NHS Resolution

2 July 2026

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**REF:** **SHA/26972**

**COMMISSIONER:** **NHS ENGLAND - NORTH WEST**

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

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

## 1 Outcome

1.1 I determine that the Appellant is entitled pursuant to paragraph 4(1)(d) of the 2015 Determination to suspension payments but that the value of those payments is zero.

A copy of this decision is being sent to:

Dr [redacted]
Hill Dickinson LLP representing NHS England

NHS Resolution

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

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## 1 INTRODUCTION

1.1 The above named Appellant has referred the matter for consideration under the National Health Service (Performers Lists) (England) Regulations 2013 ("the Regulations").

1.2 The Secretary of State for Health and Social Care has directed that NHS Resolution, the operating name of NHS Litigation Authority, exercise the functions under Regulation 13(5) to (9) on their behalf. Primary Care Appeals discharges that function for NHS Resolution and I, as an authorised officer have made this determination

## 2 THE APPEAL

2.1 By an email dated 9 April 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 30 April 2026 (“**NHS England’s Representations**”);

2.2.3 The Appellant’s observations received 28 May 2026 (“**Appellant’s Observations**”); and

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 APPEAL AND SUBMISSIONS

Notice of Appeal

3.1 "Today I have received a decision from NHSE that an appeal against the initial decision for suspension payments was declined. I have attached the letter, as per protocol.

3.2 I wish to appeal once more against this:

3.3 The initial appeal did not give me an opportunity to set out the grounds of appeal, hence should not be valid.

3.4 The reason for appeal is that although the locum work was not authorised, however I was put into a position of not being able find any work under the restrictions by the Undertaking. I communicated on this in the interview, pending a submission to the Decision Making Panel with all the evidence supporting that argument will be submitted before the 27th of April. It is possible that this may be referred by the GMC to the MPTS for a final decision. This may take 2-3 years, as it currently stands.

3.5 In the time that a decision has to be made, by either the DMP, the GMC or the MPTS should not be prejudiced that pending a formal decision that I am not permitted to work as a doctor anymore. In such garden leave, the decision to suspend me should be impartial. It is not at this moment in my opinion.

3.6 The text of the guidelines on this as is on page 17, Guidance on Payments during Suspension of a GP of the Performer's List, states clearly that locums do have a qualifying relationship. As such I would argue that the request for payments during suspension of my practice should be upheld."

3.7 [Enclosures:

3.7.1 Copy of NHS England letter, Outcome of independent review of suspension payment entitlement dated 8 April 2026

3.7.2 Guidance on payments to medical practitioners during suspension from the performers list. Version 3.4 (March 2025)].

NHS England's Representations

3.8 **"A. INTRODUCTION**

3.9 1. These are representations of NHS England ("**NHSE**") in response to the appeal of Dr [redacted] ("**Dr [redacted]**" or "**the Appellant**") dated 9 April 2026, against the decision of NHSE that he is not entitled to suspension payments following his suspension from the National Medical Performers List (England) ("**the Performers List**") on 12 January 2026.

3.10 2. The appeal is made under Regulation 13 of the National Health Service (Performers Lists) (England) Regulation 2013 (as amended) ("**the Regulations**"). The decision under appeal is the reconsidered decision of NHSE, communicated to the Appellant by letter dated 8 April 2026, that he is not entitled to suspension payments in accordance with the Secretary of State's Determination: Payments to Medical Practitioners Suspended from the Medical Performers List 2015 ("**the Determination**").

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

3.12 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)**].

3.13 5. For the reasons set out below, NHSE respectfully invites the PCA to dismiss the appeal and uphold the decision of 8 April 2026. In summary:

3.13.1 a. The Appellant was not a qualifying practitioner within the meaning of paragraph 3 of the Determination, in that he was not "*able and permitted*" to perform primary medical services prior to his suspension and should not be regarded as being so during his suspension, given the circumstances. His inclusion on the Performers List was subject to long-standing conditions which required the prior approval of NHSE for any place of work. Without such approval, he was not permitted to perform primary medical services at Friary House Surgery, Croft Hall Surgery or Catherine House Surgery, as he has himself admitted he did.

