

## **REGULATIONS FOR THE POSITION OF OMBUDS OFFICER**

### **PREAMBLE**

Maastricht University (UM) wants its staff to have a healthy and safe working environment. It attaches great value to collegiality, equality, safety and integrity. This is one reason why UM has established a position of university Ombuds officer. The Ombuds Officer can contribute to open communication at UM, which can positively affect social safety at the university.

The Ombuds Officer is independent and is an unbiased contact. A Notifier can ask the Ombuds Officer for advice on a specific matter in an approachable way. They can also make an official Report, after which the Ombuds Officer can decide to investigate whether there has been inappropriate behaviour. The Ombuds Officer can also start an investigation on their own initiative. As an impartial mediator, the Ombuds Officer can contribute to informal dispute resolution. The Ombuds Officer is bound by official secrecy.

The Ombuds Officer can make recommendations to management on wider trends and developments in social safety and underexposed or unexposed issues. This is where the Ombuds Officer differs significantly from a confidential adviser who acts on behalf of a Notifier and thus does not occupy an independent and neutral position.

The Ombuds Officer's activities and the framework in which they are performed are laid down in these regulations. Explanatory notes on several articles are included at the end of these regulations to support their interpretation.

## Article 1 – Definitions

1. The terms below have the stated meaning in these Regulations:
  - a. **Employee:** a person who has, or has had, an employment contract with UM as defined in Article 1.1(g) of the Collective Labour Agreement of Dutch Universities.
  - b. **Student:** Person who is enrolled or has been enrolled at Maastricht University for a study, programme or course, the contract student, extraneous, post-initial master's student and anyone who makes use of the educational facilities provided by Maastricht University on any other lawful basis.
  - c. **External Party:** a person who has, or has had, a work placement, secondment or hosting agreement with UM; or who is or has been registered at UM.
  - d. **Notifier:** the Staff Member, Student or External Party who makes a Report to the Ombuds Officer.
  - e. **Report:** a written request from a Notifier to the Ombuds Officer to investigate how a Body has behaved or failed to behave towards this Staff Member, Student, External Party or another person in a specific matter.
  - f. **Ombuds Officer:** the independent officer appointed by the Executive Board to conduct solicited and unsolicited investigations into the propriety of conduct by and against UM Staff Members, Students or External Parties.
  - g. **Body:** the Supervisory Council, the Executive Board, the Faculty Board, the dean of a faculty or a member responsible for a specific portfolio on the Faculty Board, the director of a department, faculty or interfaculty research institute, the University Council or Local Consultative Body, Staff Member, Student or External Party.
2. Unless expressly stated otherwise or the context requires otherwise, if the definition in this article is stated in the singular, it includes the plural and vice versa.

## Article 2 – Ombuds Officer

1. The Ombuds Officer has an independent position at UM and is tasked with identifying undesirable patterns, providing solicited and unsolicited advice, maintaining contact with a Notifier regarding a Report or request for advice, conducting an investigation on their own initiative in response to a Report, and acting as a mediator, where necessary.
2. The Ombuds Officer notifies the Executive Board and the relevant Faculty Board or the director of the department concerned in writing if they identify a problematic trend or serious signs of such a trend, so that the board and/or the director have the opportunity to address the identified problem.
3. Any Notifier can contact the Ombuds Officer about how a Body, Staff Member, Student or External Party has behaved towards them in a specific matter, either to seek informal advice from the Ombuds Officer or to submit a Report as described in Article 3.

## Article 3 – Report

1. The Ombuds Officer's work address and email address are listed on UM's publicly accessible website.
2. The procedure for submitting a Report to the Ombuds Officer is described on UM's publicly accessible website.
3. The Ombuds Officer must act in response to a Report as referred to in the second paragraph unless an exception in Article 4 applies.
4. If the Ombuds Officer believes the Notifier has the right to object to, appeal against or complain about the conduct referred to in the Report or if the Notifier can file a complaint at a Body of the university, the Ombuds Officer will point out this possibility to the Notifier as soon as possible, in accordance with Article 4, paragraph 1.
5. The Notifier may withdraw the Report at any time, in which case the Ombuds Officer may decide to cease the investigation or continue it on their own initiative. The Ombuds Officer informs the Notifier and, if relevant, the other parties involved of their decision to cease or continue the investigation within fourteen calendar days of the Notifier having withdrawn the Report. If the Ombuds Officer continues the investigation on their own initiative, the withdrawn Report is the reason for the investigation, but the investigation focuses on a trend in the identified problem.
6. Notifiers who have filed a Report in good faith, with due observance of the provisions of these Regulations, and Staff Members who cooperate in an investigation by the Ombuds Officer, will not be disadvantaged at all in their position insofar as that disadvantage would

only result from submitting the Report to the Ombuds Officer or cooperating in the investigation.

