

THE MERITS OF A STAFF OMBUDSMAN IN HIGHER EDUCATION

A plea for the widespread introduction of a Staff Ombudsman in the higher education system

The position of Staff Ombudsman remains virtually unknown within higher education. This article examines the duties, powers and impact that a Staff Ombudsman can have. Should the position of Staff Ombudsman become a more widespread phenomenon? In other words, what benefits does the appointment of a Staff Ombudsman offer for an institute of higher education?

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What is the current situation?

In the Netherlands, around ten institutes of higher education (four research universities and six universities of applied sciences) currently have a Staff Ombudsman, some of whom also work for students.

Utrecht University was the first Dutch institute of higher education with an officer who acts as ombudsman for staff; however, the post was given a different name, roughly translated as Confidential Counsellor for Staff issues or Confidential Staff Counsellor¹. This position was established in 1977 at the request of the University Council and has been part of the permanent staff provisions ever since.

In the job description for Confidential Staff Counsellor at Utrecht University, the purpose of the position is described as follows:

“Providing independent support to individual members of staff, groups of staff and/or managers in analyzing and solving complaints and grievances relating to HR issues, where possible referring to the appropriate bodies within or outside Utrecht University, highlighting systematic shortcomings in regulations or organizational provision”
(Utrecht University, 1998).

In common with other Staff Ombudsmen in Dutch institutions of higher education, the Confidential Staff Counsellor at Utrecht handles issues relating to the legal status of employees, such as performance reviews, dismissal issues, redundancy schemes, problems affecting PhD candidates², working conditions, returning to work after chronic illness and clashes with colleagues. The Confidential Staff Counsellor/Staff Ombudsman is independent and has

¹ In 1977, the position of ombudsman was unknown in the Netherlands. The job description of Confidential Staff Counsellor at Utrecht University dates back to 1977 and is almost identical to the job description for ombudsmen currently working in institutes of higher education. A key point of difference is the right of investigation, a power which an ombudsman has but which the Confidential Staff Counsellor at Utrecht University does not. In addition to the Confidential Staff Counsellor, a Harassment Counsellor and an Academic Integrity Counsellor have also been appointed for staff at Utrecht University.

² In the Netherlands PhD candidates are members of academic staff. Unlike in the UK or USA, they are not seen as students.

unencumbered access to all departments and information within the university. The staff ombudsman is not appointed by a legislative body to represent the public, nor does he conduct formal investigations. The (organizational) ombudsman provides conflict resolution and problem-solving services to members of the university.

Within the organizational hierarchy, the Confidential Staff Counsellor/Staff Ombudsman reports to the Executive Board; he or she is not part of HR Management and does not report to an HR Manager. Members of staff see this as an important advantage of the position, since HR staff are not widely considered to be impartial.

What position does the Staff Ombudsman have?

For the sake of convenience, the term Staff Ombudsman will be used exclusively from now on.

The Staff Ombudsman has an independent position, must observe professional secrecy, exists primarily to act for the complainant, but does not necessarily support him or her. In that sense, the position of the Staff Ombudsman differs from that of the Harassment Counsellor. The Harassment Counsellor supports employees and/or students in dealing with such issues as intimidation, violence and aggression at work (Bezemer, 2013). The appointment of the Harassment Counsellor is regulated in the Dutch Working Conditions Act (*Arbowet*).

The Staff Ombudsman is positioned between the parties, advising and acting as intermediary as required. However, such mediation can only take place if the individual reporting the issue authorizes this. Unless the individual reporting expressly waives professional secrecy, the Staff Ombudsman is not permitted to attempt to contact his or her line-manager, close colleagues or PhD supervisor. Only when the individual reporting gives his or her permission, thereby waiving the duty of confidentiality, is the Staff Ombudsman permitted to consult with third parties.

What powers does the Staff Ombudsman have?

