OUTLINE PROTOCOL BETWEEN UNIVERSITY COLLEGE LONDON AND UNIVERSITY COLLEGE LONDON HOSPITALS NHS FOUNDATION TRUST PERTAINING TO THE JOINT MANAGEMENT OF EMPLOYMENT RELATIONS AND ASSOCIATED MATTERS FOR EMPLOYEES SHARED BETWEEN THE STATED ORGANISATIONS

1. Protocol Overview

The following general principles and procedures are the result of agreement between University College London (UCL) and University College London Hospitals NHS Foundation Trust (hereafter called “the Trust”) in which staff substantively employed by UCL may hold an honorary appointment with the Trust (and vice versa), in order to carry out the full remit of the duties of their substantive appointment and is intended to provide a framework for co-operation between UCL and the Trust for the joint management of employment relations and associated matters for such staff, hereafter called the “shared employee(s)”. 

2. General Principles

2.1. The definition of a shared employee for the purpose of this agreement is any employee holding a substantive appointment with either UCL or the Trust and required to hold an honorary appointment with the other partner in order to undertake the full remit of the duties of their substantive appointment. Both contracts must be held concurrently.

2.2. A shared employee may hold any level of appointment at UCL and may hold any level of appointment at the Trust (medical or non-medical).

2.3. The substantive contract and the honorary contract are both contracts of employment and will include explicit reference to each other in their terms of employment. The shared employee 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. UCL and the Trust will each appoint a line manager for the shared employee to ensure the full execution and management of the employment contract.

2.4. 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 duties under the honorary contract is essential for the full and proper performance of the duties under the substantive contract as per 'Follett' principles.

2.5. UCL and the Trust will therefore seek to ensure joint co-operation in their dealings with the shared employee, in particular with regard to issues of appraisal, review, Job Planning (Consultant level staff), Work Outline agreements (non-Consultant level staff), dismissal discipline and absence management.

2.6. This Protocol applies in the first instance to UCL and its UK NHS Partner Trusts. In instances where a shared employee is required, by the nature of their shared appointment, to work outside of the UK for a period of time, the HR Directors of UCL and the Trust, will determine necessary revisions to the shared employees terms of employment in both the substantive and honorary contract and where applicable to this Protocol.
3. Recruitment of Shared Employees

UCL and the Trust will develop and keep under review joint recruitment and selection procedures for shared employees, facilitating representation of each organisation at each stage of the process. UCL and the Trust will ensure local procedures facilitate the sharing of appointment and personal details by the substantive employer to facilitate the issue of the honorary appointment. UCL and the Trust will work to develop joint induction processes for shared employees. Where these are not feasible or practicable, UCL and the Trust will ensure the shared employee attends both organisations induction programme, reporting back to each other that attendance has been recorded on their respective courses.

For Medical Consultant Level Appointments National Guidance on the Employment of Consultants needs to be followed including appropriately convened Advisory Appointment Committees.

4. Permission to Work and /or carry out duties

4.1. Under current UK Home Office regulations UCL and the Trust acknowledge that a shared employee must hold a separate CRB clearance (where required of the role) with each employer. In the event CRB clearance is denied this will be reported to the HR Director of the requesting organisation, who will advise in confidence their counterpart in the joint employing organisation.

4.2. In accordance with UK Border Agency regulations UCL and the Trust acknowledge that a shared employee of non-European Migrant status must hold the requisite authorisation to work in the UK with their substantive employer, prior to the request for an honorary appointment. Each case will be reviewed according to circumstances, and further Permission to Work may need to be sought by the honorary employer. In instances where Permission to Work in connection with a UCL appointment is declined this will be reported to UCL’s HR Director, who will advise in confidence the Trust’s Director of HR (and vice versa).

5. Contracts of Employment

UCL and the Trust will 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 shared employees.

6. Honorary Appointment outside of the initial joint recruitment processes

Where, subsequent to employment at UCL at a future date, an employee requires an honorary appointment with the Trust (and vice versa) in order to complete the full remit of their duties for their substantive employer, UCL and the Trust will from the point of issue of the honorary contract consider the individual as a shared employee and subject to the terms of this protocol.
7. Promotion

The level of UCL appointment (substantive or honorary) held by a shared employee will be determined by UCL. Any request for promotion will be considered within the appropriate UCL process. The level of clinical appointment held by a shared employee (either substantive of honorary) will be determined by the Trust and any request for promotion will be subject to Trust procedures.

8. Joint Appraisal

8.1. UCL and the Trust shall agree procedures for the joint appraisal of shared employees and ensure that such arrangements are referred to in the terms of the substantive and honorary contracts issued to the member of staff. As part of the agreement every attempt will be made to synchronise the timetable for the appraisal process.

