

**Health Education England
(North West Office)**

Postgraduate Medical and Dental Education

Formal Appeals Process

External Guidance

Document Title	Formal Appeals Process
Purpose	A guidance document that describes how formal appeals against ARCP outcome 3 & 4 and withdrawal of NTN's for other reasons should be conducted, ensuring consistency of practice across the North West.
Author	Bev Miller Project Manager Deanery Integration PP3 Bev.miller@hee.nhs.uk Content based on the work of Emma James, Secondary Care Education Manager, North Western Deanery.
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Table of Contents

Background	4
1. Principles	5
Basic Principles	5
Records that must be kept	5
2. Outline of Process	6
3. Review.....	6
4. Appeal	7
General	7
Process.....	8
Panel Composition.....	8
Appellant Team Composition	10
Management (Respondent) Team Composition	10
5. The Appeal Hearing Protocol	10
Pre-Hearing (panel members only)	10
Appeal via Written Review of Evidence (when requested by trainee).....	11
Appeal via Face to Face Hearing.....	11
Deliberations after Face to Face Hearing	12
Administration after Face to Face Hearing.....	13
Document Storage.....	13
Appendix 1: Management Side Briefing Notes	
Appendix 2: Trainee Briefing Notes	

Formal Appeals Process Guidance

Background

HEE North West Office operates in accordance with the requirements set out in a range of documents relating to the provision of postgraduate medical and dental education and training including:

- GMC Promoting excellence: standards for medical education and training
- A Reference Guide for Postgraduate Specialty training in the UK (The Gold Guide) January 2018
- The UK Foundation Programme Reference Guide May 2017
- A Reference Guide for Postgraduate Dental Specialty Training in the UK June 2016 (Dental Gold Guide)
- A Reference Guide for Dental Foundation Training in England, Wales and Northern Ireland (Draft edition to support review of competence progression (RCP) pilots 2015/2016 July 2015) (The Blue Guide)

This guidance is generic in style and the principles apply to all trainees. However, there are differences in process between Foundation, Hospital Specialty, General Practice and Dental trainees, reflecting the relevant national guidance. It should be read concurrently with the relevant guide listed above, depending on the trainee. Appeals against ARCP outcome 4 by F1 UK medical graduates will be heard by the University/Medical School of graduation. For F1 doctors graduating overseas, this HEE process will apply and appeals should be directed to the Postgraduate Dean. Appeals against ARCP outcome 3 by F1 trainees are covered by this process.

This guidance provides an overview of the steps that should be taken in the event of a trainee formally appealing an ARCP outcome that recommends an outcome 3 or 4 or appealing the withdrawal of a national training number (NTN) under para. 3.68 iii-vii of the Gold Guide. The process aims to ensure trainees are treated fairly by setting out a transparent process that is also informed by the following ACAS documents:

- Code of Practice on Disciplinary and Grievance Procedures March 2015
- Discipline and Grievance at Work: The ACAS Guide

Please note: This document is a guide and is non-contractual. Any reference to 'working day' in the guidance means any normal day of work, excluding Saturdays, Sundays and bank holidays. It is written from the perspective of a medical trainee undertaking a hospital-based specialty and covered by the Gold Guide, 7th edition. The principles apply to other trainees but aspects of the process and exact terminology may vary, in accordance with the other national documents listed above and the specific training programme.

