

16 January 2025

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FILE REF: **SHA/26357**

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COMMISSIONER: **NHS ENGLAND**

PERFORMER: **DR [REDACTED] ("the Appellant")**

DISPUTE RESOLUTION: **NATIONAL HEALTH SERVICE (PERFORMERS LISTS)
(ENGLAND) REGULATIONS 2013**

1 Outcome

- 1.1 I determine that the Appellant is entitled to suspension payments for 10 April 2024 and the Appellant is not entitled to suspension payments for the period 11 April 2024 to 31 October 2024.

A copy of this decision is being sent to:

Dr [Redacted] (the Appellant)
NHS England



Resolution

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10 South Colonnade
Canary Wharf
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DISPUTE RESOLUTION: **NATIONAL HEALTH SERVICE (PERFORMERS LISTS) (ENGLAND) REGULATIONS 2013**

1 INTRODUCTION

- 1.1 The above named Appellant has referred the matter for consideration under the National Health Service (Performers Lists) (England) Regulations 2013 ("the Regulations).
- 1.2 The Secretary of State for Health and Social Care has directed that NHS Resolution, the operating name of NHS Litigation Authority, exercise the functions under Regulation 13(5) to (9) on their behalf. Primary Care Appeals discharges that function for NHS Resolution and I, as an authorised officer have made this determination.

2 THE APPEAL

- 2.1 By a letter dated 21 October 2024 the Appellant appealed to Primary Care Appeals against the reconsideration of a decision by NHS England to refuse to make a payment to the Appellant during the period of suspension ("**Notice of Appeal**");
- 2.2 I have had regard to the following documents made available to me in consideration of this matter to ensure that it is just, expeditious, economical and final:
 - 2.2.1 the Appellant's Notice of Appeal;
 - 2.2.2 the Appellant's representations dated 24 October 2024 ("**Appellant's Representations**");
 - 2.2.3 NHS England's representations dated 13 November 2024 ("**NHS England's Representations**");
 - 2.2.4 the Appellant's observations dated 26 November 2024 ("**Appellant's Observations**"); and
 - 2.2.5 NHS England's observations dated 29 November 2024 ("**NHS England's Observations**").

- 2.3 The matter relates to the entitlement of a medical practitioner to suspension payments under Regulation 13 of the Regulations and in turn the Secretary of State's Determination: Payments to Medical Practitioners Suspended from the Medical Performers List 2015 ("**the 2015 Determination**").

3 BACKGROUND AND SUBMISSIONS

- 3.1 The background below is taken from the Appellant's Appeal Notice, NHS England's Representations, and the Appellant's Representations.
- 3.2 The Appellant was at work on 10 April 2024 and completed the morning session.
- 3.3 Just before the afternoon session began the Appellant received a phone call from NHS England to say he was immediately suspended.
- 3.4 On 10 April 2024 NHS England issued a letter by email to the Appellant notifying the Appellant of his immediate suspension.
- 3.5 On 11 April 2024 the Appellant was arrested and given bail conditions.
- 3.6 On 2 July 2024 NHS England issued a letter by email to the Appellant with its decision regarding entitlement to suspension payments.
- 3.7 On 9 October 2024 NHS England issued its reconsidered decision ("**Reconsideration**") determining that the Appellant is entitled to the amount set out in its Decision on the date of the Appellant's suspension, 10 April 2024.
- 3.8 Following the Reconsideration, the Appellant has submitted the Notice of Appeal.

