

Scotland Deanery – Policy for Review and Appeal of ARCP Outcome

May 2024

1. Introduction

- 1.1 This document sets out the Scotland Deanery policy for Review and Appeal of an ARCP outcome and for Appeal against the withdrawal of a training number.
- 1.2 The policy applies to foundation, core and specialty trainees (including LATs).
- 1.3 It has been written in accordance with the Gold Guide, version 9.
- 1.4 The Deanery Appeals Team (DAT) will manage all aspects of the Review/Appeal process with relevant input from local Training Management teams.,

2. Abbreviations used within this document:

LDD: Lead Dean Director
APGD: Associate Postgraduate Dean
AD: Assistant GP Director
ARCP: Annual Review of Competence Progression
DAT: Deanery Appeals Team
E&D: Equality and Diversity
GG: Gold Guide
HR: Human Resources
MSF: Multi-Source Feedback
PD: Programme Director (FPD & TPD)

3. The Right to Review/Appeal (ARCP Outcome)

3.1 **Definition of a Review:** The Review is a process where the individual or original ARCP panel that issued an ARCP outcome/decision, return to reconsider whether it was appropriate. This does not require the original panel to be formally reconvened and can be undertaken virtually. The Review must take into account the representations of the trainee asking for the Review and any other information, including additional relevant evidence, whether it formed part of the original considerations or has been freshly submitted (GG 4.164).

3.2 **Definition of an Appeal:** The Appeal is a procedure whereby the decision of the individual or original ARCP panel is considered by another (different) individual or panel. An Appeal takes into account the information/evidence available at the time the original outcome was issued alongside newly submitted evidence relevant to the Appeal and the representations of the trainee making the Appeal request. Those involved in an Appeal panel must not have played a part in the original decision or review. (GG 4.165)

3.3 A trainee in receipt of an outcome 2, 7.2 or 10.1 has the right to Review only (GG 4.168). If the outcome is upheld by the Review panel, there is no further right to Appeal.

3.4 A trainee in receipt of an outcome 3, 4, 10.2 has the right to request an Appeal (GG 4.169-4.182), however a Review will be conducted as a preliminary part of the process. The Review is conducted according to the procedure for an outcome 2, 7.2 or 10.1 Review. If the outcome is upheld by the Review panel, the trainee then has the option to proceed to an Appeal. Where the review panel has modified the decision of the original panel to an outcome 1 or 2 this completes any appeal process (GG 4.174).

3.5 Trainees are notified of their right to appeal at the post ARCP meeting (virtual or face-to-face) which takes place when a developmental outcome is issued. At this meeting the trainee will have the chance to discuss the outcome and recommendations made by the panel. The trainee will be provided with a copy of the review/appeal briefing note relative to their outcome. These provide the options available to the trainee. This information is also routinely available on the Scotland Deanery website: <http://www.scotlanddeanery.nhs.scot/trainee-information/annual-review-of-competence-progression-arcp/appeal-your-decision/>

Trainees in receipt of an outcome 4 will remain in employment until the conclusion of the ARCP Appeal.

4. Requesting a Review/Appeal

4.1 A request for Review/Appeal must be made **in writing** by the trainee within 10 working days following the date of the ARCP face-to-face/virtual meeting (i.e. day 1 is the next working day after the ARCP face-to-face/virtual meeting). The deadline for the request to be **made by 5pm** on the 10th working day. The request should be made by e-mail and addressed to the ARCP Appeal mailbox arcpappeals@nes.scot.nhs.uk it should clearly state the reasons for the request and can include additional supporting evidence, e.g. evidence of mitigating circumstances or other evidence relevant to the original panel's decision.

4.2 If a request for Review/Appeal is received more than ten working days after the ARCP face-to-face/virtual meeting, it will not normally be considered, unless the trainee provides a reasonable explanation of why the request could not be made within the required ten days. The LDD for that specialty will decide whether or not to accept the late request.

4.3 A trainee should not make a request for Review/Appeal **until after** they have attended their ARCP face to face/virtual meeting.

4.4 Trainees on an outcome 2, 7.2 or 10.1 will be asked to complete a **Review Request** form (see appendix 1).

4.5 Trainees on an outcome 3, 4, or 10.2 will be asked to complete the **Appeal Request** form (see appendix 2).

4.6 These forms record the reasons for the request for Review or Appeal. Grounds for Review/Appeal must be set out clearly and concisely by the trainee in the form.