3.13.2 b. Furthermore, and in any event, the pay information submitted by Dr [redacted] in support of his claim relates exclusively to work undertaken in direct, admitted and knowing breach of his conditions. Such earnings cannot be considered as "*normal monthly income*" within the scope paragraphs 4 and 5 of the Determination. There is, accordingly, no lawful basis upon which any suspension payment may be calculated.

3.13.3 c. Furthermore, and in any event, the grounds of appeal advanced by the Appellant are procedurally misconceived, legally irrelevant to the question of entitlement under the Determination, and/or speak to matters of mitigation for any future regulatory action rather than the lawfulness of the decision under this appeal.

3.14 **B. RELEVANT LAW AND GUIDANCE**

3.15 6. Regulation 10 of the National Health Service (Performers Lists) (England) Regulations 2013 ("**the Regulations**") empowers NHSE to impose conditions on a practitioner's inclusion on a performers list.

3.16 7. Regulation 12(1) of the Regulations states:

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

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

3.17.2 *(b) while it awaits—*

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

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

3.18 8. Regulation 12(6) states:

3.19 *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).*

3.20 9. Regulation 13 states:

3.21 *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.*

3.22 10. 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**").

3.23 11. Paragraph 3 of the Determination establishes when a medical practitioner may be entitled to suspension payments. It provides (with emphasis added):

3.24 *(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.*

3.25 *(2) This sub-paragraph applies to a medical practitioner who —*

3.25.1 *(a) is suspended; and*

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

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

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

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

3.25.2.4 *(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,*

3.25.2.5 *(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.*

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

3.27 12. The requirements of sub-paragraphs 2 and 3 are cumulative: both must be satisfied before a practitioner may be entitled to received payments.

3.28 13. Paragraph 4 of the Determination establishes the circumstances in which a suspended practitioner (to whom paragraph 3 applies) is entitled to receive payments and introduces the concept of "normal" income. Paragraph 4(1)(d), which is of particular relevance given the Appellant's locum status, provides that such practitioner is entitled to payments where (with emphasis added): *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.*

3.29 14. Paragraph 4(2) of the Determination provides:

3.30 *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.*

3.31 15. Paragraph 5(1) of the Determination prescribes the amount of any suspension payment. Paragraph 5(1)(d), which applies to locums, provides that the amount is (with emphasis added):

3.31.1 *(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.*

3.32 16. In his appeal, Dr [redacted] refers to NHSE's published Guidance on payments to medical practitioners during suspension from the performers list ("**the Guidance**"), which is referred to in these representations where relevant [**R/4/166-222**]. The Guidance is not intended to replace or supersede the Regulations or Determination, but sets out NHSE's approach to applying the Determination.

3.33 **C. RELEVANT FACTS**

3.34 **Background**

3.35 17. Dr [redacted] is a registered medical practitioner and has been included on the Performers List since its inception in 2006. Dr [redacted]'s inclusion was subject to conditions immediately prior to his suspension. The case history of his conditional inclusion, voluntary undertakings, and previous suspensions is set out in the NHSE Investigation Report dated March 2026 ("**the Investigation Report**") [**R/1/3-40**].

3.36 18. Following a review of conditions by NHS England South West Performers List Decision Panel ("**PLDP**") on 8 May 2024, Dr [redacted]'s conditions were amended. The amended conditions were formally imposed with effect from 14 May 2024, following NHSE's letter to Dr [redacted] of that date [**R/1.3/51-55**]. Dr [redacted] exercised his right of appeal to the First-tier Tribunal but withdrew that appeal on 29 July 2024, citing that his financial situation had been resolved and that he could accommodate the conditions [**R/1.4/56-57**].