The Staff Ombudsman handles complaints or grievances from members of staff on what they consider to be inappropriate or unfair treatment by persons or bodies in the university. The complaint may relate to a measure or decision taken with regard to the individual concerned or indeed a measure or decision that the authorized body expressly or implicitly refuses to make with regard to the individual concerned.

The Staff Ombudsman explores the background and facts of the case. In doing so, he or she will maintain as much contact with local management as is necessary or desired. Bodies and officials are obliged to provide any information requested and to allow access to documentation.

Depending on the conclusions, the Staff Ombudsman can attempt, by means of referral, mediation or advice, to move the situation closer to a solution within the relevant structure of powers and responsibilities. It is explicitly not the role of the Staff Ombudsman to solve issues him or herself: he or she does not make any decisions and does not act as arbiter.

The Executive Board, local management of faculties or services, other bodies and individual employees can draw the attention of the Staff Ombudsman to complaints or call on him or her to mediate. Cooperation in a mediation process is always voluntary; which is a basic principle of mediation.

How does the Staff Ombudsman approach his or her work?

During the first phase of contact with the individual making the report or with the complainant, the Staff Ombudsman makes a judgment on the issue as raised by the member of staff as well as the background to the incident and the facts about what happened. He or she checks whether the member of staff has already raised the complaint or grievance within the line-management of the unit concerned. If this reveals that the appropriate procedures have been followed, but little or no progress has been made, he or she explores the broader context of the issue by studying and analyzing relevant documentation and the opinions of any other persons involved.

After considering all of the relevant interests, he or she decides the subsequent approach to be adopted. In weighing up these interests, it is important that a balance is struck between the personal well-being of the member of staff and the interests of the organizational unit as a whole. This may involve taking into account such criteria as proportionality and reasonableness.

What types of issues does the Staff Ombudsman handle?

The Staff Ombudsman can be approached by members of staff on a range of different issues. Most of these issues relate to:

career problems

conflicts with line-managers

dismissal problems

problems encountered by PhD candidates

problems relating to the legal status of staff

reorganizational problems

problems encountered by staff returning to work following illness.

The Staff Ombudsman is also deployed in issues relating to performance reviews, personal problems, reports made by whistle-blowers³, clashes with colleagues and issues of conscience.

As well as individual members of staff, groups of staff can also turn to the Staff Ombudsman. This usually happens when working conditions in a department become seriously threatened.

The activities of a Staff Ombudsman can be illustrated by means of a series of examples.

- A PhD candidate clashes with his PhD supervisor. The PhD program is coming to an end and the thesis has already taken shape. The PhD supervisor refuses to continue to work with him. After the Staff Ombudsman is brought in, he or she arranges for a new supervisor to be found without this leading to any loss of face.
- A department decides to pursue a different course. Several members of staff with permanent contracts no longer have a place in the new organization. At the request of the line-manager, a member of staff who is to be made redundant is referred to the Staff Ombudsman for

³ In higher education, it is generally the Confidential Staff Counsellor or Staff Ombudsman to whom whistle-blowers can report any issues.

information and advice on a severance scheme, based on a settlement agreement. There are then consultations between the manager and the redundant member of staff on the substance of a severance scheme that is favorable for the employee in order to prevent the case needing to be put to the civil service court or district court.

