

## Appeals Policy for ARCP panel Outcomes Foundation and Specialty Training

This document sets out the policy and procedure for appealing against the decision of the ARCP panel and replaces all previous policies.

## **Introduction**

This policy is applicable to the ARCP process for both foundation and specialty training, and the withdrawal of a training number by the Postgraduate Dean. It is based on the requirements for appeals against ARCP outcomes and withdrawal of a training number as set out in 'The Guide to Postgraduate Specialty Training', the "Gold Guide Sixth Edition" (2016), and the Foundation Programme Reference Guide 2012 (updated for 2014).

For Foundation trainees, this policy will apply to all trainees in the East Anglian Foundation School.

From August 2017 this policy will apply to F1 trainees in the Essex, Bedfordshire and Hertfordshire Foundation School.

From August 2018, this policy will apply to all foundation trainees in Health Education England working across the east of England (HEE, EoE).

For Specialty trainees this policy will apply to all trainees in training programmes managed by Health Education England, East of England.

This policy does not apply to trainees who are linked to Foundation and Specialty training programmes managed by the Health Education England organisations in London.

The 2016 edition of the Gold Guide defines the differences between Appeals and Review as follows:

### **Review of ARCP Outcomes**

7.124 A review is a process where an individual or a group who originally made a decision, returns to it to reconsider whether it was appropriate. This does not require the 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 relevant information, including additional relevant evidence, whether it formed part of the original considerations or has been freshly submitted.

### **Appeal against ARCP outcomes**

7.125 An appeal is a procedure whereby the decision of one individual or a group is considered by another (different) individual or group. An appeal can take into account information available at the time the original decision was made, newly submitted information relevant to the appeal and the representations of the appellant. Those involved in an appeal panel must not have played a part in the original decision or the review.

## **Review of ARCP Outcome 2 (Specialty training only)**

Where a trainee is awarded an Outcome 2, they can request in writing a review of this decision. As part of the request the trainee must submit their grounds for requesting a review and their supporting evidence. The review is undertaken by the ARCP panel that originally made the decision. Requests for a review must be made to the Appeals Officer within 10 working days\* of being notified of their decision.

The Appeals Officer will arrange for a review of the outcome 2 and, as far as practicable, with all members of the original ARCP panel within 15 working days\* of receiving the written request for a review. Where all the members of the original ARCP panel are not available, a minimum of the Chair and one additional member of the original panel must be present at the review discussion. The review can be held virtually in circumstances where it is not practicable to convene the panel in person in a timely manner. A meeting must be arranged with the trainee following the review; this can be with the chair of the review panel or a senior educator in the training programme.

Any additional evidence that the trainee wishes the review panel to consider must be submitted within 5 working days\* prior to the review taking place.