NOTICE OF APPEAL

- 3.9 "I would be grateful if consideration is given to my appeal against the decision of NHSE refusal to make suspension payment.
- 3.10 The main reason for the appeal is the chronology of events.
- 3.11 I was at work on the 10th of April 2024. My morning session was uneventful. Just before the start of my afternoon session, I received a phone call from NHS England informing me that I am immediately suspended and not to undertake any further clinical session because of concerns about my practice.
- 3.12 Following this event at work, the Police department was contacted by NHSE. As a result, I was arrested and given bail conditions.
- 3.13 The explanation and argument of NHSE gave no consideration to the chronology of events.
- 3.14 I am appealing their decision to refuse payment because NHSE were the first to stop me from working according to the 2013 Regulations. The Police did not stop me from working. I was already suspended by the time of arrest."
- 3.15 [Enclosures:

- 3.15.1 Letter from NHS England to Dr [Redacted] dated 10 April 2024 “Immediate Suspension from the National Medical Performers List (England)”.
- 3.15.2 Letter from NHS England to Dr [Redacted] dated 2 July 2024 decision regarding suspension payment.
- 3.15.3 Letter from NHS England to Dr [Redacted] dated 9 October 2024 reconsideration of decision regarding suspension payment.]

NHS ENGLAND’S REPRESENTATIONS (REPRESENTED BY HILL DICKINSON LLP)

3.16 “Background

- 3.17 1. The Applicant, Dr [Redacted], appeals against the decision of the Respondent, NHS England, to refuse his application for suspension payments from 11 April 2024 as a result of non-eligibility.
- 3.18 2. NHS England’s decision on the suspension payments as to which Dr [Redacted] is entitled was set out within a letter of 2 July 2024 [R/2/3-4] and reconfirmed within a letter dated 9 October 2024 [R/3/5-7].
- 3.19 3. For the reasons set out below, NHS England invites the PCA to dismiss this appeal and confirm that Dr [Redacted] was not and is not eligible for suspension payments from 11 April 2024 onwards.

3.20 Documents

- 3.21 4. NHS England encloses a bundle of documents with these representations. Reference to documents within the bundle use the format [R/Document Number/Page Number].

3.22 Relevant law

- 3.23 5. Regulation 12(1) of the National Health Service (Performers Lists) (England) Regulations 2013 (“the Regulations”) states:

3.23.1 *(1) If NHS England is satisfied that it is necessary to do so for the protection of patients or members of the public or that it is otherwise in the public interest, it may suspend a Practitioner from a performers list—*

3.23.1.1(a) *while NHS England decides whether or not to exercise its powers to remove the Practitioner under regulation 11(1)(c), 14(3) or (5), 16 or 17(6)(b) or to impose conditions on the Practitioner’s inclusion in a performers list under regulation 10;*

3.23.1.2(b) *while it awaits—*

3.23.1.2.1(i) *the outcome of any criminal or regulatory investigation affecting the Practitioner, or*

3.23.1.2.2(ii) *a decision of a court anywhere in the world, or of any regulatory body, affecting the Practitioner;*

3.24 6. Regulation 12(6) states:

3.24.1 *(6) Where NHS England considers it necessary to do so for the protection of patients or members of the public or that it is otherwise in the public interest, it may determine that a suspension [under paragraph (1)] is to have immediate effect without undertaking the steps specified in paragraph (2).*

3.25 7. Regulation 13 states:

3.25.1 *(1) During a period of suspension under regulation 12, payments may be made by the Board to, or in respect of, a Practitioner in accordance with a determination by the Secretary of State.*

3.26 8. At all relevant times, the relevant determination is the Secretary of State's Determination: Payments to Medical Practitioners Suspended from the Medical Performers List 2015 ("**the Determination**").

3.27 9. Paragraph 3 of the Determination (with our emphasis added) states:

3.27.1 **"Qualifying Medical practitioners**

3.27.2 *3.(1) A medical practitioner may be entitled to receive payments from the Board by virtue of this Determination if sub-paragraphs (2) and (3)*

3.27.3 *apply to that medical practitioner.*

3.27.4 ...

