IN THE COMPETITION APPEAL TRIBUNAL

Case No: 1701/5/7/25

Salisbury Square House
8 Salisbury Square
London EC4Y 8AP

Friday 26th September

Before:

Ben Tidswell
Ioannis Kokkoris
Charles Morrison

(Sitting as a Tribunal in England and Wales)

BETWEEN:

NST WORLDWIDE LIMITED

Claimant

v

(1) WORLD SNOOKER LIMITED
(2) WORLD SNOOKER HOLDING LIMITED
(3) WORLD PROFESSIONAL BILLIARDS AND SNOOKER ASSOCIATION LIMITED

Defendants

A P P E A R AN C E S

Ben Quiney KC and Hamish Fraser (Instructed by London Litigation Partnership) on behalf of NST Worldwide Limited
Marie Demetriou KC and Jacob Rabinowitz (Instructed by Livida Legal) on behalf of World Snooker Limited and World Snooker Holding Limited
Tom Mountford (Instructed by Bird & Bird) on behalf of World Professional Billiards and Snooker Association Limited

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Friday, 26 September 2025

(10.30 am)

Housekeeping

THE CHAIR: Yes. Good morning, Mr Quiney. I need to read the live stream warning first, so if you just bear with me.

Some of you are joining via live stream on our website, so I should start with the customary warning. An official recording is being made and an authorised transcript will be produced, but is strictly prohibited for anyone else to make an unauthorised recording, whether audio or visual, of the proceedings, and breach of that provision is punishable as a contempt of court.

Good morning, everybody.

MR QUINEY: Good morning, sir, and thank you very much. You'll have seen from the exchange of emails, or the product of the exchange of emails, an email to the court, the tribunal, yesterday, identifying matters that have been resolved --

THE CHAIR: Yes.

MR QUINEY: -- and matters that remain live.

THE CHAIR: Yes, that was very helpful. Thank you.

MR QUINEY: You'd be very glad to hear there's one further matter that's managed to be resolved this morning as well.

THE CHAIR: Good.

MR QUINEY: So --

THE CHAIR: There are some -- I should just say, and let's run through and just work out what we have got. I should say there are some things that I think we probably want to say about some of the things that have been resolved, which you may view as being unhelpful. A retrograde step, but just to touch on them and just to give you

a sense of some guidance from us on what we think would be helpful.

That particularly, I think, applies to the first issue about the list of issues. But anyway, do you want to just remind us, just to make sure we're all on the same page? I think we've got an email, I think, from Mr Mountford, which tells us the answer, but just, that is the position as we currently stand, is it? That we are dealing with issue 2, which is the amount of the security costs.

MR QUINEY: Yes. So if I may just pick up the points that, of course, are not an issue, just so we're on the same page.

THE CHAIR: Yes, that's easier.

MR QUINEY: So starting from Mr Mountford's very helpful email. Then, of course, the list of issues, which I understand, sir, you may have comments on. And the current position is that we have agreed to try and agree that within a period of time, say, three weeks from today. And that would be using, as a basis, the skeleton I draft that was attached to our submissions --

THE CHAIR: Yes.

MR QUINEY: And I understand the defendant's position, they'll respond to that, and then we'll respond to their response. We anticipate that there's going to be a balance of correspondence, no doubt, but we would hope to be able to resolve that in three weeks, if that is acceptable to the tribunal.

THE CHAIR: Yes.

MR QUINEY: The second issue is the security for costs, and you remember, there are three bases of relief sought by the defendants.

First, the issue regarding the anti-avoidance endorsement, and particularly, focusing on the issue of the risk of fraud, if I can put it that way.

THE CHAIR: Yes.

MR QUINEY: That has, as we know, been resolved by a suitable endorsement, which

has been secured at pace, from those insuring my client on the ATE policy. There was a collateral second point, basis B in Ms Ellen's statement, which was, "Well, if we can't get that," says the defendants, "we want payment in now". But of course, that falls away as well, given that the anti-avoidance endorsement is acceptable.

And that leaves the last of the three points, which is, nonetheless, the defendants would seek an order that within 12 weeks before trial, the limit of indemnity, which is currently 2 million -- which, of course, we say is enough -- would nonetheless have to be increased to 2.8 million, and that's the point of dispute between the parties on that, which I'll address you on after the tribunal's comments. I suggest I address you on that first.

THE CHAIR: Yes. I was going to say, Ms Demetriou's applications, presumably --

MR QUINEY: I suggest that we address --

THE CHAIR: We deal with that first, yes.

MR QUINEY: I hope to address you on it at some point, anyway.

THE CHAIR: I'm sure you will.

MR QUINEY: Issue 3 was what was described as the RFIs, and this was connected with issue 4 on disclosure. That has actually been resolved now.

THE CHAIR: Yes.

MR QUINEY: So the essence of that resolution was the major focus, as you'll have seen from the skeleton argument submitted by my client, was a concern about historical versions of the player's contract, which you may remember, is at the core of this case, which is, we say, one of the tools that the defendants, certainly D1 and D2, have utilised to exert the monopoly. And I understand from my friend that there is a commitment to seek earlier iterations of that contract, and to provide them post-2010, not the 2001 that (audio distortion). That is acceptable.

THE CHAIR: What's happened to the rest of the RFIs? I mean, actually, I have to

confess that we weren't entirely sure what documents were still in play, but there were clearly a number of RFIs that have been answered and I think you're still considering; is that right? Is there a process agreed for how that's going to be resolved?

MR QUINEY: There isn't a process agreed. For our part, as you know, we put the RFIs in before the summer, (inaudible) in June. The position adopted by the defendants is, "Well, at that point, we're not going to answer them by the time you want us to answer them, but we will answer them eventually".

At the beginning of September, we had emails to the effect of "We're not going to answer a number of these, but we will try and answer some of them". And those some were answered on 19 September by D1 and D2, and then this week, D3 provided answers that were promised as well.

The short point is we don't have an application. We don't have an application because we haven't had time to put an application in, and as you might anticipate, we'd want to think quite hard about doing that. Not least to try and focus the application, but also, as you know, my client is a startup and doesn't have a large amount of funds, and there's cost risks attached to these sorts of applications.

So as far as how we deal with the responses we've had, I can tell you that we are unsatisfied with a number of them. Whether we go so far as to seek the assistance of the tribunal on those, is a matter we're still considering. If the tribunal would want to set a timetable, potentially, it should (audio distortion) position on that (audio distortion) an application (audio distortion).

THE CHAIR: I don't want to do that, but I did want to make the observation: it did seem somewhat extraordinary that there were 63, I think, RFIs in total. It seems like an awful lot, and I'm pleased to hear that were focus in your submissions, and I certainly would encourage your client to think very carefully about what it actually needs at this stage.

Obviously, there's disclosure coming, there's witness statements coming, there are plenty opportunities to get to the bottom of things. It's really what is necessary at the moment, if something's(?) necessary at the moment.

So I'll leave that with you. I don't want to have a discussion about the RFIs that's unnecessary, and I certainly don't want to set any sort of timetable for it. But what I do want to make plain is that if -- and I would like to say a little bit about the management of this case in a minute, before we launch into the detail -- but if we get back disputes, or what's apparent to us there have been disputes about RFIs, which are unfocused on either side -- and this is not a point just about your client; it's about all the parties -- then we will be looking to impose sanctions for that sort of behaviour that's not proportionate.

So I think everybody should keep that in mind while they're going through the process of considering your requests, such as they are.

MR QUINEY: That's very helpful, and certainly, that is consistent with why we want to take time properly (audio distortion). (Audio distortion) clarifies (audio distortion) that have now come in --

THE CHAIR: Yes.

MR QUINEY: -- and take a view on that, as opposed to trouble the court with applications, which we have done. And the one point that was made in dispute (audio distortion).

THE CHAIR: That's --

MR QUINEY: That was, going back to Mr Mountford's very helpful email, that was both issue 3 and also issue 4.

THE CHAIR: Yes, just on issue 4. So I -- again, I would like to say a little bit about the approach to general -- in fact, actually ask you a little bit about the general approach to disclosure, so when we -- we might put that back on the agenda. But

I don't think it'll take very long.

I just want to understand a little bit more about how you're approaching it collectively -- that is not just you -- and where you've got to so far on that. But we can deal with that, perhaps, in the right order.

MR QUINEY: Certainly, within the appropriate time, thinking about the course of today's submissions, that'd be an appropriate time to consider that in the context of the timetabling.

THE CHAIR: Well, we could do that, or we can just do it in the order it was before. Just leave it a placeholder for it. Why don't we just leave it as item 4 and we'll deal with it then.

MR QUINEY: That then takes us back to Mr Mountford's helpful email. Issue 8, trial timetable, is fallen away.

There's issue 6, which is described as witness immunity. This is not a matter that I'm seeking at the assistance of the tribunal on. It is simply a concern that my client has ventilated in correspondence, and we're looking for just a very simple commitment from D3, the association, which is the concern that within the context of the disciplinary process -- and I deal with this at paragraph 53 onwards in my skeleton -- there is a risk or a perceived concern that the disciplinary process might be utilised by virtue of the fact of giving evidence on behalf of our client.

So if players were to become witnesses in this action, on behalf of my client, they're obviously subject not only to the extensive rigours of the tribunal's governance of the evidence they give, but they're also potentially subject to disciplinary procedures under the association. And we just simply wanted a commitment that the act of giving evidence in this, as opposed to the quality of evidence, the act of giving evidence would not be a matter that would give rise to disciplinary action.

That's been ventilated in terms in the correspondence, but the commitment put in my

submissions has not been firmly agreed to.

THE CHAIR: Yes. Well, I mean, just leave it in the agenda there, and we'll deal with it in --

MR QUINEY: I'm grateful. And then going back to the issues in dispute -- the second page of Mr Mountford's email, we can see there issue 2 on the question of how much and when on the security. Issue 4 and disclosure is gone. Issue 5 on expert witnesses remains, which is we're asking permission from the tribunal for three disciplines --

THE CHAIR: Yes.

MR QUINEY: And the defendants are asking for one common discipline with us, but saying, "Let's wait until disciplines two and three". And then the issue of the timetable. In particular, maybe working backwards when we're going to have a trial and see what space we have there, because there seems to be a major (inaudible) between the parties (inaudible) the trial should take place. I'm grateful.

THE CHAIR: Thank you. Mr Mountford, yes.

MR MOUNTFORD: Sorry. May I just deal with two points of clarification? First of all, in relation to the list of issues, I think, in my email to the tribunal, I noted that the specific timings in relation to that were to be discussed. What we had proposed in my skeleton argument was that --

THE CHAIR: Before you get into that, we're going to talk about them anyway. So this is sort of just the -- this is just the wash up of what's live and what's not. So why don't you just hold that -- hold fire on that, and then --

MR MOUNTFORD: It's just the (overspeaking) --

THE CHAIR: When we get to that in a minute --

MR MOUNTFORD: It was suggested that it was agreed at three weeks, but I think it's --

THE CHAIR: Yes, well, certainly I can -- yes, okay. That's fine. Well, we'll get to that

in a minute. That's helpful, thank you. So that's the agenda, then; that's what we're dealing with.

Just before we start, I do want to make an observation, and I certainly don't want in this to get into any arguments with the parties about fault, because that, I think, would be really unhelpful at this stage in the proceedings and indeed, I'm not sure it's helpful to do that. But it is plain to us that the proceedings are being conducted, at least in some respects, in a way that we think looks uncooperative and disproportionate.

Just to give you some examples of that, the unnecessary extensive pleadings, which I will say something about in a minute, but they seem to us to be really quite unsuitable for a case of this sort in this tribunal. The nature of some of the applications before us, many of which have gone away, but actually the fact that they got as far as they did, and the amount of paper that seems to have been expended on them between solicitors, is a concern. Related to that the apparent inability of the parties to agree points which should obviously be resolved by agreement. All of that is apparent -- it's certainly apparent to us -- from the material we have in front of us.

So what I wanted to do was remind all the parties about rule 4(7) of the rules, the tribunal's rules, that provides that:

"The parties (together with their representatives and any experts) are required to co-operate with the Tribunal to give effect to the principles in this rule."

Which is basically that the cases are dealt with justly and proportionately, the emphasis here on proportionately.

Just to be very clear, that imposes a duty on the parties to assist the tribunal in making sure this case is dealt with proportionately. We do expect that to happen in the real world as well as in the rules, and those who are familiar with the tribunal will know that we're prepared to case manage vigorously if we think the parties are not doing that properly themselves. That will, of course, include a much more interventionist

approach from the tribunal, and it will also involve the use of cost sanctions to discipline poor behaviour.

So I just don't want anybody to be under any illusion about the status quo and the ability to continue with the status quo. That is not, as far as we're concerned, satisfactory. I would ask all the parties and particularly the solicitors to think carefully about their approach to the management of these proceedings.

So I'm sorry to start with a complaint, but it's better to get it out early rather than later. You can treat it as an early warning signal, if you like, but I'm afraid to say that the next time we have to raise it, it's much more likely there will be consequences for behaviour which is not consistent with rule (7). I don't know if anybody wants to say anything about that. I'm certainly not inviting it, but if anybody has any observations, they're very welcome to.

MR QUINEY: Sir, I'm sure we're all listening and we've all taken that on board, but there are no particular observations on that.

THE CHAIR: Good, thank you. Thank you.

Shall we get into item 1, then, on the list of issues? I don't want to prolong this, but just to give you a bit of a sense of our thinking on it and then obviously any thoughts from you.

I think our starting point on this is that we -- as I've mentioned, the pleadings seem to be a very difficult set of documents for us. I've counted up something like 400 pages before we got to the appendices. They are very expansive documents: they contain an awful lot of factual material; they contain what appears to be quite a lot of advocacy; and they go quite a long way beyond what I think we would normally expect in this tribunal and indeed in the High Court, proper pleadings to look like.

There was a moment of temptation where I thought that perhaps we should be saying to you, "You need to go away and replead this case so that it looks sensible", but I am

conscious of the proportionality of that, heeding my own advice, and I think probably the most efficient way to deal with the problem is by way of a good list, a very good list, of issues.

So we would like some serious emphasis to be put on that, and obviously that is what the parties have agreed between themselves they want to do. But I thought I'd just give you a little bit of an indication of what we would find helpful.

First of all, it should be a logical list -- logical, in the sense of the flow of the framework of the case -- setting out the issues that we have to resolve. That, of course, should cross-reference to the key parts of the pleadings. When I say the key parts, obviously you might take the view that some of the issues relate to large swathes of the pleadings. That's not very helpful for us. What we want to be able to do is to see the issue and go and see the meat of the point in the pleading if that's what we want to do. We don't want to see everything that relates to it. What I have in mind is that it will, as a matter of practicality, effectively replace the pleadings as a working document.

I'm not trying to be innovative with that, as some might be concerned. It's really actually just a practicality because I don't see the pleadings at the moment being working documents; they're just not documents that we, I think, are going to find easy to navigate, either when we read things or indeed when you're dealing with them in trial.

So what I would hope is that if we've got pleadings in the correct, logical order which deal with the issues at the right level of granularity, it will be a very clear roadmap to the issues in the pleadings and will help us as if they were the pleadings, if one could put it that way. I'm certainly not putting the pleadings into the wastepaper basket; they absolutely remain on the record and they're important documents. There will be moments, I'm sure, when we need to go and look at them in detail. But what I really

want is a bit of a shortcut for that exercise, so we can find what we need when we need it.

Just to give -- if it's of any help -- and I appreciate that the document attached to your skeleton clearly was a draft, but it certainly seemed to us that it could deal with a fair amount of further granularity.

Just to give an example, I think you've talked about market dominance as an issue. Well, you know, what would be really helpful to us would be to have a statement of what is the proposed market, and as and when there's a response to that, what the response is. If there's no response to it, obviously, then it'll have to be dealt with in the economic evidence. But at least we know what the relevant market contended for is, and then obviously, who's said to be dominant in what market, and what other markets might be relevant.

So that's the sort of granularity. I don't want to get into anything more detailed than that. There's an exercise in the judgment in here. I'm sure that you've all done this before in different ways, and I'm sure you'll have very good means of agreeing between yourselves about the right level of granularity. So I don't think I need to say anything more about that, but that was hopefully just an indication about what we would find helpful.

Just one other thing. I certainly have a firm view that when we get into experts, it's helpful for the experts to have some clarity between them as to what they're addressing. Again, I'm not seeking to be prescriptive and to stop people doing things that the experts feel they need to do, but at least having some certainty of what the key issues the experts are looking at seems to me to be a useful discipline for everybody, and so I would hope this document would feed into that process.