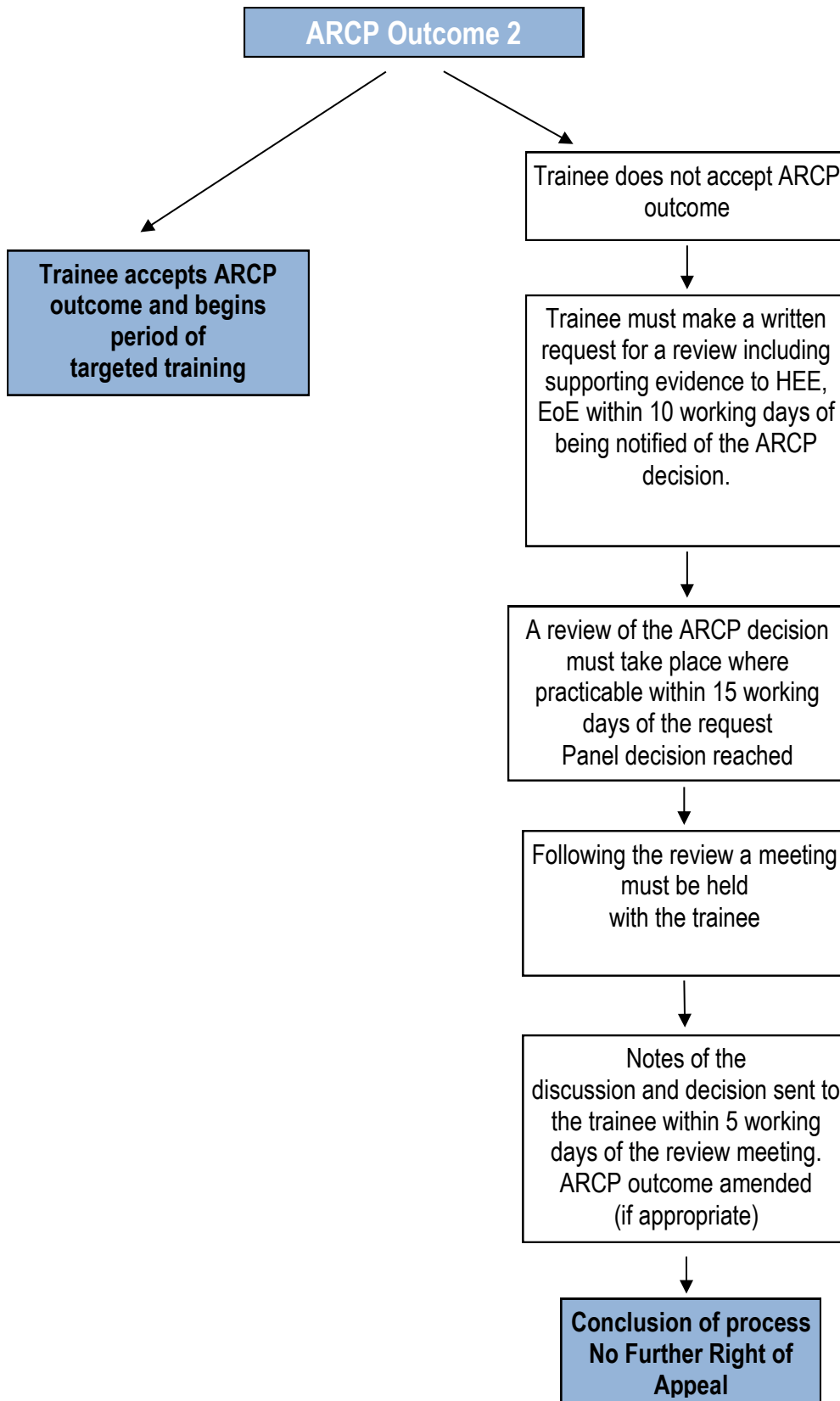
On completion of the review, the panel may decide to:

1. Reaffirm its previous decision;
2. Substitute its previous decision with a decision that Outcome 1 has been reached and complete an Outcome 1 form or an Outcome 6 form if the trainee has completed their training.

A HEE, EoE administrator will be present at the review to make a written record summarising the discussion and the decision reached; this record will not be verbatim. The written record of the proceedings including the decision reached will be given to the trainee within 5 working days\* of the review taking place.

The decision of the panel reviewing the ARCP panel Outcome 2 award is final and there is no further right of appeal.

**Figure 1: Flowchart for Review of Outcome 2 (Specialty training)**



## **Appeals against ARCP outcome 3 or 4**

Trainees have a right of appeal if they are awarded an ARCP outcome 3 or 4 or in the case of removal of a training number by the Postgraduate Dean. A request for an appeal must be made in writing to the Postgraduate Dean or nominated representative within 10 working days\* of the trainee being notified of the ARCP panel's decision and must state the grounds for appeal.

For Foundation training an appeal against an ARCP outcome 4 by an F1 trainee who is a UK graduate would normally be the responsibility of the graduating medical school but for geographical reasons may be devolved to the local Foundation School and their linked educational organisation.

Foundation year 2 doctors can only appeal against an ARCP decision to remove them from the training programme without completion of the Foundation Achievement of Competence Document (FACD) if they can demonstrate that they have met all the required competencies and that the evidence was available at the ARCP but was not considered appropriately.

### **Review (Specialty Training only)**

On receipt of a request for an appeal, the Appeals Officer will arrange for a review to be held before the formal appeal hearing. The process will follow the same as a review of an outcome 2 outlined on page 3 of this document.

Where the review panel change the outcome decision, this completes the appeal process. If the review panel do not change the outcome decision, HEE, EoE will confirm with the trainee, within 10 working days of the decision if they wish to proceed to a formal appeal hearing. The Appeals Officer will write to the trainee to confirm this, prior to setting up any panel.

