

# **Regulations concerning the UvA's Confidential Advisers for Undesirable Behaviour 2021**

## **Preamble**

The University of Amsterdam aims for a safe, healthy and pleasant studying and working environment. Undesirable behaviour undermines the social safety of this environment. When students or staff are confronted with behaviour or conduct that could be considered undesirable behaviour, they can turn to a confidential adviser.

## **Basis of the Regulations**

These Regulations are based on Article 1.12 (Undesirable behaviour) of the Collective Labour Agreement for Dutch Universities (CAO NU), Sections 3(1) and (2) of the Dutch Working Conditions Act (Prevention and, if this is not possible, limitation of psychosocial work stress) and the Code of Conduct of the University of Amsterdam.

**Definitions**

In these Regulations, the following terms have the following meanings:

**Faculties**

The faculties of the University of Amsterdam listed in Appendix A to the Management and Administration Regulations (2016), with the exception of the Faculty of Medicine.

**Central units**

Units of the University of Amsterdam other than a faculty, the head of which reports directly to the Secretary General of the University of Amsterdam (shared service units and Executive Staff).

**(Former) employee**

A person who performs or has performed work for the University of Amsterdam, whether or not in the context of employment with the UvA and whether or not in an employer-employee relationship with the UvA, including trainees and guest lecturers/researchers.

**(Former) student**

A person who is or was enrolled at the UvA for his or her studies, a degree programme or course, a contract student, an external candidate, a postgraduate Master's student and anyone who makes use of the educational facilities offered by the UvA on any other lawful basis.

**Undesirable behaviour**

Any behaviour that causes stress to the person on the receiving end of it because it jeopardises or damages their physical or emotional integrity. This may include, but is not limited to, physical or verbal aggression, intimidation, sexual harassment, unwanted sexual advances, discrimination and exclusion or bullying.

**Person**

(Former) employee of (former) student.

**Sexual harassment/unwanted sexual advances**

Any form of verbal, non-verbal or physical behaviour (with a sexual connotation) that has the purpose or effect of affecting the dignity of the person, in particular when a threatening, hostile, offensive, humiliating or offensive environment is created.

**Aggression and violence/intimidation**

Any incident in which a person is harassed, threatened or attacked either mentally or physically in circumstances directly related to work or study, whether verbal or physical.

**Bullying**

Any type of intimidating behaviour that is structural in nature, committed by one or more persons and directed against a person or group of persons who cannot defend themselves against this behaviour. An key element that defines what constitutes bullying at work is the repetition of that behaviour over time.

**Discrimination**

Direct and indirect distinction, as well as any instruction to that end.

Direct distinction: where a person is treated in a different manner than another is, has been or would be treated in a comparable situation, on the grounds of:

- religion
- belief
- political opinion
- race
- gender
- nationality
- sexual orientation
- civil status
- age
- disability or chronic illness
- working hours (full-time or part-time) or employment contract (indeterminate or temporary).

Indirect distinction: where a seemingly neutral provision, standard or conduct particularly affects persons with a particular religion, belief, political opinion, race, gender, nationality, civil status, age, sexual orientation, disability or chronic illness, in full-time or part-time employment or with an indefinite or temporary employment contract in comparison with others.

Gender distinction is also understood to mean a distinction based on gender characteristics, gender identity and gender expression. Direct gender distinction is also understood to mean a distinction based on pregnancy, childbirth and maternity.

**Informant**

A (former) employee or (former) student who believes he or she is dealing with undesirable behaviour at the University of Amsterdam and makes a referral to the confidential adviser.

## **Confidential advisers for undesirable behaviour**

### **Article 1 Recruitment, selection and appointment**

1. Confidential advisers for undesirable behaviour are appointed by the dean of a faculty or the Secretary General of the University of Amsterdam for a period of three years for at least 60 hours per year. In principle, a three-year reappointment is possible. The aim is to appoint at least two confidential advisers for each faculty. For the central units, the aim is to appoint a total of at least four confidential advisers.
2. Confidential advisers for undesirable behaviour are recruited by means of an open recruitment procedure. In any event, the selection committee will consist of the UvA's coordinating confidential adviser, the dean or the Secretary General of the University of Amsterdam or a mandatory.
3. The aim of the selection process is to make the entire group of confidential advisers for undesirable behaviour at the UvA as diverse as possible.
4. Confidential advisers for undesirable behaviour are issued a letter of appointment containing their start date and term of appointment and referring to the present document for their duties, position, role clarification, obligations, rights, available resources and their release, discharge or termination (if applicable).