- More than half of the team is having difficulties working with the manager and this threatens the continuity of the degree program. The result is a group report to the Staff Ombudsman who decides what the next step should be, in close consultation with the reporters. In consultation with management, a satisfactory solution for all parties is found.
- Members of staff who are absent for long periods as a result of illness have to deal with complex regulations and external organizations such as the Employee Insurance Administration (*UWV*). Long-term absence can result in employees losing their jobs if there is no likelihood of recovery within two years. At a time of economic crisis, many members of staff are fearful of the prospect of a life on benefits. The Staff Ombudsman becomes involved, facilitating clear and regular communication between the employee and the line-manager with a beneficial effect for both of them. The Staff Ombudsman must convince the line-manager on the basis of arguments. He or she can never impose certain actions by a manager.
- Within higher education organizations, the Staff Ombudsman plays a unique role in the termination of permanent employment contracts. In the past, before the economic crisis, a permanent contract was almost tantamount to life insurance for staff. Having secured permanent employment in higher education meant that one had a job for life. These times have now changed. For employers, it is now more attractive to dismiss staff who are surplus to requirements or whose performance is disappointing. However, it is a painful and expensive process for both parties, especially if they are both compelled to hire lawyers. The Staff Ombudsman regularly prevents matters reaching that stage by advising the member of staff concerned and assisting them in drafting what is known as a Settlement Agreement. This kind of agreement takes the interests of both the institution and the member of staff into account. The agreement regulates the end of the appointment, the payment of salary for several months during which no work is done in return, the retention of the right to benefits if the employee is not successful in finding alternative employment, the deployment of an outplacement agency to find an alternative place to work, the funding of additional courses intended to ensure that the employee threatened with dismissal is better equipped for the labor market and so on. The explicit aim of the Settlement Agreement is to find suitable alternative employment. The efforts of the Staff Ombudsman create a win-win situation.

The Staff Ombudsman: advantages, importance and results

In many cases, as described above, the deployment of a Staff Ombudsman can prevent legal conflicts, which means issues within the organization are regularly escalated to him or her as a final resort. His or her efforts are intended to provide intervention in problem scenarios at as early a stage as possible, in order to prevent a situation in which relationships become irreparable or to enable an amicable parting of ways.

In higher education in the Netherlands, around ten percent of institutions have a Staff Ombudsman. This means that it is more the exception than the rule for higher education to have appointed an impartial complaints officer and intermediary in issues relating to the legal position of staff. Indeed, it is remarkable that most organizations have no provisions for staff in the form of an impartial adviser or intermediary.

Two key factors are instrumental in this. The first relates to the role of HR staff. In the past, HR officers worked on behalf of staff members who asked for advice, but this role has recently changed. In the last ten years, HR officers have been deployed exclusively for management. In the event of conflicts, university staff are therefore not likely to call on the services of an HR officer. Trust in HR has diminished significantly. A second factor relates to the importance of the trade unions. In the US and Canada, there is a high level of organization of labor. As a result, many members of staff are automatically members of a union. This is not the case in the Netherlands. Only around ten to fifteen percent of university staff are members of a trade union. In the event of conflict, turning to a trade union is therefore not the most obvious move. Both of these factors contribute to the increasing importance of the position of Staff Ombudsman. Very occasionally, external mediators are deployed, usually in situations where employment conflicts have already escalated. The bulk of the issues put to the Staff Ombudsman can be solved in the early stages.

In terms of expenditure, a Staff Ombudsman can be said to earn his or her salary. A study conducted by Euwema et al. (2007) made an assessment of the costs of conflict at work. It involved an analysis of 56 cases at a university and a ministry. It identified the following cost components: the cost of conflict handling (the deployment of the HR department, staff physician, legal affairs department, etc.), costs resulting from absence, the cost of temporary replacements during absence, exit costs, the cost of permanent replacement and the cost of recruiting and inducting a new employee. In the study, the maximum costs of a conflict at work amounted to € 231,230. In other words, preventing legal escalation, one of the most important activities of a Staff Ombudsman, is particularly effective.

Intervention by the Staff Ombudsman not only reduces costs, but can also prevent damage to the reputation of the institution and the member of staff concerned. Legal conflicts are emotionally draining for employees. Court proceedings are not only expensive but can also often be prolonged. It can be difficult to focus on a new career with an alternative employer during such a legal process.

The cost element of a Staff Ombudsman is something that deserves further consideration. An argument often cited in opposition to the appointment of such an official is that it is tantamount to sleeping with the enemy. It is seen as inviting complaints and therefore something that should be avoided. This response would appear to be inspired by the notion that it is in the interest of the organization to ignore any complaints as far as possible and to eschew critical scrutiny.