3.37 **Relevant conditions**

3.38 19. The conditions imposed on Dr [redacted]'s inclusion in the Performers List (as amended on 14 May 2024) included, materially for the purposes of this appeal:

3.38.1 a) **Condition 1:** the requirement to have a workplace reporter approved by the Responsible Officer (or their nominated deputy);

3.38.2 b) **Condition 2:** the requirement to have a clinical supervisor approved by the Responsible Officer (or their nominated deputy) with "close" supervision (GMC definition), the supervisor to be in the same practice for at least 60% of the time, weekly meetings, structured reports to NHSE and NHSE clinical advisor oversight;

3.38.3 c) **Condition 5:** the requirement to inform NHSE of any post accepted before commencement of that post;

3.38.4 d) **Condition 6:** the requirement to inform any organisation or person employing or contracting him, and any prospective employer or contractor, that his inclusion was subject to conditions; and

3.38.5 e) **Condition 9:** the requirement not to undertake any short-term locum post of a duration of less than three months unless the position had been agreed by NHSE.

3.39 20. The combined effect of these conditions is that Dr [redacted] was not permitted to perform primary medical services at any practice in respect of which NHSE had not approved the practice, an appropriate workplace reporter and a clinical supervisor, and had not agreed the engagement in advance. Absent the requisite approvals, the conditions provided for a prohibition on Dr [redacted] being freely able and permitted to perform primary medical services at any such practice.

3.40 **Events leading to suspension**

3.41 21. Between late 2024 and January 2026, Dr [redacted] worked as a locum at three general practices – Friary House Surgery, Croft Hall Surgery and Catherine House Surgery – on multiple occasions. None of those practices had been approved by NHSE under the relevant conditions. No workplace reporter or clinical supervisor had been approved at any of them. Dr [redacted] did not inform NHSE in advance of any of these engagements. He did not inform the practices that his inclusion on the Performers List was subject to conditions.

3.42 22. NHSE became aware of Dr [redacted]'s locum work on 9 January 2026, following contact from the practice manager of Friary House Surgery who had received information indicating that restrictions may have been in place on Dr [redacted]'s practice. NHSE undertook enquiries and, having regard to the information obtained, determined to suspend Dr [redacted] from the Performers List on 12 January 2026. That decision was subsequently reviewed and upheld on 13 January 2026 in accordance with the Regulations.

3.43 **Claim for suspension payments and the decision under appeal**

3.44 23. On 26 January 2026, Dr [redacted] submitted a claim for suspension payments, relying on 16 invoices in respect of locum work undertaken at Croft Hall Surgery, Friary House Surgery and Catherine House Surgery in the period November 2024 to January 2026 [**R/1.28/143-144**].

3.45 24. By a letter dated 31 March 2026 [**R/2/159-160**], NHSE notified Dr [redacted] of its decision that he was not entitled to suspension payments. The decision was based on:

3.45.1 a. Paragraph 3(3) of the Determination – Dr [redacted] was not "able and permitted", given that his conditions would have required approval of all of his places of work;

3.45.2 b. The fact that the pay information submitted could not constitute "normal monthly income" because the earnings were obtained while working contrary to his conditions.

3.46 25. Dr [redacted] was informed of his right to seek reconsideration under Regulation 13 of the Regulations. The decision was reconsidered and, by a letter dated 8 April 2026, NHSE (North West) confirmed, independently and taking into account the Investigation Report, that Dr [redacted] was not entitled to suspension payments [**R/3/161-162**]. The reasoning in substance was the same as that of 31 March 2026. Dr [redacted] then sent notice of appeal to the PCA on 9 April 2026 [**R/4/163-222**].

3.47 **The Appellant's admissions**

3.48 26. In his written statement dated 20 February 2026, and in interview on 2 March 2026 (both forming part of the Investigation Report), Dr [redacted] has admitted, in terms, that:

3.48.1 a. He undertook locum work at Friary House Surgery, Croft Hall Surgery and Catherine House Surgery which was unauthorised and in knowing breach of his conditions;

3.48.2 b. None of those practices had been approved by NHSE in accordance with his conditions;

3.48.3 c. He did not inform NHSE that he intended to work, or had worked, at these practices;

3.48.4 d. None of the practices was aware that his inclusion on the Performers List was subject to conditions;

3.48.5 e. He was not subject to supervision while working at these practices; and

3.48.6 f. He knew that undertaking such work was contrary to the conditions imposed on his inclusion on the Performers List.

