NHS Resolution

17 September 2026

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REF: APL-4518 (LEGACY CASE SHA/27045)

COMMISSIONER: **NHS ENGLAND**

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

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

1 Outcome

1.1 Pursuant to paragraph 3(1) of the 2015 Determination, I determine that the Appellant is not entitled to suspension payments for the period from [redacted] onwards.

A copy of this decision is being sent to:

Clyde & Co Solicitors, on behalf of [redacted]
Hill Dickinson LLP, on behalf of NHS England

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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 a letter dated 11 June 2026 the Appellant, through its representative Clyde & Co LLP, 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 dated 11 June 2026;

2.2.2 NHS England's representations dated 13 July 2026 ("**NHS England's Representations**"); and

2.2.3 The Appellant's observations dated 30 July 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 BACKGOUND 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 On [redacted] NHS England issued its reconsidered decision ("**Reconsideration**") determining that the Appellant is not entitled to the amount set out in its Decision.

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

Notice of Appeal

3.4 By their Notice of Appeal, the Appellant is appealing a decision by NHS England to deny the Appellant suspension payments from the period of [redacted] onwards, as set out in the Decision and confirmed in the Reconsideration, on the basis set out below:

3.5 "Introduction

1. This is the Appellant's Notice of Appeal against:

a. the decision of NHS England dated [redacted] refusing to make suspension payments during [redacted]'s suspension from the Medical Performers list ("the [redacted] Decision");

b. the reconsideration decision of NHS England dated [redacted] again refusing to make suspension payments during [redacted]'s suspension from the Medical Performers list ("the [redacted] Decision").

2. The [redacted] Decision and the [redacted] Decision are collectively referred to as "the Decisions".

3. Enclosed with this Notice of Appeal are:

a. a copy of the [redacted] Decision;

b. a copy of the [redacted] Decision

4. This appeal is brought pursuant to Regulation 13(5) National Health Service (Performers Lists) Regulations 2013/335.

Parties

5. [redacted]. Represented by Clyde and Co Solicitors, [redacted]

6. [redacted] NHSE England South West, South West House, Blackbrook Park Avenue, Taunton, Somerset, TA1 2PX [redacted]

Background

7. [redacted] is a retained GP at the [redacted] Practice, [redacted].

8. [redacted] was referred to the GMC by Devon and Cornwall Police on [redacted] following concerns regarding her mental well-being. A fitness to practise investigation was opened by the GMC.

9. On [redacted], [redacted], Professional Standards Manager within the Professional Standards Team at NHS England South West, emailed [redacted], Practice Manager at [redacted] Practice, to ask whether the practice had any concerns about [redacted] working clinically. On [redacted] [redacted] replied explaining that the practice had no concerns about [redacted]'s clinical practice.

10. [redacted] underwent assessments with two GMC Health Examiners. [redacted] saw [redacted] on [redacted] and came to the conclusion that [redacted] was not currently fit to practise due to her mental health. [redacted] saw [redacted] on the [redacted] and the [redacted] and reported [redacted] that [redacted] was fit to practise with restrictions.

11. On [redacted] [redacted] met with [redacted] of [redacted] Occupational Health who concluded that [redacted] was fit for work and able to continue her full duties without restriction but noted her to be suffering from PTSD. It was noted that her current symptoms did not impair her functioning or clinical performance.

12. On [redacted] NHS England wrote to [redacted] confirming the Professional Standards Group (PSG) outcome, namely that no further actions were required and that it was appropriate to await the GMC outcome. The letter also noted that there were no concerns from her workplace about her clinical practice.

13. On [redacted] the two GMC assessors met and produced a joint report which concluded that [redacted] was currently unfit to practise with a diagnosis of delusional disorder given as the reason. The case was referred to an Interim Orders Tribunal ("**IOT**") of the Medical Practitioners Tribunal Service to take place on [redacted].

14. On [redacted] [redacted] emailed [redacted] to advise that [redacted] "*should not commence work until she was fit to do so*". [redacted] further emailed the [redacted] [sic] on the [redacted] to say, "*When I spoke to her it sounds like she is keen to return to work prior to the* [redacted] *tribunal, so I wanted to give you the heads up on this. I did mention that she needed to look after herself whilst she is going through this process. ….. I will leave with you to have a conversation with [redacted] regarding whether she does work prior to the* [redacted]".

15. [redacted] emailed the Practice Manager on [redacted] confirming that she had spoken with MPS and had been advised that she was able to work up until the [redacted] (prior to the IOT hearing on [redacted]). She confirmed in this email that she would like to continue working until that time. The Practice Manager responded to say, "*The Partners and I feel that you should take this time to prioritise preparing for the* [redacted] *and take paid leave from the practice. We would want you to be able to work free from distraction, and this feels like a major event in your life which we should support you with. Just like following a bereavement or a significant health diagnosis, we would support a clinician in taking time away from work.*" [redacted] responded to ask whether a sick note would be helpful from the GP to which the Practice Manager

confirmed that it would. [redacted] requested a fit note from her GP following the advice from the Practice Manager and [redacted]. That fit note was provided following a telephone consultation, was dated [redacted] and was time limited from [redacted] and related to "*stress*".

Interim Suspension from the Medical Register its consequences

16. [redacted] attended the IOT hearing on the [redacted] where she was suspended from the medical register on an interim basis because the IOT considered it was necessary to do so for the protection of the public, the maintenance of public confidence in the profession and that, given the health concerns raised, an order was required to protect [redacted]'s own interests. In arriving at its decision to impose an interim order of suspension the IOT relied upon the opinions of [redacted] and [redacted] as set out in their joint report.

17. Pursuant to Regulation 12(1A)(a) of the National Health Service (Performers Lists) (England) Regulations 2013/335 ("**the Performers Lists Regulations**"), NHS England was required to suspend [redacted] from the performers list. That suspension is mandatory and there is no right of appeal against it. On [redacted] NHS England wrote to [redacted] to inform her of this. The letter clearly stated:

"You are therefore not able to perform NHS Primary Care Medical Services during the period of your suspension".

18. The letter therefore made clear that the reason that [redacted] was not "able" to perform NHS Primary Care Medical Services was due to this suspension.

19. Pursuant to Regulation 12(1) Performers Lists Regulations, payments may be made by NHS England to a practitioner in accordance with a determination by the Secretary of State, provided the appropriate application has been made.

20. [redacted] made an application to NHSE for suspension payments on the [redacted]. There is no dispute that [redacted] made an application within the mandated timeframe.

21. The Secretary of State's determination "*Payments to Medical Practitioners Suspended from the Medical Performers List 2015*" ("**the 2015 Determination**") provides for payments to be made to practitioners who "***apart from the suspension, and any suspension from the register of medical practitioners*** *that 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 lists), is able and permitted to perform primary medical services*". [emphasis added]

22. Again, there is no dispute that she is not able or permitted to perform primary medical services because she is subject to an interim suspension by the GMC and consequential suspension from the performers list by NHS England.

The [redacted] **Decision**

23. On [redacted] [redacted] informed [redacted] that it was unlikely that she would meet the criteria for suspension payments on the basis that she was signed off sick from the practice and that "*A practitioner must be able and permitted to perform primary medical services to quality for suspension payments*".

24. NHSE wrote to [redacted] on the [redacted] declaring that [redacted] was ineligible for suspension payments due to her ill health. The reason given was that:

"Under paragraph 3(3) of the Determination, you are not regarded as "able and permitted" because you were not working in the run up to your IOT hearing".

25. That was clearly incorrect: there is no requirement under paragraph 3(3) to be working in the run up to the IOT hearing that triggers a suspension under Regulation 12.

The [redacted] **Decision**

26. By letter dated [redacted], [redacted]'s solicitors sought a reconsideration of that refusal on the basis that it was based upon an erroneous interpretation of "*able and permitted*" in paragraph 3(3) of the 2015 Determination.

