

Leiden University Regulations on Reporting Malpractice 2021

Preamble

The Executive Board of Leiden University,

whereas:

- The Executive Board considers it very important that suspicions of malpractice within the organisation can be safely reported by both employees and students.
- The Executive Board deems it desirable, in the context of the University's integrity policy, to adopt regulations in respect of reporting suspected malpractice; the purpose of such regulations is on the one hand to offer legal protection to the employees and students concerned, and on the other hand to offer Leiden University the opportunity to thoroughly investigate any possible malpractice within the organisation, taking account of Article 2(1) of the Whistleblowers Authority Act, which came into effect on 1 July 2016.

The Executive Board therefore established the Leiden University Regulations on Whistleblowers 2017. Partly in the light of experience with those Regulations, the present amendments were made, *inter alia* resulting in a new name: the Leiden University Regulations on Reporting Malpractice 2021.

resolves to adopt:

the Leiden University Regulations on Reporting Malpractice 2021

Chapter 1. General provisions

Article 1.1. Definitions

1. As used in these Regulations, the following terms have the following meanings:
 - a. the University: Leiden University;
 - b. Executive Board: the Executive Board of the University;
 - c. Board of Governors: the Board of Governors of the University;
 - d. Committee: the Committee referred to in Article 3.1;
 - e. Employee: a person who, whether or not in accordance with the Collective Labour Agreement (CAO) for Dutch Universities, has or – no more than twelve months ago – had an employment contract with the University, or who works or – no more than twelve months ago – worked in another way under the responsibility of the University;
 - f. Student: a student who is or – no more than twelve months ago – was registered as such with the University;
 - g. Notifier: an employee or student who reports a suspicion of malpractice;
 - h. Employee's Manager: the manager of the organisational unit within which the malpractice is suspected;
 - i. Student's Manager: the student's manager is deemed to be the Programme Director of the study programme within which the malpractice is suspected;
 - j. Confidential Counsellor for Malpractice: a person who has been designated as such by the Executive Board.
2. Requirements for establishing a suspicion of malpractice are that:
 - a. the suspicion is based on reasonable grounds resulting from the knowledge gained by the employee or student at the University or from the knowledge obtained by the employee or student through his/her work or study at another business or organisation; and
 - b. the malpractice relates to an improper act or omission under the responsibility of Leiden University where a substantial University interest or public interest is at stake; and

c. the malpractice relates to a violation of statutory regulations, a risk to public health, public safety or the environment, or a risk to the proper functioning of the University or an affiliated public service or undertaking.

3. Malpractice within the meaning of these Regulations does not include a violation of academic integrity within the meaning of the Leiden University Academic Integrity Complaints Regulation.

Article 1.2 Advice and counselling by the Confidential Counsellor for Malpractice¹

1. In the context of these Regulations, the Executive Board designates one or more Confidential Counsellors for Malpractice.

2. The tasks of the Confidential Counsellor for Malpractice are:

- a. to assist, advise and support Notifiers who suspect malpractice;
- b. to inform Notifiers about the various routes open for finding a solution to the problem or for reporting suspected malpractice;
- c. to counsel Notifiers if they would like to have mediation in the case or wish to report it to their Manager or the Committee;
- d. to refer Notifiers, if they so wish, to experts in the area of the suspected malpractice;
- e. to act as a contact person with a view to ensuring that Notifiers do not suffer detriment;
- f. to register reports of malpractice and to provide the Executive Board with anonymised Annual Reports on these.

3. The Confidential Counsellor for Malpractice reports to the Executive Board concerning the performance of his/her tasks.

4. Where there is sufficient cause, the Confidential Counsellor for Malpractice who was contacted by the Notifier will advise that the suspected malpractice should be reported.

Chapter 2. Internal reporting and procedure

Article 2.1. Internal reporting to the Manager

1. An Employee or Student who has a suspicion of malpractice reports this suspicion to the relevant Manager.

2. The Manager sends a confirmation of receipt to the Notifier who has reported a suspicion of malpractice; this confirmation contains a description of the reported suspicion and the time at which the Notifier reported the suspicion.

3. The Manager referred to in the first paragraph ensures that the president of the Executive Board is immediately informed of a reported suspicion and of the date on which the report was received.

