Ombudsperson Regulations

Wageningen University & Research

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# Introduction

The parties of the Collective Labour Agreement for Dutch Universities 2020 (‘CAO NU’) have agreed to set up an ombudsperson position at all universities involved in the CAO NU. The VSNU and the trade unions have made agreements on the appointment of a university ombudsperson position within the various universities. The approach is based on uniformity, partly because of national political and media attention. A National Framework (**Appendix A**) has been adopted for the organisation of the ombudsperson position. This National Framework is the starting point for the organisation of the ombudsperson position within Wageningen University & Research (‘WUR’).

WUR’s principles on acting with integrity are anchored within the WUR’s Integrity Code. The Executive Board of WUR considers it self-evident that all persons within WUR who work or study here directly or indirectly – such as employees, PhD candidates (appointed or not appointed) and students – are able to work and study in an inspiring and safe environment.

In a safe work and study environment, it is possible to speak out if things are not going well and to address problems, dilemmas or conflicts in order to find solutions. The primary responsibility for resolving such situations lies with managers, in the broadest sense of the word. For situations in which managers cannot offer solutions, WUR has an extensive support structure in which various actors, such as counsellors, deans, student welfare services, PhD supervisors, company social workers, occupational health and safety services and HR contribute to promoting a safe work and study environment, in the broadest sense of the word. Additionally, various complaints, objections and appeals procedures are in place, which employees and students can use if they have complaints about, for example, their (legal) position or in cases of undesirable conduct. The ombudsperson position is an instrument that contributes to a safer work and study environment, complementing the existing support structure. The ombudsperson works independently, impartially and confidentially, and can investigate and give (solicited and unsolicited) advice on structural problems and abuses in the work and study environment.

For employees and students, the purpose of the ombudsperson is to identify and offer advice on major trends relating to social safety from an independent and authoritative position. The ombudsperson deals with individual cases, but does not deal with issues relating to legal affairs, issues that have already been dealt with and cases that have been explicitly assigned to specific committees.

The introduction of the ombudsperson is intended to create an easily accessible facility for (groups of) employees and students for problems that arise during work or study and that may lead to questions, dilemmas or conflicts, to provide appropriate opportunities for independent and impartial advice, mediation or referral within the support structure or investigation. It concerns situations in which employees or students believe that they have been treated – in their eyes – incorrectly or unfairly by persons or bodies of Wageningen University & Research.

The ombudsperson can support (groups of) employees and students in analysing and solving questions, dilemmas or conflicts related to work or study, at the moment that no solutions can be agreed upon between them and the existing support structure. The ombudsperson is not an additional body to the existing complaints, objections and appeals mechanisms, or a replacement for the actors who focus on individual cases, but the ombudsperson is an independent party who can act as intermediaries between parties and expose ineffective patterns in the culture of (parts of) the organisation, with regard to social safety. The intermediary role of the ombudsperson means that they can act as an independent counsellor with the aim of clarifying problems or mediating in one or two conversations to get the parties talking again. The ombudsperson can, if appropriate, also point out the possibility of mediation and make referrals.

In order to fulfil this role, the ombudsperson has the authority to obtain information and conduct investigations (or have them conducted) and to offer advice based on this. The ombudsperson can also act as an intermediary before issues become unmanageable. The ombudsperson can also make referrals to the appropriate bodies within the support structure and point out or offer advice on the correct procedure. As a rule, the referral will be to the actors in the support structure designated for individual cases, or to the existing complaints, objections and appeals committees. The ombudsperson does not take over the role or position of existing actors or committees in the support structure, but they can, if several reports are made about a certain situation, decide to start investigations at their own initiative.

The ombudsperson does not act as an arbitrator or the primary advocate of any party. The ombudsperson can be contacted for questions, dilemmas or conflicts relating to work and study, without formalities. The ombudsperson always aims to discover means for resolving issues. If there is an investigation, the ombudsperson draws up a report, which may or may not include recommendations. The ombudsperson cannot make binding decisions.

