

COVID-19 ARCP Appeal Process

1. Introduction

1.1 This document sets out the process for appeals of ARCP Outcomes during the COVID-19 Pandemic. It is a derogation to the Gold Guide (GG8). It will not cover every eventuality and there may be occasions where it will be necessary for Postgraduate Deans to use their discretion to make additional derogations from the guidance in exceptional circumstances (GG8:1.11-1.12). Statutory Education Bodies (SEBs) may also need to modify their Standard Operating Procedures (SOPs) in response to COVID-19.

1.2 This guidance applies to appeals against ARCP Outcomes during COVID-19. It does not apply to removal of a National Training Number (NTN) or Foundation training contract for other reasons (GG8: 3.99 iii, iv, vi or vii) which are subject to appeal through the usual process as outlined in GG8:3.101.

1.3 As described in the ARCP Decision Aid¹, there may be challenges for trainees and trainers in preparing and providing evidence for ARCP as well as for the Statutory Education Bodies in delivering ARCPs during the present COVID-19 pandemic. ARCP, as the systematic method of reviewing evidence to assess whether a trainee can safely progress to the next stage of their training, is essential to trainee progression and therefore a process is needed for ARCP to proceed despite the current challenges. Whilst the ARCP Decision Aid aims to enable trainee progression with satisfactory outcomes (Outcome 1 & 6) as far as practically possible; there will still be Outcomes 2 – 4 that would normally be subject to review (Outcome 2) or appeal (Outcomes 3 & 4) in accordance with GG8:4.164 – 4.172. In addition, the derogation to GG8: 4.91 *ARCP Outcome 10* has been developed as a “no fault” outcome to recognise the disruption to training programmes due to COVID-19.

1.4 GG8: 4.173 – 4.179 sets out the process and minimum requirements for ARCP appeal panel membership, with operational detail included in the standard operating procedures (SOPs) in the four UK Statutory Education Bodies (SEBs), (HEE, HEIW, NES & NIMDTA).

1.5 Given the limited capacity of local offices and education faculty to support ARCP appeals it is necessary to adapt the ARCP appeal process to enable ARCP appeals to be heard in a timely fashion in the context of the pandemic and the associated difficulty in securing the participation of multiple clinicians in appeal panels. This adapted approach will maintain externality and equity for trainees. COVID-19 ARCP Appeal Process

¹ ARCP Decision Aid – Enabling progression at ARCP April 2020

2. Adapted ARCP appeal process during COVID-19 pandemic

2.1 Currently, GG8:4.170 makes provision for the Postgraduate Dean, upon receipt of the appeal request, to arrange a review of the original ARCP decision (see footnote 14 GG8) commonly referred to as a step 1 review. This is a primary filter for potential appeals and should be maximised. It is anticipated that, during this pandemic, reviews will need to be undertaken virtually.

2.2 If the step 1 review does not change the original ARCP outcome, then normally it would progress to a full appeal hearing (Step-2 appeal).

2.3 Standard Operating Procedures (SOPs) in each of the four UK SEBs (HEE, HEIW, NES & NIMDTA) set out the minimum requirements /constitution of ARCP appeal panels.

2.4 Given the current pressures on clinician and external college adviser capacity it is suggested that the approach to ARCP appeal panels should be redefined as set out in 1.5 and that the panel should be composed of a minimum of three individuals, including the Postgraduate Dean or their nominated deputy and at least two others from the following list:

- An external college/faculty adviser (dependent on capacity)
- A senior doctor from the same specialty
- Lay representative
- HR support/representative²
- Trainee representative

2.5 SEBs should consider options for establishing a regional resource for sharing/coordinating personnel, or pairing with another team (eg neighbouring office/deanery) to assure externality, equity, and transparency of process.

2.6 Usual timelines for implementation should be observed wherever possible to maintain the flow of progression assessments. GG8: 4.173 is more permissive in extending the timelines to normally within 30 working days and a maximum limit of one year beyond the decision date. COVID-19 ARCP Appeal Process

² Lead Employment arrangements differ in each of the SEBs, with the role of HR in the appeal process being set out in and dependent upon SEB specific SOPs

3. Operationalizing ARCP appeals during COVID-19 pandemic

3.1 As COVID-19 restrictions require social distancing, it will not be possible to undertake face-to-face appeal hearings in the same way as usual. In addition, it is expected that there will be difficulties in coordinating a large number of clinicians for an appeal hearing at a mutually convenient time. In view of this, appeal hearings will take place with a virtual panel of reduced size. If possible, the trainee (appellant) and management (Deanery/Specialty School) will present their arguments to the panel on the day of the hearing orally, using appropriate social distancing measures / videoconferencing or equivalent technology.

