

Annual Report of the advisory committee LOWI 2020



LOWI Report on the Year 2020

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Pronken met andermans veren (kleurets) / The crow in borrowed feathers (colour etching), J.W.M. van der Meer,
2014

Foreword

The LOWI plays an important role in the system of ensuring research integrity in the Netherlands. It does this by advising the boards of research institutions on situations concerning alleged violations of the principles of research integrity. For the tasks of the LOWI, see Section 3 of this annual report.

In 2020 the LOWI issued several opinions, each of which is worthy of discussion in itself. However, in this annual report I do not wish to address every individual opinion, but to focus on one particular topic that came to the fore in various cases in the past year: the duty of confidentiality.

It is important that the debate in and about scientific research is conducted intensively and publicly. This also applies to research integrity. Transparency on this is likewise of great importance, also where individual cases are concerned. As always where openness and transparency are concerned, there are interests that justify exceptions to this. One of these interests is that so long as it is (still) uncertain that a violation of research integrity has taken place, the investigation into this can be conducted in confidentiality. This exception is justified, because – once proceedings containing sufficient safeguards have been carried out – both the party that feels that a violation of research integrity has taken place, as well as the researchers against whom an allegation of a violation of research integrity has been made, have the right to an impartial and expert opinion and ultimately an administrative ruling, without any external pressure.

Both the National Model Complaints Procedure for Research Integrity of the Association of Universities in the Netherlands (VSNU), on which most of the research institutions complaints procedures are based, and the LOWI Regulations 2018 which apply to the LOWI contain rules for this. Article 4 subsection 1 of the Regulations stipulates that to ensure that each petition for an opinion from the LOWI is treated with due care, the parties have a duty to maintain *confidentiality* regarding the complaint to the Research Integrity Committee (CWI) of the institution and the petition to the LOWI, at least from the announcement of the preliminary ruling by the board of the institution to the announcement of the final ruling by the board. This stipulation ensures a duty of confidentiality concerning the information exchanged in the procedure before both the CWI and the LOWI throughout the duration of the procedure. The LOWI conforms strictly to this duty. A prematurely disclosed allegation of a violation of research integrity can cause great damage to researchers and can impede a careful consideration of the complaint or petition. Restrictions to transparency continue to apply even after the LOWI has issued its opinion. Once the board has provided a final ruling or three months have passed since the opinion was issued, the opinion of the LOWI will be published by the LOWI on its website in an anonymised form. Here the LOWI follows the principle that it must not be possible to trace the opinion back to the individual parties (the complainants and researcher in question). For reasons of clarity of an opinion, the LOWI is committed to being more cautious in anonymising, as evidenced by the fact that the name of the institution in question and the field are mentioned, but the name of the institute where the researcher in question is or was working is in principle not stated.

Article 4 subsection 3 of the Regulations stipulates that if the duty of confidentiality is violated, the LOWI will be entitled to draw its own conclusions. In some circumstances this may mean that the LOWI decides not to process the petition for an opinion. In a certain sense this stipulation is unilateral. If it is not the petitioner who is asking for an opinion but the other party who breaches confidentiality, this could lead to the petitioner being denied the opportunity of receiving a ruling from the LOWI as a consequence of the breach of confidentiality by the other party. But even if it is the petitioner who breaches confidentiality,

there may still be good reason to issue a substantive ruling, for example if this is in the interests of the other party. In opinion no. 2020-17, the LOWI did not choose to not (further) process the petition due to violation of the duty of confidentiality, because in this case it was preferable to issue an opinion about the substance of the petition.

Furthermore, the duty of confidentiality is not absolute. The duty may be broken if required by another, overriding interest. In that case the breach of the duty of confidentiality does not lead to the petition not being processed. For example, in opinion 2020-08, the LOWI considered it acceptable that documents from the CWI/LOWI proceedings may be submitted in a lawsuit if necessary, even in the event of a public hearing. From a perspective of due care, in such a case it is important that the party in question contacts the CWI/LOWI.

