

Maastricht University Regulations on Reporting Misconduct (Whistleblowers' regulations)

Maastricht University Regulations on Reporting Misconduct

In view of:

- the 2017 Code of Good Governance for Universities (*Code Goed Bestuur Universiteiten*), adopted by the VSNU on 10 May 2017.
- the Netherlands Code of Conduct for Academic Practice (*Nederlandse Gedragscode Wetenschapsbeoefening*), VSNU 2004, revised in 2012 and 2014
- the Maastricht University Complaints Regulations on Scientific Integrity (*Klachtenregeling Wetenschappelijke Integriteit Universiteit Maastricht*) 1 September 2012
- Section 2 (1) of the House for Whistleblowers Act (*Wet Huis voor Klokkeluiders*), which entered into force as of 1 July 2016

the Executive Board adopts the Regulations on Reporting Misconduct (Whistleblowers' regulations) for Maastricht University as follows.¹

Article 1 Definitions

1. In these regulations, the following terms shall have the following meanings:
 - a. **adviser**: an internal or external third party which by virtue of its position is bound by an obligation of confidentiality and which is consulted confidentially by an employee about a suspicion of misconduct, for instance a company doctor, a lawyer, a legal counsel of the trade union etc.;
 - b. **Advisory Department of the House for Whistleblowers**: the advisory department of the House for Whistleblowers, as referred to in Section 3a (2) of the House for Whistleblowers Act;
 - c. **Investigation Department of the House for Whistleblowers**: the investigation department of the House for Whistleblowers, as referred to in Section 3a (3) of the House for Whistleblowers Act;
 - d. **secretary**: the secretary who will provide secretarial and policy-related support for the reporting procedure and has been appointed as such by the competent authority in connection with these regulations;
 - e. **competent authority**: the Executive Board of Maastricht University or a person or body designated for that purpose by the Executive Board under the UM Mandates Regulation. If a report of a suspicion of misconduct relates to one or more members of the Executive Board, the Supervisory Board shall be the competent authority.
 - f. **external third party**: any organisation or representative of an organisation, not being the confidential adviser or the adviser, to whom an employee reports a suspicion of misconduct, because in their reasonable opinion the misconduct is of such public interest that, in the specific circumstances of the case, that interest must be regarded as outweighing the interests of the employer as served by nondisclosure, and who in his or her reasonable opinion may be regarded as capable of taking direct or indirect action to resolve, or be able to resolve, the suspected misconduct.
 - g. **manager**: the authorised person designated by the Executive Board under the UM Mandates Regulation, such as for instance the employee's administrative manager;
 - h. **informant**: the employee who has reported a suspicion of misconduct under these Regulations;
 - i. **report**: the report of a suspicion of misconduct under these Regulations;

¹ These regulations are based on the model procedure for dealing with reports of suspicions of abuses or irregularities (*Modelregeling inzake the omgaan met melden vermoeden misstand of onregelmatigheid*) of the Advice Centre for Whistleblowers (*Adviespunt Klokkeluiders*).

- j. **investigators:** those whom the competent authority charges with the investigation into the misconduct;
 - k. **Supervisory Board:** the body that exercises supervision over the the competent authority within the UM organisation;
 - l. **suspicion of misconduct:** the suspicion of an employee of the occurrence of misconduct within the UM organisation insofar as:
 - 1e. there are reasonable grounds for the suspicion which arise from knowledge that the employee has gained at their employer or which stem from the knowledge that the employee has obtained through their activities at another business or organisation; **and**
 - 2e. the public interest is at stake in:
 - i. a gross violation of a statutory provision or risk thereof,
 - ii. a serious criminal offence or risk thereof,
 - iii. a gross breach of regulations other than a statutory regulation or risk thereof,
 - iv. a major danger to public health, the safety of persons or environmental damage, or risk thereof
 - v. the intentional provision of incorrect information to public bodies, or risk thereof,
 - vi. a waste of public funds, or risk thereof, and
 - vii. the conscious concealment, destruction or manipulation of information about the facts mentioned under i to vi inclusive above, or risk thereof;
 - m. **confidential adviser:** the person appointed as such by the competent authority in connection with these regulations
 - n. **employer:** Maastricht University (referred to below as: UM)
 - o. **employee:** a person who performs or has performed work on the basis of an employment contract or a person who performs or has performed work for UM on a basis other than an employment relationship;
2. Any complaints concerning (alleged) infringements of academic conduct, which are understood to include academic misconduct, deception and unlawful exercise of intellectual property rights, will be handled in accordance with the procedure set out in the Maastricht University Complaints Regulations on Scientific Integrity (Klachtenregeling Wetenschappelijke Integriteit UM).

