



ANNUAL REPORT OMBUDS OFFICER

Period: 15 October 2019 - 31 August 2020

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October 2020

**UNIVERSITY
OF TWENTE.**

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1. OMBUDS OFFICER PILOT

The University of Twente is one of four Dutch universities participating in the Ombuds Officer pilot project. This is part of a series of agreements between trade unions and employers, intended to create a safe work and study climate within the university. After an extensive preliminary study considering the officer's exact role at UT, Dr Han Warmelink was appointed to the position on a part-time basis (20 hours per week) for a period of two years, starting on 15 October 2019.

Both students and employees can report problems related to studying or working at UT to the Ombuds Officer (see Chapter 2). His primary role is to lend a sympathetic ear and to provide advice, guidance and mediation services. If necessary, he can refer people to the appropriate authority. Or he may decide to investigate the matter personally. The Ombuds Officer formally reports to General Affairs, and specifically the secretary to the Executive Board, but in performing his duties he is completely independent and not accountable to any authority. He has his own office in De Citadel (room H304) and in principle is available there on Mondays and Tuesdays.

The position of Ombuds Officer complements other existing services, such as the confidential advisers, student counsellors, student psychologists, study advisers and Complaints Committee. The Ombuds Officer is an impartial and independent individual, who is readily available to both university staff and students. People can approach him with questions or to report issues in a wide range of areas, such as unacceptable behaviour, handling of complaints, job appointments, performance appraisals, workloads, dismissal, vocational rehabilitation and switching jobs. Confidentiality is guaranteed.

In consultation with the confidential advisers and the Complaints Committee, the Ombuds Officer's tasks have been further specified. Where the confidential adviser primarily offers personal support, particularly with regard to unacceptable behaviour, the Ombuds Officer focuses upon resolving a reported problem. This requires a neutral, impartial attitude towards all concerned. And unlike the Complaints Committee, the Ombuds Officer does not issue rulings on individual cases. Rather, his role is to identify problems within the organisation and, if necessary, cluster them so that the Executive Board is able to respond effectively (see Chapter 3).

In the spring of 2020, an independent evaluation of the pilot project was initiated on behalf of the parties to the Collective Labour Agreement (CLA) of Dutch Universities. The evaluation report is due to be published in October or November 2020. In anticipation of its findings, it has already been agreed in the current CLA that an Ombuds Officer function will be established at every Dutch university from mid-2021. At that point UT will have to decide the future form of that function here.

2. COMPLAINTS HANDLED

The bulk of the Ombuds Officer's work involves dealing with complaints referred to him by students and staff. This chapter summarises the complaints received during the period of this report, 15 October 2019 to 31 August 2020, and how they have been handled.

Number of complaints

In the 2019-2020 academic year, the Ombuds Officer received 39 complaints concerning problems requiring attention and, if possible, a solution. Most were submitted by e-mail (request for contact), some by telephone and a few in person, after a knock on the door.

Complaints came in fairly regularly throughout the year, but with an initial peak in the second half of October and a dip in December. Numbers appear to have decreased slightly since March, perhaps due to the measures taken in response to Covid-19, in particular the closure of university buildings.

<i>October:</i>	<i>6</i>
<i>November:</i>	<i>5</i>
<i>December:</i>	<i>1</i>
<i>January:</i>	<i>5</i>
<i>February:</i>	<i>6</i>
<i>March:</i>	<i>3</i>
<i>April:</i>	<i>3</i>
<i>May:</i>	<i>3</i>
<i>June:</i>	<i>6</i>
<i>July:</i>	<i>1</i>
<i>August:</i>	<i>0</i>

Referrals by confidential advisers

In five cases a problem was first raised with one of the university's confidential advisers and then referred to the Ombuds Officer either with the express intention of finding a solution or because, given the nature of the issue, the adviser was not the appropriate person to deal with it.

Conversely, in a number of cases the Ombuds Officer advised complainants of the support available from the confidential advisers in addition to his own assistance in trying to resolve their problem. It is not known whether any of the complainants made use of this option.

Complainants

Any UT employee or student can refer a complaint to the Ombuds Officer regarding conduct by the university as an institution or by any individual connected with it. In some cases (see below) the complainant was not yet or no longer associated with UT as an employee or student, but their complaint did relate to work or study at UT. The Ombuds Officer has opted for a broad reading of the admissibility of such complaints.

