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Ombud Rule

1 July 2024

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Ombud Rule

Type of document:	Rule
Purpose:	The purpose of the Stellenbosch University (hereafter SU or the University) Ombud is to provide an approachable, accessible, independent and impartial office that is available to SU stakeholders.
Approved by:	Council
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Regulation curator[2]:	Registrar; Secretariat of Council
Keywords:	Ombud, Council, Rector, independent, mediator, confidential, appointment, term of office, grounds for removal
Validity:	The English version of this regulation is the operative version, and the Afrikaans version is the translation.

[1] Rules Owner: Head(s) of Responsibility Centre(s) in which the rules functions.
[2] Rules Curator: Administrative head of the division responsible for the implementation and maintenance of the rules

RULE:
STELLENBOSCH UNIVERSITY (SU) OMBUD

1. Purpose

1.1. The purpose of the Stellenbosch University (hereafter SU or the University) Ombud is to provide an approachable, accessible, independent and impartial office that is available to SU stakeholders.

1.2. These stakeholders, who may have legitimate concerns, grievances or interests involving SU, can approach the Ombud under the following circumstances:

1.2.1. They have a complaint, issue or problem that could not be addressed or resolved;

1.2.2. They feel that they have been treated unfairly;

1.2.3. They seek guidance to solve a complicated problem regarding the University;

1.2.4. They need an impartial listener who will keep confidential any sensitive matter they may raise;

1.2.5. They need a neutral mediator to assist in resolving a dispute;

1.2.6. They need help expediting a matter that is unreasonably delayed or too urgent to go through the normal internal channels.

1.3. The Office of the Ombud strives for fairness, usually by means of providing information and making enquiries into the matter through dialogue, engagement, informal mediation, factual findings and/or recommendations to the relevant staff member(s), division(s), faculties, or other leaders at SU.

1.4. Through the assistance of the Office of the Ombud, SU strives to provide an environment where no complainant will suffer reprisal, discrimination or victimisation for seeking assistance from the Ombud.

1.5. A core objective of the Office of the Ombud is to hold SU accountable to its governance documents (e.g. SU values, policies and rules) and challenge and enable the University to achieve higher standards and improved service delivery.

2. Principles

2.1. The Office of the Ombud must operate according to the principles below to align with the Code of Ethics of the International Ombudsman Association (IOA) as applied by members of the European Network of Ombuds in Higher Education (ENOHE). These principles are:

2.1.1. Independence – the Office of the Ombud must be independent of the University regarding structure, functioning and external impression to the highest degree possible.

2.1.2. Impartiality – the Office of the Ombud must be unaligned and impartial. It may not become involved in any situation that could create a conflict of interest or a perceived conflict of interest.

2.1.3. Confidentiality – the Office of the Ombud must keep all communication with persons seeking assistance from its office strictly confidential. It may not disclose confidential communication (including whether a specific person(s) has/have approached the Office of the Ombud or not) unless the permission of the person(s) concerned has been obtained to disclose the information. The only exceptions to this principle are situations of apparent immediate danger of serious harm or a legal duty to disclose.

2.1.4. Informality – the Office of the Ombud, an informal source of assistance, may not participate in formal adjudicative or administrative procedures of the University.

3. Duties and mandate

3.1. It is the Office of the Ombud's duty to investigate complaints and/or matters that come to its attention and attempt to resolve these by providing information, making enquiries into the matter, through dialogue, informal mediation, shuttle diplomacy, and as appropriate factual findings and/or recommendations.

3.2. The Office of the Ombud's mandate is to consider each complaint or matter impartially, fearlessly, open-mindedly and objectively and come to an independent conclusion within a reasonable time frame.

3.3. In this way, the Office of the Ombud helps the University and its stakeholders to minimise conflict, solve problems and/or come up with sensible solutions.

3.4. The Office of the Ombud also assists by referring issues that arise to formal channels to be taken further, where appropriate. Should a stakeholder be unable or unwilling to report or raise a concern personally or wish to remain anonymous, the Office of the Ombud may assist by voicing the concern or creating awareness of the issue (or doing both) before the appropriate institutional decision-makers.

4. Exclusions

Because of the informal, impartial and independent nature of the Office of the Ombud, the incumbent, aligned with the IOA standards of practice, is unable to assist with the following:

4.1. fulfil any other function at SU;
4.2. make binding decisions on SU's behalf;
4.3. institute, amend or set aside any governance document(s);
4.4. provide legal or other advice or psychological or any other counselling;
4.5. issue punitive or declaratory or other orders;
4.6. award compensation;
4.7. provide legal opinions or legal judgements;
4.8. handle or deal with substantive academic matters (but can deal with underlying procedures or rules);
4.9. act as a representative for any party;
4.10. receive notifications on SU's behalf;
4.11. attend to complaints that already are the subject of legal proceedings, an internal disciplinary process, or some other formal internal and external process;
4.12. represent a stakeholder in matters (e.g., labour law related); or
4.13. act in any way that would compromise the neutrality of the Ombud's position.