3.27.5 *(3) This sub-paragraph applies to a medical practitioner to whom sub-paragraph (2) applies who, apart from the suspension, and any suspension from the register of medical practitioners which does not provide grounds for removal from the medical performers list under regulation 28 of the 2013 Regulations (grounds for removal from the medical performers list), is able and permitted to perform primary medical services."*

3.28 10. Paragraph 6(1) of the Determination states:

3.28.1 *"No payments may be made by the Board pursuant to this Determination unless the Board is satisfied that the suspended medical practitioner is entitled to a payment of that specific amount".*

3.29 **Relevant facts**

3.30 11. On 10 April 2024, NHS England wrote to Dr [Redacted] to confirm that in accordance with Regulation 12(1)(a) and Regulation 12(6), NHS England suspended Dr [Redacted] from the medical performers list with immediate effect [**R/4/8-9**].

3.31 12. On 13 April 2024, NHS England were contacted by Kent Police to confirm that, following his arrest on 10 April 2024, Dr [Redacted] was bailed with a strict package of bail conditions ("**the Bail Conditions**") which included the following:

3.31.1 • Not to access any NHS systems for any reason.

- 3.31.2 • Not to enter any medical facility unless to seek treatment for yourself .
- 3.31.3 • Not to practise medical examinations or offer medical advice to anyone publicly or privately. [R/5/10]
- 3.32 13. On 11 April 2024, in accordance with Regulation 12(7)(c)(ii), NHS England reviewed this decision and upheld Dr [Redacted]'s suspension from the medical performers list [R/6/11-12].
- 3.33 14. On 25 April 2024, Dr [Redacted] submitted a signed claim for suspension payments [R/7/13-16]. Within his claim form:
- 3.33.1 a. Dr [Redacted] stated that he was unable to provide evidence of normal monthly NHS earnings because the police had seized his computer and mobile phone. Payslips were latterly provided by Dr [Redacted]'s former employer.
- 3.33.2 b. Dr [Redacted] answered "Yes" to the question: *"Apart from your suspension from the medical performers list and any interim suspension by the GMC, would you be able and permitted to perform primary medical services?"*
- 3.33.3 c. Dr [Redacted] gave the following warranty: *"I warrant that information which I have provided in this form and any accompanying documents provided to NHS England is accurate and complete."*
- 3.33.4 d. Dr [Redacted] gave the following undertaking: *"I undertake to inform NHS England immediately of any change to my circumstances that might affect my entitlement to suspension payments"*.
- 3.34 15. On 2 July 2024, NHS England wrote to Dr [Redacted] confirming that he was entitled to suspension payments on 10 April 2024 only and not entitled to suspension payments from 11 April 2024 onwards. NHS England noted that *"to be eligible for suspension payments, you must be able and permitted to perform primary medical services."* [R/2/3]. NHS England added that *"...as you were arrested on 10 April 2024, held in custody and then released with bail conditions which mean you cannot work as an NHS GP; you are not eligible for suspension payments from 11 April 2024 onwards"*. [R/2/3].
- 3.35 16. On 27 September 2024, Dr [Redacted] wrote to NHS England requesting that this decision be reviewed [R/8/17-18].
- 3.36 17. On 9 October 2024, NHS England wrote to Dr [Redacted] to confirm that the decision taken on 2 July 2024 confirming that Dr [Redacted] was not entitled to suspension payments had been reviewed and upheld [R/3/5-7]. The conclusion was that the interpretation of the Determination (regarding being permitted and able to provide NHS services at the point of suspension) was correct and the decision to not pay suspension payments was upheld.
- 3.37 18. Dr [Redacted] appealed this decision on 21 October 2024 [R/1/1-2]. Dr [Redacted] stated that the *"...main reason for the appeal is the chronology of events... I am appealing their decision to refuse payment because NHSE were the first to stop me*

from working according to the 2013 Regulations. The Police did not stop me from working. I was already suspended by the time of arrest”.

3.38 19. On 21 October 2024, Dr [Redacted] relinquished his licence to practice medicine in the UK.