Article 2 Consultation

1. Before an employee reports a suspicion of misconduct, the employee can confidentially consult an adviser about the suspicion of misconduct.
2. In accordance with paragraph 1, the employee can ask the confidential adviser for information, advice and support concerning the suspicion of misconduct.
3. In accordance with paragraph 1, the employee can also ask the Advisory Department of the House for Whistleblowers for information, advice and support concerning the suspicion of misconduct.
4. The costs, if any, of consulting a company doctor or the House for Whistleblowers will be borne by the employer. Other consultation costs must be paid by the employee.

Article 3 Internal report

1. An employee who performs or has performed work on the basis of an employment contract with a suspicion of the occurrence of misconduct within UM can report this to their manager or if the employee does not consider it desirable to report this to his or her manager, to the confidential adviser, unless a ground for exception applies as referred to in article 14 (2). The

manager or the confidential adviser to whom the report has been submitted will forward the report to the competent authority without delay.

2. An employee who performs or has performed work for UM on a basis other than an employment relationship with a suspicion of the occurrence of misconduct within UM can report this to the confidential adviser, unless a ground for exception applies as referred to in article 14 (2). The confidential adviser will forward the report, in consultation with the employee, to the competent authority without delay.
3. If the report of the suspicion of misconduct relates to the competent authority, the employee can also submit the report to the Supervisory Board. If an employee of another organisation as referred to in paragraph 2 has a reasonable suspicion that the competent authority is involved in the suspected misconduct and submits a report on this to the confidential adviser, the confidential adviser will forward the report to the Supervisory Board. In that case, references below in these Regulations to the 'competent authority' must be read as 'Supervisory Board'.
4. The employee is not expected to be able to prove that what he or she asserts is true. However, the employee must be able to demonstrate that there is sufficient cause for a reasonable suspicion of misconduct. The employee should provide as much information as possible in connection with the report: names, dates, places and the reason for the report.
5. Anonymous reports will not be considered.

Article 4 Protection of the informant against disadvantage

1. The competent authority shall not disadvantage the informant in their legal position in any way whatsoever.
2. Disadvantage as referred to in paragraph 1 also applies if there is a reasonable ground for holding the informant to account for their performance or for taking a detrimental measure in respect of the informant, but the measure that the competent authority takes is not in reasonable proportion to that ground.
3. If the competent authority proceeds to take, within a foreseeable period of time after the submission of a report, a detrimental measure in respect of the informant, it shall substantiate why it considers this measure necessary and that this measure is unconnected with the report made in good faith and properly of a suspicion of misconduct.
4. The competent authority must ensure that managers and colleagues of the informant refrain from any form of disadvantage, in connection with the report made in good faith and properly of a suspicion of misconduct, that impedes the professional or personal functioning of the informant. This is understood to mean at least:
 - a. bullying, ignoring and excluding the informant;
 - b. making unfounded and disproportionate accusations in relation to the informant's functioning;
 - c. the actual imposition of a research, discussion, workplace and/or contact prohibition on the informant or the informant's colleagues in any shape or form whatsoever;
 - d. intimidation of the informant by threatening specific measures or practices if they continues with their report.
5. The competent authority will hold to account employees who disadvantage the informant and can impose a warning or measure on them.
6. Paragraph 1 shall not apply if the employee did not act in good faith and/or pursued personal gain from the misconduct or reporting it.
7. The employee can be held liable for damage/loss resulting from an intentional act or wilful recklessness.