4. On the basis of the report of suspected malpractice, the Manager immediately conducts an impartial and independent investigation.

5. Notwithstanding the provisions of the previous paragraphs, the Notifier can report suspected malpractice directly to the Committee, if the application of those paragraphs cannot reasonably be required of the Notifier.

6. If the report pertains to suspected malpractice committed by the Executive Board or by one or more of its members, the report will be made to the Board of Governors. In that case, only the provisions of these Regulations in the second to fourth paragraphs and seventh to ninth paragraphs of this article and in Article 2.2 are applicable, or applicable *mutatis mutandis*.

¹ <https://www.medewerkers.universiteitleiden.nl/bestuur--organisatie/begeleiding-en-advies-bij-problemen-op-het-werk/vertrouwenspersonen/misstanden/bestuursbureau-expertisecentra/bestuursbureau?cf=bestuursbureau-expertisecentra&cd=bestuursbureau>

7. The report will be made in writing (by post or by email) and will:
 - a. contain a clear description of the malpractice; and
 - b. state the date and, unless the provisions of Article 2.2, third paragraph, are applicable, the Notifier's name, position (where relevant) and contact details.
8. Anonymous reports will not be accepted for processing, unless the provisions of Article 2.2, third paragraph, are applicable.
9. An internal report does not affect the legal obligation to report a criminal offence (where relevant).

Article 2.2. Internal reporting via the Confidential Counsellor for Malpractice

1. An Employee or Student who suspects malpractice but does not wish to directly make an internal report of that suspicion him/herself can ask one of the Confidential Counsellors for Malpractice to do this for or on behalf of him/her.
2. The Confidential Counsellor for Malpractice will forward the Notifier's report in accordance with the provisions of Article 2.1.
3. At the Notifier's request, the reporting via the Confidential Counsellor for Malpractice can take place anonymously, provided that the Confidential Counsellor for Malpractice knows the Notifier's name, position (where relevant) and contact details.
4. In that case, the Manager will send the confirmation of receipt as referred to in Article 2.1, second paragraph, to the Confidential Counsellor for Malpractice, who will forward the confirmation of receipt to the Notifier.

Article 2.3. Standpoint of the Manager

1. Within a period of eight weeks from the time of the internal report to the Manager, the Notifier will be informed in writing by or on behalf of the Manager of a substantive standpoint concerning the reported suspicion of malpractice.
2. If the standpoint cannot be given within eight weeks, the Employee or Student will be informed of this by or on behalf of the Manager, with an indication of the period within which he/she can expect a standpoint.
3. The Employee or Student can report the suspicion of malpractice to the Committee if:
 - a. he/she does not agree with the standpoint; or
 - b. he/she has not received a standpoint within the required period referred to in the first and second paragraphs; or
 - c. the period referred to in the second paragraph is unreasonably long, taking account of all the circumstances; or
 - d. he/she takes the view that the situation falls under the provisions of Article 2.1, fifth paragraph.
4. If the Notifier does not report the suspicion to the Committee, a copy of the Manager's standpoint will be sent to the Executive Board.

Chapter 3. The Leiden University Committee on Whistleblowing and the reporting procedure

Article 3.1. Establishment and task of the Committee

1. Leiden University has a Committee on Whistleblowing.
2. The Committee's task, as part of the internal reporting procedure, is to investigate suspected malpractice reported by the Notifier and to advise the Executive Board thereon.

Article 3.2. Composition of the Committee on Whistleblowing

1. The Committee consists of a chair, who is also a member, and four other members. The Committee appoints a vice-chair from among its members. With a view to proper fulfilment of its task, at least one member of the Committee is not (or was not recently) connected with Leiden University.

2. The chair or, in his/her absence, the vice-chair decides on the composition of the committee that will investigate the report, consisting of a chair and two members.

3. Members of the Committee who are or were involved in any way with the persons or facts to which the report pertains will not participate in handling that report.

4. The chair and members of the Committee are appointed by the Executive Board for a term of three years, at the end of which they can be reappointed for subsequent terms of three years.

5. The members of the Executive Board, the members of the Board of Governors, the members of the Faculty Boards, the chairs and directors of faculty institutes and the directors of expertise centres of the University are not eligible for appointment.

