NHS Resolution

2 June 2026

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REF: SHA/26853

COMMISSIONER: **NHS ENGLAND (NORTH WEST COMMISSIONING REGION)**

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

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:

Taylor Wood Solicitors on behalf of Dr G [redacted]
Hill Dickinson on behalf of NHS England

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PERFORMER **DR [redacted] ("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 13 January 2026 Taylor Wood Solicitors on behalf of the Appellant applied to Primary Care Appeals for consideration of a reconsidered 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 11 February 2026 ("**NHS England's Representations**");

2.2.3 The Appellant's representations dated 21 January 2026 ("**Appellant's Representations**"); and

2.2.4 The Appellant's observations dated 18 February 2026 ("**Appellant's Observations**").

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

3 BACKGROUND AND SUBMISSIONS

3.1 The background below is taken from the Appellant's Appeal Notice, NHS England's Representations, and the Appellant's Representations.

3.2 It was determined on 11 September 2025 that the Appellant should be removed from the Medical Performers List on the grounds of suitability in accordance with Regulation 14(3)(d) and the Appellant was informed of this in a letter of 15 September 2025.

3.3 The Appellant appealed against the decision to remove him from the Medical Performers list on 10 October 2025.

3.4 The Appellant was suspended from the medical performers list on 13 November 2025 and was informed of this by way of a letter dated 17 November 2025.

3.5 The Appellant was informed of his potential entitlement to suspension payments and a claim form was submitted dated 25 November 2025.

3.6 In a letter dated 23 December 2025 NHS England advised the Appellant that he did not meet the criteria which the performer must meet immediately prior to suspension and was therefore not entitled to suspension payments.

3.7 The Appellant wrote to NHS England on 23 December 2025 requesting a reconsideration of its Decision.

3.8 On 12 January 2026 NHS England issued its reconsidered decision ("**Reconsideration**") determining that the Appellant is not entitled to the amount set out in its Decision.

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

Notice of Appeal

3.10 By letter of 13 January 2026, Taylor Woods Solicitors on behalf of the Appellant stated:

"This is a Notice of Appeal against the determination by NHS England of 12 January 2026 (a copy of which is attached), which refused suspension payment to Dr. [redacted].

The grounds of appeal are advanced on two fundamental bases.

- Purposive / 'whether or not in receipt' construction: the 'pro bono' label should not reduce 'normal monthly NHS earnings' to £0 where NHS clinical services were in fact delivered under an NHS contract and an earnings baseline can be lawfully determined/approximated.

- Substance over form: the £2,000 (7 Feb 2025) and £5,000 (23 Oct 2025) payments are, in substance, connected with the performance of NHS primary medical services and should be treated as earnings (or at least as corroboration that a nil base is artificial).

We have attached the grounds as separate attachments to this correspondence."

3.11 Notice of Appeal – Payments to Medical Practitioners Suspended From The [sic]

"Introduction

This is a Notice of Appeal to the Secretary of State (via NHS Resolution Primary Care appeals against NHS England's reconsidered decision dated 12 January 2026)(ref: Q83-2022-2023-MPC-045), refusing suspension payments for the suspension commencing 13 November 2025.

1. Purpose of this Notice

1.1 This is a Notice of Appeal to the Secretary of State (via NHS Resolution Primary Care Appeals) against NHS England's reconsidered decision dated 12 January 2026 refusing suspension payments. The appeal is lodged within 28 days of receipt, and a copy of the decision is enclosed.

Background

Dr [redacted] was engaged by Old Swan Health Centre Group Practice ("the contractor practice") under a supervised placement commencing December 2024 and worked regularly as a GP within the relevant period prior to suspension (the precise six-month window requires confirmation). The supervised work was performed for NHS patients under the contractor's NHS contract. The arrangement was described as "pro bono" as part of the broader regulatory context and to enable supervised practice while restrictions were in place. During that period Dr [redacted] received two payments from the contractor practice (£2,000 on 7 February 2025 and £5,000 on 23 October 2025), described by the practice in a later letter as a goodwill contribution towards travel expenses.

The Decision under Appeal (NHS England Decision)

NHS England accepted that Dr [redacted] meets the criterion at paragraph 3(2)(b)(ii) of the Determination (qualifying medical practitioner) as someone employed or engaged by a contractor prior to suspension.

NHS England nevertheless refused payments on the basis that there were no "normal monthly NHS earnings from work as a performer of primary medical services" under paragraph 4(1)(c) upon which to base a calculation, and treated the £2,000 and £5,000 as travel/goodwill not linked to performance of NHS primary medical services.

Basis of Appeal

It is submitted that the NHSE decision is wrong on two complementary principles

a. Dr [redacted]'s work for the contractor practice should be treated as establishing "normal monthly NHS earnings" (or a lawful approximation of them) notwithstanding that the arrangement was described as pro bono; and

b. the £2,000 and £5,000 payments should be treated in substance as remuneration connected with NHS primary medical services rather than being excluded as mere goodwill/travel.

The following grounds are advanced as grounds of appeal

Grounds of appeal

1. Error of approach / misinterpretation of the Determination:

NHS England treated the label "pro bono" as eliminating "normal monthly NHS earnings" for the purposes of paragraph 4(1)(c). That approach is wrong in principle because the Determination is concerned with protecting earnings lost by reason of suspension and expressly contemplates that entitlement may arise "whether or not" the practitioner is actually in receipt of the relevant income from the contractor. Where NHS services were in fact delivered to NHS patients under an NHS contract, NHS England was required to determine Dr [redacted]'s 'normal monthly NHS earnings' by reference to the underlying NHS work performed (and/or by a lawful approximation), rather than concluding there were no earnings simply because the parties described the arrangement as pro bono. The approach should have been what would a normal locum or salary doctor have been paid or earned for the work, and a schedule is attached to this appeal as to the correct way the calculation should have been reached.