8.2. UCL and the Trust agree to facilitate annual joint appraisals at which the following will be in attendance: shared employee, UCL line manager, NHS line manager.

8.3. In exceptional instances where joint appraisal cannot be facilitated, UCL and the Trust will conduct separate appraisals with the shared employee. The UCL and Trust appraisers will share the outcome documents of their appraisals with each other and agree the joint appraisal outcome, notifying the shared employee accordingly.

9. Revalidation

The Trust and UCL will identify shared employees eligible for revalidation via the Trust and those trainees eligible for revalidation via the relevant Deanery (ARCP). For shared employees eligible for revalidation via the Trust, the following applies:

9.1. UCL and the Trust acknowledge that a shared employee must undertake a full and recorded annual appraisal process with each employer to facilitate the Trust's authorisation and submission of the employee's application for Revalidation.

9.2. The Trust will appoint a Responsible Officer (RO) and UCL will appoint a Revalidation Lead (RL) who will jointly hold accountability for the process of revalidation for relevant shared employees.

9.3. The Trust RO will hold accountability for the Trust's sign off confirming the completion of an annual Medical Appraisal.

9.4. UCL RL will hold accountability for the University's sign off confirming the completion of an annual University appraisal.

9.5. On behalf of UCL, the UCL RL will confirm academic appraisal details to the Trust (as required) to facilitate the Trust's review and submission of revalidation applications for shared employees.

9.6. In accordance with GMC requirements, the Trust will hold responsibility for the formal sign off and submission of all revalidation applications for shared employees,
notifying UCL of submissions and the details of any shared employees where the Trust could not support submission.

9.7. Where the Trust’s RO identifies any issues or concerns regarding a shared employees’ fitness to practice or performance in their role via the annual appraisal processes, the Trust’s RO will immediately notify UCL’s RL prior to any redress under Trust policies or procedures. Similarly, UCL’s RL will notify the Trust’s RO of any issues identified via the university’s appraisal process, prior to the invocation of any UCL policies or procedures.

9.8. In the unlikely event a shared employee’s application for Revalidation has been approved with conditions or declined, the Trust’s RO will immediately notify UCL’s RL, who will refer the matter to the UCL Director of Human Resources for advice and any subsequent actions.

9.9. Any shared employee substantively employed by UCL and without a nominated Trust for revalidation purposes will be referred to the UCL RL for advice.

10. Job Planning and Work Outline document

10.1. All shared employees are subject to completing an annual process (Job Planning for Consultant level staff or Work Outline document for non-Consultant level staff) detailing the duties to be undertaken for both their substantive and honorary employers, which requires the sign-off of both the substantive and honorary employer in order to be considered authorised by both employers.

10.2. As part of the agreement between UCL and the Trust every attempt will be made to synchronise the timetable for the job planning/work outline process as well as standardise paperwork.

10.3. UCL and the Trust agree to implement local procedures to ensure the timely review and sign-off of both Job Plan and Work Outline documents, to include submission of fully authorised documentation to the UCL Human Resources Division and Trust’s Medical Staffing Office. UCL and the Trust note that the established process of Job Planning for Consultant and G.P. Clinical Academic staff will continue and will run in parallel to the new Work Outline Planning process for all other staff determined as shared employees.

10.4. The agreed Work Plan/Job Outline division of work between the organisations does not necessarily denote the agreed recharge distribution.

10.5. UCL and the Trust recognise that timely agreement and submission of the documentation is important to ensure that financial issues are dealt with in an accurate and expeditious manner.
11. Notification of changes to agreed Job Plan or Work Outline document

11.1. UCL and the Trust recognise that service needs may require changes to a shared employee Job Plan or Work Outline document, outside the usual joint annual review and agreement process. In such instances the shared employee will obtain approval for the proposed change, from both their UCL and Trust line managers. Where approval is given UCL and Trust line managers will advise of this change accordingly: UCL line managers will notify the UCL HR Consultancy Team and the NHS Billing Department; Trust line managers will notify the Trusts Medical Staffing Office. The Trust will notify UCL NHS Billing in writing of any changes, and subject to local agreements, further authorisation maybe sought from Trust Central Finance.

11.2. UCL and the Trust acknowledge it is the duty of each Organisation to ensure that the changes they have requested are followed through to ensure the amendment has been processed through the substantive Organisation’s payroll and recharge process. It is the responsibility of each Organisation to financially accrue for all known and expected charges, and to carry these forward through to each financial year until settlement, if necessary within the 6 year statutory limitation for the collection of debt.