Now, clearly that depends a little bit on the stage with(?) instruction of the experts and their engagement. I'm not closing the door on amendment to this thing at all or the

evolution of it, but I would like you to think about it as being useful for that purpose as well while you prepare it.

Why don't I stop there and just see whether anybody's got any observations on that? Ms Demetriou.

MS DEMETRIOU: Sir, we agree that the issues need to be more granular, and the current draft -- I'm not criticising my learned friend at all -- tends to roll various issues into a single issue. I think we'd be content on our side to have a first stab and send it to my learned friend as part of that process, but we completely agree with what you've said.

THE CHAIR: Well, thank you. I think you've got Mr Quiney's draft and, in a way, I think the ball is therefore in your court. I'm sure if you'd feel that -- you know, you will do as little violence as you need to, but as much as you have to, I suppose, to the draft.

MS DEMETRIOU: Yes, exactly.

THE CHAIR: I'm sure that you'll do that, bearing in mind the usefulness of it to the tribunal.

MS DEMETRIOU: Of course, sir.

THE CHAIR: Yes. Thank you.

Mr Mountford.

MR MOUNTFORD: I certainly endorse what my learned friend, Ms Demetriou, has said. For the third defendant, it's also an important aspect of the list of issues, which isn't reflected in the draft that the claimants have provided, that there's a clear delineation as between the positions of the first and second defendant and the third defendant.

THE CHAIR: The abuse of dominance in the Chapter I (overspeaking).

MR MOUNTFORD: Yes, exactly. Also, even within those parts of the heads of claim that are pleaded, then we'll always plead it against both.

THE CHAIR: Yes.

MR MOUNTFORD: So a clear articulation of which of the issues do and don't relate to which defendants.

THE CHAIR: Actually, that was behind my observation; that it would be useful to know who's said to be dominant in what market, because obviously that's quite different, I imagine, for your clients as to the other defendants.

MR MOUNTFORD: Sir, in relation to timings, what I had proposed in my skeleton argument was that within a three-week period, a draft is produced - well, we will produce the next draft within that three weeks, and then we allow three weeks to seek to agree it. I don't think it's realistic to produce that, seek to agree it and submit it within three weeks from now, but I think within six weeks we should be able to do that. Obviously, if we're in a position to circulate a revised draft sooner, we will do. But I think that, given the importance of the document as a tribunal sees it, there isn't any particular reason to rush to do that in three weeks as opposed to a more realistic six weeks.

THE CHAIR: Is that timing agreed?

MR MOUNTFORD: Well, I had understood that -- because I had understood -- yes.

MR QUINEY: Just two points, sir. Obviously, we agree with everything you've just said, and that seems a very sensible approach. Certainly, I would hope that the parties can co-operate on that, and certainly the first list of issues was simply a stab to invite your conversation.

THE CHAIR: No criticism at all of it. No, I understand.

MR QUINEY: But we appreciate that time will be taken on this. While all the parties take on board earlier comments about co-operation, this is an important document and we will seek to do our best in doing(?) it.

As to whether a total of six weeks is appropriate for this process, that feeds in,

essentially, to the timetabling issues that we'll come to probably at the end of this hearing. But you'll have seen that there is a concern on our side that matters may move too leisurely for our liking, given our commercial interests in the position that we've adopted in this litigation.

So may I just say, for the moment we have an open mind for, say, two weeks and two weeks, but I'd rather not commit to three weeks and three weeks before we get into the timetabling questions.

THE CHAIR: Well, let's see within the timetabling point. I mean, I think the only thing I would say is it seems clear that I think we all agree it's going to be a useful document, and therefore we want to make sure it's as good a document as we can sensibly make. But let's come back to the timing point when we look at the timetable.

Yes.

MR QUINEY: Sir, from my part, I have no further comments before we get into the security for costs, unless, sir, you have (inaudible).

THE CHAIR: I think (inaudible) on the subject. Yes, fine. Thank you very much.

MR QUINEY: Then I'll hand over to my learned friend.

THE CHAIR: Yes. Ms Demetriou.

Security for Costs

Submissions by MS DEMETRIOU

MS DEMETRIOU: Thank you, sir, members of the tribunal.

The background is set out in our skeleton argument. As my learned friend has indicated already, the application had three elements to it. The elements 1 and 2 have now been addressed. The remaining question is the indemnity limit in the insurance cover, which is, in our submission, insufficient to cover an adverse costs order.

Are you working from electronic or paper bundles?

THE CHAIR: They are all electronic.

MS DEMETRIOU: The draft order is at page 988 of the bundle. In fact, the relevant part is on page 989. I just ask you to remind yourselves of paragraph 3. That sets out the order that we seek.

THE CHAIR: Yes. So this is the point about -- at the moment it's 2 million, isn't it?

MS DEMETRIOU: That's correct.

THE CHAIR: 2 million is offered. You're saying, by the time you get to 12 weeks before trial, that's going to need to be 2.8.

MS DEMETRIOU: Just one point of nuance. What we say is that our total costs on this side, and you'll have seen -- I'm going to take you; there's quite a granular cost estimate that's been carried out by our respective solicitors -- is estimated to be 4 million until the end of trial for both defendants. 2.8 million represents 70 per cent of the 4 million, so 70 per cent being the amount we'd likely to recover approximately if we succeed.

The reason that we have referred to the 12 weeks before trial is that the majority of those costs would have been incurred with brief fees and so on 12 weeks before trial starts. That's the reason for the timing, and that's the reason for the amount.

I propose to make the application as follows. I'm going to take the tribunal briefly to the relevant legal principles, which I can do by reference to our skeleton, and secondly, make my submissions by reference to the evidence. I'm not going to take very long. I'm assuming you've read our skeleton argument.

THE CHAIR: I think we've read the material. Maybe it's helpful just to give you a bit of an indication about our reaction.

MS DEMETRIOU: Yes.

THE CHAIR: I mean, it seems to us that there's obviously a fairly inexorable logic in the points you've just made. But there also seems to us to be a practical question as

to whether it is the right thing now to be specifying the number that is going to apply in whenever it is, and it's certainly not for quite some time. I suppose that the point there is that it seems reasonably unlikely that by the time we get to 12 weeks before trial, the number is still going to be 2.8 million. It might be. I'm not saying it's not going to be. It may be that the cost forecasting has been brilliant and it's exactly right, but it seems possible it might be less. It's possible it might be more.

The problem with that is it leads us to duplication not only of this exercise, but also it puts the insurers to the trouble of having to do it twice as well, and that didn't seem to be enormously helpful. We just wondered whether actually it is a sensible thing to be addressing this now, given that we know we're probably going to have to deal with it again at some stage. That's not to say it should have to wait until 12 weeks for trial. It may be that you would say 20 weeks before trial, you had enough visibility to be able to give us some real clarity about the right number. I'm just giving you that point.

MS DEMETRIOU: That's very helpful. Let me address that --

THE CHAIR: You don't have to deal with it now, but that's the point that's on our minds.

MS DEMETRIOU: No, that's extremely helpful. Let me address that point head on. What we say about that is that you obviously have now a very granular estimate of costs going forward. It would be unusual, to put it mildly, for costs to turn out to be less than they're estimated to be, and in fact, every effort has been made by those instructing me to litigate this in a cost efficient way.

As to the timing, one solution -- I think one problem with simply deferring it, so deferring this application till later, is that we don't have any evidence at all from my learned friend as to whether or not there's going to be any difficulty in seeking an increase in the indemnity from the insurer. So there's no evidence from Mr Mehta in his statement about that. Now, if there is no difficulty at all, if it transpires there's no difficulty in doing

this, then one can see an argument for deferring it. However, if there is a difficulty, it's something really that does need to be grappled with now, in our respectful submission. Because if it does transpire that there is a difficulty -- say 12 weeks before trial, what the claimants say is, "Well, I'm sorry, we can't do this" -- then a lot of work and money is going to be have been expended up to that point and the tribunal is going to be in a difficult position. Presumably the claimants will be facing an application from us to stay the litigation, in circumstances where much work will have been done and the tribunal's diary would have been held.

THE CHAIR: So you're saying it's effectively the wasted costs that -- you're saying if you put them to the test on the 2.8 now, we'll know whether it's going to be forthcoming. But that's a bit -- I mean, that's --

MS DEMETRIOU: Well, sir, it would have been very simple for them to adduce evidence to say, "Well, here's some evidence from our insurer, this is not going to be a problem. But let's have up-to-date information". And sir, in relation to your point -- which I do accept is a good point -- that when it comes to 12 weeks before trial it may be that the cost position has moved on, may I suggest a tweak to what we're proposing, which is: what we could offer to do is at the stage where this is going to bite and the indemnity cover is going to have to be put in place, that sometime before that -- say, four weeks before that -- we provide an updated schedule of costs that have been incurred, so as to render the position much more concrete. That would avoid the difficulty that you're pointing to, sir, which is that corrections have to be made to the insurance cover. So we could undertake, four weeks before the 12 weeks, to provide a schedule of costs actually incurred, so that a more precise view can be taken of what's needed.

THE CHAIR: But at that stage the insurer will then have to go through the process again, won't they, of raising the limit, if the costs have gone up, say.

MS DEMETRIOU: I think that then the limit will have to be addressed, but they will have been under an order from now to do it at least up to the point of 2.8 million, which will offer us protection in the event that it can't be done.

THE CHAIR: So you say that it's the incremental amount, whatever it is, is going to be much smaller than the gap between two and --

MS DEMETRIOU: Exactly, and obviously it lessens the risk to us.

THE CHAIR: Well, except there isn't a risk for you, though, is there? Not in that sense. I mean, obviously there's the risk you indicated earlier, which is that you've wasted a whole lot of costs. But the simple fact is that the insurance policy will pay out against your costs, assuming that they're assessed at around about 70 per cent, which seems quite likely. So the risk is actually minimal. I suppose this is the point. We'll get into the authorities, but as I understand it, the point here is to provide you with protection. As long as the process works so that you come back before you are exposed to 70 per cent of whatever gets you to the 2 million --

MS DEMETRIOU: Yes.

THE CHAIR: -- you're not at risk at all.

MS DEMETRIOU: Well, the risk is the one that I identified a moment ago, which is --

THE CHAIR: Yes. The waste of costs.

MS DEMETRIOU: -- the wasted costs, and --

THE CHAIR: But you're getting those costs back. Well, 70 per cent of them.

MS DEMETRIOU: Well, yes. But then there's potential -- so what happens then if the claimants come back and say, "Well, we can't get this raised indemnity". What happens at that point?

THE CHAIR: But aren't you trying to put yourself in a better position than if they hadn't had to give security for costs? Because let's say they appear to be pecunious at the moment, so they could pay them. Then when you get to 12 weeks before trial, it

suddenly turns out that they can't, or at least they can't pay the top-up. Now at that stage, you're stuck with that, aren't you? So you're trying to put yourself in a better position then, aren't you?

MS DEMETRIOU: I would turn the point around and say that the authorities say that security for costs application should be made at an early stage of the proceedings, and that's precisely to avoid wasted court time and wasted expenditure if, when it comes to trial, the costs of the winning party can't be met. So that's why, in order to achieve certainty, security for costs application should be made very early in the process, which we've done.

So to turn the point around, we say, "Well, you've got all the information in front of you. We're ready. We're here prepared to argue it". What you don't see in the authorities are postponements of these applications to get a clearer and clearer cost position until just before trial. There is a basis on which we say you can and should order that they agree to put this indemnity in place at that point in time.

We're saying that to meet your point, which is that there may be some change in the cost position, we undertake to update the claimants prior to that with a schedule of costs actually incurred. What that does is gives us the security of them being under order to do it, and it will also flush out any difficulty that they have in obtaining increased cover, because we'd better know about that now rather than 12 weeks before trial, when there's a risk of the trial being vacated, which would also be problematic for the tribunal, whose time will have been wasted. So that's really why we say now is the appropriate time.

THE CHAIR: Shall we have a look at the authorities first?

MS DEMETRIOU: Yes.

THE CHAIR: I'll let you get on with that.

MS DEMETRIOU: I'm going to take the authorities from our -- the principles from our

skeleton, where we've set them out. I think that's most efficient. It's paragraphs 32 to 36 of our skeleton argument. (Pause)

Do you have that?

THE CHAIR: Yes.

MS DEMETRIOU: Thank you. Just to take you through those paragraphs.

Obviously the tribunal is aware of the rule. There is a gateway requirement and then a discretionary requirement.

Then looking at the discretionary requirement, we've set out there at paragraph 34 what the CAT guide says. We say at 35:

"Looking at those points, so (a) whether it appears that the application is made in order to stifle a genuine claim or would have that effect". [as read]

As we say at 35.1, the burden is on the respondent to show that and there is no evidence from Mr Mehta on that point. So I think we can dispense with that as being a relevant point.

"(b) the stage of the proceedings at which the application is made and the amount of costs which the claimant has incurred.

"(c) the claimant's financial position, whether it is impecunious and if so, why, and particularly whether the impecuniosity can be attributed to the defendant's infringement.

"(d) the likely outcome of the proceedings". [as read]

Now, what we say about that at page 35.3 is that it's very well established that the court doesn't get into the merits unless it's obvious that one side is going to win or lose. We say that's not the case here. Then "any admissions made by the defendant", and then "the provisions in the tribunal's rules as to order for costs". [as read]

So there's a general discretion, and those are relevant factors, but not exhaustive factors.

Then our submissions are as follows. As I've said, we don't need to dwell on the gateway requirement because the claimant accepts that the requirement is met, and that's Mr Mehta's statement at paragraph 12, where he accepts it in terms. You'll have seen Ms Ellen's evidence, where she says, in her statement, that the claimant is a company which has negligible assets.

In terms of the discretionary factors, as I've said, the claimant has failed to produce any evidence on the point about stifling a claim. We say that it's obvious that requiring this increase in the indemnity would not stifle a claim. If you turn to Mr Mehta's statement, please. So that's at paragraph 21 of his statement, so page 1002 of the bundle.

THE CHAIR: Yes.

MS DEMETRIOU: You see from that that the claimant is able to meet its own significant costs. And if we go back to Ms Ellen's statement, please, at page 746 of the bundle, at paragraph 64(c), she says that:

"... there is ... evidence that tends to indicate that the Claimant should be able to obtain any necessary funding from its shareholders / directors. The Claimant is understood to have three equal Shareholders (each of whom is also a director). Each of these individuals appears to have had successful careers in their respective fields. They comprise: Ronnie O'Sullivan, who the Claimant has previously described as 'one of the most accomplished players in snooker's history'; Jason Francis, who the Claimant has previously described as 'an experienced and successful organiser and promoter of snooker related events'; and Mayus Karia, who is a Solicitor-Advocate at the Claimant's law firm whose rates are advertised at £1000 per hour plus VAT ..."

So that's evidence showing that they're likely to be able to meet any costs order. And as we saw from Mr Mehta's statement, they are covering the claimant's own significant cost, despite the claimant not having -- the company itself having negligible assets.

Stage of proceedings, the application -- we've made the application before the first CMC. We say that's entirely appropriate.

Then in terms of the exercise of the tribunal's discretion, we say that there are compelling reasons to make the order. Two key points that we rely on. The first is that -- the two key points are that the current indemnity limit won't be sufficient to cover 70 per cent of the defendant's costs of the trial, and those costs are reasonable and proportionate, as I'm going to come on to.

Secondly, the obligation is limited in nature. So we're not seeking a payment into court. We're simply seeking a change to the insurance cover. So it's proportionate -- the order we're seeking is proportionate. And of course, the claimant has already obtained a £1 million increase to the applicable limit, and it hasn't adduced any evidence as to whether or not it would be unduly burdensome for it to obtain a higher indemnity limit. So we say what we're asking for is reasonable.

On the reasonableness, the main point taken against us by my learned friend is that the defendant's estimated costs are not reasonable. I'm going to make submissions about my clients, and I think Mr Mountford will add a few -- make a few submissions about his own client's position.

If we could go back, please, to Ms Ellen's statement. So page 970 of the bundle. This is the exhibit to her statement. I don't know if the tribunal has had an opportunity to look at this at all.

THE CHAIR: Not in any detail.

MS DEMETRIOU: So you can see that the first two-thirds of the page are costs actually incurred up to 1 September.

THE CHAIR: Yes.

MS DEMETRIOU: And then the remainder of the document is -- so you can see that that's around £315,000 and there's an estimate of further costs up to the end of trial of

around £1.8 million. So we have a total of £2,143,000 approximately.