There are also cases where the duty of confidentiality is experienced as constrictive. This may be the case where prior to the complaint being submitted to the CWI, there has already been publicity, often purporting that one or more researchers have breached research integrity. If this publicity leads to a complaint or a request from a board for an ex officio investigation by a CWI, the duty of confidentiality would preclude parties, and in particular the researcher(s) who are subject of the complaint, from responding publicly. If the publicity can be linked back to the complainant in the CWI proceedings, this also applies to him/her. However, if this is not the case, the complainant could continue to freely seek publicity, while the researcher would not be able to because of the duty of confidentiality. In such cases it happens that the fact that the researcher is unable to respond to reports in the press because of the duty of confidentiality is interpreted by the media to the detriment of the researcher, with (further) negative perceptions as a consequence. It is important that in particular the institutions involved in such cases make clear what restrictions apply to the ability of parties to respond arising from a CWI/LOWI procedure. For that matter, I feel it is important that researchers exercise caution in the public debate when it comes to drawing conclusions about the research integrity of others. At the same time, the standards in the Code of Conduct allow little scope for checking statements by researchers about others, as can be seen in opinion 2020-04, for example.

The duty of confidentiality is even more constrictive where, in cases that have received wide media coverage, the board, following a ruling from the CWI, reaches the conclusion that *no* breach of research integrity has taken place. In such cases it would be very much in the interests of the researcher in question that the positive ruling over him or her be made public. Yet the Regulations prevent him or her from responding while LOWI proceedings are still ongoing. The situation is further complicated because in addition to the time needed for CWI proceedings, the LOWI proceedings also take time. The LOWI is aware of this, but is bound to the formal time limits laid down in the Regulations.

The board of an institution may also experience the duty of confidentiality as unnecessarily constrictive. This situation occurs in particular where the board, based on the opinion of the CWI, reaches the conclusion that there has indeed been a breach of research integrity, and to such an extent that with regard to general public interests (for example public health) or in the interests of science, this preliminary ruling should be communicated to third parties. In the case that led to opinion 2020-10, the Executive Board of a university published the CWI opinion with its preliminary ruling on its website right away and communicated it to third parties, including the new employer of the person in question and journal editors. As a consequence the identity of the researcher in question soon became known. The LOWI felt that it is in the interests of an institutional board to prevent breaches of research integrity wherever possible, and that it should therefore be able to take measures. However, when taking measures against or concerning a researcher, a board must take its duty of confidentiality into account until the final ruling has been made, unless there are compelling interests that make it impossible to wait that long. An example of compelling interests is

where a person's health is at risk. In this case the LOWI did not feel that there was a sufficiently compelling interest.

As long as the duty of confidentiality exists, the LOWI will continue to uphold it, even though it acknowledges that under certain circumstances there may be tension between a duty of confidentiality and other justified interests.

The year 2020 may rightly be called an exceptional year. All but two of the LOWI meetings and the pre-consultations in the so-called chairpersons meeting took place online. But even more important was the fact that Roel Fernhout stood down as chairperson of the LOWI on 28 May 2020. Roel Fernhout was chairperson of the LOWI for five and a half years. Under his inspirational leadership and drawing on his experience as National Ombudsman and his knowledge of the rules of the right of complaint, he was able to ensure a strengthening of the legal and procedural foundation that underpins the opinions of the LOWI. He also ensured that there is far more clarity than before on the content of the standards that are used to determine whether there is a case of a breach of research integrity. It is partly due to his efforts that the number of institutions affiliated to the LOWI has grown so strongly. He also ensured that the members of the LOWI now enjoy the support of an excellent secretariat that has proved invaluable for the smooth operation of the LOWI in its rulings. The LOWI owes him a great debt of gratitude.

Dr E.J. Daalder, chairperson

1. Composition of the LOWI in 2020

In 2020, the advisory committee of the LOWI (hereinafter: the LOWI) had the following members:

Prof. R. Fernhout, chairperson (<i>until 28 May 2020</i>)	administrative law
Dr. E.J. Daalder, chairperson (<i>as of 3 June 2020</i>)	administrative law
Prof. W.J. Zwolve, deputy chairperson	historical development of the law
Prof. L. Lechner	health psychology
Prof. J.W.M. van der Meer (<i>until 1 September 2020</i>)	internal medicine
Prof. J.P. Hogendijk	history of mathematics
Prof. J.G. van Erp	public institutions
Dr J. Tijdink	psychiatry
Prof. H.G. Brunner (<i>as of 1 September 2020</i>)	genetics

The LOWI is assisted in its work by a secretariat. In the year under review, J.C. Zweistra was the official secretary, and A. Muller the assistant. As of 1 July 2020, P. Ordodi holds the position of legal secretary.