### **Article 2 Position and role clarification**

1. Confidential advisers for undesirable behaviour act independently of line management and are not accountable to the dean of their own faculty or the Secretary General of the University of Amsterdam while acting in this role. Confidential advisers for undesirable behaviour are responsible for assisting the informant. Fact-finding is not included in their remit. As a result, their role is explicitly and deliberately 'biased'. This bias means that confidential advisers for undesirable behaviour:
  - do not mediate between the informant and the person to whom the report relates;
  - do not apply the principle of hearing both sides of the argument;
  - do not take corrective action;
  - do not provide independent advice to line managers, senior management, P&O or others regarding individual cases.
2. The role of confidential adviser for undesirable behaviour is performed by an UvA employee or a former employee appointed by the dean of a faculty or the Secretary General of the UvA.
3. Insofar as the confidential adviser for undesirable behaviour is an UvA employee, his or her duties as confidential adviser are considered to be within the scope of the position specified in the employment contract. On average, the workload that the role of confidential adviser for undesirable behaviour entails (including on-the-job and additional training, peer feedback, profiling and consultation) 60 hours per year.
4. The role of confidential adviser for undesirable behaviour should not conflict with the position specified in the employment contract, any additional positions or membership other UvA committees/boards.
5. If a former employee is appointed as confidential adviser for undesirable behaviour at the request of the dean or the Secretary General of the University of Amsterdam, suitable compensation will be agreed.
6. Confidential advisers for undesirable behaviour who have a position of trust with respect to other employees may not act as confidential advisers for informants who come under their authority, nor may they act for informants whose reports relate to employees under their authority.

7. Confidential advisers for undesirable behaviour may not act for both the informant and the person who is the subject of the report.
8. If a confidential adviser for undesirable behaviour is of the opinion that it is not suitable to assisting the informant may be referred to another confidential adviser for undesirable behaviour.
9. If the informant is unable or unwilling to turn to a confidential adviser for undesirable behaviour of their own faculty/central unit, they can turn to one of the confidential advisers for undesirable behaviour of another faculty/central unit.

### **Article 3            Duties**

Confidential advisers for undesirable behaviour:

1. complete an initial intake for employees and students who experience undesirable behaviour and come to the confidential adviser for undesirable behaviour directly. The confidential adviser will confirm receipt of the report within two working days and will endeavour to help the informant as soon as possible;
2. provide information on informal and formal steps that the employee or student can take to improve the situation and discuss the opportunities and risks involved;
3. refer to other internal or external experts in the area of undesirable behaviour, if necessary;
4. support and assist the informant at the request of the relevant (former) member of staff or (former) student (for example if the employee or student wishes to raise the undesirable behaviour with his or her supervisor, lecturer or in proceedings at the Complaints Committee, or if the employee or student wishes to have mediation in the matter);
5. liaise and keep in contact with the informant for a period of time following conclusion of the process to determine whether the situation has improved and/or whether the informant still needs help;
6. report undesirable behaviour to the board of the unit, the supervisor, P&O, the director of education/programme director and/or the coordinating confidential adviser at the request of the employee or student;
7. clarify the role of confidential adviser for undesirable behaviour to employees and students, if desired;
8. keep track of the nature and extent of the reports (including complaints), broken down into reports by employees and reports by students and broken down according to the organisational unit where the informant works or studies (the relevant faculty/central unit);
9. issue an anonymised annual overview of the nature and scope of the reports (and trends, if possible and insofar as this is permitted by their duty of confidentiality) to the coordinating confidential adviser, who incorporates this into the annual report of the UvA's confidential advisers;
10. report problems regarding social safety in policy, practice and organisational structure to their own dean/director or the Secretary General of the University of Amsterdam and to the coordinating confidential adviser. If a unit has several confidential advisers, such reports are issued jointly.

