

SURF regulation on undesirable behaviour

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1.1. Principles behind the Regulation

All SURF employees are entitled to a safe, healthy working environment. This means that we aim not only to have safe and healthy working areas but expect every employee to act in accordance with generally accepted standards of decency. Behaviour and language which colleagues find unwanted or intimidating are not acceptable.

If there is an issue of undesirable behaviour, the management of an operating company will (in consultation with the manager of the employee in question) take measures which range from a verbal warning to dismissal.

1.2. Who may invoke this regulation?

All employees working with SURF or an operating company under an employment agreement are entitled to invoke the regulation on undesirable behaviour. The regulation also applies to people working for SURF as agency workers, temps, on-call workers and trainees.

To prevent and combat undesirable behaviour, an external confidential contact person has been appointed¹. Employees who feel they have been personally affected by undesirable behaviour can count on the confidential contact person's support.

1.3. What does 'undesirable behaviour' mean?

For the purposes of this regulation, undesirable behaviour refers to discrimination, sexual harassment, aggression, violence, and bullying, as described below, as well as combinations thereof, which cause stress in the workplace.

a. Discrimination refers to directly or indirectly differentiating between people based on, among other things, religion, beliefs, political orientation, race, gender, nationality, sexual orientation, marital status, age, disability, or chronic illness.

Note: direct discrimination occurs in a work setting when a person is treated differently from the way in which another person is treated or would be treated in a comparable situation. Indirect discrimination occurs when people are apparently treated (or not treated) in a neutral way, resulting in discrimination taking place.

b. Sexual harassment means: any type of undesirable verbal, non-verbal or physical behaviour with sexual connotations. In particular, where a threatening, aggressive, offensive, humiliating or hurtful situation is created.

¹ This is a confidential contact person linked to this regulation on undesirable behaviour. As part of the Whistleblower Scheme, a different confidential contact person has been appointed, with a focus on integrity.

Note: sexual harassment can occur in a lot of different forms. Double entendres, needless touching, peeping, pornographic images at work, sexual assault and rape are all forms of sexual harassment. Sexual blackmail is also a type of sexual harassment. An example of this could be opportunities for promotion and decisions at work depending on performing sexual acts. This behaviour can create a threatening or sexually intimidating and hurtful environment, which is an attack on the dignity of the employees affected. Psychological violence can thrive at such times in environments like this, which may also create opportunities for sexual blackmail.

c. Aggression and violence refer to incidents in which an employee is physically or psychologically harassed, threatened or assaulted in the work environment.

Note: aggression and violence include acts of verbal violence (name-calling, insults) and physical violence (kicking, hitting, threatening or attacking with a weapon). It can also involve psychological violence: threatening, intimidating, pressuring, threats to domestic life and/or damaging property.

d. Bullying means: all types of intimidating behaviour of a structural, by one or more employees (colleagues, supervisors) aimed at an employee or group of employees.

Note: an important characteristic of bullying at work is that the behaviour is repeated over time. One-off incidents do not constitute bullying. This behaviour can take various forms but, in particular, involves words, gestures, actions or threats. Bullies usually deliberately aim to harm or degrade another person.

1.4. What should you do if you experience undesirable behaviour?

There are a number of ways employees can choose to deal with undesirable behaviour. In many cases, the victim is personally able to put an end to undesirable behaviour. An employee can speak with the person, whose behaviour towards him or her is undesirable, about his or her behaviour. Supervisors can be directly or indirectly involved in resolving the situation on request.

Sometimes contact with the perpetrator is no longer feasible or this contact does not lead to a solution acceptable to both sides. In such circumstances, additional facilities have to be made available to put a stop to undesirable behaviour.

If a mutual satisfying solution cannot be arrived at, it may be possible to achieve results with the help of third parties. The first step is to submit a report to the confidential contact person. The last possible step is to submit a report to the Complaints Board. The way these options are organised and how they work are described below.