5. Functions of the Office of the Ombud

5.1. The Office of the Ombud can investigate university matters, provide options and make recommendations.

5.2. The Office of the Ombud must strive to make fair, balanced, impartial, and independent suggestions and recommendations.

5.3. The Ombud's focus is not to establish guilt or punishment but to act as a mediator, help solve university-related problems, address administrative irregularities, and highlight injustices.

5.4. The Ombud has access to all relevant information, and SU employees, divisions and bodies (including but not limited to student structures) are obliged to make such information available to the Office of the Ombud as soon as possible. The Office of the Ombud must treat any information obtained as strictly confidential unless the responsible SU employee(s) has granted permission to convey such information to the complainant/ stakeholder.

5.5. The Office of the Ombud must be readily accessible to any stakeholder directly via their email. The Ombud's contact details must be available on the University's website. The relevant webpage is https://www.su.ac.za/en/office-ombud

5.6. The incumbent must strive to ensure that stakeholders are not discouraged or intimidated to approach the Office of the Ombud.

5.7. The Ombud must provide a sympathetic ear to stakeholders in a vulnerable position or who fear intimidation because of existing power relations or positions.

5.8. The Office of the Ombud may be approached at any time to facilitate, guide or listen, and remains available and accessible at all reasonable times. If all available internal channels or processes have not yet been exhausted, the Office of the Ombud must refer the complainant to the correct person or structure within the University, except as in (a) or (b) mentioned below. Nonetheless, the complainant retains the right to approach the Office of the Ombud again should the matter not be resolved to the complainant's satisfaction. As a rule, the Office of the Ombud will consider a matter only if, in its opinion, all other internal channels or avenues at SU that are available to stakeholders have been exhausted to find a solution to a particular problem unless:

(a) the matter is too urgent; or

(b) anonymity is requested by the complainant(s).

5.9. The Office of the Ombud will hear both parties and both sides of the matter being investigated, i.e. the *audi alteram partem* rule applies.

5.10. The Office of the Ombud may initiate enquiries to clarify any issue concerning SU that seems unfair in respect of any stakeholder. If necessary, the Ombud may recommend an inquiry (formal or informal) by the University (or do both) about such issues that may have come to the Ombud's attention.

5.11. Subject to the Rule, the manner in which the Office of the Ombud deals with a specific matter rests within the Ombud's sole discretion.

5.12. Upon reasonable request by a complainant, the Office of the Ombud may provide relevant feedback to the complainant about the outcome of the complainant's matter. The information and the extent of the information provided will be at the sole discretion of the Ombud. For any confidential feedback to the University, please refer to par 6.8 below.

5.13. Should the Office of the Ombud become aware of a self-evident transgression of university rules or the laws of the country which seems to require an SU disciplinary process, the proper action by the Ombud is to refer the matter to the Rector and Vice-Chancellor or the existing appropriate internal structures, taking into account the provisions of 5.14 below.

5.14. The Office of the Ombud must firstly attempt to clarify a problem or matter at the most junior level possible within the University (i.e. not immediately escalate to a Dean, member of the Rectorate or Vice-Chancellor) unless such a course of action would be inappropriate, in the Ombud's sole discretion, due to urgency, material disadvantage to the complainant or SU, or any other valid reason.

5.15. When the Office of the Ombud refers the matter to be dealt with or finalised within the SU structures, the head of the environment must provide feedback to the Office of the Ombud on how the matter was addressed and the outcome. This feedback must be provided to the Office of the Ombud within a reasonable time.

6. Reporting and providing feedback

6.1. The Office of the Ombud reports to Council.

6.2. The Office of the Ombud shall deliver quarterly reports on relevant and regular operational matters to the Chair of Council and the Rector and Vice-Chancellor so as to assist in ensuring that those matters are being appropriately addressed.

6.3. The Ombud must provide a six monthly report to Council, which must cover the following:

6.3.1. an overview of matters lodged;

6.3.2. findings and recommendations in general terms, without compromising the confidentiality and anonymity, as applicable, that is guaranteed to stakeholders who approach the Ombud;

6.3.3. trends or specific behaviour that may be an indication of a pattern;

6.3.4. where appropriate feedback from environments must also be included in this report.

