

# **PRIMARY HEALTH LISTS**

**The Tribunal Procedure (First-Tier Tribunal) (Health, Education and Social Care) Rules 2008**

**IN THE MATTER OF THE NATIONAL HEALTH SERVICE (PERFORMERS LISTS) (ENGLAND) REGULATIONS 2013**

**[2020] 4120.PHL V Kinly**

Heard on 13<sup>th</sup> May 2021 by video (Kinly).

## **BEFORE**

**Mr G Brandon (Tribunal Judge)  
Martyn Green (Professional Member)  
Libhin Bromley (Specialist Member)**

## **BETWEEN:**

**Mrs Ioulia Stavriniidou**

**Applicant**

**-v-**

**The National Health Service Commissioning Board**

**Respondent**

## **DECISION**

### **The Appeal**

1. This is an appeal by Mrs Ioulia Stavriniidou (“the Appellant”) made pursuant to Regulation 17 of the National Health Service (Performers Lists) (England) Regulations 2013 (“the 2013 Regulations”) against a decision made by the Performers List Decision Panel (“PLDP”) of 3<sup>rd</sup> September 2020 (confirmed in a letter dated 8<sup>th</sup> September 2020) to remove her from the NHS Performers List.

### **Attendance**

2. The Appellant represented herself at the hearing and gave oral evidence. The Appellant did not call any witnesses to give oral evidence on her behalf.

3. The Respondent was represented by Mary-Teresa Deignan (Counsel) and Emma Kewley, Solicitor. The Respondent called Mr Ben Collins, Professional Regulations and Revalidation Specialist and Professional Standards Manager for NHS England and Mr Thomas Steven Claydon, Registered Dental Surgeon and Senior Clinical Dental Adviser, NHS England and NHS Improvement.
4. This has been a remote hearing which has not been objected to by the parties. The form of remote hearing was video using the Kinly service. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The documents that we were referred to are in a bundle of 736 pages, the contents of which we have recorded. The order made is described at the end of these reasons. The parties said this about the process: Mrs Stavrinidou had difficulty connecting to the hearing and initially joined by both video and telephone. She was able to see and hear all parties, but she was only able to be heard, as the image of her on screen was frozen. Later during the hearing, she connected by telephone only. She indicated that she was willing to proceed with the hearing in this way and the panel considered that the hearing could be fair with connections established in this way. At the end of the hearing Mrs Stavrinidou and all other parties confirmed that they were satisfied that they had been able to take a full part in the hearing.

### **The Hearing**

5. The hearing took place on 13<sup>th</sup> May 2021 by video link.
6. Mrs Stavrinidou indicated that she had taken legal advice since 21<sup>st</sup> April 2021 but wanted to represent herself and was continuing with her appeal.

### **Late Evidence**

7. No late evidence was submitted by either party.

### **Background**

8. The Appellant is a Dental Practitioner included on the Respondent's Performer List ("the Performer List"). She is registered with the General Dental Council (GDC) and has been included on the performer list since 6 June 2012.
9. A number of events occurred, leading up to the decision which is subject to appeal:
10. NHS England received a complaint about the Appellant's practice on 7 March 2018 and carried out an audit of her practice which revealed concerns about a further 26 patients which related to various aspects of her practice including multiple cases of missed disease diagnosis. The Respondent suspended the Appellant from the list by letter dated 8 May 2018. A panel reviewed the decision under Regulation 12 (1) (a) of the 2013 Regulations and confirmed it. The Appellant was informed of this decision by letter dated 21 May 2018.

