

# EXTERNAL COMPLAINTS PROCEDURE TNO



15 May 2019



Having regard to Chapter 9 of the Dutch General Administrative Law Act, the Executive Board of TNO decided to adopt this external complaints procedure TNO on 13 May 2019 and for it to become effective as of 1 May 2019.

#### ARTICLE 1 DEFINITION OF TERMS

1. TNO: Dutch organisation for applied scientific research TNO, situated in Delft, with its registered office in The Hague.
2. Executive Board: the TNO Executive Board.
3. Supervisory Board: the TNO Supervisory Board.
4. Council for Defence Research: the TNO Council for Defence Research.
5. Unit: organisational unit within TNO.
6. Complainant: the person who submitted the Complaint, not being a person who works under the responsibility of TNO.
7. Person or Persons Concerned: the person or persons to whom the Complaint pertains.
8. Complaints Handler: a handler as referred to in Article 6 of this Complaints Procedure.
9. Complaint: a Complaint submitted in writing about the way in which TNO, or an executive or other body of TNO, or a person employed under the responsibility of TNO, behaved in respect of third parties on a specific occasion. Behaviour and conduct also refers to omissions.
10. Services Organisation: organisational unit to support the Executive Board and/or the TNO organisation.
11. Inquiry Committee: an inquiry committee set up in accordance with Article 7 of the Complaints Procedure.
12. Investigator: should be interpreted as "Complaints Handler" or "Inquiry Committee" in function of who studies a specific Complaint in accordance with Article 8 of the Complaints Procedure.
13. Complaints procedure: this external complaints procedure TNO 2019.
14. NGWI: Netherlands Code of Conduct for Research Integrity of 2018.
15. Awb: Dutch General Administrative Law Act.
16. CL&C: the Corporate Legal & Compliance Department of TNO

#### ARTICLE 2 SCOPE

1. This Complaints Procedure sets out the procedure for dealing with external complaints in order to operate as a complaints procedure, as included in Section 9, Title 9.1 of the Dutch General Administrative Law Act.
2. Complaints about an alleged breach of research integrity in accordance with the definition as included in the NGWI, paragraph 5.2.A are processed in accordance with this Complaints Procedure with due regard to the specific provisions of Article 12.

#### ARTICLE 3 SUBMITTING A COMPLAINT

1. A Complaint shall be submitted in writing and shall contain at least:
  - a. The name, signature and address of the submitting person;
  - b. The date of writing;
  - c. A description of the conduct the Complaint addresses.
2. The Complaint shall be submitted to the Executive Board, attn. Corporate Legal & Compliance Department, PO BOX 96800, 2509 JE The Hague.
3. The Complaint is deemed received when the requirements of Articles 3.1 and 3.2 of the Complaints Procedure have been met. If the provisions of Articles 3.1 or 3.2 have not been met, the Complainant is given the opportunity to remedy the failing within a period of two weeks. If the provisions of Articles 3.1 or 3.2 are still not met at that time, the Executive Board may declare the Complaint inadmissible.
4. If a Complaint is submitted verbally, the Complaints Procedure shall be brought to the attention of the Complainant with the notice that Complaints shall only be processed when they have been submitted in writing to the Executive Board.
5. If the Complaint is submitted in a language other than Dutch or English, the Complainant shall provide a proper translation of the submitted Complaint into the Dutch or English language at his own expense. If a translation into the Dutch or English language is not provided, the Executive Board may declare the Complaint inadmissible.

#### ARTICLE 4 CONFIRMATION OF RECEIPT

1. The Complaints Handler confirms receipt of the Complaint to the Complainant in writing within ten (10) working days, whilst stating how and the period within which the Complaint shall be processed.
2. The Person or Persons Concerned shall be sent an pseudonimised copy of the Complaint and any appendices, stating how and the period within which the Complaint shall be processed.

