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22 May 2026

REF: SHA/26863

COMMISSIONER: **NHS ENGLAND**

PERFORMER: **DR A S ("the Appellant")**

NATIONAL HEALTH SERVICE (PERFORMERS LISTS) (ENGLAND) REGULATIONS 2013

1 Outcome

1.1 I determine that the Appellant is not entitled pursuant to paragraph 3 of the 2015 Determination to suspension payments for the period of the NHS performers list suspension.

A copy of this decision is being sent to:
Dr A S
Hill Dickinson LLP (on behalf of NHS England)

NHS Resolution

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10 South Colonnade
Canary Wharf
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COMMISSIONER: **NHS ENGLAND**

PERFORMER: **DR A S ("the Appellant")**

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 19 January 2026 the Appellant applied to Primary Care Appeals for consideration 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 NHS England's representations dated 18 February 2026 ("**NHS England's Representations**");

2.2.3 The Appellant's representations dated 18 February 2026 ("**Appellant's Representations**");

2.2.4 The Appellant's observations dated 10 March 2026 ("**Appellant's Observations**"); and

2.2.5 NHS England's observations dated 6 March 2026 ("**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 Notice of Appeal, NHS England's Representations, and the Appellant's Representations.

3.2 On 14 August 2025, NHS England suspended Dr S from the Performers List with immediate effect.

3.3 On 12 November 2025, Dr S applied for suspension payments in respect of the period of suspension from 14 August 2025.

3.4 NHS England issued a letter to the Appellant on 19 November 2025 with its decision regarding entitlement to suspension payments.

3.5 On 23 December 2025 NHS England issued its reconsidered decision ("**Reconsideration**") determining that the Appellant is not entitled to suspension payments.

3.6 Following the Reconsideration, the Appellant has submitted the Notice of Appeal.

Notice of Appeal

3.7 "I write to give formal notice of appeal against NHS England's reconsidered decision to refuse suspension payments in respect of my suspension from the Medical Performers List commencing 14 August 2025.

3.8 Grounds of Appeal

3.9 1. Misapplication of the Secretary of State's determination

3.10 NHS England has misapplied the Secretary of State's Determination Payments to Medical Practitioners Suspended from the Medical Performers List (2015), in particular Part 3, by failing properly to apply the provision relating to "the circumstances giving rise to the suspension".

3.11 2. Error in law in treating Pre-Existing matters as "new circumstances"

3.12 The factual circumstances relied upon by NHS England in support of the suspension commencing 14 August 2025 arose no later than December 2024 and formed the basis of my earlier suspension. The subsequent presentation of additional detail or elaboration concerning those same matters does not amount, in law, to new circumstances.

3.13 3. Procedural unfairness and conflation of delay with circumstances

3.14 NHS England was actively involved throughout the relevant period, including attendance at multiple LADO meetings and receipt of safeguarding information during my first suspension. Any further information later relied upon was

available to NHS England during that period or could reasonably have been sought at that time. NHS England cannot lawfully rely on its own decision not to obtain or pursue available information earlier in order to re-characterise the same underlying matters as new circumstances for the purpose of refusing suspension payments.

3.15 Please confirm receipt of this notice of appeal and advise as to the next procedural steps, including the timetable and format for submission of full written grounds.

3.16 Please also find attached the decision letter from NHSE."

3.17 [Enclosures: Letter from NHS England to Dr S dated 23 December 2025 decision regarding suspension payment.]

NHS England's Representations (represented by Hill Dickinson LLP)

3.18 "Introduction

3.19 1. The Appellant, Dr A S appeals against the decision of the Respondent, NHS England, to refuse his application for suspension payments following his suspension from the Medical Performers List ("**the Performers List**") on 14 August 2025.

3.20 2. NHS England's decision on the suspension payments to which Dr S is entitled was set out within a letter dated 19 November 2025 [**R/5/18-23**] and reconfirmed within its reconsidered decision dated 23 December 2025 [**R/6/24-29**].

3.21 3. For the reasons set out below, NHS England invites the PCA to dismiss this appeal and confirm that Dr S is not entitled to suspension payments in respect of the suspension commencing 14 August 2025.

3.22 **Documents**

3.23 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)**].

3.24 **Relevant law**

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

3.25.1 *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…*

(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;

3.26 6. Regulation 12(4) provides:

3.26.1 *(4) A suspension under paragraph (1) has effect for a period of 6 months beginning with the date on which NHS England's decision takes effect, unless NHS England decided, before the end of that period, to extend it for a further period of 6 months.*

3.27 7. Regulation 12(6) states:

3.27.1 *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).*

3.28 8. Regulation 13 states:

3.28.1 *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.*

3.29 9. 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"**).

3.30 10. Paragraph 3 of the Determination establishes when medical practitioners may be entitled to suspension payments. Paragraph 3 states (with emphasis added):

3.30.1 *"Qualifying Medical Practitioners*

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 a medical 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 contractor 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.

3.31 11. Paragraph 6(1) of the Determination states:

3.31.1 *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.*

3.32 **Relevant facts**

3.33 First suspension

3.34 12. On 9 December 2024, NHS England suspended Dr S from the Performers List with immediate effect pursuant to Regulation 12(6) of the Regulations and this is recorded in NHS England's letter dated 9 December 2024 [**R/1/2-3**]. The decision to suspend was taken in response to Dr S's arrest following allegations of inciting a child to engage in sexual activity online. At the time of the first suspension, NHS England's knowledge was limited to the fact of Dr S's arrest. No detail was available regarding the content, nature, or context of the alleged communications. During the first suspension, Dr S consistently denied the allegations, maintaining that he had not engaged in any improper online activity. The suspension was reviewed on 10 December 2025 and upheld.

3.35 13. At the time of his suspension on 9 December 2024, Dr S was performing primary medical services and met the criteria at paragraph 3(2)(b) of the Determination as a qualifying medical practitioner.

3.36 14. Dr S was not originally eligible for suspension payments due to bail conditions imposed upon him. Those bail conditions were subsequently varied, and Dr S became eligible for suspension payments from 10 January 2025.

3.37 15. On 4 February 2025, NHS England wrote to Dr S [**R/2/4-12**] confirming that he was entitled to suspension payments, calculated at 90% of his monthly pensionable earnings, being £4,949.99 per month. The first payment was calculated at £3,630, representing a pro rata amount from 10 to 31 January 2025.

3.38 16. In accordance with Regulation 12(4), Dr S's suspension lapsed on 9 June 2025 after the expiry of the six-month period. NHS England did not extend the suspension prior to its expiry.

3.39 Period between suspensions

3.40 17. Following the lapse of the first suspension on 9 June 2025, Dr S was no longer suspended from the Performers List. During the period between 9 June 2025 and 14 August 2025, Dr S undertook a short period of private work overseas between 15 and 31 August 2025; however, as confirmed in his correspondence, this work was wholly unrelated to NHS primary medical services.

3.41 18. During this period, NHS England continued to manage residual safeguarding concerns arising from the December 2024 arrest. Although both Greater Manchester Police ("GMP") and the GMC had closed their investigations, NHS England's Professional Standards Group ("PSG") agreed in May 2025 that Dr S should be asked to sign Agreement Terms; these were intended to provide safeguards pending further consideration of conditions. Dr S declined to sign the Agreement Terms despite NHS England meeting with him to explain their purpose and to confirm that they did not imply that Dr S was guilty of any criminal offence or professional misconduct. As the first suspension approached its expiry date, NHS England therefore prepared to refer the matter to a PLDP with a view to imposing formal conditions. The LADO subsequently closed its own process on 7 July 2025 with an outcome of "unsubstantiated", but both the LADO and GMP expressed ongoing concerns and encouraged that Dr S continue to work in line with NHS England's recommendations. During this time, he was free to work unrestricted following the lapse of his suspension.

3.42 Second suspension

3.43 19. On 14 August 2025, NHS England suspended Dr S from the Performers List with immediate effect pursuant to Regulation 12(6) of the Regulations and this is recorded in NHS England's letter dated 14 August 2025 [**R/4/16-17**]. The second suspension was reviewed on 15 August 2025 and upheld.