4.7 The **Appeal Request** form can be updated by the trainee between Review and Appeal if required. Prior to the Appeal, the DAT Case Manager will ask the trainee if they wish to update the **Appeal Request** form.

4.8 Trainees should submit written evidence to support their request for an appeal. New information for an appeal might include new evidence of mitigating circumstances not available to the ARCP panel. New information would not normally include competences/capabilities or evidence from assessments acquired after the date of the ARCP subject to appeal (GG 4.164-4.165)

4.9 If the trainee requesting a Review/Appeal is on a period of sick leave at the time of making their request, the process would normally be put on hold until such time as the trainee has returned to work. However, there may be exceptional circumstances whereby the Appeal can proceed. The DAT Case Manager will consult with the LDD for a decision if exceptional circumstances apply.

5. Review of an ARCP outcome 2, 7.2, 10.1, 10.2, 3 or 4

5.1 The DAT Case Manager will co-ordinate the Review in liaison with the original ARCP panel chair. Where practical the Review should take place within 15 working days of the trainee's request, however this may not be possible in all cases. The DAT Case Manager will keep the trainee informed of the Review arrangements.

5.2 If the original ARCP panel cannot be fully reconvened within the specified timescale (in person or virtually), the Review panel will be considered quorate if it incorporates the original ARCP panel chair and two other members of the original ARCP panel (not including lay representative or deanery administrator).

5.3 The Review can be conducted in person or virtually. The trainee does not attend the Review. Members of the panel can also contribute virtually by email if required.

5.4 Following the Review, the original panel Chair will provide the DAT Case Manager with confirmation of the result of the Review in writing, this should also include the reasons as to why the outcome was upheld or overturned. In compiling this information, the Chair should respond directly to the grounds for Review listed by the trainee in their Review Request form. If the review overturns the original outcome the Chair should discuss this with the LDD prior to communicating the decision with the trainee.

5.5 At a Review, the panel can uphold the original ARCP Outcome or overturn the Outcome. The panel should not impose an increased sanction on the trainee. In circumstances where new information has come to light that may inform a decision to increase the sanction, these issues will be brought to the attention of the LDD. (4.180)

Original ARCP Outcome	Potential overturned/amended Review Outcome	Potential for further Appeal Request
2, 10.1, 7.2	1, 7.1, 10.1 (for 2 only)	Panel decision is final, no further appeal process
3	1, 2, 10.1, 10.2, 6	If original outcome is upheld, trainee has the right to request an Appeal
4	1, 2, 10.1, 10.2, 3, 6	If original outcome is upheld, trainee has the right to request an Appeal
10.2	1, 10.1	If original outcome is upheld, trainee has the right to request an Appeal

5.6 If an outcome is overturned, the DAT Case Manager will inform the trainee's programme administrator who will amend the trainee's record on Turas and the relevant e-portfolio to show the revised outcome only. When an outcome is overturned (especially outcome 3 or 4) these must be discussed with the LDD of that speciality before the outcome overturned e-mail is sent to the trainee.

6. Appeal of an ARCP outcome 3, 4, 10.2

6.1 Before an Appeal, a Review will have taken place and the trainee will have been informed of the outcome of the Review by letter. The trainee then has 10 working days in which to request to proceed to an Appeal. They should make this request **in writing** via the ARCP Appeals mailbox.

6.2 When a request for appeal is received, the DAT Case Manager will acknowledge the appeal request within 5 working days. The DAT Case Manager will check the grounds for Appeal with the trainee and ask them if they wish to update the **Appeal Request** form. The formal appeal hearing should normally take place as soon as practical, without unreasonable delay and normally within 30 working days of

the appeal request. In exceptional circumstances the appeal hearing might be delayed beyond the 30-day limit. However, where it has not been possible to hear an appeal within the 30-day period, appeals should normally be heard within one year of the decision (GG 4.176).

6.3 The panel for an Appeal is made up as follows, all positions require to be filled:

- i. Chair
- ii. College Representative/Foundation School Director or Foundation PD from another foundation school
- iii. Consultant: ES/TPD/APGD from trainee's specialty, but different training region (for specialty only)
- iv. TPD/APGD from another specialty (for specialty only)
- v. Foundation PD/APGD from different Scottish region (for foundation only)
- vi. Trainee Representative from another specialty
- vii. Lay Representative

Every effort should be made to source a College Representative however if this is not possible, the appeal can go ahead. As per Gold Guide version 9, it is not mandatory.