27. The letter noted that the [redacted] Decision was both legally and factually flawed:

> a. it was not the case that [redacted] was unable or not permitted to work at the time of the IOT hearing. The fit note was in respect of her being given time off to prepare for the IOT hearing (following pressure from NHS England itself) and not because of her health at the time;
>
> b. the words "apart from the suspension" in paragraph 3(3) are critical. They make clear that eligibility is assessed by reference to a counterfactual position, stripping out the suspension itself. Ill health is frequently the reason for suspension. If ill health that leads to a GMC suspension was regarded as meaning that a practitioner was not "*able or permitted*" to perform primary medical services, then a person interim suspended by the GMC on health grounds could never qualify for payments. That result is patently absurd (as well as discriminatory): suspension on misconduct or capability grounds would result in payment but not on health grounds;
>
> c. the correct interpretation is that "able and permitted" refers to able and permitted in a legal and regulatory capacity, and not the temporary factual inability that gave rise to the suspension. In other words, but for the GMC interim suspension, would the performer be legally barred or professionally disqualified from acting.

28. NHS England responded by letter dated [redacted] from [redacted], Professional Standards Manager – Regulations, Advice and Legal, to [redacted]. The letter confirmed that [redacted] has a qualifying relationship under paragraph 3(2)(b)(ii) of the 2015 Determination, but continued to dispute the interpretation of paragraph 3(3) and whether [redacted] is "*apart from the*

suspension, able and permitted to perform primary medical services". The letter sought to rely upon a previous determination, namely Case Ref SHAQ/26236 [sic].

29. Whilst the [redacted] Decision also held that [redacted] was not "able and permitted" and therefore did comply with Paragraph 3(3), NHS England in its [redacted] Decision relied upon different reasoning from the reasoning relied upon in its [redacted] Decision. Rather than relying upon the sick note / an allegation that [redacted] was not working in the run up to the IOT hearing, it instead apparently relied upon:

a. the decision by the Interim Orders Tribunal to suspend [redacted] on the basis that she was "*unwell and not fit to practise*"; and

b. the report of the two experts instructed by the GMC dated [redacted] which stated that, in their joint opinion, [redacted] was unfit to practise due to a diagnosis of delusional disorder.

30. The [redacted] Decision was sent to [redacted]'s solicitor on [redacted].

Issue

31. It is understood therefore that the only basis upon which the application for suspension payments has been refused is that NHS England does not consider that the requirement in paragraph 3(3) of the 2015 Determination is met, namely that [redacted] is "*able and permitted to perform primary medical services*".

32. That conclusion of NHS England is incorrect both as a matter of fact and of law.

Grounds of Appeal

Ground 1: NHS England has misinterpreted the wording of paragraph 3(3) of the 2015 Determination when considering the meaning of "apart from suspension".

33. NHS England has erred in law in its interpretation of paragraph 3(3) of the 2015 Determination.

34. As a matter of law "suspension" in paragraph 3(3) must include the matters upon which the suspension is based. Otherwise the section could not work: a person could never receive payments because they would always fail to be "able and permitted to perform primary medical services", namely for the reason that gave rise to the suspension.

35. This would be particularly the case where the suspension is on health grounds. A person suspended on health grounds could never qualify because they would never be regarded as "able and permitted" to perform primary medical services. Such an interpretation of the 2015 Determination is irrational. If health cases were intended to be excluded, the 2015 Direction would have said so. It did not.

36. Instead, the 2015 Direction was looking at the counter factual position: if there were not concerns about [redacted]'s health resulting in her suspension, would she be able and permitted to work? The clear answer is "yes". As such Paragraph 3(3) has been complied with.

Ground 2: Misunderstanding / misinterpretation of GMC Interim Orders under s41 Medical Act 1983 and the relevance of expert reports

37. In addition, NHS England has misunderstood the findings and purpose of an interim orders tribunal. Such a Tribunal does not make findings of fact. It instead carries out a risk assessment and ultimately decides whether a suspension is necessary for the protection of the public, maintenance of the public confidence in the profession and/or for the protection of the interests of the practitioner. That is what occurred here. There was no finding by the IOT that [redacted] is not currently fit to practise, nor could there be such a finding given that that is outside the statutory remit of an IOT.

38. Similarly, the opinions of the joint experts do not amount to a finding that [redacted] is "unable" to work. They have merely provided an opinion, no more, on her current fitness to practise. That is not determinative and could not be so. What if there is a conflicting opinion, as there is here, where there were no concerns about [redacted]'s clinical practice and occupational health did not consider her unfit to practice? What if the two experts disagreed?

39. In addition, the joint opinion is only an opinion at a point in time predating the IOT hearing. It does not address [redacted]'s health during the period of suspension. It cannot therefore be used as a basis for saying that she is not "able and permitted" to work.

Ground 3: NHS England has misinterpreted the wording of paragraph 3(3) of the 2015 Determination when considering the meaning of "able and permitted".

40. In the alternative, and in any event, NHS England has misinterpreted the meaning of "able and permitted". It must mean more than whether or not a person is considered well enough to be fit to practise. A person may well be "able" to practise, even it not "fit" to do so. Instead, it must refer to "able and permitted" in a regulatory or legal capacity. In other words, but for the GMC interim suspension, would the performer be legally barred or professionally disqualified from acting.

Ground 4: Irrelevance of the sick note

41. To the extent that NHS England continues to rely upon the sick note, such reliance is misconceived:

a. the sick note did not show that [redacted] was not able to work. It was simply provided to assist her in taking time off work ahead of the IOT hearing;

b. even if it was relevant, it only covers the period [redacted] and therefore could only be relevant for three days, namely [redacted] when considering suspension payments.

Ground 5: The [redacted] **Decision is unlawful as it amounts to a breach of the Equality Act 2010**

42. The 2015 Determination must be read in conjunction with section 15 Equality Act 2010 which makes it unlawful to discriminate against someone because of something arising from their disability unless it can be shown that it is a proportionate means of achieving a legitimate aim. NHS England's interpretation of the 2015 Direction is inconsistent with s15: it is likely to result in doctors who are, in the view of NHS England, unable to practise because of something arising from their disability, also unable to receive suspension payments. By comparison, a doctor suspended because of conduct or capability concerns could still receive suspension payments. Such a distinction is not justifiable on the basis that it is a proportionate means of achieving a legitimate aim and is therefore irrational and unlawful. Similarly, the 2015 Determination must be read in conjunction with 19 Equality 2010 which makes it unlawful to apply a provision, criterion or practice ("PCP") which is discriminatory in respect of the protected characteristic of disability, unless it can be justified as a proportionate means of achieving a legitimate aim. A PCP of interpreting or applying the 2015 Determination so that those who are, in the view of NHS England, unable to practise because of their disability, are unable to receive suspension payments is not justifiable as a proportionate means of achieving a legitimate aim and is therefore irrational and unlawful.

43. In addition, the 2015 Determination must be read in conjunction with the public sector equality duty set out in section 149 Equality Act 2010 which requires NHS England and the Secretary of State to have regard to the need to eliminate discrimination and to advance quality of opportunity. NHS England's interpretation of the 2015 Determination is incompatible with that duty and is therefore irrational and unlawful.

Ground 6: NHS England's interpretation of the 2015 Direction is incompatible with the Human Rights Act 1998

44. In addition, the 2015 Direction must be read in conjunction with section 6 Human Rights Act 1998 which makes it unlawful to act in a way which is incompatible with a Convention right, in this case: [redacted]'s Article 8 right to a private and family life (which include her professional activities and her ability to earn a living); her Article 14 right not to be discriminated against and her Article 1, Protocol 1 right to peaceful enjoyment of property, including the legitimate expectation that she would receive suspension payments from NHS England. NHS England's interpretation of the 2015 Determination is incompatible with [redacted]'s rights under the Human Rights Act 1998 and the European Convention on Human rights.

Ground 7: Breach of legitimate expectation

45. There is no exclusion from the entitlement to suspension payments for those suspended on health grounds from the 2015 Determination. Those practising in the NHS as members of the performers list therefore have a legitimate expectation that, were they to be suspended, including on health grounds, they will receive payments in accordance with the 2015 Determination. NHS England is acting in breach of that legitimate expectation.

Conclusion

46. For the above reasons the Decisions are incorrect as a matter of law and fact. The Decisions should be quashed and replaced with a decision awarding [redacted] suspension payments from [redacted]."