3.44 20. The decision to suspend Dr S on 14 August 2025 was based on information and concerns that were distinct from and additional to those which had given rise to the first suspension on 9 December 2024. Specifically, on 6 August 2025, NHS England received a witness statement from the Greater Manchester Police officer responsible for the investigation [**R/3/13-15**]. This statement provided, for the first time, the substantive context of the alleged online communications and search history underlying the criminal investigation. Crucially, NHS England had not been provided with this material at any point prior to the lapse of the first suspension on 9 June 2025 and it contained further information that materially altered NHS England's assessment of risk, including material that was inconsistent with Dr S's earlier explanations and denials. Had this material been available at the time of the first suspension, NHS England would have considered immediate removal proceedings. Its disclosure in August 2025 therefore constituted a significant and substantive change in the factual circumstances, and was considered sufficiently serious to warrant immediate suspension under Regulation 12(6).

3.45 21. We do not set out the contents here, but invite the PCA to review the witness statement in full. For completeness, Dr S continues to deny the allegations contained within the witness statement.

3.46 22. On 12 November 2025, Dr S applied for suspension payments in respect of the second period of suspension. NHS England considered the application and determined that Dr S did not meet the qualifying criteria set out in paragraph 3(2)(b) of the Determination, as he was not, immediately prior to the second suspension, working in any of the qualifying capacities. NHS England communicated its decision to Dr S by letter on 19 November 2025.

3.47 23. On 16 December 2025, Dr S requested a reconsideration of the decision in accordance with Regulation 13(3) of the Regulations.

3.48 24. On 23 December 2025, the reconsideration was undertaken by a separate team within NHS England, and not the team responsible for the original decision. The reconsidered decision upheld the refusal to make suspension payments. Dr S was informed by letter on 23 December 2025.

3.49 25. On 2 January 2026, Dr S relinquished his licence to practise with the General Medical Council ("GMC"). NHS England mandatorily removed Dr S from the Performers List in accordance with Regulation 28(1)(c) of the Regulations with effect from 2 January 2026.

3.50 26. Dr S has appealed the reconsidered decision to NHS Resolution's Primary Care Appeals service, which determines such appeals on behalf of the Secretary of State.

3.51 **Representations**

3.52 Overview

3.53 27. For the avoidance of doubt, any statements or assertions made in Dr S's appeal dated 19 January 2026 that are not expressly addressed in these representations are not admitted or accepted as accurate or relevant for the purposes of this appeal.

3.54 28. NHS England's decision to refuse suspension payments in respect of the second period of suspension was correct in its application of the Determination and the Regulations. NHS England submits that Dr S does not meet the criteria for entitlement to suspension payments under the Determination in respect of the second period of suspension commencing 14 August 2025, for two principal reasons:

3.54.1 a. Dr S does not satisfy paragraph 3(2)(b) of the Determination because, immediately prior to the suspension on 14 August 2025, he was not a contractor, a person employed or engaged by a contractor to perform primary medical services, or a locum; and

3.54.2 b. The circumstances giving rise to the suspension on 14 August 2025 are different from those which gave rise to the earlier suspension on 9 December 2024, such that the alternative limb of paragraph 3(2)(b) ("or the circumstances giving rise to the suspension") does not assist Dr S.

3.55 29. NHS England addresses each of the Appellant's three grounds of appeal below.

3.56 Ground 1: Alleged misapplication of paragraph 3 of the Determination

3.57 30. Dr S contends that NHS England has misapplied paragraph 3 of the Determination, in particular the provision relating to "the circumstances giving rise to the suspension".

3.58 31. Paragraph 3(2)(b) provides that the qualifying criterion is assessed by reference to the practitioner's status "immediately prior to the suspension (or the circumstances giving rise to the suspension)". This requires the practitioner to demonstrate that, at the relevant time, they fell within one of the categories at sub-paragraphs (i) to (v) – namely, that they were a contractor, employed or engaged by a contractor, or a locum.

3.59 32. The relevant "suspension" for these purposes is the suspension commencing on 14 August 2025.

3.60 Immediately prior to that suspension, Dr S was not performing primary medical services in any capacity. His first suspension had lapsed on 9 June 2025, and there is no evidence before NHS England that Dr S had returned to any form of work as a contractor, an employee or person engaged by a contractor, or a locum in the period between on 9 June 2025 and 14 August 2025, within the meaning of the Determination. Dr S has not asserted otherwise in his appeal.

3.61 33. In paragraph 1 of the Determination, all such categories under paragraph 3(2)(b) refer to "primary medical services", directly or through another defined term. "Primary medical services" are defined as "medical services to which the provisions of Part 4 of the 2006 Act (medical services) apply". "2006 Act" is defined as "the National Health Service Act 2006". The 2006 Act, including Part 4, concerns the provision of services as part of the NHS in England.

3.62 34. Dr S therefore does not satisfy the primary limb of paragraph 3(2)(b) of the Determination.

3.63 35. As to the alternative limb – "or the circumstances giving rise to the suspension" – NHS England notes that this provision is considered further under Ground 2 below. However, NHS England's position is that the circumstances giving rise to the second suspension are different from those of the first, and accordingly the alternative limb does not take Dr S back to a point in time when he was performing primary medical services.

3.64 Ground 2: Alleged error in law treating pre-existing matters as "new circumstances"

3.65 36. Dr S contents that the factual circumstances relied upon by NHS England in support of the suspension commencing 14 August 2025 arose no later than December 2024 and formed the basis of his earlier suspension. He argues that the subsequent presentation of additional detail or elaboration concerning those same matters does not amount, in law, to new circumstances.

3.66 37. NHS England does not accept this characterisation. The "circumstances giving rise to the suspension" means the circumstances giving rise to the

second suspension, not the first suspension. The second suspension on 14 August 2025 was not imposed based on circumstances already known to NHS England prior to the first suspension in December 2024. The second suspension was imposed on the basis of specific information that was not available to or known by NHS England at the time of the first suspension in December 2024. NHS England emphasises that the "new circumstances" giving rise to the second suspension consisted specifically of the detailed witness statement provided by GMP in August 2025. This information was not, and could not reasonably have been, obtained by NHS England at the time of the first suspension. The statement contained substantive factual material, most notably the content of the online communications and associated search history, that materially altered the safeguarding risk and directly led to the second suspension.

3.67 38. What NHS England knew in December 2024 was confined to the fact of arrest. What NHS England knew in August 2025, for the first time, was the substance and context of the underlying conduct. These are distinct factual matters which gave rise to separate and additional concerns about Dr S's fitness to practise. The suspension letters themselves demonstrate that the factual bases of the first and second suspensions were different, with the second suspension arising only after NHS England received substantially more detailed material that had not been available in December 2025.

3.68 39. The full circumstances of the first and second suspensions are therefore different. The fact that some of those circumstances may overlap or relate to the same broad subject area or investigation does not equate to them being the "same circumstances" for the purposes of the Determination. If the Secretary of State had intended the alternative limb in paragraph 3(2)(b) to encompass any matter arising from the same general investigation or course of events, regardless of what NHS England becomes aware of and when, he would have said so within the wording of the Determination. Furthermore, this would produce the anomalous results that a practitioner could be entitled to indefinite suspension payments based on a qualifying status that existed at an earlier, unrelated point in time, even where the specific concerns giving rise to the later suspension were entirely new.

3.69 40. NHS England submits that the phrase "the circumstances giving rise to the suspension" in paragraph 3(2)(b) refers to the specific factual matters upon which the decision to suspend was actually based. Where, as here, a second suspension was imposed on the basis of materially new information not previously known to or relied upon by NHS England, those are properly to be regarded as different circumstances giving rise to the suspension.

3.70 41. The High Court decision in *Sandles v NHS England* [2022] EWHC 1582 (Admin) confirms that where the wording of the Determination is clear, it must be applied according to its ordinary meaning. At paragraph 34 [**R/7/30**], Judge Elizabeth Cooke observed that while policy considerations may assist where a provision is ambiguous, "there is no ambiguity in this case … the words of the 2015 Determination are clear." Although Sandles concerned a different entitlement provision ("able and permitted to perform primary medical services"), the judgment reiterates that the Determination should be interpreted by giving effect to its plain wording. NHS England relies on this approach in

contending that entitlement is determined strictly by the criteria set out in the relevant paragraphs of the Determination.