3.49 27. Dr [redacted] further recognised in interview that his conduct *"raised probity concerns"* and that he *"shouldn't have done what he had" [**R/1/31-32**]*. The Investigation Report concludes that multiple breaches of his conditions are proven and that Dr [redacted] knowingly undertook unauthorised NHS primary care work in breach of those conditions.

3.50 **D. REPRESENTATIONS IN RESPONSE TO THE APPEAL**

3.51 28. Dr [redacted]'s grounds of appeal can be summarised as four contentions, each of which NHSE addresses in turn below.

3.52 **Ground 1: alleged procedural irregularity**

3.53 29. Dr [redacted] contents that *"the initial appeal did not give me an opportunity to set out the grounds of appeal, hence should not be valid".* That contention is misconceived and misunderstands the three stages of the decision-making process under Regulation 13:

3.53.1 a. The initial decision of NHSE (South West) dated 31 March 2026;

3.53.2 b. The reconsideration of that decision under Regulation 13 of the Regulations, undertaken by NHSE (North West), communicated by letter dated 8 April 2026; and

3.53.3 c. The statutory appeal to the Secretary of State (exercised by the PCA under Regulation 13(5) to (9)), which is the present appeal.

3.54 30. Reconsideration under Regulation 13 is not an "appeal" per se, and there is no statutory or procedural requirement that a practitioner is to formally set out grounds of appeal at the reconsideration stage. The reconsideration process is the process by which a practitioner may invite NHSE to re-examine

its decision in light of any further information or representations the practitioner wishes to put forward. Dr [redacted] was invited, in the letter of 31 March 2026, to seek reconsideration within 28 days and was entitled to make any representations in support of that request. Nothing precluded him from doing so.

3.55 31. The present appeal is the proper statutory appeal. It is in this appeal that Dr [redacted] is required to set out his grounds. He has done so, and NHSE is now responding to them in these representations. There has been no such irregularity with the procedure and process of both the decision and the appeal and therefore no unfairness has been caused.

3.56 32. Accordingly, Ground 1 is without merit and should be dismissed.

3.57 **Ground 2: alleged inability to obtain work under the conditions**

3.58 33. Dr [redacted] contends that, although the locum work was unauthorised, he was *"put into a position of not being [to] find any work under the restrictions".* This argument is not a legal answer to the question of entitlement under the Determination, and is in any event not borne out on the facts.

3.59 34. As a matter of law, the question of whether a practitioner is a qualifying practitioner under paragraph 3 of the Determination is to be determined objectively by reference to the criteria set out in that paragraph. The financial pressures on a practitioner, or the commercial difficulties of obtaining employment consistent with the conditions imposed by NHSE, are irrelevant to that assessment. There is no "necessity" or "hardship", or other analogous exception within the scheme of the Determination, and nothing of that nature that can properly be read into it.

3.60 35. In any event, the factual premise of Dr [redacted]'s complaint is not made out on the facts:

3.60.1 a. The conditions imposed on 14 May 2024 were imposed by a properly constituted PLDP following a review undertaken in accordance with Regulation 16 of the Regulations.

3.60.2 b. Dr [redacted] exercised his right of appeal to the FTT against those conditions and then withdrew that appeal on 29 July 2024, on the basis (conveyed by his then solicitors) that his financial situation had been resolved and he could accommodate the conditions. He thereby accepted the conditions as they stood.

3.60.3 c. Dr [redacted] was in fact able to secure and undertake approved employment under the conditions, including ongoing approved employment with Pier Health Group following the imposition of the amended conditions, and approved employment at Ruby County Medical Group, where the practice and supervisor were approved on 4 August 2025 and he commenced work in September 2025, prior to his resignation on 21 December 2025.

3.60.4 d. At the meeting of 18 July 2025, attended by Dr [redacted]'s MDU representative, NHSE advised that he could request a formal PLDP

review of his conditions, on the provision of evidence in support of any proposed change. Dr [redacted] did not utilise this option.