#### ARTICLE 5 A COMPLAINT IS NOT CONSIDERED

1. TNO is not obliged to process a Complaint if:
  - a) The Complaint pertains to conduct that took place more than a year prior to submitting the Complaint in accordance with Article 3 of the Complaints Procedure;
  - b) The Complainant can or could object within the meaning of the Dutch General Administrative Law Act;
  - c) The Complainant can or could lodge an appeal within the meaning of the Dutch General Administrative Law Act, unless it concerns a failure to take a decision on time within the meaning of the Dutch General Administrative Law Act;
  - d) The Complaint pertains to conduct that is or was subject to the opinion of a judiciary body other than an administrative court following the instigation of proceedings;
  - e) The Complaint pertains to conduct that is the subject of criminal proceedings;
  - f) The Complaint pertains to conduct that was dealt with previously with due regard to the provisions of this Complaints Procedure;
  - g) The interests of the Complainant or the weight of the conduct are apparently insufficient. This Complaints Handler shall notify the Complainant supported by reasons.
2. TNO is equally not obliged to process a Complaint if TNO already processed the Complaint by means of a different procedure.
3. The Complainant shall be informed in writing of the decision not to consider the Complaint as soon as possible, but no later than four weeks from receipt of the Complaint.

#### ARTICLE 6 COMPLAINTS HANDLER

1. The Complaints Handler is responsible for processing the Complaint.

The Complaints Handler is appointed as follows:

  - a) If it concerns Complaints about employees of a Unit or of the Services Organisation - the Director in question or a person designated by the Director, not being the Person Concerned.
  - b) If it concerns Complaints about a Director of a Unit or a part thereof, or a Director of the Services Organisation or the Manager of a part thereof - the Executive Board or a person designated by the Executive Board, not being the Person Concerned.
  - c) If it concerns Complaints about the Executive Board - the Supervisory Board or a person designated by the Supervisory Board, not being the Person Concerned.
  - d) If it concerns Complaints about the Supervisory Board - a person designated by the Supervisory Board, not being the Person Concerned.

- e) If it concerns Complaints about the Council for Defence Research - employees designated by the Ministry of Defence, not being the Person Concerned
2. Complaints that do not concern specific persons are processed by the Director of a Unit or of the Services Organisation or part thereof, who is responsible for the conduct in respect of the Complainant, or by a person designated by the Executive Board.
3. If a Complaint concerns several Persons Concerned divided over two or more organisational units, being Units, the Services Organisation or parts thereof, the Executive Board, the Supervisory Board and/or the Council for Defence Research, the Complaints Handler is designated as follows:
  - a) If the Complaint arose in the context of one process where the Persons Concerned worked together - the Director of one of the aforementioned organisational units that was responsible for implementing the process.
  - b) If it does not concern one process where the Persons Concerned worked together and therefore several Directors of one of the aforementioned organisational units are responsible, the Directors concerned shall agree which one of them shall be the Complaints Handler. The Complaints Handler shall inform the other Directors of the procedure and the opinion on the Complaint.
4. After CL&C has received the Complaint, it shall forward this immediately to the responsible Complaints Handler. CL&C informs the Executive Board of the receipt of the Complaint.
5. The Complaint is processed by the Complaints Handler, unless the Complaints Handler, following consultation with CL&C, is of the opinion that the severity of the nature and content of the Complaint is such that it should be escalated to a higher officer. In that case the Complaints Handler shall forward the complaint immediately to the higher officer, who will then be designated as the Complaints Handler.
6. Upon receipt of the Complaint, and following advice from CL&C, the Complaints Handler shall decide - in function of the severity, the subject and other important circumstances - to deal with the Complaint himself informally, with or without the use of mediation, or formally in the capacity of Investigator, or to proceed with setting up an Inquiry Committee in accordance with Article 7 of the Complaints Procedure. In order to determine and agree the next steps, the Complaints Handler may discuss those informally with the Complainant.
7. At variance with Article 6.6 of the Complaints Procedure, a Complaint about an alleged breach of research integrity always requires the instigation of an Inquiry Committee in accordance with Article 7 of the Complaints Procedure.