3.39 20. On 23 October 2024, a Performers List Decision Panel (“**PLDP**”) hearing was held and Dr [Redacted] was informed on 31 October 2024 that he had been removed from the Performers List under Regulation 28(1)(c) on the grounds that his licence to practice has been withdrawn. This a mandatory ground of removal in respect of which there is no right of appeal **[R/9/19-20]**.

3.40 **Submissions of NHS England**

3.41 *Ongoing nature of “able and permitted”*

3.42 21. NHS England submits that the wording of paragraph 3(3) of the Determination (“*who, apart from the suspension... is able and permitted to perform primary medical services*”) is an ongoing condition of entitlement, throughout the period of suspension and is not limited to the time when the practitioner was initially suspended.

3.43 22. Although not explicitly stated, the implication made by Dr [Redacted]’s appeal reasoning is that he should be entitled to suspension payments from 10 April 2024 onwards because he had been able and permitted to perform primary medical services at the time the suspension was imposed. This is an incorrect basis for suspension payment entitlement.

3.44 Period of time Dr [Redacted] was suspended prior to arrest (10 April 2024)

3.45 23. Dr [Redacted] was considered eligible for suspension payments on the date of his suspension, 10 April 2024. This is not in dispute between the parties.

3.46 Period of time Dr [Redacted] was under arrest (11 April 2024)

3.47 24. In the Primary Care Appeal for *SHA/23356*, at paragraph 4.19 **[R/10/33]** an imprisoned performer was determined not to be “*able and permitted*” to perform primary medical services:

3.47.1 *“It is clear to me that on a literal interpretation of the meaning of “able and permitted” in sub-paragraph (3), the Appellant was not able to provide primary medical services during the relevant period as he was in prison”.*

3.48 25. NHS England submits that the literal interpretation should also be used in this case to determine that whilst under arrest, Dr [Redacted] was not able or permitted to provide primary medical services and would therefore not be entitled to suspension payments.

3.49 26. The High Court case of *Sandles v NHS England* [2022] EWHC 1582 (Admin) (“**Sandles**”), states that literal interpretation should be used when there is no ambiguity in the wording of legislation. Judge Elizabeth Cooke found the following:

- 3.49.1 Paragraph 34 – *“whilst it may be open to me to use policy to construe a regulation where it is ambiguous (AA (Nigeria v SSHD [2010] EWCA 773, paragraph 70, in relation to the Immigration Rules), there is no ambiguity in this case. As discussed above, the words of the 2015 Determination are clear”*.
- 3.50 27. NHS England submits that there is no ambiguity in the meaning of *“able and permitted to perform primary medical services”* and that Dr [Redacted] is therefore not entitled to suspension payments for the time when he was under arrest.
- 3.51 Period of time Dr [Redacted] was under bail conditions (11 April 2024 – present day)
- 3.52 28. Following his arrest, Dr [Redacted] was released under the Bail Conditions.
- 3.53 29. NHS England submits that both the intention, and the practical effect, of the Bail Conditions is to prevent Dr [Redacted] from performing medical services of any kind in the United Kingdom. Dr [Redacted] is banned from undertaking medical examinations or offering medical advice to anyone, publicly or privately. Dr [Redacted] is banned from entering any medical facility (except for his own treatment) or accessing any NHS systems for any reasons. Even if working remotely and without providing medical examinations or offering medical advice, to perform NHS primary medical services of any kind, Dr [Redacted] would need access to NHS systems:
- 3.53.1 a. GPs have obligations under Good Medical Practice to *“...make sure that formal records of your work (including patients’ records) are clear, accurate, contemporaneous and legible ”* (Paragraph 69, [Good Medical Practice](#)); and
- 3.53.2 b. CQC requires service providers to *“...maintain securely an accurate, complete and contemporaneous record in respect of each service user, including a record of the care and treatment provided to the service user and of decisions taken in relation to the care and treatment provided”* (Regulation 17(2)(c), [Health and Social Care Act 2008 \(Regulated Activities\) Regulations 2014](#)).
- 3.54 30. NHS England submits that whilst the Bail Conditions are in place, Dr [Redacted] is neither able nor permitted to perform primary medical services.
- 3.55 Period of time following Dr [Redacted] relinquishing licence (21 October – present day)
- 3.56 31. On 21 October 2024, Dr [Redacted] relinquished his licence to practise meaning that since this date he has not been able to practise medicine in the UK.
- 3.57 32. NHS England submits that as a result of his licence being relinquished on 21 October 2024, alongside the reasons given above, Dr [Redacted] has not been able or permitted to perform any medical services in the UK.
- 3.58 **Conclusion**
- 3.59 33. For the reasons set out above, NHS England invites the PCA to dismiss this appeal, and confirm that Dr [Redacted] is not entitled to suspension payments as he has not been able or permitted to perform primary medical services since 11 April