6.4. Both Council and the Ombud may, at any time, request the Ombud to attend a meeting with Council so as to allow the Ombud an opportunity to share any reflections arising from the execution of the Ombud's function and to allow Council the opportunity to engage with the Ombud.

6.5. A copy of the report in paragraph 6.3 must also be provided to each of the respective Chairs of the Audit and Risk Committee (ARC) and the Social and Business Ethics Committee (SBEC), who may present it to their committees for consideration from either a risk or an ethics viewpoint, should the Chairs concerned deem it necessary. The Office of the Ombud may also call on any of these Chairs if the Office needs assistance.

6.6. Besides providing a record of matters that have been lodged, the Office of the Ombud report also serves as an early warning regarding matters or issues that require further consideration or action, or both.

6.7. Any factual findings and recommendations may also be reported from time to time to SU officials at the Ombud's discretion. If the Office of the Ombud deems a matter of sufficient importance, it must report the relevant findings and recommendations to an SU official at the minimum level of a Dean or Senior Director.

6.8. The reports by the Office of the Ombud are confidential. Those parts of the Ombud's report that are relevant to the complainant or other stakeholders may be shared with them at the sole discretion of the Office of the Ombud.

6.9. The Office of the Ombud has access to the Rectorate to raise issues, trends or

concerns regarding specific environments that have been noted on campus so as to assist the Rectorate in dealing with those matters.

7. Term of Office

7.1. The Ombud's term of appointment is five (5) years and the Ombud may be reappointed once, for a second consecutive term of five (5) years (without other candidates being considered).

7.2. An Ombud may be considered for a third term via an open recruiting process, as provided in paragraph 8.1. Should the incumbent reapply, the incumbent will be considered along with any other candidates.

8. Appointment

8.1. Council is responsible for the appointment and reappointment of the Ombud.

8.2. To initiate and appointment or reappointment of an Ombud, Council must appoint an appointments committee as contemplated in 8.3 below.

8.3. The appointments committee shall comprise of the full Executive Committee of Council (EC(C)), two representatives of the ARC and two representatives of the SBEC. The members from the ARC and the SBEC should preferably be external (independent) members. The Registrar or their delegate will be the secretariat of the appointments committee.

8.4. The role of the appointments committee is to identify suitable candidate(s) and then propose to Council the candidates, following which the Council must, upon consideration, appoint the Ombud.

8.5. The appointments committee shall only consider suitable eligible candidates and a person will automatically be disqualified as a candidate if they:

(a) are declared insolvent, provisionally or finally, by a court of law;

(b) have a conflict of interest;

(c) are found guilty of an offence and sentenced to imprisonment without the option of a fine, but a person is not regarded as being sentenced until an appeal against the conviction or sentence has been determined, or the time for an appeal has expired;

(d) would be disqualified from being appointed as a director of a company under the Companies Act;

(e) have been removed from any professional body or Office or Trust due to misconduct or dishonesty.

8.6. The Human Resource and Remuneration Committee of Council makes a recommendation to the Council regarding the Ombud's remuneration, annual increase, and benefits. Council will then make a determination on

these issues.

8.7. The Human Resources Division (HR) of SU must inform Council when the current Ombud's term of service is drawing to an end or if a vacancy arises.

8.8. HR will provide support to Council and the appointments committee in the appointment process. The appointment process may include interviews with candidates by the appointments committee.

8.9. Process for a second consecutive term

8.9.1. After notification from HR, Council approaches the Ombud at least twelve (12) months before the expiry of the incumbent's term and enquires whether the incumbent wishes to continue for a second term.

8.9.2. If the incumbent indicates a willingness to continue for a second term, the steps in the Reappointment procedure in par 8.10 must be followed.

8.10. Steps in the Reappointment Procedure

8.10.1. The Ombud must submit the following documents to the Chair of Council:

8.10.1.1. A report pertaining to performance achieved during the current term;

8.10.1.2. A vision statement for a possible second term;

8.10.1.3. An updated curriculum vitae.

8.10.2. The Chair of Council will obtain feedback from key stakeholders and provide such feedback to the appointments committee for inclusion in its consideration under 8.10.3. The second term must be considered by the appointments committee which will make a recommendation to Council to reappoint if appropriate. The incumbent would have no reasonable expectation to be reappointed.

8.10.3. Council makes a final decision on the reappointment of the Ombud by a majority vote of members present and voting.

8.10.4. If the incumbent obtains a majority vote of members on Council present and voting, the incumbent is appointed for a further term with the duration of that term determined by Council but it will not be longer than five years.

8.10.5. If the incumbent does not receive a majority vote, the appointments committee will start the process afresh.

8.10.6. Council thereafter informs the incumbent of the final decision.

9. Performance

The Ombud's performance will be assessed on an annual basis by the ECC which shall, in doing so, obtain appropriate input from Council.