1. PRINCIPLES

Basic Principles

- 1.1 This process enables trainees to appeal the decisions resulting from ARCP panels and withdrawal of NTN's under paragraph 3.68 iii-vii of the Gold Guide.
- 1.2 The process includes a review (except for Foundation trainees) and then a formal appeal hearing and trainees can request a review and an appeal by writing to the relevant senior official within HEE North West Office. See section 2.4 for details of who to contact. Trainees can withdraw their appeal at any stage during the process.
- 1.3 HEE North West Office endeavours to achieve consistency of decision-making, in order that the outcome of reviews and appeals panels is as consistent as possible on a like for like basis.
- 1.4 HEE North West Office is committed to undertaking thorough investigations to inform each appeal. It will ensure that the management side carries out an in-depth investigation that captures all relevant evidence, including that which supports the trainee's case.
- 1.5 HEE North West Office aims to ensure there is good communication throughout a trainee's programme in order that they are informed of any issues/concerns as early as possible, ensuring that any concerns do not come as a surprise to them. Shortcomings should be identified and discussed as soon as they become apparent on an informal basis, thereby minimising recourse to this formal procedure.
- 1.6 HEE North West Office will allow trainees to put their case in response to any identified shortcomings before any action is taken. Informal dialogue between trainees and their trainers is encouraged, to resolve issues informally wherever possible.
- 1.7 Trainees will be notified in advance where a formal meeting could result in the termination of their training programme.
- 1.8 This process allows trainees to be accompanied to formal meetings.
- 1.9 HEE North West Office is committed to resolving appeal applications as speedily as possible.
- 1.10 The trainee will be held in good faith and there will be no pre-judgement of issues.

Records that must be kept

- 1.11 A record of the issues relating to the trainee's progress.
- 1.12 Mitigating factors that the trainee has for the concerns raised about their performance.
- 1.13 The reasons for any action taken.
- 1.14 Whether an appeal has been lodged.
- 1.15 The outcome of the appeal.
- 1.16 Any grievances raised during the reviews or appeal.
- 1.17 Subsequent developments.
- 1.18 Notes of formal meetings and appeal hearings.

2. OUTLINE OF PROCESS

2.1 As set out in the Gold Guide, para. 4.70, the ARCP panel (or a senior educator involved in the trainee's training programme) should meet with all trainees who are judged on the evidence submitted to their ARCP to:

- Require further development on identified, specific competencies (outcome 2 or 7.2)
- Require additional training because of inadequate progress (outcome 3 or 7.3)
- Be required to leave the training programme before its completion (outcome 4)

The purpose of this post-ARCP review meeting is to inform the trainee of the panel's decision and plan any further action required; or to confirm the competences with which a trainee will leave the programme.

2.2 If a trainee disagrees with the panel's decision they have the right to ask for a further review. Review of an outcome 2 is covered by HEE's ARCP Protocol and trainees should refer to that protocol if they wish to request a review of an outcome 2. Trainees appealing an ARCP outcome 3 or 4 or appealing the withdrawal of a NTN under para. 3.68 iii-vii of the Gold Guide can request a review under this process. If, following the review, the trainee rejects the decision made, they have a final right of appeal to a formal appeal hearing.

2.3 The timescale for submission of a request for a review or an appeal is within 10 working days of being notified of the decision which is to be appealed. The trainee must state what the grounds for the review/appeal are:

- The process that led to the decision was not followed correctly
- The decision being appealed against was made in a prejudicial way or there is evidence of prejudice or bias
- Information has now come to light which was not known when the original decision was taken and it may have influenced the outcome

2.4 Hospital specialty trainees wishing to request a review or an appeal must submit their request in writing to the Postgraduate Dean. Foundation trainees requesting an appeal under this process must submit their request to the Postgraduate Dean. F1 trainees who graduated in the UK and are appealing an ARCP outcome 4, should also address their appeal to the Postgraduate Dean in the first instance; the Postgraduate Dean will contact the relevant medical school of graduation. General Practice and Public Health trainees must submit their request to the Deputy Dean, Primary Medical Care & Public Health. Dental trainees must submit their request to the Postgraduate Dental Dean (Deputy Dean). All these senior officials may ask another member of the senior management team to advise on the grounds for appeal. Throughout the rest of this process, the terminology 'Postgraduate Dean' will be used for simplicity.

2.5 Throughout this process, where relevant, the trainee must be informed in advance if termination of their training programme may be an action considered.

3. REVIEW (except Foundation Trainees)

3.1 Medical Trainees, except Foundation trainees, have the right to request that a review be convened. They must submit their request in writing to the Postgraduate Dean, clearly stating the grounds for appeal (see 2.3 above), within 10 working days of being notified of the decision which they wish to appeal against. Dental specialty trainees may request a review if the ARCP meeting that awarded the adverse outcome did not consider mitigating circumstances.