6. Discharge before the end of the specified term will take place at the member's own request. A member can also be discharged before the end of the specified term by the Board of Governors, in consequence of unsatisfactory performance as a member of the Committee.

Article 3.3. Secretary

The Committee is assisted by a secretary appointed by the Executive Board, who must have sufficient legal knowledge.

Article 3.4. Confirmation of receipt and the investigation

1. The Committee sends confirmation that it has received a report of a suspicion of malpractice to the Notifier who reported the suspicion to the Committee, and informs the president of the Executive Board about the report.

2. If the Committee deems this necessary for performing its task, it will conduct an investigation. The Committee can assign the investigation to one of its members, who will then act on its behalf.

Article 3.5. Powers of the Committee

1. The Committee is authorised to obtain information from all employees, students and bodies of the University. It can demand inspection of all documentation and correspondence that it deems important for assessing the report.

2. The Committee can consult experts, whether or not employed by the University.

3. The Committee creates a file for each report that it handles. No confidentially given information contained in this file will be disclosed to others, except with the permission of the individuals concerned.

Article 3.6. Inadmissibility

1. The Committee will declare the report inadmissible if:

- a. it does not pertain to a suspicion of malpractice within the meaning of Article 1.1, second paragraph; or
- b. the report pertains to a violation as referred to in Article 1.1, third paragraph; or
- c. the Notifier does not demonstrate that he/she has first reported the suspicion internally, as prescribed in Article 2.1, first paragraph, unless the situation falls under the provisions of Article 2.1, fifth paragraph; or
- d. the Notifier has reported the suspicion internally, as prescribed in Article 2.1, first paragraph, but a reasonable period has not yet elapsed since the internal report.

2. A reasonable period, as referred to in the first paragraph, subparagraph d, has elapsed if:

a. a standpoint of the Manager has not been given to the Notifier who reported a suspicion of malpractice within a period of eight weeks from the time of the internal report, unless the Manager has informed the Notifier that he/she cannot expect a standpoint within a period of eight weeks; or

b. the Manager has not set a period as referred to in Article 2.3, second paragraph; or

c. the period set by the Manager, referred to in Article 2.3, second paragraph, has elapsed and a standpoint of the Manager has not been communicated to the Notifier; or

d. the period set by the Manager, referred to in Article 2.3, second paragraph, is not reasonable, taking account of all the circumstances.

3. The Committee will inform the Executive Board and the Notifier who reported a suspicion of malpractice to the Committee that the report is inadmissible, stating the reasons for this.

Article 3.7. Procedure of the investigation

1. If an investigation is to be conducted, the Committee will inform the Notifier and/or the Confidential Counsellor for Malpractice, and also the person(s) to whom the report pertains, unless this could be detrimental to the interests of the investigation.

2. The Committee will, if it so wishes, assign part of the investigation to one or more investigators who are independent and impartial and have expertise in the matter, and will in any case not assign the investigation to persons who possibly are or were involved in the suspected malpractice. An employee who is asked by the Committee to act as an investigator can claim exemption by stating, with reasons, that fulfilling this task would (possibly) create a conflict of interests.

3. The Committee can, if necessary, consult an (external) expert or ask an (external) expert to make investigations.

4. In conducting the investigation, the principle of hearing both sides will be observed.

5. The design of the investigation, the method of conducting the investigation, including any consultation of experts, and the results of the investigation will be set down by the Committee in its advice, as referred to in Article 3.8; this will also be done if the Committee assigned part of the investigation to one or more other parties.

Article 3.8. Advice of the Committee

1. If the reported suspicion of malpractice is admissible, the Committee will set down its findings concerning the report of suspected malpractice in advice addressed to the Executive Board as soon as possible.

2. The Notifier who reported a suspicion of malpractice to the Committee will receive a copy of the advice, taking due account of the possibly confidential nature of information given to the Committee and the applicable regulations.

3. The advice will be published, in anonymous form and taking due account of the possibly confidential character of information given to the Committee and the applicable regulations, on the Committee's website,² as referred to in Article 3.10, at least insofar as compelling interests do not dictate otherwise.

