

Regulations Complaints procedure undesirable behaviour Wageningen University & Research

Preamble

As a starting point for Wageningen University & Research, the Executive Board expects that all individuals directly or indirectly working or studying at WUR, such as employees, PhD candidates, students, etc., must engage with each other in an honest, respectful manner, so that everyone is able to work or study in a safe social environment. The basic norms and values applicable to desirable behaviour are: respect, integrity, honesty and safety.

The Executive Board upholds a preventative policy aimed at preventing and combating undesirable behaviour, particularly harassment (including sexual harassment), aggression, violence, discrimination and bullying, both in the workplace and the study environment.

These basic principles and the Regulations Complaints procedure undesirable behaviour based on them constitutes a further elaboration of the general provisions in the CAO WR and CAO NU (Collective Labour Agreement for Dutch Universities), as well as the general complaint section included in Chapter 9 of the General Administration Act (AWB) and, where necessary, are supplemented by additional rules given the special nature of the complaints regulations. The legal basis of these regulations is the Working Conditions Act (ARBO) and the Equal Treatment Act (AWBG).

A complaint about undesirable behaviour is handled carefully and under strict confidentiality. The Executive Board believes that it is preferable that a complaint is resolved, to the satisfaction of the complainant, through an informal process and in consultation with the parties directly involved. To ensure this process runs smoothly the Executive Board has appointed a confidential counsellor for each organisational division to whom the complainant can turn.

Should this informal process fail lead to the desired solution or should the complainant for any reason not wish to use the informal process, they are entitled to use the formal complaint procedure as established in these regulations. Nevertheless, prior to presenting the complaint for consultation to the external Complaints Committee, the Executive Board may express the desire to resolve the complaint through the informal process after all. In doing so, the Executive Board will not make any statements on the content of the complaint.

Article 1 Definitions

In these complaints regulations based on the CAO NU and CAO WR, the following definitions apply:

1.1 Organisation:

Wageningen University & Research, i.e. Wageningen University and Wageningen Research (Foundation and subsidiaries).

1.2 Executive Board:

Executive Board of Wageningen University and Executive Board of Wageningen Research Foundation.

1.3 Complaint:

A complaint is a statement by an employee, PhD candidate or student regarding undesirable behaviour they have been subjected to.

1.4 Employees, PhD candidates, students, etc.:

Employees are defined as all individuals who perform work activities within the organisation, whether or not through an employment contract. Wageningen University PhD candidates are defined as all PhD candidates who perform work activities within the organisation, whether or not through an employment contract. Students are understood to mean all individuals who follow a study programme at the organisation. Even former employees, former PhD candidates and former students who were employed by or conducted their PhD research at the organisation or studied at the organisation up to a maximum period of three years ago, has the right to invoke this complaints procedure.

- The term employee/work environment is also used to mean student/study environment.
- The term individual is also used to mean employee/PhD candidate/student.

1.5 Complainant:

The employee, PhD candidate or student who entrusts the confidential counsellor with their complaint, or submits a complaint about undesirable behaviour via the complaints officer.

1.6 Defendant:

The employee, PhD candidate or student against whom the complaint is directed.

1.7 Undesirable behaviour:

In these complaints regulations, undesirable behaviour is defined as: sexual harassment, harassment, discrimination, aggression, violence and bullying in the workplace or study situation.

1.8 Sexual harassment:

Unwanted sexual advances, requests for sexual favours or any other verbal, non-verbal or physical behaviour that also involves one of the following points:

- submission to such behaviour is explicitly or implicitly used as condition for employing an individual;
- submission to or rejection of such behaviour by a person is used as a basis for decisions that affect this individual's work;
- such behaviour intends to impact the performance of an individual and/or create an intimidating, hostile or unpleasant work environment;
- such behaviour results in the performance of an individual to be impacted and/or creates an intimidating, hostile or unpleasant work environment;

1.9 Sexual harassment:

Undesirable behaviour, aimed at or resulting in the violation of the dignity of an individual and creating a threatening, hostile, insulting, humiliating or hurtful environment.

1.10 Discrimination:

Discrimination involves making an unlawful distinction between groups of individuals in regards to religion, conviction, sexual orientation, race, sex, political persuasion, (physical) disability, skin colour or appearance, or anything else referred to in Article 1 of the Constitution.

1.11 Aggression and violence:

Aggression and violence involve incidences in which a person is psychologically or physically harassed, intimidated, threatened or attacked under circumstances directly related to the performance of one's duties or following a study at the organisation. Aggression and violence include taunting, cursing, throwing objects and hitting.

