NHS Resolution

6 March 2026

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REF: SHA/26782

COMMISSIONER:	**NHS ENGLAND**
PERFORMER	**DR [XXX] ("the Appellant")**
DISPUTE RESOLUTION:	**NATIONAL HEALTH SERVICE (PERFORMERS LISTS) (ENGLAND) REGULATIONS 2013**

1 Outcome

1.1 I dismiss the appeal and confirm the decision of NHS England.

A copy of this decision is being sent to:

Dr [XXX]
Hill Dickinson LLP on behalf of NHS England

NHS Resolution

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PERFORMER **DR [XXX] ("the Appellant")**

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 an email dated 14 November 2025, the Appellant applied to Primary Care Appeals for consideration of a decision by NHS England as to the amount of the payment in respect of 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 dated 14 November 2025;

2.2.2 Email from the Appellant's dated 24 November 2025;

2.2.3 NHS England's representations dated 10 December 2025 ("**NHS England's Representations**"); and

2.2.4 NHS England's observations dated 16 December 2025 ("**NHS England's Observations**").

2.3 The matter relates to the amount of a medical practitioner's 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 Notice of Appeal, NHS England's Representations, and NHS England's Observations.

3.2 The Appellant was suspended from the medical performers list on 4 April 2025 because of concerns about patient safety and public interest, following allegations raised about inappropriate sexual conduct.

3.3 On 14 May 2025 a Performers List Decision Panel considered the Appellant's case and decided that the Appellant could return to work subject to conditions. The Appellant agreed to these conditions and his suspension was lifted on 24 May 2024. He received suspension payments from April to May 2025 at a rate of £4,767.30 per month.

3.4 The Appellant's case was reviewed again on 1 October 2025 by a Performers List Decision Panel. The Panel immediately suspended the Appellant again, due the need to protect patients and maintain public confidence.

3.5 NHS England re-assessed his entitlement to suspension payments for this new suspension period. NHS England were calculated based on the period from April to September 2025. This averaged £2,917.33. The Appellant was notified on 3 November 2025 that he was entitled to receive suspension payments of £2,625.60 monthly until 14 February 2026.

3.6 On 14 November 2025, at the request of the Appellant, NHS England reconsidered its decision in relation to the suspension payment amount. This decision upheld the initial payment calculation of £2,625.60.

3.7 Following the reconsideration, the Appellant has submitted the Notice of Appeal.

Notice of Appeal

3.8 By email of 14 November 2025, the Appellant stated:

> "I am writing to ask for a decision regarding my suspension payments to please be reconsidered.
>
> The details of my suspension payments are set out in the letters that I received on this matter and I have attached them to this email.
>
> I was receiving my full allocation of suspension payments during my initial suspension. This suspension was lifted at the preliminary NHS hearing (which mirrored the decision by the GMC) and I returned to work.
>
> Four months after this at a further NHS hearing on October 1st, it was decided that the initial NHS panel decision should be reconsidered as I had been placed on the wrong pathway through what appeared to be a procedural issue not connected to anything that had happened in those four months. I was thus re-suspended. We are now waiting for the substantive NHS hearing to review that

initial decision. This should have happened within 42 days, but we are already at that point and no date has been set for the hearing.

My suspension payments for this current period are less than what I was expecting. The reason for this is that the monthly amount that is due as a suspension payment is calculated as an average of my last 6 months of earnings. Obviously, for 2 of those 6 months I was suspended and suspension payments don't count towards that total so in effect I am receiving a calculation of only 4 months of earnings averaged over 6 months.

The decision to suspend me at this point I was told is a neutral decision. The GMC are investigating the matter and are yet to make any formal allegations or decide whether this matter will go to a GMC hearing. However, this outcome in terms of pay feels like a punishment decision has been applied.

The only reason that my suspension payments have been significantly reduced is because the NHS unilaterally decided to reconsider their own initial decision to allow me to return to work (the GMC around the same time upheld their decision that I was able to continue working) and resuspend me. I feel it is unfair that there should be a financial penalty attached to this decision process.

Let me be clear in saying that I am not casting aspersions here but I feel the circumstances of what has occurred are outside the 'normal' process and I feel I am being punished for a panel revisiting their own due process through no fault of my own in the four months I was approved to work. The panel themselves acknowledged that there had been absolutely no issues within the month period I was allowed back at work. I wholly respect and accept the need for due process, of course. I would just appreciate this being revisited on its own unique merits and circumstances.

As you can imagine this is an unbelievably stressful time for myself and my family and the additional loss of income is causing numerous financial issues in addition to all the other stresses.

I am so sorry to have to make an approach on this."

3.9 By email of 24 November 2025 the Appellant provided the following additional information:

"Since looking into this matter further after receiving your email it has become apparent that there is a further issue with regard to the initial suspension payments. This probably would have gone unnoticed had the more recent issue not occurred. I appreciate that this will require further investigation from you and may delay the process.

<u>Issue 1 (the new issue)</u>

I was suspended on 4th April and my suspension was lifted on the 23rd May. I have attached an email exchange between myself and Mr [B] of NHSE regarding these initial payments. I supplied details of my monthly drawings as requested. He asked whether they were net or gross to which I quite clearly informed NHSE that these were net figures. I was then asked to supply a gross (pre-tax) figure. I sent back the reply I received from my accountants regarding this which included my tax liabilities for that period and asked what further

information he might need. He said that NHSE could use those figures to calculate my payments. Unfortunately, the figures used to calculate my suspension payments were the net figures - not the gross figure that they should have been. This resulted in a significantly lower payment than I was due. I have attached the letter regarding the decision for suspension payments during the initial suspension as well evidence of the actual payments made into my bank account and evidence of my drawings for the preceding 6 months.

