



## Lead Employer Trust

Local Agreement – Agreed in Partnership with the BMA

Reference		Title	Managing Employee relations matters during a Pandemic
Date agreed	8 <sup>th</sup> April 2020	Review date	July 2020
Applicable staff groups – All staff employed by the Lead Employer Trust hosted by Northumbria Healthcare NHS FT			

### **Background**

The Lead Employer Trust (LET) has an ongoing responsibility to make adequate provision for health and safety of staff during a pandemic and take all reasonable steps to safeguard staff. While taking a balanced approach, the LET will continue to address employee relations matters and any instances of misconduct that places staff, patients or the public at risk and deal with them robustly.

Disciplinary procedures will therefore remain in place but it is unlikely that there will be the capacity to manage the formal processes within the Disciplinary, Grievance and Appeals. As such their application maybe varied or delayed until after the difficulties caused by a significant impact of the pandemic period.

In certain circumstances, staff may still be excluded if necessary, pending further investigations where it is considered that the individual's continued presence at work would be likely to put patients or the organisation at risk or compromise the investigation, but managers must, more than ever, consider all the available alternatives before excluding e.g. redeployment to another area or limited duties etc – as the impact of the pandemic may be felt for a significant length of time.

The LET recognises the level of anxiety that a pandemic can generate, and wherever possible will seek to address matters using a moderated approach. However, we cannot rule out the possibility of having to apply disciplinary action.

### **Current position**

As at 1<sup>st</sup> April 2020, there are no ongoing formal employee relation matters. If any do occur, steps will be taken to ensure specific plans conclude each without delay.

It is recognised that the service delivery pressures arising during the key impact of the pandemic may mean that novel approaches need to be considered as means of

resolving matters which have been determined to be matters of misconduct and grievance.

## **Conduct**

Host Training Organisations remain responsible for ensuring the appropriateness of workplace conduct / behaviour and professional codes of practice continue to apply.

The LET continue to support informal resolution of misconduct issues wherever possible and will use the principles of personal responsibility to achieve this.

New conduct concerns arising during the outbreak

- The host training organisation will notify the LET/HEENE Revalidation Team providing a statement of facts & concern based on all information available to them.
- Advice would be sought from the LET HR representative to determine appropriate course of action, considering any mitigating factors and whether further investigation is needed.
- This will be discussed with the LET Medical Director.
- If the concern relates to minor misconduct, informal action will follow.
- If the concern relates to Serious or Gross misconduct, further investigation may be required.
- An investigation would be undertaken in the normal way, limiting face to face to contact and using technology to take further statements and gather evidence wherever possible and appropriate.
- On completion of investigation, the appointed Case Manager and HR Manager support will consider all facts presented and determine appropriate action
  - No case to answer – decision will be communicated in writing
  - Case to answer and category of potential misconduct
    - Minor misconduct – informal action recommended
    - Serious misconduct – as below
    - Gross misconduct – as below

Potential serious misconduct will be handled as follows;

- Case Manager and LET HR representative to consider conduct category & communicate in writing to employee, providing facts and rationale for such decision, recommended course of action and appropriate fixed sanction.
- Staff member would have an opportunity to accept or challenge recommended course of action and appropriate fixed sanction. If so, an independent panel would be convened (either virtually or provide employee opportunity to respond/submit final case information for consideration in writing). The independent panel should have no knowledge of the case managers recommended appropriate fixed sanction and will reach a conclusion independently.

- If staff member unable to access virtual or has concerns re. writing we could proceed in person with social distancing rules applied.
- Electronic packs to be available.
- If the employee was unable/unwilling to attend due to concerns relating to Covid, all reasonable steps would be undertaken to overcome such concerns. It will be for the Disciplinary Chair/Panel to consider reasonable action to either proceed in absentia or defer until such reasonable timeframe.

Potential gross misconduct during the pandemic will be handled as follows;

- A panel will be convened (either virtually or provide employee opportunity to respond/submit final case information for consideration in writing).
- If staff member unable to access virtual or has concerns re. writing we would proceed in person with social distancing rules applied.
- Electronic packs to be available.
- If the employee was unable/unwilling to attend due to concerns relating to Covid, all reasonable steps would be undertaken to overcome such concerns. It will be for the Disciplinary Chair/Panel to consider reasonable action to either proceed in absentia or defer until such reasonable timeframe.

## **Grievances**

It remains the responsibility of all employees and the host training organisation to try to resolve issues informally wherever possible to ensure local resolution.