Article 5 Combating disadvantage for the informant

1. Within five working days after notification of the confirmation of receipt as referred to in article 8 (2), the confidential adviser will discuss with the informant what risks of disadvantage might apply, how those risks can be reduced and what the employee can do if they believe they have been disadvantaged. The confidential adviser will ensure this is documented in writing, and will present that documentation to the informant for approval and signing. The informant will receive a copy of this.
2. If the informant is of the opinion that any disadvantage has occurred, they can discuss this with the confidential adviser without delay. The confidential adviser and the informant will also discuss what measures can be taken to that combat disadvantage. The confidential adviser will ensure this is documented in writing, and will present this documentation to the informant for approval and signing. The confidential adviser must forward that report to the competent authority without delay. The informant will receive a copy of this.
3. The competent authority will ensure that measures that are necessary to combat disadvantage are taken.

Article 6 Protection of other parties involved against disadvantage

1. The competent authority shall not disadvantage the adviser who is employed by the employer for acting as adviser of the informant.
2. The competent authority shall not disadvantage the confidential adviser for performing the tasks described in these Regulations.
3. The competent authority shall not disadvantage the investigators employed by the employer for performing the tasks described in these Regulations.
4. The competent authority shall not disadvantage an employee who is heard by the investigators in connection with making a statement in good faith.
5. The competent authority shall not disadvantage an employee in connection with the provision of documents by the employee to the investigators that in their reasonable opinion are important to the investigation.
6. Article 4 (2) to (6) inclusive shall apply correspondingly to disadvantage for the persons referred to in paragraphs 1 to 5 inclusive.

Article 7 Confidential treatment of the report and the identity of the informant

1. The competent authority shall ensure that the information about the report is stored in such a way that it can only be accessed physically and digitally by those who are involved in dealing with this report.
2. Anyone involved in dealing with a report shall not disclose the identity of the informant without the express written permission of the informant and shall treat the information about the report confidentially.
3. If the suspicion of misconduct has been reported to the confidential adviser and the informant has not given permission to disclose their identity, all correspondence about the report shall be sent to the confidential adviser and the confidential adviser shall forward this to the informant without delay².
4. Anyone involved in dealing with a report shall not disclose the identity of the adviser without the express written permission of the informant and the adviser.

² Explanation: If the suspicion of misconduct has been reported to the confidential adviser and the informant has not given permission to disclose their identity, the confidential adviser passes the anonymized report. As it were, the confidential adviser will be the informant and all correspondence concerning the report will be via the confidential adviser who passes this on to the original informant.

Article 8 Documentation, forwarding and confirmation of receipt of the internal report

1. If the employee reports a suspicion of misconduct orally to their manager or the confidential adviser or provides an oral explanation on a written report, this manager or confidential adviser will ensure, in consultation with the informant, that this is documented in writing, and will present that documentation to the informant for approval and signing. The informant will receive a copy of this.
2. Within five working days, the competent authority will send the informant a confirmation that the report has been received. The confirmation of receipt will in any case contain a description of the essence of the report, the date on which it was received and a copy of the report. The manager and the confidential adviser will receive a copy.
3. If the report was submitted to the manager of the employee, the confirmation of receipt will state that the employee can turn to the confidential adviser with a view to combating disadvantage.