3.2 In the event that the appellant and/or management (Deanery/Specialty School) is unable to present their arguments on the day of the hearing, the panel will decide if it is appropriate to reschedule, or to proceed to consider the appeal on the basis of the written evidence bundles provided in advance³.

3.3 Trainees (appellant) and management (Deanery/Specialty School) should submit their evidence bundles by email, to the local office managing appeals in the usual way and in accordance with usual timelines as set out in GG8 and local SOPs.

3.4 Local offices will prepare the bundles for the panel members and forward them a minimum of 5 working days before the panel hearing.

3.5 The team managing the appeal should have IT support to enable a virtual panel and access to relevant documents through suitable videoconferencing resources, with appropriate invitations sent and tested before the scheduled appeal hearing.

3.6 There should be consideration of appropriate administrative support to document the appeal panel hearing and timely correspondence of the outcome. Templates with agreed wording for ARCP appeal outcomes may enable consistency and speed of outcome letters by email.

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³ GG8: 4.174 makes provision for appeals to be dealt with on written submissions

4. Trainee Representation and Outstanding Issues

4.1 The Gold Guide and SOPs make provision for support or representation for ARCP appeals which may be from the doctor's professional organization (e.g. British Medical Association), a friend or colleague, and at the discretion of the Appeal Panel Chair, legal representation. If possible, trainee representatives will attend ARCP appeal panels using appropriate social distancing measures / videoconferencing or equivalent technology.

4.2 There are appeals with complex issues currently in the system that have been postponed for other reasons unrelated to COVID-19, which may be outstanding grievances, employer or GMC investigations, ongoing legal action e.g. Employment Tribunals or Judicial Reviews; that have not concluded. These appeals should be postponed/deferred until after COVID-19 pandemic under the exceptional circumstances criteria set out in GG8: 4.173. Local teams should inform trainees that these appeals have been postponed and will be heard under the usual appeal process after the COVID-19 pandemic.

5. Decisions that will be subject to appeal through the revised COVID-19 appeal process

5.1 ARCPs for trainees assessed during COVID-19 will follow the agreed guidance and ARCP Decision Aid algorithm⁴.

5.2 Where there are delays in the acquisition of competencies/capabilities which are not COVID related, then the usual ARCP outcomes (GG8:4.91) would apply and be subject to the usual review (Outcome 2) or appeal process (Outcomes 3 & 4).

5.3 The Derogation to GG8: 4.91 **ARCP Outcome 10** makes provision for "no fault outcomes" where training has been disrupted by COVID-19.

5.3.1 ARCP Outcome 10.1: recognizes that progress is satisfactory but the acquisition of competencies/capabilities by the trainee has been delayed by COVID-19 disruption. The trainee is not at a critical progression point in their programme and can progress to the next stage of their training. Any additional training time will be reviewed at the next ARCP.

An Outcome 10.1 might also be used at critical progression points if the mandated capabilities for progression have been amended and can be made up at the next stage in training.

An Outcome 10.1 should not be used for a trainee at the CCT critical progression point.

ARCP Outcome 10.1 is subject to the review process (GG8:4.614-4.615) COVID-19 ARCP Appeal Process

⁴ Documents can be accessed on the COPMeD website <https://www.copmed.org.uk/publications/covid-20>

5.3.2 ARCP Outcome 10.2: Progress is satisfactory but the acquisition of competences/capabilities by the trainee has been delayed by COVID-19 disruption. The trainee is at a critical progression point in their programme and additional training time is required.

ARCP Outcome 10.2 is subject to the appeal process (GG8: 4.166 – 4.179)

5.4 Overturning an ARCP Outcome 3 during COVID-19: Trainees assessed during COVID-19 and awarded an ARCP Outcome 3 who believe that a “no fault” ARCP Outcome 10 should have been awarded, can appeal that decision. If the appeal is upheld, the Postgraduate Dean has discretion to make a derogation from the Gold Guide process (GG8:1.12) overturning the Outcome 3 and awarding an ARCP Outcome 10.2

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