Now, the claimant say that these costs are not reasonable, but just looking at how the costs have been calculated, I hope the tribunal -- certainly in my experience, these are extremely -- what's envisaged here is an extremely streamlined process in terms of the number of lawyers involved and so on. And you will see, for example -- and so it's simply not right to say, as my learned friend does at paragraph 30 of his skeleton argument, that WSL is very "lawyer heavy". Those are his words.

Looking at the schedule, you can see that what's happening here is that my clients have instructed two partners: one partner whose expertise is in sports litigation, and a partner who's a competition litigation specialist. There's no duplication between those two partners. They just have different areas of expertise and of work on the case. One associate and a trainee or paralegal. So it is, we respectfully say, an efficient and slimline team.

And then there is -- then on the counsel side, there's me and Mr Rabinowitz, who's quite a junior junior. And we have taken account of the fact, and you can see across the two defendants, of course, it's reasonable that they're separately represented. But we have two counsel and they have one counsel, and that precisely is because we think that there are efficiencies that we can make across the defendants.

It is, with respect, difficult to see how this case could properly be litigated with fewer lawyers, given what we're facing in terms of the claim. So I don't want to cast blame either, but going back to your observations at the outset, and as we've said in our skeleton argument, the claimant has hitherto been pursuing these claims in what we've called a scorched-earth way.

So this has been the case from the very start of the dispute, and the letter before action talked about far-reaching consequences, criminal sanctions, loss of liberty from our client's perspective. So it's been high octane, and you can see that the pleading that

we faced has been extremely detailed and we say far fetched in many ways.

I don't I know you're not going to want to talk about the merits in the context of this application, but the issues raised by the claims are, of course, fundamental to my client's business. Because the claimant alleges that both the contract by which the WSL obtained its business, and the contracts which form the ongoing bedrock of that business, so the two players contracts, are anti-competitive and unlawful.

If they're right, that really will have an existential impact on my client's business. And so they're right to take the claim seriously, and they're right to want to defend themselves. We say that that has to be taken into account when looking at the reasonableness of costs, as does the fact that the claims raise complex issues of fact and law in an area which the tribunal will know is a developing area of jurisprudence in the sports field.

So what are the points -- what are actually the points made by the claimants on costs? If you could go back to Mr Mehta's statement, please, at page 1002. I just want to go through the various points that they make. So you can see, at paragraph 20, Mr Mehta says that there are various concerns that arise from the estimates given by Ms Ellen and Mr Bush. The first point that he makes there at paragraph 20 is that in a letter written in February, my instructing solicitors estimated the defendant's costs at £4 million -- that's the same as the estimate now -- but on the basis that of a higher estimate for experts -- at that stage, £1 million for the experts, and that's now been reduced.

So what's said is, "Oh, well, that must show that the legal fees that you're now estimating are inflated". And we say, "Well, that doesn't follow at all".

The answer to this is that the February 2025 estimate was a preliminary estimate, given at an early stage before service of defence and replies. It was expressly caveated as follows:

"All estimates are subject to amendments once more is known about the nature and direction of the litigation, as these exclude costs of applications such as security for costs."

So there was a caveat. It was an early estimate. By contrast, the estimate which I've just shown you exhibited to Ms Ellen's witness statement, provides a detailed stage by stage breakdown, prepared with the benefits of the parties' full statements of case -- so after the pleadings -- and supported by a statement of truth from the defendants' solicitors.

Now, if the claimant -- if what Mr Mehta's saying here at paragraph 20 -- and there's a hint of this in my learned friend skeleton -- if what they're saying is, "Oh, well, you've somehow reverse-engineered the £4 million figure", then that would be, if that submission is made, that would be an unbecoming submission, and we say that it should be rejected, because my instructing solicitors and those of Mr Mountford have put considerable work into the cost estimate. It's explained in Ms Ellen's witness statement, and it is, as I say, supported by a statement of truth.

It's also why the attempt by my learned friend, a jury point, in paragraph 26 of his skeleton, where he talks about Mr Hearn's reference to deep pockets, that should be rejected. It is a jury point. It's irrelevant. What you have in front of you are granular and detailed estimates, which are arrived at by my solicitors, in consultation with the counsel team and the experts, and represent their best estimate of cost going forward.

Mr Mehta then says -- or the claimant, sorry, then says, "Oh, well, look, our costs are lower now". All we've got from the claimant is what you see in paragraph 21. So it really is back of an envelope stuff here, and it's inadequate because it hasn't been reasoned out. We have no idea how they've got to these figures. The tribunal should place no weight on them at all. The estimated costs are not broken down by stage of the proceedings, or indeed at all, other than by my firm counsel experts and other,

whatever "other" is.

And there's no explanation as to the assumptions underlying the estimate or the basis on which the estimates been prepared. Even on its face, the estimate is surprising, because if you look at the figure for experts, £180,000, that's surprising in circumstances where, at the same time, the claimant is saying, "We want three expert streams. Three streams of expert work", and the tribunal will know from other cases that that does seem extremely low.

Then we see, it's said at paragraph 22 by Mr Mehta that:

" ...the solicitor assigned to the case, being myself, will be working on this case as the only fee earner."

That's what he says. Now, that's wholly surprising in litigation of this complexity. It's wholly surprising. We say that that looks odd on its face. But as the defendants understand the position, the only other solicitor at the claimant's law firm is Mr Karia, and Mr Karia, I've already made reference. We've got in the bundle his web page, where he says that his fee is £1,000 an hour. He's understood to be one of three equal shareholders in and directors of the claimant.

And we say that the claimant -- what we don't have here at all is any indication, and the claimant is indeed -- we asked them to confirm the position one way or the other. No indication that Mr Karia has no involvement in the conduct of the proceedings, even if not as the solicitor assigned to the case or the fee earner. Because if he does and he's not charging for that because he is a shareholder, then any estimate of cost would have to take into account that. You can't just say, "Oh, well, we're getting all this free work from Mr Karia, which is hoping to -- he's hoping will benefit him in due course, but we discount that in our fee estimate --

THE CHAIR: You mean for the purposes of comparison?

MS DEMETRIOU: For the purposes of comparison, exactly.

Now, Mr Mehta also says at paragraph 22.1 that there is alignment between the defendants, the two sets of defendants, and this means that the defendants' estimate should be lower.

Now, it is true that the defendants' positions in the litigation are aligned to a certain extent, to a sizable extent. On that basis, as I've already indicated, the defendants have sought and are seeking to limit costs wherever possible. So, for example, as compared with the claimant's three-counsel team, we have a two-counsel team and the WPBSA has one as a sole counsel. We've also agreed to share experts which results in significant efficiency.

Nevertheless, the defendants do require a separate representation; they are distinct entities with different roles. Each will be in a position to put forward evidence and submissions on different points and from different perspectives. It's obviously the claimants who have chosen to sue both sets of defendants, and in circumstances where they've chosen to do that, they should obviously expect to pay two sets of costs, albeit, as I say, we're making every effort not to duplicate and to be efficient.

Then, Mr Mehta says at 22.3 that our expert costs are very high. I think that our answer to that is that we think that the claimant's expert costs are unrealistically low for a case like this. They've put in issue complex issues of economics, including as to market definition and dominance, and the idea that they're going to restrict themselves to £180,000 for three experts in three different disciplines, we say, is for the birds.

That's what we say, sir, members of the tribunal, about discretion. We say that there is a clear case that has not been adequately met; a clear case that the indemnity limit should be increased. Otherwise, we are continuing with these proceedings at risk. Sir, you raised the timing point with me. I've addressed that already. I don't propose to come back to it unless you have any further questions.

THE CHAIR: Well, I just have one question, which is just that I was just taking a quick

look at the Panamax Alexander case. I mean, in any of these cases, does this issue arise as to the top up? Because, your point, I think, is that the authorities encouraged, quite rightly, the applications to be made early, but does that really mean that all aspects of the application should be dealt with at the earliest possible time, or, I mean, is there really any guidance on that in the authorities?

MS DEMETRIOU: My learned friends have put in an authority which they sent us this morning, and I think they're going to rely on that authority to say that you shouldn't take the decision now. Because it's an authority that has been sent to us --

THE CHAIR: Well, it --

MS DEMETRIOU: Can I hear what my learned friend has meant by --

THE CHAIR: Yes, well, I suppose (inaudible). But you're not suggesting that apart from that, there's nothing you're relying on in the case law. I mean, it's just a question of how is this done as a matter of practice, really. That's the question I'm asking.

MS DEMETRIOU: Sir, the point was put that we had made the application too late, so we've dealt with that by adducing various authorities. It's now being said, "Oh, well, it's too early". None of our authorities addressed that point. I'm not aware of any that lay down any principles as to that point.

But I come back to the points I made, which are that we're here now, we've argued it out, we are at risk going forward if the order is not made now, we're at risk of wasted costs if the eventual position is that they can't obtain an increase for the indemnity. On that basis, we respectfully invite you to make the order that we seek now.

THE CHAIR: Yes, thank you.

Mr Quiney, we seem to have been given -- I've been given -- an extract about documentary evidence from Mr Hollander. I don't know whether that was intended at the time or not. Should I give that back to you, or you -- I'm sorry, hang on.

MR QUINEY: You could. That was obviously a document actually passed to my

learned friends this morning. What we intended to hand up was (overspeaking) --

THE CHAIR: Yes, I've got *Endeavour* as well. It was just something extra.

MR QUINEY: I'm not going to trouble you with the disclosure issues. We will resolve that.

THE CHAIR: You will resolve that, thank you very much.

Mr Mountford.

Submissions by MR MOUNTFORD

MR MOUNTFORD: Sir, on behalf of the third defendant, the WPBSA, I adopt the submissions of my learned friend, Ms Demetriou. You will have seen that we are seeking to, in this hearing, divide issues between us where we can in order to avoid duplication. We say that that's an indication of the approach that we've taken throughout these proceedings to try to find what efficiencies can be found.

Dealing first, very briefly, with this question of the timings for the tribunal to grapple with this, I fully endorse what my learned friend has said in relation to that. I understand the tribunal's having a question in your minds as to whether you need to grapple with this when we are looking forward into the future, but it does appear to us that it is more procedurally efficient, given the materials that you have today and given the clear conclusion you can reach on the figures based on the detailed estimates that have been done, to go down the route of grappling with this now, with the protection that with an update four weeks before the revised cover would have to be obtained, all defendants giving an update on their incurred costs, so that if at that stage it turns out that we're, you know, 100,000, 200,000 down, it will be very simple to say, "Well, 70 per cent of that means we can consensually agree that, in fact, you don't need to obtain an additional 800,000. It might be an additional 700,000 or 750,000".

You see that that would easily flow from that update mechanism. Of course, if, at that point, contingencies have arisen which weren't foreseen, which is probably the more

likely situation than us being under budget, then the onus would be on us as to whether we say, "Well, actually we want to seek from the other side a higher limit and if they don't agree that, we bring that back to the tribunal". But by grappling with it now, we think that that will be the most procedurally efficient way of dealing with it.

I won't go over the same ground that my learned friend has dealt with, but I do just want to deal with the question of the reasonableness and proportionality of the costs. As for D1 and D2, the claimant has elected to bring proceedings against D3 as well, and one might imagine a world in which really the nub of their complaint here is against D1 and D2 and that D3 was never joined to these proceedings.

We've said what we've said in our pleadings about the writ in water nature of some of the aspects of the claim against us, but I obviously don't invite you, for the purposes of this, to try and grapple with the merits. But I make the simple point that the claim has been brought against us. We are a membership organisation and the international governing body for this sport, and that the claim we are facing, as quantified by the claimant, exceeds £10 million. To put that in some context, that's something in the order of four times the revenue of my client as an organisation.

So it is entitled to and required responsibly in the interests of its members to take these claims very seriously, and it is entitled to have its own legal representation with expertise in the appropriate areas of sports law and competition law. It would, in my submission, be fully entitled to be represented by leading counsel as well as by junior counsel, and it would be an extremely difficult proposition for my learned friend to stand up and say to you, in circumstances where my client is facing a £10 million claim, that it would be disproportionate for it to have leading counsel. Nevertheless seeking to find what efficiencies it can, it has elected to instruct only junior counsel, and for us to work as closely as we can with the first and second defendants to the extent of alignment to conduct matters in an efficient manner.

We don't serve members of the tribunal, except that the starting point -- that the claimant's costs to the extent of the information that's been given are a realistic jumping-off point for comparison. We are told that only one solicitor is going to be working on this case. We do think that seems unrealistic. The relationship between the claimant and the claimant's solicitors is obviously not one -- to put it at its lowest, it could be described as an arm's length relationship, given the principal solicitor in this two-man firm's equity interest in the claimant's business.

We, by contrast to the claimant, my client must, in the normal way, go and procure legal services in the market on a commercial basis, on an arm's length basis. We say that, when one looks at what has been estimated, when one looks at specific examples, such as the example my learned friend Ms Demetriou gave of the £180,000, estimated for three sets of experts, well, we say that's not realistic. With respect, the firm that sits behind me, the firm that sits behind Ms Demetriou, do have experience of conducting these types of cases, of budgeting those costs. So we say that has been done, it's been done very diligently (audio distortion) actually be accepted to be (audio distortion).

You can see for our purposes that that's in the bundle at 983. That's the exhibit which is attached to the witness statement of Mr Bush, line 18 which is the (audio distortion) at paragraph 4.1. The headline (audio distortion) a total estimated (audio distortion) figure down to (audio distortion), and one sees that broken down through from 9-8-(audio distortion).

I don't propose to trouble you with too much detail in relation to that. I'll hear whether my learned friend has any specific points he wishes to make in relation to that, and deal with it in reply. But we say that those costs reflect a proportionate and reasonable approach to the costs that could be expected to be incurred in litigation of this scale, raising these issues of this value.

There is then a point that's made (audio distortion) at my learned friend's skeleton argument. This is paragraph 38. (Pause)

It's suggested there that, on account of conduct considerations, the application for increased security should be refused. Can I just pause to say something in relation to that? This is one of a number of places in this litigation to date where the claimant has simply lumped all of the defendants together without any proper differentiation for the fact that the third defendant is a wholly separate organisation.

But what appears to be relied upon is this comment that's quoted in paragraph 39, which doesn't concern any member of the third defendant. My learned friend, Ms Demetriou, would, I'm sure, have much to say about that if she needed to deal with it today, which I imagine she doesn't.

But come what may, this doesn't concern the third defendant. So we say that there is simply no basis to suggest that there has been any conduct on the part of the third defendant which would justify departing from the usual approach to security for costs, and the suggestion in paragraph 39 that:

"The manner in which defendants have approached this litigation is entirely consistent ..." [as read]

(Audio distortion) stated there, in my submission, is something which simply should never have been made. There's no basis here for any kind of conduct allegation in relation to the third defendant that's pertinent to this application.

So one then comes back, really, to the budget. You do accept that there are certain areas where synergies can be found between the defendants. For example, in expert evidence, we are proposing joint instruction of experts and we've proposed a division where we will bear a third of the costs of that and the first and second event will bear two thirds of the cost of that, reflecting in part the larger scope of issues for expert evidence that will concern D1 and D2 as opposed to D3.

That same synergy does not obviously apply to other parts of the litigation. My client will have to conduct their own disclosure exercise. The cost of that disclosure exercise is the cost that it would be, whether we were the sole defendant or whether we were one of three defendants. My client will have to produce its witness evidence of fact. The costs of that will be what they are. So the suggestion that one can say, "Oh, well, there's a one-third, two-third sharing of costs in relation to expert evidence, therefore that should be read over to say there should be some greater synergies", the reality is that the claimant has chosen to bring proceedings against two sets of defendants who are organisationally separate and independent. In those circumstances, it has to bear the consequences of that, which is that each of them must be allowed to incur the costs necessary to properly defend this litigation.

Unless I can assist with anything else, that's what I was proposing to say.

THE CHAIR: Thank you.

Submissions by MR QUINEY

MR QUINEY: I'm grateful.

Dealing with the question of security for costs, it has obviously narrowed very significantly, which is very helpful. The essence of this is a question of how much and when. What I will be addressing you on is that there's no fair or good reason in the exercise of discretion to make the order that you're being invited to at the third paragraph in the draft order.

On the question of timing, if the question before the tribunal was simply, "There's a £2 million ATE policy which is now accepted to be good security. Are the defendants currently protected and secure?", the answer would be "yes". So we're looking into the future and the points, of course, sir, that you made earlier, which is: are we in a fair and proper position to decide now? My client has to approach the insurer and seek to gain security in the future when the door isn't closed -- and we'll look at the authorities

in a minute -- to them seeking further security, if they felt it was actually necessary, and more importantly, merited.

