

UCT LAW FACULTY POLICY AND PROCEDURES FOR BREACH OF RESEARCH ETHICS CODES AND ALLEGATIONS OF MISCONDUCT IN RESEARCH

Approved by the Law Faculty's REC: February 2016

1. Introduction

The UCT Authorship Practices Policy,¹ the [Draft] UCT Policy for Conflict of Interests and of Commitment in Teaching and Research,² the UCT Research Ethics Code for Research Involving Human Participants and the UCT Research Ethics Code for Use of Animals in Research and Teaching,³ the UCT Policy and Standard Operating Procedures regarding Experimental Use of Non-Human Primates, the Policy for Avoiding Plagiarism,⁴ the [DRAFT] Whistle-blowing for Academic Misconduct Policy together with the Faculty-level Codes, Policies and Standard Operating Procedures (hereafter all referred to as 'the Codes') describe the principles and practices for encouraging responsible conduct of research at UCT. This document must be read with above Codes.

Misconduct or inappropriate behaviour in research is a serious matter. Its implications have the potential for harm that goes beyond the immediate parties. If proven, misconduct in research has negative implications for the researcher, the institution, funding bodies, journal publishers as well as colleagues, students and human research participants. In the case of misconduct in research involving animals, prosecution in terms of the Animals Protection Act⁵ is also possible.

The research enterprise is inherently complex. Consequently, processes and procedures for dealing with allegations of misconduct or inappropriate behaviour must be clear and consistent. Investigation of allegations must take place in accordance with the highest standards of integrity, fairness, due process and reasonableness. Persons who are tasked with investigating allegations must act with utmost integrity and sensitivity.

This Policy and Procedures document⁶ applies to all teaching staff, researchers and other staff members of the Law Faculty as well as students, postdoctoral fellows and research associates, honorary research associates, visiting scholars, Law Faculty staff on sabbatical leave or on

¹ Approved PC 1/2011.

² Under revision.

³ Approved by Senate 30 March 2012.

⁴ Under revision.

⁵ Act No 71 of 1962.

⁶ This document has drawn on the Australian Code for the Responsible Conduct of Research Part B © Australian Government 2007 www.nhmrc.gov.au; the University of Michigan Standard Practice Guide: Policy Statement on the Integrity of Scholarship and Procedures for Investigating Allegations of Misconduct in the Pursuit of Scholarship and Research 2009 www.drda.umich.edu/policies/um/integrity.html; Harvard Medical School Principles and Procedures for Dealing with Allegations of Faculty Misconduct www.hms.harvard.edu/public/coi/policy/misconduct.html; Northwestern University Policy for Reviewing Alleged Research Misconduct www.research.northwestern.edu/ori; Keith-Spiegel, Sieber & Koocher *Responding to Research Wrongdoing: a user-friendly guide* 2010 <http://www.ethicsresearch.com/freeresources/rwrresearchwrongdoing.html>; UK Research Integrity Office <http://www.ukrio.org/ukR10htre/UKRIO-Procedure-for-the-Investigation-of-Misconduct-in-Research2.pdf>; Research Councils UK 2011 RCUK Policy and Code of Conduct on the Governance of Good Research Conduct 'Integrity, Clarity and Good Management' <http://www.rcuk.ac.uk>; Stellenbosch University 2011 'Procedure for the Investigation of Research Misconduct at Stellenbosch University'.

leave without remuneration, and adjunct staff. If the respondent has left UCT, the procedures may nevertheless be used to determine the culpability of the respondent.

The Policy seeks a balance between, on the one hand, providing safeguards for those who raise genuine concerns about improper conduct and, on the other, providing protection against uninformed, inaccurate and malicious allegations that can cause serious harm to innocent persons as well as to the University. This balance is found in an independent and formal procedure and proper investigation, preceded by a less-formal process that permits inquiry into the merit of the allegation. The objective is to provide a safe and secure mechanism for raising genuine concerns about improper conduct without fear of victimisation and without resorting to complaints to the media that may bring the University into unwarranted disrepute.