Article 3.9. Standpoint of the Executive Board

1. The Executive Board will adopt a substantive standpoint within two weeks after receiving the advice as referred to in Article 3.8 and will communicate this standpoint in writing to the Notifier and, if necessary, the Confidential Counsellor for Malpractice and the

² <https://www.organisatiegids.universiteitleid.nl/universitaire-commissies/commissie-misstanden>

Committee as soon as possible, also stating the steps to which the report has led or will lead.

2. If the Executive Board's standpoint cannot be given within the specified period, the Executive Board will inform the Notifier and, if necessary, the Confidential Counsellor for Malpractice about this in writing, also stating the period within which the standpoint can be expected. If the total period, calculated from the Committee receiving the report to the Executive Board giving its standpoint, thus amounts to more than twelve weeks, an explanation will also be given of why a longer period is necessary.

3. Further deferment is possible insofar as:

- a. the Notifier consents to this; or
- b. this is necessary for compliance with statutory procedural requirements.

Article 3.10. Annual Report and advice

1. The Committee will produce an Annual Report every year.

2. This Annual Report will state, in anonymised terms and taking due account of the applicable regulations:

- a. the number and nature of the reports of suspected malpractice;
- b. the number of reports that did not lead to an investigation;
- c. the number of investigations conducted by the Committee; and
- d. the number of times the Committee issued advice and the nature of the advice.

3. This Annual Report will be sent to the Executive Board, which will immediately send the Annual Report to the Board of Governors and the University Council. The Executive Board mentions this Annual Report in the annual report referred to in Article 2.9 of the Higher Education and Research Act (*Wet op het hoger onderwijs en wetenschappelijk onderzoek*; WHW).

4. The Annual Report will be published in Leiden University's annual report, as referred to in the third paragraph. The anonymised advice will be published on the Committee's website.³

Chapter 4. External reporting

Article 4.1. External reporting

1. After making an internal report, the Notifier can make an external report of suspected malpractice to or via the Whistleblowers Authority (*Huis voor klokkenluiders*) if:

- a. He/she does not agree with the Committee's decision, as referred to in Article 3.6, first paragraph, that it will not further handle the report; or
- b. He/she takes the view that the internal procedure has not led to satisfactory measures to eliminate the suspected malpractice; or
- c. The handling of the report has not been completed promptly (within twelve weeks) by the Committee and the Executive Board and a deferment has not been agreed in accordance with Article 3.9, second paragraph.

2. If the Notifier cannot reasonably be required to first go through the internal procedure, the Employee or Student can, notwithstanding the provisions of the previous paragraph, report the suspected malpractice directly to or via the Whistleblowers Authority, or to an external organisation designated for this purpose.

3. If there is a reasonable suspicion of a criminal offence or a serious risk to public health, safety or the environment, an Employee or Student can report this directly to the relevant competent authority.

³ <https://www.organisatiegids.universiteitleiden.nl/universitaire-commissies/commissie-misstanden>

Chapter 5 (Legal) protection

Article 5.1 Protection of the Notifier and other involved parties against detriment

1. The Notifier must not suffer any detriment to his/her status, including his/her legal status, within the University as a result of properly reporting suspected malpractice in good faith.

2. The Executive Board will ensure as far as possible that the Notifier also does not otherwise suffer detriment in performing his/her duties or following his/her studies as a result of making a report properly and in good faith.

3. The Executive Board will also ensure as far as possible that the persons involved in handling a report of suspected malpractice, including the Confidential Counsellor for Malpractice, do not suffer any detriment to their legal status, or otherwise in performing their duties, as a result of making statements or performing tasks specified in these Regulations in good faith.

4. If a decision is taken to dismiss a Notifier, or not promote him/her to a higher position or salary scale, the Executive Board must give reasons to substantiate that this decision is not related to the report made in good faith. This protection will last in any case until three years after the handling of the report has been completed in the manner referred to in Articles 3.6, 3.9 and 4.1.

Article 5.2 Confidential treatment of the report and the Notifier's identity

1. Any party that is involved in handling a report of suspected malpractice will not disclose the Notifier's identity without his/her explicit permission and will treat the information about the report confidentially.

2. If the suspected malpractice has been reported via the Confidential Counsellor for Malpractice and the Notifier has not given permission for his/her identity to be disclosed, all correspondence about the report will be sent to the Confidential Counsellor for Malpractice, who will immediately forward it to the Notifier.

