

Supporting the trainee with Performance Concerns – the legal view



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Introduction

- What challenges are happening to the training process?
- Why do they arise?
- Typical case
- Legal risks
- Lessons learned

What legal challenges do you think are happening to the training process?

- Race discrimination
- Religious discrimination
- Whistle blowing claims
- Age discrimination
- Sex discrimination
- Disability discrimination

Why do we see these claims?

- Massive cohort of trainees - 2021 recruitment round:
 - 7846 specialty trainees per year
 - 4000 GP trainees per year
- Rise of late-stage diagnosis learning disabilities
- Limits on additional training time – Gold Guide
- Annual Review of Competence Panels (ARCPs)
- Royal College exams and curricula
- Responsibilities harder to define
- Claims are complex and long running

Typical case

- GP Trainee develops a significant medical issue
- Specialist report recommends extensive reasonable adjustments
- The trainee's Royal College confirms that it cannot provide the trainee with additional exam attempts and/or
- The GP practice informs HEE that it is not possible for it to provide an appropriate training placement for the trainee
- The trainee has submitted a grievance to the Lead Employer
- HEE cannot find another GP practice willing to accommodate the trainee

Issues arising out of the case

- What are the barriers to continuing?
 - Exam attempts
 - Locating a placement
- Are these factors out of our control?
- Can we support the trainee challenge any of these decisions?
- Alternatives to terminating training?
- What support can we offer?

Trainee cases – the risks of getting it wrong

- Sympathetic claimant
- Complex and difficult to defend
- Career ending losses
- Loss of trainee to the NHS
- Reputational risk - social media/MPs

Ongoing Legal Risks

- Royal College and exam attempts
- Diagnosed neurodiversity increasing
- Differential attainment – ARCP outcomes
- HEE's increased visibility
- Liability for educational supervisors

Lessons learned

- Identifying responsibilities
 - Educational vs employment issues
 - Local vs curriculum issues
- Record key decisions – email/notes of meeting
- Transparency/involving others
- Challenging employer/placement decisions on behalf of the trainee
- Changing trainers/training placement
- Investigation of complaints
- Engage with support for trainers dealing with (disabled) trainees in difficulty
- Training!



Thank you