Our practice keeps back money to pay the tax for the partners. This means we take a lower monthly net drawings (as we don't know our tax liability at this point) and after the accountants have advised us of the amount required for tax any remaining amount is taken by the partners as a dividend. This is why it was difficult to give a clear figure for the gross amount received on a monthly basis at the time of the request.

Issue 2

I was resuspended on the 1st October and this is ongoing currently. Nothing happened between the initial suspension and the resuspension to trigger this decision. In fact the panel acknowledged that I had worked safely during that period and completed remedial work. The decision to re-suspend me was unilaterally taken by NHSE as the review panel felt the initial decision should be reconsidered and I should be resuspended until this has occurred.

The amount of the suspension payments are set out in Secretary of State's Determination: Payments to Medical Practitioners Suspended From The Medical Performers List (2015) Section 4 (2). It states that "for the purposes of determining what is or are "normal" income, drawings, earnings or profits.....the payments should be based on an average of the most recently available 6 complete months of data".

I submitted the recent 6 months worth of income. I have attached evidence of those drawings. This amounted to only 4 months of complete data as the previous 6 month period covered 2 months when I had been initially suspended (ie April and May). NHSE decided that this meant that the 4 months of income should be averaged out over 6 months (as suspension payments weren't part of the calculation) resulting in a significantly lower figure (please also note that these figures were again net income and not gross income as discussed above). I asked for this to be reconsidered and supplied the 2 months of data from before the suspension, which gave NHSE 6 complete months of data as per the Secretary of State's Determination, but on reconsideration NHSE felt that their initial decision to only accept the 4 months of complete income data, but average this out over a 6 month period was correct. This is quite clearly not correct by the letter and by the spirit of the determination. The suspension is a neutral decision whilst further investigations and processes are undertaken, but a significant financial penalty has been applied that is resulting in significant hardships for myself and my family currently.

I appreciate that these issues are complex and that mistakes get made. I also appreciate your time looking into this matter."

NHS England's Representations

3.10 In a letter dated 10 December 2025 Hill Dickinson on behalf of NHS England stated:

"**Introduction**

1. The Applicant, Dr [XXX], appeals against the decision of the Respondent, NHS England, regarding the amount of his suspension payments following his suspension from the Performers List. Specifically, Dr [XXX] argues that he should receive £4,269.00 per month, rather than the amount of £2,625.60 per month determined by NHS England.

2. NHS England's original decision was communicated to Dr [XXX] on 3 November 2025 [R/1/2]. Following a request for consideration, this decision was reviewed and subsequently upheld by NHS England on 14 November 2025, with the outcome confirmed in writing to Dr [XXX] [R/2/3].

3. NHS England invites the PCA to dismiss this appeal and uphold NHS England's decision.

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(s)].

Relevant law

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

> *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…*
>
> *(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;*
>
> *(b) while it awaits—*
>
> *(i) the outcome of any criminal or regulatory investigation affecting the Practitioner, or*
> *(ii) a decision of a court anywhere in the world, or of any regulatory body, affecting the Practitioner;*

6. Regulation 12(6) states:

> *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).*

7. Regulation 13 states:

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.

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).

9. Paragraph 3 establishes when medical practitioners may be entitled to suspension payments.

10. Paragraph 4(1) establishes the circumstances in which a suspended medical practitioner is entitled to receive a payment in any given month (or part month). However, paragraph 4(1) also establishes the concept of normal monthly payments, drawings, earnings, and profits, depending on the practitioner's role (i.e. contractor, partner, employee, or locum). For brevity, we will refer these collectively as 'normal monthly income'.

11. Paragraph 4(2) provides:

> *For the purposes of determining what is or are "normal" income, payments, drawings, earnings or profits in respect of this paragraph and paragraphs 5 and 6, an average of the most recently available six complete months of data is to be taken, unless such a calculation is impossible or produces an amount which the Board considers represents an unreasonable amount by way of protected earnings for the medical practitioner during the period in which that practitioner is suspended.*

12. Paragraph 5(1) then defines how such a payment should be calculated. The relevant part of paragraph 5(1) that applies to Dr [XXX] is:

> *(b) where a contractor consists of two or more individuals practising in partnership and the suspended medical practitioner is or was a partner in a partnership immediately before the circumstances giving rise to suspension, an amount which represents 90% of the medical practitioners normal monthly drawings (or a pro rata amount in the case of part months) from the partnership account;*

Relevant facts

13. On 4 April 2025, Dr [XXX] was immediately suspended from the Medical Performers List under Regulation 12. The suspension was imposed in light of serious allegations regarding Dr [XXX]'s conduct which raised concerns about patient safety and public interest. These allegations included engaging in an inappropriate sexual relationship with a patient, engaging in a sexual relationship with a vulnerable patient on practice premises during working hours on five occasions, and that Dr [XXX] repeatedly breached the GMC's Good Medical Practice, specifically paragraph 86: "*You must not act in a sexual way towards patients or use your professional position to pursue a sexual or improper emotional relationship with a patient or someone close to them*".

14. On 7 April 2025, a Performers List Decision Panel ("PLDP") reviewed the suspension on 7 April 2025 and upheld the immediate suspension for a period of up to six months. During this suspension period, Dr [XXX] was entitled to claim suspension payments. NHS England calculated his suspension payments at £4,767.30 per month, based on 90% of his average monthly income in the six months preceding April 2025. Dr [XXX] therefore received payments at this rate while he remained suspended in April and May 2025.

