

Joint Protocol

Dismissal, Discipline, Suspension and Other Procedures Applicable for Clinical Academic Staff

Barts and The London 
NHS Trust

 Queen Mary
University of London

September 2009

Joint Protocol: Dismissal, Discipline, Suspension and Other Protocols for Clinical Academic Staff

Introduction

- 1 The following Joint Protocol (hereafter called “the Protocol” is the result of agreement between Queen Mary, University of London (hereafter called “the College”) and Barts and The London NHS Trust (hereafter called “the Trust”) in which College-employed medical and dental clinical academic staff (hereafter called “clinical academic staff”) may hold honorary NHS contracts, and is intended to provide a framework for co-operation between the College and the Trust as employers of the clinical academic staff.
- 2 This document takes into account revisions to the honorary and substantive contracts recommended in respect of the new disciplinary framework for doctors and dentists in the NHS, Maintaining High Professional Standards in the Modern NHS, as agreed in February 2005 by the Department of Health, British Medical Association and British Dental Association.
- 3 On behalf of the Consultant Contract Programme Board, responsibility for the review, amendment, implementation and adherence to the terms detailed in the Protocol lies with the representatives of the employing organisations, identified in point 35 below.

General Principles

- 4 The substantive academic contract and the honorary NHS 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 under College statute or from the employment relationship generally.
- 5 However, the College 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.
- 6 The College and the Trust will therefore:

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- i seek to ensure joint co-operation in their dealings with members of clinical academic staff, in particular with regard to issues of dismissal, discipline, suspension from duties, capability, and probation;
 - ii seek to ensure that their contracts (honorary or substantive) contain provisions which facilitate such joint co-operation and shall regularly discuss the contents of the contracts issued to clinical academics;
 - iii inform all clinical academics in writing of the procedure(s) under which their conduct, capability and dismissal would be considered (as amended to incorporate the Maintaining High Professional Standards framework), placing a copy of the written notification on each individual's HR record;
 - iv grant clinical academics reasonable time off work to facilitate their full participation in dismissal, disciplinary, suspension, capability and probation procedures irrespective of whether such procedures are instigated by either the substantive or honorary employer;
 - v publish the Protocol, including on both College and Trust intranet sites.
- 7 The College and the Trust acknowledge that, if either 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 College and the Trust to agree in general terms a framework for the handling of such matters.
- 8 The College and the Trust acknowledge that as employers of clinical academics, each may wish, during a clinical academic's employment, to take action (whether in terms of dismissal or action falling short of dismissal) in respect of matters such as:
- i misconduct;
 - ii capability of performing the duties of the post to a satisfactory standard;
 - iii assessing medical fitness to undertake all or part of the duties of employment (including consideration of the making of reasonable adjustments under the Disability

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- Discrimination Act 1995, where the obligation to make such adjustments applies);
 - iv redundancy or other re-organisation, including the end of a fixed-term contract;
 - v dismissals relating to probation, statutory bar and any other substantial reason;
 - vi dismissals relating to retirement.
- 9 Wherever possible, any minor issues relating to conduct and capability should be dealt with by remedial action before recourse is made to formal procedures.
- 10 Action may be taken relating to a clinical academic by either the substantive employer or the honorary employer. In either case, the employer will act in accordance with its procedures (which will in the case of the Trust be consistent with the “Maintaining High Professional Standards in the Modern NHS” framework).
- 11 The College and the Trust acknowledge that:
- i there may be occasions on which the College has grounds for considering such action under its appropriate procedure(s), and the Trust does not (and vice versa);
 - ii there may be occasions on which the College 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).
- 12 The College and the Trust acknowledge that each has procedures for determining such issues in respect of its relationship with the member of clinical academic staff. These are listed in Appendix A.
- 13 The College and Trust shall ensure that their respective procedures provide that, while either the College's or the Trust's procedures are 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 College, as the case may be). They will also ensure that rights of appeal will be confined solely to the procedure which is being implemented and individual

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employees may not appeal across procedures to the other party (i.e. the College or the Trust as the case may be).