11.3. Any incorrect or delayed change which results in payroll overpayment will be credited back through the recharge process as and when the overpayment is collected from the employee.

11.4. Subject to the completion of the annual Job Plan or Work Outline document, any pay elements, as per the employee’s contract, will be paid automatically and UCL and the Trust will be charged in accordance with the agreed funding distribution.

12. Teaching

UCL and the Trust acknowledge that at the time of signing this agreement the current national arrangements for the commission of medical education are under review. The following provisions reflect existing arrangements in place between UCL and the Trust, and will be reviewed in due course:

- UCL holds responsibility for the design, infrastructure and management of its medical education programme
- UCL and the Trust will agree (and periodically review) a Service Level Agreement governing the delivery of UCL’s medical education programme including the supply of each employer’s substantively employed staff to deliver teaching and related duties
- Trust staff will hold an honorary academic appointment at UCL to undertake teaching and related duties
- UCL and the Trust will ensure that all shared employees undertaking teaching and related duties receive the appropriate training and review
- The terms agreed in this document for the joint management of employee relations matters will apply to all shared employees undertaking teaching activities, in addition to those that maybe agreed and revised from time to time in the Service Level Agreement.
13. Research

UCL and the Trust will ensure that all shared employees holding an honorary contract to undertake research activities on human subjects, their tissue or their data comply with the all the relevant legal, regulatory and policy frameworks, including, but not limited to:

- the requirements for Research Ethics Approval
- DH Research Governance Framework
- NIHR Research Support Services
- local UCL or Trust policies pertaining to research
- the provisions for joint management of shared employees as detailed in this document

UCL and the Trust will achieve oversight of shared employees conduct of such research activities by:

- the development of Joint Committee structures for research oversight
- sharing of information about the shared employees’ research conduct
- integrated approaches to applying UCL and Trust policies and procedures pertaining to research
- consultation about performance or disciplinary policies which pertain to a shared employees conduct of research

14. Publications and Public Speaking

UCL and the Trust will ensure that shared employees holding honorary appointments with their organisation, comply with procedures governing the publication of research findings and public speaking (such as conferences) and will make provision within such procedures for the joint notification of both organisations (by the shared employee) of any intended public delivery (whether in print or other media) where both organisations are to be credited. Local procedures will facilitate the sharing of information as required and stipulate joint authorisation from both organisations is required prior to publication or public delivery of any material where credit to both organisations is noted.

15. Disciplinary and other Procedures

15.1. UCL and the Trust acknowledge that as employers of the shared employee, each may wish, during the employment, to take action (whether in terms of dismissal or action falling short of dismissal) in respect of matters such as:

15.1.1. misconduct or alleged misconduct
15.1.2. performance of the duties of employment to a satisfactory standard
15.1.3. 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 provisions of the Equality Act 2010 where the obligation to make such adjustments applies)
15.1.4. attendance
15.1.5. redundancy or other re-organisation
15.2. 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 shared employee.

15.3. UCL and the Trust acknowledge that:

15.3.1. 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)

15.3.2. 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

15.3.3. 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 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.

15.4. UCL and the Trust therefore agree that:

15.4.1. the following issues of conduct are matters which would ordinarily fall to be dealt with under UCL discipline procedure(s); all matters relating to a failure to adequately discharge the duties defined in a shared employee’s Job Plan (Consultant level staff) or Work Outline document (non-Consultant level staff); all matters relating to the satisfactory conduct of a substantive UCL employee in the execution of their university 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 and may be amended from time to time):

**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 workplace; 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; serious breach of NHS Trust policies and/or procedures concluding with the withdrawal (by the Trust) of the employee's honorary appointment, with such a breach rendering the employee unable to attain a further honorary appointment with another NHS Trust.

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

15.4.2. the following issues of conduct are matters which would ordinarily fall to be dealt with under the Trust's disciplinary procedure(s) [Trust to give details]; and

15.4.3. in cases where an issue of misconduct arises under both 15.4.1 and 15.4.2 above, UCL and the Trust will need to determine on the facts of each case which procedure will take priority.

16. Potential Dismissal on the Grounds of Misconduct

16.1. Where either UCL or the Trust has grounds for considering the dismissal of a shared employee on the grounds of misconduct:

16.1.1. the party considering the instigation of disciplinary procedures, which may result in dismissal, 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.

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

16.1.3. 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 respective disciplinary procedures and the sequence in which those procedures shall be operated.

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

16.1.5. 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.
16.1.6. 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.

16.1.7. In cases that involve medical staff undertaking NHS duties the Maintaining High Professional Standards Framework needs to be adhered to.