#### **Article 4           Duty of confidentiality**

1. Confidential advisers for undesirable behaviour have a confidentiality obligation regarding what informants disclose to them. This confidentiality also applies after termination of their activities as confidential adviser for undesirable behaviour.
2. The confidential adviser for undesirable behaviour does not take any action without the informant's consent.
3. The duty of confidentiality does not apply if statutory provisions prescribe an obligation to report.
4. The confidential advisers for undesirable behaviour endorse the Code of Conduct for Confidential Advisers for Undesirable Behaviour, included as Appendix 1.
5. The confidential advisers for undesirable behaviour act in accordance with the General Data Protection Regulation (GDPR).

#### **Article 5           Legal protection**

1. The dean of the faculty or the Secretary General of the University of Amsterdam ensures that confidential advisers for undesirable behaviour are able to perform their role without prejudice to their position as an employee of the university.
2. Within the UvA, confidential advisers for undesirable behaviour have an internal right to refuse to give evidence and do not need to testify/make a statement about any person or matter.

#### **Article 6           Reports and referrals to other authorities**

1. A confidential adviser may conclude that a report is not within the remit of the confidential advisers or not covered by the Regulations concerning the UvA's Confidential Advisers for Undesirable Behaviour.
2. If the confidential adviser for undesirable behaviour believes that another authority within the university is better equipped to support the informant or handle the report, he or she will refer the informant to that authority.

#### **Article 7           Facilities**

1. With due observance of the provisions in Article 1, the dean of the faculty or the Secretary General of the University of Amsterdam will ensure that the confidential advisers for undesirable behaviour have enough time available (60 hours per year at least in any case) to be able to perform their role properly and that they have the resources to perform their role.
2. The dean of the faculty or the Secretary General of the University of Amsterdam will ensure that confidential advisers for undesirable behaviour are able to attend the necessary training and peer review.
3. Confidential advisers for undesirable behaviour receive an annual compensation for performing their role.<sup>1</sup> This is conditional on their participation in mandatory (additional) training and/or peer review for confidential advisers.
4. The dean of the faculty or the Secretary General of the University of Amsterdam will ensure that the confidential advisers for undesirable behaviour are known and visible within the organisation.

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<sup>1</sup> In accordance with the compensation scheme for company emergency response officers.

## **Article 8 Release, discharge or termination by operation of law**

1. The dean of the faculty or the Secretary General of the University of Amsterdam is authorised to rescind an appointment as confidential adviser for undesirable behaviour if the appointment can no longer reasonably be required to allow to continue. In that case, the dean of the faculty or the Secretary General of the University of Amsterdam will inform the confidential adviser for undesirable behaviour in writing, giving reasons. This may be the case, for example, if:
  - a. it has been established that there has been a demonstrable, serious failure on the confidential adviser for undesirable behaviour's part to perform his or her duties or that the confidential adviser has seriously exceeded the powers associated with the role. This must have been established by an independent, ad-hoc committee, which has a duty of confidentiality regarding the content of the case of which it is notified;
  - b. a conflict of interest arises with the principal or ancillary position of the confidential adviser for undesirable behaviour;
  - c. the confidential adviser for undesirable behaviour does not satisfy the requirement of attending at least two additional training/peer review meetings per year.
2. Confidential advisers for undesirable behaviour may decide at any time to resign from their duties. They must inform the dean, the Secretary General of the University of Amsterdam and the coordinating confidential adviser.
3. An appointment as confidential adviser for undesirable behaviour ends by operation of law upon expiry of the term of appointment and/or upon termination of employment with the UvA. However, a former employee may be appointed or reappointed as confidential adviser for undesirable behaviour at the request of the dean and the Secretary General of the University of Amsterdam (in which case he or she may possibly only be paid a voluntary compensation to be agreed within the applicable limits).

## **Article 9 Complaints**

1. If desired, an informant may submit a substantiated complaint about a confidential adviser for undesirable behaviour to the coordinating confidential adviser, who will handle the complaint.
2. Depending on the nature of the complaint, the coordinating confidential adviser may play a mediating role between the complainant and the confidential adviser for undesirable behaviour and/or handle the complaint independently.
3. If the complaint is so serious that the coordinating confidential adviser is of the opinion that the appointment of the confidential adviser should be reconsidered, the coordinating confidential adviser is authorised – after having informed the informant and the confidential adviser of the intention to do so – to inform the dean or the Secretary General of the University of Amsterdam.
4. The handling of complaints is subject to the duty of confidentiality set out in Article 5 of these Regulations.