Article 9 Handling of the internal report by the employer

1. The competent authority will instigate an investigation of the reported suspicion of misconduct, unless:
 - a. the suspicion is not based on reasonable grounds, or
 - b. it is immediately clear that the report does not relate to a suspicion of misconduct.
2. If the competent authority decides not to instigate an investigation, it will notify the informant of this within two weeks after the internal report was submitted. In that connection, the grounds will also be stated on the basis of which the competent authority judges that the suspicion is not based on reasonable grounds, or that it is immediately clear that the report does not relate to a suspicion of misconduct.
3. The competent authority will assess whether an external third party as referred to article 14 must be informed of the internal report of a suspicion of misconduct. If the employer notifies an external third party, the competent authority will send the informant a copy of the notification, unless there are serious objections to this.
4. The competent authority will assign the investigation to independent and impartial investigators, and will not, in any event, have the investigation conducted by individuals who may be involved in or may have been involved in the suspected misconduct.
5. The competent authority will inform the informant that an investigation has been instigated and who is conducting the investigation. When doing so, the competent authority will send the informant a copy of the terms of reference for the investigation unless there are serious objections to this.
6. The competent authority will inform the persons to whom a report relates about the report and about the notification of an external third party as referred to in paragraph 3, unless the interests of the investigation or enforcement can be harmed as a result.

Article 10 The performance of the investigation

1. The investigators will perform the investigation within eight weeks after they have been instructed to do so by the competent authority pursuant to article 9 (4). After eight weeks at the latest the investigators will report their findings to the competent authority. If it becomes clear during the period of eight weeks that the investigation cannot be completed within the set period, the investigators will notify the competent authority about this without delay.
2. The investigators will give the informant and the person to whom the report relates the opportunity to be heard. The investigators will ensure that this is documented in writing, and

will present this documentation to the person's heard for approval and signing. These will receive a copy of this.

3. The investigators can also hear others. The investigators will ensure that this is documented in writing, and will present this documentation to the person heard for approval and signing. The person heard will receive a copy of this.
4. If the report relates to a person, that person will be heard. The investigators will ensure that this is documented in writing, and will present this documentation to the person concerned for approval.
5. The investigators can view and request all documents within the organisation of the employer that they reasonably deem necessary for performing the investigation.
6. Employees are in addition allowed to provide the investigators with all documents of which they reasonably deem the investigators should be aware within the scope of their investigation.
7. The investigators will write a draft investigation report and give the informant the opportunity to comment on it, unless there are serious objections to this.
8. The investigators will then finalise the investigation report. They will send the informant a copy of this, unless there are serious objections to this.
9. The secretary supports the investigators in all activities.

Article 11. The employer's opinion

1. The competent authority will inform the informant in writing within a period of at most twelve weeks from the time of the internal report of the substantive opinion about the reported suspicion of misconduct. Furthermore, the measures that the opinion has led to are also stated.
2. If it is clear that the opinion cannot be given within the set period, the competent authority will notify the informant of this in writing. When doing so, it must indicate the period within which the informant can expect to see the opinion.
3. After completion of the investigation, the competent authority will assess whether an external third party as referred to in article 14 must be informed of the internal report of a suspicion of misconduct and of the investigation report and of the opinion of the employer. If the employer notifies an external third party, the employer will send the informant a copy of the notification, unless there are serious objections to this.
4. Like the informant, the persons to whom the report relates are notified on the basis of paragraph 1 to 3 inclusive, unless this could harm the interests of the investigation or enforcement. In addition, the information will be treated confidentially for as long as there is a suspicion of misconduct.
5. The secretary will support the competent authority in all activities.

Article 12 The right of both parties to be heard in relation to the investigation report and opinion

1. The competent authority will give the informant an opportunity to respond to the investigation report and the opinion of the competent authority.
2. If the informant states, in response to the investigation report or the employer's opinion, providing reasons for this, that the suspicion of misconduct has not actually or not properly been investigated or that the investigation report or the employer's opinion contain significant inaccuracies, the employer must respond to the substance of this and if necessary modify the report.
3. If the competent authority notifies or has notified an external third party as referred to in Article 14, it will also forward the informant's aforementioned response to the investigation report and the opinion of the competent authority to this external third party. The informant will receive a copy of this.

