

## **Bangor University and Betsi Cadwaladr University Health Board**

### **Protocol for the joint arrangements for the employment of clinical academic doctors and dentists**

#### **Introduction**

1. The following general principles and procedure are the result of agreement between Bangor University (the University) and the Betsi Cadwaladr University Health Board (BCUHB) in which University clinical academic doctors and dentists may hold honorary NHS contracts. The protocol is intended to provide a framework for co-operation between the University and BCUHB as employers of the clinical academic staff.

#### **General Principles**

2. 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 (for example under Statute) from the employment relationship generally.
3. However, the University and BCUHB 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. The University and BCUHB will therefore seek to ensure joint cooperation 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. The University and BCUHB will seek to ensure that their contracts (honorary or substantive) contain provisions which facilitate such joint cooperation and shall discuss on a regular basis the contents of the contracts that each will issue to clinical academics.

#### **Joint Appraisal and Joint Job Planning**

6. The University and BCUHB have agreed procedures for the joint appraisal and joint job planning of medical and dental clinical academic staff at honorary consultant level, and agree to ensure that such arrangements are referred to in the terms of the substantive and honorary contracts issued to the members of staff concerned and that arrangements for joint appraisal arrangements continue to be developed to ensure robust, high quality appraisals that satisfy revalidation requirements.

#### **Disciplinary and other Procedures**

7. The University and BCUHB 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 allegations or matters such as:

- a) 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 or the Equalities Act 2010 where the obligation to make such adjustments applies)
  - d) attendance.
8. The University and BCUHB acknowledge that each has the following procedures for determining such issues in respect of its relationship with the member of clinical academic staff:
- University and NHS Joint Arrangements for the handling of Disciplinary/Appeal Matters and Grievances
  - University Statutes
  - All Wales NHS Grievance and Disciplinary policies

9. The University and the NHS body acknowledge that:
- a) there may be occasions on which the University has grounds for considering such action under its appropriate procedures, and BCUHB does not (and *vice versa*);
  - b) there may be occasions on which the University has grounds for considering such action under its appropriate procedures and BCUHB also has grounds for considering action against the same employee under its own appropriate procedures; and
  - c) that, if the University or BCUHB 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 BCUHB to agree in general terms a framework for the handling of such matters.

10. The University and BCUHB therefore agree that:
- a) the following issues of conduct are matters which would ordinarily fall to be dealt with under the University's disciplinary procedures:
    - any disciplinary issue arising in connection with a clinical academic's University/academic duties
  - b) the following issues of conduct and capability are matters which would ordinarily fall to be dealt with under BCUHB's disciplinary or equivalent procedures:
    - any disciplinary or capability issue arising in connection with a clinical academic's clinical/NHS duties

- c) in cases where an issue of misconduct (which includes performance issues) arises under both a) and b) above, the University and BCUHB will determine on the facts of each case and which procedure will take priority.

### **Potential disciplinary action**

11. Where either the University or BCUHB has grounds for considering formal procedures with a member of clinical academic staff on the grounds of misconduct, performance, absence or ill health, up to and including dismissal, each will advise the other of that fact, via the respective Directors of Human Resources, and:

- a) the party considering the instigation of disciplinary procedures shall notify the other of that fact, and shall discuss with the other the circumstances which have led it to contemplate initiating proceedings;
- b) the University and BCUHB 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 the University or the BCUHB procedure is to be invoked.
- c) where it is practical to do so, any party considering restricting the practice of the clinical academic or excluding them from work shall discuss this proposal with the other party prior to the clinical academic being so restricted or suspended.
- d) (in cases of sickness absence or medical incapacity) the University and BCUHB shall consider whether it is necessary to obtain a medical report (or further medical reports) 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 BCUHB shall discuss the questions/issues to be raised with such medical adviser, in particular any issues arising under the Equalities Act 2010 or the Disability Discrimination Act 1995 (if it relates to a period before October 2010), including any duty to make reasonable adjustments.
- e) the University and BCUHB will cooperate with each other to facilitate any investigation.
- f) the University and BCUHB shall liaise with each other on the steps to be taken under the applicable disciplinary procedure or procedures. In particular, to clarify representation by both employers on any panel established under any of their applicable procedures and the facilitation of the calling of witnesses and / or the production of any documentary evidence necessary for the purpose of determining whether misconduct (which includes performance issues) has occurred.
- g) The University or BCUHB (as the case may be) shall keep the other informed of the progress and outcome of the investigation under that procedure, including the outcome of any appeal.

The arrangements agreed between the University and BCUHB for invoking their respective procedures are detailed in the "Arrangements for the handling of disciplinary and grievance matters by Bangor University and BCUHB".

12. While the University and BCUHB shall cooperate 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 proceedings should be instigated, to determine the outcome, and to determine if dismissal is the appropriate

sanction to be applied on the facts of that case. Representation of BCUHB on the University's panels (and vice versa) does not mean that the BCUHB's representative is deciding whether the NHS's contract with the member of staff is to be terminated (and vice versa).

13. It is agreed between the University and BCUHB that the University is not only indemnified against clinical negligence claims but also in relation to discrimination and other claims arising from the performance of duties for the honorary employer(s) (including legal costs on an indemnity basis).

#### **Redundancy or Re-organisation**

14. The University and BCUHB acknowledge that as employers of the clinical academic member of staff, each may wish to take action in respect of redundancy or re-organisation. The redundancy of a clinical academic's substantive employment is covered by the Statutes and subject to the University Redundancy arrangements.
15. In the event that either BCUHB or the University is contemplating the deletion of a post, the non-renewal of a fixed-term contract, or other re-organisation 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 Cooperation**

16. The University and BCUHB shall ensure that:
  - a) their respective procedures provide that, while either the University's or BCUHB'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 BCUHB or the University, as the case may be).
  - b) rights of appeal will be confined solely to the procedure that is being implemented and individual employees may not appeal across procedures to the other party (i.e. the University or BCUHB, 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.
  - d) University employed doctors holding a licence to practise will connect with the Responsible Officer in their lead NHS Health Board for revalidation purposes.
17. The University and BCUHB shall meet on a regular basis to review this Agreement and its operation.