### **Formal appeal hearing (Foundation and Specialty training and NTN removal by the Postgraduate Dean)**

The Appeals Officer will arrange the appeal hearing, where possible, to take place, within 15 working days\* of receipt of a request for a formal appeal hearing, or following completion of the review process. The appeal hearing will only be re-arranged on one further occasion in exceptional circumstances such as ill health. If the trainee or their representative is not able to attend the re-arranged appeal hearing, it will proceed in their absence. The trainee will be entitled to make representations in writing for the appeal panel to consider in their absence.

### **Constitution of the Appeal Panel**

The Appeals Officer will convene an independent panel to consider the evidence and form a judgement. The appeal panel should include:

<b>Specialty Trainee Appeal Panel</b>	<b>Foundation Appeal Panel</b>
Postgraduate Dean or their nominated representative as chair	Postgraduate Dean or their nominated representative as chair; For F1 UK graduates ARCP outcome 4 appeal, Medical School Dean as chair
College/Faculty representative from an adjacent region	Foundation School Director from another Foundation School
Two senior doctors from the same Health Education England, East of England area as the trainee; one of whom should be in the same specialty as the trainee and one of whom should be from a different specialty from the trainee.	Two senior doctors from the same Foundation School as the trainee who provide educational or clinical supervision for Foundation training; For F1 UK graduates ARCP outcome 4 appeal, one senior doctor should be a medical school representative
A senior trainee from a different specialty	A foundation doctor in training in a different foundation school
Lay Representative	Lay Representative
<ul style="list-style-type: none"> <li>• HR representative who will be available to advise the panel</li> <li>• Administrative support who does not form part of the appeal panel</li> </ul>	

The membership of the panel should not include anyone involved in either the review stage or any members of the original ARCP panel.

The appeal hearing will be recorded and a HEE, EoE administrator will be present to make a written summary record of the discussion and the decision reached. This will not be a verbatim record and we do not share the audio recordings due to the requirements of the Data Protection Act (1998).

All members of the panel must have undertaken equality and diversity training within the past three years and be able to evidence this.

### **Trainee Representation**

Trainees have the right to be represented at the formal appeal hearing. The trainee may be represented by a friend, colleague or a representative of their professional body. The trainee may be represented by a legal representative; however the legal representative must be reminded that the appeal hearing is not a court of law and the panel governs its own procedure, including the questioning allowed of others by the legal representative. The trainee should inform HEE, EoE of their representative's name and contact details. Trainees are also permitted if they wish to send a representative to attend the appeal hearing in their place. If they wish to do this, they must inform HEE, EoE at least 5 working days prior to the hearing taking place.

### **Statement of Case**

The trainee and HEE, EoE will be required to provide a written statement of case plus any supporting documentation. The HEE, EoE Appeals Officer will confirm a

deadline which ensures that the documents can be received by the relevant parties at least 5 working days\* prior to the date of the appeal hearing.

Any documentation submitted after this deadline will only be considered at the discretion of the Chair of the appeal panel.

### **Supporting documentation**

The trainee and the appeal panel members will be provided with the following documentation pack at least 5 working days\* prior to the appeal panel hearing:

- Timetable and seating plan for the appeal hearing
- Trainee's written appeal
- Record of ARCP panel including reasons for outcome given
- Copies of evidence used at ARCP panel, e.g. Educational Supervisor's report, report from Programme Director/FTPD, assessments undertaken in post
- Statement of case of both parties;
- Any other material evidence pertinent to the appeal
- Historical record of the trainee's progression in training to date, including ARCP outcomes and a summary timeline.

### **Witnesses**

The trainee and/or their representative would normally be expected to be present at the appeal hearing; this will not be necessary if a decision has been made to hold a virtual panel. Should the trainee wish to call any witnesses they must notify the Appeals Officer no later than 5 working days\* prior to the appeal panel hearing. Any witnesses notified after this deadline will only be considered at the discretion of the Chair of the appeal panel.