7. If a Report relates to the Executive Board or one of its members, the Supervisory Council will exercise the Executive Board's powers under these Regulations and the Ombuds Officer will inform or involve the Supervisory Council in the same way as the Executive Board would be informed or involved.

#### **Article 4 – Power and obligation to investigate**

1. The Ombuds Officer is not authorised to investigate if one or more statutory, complaints, objection or appeal procedures which are or were open to the Notifier regarding the conduct.
2. The Ombuds Officer does not have to start or continue an investigation if:
  - a. one year or longer has passed since the conduct to which the Report relates last occurred
  - b. they believe the Report is obviously unfounded
  - c. they believe the interest of the Notifier or the seriousness of the conduct to which the Report relates is obviously insufficient
  - d. they believe after their intervention that the Notifier's grievances have been satisfactorily addressed.
3. If the Ombuds Officer does not start or continue an investigation in response to a Report as referred to in paragraph 1, they will inform the Notifier of this in writing as soon as possible, stating the reasons for this decision. The Ombuds Officer also informs the Notifier which Body is competent to deal with the Report or complaint. No objection or appeal can be made against the Ombuds Officer's decision not to start an investigation. Subject to paragraph 1, the Ombuds Officer is authorised to start an investigation on their own initiative into the conduct of a Body in a specific matter.

#### **Article 5– Investigation**

1. The Ombuds Officer assesses whether or not the Body has acted properly in the matter under investigation unless the Ombuds Officer decides to refrain from making such an assessment. Any conduct by a person working on behalf of a Body is deemed to be the conduct of that Body.
2. The Ombuds Officer will inform the Body being investigated accordingly.
3. The Ombuds Officer will ensure that no person involved in the conduct to which the investigation relates works on an investigation, whether or not instituted after a Report is made.

#### **Article 6 – Positions and statements**

1. The Ombuds Officer gives the Body or the person named in the Report and the Notifier the opportunity to express their views in writing or orally, whether or not in each other's presence.
2. If the Ombuds Officer considers it necessary for the purpose of assessing the Report, they may allow persons other than the Body concerned and the Notifier to become acquainted with the Report, with a request to make written or oral statements, if necessary under a guarantee of strict confidentiality. Persons to whom such a request is made must comply with it within the time limit set by the Ombuds Officer.

#### **Article 7 – Information**

1. Within a reasonable period to be determined by the Ombuds Officer, the documents held by the Body, the person to whose conduct the Report relates, and other parties must be submitted to the Ombuds Officer for the purpose of an investigation after a written request to that effect.
2. The Ombuds Officer will make a request as referred to in paragraph 1 to the manager of the person holding the requested documents or information unless the investigation concerns that manager, in which case the Ombuds Officer will make the request directly to the person holding the requested documents or information.

3. A Body may determine that information and/or documents, which in its opinion need to be kept confidential for important reasons or which are subject to a duty of confidentiality, will be provided only to the Ombuds Officer and on condition that the Ombuds Officer maintains their confidentiality.

#### **Article 8 – Experts and site inspections**

1. The Ombuds Officer is authorised to bring in experts if they believe this is necessary for the purpose of the investigation.
2. If the Ombuds Officer believes it is necessary for the purpose of the investigation, they can enter all locations without consent where the Body or the person named in the Report is performing duties or which, in the Ombuds Officer's opinion, are relevant to the investigation.

#### **Article 9 – Mediation**

1. If an investigation is opened because of a Report, the Ombuds Officer can try to mediate between the Notifier and the Body to which the Report relates during or after the investigation. The mediation is aimed at an out-of-court settlement of the Report.
2. The Ombuds Officer will act impartially when implementing paragraph 1.