2. Failure to apply the Determination's calculation machinery (and/or failure to ask the right questions):

Even if NHS England considered that payslips/remittances were not available in the usual form, it was required to establish the correct calculation route and apply it. In particular:

> (i) paragraph 4(2) provides for 'normal' earnings to be determined by an average of the most recently available six complete months of data unless impossible or unreasonable; and
>
> (ii) where the factual matrix resembles locum-style work, the Determination expressly uses a 'reasonable approximation' mechanism. NHS England did not identify what data it considered (sessions/days worked, agreed day rates, rotas, supervision logs, etc.) and did not consider any lawful approximation route before concluding the correct figure is nil.

3. Mischaracterisation of payments / substance over form:

NHS England relied on a later letter from the contractor practice describing the £2,000 and £5,000 as goodwill for travel. However, the correct question is whether those payments were, in substance, connected with Dr [redacted]'s

performance of NHS primary medical services and/or formed part of the remuneration package for the supervised work.

A label is not determinative. NHS England did not investigate the underlying arrangement contemporaneously (e.g., agreed locum rate, sessional expectation, supervision plan, or the causal link between the work performed and the payments).

4. Failure to take account of relevant considerations / irrationality:

NHS England's decision effectively permits an arrangement compelled by regulatory circumstances to nullify the statutory protection. Dr [redacted]'s supervised placement existed within a context of restrictions; the refusal decision acknowledges the financial consequences but then treats the financial consequences as irrelevant to the proper construction and application of the Determination. The protective purpose of the Determination is defeated if NHS England can set the baseline at £0 solely because a contractor and practitioner adopted a 'pro bono' label to enable supervised practice.

5. Human rights violation:

Once entitlement is properly determined under the Determination, the suspension payments constitute a 'possession' for the purposes of Article 1 Protocol 1 (A1P1). A refusal (or a calculation fixed at £0 by an unlawful approach) is an interference requiring lawful justification and a fair balance. Further, the severe impact on private and family life (Article 8) is relied upon as an additional relevant consideration in the proportionality assessment. These points are secondary to the public law and construction grounds above.

Relief sought

- Allow the appeal and set aside NHS England's reconsidered decision dated 12 January 2026.

- Determine that Dr [redacted] is entitled to suspension payments for the suspension commencing 13 November 2025 under the Determination; and

- Direct NHS England to calculate the amount by reference to Dr [redacted]'s 'normal monthly NHS earnings' from work as a performer of primary medical services in the six months immediately prior to suspension, taking a reasonable approximation where necessary, and to pay the sums due (with any appropriate backdating).

- In the alternative, remit the matter to NHS England with directions as to the correct approach and the evidence required.

6. Proposed calculation approach (to assist the Appeals Officer)

6.1 Dr [redacted]'s supervised work for the contractor practice was work performed for NHS patients under an NHS contract and would ordinarily attract locum/sessional remuneration. The evidence will show that a locum day rate of approximately £650 per day was the prevailing/expected rate for equivalent work.

6.2 NHS England should therefore calculate 'normal monthly NHS earnings' by reference to the most recently available six complete months of data in the relevant window, using objective evidence of sessions/days worked (rota entries, supervision logs, clinic lists, appointment reports) and applying the 90% protection threshold. If the precise number of days/sessions varies, an average should be taken.

6.3 The £7,000 received should be treated either (i) as part-remuneration for the work performed (and therefore included in earnings), and/or (ii) as corroborative that the arrangement was not purely gratuitous, and that a nil earnings base would be artificial and contrary to the Determination's purpose.

7. Evidence and enclosures (initial)

We enclose / rely upon the following (and reserve the right to supplement):

- NHS England reconsidered decision letter dated 12 January 2026.
- Claim form dated 25 November 2025 and supporting documents submitted to NHS England.
- Letter from Old Swan Health Centre Group Practice dated 22 December 2025 (as referenced by NHS England).
- Any supervision plan / action plan documents and confirmations of supervised placement (December 2024 onwards).
- Bank statements / payment confirmations evidencing the £2,000 and £5,000 payments (and any description accompanying them).
- Rota/session evidence and contemporaneous emails concerning expected rate/day rate and arrangements (to follow if not already provided).

8. Request for clarification (if NHS England maintains refusal)

If NHS England maintains that there were no 'normal monthly NHS earnings' upon which to base any calculation, we request confirmation of:

- The exact date of suspension relied upon for the determination and the precise six-month period considered.
- Which qualifying category/categories (paragraph 4(1)(a)–(d)) NHS England considered potentially applicable, and why each was accepted/rejected.
- What sources of earnings information were checked (and excluded), including whether any session/rota-based calculation was considered and why it was rejected."

3.12 Schedule of suggested calculation of payments under the Direction

"This Schedule supplements the Appeal to NHS Resolution (Primary Care Appeals) against NHS England's reconsidered decision dated 12 January

2026. It sets out Dr [redacted]'s work pattern in the relevant period and an illustrative calculation of 'normal monthly NHS earnings' for the purposes of the 2015 Secretary of State Determination.

2. Work pattern and market rate

- Worked 3 days per week: Tuesdays, Wednesdays and Fridays.
- Each working day: approximately 3 hours (morning) + 2 hours (evening) = 5 hours.
- Total: 15 hours per week.
- Market rate for equivalent locum GP work: £100 per hour.