## **Coordinating confidential adviser**

One of the University of Amsterdam's confidential advisers has the position of first among equals. In addition to the preceding articles, Articles 11-14 apply to the coordinating confidential adviser.

**Article 10 Recruitment, selection and appointment of the coordinating confidential adviser**

1. The coordinating confidential adviser is selected by means of an open recruitment procedure. In any event, the selection committee will consist of the Secretary General of the University of Amsterdam, a dean and one of the UvA's confidential advisers for undesirable behaviour. The central representative advisory councils will be heard.
2. The coordinating confidential adviser is appointed by the Executive Board on an employment contract for 0.8 fte.

**Article 11 Position and role clarification**

1. The position of coordinating confidential adviser is incompatible with any other position at and any other activity in the service of the University of Amsterdam.
2. The coordinating confidential adviser is not subordinate to any body in the performance of his or her duties.
3. The Executive Board may discharge the coordinating confidential adviser of his or her duties at his or her own request, or if any action or lack thereof on the part of the coordinating confidential adviser leads to a serious undermining of trust in him or her.
4. Each year, the Executive Board, the Secretary General of the University and the coordinating confidential adviser have a meeting in which the activities of the coordinating confidential adviser are discussed and evaluated.

**Article 12 Duties**

The coordinating confidential adviser is also a confidential adviser for undesirable behaviour and is therefore bound by these Regulations. In addition, the coordinating confidential adviser has a number of additional duties. The coordinating confidential adviser:

1. acts as a sparring partner for the other confidential advisers for undesirable behaviour;
2. monitors the independent position of the confidential advisers for undesirable behaviour in the faculties/central units and ensures that the confidential advisers receive sufficient facilities to perform their role;
3. safeguards the quality of the confidential advisers for undesirable behaviour (through recruitment and selection, training and peer review) and ensures that they comply with the requirements of these Regulations;
4. ensures that the burden of duties per confidential adviser does not become too high;
5. handles complaints by informants about confidential advisers;
6. issues an anonymised annual overview of the nature and scope of the reports (including any trends) to the Executive Board, the Central Works Council, the Central Student Council, the deans, the Secretary General of the University of Amsterdam, the unit directors, HR Policy & Strategy, the ombudsman, the occupational health and safety service and the Complaints Committee. This annual report is also published on the UvA website. In the annual report, the coordinating confidential adviser also informs about or advises on any problems related to undesirable behaviour within the organisation;
7. coordinates the activities of the internal network of confidential advisers for undesirable behaviour, monitors replacements during holidays/illness, suggests reappointments, coordinates the filling of vacancies and gives an introduction to new confidential advisers;

8. organises information sessions, maintains the overview of confidential advisers on the UvA website and submits news items for the UvA newflash;
9. represents the UvA in the Network for University Confidential advisers (NUVP).

**Article 13      Facilities**

The Secretary General of the University of Amsterdam provides the coordinating confidential adviser with the facilities required for the proper performance of his or her duties.

**Concluding provisions**

**Article 14      Adoption of these Regulations**

These Regulations concerning the UvA's Confidential Advisers for Undesirable Behaviour were adopted by the Executive Board on October 12, 2021 and will enter into force on November 1, 2021.

**APPENDIX 1: Code of Conduct for Confidential Advisers for Undesirable Behaviour:  
'Dealing with the duty of confidentiality'<sup>2</sup>**