#### **Article 10 – Findings, recort and recommendations**

1. Before closing the investigation, the Ombuds Officer communicates the findings in writing to the Body concerned, the person to whose conduct the request relates and the Notifier and offers them the opportunity to respond to the findings in writing within a reasonable period to be set by the Ombuds Officer.
2. Once an investigation is closed, the Ombuds Officer draws up a recort, in accordance with Article 10 of the Government Information (Public Access) Act (*Wet Open Overheid*), which presents the Ombuds Officer's findings and opinion.
3. If the Ombuds Officer believes the conduct to which the investigation related was improper, the recort will state which requirement of propriety was violated.
4. The Ombuds Officer sends the recort to the Body concerned, the person to whose conduct the request relates, the Notifier and the Executive Board.
5. It is not possible to object to or appeal against the recort.
6. The Ombuds Officer may make recommendations to the Body based on the investigation. In this case the Body will inform the Ombuds Officer within a reasonable period how the recommendations will be implemented. If the Body considers not following the recommendations, it will inform the Ombuds Officer, the Executive Board and the Notifier, stating reasons.
7. The Ombuds Officer will provide anyone who so requests a copy or extract of a recort as referred to in the second paragraph, in accordance with Article 6.16 of the UM Administration and Management Regulation.
8. An agreement resulting from a mediation, a recort of findings as described in paragraph 2 and/or a decision taken because of a recort of findings will be removed from the personnel file after three years. The data held by the Ombuds Officer will also be removed from the Ombuds Officer's archives after three years.

#### **Article 11 – Confidentiality**

1. The Ombuds Officer, all persons working for the Ombuds Officer, and all Staff Members, Students and other persons involved in the investigation, are bound to keep as confidential anything they may have become aware of during the course of their work, insofar as these regulations do not explicitly prescribe a duty of disclosure. The duty of confidentiality remains fully applicable after an investigation.
2. The Ombuds Officer can be released from their duty of confidentiality if the safety of Staff Members, External Parties, Students and/or the Ombuds Officer is threatened.

**Article 12 – Effective Date**

1. The Executive Board of Maastricht University has adopted these regulations after approval from the Local Consultative Body and the University Council.
2. These regulations come into effect on 7 February 2024.

## **ARTICLE-BY-ARTICLE**

### **EXPLANATION Article 1**

#### *Paragraph 1(b)*

The word 'complaint' rather than the word 'Report' is used for a matter in connection with which the Ombuds Officer is contacted. Although a Report can be a complaint, it can also be something else. In fact, the Ombuds Officer can act even before there is a formal complaint. This also prevents a conflict with the mandate of a complaints committee, for example, where the word complaint is used in a formal sense.

The conduct of a Body is understood to mean both an act and an omission, as well as treatment or behaviour.

#### *Paragraph 1(c)*

Although a Report can first be made orally, it must be put in writing by the staff member who wishes to make the Report before the Ombuds Officer will deal with it. This not only prevents miscommunication about the nature or content of the Report, but also complies with the duty to pass on information as described in Article 6, paragraph 4. A Report by email is considered to be a written Report.

### **Article 2**

#### *Paragraph 3*

Before making a Report, the matter can be discussed informally with the Ombuds Officer.

### **Article 3**

#### *Paragraph 2*

Publishing the Ombuds Officer's contact information on the publicly accessible part of the website (not only the intranet) is a shared responsibility of the Executive Board and the Ombuds Officer.

It is not possible to make an anonymous Report to the Ombuds Officer. If where the Notifier works and the context of the Report are unknown, it is difficult to start working with the Report. If the identity of the Notifier and the context of the Report are unknown, it is impossible to hear both sides of the argument. It could also harm staff members' social safety if anonymous Reports are made that cannot be properly investigated. Lastly, as the Ombuds Officer is bound by confidentiality, knowledge of the Notifier's identity can be restricted to the Ombuds Officer.

A Notifier who wishes to report misconduct anonymously can use the Maastricht University Regulations on Reporting Misconduct (Whistleblower Regulations)

#### *Paragraph 4*

Because of the Ombuds Officer's duty of confidentiality, they will not forward any Report on their own initiative for which a formal objection, appeal or complaint may be lodged with the competent authority or Body. Instead, the Ombuds Officer will inform the Notifier of the possibility of objection, appeal or complaint, after which the Notifier can still request the Ombuds Officer to forward the Report.