Determining the Leading Employer on Matters of Discipline

- 14 The College and the Trust agree that whilst either may take disciplinary action in respect of conduct of a clinical academic, and that both may take disciplinary action in respect of the same conduct, the following guidelines will assist parties in determining which employer will usually take such action.
- 15 The following issues of conduct are matters which would ordinarily be dealt with under the College's disciplinary procedure;
 - i conduct amounting to a criminal offence whether or not there has been a prosecution and conviction, of a kind that is judged in all the circumstances to be relevant to the member of staff's employment by the College;
 - ii failure, refusal, neglect or inability to perform some or all of the duties or to comply with some or all of the conditions attaching to the post, or performing those duties or complying with those conditions in an unsatisfactory or inadequate manner;
 - iii conduct of a kind judged to be inappropriate or unacceptable on the part of a holder of the post held by the member of staff, such as (but not confined to) the following:
 - a breach of any obligation or duty arising under any of the College's regulations regarding financial matters, dignity at work, equal opportunities, public interest disclosure, health and safety, data protection or any other rules, regulations or codes binding on the member of staff;
 - b wilful or reckless damage to or improper use of College facilities, premises, property or equipment;
 - c disruption of, or improper interference with, the activities of the College or of any employee, student, Council member or visitor (other than any lawful industrial action);
 - d violent, indecent, disorderly, threatening, abusive, insulting or harassing behaviour or language (whether

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- written, spoken or in any other form) in the College or directed to members of, visitors to, or employees of the College;
 - e fraud, deceit, deception or dishonesty in relation to the College of any related activity, including research and examining;
 - f action likely to cause injury or impair safety in the College;
 - g divulging information or material received in confidence in the course of or as result of employment with the College (unless the disclosure is permitted under the Public Interest Disclosure Act 1998 or in accordance with the College's Whistle Blowing Procedure).
- 16 The following issues of conduct are matters which would ordinarily fall to be dealt with under the Trust's disciplinary procedure(s):
- i actions involving Trust members of staff;
 - ii performance of direct clinical care duties or activities in support of clinical care;
 - iii matters relating to Trust management issues or decisions.
- 17 In cases where an issue of misconduct arises under either 15 or 16 above, the College and the Trust will need to determine on the facts of each case which procedure will take priority.
- 18 The actions of staff that would be considered to be gross misconduct include those where they have:
- i been appointed to their job or get other rewards by lies or deception;
 - ii corruptly abuse their position with the College to gain advantage for themselves or others;
 - iii deliberately falsify records, including those about students, staff, or others;
 - iv abuse their position with the College to take advantage of others;
 - v commit serious acts of discrimination, bullying or harassment;
 - vi threaten, fight or assault anyone;

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- vii steal nor take or damage anything connected with their work;
- viii knowingly risk serious harm to people;
- ix are incapable at work, as a result of misuse of alcohol or illegal drugs;
- x do private work when they should be at work for the College;
- xi seriously breach financial regulations or procedures;
- xii deliberately refuse to obey properly given direct instructions;
- xiii inappropriate use of information technology in breach of College policy;
- xiv breach College rules, Codes, instructions, regulations or standing orders where the effect of the breach has serious consequences;
- xv break the law at (or even away from) work which makes them unfit for the work they do, or which damage the College's reputation;
- xvi obtain College services, property or money by fraud;
- xvii conceal any serious matter they should report (or disclose it if it should be kept confidential (subject to the provision of the Public Interest Disclosure Act 1998));
- xviii any other offence that would warrant dismissal without notice on a first offence.

