

<b>Name of Guidance</b>	Organising and Chairing an Appeal Panel (after ARCP/RITA)
<b>Category</b>	Professional Support
<b>Authorised by</b>	Postgraduate Dean's Senior Management Team
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<b>Document Author</b>	David Eadington, Deputy Postgraduate Dean

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1.0	February 2014	Dr David Eadington	New guideline
1.1	September 2014	Dr David Eadington	Updated in line with revision of the Gold Guide
1.2	March 2016	Jill Hanson, Business Manager	Amendments in line with new HEE branding guidelines
1.3	January 2017	Becky Travis, Business Manager	Update to the procedure and revisions in line with the Gold Guide (v6)

## Section 1: Background

These notes are to assist Administrative Leads and Panel Chairs in following a consistent process when organising Appeal Panels.

***The Appeal Panel Chair has overall responsibility for managing the Appeal Panel.***

## Section 2: The purpose of the Appeal Panel – key points

- The purpose of the appeal is to reconsider a previous decision to award either an extension to training (outcome 3), or to remove the National Training Number (NTN) (outcome 4). An Appeal Panel will reconsider the information that was available at the time the original decision was made, together with any newly submitted information from the Trainee or their representatives. The Trainee is expected to attend in person on the day to represent themselves at the Appeal.
- The members of a Step 2 Appeal Panel must not have taken any part in previous progression decisions involving the Trainee concerned. Membership of a Review Panel is not under this constraint.
- **Foundation trainees** are managed using the 'UK Foundation Programme: Reference Guide' (the 'Purple Guide', 2016). Since 2012 they have taken part in an ARCP process alike to specialty trainees, following the same educational principles for their management, assessment and sign off. The Purple Guide includes a description of an appeals process for FY2 trainees which contain some different terminology to that set out below. However, in all practical respects the appeals processes adopted by Health Education England working across Yorkshire and the Humber (HEE YH) should normally be identical for all trainees.
- **Foundation Year 1** doctors exited from training who are UK graduates make their appeal directly to their Medical School of graduation. The Medical School then manages the process independently. FY1 trainees who have graduated overseas will have their appeal managed by HEE YH using the process set out below

## Section 3: Prior to the Appeal Panel taking place

- The Administrative Lead and the Chair will agree the date for the appeal Panel. Once the date is set, they will then agree the details of the Panel membership. No individual who has previously been involved in reaching a progression decision on the Trainee should be a member of the Panel.
- The Administrative Lead will confirm that all Panel members have completed or renewed their 'Equality and Diversity' training within the last three years.
- Every effort will be made by HEE YH to comply with the Orange and Gold Guide in relation to the timescales outlined in the Gold Guide for planning Appeals. In some cases these timescales will not be met due to holiday periods, difficulties in obtaining externality, etc.
- The Administrative Lead will arrange for a representative of the School (e.g. Training Programme Director, Course Organiser or Head of School), to present on the day of the Appeal. This will involve confirming the presenter's availability and explaining how the appeal will run. This will include preparing a brief written report to be available in advance for the Panel pack, which the presenter can expand on verbally on the day.
- The Administrative Lead, with support from the TPD, should produce a chronology of training using data held on Intrepid. This would consist of ARCP dates/decisions and would form the starting point for the preliminary discussion for Panel members.

*Checklist - papers in the pack should include (if relevant, not an exhaustive list):*

- Chronology of training (Administrative Lead)
  - Written report from the Speciality School
  - Appeal letter from the Trainee
  - Any submitted evidence from the Trainee
  - Supervisor reports and/or workplace based assessments
  - Examination results and guidance about the marking protocol
  - Other written evidence/forms from ARCP/RITA Panel
  - Letters/emails
  - Meeting notes
- A paper copy of the Gold/Orange Guide must be available for the Panel to refer to on the day. The most recent version of the Gold Guide now applies to all post MMC trainees (non-RITA, 2007 onwards), whenever their training commenced.
  - The Panel must have computer access to the e portfolio together with projection facilities.