1. Confidential advisers enter into a relationship of trust with the informant or other persons who make a report to them or with whom they come into contact. That is why confidential advisers are bound by a duty of confidentiality towards all parties regarding what they learn during the performance of their duties as confidential adviser.
2. Breach of this duty of confidentiality is only possible if the informant gives written consent, or if there are very urgent reasons as described in item 3 of this Appendix.
3. Only if the situation so requires can it be necessary or desirable to breach the duty of confidentiality without the written consent of the informant and/or the persons involved. The duty of confidentiality may only be waived if all of the following conditions have been met:
  - Every effort has been made to obtain the consent of the informant and/or the persons involved.
  - The confidential adviser for undesirable behaviour has suffered a crisis of conscience on account of his or her duty of confidentiality.
  - It is almost certain that upholding the duty of confidentiality will lead to identifiable and serious damage and/or danger for the informant and/or the persons involved or third parties.
  - The confidential adviser for undesirable behaviour is almost certain that the breach of the duty of confidentiality will significantly prevent or limit damage to the informant and/or the persons involved or third parties.
4. If such a situation occurs, the confidential adviser will first discuss the reasons for breaching the duty of confidentiality with the coordinating confidential adviser. If the coordinating confidential adviser considers this necessary, he/she will inform the Secretary General of the University of Amsterdam. If breaching the duty of confidentiality is urgent, the Secretary General of the University of Amsterdam will be informed afterwards. The confidential adviser will inform the informant of his or her intention to breach the duty of confidentiality before actually doing so, unless this is impossible due to the aforementioned situation and/or need for urgency.
5. If the breach of the duty of confidentiality makes this necessary, the confidential adviser for undesirable behaviour will immediately refer the persons involved to another confidential adviser for undesirable behaviour or body upon their request.

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<sup>2</sup> Based on the Ministry of Social Affairs and Employment publication (2019) *Leidraad voor het positioneren en functioneren van vertrouwenspersonen ongewenste omgangsvormen op het werk* (Guideline for the position and functioning of confidential advisers for undesirable behaviour at work).

## **APPENDIX 2: Job requirements for the confidential advisers for undesirable behaviour and the coordinating confidential adviser**

### **Job requirements for the confidential advisers for undesirable behaviour**

The following job profile applies to the confidential advisers for undesirable behaviour.

Confidential advisers for undesirable behaviour:

- have completed, or are prepared to complete, a training course for confidential advisers for undesirable behaviour recognised by the University of Amsterdam and has thus gained an insight into the psychological, legal and organisational aspects of the role;
- have a sufficiently good command of the Dutch and English language;
- attend at least two additional training/peer review meetings for confidential advisers for undesirable behaviour per year;
- are aware of the internal structure, culture and the regulations relevant to the position within the organisation.

In addition, confidential advisers for undesirable behaviour possess:

- empathy;
- communication skills (particularly active listening);
- a sense of organisational relationships/interests;
- analytical skills (e.g. the ability to oversee alternative action and its outcomes);
- the ability to reflect (on their own behaviour and that of others);
- integrity (e.g. as evidenced by the ability to deal with the duty of confidentiality);
- the ability to maintain professional distance from the informant and the informant's problem.

### **Job requirements for the coordinating confidential adviser**

The following job profile applies to the coordinating confidential adviser. The coordinating confidential adviser:

- has gained experience as a confidential adviser for undesirable behaviour within or outside the UvA (preferably at least two years and within a university context);
- is a National Association of Confidential Advisers (LVV) certified confidential adviser and included in the register of confidential advisers;
- keeps track of relevant developments in the field, reads relevant literature and participates in important additional training/symposia/conferences (at least three per year, in addition to internal peer review/additional training);
- is able to advise on and contribute to updating and maintaining policy in the areas of desirable behaviour, equal treatment, working conditions and/or studying conditions.

# **Regulations concerning the UvA's Confidential Advisers for Undesirable Behaviour 2021 – explanatory notes**

The Regulations concerning the Confidential Adviser for UvA Employees have been amended on the basis of changes in legislation and regulations, the guidelines of the LVV and current practice at the UvA. A large number of textual changes have been made to the Regulations and certain items have been clarified. These explanatory notes discuss the more far-reaching changes in more detail.

## **Job title**

A general change concerns the modification of the job title in line with LVV terminology.

This means that we use the term 'confidential adviser for undesirable behaviour', rather than plain 'confidential adviser'. A substantive argument for this change is that confidential advisers for undesirable behaviour deal with specific behaviour only and that staff and students cannot report other concerns to them. Examples include reports about scientific integrity. This is why, among others, the confidential advisers for scientific integrity and the confidential adviser on individual legal status are not bound by these Regulations.