This Policy and Procedures document outlines how to respond to allegations of research misconduct in the Law Faculty. Because the number of people with experience of dealing with these matters is small, the Law Faculty will be giving attention to building capacity and institutional memory. Simultaneously, conflicts of interest must be avoided, while the achievement of transparency and accountability is to be promoted.

2. Principles

The Law Faculty endorses following principles that underpin the university's attitude towards allegations of research misconduct or scholarly misbehaviour.

The University of Cape Town and its Law Faculty believes

- 2.1 in the importance of **impeccable ethical standards** in teaching, research, and clinical activities to all researchers at UCT and to the entire institution
- 2.2 that **reporting** suspected research misconduct is a **shared and serious responsibility** of all members of UCT
- 2.3 that the University has a **responsibility to respond** to credible reports of allegations of research misconduct
- 2.4 that the integrity of teaching, research and clinical activities at UCT requires that allegations of research misconduct or scholarly misbehaviour must be dealt with **equitably, confidentially and as expeditiously as possible**, taking care to provide opportunities for all interested persons to be heard
- 2.5 that the **procedures** for dealing with alleged research misconduct or inappropriate scholarly behaviour must be **accessible, understandable, fair and expeditious**
- 2.6 that the University has a **responsibility to protect the rights and reputations of all** individuals, including the person against whom an allegation is made (respondent) and the person who makes the allegation (complainant)
- 2.7 that persons who are requested to participate in investigations must do so with integrity, objectivity and without conflict of interest
- 2.8 that **proven research misconduct** is dealt with in terms of **existing university procedures**.

3. Unacceptable conduct

Unacceptable conduct or research misconduct includes but is not limited to:

3.1 **Fabrication** – deliberate creation of false data, including documentation and participant consent, dishonesty in reporting results, in collecting or analysing data, or omission of conflicting data

3.2 **Falsification** – deliberate misrepresentation of research including progress in research or inappropriate adjustment and/or selection of data, imagery, results and/or consents, or undisclosed duplication of publication, or inappropriate claims to authorship or attribution of work contrary to the UCT Authorship Practices Policy

3.3 **Plagiarism** – misappropriation or use of someone else's work, ideas, results, methods or intellectual property without acknowledgement or permission

3.4 **Abuse of confidentiality** – taking or releasing the ideas or data of others which were shared with the legitimate expectation of confidentiality, e.g. taking ideas from others' grant proposals, award applications, or manuscripts for publication when tasked with reviewing same

3.5 **Breach of research ethics codes or other regulatory requirements** – failure to obtain required approval(s) or to adhere to research ethics codes and standard operating procedures, including but not limited to

- the UCT Authorship Practices Policy
- *the UCT Policy for Conflict of Interests and of Commitment in Teaching and Research [currently in draft form]*
- the UCT Research Ethics Code for Research Involving Human Participants
- the UCT Research Ethics Code for Use of Animals in Research and Teaching
- Guidelines for Use of Recombinant DNA
- Guidelines for Use of Radioactive Material
- Guidelines for Use of Hazardous Chemicals or Biologicals
- Law Faculty Codes, Policies and Standard Operating Procedures

3.6 **Deliberate misrepresentation in publication** refers to the situation where a researcher knowingly publishes material that is likely to mislead readers, including undisclosed duplication of publication, or inappropriate claims to authorship, or attribution of work contrary to the UCT Authorship Practices Policy

3.7 **Improper conduct in peer review** of research proposals or results (including manuscripts submitted for publication), or failure to disclose conflicts of interest, or inadequate disclosure of clearly limited competence

3.8 **Retaliation** – taking punitive action against a person thought to have reported suspected research misconduct.

