IN THE COMPETITION APPEAL TRIBUNAL

Case No:1750/5/7/25- 1752/5/7/25

Salisbury Square House
8 Salisbury Square
London EC4Y 8AP

Monday 8th December 2025

Before:

Justin Turner KC

(Sitting as a Tribunal in England and Wales)

BETWEEN:

Dr Andrés Herane-Vives

Claimant

V

AXA PPP Healthcare Limited and AXA Insurance UK Plc

Bupa Insurance Services Limited

Defendants

A P P E A R AN C E S

Dr Andrés Herane-Vives representing himself

Robert O'Donoghue KC (Instructed by Pinsent Masons) on Behalf of Bupa Insurance Services Limited

James Bourke (Instructed by DAC Beachcroft) on behalf of AXA PPP Healthcare Limited and AXA Insurance UK PLC

Monday, 8 December 2025

(10.30 am)

THE CHAIR: Can you hear me? Dr Herane, you're on mute, I think.

DR HERANE-VIVES: Yes, sir, I hear you. Thank you very much.

THE CHAIR: Thank you. Thank you. I just need to read something out first. Dr Herane, please forgive me.

Some people are joining us live-stream on our website, so I will start with a warning. An official recording is being made and an authorised transcript will be produced, but it's 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. (Pause)

Can you all hear me? Mr Donoghue, can you hear me?

MR O'DONOGHUE: Sir, I can. It's breaking up a little bit --

THE CHAIR: Right.

MR O'DONOGHUE: -- at a time, but I can basically hear you, yes.

THE CHAIR: All right. Well, please, let me know if you can't.

MR O'DONOGHUE: Thank you.

THE CHAIR: Just before we start, just so that everyone is aware, I don't think any conflicts arise, but I am insured by Bupa. I have health insurance with Bupa, although no active treatments at the moment, and I was formerly a member of the council at UCL and I never had any contact with Dr Herane while I was there. But just so you're all aware, if this becomes a problem in the future, please let me know.

Dr Herane, I just wanted to start by giving you some background to these sorts of proceedings, which I hope will be helpful. You are, of course, entitled as a litigant in person to bring a claim before this tribunal, but you need to be aware that the matters that you raise are extremely complex and that as currently formulated, your claim is

not straightforward and may fail. I'll come to explain some of the reasons for that in a moment. I'll come back to that.

But I first want to make you aware of the consequences if your claim does fail, what happens. Now, if you lose, you're liable to pay the costs or at least a proportion of the costs of Bupa and AXA, which will run into -- almost certainly run into hundreds of thousands and possibly millions of pounds.

So your potential jeopardy, unless you have considerable means, is financial ruin, and you need to be -- sorry. Somebody's talking. (Pause)

Right. Whoever's talking, can you please stop? Switch your microphone off. Sorry, Dr Herane.

I was saying that your potential jeopardy is you may have to pay costs to Bupa and AXA if you lose at the end of this litigation. These can be very considerable sums. So you may, as a practical matter, be facing financial ruin, unless you have considerable private means.

Moreover, even before we get to the end of proceedings, you can be ordered to pay costs as we go along, if you were to lose a particular application. For example, a dispute over what information you should provide or what documents you should provide, if you were to lose one of those applications, it's possible -- not certain, but it's possible -- you could be ordered to pay costs in relation to one of those applications. Again, those costs are not necessarily trivial.

You need to balance that risk of exposure to costs against the benefits you're going to get from this litigation. So if you're successful, you potentially will get a sum which will be broadly based on work you've lost. You need to consider what the value of that is and whether that can be balanced fairly, in your mind, against your potential liability and costs. So you need to carry out this risk benefit analysis, and that is something that professional litigants do all the time.

Just thinking about matters here, it's not clear to me where that risk benefit lies for you at the moment. So that's the first thing, your potential liability and costs.

Second, you need to consider the anxiety and emotional trauma that complex litigation creates in all litigants, and consider whether this is something you're prepared for. These are extremely complex cases: worry, sleepless nights, financial pressure, an enormous workload. The litigation will play on your mind and that is something that you really need to consider right from the outset.

Third, even if you're able to formulate a good case, it's going to be extremely challenging to successfully bring that claim, bring that case against well-funded litigants, without good quality legal advice and some equality of arms. The world shouldn't be like that, but that's the reality. The stark reality is, you will be at a disadvantage if you are facing extremely skilled solicitors and advocates and you don't have an equivalent support.

So you need to consider whether you can obtain specialist legal advice and get the support that you require to carry out this litigation. So those are things I just want you to be aware of at the outset. I don't want to be telling you this at the end or halfway through, and I think you need to give consideration to them.

Now, I said I'd explain a little bit more as to why, as currently formulated, your claims appear not straightforward. First, to succeed on abuse of dominant position, you have to show that the defendants are dominant and market shares you've identified, of less than 40 per cent, are just not usually sufficient to establish dominance.

You've not pleaded collective dominance. So as currently formulated, this is a challenging aspect of your case and even if there is some merit in the complaint you're making about getting access to insured patients, it doesn't mean that you're entitled to bring a claim in this tribunal for abuse of dominant position. That is a specific hurdle that you need to get over.

As to your chapter I prohibition claim, as the defendants are pointing out, you've not yet identified a relevant agreement. At the moment, it's difficult to see how that case is going to be articulated. So that's something, obviously, you're going to have to give considerable thought to.