2024. The evidence in this case which demonstrates this is indisputable and Dr [Redacted] has given no basis whatsoever upon which to allow his appeal.

- 3.60 34. Further NHS England submits that where the criteria in the Determination is not met, then there is no ability for NHS England to make the payments and no discretion to do so.”
- 3.61 [Enclosure: Primary Care Appeals Hearing Bundle November 2024 [Appendix A]
 - 3.61.1 Appeal Application 21 October 2024
 - 3.61.2 Letter from NHS England dated 2 July 2024
 - 3.61.3 Letter from NHS England dated 9 October 2024
 - 3.61.4 Letter from NHS England dated 10 April 2024
 - 3.61.5 Email from Police dated 13 April 2024
 - 3.61.6 Review of immediate suspension dated 11 April 2024
 - 3.61.7 Claim form – Suspension Payments to Medical Practitioners
 - 3.61.8 Email from Dr O 27 September 2024
 - 3.61.9 Letter from NHS England dated 31 October 2024
 - 3.61.10 SHA/23356 (redacted).]

APPELLANT’S REPRESENTATIONS

- 3.62 “I would be grateful if consideration is given to my appeal against the decision of NHSE refusal to make suspension payment.
- 3.63 Regulation 13 of the 2013 Regulations deals with payments during suspension as follows:
 - 13.—(1) During a period of suspension under regulation 12, payments may be made by the Board to, or in respect of, a Practitioner in accordance with a determination by the Secretary of State.
- 3.64 The reason for the appeal is the chronology of events.
- 3.65 I was at work on the 10th of April 2024. My morning session was uneventful. Just before the start of my afternoon session, I received a phone call from NHS England informing me that I am immediately suspended and not to undertake any further clinical session because of concerns about my practice.
- 3.66 Following this event at work, then the NHSE contacted the police. As a result, I was arrested and subsequently discharged on-bail conditions.

- 3.67 The explanation of NHSE is that payments can be stopped despite suspension is not lifted nor lapsed.
- 3.68 The NHSE has agreed to make payment but to stop it after 24 hours despite suspension still in place.
- 3.69 The hypothetical scenario offered by NHSE that ‘if Dr [Redacted] suspension were not in place, he would not be permitted to undertake NHS work as a General Practitioner due to his specific bail conditions’ is not proven.
- 3.70 I am appealing their decision to refuse payment because NHSE were the first to stop me from working according to the 2013 Regulations. The Police did not stop me from working. I was already suspended by the time of arrest.”
- 3.71 [Enclosure: National Health Service (Performer Lists) (England) Regulations 2013] [Appendix B]

NHS ENGLAND’S OBSERVATIONS

3.72 “Background

- 3.73 1. The Applicant, Dr [Redacted], appeals against the decision of the Respondent, NHS England, to refuse his application for suspension payments from 11 April 2024 as a result of non-eligibility.
- 3.74 2. Representations were provided by NHS England on 12 November 2024.
- 3.75 3. The Applicant provided representations dated 24 October 2024 which were sent to NHS England on 15 November 2024.
- 3.76 4. This document is NHS England’s observations on the Applicant’s representations.

