

THE UNISA OMBUDSMAN

PRINCIPLES AND PRODECURES FOR THE REFERRAL OF MATTERS

Introduction

The office of the Unisa Ombudsman was established by the University Council to enhance Unisa's service delivery and to foster a culture of efficient and effective administration. The Ombudsman draws his or her authority from a founding document, approved by the University Council (see Annexure A).

The Ombudsman is a legally qualified, independent person, whose sole function is to investigate complaints referred by any person who feels aggrieved by conduct or lack of conduct which affects him or her on the part of the University.

The purpose of the service is to resolve a matter without delay in an effective and inexpensive manner.

The University Ombudsman is **Prof RH Nengwekhulu**

Who can refer a matter?

Any person, who feels aggrieved and directly affected by the matter complained of, can refer it to the Ombudsman. The complainant can be a student, a member of staff or a member of the public.

Matters that can be referred to the Ombudsman

Any decision, action, or lack of action on the part of the University, which an affected person considers to be inadequate service or administrative malpractice, can be referred to the Ombudsman. This general principle is qualified by a number of exceptions, which are listed below.

Matters that cannot be referred to the Ombudsman

The following matters fall outside the authority of the Ombudsman:

- labour and employment related matters, for which there are approved grievance, disciplinary and labour law procedures
- the conduct or decisions of the University Council and its committees; the University Senate and its committees; or the Institutional Forum and its committees
- a matter of academic judgement (i.e. the *quality* of a student's performance), unless the complaint relates to unfair marking or

assessment, examination procedure irregularities, or bias against a student

- a matter which is, or has been the subject of judicial, arbitration or similar formal proceedings, resulting in an external binding ruling, or
- a complaint which is patently frivolous or vexatious.

The Ombudsman takes the final decision on whether to receive and investigate a matter.

When is a matter ready for referral?

A matter may only be referred to the Ombudsman after the complainant has exhausted other internal complaint remedies and procedures. To this end, complainant must indicate on the Ombudsman Referral Form (See Annexure B) what steps he or she has taken to resolve the matter.

Under exceptional circumstances, the Ombudsman may receive a matter even if the internal remedies have not been exhausted. However, if the Ombudsman is of the view that internal remedies must first be exhausted, the complaint will be referred back to the complainant and/or the University to first attempt to resolve the matter.

How to refer a matter

A complaint must be made in writing on the Ombudsman Referral Form (see Annexure B). The form must be completed in full, and the complainant must provide as much supporting documentation and information as are available to him or her.

The completed Ombudsman Referral Form and supporting documentation and information must be submitted, electronically, by fax or in hard copy to the address below.

The Ombudsman may, at his or her discretion, receive a complaint which is not on the Ombudsman Referral Form. In such a case, the Ombudsman must be satisfied that the manner in which the matter is referred corresponds materially with the requirements of the Ombudsman Referral Form.

The Ombudsman reserves the right to refer a complaint back, whether on the Ombudsman Referral Form or in another form, for amplification.

Where to refer a matter

A matter is referred to the Ombudsman via the office of the Assistant Principal. The address is as follows:

Personal delivery: The Unisa Ombudsman
Sunnyside North Campus
Cnr Mears & Walker Str
(Entrance – Walker Street) Building 6
Office number 40

Postal address: The Unisa Ombudsman
Sunnyside North Campus
P O Box 392
UNISA
0003

Telephone: 086 10 66 88 /+27 12 481 2874
(Ms Dikeledi Hlabangane)

Fax no: +27 12 481 2838

E-mail: ombudsman@unisa.ac.za.

Personal deliveries can be made from Monday to Friday between 07.45 and 16.00

Timelines

A matter must be referred to the Ombudsman within **4 months** of the date on which the complainant became aware of an adverse action on the part of the University, or in the case of an omission or neglect by the University, within 4 months after a written reminder to the University of its omission or neglect.

The Ombudsman has discretion to extend the time within which a matter must be referred, or to condone a late referral.

The investigation

The Ombudsman's procedures are informal. The Ombudsman is not like a court where the parties appear in person or through their representatives. The Ombudsman will as far as possible resolve the matter on the basis of the documentation and information at his or her disposal. However, the Ombudsman is entitled to call for an interview any person whom he or she thinks can assist with the investigation.

As a rule, the investigation and review of the matter complained of will be dealt with in the following manner:

- The Ombudsman will assess the complaint and decide whether it justifies further investigation.