11. On 19 June 2018, the General Dental Council, having been informed of the suspension, imposed conditions of practice on the Appellant's registration for 18 months. The decision was reviewed on 28 November 2018 and the interim conditions of practice order remained in place.
12. On 23 October 2018 a panel reviewed the Appellant's suspension from the list and decided to lift the suspension and impose conditions on her continued inclusion in the list, as the Appellant had completed 25 online courses to remediate the concerns raised. The Appellant was informed of this decision in a letter dated 25 October 2018.
13. In January 2019 the Appellant made arrangements to commence practice in Lincolnshire.
14. A panel of the Respondent held a review meeting on 6 March 2019 due to concerns about the Appellant's compliance with existing conditions and concluded, amongst other things, to give the Appellant 28 days' notice of maintaining conditions and proposal of suspension, to appoint an investigator to complete a records review, incorporating direct observation and case-based discussions within four weeks and to arrange a meeting with the clinical lead for the Appellant to bring any evidence of improvement following the courses she had undertaken.
15. Catriona Peterson was appointed as an independent investigating officer and produced a report dated 9 March 2019 which identified concerns about the Appellant's practice including, but not limited to, a lack of patient consent, not listening to patients, poor communication, poor record-keeping and slow/muddled diagnosis. The Respondent's position was that the Appellant was not working at a standard suitable for independent practice.
16. On 19 March 2019 the GDC proposed that the Appellant's practice be subject to conditions of practice for 18 months. The Appellant accepted the proposal and the interim suspension order was revoked. The date of the decision was 26 April 2019.
17. On 9 April 2019, the Appellant provided the Respondent with a copy of her indemnity documents. The policy did not appear to include run-off cover.
18. On 25<sup>th</sup> of April 2019 a panel took account of issues regarding the Appellant's clinical practice that they considered had not been sufficiently explained or resolved and the Appellant's health and well-being and decided to suspend the Appellant from the list under Regulation 12 (1)(a) of the 2013 Regulations to protect the public and to support the Appellant.
19. On 14 June 2019, the GDC Interim Orders Committee, having been informed of the above decision, imposed an interim suspension order upon the Appellant's registration for 18 months.
20. The Respondent suspended the Appellant from the list under Regulation 12 (1A)(b) of the 2013 Regulations, informing the Appellant this by letter dated 20 June 2019.

21. The Respondent submitted that the requirement for an appropriate policy of indemnity insurance is mandatory and not discretionary, specifically that it is not discretionary upon the ability of the practitioner to pay for such cover and that any appropriate policy of indemnity insurance must include run-off cover as claims can arise after the indemnity policy has come to an end and noted that the Limitation Act 1980 provides a period of three years for claimants to bring claims for personal injuries against a practitioner from the date on which their cause of action arose.
22. The Respondent made contact with the Appellant requesting confirmation of her indemnity cover and received the reply, on 26th March 2020 that she did not have such cover because she could not afford to pay for it after July 2019. Correspondence continued between the parties until 8 June 2020, during which time the Respondent requested that the Appellant provide evidence of any suitable run-off cover which she had in place and the Appellant continued to express her inability to pay for such a policy.
23. On 21 July 2020 a panel of the Respondent decided that the Appellant was unsuitable to remain on the list and recommended her removal from it pursuant to Regulation 14 (3) (d) of the 2013 Regulations.
24. This decision was confirmed on 8 September 2020 by letter indicating the decision of a panel at an oral hearing held on 3 September 2020.
25. The Respondent was still of the view that the Appellant did not have an appropriate indemnity arrangement, specifically, that she lacked appropriate run-off cover in respect of her time in practice, up to the point where she ceased practice due to the regulatory action described above and therefore she was not suitable to remain on the Performers List pursuant to Regulation 14 of the 2013 Regulations.

### **The Agreed Issues for the Tribunal**

26. There was a single issue for determination by the tribunal at the hearing.
27. It was not in issue that run-off cover is an extension of cover provided by a policy of indemnity insurance which had ceased and which provides cover for the number of years specified in that policy in respect of claims made against the practitioner which arise from their work during the currency of the policy up to the point where they stopped practice.
28. It was not an issue that the Appellant did not have run-off cover in place at the time of the hearing, having lost such cover in July 2019 when she cancelled her indemnity insurance policy.
29. Although the Respondent outlined the Appellant's regulatory history leading up to her suspension, it did so by way of providing background for the hearing and made it clear that the sole reason the Respondent considered the Appellant to be unsuitable to remain on the Performers List was her lack of run-off cover.
30. NHS England argued it was a mandatory requirement for the Appellant to have run-off cover in place to remain on the Performers List and outlined the

importance of run-off cover as being, primarily, to protect patients who may need to access such cover in redress if they require compensation and secondly to protect the Appellant in providing cover to enable her to meet any potential liabilities for claims made after the term of her indemnity insurance