6.4 An HR representative from the trainee's placement board will be invited to attend the Appeal but this would be in an observing capacity and in order to provide HR/employment advice if this is necessary.

6.5 The DAT case manager will be present at the Appeal to record a summary of the meeting. Two note takers can attend if required.

6.6 All panel members are required to attend the Appeal in person or virtually.

6.7 All panel members require to have undergone appropriate training, including E&D training, and must have read all documentation prepared in advance of the Appeal.

6.8 On the day of the Appeal, if a member of the panel cannot attend (e.g. due to illness, travel disruption), the Appeal will be cancelled and re-arranged.

6.9 On agreeing to be part of the panel, all members will be provided with the name and programme of the trainee as well as the details of the deanery representative and will be asked to confirm that they have no conflict of interest with the trainee; for example, they would require not to have had any prior involvement with the trainee (personal or professional). If a conflict of interest is identified, then the DAT Case Manager will seek a replacement panel member.

6.10 Once the panel members are confirmed, the trainee will also be contacted and asked to confirm no conflict of interest with the panel members.

6.11 Evidence provided by trainees and the deanery representative might include: written statements of support from colleagues/supervisors/others; copies of correspondence documenting training and progression; excerpts from portfolio/assessments/MSFs etc. This list is not exhaustive and is to provide examples only. It is recognised that Appeal cases are exceptional and cannot conform to a standard template. New information would not normally include competences/capabilities or evidence from assessments acquired after the date of the ARCP subject to appeal (GG 4.164-4.165)

6.12 The DAT Case Manager will invite the trainee to submit any further documentation/evidence in support of their Appeal. This will require to be submitted to the DAT, at least 6 working days ahead of the appeal. This further evidence/documentation will support the reasons for the Appeal as

outlined in the Appeal Request. We strongly encourage trainees to provide a written statement of their case in advance to ensure all points they wish to make are shared with the panel. This will not limit any verbal input they wish to provide during the Appeal.

6.13 The DAT Case Manager is responsible for the compilation of the evidence pack and will liaise with the Programme Director and/or original ARCP panel Chair to compile documentation in support of the original decision made by the ARCP panel. The DAT Case Manager will liaise with the relevant LDD (for specialty) who will oversee the compilation of and give final approval to the evidence pack.

6.14 The evidence pack will be provided to all panel members, trainee and deanery representative 5 working days before the appeal. This is in order that all attending have appropriate time to read the evidence and prepare for the Appeal. The evidence pack will be sent out electronically (exception for reasonable adjustments only).

6.15 The DAT Case Manager in liaison with the panel Chair will devise the timetable for the Appeal. The standard format of the Appeal enables the following:

- The trainee can present his/her case to the panel as to why the original ARCP outcome issued was incorrect;
- The deanery representative can present his/her case to the panel in support of the decision making of the original ARCP panel.

The Chair will facilitate the discussion, but all panel members will have an opportunity to ask questions to the trainee and deanery representative.

6.16 Panel members cannot be given access to the e-portfolio in advance of, or during the Appeal. It is therefore of vital importance that all relevant parts of the portfolio are included in the evidence pack.

6.17 There may be concurrent employer investigations into clinical incidents which are ongoing at the time of the Appeal. There may be occasions where it is appropriate to notify the panel of concurrent investigations and their status, particularly if patient safety concerns are involved. This information can be provided by the placement health board HR.

6.18 The trainee has the option to attend the Appeal, or they can opt to participate via written submission only. The deanery encourages the trainee to bring an accompanying person/s with them to the Appeal for moral support (maximum of 2 persons). This might be a friend/colleague/family member/supporting representative from professional body. The trainee can also arrange for a representative to attend the Appeal on their behalf. The trainee will be asked to confirm the details of an accompanying person in advance of the Appeal.

6.19 The trainee and accompanying person can be present for the trainee session and the final session where they will receive verbal confirmation of the outcome. In the interests of transparency, the trainee and accompanying person can also attend the deanery representative session. During the deanery representative session, the trainee and accompanying person will observe and will not have the opportunity to question the representative attending.

6.20 The deanery representative will be the Chair or member of the original ARCP panel, e.g. PD/APGD. They must attend the Appeal in person (or virtually for virtual panels). In the interests of transparency, the deanery representative has the option to attend the trainee session. During the trainee session, the deanery representative will observe and will not have the opportunity to question the trainee. They will not attend the final session at which the trainee receives verbal confirmation of the outcome.