1.12 Bullying:

Bullying involves systematic hindering, harassing, or causing a physical or mental discomfort, focused on the same individual and often over a prolonged period. Bullying within the organisation includes the systematic inflicting of mental, physical or sexual discomfort by one person or a group of persons as a result of which the complainant is unable to function optimally within the organisation. Examples include social isolation, making work unpleasant or impossible for the individual, mocking, gossiping, and threatening.

1.13 Confidential counsellor:

The independent officer appointed by the Executive Board to whom the complainant can turn to with a complaint relating to undesirable behaviour.

1.14 External Complaints Committee:

The external Complaints Committee established by the Executive Board to advise the Executive Board on the submitted complaint(s).

1.15 Mediator:

A mediator is the individual accepted by the complainant and defendant to seek a solution.

1.16 **Complaints officer:**

The employee appointed by the Executive Board to whom the complaint can be submitted and who is charged with providing administrative support in the handling of the complaint. This complaints officer is the contact person both for the Executive Board and the external Complaints Committee. The complaints officer is also charged with the task of ensuring the complaints procedure is upheld. The position of complaints officer is incompatible with the role of confidential counsellor.

1.17 **Disadvantaging:**

It is forbidden to disadvantage people an individual on the fact that they have utilised the complaints procedure, have provided relevant assistance or have been heard as a witness.

Article 2 The confidential counsellor

2.1 On the recommendation of local boards, the Executive Board appoints confidential counsellors, one for students of Wageningen University and one for employees (including PhD candidates), preferably one per organisational unit, taking into account the organisation's locations.

2.2 The confidential counsellor has the following tasks:

- Acting as the point of contact for employees/PhD candidates/students confronted with undesirable behaviour;
- Receiving complaints, supporting and if necessary referring employees/PhD candidates/students to specialists;
- Informing the complainant about the complaints procedure described here and the consequences linked to it, before any relevant steps are taken;
- Advising the complainant about any steps to be taken;
- Counselling and supporting employees/PhD candidates/students who are considering submitting a complaint to the Executive Board;
- At the request of the complainant, finding a mediator;
- At the request of the complainant, taking steps aimed at finding a solution;
- Providing the Executive Board and other relevant organisational units with solicited and unsolicited advice in the area of prevention of and combating undesirable behaviour including advice on the general policy of the organisation to combat undesirable behaviour.
- Annually issuing an anonymised report to the Executive Board about the number of complaints and the nature of these complaints.
- At the request of the complainant, appearing before the Complaints Committee on behalf of the complainant if they are unable to attend.

2.3 The confidential counsellor has the following tasks:

The confidential counsellor is authorised to request access to all relevant staff-related information. If this concerns sensitive information about an employee, this is done in consultation with the HR Manager of the organisational division in question. If this concerns sensitive information about a student, this is done in consultation with the head of the Student Services Centre.

Insofar as exercising their function is concerned, the confidential counsellor is entitled to consult internal and external experts at their own initiative.

The confidential counsellor has access to all organisational units and is allowed to talk to all employees.

The confidential counsellor is authorised to bring a matter to the attention of the Executive Board provided the confidential counsellor receives one or more complaints, which the complainant for some reason has not or does not wish to present to the Complaints Committee. The confidential counsellor shall consult on this in advance with the Director of Corporate HR, the director of the Wageningen Graduate School involved and/or the Director of Education & Student Affairs (ESA), to the degree to which the case affects the interests of employees, PhD candidates and/or students.

2.4 In the execution of their tasks the confidential counsellor does not perform any acts relating to an individual case without the permission of the complainant.

The confidential counsellor may refuse to handle a complaint on the following grounds:

- Conflict of interest;
 - Personal and/or factual circumstances;
 - If the complaint is not directly related to the undesirable behaviour as referred to in this procedure;
 - If this situation occurs, the confidential counsellor will refer the complainant to a different confidential counsellor or body that will be able to properly handle the complaint.
- 2.6 For the execution of their tasks, the confidential counsellor only renders their account to the Executive Board, in which context the obligation to observe confidentiality is respected regarding information the confidential counsellor has divulged.
- 2.7 Confidential counsellors may not be disadvantaged within the organisation on account of their handling of a complaint pursuant to their function as confidential counsellor. For this reason, confidential counsellors enjoy similar protection against dismissal as members of participational bodies.
- 2.8 The Executive Board will offer the confidential counsellor the facilities required for the performance of their tasks.