Of course, every time my client goes back to an insurer, there's time expense. There's a new premium. These things are not simply a matter of asking the insurer nicely to increase from 2 million to 2.8 million. They are consequential decisions and processes, and equally a consequential and important process that should not be repeated again and again. So the fair approach is the approach that we've advocated in this skeleton, now that it's clear that the ATE is good security, that the order sought should not be made.

If I could just address the tribunal first on the authorities, then I'll look at the exercise of discretion, the factual matters, if I may.

My learned friend in her skeleton argument has properly identified a number of principles. As you'll have seen, as the issues have shaken out, so to speak, the gateway requirement is not an issue. Stifling, in the sense of the impecuniosity of my client and the inability to run this litigation, is not an issue.

The two issues are: how 1) the tribunal goes around goes about assessing the proper quantum of securities, and when that should be done.

There are two authorities, if I may take you to, sir. That's obviously bearing in mind that the actual underlying rules within the tribunal rules are well familiar territory to everyone.

The first case is the case of Pisante v Logothetis, which is in the combined authorities bundle, starting at page 222.

THE CHAIR: 222, did you say?

MR QUINEY: Yes. That's where the case starts.

THE CHAIR: Yes.

MR QUINEY: Now, in that case, there are a number of issues. But the issues I'd like

to focus on is what is described at section (G) as "Quantum of Security". The learned judge deals with that at paragraph 88 at page 251.

Now what I will ask you, if you don't mind, is simply at this stage to read yourselves paragraphs 88 through to 90, and then I'll make the points after that, please. (Pause) If the tribunal has had an opportunity to consider those paragraphs, I'll make the following points, if I may.

At paragraph 88(i), we can see the learned judge rightly points out that it's a discretionary question, but a "broad brush" question. It's not a detailed assessment. One needs to do the best one can in the circumstances.

Then at (ii), he describes the discount. You'll have seen from the skeletons a number of ways that that's put, 70 per cent, 65 per cent, and as we'll see it, even possibly 60 per cent. I suggest the tenor of the authorities is essentially that's meant to take into account a number of issues, ie, it's not simply the usual 70 per cent discount that you'd expect on standard assessment or on a detailed assessment. It's meant to encapsulate more than that: the uncertainties of litigation; the risks that sums might go down as well as up; and also taking into account the stage that we're at, where there's a lot of uncertainty and we're about to argue about whether we should have three experts or one expert at this point. We're about to argue about what the timetable looks like.

So there are lots of uncertainties here and at (iii) one should look at the "balance of prejudice" as well and consider, I would submit, not just the potential prejudice that the defendant might be left unsecure, but also the prejudice that a claimant has to suffer particularly in an ATE situation where one has to trouble the insurer potentially on the -- we would say on the defendant's basis, repeatedly and at cost, and equally the balance of fairness and the issues of conduct generally. We can see, at paragraph 90, the learned judge rightly points out that you might be looking at a discount

between 60 per cent and 70 per cent, and indeed, in this case he adopts a broad discount of 66 per cent or two-thirds.

So the point there is that the starting point is not 70 per cent, as put forward by my learned friends, which translates into 2.8 million, but rather it could be as much as, or as little as, an additional 600,000 or maybe an additional 500,000, and that's before one even gets into the nuts and bolts of the quantification process.

THE CHAIR: Am I right in thinking, though, you've essentially agreed the 70 per cent for the purposes of the 2 million?

MR QUINEY: No, I've gone for 65 per cent in my skeleton.

THE CHAIR: Ah. Sorry. I thought the reason you had provided the insurance at 2 million was because it represented 70 per cent of the costs, up to the --

MR QUINEY: Well, there are two things. The first is: what is the appropriate test on the quantification by the tribunal at this stage? You suggested 65 per cent.

THE CHAIR: Yes.

MR QUINEY: We've gone for the 2 million, (a) because we think that's a reasonable sum in the face of the points that we've met on the application, and (b) that is by reference to, it could be 70 per cent, it could be 65 per cent, because that's not a matter for us to decide, but we're doing the best we can in finding appropriate security and cover to face this application.

With that in mind, I just turn to the Endeavour Energy case I've handed up as well. This deals with a separate and different point, but it doesn't change the principles that we just were looking at. The separate and different point, which I understand is a matter raised by tribunal earlier, which is: what about staging? Is that an appropriate way of dealing with matters? This is a case where there was a staged approach adopted, and Mr Justice Males, as he was, helpfully explains this at paragraphs 10 and 11 of the judgment, if I could just ask you to read those. (Pause)

THE CHAIR: He says this is a case where the ordinary commercial court practice should be followed. So that suggestion there is that is the ordinary commercial court practice to do it in stages. Is that --

MR QUINEY: Exactly.

THE CHAIR: Is there any further indication of that, and do we find anything in the White Book on that?

MR QUINEY: Well, if I might have a look at the commercial court guide to answer that question at some point in the future. But my experience in the commercial court is that that is commonplace. I would suggest that Mr Justice Males has a pretty good grasp of that.

THE CHAIR: Yes.

MR QUINEY: Certainly if one needs authority for that, his decision is authority, because indeed, that is what he does. We can see that at paragraph 14 later on, where he adopts this approach and he makes the order of security in the sum of £550,000 up to the service of witness statements, with liberty to the defendants to apply for further security in the event that the action proceeds beyond that stage, and that would be at the appropriate way of dealing with matters like this, and certainly the balance of prejudice and the fair outcome. Now, that order isn't required today, because of course the ATE is currently providing £2 million, which is more than enough, and no one disagrees on that. But what it shows is: if the concern is that there might be an argument that, oh, if we come back, say, 12 weeks before trial, it might be said against us that the defendants should have come earlier, that is not the issue here. The issue here is what's the fair outcome once the matter is before the court, and there's certainly no suggestion that if the defendants were to come back at a later stage when matters are crystallised and clear, saying, "Well, actually, the £2 million we now know is no longer sufficient", that there would be any argument

made that that was too late or too delayed.

THE CHAIR: So there's a number of things which are more or less agreed. I mean, they may not be precisely agreed, but it's agreed that your client has to provide some security for costs.

MR QUINEY: Yes.

THE CHAIR: And it's trying to do that through insurance. It agreed that there should be some degree of haircut as indicated in Pisante, and you would say 65 per cent and they say 70 per cent but there's not an awful lot between you. It's also acknowledged -- I think you're saying it's acknowledged -- that it may be necessary to have another conversation about this at some later stage, because if their costs are -- even on the 65, but certainly on the 70 -- were to exceed £2 million, then you would accept that they're entitled to have the 2 topped up.

MR QUINEY: All the other points, except for that last point, I'm with you, sir.

THE CHAIR: Why not, though? Because, I mean, surely if you've accepted in principle you have to provide security, and surely if -- just assuming that the numbers, I appreciate there might be arguments about the estimates and so on, but it's saying they made good an estimate that took it at 65 per cent above 2 million principal, surely you're a bit cornered at that stage, aren't you?

MR QUINEY: So the reason I parted company at the last point is because there are arguments about the underlying quantification.

THE CHAIR: Yes, I understand so. Absolutely. So you're entitled to -- parking that, though, as a matter of principle, if we were to form the view that the likely costs for the defendants' assessed at whether it's 65 or 70, whichever we decided is the right figure, was more than 2 million, you're not really in a position to be pushing back and saying, "We're not going to top up the policy".

MR QUINEY: Well, there's essentially three points there.

THE CHAIR: Yes.

MR QUINEY: The first is: our primary position is that the sums -- the global sum, the gross sum of £4 million is too high.

THE CHAIR: I understand the point about quantification, but just assuming that I've -- I think in my -- the point I put to you, we've decided that whatever we've decided gets you above £2 million, so you don't have to worry. I'm not trying to trap you into a concession. I'm really -- just want to -- I want to -- I suppose the other way of putting this, Mr Quiney, maybe it's more helpful to put it this way.

If we were to reach the conclusion -- I'm not saying we obviously have to discuss this; I don't know where we're going to end up -- but if we were to reach the conclusion that this should be done later rather than now, it would be unfortunate if your client and their insurers were not fully cognisant of that and anticipating it and recognising that it might end up at £2.8 or indeed more.

And if that were something which was -- well, I don't think I can ask you, obviously, to commit to the quantification point, and obviously you've got your point as at 65 or 70, but I think I'm indicating to you there's not very much sympathy for any other argument, which is effectively conceded by the grant of the insurance policy at 2.

MR QUINEY: I understand, sir, there's helpful points. The second point I was going to come on to is this, which is, by virtue of us saying that this should be a staged approach akin to that adopted by Mr Justice Males, we accept that at a later date, in the appropriate circumstances, an application might be made at that point to say the £2 million we now understand and know is not enough, and we want more.

Then the third point is, well, of course, that would have to still be justified at that stage.

THE CHAIR: Yes. I think the point I'm trying to make here is I don't want you to be having this argument on a different basis in -- if we were to end up in that position, it would be most unfortunate if you were to turn up with a whole lot of arguments. Well,

I think I'm telling you you'll get pretty short shrift if you turn up with a bunch of arguments which are not about quantification or about the proper haircut.

MR QUINEY: Yes, my Lord. Sir, I do understand that, and as I said, that acceptance is implicit in the approach that we've endorsed in the skeleton --

THE CHAIR: Yes. Well, it seems to me that is the case. Yes.

MR QUINEY: Obviously, putting it in broad terms, the main thing I'm saying is: there shouldn't be an order in the terms of the draft order at point 3 made today. That's what I'm saying.

Equally, when it comes to looking at this position later on -- and who knows what happens in the litigation between now and then -- what we wouldn't be saying is, "This is too late. You should have done it earlier". That's completely implicit again, or expressed, in fact, in what I've said.

The second is: all the points regarding the top-up -- if I can put it that way -- I would hope would be ventilated in correspondence, in the same way they have been ventilated at length in this correspondence. So it's unlikely that my clients would go either caught by surprise or go into blind, such a debate before the tribunal.

What's more likely -- although I can make no promises one way or the other -- is that a constructive conversation, particularly in the light of the tribunal's comments at the beginning of this hearing, would be engaged in. If we then have an articulation of what the top-up looks like, my client is left with a decision.

Do I, says the client, go to my insurer's early doors and see whether there's a possibility to pay for additional cover? If so, what should that be? Is it just simply the amount that's being claimed, or is it a lesser amount because we think that's overvalued? Or do we run the risk of saying, "No, we're not doing it at all", which might be a high risk strategy in the light of the tribunal's comments just now.

But those are the decisions that are open to us, but also, I say, decisions which should

be taken at that stage, not today.

THE CHAIR: So just conscious that we should take a break for the writer. I imagine you've got a bit to do here, haven't you? You're not close.

MR QUINEY: I haven't troubled you, yes, on the facts.

THE CHAIR: No, I thought you --

MR QUINEY: I was going to come on to that --

THE CHAIR: I didn't think we were going to avoid that, so --

MR QUINEY: Great.

THE CHAIR: -- why don't we -- we will rise and take a ten-minute break. Thank you.

(11.50~am)

(A short break)

(12.09 pm)

THE CHAIR: Yes, Mr Quiney.

MR QUINEY: I'm grateful. I said I was going to deal with the facts. And when I say the facts, what I mean are essentially two categories of issues. First of all, looking at the quantification, which is obviously subject to a matter of principles we're talking about before the break. And then looking at sort of the bigger picture, if I can put it that way, and some of the points made against me by my learned friends, as to so-called scorched earth or jury points and suchlike.

So dealing with the question of costs and the estimate provided by the defendants, the first port of call, if I can put it that way, is Ms Ellen's cost estimate within her first witness statement -- the only witness statement -- at page 739 of the bundle, at paragraph 42. Now --

THE CHAIR: You say 739, did you say?

MR QUINEY: It's page 739, yes.

THE CHAIR: Thank you.

MR QUINEY: I'm grateful. So this is, of course, against the background of long, protracted correspondence. We have a threat of security as early as November, in 2023, and that resurfaces on service of the claim in January of this year, and then rolls on.

There are a number of issues taken, most of which now have been resolved, including, in particular, the AAE. But the starting point for the defendants was that they wanted £4 million, so at that point, there was no discount. That was the threat that my client was facing.

Then we have a sort of softening of position where we at least have an acceptance, and we can see this in the submissions you've heard, down to a maximum of £2.8, ie 800 above the £2 million cover. The way in which the defendants justify this -- and it is the burden on defendants to demonstrate on the rough and ready approach that they really, genuinely have costs that are reasonable and proportionate of those sums -- is done in two ways.

First is, as we'll see in a minute, the narrative from the witnesses. Then secondly, a table of costs, which will come on to. In fact, you've been taken to already.

On the justification in the evidence, one can see at 42, 43 and 44, a brief justification -- and is no more than that -- and one of the points that's raised, and addressed by Ms Ellen is, of course, a point we take against D1 and D2, which is the potential risk of duplication by having two partners running this litigation. Even if the partners have different expertise, one being sport and one being competition, we say from the beginning that there is a real risk of duplication, and it's not justified.

Then we don't see much more than that to explain how we get to the estimates we then see, which are later on in the exhibit, specifically starting at page 970 of the bundle. Now, again, as a bit of contextualisation here -- and before we come on to looking at the way the claimant's running this -- one will recall, I hope, that the

claimant's position is they do have a single fee earner, but what they've done is they've utilised and relying on a three member counsel team, which should have, I would say, efficiencies and savings as a result. But then maybe, as counsel, I would say that. But certainly having a counsel team of that nature would help.

What we have on the Livida side is, of course, as I've said, two partners – one sport, one competition – associate, trainee, paralegals, et cetera. And we see that already some £315,000-odd has been spent. That's the incurred element. And then we see a lot of spending thereafter to come to the, we would say, disproportionate and significant sum of £2.1-million-odd at page 973.

Now, that includes a lot of lawyer spending. It includes a lot of expert spending, and a point between the parties, obviously, is how much does one need to spend on experts in a case such as this, but I'll come on to that.

But just by way of comparison, we can see Mr Bush's statement, which sets these issues out, which is at page 980. He deals with incurred costs at section 3 and then future costs at section 4, and we see there that in fact, the third defendant has spent £470,000-odd, which is obviously materially more than the £315,000 that D1 and D2 have incurred.

Now, the reason I make that point at this stage is dealing with the allegations that synergies have been achieved and will be achievable. Of course, our position is that that hasn't actually been catered for sufficiently, when one looks at the combination of the bottom lines, but particularly, on the incurred costs.

So as will have been apparent from the pleadings, and indeed has been the position adopted by the defendants, the case that the association has to meet is materially slimmer than the case that D1 and D2 have to meet.

And my learned friend Mr Mountford is at pains to demonstrate that there are separate and more narrow allegations made, which makes it all the surprising if, in fact,

synergies have been achieved, that the association would be spending £470,000, nearly £160,000-odd more than D1 and D2, which I would submit suggests that that has not been achieved and we can't be confident doing the rough and ready quantification process that that is, in fact, going to be achieved and catered for in these estimates.

We then see Mr Bush, at paragraph 4.1, set out how the further £1.38 million will be spent. Then he gives some justification, unlike Ms Ellen at 4.4, talking about the lengthy pleadings. Well, they've already been spent or dealt with. "The complex legal argument and requirement of expert evidence". Yes, that is right. Again, we've got the statements of claim, our case of (inaudible), but of course, that has been dealt with.

But what he doesn't really explain, and this is the step further that I say the defendants need to go and have failed to go, is really why so many lawyers are required to justify the bottom line, which is very significant. Both bottom lines are materially higher than the claimant's. We'll look at where the claimant comes to on that, but of course, the claimant generally will take the burden of running a piece of litigation such as this, and that's for three reasons.

First of all, getting the litigation up and running. Secondly, in this instance, dealing with two sets of defendants. So that immediately requires additional work. And that -- there isn't a corollary on the other side, because we're being told the defendants are already liaising with themselves. So it's not like you might have a multi-party litigation where one defendant has to read everything, another defendant produces it, and there may be material conflicts between the two. Here we have a unified front, allegedly. But my client still has to deal with both of them.

Then thirdly, simply the running of the trial, the collating of the evidence, the bundles, and all the logistics that go with that.

But when one looks at the bottom line, in Mr Bush's table, or schedule that he attaches -- and that is at page 974 to Ms Ellen's statements. I use her exhibit, in this case, because it helpfully sits behind D1 and D2's estimates. We can see immediately, at 974, why it's the case that the association, D3, has run up so much money in the past.

There's a partner, there's a senior associate, there's a mid-level associate, there's a junior associate, there are trainees, there's some consultants, and all of that comes to a figure of £338,000. That is not redolent of the synergies and savings that we're being told are the underlying basis for the estimates being put forward. Indeed, that over-lawyering -- as I've described it in my skeleton and will continue to describe it -- persists as you look at the estimates going forward.