#### ARTICLE 7 INQUIRY COMMITTEE

1. A legal counsel from CL&C shall always be a member of the Inquiry Committee.
2. The Complaints Handler and the Person or Persons Concerned shall never form part of the Inquiry Committee.
3. The Inquiry Committee has an advisory and supportive task and monitors the terms as set out in this Complaints Procedure.
4. The working method of the Inquiry Committee is described in more detail in an instruction from the Complaints Handler to the Inquiry Committee. It shall always describe how both sides of the argument shall be heard. A model form for issuing instructions to the Inquiry Committee is available to the Complaints Handler from CL&C.

#### ARTICLE 8 PROCESSING A COMPLAINT

1. The Investigator has the authority to freely obtain information verbally and in writing, inside and outside TNO, for the purpose of the investigation.
2. If a Complaint pertains to the integrity of persons or the organisation, the Complaints Handler shall inform the Integrity Officer of TNO of the Complaint as soon as possible following receipt of the Complaint.
3. If a Complaint requires specialist knowledge that is not available within TNO, and following consultation with and advice from CL&C, the Investigator may decide to obtain this specialised knowledge externally in accordance with the TNO Mandate procedure. For example by asking advice or by asking one or more external specialists to join the Inquiry Committee. If an Inquiry Committee deals with the Complaint, the Complaints Handler shall always be informed in writing. The Complainant and the Person or Persons Concerned shall also be informed in writing, except if this is precluded by the interests of the investigation.
4. At the request of the Complainant or the Person or Persons Concerned, an exploratory discussion may be held with the Investigator prior to the interviews in accordance with Article 9 of the Complaints Procedure. The purpose of the exploratory discussion is to provide clarity on the progress of the procedure.
5. The Investigator, the Person or Persons Concerned and other persons who work under the responsibility of TNO and who are involved with the Complaints Procedure and/or will be interviewed, shall maintain strict confidentiality of anything they take cognisance of in relation to dealing with the Complaint. If externals are involved in dealing with the Complaint, they shall sign a confidentiality agreement in advance.
6. In the event of an investigation by an Inquiry Committee - after completing the investigation, the Inquiry Committee sends a report of findings, accompanied by any advice or recommendations to





the Complaints Handler. The Inquiry Committee shall also provide the written reports of the interviews in accordance with Article 9 of the Complaints Procedure.

7. If, following application of Article 6.6 of the Complaints Procedure, the Complaint has been dealt with to the satisfaction of the Complainant in an informal manner, with or without using mediation, the Complaint shall not be processed further and Articles 9, 10 and 11 of the Complaints Procedure shall not be applied. The Complainant, the Person or Persons Concerned, and the Executive Board shall be informed in writing if processing of the Complaint was stopped in this manner.
8. Whilst the Complaint is processed, the Complaints Handler shall inform the Executive Board of the progress of dealing with the Complaint.

#### ARTICLE 9 INTERVIEWS

1. The Investigator provides the Complainant and the Person or Persons Concerned with the opportunity of an interview by means of a written invitation. The Investigator states at which TNO site the interviews will be held and shall provide at least three dates and times on which the Investigator is available.
2. The Investigator may refrain from interviewing the Complainant if:
  - a) The Complaint is evidently unfounded;
  - b) The Complainant stated not to wish to use the right to be interviewed;
  - c) The Complainant failed to state in writing that he wished to use the right of interview within fifteen (15) working days of the dispatch date of the written invitation.
3. The Complainant may be assisted by a third party. If the Complainant is assisted, the Complainant shall inform the Investigator at least three (3) working days prior to the interview. The costs involved with the assistance shall be borne by the Complainant.
4. The Person or Persons Concerned may be assisted by a third party. This person cannot be a person who works under the responsibility of TNO. If the Person or Persons Concerned are assisted, the Person or Persons Concerned shall inform the Investigator at least three (3) working days prior to the interview. The costs involved with the assistance shall be borne by the Person or Persons Concerned. If, based on special circumstances, it's not reasonable to expect from the Person or Persons Concerned to bear the costs for their own assistance, the HR director, on request of the Person or Persons Concerned, provided that they have an employment contract, can decide that the costs of being assisted are paid in whole or in part by TNO.
5. The Investigator is authorised to interview third parties.