NHS England's Representations

3.6 "**Background**

1. The Applicant, [redacted], appeals against the decision of the Respondent, NHS England, to refuse her application for suspension payments.

2. NHS England's decision on the suspension payments as to which [redacted] is entitled was set out within a letter of [redacted] [R/3/8-9].

3. For the reasons set out below, NHS England invites the PCA to dismiss this appeal and confirm that [redacted] was not eligible for suspension payments.

Documents

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].

Relevant law

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

(1A) NHS England must suspend a Practitioner from a performers list if the Practitioner's registration—

> *(a) in the register of medical practitioners is subject to an interim suspension order made under section 41A of the Medical Act 1983.*

6. Regulation 13 states:

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

7. 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").

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

"Qualifying Medical practitioners

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

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

(a) is suspended; and

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

…

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

…

(3) This sub-paragraph applies to a medical practitioner to whom subparagraph (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." [Hill Dickinson's emphasis]

9. It is agreed that [redacted] has a qualifying relationship under paragraph 3(2)(b)(ii) of the Determination.

10. Paragraph 4 of the Determination (added for completeness but not a current matter of contention in respect of this appeal) states:

(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 —

…

(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

(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.

11. Paragraph 2 of the Determination provides the following definition:

""suspended", in relation to a medical practitioner, means suspended by the Board in accordance with regulation 12 of the 2013 Regulations (suspension)".

12. Paragraph 6(1) of the Determination states:

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

Relevant facts

13. On [redacted], NHS England wrote to [redacted] to confirm that in accordance with Regulation 12(1A)(a), NHS England suspended [redacted] from the medical performers list. This is a mandatory basis for suspension with no right of appeal [R/1/1-3].

14. On [redacted], [redacted] submitted a claim for suspension payments. [R/2/4-7].

15. On [redacted], NHS England wrote to [redacted] confirming that she was not entitled to suspension payments at that time noting that "under paragraph 3(3) of the Determination, you are not regarded as "able and permitted" because you were not working in the run up to your IOT Hearing" [R/3/8-9] (the Decision Letter).

16. On [redacted], [redacted]'s representative requested a review of the decision on the basis that:

a. It applies an incorrect legal test;

b. It ignores the phrase "apart from the suspension";

c. It frustrates the purpose of Regulation 13 and is discriminatory in doing so;

d. It conflicts with binding High Court authority and established NHSR interpretation [R/4/10-14].

17. On [redacted], NHS England wrote to [redacted] and confirmed that the decision had been reviewed and it was again confirmed that [redacted] was not eligible for suspension payments. [R/5/15-22] The conclusion was that the interpretation of the Determination (regarding being fit and able to provide NHS services) was correct and the decision to not pay suspension payments was upheld.

18. [redacted] appealed this decision on 16 June 2026 [R/6/23-46]. The appeal is explicitly made against the decision (and subsequent review) in which suspension payments were refused during [redacted]'s suspension from the Medical Performers list.

Response to [redacted]'s pleadings

19. NHS England opposes [redacted]'s appeal in its entirety. Any grounds of appeal or other observations made in the appeal which are not addressed in this response are not to be taken as accepted. NHS England reserves the right to provide a further response in the event that [redacted] seeks to amend the grounds of appeal or upon further information becoming available.

20. NHS England adopts and relies upon the reasons provided within the Decision Letter for the purposes of this response. The PLDP's reasoning is a matter of record in the Decision Letter. In respect of the seven grounds of appeal made by [redacted], NHS England submits the following:

"Ground 1: NHS England has misinterpreted the wording of paragraph 3(3) of the 2015 Determination when considering the meaning of "apart from suspension"."

21. [redacted]s representatives have stated that:

"….33. NHS England has erred in law in its interpretation of paragraph 3(3) of the 2015 Determination.

34. As a matter of law "suspension" in paragraph 3(3) must include the matters upon which the suspension is based. Otherwise the section could not work: a person could never receive payments because they would always fail to be "able and permitted to perform primary medical services", namely for the reason that gave rise to the suspension.

35. This would be particularly the case where the suspension is on health grounds. A person suspended on health grounds could never qualify because they would never be regarded as "able and permitted" to perform primary medical services. Such an interpretation of the 2015 Determination is irrational. If health cases were intended to be excluded, the 2015 Direction would have said so. It did not.

36. Instead, the 2015 Direction was looking at the counter factual position: if there were not concerns about [redacted]'s health resulting in her suspension, would she be able and permitted to work? The clear answer is "yes". As such Paragraph 3(3) has been complied with."

22. This position outlined by [redacted] is factually and legal [sic] incorrect. NHS England consistently applies this interpretation and regularly makes suspension payments to medical practitioners who meet the relevant criteria under the Determination.

23. By way of illustrative example, if a doctor was suspended in the public interest pending an investigation into allegations of misconduct, this (and the matters upon which the decision is based) would not of itself be a reason to determine that the individual is not "able and permitted" for the consideration of suspension payments.

24. [redacted] references the case SHA/26357 which makes this point clear: prior to that performer's arrest and bail, the practitioner was entitled to suspension payments as "able and permitted" to perform; once bail conditions were set which limited their ability to provide primary care, they were then not entitled to suspension payments as they were no longer "able and permitted".

25. Health can be a reason why a performer is unable to perform primary medical services. There is no exclusion of health reasons and NHS England is not able to interpret the Regulations this way. In the High Court case of Sandles v NHS England [2022] EWHC 1582 (Admin) ("Sandles"), Judge Elizabeth Cooke found the following:

> Paragraph 34 – “whilst it may be open to me to use policy to construe a regulation where it is ambiguous (AA (Nigeria v SSHD [2010] EWCA 773, paragraph 70, in relation to the Immigration Rules), there is no ambiguity in this case. As discussed above, the words of the 2015 Determination are clear”. [R/7/47-55]

“Ground 2: Misunderstanding / misinterpretation of GMC Interim Orders under s41 Medical Act 1983 and the relevance of expert reports”

26. NHS England agrees with [redacted]’s assessment in respect of the purpose of the Interim Orders Tribunal. It does not make findings of fact and is carrying out an interim risk assessment in anticipation of a substantive fitness to practise tribunal, if it is deemed necessary.

27. NHS England disagrees however with the assessment of the relevance of expert reports.

28. The joint health examination report dated [redacted] by two Consultant Psychiatrists ([redacted] and [redacted] concluded that [redacted] is not fit to practise at all. This evidence is clear that even if the suspension (both GMC and Performers List) were not to be imposed, [redacted] is not able to work due to ill health.

29. [redacted] asserts that the two experts *“…have merely provided an opinion, no more, on her current fitness to practise. That is not determinative and could not be so”*. This assertion is incorrect.

30. The experts diagnosed the illnesses that [redacted] is suffering from and determined how this would impact upon her ability to practise (i.e. work). The joint expert report is, at least, akin to a fit note, which the PCA has previously found to be relevant evidence (see below).

31. *Getting the most out of the fit note: guidance for healthcare professionals*, states that “the fit note is based on an assessment by a healthcare professional about their patient’s fitness for work. Legislation requires the healthcare professional to undertake an assessment, either through a face to face, video call, telephone consultation or through considering a written report by another healthcare professional, in order to complete a fit note” [R/8/56-75]. This is in effect, exactly what the experts did in their reporting. Furthermore, NHS England submits that the joint expert report is stronger evidence of an inability to work than a standard GP fit notes, given the level of detail and that it was prepared by two experts in the field of psychiatry.

32. NHS England notes the following from SHA/26236:

> *4.16 Having considered both of these lines of reasoning, I consider that a fit note is not definitive evidence of an individual's ability or inability to work for the purposes of the 2015 Determination. However, I also do not consider that it should be completely overlooked. In regards to the Appellant's reference to it being for the Appellant's benefit I note that the guidance makes reference to its benefit to an employer as well, and that it can provide advice directly to them. A fit note is also evidence for eligibility for Statutory Sick Pay. As such, I consider that it must carry*

some weight for NHS England, who, in making suspension payments, are in a position not dissimilar to an employer.