Even if they are ignored, the idea that there could be no complaints is highly improbable. Friction and issues that cannot easily be solved by means of a simple discussion between the parties involved occur whenever people are working together. And this is precisely why the role of Staff Ombudsman exists: an easily accessible, impartial partner in dialogue, adviser and complaint handler who can advise the employee and mediate between the parties. For the employer, the Staff Ombudsman's impartial and independent position makes him or her the only official within the organization who is appropriately qualified to judge it.

The past clients of the Staff Ombudsman are virtually unanimously positive about the support provided. They especially appreciate the independence of the Staff Ombudsman.

At research universities and universities of applied sciences where a Staff Ombudsman is active, experiences at organizational level have been positive, especially at times of major changes in education that have significant consequences for staffing.

What conclusions can be drawn from all of this?

1. Institutions of higher education are gradually acknowledging the importance and benefits – both for employees and the organization as a whole – of appointing a Staff Ombudsman. Regulating the establishment of such a position within the Higher Education and Research Act (*WHW*, 1992) is something to be recommended. VU University Amsterdam, Leiden, Groningen and Utrecht Universities all have a Staff Ombudsman and there are Staff Ombudsmen associated with several Universities of Applied Sciences. In most of higher education in the Netherlands however, the Staff Ombudsman is an unfamiliar figure.

Recently, the reputation of one university of applied sciences without a Staff Ombudsman was seriously damaged as a result of fraud involving the awarding of diplomas to students who had not reached the required standard. Who knows what difference a Staff Ombudsman would have made at this institution in the period leading up to the fraud that occurred there if it had been identified, tackled earlier and therefore never revealed publicly? This was a case of fraud that seriously undermined confidence in higher professional education in the Netherlands.

2. Embedding the position of Staff Ombudsman within Dutch legislation will require the development of a new Hay profile⁴. Dutch universities apply the University Job Classification System (abbreviated to UFO in Dutch) for job descriptions. The system within higher professional education, which also makes use of Hay profiles, is also lacking the role of Staff Ombudsman. The profile of Harassment Counsellor according to the UFO model differs vastly from the day-to-day activities of the Confidential Staff Counsellor/Staff Ombudsman.
3. If the introduction of the position of Staff Ombudsman is to be successful across the whole of higher education, a suitable qualification will need to be developed. In the absence of any such specific qualification, a qualification in mediation would appear to be most appropriate for a Staff Ombudsman. In the past, ombudsmen have generally been trained by means of peer-education, peer reviews, supervision, coaching and on-the-job learning. Knowledge is also shared by means of the Organization of Ombudsmen in Higher Education (abbreviated to VOHO in Dutch) and via the European Network of Ombudsmen in Higher Education (ENOHE). A handbook on the subject (“Handboek Ombudsman Personeel Hoger Onderwijs”, Teppema & Herfs; 2014) has recently been published.
4. For an institute of higher education, the appointment of a Staff Ombudsman is clearly a demonstrably efficient strategy in view of the expenditure saved on conflict management and is effective both because of the short lines of communication involved and his or her independent position. Thanks to the informal mediation, he or she can also help to prevent damage to employees and to the reputation of the institution.
5. An institute of higher education that has its own Staff Ombudsman is making a clear statement about its willingness to take issues involving the social safety of its staff seriously. That is often lacking: the main focus is generally on aspects of physical safety in the workplace. Recently, the Dutch University Network of Confidential Counsellors drew the attention of the coordinators of the project run by the Ministry of Education, Culture and Science (*OCW*) and the Education Inspectorate on the subject of integrated safety in higher education to the fact that a greater focus is needed on social safety in working situations. This was a response to the report on the issue of (social) safety & integrity in higher education issued by the Education Inspectorate in 2012.

⁴ All positions in Dutch universities are described by the Hay Group.