In those instances where it is felt a formal approach is required but has not yet commenced a discussion between the host training organisation and LET HR representative should take place to determine whether it is appropriate to continue and how best to gather the facts required.

It will be for an appropriate manager from the host training organisation and LET HR representative to consider reasonable action to either proceed or defer until such reasonable timeframe and for this to be communicated to the employee and their representative if applicable.

## **Dignity at Work**

The key to dealing with conflict or working relationship difficulties is early identification of issues and where possible informal resolution.

The LET is committed to informal resolution wherever possible and therefore requires a facilitated meeting to be completed before any further action.

It will be for an appropriate manager from the host training organisation and LET HR representative to consider reasonable action to either proceed or defer until such reasonable timeframe and for this to be communicated to the employee and their representative if applicable.

They must consider whether alternative management arrangements, transfer of employees or exclusion are necessary in the meantime.

### **Concerns about the conduct, capability or health of a practitioner**

The LET continue to support informal resolution of any concerns and will use the principles of personal responsibility to achieve this wherever possible.

The Line Manager may consult with the Head of Human Resources (or Senior HR Manager), prior to notifying the Chief Executive or Executive Medical Director of any concern relating to the conduct, capability or health of a practitioner.

Common sense needs to be applied to whether such concerns are of sufficient substance that they need to be reported.

An appointed Case Manager will review the information available and consider whether formal investigation is needed and whether temporary variations outlined in this paper should apply.

### **Sickness Absence Management**

The LET will continue to pro-actively manage sickness absence of all employee's as part of the continuing commitment to promote and support workplace health and wellbeing.

It is recognised that face to face meetings may not be appropriate. Management discussions will therefore take place with employees who are absent by telephone, using teleconference calls or Microsoft teams, Skype where appropriate. This is to ensure any cause for concern are addressed, supportive action taken to ensure all staff who are able to return to work do so without delay, either in their substantive role or an alternative role to support the pandemic.

During the outbreak, all final stage sickness reviews will be paused and deferred until such time the Head of HR for the LET and BMA representative consider it appropriate to recommence.

### **Organisational Change**

Where organisational change is required during a pandemic, arrangements will be determined on a case by case basis.

### **Appeal Hearings**

If an employee submits an appeal, it will be acknowledged in writing in the normal way.

Wherever possible, an Appeals Panel would be convened (either virtually or provide employee opportunity to respond/submit final case information for consideration in writing).

If appellant is unable to access virtual means or has concerns re. writing we may proceed in person with social distancing rules applied. Delays in arranging such may occur.

If the employee was unable/unwilling to attend due to concerns relating to Covid, all reasonable steps would be undertaken to overcome such concerns. It will be for the Head of HR for the LET (or nominated LET Senior HR representative) and Chair of the Panel to consider reasonable action to either proceed in absentia or defer until such reasonable timeframe. This would be communicated to the employee and if applicable, their representative.

### **Exceptional Circumstances**

Although it is felt this modified approach may prove suitable in a good proportion of cases, there are inevitably going to be certain situations where it may not be felt appropriate and a bespoke/case by case approach may need to be considered. Such as;

#### *Exclusions*

Any staff currently excluded or requiring exclusion due to a new allegation

#### *Court proceedings*

*Where staff are subject to ongoing external police investigations/ court proceedings. Such external factors can cause delays in achieving timely resolution to current HR processes*

In these above cases, the case management team should review whether it is possible for the employee to return to work in an alternative role, particularly in view of new/additional resources required to assist with the pandemic, the case manager will write and advise the individual of the likely delays caused by current situation, and continue to review the case in writing not less than monthly. In accordance with existing policies, it is vital that the case managers also routinely evaluate and assess suitability of returning to work in same or alternative work in view of fast changing operational needs.

Special consideration will also need to be given to any particular staff to whom specific guidance has been developed in line with the national Pandemic response e.g.

#### *Self isolation*

*Staff with underlying health conditions*

*Over 70's*

*Pregnant staff*

## Review and termination arrangements

This statement does not constitute a permanent contractual variation, and is intended to cover the current emergency situation.

This agreement will be subject to monthly review. Either Management or Staff Side representatives may unilaterally withdraw from this agreement with one month's notice, recognising that any such a withdrawal will only be used as a last resort after all reasonable alternatives have been explored.

## Approving Committee/s

Management side approved by	Staff Side approved by
Head of HR for the LET	Staff Side Chair
Name	Name
Signature	Signature