3. Earnings calculation

On the above instructions, the weekly and monthly equivalents are as follows:

Basis	Computation	Result
Weekly hours x rate	15 hours x £100	£1,500.00 per week
Monthly (conservative)	As instructed/rounded	£6,000.00 per month
Monthly (annualised)	£1,500 x 52 ÷ 12	£6,500.00 per month

The suspension payment is 90% of 'normal monthly NHS earnings'. The two illustrative 90% figures are therefore:

- Using £6,000 per month (conservative): 90% = £5,400.00 per month.
- Using annualised monthly equivalent (£6,500.00): 90% = £5,850.00 per month.

4. Ex-gratia payments received

- Total ex-gratia received from the practice: £7,000.
- £2,000 received on 7 February 2025.
- £5,000 received on 23 October 2025.

These payments are relied upon (i) as evidence that the arrangement was not purely gratuitous in substance, and (ii) as corroboration of remunerated NHS service delivery, supporting a lawful non-nil earnings baseline"

3.13 GP LOCUM PAY RATE—Google search.

"UK GP locum rates vary significantly but generally fall between £85-£110 per hour for standard sessions , with higher rates for evenings/weekends (£100-£140+) and lower for some areas, while full days can range from £650-£900+, influenced by location, workload, urgency, and booking method (agency vs. direct). Rates depend heavily on local demand, with some areas like London potentially offering lower rates and others like the South West higher, and factors like holiday pay inclusion also affect the headline figure.

Typical Rate Ranges

• Hourly: £85 - £110 (standard in-hours).

• Daily: £650 - £900 (full day).

• Out-of-Hours (OOH): £100 - £140+ per hour.

• Premium Shi fts/Bank Holidays: 15-30% higher than standard rates.

Factors Influencing Rates

• Location: London can have lower rates compared to the South West.

• Urgency/Short Notice: Higher rates for last-minute cover.

• Workload: High patient volumes or complex sessions command more.

• Booking Method: Direct bookings (e.g., LocumDeck) often mean the GP gets the full fee, whereas agencies take a percentage.

• Inclusions: Some advertised rates include holiday pay, while others don't, affecting the base figure."

3.14 Enc: Letter dated 16 January 2026 from The Old Swan Group Practice

3.15 Claim form – Suspension Payments to Medical Practitioners (M1)

NHS England's Representations

3.16 In a letter dated 11 February Hill Dickinson on behalf of NHS England stated:

3.17 "Introduction

1. The Applicant, Dr George [redacted], appeals against the decision of the Respondent, NHS England, to refuse him suspension payments following his suspension from the Performers List, under the Secretary of State's Determination: Payments to Medical Practitioners Suspended from the Medical Performers List 2015 (**the Determination**).

2. NHS England's original decision was communicated to Dr [redacted] on 23 December 2025 [R/2/6-7]. Following a request for consideration, this decision was reviewed and subsequently upheld by NHS England on 12 January 2026, with the outcome confirmed in writing to Dr [redacted] [R/3/8-10].

3. In summary, NHS England submits:

a. Dr [redacted] has not provided any evidence of normal monthly NHS earnings from work as a performer of primary medical services in the six months immediately prior to his suspension from the Medical Performers List

b. NHS England's decision to refuse Dr [redacted]'s claim for suspension payments was a lawful and reasonable decision that NHS

England was entitled to reach in the circumstances, in accordance with the Determination.

4. Accordingly, NHS England invites the PCA to dismiss this appeal and uphold NHS England's decision.

5. 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

6. Regulation 12(1)(d) 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…*
>
> *(d) pending an appeal under these Regulations.*

7. 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).*

8. 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.*

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**).

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

11. 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**'.

12. The relevant part of paragraph 4(1) that applies to Dr [redacted] is:

(c) where the suspended medical practitioner is or was employed or engaged by a contractor, other than as a locum, that medical practitioner is not entitled to receive at least 90% of that medical practitioner's normal monthly NHS earnings from work as a performer of primary medical services (or a pro rata amount of such work in the case of a part month), whether or not that medical practitioner is actually in receipt of at least that amount from the contractor; or

13. For completeness, Dr [redacted]'s representative has stated that paragraph 4(1)(d) also applies to Dr [redacted] but this is contested:

(*d) in a case where the suspended medical practitioner is a locum, that medical practitioner is not entitled to an amount under the contract of service or the contract for services representing at least 90% of what the Board considers is a reasonable approximation of that medical practitioner's normal monthly NHS profits (or a pro rata amount in the case of a part month) from locum work as a performer of primary medical services…"*

14. 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.

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

(c) where the suspended medical practitioner is or was employed or engaged by a contractor, other than as a locum, an amount which, immediately before the suspension, amounted to at least 90% of that medical practitioner's normal monthly NHS earnings from work as a performer of primary medical services (or a pro rata amount of such work in the case of a part month);

16. For completeness, Dr [redacted]'s representative has stated that paragraph 5(1)(d) also applies to Dr [redacted] but this is contested:

(d) where the suspended medical practitioner is a locum, an amount which the Board considers is a reasonable approximation of what immediately before the suspension amounted to 90% of the suspended medical practitioner's normal monthly NHS profits (or a pro rata amount in the case of part months) from locum work as a performer of primary medical services..

Relevant facts

17. On 11 September 2025, a Performers List Decision Panel (PLDP) of the Respondent determined that Dr [redacted] should be removed from the Medical

Performers List on the grounds of suitability on the Medical Performers List, in accordance with Regulation 14(3)(d) of the Regulations. Dr [redacted] was informed of this decision in a letter dated 15 September 2025.

18. Dr [redacted] appealed the decision to remove him from the Medical Performers List on 10 October 2025.

19. On 13 November 2025, NHS England suspended Dr [redacted] from the Medical Performers List. Dr [redacted] was informed of this decision on 14 November 2025 by [NO'C] with the PLDP letter being sent on 17 November 2025 [**R/4/11-14**].

