

HILL DICKINSON

HEE East of England

**Supporting a Doctor Through Difficulty
– legal risks**

**Michael Wright
Partner**

May 2019



Managing the Risk

- Introduction
- What legal challenges are happening to the training process?
- Areas of risk/getting it wrong
- Common signs of concern
- Lessons learned



What legal challenges are happening to the training process?

HEE – approx. 24 litigated claims since 2013:

- 10 disability discrimination
 - 8 race discrimination
 - 4 judicial reviews
 - 3 whistle blowing
 - 1 age discrimination
 - 1 sex discrimination
- 

Focus on disability:

1. Does the person have a **physical or mental impairment**?
 2. Is it automatically counted as a disability?
 3. Does that impairment have an **adverse effect** on their ability to carry out **normal** day-to-day activities?
 4. Is that effect **substantial**?
 5. Is that effect **long-term**?
- 

Reasonable adjustments

Where a:

- provision, criterion or practice
- any physical feature of the employer's premises or
- lack of an "auxiliary aid"

places the disabled employee at a substantial disadvantage ... must take such steps as are reasonable, in all the circumstances, to avoid that disadvantage or provide the auxiliary aid



Reasonable adjustments

- Examples of reasonable adjustments from EHRC Code:
 - phased return to work
 - varied start and finish times
 - alteration or reallocation of duties
 - returning in supernumerary capacity
 - purchasing equipment or software
- Duty is a wide one; can affect any area



Cost – physical feature/aux aid

- GPST, Dr Peters, has deteriorating sight
- Specialist report states that Dr P needs new computer equipment
- It will cost £15,000
- GP practice refuses to pay because he has 2 months left at the practice

Is it reasonable to fund the purchase of the equipment?

What factors should be taken into account?

If so, who should pay?



Learning disabilities

- Common late-stage diagnosis
- Dyslexia, Dyscalculia and Dysgraphia
- Additional training time?
- Exams



The training pause

- 4.10 There are occasions where progress in training cannot be achieved because of events external to training and even though the trainee has remained in the workplace. This would result in a shorter period of time than expected having been available for training since the previous Annual Review of Competence Progression (ARCP). In this situation, consideration would need to be given to training time being paused and the prospective core training programme end date or CCT/CESR(CP)/CEGPR(CP) date being extended following review at the ARCP (paragraph 4.72). The decision to pause training time is an important one and needs to be formalised with written agreement from the Postgraduate Dean. Reference should also be made to the GMC's position statement on time out of training.

Disability- Areas of Risk

- Not wanting to afford the disabled doctor '**special treatment**'
 - Failing to **engage** with the doctor and others
 - Failing to demonstrate **separation** with RCs and GMC
 - Becoming **cynical** about the doctor's condition
 - Jumping to conclusions e.g. exams, LTFT or night working
 - Passing on the problem
- 

Trainee doctors – areas of risk

- Easier to reject/refuse
- Responsibilities harder to define
- Three-way relationship
 - Host trust
 - Employing Trust
 - HEE

Areas of responsibility

- GMC
 - Fitness to practice
 - Entry to Register

- Royal College
 - Exams
 - Curriculum requirements



Areas of responsibility

- HEE responsibility?
 - Length of training/progression
 - Part time working
 - Locating training placement
 - Supernumerary funding
 - Ability to continue
 - OOP
 - Termination of training
 - Completion of training



Areas of responsibility

- Employer issue?
 - ‘Legal’ employer
 - Capability policy/MHPS process
 - Duty of care
 - Part time working?
- Host Trust?
 - Reasonable adjustment to work
 - Hours of work/phased return
 - Managing trainee

Trainee doctors – getting it wrong

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



Common signs of concern

- Lack of insight
- Confrontational and hostile
- Manipulation of system
- Unresolved complaints/grievances – whistleblowing
- Mental or physical health issues
- Social media
- Lengthy/late night emails



Lessons Learned

- Identify responsibilities
- Challenging decisions on behalf of the trainee
- Avoid email ping-pong
- Record key decisions – email/notes of meeting
- Set out consequences
- Changing TPD/ES/training placements
- Investigate complaints



HILL DICKINSON

Stats!