15. On 14 May 2025, a PLDP took place and the Panel considered Dr [XXX]'s case, and decided that Dr [XXX] could return to work subject to conditions in accordance with Regulation 12(10)(b). Dr [XXX] agreed to the proposed conditions on 23 May 2025, and accordingly NHS England lifted his suspension on that date. Dr [XXX] resumed work in his practice thereafter, with those conditions in place.

16. On 1 October 2025, a PLDP was convened to review Dr [XXX]'s case again. Given the nature of the allegations, and the implication for Dr [XXX]'s suitability for inclusion on the Performers List, the Panel immediately suspended Dr [XXX] again pending a full PLDP hearing to consider removal under Regulation 14(3)(d). This second immediate suspension, effective 1 October 2025, was necessary to protect patients and maintain public confidence while the suitability removal was to be decided, and was taken under Regulation 12(1)(a) and 12(6) in light of the serious, admitted allegations. Dr [XXX]'s suspension from 1 October 2025 is ongoing and a substantive PLDP unsuitability hearing is scheduled for 15 January 2026 to determine whether Dr [XXX] will be removed from the Performers List.

17. Following Dr [XXX]'s suspension on 1 October 2025, NHS England assessed his entitlement to suspension payments for this new suspension period. In line with the Determination, Dr [XXX]'s "normal monthly income" was calculated based on the 6-month period immediately preceding October 2025 (April to September 2025). During much of April and May 2025, Dr [XXX] had been suspended, and received suspension pay rather than earnings from performing primary medical services, and he worked from late May through to September. His average monthly NHS earnings over April to September 2025 were £2,917.33. Ninety percent of this averaged figure is £2,625.60 per month. NHS England notified Dr [XXX] that his suspension payments from October 2025 onwards would be £2,625.60 per month.

18. Dr [XXX] was dissatisfied with this amount and on 3 November 2025, he requested reconsideration of the payment calculation, pursuant to Regulation 13 (3)(b). NHS England's North East and Yorkshire Team carried out a full reconsideration of the decision. On 13 November 2025, the reconsideration upheld the original calculation of £2,625.60 per month. The decision letter dated 14 November 2025 explained the basis and, in summary, that the six-month earnings period used was April to September 2025 and that in accordance with the Determination, suspension payments received during the earlier suspension are not counted as earnings. Dr [XXX] was advised in that letter that if he remained dissatisfied with this decision, he could appeal to the Secretary of State (Primary Care Appeals) under Regulation 13(5) within 28 days.

19. Dr [XXX] lodged a notice of appeal by email dated 14 November 2025 with NHS Resolution's Primary Care Appeals service, contesting NHS England's decision on his suspension payment. In his appeal, Dr [XXX] asserts that it is unfair for his monthly suspension pay to drop from £4,767.30, in his first suspension period, to £2,625.60 now, and the only reason his recent earnings were lower is because he was suspended and then re-suspended. Dr [XXX] contends that using six months data which includes two months where he was not working, due to his initial suspension, has unfairly reduced his payment. He has provided his own calculation suggesting that if the two "non-working" months are excluded, and earlier months of full work are used instead, his six month's earnings would total £28,460, making ninety percent of that £25,614, which would equate to £4,269 per month that Dr [XXX] was expecting.

Representations

20. For the avoidance of doubt, any statements or assertions made in Dr [XXX]'s appeal dated 14 November 2025 that are not expressly addressed in these representations are not admitted or accepted as accurate or relevant for the purposes of this appeal.

21. NHS England submits that the monthly amount of £2,625.60 for Dr [XXX]'s current suspension is the correct figure applying the Determination. The default methodology for calculating this amount is using the most recent six months of earning data before the suspension occurred. In Dr [XXX]'s case, the relevant period for this calculation was April to September 2025. At the point of Dr [XXX]'s suspension on 1 October 2025, the most recent six months were April to September 2025. Therefore, NHS England was required to take Dr [XXX]'s actual NHS earnings in those months, calculate the average, and take 90% of that average as the protected monthly sum.

22. The Determination's default methodology is to apply the last six months' data except in two scenarios: where using that data is impossible, or where it would produce an amount which NHS England considers represents an "unreasonable amount" by way of protected earnings.

23. NHS England submits that neither of those scenarios apply here:

    a. Dr [XXX]'s earnings for April to September 2025 were available, and thus it was not impossible to obtain this data and calculate the amount.

    b. NHS England did not consider the sum of £2,625.60 to be "unreasonable". This is a subjective test imparting substantial discretion on NHS England. As per the PCA in SHA/26637 at paragraph 4.7: "*I consider that paragraph 4(2) confers a discretion that is expressly subjective in its formulation, in that it is what NHS England considers to be unreasonable*." [R/3/18] In any event, it was not an objectively "*unreasonable*" figure: in the absence of a specific definition on "unreasonable" in the Determination, it was not a figure "*so unreasonable that no reasonable person acting reasonably could have made it*" (*Associated Provincial Picture Houses Ltd v Wednesbury Corporation (1948) 1 KB 223*). Dr

[XXX]'s recalculated payment was well within normal ranges and in line with his reduced work during that period.