<i>Not yet employed/not yet a student:</i>	2
<i>No longer employed/no longer a student:</i>	3
<i>Left UT during process:</i>	4

The breakdown of complainants by background and gender during the reporting period was as follows.

<i>Undergraduate/postgraduate student:</i>	5 (2 female, 3 male)
<i>PhD student:</i>	8 (4 female, 4 male)
<i>Administrative/support staff:</i>	14 (7 female, 7 male)
<i>Academic staff:</i>	12 (6 female, 6 male)

As for employment status, 19 of the 39 complainants had permanent UT contracts.

The breakdown by nationality was as follows.

<i>Dutch:</i>	22
<i>Non-Dutch:</i>	17 (including 7 non-Western)

Place of work or study

The 39 complaints related to the following faculties and service departments. This does not necessarily mean that the unit itself was implicated in the reported problem, but rather that the complainant and/or the respondent worked or studied there.

<i>EEMCS:</i>	5
<i>ET:</i>	7
<i>TNW:</i>	4
<i>BMS:</i>	9
<i>ITC:</i>	0
<i>LISA:</i>	3
<i>CFM:</i>	4
<i>CES:</i>	3

GA/Executive Board: 3
Other: 1

Topics

Naturally, each individual case is different. However, some common themes can be discerned. Below is a list of topics, with the number of cases in which each was a prominent factor (the total exceeds 39 because some cases involved several topics).

<i>Dysfunctional employment/personal working relationship:</i>	12
<i>Equal treatment/exclusion:</i>	9
<i>Terms of employment/end of appointment:</i>	6
<i>PhD supervision:</i>	5
<i>Cultural differences:</i>	4
<i>Covid-19:</i>	4
<i>Sexual harassment:</i>	3
<i>Academic integrity:</i>	3
<i>Whistleblower report:</i>	2

From this list, it is apparent that a significant number of complaints fall within the remit of the confidential advisers. HR issues are also common. A third significant category is problems with the PhD trajectory (supervision, departure of supervisor, end of funding). Chapter 3 examines this topic in more detail.

Relationship with complaints procedure

In several cases, the Ombuds Officer was approached specifically with either an explicit or an implied request to pass judgement, as if he handles complaints formally. In some other situations, too, the question arose as to whether following the established complaints procedure (seeking a formal resolution) would not have been more appropriate than turning to the Ombuds Officer. In answering that question, the decisive factor was always whether solving the problem was still possible.

In none of the cases in question was the complaint to the Ombuds Officer withdrawn and the situation referred instead to the Complaints Committee. In one case in which no solution could be reached, the complainant was referred explicitly to the Complaints Committee. It is not known whether they took that advice.

Service provided: dialogue

In all cases, the Ombuds Officer initially offered a sympathetic ear by meeting the complainant “live” – usually face to face, but on a few occasions over the telephone – to discuss possible ways to resolve their problem. In nine of the 39 cases considered, more than one such conversation was held. After the university buildings were closed due to Covid-19 in March 2020, these meetings were conducted by telephone and/or online. It is difficult to determine whether this enforced change has had a negative impact upon the service provided by the Ombuds Officer. At any rate, no complaints have been received about it.

Many of the conversations focused primarily upon finding out the exact nature of the problem for which a solution was being sought. These very often combined formal (e.g. decisions) and informal (e.g. treatment) aspects. In a few cases, the issue was subject to other official or even legal proceedings at the same time. See also “Obstacles” below.

Service provided: mediation and investigation

After consulting the Ombuds Officer, the majority of complainants themselves pursued a solution to their problem, with or without third-party assistance. But in eight of the 39 cases considered, the Ombuds Officer himself provided mediation. These mainly concerned PhD student-supervisor or employee-manager relationships. Usually, an HR employee was called in as well. In consultation with the complainant, in two cases the Ombuds Officer conducted his own investigation in order to obtain information, including material from other sources, needed to arrive at a solution.

In 22 of the 39 cases, the Ombuds Officer’s only contact was with the complainant. In the other 17, discussions were also held with the respondent and/or a third party (the total below exceeds 17 because some cases fall into more than one category).

<i>Direct contact with respondent:</i>	3
<i>Contact with respondent and a third party:</i>	5
<i>Direct contact with third party only:</i>	4
<i>Insufficient information for further action:</i>	8

Contacts/activities

The 39 cases resulted in a total of 290 contacts with or activities by the Ombuds Officer. That means an average of seven to eight contacts per case, with the actual number ranging from one to 23. The majority of these contacts and activities consisted e-mail exchanges with the complainant, the respondent or a relevant third party.