Now, we appreciate that this case is important to the defendants. It's very important to my clients as well. Indeed, I have no doubt that every defendant or every claimant that appears in this court will be equally concerned about outcomes, because they're important issues. But the importance of the issue should not be the driver simply to proportionality. There needs to be a 360 consideration objectively.

Whilst some criticisms have been made of my client's estimate of costs, they cannot be ignored. They're still in evidence, as we will see in a minute.

Equally, when one considers the value of the claims, yes, the claims are quantified at £10 million, and, yes, the claims are not just for damages but also declaratory relief, because the essence of, for example, the sanctioning regime that you will have seen reference to, where my client has to go to D1 and D2 to ask permission from a competitor to put an event on.

These are complicated and important issues, but in the grand scheme of things, they're not the biggest case. While it is important, this is clearly over-lawyering, and that's why we somehow get to the £4 million, even though it seems to be savings on the

experts from the original estimate, because this is going too far.

In the rough, broad-brush approach that this tribunal should consider when assessing the likely quantum and exercising discretion, even assuming that's going to be done today -- and you've heard my points as to why it shouldn't be done today -- these figures need to be taken with a material pinch of salt. Either the quantum is addressed early on in the process and reduced from £4 million gross to, say, £3.5 million or £3 million and/or a generous, from my perspective, at least, discount is applied to reduce those sums. Then once that is done, one can see that maybe £2 million, which might be 60 per cent -- and that would be effectively 60 per cent or something in the region of a £3 million gross figure -- would be appropriate protection. The reason why this pinch of salt needs to be applied to these particular (audio distortion) figures.

MR MORRISON: Forgive me, Mr Quiney.

MR QUINEY: Certainly, sir.

MR MORRISON: Is it your case, on that footing, that the £2 million would be adequate protection for all of the costs that are to be incurred in the case?

MR QUINEY: Yes, it is, and that's the position that I (inaudible) in my skeleton, yes.

MR MORRISON: Yes, thank you.

MR QUINEY: Now, obviously there is a broad spectrum on that. We(?) start with either £2.8 million, and that's on the 70 per cent. If you're talking about 65 per cent, you're at £2.6 million. If you're accepting the points that I've made -- and the further points I'm about to make -- as to the bottom line of the quantum, so to speak, then one rapidly comes either at £2 million or so close to £2 million that certainly at this early stage, £2.8 million, ie the extra £800,000 cannot be justified as a fair exercise of discretion.

MR MORRISON: So you put your case on two legs(?), as I understand it. One is that it should be a staggered approach --

MR QUINEY: Yes.

MR MORRISON: -- following the approach of Mr Justice Males, as he then was. Secondly, you say that having regard to the figures, £2 million is adequate; there is no need to look at a £2.8 million figure.

MR QUINEY: Yes.

MR MORRISON: Thank you.

MR QUINEY: That's taking into account the nature of the discretionary exercise that this tribunal is having to undertake; the rough-and-ready approach, the fair approach. As I said, this is "a pinch of salt", as I've described it, or maybe it's more than a pinch. But it can be seen from the context of this dispute.

Now, I'm sure the tribunal has seen a whole range of different types of dispute, but the culture and nature of the sport of snooker is, in some ways, unusual and unique, and the approach that from a very early stage within the sanctioning process, as it's described, that my client experienced and the threats that were made by Mr Hearn, amongst others, colours this.

Sir, I'm sure you saw from my skeleton, references to the exhibits and evidence from Ms Ellen of the transcript of that phone call between Mr Francis and Mr Hearn. If you've had an opportunity to have read it, I would submit that that gives one a very colourful understanding of: (a), Mr Hearn's position in all of this; but also (b), his attitude in the communicated position of certainly D1 and D2.

I mean, he goes so far as to make threats. He has deep pockets and this will be very expensive and he will throw all the money he can at this. I would say that's exactly why we see these big figures. It will bankrupt everyone else as well. "It may cost millions, but it will bankrupt you". Again, this is what we see.

That's against the background of him saying that he owns the players and also, more importantly, he spent many decades building this, we would say, monopoly. It's

against that background that one must then step back and look at what's proportionate and fair in these circumstances.

I would suggest that Mr Mehta's statement is help on this. He is clear in his evidence as to his estimates, and they are no more than estimates of what it might cost the claimant to run this trial. Now, this may not be the granular detail in the tables that have been produced by the defendants. That's not a surprise; the burden is on them to justify the figures they're claiming. What happens in an application such as this, I suggest, is the claimant puts their comparator in, but it's not the same burden.

THE CHAIR: Well, if you want us to give it weight, it needs to be credible, doesn't it, Mr Quiney? At such a high level, it is difficult to form a view as to its credibility, let's put it that way.

MR QUINEY: Well, I would say at paragraph 21 -- just for your reference, because you've obviously had an opportunity to see this -- at page 1002. There are perhaps two elements that have been attacked by my learned friends on this. The first is his estimate that it will be £600,000 to run the trial and legal solicitor's costs. Then secondly, that it will be £180,000 to run the experts.

Now, £600,000 is materially less than obviously either approach adopted. It's materially less because of the approach adopted by the claimant, which is to have a single fee earner but a large counsel team to run that. As I've mentioned before, that will create efficiencies, and indeed why the counsel estimates are materially higher.

But that's in comparison to the numerous amounts of lawyers that have been adopted by the others. I'm not saying the defendants shouldn't have an experienced, competent legal team, as they do have in this case. My complaint is about how many.

MR MORRISON: Sorry, it's about ...?

MR QUINEY: How many lawyers, not their quality. Equally, when it comes to the

experts, this is not a back of an envelope calculation, to use my learned friend's position; this is Mr Mehta's evidence.

THE CHAIR: It does look extremely light, I have to say, having seen quite a lot of these estimates. Maybe perhaps the ones I've seen have been extremely heavy. But considering, as I understand it, it contemplates three different experts -- obviously, we'll come on to that, but I would be very surprised if that turns out to be a realistic figure for -- actually, possibly even for one of them, by reference to the matters they're going to need to deal with for economic expertise.

MR QUINEY: Sir, you're entirely right. There is -- obviously, in our experience, and we've all had experience of multiple different types of disciplines, experts in disputes. There is a range here. But the fundamental point, which I hope the tribunal are seeing here, is that the legal operation behind this claim is a lean one, and necessarily lean one, given the position and indeed the whole fundamental position adopted in the security of costs of impecuniosity. While it may be that £180,000 might be considered to be an amazing deal -- to borrow the figures that, sir, you had there -- the corollary is it doesn't justify the half a million plus for the experts at this stage, which is what the question is.

THE CHAIR: Well, I'm not sure that is the question. I think if you're coming along and saying that, by reference to this, there's an unreasonable -- I'm not sure that really holds up. I think if you've got other bases to criticise the amount of it, then fine. I mean, I don't think we need to spend a lot of time on it.

MR QUINEY: But I do need to meet the criticism that's been made of the matter.

THE CHAIR: Yes.

MR QUINEY: Those are the major points of fact that I ask you to exercise your discretion upon if it's to be exercised at all today, which I obviously suggest it should not.

If that's right, then one shouldn't start with the £4 million, one shouldn't start with the 70 per cent. One should start with a lower figure, maybe something in the region of £3 million or £3.5 million. One should either be looking at a discount of a minimum of 65 per cent. Sorry, the discount would be 35 per cent, but applied to that gross figure. Taking all of that together and putting it within the context of the conduct, it would not be justified to make a decision or order in the terms sought today.

Sir, those are my submissions on those points.

THE CHAIR: Thank you.

Ms Demetriou.

Reply submissions by MS DEMETRIOU

MS DEMETRIOU: May it please the tribunal. The timing point, first of all. So I was listening to Mr Quiney when he was saying that it would be onerous to go back to the insurers on more than one occasion and so there shouldn't be an order now. We, in light of those submissions, have gone back to the insurance policy. Can I ask you to turn that up? So it's at page 864 of the bundle. (Pause)

THE CHAIR: Yes.

MS DEMETRIOU: This is the claimant's insurance policy. Can I just draw your attention to paragraph 3.3, so:

"Adequacy of the Limit of Indemnity:

"3.3. It is the responsibility of the Insured to ensure that the Limit of Indemnity (in respect of Opponent's Costs) is adequate at all times and not materially less than the Representative's estimation of Opponent's Cost to the conclusion of trial [I'm emphasising those words] (where available premised on information provided by the Opponent).

"3.4. The Insured shall purchase increases to the Limit of Indemnity (in respect of Opponent's) costs as required to ensure that at all times [I emphasise those words]

that Limit of Indemnity is adequate pursuant to the preceding sub-paragraph."

Members of the tribunal, there is actually a contractual obligation on the claimant to draw to the insurer's attention the estimation of the defendant's costs that they have diligently produced, and at all times to ensure that they've purchased increases to the limit of indemnity, going through to the conclusion of trial. That is their contractual obligation. It is, with respect, extremely concerning on this side of the tribunal to be listening to Mr Quiney make submissions as to why there should be no order, because they should not have to approach their insurers now, in circumstances where he seemed oblivious to his own client's contractual obligation.

THE CHAIR: Well, I think what he's actually said is that they think that the £2 million is the number that meets that requirement. I think that's actually his position.

MS DEMETRIOU: He put the point --

THE CHAIR: Now, he can obviously disagree with that, but I think that's what he's saying.

MS DEMETRIOU: Well, no. To be fair, sir, he put the point on both bases, and that was clarified in discussion with him. So he put the point on both bases. He said, "First of all, I think £2 million is enough". Well, he's got problems on that, which I'll come on to. But secondly, he really did place weight on the timing point.

So the timing point collapses in view of this, and as I say, it's concerning that the point wasn't drawn to the tribunal's attention by my learned friend, and it makes it all the more important, given that the claimant was apparently unaware of this obligation, that the order is made now. So the timing point is an important point to us, and we respectfully say this is a reason why the order should be made now.

Then we come on to the submissions about level of costs. What's said is that £2 million is sufficient to the end of trial; that's the alternative basis on which my learned friend puts his argument. We say that that's hopeless in light of the very

granular and diligent cost estimation that's been carried out by both firms of solicitors who are instructed on behalf of the two sets of defendants.

Now, Mr Quiney made various potshots at the costs. We say that none of those had any basis, really for the reasons I gave before. But in any event, the 70 per cent takes account of -- the whole purpose of it being 70 per cent and not all of the costs, is that that takes account of the fact that costs will be subject to detailed assessment at the end and that we're unlikely to recover all of our costs. That's baked in to the 70 per cent. So the idea that these costs are -- and just going back to clauses 3.3 and 3.4, those don't talk about level of indemnity of 70 per cent of costs. Actually, the contractual obligation is that there's an indemnity up to 100 per cent of costs.

So really these points made by my learned friend have even less weight. On the substance, I don't want to repeat the submissions I made earlier, but we say that "back of an envelope" is too kind to the sort of finger in the air figures that have been put forward in relation to the claimant's costs, and no weight, with respect, should be placed on them as a point of comparison. There's absolutely no explanation, as I've said, as to the assumptions on which those have been provided and they appear on their face unrealistic, especially when one is looking at the proposed expert costs.

I just make one further point, which is an error I made. When I showed you our schedule, I showed you that we had a competition partner, a sports law partner, and I referred to an associate and a trainee. Can I just clarify that they are one and the same person? So they were a trainee, but they've since qualified, so it's actually three solicitors rather than four.

THE CHAIR: I'm going the other way.

MS DEMETRIOU: Sir, those are our submissions. On any view, this estimate has been put together diligently. These are not high costs. This is a lean team, if I may say so, and there's no proper basis that's been put forward to show that they're

inflated. To the extent that any points can be made, they're baked in, as I say, to the 70 per cent. You have my point now on timing.

Those are my submissions in reply, unless you have any questions.

THE CHAIR: Yes. Can I just be clear about -- we talked a bit about the risk before that materialises if we leave this to later.

MS DEMETRIOU: Yes.

THE CHAIR: I just want to make sure I absolutely understand, or at least we're on the same page on that. You always have the risk -- oh, sorry. The risk in relation to -- I'm talking about the risk that might become apparent at any point up to the 12 weeks before trial. On the assumption that your estimates are right and that everything works according to that, you don't have a risk in relation to recoverable costs, assuming the 70 per cent is broadly right.

MS DEMETRIOU: That's correct.

THE CHAIR: But you do have a risk in relation to irrecoverable costs, and it was that risk you were identifying, which is that irrecoverable costs that don't need to have been incurred are incurred because there wasn't an earlier intimation of the inability to get the cover.

MS DEMETRIOU: Yes. That's right, sir. But of course, now that we've focused on the terms of the contract, the risk is greater, because if this isn't done now -- so, in fact, the obligation in the contract is more granular than we're even asking for. So if actually there isn't insurance in place till the end of trial to cover the defendant's costs, then the claimant is in breach of its own insurance contract.

THE CHAIR: Well, that depends, doesn't it? I mean, it depends on what we don't know. I don't know. Maybe you do. We've got no idea what the dialogue between the insured and the insurer is. If the insurer is completely aware of what's happening in this courtroom and is happy with it, then it won't be in breach, will it? I mean, surely

the word "materially", for a start, gives rise to all sorts of questions about -- what does that mean?

MS DEMETRIOU: It's very clear, with respect, what it means, on its face. The clause is very clear. As I say, it's concerning that it wasn't drawn to the tribunal's attention. It's obviously relevant to the timing point, because the objection that my learned friend made to the order being made now is that they don't want to approach the insurers. Well, they obviously have to as a matter of their contractual obligations.

THE CHAIR: I'm not sure that our discretion as to what the appropriate provision for security should be driven by the contractual arrangements between the insurer and the insurer. That's not my understanding of what we're here to do. I absolutely take the point that if you're saying -- if the impediment to security is they don't want to go and ask for it, then of course you are right. Surely they should be making plain what the position is. But if the impediment to security is they don't want to have to do it more than once, or more often they need to, then the whole point really falls away, doesn't it?

MS DEMETRIOU: Well, no, sir, because with respect, looking at 3.3, the obligation is to ensure "at all time."

"It is the responsibility of the Insured to ensure that the Limit of Indemnity (in respect of Opponent's Costs) is adequate at all times ... to the conclusion of trial".

THE CHAIR: I mean, again, "adequate". What does that mean? If the insurers are aware of everything and think it's adequate --

MS DEMETRIOU: Well, it says:

"... adequate ... and not materially less than the Representative's estimation of Opponent's Costs ... premised on information provided by the Opponent ..."

We say that's crystal clear.

THE CHAIR: You're then back into the argument about what the right estimation is.

The point I think I'm making is: I absolutely take your point that there should be no weight given to any reluctance to engage with the insurers about the likelihood of having to put more money into the policy. But it also seems to me that it's not for us to determine -- it's not for us to get into the question of what discussions take place between the insured and the insurer. Our job is to work out what we think is the fair way to deal with the security and whether it should be staged or not. I don't think this makes an awful lot of difference.

MS DEMETRIOU: Well, sir, with respect, your role as the tribunal is of course to determine the competing submissions that are made. I've put forward good reasons why the order should be made now. On the timing point, what was said in opposition to my submission was that it's onerous to approach the insurer with differing amounts.

THE CHAIR: I take your point, but I don't think that's the only point. It's certainly not the only point that I put to you about why -- I mean, the point I put to you was: wouldn't it be much more sensible to do this when we actually know what the real numbers are likely to be, rather than guessing a year and a half out? That's not addressed by this at all, I don't think.

MS DEMETRIOU: Well, sir, with respect, it is addressed by this, in the sense that of course I take your point that it's not for the tribunal to monitor the contract. But in circumstances where what's put to me is "Wouldn't it be sensible to do it once and for all?", we say, "No, you've got to look at all the relevant facts when determining whether that's a sensible approach". What you have here, if we go back to page 863 of the policy, we see that 3.1.13, for example: "Keep any estimate of Costs produced under regular review and keep the Insurer informed of any material changes ..."

Then the clauses I've shown you over the page. So when one is asking, as the tribunal must ask, well, what's the sensible thing to do here? Is it to go once to the insurer, or is it to make the order now? We say that it is relevant to look at the contractual context,

because the contractual context, far from being as my learned friend says, "Oh, we shouldn't bother the insurer", is, on the contrary, to keep the insurer appraised of all of these developments. Also, more than that, there's an obligation to ensure that the limit of indemnity, which is what we're talking about, is at all times sufficient until the end of trial.

