

HILL DICKINSON


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**Foundation Conference 2020**

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## Overview of session

- Legal challenges
  - Appeals
    - Common grounds of appeal
  - Lessons learned
  - Risks of getting it wrong
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## Right of Review and Appeal

- Outcome 3 or 4 and withdrawal by PGD (3.54 e.g. dismissed or assessed as not suitable)
  - A review is a process where an individual (PGD) or a group who originally made a decision returns to it to reconsider whether it was appropriate.
  - F1 appeal Outcome 4 - for UK medical graduates (F1s) normally heard to university/medical school of graduation
  - For non-UK grads & F2 - Outcome 4 would normally be heard by the foundation school
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## Common Grounds of Appeal

- Lack of warning (4.104)
  - Length of training/extensions
  - Bullying and harassment
  - Medical issues
    - Training pause (4.78)
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## Example

- A Foundation trainee appeals an Outcome 3.
  - He states that he has been bullied throughout his training and does not accept the ES's end of year report.
  - The trainee has previously raised grievances about his working environment.
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## Bullying/allegations of discrimination

- Appeal hearing not set up to make decisions about B&H
  - Have the allegations already been investigated/considered?
  - If everything the trainee says is true is it directly relevant to the appeal?
  - Options:
    - Refer to HR
    - Independent investigation outside of process
    - Continue with appeal if allegations unrelated
  - Allegations under investigation by HR
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## Reasonable adjustments for disability


- 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 of the contract
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## Learning disabilities


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

- 12 months ago a trainee was diagnosed with dyslexia
  - OH recommended various adjustments e.g. coaching, equipment, etc...
  - The trainee receives an Outcome 4 for general poor performance and issues with communication skills
  - The trainee appeals the outcome on the basis that the adjustments were delayed and they haven't been given sufficient time to take effect
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## Medical issues - Areas of Risk

- Not wanting to afford the disabled doctor '**special treatment**' and not wanting to disadvantage others
  - Failing to **engage** with the doctor and others
  - Becoming **cynical** about the doctor's condition
  - Jumping to conclusions e.g. exams, LTFT or night working
  - Passing on the problem
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## Foundation doctors– areas of risk

- Responsibilities harder to define
  - Two-way relationship
    - Employing Trust
    - HEE/Foundation school
  - Complex – e.g. role of GMC/RC/medical school
  - Who is responsible for what?
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## Common signs of concern

- Lack of insight
  - Confrontational and hostile
  - Manipulation of system
  - Unresolved complaints/grievances – whistleblowing
  - Mental or physical health issues
  - Social media
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## Lessons Learned

- Transparency
  - Marking an email 'confidential' won't prevent disclosure
  - Identify responsibilities
  - Record key decisions – email/notes of meeting
  - Set out consequences
  - Challenging decisions on behalf of the trainee
  - Early intervention/escalation
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## Trainee doctors – getting it wrong

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