16.2. 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 the Trust’s representative is deciding whether the Trust’s contract with the member of staff concerned is to be terminated (and vice versa).

17. Dismissal on Performance, Absence or Ill-Health Grounds

17.1. In the event that either the Trust or UCL considers the dismissal of a shared employee on the grounds of performance, absence or health, 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:

17.1.1. 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. However, where possible joint proceedings should take place.

17.1.2. whether it is appropriate to consider the restriction of practice or exclusion from work of the shared employee concerned in relation to either their substantive or honorary duties or both. Any party considering restriction of practice or exclusion from work of the shared employee shall advise the other of its proposal to restrict or exclude and discuss this prior to the shared employee being restricted or excluded, where it is practical to do so.

17.1.3. 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 shared 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 provisions of the Equality Act 2010, including any duty to make reasonable adjustments.

17.1.4. In cases that involve medical staff the Maintaining High Professional Standards Framework needs to be adhered to.
17.2. UCL and the Trust shall keep each other advised of the actions taken under their applicable procedures, including the outcome of any appeal.

17.3. 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 the representative is deciding whether the Trust's contract with the member of staff concerned is to be terminated (and vice versa).

18. Dismissal of shared employee(s) on the grounds of redundancy or re-organisation

In the event that either the Trust or UCL is contemplating the dismissal for redundancy or other re-organisational reasons of a shared employee or employees, it shall advise the other of this fact at its earliest opportunity, and prior to commencing its formal consultation process. The organisation taking action shall keep the other regularly informed of the action being taken in this respect.

19. Cessation of UCL and/or Trust services or business function

UCL and the Trust agree to provide each other with adequate notice of any proposed review and/or formal consultation process, in which their shared employees work. Each organisation’s procedure will facilitate representation of the partner employer, as required. Where redundancy of any shared employee results, UCL and the Trust agree that each will consult the other in relation to the proposed date of termination before notice of termination of employment is served.

20. Payment for honorary duties

UCL and the Trust agree that all honorary duties undertaken will be facilitated within a shared employee’s Job Plan or Work Outline document. There will be no additional payment made to the shared employee for undertaking honorary activities by either UCL or the Trust.

21. UCL and Trust Recharges

UCL and the Trust agree to adhere to the terms of the HMRC Memorandum of Understanding ‘Joint Staff of Universities and NHS Organisations’, March 2007 (http://www.doh.gov.uk/doh) in respect of the VAT treatment of recharges for shared staff.

Any future changes in VAT regulations affecting the VAT treatment of salary recharges will be reviewed and their impact assessed at the time, which may require amendments to this agreement. It is recognised by UCL and the Trusts that each organisation is obliged to comply with relevant VAT legislation and guidance in ensuring its own VAT affairs are in good order with HMRC.
22. Employment Tribunals

22.1. UCL and the Trust acknowledge that whilst each has a legally independent contract of employment with a shared employee, those contracts are treated as interdependent in the joint management of the employee by both organisations. UCL and the Trust acknowledge that as joint employers, each could be asked to respond to a Tribunal claim submitted against the other (either in writing or called in person).

22.2. In such occurrences, UCL and the Trust agree to discuss estimated costs (legal or otherwise) to be incurred by the partner organisation against whom the claim has not been submitted. Where applicable the named partner may agree to cover or contribute to such costs. All such incidences will be referred to both UCL and the Trust’s Director of Human Resources, for discussion and agreement.

23. Other general provisions regarding co-operation

23.1. UCL and Trust shall ensure that:

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

23.1.2. rights of appeal will be confined solely to the procedure which is being implemented and shared employees may not appeal across procedures to the other party (i.e. UCL or the Trust, as the case may be).

23.1.3. 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.

23.1.4. in the unlikely event of serious dispute between UCL and the Trust regarding the management of employee relations and/or associated matters concerning a shared employee or employees, both organisations agree to participate in a process of mediation to aid resolution. Where resolution is not achievable and deadlock is determined, the organisation with which the shared employee is legally determined to hold their substantive contract will decide the further actions to be taken. Both UCL and the Trust agree to abide by the substantive employer’s decision.

23.2. 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.
24. Agreement

24.1. 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.

24.2. Additionally, we nominate our respective Director of Human Resources to be the appropriate representative of our organisation for discussion, agreement and signatory for any further employee relation protocols underpinning the principles and agreed working practices detailed within this document.

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<td><strong>University College London</strong></td>
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<td>Print Name:</td>
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- template Protocol agreed and issued to Universities by UCEA - Follett Report - Implementation – Appendix 2:
  Outline Protocol Between University and Trust December 2003
- 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