4.17 As to the weight attached to a fit note, I consider that this will be entirely dependent on the contents of the fit note, the circumstances of its issuing and any surrounding corroborative information. Whilst I agree with both parties that it is not de facto determinative of an individual's ability or inability to work, I consider that there may be circumstances where it is strong enough evidence to demonstrate an inability to work, for the purposes of the 2015 Determination. Whilst an individual may choose to work, I consider that the opinion of a healthcare professional, in a clinical setting, who must make a determination of an individual's ability cannot simply be ignored. Where a fit note is issued indicating that an individual is not fit for work, I consider that there then would need to be reliable evidence to rebut the ordinary and everyday understanding that such an individual would be unable to work. I also consider that there may be evidence that demonstrates the fit note to be unreliable. As such, I consider it necessary to evaluate each of the fit notes, in depth, considering the weight to attach to them individually, and collectively, taking into account corroborative evidence and considering them not just as fit notes, but by what information they contain.

(emphasis added) [R/9/76-106]

33. The joint experts report could not be clearer on the significance of the diagnosis and the conclusion that [redacted] is not fit to work / practise and therefore falls within the ordinary and every day understanding of the word "unable".

"Ground 3: NHS England has misinterpreted the wording of paragraph 3(3) of the 2015 Determination when considering the meaning of "able and permitted"

34. NHS England submits that there is no ambiguity regarding the Determination and that the relevant words in Paragraph 3(3) are clearly written. See paragraph 25 above.

35. NHS England submits that there is no ambiguity in the meaning of "able and permitted to perform primary medical services". We have the evidence of the joint experts which in the clearest terms states that [redacted] is not able to perform primary medical services because she is not fit to practise. NHS England has not been provided with contemporary evidence to counter the findings of the joint experts.

"Ground 4: Irrelevance of the sick note"

36. The fit note, issued by [redacted]'s GP for the period of [redacted] is relevant to that period only [R/10/107].

37. [redacted] was signed off as not fit to work for the period of [redacted]. NHS England notes that the wording of paragraph 3(3) of the Determination ("*who, apart from the suspension… is able and permitted to perform primary medical services*") is an ongoing condition of entitlement, throughout the period of suspension and is not limited to the time when the practitioner was initially

suspended. This fit note is only therefore relevant to the first three days of [redacted]'s suspension from the Medical Performers List ([redacted]).

38. The weight to be attached to this fit note should be determined in line with the considerations found in paragraph 4.17 of SHA/26236 [R/9/76-106]. NHS England submits that although the period of being unfit to work expired on [redacted] according to the fit note; this does not provide a basis for an overall finding of fitness to work. In [redacted]'s own words, the fit note was only used to cover the stressful period leading up to the interim orders tribunal. The fit note does not record any reference to the delusional disorder diagnosis and therefore provides no evidence regarding that condition.

"Ground 5: The [redacted] *Decision is unlawful as it amounts to a breach of the Equality Act 2010"*

39. NHS England submits that it is not a matter for the PCA to determine whether the Determination is discriminatory under the Equality Act 2010. NHS England and the PCA must apply the Determination equally to all performers.

40. In any event, the decision does not amount to unlawful discrimination under the Equality Act 2010. The decision was not taken because [redacted] has a disability, nor because she was suspended on health grounds, but because NHS England concluded, on the evidence available to it at the time, that the eligibility requirements in paragraph 3(3) of the Determination were not satisfied, namely that she was not "able and permitted" to perform primary medical services. The same test is applied to all suspended practitioners irrespective of the nature of the underlying concerns giving rise to suspension.

41. Any question of the lawfulness of the Determination should be made to the Secretary of State for Health and Social Care. It is not in NHS England's power to determine this.

"Ground 6: NHS England's interpretation of the 2015 Direction is incompatible with the Human Rights Act 1998"

42. NHS England denies that the decision is incompatible with the Human Rights Act 1998. The decision did not interfere with any Convention right but simply applied the eligibility criteria contained within the Determination. [redacted] does not have a proprietary right to suspension payments unless and until she satisfies the conditions of entitlement under the Determination.

43. Whilst denying that any incompatibility with the Human Rights Act 1998 has taken place, NHS England submits that it is not a matter for the PCA to determine whether the Determination is incompatible. NHS England and the PCA must apply the Determination. The question for the PCA is whether [redacted] is or is not entitled to suspension payments, applying the Determination.

44. Any question of the Determination's incompatibility with the Human Rights Act 1998 should be made to the Secretary of State for Health and Social Care. It is not in NHS England's power to determine this.

"Ground 7: Breach of legitimate expectation"

45. Looking also at the decision made in the Primary Care Appeal for SHA/23356 Paragraphs 4.19-4.40 [R/11/108-124], concepts of legitimate expectation where performers are suspended on health grounds are not relevant when determining whether a performer is "able and permitted". NHS England particularly notes:

> Paragraph 4.39 – *"I am however not persuaded that I am able to read into the 2015 Determination additional wording that excludes the Appellant's particular situation from the existing wording, particularly where:*
>
> *…*
>
> *4.39.3 the meaning of the existing wording of the eligibility for suspension payments in the 2015 Determination is clear and unambiguous."*

46. The decision of NHS England in determining whether or not to make suspension payments is limited to applying the Determination as drafted by the Secretary of State. NHS England may only pay suspension payments where, pursuant to the Determination, it "…is satisfied that the suspended medical practitioner is entitled to a payment" (paragraph 6 of the Determination).

47. NHS England does not have the power to determine whether there is a legitimate expectation to provide suspension payments to those suspended on health grounds. Referring again to paragraph 34 of Sandles, the wording around suspension payments is not ambiguous and policy and expectations should not therefore be used to construe the Determination.

Conclusion

48. For the reasons set out above, NHS England invites the PCA to dismiss this appeal, and confirm that [redacted] is not entitled to suspension payments."

Appellant's Observations

3.7 "**Introduction**

1. This is the Appellant's response to the Respondent's written representations dated 13 July 2026.

Lack of clarity about the reasons relied upon by the Respondent

2. The Respondent's written representations expressly rely upon its decision of [redacted] as being the decision that it seeks to defend [see §§15 and 20]. However, the reasoning in the representations seeks to defend the reasoning set out in its reconsidered decision of [redacted] which differed from its [redacted] reasoning. The [redacted] decision relied purely on the existence of the Fit Note that the Appellant obtained ahead of her GMC IOT hearing on [redacted] to reflect the time off she had been given, at the suggestion of the Respondent, to enable her to prioritise preparation for that hearing. The Respondent's representations however focus instead on the view of the two GMC assessors dated [redacted] that the Appellant was not currently fit to practise.

3. It is unfortunate that the Respondent appears to be relying upon one set of reasons (dated [redacted]) to defend an entirely different set of reasons (dated [redacted]). That is inconsistent with its assertion that it is merely applying the 2015 Determination and that it does so on a consistent basis.

Response to the Respondent' written representations dated 13 July 2026

Ground 1: NHS England has misinterpreted the wording of paragraph 3(3) of the 2015 Determination when considering the meaning of "apart from suspension".

4. The Respondent's representations at §§21-25 do not address the key point here: the only reason that the Appellant is not able or permitted to perform primary medical services is because she has been suspended pursuant to Regulation 12(1A)(a), based upon the interim suspension by the GMC. As such this is a case where "*apart from the suspension*" she would be "*able and permitted to perform primary medical services*". She therefore fulfils the requirements of paragraph 3(3) of the Determination.

5. The Respondent's "*illustrative example*" at §23 merely serves to undermine its case. If a practitioner is subject to an interim order on the basis of the need to protect the public due to the allegations of conduct or capability against him, NHSE rightly would not regard him as unable or not permitted to practise due to the alleged misconduct / capability and the risk that it gave rise to. However, if a practitioner is subject to an interim suspension on the basis of the need to protect the public due to concerns about his health, NHSE wrongly regards him as unable or not permitted to practise due to health. The reality is that, in both cases, the reason that the practitioner is not able or permitted to practise is simply due to the suspension, including the concerns that gave rise to the suspension.