3.60.5 e. The unauthorised work at Croft Hall Surgery began in December 2024, that is approximately four months after the withdrawal of the FTT appeal and many months before any suggestion that the conditions were operating unfairly. The unauthorised work was therefore not a reaction to a subsequent change in circumstances, but a decision taken at a point when he had recently represented that he could comply with the conditions.

3.61 36. The proper route for a practitioner who considers that these conditions are unworkable is to seek a review of those conditions by the appropriate routes (whether by a further PLDP or by appeal), not to breach them and to earn income in contravention of them. Dr [redacted] had ample opportunity to pursue the appropriate routes. He elected, instead, to pursue the latter. That is a matter which may properly be regarded by the PLDP at its next meeting to discuss Dr [redacted]'s case on 6 May 2026, but it is not a basis for the payment of public funds to him under the Determination.

3.62 37. Accordingly, Ground 2 is without merit and should be dismissed.

3.63 **Ground 3: the forthcoming regulatory proceedings**

3.64 38. Dr [redacted] contends that, pending the determination of the forthcoming PLDP on 6 May 2026 (and any subsequent GMC/MPTS proceedings), he should not be "*prejudiced*" by being treated as not permitted to work, and that any decision to suspend him should be "*impartial*". This misunderstands both the nature of suspension from the Performers List and the application of the Determination.

3.65 39. First, suspension from the Performers List is, as affirmed in *Sandles v National Health Services Litigation Authority (Primary Care Appeals)* [2022] EWHC 1582 (Admin), a neutral, non-punitive measure. It is not a finding of fact against the practitioner, and NHSE makes no submission that it is or should be treated as such. However, suspension is not and has never been automatically accompanied by an entitlement to payment. The right to suspension payments arises only where the statutory criteria in the Determination are met.

3.66 40. Secondly, the "*able and permitted"* test in paragraph 3(3) of the Determination is an objective test applied by reference to the practitioner's position during the suspension. It does not look forward to any future determination by the PLDP, the GMC, or the MPTS. The outcome of those future proceedings can neither establish an entitlement which did not exist at the material time, nor remove one (*vice versa*).

3.67 41. Thirdly, and importantly, the reason Dr [redacted] is not "*able and permitted*" is not the suspension itself, nor is it any future GMC sanction. It is the conditions to which his inclusion on the Performers List was subject to immediately prior to his suspension, which had been in place since 14 May 2024 and which he made no successful challenge to. Those conditions, in terms, made it impermissible for him to perform primary medical services at any practice other than one approved by NHSE, conditions he knowingly breached, and NHSE

submits are relevant circumstances to considering if Dr [redacted] is "*able and permitted*" during the suspension.

3.68 42. Therefore, no question of "*prejudice*" arises. Dr [redacted] is in exactly the position he would have been in had he not been suspended; he would have still required NHSE approval to work at any practice; he would still have been prohibited from undertaking unauthorised short-term locum work under condition 9; and he would still have been obliged to inform NHSE and any employer or prospective employer of his conditions.

3.69 43. Accordingly, Ground 3 is without merit and should be dismissed.

3.70 **Ground 4: locums and qualifying relationships**

3.71 44. Dr [redacted] contends, relying on page 17 of the Guidance, that "*locums do have a qualifying relationship*", and that on that basis his claim for suspension payments should be upheld. NHSE agrees that a locum practitioner is capable of having a qualifying relationship. However, this is not sufficient to dispose of the appeal in Dr [redacted]'s favour, and his reliance on it misunderstands the Determination in two critical respects. "Qualifying relationship" is a term used in the Guidance to describe a scenario when one of the qualifying grounds in paragraph 3(2)(b) is met.

3.72 45. First, the existence of a qualifying relationship is a necessary part of entitlement but it is not in and of itself sufficient to justify entitlement. He must have also be "*able and permitted*" to perform primary medical services. For the reasons set out above, he is not.