20. Dr [redacted] was informed of his potential entitlement to suspension payments on 18 November 2025 [**R/5/15-17**]. After a misunderstanding regarding this email, Dr [redacted] was provided with a claims form on 24 November 2025 [**R/6/18-23**]

21. Dr [redacted] returned his signed claims form on 25 November 2025 [**R/1/2-5**] indicating that he was not [sic] making this claim in respect of two periods of suspension:

> *I was initially suspended by NHSE on the 8th of December 2023 up until March 2024. During this period I was a sole GP contractor at The [redacted] Practice. During this period, I was getting regular earnings 6 months prior to the suspension. I did apply for a suspension payment regarding this on 12.12.23, but this was declined. B. I was suspended again by the PDLP on 13.11.25. Please see my comments regarding this suspension in part D of this form. I can confirm that I want both suspensions looking at.*

22. NHS England's letter to Dr [redacted] dated 23 December 2025 stated that Dr [redacted] did not meet any of the criteria which the performer must meet immediately prior to suspension:

- "*A contractor (including a partner in a partnership which is a contractor),*
- *A person employed or engaged by a contractor to perform primary medical services,*
- *A locum who has, or has had, a contract for services with a contractor to perform primary medical services*
- *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,*
- *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" [**R/2/6-7**].

23. On 23 December 2025, Dr [redacted] requested a reconsideration of the decision on the basis that:

a. "*The decision lacks sufficient reasons and is not properly particularized;*

b. Insufficient consideration of available, and improper interpretation of evidence; and

c. Inconsistency with the earlier "£0 (pro bono)" position" **[R/7/24-26]**.

24. The decision was reconsidered by NHS England on 12 January 2026 [**R/3/8-10**]. NHS England confirmed that Dr [redacted]'s claim for suspension payments in 2023 was refused. He was notified of this, along with his right of appeal and did not exercise this right. NHS England provided comprehensive responses to the Appellant's three grounds of reconsideration which are found in that letter and are not rehearsed here.

Representations

25. For the avoidance of doubt, any statements or assertions made in Dr [redacted]'s appeal letter dated 13 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 [R/8/27-43].

26. In his first ground of appeal, Dr [redacted] states that there has been an "*error of approach / misinterpretation of the Determination*":

a. NHS England agrees with the statement of the Appellant that "…*the Determination is concerned with protecting earnings lost by reason of suspension*". NHS England submits however that Dr [redacted] was not earning money as a medical performer immediately prior to his suspension in November 2025.

b. Dr [redacted]'s statement that "…*the Determination… expressly contemplates that entitlement may arise "whether or not" the practitioner is actually in receipt of the relevant income from the contractor*" is a misunderstanding of Paragraph 4(1)(c) of the Determination. This is not a statement that the contractor may or may not be paying the performer from primary services. Paragraph 4(1)(c) of the Determination only states that there is an entitlement to "*90% of the medical practitioners normal monthly NHS earnings from work as a performer of primary medical services*". Dr [redacted] has this entitlement, and this is not in question.

c. Dr [redacted]'s argument falls foul of Paragraph 5(1)(c) of the Determination however as the approach to determining amount of suspension payments has never been "…*what would a normal locum or salary doctor have been paid or earned for the work*". The calculation is that the payments for that six month period should be "…*an amount which, immediately before the suspension, amounted to at least 90% of*

that medical practitioner's normal monthly NHS earnings from work as a performer of primary medical services". Dr [redacted] was not renumerated [sic] for his work as a performer of primary medical services in the six month period prior to suspension. Therefore, although he is entitled to suspension payments under Paragraph 4(1)(c) of the Determination; as he was not earning any money from work as a performer of primary medical services in that period, he has no basis upon which to account for suspension payments. Put simply, 90% of £0 is £0.

d. Further, the drafting of the Determination leaves no doubt that the calculation for suspension payments is not based on "…*what would a normal locum or salary doctor have been paid or earned for the work*": Paragraph 5(1)(c) of the Determination states "… *an amount which, immediately before the suspension, amounted to at least 90% of <u>that</u> medical practitioner's normal monthly NHS earnings from work as a performer of primary medical services*" (emphasis added). It does not state that the performer should receive 90% of that of a normal locum or salary doctor, it relates to "that" medical practitioner, i.e. the one making the application. Further, if this assertion by Dr [redacted] was in fact correct, it would render the whole six month period of data required under Paragraph 4(2) of the Determination as pointless as payments would be based on national averages.

27. In his second ground of appeal, Dr [redacted] states that there was a "failure to apply the Determination's calculation machinery (and/or failure to ask the right questions)":

a. NHS England has employed the correct calculation route and I refer back to paragraph 26(c) above.

b. Dr [redacted] has stated that "…*paragraph 4(2) provides for 'normal' earnings to be determined by an average of the most recently available six complete months of data unless impossible or unreasonable*". This does accord with the test of entitlement under Paragraph 4(2) but given the position that Dr [redacted] has not received earnings from work as a performer of primary medical services in the immediate six month period before his suspension, then it is not impossible to determine that Dr [redacted] should not receive suspension payments as he did not earn during this period.

c. Dr [redacted] has stated that "*where the factual matrix resembles locum-style work, the Determination expressly uses a 'reasonable approximation' mechanism. NHS England did not identify what data it considered (sessions/days worked, agreed day rates, rotas, supervision logs, etc.) and did not consider any lawful approximation route before concluding the correct figure is nil*". The reasonable approximation mechanism is used for suspended medical practitioners who have worked as locums, Dr [redacted] has provided no evidence that he has worked as a locum in the six month period prior to his suspension. Dr [redacted] was engaged by a contractor on a pro-bono basis. This does not resemble locum-style work as Dr [redacted] has suggested. Further Paragraph 4(1)(d) of the Determination, which

considers entitlement for those in locum positions, provides the basis for entitlement on "*an amount under the contract of service or the contract for services*". The letter from Dr [redacted]'s supervisor confirms that he has not been contracted by Old Swan Health Centre [**R/9/44**].