24. There was therefore no justification or obligation for NHS England to not apply the default methodology.

25. Dr [XXX] perceives the drop in his suspension pay as a punitive measure, however, it must be emphasised that suspensions are not punitive measures and suspension payments are intended to partially compensate for lost earnings due to suspension, provided certain conditions apply, and not to punish or reward a practitioner in any sense. The scheme ties the payment to what the doctor was actually earning prior to suspension. This calculation is therefore not aimed at Dr [XXX] personally, but a consistent rule applied to all performers. We stress that the decision to re-suspend Dr [XXX] on 1 October was taken by the duly authorised Panel following a further review, to protect patients pending the outcome of this process. The consequent reduction in pay is an incidental outcome of the timing and Dr [XXX]'s earning pattern for that period. The decisions to suspend practitioners, revoke suspensions, or re-suspend practitioners are not appealable to the PCA; this appeal is only concerned with the suspension payments.

26. Dr [XXX] has urged that his situation be considered on its "unique merits", citing the stress on his family finances, the alleged procedural irregularity that led to his re-suspension, and the fact that GMC has not barred him from practice in the meantime. NHS England respectfully submits that such factors cannot influence the suspension payment amount under the law. The Regulations and Determination create an entitlement formula and does not afford discretion to award a higher sum because a practitioner finds themselves in financial hardship or the manner in which the suspension arose. In his appeal, Dr [XXX] refers to his personal financial issues from this additional loss of income. NHS England submits this falls outside the scope of what may be considered. Under Paragraph 6 of the Determination, NHS England can only make payments in accordance with the Determination, which does not make provision for hardship payments or similar financial support. As per the PCA in SHA/26637 at paragraph 4.15: "I do not consider that the circumstances of the suspension or of the Appellant's finances can impact on my consideration of the application of the 2015 Determination." [R/3/20].

27. It is also important to note that suspension payments are funded from public monies, and NHS England is required to act in accordance with HM Treasury's Managing Public Money guidance. That guidance makes clear that public funds must be used in ways that are regular, proper, and represent value for money. The Determination reflects this principle by providing a safety net during a neutral suspension, rather than replicating a practitioner's full pre-suspension income. Granting Dr [XXX] an exception - such as by using earnings outside the stipulated period or otherwise inflating the payment - would not only lack legal authority but would risk breaching NHS England's obligation to ensure payments are reasonable, proportionate, and defensible. NHS England has therefore applied the Determination and its calculation method as it is bound to do.

28. Furthermore, nothing in Dr [XXX]'s current suspension from the Performers List prevents him from seeking alternative work to supplement his income if he

considers his suspension payments insufficient. Dr [XXX] is not suspended by the GMC, and while conditions have been imposed on his registration, those conditions do not prevent him from practising as a doctor entirely. Subject to compliance with those conditions, he remains free to undertake appropriate medical work. He is also free to seek other forms of unregulated employment if he wishes.

29. Although not directly pertinent to the financial calculation, Dr [XXX] raised concerns about the timing of his unsuitability hearing, by stating it should have taken place within 42 days of the suspension on 1 October 2025, and the fact he was re-suspended despite no new misconduct. As noted above, decisions to suspend practitioners, revoke suspensions, or re-suspend practitioners are not appealable to the PCA; this appeal is only concerned with the suspension payments. Nonetheless, for completeness, NHS England wishes to address these points to assure the PCA that due process was followed in this case. The interval between Dr [XXX]'s immediate suspension on 1 October 2025 and the scheduled PLDP removal hearing on 15 January 2026 is 106 days. While this is longer than ideal, it has been caused by the practical difficulty of convening a panel with appropriate members who are not conflicted. Under Regulation 14(8)(c), notice of a PLDP hearing must be not less than 28 days, and this requirement has been met. There is no rule requiring that the hearing occur within 42 days of the suspension. Dr [XXX]'s understanding on this point is therefore mistaken. During this interim period, Dr [XXX] remains suspended under the powers of Regulation 12, and he continues to receive suspension payments at the calculated rate. The suspension is a neutral act until the merits of his case can be decided at the January panel. The upcoming hearing in January will fully consider Dr [XXX]'s suitability to remain on the list, and he will have the opportunity to present his case there. In the meantime, NHS England has fulfilled its obligations under the Regulations and Determination.

30. In summary, NHS England's position is that the disputed suspension payment has been determined lawfully, fairly, and in line with the Determination. The calculation of £2,625.60 per month has been carried out in accordance with the Determination and no error of law or fact has been demonstrated in the way NHS England determined this payment.

Conclusion

31. For the reasons set out above, NHS England respectfully invites the PCA to dismiss this appeal and uphold NHS England's decision."

NHS England's Observations

3.19 "**Introduction**

1. These observations are submitted on behalf of NHS England in response to Dr [XXX]'s representations on appeal dated 24 November 2025. These representations were received by NHS England on 15 December 2025.

2. We address each of Dr [XXX]'s points in turn, strictly limiting our observations to rebuttal of the issues he has raised, and no new matters are introduced on our behalf at this stage.

3. Our responses are in accordance with the National Health Service (Performers Lists) (England) Regulation 2013 and the Secretary of State's Determination: Payments to Medical Practitioners Suspended from the Medical Performers List 2015 (**the Determination**) which governs how suspension payments are calculated. We note that the appeal before the Primary Care Appeals concerns the reconsidered decision on Dr [XXX]'s current suspension payments, from 1 October 2025 onwards, and not the initial suspension in April to May 2025. Nevertheless, for completeness and in order to rebut the points raised, we address both issues raised by Dr [XXX] below.