So when you're asking yourself the question you've got to ask yourself, which is "Do we do it now or do we do it later?", on the premise that it might be more convenient to do it later. We say "no", because that is inconsistent with the contractual arrangements, and that's a relevant -- you're not enforcing the contract, you're not opining on it, but it's a relevant, highly relevant, material factual circumstance which militates in favour of making the order we seek now.

It really disposes, sir, of the point that -- isn't it more convenient to do it when we know what the costs are in due course, because the parties have contracted to make sure that there is a sufficient indemnity to the end of trial at all times. That's why we say it disposes of the timing point.

MR QUINEY: Sir, I'm aware it's Mr Mountford's turn for reply, but I would like to meet some of those points that have been just raised by my learned friend after that.

THE CHAIR: Well, let's hear what Mr Mountford says.

Reply submissions by MR MOUNTFORD

MR MOUNTFORD: Just very briefly. First of all, on the point -- sorry, sir -- in relation to the prejudice from deferring this.

As you identified, sir, there is prejudice in relation to irrecoverable costs. For a --

THE CHAIR: The recoverable costs?

MR MOUNTFORD: Irrecoverable.

THE CHAIR: Irrecoverable.

MR MOUNTFORD: Yes. For a small organisation such as the third defendant, that

is of course significant. You know, those are irrecoverable costs if ultimately it were the case that further cover couldn't or wasn't to be obtained.

THE CHAIR: It doesn't make any difference, because you're not going to -- the point about irrecoverable costs is you never get them back. That's the whole point, isn't it?

MR MOUNTFORD: But the point is that if it's grappled with and the outcome --

THE CHAIR: Oh, I see what you mean. Yes. Well, yes, of course, but -- yes. Okay, fine. But, in a way, I absolutely understand the point, but of course that's the position of any litigant. If you didn't have a security cost application, you'd have that problem. So why are you being put in a better position because you have a security cost application?

MR MOUNTFORD: Well, I think the point is that if it's grappled with at this stage to say, "Yes, it will be appropriate" (overspeaking).

THE CHAIR: I can see you get an advantage. I can absolutely see if --

MR MOUNTFORD: Yes.

THE CHAIR: -- I can see there's a lost advantage, if you succeed and they can't provide the cover, then obviously you're in a better position. But that's my point too, which is you're actually trying to put yourself in a better position than you would be in if there wasn't a security for cost application. I don't quite think that's the point of the security for costs.

MR MOUNTFORD: I turn it on its head, sir, to say that --

THE CHAIR: I know you do. I know you do. But I'm not sure that's the way we should be looking at it.

MR MOUNTFORD: Well, with respect, sir, what I say is that that the security for cost regime exists in certain categories of cases. Obviously, one doesn't normally have that protection, but in circumstances where the security for cost jurisdiction (inaudible), it is to provide that --

THE CHAIR: Well, no, it's not. It's to provide protection against recoverable costs. That's what security costs are for.

MR MOUNTFORD: Yes.

THE CHAIR: I mean, I don't think -- well, unless you want to show me something different, but I'm not aware of any authority that says it's there to provide for irrecoverable cost. And that's why in the cases -- that's why in Pisante, for example, it goes through that analysis and why the time is spent to get to the right point, because it's aiming at making sure there's proper cover for the recoverable costs, not the irrecoverable costs.

MR MOUNTFORD: Yes, but I think we're probably agreeing at it from slightly different directions. But the point is that, if at the point that they had refused to put in place a security that had been ordered by reference to likely recoverable costs -- it's obviously a likely estimation of recoverable costs -- if they're unable to do that, then as my learned friend says, the likely consequence is the litigation is stayed and therefore the management time of all costs, recoverable, irrecoverable --

THE CHAIR: I think we understand.

MR MOUNTFORD: Yes, it's simply that point.

The other point I make, again, very briefly in reply. First of all, there was a suggestion from my learned friend that on his point about synergies, it was a rather faint challenge, but it seemed to be suggested that because part of the claim only is alleged against the third defendant, the third defendant can in some way go to sleep in relation to the rest of it.

It doesn't obviously work like that. There is a single pleaded claim against all of us. We have -- against all defendants, we have to deal with all aspects of the case management. My client has to consider what part do or don't impact on it. And then for the bits that are not levelled against, it doesn't have some collateral impact,

et cetera. So it doesn't somehow become some much smaller exercise because only a part of the claim, in terms of the causes of action, are pleaded against my client.

My client is also a small organisation. It does not have an in-house legal department. So by contrast, there is an in-house lawyer for first defendant, and on the claimant's side, obviously, one of the 33 per cent shareholders is a principal solicitor of the claimant's firm.

So matters have to be referred by the third defendant to external lawyers in a way which perhaps some things can be done in-house because of the setup of the first and second defendants and the claimant.

The suggestion in relation to over-lawyering. I mean, again, I just simply reject that. If one looks very simply at the estimates that have been put in and the summary of incurred costs in relation to the third defendant, most of the work has been done to date by mid-level associate with appropriate partner-level supervision. The fact that some junior associate comes in to do some discrete task, et cetera, it's neither here nor there.

Looking at it in the round, it's simply impossible to say that these are -- the estimates that have been provided are redolent of over-lawyering, and we certainly reject that in terms.

Then finally, in terms of work that's been done, and in terms of work that will need to be done, it is the third defendant, and indeed the first and second defendant, that are the organisations in this litigation, which have been operating for many years, as opposed to the claimant, which is a relatively newly formed organisation.

When one looks at things like the burden of disclosure, et cetera, that's obviously a materially different exercise, if one is looking back over many years' worth of documents, as opposed to if one is a newly formed company that was looking to put its first event on only a couple of years ago.

So for all of those reasons, I say there's simply nothing in the challenge to the quantum of costs that have been set out in the estimates provided by the third defendant. Unless I can assist further, that was all I was proposing to say. Thank very much.

Reply submissions by MR QUINEY

MR QUINEY: Sir, if I could just get back --

THE CHAIR: Yes, (overspeaking).

MR QUINEY: -- on the points regarding the policy.

I mean, the first is -- my first point is my client is well aware of its obligations, and indeed, the whole question of obligations and suchlike was one of the many issues, including the issue relating to the AAE, the anti-avoidance endorsement that has been fleshed out and ventilated in correspondence.

Equally, you may recall that my client did go back to the insurers and seek an increase from £1 million to £2 million in this process. So what we're not saying is that there is a reluctance, as my learned friend would characterise it, to go back to the insurer. We're simply observing that it is not a straightforward process. And to have to do it multiple times is even less straightforward, and every time comes with particular issues of spending time and resources, but also cost.

So it's not there's an unwillingness, as my friend learned friend would characterise it, to comply with our obligations under the insurance policy. It's just simply a practical, pragmatic and fair recognition that it does come with a time, resource and financial cost.

THE CHAIR: Maybe you're going to come (overspeaking) --

MR QUINEY: I am.

THE CHAIR: Yes, it's fine. I'll let you finish. Yes, carry on.

MR QUINEY: My next point is, that even assumes that my learned friend is correct in her analysis of the policy. So first of all, the obligations under 3.4, 3.3 and 3.4, is about

estimates, adequacy. Those are matters primarily between my client and the insurer, and those are matters that shouldn't be conflated into the exercise of discretion in the application.

Secondly, they're matters that, if the insurer is unhappy about, and given a AAE endorsement has been sought and achieved in the past week or so from the insurer in response to the allegations, the estimates and the application, there's certainly no grounds to suggest that the insurers are unaware of all of this. Indeed, they're not unaware of all of this. But estimates and adequacy are matters of judgment.

Further, my learned friend, I suggest, has overegged the argument by suggesting that, actually, this requires, on her argument, £4 million of cover, 100 per cent of everything. But of course this is about estimates, adequacy and opponent's costs, and one can see that opponent's costs are defined earlier on in the policy, at page 860, as costs which the insured is ordered by the court or tribunal to pay to the opponent, or agrees to pay to the opponent with the insurer's approval.

So immediately, if we're talking about an estimate of a risk to pay opponent's costs, which are those ordered by the tribunal, it doesn't follow that that's 100 per cent. Indeed, the premise of the 70 per cent discount put forward by my friends is the reality and likelihood that 100 per cent will never be recovered.

So even if my friend had a point, and I say she does not, the analysis and the weight she places on these clauses and these obligations doesn't carry the day. That's why I say that this is a conflation.

THE CHAIR: This is an underinsurance point, isn't it? This is a fairly standard underinsurance provision saying, "Don't come along and insure for one if you know it's going to cost three".

MR QUINEY: Exactly. And the reason why I say there's a broad conflation here is, of

course, the premise of where we are now is that the policy, ATE policy, provides sufficient security, and that's because of the anti-avoidance clause, which is now accepted.

What the anti-avoidance clause says, "Yes, you claimant and your insurer, you may have a dispute". You may even have a dispute over the meaning of 3.4 that we were just looking at. But the AAE says that is relevant to the defendants, because they have security up to the point of termination.

So even if there is a dispute that might cause problems between the insurer and the insured, as far as the adequacy of the security and indeed the exercise of discretion, on the premise that the ATE -- which is accepted -- provides adequate security, it would be a mistake to get into the granular understanding of the various obligations here, and that does not become the driver for when the order should be made.

MR MORRISON: Mr Quiney, as I understand it, I don't think Ms Demetriou goes as far as saying, although she may reserve a position on it, for you not to go now under the provisions of the policy that were recited and explain a better view as to the limit of indemnity might result in a breach of the terms of the policy, this entitling you to a higher limit of indemnity figure. She doesn't perhaps go that far now.

But what, as I understood, her submission to be, was that the terms oblige you, where you can reasonably foresee that there is a likely limit of indemnity for you to go back now to the insurers and tell them. And that's something that we should take into account today, because I think the point is ... But what do you say to that?

MR QUINEY: So there are two different issues going on there. If the question is, should my client have to talk to their insurers on a regular basis about the progress of the litigation, and particularly the estimates that have been put in by the defendants, we accept that that is something we may well do when we're not going to rely on the fact we have to do that as a reason for justifying our position today.

That is materially different from saying that we have to secure an extra £800,000 12 weeks before trial, as an extra -- as an order from this tribunal. And that's because the reason that is actually being ordered to secure us £800(?) is very different from entering into a commercial reasonable dialogue with your insurer about, "Well, here is the application. Here are the figures".

That dialogue that I've just described does not cost money. An order of £800,000 will cost money. And if that is a fair order to make, it's fair to order it at the stages needed.

MR MORRISON: Yes. Yes, I see.

MR QUINEY: I hope that answers your question.

MR MORRISON: Yes, it does. And do you go as far as to say -- well, if it turns out that you're wrong on this, and when you go back, if you are compelled to go back to increase the limit of indemnity insurance, you should have told us this before. Well, then, too bad for you at that stage, and you wouldn't be able to offer further security.

MR QUINEY: Um ...

MR MORRISON: Is that the (inaudible)? The staged approach?

MR QUINEY: The short point is that I'm not going to go quite as far as to that, but what I will do is sketch this out.

So assuming I'm correct today, and my submissions are accepted by the tribunal and no order is made today, that's premised on the risk, further on, that the defendants do pursue a top-up, so to speak, of the indemnity.

If that is pursued, then we have to look at it in the rounds and work out -- the client needs to work out what to do about it. If the consequence of that application, assuming no reasonable compromise can be made, is the tribunal decides it is fair that an extra top-up of, say, £800,000 is made, then my client has to decide how they're going to comply with that order.

So the short answer to your question is, no, I'm not going to go as far as the proposition

put forward by you today, but I appreciate and understand the points that you're making. That they should be for another day, is my point.

I'm grateful. Those were the points I had in response to my learned friend's points on the policy, and unless there's anything else I can assist on.

THE CHAIR: So that is a convenient point for us all to go and have some lunch, I think, and we will come back and give you an answer on that, after the short adjournment, and then I hope we can move perhaps a bit more swiftly through some of the other material. But thank you very much.

We'll return -- we don't have an awful lot to do this afternoon, do we? In terms of time, what's your best guess as to how long it'll take us?

MR QUINEY: Sir, I think the most important thing is the timetabling, and that might be driven by working out when we might have a trial. We need take into account all the circumstances.

THE CHAIR: There's no need to have anything other than an hour for a short adjournment, I think.

MR QUINEY: I will say so.

THE CHAIR: We'll return at 2.00 pm. Thank you.

(12.57 pm)

(The short adjournment)

(2.00 pm)

Ruling on security for costs

(2.05 pm)

Costs

Submissions by MR QUINEY

MR QUINEY: Sir, I'm grateful you dismissed the application. Before I come on to the

outstanding issues that we are obviously waiting for, there's the issue of the costs of the application.

We would ask for our costs of this application to be assessed, if not agreed, on standard basis. I say that for three reasons.

First of all, we've succeeded on the contentious matter that's troubled the tribunal today.

Secondly, the other matter, which was forming part of the first and second grounds of relief was resolved at pace by my client seeking the endorsement that was sought, and my client acted entirely reasonable in doing so.

Thirdly, and finally, had, in fact, as should have been done, it had been raised in correspondence, that rhetorically, we, the defendants, want this endorsement and not issued the application, we could have avoided a lot of this. The reality is, however, clearly, even if they had asked us that at an earlier stage and we even had a discussion as to the terms of that endorsement, it's unlikely we would have avoided this application, given that the £2 million, in their view, was never going to be enough and they needed, they say, an order.

So we're here today arguing about this, and my client has spent significant costs in preparing for this, including a witness statement. Maybe not perhaps as much, we suspect, as the other side, but we would be entitled to our costs in these circumstances, and that would be the correct order. Those are my points.

THE CHAIR: Yes, thank you.

Ms Demetriou.

Submissions by MS DEMETRIOU

MS DEMETRIOU: Sir, we say that it should be costs in the case or costs reserved. This is quintessentially a case management issue.

In terms of the application, it's not right to say that costs could have been avoided had

we handled things differently. In fact -- I don't want to take you through all the correspondence, but this was raised in correspondence because of the cost risk, because of the impecuniosity of the claimant, and we simply were stonewalled, so we had to keep pressing. We made the application and we have substantially succeeded in getting what we want, which is the endorsement. So we've substantially succeeded on the application.

In relation to the indemnity limit, although you've dismissed the application today, the tribunal's recognised that this is an issue which is likely to resurface, and so it's really not appropriate to award costs against us in circumstances where this is likely to become live later on and we may succeed at that stage. So costs should be reserved or costs in the case.

Submissions by MR MOUNTFORD

MR MOUNTFORD: I endorse that position, sir, and I endorse the submissions of my learned friend, Ms Demetriou. We do say that the hearing of this aspect, the indemnity limit issue today, has served a useful case management purpose: they have seen the production of detailed budgets, which are useful to all parties in terms of managing this litigation going forward. This has not required the listing of a separate hearing; it has been dealt with as one of many matters of case management business.

We do say, in those circumstances it wouldn't be a just result to order costs in favour of the claimant as between whether the tribunal says these should be reserved because this issue will come back before us and some of the evidence filed previously may be germane to that exception. We deal with it all at that stage or it just says it's a case management matter and it be dealt with as costs in the case. I think there are arguments for both of those and certainly wouldn't resist the tribunal taking either of those two courses.

MS DEMETRIOU: Just, sorry, because I didn't have the reference to the

correspondence in case you want to see it, so --

THE CHAIR: I don't think we need to, Ms Demetriou.

MS DEMETRIOU: You don't -- okay.

THE CHAIR: Thank you.

Mr Quiney, anything you want to say?

MR QUINEY: Sir, you have my points.

THE CHAIR: Yes, thank you. (Pause)

(2.09 pm)

Ruling on costs

(2.10 pm)

MR QUINEY: I'm grateful, sir. If I can now move on to the other matters that are outstanding, some of which we've had a chance to discuss over the short adjournment, there are three essential points that remain: first, the witness immunity issue; second, the expert permission issue; and thirdly, the timetable.

THE CHAIR: Yes, just before you jump onto that, I just want to say something quite quickly about disclosure. Let me just test this with you. I really want to put a marker down rather than have a great debate about it. Hopefully, what I say will be familiar to most, if not everybody.

The point I want to make is that there is a different approach to disclosure in the tribunal than there is in the High Court, and it is not a matter of standard disclosure as a matter of course. What that means is that -- and I think there's some good indications of how this works in the guide and there's a decision in light of (inaudible) Trucks, which you might find helpful as well. 2023, I think, if people aren't familiar with that. But the way in which it is done here is to focus on the issues and to make sure that the disclosure is reasonable and proportionate by reference to the particular

points.