### **Section 3: The Trainee**

The Trainee must receive clear information on the process of the Panel, their right to submit new evidence in writing (but not on the day) and the role of supporters:

- HEE YH will ensure that the advice/information given to the Trainee is relevant, appropriate and complete. All detail given to the Trainee should mirror the detail given to the Panel.
- The Trainee may bring a supporter to the appeal. The supporter can normally only attend if the Trainee is present.
- The Trainee has a right to be represented at the hearing, and their representative may speak on their behalf with the agreement of the Chair. This decision is solely at the discretion of the Chair.
- The Trainee is entitled to bring a legally qualified representative as a supporter if they wish, but that person cannot use their legal knowledge to change the process of the appeal. In particular they cannot cross examine witnesses. The Chair should remind the Trainee and the lawyer that the Panel decides how the appeal will be conducted.
- It is not the responsibility of HEE YH to ensure that the Trainee is provided in advance with a copy of the relevant sections of the Gold Guide. The Gold Guide will be available on the day as a reference should it be required.
- The Trainee is permitted to submit paperwork to either a Review or an Appeal Panel. Paperwork must be submitted to HEE YH within the deadlines stated in the Gold Guide. HEE YH is not responsible for producing copies of paperwork, and will not normally allow paperwork to be submitted after the deadline. HEE YH will send electronic copies of the paperwork to the relevant Panel members. Paperwork can also be sent as hard-copy format to an agreed address if requested.
- Evidence provided by HEE YH should be dispatched in a timely manner allowing the Trainee ample opportunity to examine it (usually at least five working days prior to the hearing).
- New evidence should not normally be presented within one working week of the date of the appeal.

### **Section 4: Summary of the full process**

1. The Chair asks the Panel to confirm their name and role on the Panel. The Chair also asks the Panel to confirm they have completed Equality and Diversity Training and state any conflicts of interest. Chair briefs Panel in pre-meeting
2. Speciality School Representative and Trainee (including representative where appropriate), attend the appeal simultaneously.
3. The Chair confirms the format of the Appeal Hearing.
4. The Speciality School Representative presents their case with the Trainee present.

5. Panel questions Specialty School representative. The Trainee is asked whether they would like to comment for points of clarification.
6. Trainee presents case with the Specialty School representative present.
7. Panel questions Trainee. The School Representative is asked whether they would like to comment for points of clarification.
8. Panel deliberates on decision.
9. Panel may wish to ask the Speciality School Representative or Trainee further questions. Should this be required, the School Representative and the Trainee must be present for further questioning.
10. Decision delivered to Trainee.
11. Decision letter sent to Trainee within five working days of Panel taking place.
12. Decision letter sent to the employer within five working days of Panel taking place.
13. The Chair has the discretion to run the process in the order they determine is appropriate and may adapt accordingly.

#### **Section 5: Pre-Meeting of Panel – how it should run**

1. Welcome and introductions. The Chair ensures that all panel members understand their role.
2. Chair should reiterate that it is a HEE YH appeal and not a legal process. The Panel Chair will govern the procedure to be adopted at the meeting.
3. Panel members are asked to re-confirm that they have undertaken the mandatory 'Equality and Diversity' training.
4. Panel members are asked to give details of any prior involvement in training or assessment concerning the Trainee to date.
5. The Panel should normally review the evidence presented prior to the appearance of the Trainee. Each Panel member should clarify the case and prepare questions to put to the Trainee and the Specialty School Representative.

#### **Section 6: Panel Hearing – how it should run**

1. If the Trainee (or their representative) is unable to attend a hearing, the Panel may choose to continue with the hearing in the absence of the Trainee (or their representative). The Panel will only delay the hearing in exceptional circumstances.
2. Appeal hearings are not courts of law. The Panel governs its own procedures, including the questioning allowed by legal representatives.
3. The Administrative Lead will be present to minute the Panel Hearing.
4. The Specialty School Representative/TPD should be introduced to the Panel and asked to present the 'Health Education England Yorkshire and the Humber' case. This should be followed by questions from the Panel. The Trainee is asked if they wish to make any points of clarification.
5. The Trainee (with their supporter/representative if present) is invited to present their case to the Panel. This should be followed by questions from the Panel. The School Representative is asked if they wish to make any points of clarification.
6. The Trainee should be given the opportunity to present their appeal and to offer a statement in mitigation if they wish. Each member of the Panel should be allowed to put further questions to the Trainee for clarification.
7. The Chair should focus the discussion and allow time for each member of the Panel to express their views. Each of the 'allegations' or points should be put to the Trainee and they should be given the opportunity to respond.
8. The Chair should discuss the format of the meeting with the Trainee and confirm that a decision will

be made on the day, wherever possible.