Observations

Issue 1: Initial suspension payment calculation

4. Dr [XXX] suggests that his suspension payments during the first suspension, from 4 April to 23 May 2025, were miscalculated because NHS England used his net monthly drawings instead of a gross figure. He states that he provided information about his monthly drawings, clarified they were net figures, and was asked to supply a gross pre-tax figure. In the absence of doing so, the net figures were used, resulting in a lower payment than he believes was due.

5. As a preliminary point, the initial suspension payments are not under reconsideration or under appeal in these proceedings. The decision before the PCA relates to Dr [XXX]'s suspension payments for the current suspension. Dr [XXX] did not appeal the calculation of his April to May 2025 payments at the time, and raising this issue now effectively introduces a new matter, which is procedurally not permitted at the appeal stage. Under Regulation 13(3A) of the National Health Service (Performers Lists) (England) Regulations 2013, any request for reconsideration must be made within 28 days of notification of the decision, and under Regulation 13(5), any appeal to the Secretary of State must be lodged within 28 days of the reconsidered decision. Dr [XXX] did not take either step within the applicable timeframes. We respectfully ask the PCA to note that this issue falls out of scope of what needs to be decided in the present appeal.

6. Without prejudice to the above objection, we submit that the initial suspension payments were calculated correctly in accordance with the Determination. Paragraph 5(1)(b) of the Determination provides that when a suspended practitioner is a partner in a practice, the suspension payment for each month should be: "*an amount which represents 90% of the medical practitioner's normal monthly drawings… from the partnership account"*.

7. In view of the above, the default methodology that NHS England use to calculate is whatever the doctor's normal monthly drawings from the partnership account was, and ninety percent of that amount is payable during the suspension. The Determination's wording does not explicitly distinguish between "gross" or "net" income; it uses the concept of normal monthly drawings for partners. In general terms, a partner's drawings are the sums taken from the practice's profits on a regular basis, which often are net of sums set aside for tax. Dr [XXX] states that his practice choose

to retain a portion of income to cover tax liabilities, meaning his routine monthly drawings were lower and a further dividend would usually be paid later. Nonetheless, routine monthly withdrawals represent his "normal monthly drawings" in the context of the Determination.

8. NHS England therefore calculated the payments based on the income information that Dr [XXX] himself provided at the time. It is standard procedure for NHS England to request evidence of the practitioner's recent earnings when determining suspension payments, and accordingly, Dr [XXX] was asked for six months of income data, and he submitted figures which he identified as his net monthly drawings. Ultimately, the only figures made available to NHS England in order to make the calculation for his "normal income" were the ones he gave. NHS England therefore used these figures to make its calculation. If Dr [XXX] believed those figures did not accurately reflect his full income, it was incumbent on him at that stage to clarify and provide appropriate evidence of a different figure, for example, a calculated gross income. NHS England received no clear, supported gross monthly income from Dr [XXX] during the initial suspension that could be substituted for. In the absence of such data, it was reasonable and necessary to use the "normal monthly drawings" as provided, consistent with the Determination.

9. In summary, this matter should not affect the current appeal as it is outside the scope of the decision under the review. However, if it were to be considered, NHS England's calculation of the initial suspension payments was done in good faith and according to the Determination, using Dr [XXX]'s normal monthly drawings as he reported them. If there was any underpayment at that time due to Dr [XXX] providing net figures, that resulted from information he chose to provide. It is not an error on the part of NHS England, and it is not a subject of the present appeal.

Issue 2: Calculation for second suspension

10. Dr [XXX]'s second issue concerns the method of calculating his suspension payments for the ongoing suspension that began on 1 October 2025. Dr [XXX] asserts that NHS England incorrectly averaged only four months of income over a six-month period, thereby underestimating his normal monthly income. Dr [XXX]'s argument is that the Determination prescribes using six complete months of data to determine normal income, whereas NHS England considered only four months of actual earnings and effectively treated the two months of his prior suspension as zero income months in the average. Dr [XXX] believes NHS England should have taken two earlier months of income, from before his first suspension, to make up a full six months of pay. Dr [XXX] contends that the approach NHS England took is "*quite clearly not correct by the letter and by the spirit of the determination"*.

11. In response, NHS England relies on the exact wording of the Determination which is unambiguous on this point. Paragraph 4(2) of the Determination provides that, for the purpose of determining a practitioner's "normal" income "*an average of the most recently available six complete months of data is to be taken"*, unless doing so is impossible or produces an unreasonable result. In compliance with this, NHS England looked to Dr

[XXX]'s most recently available six-month period prior to the suspension in October 2025. The six-month timeframe immediately preceding the relevant suspension included April to September 2025. We acknowledge that two of those months coincided with Dr [XXX]'s earlier suspension, during which his actual practice income was nil as he was instead in receipt of suspension payments. Nevertheless, those months were part of the most recent period available. The Determination does not allow NHSE to selectively pick and choose any six months, rather, it specifically says "most recently available" six months. The ordinary meaning of that phrase is the six-month period immediately preceding the suspension in question, provided data for that period exists.

12. Dr [XXX] argues that only four months were "complete" in terms of income, implying that the two suspension months should be excluded as not being "complete" data. We respectfully disagree with this interpretation. The phrase "six complete months of data" in the Determination refers to the preceding six calendar months' worth of data, as opposed to partial months. For example, if a suspension begins mid-month, that partial month would not count as a "complete" month for calculating the average. The Determination does not say "six months of full pay" or "six highest earning months", it says the most recent six months, whatever the income in those months may be. The two months in question are complete months in that sense and data for them is "available", even if the data shows zero NHS earnings due to the practitioner receiving suspension income in lieu. Nothing in the Determination requires NHS England to discount those months or select other months at the practitioner's request.