Article 13 Supervisory Board

If the employee:

- a. has not received an opinion within the required period, referred to in the first and second paragraphs of article 11, or
- b. the period, referred to in the second paragraph of Article 11, is unreasonably long taking all circumstances into account and the employee has complained about this to the competent authority, or
- c. cannot agree to the opinion of the competent authority, or
- d. reasonably suspects that the competent authority is involved in the suspected misconduct as referred to in Article 3 (3), the employee should contact the chair of the Supervisory Board. The chair of the Supervisory Board will inform the employee about the subsequent progress within ten days.

Article 14 External report

1. After submitting an internal report of a suspicion of misconduct, the informant can submit an external report if:
 - a. the informant, with due observance of article 13, disagrees with the opinion referred to in article 11 **or**;
 - b. if a ground for exception as referred to in the next paragraph applies.
2. A ground for exception as referred to in the previous paragraph under (b) shall apply in the case of:
 - a. immediate danger, where a serious and urgent social interest necessitates immediate external reporting;
 - b. a reasonable suspicion that the Supervisory Board is involved in the suspected misconduct;
 - c. a clearly demonstrable threat of obfuscation or destruction of evidence;
 - d. a previous internal report in accordance with the procedure of essentially the same misconduct, which has not resolved the misconduct;
 - e. a statutory obligation or authorisation to submit a direct external report.
3. the informant can submit the external report to an external third party that, in the reasonable opinion of the informant, is the most appropriate. External third party is, in any case, understood to mean:
 - a. a body that is tasked with detecting criminal offences;
 - b. a body that is tasked with supervising compliance with that which is stipulated in or pursuant to any statutory regulation;
 - c. another competent body to which the suspicion of misconduct can be reported, including the Investigation Department of the House for Whistleblowers.
4. The informant shall take account of the effectiveness with which that third party can intervene and with the interests of the employer in as little damage/loss as possible as a result of that intervention, insofar as that damage/loss does not unavoidably arise from acting against the misconduct.
5. As the possibility of damage/loss for the employer grows as result of the external report, the suspicion of misconduct held by the informant is required to be stronger.

Article 15 Internal and external investigation into disadvantage for the informant

1. An informant who believes they are disadvantaged in connection with submitting a report of a suspicion of misconduct can ask the competent authority to perform an investigation of the manner in which they are treated within the organisation.
2. Articles 9 to 12 inclusive are applicable by analogy.
3. Paragraphs 1 and 2 apply correspondingly to the persons referred to in article 6 (1) to (5) inclusive.
4. The informant can also ask the Investigation Department of the House for Whistleblowers to instigate an investigation into the way in which the employer behaved towards him further to the report of a suspicion of misconduct. The informant must notify the competent authority of this request.

Article 16 Publication, reporting and evaluation

1. The Executive Board will handle communication about and publication of these Regulations.
2. The Executive Board will designate an secretary who will annually prepare a report on the policy on handling reports of suspicions of misconduct and the implementation of these Regulations. That report will contain anonymised information on:
 - a. the number of reports and an indication of the nature of the reports, the outcomes of the investigations and the opinions of the employer;
 - b. the number of reports that did not lead to an investigation;
 - c. general information on experience of combating disadvantaging of the informant;
 - d. the number of investigations undertaken and the nature of the measures.
3. The secretary will send the annual report to the Executive Board.

Article 17 Entry into force of Regulations and withdrawal of current Regulations

1. These Regulations were amended in connection with the entry into force of the Act on the Standardisation of the Legal Status of Civil Servants (WNRA) and shall enter into force on 31 December 2019.
2. These Regulations shall be referred to as Maastricht University Regulations on Reporting Misconduct.
3. The Regulations on the protection of whistleblowers at Maastricht University (whistleblower regulations) of 1 July 2018 will thereby be cancelled).