### **The Respondent's position**

31. The Respondent's position was that the Appellant did not have run-off cover and had not had any such cover since July 2019, when she cancelled her policy of indemnity insurance.
32. The Respondent's position was that "Run-off" cover is mandatory, not discretionary, and specifically not discretionary upon the ability of the practitioner to pay for it, that the lack of such cover meant that the Appellant continues to be unsuitable to remain on the Performers List.
33. The Respondent argued that the Appellant lacked insight into the importance and mandatory nature of run-off cover in that; she cancelled her indemnity policy without taking advice from NHS England as to the consequences of this; she has been reminded of the importance of run-off cover; she has been provided with time and with opportunity to purchase retrospective run-off cover; she has been advised that she cannot remain on the List without runoff cover; the lack of claims made is irrelevant; she repeated her inability to afford run-off cover but did not express concerns about the exposure of patients to lack of redress in the absence of run-off cover; despite receiving funds from NHS England the Appellant did not put them towards payment for run-off cover; the Appellant failed to appreciate that the requirement for run-off cover is mandatory and that concerns about her competence emphasise the importance of the mandatory nature of the requirement

### **The Appellant's position**

34. The Applicant's case was that she understood the importance of run-off cover and that it had come to an end when she cancelled her indemnity policy in July 2019 but, due to her suspension she had not been able to work, financial considerations meant that she could no longer afford at that time to continue her policy nor could she, after that date, afford to put in place indemnity insurance in general or a specific policy of run-off cover.
35. The applicant's case was that she should be restored to the List so that she could practise dentistry and would put in place indemnity insurance when she had the means to pay.

### **The Regulatory Framework**

36. There was no dispute as to the legal framework as set out in the Respondent's skeleton argument.
37. Dentists who wish to provide NHS dental services in England are required to be named in the National Health Service Dental Performers List ('the List') as provided by the framework set out in the National Health Service (Performers Lists) (England) Regulations 2013 ('the 2013 Regulations'). The 2013

Regulations provide a statutory regime for the admission, suspension and removal of dentists from the List with, it is submitted, the purpose of:

- ensuring dentists are competent to provide NHS dental services;
- protecting patients from dentists who are not competent to provide NHS dental services;
- in the event a dentist provides a patient with a standard of care below that required by the NHS;
- dentists have in place indemnity insurance to provide a remedy to such patients.

38. Regulation 4(2)(h) of the 2013 Regulations provides that when Mrs Stavrinidou made her application for inclusion in the List she was required to provide: 'evidence that the Practitioner has in force an appropriate indemnity arrangement which provides the Practitioner with cover in respect of liabilities that may be incurred in carrying out the Practitioner's work;'

39. Regulation 4(3)(c) of the 2013 Regulations provides that Mrs Stavrinidou was required to provide the following undertaking:

'to maintain an appropriate indemnity arrangement which provides cover in respect of liabilities that may be incurred in carrying out work as a Practitioner at all times and to provide evidence of such an indemnity arrangement to the Board on request;'

40. NHS England relied upon the 'unsuitability' provision in Regulation 14(3)(d) of the 2013 Regulations to remove Mrs Stavrinidou from the List:

'The Board may remove a Practitioner from a performers list where any one of the following is satisfied -

....

the Practitioner is unsuitable to be included in that performers list ("an unsuitability case").'

41. Regulation 15 of the 2013 Regulations sets out the criteria for a decision on removal on the grounds of unsuitability. The relevant parts of Regulation 15 are:

'(1) Where the Board is considering whether to remove a Practitioner from a performers list under Regulation 14(3)(d) (an unsuitability case), it is to consider -

....

(c) the matters set out in paragraph (2).

(2) Those matters are -

(a) the nature of any event which gives rise to a question as to the suitability of the Practitioner to be included in the performers list;

....