3.77 Respondent’s Observations

- 3.78 5. The majority of points raised by the Applicant have already been covered by NHS England in its Representations. NHS England does however highlight two points in the Applicant’s representations.
- 3.79 6. The Applicant noted that: “*The explanation of NHSE is that payments can be stopped despite suspension is not lifted nor lapsed*”. NHS England absolutely has the power to stop suspension payments where there was a change in the performer being “able and permitted” given that this is an ongoing condition of entitlement, throughout the period of suspension and is not limited to the time when the practitioner was initially suspended.
- 3.80 7. The Applicant states that: “*The hypothetical scenario offered by NHSE that ‘if Dr [Redacted] suspension were not in place, he would not be permitted to undertake NHS work as a General Practitioner due to his specific bail conditions’ is not proven*”. The bail conditions imposed on the Applicant ban him from entering any medical facility (except for his own treatment) or accessing any NHS systems for any reasons. It is a matter of common sense that with these bail conditions in place, the Applicant would not be able and permitted to perform primary medical services in the UK.

3.81 **Conclusion**

- 3.82 8. Dr [Redacted] is not entitled to suspension payments as he has not been able or permitted to perform primary medical services since 11 April 2024. The evidence in this case which demonstrates this is indisputable and Dr [Redacted]'s representations do not add a basis upon which his appeal should be allowed. Therefore, the position of the Respondent is unchanged, that it invites the PCA to dismiss this appeal."

APPELLANT'S OBSERVATIONS

3.83 **"Introduction**

- 3.84 Dr [Redacted] qualified as a medical doctor in 1994, registered with the GMC. He completed the GP certification in 2003. I am certified and experienced in Drug and Alcohol management. Other certifications relevant for this purpose are Safeguarding in Children and Young People (Level 3) and Safeguarding Adults.

3.85 **Background**

- 3.86 1. The Applicant, Dr [Redacted], appeals against the decision of the Respondent, NHS England, not to continue suspension payments from 11 April 2024.
- 3.87 2. Dr [Redacted] received suspension payments under the same circumstances between June 2010 to April 2014. Suspended by NHS England in June 2010. And under bail conditions from July 2010 until completion of court trial in November 2013. He received regular monthly payments until the suspension was lifted in April 2014.
- 3.88 3. He was informed, by the Local Medical Committee (LMC,) not to secure another employment or receive income from another employment whilst receiving suspension payments.
- 3.89 4. Suspension payments did not commence and then stopped because he was on bail conditions in 2010.

3.90 **Relevant Laws**

- 3.91 5. He was suspended whilst at work with immediate effect under regulation 12(1)(a) of the of the NHS Performer's List Regulation 2013 10 April 2024.
- 3.92 6. It was varied to regulation 12(1)(b) on 1 May 2024.
- 3.93 7. Suspension payment commenced under section 13(1) of Performer's list Regulation 2013 for 24 hours only.

3.94 **Facts**

- 3.95 8. The bail conditions are in place and does not prevent him from using his skills and knowledge in carrying out responsibilities remotely.
- 3.96 9. The NHSE stated that their decision is based on "that if Dr [Redacted] s suspension were not in place, he would not be permitted to undertake NHS work as a General Practitioner due to his specific bail conditions" .

- 3.97 **10.** In a scenario where suspension is lifted by the NHSE but bail conditions still in place, he is able to work as an NHS appraiser, an expert witness, case investigator and clinical adviser and reviewer in the NHS.
- 3.98 **11.** As a GP with special interest (GPwSI) in Drug and alcohol, he will be able to work in treatment and rehabilitation centres which are often located outside hospital or medical premises. The rehabilitation centres are on private premises, and he does not need to access NHS computers for clients' assessment and management.
- 3.99 **12.** He will be able to obtain satisfactory Enhanced Disclosure and Barring Service (DBS) Check. This was the case when he applied for DBS despite being suspended and on bail in 2013.
- 3.100 **13.** He is also able to work as a Safeguarding officer and Functional assessor.
- 3.101 **14.** In all these situations he can work remotely as well.
- 3.102 **15.** He has an alternative e-mail address, Egress account and can receive redacted patient or client information. He is able to receive confidential redacted patient or client information in all the above mentioned employments.
- 3.103 **Conclusion**
- 3.104 For the reasons set out above, Dr [Redacted] invites the PCA to uphold this appeal."