1.5. Reporting undesirable behaviour

There are various options available to employees who have been direct or indirect victims of discrimination, sexual harassment, aggression and violence or bullying, such as:

Try to find a solution together

In the first instance, try to resolve the issue together. It is often the case that someone has not understood that his/her behaviour is undesirable. If the person is directly addressed about his/her behaviour, that is often sufficient to put an end to such behaviour. Of course, you may also go directly to someone within your organisation, such as your supervisor or HR adviser.

Contact the Confidential Contact Person

If someone is unable to put an end to undesirable behaviour (or to have it stopped), he/she may contact the confidential contact person.

With the involvement of the confidential contact person, an informal forum is provided for dealing with reports of undesirable behaviour that is encountered or experienced. The confidential contact person's job is to ensure that the person who has reported undesirable behaviour is looked after. The confidential contact person can give the person reporting an incident advice on what steps can be taken and offer them support in taking those steps. The confidential contact person can, in consultation with and with the agreement of the person reporting an incident, contact people in that person's environment who can offer help, such as the supervisor. If that event, it must be clear to all parties involved that the confidential contact person is acting on behalf of a person reporting an incident. Under no circumstances will the confidential contact person take action without the consent of the person concerned.

Employees who are involved in undesirable behaviour have the most to gain from ending undesirable behaviour and preventing the re-occurrence of undesirable behaviour. That is why it is advisable, before submitting a complaint, that you first report the matter to a confidential contact person.

1.6. Submitting a complaint to the Complaints Board

The nature of a complaint or issue can be such that support by the confidential contact person does not lead to a solution being found or a solution is not possible solution at the informal level, and so steps are taken to submit a formal complaint. For this reason, the option of formally processing complaints through a Complaints Board is also available. This is provided by an external organisation and comprises a chairperson and a behavioural expert.

The Complaints Board investigates the admissibility and merits of the complaint by hearing the complainant, accused person(s), and any witnesses and/or other people. Based on its findings, the Complaints Board can advise the management on measures to be taken. If the Complaints Board finds that the complaint is well founded, the management may impose sanctions or take other measures.

Anonymous complaints will not be addressed.

1.7. Submitting a complaint after leaving the company

Complaints from former employees or other individuals who are treated in a similar manner under Article 1.2 may be dealt with for up to one year after leaving the company or the end of other types of collaboration.

These may be assessed by the Complaints Board.

1.8. Confidentiality and protection

All parties involved in the implementation of this policy and who has access to details that they know to be confidential or should reasonably consider to be confidential shall maintain the confidentiality of said details, save where legal provisions require these parties to disclose this information or their duties when implementing the policy require information to be disclosed. The employer shall ensure that when following the complaints procedure the complainant's position within the company is not compromised.

1.9. How the confidential contact person works

The confidential contact person's duties include:

- 1) acting as a point of contact for individuals faced with undesirable behaviour, receiving and supporting them.
- 2) At the request of this person, taking action aimed at finding a solution, e.g. by promoting mediation to prevent or combat undesirable behaviour.
- 3) referring complainants to other bodies that provide assistance within or outside of the organisation.
- 4) informing the person of the options available, including the option of submitting a complaint to the Complaints Board. The person then makes his/her own decision.
- 5) giving support and guidance when a complaint is submitted and while the Complaints Board is dealing with the complaint.
- 6) explaining and setting out the options for preventing and combating undesirable behaviour.
- 7) providing follow-up care for employees who have faced undesirable behaviour.
- 8) Identifying bottlenecks in the implementation of the policy for preventing and combating undesirable behaviour.
- 9) recording the nature and scope of issues submitted to the confidential contact person, by creating and maintaining a dossier of reports. The confidential contact person will present an anonymised annual report to the management each year.

The confidential contact person's main duty is to receive individuals reporting incidents and guide them in finding an appropriate solution for their problems with undesirable behaviour in the workplace. The confidential contact person acts during the informal part of the report. If the report escalates to the point at which a complaint is submitted to the Complaints Board, the confidential contact person also offers guidance during this formal phase.

The general working method of the confidential contact person can be described as follows:

1. becoming acquainted with the report.
2. recording what the person reporting an incident has already done personally.
3. investigating what else that person can do.
4. Assessing what help that person needs from the confidential contact person to do so.
5. assessing whether that person needs help from others within and/or outside the organisation to solve the issue. If necessary, offer support to approach these people.