28. In his third ground of appeal, Dr [redacted] states that there was a "*Mischaracterisation of payments / substance over form*":

a. The letter from Dr [redacted]'s supervisor confirms that the two payments were made on a goodwill basis to assist Dr [redacted] with travel [**R/9/44**]. This did not amount to normal monthly NHS earnings from work as a performer of primary medical services. In a hypothetical situation where a suspended performer was entitled to suspension payments and had been in receipt of normal monthly NHS earnings from work as a performer of primary medical services, any payments made by the contractor for expenses incurred during the period would be disregarded. The ex gratia payments are therefore analogous to that of an expenses payment.

29. In his fourth ground of appeal, Dr [redacted] states that there was a *"failure to take account of relevant considerations / irrationality*":

a. Dr [redacted] has stated that the "…*protective purpose of the Determination is defeated if NHS England can set the baseline at £0 solely because a contractor and practitioner adopted a 'pro bono' label*". This is incorrect. The decision not to pay suspension payments to Dr [redacted] did not arise because of a 'pro bono' label, it arose because Dr [redacted] could not evidence normal monthly NHS earnings from work as a performer of primary medical services.

30. In his fifth ground of appeal, Dr [redacted] states that there has been a "*human rights violation*":

a. NHS England's decision to refuse Dr [redacted]'s claim for suspension payments was a lawful and reasonable decision that NHS England was entitled to reach in the circumstances, in accordance with the Determination.

b. Dr [redacted] has referenced the "*severe impact on private and family life (Article 8)*". Nothing in Dr [redacted]'s current suspension from the Performers List precludes him from undertaking work to provide an income. Dr [redacted] 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.

Conclusion

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

3.18 Exhibits to the Respondents Representations are enclosed at Appendix B.

Appellant's Representations

3.19 In an email of 21 January 2026, the Appellant's representative stated:

3.20 "We rely on earlier representation made on behalf of Dr. [redacted], which is attached in case it has not been recived. [sic]"

Appellant's Observations

3.21 Under cover of an email of 18 February 2026, the Appellant's representative stated:

3.22 "Observations in Response to NHSE Submissions on Suspension Payments

Introduction

These observations are filed in reply to NHS England's written response on the issue of suspension payments.

Overview

NHS England has indicated (in parallel correspondence) that it is no longer appropriate for Dr [redacted] to be removed from the Medical Performers List on "unsuitability" grounds at this time. However, it has requested Dr. [redacted] not to undertake any clinical work until his case is determined by the Performers List Decision Panel (PLDP). In essence, Dr. [redacted] continues to be de facto suspended notwithstanding the order of First-Tier Tribunal. The present appeal, however, concerns suspension payments during the period of suspension and is governed by the applicable Secretary of State Determination: Payments to Medical Practitioners Suspended from the Medical Performers List 2015 (the Determination).

1.2 The appeal turns on whether Dr [redacted] had "normal monthly NHS earnings from work as a performer of primary medical services" in the relevant six-month period, and how that concept should be assessed where work was performed regularly but labelled "pro bono" and/or partly met by goodwill payments.

2. The Respondent's approach is overly formalistic and defeats the protective purpose

a. NHS England's response places determinative weight on the absence of conventional payslips and the description of the arrangement as "pro bono" and treats that as fatal to entitlement.

b. That approach is inconsistent with the protective purpose of the suspension payments scheme, which exists to mitigate the financial impact of suspension from the performers list pending determination of proceedings.

c The correct approach is substance over form: where Dr [redacted] in fact performed NHS primary medical services regularly during the

relevant period, the Tribunal should assess “normal monthly NHS earnings” by reference to the ordinary value of that work (i.e. what would ordinarily have been paid for the services performed), rather than the label applied by the contractor to the payment arrangements.

3. The issues for the PCA

NHS England’s central contention (at paragraph 3 of its response) is that Dr [redacted] has provided ‘no evidence’ of normal monthly NHS earnings in the six months prior to suspension.

Dr [redacted]’s case is that: (a) he did perform NHS primary medical services regularly in the relevant period; (b) the Determination requires a fair assessment of the normal monthly NHS earnings attributable to that work (substance over form); and (c) where necessary the PCA can adopt a reasonable approximation based on the available evidence, and/or give short directions for further evidence rather than dismissing the appeal.

4. Correct approach to paragraph 4(1) and ‘normal monthly NHS earnings’

a. NHS England correctly cites paragraph 4(1)(c) of the Determination (employed/engaged by a contractor other than as a locum). Importantly, paragraph 4(1)(c) looks to the practitioner’s normal monthly NHS earnings from work as a performer, ‘whether or not that medical practitioner is actually in receipt of at least that amount’ from the contractor. The focus is therefore the normal monthly value of the NHS performer work, not the label attached to the payment arrangement.

b. NHS England disputes reliance on paragraph 4(1)(d) / 5(1)(d) (locum). First and foremost, NHSE imposed conditions which can only be fulfilled at NHS approved practice without the financial safeguards or support that should follow such conditions. It is now not open to NHSE to now argue the nomenclature assigned to the work performed. Dr [redacted] maintains that, on the evidence, he was engaged to provide GP services in a manner consistent with locum/sessional work. In any event, the PCA can determine status on the facts and apply the appropriate limb. If there is any doubt as to status, the PCA still has the power to adopt a fair and reasonable approximation of ‘normal monthly NHS earnings’ by reference to the work actually done.

c. Paragraph 4(2) provides that an average of the most recently available six complete months of data is to be taken unless impossible or unreasonable. Where the payment structure is informal (e.g., described as ‘pro bono’ or met partly by goodwill), a strict ‘payslip-only’ approach would make calculation ‘impossible’ and defeat the scheme. In those circumstances, the PCA should adopt a reasonable approximation using the available evidence of work performed and ordinary remuneration for comparable NHS GP work.