3.71 42. Accordingly, the relevant point in time at which to assess Dr S's status is immediately prior to the circumstances that gave rise to the suspension on 14 August 2025. Those circumstances came to NHS England's attention after the first suspension had already lapsed on 9 June 2025. At that point, Dr S was not performing primary medical services in any qualifying capacity. He therefore does not satisfy paragraph 3(2)(b) under either the primary or the alternative limb.

3.72 Ground 3: Alleged procedural unfairness and conflation of delay with circumstances

3.73 43. Dr S contends that NHS England was "actively involved throughout the relevant period, including attendance at multiple LADO meetings and receipt of safeguarding information" during the first suspension, and that any further information later relied upon was available to NHS England during that period or could reasonably have been sought at that time. Dr S argues that NHS England cannot lawfully rely on its own decision not to obtain or pursue available information earlier in order to re-characterise the same underlying matters as new circumstances for the purpose of refusing suspension payments.

3.74 44. NHS England does not accept this submission, for the following reasons.

3.75 45. First, the question of whether Dr S is entitled to suspension payments under the Determination is determined by the objective criteria set out in that Determination. The eligibility criteria for entitlement to suspension payments in paragraph 3 are concerned with the practitioner's status and whether they were working in a qualifying capacity immediately prior to the suspension or the circumstances giving rise to it. It does not depend on when or how NHS England came to learn of the information upon which the suspension was based. The Determination contains no provision to incorporate any assessment of NHS England's conduct, the timeliness of its investigatory processes, or whether information could or should have been obtained earlier. The Determination is in view of a payment scheme with defined eligibility conditions, it is not a vehicle for challenging the procedural impropriety of NHS England's decision making. In any event, NHS England's position is that issues relating to the timing or progression of the investigation do not affect, and cannot alter, the statutory test for entitlement under the Determination.

3.76 46. Second, the investigation into concerns about Dr S was ongoing and evolving. The circumstances giving rise to the second suspension were not known or available to NHS England at the time of the first suspension. It is inherent in multi-agency safeguarding processes that information emerges incrementally from a range of sources, including the police, local authorities, and regulatory bodies. NHS England cannot be criticised for, or precluded from, acting on new information when it is formally received. The fact that NHS England attended LADO meetings does not mean that all information subsequently relied upon was available at those meetings or at the time of the first suspension. Moreover, the fact that an individual employee or representative may have been aware, or ought to have been aware, of certain

information does not mean that NHS England, as the statutory decision-maker, can be treated as having been in possession of that information for the purposes of taking regulatory action; nor does it prevent NHS England from acting appropriately once that information is properly brought to the organisation's attention. Investigations of this nature are dynamic, and it is appropriate for NHS England to act on emerging information. To hold otherwise would impose an unreasonable obligation on NHS England to anticipate every possible piece of information that might arise from an ongoing investigation and would penalise the organisation for adopting a measured and proportionate approach to suspension decisions.

3.77 47. Moreover, even if Dr S's characterisation of the timing were accepted (which it is not), this would not affect his eligibility for suspension payments for the reasons set out above. The statutory test in paragraph 3(2)(b) is an objective one that does not depend on the reasons for, or indeed the fact of, any delay in obtaining information. The decision to suspend on 14 August 2025 was, as a matter of fact, based on the specific information described above. The "circumstances" must be determined by reference to NHS England's actual decision to suspend; what NHS England did or did not know and why are in themselves part of the changing circumstances between the first and second suspension.

3.78 Dr S's subsequent removal from the Performers List

3.79 48. NHS England further notes that on 2 January 2026, Dr S relinquished his license to practice with the GMC. As a consequence, NHS England mandatorily removed Dr S from the Performers List under Regulation 28(1)(c) of the Regulations. This is relevant insofar as it confirms that, from that date at the very latest, Dr S was neither able nor permitted to perform primary medical services and would not satisfy the criteria in paragraph 3(3) of the Determination. Furthermore, his entitlement fell away altogether upon him no longer being included in the medical performers list at all. No discretion to make payments outside the Determination

3.80 49. NHS England draws the PCA's attention to the wording of Paragraph 6(1) which provides that no payments may be made unless NHS England is satisfied that the practitioner is entitled to such payment. Where the qualifying criteria are not met, NHS England has no power to make suspension payments and no discretion to do so. In the present case, Dr S did not meet those criteria, and NHS England was therefore correct to refuse the application.

3.81 **Conclusion**

3.82 50. For the reason set out above, NHS England respectfully invites the PCA to dismiss this appeal and uphold NHS England's decision in confirming that Dr S is not entitled to suspension payments in respect of the suspension commencing 14 August 2025. In summary:

3.82.1 a. Dr S does not satisfy paragraph 3(2)(b) of the Determination. Immediately prior to the suspension on 14 August 2025, Dr S was not a contractor, a person employed or engaged by a contractor, or a locum performing primary medical services. His first suspension had lapsed on 9 June 2025, and he had not returned to any qualifying role.

3.82.2 b. The circumstances giving rise to second suspension on 14 August 2025 are factually different from those which gave rise to the first suspension in December 2024. The alternative limb of paragraph 3(2)(b) therefore does not affect the position as it does not take the assessment of Dr S's qualifying status back to a point in time when he was performing primary medical services.

3.82.3 c. Dr S's argument based on alleged procedural unfairness or delay is misconceived. Entitlement under the Determination depends on objective qualifying criteria and does not depend on the timing NHS England's receipt of information or evidence that give rise to circumstances of suspension.

3.82.4 d. Further NHS England submits that where the criteria in the Determination are not met, NHS England has no power or discretion to make payments."

Appellant's Representations

Appellant	REDACTED
Performer List Number	N/A
Decision Under Appeal	NHS England reconsideration decision dated 23 December 2025
Suspension commencing	14 August 2025

3.83 **"Summary**

3.84 This appeal concerns whether NHS England lawfully refused suspension payments following my suspension from the Medical Performers List commencing 14 August 2025.

3.85 NHS England refused payment on the basis that

3.86 (a) I was not a qualifying practitioner immediately before 14 August 2025, and

3.87 (b) the "circumstances giving rise" to the 14 August 2025 suspension were said to be different from those leading to my earlier suspension (9 December 2024 to 9 June 2025) because certain details (chat excerpts and internet search history) were "not known" previously.

3.88 I submit NHS England's approach is wrong in law and unfair in operation. Determination expressly allows eligibility to be assessed by reference to my status immediately prior to the circumstances giving rise to the suspension. The underlying circumstances relied upon in August 2025 arose from December 2024 till March 2025 which formed the basis of the first suspension and its continuation till NHS let is lapse.

3.89 NHS England kept the concerns alive after the first suspension lapsed (including referral to PLDP) and then obtained a police statement after the first suspension lapsed. **That late obtained detail is not "new circumstances" in law; it is elaboration of the same underlying case**. **A decision-maker**

cannot convert its own delay in obtaining reasonably available information into "new circumstances" to defeat a statutory payment entitlement.

3.90 The issues for determination are:

3.90.1 What were the "circumstances giving rise to the suspension" commencing 14 August 2025?

3.90.2 Were those circumstances different from the circumstances that arose from December 2024 till March 2025 during first suspension period?

3.90.3 If not different, does paragraph 3(2)(b) of the Determination require eligibility to be assessed by reference to my status immediately prior to the December 2024 circumstances?

3.91 I seek an order allowing the appeal, setting aside NHS England's refusal, and directing payment of suspension payments (including arrears) from 14 August 2025.

3.92 **1. Chronology**

3.93 A brief chronology is set out below. Dates can be cross-checked against NHS England's own case records and correspondence.

Date	Event (high-level)
Dec 2024	Police investigation commenced regarding an alleged online communication; I was practicing as GP immediately prior. NHS England imposed an immediate Performers List suspension and accepted I was eligible for suspension payments.
Dec 2024 – Mar 2025	NHS England case manager engaged in safeguarding liaison (including LADO meetings with police).
Mar 2025	Police investigation concluded with no further action. Police officer offered his MG11 statement in 3rd LADO meeting dated 12/03/2025
Apr 2025	GMC process concluded with no further action; interim restrictions were revoked (March 2025). I notified NHS England and requested review.
May – Jun 2025	NHS England proposed agreement terms/conditions; I did not agree. NHS England did not seek to extend suspension, and the first suspension lapsed on 9 June 2025.

