

Complaints Regulations regarding Undesired Behaviour

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Foreword

In this revised version of the Complaints Regulations regarding Undesired Behaviour, the following has been revised and adapted:

- Texts have been updated according to the current situation
- Texts have been updated according to the Regulations regarding Complaints KOMM Foundation (version 2010)

Please send any remarks you may have concerning and further to these regulations to SER for the attention of the Secretary of the Executive Board.

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Chapter 1 In General

Article 1.1 Definitions

In these Regulations the following terms refer to:

Collective labour agreement	The Collective Labour Agreement for Higher Professional Education, as most recently established, abbreviated to CAO.
Committee of confidential counsellors	A committee of internal and external confidential counsellors.
Complainant	A student or staff member of Breda University of Applied Sciences who has experienced undesired behaviour and has reported this or has filed a complaint (via a third party).
Complaint	In these regulations, a complaint is a written statement of dissatisfaction with behaviour or neglecting behaviour of or by the person the complaint is filed against with the complaints committee.
Complaints committee	A group of independent and impartial members compiled by KOMM Foundation further to a complaint.
Confidential counsellor	Breda University of Applied Sciences has internal and (an) external confidential counsellor(s). These persons have been appointed by the Executive Board to support the student or employee who is confronted with undesired behaviour. The internal confidential counsellors are members of staff of Breda University of Applied Sciences.
Defendant	The person or entity against whom a complaint is filed.
Executive Board	Executive body at Breda University of Applied Sciences Foundation, as referred to in Article 10.2 WHW jo. Articles 3 up to and including 7 and Article 7 of the Statutes (Charter) of Breda University of Applied Sciences Foundation.
Guest	Visitor to Breda University of Applied Sciences such as guest lecturer, participant of an event of Breda University of Applied Sciences, relatives, library subscriber, etc.
Immunity	The right to refuse to give evidence because otherwise impartiality cannot be guaranteed.
Institution	Breda University of Applied Sciences
Member of staff	Person who on the basis of a labour contract in civil law is employed by Breda University of Applied Sciences. Given equal status to members of staff are those who are made available to Breda University of Applied Sciences by means of a job agency, work placement or secondment agreement or otherwise.
Notification	Notification takes place when a student or employee of Breda University of Applied Sciences reports a case of undesired behaviour to a confidential counsellor. This case can be notified both in writing and orally.

Student	Person who is registered at Breda University of Applied Sciences as referred to in Article 7.32 of the WHW.
Third party	Member of staff from a party under contract to Breda University of Applied Sciences.
Undesired behaviour	<p>By undesired behaviour is meant sexual intimidation, discriminating behaviour, aggression, violence, bullying and abuse of power.</p> <p>Undesired behaviour occurs/has occurred under circumstances directly relating to working or attending classes at Breda University of Applied Sciences.</p> <p>Sexual intimidation Sexual intimidation concerns any form of behaviour, attitude, advances (verbal, non-verbal or physical) aimed at one or more persons, expressing sexual attention in the very broadest sense, and which form of behaviour, attitude or advances is considered undesired by the person and/or persons intended. Sexual intimidation can occur both intentionally or unintentionally.</p> <p>Discrimination Discrimination involves making any form of unjustified distinction as referred to in Article 2 of the Equal Treatment Act, by exclusion, restriction or preference whose aim or whose consequence may be that recognition, pleasure or performance on terms of equality of human rights and fundamental freedom in the political, economic, social or cultural domain or in other domains of public life is annulled or affected. Discrimination can occur both intentionally or unintentionally.</p> <p>Aggression/Violence/Bullying Concerns any form of behaviour, attitude, expression, decision, or neglecting to behave/reflect and failing to make any decisions; in which one or more persons are harassed mentally and/or physically, threatened or attacked.</p> <p>Abuse of power Abuse of power occurs when an employee (colleague, supervisor or lecturer) or a student uses his position, authority and/or knowledge in an intimidating, manipulating or violent way at the expense of the person (employee or student) with whom he has a confidential and/or hierarchical relation. Abuse of power involves acting, neglecting to perform or making a decision.</p>
WHW	The Higher Education and Research Act including later supplements and amendments.

Article 1.2 Aim

- 1 The Complaints Regulations regarding Undesired Behaviour states how a complaint about undesired behaviour can be filed, investigated and settled. Furthermore, these regulations need to provide for the protection of interests of complainant and defendant when the complaint is being investigated and settled.
- 2 Breda University of Applied Sciences has drawn up a Domestic Violence and Child Abuse Reporting Code for any suspicions in the field of domestic violence and child abuse.