The tasks and competencies of the ombudsperson – including the authoritative and independent position at Wageningen University & Research – are described in these regulations, which are based on the National Framework.

# Article 1 – Definitions

For the purpose of these regulations, the following definitions apply:

1. *Organisation:* Wageningen University & Research, i.e. Wageningen University and Wageningen Research (Foundation and operational subsidiaries), ‘WUR’.
2. *Executive Board* Executive Board of Wageningen University and Executive Board of the Wageningen Research Foundation.
3. *Employee(s), PhD student(s) and student(s) etc.:*
* Employees are defined as all persons who, with or without employment contracts, perform work within the organisation.
* PhD candidates are defined as all PhD candidates with or without employment contracts in the organisation.
* Students are understood to mean all individuals who follow a study programme at the organisation.
* Employees/PhD candidates/students are also understood to mean former employees/PhD candidates/students who have not left the organisation for more than a year at the time they report to the ombudsperson.
* The term employee/work environment is also used to mean student/study environment.
* Wherever reference is made to he/him/his, this shall also be understood to mean she/her.
* The term ‘person’ is also used to refer to an employee/PhD candidate/student.
1. *Ombudsperson (m/f)*: the independent official appointed by the Executive Board, as described in these regulations.
2. *Report*: a report on behaviour in the field of social safety and/or undesirable conduct. In this context, conduct is taken to mean both an act and neglect. A report may relate to an organisational component, a department, a person or a group of persons.

# Article 2 – Ombudsperson

1. Wageningen University & Research has an ombudsperson for its staff and students.
2. The ombudsperson is appointed by the Executive Board for a period of 2 years. The appointment may be renewed once for a further period of 2 years.
3. Prior to the appointment of the ombudsperson, the Local Participation and the participational structure are given the opportunity to meet the intended candidate for the position and to advise the Executive Board on the appointment on the basis of this meeting. This advice will be taken into account by the Executive Board in its decision on the appointment.
4. The ombudsperson shall be independent and impartial in its duties and shall not be subordinate to any body. The position of ombudsperson is incompatible with any other position or activity at Wageningen University & Research.
5. The ombudsperson handles reports from (groups of) employees and students, and advises on larger trends in the social safety field. The ombudsperson deals with individual cases, but does not deal with issues relating to legal affairs, issues that have already been dealt with and cases that have been explicitly assigned to specific committees. The ombudsperson does however act if they notice a trend. The position is complementary to the existing support structure and should not duplicate the roles of other actors in the support structure, such as confidential counsellors or committees.
6. The ombudsperson reports on their activities annually to the Executive Board, the Local Participation and the participational structure.
7. The ombudsperson is provided with the resources necessary for the proper performance of their duties, such as the availability of a room that guarantees confidentiality and anonymity, an adequate investigation budget and the necessary ICT facilities (including a secure ICT system for registering reports).
8. The Executive Board and the ombudsperson meet annually to discuss and evaluate the ombudsperson’s work. The Local Participation and the participational structure shall inform the Executive Board of their findings prior to this meeting.
9. The ombudsperson may be suspended from their duties at the request of the Executive Board or if their actions or neglect severely damage the trust placed in them.
10. After having notified the Local Participation and the participational structure, the Executive Board shall appoint a deputy to the ombudsperson if the ombudsperson is expected to be unable to perform their duties for more than six weeks.
11. The deputy ombudsperson shall take office at a time determined by the Executive Board. They shall remain in office until the ombudsperson resumes their duties or until a new ombudsperson takes up their duties.
12. The Executive Board shall ensure that the ombudsperson is not disadvantaged in their position as a result of their performance.
13. Complaints about the ombudsperson may be submitted to the Executive Board. If these are not resolved satisfactorily, they can be reported to the Supervisory Board. The ombudsperson shall be exempt from costs of legal assistance in the event of disputes or complaints against them.
14. The ombudsperson advises, and is accountable to, the Executive Board of Wageningen University & Research. The ombudsperson is bound by professional secrecy and is independent in the performance of their duties. The ombudsperson performs their duties within the framework of the General Data Protection Regulation (AVG).