4

CONSIDERATION

- 4.1 Regulation 13(5) of the Regulations enable a medical practitioner to appeal NHS England's reconsideration of a decision relating to the medical practitioner's eligibility for suspension payments.
- 4.2 The Notice of Appeal is in respect of the Appellant's eligibility for suspension payments from 10 April 2024. The Appellant submits that his entitlement to suspension payments is from 10 April 2024.
- 4.3 I note there is no dispute from NHS England that the Appellant was entitled to suspension payments on 10 April 2024, which is the day the Appellant was informed by NHS England of the suspension.
- 4.4 The dispute arises from 11 April 2024, the day upon which the Appellant was arrested and bailed by the police, with bail conditions. The Appellant has not specified when the suspension payments should cease. However I note NHS England state that on 21 October 2024, the Appellant relinquished his licence to practice medicine in the UK. I further note on 31 October 2024 that the Appellant was removed from the Performers List under Regulation 28(1)(c) on the grounds that his licence to practice has been withdrawn. This information has not been disputed by the Appellant. Therefore it is my understanding that the dispute is with regard to suspension payments from 11 April 2024 to 31 October 2024.
- 4.5 The Appellant has provided me with a copy of The National Health Service (Performers Lists) (England) Regulations 2013 ("the Regulations") quoting paragraph 13(1) (see 3.63 above). The Appellant states he is appealing the decision of NHS

England “because NHSE were the first to stop me from working according to the 2013 Regulations. The Police did not stop me from working. I was already suspended by the time of arrest.”

4.6 It is not in dispute that NHS England suspended the Appellant on 10 April 2024. It is not disputed that the Appellant was arrested on 11 April 2024. It is not disputed that the Appellant was bailed with conditions by the police on 11 April 2024. NHS England has provided me with a copy of the email from Kent Police dated 13 April 2024.

4.7 An extract of these conditions are that the Appellant should:

4.7.1 “.... Not to access any NHS systems for any reason.

4.7.2 Not to enter any medical facility unless to seek treatment for yourself.

4.7.3 Not to practise medical examinations or offer medical advice to anyone publicly or privately.....

4.7.4 This package should be enough to prevent him from working within primary, secondary, and private care.”

4.8 Paragraph 3(1) of the 2015 Determination states:

“3 (1). A medical practitioner may be entitled to receive payments from the Board by virtue of this Determination if sub-paragraphs (2) and (3) apply to that medical practitioner.

(2) This sub-paragraph applies to medical a practitioner who –

(a) is suspended; and

(b) immediately prior to the suspension (or the circumstances giving rise to the suspension) is or was –

(i) a contractor (including a partner in a partnership which is a contractor),

(ii) a person employed or engaged by a contractor to perform primary medical services,

(iii) a locum who has, or has had, a contract for services with a contractor to perform primary medical services,

(iv) a locum employed or engaged by a body that provides or provided locum or deputising services to contractors who, in the period of six months beginning immediately prior to the suspension performed primary medical services which were provided at a contractor’s practice,

(v) a locum who does not, or did not, have a contract of service or a contract for services with a contractor or a body referred to in paragraph (iv) but who, in the period of six months beginning immediately prior to the suspension, performed primary medical services which were provided at a contractor’s practice.

(3) This sub-paragraph applies to a medical practitioner to whom sub-paragraph (2) applies who, apart from the suspension, and any suspension from the register of medical practitioners which does not provide grounds of removal from the medical performers list under the regulation 28 of the 2013 Regulations (grounds for removal from the medical performers list), is able and permitted to perform primary medical services.”