6.21 There may be other trainers who have been involved in the case, for example, educational supervisors/clinical supervisors/clinical directors. They will not be invited to attend the Appeal but can submit written statements as part of the evidence pack (where appropriate), these must be submitted to the DAT Case Manager at least 6 working days ahead of the Appeal.

6.22 Once the panel has reached a decision, the trainee and accompanying person will be invited to meet with the panel and receive verbal confirmation of the decision. This will be followed by full confirmation of the decision in writing within 3 – 5 working days.

6.23 In the case of an outcome 4 where the outcome is upheld, the confirmation in writing will also include contact details for careers advice from their local APGD for careers, plus contacts for BMA support/counselling etc. These options should be mentioned verbally to the trainee at the final session. The effective date for the cessation of the training programme (removal of training number/contract) is the date of the letter confirming the decision.

6.24 A summary of the Appeal will be taken and checked for factual accuracy by panel members and trainee (the trainee will be provided with the parts of the Appeal where the trainee has been present). There will be 5 working days from receipt to confirm factual accuracy, or to propose amendments. If no response is received it will be deemed that individuals have accepted the factual accuracy of the summary.

6.25 Following conclusion of the Appeal a letter incorporating the result will be sent to the trainee and copied to the LDD/APGD/AD(GP)/Programme Director and Board HR representative.

6.26 If an outcome is overturned, the DAT Case Manager will inform the trainee's programme administrator who will amend the trainee's record on Turas and the relevant e-portfolio to show the revised outcome only. The facts of the case will be recorded and retained but the outcome should be amended (GG4.166).

6.27 LDD of Appeal panel to discuss outcome with PGD of specialty after appeal has concluded to discuss outcome and learning needs.

7. The right to Appeal withdrawal of NTN /training contract/removal from foundation programme

7.1 A trainee has the right to appeal against a decision to withdraw a training number as defined in GG 3.993.101 and 4.169-4.175

7.2 The trainee should make their request **in writing**, to the arcpappeals@nes.scot.nhs.uk mailbox clearly stating the reasons for the request and can include additional supporting evidence.

7.3 The trainee will be asked by the DAT Case Manager to complete the **Appeal Request** form – see appendix 3. This form records clearly the reasons for the request for Appeal.

7.4 On receipt of the request, the LDD will conduct an initial review of the decision to withdraw the training number. They will consider the information contained in the trainee's Appeal request. If the LDD decides to reverse the original decision, then the trainee will not have their number withdrawn. If the LDD determines that there is insufficient reason to reverse the decision, then the trainee will be given the option to proceed to an Appeal.

7.5 An Appeal into withdrawal of a training number should be arranged as per the process for an ARCP outcome Appeal (section 6). The main difference is that there will not be a deanery representative

session, the case for the withdrawal of the training number will be presented in the written evidence provided by the Deanery in the evidence pack.

TRAINEE REQUEST FOR A REVIEW (ARCP OUTCOME 2, 10.1 or 7.2)

Name:

GMC Number:

Training Programme:

Year of training:

Date of ARCP - desktop review:

Date of ARCP - face to face meeting:

Please provide clearly and concisely, the reasons for your request for review in list format below:

1.

2.

3.

[Please add numbered items as required]

Please contact the Deanery Appeals Team if you have any questions about the process: arcpappeals@nes.scot.nhs.uk

TRAINEE REQUEST FOR AN APPEAL (ARCP OUTCOME 3, 4, 10.2)

Name:

GMC Number:

Training Programme:

Year of training:

ARCP Outcome:

Date of ARCP - desktop review):

Date of ARCP - face to face meeting):

Please provide clearly and concisely, the reasons for your appeal in list format below:

1.

2.

3.

[Please add numbered items as required]

Please contact the Deanery Appeals Team if you have any questions about the process: arcpappeals@nes.scot.nhs.uk

TRAINEE REQUEST FOR AN APPEAL (NTN REMOVAL)

Name:

GMC Number:

Training Programme:

Year of training:

Date NTN Removed:

Please provide clearly and concisely, the reasons for your appeal in list format below:

1.

2.

3.

[Please add numbered items as required]

Please contact the Deanery Appeals Team if you have any questions about the process: arcpappeals@nes.scot.nhs.uk