(d) the relevance of the event to the Practitioner's performance of the services which those included in the relevant performers list perform, and any likely risk to any patients or to public finances;'

42. Regulation 17(4) of the 2013 Regulations provides that:

'On appeal, the First-tier Tribunal may make any decision which the Board could have made.'

43. Regulation 17(6) of the 2013 Regulations provides for the imposition of conditions upon the inclusion of a Practitioner in a List. The Respondent argued that as the removal of Mrs Stavrinidou is sought on the ground of her unsuitability to be in the List, this provision is not available in this case.
44. The Tribunal is required to make a fresh decision, one which the Board could have made.
45. The burden of proof rests upon the Respondent, and the standard of proof is the balance of probabilities.

### **Evidence**

46. We received an indexed bundle which had been prepared by the Respondent and contained the evidence and submissions of both parties. We do not rehearse their contents as these are a matter of record. We have summarised the evidence insofar as it relates to the issues we determined.
47. At the hearing, in addition to the issues outlined in the bundle and in the skeleton argument, the Respondent pointed to some inconsistencies in communication between NHS England and the Appellant regarding the Regulations under which regulatory decisions prior to the one under appeal had been made. The Respondent pointed out that a letter dated 20<sup>th</sup> June 2019 purported to change the Appellant's suspension to one under Regulation 12(1)(A) when it should have referred to Regulation 12 (1A) and erroneously referred to the previous suspension decision as having been under Regulation 12(1)(b) when it should have been 12(1)(a).
48. The Respondent argued that the Appellant received a letter referring correctly to Regulation 12(1)(a) and that the relevant Regulation was 14(3)(d) which is the consideration of unsuitability and that having correctly communicated that, the suspension from 25<sup>th</sup> April 2019 was effective.
49. The Respondent argued that there was only one provision in Regulation 12 with a capital 'A' and there was therefore no ambiguity in the communication of this decision to the Appellant.
50. The Respondent argued that both of these matters were accepted within the Scott schedule by Mrs Stavrinidou.
51. Mrs Stavrinidou was invited to turn to the Scott Schedule in the bundle to establish the Regulations relied upon by NHS England in their suspension decisions.
52. Mrs Stavrinidou was then directed to the minutes of the panel decision of 25<sup>th</sup> April 2019 at page C192 of the bundle which refers to Regulation 12(1)(a). Mrs Stavrinidou was asked if she took issue with this. She replied that she did not know and did not understand.

53. Mr Collins gave evidence confirming the contents of the two witness statements made by him and included in the bundle. He referred to a table of the correspondence between him and the Appellant. He stated that he had made contact with Mrs Stavrinidou on 24<sup>th</sup> March 2020 requesting confirmation that she had in place a suitable policy of indemnity insurance and that the Appellant responded on 26<sup>th</sup> March to confirm that she cancelled her indemnity policy in July 2019 due to her finances.
54. He explained the mandatory nature of appropriate indemnity insurance including run-off cover. He stated that when an application is made to be added to the list, evidence must be provided by a practitioner of indemnity insurance which includes run-off cover for the protection of the practitioner and of patients.
55. Mr Collins stated that he had been in regular contact with the Appellant but that she had not mentioned to him that she was cancelling her cover. He stated that Mrs Stavrinidou had been given an opportunity to obtain run-off cover and had not done so and that in his opinion she was not suitable to be included on the list for this reason. He stated that he was not aware of any of the payments made to the Appellant by NHS England, which totalled £13,999.42 between July 2019 and January 2021, and continued at a rate of £1,684.18 per month, being used by her to obtain run-off cover and that he had not been informed of any attempt to obtain such cover since 13<sup>th</sup> January 2021. The correspondence continued through April 2020 and on 20<sup>th</sup> May 20 Mr Collins wrote to the Appellant to remind her of Regulation 4(3)(c) of the 2013 Regulations and provided her with an opportunity to obtain appropriate indemnity cover, retrospectively backdated from when she cancelled her previous cover in July 2019. Mr Collins had advised the Appellant that her continued inclusion in the National Performers List would be considered by a PLDP if she did not submit evidence of run-off cover by 3<sup>rd</sup> June 2020. The Appellant responded on 1<sup>st</sup> June 2020 stating that she could not afford the cover.
56. Mr Collins was asked by the panel whether it is normal for dentists to ask him for clarification on procedures, he replied that this does happen, but that Mrs Stavrinidou had not asked him about indemnity insurance and he was not aware of any issue, but that in the hearing on 25<sup>th</sup> April 2019 it was noted that her indemnity insurance policy did not have run-off cover, though the matter was not progressed at the hearing. He stated that the main concern at the oral hearing had been Mrs Stavrinidou's health. He stated that he became aware of the lack of an indemnity insurance policy on 26<sup>th</sup> March 2020. He stated that as a supportive measure he had provided an opportunity to put in place back-dated insurance and had the Appellant done so she would have continued on the list albeit suspended as a result of action taken by the GDC.
57. Mr Claydon gave evidence confirming the contents of his witness statement within the bundle and corrected his qualification to LDS RCS. He stated that run-off cover was a requirement to ensure that patients had appropriate access to redress should it be necessary to make a claim against a practitioner and that by not obtaining such insurance, Mrs Stavrinidou had failed to put measures in place to protect previous patients should they have