Jul 2025	NHS England confirmed it would proceed to PLDP to seek conditions; the regulatory concerns remained live.
Aug 2025	NHS England requested/obtained an MG11 statement after the lapse and imposed a new immediate suspension on 14 August 2025, stating it had "new information".
Aug 2025	I applied for suspension payments; NHS England refused and later upheld refusal on reconsideration, asserting the August 2025 circumstances were "different" because some details were "not known" previously.

3.94 **2. Statutory Framework**

3.95 Suspension payments are governed by the Secretary of State's Determination Payments to Medical Practitioners Suspended from the Medical Performers List (2015) (the "Determination"). In this case particularly paragraph 3(2)(b). The Determination states:

3.96 This sub-paragraph applies to a medical practitioner who –

3.96.1 (a) is suspended; and

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

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

3.97 The bracketed words "(or the circumstances giving rise to the suspension)" create a separate statutory gateway. The Determination does not restrict eligibility to a snapshot of employment status on the date NHS England chooses to issue a suspension notice.

3.98 I submit that circumstances of August 2025 suspension were the same which resulted in continued suspension from 9 December 2024 till 9 June 2025. Accordingly, I am eligible to receive suspension payment according to the Determination.

3.99 **3. Undisputed Matters**

3.100 The following matters are not in dispute:

3.101 1) I was practicing GP immediately prior to the December 2024 events

3.102 2) NHS England accepted that I met the qualifying status requirement and paid suspension payments during the first suspension; the safeguarding and police investigation circumstances originated in December 2024

3.103 3) The police concluded the investigation with no further action; and there was no GMC suspension in force (interim restrictions were revoked).

3.104 4) NHS England's case manager attended all LADO meetings with police officer including one on 12 March 2025, when police officer first offered to produce MG 11.

3.105 5) NHS England asked officer to produce MG11 statement after letting the first suspension lapse.

3.106 **4. The Core Issue: "Circumstances" vs Later Obtained Detail**

3.107 NHS England's reconsideration letter states that the circumstances giving rise to the 14 August 2025 suspension were "different" because it relied on details of **alleged** communications and "exact" internet search history which were said to be "not known" during the earlier suspension. This approach is legally misdirected.

3.108 NHS England's position treats "newly obtained particulars" as "new circumstances"; but the Determination distinguishes eligibility by reference to the underlying circumstances giving rise to suspension, not by the timing of details gathered about those circumstances. Therefore, in this context, "circumstances" refers to the underlying factual situation giving rise to regulatory concern (the December 2024 investigation), not the later format or level of detail in which information was recorded.

3.109 The MG11 statement obtained in August 2025 did not introduce a new episode of conduct, a new alleged victim, a new period, or a new investigative strand. It presented a formal narrative (and officer's opinion) about the same December 2024 investigation and device examination on request of NHS. **On request elaboration is not the new "circumstances".**

3.110 **5. Information Availability and NHS England's Reliance on Its Own Delay**

3.111 I submit, and evidence will demonstrate that NHS England always had access to the information which NHS later called to be new. NHS England was actively involved during the first suspension period, including safeguarding liaison with police (Attending all LADO meetings).

3.112 In first LADO meeting (December 2024), officer disclosed the theme of alleged chat "reciprocal oral sex acts".

3.113 In 2nd LADO meeting (February 2025), officer disclosed findings related to breastfeeding content (images and internet activity).

3.114 In 3rd LADO meeting (March 2025) The investigating officer indicated (before the end of the first suspension) that an MG11 statement could be provided for the GMC.

3.115 NHS England also sought professional advice (PPA advice April 2025), which recommended seeking further information from the GMC. Nevertheless, NHS England did not obtain statement or the GMC-held summary material during the first suspension period.

3.116 However, NHS England allowed the first suspension to lapse in June 2025 while expressly keeping the concerns live by progressing the matter to PLDP. After the suspension lapsed, NHS England requested and obtained the MG11 statement in August 2025. This MG11 merely contained more details of what was already shared as safeguarding concerns in LADO meetings. NHS treated these case details as “new circumstances” to justify refusal of suspension payment.

3.117 **A decision-maker cannot lawfully rely on its own omission or delay in obtaining reasonably available information to re-characterize an unchanged case as “new circumstances” for the purpose of defeating a statutory entitlement.**

3.118 **6. Regulatory Continuity and the Practical Reality of Employment Status**

3.119 NHS England’s approach also produces an arbitrary result. After June 2025, NHS England did not conclude that concerns were resolved; it continued regulatory action with plan to refer the matter to PLDP. In those circumstances, it was unrealistic to treat the position as if I had returned to an ordinary employment market unencumbered by ongoing Performers List proceedings.

3.120 **7. Purposeful Interpretation**

3.121 The Determination’s scheme is protective: it prevents financial penalty in circumstances where a practitioner is precautionarily suspended while concerns are assessed. Any interpretation that allows entitlement to be defeated by administrative sequencing (lapse and re-suspension on the same case) undermines that protective purpose and renders the “circumstances giving rise” gateway ineffective.

3.122 If NHS England’s interpretation were accepted, a practitioner could qualify for payments during an initial suspension but loses entitlement solely because NHS England

3.122.1(a) permits suspension to lapse,

3.122.2(b) keeps the case open, and

3.122.3(c) later re-suspends on the same underlying facts only because months later NHS decides to ask for more details.

3.123 That is precisely the unfair outcome the “circumstances giving rise” wording is designed to prevent.

3.124 **8. Conclusion**

3.125 In conclusion I submit that “circumstances giving rise” to the August 2025 suspension are the same underlying factual matrix that existed from December 2024 to March 2025, which led to the first suspension i.e. safeguarding/police concerns disclosed through the LADO process and arising from the same investigation strand. NHS England was present throughout, knew the themes, and had every opportunity to obtain information during the first suspension period but chose not to obtain it. The MG11 obtained after the first suspension lapsed is not a new circumstance; it is only details of the same case. I should

not lose a statutory payment entitlement because NHS England later sought a more detailed statement about a case it already had in substance.

3.126 **9. Remedy Sought**

3.127 For the reasons set out above, NHS England misapplied paragraph 3(2)(b) of the Determination by treating later evidential detail as new "circumstances" and by relying on its own delay in obtaining available information. The underlying circumstances, giving rise to the 14 August 2025 suspension arose in December 2024, at which time I was a qualifying practitioner. Eligibility is therefore satisfied via the "circumstances giving rise" gateway.

3.128 I respectfully request that the appeal be allowed and that NHS England be directed to:

3.128.1 Set aside the reconsidered refusal decision.

3.128.2 Confirm that I am eligible for suspension payments under Part 3 of the Determination for the suspension commencing 14 August 2025.

3.128.3 Pay suspension payments from 14 August 2025 onwards, including arrears.

3.129 **10. Evidence and Confidentiality**

3.130 Materials such as LADO minutes (referenced in this submission), PPA advice, MG11 and internal NHS correspondence are confidential. I do not exhibit them because they were disclosed to me only for the limited purpose of preparing submissions in the PLDP process and I do not have authority to further disclose or re-deploy them in these proceedings.

3.131 However, NHS England attended the relevant safeguarding meetings and is the custodian of the LADO minutes, related records, the PPA advice letters and associated case documentation. I therefore invite the appeal manager to direct NHS England to produce the relevant documents (or a dated schedule of what information was received and when) to verify the disclosure timeline relied upon in this appeal, including in particular the LADO meeting records for 11 December 2024, 21 February 2025, and 12 March 2025, and the PPA advice letter dated 01 April 2025, together with the date on which the MG11 statement was requested and received.

3.132 I rely on NHS England's custody of these records and invite the appeal manager to direct production; I will comply with any further direction if the appeal manager considers additional disclosure is necessary and lawful."

<u>NHS England's Observations</u>

3.133 Introduction

3.134 1. These observations are submitted on behalf of NHS England in response to Dr S's representations on appeal dated 18 February 2026, received by NHS England on 25 February 2026.

3.135 2. We address each of Dr S's points in turn, strictly limiting our observations to rebuttal of the issues he has raised. NHS England encloses an updated bundle of documents with an additional section of documents exhibited with these observations. Reference to documents within the bundle use the format [**R/Document Number/Page Number(s)**].

3.136 **Observations**

3.137 3. The majority of points raised by the Appellant have already been addressed in NHS England's representations. NHS England does, however, make the following observations.