Article 1.3 General provisions

- 1 These Complaints Regulations regarding Undesired Behaviour is applicable to employees and students and is part of the Students' Charter.
- 2 The Executive Board sees to the regulations being available and familiar among all parties involved. The Executive Board also takes care of appointing internal and external confidential counsellors.
- 3 Where reference is made to students, this is understood to include prospective students, course participants, extraneous students or alumni, unless expressly stated otherwise.
- 4 Where reference is made to he/him, this is understood to include she/her.
- 5 Where reference is made to employee(s), it is understood to include third parties or guests.
- 6 The Complaints Regulations regarding Undesired Behaviour takes effect after the Executive Board has approved and established it under simultaneous abolition of the previous versions of these regulations.

Chapter 2 Special provisions

Article 2.1 Position of students/employees of Breda University of Applied Sciences

Not a single student or employee of Breda University of Applied Sciences may be damaged in his position and/or interests within the institution as a result of being a complainant, counsellor, confidential counsellor or person heard by the complaints committee, is or has been involved in a complaints procedure as laid down in these regulations.

Article 2.2 General obligations

- 1 Anyone who has received or has acquired information and details and/or has come to possess written documents, digital and/or other information carriers concerning a concrete complaint is obliged to carefully deal with it in order to avoid unnecessary damage for the complainant, defendant, witness, Breda University of Applied Sciences and/or any other persons that may be involved as much as possible.
- 2 If an employee or student has heard in any way that an employee or student may be guilty or may have been guilty of a sexual offence committed against an employee or student of Breda University of Applied Sciences, he informs the Executive Board without delay.
- 3 Publicity and maintaining contacts with the press and other media on a concrete complaint pertains to the Executive Board's responsibility. Publicity is to be shunned away from by others as much as possible. Contacts, if any, with the media should be reported to the Executive Board without delay.
- 4 With the exception of the provisions as referred to in these regulations, nobody deals with a complaint about undesired behaviour or makes an attempt at mediation. This does not affect the powers and responsibility of the Executive Board to take preliminary measures.
- 5 Anyone receiving a document containing a complaint about undesired behaviour passes it on to the confidential counsellor.
- 6 In addition to the provisions of paragraph 5 the complaints committee also deals with complaints that are directly filed.
- 7 Anyone who knows about and/or possesses written documents regarding a (possible) case of undesired behaviour as a result of these regulations is obliged to remain tacit and takes care that the documents referred to do not fall into the hands of non-authorized persons. However, the provisions as referred to in paragraph 2 of this Article need to be satisfied.
- 8 Non-compliance with the provisions in the previous paragraph can be considered being guilty of dereliction of duties and this may lead to taking disciplinary measures (See Chapter 5).

Article 2.3 Filing a complaint

- 1 A complaint is filed in writing to:
 - a the Executive Board of Breda University of Applied Sciences, or
 - b the complaints committee of the KOMM Foundation.
- 2 A complaint that is submitted later than two years after the incident to which the complaint applies (last) occurred will not be dealt with. This term is extended for a student by two years

after he has left Breda University of Applied Sciences. In special cases, this may be deviated from by the complaints committee after consulting the board of the KOMM Foundation.

- 3 If a complaint is submitted to the Executive Board, the complainant will receive a confirmation of receipt.
- 4 Subsequently, it is determined in consultation with the complainant whether the complaint is eligible for mediation. If the complainant opts for mediation, the defendant is approached by the Executive Board with the question whether he agrees with mediation.
- 5 If the possibility for mediation is not made use of concerning a complaint submitted to the Executive Board, the Executive Board refers the complainant to the complaints committee without delay.
- 6 If a complaint is directly submitted to the complaints committee, complainant and defendant are approached with the question whether they would wish any mediation.
- 7 A complaint that has been filed anonymously will not be handled. In special cases, this may be deviated from by the complaints committee after consulting the board of the KOMM Foundation.

Article 2.4 Disputes and unforeseen circumstances

If any circumstances occur in which the provisions in these regulations do not apply, the Executive Board will make a decision provided that the confidential counsellor or the chairman of the complaints committee, respectively, makes a decision with regard to issues regarding procedures to be followed by them.

