

Trainees in difficulty / Avoiding Pitfalls and Appeals

Ian Barton, Kate Read and Susan Woodroffe

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Educational Supervision



Educational progression



Development of the individual to learn – how do you get the best out of your train



Trainee and patient safety

Appeals: The Process

- Trainee receives an unsatisfactory outcome (3,4)*
- Provided with advice re appeals process
- 10 days – trainee provides reasons for appeal
- Review takes place (original panel)
- Proceed to full appeal hearing
- Purpose: review original ARCP decision and undertake re-hearing

* Removal of NTN on other grounds

Grounds for Appeal

Training Environment
– opportunity /
relationship
breakdown

Ill health / Disability /
Failure reasonable
adjustments

Failure to forewarn
(Trainee may perceive
as unfair)

Failure to follow
process (No right of
reply)

Whistleblowing /
Victimisation

Consequences of
removal of NTN (loss
of opportunity to
progress / earnings)

A Trainee you have supervised...



How were you alerted to
the possible difficulties
the trainee had?



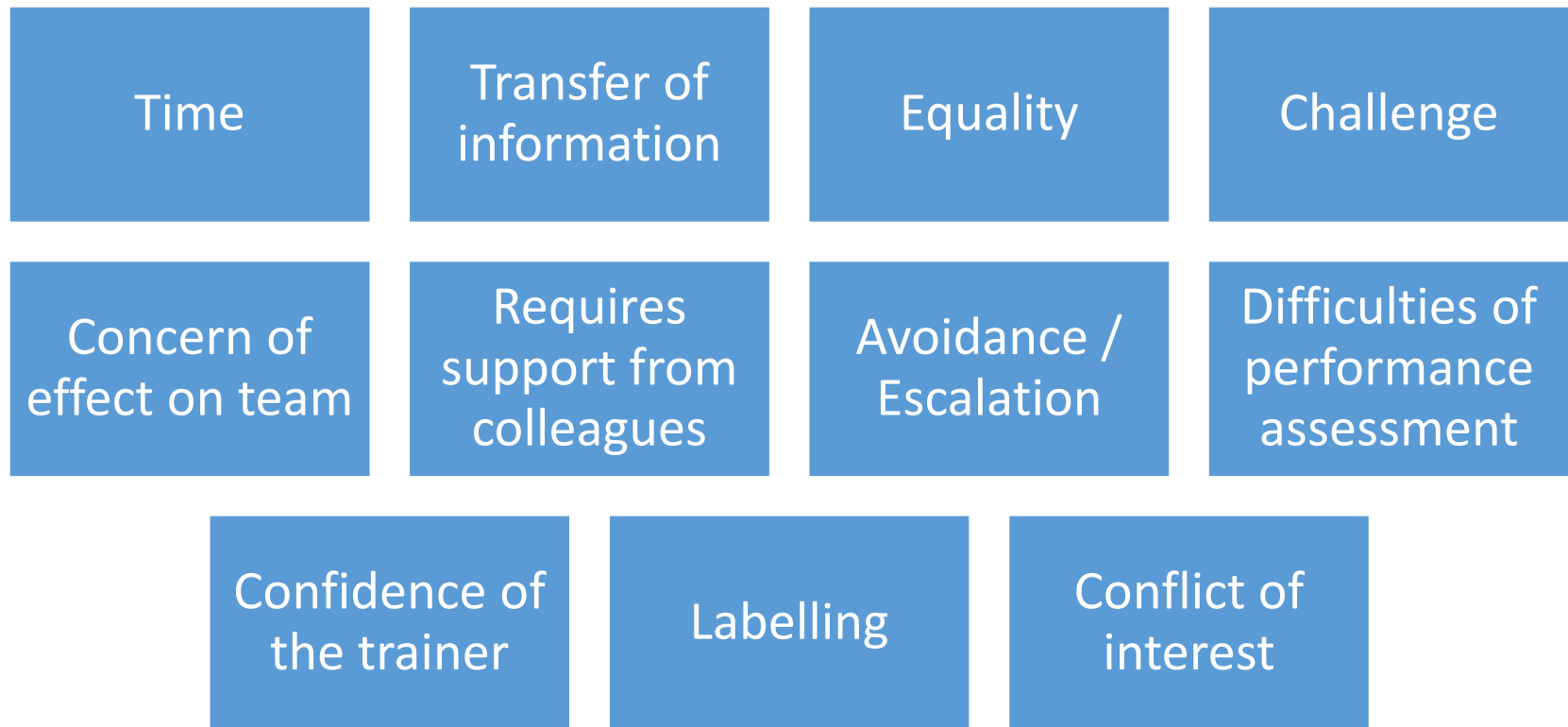
How did you address
these with the trainee and
what was the outcome?



What information did you
gather and how did you
obtain it?



Discuss- 10 mins



What are the barriers to identifying tackling and recording concerns?

Barriers

- Fear of confrontation
- Fear of retaliation
- Denial
- Lack of confidence in skills
- Lack of “evidence”
- Desire to rescue or protect
- Avoidance
- Frustration
- Helplessness

What is the challenge?

- Finding objective evidence
- Documentation
- Openness with the Trainee
- Awareness of counter-allegations
- Failing to fail

Gathering information

Involve some or all of:

Clinical supervisor

Educational supervisor

DME (will support you:
this is difficult!)

HR

Medical Director

OH

Deanery

Medical School

TAB/ 360 feedback can be
very useful

SPEAK to the TRAINEE,
document everything

Avoiding Pitfalls

What difficulties are encountered?