2. LOWI's status

The LOWI is governed by LOWI Foundation. The foundation also publishes an annual report. For more information on the foundation, we refer to this report.

3. LOWI's tasks

Advising the Boards of affiliated institutions

The LOWI advises the Board of an affiliated organisation on a ruling (or a provisional ruling) of that Board concerning an alleged violation of research integrity. The LOWI does not advise on its own initiative, but only in response to an admissible petition to that effect. The opinions issued by the LOWI are not binding, but are generally complied with. Although the opinions are not binding, they do entail obligations. Where a Board decides not to comply with a LOWI opinion, it must give reasons for this in the final ruling. If the LOWI does not further consider a petition, it declares a petition inadmissible and does not issue an opinion to the Board. Strictly speaking, these decisions are therefore not opinions, but are also included as 'opinions' in the figures in Section 6 of this annual report in order to provide the most complete picture possible of the work carried out by the LOWI in 2020.

Knowledge transfer

In 2020, the LOWI also contributed to meetings concerning research integrity:

- 30 November and 7 December 2020 – Eric Daalder acted as speaker at a workshop (webinar) of the Government as part of the Week on Integrity. He spoke about policy research and research integrity.

LOWI international

The LOWI is a member of the European Network of Research Integrity Offices (ENRIO). The aim of the network is to promote an international debate on research integrity. Via the website of ENRIO – www.enrio.eu – other ENRIO members, as well as interested parties, have access to information on the establishment, advisory role and procedure of the LOWI. All affiliated institutions have an individual web page containing information on their organisation. The LOWI also provides information on its advisory role and procedure to countries outside this network.

4. LOWI-affiliated institutions

An increasing number of institutions have joined the LOWI in the years since it was founded. In 2020, the institutions affiliated with the LOWI were:

- the founders KNAW, NWO and VSNU and their institutes
- the public and special universities, including the University Medical Centres and the Open University
- Sanquin Blood Supply Foundation
- University of Humanistic Studies
- National Institute for Public Health and the Environment (RIVM)
- Wageningen Research Foundation
- Netherlands Institute for Health Services Research (NIVEL)
- Theological University of Apeldoorn (TUA)
- Kampen Theological University (TU Kampen)
- Protestant Theological University (PThU)
- Amsterdam School of Real Estate (ASRE)
- Princess Máxima Centre for Paediatric Oncology
- Royal Netherlands Meteorological Institute (KNMI)
- Nyenrode Business University (NBU)
- Research and Documentation Centre (WODC)
- CPB Netherlands Bureau for Economic Policy Analysis *affiliated since 1 July 2020*
- PBL Netherlands Environmental Assessment Agency *affiliated since 1 July 2020*
- Netherlands Institute for Social Research (SCP) *affiliated since 1 July 2020*
- The Netherlands Association of Universities of Applied Sciences (Vereniging Hogescholen) *affiliated since 1 July 2020*
- ZonMw *affiliated since 1 July 2020*

5. Website and press

The anonymised opinions issued by the LOWI are published on the website (www.lowi.nl), along with a summary of these opinions. The summaries also report the rulings taken by the Boards after receiving the LOWI's opinions. The summaries are translated into English and published on the English version of the website. The LOWI decisions in which a petition is declared inadmissible and not further considered are also published on the website. Decisions on any complaints concerning the LOWI are also published on the website.

The LOWI is regularly contacted by the press or third parties. The LOWI answers general questions from third parties to the best of its ability. However, in view of the LOWI's duty of confidentiality as described in Article 4 of the LOWI Regulations 2018, we operate on the

principle that the LOWI does not provide information on whether an issue is (or has been) pending with the LOWI.

The LOWI in (scientific) publications:

- Hans Hofhuis, 'Het gebruik van geanonimiseerde verklaringen in en buiten rechte', Nederlands Juristenblad, 4-12-2020, afl. 42, p. 3229-3234.