19 The above list is not exhaustive

Dismissal or Discipline on the Grounds of Misconduct

- 20 Where either the College or the Trust has conduct-related grounds for considering disciplinary action up to and including the dismissal of a member of clinical academic staff on the grounds of misconduct:
- i the Director of HR of the employer considering instigation of disciplinary procedures which may result in restriction of practice or exclusion from work will hold responsibility for advising the other employer's Director of HR prior to the clinical academic being so restricted or suspended, where it is practical to do so;

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- ii the College and the Trust will co-operate with each other to facilitate any investigation into the alleged misconduct;
 - iii The College 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;
 - iv the College and the Trust shall liaise with each other on the steps to be taken under the applicable disciplinary procedure(s), in particular as regards representation by both employers at any disciplinary hearing 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;
 - v the College 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.
- 21 While the College 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.
- 22 Representation of the Trust at the College's disciplinary hearings (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).
- 23 Joint working and provisions for sharing of information
- 24 Explicit reference will be made in both the substantive academic and honorary clinical contracts issued to clinical academic staff (by the College and Trust respectfully) to the need to share personal data or sensitive personal data between institutions from time to time during a clinical academic's employment. Data relating to the dismissal, discipline, suspension, capability and probation procedures applied to a member of clinical academic staff is deemed such data.

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- 25 By undertaking both academic and honorary clinical duties of their appointment, the clinical academic gives their permission for relevant personal data or sensitive personal data to be shared between the College and the Trust, under the Data Protection Act 1998, whether with or without their consent prior to the release of such information.
- 26 During the course of any investigation and/or appeal hearing conducted in accordance with either of the employers' dismissal, disciplinary, capability or suspension procedures (as detailed in point 8 above), it may be necessary for data provided by, or relating to third parties (in particular relating to patients), to be shared between the substantive and honorary employers. In circumstances where it is considered to be at no detriment to the full completion of any investigation and/or any appeal hearing, the identity of the third party will be kept in confidence by the employer instigating procedures or facilitating an appeal hearing. It will be the responsibility of the employer providing such information to ensure the third party is aware that information supplied by them may be shared with the other employer, and that in doing so, it may be necessary for their identity to also be shared.
- 27 With the exception of the briefings as detailed in points 15 a), 28 and 32, all data (in whatever format) relating to the dismissal, disciplinary, suspension, probation or capability of clinical academic and any subsequent appeal process will:
- i in cases conducted via the College's procedures, be retained by the College; and
 - ii in cases conducted via the Trust's procedures, be retained by the Trust.

Dismissal on the Grounds of Capability

- 28 The College and the Trust agree that either may take action in respect of the capability of a clinical academic, and that both may take action in respect of the same capability, the following guidelines will assist the parties in determining which employer will usually take such action.

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- 29 The Director of HR for the employer considering dismissal will hold responsibility for advising the other employer's Director of HR of that fact and together shall confirm:
- i whether action is to be taken under the procedures of the College or the Trust or both (and if both, which procedure shall take priority);
 - ii 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
 - iii (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. The College and the Trust shall discuss the questions/issues to be raised with such medical adviser, in particular any issues arising under the Disability Discrimination Act 1995, including any duty to make reasonable adjustments.
- 30 The College and the Trust shall keep each other advised of the actions taken under their applicable procedures, including the outcome of any appeal.
- 31 While the College 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 the College hearings (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).

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Dismissal on the Grounds of Redundancy, Failure of Probation, Termination of a Fixed Term Contract, Statutory Bar or Any Other Substantial Reason

- 32 In the event that either the Trust or the College is contemplating the dismissal of a clinical academic on the grounds of redundancy arising from re-organisation or restructuring, probation, statutory bar, end of Fixed Term Contract or any other substantial reason, the relevant Director of HR shall advise the other Director of HR of this fact and shall keep the other regularly informed of the action being taken in this respect., including the outcome of any appeal.
- 33 While the College 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 the College hearings (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 dismissed (and vice versa).

Dismissal on the Grounds of Retirement

- 34 Where the College is contemplating the dismissal of a member of clinical academic staff on the grounds of retirement and the employee has been refused a request to defer retirement or given a shorter deferment than requested, the College and Trust will follow the procedure outlined in the “Joint Protocol to Deal with Requests to Defer Retirement – Staff with Honorary NHS Contracts”.

