OUTLINE PROTOCOL BETWEEN

UNIVERSITY COLLEGE LONDON
&
CAMDEN and ISLINGTON MENTAL HEALTH AND
SOCIAL CARE TRUST

PERTAINING TO THE JOINT EMPLOYMENT OF
CLINICAL ACADEMIC STAFF
OUTLINE PROTOCOL BETWEEN UNIVERSITY COLLEGE LONDON AND CAMDEN and ISLINGTON MENTAL HEALTH AND SOCIAL CARE TRUST PERTAINING TO THE JOINT EMPLOYMENT OF CLINICAL ACADEMIC STAFF

Protocol Overview

1. The following general principles and procedure are the result of agreement between University College London (UCL) and Camden and Islington Mental Health and Social Care Trust (hereinafter called "the Trust") concerning UCL clinical academic staff who hold honorary NHS contracts and is a framework for co-operation between UCL and the Trust as joint employers of the clinical academic staff.

General Principles

2. The substantive academic contract and the NHS honorary contract are both contracts of employment. The clinical academic will therefore have two employers, each of whom will have obligations to the employee under its respective contract of employment and arising (for example under statute) from the employment relationship generally.

3. However, UCL and the Trust recognise that as far as possible those separate employment relationships should be regarded as a whole, reflecting the fact that the performance of the clinical duties under the honorary NHS contract is essential for the full and proper performance of the duties under the substantive academic contract.

4. UCL and the Trust should therefore seek to ensure joint co-operation in their dealings with the member of clinical academic staff, in particular with regard to issues of appraisal, review, job planning, dismissal and discipline.

Contracts of Employment

5. UCL and the Trust will seek to ensure that their contracts (honorary or substantive) contain provisions which facilitate such joint co-operation and shall discuss on a regular basis the contents of the contracts which each will issue to clinical academics.

Disciplinary and other Procedures

6. UCL and the Trust acknowledge that as employers of the clinical academic member of staff, each may wish, during the employment of the clinical academic concerned, to take action (whether in terms of dismissal or action falling short of dismissal) in respect of matters such as:

   (a) misconduct or alleged misconduct

   (b) performance of the duties of employment to a satisfactory standard

   (c) assessing medical fitness to undertake all or part of the duties of employment (including consideration of the making of reasonable adjustments under the Disability Discrimination Act 1995 where the obligation to make such adjustments applies)

   (d) attendance

   (e) redundancy or other re-organisation

7. UCL and the Trust acknowledge that each has the procedures detailed in Annex A of this Protocol, for determining such issues in respect of its relationship with the member of clinical academic staff.
8. UCL and the Trust acknowledge that:

a) there may be occasions on which UCL has grounds for considering such action under its appropriate procedure(s), and the Trust does not (and vice versa);

b) there may be occasions on which UCL has grounds for considering such action under its appropriate procedure(s) and the Trust also has grounds for considering action against the same employee under its own appropriate procedure(s); and

c) that if UCL or the Trust terminates the substantive or honorary contract (as the case may be), the other will need to consider whether, in the light of that termination, the remaining contract can be continued or ought to be terminated

d) and that, while each case will need to be considered on its own facts, it is appropriate for UCL and the Trust to agree in general terms a framework for the handling of such matters.

9. UCL and the Trust therefore agree that:

a) the following issues of conduct are matters which would ordinarily fall to be dealt with under UCL disciplinary procedure(s); all matters relating to a failure to adequately discharge the academic duties defined in a clinical academic's integrated job plan; all matters relating to the satisfactory conduct of a clinical academic in the execution of their academic duties. Examples of behaviour that may be viewed as unacceptable to UCL and those that may be viewed as Gross Misconduct are as follows (this is not an exhaustive list):

   - **Unacceptable Behaviour**: matters relating to poor performance not being dealt with under UCL's Capability Procedure, poor attendance not being dealt with under UCL's Sickness Absence Policy, unauthorised absence, refusal to undertake reasonable management requests, failure to deal with colleagues and students appropriately.