6. The Respondent does not in its representations dispute that its interpretation means that a GMC interim suspension based on health grounds would always give rise to a situation where the practitioner was not entitled to payments under the Direction. If that was the case, then both the Direction, and the Respondent, would make that clear. There is however nothing in the Direction excluding entitlement to payments to those subject to interim suspensions on health grounds and nothing in the Respondent's "Policy on managing the NHS Performers Lists (England)" that makes that clear.

7. Contrary to §25, the Respondent is simply failing to give Paragraph 3(3) its clear interpretation as the Respondent's interpretation undermines the ordinary and natural meaning of the phrase "*apart from the suspension*".

Ground 2: Misunderstanding / misinterpretation of GMC Interim Orders under s41 Medical Act 1983 and the relevance of expert reports

8. The Respondent at §26 rightly acknowledges that an IOT is only carrying out an interim risk assessment. However, the Respondent then contradicts that by its reliance on the expert reports that were used by the GMC solely for the purpose of an assessment of **risk**. The IOT did not (and cannot, because that is not its statutory role) make any finding that the Appellant is not fit to practise, let alone that she is "unable" to practise.

9. The Respondent at §28 states that "*The evidence is clear that even if the suspension (both GMC and Performers lists) were not to be imposed, [redacted] is not able to work due to ill health*". That is incorrect as a matter of fact and law, both with regard to the findings of the IOT and the findings of the medical experts.

10. As regards the IOT:

a. the IOT's decision was that "*there are concerns regarding [redacted]'s fitness to practise which indicate that there is a real and immediate risk to patient safety*" and that an interim order "*is necessary for the protection of the public and which indicates that it is in the public interest to impose an interim order and indicates it is in [redacted]'s interests to restrict their registration*" [§13]. That is not a decision that the Appellant was not fit to practise (let alone not able to practise) but instead that permitting her to practise would give rise to unacceptable risks;

b. the IOT further stated that "*there was information to suggest that [redacted] may pose a real risk to public safety, if she were permitted to remain in unrestricted clinical practice*" [§17]. As such the IOT did not consider that the Appellant was not "*able*" to practise but that she should not be "*permitted*" to practise, hence the interim order of suspension;

c. the IOT further noted that its order "*has removed [redacted]'s ability to practise medicine*" [§18]. In other words, it is the **interim order of suspension** that has removed the Appellant's ability to practise. As such, per paragraph 3(3) of the Direction, "*apart from the suspension*", the Appellant would be "*able and permitted to perform primary medical services*".

11.As regards the reports of the medical experts:

a. the GMC medical experts provided reports about the Appellant's "fitness" to practise not her "ability" to practise. It is axiomatic that a practitioner maybe "able" to practise but they are not "fit" to do so, for example, because their health or lack of capability makes them a risk to patients;

b. [redacted] (one of the GMC experts) had initially concluded that the Appellant was not fit to practise on the basis that her health interfered with her "*ability to function safely in her medical role*" and that she was not fit "*to practise safely*" [§13]. That is not a finding that she was not "able" to practise but instead that she was not able to practise "safely". (By comparison the initial view of [redacted] was that she was fit to practise, albeit with restrictions.). Paragraph 3(3) of the Direction does not refer to doctors being "*unable to practise safely*";

c. whilst the joint expert report opined that the Appellant suffered from "*Delusional Disorder: ICD F22*" which had "*an impact upon her ability to work*", there was no conclusion that she was "unable", physically or mentally to work. As regards "*Opinion on fitness to practise*", whilst both psychiatrists were now of the opinion that she was not fit to practise, again neither concluded that she was not "able" to practise;

d. by comparison the view of NHSE's OH doctor dated 26 November 2025 was that the Appellant was "*fit to work and able to continue her full duties without restriction*". That is inconsistent with any finding that she is not "able" to practise;

e. in addition, the Appellant was working up until she was given time off to prepare for the IOT hearing without any clinical concerns from her practice. Again, that is inconsistent with any finding that the [sic] she is not "able to practise".

12. Contrary to §§29-32, the reports of the two experts are merely opinions and contradict the findings of other medical experts. In addition, as noted above, neither states that she is not "able" to work. Neither has provided a fit note and, in any event, a fit note is not conclusive evidence that a doctor is not fit to practise, let alone not "able" to practise.

13. Moreover, the decision (SHA/26236) referred to by the Respondent does not support its case. In that case, the practitioner was suspended from the performers list due to health concerns [§3.12]. On the Respondent's case, that should have resulted a finding that they were unable to work due to health concerns. However, that is not what was decided, with the initial and later periods of suspension being regarded as complying with paragraph 3(3) of the Determination.

14. Moreover, in the present case, the only fit note covered the period whilst the Appellant was given time off to prepare for the IOT hearing. There is no evidence relied upon by NHSE to support any assertion (if one is being made) that, absent the suspension by the IOT, she would not have continued to work. Of note, the testimonials from three of the GP Partners at the practice where she worked, as well as the testimonial from the practice manager, provided for the GMC IOT hearing, were overwhelmingly positive and raised no concerns about the Appellant's fitness to practise or about her physical or mental health.

Ground 3: NHS England has misinterpreted the wording of paragraph 3(3) of the 2015 Determination when considering the meaning of "able and permitted".

15. Again, as outlined above, the Respondent is not correct to state that the experts have opined that the Appellant is not "able" to practise, but instead that she is not "fit to practise" due to patient safety concerns. A person may well be "able" to practise, even if not "fit" to do so. A simple analogy makes this clear: a doctor might be regarded as not "fit" to practise due to some misconduct outside of the workplace. But that does not mean that they are not "able" to practise. They are very much able to do so, but it would be contrary to the public interest for them to be "permitted" to do so given that they are not regarded as "fit" to do so.

16. Moreover, the Respondent's interpretation of "able" remains erroneous. As noted above, it does not state that there is a requirement to be able to practise safely or properly or without risk. The reference to "able and permitted" must mean something more than there would be an unacceptable risk were they permitted to do so.

Ground 4: Irrelevance of the sick note

17. The Respondent apparently accepts at §36 that the fit note cannot be relevant beyond the period [redacted] (and so contradicts its decision of [redacted] which it seeks to uphold).

18. In any event, the sick note was only obtained voluntarily by the Appellant after her practice had given her time off to prepare for the IOT hearing. It is not evidence that she was not able to work at the relevant time.

Ground 5: The [redacted] **Decision is unlawful as it amounts to a breach of the Equality Act 2010**

19. The Respondent's responses at §§39-41 fail to acknowledge that it is its erroneous interpretation of the Determination that has led to this outcome. Moreover, that it states that it applies the same test to all practitioners [§40] ignores (a) the fact that it is only those suspended on health grounds that are apparently affected by this interpretation and (b) that, even if the same approach is applied to all practitioners, that does not prevent it from being treatment that is unfavourable to disabled practitioners because of something arising from their disability which cannot be justified as a proportionate means of achieving a legitimate aim. In addition, the Respondent has failed to address the need to comply with the public sector equality duty.

Ground 6: NHS England's interpretation of the 2015 Direction is incompatible with the Human Rights Act

20. The removal of the Appellant's ability to earn a living via her chosen profession in circumstances where she is not provided with suspension payments, manifestly interferes with her right to a private life. Per the ECtHR in *Denisov v Ukraine* (Application no. 76639/11) (25.09.18) at §100, the right to a private life does not exclude in principle activities of a professional or business nature and Article 8 issues may still arise where the impugned measure has or may have serious negative effects on the individual's private life, including where there are serious material consequences and where there is an impact on the individual's opportunity to establish and develop relationships with others and on their reputation [§107]. Thus, the denial of suspension payments to the Appellant during the period of her interim suspension amounts to an unjustified interference with her Article 8 rights because it amounts to a serious material consequence to her (loss of her income) in circumstances where she is being denied the ability to work due to the suspension.