I see you nodding, so I'm probably unnecessarily saying all this. I just wanted to make sure that was plain to everybody, that I would not be happy to see the parties approach this just as a matter of standard disclosure, without giving some thought to how the disclosure might be shaped to the issues in the case.

MR QUINEY: Sir, I'm very grateful for that. I was nodding for two reasons: (a), because I understand that; but (b), more importantly, when we come on to the timetabling, that you'll be hearing from me that we've come to the position that we agree the first part of the timetabling, specifically those dealing with disclosure with the other side. But we'll come on to that in a minute, if I may.

THE CHAIR: I suspect that -- I did see in there that there was some reference to having a CMC, which would be focused, no doubt, on disclosure. So we can talk about that when we get there.

MR QUINEY: Exactly.

THE CHAIR: Good.

Witness Immunity

Submissions by MR QUINEY

MR QUINEY: So dealing with the witness immunity point, if I can put it that way. I've had an opportunity to talk to Mr Mountford, and he has pointed out, of course, that this has been an issue, as we accept and we talk about ourselves, ventilated in correspondence.

There are two particular matters he's brought my attention to that D3's solicitors wrote in a letter of 4 July this year that D3's rules do not prohibit or restrict the ability of its member players to provide evidence in legal proceedings. Then, further in his own skeleton at 38, he records:

"No disciplinary consequences could arise from such an approach and D3 confirms for the avoidance of any genuine doubt that no such consequence would be applied to any member of D3 [that's the player's association] making such an approach to it [that is, an approach to the association]." [as read]

You'll remember the simple point that we had asked the association to confirm was the very fact of giving evidence would not lead to disciplinary proceedings as opposed to the quality of the evidence which we would accept may remain open.

In the light of the helpful points Mr Mountford's brought to my attention, we will not be seeking any order, nor were we, but those are the sort of points that I think answer our request. So I record that we don't need to trouble the tribunal any further on that.

THE CHAIR: Does anybody have anything further to say on that? Mr Mountford?

MR MOUNTFORD: I don't think there's anything that I need to say in light of that.

THE CHAIR: Okay. Thank you.

Experts and Timetabling

Submissions by MR QUINEY

MR QUINEY: I'm very grateful.

That leaves over experts and timetable, which I may suggest are interlinked, the expert issue being whether we would seek permission for all disciplines at this stage, as opposed to simply the economists, which both sets of parties agreed on. Then the question of the timetabling.

On the first of those points, we accept and agree with the defendants that it would be an appropriate position for permission to be given to a single discipline -- the economists, at this stage -- with obviously standing over the issue of whether further disciplines, and we would say in our case an expert in the sector, but also a forensic accountant to prove our losses. The reason why we've accepted that position is now

allied to the timetable, where we've accepted -- and I'll take the tribunal through in a minute through what that means -- but we've accepted that the disclosure schedule timetable, as put forward by the defendants, is the right timetable for the tribunal to adopt, if the tribunal is minded.

THE CHAIR: You mean the bits relating to disclosure?

MR QUINEY: I'll take you to the detail.

THE CHAIR: Yes. We'll come on to that. Just before we do, in relation to economists, the position is everybody is applying for an economic expert. When I say "everybody", you're applying for one. The defendant is applying for one.

MR QUINEY: Yes.

THE CHAIR: It's perfectly sensible to us, and we certainly agree that it's a case in which it's appropriate for there to be economic expertise. So there's no pushback from us, and we're happy to make that order. The only thing I think would be quite helpful would be to try and firm up at an early stage who those experts are. The reason I say that is that as we think about all the things that are going to be done in the next few weeks, the list of issues and so on, the further this goes without there being a clear and accountable expert for the parties, the less satisfactory that is, I think. It's helpful, I think. I mean, obviously we can't -- how are you (inaudible) more than you -- are you -- are capable of moving in relation to appointment of an expert? But leaving it later just makes it untidy and unhelpful, I think.

MR QUINEY: We would endorse that position.

Going back to the timetable, one of the reasons why we've accepted the single discipline point at this moment rather than a multidiscipline point is because that anticipates a second CMC, particularly for the questions of disclosure in February next year. But it would also seem to us that that is a point where it remains open to our client to seek further permission if required. The reason I'm saying that is because

I want to make it clear that there is a strong likelihood that we will be asking for permission for those disciplines, and I'm sure there's no resolution of that point today.

THE CHAIR: Yes. Exactly. A couple of thoughts on that. One is just a point. I'm sure you're alert to this too, Mr Quiney, but there are some things that are probably helpfully done by me alone, and disclosure is certainly one of them. I can spare my colleagues the pain of that exercise. There are some things that can't be done by me, but actually there are some things that probably should be done by the three of us. I rather suspect that the discussion of experts is something that should be dealt with by a full panel unless it's not controversial. But if it is going to be controversial, which it seems it might be, and we're going to have an argument about that, we would need to convene the full panel. So you might just want to think about that in terms of maybe when we come to timetable, we'll talk some more about it.

The second observation is that in relation to those other two experts, and without wanting to provoke any great debate, obviously forensic accounting is a well-recognised expertise, and in an appropriate case where it's of assistance to the parties and the tribunal, then clearly that's a sensible thing to do in due course. As long as you can make those points out, I wouldn't imagine there would be much resistance.

I think this question of industry expertise is quite a vexed one, and I am not -- I think it requires quite careful thought as to the benefits to the tribunal of having an industry expert or a factual witness who's able to provide evidence about the same sort of things. In a case where the parties both know the industry very well, one would, I think, hope and expect that the factual evidence could give an awful lot of that background and also could provide the necessary platform for any economic experts who were required for some input.

The reason I say that is that sometimes it's unavoidable, and it comes up, for example,

in these collective proceedings with the class representative who probably isn't an expert in the field, the industry. Without necessarily any willing class member to give evidence, there's really not much choice but to go to an industry expert, or at least that's probably the easiest way to get that sort of evidence in front of the tribunal, where the parties are actually involved in the market we're talking about.

The concern I think we have is that a layer of -- a veneer has been put between us and the factual evidence, which may actually not be very helpful -- may make it harder for us rather than easier for us, if that makes sense. I'm not saying we're not prepared to grant it. But I think it would be interesting for you, as you think about any application to explore what couldn't sensibly be done by a factual witness, and bear in mind, no doubt, that -- I mean, you don't know what they're going to put in their witness statements, but one would expect there might be some background provided by the defendant's witnesses as well. But I do appreciate you've got to make your case on your pleadings. So if you come back and say "We need it for these reasons by reference to these issues", then of course we're very happy to consider that application.

MR QUINEY: Sir, that's an extremely helpful set of guidance, which I'm sure all parties will bear in mind. The only observation reply I would suggest is obviously there is that dividing line between expert opinion and factual evidence, and one might suggest from looking at the pleadings that two points arise from that. Firstly, opinion evidence probably will matter quite significantly, and the factual witnesses, particularly the protagonists in this particular litigation, may well have different views about what actually happens or how things happen. While I don't in any way step away from the helpful guidance, sir, that you've given to the courts, I do observe that there might be particular qualities to this litigation that we will need to address you on when you are being asked to decide that.

THE CHAIR: Yes. I mean, that's an absolutely fair observation. I suppose the thought that comes immediately to mind on that is if that opinion is actually really the point that we're supposed to decide, then it's not really very helpful either. But I'm not saying your point doesn't have validity. It's just that there are some limits to that. We did spend a lot of time trying to think of some things that an expert in these areas might be able to give us evidence on that couldn't be produced by a factual witness, albeit that there may be different views on some of the facts. We did struggle a bit. So I'm sure that when you come back, if you come back, then you'll come with some examples of why it works.

The other thing, of course, is at some stage -- I can't remember whether it's in your directions -- but you might give some thought to what facts could be agreed, because if that was done at a relatively early stage, it would no doubt help the experts and also might avoid quite a lot of contention --

MR QUINEY: (Overspeaking) on that short point, sir, that isn't part of the current timetable for the parties to take that into account.

THE CHAIR: Yes. I mean, sometimes it's more trouble than it's worth. It's really a matter for, I think, your judgment as to whether you think it's the most efficient way of getting to the necessary point.

MR QUINEY: I suspect we'll have a better view about trying to prove issues, let alone agreeing facts.

THE CHAIR: Yes. (Pause)

Yes. Mr Mountford.

Submissions by MR MOUNTFORD

MR MOUNTFORD: There's not much I need to say in light of the tribunal's helpful indications there, which is very much in line with our own thinking. It does seem to us that, where the potential need for this expert evidence arises by reference to the lost

case of the claimant one sees in the pleadings, you know, pleas that "we were planning to organise various events". I don't perhaps need to take you there now, but there's also relatively high-level spreadsheets attached to the pleadings which say, you know, for example, "We anticipate we would have sold 100 tickets and we would have sold this many glasses of champagne, and this is how we arrive at our loss figures". It's not the kind of exercise that one says automatically, yes, that will definitely need forensic accountancy expert evidence. It's not looking at financial statements and working out what were profit margins on events that actually happened. It's a projection exercise.

So I think one of the things that we have in mind is that we need to see the disclosure which sits behind those parts of the pleading. We need to consider, therefore, what the sort of documentary evidential foundation is. We then need to consider (inaudible) for all parties. As the tribunal says, what factual evidence we'll be able to adduce in support of that or to answer it? Then, of course, we also need to consider the overlap between potential different sets of experts and whether actually, you know, could end up with a situation --

THE CHAIR: You can do one rather than two.

MR MOUNTFORD: Exactly. So therefore it's an exercise where we say (inaudible).

THE CHAIR: That's right. Just to be clear, I think there is a category of forensic accounting expertise which is really more presentational. There's also a question as to whether it's necessary in this case, whether it's a sufficiently complex case to justify that. All of those are things I'm sure that Mr Quiney will have heard and will be thinking about.

MR MOUNTFORD: I'm grateful.

Reply submissions by MR QUINEY

MR QUINEY: So with those sort of points in mind, could I just take you to the

timetabling issues?

THE CHAIR: Sorry. Just one last point on experts. I mean, again, so you're clear, we would expect a formal application, obviously, if you want. I mean, I think we've done the economic experts somewhat informally because we all know it's necessary, but I think it will have to be a formal, substantiated application. That doesn't mean lots of witness statements and things like that, but it does mean a very clearly reasoned application that we can understand the reasons why it's necessary.

MR QUINEY: So with that in mind, what I'm not proposing when we go into the timetable is, for example, say, "And here is a CMC or a hearing where this will be determined". But implicit within this is that, you'll see, in the first half of 2026, is probably where this arises as an issue.

THE CHAIR: Yes.

MR QUINEY: So given that we've agreed to be in lockstep to some degree with the defendants' proposals, I would like to take you to the skeleton argument provided by the first and second defendants at page 25.

THE CHAIR: Yes. (Pause)

MR QUINEY: So hopefully you'll see there that, of course, the beginning of all of this is today's date, the 26th, and then the first set of issues are relating to the list of issues and the agreement of the list of issues. We've already canvased whether that would be three weeks plus three weeks, or two weeks plus two weeks, but given the movement over lunch, we would be content to agree three weeks and three weeks for these purposes.

Moving through hopefully uncontentious grounds, we have: the exchange of the disclosure reports on 10 November this year; disclosure requests, 28 November; responses, 19 December; and reply to the responses of the disclosure requests on 16 January. Then a proposed, at least placeholder date for determination, either by

yourself, sir, or the tribunal, on 20 February 2026.

THE CHAIR: So just on that, and all of that makes perfect sense. Just on that, I'm starting a ten-week trial on 1 March, and I suspect I won't want to be doing disclosure applications quite that close to it.

I don't know whether it's possible -- I mean, it seems to me that you could bring that CMC back to the end of January, put a bit of pressure on people to get it resolved.

But on the other hand, I think there's no harm in that. So I think if --

MR QUINEY: Let me just checked my diary --

THE CHAIR: Yes, of course.

MR QUINEY: -- what date that would be. Because for our part, we would find that actually very helpful to have a bit earlier, rather than a bit later. As you will see in a minute why there's some differences on the timetable. And I think a Friday in January 2026 would be 30 January, for example, or 23 January. (Pause)

THE CHAIR: We're offering to bear the burden if for some reason I can't make it. So that's very helpful, which does give us a bit more flexibility. I'm sorry, you were saying the 20 ...?

MR QUINEY: So if you were to move forward, the determinations CMC from 20 February, you could have it, say, on 30 January.

THE CHAIR: Friday, the 30th?

MR QUINEY: Yes.

MR MOUNTFORD: I can be helpful to (several inaudible words). Or do you want to run through the whole timetable with us?

THE CHAIR: I think if you have a -- I mean, I was assuming that, at this stage, we were going to -- that the consensus would (inaudible) over and that we'd have some -- so if you've got anything on anything so far, I don't know if you have any views on 30 January or indeed any other date around then.

It may be that you're not in a position to confirm it, in which case we don't have to go nap on that now.

MR MOUNTFORD: It think it does cause some difficulties.

THE CHAIR: Yes.

MR MOUNTFORD: I don't want to keep cutting into this, I just want it to be considered that that's agreed, and we're sort of --

THE CHAIR: No, no, of course. No. Well, I mean, maybe the answer to this is that we know we need to do it at the end of January. If, for some reason -- and I think it is the sort of thing exactly that it's not really the sort of thing you want to be farming out to somebody else, and so -- particularly since you're by yourself, and there's no one to farm it out to.

So why don't we leave it on the basis that that's indicative? I mean, I don't know whether --

MR MOUNTFORD: It is because I have a one-week trial, and it's in the first week of February. So it's just --

THE CHAIR: You're on the same position as me. You don't want to (inaudible) anything.

MR MOUNTFORD: Yes.

THE CHAIR: And there's a question as to whether the 23rd is pretty close to the 16th. I think what I might do is just leave it to you to come back and make enquiries at the registry and either I, or Mr Morrison, will deal with it, depending on when it is it ends up. That's probably the best thing.

But I certainly think that the other reason for bringing it back a bit is, it seems to me, the 2 April, when disclosure has to be provided, is not that far away from the middle of February. So middle of February is (inaudible) at some, I think, depending on how much there is, of course.

MR QUINEY: Given my next submission is about bringing forward that date, we'll see how that goes.

THE CHAIR: Well, just before you do that, because in a way that -- the question in my mind is, I don't know whether you're still trying to engineer a trial in July 2026, because that seems to me to be wholly unrealistic, if I may say so.

MR QUINEY: We came to that conclusion.

THE CHAIR: Yes. Because in a way, maybe we should have that discussion about -- well, I mean, why don't I let you do your bit. You carry on.

MR QUINEY: Yes, well. So I was going to make three points.

THE CHAIR: Yes.

MR QUINEY: I'll just make them very quickly.

So, where the consensus stops is 20 February, as you rightly anticipated.

THE CHAIR: Yes.

MR QUINEY: The second point is: whether that's 20 February or 30 January or whatever is a matter for the tribunal. But it's a useful baseline starting point.

Then the third introductory point is -- might be described as counting backwards. So it's a question of where the tribunal can accommodate the parties for a trial.

On that point, currently the parties have floated a two-week period. Having talked to my friend Ms Demetriou, we agree that two weeks might be optimistic, three weeks might be more conservative at this stage. Obviously it's to be revisited.

THE CHAIR: And is that, a four-day or five-day week --

MR QUINEY: Well, I've been working on a four-day week, but a five-day week as -- I mean, equally --

THE CHAIR: Yes.

MR QUINEY: -- would be accommodated.

THE CHAIR: Yes. I mean, if it's a two-week trial, then five days is fine. A three-week

trial, probably, it's fine. Once you get to a point where --

MR QUINEY: Yes.

THE CHAIR: -- five days doesn't -- isn't very pleasant, as I'm sure you know.

MR QUINEY: Certainly from my part -- I don't know about my learned friend -- but I didn't want it suggested that suddenly two weeks is written in stone, because --

THE CHAIR: No. So we really -- so what we should be doing, and I would like -- just so it's clear, I would like to put a date in the diary for the trial today, or at least immediately following this.

I think if we don't do that, then you will lose focus, without any disrespect to those behind you. Also, it allows everybody to know where they are. So if that's where everybody is, that would be helpful for us as well.

MR QUINEY: Absolutely. And that's also consistent with, obviously, the overarching submissions that we've made when we were trying to hit the target of July 2026 --

THE CHAIR: Yes.

MR QUINEY: -- that my client would like this resolved sooner, rather than later. Having a locked date, at least even in principle, that would be a very good start from my client's perspective.