- 4.9 The Appellant was removed from the Performers List on 31 October 2024 and so was suspended from the Performers List from 10 April 2024 until removal on 31 October 2024. The Appellant therefore satisfied the requirement at paragraph 3(2)(a) of the 2015 Determination.
- 4.10 Under paragraph 3(2)(b) of the 2015 Determination, a medical practitioner may be entitled to suspension payments if, immediately prior to the suspension or circumstances giving rise to the suspension, they were a contractor (including a partner), employed or engaged by a contractor, or a locum (the full provisions are quoted above). I consider that the Appellant meets this criterion as the Appellant was, immediately before he was informed of his suspension, employed and had seen patients that very morning.
- 4.11 Finally, I have considered whether the criterion at paragraph 3(3) is met.
- 4.12 The Appellant states *“The hypothetical scenario offered by NHSE that ‘if Dr [Redacted] suspension were not in place, he would not be permitted to undertake NHS work as a General Practitioner due to his specific bail conditions’ is not proven.”* I disagree with the Appellant’s assertion. I am mindful that the bail conditions from Kent police are clear in their intention *“This package should be enough to prevent him from working within primary, secondary, and private care.”*
- 4.13 NHS England noted that *“to be eligible for suspension payments, you must be able and permitted to perform primary medical services.”* I agree with NHS England’s assertion of a literal interpretation of the meaning *“able and permitted”* as referred to in sub-paragraph (3). The Appellant was banned from undertaking medical examinations or offering medical advice to anyone, publicly or privately. The Appellant was banned from entering any medical facility (except for his own treatment) or accessing any NHS systems for any reasons in the United Kingdom. I am not persuaded that the Appellant could work remotely as the bail conditions were issued such as to prevent that very situation.
- 4.14 In this regard, the Appellant refers, in the third person, to being able to carry out other work (see paragraphs 3.95 to 3.100 above). The Appellant concludes:
- 4.14.1 *“In all these situations he can work remotely as well. He has an alternative e-mail address, Egress account and can receive redacted patient or client information.*
- 4.14.2 *He is able to receive confidential redacted patient or client information in all the above mentioned employments.”*
- 4.15 I disagree and am mindful of the bail conditions and the email from the police officer which states *“This package should be enough to prevent him from working within primary, secondary, and private care.”*

- 4.16 I am of the view that the Appellant was not able or permitted to provide primary medical services during the relevant period from 11 April 2024 to 31 October 2024. Further the Appellant relinquished his license on 21 October 2024 so again in these circumstances would not be permitted to perform any medical services in the United Kingdom prior to his removal from the Performers List on 31 October 2024. As such, I consider that the Appellant does not satisfy the requirement at paragraph 3(3).
- 4.17 Finally, I note the Appellant refers to a previous suspension period between June 2010 to April 2014 in which he states in the third person:
- 4.17.1 *“Dr [Redacted] received suspension payments under the same circumstances between June 2010 to April 2014. Suspended by NHS England in June 2010. And under bail conditions from July 2010 until completion of court trial in November 2013. He received regular monthly payments until the suspension was lifted in April 2014.*
- 4.17.2 *Suspension payments did not commence and then stopped because he was on bail conditions in 2010.”*
- 4.18 I have not been provided with any information regarding this period. I have no record of bail conditions, any reports or the outcome. I am unable to make a direct comparison of the current suspension with the limited information provided for the previous suspension.
- 4.19 In light of the above I consider that the Appellant is not entitled to suspension payments for the period 11 April 2024 to 31 October 2024. No additional amount is due to the Appellant.

5 DETERMINATION

- 5.1 I determine that the Appellant is entitled to suspension payments for 10 April 2024 and the Appellant is not entitled to suspension payments for the period 11 April 2024 to 31 October 2024.

Head of Appeals
NHS Resolution