- 3.2 The Postgraduate Dean will arrange for a review of the original decision when the grounds for appeal have been established. Where the appeal is against an ARCP Outcome 3 or 4, this review provides an opportunity for members of the original panel to review their decision. Where the appeal is against a decision to withdraw a NTN under para. 3.68 iii-vii of the Gold Guide, the Postgraduate Dean will review their decision and they may seek overview of that process from another member of the senior team.
- 3.3 The trainee may provide additional evidence at this stage and this must be received as part of the request for the review, so the panel/Postgraduate Dean can consider it along with the existing evidence. The additional evidence may include information about mitigating circumstances that was not originally disclosed or other evidence relevant to the original decision.
- 3.4 As many members as possible of the original ARCP panel will review its decision, along with any additional evidence supplied by the trainee. As far as reasonably practical, the review will be held within 15 working days of the Postgraduate Dean receiving the review request. The review may be conducted virtually. The Chair of the panel will be supported in making the required arrangements by the relevant Programme Support Manager (PSM) for the trainee's specialty.
- 3.5 After the review, the panel/Postgraduate Dean will ensure the trainee receives the decision in writing, and the reasons behind it, within 5 working days of the review. If the panel considers it appropriate, it may invite the trainee to meet with a senior nominated representative, to discuss the decision in more detail. This maybe in cases where the trainee's reasons for requesting the review indicate they may not fully understand all aspects of the panel's decision and/or the panel considers a discussion would be a useful addition to the written outcome.
- 3.6 If the panel modifies the original decision and awards an outcome 2, this completes the process and there is no further right of appeal.
- 3.7 Where the decision is an outcome 3 an action plan must be drawn up that sets out the improvements that must be made, the timescales for achievement and any support that may be required to aid improvement.
- 3.8 Where the decision is an outcome 3, an outcome 4 or the withdrawal of a training number under Gold Guide para. 3.68 iii-vii and the trainee does not accept the decision, they have the right to request a formal appeal, where an entirely new group of individuals assesses the original decision and the trainee's grounds for appeal.

4. APPEAL

General

- 4.1 If a trainee does not agree with the decision made following the review, they have one final internal route of appeal.
- 4.2 A trainee can request that a formal appeal hearing be held and they must submit their request in writing to the Postgraduate Dean, clearly stating the grounds for appeal (see 2.3 above), within 10 working days of being notified of the decision from the review.
- 4.3 National guidance recommends that the appeal hearing takes place within 15 working days of receipt of the request, but it is acknowledged that this is not always practicable given the six-week rule for consultant notice, and appeals should therefore be arranged as soon as possible following receipt of the request.
- 4.4 Appeal hearings do not have to take place face to face and the trainee can request that the appeal is conducted via a review of written evidence. If the trainee requests that the appeal

hearing be held face to face, they can attend (with or without a representative) or send a representative to attend in their place.

Process

- 4.5 When a request for an appeal is received, the Postgraduate Dean may ask another member of the senior team to advise on the grounds for appeal. When the grounds for appeal have not been clearly established, the trainee will be informed (Letter A0). When the grounds for appeal are established, the Postgraduate Dean, or a nominated deputy, should confirm receipt of the request from the trainee and confirm the date of the appeal as soon as this has been arranged (Letters A1- A5, B1-B5, C1-C4). As 4.4 above, the appeal can be conducted via a review of written evidence, at the request of the trainee.
- 4.6 The appellant trainee and the management side can each submit a bundle of evidence, which may include additional evidence not considered by the review panel. Submitted evidence must reach HEE North West Office **no less than 10 working days before the date of the hearing** (Letters A3/4 & B3/4). Additional papers will only be accepted on the day of the hearing in exceptional circumstances.
- 4.7 Once all evidential information has been received it should be acknowledged (Letters A6 and B6) indexed and circulated to all those who will be present at the appeal hearing as soon as possible, and **no less than 5 working days before the date of the hearing**. This includes the Chair and all panel members, the appellant side and the management side (Letter D1).
- 4.8 The Chair may consider postponing the hearing if the evidence is not available to all participants at least 5 working days prior to the scheduled date. For face to face appeals, the hearing may proceed as scheduled if the trainee agrees. Where the appeal is being conducted via a review of written evidence, the Chair will seek clarification from the other panel members as to whether they have had sufficient time to review the available evidence.