cause to make a claim for negligence against her. He stated his opinion that the Appellant's actions demonstrated a significant lack of insight in terms of her obligations to ensure that any patients she had treated had adequate recourse should they make a claim for negligence against her and that as a result of this she was unsuitable to be included in the Dental Performers List and should be removed from it.

58. Mrs Stavrinidou stated that she knew Mr Claydon personally and she saw him in April 2019 after a report into her work. She stated that she attended the 25<sup>th</sup> April 2019 hearing with her clinical advisor, Sean Bradley. She stated that she had told Mr Claydon that the conditions she had been working under were not good and that the clinical supervisor did not help her properly and the nurses were slow. She stated that there were no slow drills and she could not clean teeth appropriately. She stated that she took these concerns to Mr Majid, the practice manager, but nothing was done. She stated that these concerns were raised with Mr Claydon at the hearing and she stated that he said he would inspect her next place of work. She stated that Mr Claydon said that the panel did not need to suspend her.
59. Mrs Stavrinidou stated that Mr Claydon instead recommended her examination by a psychiatrist.
60. Mrs Stavrinidou asked Mr Claydon why he recommended a suspension. Mr Claydon stated that he could not promise the outcome of any panel decision. He said he had stated to Mrs Stavrinidou at a meeting with her in March 2019 that there was a possibility of suspension and that his recommendation for suspension was made on the basis of the concerns raised by the inspection of Dr Peterson dated March 2019, in particular her concern that Mrs Stavrinidou was not currently working at a level suitable for NHS practice.
61. Mr Claydon stated that payments were made to practitioners by the NHS when suspension decisions are made.
62. The evidence of Mr Collins was that this payment was made retrospectively, as referred to in a letter dated 28<sup>th</sup> November from Sunday Imaji, Programme Manager Professional Regulations.
63. Mrs Stavrinidou gave evidence that she adopted the witness statements provided by her in the bundle.
64. Mrs Stavrinidou stated that regarding the decision of the PLDP on 25<sup>th</sup> April 2019, if she had not been suspended, "everything would be ok", as the GDC gave her another suspension 3 months after that, in her view, as a consequence of this decision. Beforehand, she had had conditions only from the GDC. She stated that before that time she had been working and been able to afford things, but she could not pay her insurance after 7 months not working. She stated that she had been paying indemnity insurance up to May 2019 and that no one asked her if she cancelled her insurance and whether she had run off cover. She stated that her insurance company wanted her to pay, but she did not have any money and decided to cancel the policy and return to Greece. She stated that she knows the importance of indemnity and run off insurance, but she could not do otherwise.