Results

In 17 cases, a satisfactory result for the complainant was achieved. This does not necessarily mean that the problem was entirely resolved in all those cases, but rather that the complainant was able to “move on”. In seven cases, no positive result was recorded. Another five have yet to be completed and the results of the remainder are unknown – for example, due to the departure from the university of one of the persons concerned or because no information about the result is available.

Obstacles

When dealing with complaints, a number of procedural obstacles came to light. These meant that the Ombuds Officer either had to disregard certain aspects of the case or was unable to address them himself. Some cases involved more than one obstacle. The following are the most common.

<i>Concurrent official or legal proceedings:</i>	6
<i>Involvement of multiple employers:</i>	4
<i>Involvement of multiple universities:</i>	4
<i>Involvement of non-UT financing:</i>	3
<i>Ombuds Officer's powers:</i>	2
<i>Complainant not yet/no longer employed by UT:</i>	2
<i>Finding the right respondent:</i>	2

Conclusion

All in all, it can be concluded that the Ombuds Officer function appears to meet a need. University staff, in particular, have been able to approach him with problems which might otherwise have remained under the radar or escalated unnecessarily. In carrying out his duties, moreover, he has encountered few hindrances within UT, either when dealing with specific cases or in advising policymakers like the Executive Board. This aspect is discussed in more detail in the next chapter.

3. POLICY IMPACT OF COMPLAINTS

As well as considering specific cases, another important task for the Ombuds Officer is to pick up signals of unacceptable patterns of behaviour and to issue policy advice – solicited or unsolicited – accordingly. During the period covered by this report, one particular issue recurred in multiple cases: PhD students being placed in a vulnerable position by the premature termination of project funding due to the departure from the university of their supervisor. The Ombuds Officer has therefore explicitly requested that the Executive Board consider this matter with urgency.

PhD students “left in the lurch”

Not infrequently, academic staff in receipt of project funding for a particular study or line of research leave UT for another university. That sometimes results in termination of the funding (as can the recipient’s death or incapacitation), although in other cases its continuation is guaranteed by the financing body.

In the latter situation, there is also the question of where the money goes. Does it stay with UT (as the institution behind the application) to continue the project here, or does it follow the researcher (as the individual awarded the funding) to their new place of employment? Insofar as the terms of the award do not themselves answer this question, it is reasonable to expect UT and its personnel to reach agreement on this point when pursuing research grants.

Such agreements are even more important if the employee concerned has one or more PhD students under their wing. Regardless of whether they are employed directly by UT, it is only fair to them that the university and their departing supervisor come to an arrangement whereby they are able to complete their own research. One possibility, of course, is that they “accompany” their supervisor to his or her new institution. Another is that they remain at UT and complete their doctorate here, either under the continuing “remote” supervision of our former employee or with a new supervisor. In this case, though, it is quite likely that their research assignment will have to be revised.

Experience has shown that PhD students can end up “left in the lurch” in this situation, either because their funding simply stops or because UT and its departing employee fail to reach agreement about their “hosting”, financing or supervision. With the upshot that they are forced to give up their work since there is no longer a project (if they cannot or do not want to follow their supervisor to his or her new place of work) or no longer a position for them (if they are able and willing to move, but the new host institution does not offer them a suitable appointment), or both.

After the Executive Board was notified that a relatively large number of complaints related to this problem, at the Rector's request – and in close consultation with the Dean of the Twente Graduate School (TGS) – a remedial proposal was submitted to the Doctorate Board. It subsequently adopted a resolution putting that into effect, so that PhD students are now protected by the following arrangements.

Financing issues

If a project's funding is lost for any reason and an associated PhD student remains affiliated with UT, the principles of good employership require that the university adopt direct responsibility for their financing. This ensures that financial guarantees allowing ongoing work to be brought to a successful conclusion are in place.

Employment issues

UT is obliged to make every effort to ensure that, in event of their supervisor's departure from the university, PhD students are able to maintain an employment status comparable with that held at the beginning of their doctoral research and allowing them to complete it. How this is achieved depends upon who retains control of the project funds: the departing employee or UT itself. In the interests of the PhD student, it is essential that agreements on this matter be reached between UT, the departing employee and their new institution.