Article 2.5 Retention period

- 1 A complaint filed with the Executive Board of Breda University of Applied Sciences needs to be stored for at least five years.
- 2 The confirmation of receipt sent by the Executive Board needs to be stored for at least one year.

Chapter 3 Confidential counsellors

Article 3.1 The confidential counsellor

- 1 The Executive Board appoints an internal confidential counsellor for students and staff per department (or per cluster of departments) or (if a department has several locations) per location. A student is not bound to the confidential counsellor of the department in which he attends a study programme. Likewise, a member of staff is not bound to the confidential counsellor of his own academy/service at which he works.
- 2 Apart from the internal confidential counsellors mentioned above, the Executive Board also appoints an external confidential counsellor.
- 3 The internal confidential counsellors are members of staff of Breda University of Applied Sciences.
- 4 A student or staff member can also turn to an external confidential counsellor.
- 5 Confidential counsellors are appointed with due observance of the starting point that the total number of confidential counsellors needs to consist of both men and women. The Executive Board hears the committee of confidential counsellors when appointing a confidential counsellor.

Article 3.2 Tasks of confidential counsellor

- 1 The **internal** confidential counsellor has the following tasks:
 - a Registering the number and the type of reports of undesired behaviour;
 - b Provide a first emotional assistance for the complainant;
 - c Referring complainant to external confidential counsellor if necessary;
 - d Detecting structural problems within Breda University of Applied Sciences, which may cause undesired behaviour;
 - e Detecting the need and/or necessity to inform people and take preventive measures.
- 2 The **external** confidential counsellor has the following tasks:
 - a Registering the number of occurrences and the type of reports of undesired behaviour; firstly, anonymously on behalf of Breda University of Applied Sciences annual report and secondly, non-anonymously on behalf of the internal secret reports by the confidential counsellor.
 - b Taking care of emotional initial care for complainant;
 - c Supporting and advising complainant;
 - d Mediating: the confidential counsellor sees to mediating between complainant and defendant;
 - e Supporting/guiding the complainant at his own request and mediating when lodging a complaint with the complaints committee or if it concerns a student of Breda University of Applied Sciences who does work placement or is doing a graduation project, support him when the complaint is being handled in the placement host company;
 - f In so far as it is necessary and desired, referring the person involved to specialised support agencies;
 - g Maintaining contact with complainant to check if the filing of the complaint does not lead to any negative consequences for complainant, and report to the Executive Board on this matter;
 - h Making recommendations to the Executive Board to avoid any undesired behaviour and encourage setting up a code of conduct to this purpose;
 - i Training and guiding internal confidential counsellors.

- 3 Apart from complainant, the defendant can also turn to a confidential counsellor. If both complainant and defendant have turned to the same confidential counsellor, the confidential counsellor may request to be excused from dealing with the defendant. In that case, the defendant will be referred to another confidential counsellor.
- 4 The confidential counsellor provides the Executive Board with solicited and unsolicited advice about the institution's policy in the area of prevention and combating undesired behaviour and repercussions if any.
- 5 The confidential counsellor is open to talking to students or staff about undesired behaviour.
- 6 The confidential counsellor can draw the complainant's attention to, and guiding him in reporting to the police and judicial authorities.
- 7 After handling the complaint, the confidential counsellor is available to provide aftercare if necessary and desired.

Article 3.3 Confidential counsellor's refusal to handle a complaint

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

- a there is a functional involvement in the report or in filing a notice of complaint;
- b defendant has a family relationship with the confidential counsellor;
- c other grounds, which involve that the confidential counsellor cannot reasonably be required that he acts as confidential counsellor of complainant and defendant.

Article 3.4 Powers of confidential counsellor

- 1 The **internal** confidential counsellor is authorised to:
 - a consult (one of the) other confidential counsellors;
 - b refer people to the external confidential counsellor;
 - c have talks with staff, students and the Executive Board and make enquiries;
 - d access all departments and services of Breda University of Applied Sciences;
 - e inspect relevant documents;
 - f provide aftercare;
 - g advise the Executive Board.
- 2 The **external** confidential counsellor is authorised to:
 - a mediate between complainant and defendant;
 - b guide the complainant when filing a complaint;
 - c consult (one of the) other confidential counsellors;
 - d have talks with staff, students and the Executive Board and make enquiries;
 - e access all departments and services of Breda University of Applied Sciences;
 - f inspect all relevant documents;
 - g provide aftercare;
 - h advise the Executive Board.