The confidential contact person never acts without the consent of the person reporting an incident. This is an important principle behind all of the above elements. When a report is made, the confidential contact person will meet the person reporting an incident as soon as possible at a mutually-agreed "safe" location.

The confidential contact person's tasks:

- 1) Provided the necessary confidentiality is ensured and to the extent that doing so is a necessary part of his/her duties, the confidential contact person is competent to obtain information relating to the alleged undesirable behaviour and the circumstances in which it took place.
- 2) The confidential contact person is authorised to take advice or obtain assistance from experts if doing so is necessary to dealing with the report.
- 3) The confidential contact person is not authorised to support the person making the report and the person the report is about at the same time. In such cases, the confidential contact person may refer the person the report is about to a different confidential contact person.

- 4) The confidential contact person will not take any actions on behalf of the person making the report without the latter's consent.
- 5) The confidential contact person is competent to offer solicited and unsolicited advice on policy relating to undesirable behaviour to the management.

Reporting by the confidential contact person:

The confidential contact person draws up an annual report for the management, providing an anonymised summary of the number of reports recorded in the previous year and the nature of these reports. In consultation with the secretary of the Complaints Board, the Complaints Board also reports the number of complaints, the nature of complaints submitted, the advice issued by the commission, and decisions made by the respective management bodies. Recommendations may also be appended to reports. The confidential contact person's annual report will be sent to the Works Council by the management, on the understanding that the report's contents are treated confidentially and information from the report may not be released. The Works Council may record in its minutes that the report has been dealt with and indicate whether the Works Council feels further discussion is necessary or not.

1.10. How the Complaints Board works

As part of this Regulation on undesirable behaviour, a Complaints Board is appointed when a complaint is submitted. The SURF Complaints Board will be made up of external experts on undesirable behaviour, with the support of an external secretary. Appointing an external Complaints Board ensures that the commission will act independently.

The Complaints Board's duties are as follows:

- A. investigating complaints made to the board and ruling on whether complaints are admissible and on their merits.
- B. advising the management on measures to be taken and making recommendations relating to the complaint or the consequences of the complaint.

The general working method of the Complaints Board is as follows:

Submitting a complaint does not have a suspensory effect with regard to a decision taken or a measure adopted which is the subject of the complaint. If there are compelling arguments to this effect, the employee may request, giving the reasons, that the Complaints Committee make a ruling as a matter of urgency. It must be noted that following a careful procedure and carefully investigating all the facts and circumstances may take precedence over urgency. For these reasons, the Complaints Board may also decide not to uphold an employee's request for an urgent ruling.

1. When a complaint has been received, the Complaints Board firstly determines whether it is competent to handle the complaint and whether the employee's complaint is admissible. Submitting complaints via the confidential contact person is preferable. Where necessary, the Complaints Board may refer the complainant to the confidential contact person.
2. The employee is entitled to withdraw the submitted complaint at any time.
3. At any point in the procedure, the Complaints Board may, with the consent of the complainant and accused party, decide to initiate mediation between the parties. Pending the (exploration of) the possibility of mediation, the Complaints Board will suspend consideration of the complaint.