## **Definition of undesirable behaviour**

The definition of undesirable behaviour has been changed in line with the statutory definition as used in the Explanatory Memorandum to the Dutch Working Conditions Act and the Code of Conduct of the University of Amsterdam. Informants can turn to the confidential advisers for undesirable behaviour to report sexual harassment, aggression and violence, bullying and discrimination. In order to avoid common misunderstandings, it has been clarified that intimidation falls into the category of aggression and violence and unwanted sexual advances are a form of sexual harassment. Undesirable behaviour can also take place in the context of career development and may relate to so-called career obstruction.

## **Article 1 Recruitment, selection and appointment**

The old Regulations did not include a fixed number of hours for performing the duties of a confidential adviser. The UvA has approximately 20 confidential advisers who perform this role while in their regular position. The number of reports to the confidential advisers is not equally divided across the group. This means that a number of confidential advisers receive no or almost no reports, while others receive multiple reports. Moreover, it cannot be estimated in advance when reports will be received. As a starting point, we currently apply a guideline of 30 hours a year. The increased focus on social safety has led to an increase in the number of reports. The new Regulations therefore specify a minimum of 60 hours a year. This also includes the time required for training and peer review.

## **Article 2 Position and role clarification**

The new Regulations clarify that confidential advisers for undesirable behaviour act independently of line management. In order to avoid false expectations, the significance of the partiality inherent in the role of confidential adviser is also described.

## **Article 3 Duties**

The list of duties has been clarified and expanded in line with LVV guidelines and UvA practice. The new Regulations specifically describe what role confidential advisers can play in reporting undesirable behaviour to line management. This includes reporting undesirable behaviour at the request of the informant and reporting problems regarding social safety in policy and practice of their own accord.

#### **Article 4           Duty of confidentiality**

As regards the duty of confidentiality, it has been clarified that confidential advisers cannot take action in an individual case without the informant's consent. The new Regulations also specify that confidential advisers are bound by the General Data Protection Regulation when taking action.

#### **Article 7           Facilities**

Confidential advisers perform their duties while in their regular position. This means that they are paid on the basis of their regular position. As proof of recognition and to do justice to the fact that the confidential advisers perform these duties on a voluntary basis, a compensation in accordance with the compensation scheme for company emergency response officers has been agreed. This is conditional on the confidential advisers' participation in at least one of the annual peer review or training sessions. Naturally, confidential advisers can also attend an external peer review in order to comply with this obligation.

#### **Article 8           Release, discharge or termination by operation of law**

The old Regulations contained virtually nothing about the release, discharge or termination by operation of law of the role of confidential adviser.

#### **Article 9           Complaints**

The old Regulations did not include any provision for submitting a complaint about a confidential adviser. One point requiring attention in this respect is that a discussion about complaints usually does not involve a complaint about the confidential adviser, but a complaint about the manner in which the report has been handled by the organisation. In view of the duties and responsibilities associated with their role, confidential advisers obviously have no influence on this.

#### **Articles 10-14   Coordinating confidential adviser**

All articles regarding the coordinating confidential adviser are new. We propose to appoint a coordinating confidential adviser who will be responsible for the professionalisation and quality control of the confidential advisers. In addition, some of the confidential advisers have indicated that they need an experienced confidential adviser with knowledge of the UvA who is able to function as sparring partner in more complicated cases.

The UvA has chosen to appoint a relatively large number of confidential advisers who perform the role of confidential adviser while in their regular position. This has a number of advantages, such as ease of access and knowledge of the relevant unit. Moreover, this is in line with the decentralised organisation of the UvA. Confidential advisers can, as it were, act as a 'thermometer' for the board of the unit in the area of social safety. This set-up also has a number of disadvantages/risks, such as the low profile of the confidential advisers' reporting role (reports are spread over some 20 confidential advisers), their ties with other social safety actors and the fact that not all confidential advisers are sufficiently experienced to handle more complex cases. In addition, the increased focus on social safety requires the professional field to pay more attention to the training, recruitment and selection of confidential advisers.

The key argument for appointing a coordinating confidential adviser is to address these problems while retaining the advantages of the current set-up.