Supervision issues

UT is obliged to make every effort to ensure that the PhD student retains adequate supervision of their research even after their supervisor's departure from the university. How this is achieved depends upon where the student continues their research: at UT (whether or not working on the same topic and whether or not under the original supervisor) or at their supervisor's new institution.

Experience shows that the two latter issues cannot simply be left to the individuals directly involved. Should it prove difficult to reach agreements which are to everyone's satisfaction, it is recommended that mediation be considered. Any agreements made should be submitted to TGS for review.

4. CONTRIBUTION TO UNIVERSITY SUPPORT STRUCTURE

UT continues to develop its so-called “House of Integrity”, resting on firm ethical foundations and comprising a series of “floors” and “rooms”. The Ombuds Officer function is one of those rooms. During the first year of the pilot, considerable effort has gone into (1) positioning this function within the university’s support structure and (2) increasing awareness of the Ombuds Officer. A lot of work has been done on both points by HR policy adviser Nicole Torka, to whom I am very grateful.

Efforts have also been made to forge contacts with fellow ombuds officers in higher education, in particular those at the other participants in the pilot project: Maastricht University, Erasmus University Rotterdam and Delft University of Technology. This is important in order to learn lessons from the way the function is organised and fulfilled elsewhere.

Positioning

The agreements reached between the confidential advisers, the Complaints Committee and the Ombuds Officer about their specific tasks have helped ensure that, in handling complaints, hardly any competence-related misunderstandings or conflicts have arisen. The duties and powers of the various participants in the House of Integrity will require constant monitoring, however, as will the way these are described in protocols and on the university website. The forthcoming independent evaluation of the Ombuds Officer pilot project should provide a good opportunity to review those duties and powers, as well as such issues as the function’s relationship with the committee being formed to consider reports under the new whistleblower scheme.

At the start of the pilot project, it was decided that the Ombuds Officer would report not to HR but to General Affairs, and specifically the secretary to the Executive Board. This has proven a good choice. The two consult every six weeks on matters related to the Ombuds Officer function (evaluation, reporting, accessibility) and on policy developments important to it. This regular, open contact with its secretary makes it possible to notify the Executive Board adequately and promptly of relevant signals picked up by the Ombuds Officer. Naturally, individual cases remain confidential and are never discussed at these meetings.

On the other hand, the Ombuds Officer’s position cannot be reconciled with the proposal that he serve as a replacement for the Objections Committee in employment law cases, which was abolished with effect from 1 January 2020. This suggestion was made at the beginning of 2020 during consultations between the university authorities and the unions. The committee’s abolition is linked to the ending of civil-servant status for university staff under the new Civil Servants (Normalisation of Legal Status) Act. But assigning the Ombuds Officer to this task would

mean having to report to the Executive Board on specific cases, which is at odds with his duty of confidentiality.

With regard to the university's support structure (in the broadest sense of the term), in the context of complaints referred to the Ombuds Officer two points requiring attention and improvement are worthy of mention. Both concern the position and work of other UT complaints and appeals bodies.

1. For a number of reasons, the complaints procedure is perceived as inaccessible.
 - o Formal submission to the Executive Board.
 - o Compulsory use of Dutch.
 - o The emphasis upon potential legal consequences for the respondent in the event of a ruling against them.

2. The composition and procedures of the Examination Appeals Board are not described on the website. Such a description would help make the board more accessible.

Awareness and accessibility

UT has made a substantial effort to publicise the national pilot and the appointment of its own Ombuds Officer as widely as possible, through press releases and announcements on the website. To further increase awareness, the following activities have also been undertaken.

- Honing of website text (January 2020).
- Interviews in *U-Today* (October 2019, January and April 2020).
- Discussions with numerous stakeholders in the support structure.
- Meetings with University Council, staff representatives and P-NUT.
- Contribution to seminar on academic integrity (ITC, March 2020).
- Contribution to Integrity module (May 2020).

Peer contacts

External links have been established through:

- membership of the Association of Ombudsmen in Higher Education (VOHO);
- attendance at VOHO meetings (January and February 2020)
- meetings with the other participants in the pilot project (December 2019 and February 2020).
- contributions to the independent evaluation by SoFoKles, the Social Fund for the Knowledge Sector (May and September 2020)

These contacts have revealed that the Ombuds Officer function is interpreted in different ways within higher education. Its positioning tends to vary, in particular with regard to rulings on complaints, since not every university has both a complaints committee and an ombuds officer. The independent evaluation report from SoFoKles draws attention to these points, along with other issues regarding the design of the university support structure.