5. Evidence and valuation: substance over form

a. NHS England’s response proceeds on the premise that because Dr [redacted] did not receive conventional salary or locum invoices, there is no evidential basis for ‘normal monthly NHS earnings. That is too

formalistic. The relevant question is what Dr [redacted] would ordinarily have earned for the NHS primary medical services he in fact performed.

b. Dr [redacted]'s evidence (already filed) is that he worked regularly (e.g., set days/sessions per week) providing NHS primary medical services at a contractor practice for an extended period. Those facts permit a baseline to be assessed. If the PCA requires further corroboration, Dr [redacted] can provide (i) practice confirmation/rota evidence; (ii) diary/calendar evidence; (iii) EMIS/clinical system activity summaries (if appropriate); and (iv) bank evidence of the goodwill payments received.

c The PCA is respectfully invited to proceed by determining the baseline from: (a) frequency of sessions/hours; and (b) a reasonable market/session rate for equivalent NHS GP work, producing a 'normal monthly NHS earnings' figure for the 6-month averaging period.

6. The £7,000 'ex gratia' point does not answer the baseline question

a. NHS England treats the £7,000 received as ex gratia/expenses and therefore not 'earnings'. Even if the label 'ex gratia' is accepted, it does not follow that Dr [redacted] had no normal monthly NHS earnings. The scheme cannot be defeated by the contractor's choice of label where NHS primary medical services were in fact performed.

b. The correct approach is to identify the normal monthly value of the NHS work performed. The goodwill payments can then be treated as (at minimum) partial remuneration/recognition of that work, or as relevant evidence that work was performed regularly.

7. Article 8 / proportionality

a. NHS England suggests Article 8 is not engaged because Dr [redacted] is not suspended by the GMC and could work elsewhere. In reality, suspension from the Medical Performers List is the gateway to NHS primary medical practice. The interference is practical and financial, and the Determination exists to mitigate that very impact. If NHSE is correct in the interpretation, it would not have been necessary for the statutory provision to be enacted, as suspended practitioners would be able to find work outside of the NHS.

b. In any event, the PCA need not resolve a free-standing human rights claim in order to allow the appeal. The Determination should be applied purposively and fairly, avoiding an interpretation that defeats its protective aim.

Conclusion:

For all the above reasons, the PCA is invited to allow the appeal."

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 medical practitioner's eligibility for suspension payments.

4.2 The Notice of Appeal is in respect of the amount of suspension payments that the Appellant was deemed entitled to following his suspension on 13 November 2025.

4.3 I note that the starting point for calculating the Appellant's suspension payment amount is the 2015 Determination. I note that the 2015 Determination acts as a series of gateways in order to determine whether a medical practitioner is entitled to payments and, if so, the amount of those payments.

4.4 I will first look at the question of whether the Appellant qualified to receive suspension payments.

4.5 The 2015 Determination, under paragraph 3 states:

Qualifying Medical practitioners

(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.

4.6 I note that NHS England is of the view that the Appellant qualified to receive suspension payments as a medical performer who is suspended and further immediately prior to the suspension was "*a person employed or engaged by a contractor to perform primary medical services*" as set out in paragraph 3(2)(b)(ii).

4.7 The Appellant's representative appears to agree with this statement but is also seeking to argue that the Appellant should be considered as "a locum" for the purposes of the calculation of the suspension payments. However, I have not been provided with any information or evidence to demonstrate that the Appellant has a contract to provide such services with a contractor to perform primary medical services as set out in paragraph 3(2)(b)(v). I note that the Appellant's representative asserts that "the factual matrix resembles locum-style work", however this point has not been expanded upon in such a way as to allow me to understand what aspects of the Appellant's work made it akin to being a locum. In particular, I note that the Appellant's representative states that the Appellant was engaged under the Contractor's NHS contract. The Appellant's engagement under an NHS Contractor's arrangements over a continuous period from December 2024 to August 2025, and not for the purpose of discrete or temporary cover, is not consistent with the hallmarks of locum work.

4.8 I note that the Appellant's representative seeks to argue that payments should be based on locum rates, however given my conclusion above that the Appellant was not employed as a locum I restrict my consideration to payments for suspended medical practitioners as set out in paragraph 3(2)(b)(ii) above.

4.9 I note, from the information before me in a letter from the Old Swan Health Centre Group Practice, dated 22 December 2025, that the Appellant was not offered a salaried role and was further not offered an employment contract. I note that this has not been disputed by the Appellant's representative.

4.10 I am therefore of the view that the Appellant was engaged by a contractor to perform primary medical services and therefore qualified to receive suspension payments as a medical performer who is suspended and further immediately prior to the suspension was "a person employed or engaged by a contractor to perform primary medical services" as set out in paragraph 3(2)(b)(ii).

4.11 Given that I have found that the Appellant was a qualifying medical practitioner, as set out in the 2015 Determination, I have next considered if the Appellant was entitled to payments.