Article 3: The Complaints Committee

- 3.1 If the employee or student submits a complaint concerning undesirable behaviour, the complaint will be directly submitted to the human resource portfolio holder of the Executive Board via the complaints office. The human resource portfolio holder will then present the complaint to an independent external Complaints Committee (hereinafter referred to as the Complaints Committee) for advice, unless they see a possibility to reach a solution through the (initial) informal procedure.
- 1.2 The Complaints Committee is charged with three tasks, namely:
- Rendering a decision on the admissibility of the complaint;
 - Investigating the complaint(s) on undesirable behaviour;
 - Issuing a recommendation to the Executive Board regarding the complaint(s).
- 3.3 The composition of the external Complaints Committee is as follows: the committee consists of at least two members and a (vice) chairman and should possess sufficient legal expertise and expertise in the sphere of undesirable behaviour. The Complaints Committee is supported by a secretary appointed in consultation with the Executive Board, who is not a member of the Complaints Committee. The members of the committee may have no direct or indirect links to people at Wageningen University & Research.
- 3.4 The complaints officer will issue an annual report to the Executive Board about the number of complaints, the nature of cases handled, and the recommendations to the Executive Board. These reports have been anonymised. The Executive Board will bring this report to the knowledge of the confidential counsellors and the participational bodies.

Article 4 Complaints procedure

- 4.1. The complainant must submit a complaint about undesirable behaviour to the Executive Board in writing via the complaints officer. If there are multiple complainants against the same defendant, each individual complainant must submit a complaint letter. The complaint must at least contain:
- a A description of the complaint;
 - b The name(s) of the defendant(s);
 - c A description of the steps already taken by the complainant.
- The external committee has the option of bundling individual complaints in relation to the same case and deal with and judge them collectively.
- If the complaint has been lodged against or by a member of the Executive Board, "Executive Board" in this procedure should be read as "Supervisory Board".
- 4.2 The complaints officer will ensure that, in consultation with the Executive Board, an external Complaints Committee is instituted and will send the complainant a confirmation of receipt and a copy of the complaint regulations.

- 4.3 A complaint can be submitted within three years from the moment which the undesirable behaviour occurred.
- 4.4 A complaint is not admissible in any case if:
- a The complaint is not in relation to undesirable behaviour as referred to in these regulations;
 - b The term for a complaint has lapsed;
 - c The complaint was filed anonymously;
 - d The complaint has already been handled by the committee, unless new facts and/or circumstances are involved;
 - e A legal procedure is ongoing or has been completed regarding the complaint.
- 4.5 The Complaints Committee is entitled to information from the Executive Board if it deems it necessary for the performance of its duties. Furthermore, the committee is authorised, whether or not at the request of the complainant or defendant, to hear other individuals/witnesses (internally or externally) or consult with experts (internally or externally).
- 4.6 The Complaints Committee will hear the complainant and defendant within 15 working days after receiving the complaint. Along with the invitation for the hearing, the defendant will also receive a copy of the complaint and any other relevant documents submitted by the complainant.
- 4.7 The complainant and defendant may receive counselling from the confidential counsellor during the complaint procedure and/or someone else from within or outside the organisation.
- 4.8 If the defendant is receiving legal aid, the Executive Board may, in exceptional cases, decide to provide legal aid to the complainant.
- 4.9 If the complaint is declared unfounded, the Executive Board may in exceptional cases decide to compensate the defendant's legal aid costs.
- 4.10 In relation to Article 4.5, other individuals may be heard as well. If the committee deems it necessary that a witness is heard anonymously, the committee may make a motivated decision to do so.
- 4.11 The investigation must be completed within 40 working days after hearing the defendant. If the investigation cannot be completed within 40 working days, the Complaints Committee will report its findings thus far to the Executive Board. This report may include a possible request for an extension of the above-mentioned period by a maximum of 30 working days.
- 4.12 At every hearing, the secretary and two members of the Complaints Committee, including the chair, must be present. The hearings of the Complaints Committee are closed. A written report is drafted by the secretary at each hearing. In addition, after permission from the parties involved, the matters discussed at the hearing are recorded using recording equipment. The reports are sent as information to both the complainant and defendant, as soon as these have been verified by the committee chair. The witnesses will only receive the report pertaining to their own hearing, also for informational purposes.
- 4.13 In regards to the hearing, the following applies:
- a The complainant and defendant are heard in each other's presence.
 - b If the committee deems that both parties being heard in each other's presence is not desirable, the parties will be heard individually.
 - c If the external committee has decided to handle different complaints regarding the same case (see Article 4.1) collectively, a hearing may also take place in a group setting.
 - d The involved parties working at Wageningen University & Research are required to attend.
 - e The complainant and defendant are entitled to see all relevant documents related to the complaint; these can be obtained through the secretary.
- 4.14 After the investigation has been completed, the Complaints Committee will provide a motivated recommendation to the Executive Board. This recommendation by the committee to the Executive Board must at least include the following:
- a The nature of the complaint;
 - b Who is/was affected by the undesirable behaviour;
 - c Whether the complaint is founded or unfounded;
 - d If the complaint is founded, a recommendation is made to the Executive Board regarding measures to be taken.