3. The Executive Board will ensure that the information about the report is stored in such a way that it is physically and digitally only accessible to persons who are necessarily involved in handling the report.

Chapter 6. Final provisions

Article 6.1. Effective date

1. These Regulations enter into effect on 1 March 2021 and replace the preceding Leiden University Regulations on Whistleblowers 2017.

2. Reports of suspected malpractice that were received before the effective date will be handled in accordance with the Leiden University Regulations on Whistleblowers 2017.

Article 6.2. Official title

These Regulations may be cited as the Leiden University Regulations on Reporting Malpractice 2021.

Adopted by the Executive Board on 16 February 2021 after receiving the positive advice of the Local Consultative Committee, dated 10 December 2020, and of the University Council, dated 1 February 2021.

EXPLANATION

Article 3.2 Composition of the Committee on Whistleblowing

It is very important to emphasise the independence of the members of the Committee on Whistleblowing. The procedure stands or falls on a report being handled as carefully and independently as possible. To reinforce this independent position and to prevent any appearance of conflict of interests or partiality of the Committee members, the first paragraph of Article 3.2 now includes the stipulation that *at least one member* of the Committee *is not (or was not recently) connected* with Leiden University.

The term “was recently connected” in the first paragraph of Article 3.2 is understood to have the following meaning. When appointing a member of the Committee who comes from outside the organisation – and who was formerly connected with Leiden University (by means of an employment contract) – it is necessary to observe a period such that the candidate has been able to take sufficient distance from the organisation. The purpose of this period is to enable the candidate to become detached from the University and then to participate in a Committee that fulfils its task as independently as possible. This period can range from at least one year to two years after the employment contract has ended, depending on how long the person was employed by the University: if this was for a short time, a period of one year will be sufficient; if it was for a longer time, then a period of two years will be observed.

Administrators within the University organisation, such as those specified in Article 3.2, fifth paragraph, are not eligible for appointment as a member of the Committee. This applies during the time they are fulfilling their administrative role. When this is no longer the case, it is possible for them to become a member of the Committee on Whistleblowing. It is also important for this group that they first observe a period that allows them to take distance from their administrative role. The same considerations as for external members will therefore be applied to how soon former administrators can become a member of the Committee. This period can range from at least one year to two years after the administrative role has ended.

Article 3.2, third paragraph, stipulates that members of the Committee may not handle a report if they are or were involved with the persons or facts to which that report pertains. This is intended to guarantee the independence of the members who are involved in handling a report. This requirement, and the principles to which it gives rise, are therefore brought to the attention of all members of the Committee in their appointment letter, which states: “Your appointment as a member of the Committee on Whistleblowing means that you commit yourself to the following principles, pursuant to Article 3.2, third paragraph.

- You will not be a member of the committee that handles a report originating in your own faculty or unit;
- You will not be guided by personal interests;
- You will ensure that even the appearance of a conflict of interests cannot arise;
- You will fulfil your membership of the Committee in a completely independent and impartial manner.”

Contact details

Leiden University Committee on Whistleblowing

Reports can be sent by email to: secretariaat-jz@bb.leidenuniv.nl

The 'subject' of the email should be: Report to Committee on Whistleblowing

Leiden University Confidential Counsellor for Malpractice

Confidential Counsellor for Malpractice via the website:

<https://www.medewerkers.universiteitleidennl/bestuur--organisatie/begeleiding-en-advies-bij-problemen-op-het-werk/vertrouwenspersonen/misstanden/bestuursbureau-expertisecentra/bestuursbureau?cf=bestuursbureau-expertisecentra&cd=bestuursbureau>

Whistleblowers Authority

The Whistleblowers Authority can refer the Employee to the correct organisation and sometimes also conducts investigations itself. In addition to its Investigation Department, the Whistleblowers Authority also has an Advisory Department, which advises employees on how to deal with malpractice. The two departments are strictly separate from each other.

Telephone

For questions about reporting malpractice: 088 - 371 30 31.

For employers' questions and other questions: 088 - 371 30 32 or send an email to:

kenniscentrum@huisvoorklokkenluiders.nl.

Email

For advice on reporting malpractice: advies@huisvoorklokkenluiders.nl.

For employers and general matters: info@huisvoorklokkenluiders.nl.

Address for visitors

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<https://huisvoorklokkenluiders.nl/>