6. The interview may be recorded by means of audio recordings. The person who is interviewed shall be notified of the recording prior to the interview. The audio recording shall be treated confidentially and shall only be issued to persons on a "need-to-know" basis. The audio recording shall be destroyed as soon as all the other documents concerning the Complaint are destroyed in accordance with the Dutch Public Records Act.
7. The Investigator shall prepare a written report of the interviews.
8. The Complainant, the Person or Persons Concerned and any third parties, if interviewed, shall receive the written report of their own interview. They shall be given the opportunity to provide their view on the content of the report within fourteen (14) calendar days of the date of sending the report. Further discussion on the submitted point of view shall take place at the initiative of the Investigator if he deems this necessary.

#### ARTICLE 10 TERMS

1. In the event of an investigation by an Inquiry Committee: the Inquiry Committee sends the report of findings in accordance with Article 8.6 of the Complaints Procedure to the Complaints Handler within six weeks of receipt of the Complaint.
2. The Complaints Handler deals with the Complaint within ten weeks of the Executive Board's receipt of the Complaint in accordance with Article 3.3 of the Complaints Procedure.
3. If it proves impossible to deal with the Complaint within ten weeks, the Complaints Handler may unilaterally postpone processing of the Complaint by no more than four weeks.
4. Further postponement is only possible with written consent from the Complainant in response to a written request for the same from the Complaints Handler. The Complainant shall be given a reasonable period for giving a written response to the request. If the Complainant consents, the Complaints Handler shall report the further postponement to the Person or Persons Concerned and - if instituted - the Inquiry Committee in writing.
5. The Complaints Handler may unilaterally defer the period for processing a Complaint if there is a delay 1) that may be attributed to the Complainant, or 2) that was caused by the long-term stay abroad or the long-term illness of the Complainant, Person or Persons concerned, member of the Inquiry Committee who cannot be replaced within one (1) week or of any other person who may be important to processing the Complaint.
6. Deferral commences on the day following the day on which the Complaints Handler notified the Complainant of the deferral in writing. Except for the provisions of Article 10.7, the Complaints Handler shall report

termination of the deferral due to termination of the delay to the Complainant in writing, whilst stating the period within which the Complaint must be processed.

7. If the deferral is the result of a delay that is attributable to the Complainant, and the Complaints Handler has repeatedly attempted to make contact without any response from the Complainant, the Complaints Handler may consider the Complaint as having been processed forty-two (42) calendar days following deferral of the Complaint.
8. The Complaints Handler shall inform the Complainant, the Person or Persons Concerned and the Executive Board of the postponement, deferral, or deeming the Complaint to have been processed in writing.

#### ARTICLE 11 OPINION ON THE COMPLAINT

1. The Complaints Handler informs the Complainant in writing, supported by reasons, of the findings from the investigation of the Complaint that are relevant to the Complainant, of his opinion, and any conclusions drawn and measures imposed by TNO, insofar as this does not breach the privacy of the Person or Persons Concerned.
2. The Person or Persons Concerned shall receive a copy of the opinion of the Complaints Handler as it is notified to the Complainant under Article 11.1 of the Complaints Procedure, insofar as this does not breach the privacy of other Persons Concerned.
3. If the opinion of the Complaints Handler deviates from the advice of the Inquiry Committee, the opinion shall state the reason for that deviation and the advice from the Inquiry Committee shall be included.
4. The opinion may be founded, partially founded or unfounded, except for the provisions of Article 11.5 of the Complaints Procedure.
5. Following a thorough investigation, interviews of the Complainant and the Person or Persons Concerned and advice from CL&C, the Complaints Handler may refrain from giving an opinion if the facts remained unclear to such an extent that it is not possible to give an unambiguous opinion.
6. The opinion on a Complaint is not a decision within the meaning of the Dutch General Administrative Law Act, which means that there is no option of objection or appeal to the content of the opinion. When the opinion is notified, it notes to which body and within which term the Complainant may submit a petition if the Complainant is not satisfied with the processing of the Complaint.

#### ARTICLE 12 COMPLAINTS ABOUT BREACHING RESEARCH INTEGRITY

1. This Article 12 only applies to Complaints about an alleged breach of research integrity in accordance with the definition as given in the NGWI, paragraph 5.2.A.