### **Hearing Procedure**

The Chair should explain the format of the appeal hearing which will be as follows:

- Appeal Hearings will be recorded
- The panel should review the documentation in closed session;
- The trainee, their representative (if present) and the HEE, EoE representative will be invited to attend the panel;
- The trainee and/or their representative address the panel first and call any relevant witnesses;
- The HEE, EoE representative will then be given the opportunity to clarify matters arising from the trainee's statement;
- The HEE, EoE representative should then address the appeal panel second and call any relevant witnesses;
- The trainee and/or their representative will then be given the opportunity to clarify matters arising from the HEE, EoE representative's statement;
- Once the trainee and/or their representative have presented their statement of case both parties will have a further opportunity to ask questions;
- The panel will then also have the opportunity to ask questions of both parties and any witnesses;
- The witnesses will then be asked to leave the room;
- Both parties will be invited to make brief closing statements to the panel;

- The trainee, their representative and the HEE, EoE representative will be asked to leave the room;
- The panel will then deliberate in closed session and make a decision;
- The panel will normally make a decision on the day of the hearing. If this is not possible the panel will reserve their decision for a later date to be notified to the parties;
- The decision of the panel must be unanimous;
- The trainee will be informed of the decision by the HEE, EoE on behalf of the panel Chair in writing within five working days\* of the appeal hearing;
- The panel are required to maintain confidentiality and should not communicate the outcome.

**Please note that either party may ask the Chair of the appeal panel to adjourn during proceedings.**

### **Decision**

Upon completion of the appeal hearing the Appeal Panel will retire to consider its decision in private. It will then make one of the determinations as outlined below:

1. Confirmation of the original decision
2. Substitute the previous decision with the recommendation of an Outcome 2 or 3 and complete an Outcome 2 or 3 form recommending the further steps that must be taken and to inform the development of an action plan, including identification of the criteria against which achievement of competences will be assessed and a revised indicative date for completion of training; or
3. Rarely, it may be appropriate to substitute the previous decision with the recommendation of an Outcome 1 or 6, and complete an Outcome 1 or an Outcome 6 form.
4. The appeals panel cannot impose an increased sanction on the trainee; for instance, an outcome 3 cannot be changed to an outcome 4. In circumstances where such information is brought to light, the issues will be brought to the attention of the Postgraduate Dean.

Where the Appeal Panel proposes, either by reaffirming the previous decision or by developing an action plan, that a further period of training is required, such period may not exceed 12 months when aggregated with any previous extensions granted in respect of the trainee. This 12 month period may be exceeded only in exceptional circumstances as determined by the Postgraduate Dean up to a maximum total period of 24 months. This will be a maximum of 6 months for trainees on Core Training (CT) programmes and for trainees on GP training programmes, with a possible extension of up to 12 months only in exceptional circumstances. For clarification, section 7.80 states that exceptional circumstances might include “significant unforeseen changes to personal circumstances, service reorganisation, a major epidemic or catastrophe, or the unforeseen absence of a trainer.”

The trainee will be notified in writing of the decision within 5 working days\* with a formal report being provided as soon as is practicable. This will be sent by HEE, EoE on behalf of the Chair of the appeal panel. A copy of the proceedings will be sent to the trainee and, as appropriate, their representative with a further copy kept on file.

The decision of the appeal panel is final and there is no further right of appeal.