Article 3.5 Registration and annual report of confidential counsellor

- 1 The confidential counsellor issues an anonymised report of the number, nature and volume of cases he is dealing with or has handled, and the results of his mediation.
- 2 The details as referred to in paragraph 1 are to be included in the annual report of Breda University of Applied Sciences, which is publicly disclosed.

Chapter 4 Complaints Committee KOMM Foundation

Article 4.1 General

The Executive Board of Breda University of Applied Sciences has affiliated with the Independent Complaints Committee regarding Abuse of Power in Education, the KOMM Foundation (www.komm.nl).

When a complaint regarding undesired behaviour is filed with this Foundation, it composes a complaints committee to handle it and assigns an official secretary.

The complaints committee of the KOMM Foundation consists of three independent and impartial members, assisted by an official secretary.

The members of the complaints committee and the official secretary need to carefully handle the information becoming available when performing their duties. With regard to handling a complaint and delivering judgment, no announcements are made to any parties apart from the directly involved persons.

The Executive Board offers the opportunity to the complaints committee to perform its task properly.

Article 4.2 Filing and handling a complaint

- 1 A complaint can be submitted to the KOMM Foundation.
- 2 The complaint can only be submitted in writing to the official secretary of the KOMM Foundation, region West. For contact and other information: www.komm.nl.
- 3 A complaint can only be handled if it satisfies the requirements stated in the Regulations concerning Complaints KOMM Foundation (only available in Dutch).
- 4 For the complaints handling procedure, see 'Klachtenregeling van de stichting Komm' (only available in Dutch, ask your student counsellor for assistance if needed).

Article 4.3 Tasks

The complaints committee of the KOMM Foundation has the following tasks:

- a Investigating the complaints filed regarding undesired behaviour and rendering account and advice to the Executive Board;
- b Providing solicited and unsolicited advice to the Executive Board about a policy regarding the prevention and combating of undesired behaviour within Breda University of Applied Sciences;
- c Issuing a written report to the Executive Board about its activities annually.

Article 4.4 Powers

The complaints committee of the KOMM Foundation has the following powers:

- a the right to hear staff, students, the Executive Board and other persons involved;
- b the right to consult experts;
- c the right to access all departments and services of Breda University of Applied Sciences;
- d the right to inspect relevant documents;
- e the right to provide the Executive Board with solicited and unsolicited advice regarding the policy to be conducted and measures to be taken in the area of prevention and combating undesired behaviour.

Chapter 5 Executive Board

Article 5.1 Decision by the Executive Board

- 1 With due observance of the provisions of the collective labour agreement and Article 7.59 of the WHW, the Executive Board makes a well-founded decision as soon as possible, but within four weeks at any rate based on the advice of the complaints committee.
- 2 The Executive Board renders its decision as soon as possible, but at any rate within four weeks to complainant, defendant, complaints committee of the KOMM Foundation and the confidential counsellor involved, if any.
- 3 A decision made by the Executive Board including the attendant measure as referred to in Article 5.2 paragraph 2 is added to the file of the Executive Board.
- 4 A decision made by the Executive Board including the attendant measure as referred to in Article 5.2 paragraph 3 is added to the personnel file.
- 5 The retention period of the decision mentioned in this Article is at least five years after the complaint is handled.

Article 5.2 Measures

- 1 The measures can be of a preventive and a corrective nature or a combination of the two depending on the concrete situation and the nature and gravity of the complaint.
- 2 The following measures can be taken for a student (with the exception of a course participant) ensuing from Article 7.34 paragraph 1, under c jo. and Article 7.57h of the WHW:
 - a warning;
 - b written reprimand;
 - c full denial or partial denial of access to buildings and grounds of Breda University of Applied Sciences for a maximum period of 1 year;
 - d in compelling circumstances to be assessed by the Executive Board the continued enrolment can be denied or revoked in accordance with the provisions of Article 7.37 paragraphs 4 and 5 supplementary to the provision under c.
Any measures that could be taken supplementary to the measures under a. and b. are a transfer to a different group and allocating a different timetable.
- 3 The following measures can be taken for an employee according to the collective labour agreement with due observance of the statutory provisions in the field:
 - a warning;
 - b written reprimand;
 - c transfer or allocating a different timetable;
 - d suspension;
 - e dismissal.When the measures under d and e are taken, denial of access to buildings and grounds of Breda University of Applied Sciences can be imposed for a maximum period of one year.