65. Mrs Stavrinidou stated that she had told the NHS that she did not have cover when asked as it had not occurred to her to volunteer this information. She stated that if she had a job and had been working it would not have been necessary to cancel the cover. She stated that the GDC were 'very happy with her' and that only because she was suspended by NHS England did she lose employment.
66. Mrs Stavrinidou stated that she had started to receive payments of some £1700 per month from NHS 7 months after her suspension. She stated that this was not sufficient to pay run-off cover as a policy would cost £1400 per month and she needed to cover her living expenses with her NHS payment. She stated that she had £60,000 debts which she could not pay and that she was in despair.
67. Mrs Stavrinidou stated that in advance of the 25<sup>th</sup> April 2019 hearing she had found a new practice which was good, but that she had been referred to a psychiatrist despite, she said, being very healthy.
68. Mrs Stavrinidou confirmed in evidence that she did not currently have run-off cover. She stated that her insurance company had refused to provide her with this cover as she had cancelled her indemnity insurance and owed them 6 months of premiums.
69. Mrs Stavrinidou stated that Dr Peterson had been aggressive with her, that she was afraid, and that poor equipment at the practice had contributed to the findings of Dr Peterson's report.
70. Mrs Stavrinidou was asked whether concerns were raised about her practice in 2018 and that she was suspended from the list on 19<sup>th</sup> June 2018 and then on 23<sup>rd</sup> October 2018 was given conditions of practice. She confirmed this was correct.
71. She stated that she started work at the Lincolnshire practice in January 2019 and that she had not complied with her first condition but that this was the fault of her clinical supervisor.
72. Mrs Stavrinidou confirmed that she had in place indemnity insurance from 14<sup>th</sup> January 2019 but stated that she cancelled it in July 2019. She was asked about the 'extended notification period' and whether this provided three years of limited cover under certain circumstances. She stated that her broker told her 'everything was ok and she had cover for everything' and she 'could not read the whole policy as she could not understand that'.
73. Mrs Stavrinidou was asked whether she gave that policy to the panel at the hearing on 25<sup>th</sup> April 2019. She confirmed that she did, and that she cancelled it in July of 2019 without notifying NHS England.
74. Mrs Stavrinidou accepted that it was a requirement of being on the list that she had to have runoff cover and without it she could not be on the list.
75. Mrs Stavrinidou was asked about her problems with the Lincolnshire practice

and how she linked this with her current lack of indemnity insurance. She stated that she stopped working as a result of her suspension and this was the link.

76. She stated that if she was given the opportunity to work then she could pay her indemnity insurance monthly. She stated that this is what she did in January 2019 when she was given money by the British Dental Association (BDA). She expected to be given two months' premiums in this way. She stated that she had not made enquiries with insurance brokers.

77. Mrs Stavriniidou was asked how she was sure that the BDA would pay 2 months indemnity insurance premiums. She stated that when she called in December 2018 the BDA had paid this sum. She stated that they also paid her a further 3 months premiums as she had not, she said, received all the money she should have from the Lincolnshire practice. She stated that she was not a member of the BDA at that time.

78. Mrs Stavriniidou stated that she was not practising in Greece and had closed her practice there in 2007, that no dentists employed other dentists in Greece and there was no opportunity for her to work there. Mrs Stavriniidou stated that she obtained British nationality in 2015.

79. We were provided with a copy of the policy of insurance which the Appellant had previously had in place, and an analysis of its provisions by Mills and Reeve LLP, solicitors, which the Respondent adopted. The policy made no reference to run-off cover, but had an "extended notification period" which allowed the Appellant to notify the insurer of claims up to 3 years after the end of the term of the policy, in the event that the Appellant had retired, died, been permanently disabled or ceased her business provided that she had first given notification to the insurer and paid all premiums. This extended cover did not apply where the policy had been cancelled for non-payment of premiums.

### **The Tribunal's Conclusions with Reasons**

80. We took into account all the evidence that was included in the hearing bundle and presented at the hearing.

81. We reminded ourselves that as this was a redetermination, it remained for the Respondent to prove its case for removal under Regulation 14 of the 2013 Regulations.

82. We considered all the circumstances of the Appellant's case. We concluded that, the Appellant was unsuitable to remain on the List due to the inadequacy of professional indemnity insurance. Our reasons for doing so are set out below.