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Signatures

- 35 We the undersigned accept responsibility (on behalf of the Consultant Contract Programme Board and the organisations we represent) to uphold the principles and working practices detailed within the Protocol and undertake to review this document on an annual basis, advising any amendments required, in a timely manner.

*On behalf of
Queen Mary University of London*

Signature:



Name: Susanne Byrne

Job title: Director of HR

Date: August 2009

*On behalf of
Barts and the London NHS Trust*

Signature



Name: Ali Mohammed

Job title: Director of HR and OD

Date: August 2009

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Appendix A: Policies and Procedures relating to Disciplinary, Dismissal and Grievance Issues

<i>College Procedures</i>	<i>Trust Procedures</i>
<p>Statute 21 Revised Model Statute 21: Academic Staff Dismissal, Discipline, Grievance Procedures and related matters</p>	
<p>Ordinance C2 Ordinance C2, Dismissal, Discipline, Grievance Procedures and related matters</p>	
<p>QMUL Codes of Practice Introduction to the Codes</p>	
<p>Probation http://www.hr.qmul.ac.uk/policiesandprocedures/inductionandprobation/codeofpractice/</p>	
<p>Discipline http://www.hr.qmul.ac.uk/policiesandprocedures/problems/discipline/</p>	<p>Disciplinary Procedure for Medical and Dental Staff http://bltintranet/Policiesandguidelines/Disciplinary%20Procedure%20for%20Medical%20%20Dental%20Staff.pdf</p> <p>Exclusion from Work of Medical and Dental Staff</p>
<p>Remedying Poor Performance http://www.hr.qmul.ac.uk/policiesandprocedures/problems/poorperformance/</p>	<p>Maintaining Medical Excellence Being reviewed</p>

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<i>College Procedures</i>	<i>Trust Procedures</i>
<p>Sickness absence http://www.hr.qmul.ac.uk/policiesandprocedures/problems/sicknessabsence/</p>	<p>Health and Attendance Substance Use</p>
<p>Reviewing Fixed Term Contracts http://www.hr.qmul.ac.uk/policiesandprocedures/exitandretirement/fixedterm/</p>	<p>Fixed Term Contracts Policy http://bltintranet/Policiesandguidelines/Fixed%20Term%20Contracts%20Policy.pdf</p>
<p>Retirement HR Code of Practice on the right to Request to Defer Retirement</p>	<p>Retirement Age Policy http://bltintranet/Policiesandguidelines/Retirement%20Age,%20Working%20Beyond%20Normal.pdf</p>
<p>Other Potential Dismissals http://www.hr.qmul.ac.uk/policiesandprocedures/problems/otherdismissals/</p>	
<p>Managing Redundancy http://www.hr.qmul.ac.uk/policiesandprocedures/reorganisation/redundancy/</p>	
<p>Agreed Exit Schemes http://www.hr.qmul.ac.uk/policiesandprocedures/exitandretirement/exitschemes/</p>	
<p>Grievance http://www.hr.qmul.ac.uk/policiesandprocedures/problems/grievance</p>	<p>Grievance Policy and Procedure http://bltintranet/Policiesandguidelines/Grievance%20Policy%20and%20Procedure.pdf</p>
<p>Dignity at Work http://www.hr.qmul.ac.uk/policiesandprocedures/problems/harassment/</p>	<p>Harassment and Bullying Amongst Staff http://bltintranet/Policiesandguidelines/Harassment%20and%20Bullying%20Amongst%20Staff.pdf</p>
<p>Whistle Blowing Policy http://www.hr.qmul.ac.uk/policiesandprocedures/problems/whistleblowing/</p>	<p>Raising Concerns – Whistleblowing http://bltintranet/Policiesandguidelines/Raising%20Concerns%20-%20Whistleblowing%20Policy.pdf</p>

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Copies of the above documents are available from:

Queen Mary University of London

HR Department,
Queen Mary University of London,
Mile End Road,
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Tel: 020 7882 3697
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Barts and the London NHS Trust

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