13. Dr [XXX]'s suggested approach therefore, substituting two earlier months of full pay, finds no basis in the Determination's text. NHS England must apply the Determination as written, rather than a subjective view of its "spirit", which does not override the clear methodology outlined in the Determination.

14. Dr [XXX] points out that suspension is supposed to be a neutral act and that the calculation method has imposed a financial hardship on him and his family. NHS England maintains that the suspension in this case is a neutral act pending investigation and the Determination, and the formula for calculating suspension payments therein, has been applied uniformly (as it would to all suspended practitioners). NHS England refers to its previous representations in this case dated 10 December 2025 with regard to financial hardship in that it falls outside the scope of what may be considered. Under Paragraph 6 of the Determination, NHS England can only make payments in accordance with the Determination, which does not make provision for hardship payments or similar financial support.

15. In summary, NHS England's position is that its reconsidered decision regarding Dr [XXX]'s current suspension payments is correct. NHS England used the most recent six months of available income data to calculate the average, and then paid ninety percent of that as per the Determination. In doing so, NHS England applied the Determination and therefore acted lawfully and fairly. Dr [XXX]'s preferred alternative would have amounted to a departure from applying the Determination to his exclusive benefit, which would have been neither fair nor reasonable.

Conclusion

16. For the reasons set out above, NHS England respectfully invites the PCA reject Dr [XXX]'s representations on both points, and therefore to dismiss this appeal and uphold NHS England's original decision."

CONSIDERATION

3.11 Regulation 13(5) of the Regulations enables a medical practitioner to appeal NHS England's reconsideration of a decision relating to the amount of a medical practitioner's suspension payments.

3.12 The Notice of Appeal is in respect of the amount of suspension payments that the Appellant was deemed entitled to following his suspension on 1 October 2025. However, in his further comments he sets out two issues to be considered as part of this appeal. The first, described by both parties as "Issue 1" relates to the payment calculation during his first period of suspension between April 2025 and May 2025. The second, "Issue 2", relates to the facts as set out in the Notice of Appeal, regarding the payment calculation during the Appellant's second period of suspension from 1 October 2025.

3.13 I will start by considering Issue 2, as this is the matter to which the Notice of Appeal relates. I note that the starting point for calculating the Appellant's suspension payment amount is the 2015 Determination. NHS England has stated, and it is not disputed by the parties, that the Appellant's entitlement was calculated by reference to paragraph 5(1)(b), the key wording being "*an amount which represents 90% of the medical practitioner's normal monthly drawings* […]*."*

3.14 As per this wording, a central aspect of this calculation is based on what is "normal". This is defined in paragraph 4(2) of the 2015 Determination for these purposes.

3.15 The parties agree that the Appellant was suspended on 7 April 2025, that the suspension was lifted on 23 May 2025 on the basis of a return to work subject to conditions, and that the Appellant was re-suspended on 1 October 2025 following a further review.

3.16 NHS England has set out that the method in paragraph 4(2) is fixed. On that approach, the "most recently available six complete months of data" immediately preceding the re-suspension must include the months in which the Appellant received no drawings because the Appellant was suspended, representing a zero value. NHS England states that this is because the 2015 Determination is directly tied to what a practitioner was actually earning prior to suspension, and that this is a consistent rule that must be applied.

3.17 The Appellant has conversely stated that the months in which drawings were stopped because of the earlier suspension should not be treated as part of the "six complete months" for the purpose of paragraph 4(2). The Appellant also relies on the wider context that suspension is a neutral act and not intended to be punitive. The Appellant states that it would be inconsistent with that context for a prior suspension to reduce the level of protected earnings payable during a later suspension period, particularly where the timing of the process is not within the Appellant's control.

3.18 I consider that the starting point must be the wording of paragraph 4(2), because it performs the central definitional function in this dispute. Paragraph 4(2) provides that: "*for the purposes of determining what is or are "normal" income, payments, drawings, earnings or profits in respect of this paragraph, and paragraphs 5 and 6, an average of the most recently available six complete months of data is to be taken, unless such a calculation is impossible or produces an amount which the Board considers represents an unreasonable amount by way of protected earnings for the medical practitioner during the period in which that practitioner is suspended."* This also sets out the only two gateways by which the default approach can be displaced, namely impossibility or an evaluative judgment by NHS England that the amount produced represents an unreasonable amount.

3.19 I consider it important to deal with the word "normal" at the outset. "Normal" in the 2015 Determination is not a free-standing descriptive term in the everyday sense. Paragraph 4(2) supplies the operative meaning by prescribing how normal income or drawings are to be derived. The word "normal" therefore has to be read through the mechanism in paragraph 4(2), even where the outcome produced by that mechanism may not appear "normal" in ordinary language terms. Understanding that "normal" does not bear its everyday meaning under the 2015 Determination is necessary so that when paragraph 5(1) is read, along with the statements of the parties, it is not misunderstood as requiring a more general interpretation of the phrase.

3.20 This matters because the Appellant's central complaint amounts to the fact that his lack of drawings is self-evidently not normal, and that the average should not be reduced by months in which drawings were non-existent. Therefore, I must determine if paragraph 4(2), properly construed, requires the months with no drawings to be included in the six month dataset, and if so, then whether one of the gateways for departure is engaged.