83. We accepted the submissions of the Respondent that the initial suspension was pursuant to Regulation 12(1)(a) and present suspension is under Regulation 12(1A) of the 2013 Regulations. We noted the minutes of the oral hearing of the PLDP panel which referred at page C27 of the bundle to the correct Regulation, 12(1A). The inconsistencies in correspondence, very

fairly raised by the Respondent, amounted in our judgement to typographical errors and the basis of each suspension had been made clear to the Appellant on each occasion. Though at the hearing she stated that she 'was not sure', the Appellant had taken no issue with these matters in the Scott Schedule and did not seek during the hearing to assert that either suspension had been made in reference to an incorrect Regulation. We concluded that both suspensions had been correctly made and had taken effect.

84. We noted the Appellant's concerns that she could not afford cover and her request that she be returned to the List in order to work, earn money and pay for the policy, with funds she anticipated receiving from the BDA. We noted that she had not approached the BDA, or any insurer. She stated that she was living in Greece and was not practising there. She did not mention in evidence any employment open to her in the UK.
85. We made limited factual findings, as all the substantive allegations made by the Respondent were accepted by the Appellant.
86. We found on the balance of probabilities that the Appellant had cancelled her policy of indemnity insurance in July 2019, the reason for this being her lack of funds to pay for premiums after her suspension, as she had not by then received funds from NHS England related to her suspension. This policy provided no express run-off cover, as it was a 'claims made and reported' policy which covered the Appellant for claims made during the policy period. The policy did make provision for claims to be notified to the insurer three years after the Appellant's death, retirement, permanent disability or cessation of business and then only providing that notice had been given to the insurer. This, we concluded, was not a suitable policy of insurance even when it was in force and since the Appellant's cancellation of the policy in July 2019 it had provided no run-off cover at all.
87. At the date of the hearing the Appellant had no cover in place and had no concrete proposal to obtain any. She had not made any attempt to use funds given to her by the NHS in relation to her suspension to obtain a policy of run-off cover, as she had been using this money to pay her personal living expenses and to service her considerable debts of £60,000.
88. We were concerned that the Appellant lacked insight into the requirement for a policy and her primary concern was for her financial position and not for the risk to her patients and to her if any claim was made without a policy of insurance being in place to address it.
89. We make no finding as to the competence of the Appellant to practise but the fact that we were informed of one patient complaint and concerns discovered on inspection over her clinical performance underline the importance of mandatory insurance being in place to address any claims made against the Appellant in respect of her treatment.
90. The Respondent submitted that, whilst Regulation 17(6) of the 2013 Regulations provides for the imposition of conditions upon the inclusion of a Practitioner in a List, as the removal of the Appellant is sought on the ground of her unsuitability to be in the List, this provision is not available in this case.

it clear that whilst there is a power, in some cases, to impose conditions on a practitioner's inclusion on the Performers List there is no power to impose conditions because a practitioner is unsuitable to remain on the List. We accepted this submission and concluded that it was not open to the Tribunal to place a condition upon the Appellant's inclusion in the List that she obtain a suitable policy of indemnity insurance. That a practitioner holds such a policy is a pre-condition of inclusion in the list.

91. We took into account the Appellant's circumstances (including her previous regulatory history, the fact that she was not presently practising either in England and Wales or in Greece and her lack of means to pay for a policy of insurance) and considered that removing the Appellant from the List was both necessary and proportionate at this stage. She has been given a number of opportunities to obtain run-off cover. She does not appear to appreciate the importance of having run-off cover or the risks to patients and to her, personally, of not having run-off cover. We concluded that a practitioner who has been unable or unwilling to arrange for adequate indemnity insurance in the event of a claim being made by a patient who has previously been treated and experienced a poor outcome, must be regarded, so long as such a policy of insurance is not in place, as unsuitable to remain on the List.
92. We note that the Appellant's removal will not prevent her from re-applying to be included on the list should she obtain a suitable policy of insurance.
93. We concluded, therefore, that the Appellant's appeal shall be dismissed and the decision to remove her from the NHS Performers List is confirmed.

**Tribunal Judge G Brandon**

**First-tier Tribunal (Health Education and Social Care Chamber)**

**Date Issued: 01 June 2021**