

The Newcastle upon Tyne Hospitals NHS Foundation Trust

Joint Protocol between Newcastle University and Newcastle upon Tyne Hospitals NHS Foundation Trust

Effective: March 2011

Review: March 2013

1. Introduction

The following general principles and procedure are the result of agreement between the University and the Trust in which University clinical academic staff may hold honorary NHS contracts and is intended to provide a framework for co-operation between University and Trust as employers of the clinical academic staff.

2. General Principles

- 2.1 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.
- 2.2 However, the University 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.
- 2.3 The University and the Trust 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, dismissal and discipline.

3. Contracts of Employment

The University 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 clinical academics.

4. Disciplinary and other Procedures

- 4.1 The University 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 Equality Act 2010 where the obligation to make such adjustments applies)
- d) attendance
- e) redundancy or other re-organisation

4.2 The University and the Trust acknowledge that each has the following procedures for determining such issues in respect of its relationship with the member of clinical academic staff:-

University	Trust
Discipline, Dismissal and Removal from Office Procedure	Disciplinary Procedure
Capability/ Improving Performance Procedure	Capability Procedure to address concerns regarding competence of medical and dental staff
Sickness absence management procedure	Employee Wellbeing Policy
Medical/ill health retirement Procedure (Removal for Incapacity on Medical Grounds)	
Dignity at Work and Study - Code of Practice for Staff and Students	Dignity and Respect at Work
Procedures in relation to research misconduct, consultancy and conflict of interest	Corporate Governance Standards of Business Conduct
Policy on internet use	Internet Policy E-mail Security Policy
Policy on Leave of absence	Annual Leave and Bank Holidays Policy
Redundancy Policy and Procedure	Redundancy and Organisational Change Policy

Please note these lists are not exhaustive.

4.3 The University and the Trust acknowledge that:

- a) there may be occasions on which the University 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 the University 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 the University 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 the University and the Trust to agree in general terms a framework for the handling of such matters.

4.4 The University and the Trust therefore agree that:

- a) the following issues of conduct are matters which would ordinarily fall to be dealt with under the University's disciplinary procedure(s);
 - Matters concerned with research misconduct, or other academic misconduct, including alleged misconduct
 - Unsatisfactory performance (including attendance) in relation to academic work
 - Medical fitness to undertake academic duties
 - Inappropriate use of University facilities or services
 - Any general conduct or action that may bring or be deemed to bring the University into disrepute
- b) the following issues of conduct are matters which would ordinarily fall to be dealt with under the Trust's disciplinary procedure(s); and
 - Matters concerned with clinical misconduct, or alleged misconduct
 - Unsatisfactory clinical performance or competence
 - Inappropriate use of Trust facilities or services
 - Any general conduct or action that may bring or be deemed to bring the Trust into disrepute
- c) in cases where an issue of misconduct arises under both (a) and (b) above, the University and the Trust will determine on the facts of each case which procedure will take priority. **The lists under 4.4 a) and 4.4 b) are not exhaustive.**

5. Potential Dismissal on the Grounds of Misconduct

5.1 Where either the University 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 shall notify the other of that fact. In the first instance the Faculty of Medical Sciences PVC and or Dean of Clinical Medicine and the Medical Director of the Trust should be advised, they in turn must then advise their respective Human Resources Managers and shall discuss with the other the circumstances which have led it to contemplate initiating proceedings.
- b) the University and the Trust will co-operate with each other to facilitate any investigation into the alleged misconduct. Wherever possible any appropriate investigations will be undertaken jointly with a representative from both the University and the Trust. That the report of the investigation and all documentation submitted as part of the investigation including witness statements will be available to both employers to determine what if any further action is required.
- c) the University 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/exclude and discuss this prior to the clinical academic being so restricted or suspended, where it is practical to do so.
- e) the University 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) the University 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.

5.2 While the University 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

the University'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).

6. Joint Appraisal

The University and the Trust agree that all clinical academics will participate in joint appraisal with the appropriate representatives from both the University and the Trust. That copies of the appraisal documentation will be provided by the appraisee to the appraisers and to the appraisee's Head of School/ Director of Institute. Reference to joint appraisal will be in the terms of the substantive and honorary contracts issued to the member of staff.