4. Framework for responding to allegations of research misconduct

4.1 *Overview of Procedures for a Complainant*

4.1.1 A person who suspects research wrongdoing should take action in terms of these procedures.

4.1.2 The Law Faculty Adviser on Research Integrity must be approached in confidence to initiate an informal enquiry.

4.1.3 The Law Faculty Adviser on Research Integrity (“the Adviser”) will initiate an informal enquiry in consultation with the Dean and Director of Research and will report back to them at the conclusion of the enquiry. The Dean and Director of Research will, at the end of the meeting with the Adviser, make a recommendation either to not proceed further or to refer the allegation for a formal Faculty investigation.

4.1.4 On completion of the formal Faculty investigation a finding will be made regarding the allegation of misconduct. If the complainant is not satisfied with the finding he or she may appeal to the University level.

4.2 *Preliminary Informal Enquiry by the Faculty Adviser*

4.2.1 The purpose of the **preliminary informal enquiry** is to establish whether, on the face of it, an answerable case can be made out regarding the allegation of misconduct.

4.2.2 The informal enquiry should be prompt, discreet and effective. On receiving an allegation the Law Faculty Adviser on Research Integrity (“the Adviser”)⁷ must within five (5) working days convene a meeting with the Dean and Director of Research. The meeting will agree on a procedure for an informal enquiry by the Adviser and will notify the Chairperson of the Faculty Ethics Committee about the launch of an enquiry. The person against whom the allegation has been made must at this point be informed of the allegation, told the procedure that will be followed by the informal enquiry, and warned not to interfere in any way in the enquiry, including speaking about the allegation to any person who will be interviewed as part of the enquiry. Thereafter the Adviser will conduct an informal enquiry that will be completed within ten (10) working days of the meeting with the Dean and Director of Research. On completion of the informal enquiry the Adviser must attend and report to the next meeting of the Faculty Ethics Committee on the findings of the enquiry. The Faculty Ethics Committee will make a recommendation that the complainant not proceed further with the matter, or will escalate the complaint to a formal Faculty investigation, or will recommend an alternative route for the resolution of the complaint. The Faculty Ethics Committee will base its decision on the need to uphold high ethical standards, the nature of the alleged misconduct and equity. It will also take account of the need to protect the rights and reputations of the person making the allegation and the person against whom the allegation has been made.

4.2.3 The complainant is not obliged to follow the recommendation of the committee but is strongly encouraged to do so.

⁷ It is recommended that the Adviser is a respected academic approaching retirement or already on retirement who knows the University’s structures and procedures.

4.2.4 If the committee recommends that no further action should be taken and this is accepted by the complainant, the Faculty Adviser writes a report for the record and the matter is closed.⁸ It can be referred elsewhere or dealt with in some other manner.

4.2.5 If the meeting escalates the matter for a formal Faculty investigation the Adviser must retain any suspect data and sufficiently detailed notes and other documentation for submission to the formal investigation.

4.3 Formal investigation: Faculty-level Procedures

4.3.1 When a matter is referred for a formal Faculty investigation the Adviser must prepare a written report⁹ that includes a statement of the allegation, a description of the evidence reviewed as well as any suspect data and any other documentation, summaries of relevant interviews, and the conclusions reached.

4.3.2 The respondent and the complainant must be afforded the chance to comment on the report, which comments become part of the report

4.3.3 The Dean appoints a committee under the chairpersonship of the Director of Research that comprises two senior academics in the Faculty and one from another faculty of the University. The appointment of members of the committee should aim at avoiding the potential for conflict of interest, bias or unfairness. The committee will be known as the Research Misconduct Investigation Committee (RMIC).

4.3.4 The RMIC must gather and evaluate evidence promptly (usually within 45 days of appointment).

4.3.5 During the investigation, all reasonable efforts must be made to protect the identity of the respondent and the complainant from third parties. However, the complainant should note that the respondent is permitted to know the identity of witnesses, especially when the allegation rests on personal observation of misconduct. This means that the complainant cannot remain anonymous if he or she must give evidence of the observation.