- If the Ombudsman is of the view that the complaint justifies investigation, he or she will notify the complainant and the University that the matter will be investigated, and give an indication of the expected duration of the investigation.
- If the Ombudsman is of the opinion that the complaint falls outside the authority of the Ombudsman, or for another reason does not justify investigation, the Ombudsman will forthwith inform the complainant and the University. The Ombudsman will provide reasons for the decision.
- The Ombudsman will request the University to respond to the complaint within a time set by the Ombudsman.
- The manner in which the investigation is done is at the discretion of the Ombudsman, as long as it complies with the requirements of fairness, impartiality and transparency.
- The complainant and the University must comply promptly with any reasonable and lawful requests for information that the Ombudsman may make relating with the investigation.
- The Ombudsman is not bound by legal rules of evidence or by previous decisions of the Ombudsman.
- At the end of the investigation, the Ombudsman may, but is not obliged to, make his or her preliminary or draft report available to the complainant and the University for their comments.
- The Ombudsman may issue a Formal Decision at any time that he or she considers it appropriate to do so.
- The Ombudsman may terminate or suspend the investigation of a matter, as he or she considers appropriate, if it appears to the Ombudsman that –
 - Unisa has satisfactorily dealt with the complaint;
 - the complaint would be better considered in another forum;
 - there are proceedings taking place within Unisa or elsewhere which may be relevant to the complaint; or
 - either the complainant or the University has unreasonably delayed or has otherwise acted unreasonably: provided that the Ombudsman must without delay inform the complainant and Unisa of the termination or suspension, and provide the reasons for the decision.

The findings and recommendations

At the conclusion of the investigation, the Ombudsman prepares a confidential written report on the findings of the investigation. The report is submitted to the Principal. The Ombudsman makes recommendations based on the findings. The recommendations may include any of the following:

- That the University take particular steps to assist the complainant
- That the complaint be referred back to the department or unit from which it originated to be considered afresh because the internal procedures of the institution have not been properly followed, or due to a lack of attention

- That the complaint should be considered at another forum
- That the University should change its internal procedures or the way it deals with complaints
- That in exceptional cases, restitution or compensation be paid to a complainant
- That where the findings of an investigation warrant, disciplinary or other corrective measures be considered for professional neglect or incompetence on the part of an employee.

Upon receipt of the report, the Principal or another duly authorised senior official acting in the name of the Principal, must consider the report and act upon it in the manner considered best. The complainant must be promptly informed of the Principal's decision and action.

Unless the Ombudsman directs otherwise for good reason (for example, that disclosure will impair the rights of others), a copy of the report must be made available to the complainant.

Representation by another

It is preferable for the complainant to handle the complaint himself or herself. However, the Ombudsman may at his or her discretion permit a complainant to be assisted or represented by a family member, colleague, friend, or a member of the SRC. This is subject to the requirement that the complainant authorises the assistance or representation in writing, including the authority for the assisting person or representative and the Ombudsman to have access to and discuss the complainant's personal information. The complainant will need to ensure that the representative is thoroughly briefed. The representative must keep the complainant fully informed and be readily accessible. The Ombudsman will not correspond with both the complainant and the representative.

The University will not be liable for any costs associated with representation of or assistance to the complainant.

Representation of a complainant by a lawyer will not be allowed, unless the Ombudsman permits otherwise under highly exceptional circumstances.

Confidentiality

The Ombudsman will treat any complaint as confidential, unless it is in the public eye already. However, by signing the Ombudsman Referral Form, a complainant authorises the Ombudsman to have access to and use information relating to the complainant which is required for the purposes of the investigation. The complainant further authorises the Ombudsman to disclose such information in his or her report to the Principal, to the extent that is required for the report.

The Ombudsman may also need to obtain information from third parties about a complaint. By signing the Ombudsman Referral Form, a complainant consents to the Ombudsman releasing relevant details about the complaint and the complainant to such persons or institutions.

Cost

The services of the Ombudsman are available to a complainant at no cost. However, complainants are expected to bear any cost that might relate to their referrals, including the cost of assistance or representation.

Where the Ombudsman finds that the University was *mala fide* or acting in a grossly unreasonable manner, the Ombudsman may order it to pay the cost of the complainant for referring the matter to the Ombudsman.

Inquiries and assistance

Any inquiry or request for assistance may be directed to Ms Dikeledi Hlabangane, Office of the Ombudsman (Weekdays 07.45 to 16.00) or at the address mentioned above.

ANNEXURE A

UNIVERSITY OF SOUTH AFRICA

THE UNISA OMBUDSMAN

PREAMBLE

The University of South Africa is committed to service of consistent high quality by all its employees. While it will strive to live up to this commitment without fail, the University recognises that lapses occur and that efficient and adequate channels of redress must be created, both as remedy to aggrieved individuals and as guidance to improve where weaknesses occur. As part of its network for addressing complaints, the office of Unisa Ombudsman is hereby established. The Unisa Ombudsman is an independent office of last resort where complaints can be lodged about inadequate service and administrative malpractice in the University.