   - **Gross Misconduct**: serious negligence resulting in unacceptable loss, damage or injury; intentional serious breach of UCL policy or regulations or improper conduct in relation to job responsibilities; bringing UCL into serious disrepute; serious breach of UCL policy on Harassment and Bullying; theft, fraud or deliberate falsification of records or UCL documents; assault or attempted assault of a physical or sexual nature; malicious damage to UCL property; deliberate refusal to comply with reasonable instructions or requests made by a line manager within the work place; a breach of health and safety rules which places a member of staff or others in danger; intentional misuse of confidential information; fraudulent misuse of the UCL’s property or name; unauthorised entry to computer records or inappropriate use of UCL data or computing equipment.

   Conviction of a criminal offence outside the workplace and normal working hours may be deemed as gross misconduct depending on the nature of the offence, its relevance to the individual's employment and the sentence incurred. See UCL's policy on the recruitment of staff with criminal convictions and the use of criminal record checks which can be found at http://www.ucl.ac.uk/hr/docs/criminal_record.php.

b) the following issues of conduct are matters which would ordinarily fall to be dealt with under the Trust's disciplinary procedure(s)

   1) Timekeeping
   2) Absence
   3) Health and Safety
   4) Abuse of Facilities

- template Protocol agreed and issued to NHS Trusts by Department of Health – Maintaining high professional standards in the modern NHS: Guidance on Clinical Academics 27 April 2004
5) Discrimination/Harassment/Victimisation
6) Misconduct
7) Contravention of codes of conduct
8) Gross Misconduct e.g.
   - theft; fraud; deliberate falsification of records; fighting; assault on another
   person; deliberate damage to Primary Care Trust property; serious
   incapability through alcohol or being under the influence of illegal drugs;
   serious negligence which causes unacceptable loss, damage or injury; serious
   act of insubordination; unauthorised entry to computer records.

NB This list contains only some examples and is by no means exhaustive. In all cases
decisions about issues to be dealt with under the Trust disciplinary procedure would be
consistent with the requirements of the national templates and procedures, 'Maintaining High
Professional Standards in the Modern NHS.'

and

c) in cases where an issue of misconduct arises under both (a) and (b) above, UCL and the
Trust will need to determine on the facts of each case which procedure will take priority.

Potential Dismissal on the Grounds of Misconduct

10. Where either UCL or the Trust has grounds for considering the dismissal of a member of
clinical academic staff on the grounds of misconduct:

a) the party considering the instigation of disciplinary procedures, which may result in
disablement, shall notify the other of that fact and shall discuss with the other the
circumstances which have led it to contemplate initiating proceedings. Responsibility for
formal notification of such action will lay with the Director of Human Resources for UCL
and the Director of Human Resources for the Trust.

b) UCL and the Trust will co-operate with each other to facilitate any investigation into the
alleged misconduct.

c) UCL and the Trust shall consider whether the case is such that both parties would have
grounds for instituting disciplinary proceedings and, if that is the case, agree whether action
is to be taken under each of their appropriate disciplinary procedures and the sequence in
which those procedures shall be operated.

d) any party considering restriction of practice or exclusion from work of the clinical
academic shall advise the other of its proposal to restrict or suspend and discuss this prior
to the clinical academic being so restricted or suspended, where it is practical to do so.

e) UCL and the Trust shall liaise with each other on the steps to be taken under the
applicable disciplinary procedure or procedures, in particular as regards representation by
both employers on any disciplinary panel established under any of their applicable
procedures and the facilitation of the calling of witnesses and/or the production of
documentary evidence necessary for the purpose of determining whether misconduct has
occurred.

f) UCL and the Trust (as the case may be) shall keep the other informed of the progress
and outcome of their respective procedures, including of any appeal.