4. If the Complaints Board accepts a complaint, it will forward the complaint, including any annexes, to the accused party. The complainant and accused party will also be invited to appear at a hearing to give a verbal explanation of the complaint and verbal response/defence/objection to the complaint.
5. The complainant may be supported by a confidential contact person and/or an adviser of his or her choice, who may not be a colleague. The accused party may be supported by an adviser of his or her choice, who may not be a colleague.
6. The complainant and accused party will be heard separately unless the board considers there to be a need to hear the parties jointly. This shall be at the board's discretion.
7. The accused party will be given the opportunity to submit defence in writing. This defence may be submitted to the secretary of the Complaints Board up to ten days before the hearing.
8. The board is authorised to obtain any information it deems necessary to fulfil its duties properly. Anybody the board approaches for information is bound to provide this information. The committee will make use of the information provided while respecting everyone's right to protection of privacy. The board shall inform the relevant employee (complainant and accused party) of the information obtained.
9. When handling the complaint the Complaints Board will hold one or more sittings, during which it may hear from anybody, whom the board believes can contribute to the board's decision-making. The Complaints Board's sittings are closed. Anybody invited by the board to be heard is in principle obliged to comply with the invitation. The complainant and accused person must appear in person during hearings.
10. Both the complainant and the accused party may submit additional information to the Complaints Board up to five working days prior to the hearing.
11. A report shall be made of every hearing by the complaints committee, which must be signed by the person being heard for approval, with or without comments. If a party involved refuses to sign the report, this and any reasons stated for this refusal will be stated in the report.
12. Before the board rules on whether the complaint is well-founded (or not), the complainant and accused party will be able to – separately – consult all of the information collected by the board. The secretary of the Complaints Board will be present during this consultation. Copies of the complaints dossier may not be removed. After consulting the dossier, both the complainant and the accused party will have a final conversation with the board. A report will be drawn up of this conversation which will be appended to the complaint dossier after it has been approved by the parties involved. Only then will the board rule on whether the complaint is well-founded (or not) and draw up its advice to the management.
13. Within 8 weeks of the Complaints Board accepting a complaint, it will rule on whether the complaint is well-founded by way of advice to the management. It may extend this deadline by up to one month at most.
14. The Complaints Board may give the management interim advice on taking temporary measures.
15. If the Complaints Board deems the complaint to be well-founded, it will advise the management on a suitable measure to be taken. The recommended measures may involve:
 - a warning;
 - suspension;
 - dismissal;
 - total or partial denial of access to SURF buildings and premises for up to a year.

The management may also, of course, take measures where necessary if the complaint is not deemed to be well-founded, such as measures against the complainant and/or measures to repair the damaged reputation of the accused party as much as possible. If the complainant withdraws a complaint, the management may still take measures to clear the accused party's name.

If the undesirable behaviour involves criminal acts, consideration may be given also to declaring them. This does not mean that processing the complaint internally must be waived, because the management as an employer (responsible for staff) may have to take measures for which the outcome of an internal independent investigation will be relevant, alongside any criminal proceedings.

16. Within 2 weeks of the management receiving the Complaints Board's ruling, whether or not the ruling includes advice and/or recommendations, the management will take a decision. The complainant, the accused party and the Complaints Board will be notified of the reasoned decision. The decision will include the ruling and any advice and/or recommendations.

In no way may the employee's position as an employee be disadvantaged by the fact that a complaint has been submitted to the Complaints Board. The same applies to employees to whom the complaint does not relate who are interviewed at the request of the Complaints Board in relation to the complaint.

In principle, complaints will not be accepted if they are submitted over 2 years after the incident which has led to a complaint being submitted. This period does not apply if the incident relates to an incident which may also involve a criminal act. This will be decided by the Complaints Board.

Both the Complaints Board's ruling and the decision made by the management on the basis of the advice shall be included in the personnel files of both the employee who submitted the complaint and the accused employee(s) for a period of 5 years. This period may be extended following a written request.

The dossiers on the complaints procedure will be stored in the Complaints Board's archives for 5 years. This archive may only be accessed by members of the Complaints Board.

1.11. Complaint against a member of the management

If a complaint is made against a member of the management (a member of SURF board or a director of one of the operating companies), the Complaints Board will issue advice to the Supervisory Board, which will make a decision on the basis of this advice.

If a complaint is made against a member of the management, in Articles 12 to 16 regarding the working methods of the Complaints Board the 'management' should be replaced by 'Supervisory Board'.

1.12. Reporting by the Complaints Board

The Complaints Board draws up an annual report for the management, providing an anonymised summary of the number of reports recorded in the previous year and the nature of these reports. One of the board members (not necessarily the chairperson) and an internal staff member(s), who is (are) involved in this policy area will consult on this.

The Complaints Board's annual report will be sent to the Works Council by the management, on the understanding that the report's contents are treated confidentially and information from the report may not be released. The Works Council may record in its minutes that the report has been dealt with and indicate whether the Works Council feels further discussion is necessary or not.