- Confidentiality
- Transfer of Information
- Requirement to inform GMC
- Employment issues v education
- Potential consequences of outcome 4 /
Removal of NTN
- Counter-allegations



Pitfalls at the ARCP stage

- Misuse of ARCP
- Lack of warning
- Length of training/extensions
- Medical issues
- Bullying and harassment

Misuse of ARCP Process

- Overriding issue is the collection and assessment of evidence. It is not a tool or means of assessment – 7.27
- Allegations made by the trainee – 7.51

Lack of Warning

- Trainee must meet ES and/or TPD (7.116)... documenting the plan fully – see 7.71 pg 62
- Result should not be surprise (7.120)
- Concerns addressed before the ARCP (7.26)
- **Scenario**

Scenario

- Dr Axel appeals a decision of the ARCP to issue her with an Outcome 4. She is a core trainee. You are the relevant Head of School. Her training history is as follows:
- In her ST1 and ST2 years she received Outcome 1s. She subsequently received two Outcome 3s; each one giving her a three month extension to meet targets related to deficiencies within her work. Clear targets were set for Dr Axel by her ES after each Outcome 3.
- On appeal, Dr Axel is represented by a solicitor. He alleges that Dr Axel was not made aware prior to her final ARCP meeting that she may receive an Outcome 4 and removed from the programme. He refers to the Gold Guide and it does state that an Outcome 4 must not come as a surprise to a trainee. It is the solicitor's opinion that a failure to warn Dr Axel that she would receive an Outcome 4 has undermined the process and, therefore, it should be overturned in favour of another Outcome 3.
- On review of the e-Portfolio, you can see that her ES and TPD separately discussed the issues of her training deficiencies with her at length on many occasions and she was set clear targets to improve. However, it is unclear whether the TDP or her ES actually said to her "if you do not meet these targets you will be issued with an Outcome 4/your training number will be removed/you will fail the Scheme" or similar. It appears that the trainers found it very difficult to provide feedback to Dr Axel as she reacted very aggressively to negative comments.
- Based on the above, do you think that the trainee's appeal should succeed?
- What action could be taken prior to the appeal to assist the appeal panel make its decision?



Length of Training

- Various outcomes but principally interested in outcomes 1-4. Outcomes 3 affects CCT date
- Note 7.80 – length of extension and exceptional circumstance (page 64)
- Exceptional Circumstances

Scenario



Scenario

- A neurosurgery trainee is given an Outcome 4 because he failed to pass the requisite Royal College exams. The trainee was given two Outcome 3s, each one of six months duration, to pass the exams. However, at the latest attempt, the trainee failed.
- You review the e-Portfolio, it appears that the trainee was given sufficient support during the extensions of training and the trainee, on appeal, does not state that such support was lacking.
- The trainee's appeal is that he should be given one final attempt at the exam. He states, in his grounds of appeal, that he was going through a divorce at the time of the last attempt and that his life is more settled now. He has provided a note from his GP that confirms that he "was under immense stress due to the breakdown of his family at the time of his last attempt at the Royal College examinations". However, no further information is given about the trainee's health at the time of the exam failure. The GP also confirms that the stress has passed and gives the opinion that the trainee should be supported for a final attempt at the exams.
- Given the above information, would you recommend that the Outcome 4 is overturned and the trainee's training is extended for three months to allow another sitting at the exam?
- Would it make a difference if the trainee's exam failure was as a result of a more significant health issue, such as diagnosed dyslexia?

TPD Report – 7.49

- Specific additional report from TPD where negative report
- Whilst not compulsory would argue is essential
- Seen by Trainee prior to submission to panel
- No need to agree
- Trainee has right of reply (7.50)

Other Issues

- Medical issue
 - Are they grounds of appeal?
 - Address them anyway?
- Allegations of bullying and harassment
- **Scenario**

Scenario

- You have been appointed to represent HEE at an ARCP appeal panel. The trainee in question has submitted grounds of appeal against an Outcome 3 on the basis of bullying and harassment.
- You review the e-Portfolio. It documents that the trainee has received a number of unsatisfactory outcomes in her ARCP panel history. These have been followed up by meetings with her ES. These meetings are documented in the e-Portfolio. It seems to you that the notes from the meeting are very direct, as they clearly explain to the trainee, in no uncertain terms, why she is failing, what is needed to improve and what would be the outcome if she failed to improve.
- From the other document in the e-Portfolio, it looks as though the ES and the trainee did not get on. There is a significant amount of criticism from each party against the other. While there are no allegations of bullying, the trainee does state that she does not agree with the feedback she is receiving from her ES. In response, the ES says the trainee is very difficult to manage and does not accept feedback.
- You review the grounds of appeal. They state that the trainee considers that the ES is overbearing, rude and a bully. The trainee states that the ES's attitude towards her changed when she submitted a grievance to her employer and she is waiting for a 'tribunal hearing'.
- On review of the e-Portfolio, the trainee has received negative feedback from other trainers and clinical supervisor. The grounds of appeal state that they have been influenced by the ES.
- What issues do you need to consider when dealing with the grounds of appeal?
- What information would you look to ascertain before or during the ARCP appeal to consider the grounds of appeal?



Documenting objective evidence



Multiple sources – ideally independently verifiable



Regular and timely feedback



Don't get caught out by failure to follow process?



Be careful what you write!



Share with trainee



Avoid confrontation

Avoiding grounds for appeal