# Article 3 – Tasks and competencies of the ombudsperson

1. The ombudsperson has the following responsibilities:
	* the identification of trends and patterns in the field of social safety and undesirable conduct, as well as systematic shortcomings in legislation and regulations or the organisational implementation thereof;
	* advise the Executive Board and managers who are in the position to act on key structural issues, observed patterns, trends or systematic shortcomings;
	* adequately refer or feed back to appropriate bodies – such as confidential counsellors or complaints committees – primarily within WUR, but outside the university too, if necessary;
	* conduct investigations (whether of their own initiative or not) and make recommendations based on these;
	* act as an independent intermediary with the aim of clarifying issues;
	* intermediate in conversations with the aim of getting the parties to talk to each other again within appropriate organisational structures. If necessary, the ombudsperson can advise the use of an (external) mediator. The ombudsperson does not act as a mediator themselves;
	* publish and report observations and findings;
	* draw up an annual (public) report.
2. The ombudsperson’s advice is not binding.

# Article 4 – Report

1. Every employee and/or student can make an appointment for a report or mediation.
2. Reports may concern social insecurity and the manner in which the organisation, or person within the organisation, has behaved undesirably towards the reporting parties. Reports have no formal structure.
3. Reports cannot be submitted anonymously. If the reporting party so requests, reports can be handled anonymously by the ombudsperson after submission. The reason(s) for a report and/or mediation will be described anonymously in the report.
4. The ombudsperson is independent and has no commissioning party. This means that it is up to the ombudsperson to decide whether a report can be processed. In any case, the ombudsperson will not be able to deal with/investigate reports:
	1. if the report relates to conduct that the reporting party has already reported, or for which disputes/complaints/objections/appeals procedures are available and the reporting party currently uses, or has used, the procedure. In such cases, the reporting party must report this at once;
	2. if the report relates to conduct that is, or has been, subject to proceedings before a court of law;
	3. as long as an investigation into a report or prosecution by order of the public prosecutor is ongoing, or if the conduct is part of the investigation or prosecution of a criminal offence and an investigation into that offence or prosecution by order of the public prosecutor is ongoing;
	4. the submitter’s interest or the interest involved in the report is insufficient in the ombudsperson's opinion;
	5. in the ombudsperson's opinion, the report is not yet sufficiently justified.
5. If the person making the report fails to report the existence of a situation – as referred to in paragraph 4, section A of this article – and, after processing the report, the ombudsperson learns that such a situation exists, the ombudsperson will discontinue the investigation or will cease their duties insofar as they have already started.
6. The ombudsperson can also start an investigation at their own initiative, based on a collection of signals or reports received by themselves or other actors in the support structure, for example.

# Article 5 – Consultation

The ombudsperson, in response to a report, will consider the appropriate subsequent steps in a confidential consultation with the reporting party. The ombudsperson can advise the reporting party on how to handle the report in order to find a solution on their own. The ombudsperson can act as a facilitator or an intermediary. The ombudsperson is not a legal mediator and will – if there is a need for mediation – refer to an external mediator.