- 4 The following measures can be taken for third parties (e.g. course participants)
 - a warning;
 - b written reprimand;
 - c transfer;
 - d termination of course contract based on poor performance.When the measures under d. are taken, denial of access to buildings and grounds of Breda University of Applied Sciences can be imposed for a maximum period of one year.
- 5 The following measures can be taken for service-rendering and placement host companies, institutions and other relationships:
 - a warning;
 - b breaking contracts / severing relations.
- 6 Students who are faced with undesired behaviour in the host company environment are entitled to discontinue their work placement with immediate effect whether or not in consultation with the supervising lecturer. If the complaint is declared founded, Breda University of Applied Sciences is obliged to make every effort to look for a new placement position. It will be attempted to minimise any study delay for the person involved.

Chapter 6 Appeal

Article 6.1 Appeal

WHW Article 4.7, collective labour agreement Chapter S

- 1 An employee may file an appeal against the Executive Board's decision as referred to in Article 5.2 with the employee appeals committee. No appeal can be filed against transfer and allocating a different timetable.
- 2 A student may enter an objection to the Executive Board's decision according to the provisions in the Dispute Resolution Committee of Breda University of Applied Sciences.

Chapter 7 Final provisions

Article 7.1 Duty of care

- 1 If an employee or student is familiar with a situation or events where the undesired behaviour occurs and he can take measures to lift this situation, these measures must be taken.
- 2 Not meeting the provisions of paragraph 1 may be considered neglect of duty for an employee and lead to subjecting a person to disciplinary punishment

Appendix 1 Confidential counsellors

A Appointment of internal confidential counsellors

If there is a vacancy for the position of internal confidential counsellor, a recruitment procedure is started by the Executive Board. The Executive Board also hears the committee of confidential counsellors.

The internal confidential counsellor is appointed by the Executive Board and is directly accountable to the Executive Board. The performance of the role of internal confidential counsellor is annually evaluated. Premature dismissal from the position of the internal confidential counsellor is possible for example, if he no longer has the confidence of the parties involved in the institution or does not fulfil his duties properly or harms the interests of those involved.

B Legal status internal confidential counsellors

The internal confidential counsellor has a vulnerable position since he can dispose of knowledge of the behaviour of members of the institution at every level of the organisation. As a result, a situation may arise in which he is exerted to stop certain activities. The internal confidential counsellor needs to be protected against dismissal or other disadvantage stemming from his position. The legal status of the internal confidential counsellor is arranged according to the regulations pertaining to members of the participation council of Breda University of Applied Sciences. The Executive Board provides the internal confidential counsellor with the opportunity to properly perform his tasks.

C Job requirements of internal and external confidential counsellors

- a The confidential counsellor is accessible to all students and employees of the institution;
- b The confidential counsellor has the confidence of all parties involved in the institution;
- c The confidential counsellor knows the institutional culture;
- d The confidential counsellor has insight into the nature, size, consequences and prevention of undesired behaviour;
- e The confidential counsellor has the expertise regarding taking (initial) care of victims of undesired behaviour and their environment;
- f The confidential counsellor confidentially deals with information he disposes of in the context of his position;
- g The confidential counsellor can write a correct and factual report after receiving a complaint.

D Additional requirements for external confidential counsellors

- h The external confidential counsellor is an expert in taking care of victims (empathy, counselling skills, etc.). He has an insight into possible reactions of victims of undesired behaviour. He knows the emotional consequences of victims. He disposes of skills to encourage complainants to choose solutions that do not interfere with their own interests;
- i The external confidential counsellor has the skills to structure counselling sessions;
- j The external confidential counsellor knows how to refer persons in the field of counselling;
- k The external confidential counsellor has global knowledge of possible consequences regarding legal status and judicial consequences of filing a complaint.

E Committee of Confidential Counsellors

The confidential counsellors meet at least once a year to discuss all issues relating to their position and prepare the annual report as referred to in Article 3.5 paragraph 2.

F Facilities of confidential counsellors

The Executive Board takes care of the facilities necessary for confidential counsellors to properly perform their duties such as a reasonable amount of work and work space.

Appendix 2 Regulations regarding Complaints KOMM Foundation

The 'KOMM'-regulations are only available in Dutch, ask you're counsellor for assistance if needed.