3.73 46. Secondly, even if (contrary to NHSE's submissions) Dr [redacted] could be treated as a qualifying practitioner, his claim for suspension payments would still fail at the stage of assessing his entitlement. The Determination requires that suspension payments be calculated by reference to the practitioner's "*normal monthly income*" – for locums, a reasonable approximation of "*normally monthly NHS profits from locum work as a performer of primary medical services"*. The invoices submitted by Dr [redacted] relate exclusively to unlawful work undertaken in admitted and knowing breach of his conditions. NHSE submits that such earnings cannot properly form the basis of any calculation of "*normal monthly income"*, for the following reasons:

3.73.1 a. As a matter of ordinary construction, income which is abnormal (in the sense of being earned from unlawful work which ought never to have been undertaken) cannot be "*normal monthly income*".

3.73.2 b. The phrase "*as a performer of primary medical services"* includes the concept of lawful performance in accordance with any conditions of inclusion for a practitioner. It is NHSE's submission that a practitioner who unlawfully performs primary medical services in breach of his conditions of inclusion is not performing them as a performer within the meaning of the Determination.

3.73.3 c. As a matter of public policy, it is suggested that it would be perverse and prejudicial to the purpose of the suspension payments scheme and the use of public funds, for unauthorised earnings from unlawful work to be rewarded with an entitlement to suspension payments. If this was

permitted, Dr [redacted] would, in effect, be remunerated by public funds in reward for his unlawful conduct that not only gave rise to his suspension but contravened measures intended to protect the public.

3.74 47. Accordingly, and even assuming in Dr [redacted]'s favour that he held a qualifying relationship, his claim fails on both entitlement under paragraph 3(3) of the Determination and on calculation of supposed payments, with there being no valid earnings on which a "*normal monthly income*" can be calculated.

3.75 48. Therefore, Ground 4 is without merit and should be dismissed.

3.76 **Conclusion**

3.77 49. For the reasons set out above, NHSE respectfully submits that:

3.77.1 a. Dr [redacted] is not a qualifying practitioner within the meaning of paragraph 3 of the Determination, as he is not "*able and permitted*" to perform primary medical services;

3.77.2 b. In any event, the pay information submitted by Dr [redacted] cannot properly constitute "*normal monthly income*" for the purposes of calculating the suspension payments, as it relates exclusively to unlawful work undertaken in admitted and knowing breach of his conditions of inclusion on the Performers List;

3.77.3 c. The procedural ground advanced by Dr [redacted] is misconceived; and

3.77.4 d. The substantive grounds advanced by Dr [redacted] are either legally irrelevant to the question of entitlement under the Determination, or are matters of mitigation for any future regulatory decision, as opposed to matters that bear on the lawfulness of the decision under appeal.

3.78 50. NHS England therefore invites the PCA to dismiss this appeal and uphold NHS England's decision."

3.79 [Enclosures:

3.79.1 Appendix 1 to 25

3.79.2 Letter to Dr [redacted] dated 31 March 2026 (Suspension payments decision)

3.79.3 Suspension payment review dated 8 April 2026

3.79.4 Copy of Appeal and documents].

<u>Appellant's Observations</u>

3.80 "Matters to consider for the Appeal process in response to the correspondence of the defendant.

3.81 This is a matter of Employment Law, the content of reason for suspension is at this stage in principle not necessary to share with the court. Much of this has

been contested and will be contested in a separate oral hearing now scheduled on the 26th of June. However it shows the case under a bad light, which is premature and therefore prejudicial.

3.82 Under employment law suspension should be a neutral act, until a decision of sanctions has been made. This is protected by law and as such the BMA and NHSE have come to an agreement to fund this as NHSE as well as the GMC are employing organisations. The reference that no public money should be used, is therefore wholly incorrect.

3.83 Whilst the reason for suspension was a breach the Undertaking and Restrictions imposed by NHSE, none of the work carried out was out with GMS services. However, the nature of the restrictions were such that it did not appear to be possible to find work which would meet the full requirements set out by NHSE. This was communicated to NHSE and evidenced in a letter on the 21st October 2025, where it was clearly stated that NHSE needed more evidence. This was not obtainable anymore.