10. Resignation, Disqualification and Removal

10.1. The Ombud is not an employee of the University, and therefore, the Ombud's removal from office will also not follow the standard termination process of an employee. As Council is responsible for the appointment of the Ombud, Council is also responsible for the removal of the Ombud from office. In this procedure, Council is supported by the Office of the Registrar.

10.2. The Ombud shall be disqualified from continuing in office if they would have been automatically disqualified as a candidate under par 8.5 above.

10.3. Serious violation of the law, serious misconduct, incapacity due to poor work performance or ill health or injury, ineligibility, disqualification, incapacity, neglect and dereliction in the performance of the functions of an Ombud shall be grounds for Council to remove the Ombud.

10.4. The following procedure applies, should Council consider removing the Ombud from Office:

10.4.1. The Council may dismiss the Ombud from office by a two-thirds majority vote of all the members of the Council present and voting;

10.4.2. The process is initiated by a compliant(s) or an allegation(s);

10.4.3. The complaint(s) or allegation(s) must:

10.4.3.1. be lodged with the Registrar as secretary to Council, or their delegate;

10.4.3.2. be in writing;

10.4.3.3. outline the grounds on which the complaint(s) or allegation(s) are based and

10.4.3.4. include all supporting evidence.

10.5. The Registrar or their delegate, after receiving the complaint(s) or allegation(s), submit this and all supporting documentation to the ECC. The ECC will consider if there is merit to the complaint(s) or allegation(s).

10.6. Should the ECC, find that there is merit to the complaint(s) or allegation(s), Council must appoint a committee to investigate the complaint(s) or allegation(s) (hereafter the Investigation Committee). The composition of the Investigation Committee falls within the discretion of Council. Members serving on the Investigation Committee must be impartial, with no conflict of interest regarding the complaint(s), allegation(s) or the Ombud and must be able to conduct an investigation of this nature.

10.7. Council must formalise the scope and mandate of the Investigation Committee by means of a term of reference. The terms of reference must at least include the powers to investigate, gather evidence and call witnesses.

10.8. The Investigation Committee conducts a thorough and impartial investigation into the complaint(s) or allegation(s). Subject to the final terms of reference approved by Council, the investigation may include interviews, document reviews or any other action necessary to obtain all relevant information. The Investigation Committee may also approach any relevant stakeholder and gather additional information or clarifications as it deems fit.

10.9. If the Investigation Committee finds that there are substantive grounds for the complaint(s) or allegation(s) against the Ombud, the Investigation Committee must formalise the outcome of the investigation referred to in par 10.8 above and list the allegation(s) and the supporting evidence.

10.10. The Ombud will be formally notified of the allegation(s) against them and provided a reasonable opportunity to respond to them. A reasonable timeframe for their response will be established by the Investigation Committee and will depend on the nature of the allegation(s) or transgression(s).

10.11. The Ombud will be entitled to legal representation at their own cost and discretion.

10.12. If the Ombud wishes to respond to the investigation, they may do so.

10.13. If the Ombud decides to participate at any stage of the investigation, the Ombud has an opportunity to respond to the allegation(s) or compliant(s) and the investigation, The Investigation Committee may further investigate any outstanding matters raised by the Ombud or any party involved.

10.14. The Investigation Committee may also call the Ombud to appear before them to clarify or expand on any aspect of the investigation.

10.15. The Investigation Committee must review all evidence, the response of the Ombud and any relevant information and decide on an appropriate outcome, namely that there are sufficient grounds to remove the Ombud from office or recommend any other appropriate sanction or, based on the facts, that no further action is warranted. The Committee will provide the outcome of the investigation and a recommendation on a suitable outcome to the Council.

10.16. The Chairperson of the Investigating Committee, with the assistance of the Registrar, should ensure that a full record of all the committee's activities, deliberations, written and verbal communications as well as any form of evidence discovered and /or considered, be recorded and /or retained for a minimum period of five years.

10.17. After considering the recommendation of the Investigation Committee, the Council may decide to accept the findings and recommendations or amend the findings and recommendations.

10.18. Council will communicate the outcome and decision of Council to the Ombud. The outcome must include the reasons for the Investigation Committee's recommendation and Council's decision and the implications thereof.

11. Review of Rule

The Rule must be reviewed at least every five (5) years or sooner if needed.

12. Transitionary provision

As this Rule will impact the term of the current Ombud, and to ensure consistency with these amended rules, Council will extend the current term of the Ombud by two more years. Thus, for the purpose of this Rule, the incumbent Ombud would be deemed to have completed two consecutive terms of five years as at 30 October 2026.