3.138 Factual inaccuracies and matter said to be "undisputed"

3.139 4. At section 3 of the Appellant's representations, Dr S sets out a number of matters which he asserts are "not in dispute". NHS England does not accept that characterisation in respect of all of those matters, and it is important the PCA has an accurate factual picture.

3.140 5. Dr S states at the fourth bullet point of section 3 that "*NHS England's case manager attended all LADO meetings with police officer including one on 12 March 2025, when police officer first offered to produce MG11*". This is factually inaccurate (though Dr S later goes on to state this was offered to the GMC). The contemporaneous records of the LADO meeting on 12 March 2025 show that the investigating officer indicated that he would provide a written statement to the GMC, not to NHS England. The statement was not offered to NHS England at that meeting. NHS England exhibits the relevant LADO meeting minutes [**R/5/19-24**] that confirms this. To assist the PCA in establishing the factual timeline, NHS England has also produced the contemporaneous email correspondence documenting the process by which the police statement was formally requested and obtained [**R/14/50-52**]. That correspondence shows that a formal request, authorisation and payment were required before the statement could be produced, confirming that NHS England did not have access to this material during the first suspension period and could not have relied upon it prior to August 2025.

3.141 6. Similarly, Dr S states at the fifth bullet point of section 3 that "*NHS England asked officer to produce MG11 statement after letting the first suspension lapse."* NHS England takes issue with the characterisation that it "asked" for the statement in the manner implied. The factual position is that at the LADO meeting on 7 July 2025 [**R/12/42-47**], when the case was closed as "unsubstantiated" (meaning that the allegation could neither be proved nor disproved), the investigating officer and LADO chair expressed continuing concerns and offered to provide a written statement in the event that Dr S did not agree to the agreement terms proposed by NHS England, which he subsequently did not. NHS England thereafter requested the statement as part of the process for collating evidence for the Performers List Decision Panel hearing.

3.142 7. NHS England also notes that at section 1 of Dr s's chronology, he states that he "*applied for suspension payments"* in August 2025. This is also factually inaccurate. Dr S applied for suspension payments on 12 November 2025, just under three months after the suspension was imposed.

3.143 The meaning of “circumstances giving rise to the suspension”

3.144 8. The central issue in this appeal, and the focus of Dr S’s representations, is whether the “circumstances giving rise to” the 14 August 2025 suspension are the same as those giving rise to the suspension on 9 December 2024. NHS England has addressed this in its representations and maintains its position. The following observations address the new points raised by Dr S.

3.145 9. Dr S submits at section 4 that the MG11 statement obtained in August 2025 “*did not introduce a new episode of conduct, a new alleged victim, a new period, or a new investigative strand”* but rather “*presented a formal narrative… about the same December 2024 investigation.”* NHS England does not accept this argument.

3.146 10. Whilst NHS England’s case manager attended LADO meetings, at which certain high-level themes were discussed, the level of information available to NHS England during the first suspension period was materially different from the detailed information in the MG11 statement. By way of example:

3.146.1a. Although the particularly broad theme of alleged online communication was referenced in the first LADO meeting in December 2024, the specific content and context of those alleged communications was not disclosed to NHS England at that stage. NHS England was aware of a general theme, but not of the specific details subsequently set out in the MG11 statement.

3.146.2b. Similarly, whilst findings related to internet activity were referenced at the second LADO meeting in February 2025 [**R/4/14-18**], the specific nature and detail of the internet search history relied upon for the second suspension was not available to NHS England in that form during the first suspension period.

3.146.3c. The MG11 statement, when received, contained specific information that was not merely a repackaging of what NHS England already knew. NHS England was surprised at the detailed contents of the statement which included a search history and a conversation history, and it was this new detailed information that directly led to the decision to impose a further immediate suspension. If, as Dr S contends, the information was only a recitation of matters already known, NHS England would not have considered it necessary to take the significant step of imposing a further immediate suspension.

3.147 11. Dr S’s argument conflates awareness of general themes (that an investigation existed and concerned certain broad categories of conduct) with knowledge of the specific factual circumstances upon which the suspension was based. These are fundamentally different things. A decision-maker who knows that an investigation by other agencies exists is in a materially different position from a decision-maker who has received a detailed evidential statement setting out the particular facts and the investigating officer’s assessment of those facts.

3.148 12. The Determination refers to “the circumstances giving rise to the suspension.”. NHS England submits that this phrase must be given its ordinary and natural meaning. The Oxford Dictionary definition of circumstances is the

conditions and facts that are connected with and affect a situation, an event or an action. The “circumstances giving rise to” a particular suspension are therefore the specific factual matters that are connected with the suspension event, and therefore what actually caused the decision-maker to impose that suspension. In the case of the August 2025 suspension, those were the specific matters set out in the MG11 statement that NHS England previously was not privy to. It was the receipt of that statement, and the particular information it contained, that gave rise to the decision to suspend. The fact that a decision-maker has a high-level awareness of a general theme or a broad category of conduct should not prevent it from acting on new conditions and facts with a materially different evidential significance. It was the emergence of those new, specific factual matters - rather than the earlier general themes - that gave rise to the suspension on 14 August 2025.

3.149 Information availability and alleged delay

3.150 13. Dr S submits at section 5 that NHS England “*always had access”* to the information which it later characterised as new, and that a decision-maker cannot rely on its own delay in obtaining available information to re-characterise an unchanged case as “new circumstances”.

3.151 14. NHS England does not accept this submission for the reasons set out in its representations. NHS England makes the following additional observations.

3.152 15. First, the suggestion that NHS England was in a position to obtain the MG11 statement during the first suspension period is not supported by the evidence. The investigating officer offered to provide a statement to the GMC at the LADO meeting on 12 March 2025, not to NHS England at that time. NHS England was separately seeking further information through its own proper channels, including through information governance routes, which took significant time to progress. Dr S’s insinuation of this as a culpable delay does not reflect the practical realities of multi-agency information sharing in safeguarding cases, particularly where investigations are ongoing and conducted by the police. In these circumstances, those investigations must be given priority, and any separate investigation by NHS England put on hold, to avoid inadvertent prejudice to the police investigation. Similarly, at that stage, disclosure is governed by strict protocols and information governance requirements.

3.153 16. Second, even if NHS England could have obtained the information earlier (which is not accepted), this does not alter the legal analysis. As NHS England submitted in its representations, the question under paragraph 3(2)(b) of the Determination is what circumstances actually gave rise to the suspension, not what circumstances could hypothetically have been relied upon at an earlier date. The Determination contains no provision that deems circumstances to have arisen at an earlier point in time merely because the underlying information could, with the benefit of hindsight, have been obtained sooner.

3.154 17. Thirdly, and in addition to the points above regarding the availability of information, NHS England observes that Dr S’s representations proceed on the implicit assumption that NHS England was (or at least could have been) in possession of a full and accurate account of the relevant circumstances throughout the first suspension period, such that the MG11 statement added nothing of substance. This assumption is not borne out by the evidence.

3.155 18. NHS England's understanding of the relevant circumstances during the first suspension was materially limited, not only by the constraints of multi-agency information sharing, but also by the account that Dr S himself provided. It is relevant context that, throughout NHS England's engagement with Dr S and its investigation of the concerns, Dr S did not provide a full or transparent account of the circumstances. By way of example:

3.155.1a. Dr S denied the original allegation that he had incited a child to engage in sexual activity online, and put forward an explanation to the effect that the Thai female's (the mother of the child) phone number may have appeared on his device as a result of widespread phishing. However, it was subsequently found that the child's mother was a contact saved and deleted in Dr S's phone, which is inconsistent with the phishing explanation. Furthermore, the MG11 statement detailed the contents of a chat by a person identified by the police as Dr S which included inappropriate sexual comments about a child.

3.155.2b. In the PPA letter dated 19 August 2025 [**R/16/54-56]**, it is recorded that Dr S had explained the images found on his device had been downloaded in connection with personal issues relating to fertility, rather than with any sexual intent. This explanation was inconsistent with the nature of the material subsequently detailed in the MG11 statement. The police's own review of the material specifically detailed concerns about fetishes and sexual intent.

3.155.3c. NHS England was also unaware of the volume of images on Dr S's devices. The MG11 statement revealed there were in fact approximately 92,000 images, though a smaller number were of a sexual nature. At no time during the investigation did Dr S, or any other person or body, make NHS England aware of the information above, before the MG11 statement.