6. By appointing a Staff Ombudsman, the institution concerned is sending out a message that it intends as far as possible to solve internal issues internally and that it has confidence in the organization's capacity to deal with such issues itself. Via the Staff Ombudsman, the competent authorities receive clear and simple signals that will trigger improvements in internal processes. Rather than being dismissed as internal criticism or resistance, complaints are seen as advice provided free of charge. As such, the presence of a Staff Ombudsman could be seen as a hallmark of the quality of an institute of higher education. This is because the institute is establishing provisions for its staff that benefit both the organization and its personnel without being legally obliged to do so.

Why the position of the Staff Ombudsman is uncommon?

This article has considered a number of arguments for incorporating the position of Staff Ombudsman within higher education. Finally, we would like to look at some of the reasons why such institutions do not yet have a Staff Ombudsman.

The first of these is a lack of familiarity. University administrators lack awareness of exactly what a Staff Ombudsman might or might not bring to their organization. People are unlikely to miss something with which they are not familiar.

A second reason is associated with the lack of relevant legislation. Neither the Collective Labor Agreement for Dutch Universities, the Collective Labor Agreement for higher professional education, the Working Conditions Act nor the Higher Education and Research Act include regulations on the need for a Staff Ombudsman in institutes of higher education. Both of these arguments are ultimately based on choices made as a result of a lack of awareness.

However a third argument against is actually a conscious choice on the part of those running an institute of higher education to refrain from making such an appointment. This may be based in part on the fact that the Staff Ombudsman's very independence means that he or she is not seen as easy to manage. A Staff Ombudsman may even be perceived as a counterforce within the organization itself. This is not a perception that is shared by the authors of this article.

Final conclusion

On the basis of the arguments mentioned above and their own experiences in their work as ombudsmen the authors are convinced that universities will become more secure organizations after employing a staff ombudsman. That is the major reason for this plea for the widespread introduction of a staff ombudsman in higher education.

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References

- Bezemer, W. (2013): *De vertrouwenspersoon: typen, taken en dilemma's*. In: Tijdschrift voor Conflictmanagement. Nr.1; Sdu Uitgevers.
- Euwema, M., Beetz, J.M., Driessen, S. en Menke, R. (2007): *Wat kost een arbeidsconflict?* In: Forum voor Conflictmanagement; 2007/01. Sdu Uitgevers.
- Goosen, C.A.E.M. (2011): *In vertrouwen; een onderzoek naar de professionaliteit van de vertrouwenspersoon seksuele intimidatie*. University of Groningen. PhD dissertation.
- Council of the Netherlands Association of Universities of Applied Sciences (HBO-raad, 2012): *Collective Labor Agreement for Higher Professional Education 1 February 2012 to 30 September 2013*. The Hague.
- HU University of Applied Sciences Utrecht (2010): *HU Ombudsman Regulations (Reglement Ombudsman HU, SZ/J/10.017)*. Utrecht
- Education Inspectorate (2012): *Rapportage (sociale) veiligheid en integriteit hoger onderwijs*. Utrecht
- Royal Netherlands Academy of Arts and Sciences (2012): *Zorgvuldig en integer omgaan met wetenschappelijke onderzoeksgegevens*. Amsterdam.
- Ministry of Social Affairs and Employment: Working conditions website consulted on 11 March 2014, from <http://www.arboportaal.nl/onderwerpen/psychosociale-belasting>
- Teppema, S. & Herfs, P.G.P. (2014): *Handboek Ombudsman Personeel Hoger Onderwijs*. Brave New Books.
- Utrecht University (1998): *Confidential Counsellor Regulations (Reglement Vertrouwenspersoon)*. P&O Service Centre Utrecht
- Association of Universities of the Netherlands (VSNU, 2013): *Collective Labor Agreement for Dutch Universities, 1 January 2011 to 31 December 2013*. The Hague.
- The Higher Education and Research Act (WHW, 1992): Staatsblad 593 Sdu, The Hague.