### **Article 4**

#### *Paragraph 1*

An Ombuds Officer does not deal with Reports that have already been dealt with by a mediator or that fall under Human Resources Management or another Body within the organisation for Students. Other Bodies include student deans, student advisors, student psychologists, etc. If a Notifier feels that the outcome of a case dealt with elsewhere is inadequate, the Ombuds Officer can look into the case and give recommendations on how to improve the handling of it. The Ombuds Officer is not an additional escalation option, but can advise on the method of handling complaints

An Ombuds Officer does not deal with a subject that is explicitly assigned to a specific committee or a special officer at the university, for example for Scientific Integrity. In those cases, the Ombuds Officer must refer the Reports to the relevant officer or committee. There will always be unforeseen situations and exceptions that cannot be solved by regulations or a committee. If the Notifier does not agree with the outcome, the Ombuds Officer can look into the case and advise on improving the handling by an officer or committee.

#### *Paragraph 2*

If one ground in this paragraph applies, only the obligation to handle a complaint ceases to apply, the authority remains. Unlike the mandatory grounds for lack of authority in paragraph 1, it is thus at the Ombuds Officer's discretion whether the grounds listed in the article are applied.

#### *Paragraph 2(a)*

A limit must be placed on the period during which a Body or person can be confronted with a Report about past conduct. One year is considered reasonable in this context. The Ombuds Officer must increase the organisation's capacity to learn and this is hindered if too much focus is placed on the past instead of the recent past and the future that follows from it.

#### *Paragraph 2(b)*

Making it compulsory for the Ombuds Officer to investigate Reports that are clearly unfounded must be avoided. Given the Ombuds Officer's profile and their duties, they can be reasonably expected to recognise an objectively and clearly unfounded Report as such. The Ombuds Officer should namely not be required to conduct unlimited investigations into complaints that are obviously repetitive, serve a different purpose or are unfounded. The assessment of this falls under the Ombuds Officer's discretionary power. Even so, the Ombuds Officer must substantiate a rejection of the Report on this basis.

#### *Paragraph 2(c)*

The Notifier's interest is obviously inadequate if, for example, the Body has already apologised – provided it has done so appropriately and adequately – or if the conduct concerned has already been the subject of an investigation and a decision has been reached following another complaint. Matters that are insufficiently serious are trivial matters, such as a wrongly affixed stamp. The seriousness of the conduct will be assessed independently of the Notifier's interest, i.e. subjective or objective.

#### *Paragraph 3*

A decision as described in this paragraph is not a decision as defined in the General Administrative Law Act (*Algemene wet bestuursrecht*, Awb) against which objections and appeals may be lodged.

### **Article 5**

#### *Paragraph 1*

The Ombuds Officer may decide that an assessment is unnecessary because the Report has already been resolved after it was filed.

### **Article 6**

#### *Paragraph 1*

The Ombuds Officer determines whether the position is explained orally or in writing. The Ombuds Officer also determines whether the Notifier and the Body will state their positions in each other's presence. The Ombuds Officer will consider any requests by the parties concerned but is not obliged to comply with a request or to substantiate a decision not to comply with a request.

## **Article 9**

### *Paragraph 2*

Because of the impartial role that the Ombuds Officer plays in the mediation, the Confidential Adviser may assist the Notifier, if so required.

## **Article 10**

### *Paragraph 1*

The option for the parties concerned to respond to the Ombuds Officer's findings should not be misconstrued as an option to lodge an objection as defined in the General Administrative Law Act (Awb). The Ombuds Officer also has the right to disregard responses without stating reasons.

### *Paragraph 5*

As the recort is not a decision as defined in the General Administrative Law Act (Awb), there is no possibility of a formal objection or appeal against it.

### *Paragraph 6*

Depending on the situation, recommendations can include reaching a practical solution, having a mediating effect or, for example, making a referral to a mediator.

Although the Ombuds Officer's recommendations are not legally binding, the recommendations should at least be considered. This paragraph deals with the obligation of the person concerned to inform the Ombuds Officer in this regard. If a recommendation is not followed, this must be substantiated.

### *Paragraph 7*

A request to inspect a report is considered a request under the Government Information (Public Access) Act (*Wet Open Overheid*).