4.3.6 The respondent is entitled to be present during fact-finding meetings of the RMIC but not during its deliberative meetings.

4.3.7 At the conclusion of the formal investigation the RMIC must determine whether research misconduct has occurred and whether the respondent is culpable and, if so, include recommendations of sanctions for resolution of the matter.

4.3.8 In the event that the recommendation at the conclusion of the informal enquiry was to not proceed with the matter or to pursue it through an alternative route but the complainant insisted on escalating it to a formal investigation, and it is found that the allegation is lacking in good faith, disciplinary action against the complainant may be recommended.

4.3.9 Suspect data and sufficiently detailed notes and other documentation must be retained in case there is an appeal.

⁸ To have a record in case e.g. a complainant makes a habit of lodging vexatious complaints.

⁹ This report is prepared either by the Faculty-based Adviser on Research Integrity or by the Chair of the fact-finding inquiry committee (see 5.1).

4.3.10 Summaries of interviews conducted must be prepared and interviewees given the opportunity to comment on and revise them. The summaries become part of the record.

4.3.11 A written report must be prepared that records the results of the investigation and the recommendations regarding outcome.

4.3.12 The respondent must be afforded the opportunity to comment on the report, such comment becoming part of the record. The complainant must have the opportunity to comment on those parts of the report that describe his or her role and opinions in the investigation.

4.4 Appeal to the University level

4.4.1 If the complainant or the person against whom the allegation has been made is not satisfied with the determination of the RMIC, he/she may appeal to the University level. The appeal is made in writing to the Dean, who refers it to the DVC responsible for research together with the written finding of the RMIC and the record of the formal Faculty investigation.

4.4.2 The DVC appoints a Special Investigating Committee (SIC) to conduct an investigation.

4.4.3 Membership of this SIC must include a person who is an expert in the general academic field of the respondent. If necessary, to avoid conflicts of interest, this person may be appointed from outside the university. Membership must also include a member of SEiRC or SAEC and the faculty's REC or AEC, as the case may be.

4.4.4 The DVC responsible for research must inform the respondent of the SIC, its composition and the charges being brought.

4.4.5 The SIC must gather and evaluate the evidence promptly (usually within 90 days of appointment) and determine whether research misconduct has occurred and whether the respondent is culpable and, if so, include recommendations of sanctions for resolution of the matter.

4.4.6 During the investigation, all reasonable efforts must be made to protect the identity of the respondent and the complainant from third parties. However, the complainant should note that the respondent is permitted to know the identity of witnesses, especially when the allegation rests on personal observation of misconduct. This means that the complainant cannot remain anonymous if he or she must give evidence of the observation.

4.4.7 The respondent is entitled to be present during fact-finding meetings of the SIC but not during its deliberative meetings

4.4.8 The ORI provides administrative support to ensure a thorough and authoritative investigation.

4.5 Formal findings

4.5.1 Suspect data and sufficiently detailed notes and other documentation must be retained to permit later assessment of the adequacy of the investigation.

4.5.2 Summaries of interviews conducted must be prepared and interviewees given the opportunity to comment on and revise them. The summaries become part of the record.

4.5.3 A written report must be prepared that records the results of the investigation and the recommendations regarding outcome.

4.5.4 The respondent must be afforded the opportunity to comment on the report, such comment becoming part of the record. The complainant must have the opportunity to comment on those parts of the report that describe his or her role and opinions in the investigation.

4.6 *Resolution and outcome*

4.6.1 The report and the record are forwarded to the DVC responsible for research, who decides what action to take in light of the report. The DVC notifies the respondent, the Dean and the Registrar of the decision.