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

7.1 In the event that either the Trust or the University 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. In the first instance the Faculty of Medical Sciences PVC and or Dean of Clinical Medicine and the Medical Director of the Trust should be advised, they in turn must then advise their respective Human Resources Managers and shall discuss:

- a) whether action is to be taken under the procedures of the University or the Trust or both (and if both, which procedure shall take priority);
- 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) agreement to be reached on which employers procedure will be followed and 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. The University and the Trust shall discuss the questions/issues to be raised with such medical adviser, in particular any issues arising under the Equality Act 2010, including any duty to make reasonable adjustments. Any medical information received by either the Trust or University Occupational Health Units will be shared with both employers, having the member of staffs consent to do this should avoid the need for separate medical reports for each employer.

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

7.3 While the University 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 on the University 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).

8. Dismissal on the grounds of redundancy or re-organisation

In the event that either the Trust or the University 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. Funding issues around this would be dealt with on a case by case basis between the University and the Trust.

9. Other general provisions regarding co-operation

The University and Trust shall ensure that:

- a) their respective procedures provide that, while either the University's 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 (i.e. of the Trust or the University, 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 (i.e. the University or the Trust as the case may be).
- c) that 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 the University will also discuss and agree guidelines for the disclosure of data regarding third parties, in particular data relating to patients.

10. Monitoring

Compliance with this policy will be monitored by representatives of the Trust and Newcastle University on an annual basis to assess the continued suitability of this agreement. Representatives of the Trust and Newcastle University will identify appropriate action plans to address any areas of concern and will continue to monitor the plan until its completion.

Author: Director of Human Resources

**THE NEWCASTLE UPON TYNE HOSPITALS NHS FOUNDATION TRUST
IMPACT ASSESSMENT – SCREENING FORM A**

This form must be completed and attached to any procedural document when submitted to the appropriate committee for consideration and approval.

Policy Title:	Joint Protocol between Newcastle University and Newcastle upon Tyne Hospitals NHS Foundation Trust	Policy Author:	Karen Pearce – Senior HR Manager (Projects)
		Yes/No?	You must provide evidence to support your response:
1.	Does the policy/guidance affect one group less or more favourably than another on the basis of the following: (* denotes protected characteristics under the Equality Act 2010)	No	Policy applies to all Newcastle University clinical academic staff holding honorary NHS contracts. It is underpinned by Trust's overriding policy on Equal Opportunities
	• Race *	No	}
	• Ethnic origins (including gypsies and travellers)	No	}
	• Nationality	No	}
	• Gender *	No	}
	• Culture	No	As above
	• Religion or belief *	No	}
	• Sexual orientation including lesbian, gay and bisexual people *	No	}
	• Age *	No	}
	• Disability – learning difficulties, physical disability, sensory impairment and mental health problems *	No	}
	• Gender reassignment *	No	}
	• Marriage and civil partnership *	No	}
2.	Is there any evidence that some groups are affected differently?	No	
3.	If you have identified potential discrimination which can include associative discrimination i.e. direct discrimination against someone because they associate with another person who possesses a protected characteristic, are any exceptions valid, legal and/or justifiable?	No	
4(a).	Is the impact of the policy/guidance likely to be negative? <i>(If "yes", please answer sections 4(b) to 4(d)).</i>	No	
4(b).	If so can the impact be avoided?	NA	
4(c).	What alternatives are there to achieving the policy/guidance without the impact?	NA	
4(d).	Can we reduce the impact by taking different action?	NA	

Comments:	Action Plan due (or Not Applicable):
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Name and Designation of Person responsible for completion of this form: Karen Pearce – Senior HR Manager (Projects) Date: 09/03/2011

Names & Designations of those involved in the impact assessment screening process: CPG
(If any reader of this procedural document identifies a potential discriminatory impact that has not been identified on this form, please refer to the Policy Author identified above, together with any suggestions for the actions required to avoid/reduce this impact.)

For advice on answering the above questions please contact Frances Blackburn, Head of Nursing, Freeman/Walkergate, or, Christine Holland, Senior HR Manager. On completion this form must be forwarded electronically to Steven Stoker, Clinical Effectiveness Manager, (Ext. 24963) steven.stoker@nuth.nhs.uk together with the procedural document. If you have identified a potential discriminatory impact of this procedural document, please ensure that you arrange for a full consultation, with relevant stakeholders, to complete a Full Impact Assessment (Form B) and to develop an Action Plan to avoid/reduce this impact; both Form B and the Action Plan should also be sent electronically to Steven Stoker within six weeks of the completion of this form.