6. Overview of petitions submitted and settled in 2020

Number of petitions in 2020

In 2020, the LOWI had a total of 32 petitions awaiting settlement or further consideration. The breakdown is as follows: 2020 began with a backlog of 8 petitions submitted and considered in 2019 but not yet settled by the end of 2019. In addition, the LOWI received a total of 24 new petitions in the course of 2020.

Number of opinions and decisions issued in 2020

In 2020, 23 petitions were settled in full and published on the website. This resulted in 22 LOWI opinions and decisions (2020-01 concerns two merged files). The breakdown of this figure of 22 petitions settled in full is as follows: In 15 cases, the LOWI issued a substantive opinion to the Board concerned. In one case (2020-04), the petition resulted in a LOWI decision to declare the petition manifestly unfounded and to not consider the petition. In five cases (2020-03, 05, 06, 12, and 13) the petition resulted in a LOWI decision to not (further) consider the petition and declare the petition inadmissible. Two cases (2020-09 and 15) concerned petitions for review of a previous LOWI decision or opinion. These petitions were rejected.

Number of withdrawals: 2

Boards involved in 2020

The petitions settled in 2020 involved Boards of the following institutions:

Institution	Number of cases	Number 2020 -
Erasmus University Rotterdam	1	19
Radboud University Nijmegen	1	22
University of Groningen	2	07, 11
University of Amsterdam	1	08
Leiden University	2	01, 10
Maastricht University	6	05, 06, 17, 18, 20, 21
UMC Utrecht	3	02, 03, 14
Utrecht University	1	04
University of Twente	1	13
VU Amsterdam	2	01, 16
Wageningen University	1	12

Expert opinions in 2020: no external experts consulted

Hearings in 2020: 1

Due to the COVID-19 measures in 2020, the LOWI has not been able to hold physical hearings. In order to overcome this, the LOWI has asked written questions to the parties in two cases (2020-08 and 2020-14) to replace a hearing. In case 2020-19, a digital hearing was conducted using video calling.

Length of the LOWI procedure in 2020

The LOWI's procedures took between four (minimum) and 46 weeks (maximum), from receipt of the petition by the LOWI to the relevant opinion or decision issued by the LOWI. On average, a LOWI procedure took approximately 23 weeks. This is five weeks shorter than the average in 2019.

Number of cases upheld

Of the 15 cases in which the LOWI issued an opinion to the Board concerned, the LOWI declared 9 cases wholly or partly well-founded. The remaining 6 cases were declared unfounded.

Final rulings of the Boards

Of the 15 cases in which the LOWI issued an opinion to the Board, the Board fully followed the LOWI in its final ruling 11 times. In 3 cases, the LOWI was partly followed. In 1 case, it was not yet clear at the time of writing this annual report whether the LOWI was followed or not.

Opinions of the LOWI

The LOWI's full opinions are published on the website www.lowi.nl and provided with a summary.

7. Summary table

The table below presents the most relevant figures from Section 6 of this report:

2020	
Total number of petitions:	32
Total number of petitions settled:	23
- ruling on submission requirements	7
- ruling on substance	16
Total number of opinions/decisions issued:	22
- number of these published	22
Average length of procedure	23 weeks

The tables from previous years:

2019	
Total number of petitions:	34
Total number of petitions settled:	25
- ruling on submission requirements	7
- ruling on substance	18
Total number of opinions/decisions issued:	25
- number of these published	25
Average length of procedure	28 weeks

2018	
Total number of petitions:	34
Total number of petitions settled:	20
- ruling on submission requirements	4
- ruling on substance	16
Total number of opinions/decisions issued:	20
- number of these published	20
Average length of procedure	21 weeks

2017	
Total number of petitions:	20
Total number of petitions settled:	14
- ruling on submission requirements	3
- ruling on substance	11
- withdrawn	1
Total number of opinions/decisions issued:	14
- number of these published	14
Average length of procedure	23 weeks

2016	
Total number of petitions:	26
Total number of petitions settled:	18
- ruling on submission requirements	4
- ruling on substance	14
Total number of opinions/decisions issued:	18
- number of these published	16
Average length of procedure	29 weeks

2015	
Total number of petitions:	25
Total number of petitions settled:	15
- ruling on submission requirements	4
- ruling on substance	11
Total number of opinions/decisions issued:	14
- number of these published	12
Average length of procedure	25 weeks