4.6.2 If disciplinary action is to be instituted, the set procedures for disciplinary action must be followed.

4.6.3 If appropriate, after appeal avenues have been exhausted, the Registrar must inform relevant sponsors, journal editors, previous affiliations of the respondent, and decide whether a public statement should be made

4.6.4 If the allegations of research misconduct are dismissed, DVC responsible for research, together with the Registrar, must make all reasonable efforts to restore the reputations of the respondent and also to protect the complainant and witnesses who in good faith made the allegation and assisted the investigation

APPENDIX 1

Definitions

Abuse of confidentiality – taking or releasing the ideas or data of others which were shared with the legitimate expectation of confidentiality, e.g. taking ideas from others' grant proposals, award applications, or manuscripts for publication, when tasked with reviewing same (see also **Improper conduct in peer review**)

Adviser on research integrity - refers to a faculty-based person who can advise whether and how a suspected misconduct complaint should be lodged; this person should not have conflicts of interest and must be independent of other research-related bodies like RECs or Research Committees.

Allegation is a written or oral statement or other indication of possible research misconduct made to the Adviser in research integrity

Complainant is the individual who makes an allegation of possible research misconduct

Conflict of interest refers to the situation where a member of UCT's interests and his or her professional obligations to UCT diverge so that an independent third party might reasonably question whether the member's professional actions or decisions are determined by considerations other than the maintenance of high ethical standards in research

Deliberate violation of the Codes refers to the situation where a researcher fails to adhere to the Codes

Deliberate misrepresentation in publication refers to the situation where a researcher knowingly publishes material that is likely to mislead readers, including undisclosed duplication of publication or inappropriate claims to authorship or attribution of work contrary to the UCT Authorship Practices Policy

Fabrication refers to deliberate creation of false data, including documentation (including information regarding animal welfare monitoring records) and participant consent, dishonesty in reporting results, in collecting or analysing data, or omission of conflicting data

Failure to report violations of the Codes refers to the situation where a researcher covers up or otherwise fails to report a violation observed by him or her

Falsification refers to deliberate misrepresentation of research including progress in research or inappropriate adjustment and/or selection of data, imagery, results and/or consents

Improper conduct in peer review – refers to failure to disclose or to manage conflicts of interest, or inadequate disclosure of clearly limited competence (see also **Abuse of confidentiality**)

Plagiarism refers to misappropriation of use of someone else's work, ideas, results, methods, or intellectual property without acknowledgement or permission

Property violations refer to the situation where a researcher disposes of, tampers with or destroys the property of others, e.g. equipment, research papers and records, supplies, or products of research or scholarship

Research misconduct may include the following: fabrication; plagiarism; abuse of confidentiality; falsification; deliberate misrepresentation in publication; deliberate violation of the Codes; property violations; knowingly exposing persons or animals to a biohazard; failure to report violations of the Codes; improper conduct in peer review; retaliation against persons who report alleged violations of the Codes.

NOTE:

Research misconduct does not include honest error or honest differences in judgement in the management of a research project. Where breaches or violations of the Codes have occurred in error or because of differences in judgement or opinion, these must be dealt with appropriately by supervisors and responsible officers of UCT, including SEiRC and SAEC so that clarity and consistency are achieved. Workshops and training opportunities must be provided to achieve the goals of responsible conduct of research.

Respondent is the individual(s) against whom an allegation is made or whose actions are the subject of the inquiry or investigation

NOTE:

The UCT Authorship Practices Policy, the [Draft] UCT Conflicts of Interest and of Commitment in Teaching and Research, the [Draft] UCT Whistle-blowing for Academic Misconduct Policy provide additional information for particular situations.

NOTE:

An online source with helpful discussion of the concepts, processes and how to respond appropriately to allegations of research wrongdoing can be found at

*<http://www.ethicsresearch.com/freeresources/rwresearchwrongdoing.html> P Keith-Spiegel, J Sieber & G P Koocher *Responding to Research Wrongdoing: a user-friendly guide 2010* [this source may be used freely for educational purposes]*