Panel Composition

- 4.9 The panel **must not** include any individual who was previously involved in the original decision or in the review stage. Normally, panel members should not have been involved in any of the trainee's past assessments, but in very small specialties this may not be possible. In such cases, the trainee will be asked to confirm acceptance of the proposed panel member. All panel members must be asked if they have any conflict of interest in participating in the panel.
- 4.10 All panel members should be advised that the events that take place during the hearing, or any information contained in the evidence submitted (both written and oral), should not be discussed with anyone outside the appeal hearing, or with anyone unconnected with the hearing at any time. Information received is to be regarded as strictly confidential. However, this does not include any information that may need to be imparted to third parties as a consequence of the hearing process and decision.
- 4.11 The panels should be made up of the following individuals:

Appeals under the Gold Guide (specialty trainees including general practice and core training):

- The Postgraduate Dean or nominated representative as Chair
- A college/faculty representative from another region and from the same

specialty as the trainee

- Two senior doctors from the same region as the trainee (one should be from a different specialty to the trainee)
- A senior trainee from a different specialty to the trainee
- A lay representative

A representative from the HR department of the trainee's lead employer must also be available to advise the Chair on, for example, equal opportunity matters.

Appeals under the Foundation Programme Reference Guide (Foundation trainees):

- The Postgraduate Dean or nominated representative as Chair
- An independent Foundation School Director or Training Programme Director from another Foundation School
- At least one consultant or GP from the same Foundation School
- A lay representative
- A doctor in training from another location

A representative from the HR department of the trainee's lead employer must also be available to advise the Chair on, for example, equal opportunity matters.

Appeals under the Dental Gold Guide (dental specialty trainees):

- A Postgraduate Dean or an Associate Dean
- A senior clinician from the specialty with training experience
- A senior clinician from a different specialty with training experience
- A lay adviser/representative

HEE will also appoint a suitably qualified advisor to support the chair and advise on process

- 4.12 In the event that the trainee notifies that their representative will be a member of the legal profession, the Postgraduate Dean may direct that the panel is also supported by a member of the legal profession. For General Practice, Public Health and Dental trainees, the relevant Deputy Deans will discuss the need for legal representation with the Postgraduate Dean. Legal representatives will be reminded from the outset that appeal hearings are not courts of law and the panel governs its own procedure, including the questioning to be allowed of others by the legal representative.
- 4.13 All members of the panel must have completed equality and diversity training and be up-to-date with that training.

Appellant Team Composition

4.14 For a face to face hearing, the appellant team should consist of:

- The appellant trainee and/or the appellant's representative.
 - The appellant has the right to be accompanied to the appeal by a friend, colleague or a representative of their professional body. The name and status of the representative must be

notified to the panel Chair at least 5 days in advance of the hearing. If the representative is a member of the legal profession, they will be reminded from the outset that appeal hearings are not courts of law and the panel governs its own procedure, including the questioning to be allowed of others by the legal representative.

- 4.15 If the trainee decides not to attend the face to face hearing, they can elect to send their representative in their place and they must inform the panel of this decision at least five days before the hearing date.

Management Team Composition

- 4.16 For face to face hearings, the management team should consist of:

- Management or specialty representative. This should normally be the Training Programme Director but can also be the Head of School, Associate Dean or Deputy Dean.
- A Programme Support Manager.
- Member of the legal profession. If the trainee notifies that their representative will be a member of the legal profession, the Postgraduate Dean may direct that the management team is also supported by a member of the legal profession. Legal representatives will be reminded from the outset that appeal hearings are not courts of law and the panel governs its own procedure, including the questioning to be allowed of others by the legal representative.