3.156 19. NHS England does not invite the PCA to make findings of fact regarding these matters. NHS England raises this in response to Dr S's argument that NHS England "*always had access"* to the information and simply chose not to obtain it, which fails to account for the fact that information available to NHS England during the first suspension period was shaped in part by Dr S's own account of events, which later transpired to be incomplete and misleading.

3.157 20. It therefore follows that Dr S cannot fairly criticise NHS England for not having fully appreciated the significance or detail of the circumstances during the first suspension, when Dr S's own engagement with the investigative process did not facilitate a complete understanding. The MG11 statement, when received, provided NHS England with a materially different and more detailed factual picture than that which it had been able to form on the basis of LADO discussions and Dr S's own account. This further supports NHS England's position that the circumstances giving rise to the second suspension were not the same as known during the first suspension period.

3.158 Regulatory continuity and employment status (section 6)

3.159 21. Dr S submits at section 6 that after June 2025, it was "*unrealistic to treat the position as if [he] had returned to an ordinary employment market unencumbered by ongoing Performers List proceedings."*

3.160 22. NHS England does not accept this statement. Following the lapse of the first suspension on 9 June 2025, Dr S's inclusion on the Performers List was unrestricted. He was not subject to any conditions on his practice, he was not under notice of proposed removal, and there were no regulatory restrictions on his ability to perform primary medical services. The fact that NHS England was considering whether to refer the matter to a PLDP hearing (at which conditions may have been imposed) does not amount to a regulatory restriction on his practice. NHS England was at that stage pursuing the matter through the route of seeking agreement terms under its Policy on Managing the NHS Performers Lists.

3.161 23. Dr S was free to return to the employment market and to perform primary medical services throughout the period from 9 June 2025 to 14 August 2025. Whether or not it was realistic for Dr S to return to work is a matter of his own personal choice, not a question that bears upon the legal analysis under paragraph 3(2)(b).

3.162 Purpose interpretation (section 7)

3.163 24. Dr S invites a purposive interpretation of the Determination. NHS England submits that this is not the correct approach. As NHS England noted in its representations, in *Sandles v NHS England* [2022] EWHC 1582 (Admin), Judge Elizabeth Cooke found that the words of the Determination are clear and should be given their literal meaning. At paragraph 34, the Judge states "*… whilst it may be open to me to use policy to construe a regulation where it is ambiguous… there is no ambiguity in this case. As discussed above, the words of the 2015 Determination are clear"*.

3.164 25. NHS England submits that there is no ambiguity in the meaning of "immediately prior to the suspension (or the circumstances giving rise to the suspension)". The words are clear in that entitlement is assessed by reference to the practitioner's status at the relevant point in time. If the practitioner was not a qualifying medical practitioner at that point, then the criterion is not met. There is no basis for reading in a further provision to the effect that a practitioner who was once qualifying retains that status indefinitely wherever a subsequent suspension may relate to the same broad subject matter, particularly so where new facts and context come to light.

3.165 26. Dr S's submission that NHS England's interpretation allows entitlement to be "*defeated by administrative sequencing*" mischaracterises the position. The first suspension lapsed because the six-month period prescribed by Regulation 12(4) expired. At that time, NHS England decided not to apply to the First-tier Tribunal to extend the suspension, in view of the closure of police/safeguarding case and intention to engage with Dr S through agreement terms. The subsequent suspension was imposed when new information came to light which warranted it.

3.166 Disclosure request

3.167 27. At section 10 of his representations, Dr S invites the PCA to direct NHS England to produce various documents including LADO meeting minutes, PPA advice, and related correspondence. NHS England has enclosed the relevant LADO meeting minutes, PPA advice and contemporaneous correspondence in its supporting exhibits in order to assist the PCA with fuller factual picture.

These documents demonstrate the timeline of information received by NHS England and the distinction between the general themes known during the first suspension and the specific detailed information that came to light subsequently.

3.168 **Conclusion**

3.169 28. The position of NHS England is unchanged. Dr S is not entitled to suspension payments in respect of the suspension commencing 14 August 2025. Dr S's representations do not add a basis upon which his appeal should be allowed. In particular:

3.169.1a. Dr S's account of the factual chronology is inaccurate in material respects, as set out above. NHS England has enclosed contemporaneous documentary evidence which demonstrates the correct position and, significantly, what it became aware of and when.

3.169.2b. The "circumstances giving rise to the suspension" on 14 August 2025 were the specific detailed matters contained in the MG11 statement, which were materially different from the general themes known during the first suspension period. Dr S has conflated awareness of broad themes with knowledge of specific factual circumstances.

3.169.3c. The allegation of delay or culpable omission on the part of NHS England is not supported by the evidence. The MG11 was offered to the GMC, not NHS England, during the first suspension period. NHS England was actively seeking information through proper channels throughout.

3.169.4d. Following the lapse of the first suspension, Dr S's inclusion on the Performers List was unrestricted. He was free to perform primary medical services and to return to qualifying employment. He did not do so.

3.169.5e. The Determination is clear in its wording and should be given its literally meaning in accordance with the approach in *Sandles*. A purposive interpretation is neither necessary nor appropriate.

3.170 29. NHS England therefore further invites the PCA to dismiss this appeal."

<u>Appellant's Observations</u>

3.171 "I was given 14 days from 25/02/2026 to submit my final observations which I wish to submit today on 10/03/2026. Please find attached the document containing my final observations on representations made by NHS England.

3.172 **FINAL REBUTTAL TO NHS ENGLAND'S REPRESENTATIONS**

3.173 **Appellant:** Dr S

3.174 **Respondent:** NHS England

3.175 **Appeal:** Refusal of suspension payments for suspension commencing 14 August 2025

3.176 **Forum:** NHS Resolution – Primary Care Appeals (PCA)

3.177 **1. Introduction and scope**

3.178 This rebuttal is filed in accordance with the PCA's direction that the parties may submit rebuttal representations only. It responds to the matters raised in NHS England's representations (the "Respondent's Representations") and does not advance a new case.

3.179 The central issue remains the correct application of paragraph 3(2)(b) of the Secretary of State's Determination *Payments to Medical Practitioners Suspended from the Medical Performers List (2015)* (the "Determination"), in particular the alternative limb: "immediately prior to … the circumstances giving rise to the suspension".

3.180 NHS England's case depends on treating the phrase "circumstances giving rise to the suspension" as synonymous with the later receipt of a particular document (the MG11 witness statement) rather than the underlying factual matrix giving rise to safeguarding and regulatory concern. That approach is wrong in principle and would deprive the alternative limb in paragraph 3(2)(b) of practical effect.

3.181 **2. Preliminary matters: inaccuracies and clarifications in NHS England's chronology**

3.182 NHS England's representations contain apparent inaccuracies and inconsistencies which should be corrected by reference to contemporaneous records:

3.182.1 At paragraph 17, NHS England asserts that I undertook private work overseas "between 15 and 31 August 2025" and places this within "the period between 9 June 2025 and 14 August 2025". Those dates post-date the second suspension commencing 14 August 2025. NHS England is invited to clarify/correct this point. In any event, it is not determinative of entitlement under paragraph 3(2)(b) of the Determination.

3.182.2 At Paragraph 46, NHS England asserts that only one representative or employee was aware of the information from safeguarding meetings. This is factually incorrect because the same representatives attended the meetings, kept a written record of meetings, investigated matters, received the MG11, proposed and imposed 2nd suspension while working in their official capacity for NHSE as statutory decision maker.

3.182.3 ***These issues reinforce the need for the PCA to rely on the documentary record and, where NHS England makes assertions about what was "known", "available", or "could not reasonably have been obtained", to require those assertions to be evidenced***.

3.183 **3. Overview: what is and is not in dispute**

3.184 NHS England relies on two principal reasons for refusal (para 28):

3.184.1(a) I was not in a qualifying capacity immediately prior to 14 August 2025; and

3.184.2(b) the circumstances giving rise to the 14 August 2025 suspension were different from those giving rise to the 9 December 2024 suspension, so the alternative limb does not assist.

3.185 NHS England accepts (para 13) that I met the qualifying criteria at paragraph 3(2)(b) at the time of the first suspension on 9 December 2024 and made suspension payments during the first suspension period (paras 14–15).