Ground 7: Breach of legitimate expectation

21. The Respondent does not in its representations dispute that NHSE's interpretation means that GMC interim suspension based on health grounds would **always** give rise to a situation where the practitioner was not entitled to payments under the Direction. The Respondent has not pointed towards any statement or policy where that is made clear to performers / those applying for payments. Absent such a statement of that policy or interpretation of the 2015 Determination by NHSE, then [redacted] has a legitimate expectation of receiving payment in accordance with the clear wording of the 2015 Determination.

22. The failure to make payment to her amounts to a breach of that legitimate expectation.

Conclusion

23. For the above reasons, the Respondent's representations are incorrect as a matter of law and fact.

24. The Decisions should be quashed and replaced with a decision awarding [redacted] suspension payments from [redacted]."

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 NHS England's Initial Decision dated [redacted] (the "**Initial Decision**") and its Reconsideration dated [redacted], by which it maintained its determination that the Appellant was not entitled to suspension payments from [redacted] onwards. The Appellant's representatives state that NHS England has misinterpreted and incorrectly applied paragraph 3(3) of the 2015 Determination. They state that the words "apart from the suspension" require the circumstances upon which the Appellant's suspensions were based to be put aside, and that NHS England incorrectly treated the conclusions of the GMC health assessors' joint report dated [redacted] (the "**Joint Report**"), together with the fit note issued to the Appellant, as establishing that she was not able and permitted to perform primary medical services.

4.3 Regulation 13 of the Regulations permits NHS England to make payments during a practitioner's suspension under Regulation 12, provided that those payments are made in accordance with a determination by the Secretary of State. The applicable determination is the 2015 Determination, which sets out the relevant eligibility and payment requirements. Paragraph 3 of the 2015 Determination states:

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

(2) This sub-paragraph applies to 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."

4.4 It is not disputed that the Appellant meets the criteria under paragraph 3(2)(b)(ii) by way of being a person employed or engaged by a contractor to perform primary medical services.

4.5 However, I note that both sub-paragraphs (2) and (3) must apply for the Appellant to be eligible for suspension payments, pursuant to sub-paragraph (1). As sub-paragraph (2) applies to the Appellant, sub-paragraph (3) requires that the Appellant must also be "*able*" and "*permitted*" to perform primary medical services.

4.6 I note that in the Initial Decision of [redacted], NHS England stated that under paragraph 3(3) of the 2015 Determination the Appellant was not considered able and permitted to perform primary medical services and was therefore not eligible for suspension payments. The stated reason was that the Appellant was not regarded as "*able and permitted*" because she had not been working in the period leading up to the Interim Orders Tribunal ("**IOT**") hearing. The Initial Decision also referred to the Appellant having been signed off work, the conclusions of the GMC health assessors and the IOT report, although it did not clearly identify the respective weight placed upon those matters or explain fully how they supported the stated conclusion.

4.7 NHS England reconsidered the Initial Decision and notified the Appellant of its Reconsideration on [redacted]. The Reconsideration maintained the conclusion that the Appellant was not eligible for suspension payments but provided a more developed basis for that conclusion. In particular, it relied upon the Joint Report dated [redacted] and its conclusion that the Appellant was unfit to practise due to a diagnosis of delusional disorder. It also relied upon the outcome of the IOT proceedings as supporting that conclusion.

4.8 I note that the Appellant's representatives have divided the Notice of Appeal into separate grounds. I have therefore considered each ground in turn.

4.9 The Appellant's first ground of appeal is that NHS England misinterpreted paragraph 3(3) of the 2015 Determination. The Appellant states that the words "*apart from the suspension*" require the decision-maker to disregard not only the Appellant's suspension from the Medical Performers List and the interim suspension of her registration, but also the matters upon which those suspensions were based. The Appellant contends that, unless paragraph 3(3) is interpreted in this way, a practitioner suspended on health grounds could never qualify for suspension payments where the underlying health condition also affected their ability to perform primary medical services.

4.10 I note that the Appellant's representatives rely upon the consequences which, it states, would result from NHS England's interpretation. However, the Appellant has not identified any wording in the 2015 Determination which expressly provides that the matters giving rise to a suspension are to be treated as part of "*the suspension*" for the purposes of paragraph 3(3). I have therefore considered whether such a meaning can properly be derived from the wording and structure of the 2015 Determination itself.

4.11 I note that the Appellant's representatives state that NHS England's example undermines its own case. NHS England relies upon the example of a medical practitioner suspended following allegations of misconduct. That situation is distinguishable, as the practitioner may remain able and permitted to perform primary medical services apart from the suspension, notwithstanding the allegations made.

4.12 I am mindful that there may be a more immediate connection between the circumstances of a suspension on grounds of health and a practitioner's ability to practise than ordinarily arises where a suspension concerns allegations of conduct. I note, however, that the 2015 Determination contains no express exclusion in respect of suspensions on health grounds, or provides for any differential treatment dependent on the reasons for the suspension.

4.13 That said, it is unclear where the interpretation advanced by the Appellant's representatives would apply and where it would not. For instance, I have considered the position of a practitioner who is imprisoned as a consequence of the same conduct that also led to their suspension. The Appellant's representatives state that "the suspension" should include the matters upon which the suspension was based. However, if the suspension and imprisonment arose from the same underlying conduct, the imprisonment would also arise from the matters upon which the suspension was based. On the Appellant's proposed interpretation, it is unclear whether that independent impediment would also have to be disregarded when determining whether the practitioner was able and permitted to perform primary medical services.

4.14 The Appellant's representatives have not identified a principled basis upon which the circumstances underlying a suspension should be treated as part of "the suspension" in cases involving ill health, while other independent impediments arising from the same underlying circumstances should remain relevant. I am therefore not persuaded that the interpretation advanced by the Appellant can be applied consistently by reference to the nature or source of the practitioner's inability to perform primary medical services.

4.15 Further, I note that paragraph 2 of the 2015 Determination expressly defines "*suspended*" in relation to a medical practitioner. Although paragraph 2 defines the word "*suspended*", rather than the noun "*suspension*", the latter is the corresponding noun form of the defined term and, read in context, bears the same substantive meaning. I therefore consider that "*the suspension*" in paragraph 3(3) means suspension by NHS England in accordance with Regulation 12 of the Regulations. It does not encompass the separate circumstances giving rise to that suspension.

4.16 I am also mindful of the High Court judgment in *Sandles v NHS England [2022] EWHC 1582 (Admin)* ("**Sandles**") and the passage relied upon by NHS England. Although Sandles concerned a different provision of the 2015 Determination, I consider that it establishes the relevant approach to its interpretation. Where the wording of the 2015 Determination is clear, it is not appropriate to depart from its ordinary and natural meaning or to read additional words into it by reference to its perceived purpose or the fairness of the resulting outcome.

4.17 I consider that to construe "*the suspension*" as encompassing the circumstances giving rise to it would be to confer upon that phrase a meaning materially wider than that provided by the 2015 Determination. Had the Secretary of State intended that those circumstances should likewise be disregarded for the purposes of paragraph 3(3), it was open to him to say so in terms which were immediate and plain. No such wording is forthcoming. Indeed, paragraph 3(2)(b) refers expressly to *"the suspension (or the circumstances giving rise to the suspension)*", whereas paragraph 3(3) refers only to "*the suspension*". That difference cannot be regarded as incidental and must, I consider, be given due consideration when interpreting the relevant phrases.

4.18 It follows that "*the suspension*" in paragraph 3(3) means the Appellant's suspension from the Medical Performers List, imposed by NHS England under Regulation 12(1A)(a) of the National Health Service (Performers Lists) (England) Regulations 2013. The interim suspension of the Appellant's registration following the IOT proceedings is separately identified in paragraph 3(3) and must likewise be put aside. Neither suspension encompasses the factual circumstances which preceded it or upon which it was founded.

4.19 I note that the Appellant's observations suggest that it is NHS England's construction which undermines the ordinary and natural meaning of the words "*apart from the suspension*". I do not consider that this is so. On NHS England's construction, those words require the suspension from the Medical Performers List, and the inability to perform primary medical services arising by reason of that suspension, to be disregarded. No basis has been advanced upon which the ordinary and natural meaning of those words would also require the separate circumstances giving rise to the suspension to be disregarded. I do not consider that the matters giving rise to the suspension can properly be treated as one and the same as the suspension itself.