4.12 Paragraph 4 of the 2015 Determination states:

Entitlement to payments

4.- (1) A medical practitioner to whom paragraph 3(2) and (3) applies ("a suspended medical practitioner") is, subject to the following provisions of this

Determination, entitled to payments from the Board in respect of any complete calendar month, or part of a calendar month, for which-

(a) where the suspended medical practitioner is a contractor who is an individual medical practitioner, that practitioner's normal monthly payments (or a pro rata amount in the case of a part month) are withheld or deducted by the Board in accordance with the terms of the contractor's primary medical services contract;

(b) where the suspended medical practitioner is one of two or more individuals practising in a partnership, that medical practitioner is not entitled to receive at least 90% of the normal monthly drawings (or a pro rata amount in the case of a part month) from the partnership account, whether or not that medical practitioner is actually in receipt of those drawings;

(c) where the suspended medical practitioner is or was employed or engaged by a contractor, other than as a locum, that medical practitioner is not entitled to receive at least 90% of that medical practitioner's normal monthly NHS earnings from work as a performer of primary medical services (or a pro rata amount of such earnings from such work in the case of a part month), whether or not that medical practitioner is actually in receipt of at least that amount from the contractor; or

(d) in a case where the suspended medical practitioner is a locum, that medical practitioner is not entitled to an amount under the contract of service or the contract for services representing at least 90% of what the Board considers is a reasonable approximation of that medical practitioner's normal monthly NHS profits (or a pro rata amount in the case of a part month) from locum work as a performer of primary medical services, whether or not the suspended medical practitioner claims or is in receipt of that amount.

(2) 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."

4.13 I note that both parties confirm that the entitlement to payments falls to be considered under paragraph 4(1)(c) and I concur with this view given my finding above in respect of paragraph 3 and the fact that the Appellant was engaged by a Contractor.

4.14 I note that the Appellant's representative also raises paragraph 4(1)(d) in his observations asserting that the Appellant "was engaged to provide GP services in a manner consistent with locum/sessional work." Again, I consider that this statement is unsupported by any evidence. For the reasons set out above, the established facts of the arrangement are not consistent with locum or sessional work. I therefore agree with NHS England that the provisions under the 2015

Determination relating to locums, including paragraphs 4(1)(d) and 5(1)(d), do not apply to the Appellant.

4.15 I note that the dispute revolves around the actual amount that the Appellant should be paid for the period which they were suspended. The amount of payment is determined in accordance with paragraph 5. On the basis of the information I have already considered, the applicable paragraph is paragraph 5(1)(c), as the Appellant was employed or engaged by a contractor other than as a locum.

4.16 Under paragraph 4(1)(c) the Appellant was entitled to suspension payments, and I consider this to be the same position taken by NHS England. However, the Appellant's representative states that NHS England treated the arrangement being "pro bono" as "fatal to entitlement". I do not consider this to be the case. As stated at paragraph 26(b) of NHS England's representations, the Appellant was entitled to suspension payments. As such, entitlement was, in fact, agreed between the parties. The issue is not whether the Appellant was entitled to a payment in principle, but how any payment falls to be calculated under paragraph 5(1)(c).

4.17 The central aspect of this calculation is the Appellant's “normal” monthly NHS earnings from work as a performer of primary medical services. "Normal" is defined in paragraph 4(2) of the 2015 Determination for these purposes.

4.18 I consider that the starting point must be the wording of paragraph 4(2), which 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 by way of protected earnings.

4.19 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 the relevant normal income, payments, drawings, earnings or profits 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)(c) is read, along with the statements of the parties, it is not misunderstood as requiring a more general interpretation of the phrase.

4.20 This matters because the Appellant's representative has stated that the correct approach should have been to calculate the earnings based on a normal locum or salaried doctor, as per the calculations provided by them. Therefore, I must determine whether paragraph 4(2), properly construed, requires this approach, or in the alternative, whether one of the gateways for departure is engaged such that this approach should have been utilised. The protective purpose of

the 2015 Determination must be considered through the mechanism that it actually provides.

4.21 I am mindful that the 2015 Determination states, under "Amount of payments" under paragraph 5(1)(c) "*… an amount which, immediately before the suspension, amounted to at least 90% of that medical practitioners normal monthly NHS earnings from work as a performer of primary medical services …"* [emphasis added].

4.22 I am of the view that paragraph 5(1)(c) of the 2015 Determination is specific in that it directs NHS England to consider the normal monthly NHS earnings of the medical practitioner who has been suspended. It is not a general term for earnings of any medical practitioner, an average of what may be paid to locums or salaried doctors, or the ordinary market value of the work undertaken. Nor do I consider that the fact NHS primary medical services were performed under an NHS contract means that earnings must be attributed to that work where no earnings were in fact payable to, or received by, the Appellant.

4.23 I further note the reference in paragraph 4(2) which states "*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 …"* Evidence of sessions or days worked may demonstrate that services were performed, but it does not, by itself, establish that the Appellant had normal monthly NHS earnings from that work. The relevant data for the purposes of paragraph 5(1)(c) must be directed to earnings, not merely to activity.

4.24 I note that the Appellant was suspended with effect from 13 November 2025, however it has been confirmed, by the Old Swan Group Practice, that the Appellant ceased working for them, in any capacity, from 15 August 2025. This is some 3 months before the suspension came into effect. I note that I have no information as to where, or if, the Appellant was working as a performer of primary medical services at the date of the suspension. This further supports the conclusion that there is no basis for treating the Appellant as having received normal monthly NHS earnings immediately prior to the suspension.

4.25 I note that in the claim form dated 25 November 2025 completed by the Appellant he has stated:

"*…I eventually got a salaried GP position but on a pro bono basis on 3rd December 2024 up until September 2025 at The Old Swan Health Centre in Liverpool. I fully consented to the pro bono basis as this was the only way to get the restriction on my by NHSE lifted. …"*

4.26 Further, in a letter dated 16 January 2026 The Old Swan Group Practice confirmed the pro bono status of the Appellant stating:

"*I write to confirm that [the Appellant] worked at The Old Swan Health Centre in Liverpool as a General Practitioner on a pro bono basis from 3rd of December 2024 until 15th August 2025."*

4.27 I again note the information from the Old Swan Health Centre Group Practice in a letter of 22 December 2025 which confirms that the Appellant was not offered a salaried role and that "*he was not offered an employment contract*." I

further note the statement from the Old Swan Health Centre Group Practice that:

"The payments we made to him was purely a good will gesture to help towards his travel expenses he incurred from Manchester to Liverpool."