3.186 The appeal turns on the proper identification of the "circumstances giving rise" to the 14 August 2025 suspension and whether NHS England can lawfully treat later-obtained granular details as if they were new circumstances so as to defeat the alternative statutory gateway.

3.187 **Ground 1 (NHS England paras 30–35): "Immediately prior to the suspension"**

3.188 NHS England contends that immediately prior to the suspension commencing 14 August 2025 I was not performing qualifying "primary medical services" and therefore do not satisfy the primary limb of paragraph 3(2)(b).

3.189 Even if NHS England's contention under the primary limb were accepted for the sake of argument, it does not determine this appeal because the Determination contains an express alternative statutory gateway: eligibility may be assessed immediately prior to "the circumstances giving rise to the suspension". That alternative limb is the principal basis of my appeal and is the central dispute.

3.190 NHS England's Ground 1 therefore cannot succeed unless NHS England also establishes its Ground 2 proposition that the "circumstances giving rise" to the 14 August 2025 suspension are genuinely different from (and not a continuation or elaboration of) the underlying safeguarding/regulatory concern-matrix that existed during the first suspension period.

3.191 **Ground 2 (NHS England paras 36–42): "Circumstances giving rise to the suspension" and alleged "new circumstances"**

3.192 **A. NHS England's approach wrongly equates "circumstances" with later details**

3.193 NHS England asserts that the "circumstances giving rise to the suspension" are the specific matters relied upon for the second suspension and that these were "distinct" because NHS England received the MG11 witness statement on 6 August 2025 (paras 20, 37–40).

3.194 That framing misdirects the statutory question. The phrase "circumstances giving rise to the suspension" refers to the underlying factual situation giving rise to concern, not the later form, level of detail, or documentary repackaging in which information about that situation is recorded. A later witness statement is merely the details about the same underlying situation; it does not itself create a new underlying situation.

3.195 NHS England's position (paras 37–42) effectively rewrites paragraph 3(2)(b) to mean: "immediately prior to the suspension (or immediately prior to NHS England's receipt of later material that it chose to rely on)." That is not what the Determination says.

3.196 **B. NHS England's case conflates "newly obtained particulars" with "new circumstances"**

3.197 NHS England argues that because the MG11 statement provided "substantive context" and "materially altered" its assessment (para 20), the "circumstances" were different. That conflates:

3.197.1(i) the underlying safeguarding/regulatory concern-matrix, and

3.197.2(ii) the later acquisition of additional particulars about that same matrix.

3.198 My appeal does not depend on the PCA reviewing confidential content. The point is one of categorisation: where the second suspension arises from the same underlying investigation strand, the later receipt of a statement describing that same strand is elaboration, not "different circumstances".

3.199 **C. NHS England's own narrative supports continuity, not a reset**

3.200 NHS England itself accepts that after the lapse of the first suspension it continued to manage "residual safeguarding concerns arising from December 2024" and progressed the matter toward PLDP and conditions (para 18). That is an admission of continuity of the underlying concern-matrix.

3.201 NHS England's attempt to treat the MG11's later receipt as creating a different set of "circumstances" is inconsistent with its own case narrative of continuing management of the same concerns, including progression to PLDP for conditions.

3.202 **D. The "indefinite payments" argument is a straw man**

3.203 NHS England argues (para 39) that my interpretation would produce "anomalous" results and permit "indefinite suspension payments" based on an earlier "unrelated" status.

3.204 That is not my case. I do not contend that any later suspension, however unrelated, automatically triggers eligibility by reference to any earlier NHS work. My case is that where the later suspension is imposed on the same underlying factual matrix, the alternative limb prevents entitlement being defeated by administrative sequencing and later evidential formalisation.

3.205 **E. Sandles does not assist NHS England's interpretation here**

3.206 NHS England cites *Sandles v NHS England* [2022] EWHC 1582 (Admin) (para 41) for the proposition that the Determination should be applied according to its clear wording. I agree.

3.207 The clear wording here is "circumstances giving rise to the suspension". It does not refer to the date NHS England sought and then happened to receive a particular document. Applying the ordinary meaning supports my case: the

relevant “circumstances” are the underlying factual situation giving rise to the concerns, not the timing of later particulars.

3.208 **F. NHS England’s para 42 conclusion depends on its flawed premise**

3.209 NHS England concludes (para 42) that the relevant assessment time is immediately prior to the circumstances “coming to NHS England’s attention” after 9 June 2025. That conclusion depends entirely on the mistaken premise that “circumstances” are defined by NHS England’s later receipt of the MG11, rather than by the underlying facts which gave rise to both suspensions.

3.210 **Ground 3 (NHS England paras 43–47): Delay, availability of information, and “procedural unfairness”**

3.211 NHS England characterises my submissions as a free-standing challenge to investigatory timeliness or procedural impropriety (paras 45–47) and argues the Determination is not a vehicle for such challenges.

3.212 That mischaracterises my point. I do not ask the PCA to adjudicate a free-standing procedural complaint. My submission is that NHS England has misidentified the “circumstances giving rise” to the second suspension by conflating (i) the underlying concern with (ii) later-obtained case details.

3.213 NHS England asserts (paras 12, 37) that in December 2024 its knowledge was “confined” to the fact of arrest and that the MG11 “could not reasonably have been obtained” during the first suspension period. Those are disputed assertions.

3.214 NHS England attended the safeguarding process and holds the LADO minutes and related records. The disclosure timeline is capable of objective verification by reference to NHS England’s own file. NHS England cannot reasonably rely on broad assertions about what was “not known” or “not available” while the contemporaneous records capable of resolving that dispute are within its custody.

3.215 NHS England also advances (para 46) an argument that knowledge held by an NHS England representative in safeguarding meetings should not be treated as knowledge held by NHS England “as statutory decision-maker”. This does not make any sense and is artificial and misleading in this context. NHS England’s representatives participated in the multi-agency safeguarding process in their official capacity on behalf of NHS England. A written record of these meetings, in the form of LADO meeting minutes, was produced and NHS England is the custodian of the records. NHS England has relied on these records, as an institution, to guide their decisions. The “circumstances” should be determined objectively by reference to the underlying situation giving rise to concern and the contemporaneous record, not by internal compartmentalisation.

3.216 In any event, NHS England’s own narrative confirms continuity: it continued to manage “residual concerns arising from December 2024” and prepared PLDP conditions (para 18). That continuity is inconsistent with the proposition that the August 2025 suspension was triggered by wholly new and unrelated circumstances.

3.217 **Subsequent removal from the Performers List (NHS England paras 48–49)**

3.218 NHS England refers to my relinquishment of my GMC licence and mandatory removal from the Performers List on 2 January 2026 (paras 25, 48). That does not determine the issue on this appeal, which concerns entitlement to suspension payments following the suspension commencing 14 August 2025 and the lawfulness of the refusal decision. I am not seeking any suspension payments for the period when I did not hold the license to practice. Therefore, this is irrelevant.

3.219 **Directions / production request (to resolve disputed assertions)**

3.220 NHS England's case turns on what it says was and was not known/available to it prior to 9 June 2025 and on its characterisation of the MG11 as creating "new circumstances".

3.221 As requested in my appeal submission, I invite the PCA to direct NHS England (as custodian of records) to produce:

3.221.1 the LADO meeting records for 11 December 2024, 21 February 2025, 12 March 2025 and July 2025

3.221.2 the PPA advice letter dated 01 April 2025; and

3.221.3 the date on which the MG11 witness statement was requested and received, together with any dated schedule showing what information was received and when.

3.222 **Conclusion**

3.223 NHS England's representations seek to equate "circumstances giving rise to the suspension" with the later receipt of particulars (the MG11 witness statement). That is a misapplication of paragraph 3(2)(b) of the Determination and would deprive the alternative limb of practical effect.

3.224 Properly construed, "circumstances" refer to the underlying factual matrix giving rise to concern. NHS England's own narrative (para 18) confirms continuity of residual concerns arising from December 2024 and progression toward PLDP conditions.

3.225 The PCA is therefore respectfully invited to allow the appeal, set aside NHS England's refusal decision, and direct payment of suspension payments (including arrears) from 14 August 2025 in accordance with the Determination."