3.21 I will therefore start with whether the months during which the Appellant was suspended need to be included for the purpose of calculating the six month average. I consider that the central interpretive dispute comes down to the meaning and interaction of the phrases "*six complete months*", "*most recently available*", and "*data*".

3.22 I note that in his additional comments the Appellant places significant weight on the phrase "six complete months". The Appellant's position depends on reading "complete" as doing more than merely restricting the nature of the months relied on for the calculation period. Instead, the Appellant states that a month is not "complete" for paragraph 4(2) purposes if it does not contain drawings or earnings, in this case due to his suspension. NHS England states that "complete" is simply an explainer of the nature of the months to be taken into consideration. As per its analysis, it is there to exclude partial months, for example, where a practitioner is suspended mid-month the relevant six months would start at the end of the preceding month, since the current month is "incomplete".

3.23 I consider that there is some difficulty with the Appellant's suggestion, a key element of which is grammatical. The exact phrase of the 2015 Determination is "*six complete months of data*". The word "*complete*" sits immediately before "*months*" and therefore most naturally qualifies the months rather than

qualifying the quality or representativeness of the data. In agreement with NHS England, I consider that this supports the position that it directs the decision-maker to look at complete months rather than part months.

3.24 I do not consider that this reads as an instruction to exclude any month that contains zero values, or any month said not to be representative. If the phrase "complete" preceded the word "data" instead, then the sentence would be given an entirely different meaning, one that would be more in keeping with the Appellant's analysis. I consider that it would be odd for the 2015 Determination to be drafted with the word "*complete*" where it is, if the intention were to achieve an outcome which would be easily, and more clearly, obtained by placing it elsewhere.

3.25 I note that NHS England has provided suggested descriptors that could have been included were it intended that an assessment of the content of the selected months was to take place. I would expect that were it intended that such an assessment needed to be carried out, language would be included to create an express requirement to that end, similar to NHS England's examples. The lack of specific phrasing to indicate such an analysis would appear to me to be an obvious and intended omission, rather than any oversight.

3.26 I also consider it relevant that paragraph 4(2) appears to be drafted in a way that seeks to make the mechanism consistently administrable. A requirement to choose six complete months provides a clear temporal instruction. The specific language avoids having to construct a bespoke period, expressed in days or some other metric, in order to measure the relevant period. A complete month is easily understood and universally applicable, and makes sense in this context. This explanation makes better sense of the drafting rather than introducing further discretion as to how "*data*" should be interpreted.

3.27 I note that this point is reinforced by the fact that paragraph 4(2) already contains a mechanism designed to provide NHS England with a level of discretion. I consider that that mechanism is not expressed as a power to select a different applicable period. The discretion is worded as a limited “unless” limb which allows departure where the calculation is impossible or where it produces an amount which NHS England considers represents an unreasonable amount by way of protected earnings. The presence of those defined gateways suggests that paragraph 4(2) was drafted with the default rule in mind as the starting point, and with departures from it intended to be controlled by the two gateways rather than by a wider implied discretion to adjust the dataset.

3.28 This is reinforced by the practical consequences of the Appellant’s approach. If months can be excluded because they are said not to be representative, or not “normal” in an everyday sense, it becomes difficult to identify a stopping point. There are many conceivable reasons why drawings or earnings may be lower in a particular month, such as illness, leave, seasonal variance, a temporary reduction in sessions, or other disruption. The 2015 Determination as drafted appears to avoid turning every calculation into a dispute about which months should be used by anchoring the dataset to recency and then allowing only limited departure.

3.29 I consider that even if the test was limited to "complete" there would be significant difficulties in establishing exactly what this would mean in practice.

The smallest discrepancy in recording data could be alluded to as rendering a month incomplete. The Appellant could be understood as suggesting that any test would be limited to only excluding months with absolutely no data. However, that would be a very strict and limited test, which I do not consider can be understood simply from the inclusion of the word "*complete*". I therefore consider that there are considerable difficulties in simply accepting the Appellant's logic at face value.

3.30 Further to this, I note that there is no clear basis for the Appellant's assertions that "complete" should be given some other meaning. As I have set out, such a reading would take the sentence beyond its obvious construction, and to do so would therefore require significant evidence or support, so as to justify the departure from the norm. I do not consider that such support is present on the materials before me. I note that paragraph 4(2) does not refer to "*months in which income was received*" or "*productive months*" or even "*months where the practitioner worked*". I consider that, if the intention was to exclude months where there was no income, the drafting would be expected to use more specific language to indicate that outcome.

3.31 I consider that the phrase "*most recently available*" further supports NHS England's reading. That wording ties the dataset relied upon to recency and directs NHS England to the last six complete months for which data exists. It does not provide any discretion for the decision-maker to choose an earlier period simply because it is said to be more typical, or because it avoids an outcome that is said to be unfair. I consider that if the goal of the 2015 Determination was for NHS England to select the most representative six month period it would not make sense to also include a temporal confinement.

3.32 I also consider that the word "*data*" is broad and has deliberate significance. Paragraph 4(2) does not define data, and foreseeably could have used any number of different words to indicate more specifically if the data needed to be of a certain nature. Data in ordinary usage includes all recorded values, and consequent nothing is still a recorded value. I consider that a month with no drawings is therefore still capable of being part of an averaging exercise because it remains "data" for these purposes.