- e If the complaint gives cause, the recommendation may also include a recommendation regarding the aftercare process.
- 4.15 Within 15 working days after receiving the recommendation from the Complaints Committee, the Executive Board will formulate a written decision regarding the complaint on the basis of the Complaints Committee's recommendation and possible measures to be taken. If the Executive Boards intends to deviate from the recommendation, they must discuss this in advance with the chair or the Complaints Committee. In such a case, the deadline may be extended by 10 working days. If the Executive Board decides not to follow the recommendation of the Complaints Committee, this decision is included and motivated in its written decision. The decision by the Executive Board, including the recommendation by the Complaints Committee and the reports of the hearings, is shared with the complaints officer, the confidential counsellor (if involved with the procedure), the members of the Complaints Committee, the complainant and the defendant.
- 4.16 Both before and during the handling of the complaint, the Executive Board may decide to take temporary measures at the request of the complainant and/or the Complaints Committee:
 - if this is necessary for the wellbeing of the complainant, and/or;
 - an untenable situation develops for one or more of those directly involved.
- 4.17 The complaint may be withdrawn at any time.

Article 5 Confidentiality

- 5.1 All directly or indirectly involved parties in a complaints procedure have a duty of confidentiality to ensure the privacy of the complainant and defendant. This obligation is not applicable to doctors and justice officials.
- 5.2 The confidentiality obligation is applicable to the preparatory process, during the complaints procedure and after the decision by the Executive Board. If within the relevant organisational division, there is question of unrelenting rumours, the management of the decentralised unit (sciences group or equivalent unit) is permitted to announce within the organisational division whether the complaint is founded or unfounded after the decision has been made by the Executive Board, how the complaint procedure fared, and what the practical conclusion is in regards to the handling of the complaint. All parties must make efforts to prevent (further) damage to persons or interests, or limit this as much as possible.

Article 6 Formal title of regulations and date of enactment

These regulations are formally titled "Regulations on Complaints Procedure Undesirable Behaviour Wageningen University & Research", and by decision of the Executive Board on 20 July 2015 the regulations were amended and enacted on 1 September 2015.

Notes on the Regulations Complaints procedure undesirable behaviour

Specific terms have been set for parts of the complaints procedure. In the table below the term set for each activity is indicated, including the motivation and the article.

Periods

Article:	Period:	Activity:	Rationale:
4.6	15 working days	Hearing the complainant and defendant and determining the admissibility of the complaint.	Hearing complainant and defendant simultaneously will speed up the handling of the complaint. Complainant and defendant can then also be informed by the Complaints Committee of the procedure that is to be followed.
4.8	40 working days	Further investigating the complaint (incl. hearing the complainant, defendant and other individuals) and subsequently submitting a recommendation to the Executive Board.	The period for determining the admissibility and investigation of the complaint and submitting a recommendation to the Executive Board is 40 working days, given that it must be conducted in a careful fashion. This period may be extended; see Article 4.9.
4.9	30 working days	Extension of the investigation by the Complaints Committee if the procedure cannot be completed within 40 working days.	
4.13	15 working days	The Executive Board will make a decision on the basis of the recommendation by the Complaints Committee.	The period of 15 working days in which the Executive Board must make a decision regarding possible measures has been set as such, given that it is in everyone's interest that the case is settled as quickly yet carefully as possible.
	Extension of 10 working days		If the Executive Board does not wish to follow the recommendation of the Complaints Committee, consultation with the chair of the Complaints Committee is required and the period may be extended by 10 working days.

If the above periods cannot be met, the involved parties shall be informed of this by the complaints officer.