Outcomes by PMQ and ethnic group for each specialty group

Release Date: 28/08/2018

Outcome type

Unsatisfactory outcome (outcome 2, 3, 4, 7.2, 7.3, D or E)

Specialty group

General Practice

PMQ world region(s)

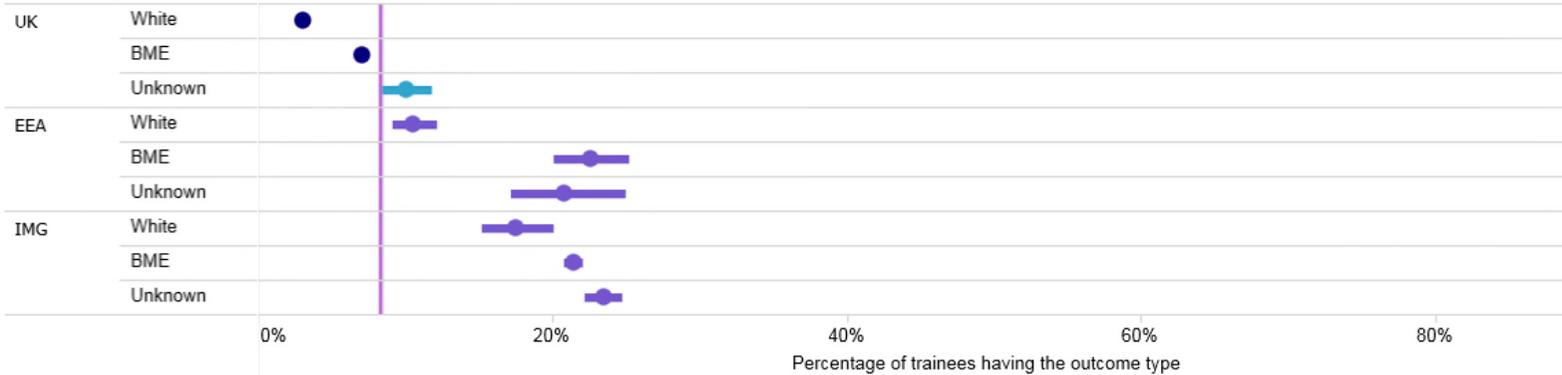
(All)

Main menu

Tabular data

Primary

PMQ world region Ethnic group



Outcomes by age group and gender for each specialty group

Release date: 28/08/2018

Outcome type

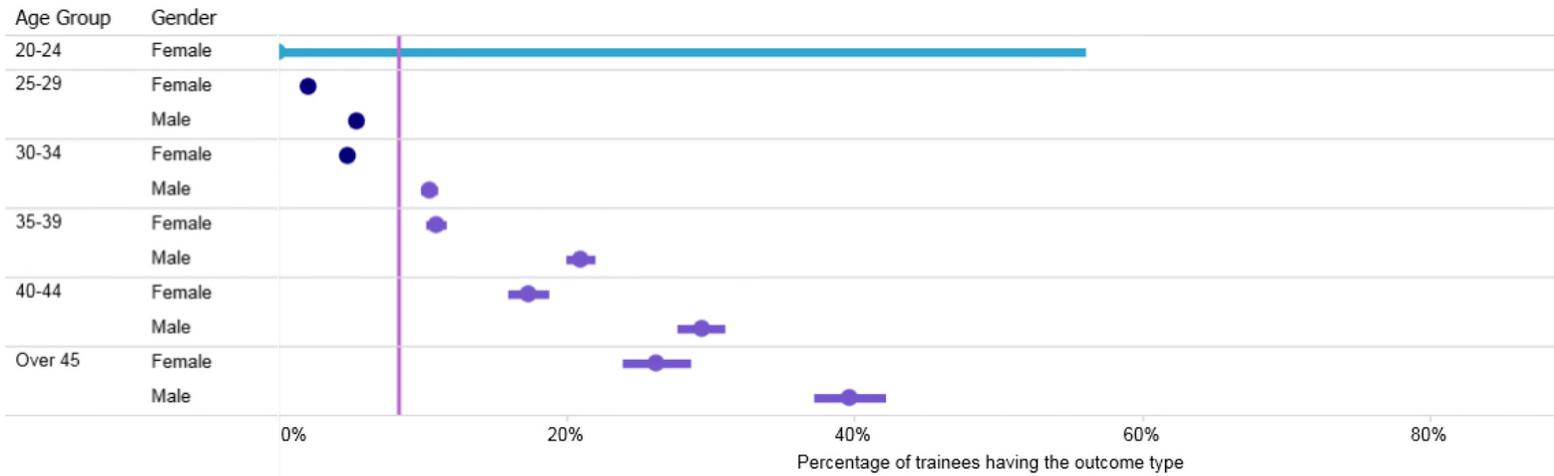
Unsatisfactory outcome (outcome 2, 3, 4, 7.2, 7.3, D or E)

Specialty group

General Practice

Main menu

Tabular data



HILL DICKINSON

Any questions?