So what I was about to address you on is sort of running up a series of stages, taking the milestones from this timetable, but aiming to hit a trial in October/November 2026. Now, having discussed matters with my learned friend, Ms Demetriou, on this, we agree that it would be difficult to hit an earlier date, whether that's July or September. She has certain commitments as well, which, you know, may or may not be a matter relevant to the tribunal, which I believe is -- and she'll address you on this, no doubt -- in or around November next year.

However, on the other side of the coin, my client would be very unhappy -- if I can put it that way -- with a trial starting in, say, the beginning of 2027. That would seem too

far away. And the roadmap, and I could sketch out for you in a second, will be a reasonable roadmap, we believe, to hit that October/November trial date.

But obviously, if there is no ability of the tribunal to accommodate that October/November trial date, I would probably be wasting my time addressing you on it. So maybe that's where we start counting backwards.

THE CHAIR: Well, I think -- why don't you give us the dates and why don't you -- I mean, let's just try and get your preferred timetable out, and then we'll get the same for Ms Demetriou, and then we'll give you a view on that.

I mean, there are constraints with the tribunal, largely about trying to find the right space at the right -- but if the parties are going to be ready, then we work on the basis that we try cases when they're ready.

So I don't want to say that we can't do it. I'm sceptical, I have to say -- given the challenge of meeting(?), I'm sceptical as to whether this can be done really much before the end of 2026. But anyway, why don't you have a go?

MR QUINEY: I'll have a go. It may be that there is just a debate of a matter of weeks here and there, but that might be a matter of weeks here and there, that takes us to December.

THE CHAIR: Yes.

MR QUINEY: But at this point, having accepted the first part of the timetable, we just want to achieve the best we can, in these circumstances; hit as early as possible date as we can. But we're not going to quibble about a week here or a week there. So I'll set out my stall, and then we'll hear what the other side say, and particularly, the tribunal may be able to accommodate.

So picking the next stage within the timetable, at page 25 -- and I'm just going to run through them all.

THE CHAIR: Yes, just give me the reference.

MR QUINEY: Final disclosure, we would suggest 20 March. Factual witness statements, we would suggest 24 April. Expert reports, 12 June. Reply expert reports, 3 July.

THE CHAIR: Did you say 3 July?

MR QUINEY: Yes. Experts meeting, 24 July. Joint statements, 7 August.

THE CHAIR: 8 August?

MR QUINEY: Sorry, 7 August. PTR, I'm going to put out 11 September, but, you know, that probably will be a question of where the trial sits. And that's in order to hit a trial, say, end of October, beginning of November.

Now, just two observations, if -- three observations, if I may. The first is, I hear, sir, what you were saying earlier about the period for final disclosure to be provided, and there may be a degree of flexibility on that. We genuinely don't believe that you probably need more than a month after that date to provide the witness statements.

Then finally, on the expert reports, we built in a bit more fat, so to speak, on that, compared to the other stages, because we're anticipating we might have to trouble the tribunal, as we've discussed. But equally, again, the expert process, the fact that it goes into August or early August, the summer vacation, should not be holding us back from necessarily having a trial.

So that's my suggested timetable. Maybe it would be appropriate, sir, if my learned friends addressed you on it.

THE CHAIR: Yes. That's helpful. Thank you.

Submissions by MS DEMETRIOU

MS DEMETRIOU: Thank you. So, we think this is a bit tight. So the date -- so just looking at our suggested dates and comparing them to the dates that my learned friend just gave, we think that it's going to be tight, in any event, to give disclosure by 2 April, even if the hearing, the CMC, is brought forward. That was already a tight date. We're

doing the best we can, so I don't think there's any flex there. So I don't think that can be brought forward.

That disclosure then has to be reviewed, and I think this is a case in which witness statements will need to take account of the other side's disclosure because of the factual issues that arise in the case.

So I think they'll have to -- the other side's disclosure will have to be reviewed. And obviously, a certain amount of work can be done on our own witness statements before that time. But the witness statements will have to take account of the other side's disclosure.

So I think that our June date is more realistic for witness statements. I think to bring it forward to April is far too close to the provision of disclosure.

The expert reports will obviously need to take account of the factual evidence. That will be the basis on which the experts opine. So for that reason, the experts will need a period of time to look at, to review the disclosure and the witness statements before compiling their reports.

We've said 28 September. It's possible that could be trimmed a little bit. Experience shows that August is quite often for economists, as well, not an ideal month, so that's why we've said 28 September.

We've tried to give realistic dates that won't need extensions -- famous last words -- but I can see that could be trimmed if one is assuming work in August. But as I say, experience shows that sometimes that is not the case.

I think there needs to be more time than three weeks before reply reports. Otherwise, it's likely the reply reports won't be of much assistance. So three weeks is my learned friend's period. We've said just over a month. It's possible that could be trimmed a little bit.

But this all takes us to, if you go down, our date. So expert meeting will -- obviously,

that needs to be sometime after the reply report, so that the experts can digest everything in the reports to make the meeting useful. We've then said a week to the joint expert statement. I think that's reasonable.

That all takes us to a trial in early 2027. As I say, if one trims -- I think the date that could be trimmed is 28 September, for the expert reports. If one assumes more work in August, that would take us to end of the year. So perhaps December would be the soonest.

We have availability issues on our side. So both myself and Mr Rabinowitz are unavailable in Michaelmas term, but we could do a trial in January. And my clients are concerned, if there's only two or three weeks in it, to retain their counsel, because there are obvious cost consequences in losing both their counsel at this stage, when we fully read into the case.

THE CHAIR: Is that -- that unavailability, that's the whole term, is it?

MS DEMETRIOU: No. So, Mr Rabinowitz it's the whole of term.

THE CHAIR: Yes.

MS DEMETRIOU: For me, I attended a CMC in this tribunal on Tuesday, where the tribunal has indicated, although not listed, a five-week trial starting in November.

THE CHAIR: Yes. So it takes you through to the middle of December, more or less.

MS DEMETRIOU: Depending when in November it starts.

THE CHAIR: Yes, I see. Yes. (Pause)

MS DEMETRIOU: So in summary, we think the dates proposed by my learned friend are too tight. We think ours are more realistic and allow a little bit of flex. And you have my submissions on the availability issues.

THE CHAIR: Actually, the other day, I think you probably can flex that witness statements date a bit as well --

MS DEMETRIOU: Yes.

THE CHAIR: -- probably. So if you were to put it -- I'm not sure. I mean, even if you bring them back a couple of weeks, actually fitting it in before the end of the year is quite difficult.

MS DEMETRIOU: It's very difficult.

THE CHAIR: Yes. Okay. Thank you. Mr Mountford.

Reply submissions by MR MOUNTFORD

MR MOUNTFORD: (Audio distortion) what my learned friend, Ms Demetriou, has said, I think an important facet of this in multi-party litigation is that we are seeking to achieve co-ordination between different defendant groups. That does require that there is a little bit more time baked into each stage to allow for that co-ordination on the defendant's side so we're jointly instructing experts. But it can't simply be done by one legal team; it's two legal teams who are interacting. So we say that's another reason why it is sensible at this stage to look at realistic gaps. We think things like, you know, three weeks later, the reply reports and things, that simply doesn't work.

From our perspective as well, it's obviously mainly an issue for the first and second defendant, their counsel availability. We don't have a counsel availability issue for December. But in circumstances where we have now bedded in on this case and my client's taken a decision not to instruct leading counsel, there is a degree of disruption if the entirety of the counsel team on first and second defendants changes, which will undoubtedly cause some degree of additional cost and complication for all parties, not simply for the parties who are represented.

So for those reasons, it does seem to us that if the tribunal was looking at a sort of July 26 versus January 27, there might be one occasion when one is looking at December versus January. There's really no point to require that sort of disruption to the way things have (audio distortion) proceeding at the moment for (audio distortion) small time --

THE CHAIR: Can I check there's no availability issue on the side of the court for January 27? Sorry, for the counsel for January 27. I'm so sorry, there's no availability issue on the side of the court for January 27. (Pause)

Discussion

MS DEMETRIOU: Sir, safe to say that we both face the spectre of finishing trials at the end of term in December, and so just to build in sufficient time properly to prepare this trial would militate against a start right at the beginning of term. I think that would be tricky.

THE CHAIR: What does that mean in practice? So, for example, I think the first Monday is the 4th, and if that was a reading week for us and we started on the 11th, I know that doesn't give you much Christmas break, does it?

MS DEMETRIOU: Well, it's not just Christmas break, which --

THE CHAIR: No, I know.

MS DEMETRIOU: -- I'm used to foregoing. It's just it doesn't give us -- I'm not satisfied that gives us -- I think another week would be really helpful because we want to make sure, obviously, that we've prepared it properly and can present it as effectively and efficiently for the tribunal's benefit as well. So I think another week would be desirable.

THE CHAIR: But on any basis, if you think about that -- I mean, it's going to cause some difficulty for you, isn't it? Because on any basis we're going to need written submissions.

MS DEMETRIOU: Yes.

THE CHAIR: Well, certainly by early in the new year. I'm not quite sure -- the trouble with it is, I mean -- well, that's fine. Let's see what Mr Quiney says.

Mr Quiney, I think the reality is -- you know, without even getting into the question of counsel's availability and the burden on them and all the consequences that come from that, because actually, from your client's point of view, I appreciate that it's not

the top of their list of things. I actually think the reality is your timetable is just too tight, and the problem with it is that it lends itself to things being done under huge pressure, particularly the disclosure work and the work around the experts. Experience tells us all that those things go wrong when that happens and we get sloppy reports and documents get missed and disclosure and so on.

The other thing about it is it's got no redundancy in it, really, at all. Things do go wrong, as we know, and people do need extensions, whether it's because somebody got sick or whatever it is. So I just don't think that it is -- it's just too tight, I think, your proposal. It is, I think, possible to push the timetable a bit harder so that the case could be tried in 2026, but actually, again, I just feel like for the sake of a few weeks, we're likely to all start in a much more considered and happy place in early January, and it will be a better trial for having some extra time. Part of that, for example, is that, you know, we're going to have to fix a PTR. The PTR will obviously be on the 2026 side of the year end. That does just give a little bit of extra time. Otherwise, I think it's really going to be very close to the trial, and I'd never think that's a very satisfactory situation.

So the short point is, I think we all think it's January. The question really, then, is just how difficult it is for Ms Demetriou and Mr Rabinowitz and, you know, I have some sympathy, but obviously there's a -- it doesn't make that much difference to you whether it's the 11th or the 18th that the trial starts.

MR QUINEY: So the short point, sir, is I'm not going to try and dissuade you from (audio distortion) that. My starting point on behalf of my client was if we could do it in essentially Q3 of 2026, that would be much preferable than Q1 of 2027. I appreciate and understand why that might not be feasible, even if there was trimming on the proposal put forward by the defendants.

So if it really is a matter of a week here and a week there, as I think I've said at the end of my submissions, we are not going to be trying to persuade the court against

that. If we're talking about a start on 11 January or 18 January, going back to, sir, your earlier point, we're all for a happy, co-operative hearing that hopefully can be conducted with efficiency and good humour in the post-Christmas period as opposed to something that's more concentrated.

So if the tribunal's mind is moving towards trying to hit an 18 January date, we will agree with that, and thereby, if that's right, then we would be content with the proposed timetable to trial that has been put forward here at page 25 of the skeleton, because I don't think there's any merit or anything to be earned by me quibbling about those points at this stage. (Pause)

THE CHAIR: Yes, okay. In that case, thank you. That's extremely helpful, Mr Quiney. Very helpful indeed.

So I think where we're left with then is that we'll have a reading week starting on 11 January. The trial will start on the 18 January, this is 2027. I think probably the right way to approach it is to list it as a two-week trial with one in reserve, because I'd much rather that it was not a three-week trial, unless you really feel it needs to be. At the moment, you clearly aren't in a position to be sure about that. So we'll block the three weeks out and you should block the three weeks out in your diary, but I don't want it to become, by default, a three-week trial just because we've done that, and I really would appreciate your consideration of that when you feel in a better place to do it. I'm sure nobody wants it to be any longer than it needs to be.

What is clear -- and I think this is a point you made, Ms Demetriou -- is that there's going to be quite a lot of interesting factual evidence. We're obviously running the justification arguments and there's going to be quite a lot of material that comes out of that which is quite detailed. I don't know how many witnesses that turns into or how much material and so on, but I can see why it might not be two weeks. But you'll form a view of that and we can work that out in due course.

MR QUINEY: Sir, it might be said against counsel sometimes that there's a temptation to fill the gaps that you've been given, the time estimates that you've been given, but we will endeavour to cut our cloth approach appropriately.

THE CHAIR: Yes.

MR QUINEY: It may be that those issues are determined to some degree by the experts determining (audio distortion) issues as well. So --

THE CHAIR: On that basis -- sorry to interrupt you, but, well, perhaps you were going to say the same point. I mean, if we know that that's the answer, I think some of the heat goes out of some of the dates, doesn't it? But what I would like you to do as counsel is to just liaise and make sure you're both happy with dates. If, for any particular reason, you did want to shift them around a bit, I don't have a problem with that, but there's obviously no point doing it for the sake of it. If there's a decent reason why it makes more sense to have a bit more time for experts and a bit less time for factual witnesses, so be it.

MR QUINEY: That was exactly the point I was going to suggest, sir, and thank you for that. This is our roadmap --

THE CHAIR: Yes.

MR QUINEY: -- at the moment. If there are matters to tweak around the edges at this stage, as opposed to any of the misfortunes that, sir, you described earlier, that might have come on the road to trial, then I'm sure we can do that.

I think that those are all of the issues we need to trouble you with as well.

THE CHAIR: Yes.

MR QUINEY: Unless there's anything my learned friends has in mind.

MR MOUNTFORD: The only point to revisit, then, is the question of the CMC in February. But I don't know how, sir, you wanted to --

THE CHAIR: I think we might leave you to take that away and work out what your

diaries look like, and then to give us some dates here --

MR QUINEY: Yes.

THE CHAIR: -- and perhaps to think about the proximity to where, assuming you end up on -- 16 January is agreed, isn't it? So why don't you go away and have a think about what dates you'd like to try and land that, when you think it's sensible to do it, and we will find a way to accommodate it. If it strays too far into February, then you may get Mr Morrison. If it's earlier than that, you may get me, or we may get any combination of the above.

MR MOUNTFORD: That's very helpful. I think, for my part, because of that trial in the first week of February, the current date of 20 February actually works very well because it gives me a week, once I'm out of that, to prepare. But it sounds like the tribunal may be able to accommodate, discuss further, and then come back to you.

THE CHAIR: Yes, there's only my availability, of course, that is a problem. So the offer that I've heard from my right doesn't make that a lot easier.

MR MOUNTFORD: Not wanting myself to show any preference to members of the tribunal, from my perspective, that's fine if that's fine for the tribunal.

THE CHAIR: That's good. That's good. The only other thing just to raise with you, just to come back to this list of issues. We would like to see that, of course. Even if it's agreed with great harmony, we'd like to have a good look at it, and maybe we've got some views on it as well. So whether it's through the process of resolving any disputes, if there are any -- there probably are some -- or if it's as a final draft, could that please be provided to us at some stage in this process? Make sure that's in the process somewhere.

MR MOUNTFORD: I think the way forward is that we'll seek to agree the list of issues. If it is agreed, we will submit it for formal approval.

THE CHAIR: Yes.

MR MOUNTFORD: So the tribunal will have a say on that. And if it (audio interrupted) satisfaction.

THE CHAIR: Yes. That's good.

Sorry. Just one other point (inaudible) Mr Quiney. If you're going to come back on your extra experts, you need to give some thought about when you do that and how it fits in. I suspect -- well, it may be that it can be dealt with on the disclosure. We can have a think about that. But it may also be -- well, maybe there are other matters that need to be dealt with which justify a CMC.

If it helps, we're very happy to do CMCs short matters, which are not terribly contentious -- well, everything's contentious -- which are not heavy matters on a virtual basis.

MR QUINEY: That would be incredibly helpful for me.

THE CHAIR: If that's more helpful, don't hesitate to ask. Actually, disclosure is something that's quite often capable of being done like that. If you wanted to make an application in relation to an expert, we could, I think, probably do that on a virtual basis as well.

MR QUINEY: Exactly. As for the timing of the expert permission question, obviously that's a matter we'll review. Particularly it'll come in after the expert, the factual witness -- sorry, the disclosure, and maybe even after the factual witnesses. But given the degree of latitude we've got in the timetable, I'm sure we can find an appropriate place.

THE CHAIR: Thank you. Well, thank you all for your work in preparing that. That's been very helpful. It's a very interesting matter. We will look forward to seeing you all in due course.

Thank you.

(2.54 pm)

(The hearing concluded)