1 Underlying values

The Ombudsman conducts his/her business in a manner which promotes the constitutional values of integrity, social justice and fairness and excellence as reflected in the University's *2015 Strategic Plan – An Agenda for Transformation*. In order to achieve this, the Ombudsman must –

- (i) be an independent, external person and not the advocate or representative of any particular person or group;
- (ii) be seen as objective, impartial and unbiased;
- (iii) maintain confidentiality (except in instances of imminent personal harm); and
- (iv) demonstrate respect for all individuals and assist complainants to understand their rights and the University to perform its responsibilities more efficiently.

2 Objectives

The work of the Ombudsman is aimed at –

- (i) improving Unisa's service delivery and quality of administration by investigating complaints and making appropriate recommendations to the Principal; and
- (ii) fostering a culture of good administration that is accountable, lawful, fair, transparent and responsive.

3 Terms of reference

- (i) Subject to the exceptions in subparagraph (iii) below, the Ombudsman receives and investigates claims from any person aggrieved by inadequate service delivery or administrative malpractice on the part of any person acting or professing to act on behalf of the University.
- (ii) At the conclusion of an investigation the Ombudsman submits a written report to the Principal with any recommendation which the Ombudsman considers appropriate to bring the matter to a satisfactory conclusion.
- (iii) The Ombudsman does not entertain any complaint –
 - (a) about labour and employment related matters, which must be addressed through the approved grievance, disciplinary and labour law procedures;
 - (b) about the conduct or decisions of the University Council or its committees, the University Senate or its committees; or the Institutional Forum or its committees;
 - (c) about a matter of academic judgement (i.e. the quality of a student's performance), unless the complaint relates to unfair marking or assessment, examination procedure irregularities or bias against a student;
 - (d) relating to a matter which is or has been the subject of judicial, arbitration or similar proceedings, resulting in an external binding ruling;
 - (e) which is patently frivolous or vexatious.
- (iv) The Ombudsman's decision whether to receive and investigate a complaint is final and not subject to internal review or appeal.

4 Procedural guidelines

- (i) The Ombudsman does not have to entertain a complaint unless a complainant can show that all other internal complaint procedures and remedies of the university have been exhausted.
- (ii) A complaint must be in writing and signed by the complainant. All further documentation required by the Ombudsman must be provided by the complainant, failing which the Ombudsman may decide not to proceed with an investigation.
- (iii) It is in the discretion of the Ombudsman to hear a complainant in person.
- (iv) Unless the Ombudsman directs otherwise, a complaint must be submitted within 4 months of the date on which the complainant became aware of an adverse action on the part of the University, or in the case of an omission or neglect by the University, within 4 months after a written reminder to the University of its omission or neglect.
- (v) The Ombudsman must request the University to respond to a complaint. The Ombudsman will have access to all official documentation relevant to the complaint.
- (vi) At the conclusion of the investigation, the Ombudsman submits a report with recommendations to the Principal. Without limiting the

Ombudsman's discretion in this regard, the Ombudsman may recommend that –

- (a) the University take particular steps to assist the complainant;
 - (b) the complaint be referred back to the department or unit where it originated to be considered afresh because the internal procedures of the institution have not been properly followed or due to a lack of attention;
 - (c) the complaint should be considered at another forum;
 - (d) the university should change its internal procedures or the way it deals with complaints;
 - (e) in exceptional cases, restitution or compensation be paid to a complainant;
 - (f) where the findings of an investigation warrant, disciplinary or other corrective measures be considered for professional neglect or incompetence on the part of an employee.
- (vii) The fact that a complaint has been lodged with the Ombudsman does not affect a complainant's right to external legal recourse.
- (viii) Upon receipt of the Ombudsman's report, the Principal or another duly authorised senior official acting in the name of the Principal, must consider the report and act upon it in the manner considered best. The complainant must be informed of the Principal's decision and action.

5 Qualifications, appointment, remuneration and related matters

- (i) The Ombudsman must have a legal background or other experience in investigating and hearing complaints and assessing facts and evidence in a balanced and unbiased manner. A good grasp of the workings of the University will be a strong recommendation.
- (ii) The Ombudsman is appointed by Council or the Executive Committee of Council for a period of two years at a time, renewable.
- (iii) The office of Ombudsman is not a full-time position and the Ombudsman is not in the employ of the University.
- (iv) The Ombudsman submits an invoice to the University for services rendered, based on a fee to be agreed upon between the Principal and the Ombudsman.
- (v) The Ombudsman may resign in writing to the Secretary of Council.
- (vi) Subject to the directions of Council, the University Registrar must provide administrative assistance to the Ombudsman to perform the functions of the office.

6 Reports to Council and Senate and review of this charter

- (i) The Principal reports regularly to Council on the work of the Ombudsman.
- (ii) The Principal submits an annual report on the work of the ombudsman to Senate, for information.
- (iii) Council reviews this charter and the efficacy of the office of Ombudsman on an annual basis.