3.84 I terminated my work at Piers HG and NHSE (SH) confirmed that the practice would not be suitable for supervision anymore, [Dr J] stated it was a practice under 'distress'. Employment by Holsworthy practice, despite working on a volunteer basis, was not suitable as they simply did not forward but one supervision report. Applications, as for example at Mayflower Practice in Plymouth, was not picked up, as evidenced in the email to [SH].

3.85 In that situation the options are only to keep applying in the knowledge that eventually one would run out of time and lose clinical skills, updates. A GP is expected to do a minimum number of sessions each year. Or simply breach it, retain the experience, and renumeration in the knowledge it would pick up and escalate at the appropriate level.

3.86 Whilst it is not for this appeal to decide whether the investigation by NHSE had sufficient merit: there were no times scales, no formulated specific concerns and no plans how to address any of them, it is in my opinion appropriate that the appeal for suspension payments should be upheld. It is likely to be lengthy process before the GMC will present this to the MPTS, if that is what their intention may be. At this stage this uncertain. However, a neutral act of suspension, can only be neutral if the loss of income gets renumerated."

## 4 CONSIDERATION

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

4.2 The Notice of Appeal is in respect of the Appellant's eligibility for suspension payments and the amount of them.

4.3 I note that the starting point for determining the Appellant's eligibility for suspension payments and then any amount of them, is the 2015 Determination. 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 subparagraphs (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 engage 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 toa contractor 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 is not a "Qualifying Medical Practitioner" because even though he was providing locum services, and would therefore meet the requirements of sub-paragraph (2) above, he does not meet the requirements of sub-paragraph (3), because he was not "able and permitted to perform primary medical services" by virtue of his NHS England conditions not having been approved for work at the practices where he carried out the locum activity.

4.7 I do not entirely agree with this interpretation. It is a question of fact that the Appellant worked at the identified practices as a locum. His NHS England conditions do not render him unable or not permitted to perform primary medical services. In fact, the opposite is true – the conditions are there to

enable him to work, but only in a practice where NHS England had (amongst other matters) approved him to work.

4.8 I am therefore of the view that the Appellant was engaged as a locum, and if he had gone through the proper approval processes with NHS England, would have been able and permitted to work.

4.9 Given that I have found that the Appellant was a Qualifying Medical Practitioner, as set out in the 2015 Determination, I have next considered whether the Appellant was entitled to payments.

4.10 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 -*

*(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 of 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"*

4.11 In the 6 months immediately prior to the Appellant's suspension, he worked at 3 practices, Friary House, Croft Hall and Catherine House, without NHS England approval. The Determination requires me to consider what amounts to "normal" income. Given that this work was not within the terms of his NHS England conditions, I determine that it cannot be considered to be "normal" within the usual dictionary definition of the word, which suggests something that is ordinary, expected, or conforms to a standard, rule or statistical average. It implies a lack of deviation from which is considered typical, customary or healthy. Working outside NHS England conditions, of which the Appellant was fully aware and has admitted he was acting outside of, cannot on any normal meaning be considered ordinary, expected, typical or customary.

4.12 I am conscious that prior to working at those 3 practices, the Appellant was working at the Pier Health Group and then at Ruby County Medical Group, between the period September 2025 and 21 December 2025. No submission has been made to me as to whether this period of authorised work should count towards any calculation of suspension payments and so accordingly, I make

no determination in respect of that period. I leave it as a matter for the Appellant to make a fresh application to NHS England if he considers the period of time working in those practices might be relevant to consider.

4.13 I note the Appellant has stated that "Under employment law suspension should be a neutral act, until a decision of sanctions has been made" and further that "a neutral act of suspension, can only be neutral if the loss of income gets renumerated." I concur 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 which was not approved.

4.14 I appreciate the Appellant experienced some difficulties at other practices and his intention by working elsewhere was to maintain clinical knowledge and competence. However, in light of the above I consider that whilst the Appellant is in principle entitled to suspension payments, the amount of those payments must be zero, as no relevant evidence has been put forward of qualifying "normal" earnings.

## 5 DETERMINATION

5.1 I determine that the Appellant is entitled pursuant to paragraph 4(1)(d) of the 2015 Determination to suspension payments but that the value of those payments is zero.

**Head of Appeals**