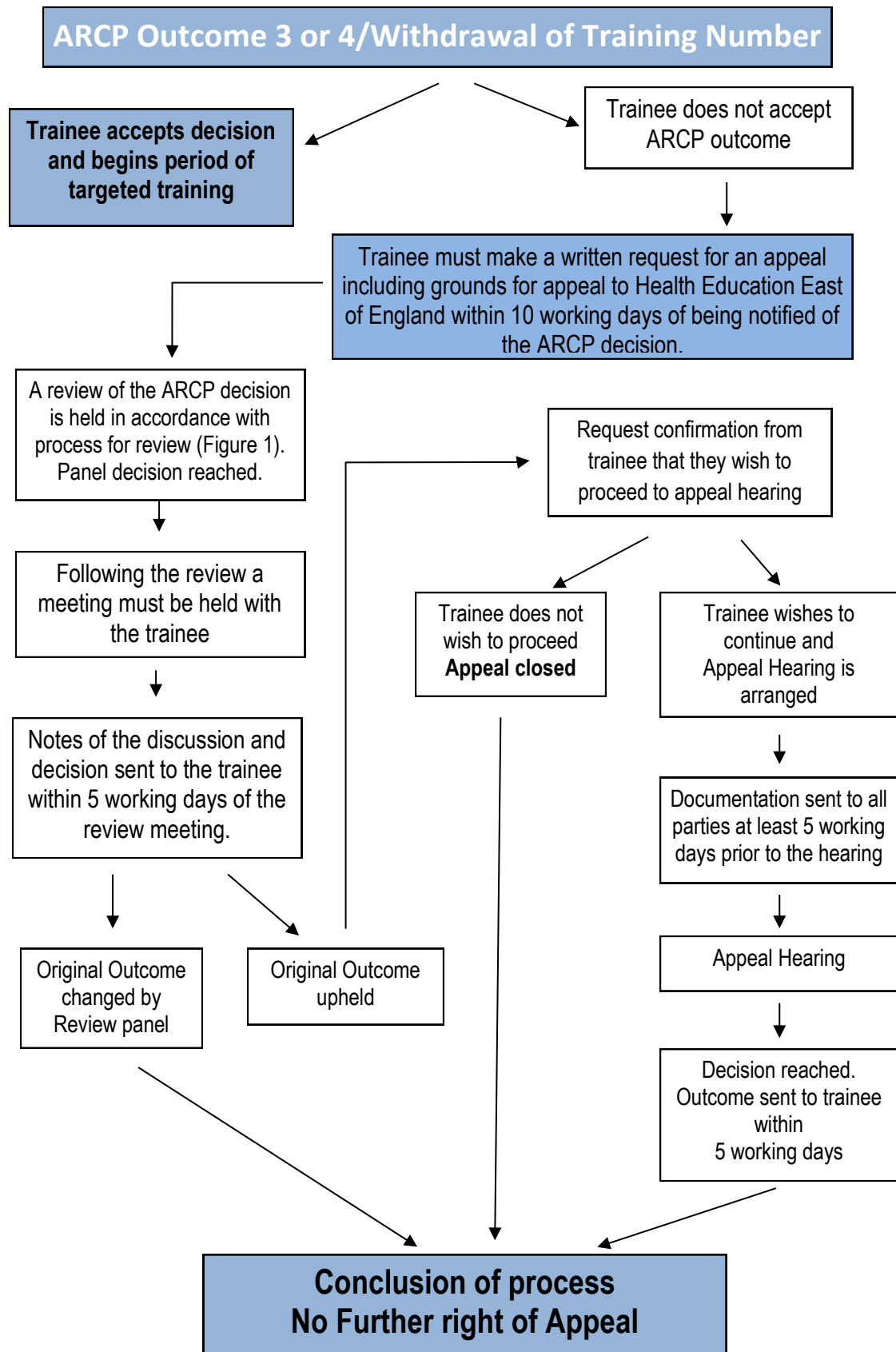


## **EQUALITY ACT 2010**

Health Education England is committed to equality and diversity within the organisation and this policy is in line with the Equality Act 2010. HEEoE will ensure that the application of any part of this policy does not discriminate, either directly or indirectly, against anyone on the grounds of race, disability, sex, gender reassignment, sexual orientation, religion or belief, age, pregnancy or maternity, marriage or civil partnership.

*\*For the purpose of this policy, working days are Monday to Friday excluding Bank and Public Holidays*

**Figure 2: Flowchart for Appeal against ARCP Outcome 3 or 4, or Withdrawal of Training Number (Specialty Training)**



## DOCUMENT HISTORY

Version	Date	Remarks
1.0	January 2010	Drafted by KR and SS
1.1	July 2010	Reviewed by KR and SS
2.0	October 2011	Draft AB and NC
2.1	November 2011	Revised AB, JH and NC
3.0	November 2012	Updated by HK and SR
3.1	December 2012	Revised by senior team including SG, JH, AB
3.2	April 2013	Revised by AB, KR, MB
3.3	September 2013	Revised by AB, KR and SB
3.4	December 2013	Updated by KR, ES
3.5	May 2014	Revised by AB, KR and EC
3.6	July 2014	Updated by KR and EC
3.7	June 2016	Updated by ES, JH, AB and KR