5. THE APPEAL HEARING PROTOCOL

Pre-Hearing Briefing (panel members only)

- 5.1 The Chair welcomes members of the panel and leads introductions.
- 5.2 The Chair will ask the panel members to confirm that they have no conflict of interest in sitting on the panel.
- 5.3 The Panel members should confirm that they have received the relevant evidential information within the time limits specified. Or if there has been delay, that they have still had time to review the information.
- 5.4 The Chair will then identify the decision being appealed (Outcome 3, Outcome 4 or withdrawal of a NTN under para. 3.68 iii-vii of the Gold Guide; the trainee's grounds of appeal; and the key points of contention.
- 5.5 Each panel member should then be given an opportunity to raise any issues for discussion from the written evidence provided.
- 5.6 If the trainee and/or their representative are attending the hearing, the panel will agree the areas of responsibility and questioning that each member will explore at the hearing proper.
- 5.7 Detailed notes of these discussions are not required but brief notes to aid the panel in their questioning during the hearing proper may be taken at the request of the Chair. Any such notes are not shared with the appellant (or their representative) or the management team.

Hearing - Appeal via Review of Written Evidence (when requested by trainee)

- 5.8 The Chair will ask the note taker to make formal notes of the ensuing discussion.

- 5.9 Following the preliminary discussion above, the Chair will lead the panel in reviewing any areas of contention, using the written evidence available provided by both the appellant and management side.
- 5.10 The Chair will then confirm with the panel that they are able to come to a decision, and whether the decision is unanimous. If the decision is not unanimous it is the Chair's responsibility to assist the panel in reaching a fair and equitable decision.
- 5.11 The Chair should then lead the panel in confirming the reasons for the decision and ask the note taker whether any part of the panel's deliberations need clarification in the interests of an accurate record being produced.
- 5.12 The Chair will ensure that the appellant trainee is informed of the panel's decision by letter sent electronically and by recorded delivery as soon as possible and within 5 working days, starting from the first working day after the hearing has closed. The report will be circulated separately, within the timescales outlined in the section on Post Hearing Administration below.
- 5.13 The appeal panel should not impose an increased sanction on the trainee. Where the panel has identified information that may inform such a decision, it will refer the matter to the Postgraduate Dean via the panel Chair and inform the appellant and/or their representative that it has done so.

Hearing - Appeal via Face to Face Hearing (where the trainee and/or their representative attends the hearing)

- 5.14 The Chair welcomes the appellant and/or their representative and the management team.
- 5.15 The panel introduce themselves including their job title and role on the panel (e.g. Specialty Representative, Trainee Representative etc).
- 5.16 The Chair will ask the appellant and/or their representative and the management team to confirm whether they have received all the relevant documentation within the stated timescale. If documentation has been received late, the Chair may seek agreement from the trainee and/or their representative that the hearing still proceeds.
- 5.17 The Chair will ask the appellant and/or their representative and the management team whether there are any preliminary issues which they request the panel considers before proceeding to the full hearing. Should this arise, the Chair will ask the appellant and/or their representative and the management team to leave the room whilst the panel considers the issue.
- 5.18 The Chair opens proceedings by describing the reasons for the hearing (ARCP Outcome 3 or 4; withdrawal of a NTN under para. 3.68 iii-vii of the Gold Guide), the trainee's grounds of appeal and the order in which representations will be made, as set out below.
- 5.19 The appellant or their representative will make their oral representations first, beginning by summarising the key reasons for the appeal before going on to give more detailed representations.
- 5.20 The management team will then have the opportunity to raise questions and clarify points relating to the appellant's written and oral representations.
- 5.21 The panel will then have the opportunity to raise questions and clarify points relating to the appellant's written and oral representations.
- 5.22 The management team then make their oral representations.
- 5.23 The appellant and/or their representative will then have an opportunity to raise questions and clarify points relating to the management team's written and oral representations.