3.33 I note that in his Notice of Appeal, the Appellant raises the issue of fairness and indicates that the process was not "normal". The difficulty is that, as I have alluded to, paragraph 4(2) does not exclude months because they are abnormal in an everyday sense. It prescribes a dataset based on recency and completeness of months, and then provides specific exceptions to that. Therefore, any decision-maker cannot take into account abnormality as a general overriding consideration when calculating the six month average, it can only be considered through the strict definition provided.

3.34 I consider that where any discretion is provided in paragraph 4(2), and therefore where an aspect of fairness might be relevant, is the gateways which provide alternatives for calculating the normal drawings. The first is where the calculation is impossible. I note that there is no suggestion that the calculation cannot be performed on the available data. The dispute is about what should be included, not about the absence of data to calculate an average. Consequently, the impossibility aspect is not engaged.

3.35 The second discretion is the unreasonableness safeguard. I note that NHS England has stated that this is expressly subjective, and I agree given that it is defined by what NHS England considers represents an unreasonable amount by way of protected earnings. I also note NHS England's reference to *Associated Provincial Picture Houses Ltd v Wednesbury Corporation (1948) 1 KB 223*, and the test to be applied as to gauge the reasonableness of the decision. I do not treat paragraph 4(2) as importing judicial review tests wholesale, but I consider that the *Wednesbury* concept is a useful way to capture the difference between an outcome that is arguable and an outcome that is unreasonable. This reinforces that paragraph 4(2) should be understood as a safeguard against outcomes that fall outside what the 2015 Determination can sensibly tolerate, rather than a mechanism for substituting the outcome with a preferable figure.

3.36 In my view, paragraph 4(2) does not answer the fairness concern by permitting the decision-maker to re-select the six month period. I consider that instead, it answers it, if at all, through the limited “unless” limb.

3.37 I consider that the Appellant’s statements regarding fairness overlap with the kind of concern the unreasonableness safeguard may address. The Appellant has stated that suspension is a neutral act and not intended to be punitive, and that it is unfair for months with no drawings caused by an earlier suspension to depress the calculation for a later suspension. I accept that this point has force as a narrative explanation of why the Appellant considers the outcome arbitrary. I also accept that the reduction may feel severe, particularly where the timing of events is driven by process rather than by choices made by the Appellant. I have nevertheless considered whether the Appellant’s submissions, properly understood, amount to a contention that the payment is unreasonable within the meaning of paragraph 4(2).

3.38 I consider that an outcome may be unfair in the sense that it produces a sharp reduction or a result that feels difficult to reconcile with the “neutral act” character of suspension, but still not be unreasonable within the meaning of paragraph 4(2). Paragraph 4(2) uses the language of unreasonableness in relation to the amount of protected earnings for that practitioner, not as a free standing test. Whilst fairness may be a factor, it is not of itself sufficient. Consequently, I cannot treat a fairness complaint as automatically satisfying the different and stricter statutory concept of unreasonableness.

3.39 NHS England has stated that it has applied the default six month methodology and has considered the resulting protected earnings figure not to be unreasonable. I consider that this matters for two reasons. First, it shows that NHS England has directed itself to the question the 2015 Determination requires it to address, namely whether the “unless” limb should be engaged, rather than treating the six month calculation as automatically determinative in every case. Secondly, it shows that NHS England has not ignored the discretion, but has exercised it by deciding not to treat the amount as unreasonable.

3.40 In this appeal, the Appellant’s submissions do not appear to set out a developed case as to why the amount produced by the paragraph 4(2) calculation is unreasonable within the meaning of that paragraph. As I have set out above, the Appellant has focused on the unfairness of including the months

during which he was suspended. Whilst I have treated the fairness complaint as engaging the unreasonableness concept at a general level, I consider that the Appellant is still required to explain why the figure produced is outside the range of permissible outcomes, rather than simply being an unattractive outcome based on previous payments.

3.41 I consider that this is where the distinction between “unreasonable” and “unfair” becomes important. The 2015 Determination does not guarantee any amount of protected earnings, and places no reliance on what usual income, or expected income might look like. Paragraph 4(2) instead selects a proxy based on recency and then allows for a strictly controlled departure through the “unless” limb. Where NHS England has applied that calculation, has recognised the consequence of including months with no drawings, and has not regarded the resulting figure as unreasonable, paragraph 4(2) does not require a further step unless there is a proper basis to conclude that NHS England's evaluative judgment is outside the bounds of the discretion conferred on it.

3.42 Whilst I am sympathetic to the Appellant, in the absence of any strong reasoning to rebut NHS England's conclusion, I therefore determine that the figure arrived at is not an unreasonable amount by way of protected earnings.

3.43 I now return to "Issue 1". This issue has been raised by the Appellant as relating to the amount paid during his initial suspension. I further note that this issue is separate from the calculation point that is the subject of this appeal, which concerns the calculation of payments following the Appellant’s re-suspension. NHS England has stated, and the Appellant has not displaced, that disputes as to the amount of a suspension payment must be raised within the time limit provided for in Regulation 13(3A), namely a 28 day period once the Appellant has been notified of the amount. On the material before me, the Appellant’s additional issue appears to be raised outside that statutory timeframe. In addition, I consider that it would be inappropriate to determine, within this appeal, a freestanding dispute about an earlier payment decision that was not part of the Notice of Appeal, as brought.

3.44 For those reasons, and because the issue appears both out of time and outside the scope of the appeal before me, I make no determination on the Appellant’s additional issue regarding the amount paid during the initial period of suspension.

4 DETERMINATION

4.1 I dismiss the appeal and confirm the decision of NHS England.

Head of Appeals
NHS Resolution