9. The Trainee should then be asked to wait outside while the Panel considers its decision.
10. The Trainee or the School Representative may be invited back to the room for points of clarification. If this is required, both the School Representative and the Trainee must be invited to attend, even if the question is only aimed at one party.

### **Section 7: Consideration of Evidence**

1. The Panel should consider the evidence, together with the responses from the Trainee and School Representative, in order to arrive at a consensus view. A unanimous decision is preferred.
2. The Panel can uphold the Appeal either on process grounds, or because it disagrees with the educational judgement that was made in reaching the previous ARCP outcome.
3. The decision should be made by the Panel immediately. A decision should be delayed only in exceptional circumstances; this would almost only be when information has been disclosed during the hearing on which a legal opinion is required to inform the Panel decision.
4. The Panel should consider whether any other actions should arise out of the findings (such as an external referral to the GMC)

### **Section 8: Delivery of Appeal Panel Decision to Trainee**

1. The Chair should normally deliver the decision verbally to the Trainee (School Representative if still present). Only in exceptional circumstances should the Trainee be informed that a process for further investigation/clarification is required. If further investigation is necessary, the Trainee must be informed of the timescales.
2. The Trainee should be informed that there is no further opportunity for an appeal within HEE YH. (It is not the obligation of HEE YH to inform the Trainee of the opportunity for an Employment Tribunal or a Judicial Review, but that is the answer to the question 'What else can I do to challenge your decision today?').
3. Trainees will be notified in writing the outcome of the appeal and the reasons supporting the decision. The minutes of the Appeal Hearing will not normally be shared, but they may be shared if requested by the Trainee.

### **Section 9: Following the Appeal Meeting**

- If an Appeal against outcome 4 is not upheld, one of the findings of the Panel is usually to offer the Trainee a meeting with a senior member of faculty for the purpose of giving careers advice. If this is wanted by the Trainee, a follow-up meeting should be arranged for the Trainee with a senior HEE YH representative (usually an Associate Dean).

### **Section 10: Appendix 1 - Key information for the Trainee**

The purpose of the Appeal is to reconsider the previous decision to award either an extension to training (outcome 3), or to remove the National Training Number (outcome 4). The Appeal Panel will reconsider the information that was available at the time the original decision was made, together with any newly submitted relevant information from you. The Trainee is expected to attend in person on the day to represent themselves.

- Trainees may invite one representative of their choosing to accompany them to the Appeal Hearing. This would usually be a friend, a supervising consultant, or a Trade Union representative. If the Trainee chooses a representative who is legally qualified, they can only support in a personal capacity, and they cannot cross examine any witnesses or Panel members. The Appeal Panel is a professional discussion, not a legal hearing.
- In accordance with the Gold Guide (2016), present at the Appeal Panel will be:

- the Postgraduate Dean or a nominated representative as Chair (normally a Deputy Dean)
- a College/Faculty representative from outside the locality in HEE, NES, the Wales Deanery or NIMDTA and from the same specialty as the trainee
- a senior doctor from the same locality in HEE as the trainee and from the same specialty as the trainee
- a senior doctor from the same locality in HEE as the trainee and from a different specialty to the trainee
- a senior trainee from a different specialty to the trainee
- a lay representative

The Administrative Lead will normally be present to take minutes.

A representative from a Human Resources Directorate, or from HEE, must be available to advise the Chair on, for example, equal opportunities matters. This does not need to be in person and a named contact can be available over the phone.

- The Trainee is permitted to submit paperwork to either a Review or an Appeal Panel. Paperwork must be submitted to HEE YH within the deadlines stated in the Gold Guide. HEE YH is not responsible for producing copies of paperwork, and will not normally allow paperwork to be submitted after the deadline. HEE YH will send electronic copies of the paperwork to the relevant Panel members. Paperwork can also be sent as hard-copy format to an agreed address if requested.
- The decision will be made on the day of the Panel. Only in exceptional circumstances will a decision be deferred to a later date.