- 5.24 The panel will then have an opportunity to raise questions and clarify points relating to the management team's written and oral representations.
- 5.25 Once the representations and questions stage has finished the Chair should ask the note takers whether any part of the proceedings so far need clarification in the interests of an accurate record being produced.
- 5.26 The Chair will formally close the hearing and indicate whether the panel is likely to be able to orally inform the appellant of the decision after they have deliberated. If the panel is unable to do this on the same day, the appellant will be informed within 5 working days starting from the next working day after the close of the hearing. (N.B. the 5 working day timeframe relates to the date the communication is sent either by Royal Mail or email, not the date it is received).
- 5.27 The appellant and/or their representative, and the management team will then leave the room.

Deliberations after Face to Face Hearing

- 5.28 The Chair leads the discussion and the panel will seek to clarify whether the points arising out of written and oral representations have been satisfactorily answered.
- 5.29 The Chair will then confirm with the panel that they are able to come to a decision, and whether this decision is unanimous. If the decision is not unanimous it is up to the Chair to assist the panel in reaching a fair and equitable decision.
- 5.30 The appeal panel should not impose an increased sanction on the trainee. Where the appeal hearing has identified information that may inform such a decision, the panel will refer the matter to the Postgraduate Dean via the panel Chair and inform the appellant and/or their representative that it has done so.
- 5.31 If the appellant and/or their representative are to learn of the decision immediately, as per section 5.26 above, then all parties should be called back into the room. The Chair will then inform the appellant of the panel's decision, the reasons for the decision reached, and any further actions or recommendations that the panel has decided to impose.
- 5.32 Following feedback to the appellant and/or their representative, the Chair should confirm with the rest of the panel whether they require a de-brief. They should also dictate their recommendation to the Postgraduate Dean and this should be forwarded immediately by the appeal organiser.
- 5.33 Any recommended follow on actions should be documented.
- 5.34 When the deliberations and de-brief have concluded, all evidence files and appeal-related paperwork must be collected from the panel members by the appeal organiser and returned to HEE.

Administration after Face to Face Hearing

- 5.35 Even if the appellant was informed of the panel's decision on the day of the hearing, the Chair (via the appeal organiser) will ensure they are informed by letter sent electronically and by recorded delivery as soon as possible and within 5 working days, starting from the first working day after the hearing has closed. The report will be circulated separately, within the timescales outlined below.
- 5.36 The note taker(s) should type up the notes of the hearing into the relevant pro-forma (Appendix J or K). This first draft should be sent to the Chair for initial review within 5 working days of the

hearing. The Chair should then make any amendments necessary and return to the note taker within a further 5 working days. This copy will then be considered to be the final draft, subject to amendments made by panel members. The final draft should then be circulated by the note taker to panel members as soon as received back from the Chair and the panel should be given a further 5 working days to make any additional amendments. This final version should be shared with the Chair before circulating to other parties.

- 5.37 Where the appeal hearing took place face to face, the final copy of the notes agreed by the Chair and the panel should be circulated to all persons who were present at the hearing, and any other persons who may need to know of any actions/ recommendations made. If any party wishes to make additional alterations at this point then they can do so in writing within 5 working days of receipt. These should be added as an addendum to the final notes, which should not be modified. The notes can be circulated to panel members, together with a letter of thanks.
- 5.38 Where the appeal hearing was conducted via a review of the written evidence, the final copy of the notes agreed by the Chair and the panel should be circulated to the panel, appellant and their representative and the management side. They should also be sent to any other persons who may need to know of any actions/ recommendations made. The notes can be circulated to panel members, together with a letter of thanks.
- 5.39 The Postgraduate Dean, through the nominated deputy, should arrange for the appellant's record of training to be amended if required.
- 5.40 Any actions taken as a result of recommendations made by the panel should be documented.
- 5.41 If an outcome 4 is upheld, the relevant Lead Employer must be informed.

Document Storage (after all appeals)

- 5.42 Original handwritten and draft notes relating to the appeal should be destroyed securely when the formal notes have been authorised by the Chair.
- 5.43 All formal documentation pertaining to the appeal should be handled in line with Data Protection legislation and DH's Records Management NHS Code of Practice.
- 5.44 Copies of the letter confirming the appeal outcome and the final notes of the hearing should be placed in the appellant's training file. Trainee files and associated appeal documentation should be kept for 8 years, or 10 if related to legal action.