4.20 I have also considered the Appellant's statement that NHS England's construction would deprive every practitioner suspended on health grounds of any entitlement to suspension payments. I do not consider that such a consequence follows. A practitioner does not cease to qualify merely because

the suspension arose from concerns as to their health. The position is otherwise only where the evidence establishes that, apart from the suspensions which paragraph 3(3) requires to be put aside, the practitioner's state of health independently renders them unable to perform primary medical services. That question must be determined upon the evidence and particular circumstances of each case, and in respect of the period for which payment is claimed.

4.21 For the reasons aforesaid, I consider that that "*the suspension*" in paragraph 3(3) should not be construed as including the circumstances upon which the relevant suspensions were founded. Paragraph 3(3) requires the Appellant's suspension from the Medical Performers List and the relevant suspension from the register of medical practitioners to be put aside. It does not require me to disregard the Appellant's underlying state of health or the evidence concerning its effect upon her ability to perform primary medical services. Whether that evidence establishes such inability, and the period for which it does so, are separate matters to which I now turn.

4.22 I note that the Appellant's second ground is that NHS England misunderstood the nature and effect of the IOT proceedings and the relevance of the Joint Report. The Appellant's representatives state that the IOT undertook an interim assessment of risk and did not make findings of fact as to the Appellant's fitness to practise. They further state that the Joint Report amounts to an opinion which is not determinative of the Appellant's ability to perform primary medical services, and that, in any event, it expressed an opinion as at a particular point in time and did not establish an ongoing inability to practise.

4.23 I note that NHS England accepts the Appellant's description of the proper role of the IOT and agrees that it did not make findings of fact as to the Appellant's fitness to practise but instead undertook an interim assessment of risk. I therefore consider that there is no material dispute between the parties in that regard. It follows that the IOT's decision to impose an interim suspension order cannot, of itself, be treated as a factual determination that the Appellant was unable to perform primary medical services.

4.24 That said, the parties disagree as to the evidential weight which may properly be attributed to the Joint Report. Neither party has provided me with a copy of the Joint Report. I am therefore unable to examine its contents directly and must confine my consideration to those matters concerning it which are agreed between the parties or otherwise recorded in the documents before me. The parties agree that the Joint Report expressed the opinion of two medical experts that the Appellant was not fit to practise and recorded a diagnosis of "*Delusional Disorder: ICD F22*". I am mindful that the Appellant's representatives characterise those conclusions as medical opinion rather than findings of fact.

4.25 I note that the Appellant's observations on Ground 2 include submissions which also arise under Ground 3, and in particular whether a conclusion that the Appellant was not fit to practise establishes that she was not "*able*" to perform primary medical services for the purposes of paragraph 3(3). For the proper separation of those issues, I do not determine that question under this ground and return to it below.

4.26 I note that NHS England states that the Joint Report is akin to a fit note and relies upon SHA/26236 in support of that submission. The Appellant's

observations seek to distinguish that determination. The Appellant states that the practitioner in SHA/26236 was found eligible for suspension payments during those periods for which the evidence did not establish that he was unfit to work. The Appellant further states that, if the mere existence of health concerns underlying a suspension were sufficient to establish inability, the practitioner in SHA/26236 would have been ineligible throughout the suspension rather than during the limited period identified by the evidence.

4.27 As I have set out above, I do not consider that this reflects the reasoning put forward by NHS England in this appeal. The Appellant's representatives appear to proceed on the basis that NHS England relies upon the IOT's decision to suspend the Appellant as positive evidence that the health concerns considered by the IOT rendered her unable to perform primary medical services. Instead, I note that the central evidence upon which NHS England relies is the Joint Report and the conclusions attributed to it concerning the Appellant's diagnosis and fitness to practise.

4.28 I now turn to the evidential weight which may properly be attributed to the Joint Report. I consider it necessary first to note that the Joint Report is not a fit note and does not acquire the status or effect of one merely in consequence of NHS England drawing a comparison between the two. NHS England has provided 'Getting the most out of the fit note: guidance for healthcare professionals' and has referred me to SHA/26236. I consider that the approach adopted in SHA/26236 affords some assistance by analogy in determining how medical opinion evidence should be treated.

4.29 I agree with both parties that the Joint Report is not, de facto, determinative of an individual's ability or inability to work. I nevertheless consider that there may be circumstances in which such a report constitutes evidence sufficiently cogent to demonstrate an inability to work for the purposes of the 2015 Determination. Although the conclusions contained within the Joint Report remain matters of medical opinion, it is the joint opinion of two medical professionals, reached in their professional capacity following their assessment of the Appellant and directed specifically to her fitness to practise. I do not therefore consider that the Joint Report may properly be dismissed as merely "*an opinion*". Its evidential weight must instead be determined by reference to the circumstances in which it was produced and the evidence which supports, contradicts or otherwise calls its reliability into question.

4.30 I note that the Appellant's representatives have not disputed NHS England's account of the contents or conclusions of the Joint Report. Nor have they identified any error or deficiency in the report or provided any medical or other evidence which contradicts its conclusions or calls their reliability into question. Instead, it is asserted that the Appellant remained able to practise, without any explanation as to how that assertion may be reconciled with the conclusions of the Joint Report.

4.31 I am mindful that neither party has provided me with a copy of the Joint Report. I consider that this prevents me from examining its detailed reasoning or attributing to it conclusions which are not otherwise agreed or apparent from the documents before me. It does not, however, require me to disregard those matters concerning the report which are common ground.

4.32 Furthermore, I note that there existed, prior to the Joint Report, conflicting assessments as to the Appellant's fitness to practise. However, each of those assessments preceded the production of the Joint Report and, so far as I have been made aware, no further medical assessment contradicting its conclusions was produced thereafter. I consider the chronology to be material. A medical assessment is necessarily directed to the individual's condition at the time at which it is undertaken, and that condition may develop or become more fully apparent with the passage of time. I note also that one of the earlier assessments had itself concluded that the Appellant was not fit to practise. The earlier evidence therefore comprised one assessment that the Appellant was not fit to practise, another that she was fit to practise subject to restrictions, and a third that she was fit to practise without restriction. I do not consider that this mixture of conclusions can safely be relied upon as establishing that the Appellant remained fit to practise at the time of the Joint Report. The Joint Report was the latest of the identified assessments and represented the joint view of the two health assessors at that later point in time. I consider that its chronology is therefore capable of lending greater weight to its conclusions, although it does not, in and of itself, render the earlier evidence immaterial.

4.33 In relation to the temporal argument, I note that no evidence has been put forward to demonstrate that, following the Joint Report, the Appellant's condition or circumstances materially changed. I do not consider that the absence of such evidence establishes, of itself, that the conclusions of the Joint Report continued to apply without limit. It does, however, mean that the opinion expressed in the Joint Report has not been displaced by any subsequent medical assessment or other evidence demonstrating a material improvement in the Appellant's condition.

4.34 I therefore consider that the Joint Report carries substantial evidential weight. Absent any error or deficiency in the report being identified, and with there being no subsequent medical assessment to contradict or displace it, I consider that the Joint Report constitutes reliable medical evidence of the Appellant's fitness to practise during the period relevant to this appeal.

4.35 For the reasons aforesaid, I do not consider that NHS England misunderstood either the nature of the IOT proceedings or the relevance of the Joint Report. NHS England accepts that the IOT undertook an interim assessment of risk and did not make findings of fact as to the Appellant's fitness to practise. I consider that NHS England properly relied upon the Joint Report, rather than the IOT's decision itself, as medical evidence of the Appellant's condition and fitness to practise. Whether the conclusion that the Appellant was not fit to practise establishes that she was not "*able*" to perform primary medical services within the meaning of paragraph 3(3) is a separate matter to which I now turn.

4.36 Ground 3 concerns NHS England's interpretation of the words "*able and permitted*" in paragraph 3(3) of the 2015 Determination. The question advanced by the Appellant's representatives is whether a conclusion that the Appellant was not fit to practise may properly be treated as establishing that she was not able to perform primary medical services. As I have noted, this argument was expanded upon in the Appellant's observations, but the essential point remains that a lack of fitness to practise does not necessarily equate to a lack of ability to practise. The Appellant's representatives also go further and state that "*able*

and permitted" refers to whether the practitioner was legally or professionally disqualified from performing primary medical services.