11. While UCL and the Trust shall co-operate with each other as described above, each
acknowledges that the other has the ultimate right to determine whether or not disciplinary
proceedings should be instigated, to determine whether misconduct has occurred and, if so, whether dismissal is the appropriate sanction to be applied on the facts of that case. Representation of the Trust on UCL’s disciplinary panels (and vice versa) does not mean that that the Trust’s representative is deciding whether the Trust’s contract with the member of staff concerned is to be terminated (and vice versa).

Joint Appraisal

12. UCL and the Trust shall agree procedures for the joint appraisal of members of clinical academic staff and ensure that such arrangements are referred to in the terms of the substantive and honorary contracts issued to the member of staff.

Dismissal on Performance, Absence or Ill-Health Grounds

13. In the event that either the Trust or UCL considers that there are grounds for considering the dismissal of a member of clinical academic staff on the grounds of performance, absence or health grounds, each will advise the other of that fact (responsibility for formal notification of such action will lay with the UCL Director of Human Resources and the Trust Director of Human Resources) and shall discuss:

a) whether action is to be taken under the procedures of UCL or the Trust or both.

In the event that both UCL and Trust procedures will be invoked, the procedure(s) of the organisation initiating consideration of dismissal will be allowed to conclude in full (and will be taken into consideration) by the remaining employer prior to any final decision being made to invoke their own procedures.

b) whether it is appropriate to consider the restriction of practice or exclusion from work of the member of staff concerned in relation to either the academic or clinical duties or both. Any party considering restriction of practice or exclusion from work of the clinical academic member of staff shall advise the other if its proposal to restrict or exclude and discuss this prior to the clinical academic member of staff being restricted or excluded where it is practical to do so; and

c) (in cases of sickness absence, or medical incapacity) whether it is necessary to obtain a medical report from an Occupational Health adviser or from an independent medical expert on the ability of the employee to perform the duties of his/her employment. UCL and the Trust shall discuss the questions/issues to be raised with such a medical adviser, in particular any issues arising under the Disability Discrimination Act 1995, including any duty to make reasonable adjustments.

14. UCL and the Trust shall keep each other advised of the actions taken under their applicable procedures, including the outcome of any appeal.

15. While UCL and the Trust shall co-operate with each other as described above, each acknowledges that the other has the ultimate right, in relation to any matter being dealt with under its procedures, to determine whether or not to dismiss the member of staff concerned. Representation of the Trust at a UCL panel (and vice versa) does not mean that that representative is deciding whether the Trust’s contract with the member of staff concerned is to be terminated (and vice versa).

Dismissal on the grounds of redundancy or re-organisation

16. In the event that either the Trust or UCL is contemplating the dismissal for redundancy or other re-organisational reasons of any member of clinical academic staff it shall advise the other of this fact and shall keep the other regularly informed of the action being taken in this respect.
Other general provisions regarding co-operation

17. UCL and Trust shall ensure that:

a) their respective procedures provide that, while either UCL or the Trust's disciplinary procedure is being applied to a member of clinical academic staff, that individual may not bring any complaint relating to those proceedings under the grievance procedure of the other employer (ie of the Trust or UCL, as the case may be).

b) rights of appeal will be confined solely to the procedure which is being implemented and individual employees may not appeal across procedures to the other party (ie UCL or the Trust as the case may be).

c) their contracts of employment and procedures are as far as possible sufficient to allow the disclosure of information from one to the other (in particular of personal data or sensitive personal data) under the Data Protection Act 1998, whether with or without the consent of the member of staff concerned. The Trust and UCL will also discuss and agree guidelines for the disclosure of data regarding third parties, in particular data relating to patients.

18. UCL and the Trust shall review this Agreement and its operation on an annual basis or at more frequent intervals as agreed by UCL and the Trust.

19. We the undersigned accept responsibility (on behalf of the organisations we represent) to uphold the principles and working practices detailed within this Protocol and undertake to review this Agreement on an annual basis, advising the UCL Director of Human Resources of any amendments required, in a timely manner.

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