2. In addition to Article 3 of the Complaints Procedure, the Complaint about an alleged breach of research integrity has to be substantiated adequately with the reasons why the Complainant deems research integrity to have been breached.
3. A Complaint about an alleged breach of research integrity cannot be submitted about methodological discussions or regular scientific debate.
4. At variance with Article 3.1.a of the Complaints Procedure, an anonymous Complaint about an alleged breach of research integrity can be processed if the Complaints Handler sees cause to do so, because he is of the opinion that:
  - a) Compelling public interest or compelling interests of TNO or the Person or Persons Concerned necessitate the same; and
  - b) The facts can be investigated without input from the Complainant.
5. In addition to Article 5 of the Complaints Procedure, a Complaint may not be processed or processed further as soon as it becomes clear that the Complaint:
  - a) Purely concerns a professional difference of opinion; or
  - b) Is only based in a labour conflict; or
  - c) Cannot lead to the opinion that the actions of the Person or Persons Concerned constituted a breach of research integrity.
6. If the Complaints Handler, in consultation with CL&C, is of the opinion that a Complaint about an alleged breach of research integrity is not subject to this Article 12 of the Complaints Procedure - for example because it does not come under the definition of Article 12.1 or complies with Article 12.5.c -, the Complaint about an alleged breach of research integrity shall be processed as a regular Complaint under the Complaints Procedure.
7. At the request of the Complaints Handler, the Person or Persons Concerned shall make non-public parts of scientific research or data available to the Complaints Handler for checking, except for the provisions of Article 12.9 of the Complaints Procedure. The Complaints Handler appoints a person to perform this check. This person may not be the Person or Persons Concerned, or be involved in any way with carrying out the scientific research that is questioned by the Complaint about breaching research integrity. Instructions to this person set out how the check shall be performed and how the findings shall be reported to the Complaints Handler. An investigation that requires checks of classified information can only be carried out by persons who have the requisite screening levels.
8. The Complaints Handler may decide that he/she shall not make information available to the Complainant or the Person or Persons Concerned if there are compelling reasons.

9. In exceptional cases, the Executive Board may determine prior to commencing scientific research that part or all of the research, including the data, do not have to be made available for confidential investigation of an alleged breach of research integrity.
10. If a Complaint about an alleged breach of research integrity is declared fully or partly founded, the Executive Board - in line with the NGWI, paragraph 5.3 - shall consider whether it is possible or desirable to impose a sanction or to take other measures.
11. Within forty-two (42) calendar days of the date of the letter with the opinion on a Complaint about an alleged breach of research integrity, the Complainant and the Person or Persons Concerned may ask a second opinion in a letter addressed to the Executive Board in accordance with Article 3 of the Complaints Procedure. The Executive Board shall note how this shall be provided for.

#### **ARTICLE 13 COMPLAINTS RECORDS**

The Complaints Handler reports to the Executive Board. The Complaint is recorded by CL&C. Each year, CL&C sends a statement of the Complaints submitted that year to the Executive Board. The list of submitted Complaints is published by means of inclusion in TNO's Annual Report.

#### **ARTICLE 14 LANGUAGE**

All communication, either verbally or in writing, as described in this Complaints Procedure, such as but not limited to confirmations of receipt, notifications, interviews, advice and meetings, either inside or outside TNO, with the Complainant or other external persons concerned, shall only take place in the Dutch or the English language.

#### **ARTICLE 15 ACTUAL OR APPARENT CONFLICT OF INTEREST**

Complaints procedures in accordance with this Complaints Procedure shall be carried out as independently as possible. An actual or apparent conflict of interest shall be avoided as much as possible.

#### **ARTICLE 16 FINAL PROVISION**

This Complaints Procedure may be referred to as "External complaints procedure TNO 2019".



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KNOWLEDGE TO CREATE  
INNOVATIONS THAT SUSTAINABLY  
BOOST THE COMPETITIVE STRENGTH  
OF INDUSTRY AND WELL-BEING OF  
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