4.37 I do not consider that the Appellant's argument gives proper effect to the nature of the ability required by paragraph 3(3). It appears to proceed upon the basis that any physical or practical capacity to undertake the constituent acts of the role may be equated with an ability to perform primary medical services. I do not consider that this is so. The question is not merely whether the Appellant could attend work or attempt to undertake clinical duties. It is whether she was able to perform primary medical services in the manner properly required of a medical practitioner, including with the degree of judgement, competence and safety inherent in the provision of those services.

4.38 I note that consideration of the word "*able*" might give rise to a considerable number of hypothetical circumstances, each concerned with a different impediment to the performance of primary medical services. I do not consider that such examples provide a substitute for the wording of the 2015 Determination. The word must be understood in the context in which it appears and by reference to the services which the practitioner must be able to perform. Where the asserted impediment is ill health, the relevant question is whether the condition affected the practitioner's capacity to perform primary medical services properly and safely, rather than whether the practitioner retained some capacity to undertake particular tasks.

4.39 Applying the evidential conclusions reached above, I note that the Appellant's representatives have not disputed NHS England's account that the Joint Report concluded that the Appellant was not fit to practise at all. Nor have they identified any distinction drawn in the Joint Report between the Appellant's fitness to practise and her functional capacity to perform primary medical services or provided evidence demonstrating that she retained the capacity described above notwithstanding the experts' conclusion. I consider that their assertion that the Appellant remained able to practise must be assessed in light of that evidential position.

4.40 I do not consider that the concepts of fitness and ability are, in every circumstance, one and the same. Nor do I consider that a conclusion that a practitioner is not fit to practise must invariably establish that the practitioner is unable to perform primary medical services for the purposes of paragraph 3(3). The significance of such a conclusion will depend upon its basis and the effect of the condition identified upon the practitioner's capacity to perform those services. In the present appeal, the conclusion attributed to the Joint Report was not merely that some concern existed as to the Appellant's health, but that she was not fit to practise at all.

4.41 Having regard to the conclusions attributed to the Joint Report, the absence of any identified defect in those conclusions and the lack of reliable evidence demonstrating that the Appellant remained able to perform primary medical services properly and safely, I consider that the evidence establishes that the Appellant was not "*able*" to perform primary medical services within the meaning of paragraph 3(3).

4.42 I now turn to Ground 4, which concerns the relevance of the fit note issued in respect of the Appellant for the period [redacted]. The Appellant's

representatives state that the fit note was obtained in consequence of the stress occasioned by the forthcoming IOT hearing, and at the suggestion of the Practice Manager, rather than because of the condition identified in the Joint Report. They further state that the fit note expired on [redacted] and could not establish any inability thereafter.

4.43 I have considered the fit note, which states that the Appellant was not fit for work for a period of 15 days by reason of stress. Consistently with SHA/26236, I consider that the circumstances in which it was obtained do not deprive it of evidential significance. It supports the conclusion that the Appellant was unable to work during the period stated upon it but is relevant to this appeal only from [redacted] to [redacted]. To that limited extent, it affords some support to the conclusions attributed to the Joint Report.

4.44 NHS England accepts that the fit note has no application beyond [redacted] and does not rely upon it as evidence of the Appellant's inability thereafter. Its expiry does not, however, establish that the Appellant became able to perform primary medical services on the following day. That question falls to be determined by reference to the Joint Report and the remaining evidence. I do not therefore consider that Ground 4 has any material bearing upon the outcome of this appeal.

4.45 I now turn to Ground 5. The Appellant's representatives state that NHS England's decision amounts to unlawful discrimination under the Equality Act 2010, as the Appellant was refused suspension payments in consequence of a health condition which amounts to a disability. NHS England states that it is not a matter for the PCA to determine whether the 2015 Determination is discriminatory under the Equality Act 2010, and that NHS England and the PCA must apply the 2015 Determination equally to all practitioners.

4.46 I note that the function conferred upon me by Regulation 13 is to determine the Appellant's appeal against NHS England's reconsidered decision concerning her eligibility for suspension payments. I do not consider that this extends to determining whether the terms of the 2015 Determination are themselves unlawful under the Equality Act 2010, or to putting aside any part of the 2015 Determination upon that basis. I must determine whether the Appellant satisfies its requirements, having regard to the representations and observations of the parties and such other evidence as I consider fit.

4.47 I have nevertheless considered whether NHS England applied paragraph 3(3) to the Appellant in a manner which discriminated against her by reason of disability. For the reasons aforesaid, I do not consider that NHS England treated the Appellant as ineligible merely because she was disabled or because her suspension arose from concerns as to her health. NHS England applied the requirement that the Appellant must, apart from the relevant suspensions, be able and permitted to perform primary medical services. That requirement applies equally to all practitioners, whatever circumstances occasioned their suspension. I do not therefore consider that NHS England's application of paragraph 3(3) to the Appellant was discriminatory in the manner stated by her representatives.

4.48 Ground 6 concerns the compatibility of NHS England's interpretation of the 2015 Determination with the Human Rights Act 1998. The Appellant's

representatives state that NHS England's interpretation is incompatible with the Appellant's rights under that Act. NHS England states that the Appellant has no proprietary entitlement to suspension payments unless and until the conditions contained in the 2015 Determination are satisfied. It further states that any challenge to the compatibility of the 2015 Determination itself is a matter for the Secretary of State and does not fall to be determined by the PCA.

4.49 As set out above, my function is confined to determining the appeal brought under Regulation 13. I do not consider that it extends to determining a freestanding challenge to the compatibility of the 2015 Determination, or to conferring an entitlement to payment otherwise than in accordance with its terms.

4.50 I have already considered the construction of paragraph 3(3) urged upon me by the Appellant and have determined that its wording does not bear that meaning. I have not been directed to any basis upon which the Human Rights Act 1998 permits the express requirements of paragraph 3(3) to be enlarged or put aside. Nor have the Appellant's representatives demonstrated that a proprietary entitlement to suspension payments arose before those requirements were satisfied. I therefore make no further determination in relation to the Human Rights Act 1998.

4.51 Finally, Ground 7 concerns the Appellant's stated legitimate expectation that practitioners suspended on health grounds will receive suspension payments in accordance with the 2015 Determination. NHS England states that any such expectation cannot prevail over the requirements of paragraph 3(3), and that the Appellant's eligibility must be determined in accordance with the terms of the 2015 Determination.

4.52 I have not been directed to any clear and unambiguous representation made to the Appellant that she would receive suspension payments irrespective of whether she remained able and permitted to perform primary medical services. Nor have I been directed to any settled practice by which practitioners suspended on health grounds receive payments without regard to the requirements of paragraph 3(3).

4.53 I do not consider that the absence of a general exclusion for practitioners suspended on health grounds gives rise to an expectation that every such practitioner will receive suspension payments. It establishes only that suspension upon health grounds does not, of itself, preclude payment. Entitlement remains subject to the requirements of the 2015 Determination and the individual circumstances of the practitioner. Whatever expectation the Appellant may have held, I do not consider that it could confer an entitlement to suspension payments where the requirements of paragraph 3(3) were not satisfied.

4.54 Having considered the evidence in its totality, I am satisfied that the Joint Report represented the most recent medical assessment of the Appellant's fitness to practise and concluded that she was not fit to practise at all by reason of delusional disorder. I therefore consider that the evidence establishes that, apart from the suspensions which paragraph 3(3) requires to be put aside, the Appellant was not able to perform primary medical services from [redacted]. It

follows that the Appellant did not satisfy paragraph 3(3) of the 2015 Determination and was not eligible for suspension payments from that date.

5 DETERMINATION

5.1 Pursuant to paragraph 3(1) of the 2015 Determination, I determine that the Appellant is not entitled to suspension payments for the period from [redacted] onwards.

Head of Appeals
NHS Resolution