4.28 I note the Appellant's comments with regard to the "good will" payments and that he considers that this should be taken into account. There is no dispute between parties that the Appellant received money from the practice, however it is noted that this was not as monthly earnings and, as per the letter from the Contractor, was to be considered as expenses to assist with travel costs incurred. I note that the categories of payment under paragraph 4(2) are "income, payments, drawings, earnings or profits". For the purposes of paragraph 5(1)(c), the relevant question remains the Appellant's normal monthly NHS earnings.

4.29 I do not consider this to be a question of accepting a label applied by the Contractor. The payments were one-off payments, for different amounts, and were described by the Contractor as a goodwill gesture towards travel expenses. They were not described as remuneration for work and were not made as regular monthly earnings. I therefore do not consider that they can properly be treated as the Appellant's normal monthly NHS earnings for the purposes of paragraph 5(1)(c).

4.30 I am of the view that the Appellant was working on a pro bono basis. In support of this, I note that I have confirmation from the medical practice that the payments made as a "good will" gesture were for travel expenses and not earnings. The performance of NHS primary medical services does not, by itself, convert expenses or goodwill payments into earnings.

4.31 I cannot see anything in the 2015 Determination that supports the Appellant's representative's assertion that the earnings of a "normal locum or salaried doctor" should be used. The Appellant's representative also states in his observations that the value of the Appellant's work should be calculated "by reference to the ordinary value of that work". I do not accept that approach. That would require the 2015 Determination to operate by reference to a notional valuation exercise rather than the Appellant's normal monthly NHS earnings. The Appellant has not identified any wording in the 2015 Determination which permits the attribution of a notional value to work undertaken without remuneration. Paragraph 5(1)(c) is concerned with the Appellant's normal monthly NHS earnings from work as a performer of primary medical services. As the evidence is that the relevant work was undertaken on a pro bono basis and no earnings were received, there is no basis on which to calculate a sum by reference to the ordinary value of that work.

4.32 I note that reference has been made to the wording of "reasonable approximation". That wording does not apply to paragraph 5(1)(c), which is the provision relevant to a medical practitioner who is or was employed or engaged by a contractor other than as a locum. In any event, and for the reasons set out above, I do not consider that the Appellant was acting as a locum. The wording relied upon is found in provisions which I do not consider apply to the Appellant and, in any event, does not provide a basis for replacing the Appellant's actual monthly NHS earnings with a notional or market-based figure.

4.33 I concur with both parties that the aim of the Regulations and the 2015 Determination is to ensure that suspension remains a neutral act and that, whilst suspended a performer is no worse off than if they were able to practice. However, that protective purpose must be applied through the wording of the 2015 Determination. It does not allow NHS England to attribute earnings to an arrangement under which none were payable. Nor do I accept the Appellant's representative's argument that the protective purpose of the 2015 Determination is defeated if the calculation is £0 because the contractor and practitioner adopted a 'pro bono' label to enable supervised practice. The calculation is not based on the label alone, but on the evidence that the Appellant received no earnings from the arrangement. I am also of the view that it cannot be the intention of the 2015 Determination that a performer who is suspended is, in effect, "better off" than when they were not suspended.

4.34 I have considered the Appellant's representative's reference to 'substance over form'. In my view, the substance of the arrangement is that the Appellant performed services under an arrangement which was expressly unpaid. Treating that unpaid arrangement as giving rise to notional earnings would not be applying substance over form, instead it would be substituting a wholly different arrangement for the one evidenced before me.

4.35 I am of the view that the Appellant was entitled to receive suspension payments and further that this should be based on the "normal monthly NHS earnings" that he was receiving in the six months prior to suspension. To the extent the Appellant says that a payment should be made because the outcome is harsh or because the unpaid arrangement enabled supervised practice, that is not a basis for calculating a payment under paragraph 5(1)(c) by reference to earnings which were not received.

4.36 Whilst the Appellant is entitled to payment, this must be calculated by reference to the earnings which he was receiving, as clearly set out in the 2015 Determination. I note that the Appellant was not being paid and further that the Appellant "…*fully consented to the pro bono…*". The reasons why the Appellant and the practice entered into that arrangement may explain the background, but they do not alter the calculation required by paragraph 5(1)(c). The 2015 Determination does not provide for a separate payment to be made because an unpaid arrangement was considered necessary or beneficial.

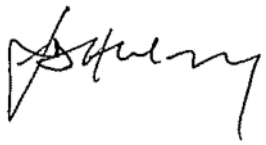
4.37 I have also considered the Appellant's representative's reliance on Article 1 of Protocol 1 and Article 8 of the ECHR. I do not consider that those points alter the position. The Appellant's representative states that, once entitlement is properly determined under the 2015 Determination, suspension payments constitute a possession. However, that does not answer the issue in dispute, which is the amount of any payment under paragraph 5(1)(c). The Appellant's argument assumes the existence of an entitlement to a payment calculated by reference to a notional value of unpaid work. For the reasons set out above, no such entitlement arises under the 2015 Determination. Article 1 of Protocol 1 does not create an entitlement to a payment which is not otherwise available under the 2015 Determination, and Article 8 does not provide a basis for replacing actual earnings with a notional or market-based figure.

4.38 In light of the above I consider that whilst the Appellant is entitled to suspension payments for the period in question, those payments must be calculated by

reference to the normal monthly NHS earnings that he was receiving, which in this case is £0.

5 DETERMINATION

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



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