# Article 6 – The investigation report

1. If a facilitating/intermediary conversation is not deemed useful, or if an attempt at it has not led to a solution, the ombudsperson gives the organisation, or the person whose conduct is the subject of the report, and the reporting party the opportunity to clarify their points of view in writing or orally, either in each other’s presence or not, at the ombudsperson’s discretion.
2. The ombudsperson may, if they deem it necessary for the assessment of the report, also give others (e.g. informants, witnesses) the opportunity to view the report and to make oral or written statements on it.
3. The ombudsperson is authorised to request information from (management) bodies and officials within the organisation, to gain access to necessary ICT systems or to request and inspect documents (including relevant information from the personnel file) relating to the report.
4. Bodies and officials within the organisation are required to provide the statements requested in paragraph 2, and the information and/or documents referred to in paragraph 3 within a reasonable period of time specified by the ombudsperson.
5. The ombudsperson informs the persons involved in the report about the information they have gathered.
6. Bodies and officials may indicate that the information and/or documents they deem to be of a confidential nature for legal or judicial reasons can only be provided on condition that their confidential nature is maintained by the ombudsperson.
7. The ombudsperson informs the reporting party and the person to whom the report relates of their provisional findings, in writing, before closing the investigation, and gives them the opportunity to respond, also in writing, within a reasonable period of time specified by the ombudsperson.
8. Before the ombudsperson closes the investigation, they inform the reporting party and the organisational unit/department/person to whom the report relates of their provisional findings in writing – as part of the adversarial process – and gives them the opportunity to respond within a reasonable period of time.

# Article 7 – The findings

1. The ombudsperson's reports, in which they reflect their evaluation, contains the considerations on which the evaluation is based and is sent – whether or not anonymously at the request of the reporting party – to the reporting party, the Executive Board and to the person to whom the report relates.
2. If the investigation concerns the Executive Board or its members, the ombudsperson will report directly to the Supervisory Board.
3. The ombudsperson may make these recommendations in the report as they see fit. These recommendations may relate to the specific conduct mentioned in the report or to more general aspects revealed by the investigation.
4. Within one month of receiving a report, the Executive Board shall inform the ombudsperson in a substantiated manner whether, and, if so, how the recommendations have been or will be followed up. The recommendations need not be implemented if they conflict with general policy for compelling reasons. The ombudsperson informs the reporting party and the person to whom the report relates of this, in writing, at once.
5. If the Executive Board considers there to be compelling reasons not to follow the advice or the recommendations, it will inform the ombudsperson in writing, stating its reasons. The ombudsperson sends a copy of this to the reporting party and the person to whom the report relates.
6. The findings (assessments and recommendations) of the ombudsperson are not open to appeal or objection.
7. The ombudsperson provides copies of reports to the HR Director.

# Article 8 – Investigations on own initiative

In the event of investigations made on the ombudsperson's own initiative, as referred to in Article 4, paragraph 6, Articles 6, 7 and 12 shall apply as far as possible.

# Article 9 – Annual Report

The ombudsperson reports on their activities annually to the Executive Board, the Local Participation, the Student Council and the Supervisory Board. In all cases, the report shall include the number of cases dealt with and an anonymous summary thereof. Any descriptions of the issues dealt with shall be such that the privacy of the staff or students concerned is fully protected.

# Article 10 – Confidentiality

The ombudsperson is obliged to maintain confidentiality with regard to anything that comes to their attention in the performance of their duties, insofar as this results from the nature of the case. This duty also applies to all people working for them and to the person who is, or was, involved in a specific case. The ombudsperson can be released from their duty of confidentiality if the safety of the staff, students or the ombudsperson is threatened.

# Article 11 – Archiving

The data held by the ombudsperson is stored in accordance with the General Data Protection Regulation (AVG) and the archives act.

# Article 12 – Protection

Complainants who act in good faith, with due observance of the stipulations of the ombudsperson regulation, who have contacted the ombudsperson or have filed a report, shall not be disadvantaged in their position in any way insofar as that disadvantage would be the result of them contacting or filing reports with the ombudsperson. Employees who cooperate in investigations – by providing information, for example – are also protected and may not suffer any adverse consequences as a result of their cooperation in investigations.

# Article 13 – Official title of regulations and date of enactment

These regulations are officially cited as the ‘WUR Ombudsperson Regulations” and have been adopted by decision of the Executive Board, dated 12 July 2021 and enacted on 12 July 2021.

In case of discrepancy between the wording of the Dutch "Regeling Ombudspersoon WUR” and the wording of the English "WUR Ombudsperson Regulations", the wording of the Dutch "Regeling Ombudspersoon WUR" prevails.