4 CONSIDERATION

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

4.2 I note that the Appellant was suspended from the Performers List with immediate effect on 9 December 2024. The Appellant became eligible for suspension payments on 10 January 2025. That suspension lapsed on 9 June

2025. I further note that the Appellant "*undertook a short period of private work overseas*", though the dates of this work are disputed. The Commissioner states in its representations that the Appellant was subsequently suspended on 14 August 2025, "*based on information and concerns that were distinct from and additional to those which had given rise to the first suspension*." The Commissioner decided that the Appellant was not eligible for suspension payments in respect of the suspension commencing on 14 August 2025.

4.3 I note that, on reconsideration, NHS England confirmed that the Appellant was not entitled to suspension payments from 14 August 2025. The Appellant disputes this, contending that the August 2025 suspension arose for the same reasons as the earlier suspension from 9 December 2024 to 9 June 2025.

4.4 I note that the issue under consideration concerns entitlement to suspension payments arising from the suspension that took effect on 14 August 2025.

4.5 The 2015 Determination sets out a medical practitioner's entitlement to suspension payments pursuant to Regulation 13 of the Regulations.

4.6 Paragraph 3 of the 2015 Determination states:

4.6.1 *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 a medical 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 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."

4.7 I will first consider paragraph 3(2)(b) of the Determination, and the wording "*immediately prior to the suspension".* I have not been provided with evidence that, immediately prior to the August 2025 suspension, the Appellant was performing primary medical services in any of the capacities listed at paragraph 3(2)(b)(i) to (v).

4.8 However, I note that in their observations the Appellant specifically seeks to rely on the parenthetical wording of paragraph 3(2)(b), namely *"or the circumstances giving rise to the suspension"*.

4.9 The Appellant contends that the circumstances on which NHS England relied to justify the suspension imposed on 14 August 2025 were materially the same as those underpinning the earlier suspension in December 2024. The Appellant further submits that NHS England's reliance on additional detail—namely that "*following the lapse of the first suspension on 9 June 2025 … NHS England continued to manage residual safeguarding concerns arising from the December 2024 arrest*"—does not amount to new circumstances. On that basis, the Appellant argues that they remain entitled to suspension payments.

4.10 I note that the Commissioner states that the August suspension was based on information and concerns that were distinct from, and additional to, those which led to the earlier suspension. The Commissioner further submits that the Appellant did not meet the requirements of paragraph 3 of the Determination because "*as he was not, immediately prior to the second suspension, working in any of the qualifying capacities*". The Appellant disputes this and argues that the wording "*the circumstances giving rise to the suspension*" can, and should, encompass the circumstances that gave rise to the initial suspension in December 2024, on the basis that there was no new information upon which the Commissioner decided to suspend the performer.

4.11 I therefore consider it necessary to determine whether the information provided in August 2025 was materially new to the Commissioner, or whether it merely repeated information already available to it. I shall not repeat the entire background to the matter, however, as the parties have set this out at length. Instead, I note that the key point of contention is the witness statement from Greater Manchester Police provided to NHS England in August 2025, and whether that statement contained wholly "new" information or was simply a repetition of what was known. This is addressed at part 5 of the Appellant's representations.

4.12 I note that the Commissioner has made reference to whether an employee or representative may have been aware of the full facts of the matter. However, I have reviewed the minutes of the Local Authority Designated Officer ("LADO") meetings, and the letters sent by the Commissioner, alongside the internal correspondence provided. I also note that there is reference to the Appellant's

responses and statements. I am mindful of the fact that there is a noticeable lack of specificity as to the nature of the issue in the meetings, though the overall picture does become clearer with each subsequent meeting. Nevertheless, I consider that the exact nature of the key online interaction incident was never expressly set out, the nature of the search terms not discussed nor was the true volume of images discovered disclosed. I have seen no evidence to suggest that prior to the provision of the witness statement in August 2025 the Commissioner, or any of its employee or representatives was aware of the details that it disclosed.

4.13 As per the Appellant, the meetings disclosed the themes of the issue and the general premise. However, I consider that there is a material distinction between awareness of the general themes and receipt of the more specific information contained in the Greater Manchester Police witness statement.

4.14 I also note that the Commissioner was not solely relying on the information disclosed during the LADO meetings. The Appellant was also providing his own explanation of the events. I consider that those explanations served to obscure, rather than clarify, exactly what had occurred, particularly when read against the information later provided by Greater Manchester Police, as per the Commissioner's Observations. Therefore, when the LADO meeting minutes are taken in combination with the Appellant's explanations, I am of the opinion that the true nature of the evidence discovered by the police and of the issues they related to was not readily apparent to the Commissioner. I also note the email provided to me by the Commissioner dated 14 August 2025 which specifically describes what information was new to it. In these circumstances, I consider that the information provided by Greater Manchester Police in August 2025 was new to the Commissioner, to the extent that it greatly clarified what had occurred and the seriousness of the issue.

4.15 I next consider the meaning of "circumstances" within paragraph 3(2)(b). The Commissioner's interpretation appears to be that the relevant circumstances are not limited to the underlying factual incident, but include the facts and information which led to the second decision to suspend the Appellant. In contrast, the Appellant sets out that it is the singular event which necessitated the suspension, and therefore further information does not change the original circumstances, as it is a singular continuing event.

4.16 I firstly note that there were two separate suspensions. There was no continuity of suspension, and there was a period during which the Appellant was free to perform NHS services, but did not do so. There is no dispute regarding this fact. I consider that the lapse of the first suspension, together with the two-month period between its expiry and the subsequent decision to suspend the Appellant, means that the August 2025 suspension should be treated as a separate and distinct matter.

4.17 That being said, I consider it correct that the underlying event which led to both suspensions was the same, in that it was the arrest and investigation by the police. However, I must be mindful of the actual wording of paragraph 3(2)(b), which is "*circumstances*". The Commissioner relies on the ordinary meaning of "*circumstances*" as "*the conditions and facts that are connected with and affect a situation, an event or an action*". I note that the Appellant states that "*circumstances*" should be interpreted as "*the underlying factual situation*

giving rise to concern". I do not consider that the word "*circumstances"* is limited in that way. In my view, it must be interpreted more widely than simply the underlying factual event, and can include the information available to the Commissioner when deciding whether to impose the relevant suspension.

4.18 I note that, as I have considered, from the Commissioner's perspective its understanding of the nature and seriousness of the underlying event had materially changed based on the new information. This was a change of circumstances, as the Commissioner did not previously have this evidence or clarity and, by August 2025, it did. I also note that this second suspension cannot be construed as a continuation of the first one. I consider that to treat the timeline as one continuous suspension would be artificial, and is clearly not suggested by either party.

4.19 Instead, the Appellant suggests that there is an ongoing "*concern-matrix*", whereby there was the first suspension, then ongoing managing of the residual safeguarding concerns, and then a second suspension. I consider that viewing the history of events in such a manner fundamentally alters the reality of the situation. The ongoing management of the residual risk, as made clear by the Commissioner's correspondence provided, was based on its initial understanding of the situation. It is clear from a letter dated 18 August 2025 that the Commissioner had changed its course of action in relation to the Appellant as a result of the new information. This does not fit in with the Appellant's description of the events as one continuous factual matrix.

4.20 Instead, I consider that the new information provided in August 2025 did not simply continue the events arising from the initial suspension, but materially informed a new decision to suspend. The conditions leading to the suspension therefore, whilst similar to the first, included the new information provided by the police and the Commissioner's changed understanding of the seriousness of the concerns. I consider that any other construction would be artificial, as it would treat the '*circumstances'* of the suspension as being limited to the underlying factual event, rather than the circumstances of the suspension, as required by the wording of the 2015 Determination.

4.21 I therefore determine that the Appellant cannot rely on the circumstances giving rise to the December 2024 suspension for the purposes of eligibility for suspension payments in respect of the August 2025 suspension. As I have not been provided with evidence that the Appellant was working in any of the qualifying capacities immediately prior to the August 2025 suspension, or the circumstances giving rise to that suspension, I determine that the Appellant does not meet the requirements for eligibility for suspension payments.

4.22 In light of the above, I consider that the Appellant is not entitled to suspension payments for the period from 14 August 2025 to 2 January 2026.

5 DETERMINATION

5.1 I determine that the Appellant is not entitled pursuant to paragraph 3 of the 2015 Determination to suspension payments for the period of the NHS performers list suspension

Head of Appeals