Now, what I'm minded to propose -- I haven't heard from you all yet, so this is just a starting point for conversation. What I'm thinking about proposing is that we stay these proceedings for some sort of mediation, before costs get out of control, and I have some specific suggestions as to how that might be managed, and I will come back to those in due course.

Dr Herane, sorry, I've been speaking to you in some length and I just want to know if you had any comments or questions at this stage, whether what I've said has been clear?

DR HERANE-VIVES: First of all, I would like to say that you are very kind. Thank you for warning me about this. So, basically, dominance can be demonstrated when AXA and Bupa act together in a co-ordinated policy that is not restricted for one of the insurers alone. But I really appreciate your comments. I think they are very kind.

I've been used to facing very difficult situations related to medical organisations that relate to non-UK doctors that have establishment rights in this country, so this is not something new. But obviously, I will deeply consider your words. I think that they are very thoughtful, obviously, very considerate.

THE CHAIR: I'm sorry, can I ask you to introduce -- I should have done this at the outset. I know who you are. Can I ask you just the defendants' counsel just to introduce themselves to the claimant.

MR O'DONOGHUE: It's Mr O'Donoghue for Bupa and Mr James Bourke for AXA.

THE CHAIR: Thank you. I did have some questions. I can probably direct them to you, Mr O'Donoghue, but they apply equally to both of you. But just as an approach,

would you have any objection to staying matters for a mediation at the outset, before we incur further costs?

MR O'DONOGHUE: I will need to take instructions. We echo certain concerns you've expressed that there are some significant challenges with this claim. I'm acutely conscious this is a litigant in person facing difficult circumstances, but there are also questions of fairness to the defendants. The vista of a six or seven figure costs tab that gets out of control is very, very concerning.

As you've adverted it, sir, the dominance case seems extremely challenging. The chapter I case at the moment is either incoherent or non-existent. Fundamentally, sir, we have no -- subject to instructions, we have no objection to a stay, coupled with mediation, and we have an open mind.

But fundamentally, my client insists on a public interest criterion, which is GMC specialist registration. As you may have picked up, sir, from my letter of Thursday of last week, the claimant has been in disputes with the College of Psychiatrists, and copied to the GMC, in which these requirements, it seems, have been challenged in various legal ways.

From my client's perspective, this entry in Specialist Register is a pro-competitive criterion intended to raise the quality of services for the insured. What's very, very unfair to us -- sir, I don't know if you have in front of you the attachment to our letter of Thursday, which is the response by the Royal College of Psychiatrists to the claimant's letter for action in the judicial review proceedings.

THE CHAIR: Yes, I have seen that. We just seem to be getting off track a little bit (overspeaking).

MR O'DONOGHUE: Well, certainly it's --

THE CHAIR: I was just asking you quite a short question --

MR O'DONOGHUE: Yes. Sir, sorry to interrupt --

THE CHAIR: And you're going to take instructions, as I understand it.

MR O'DONOGHUE: Yes, but so just to wrap up the points, you'll have seen on page 3 there are three routes for the claimant, or indeed any person, to gaining entry onto the Specialist Register. What's very unclear to us is whether the claimant has availed of any of these routes and --

THE CHAIR: But that's neither here nor there for the purposes of today. But perhaps you could then, now you brought us on to the subject, explain why you've pleaded several in several places that this requirement to be on the Specialist Register is to enable Bupa to ensure the provision of safe, appropriate and timely patient care. Could you just explain why it's unsafe for a junior doctor, let's say, to treat a private healthcare patient?

MR O'DONOGHUE: Well, so, we can actually pick this up in the letter I adverted to. There is a wealth of training and practical experience and other requirements that underpin entry into the Specialist Register, and as you will see, sir, at the top of page 3 it says:

"The primary criteria to practice in a consultant post in the UK is that a doctor is on the Specialist Register." [as read]

This is true, I think, in more than 99 per cent of cases of consultants. So it is a public interest matter administered by the GMC --

THE CHAIR: That's not an answer to my question. I asked your position: is it unsafe for non-consultants -- let's say junior doctors for present purposes -- for junior doctors psychiatrists to treat patients? Do you consider that unsafe?

MR O'DONOGHUE: Potentially so. Yes.

THE CHAIR: Right. Why is that a matter for Bupa? Presumably, you're not responsible for the standard of care given by physicians. You have no legal liability.

MR O'DONOGHUE: Well, sir, that remains to be seen. But what I can certainly say

is Bupa would wish to ensure the highest quality of medical care, and the Specialist Register is, in effect, a standard of quality mark that we rely on to achieve those ends.

THE CHAIR: But why is it any different to saying if you're going to represent your case in court, you must employ a KC such as yourself, Mr O'Donoghue, and not Mr Bourke, who I understand hasn't yet taken silk, although I'm sure it's only around the corner. But, I mean, this is all -- we know from our own professions that it isn't always as simple and straightforward as saying those who are more junior are not qualified -- or not appropriate -- to treat patients.

MR O'DONOGHUE: Yes. Well, sir, at this stage, we certainly do rely on the fact that there's a wealth of particular qualifications, training and practical experience that are necessary for the rank of consultant.

THE CHAIR: Can you just explain -- you rather dodged the question why the (overspeaking) --

MR O'DONOGHUE: Well, sir, the --

THE CHAIR: I mean, as the insurer, you don't have liability. You're not recommending all consultants. The patient I assume is free to choose a consultant and it's just a question of you writing the cheque. Why is it any business of yours as to who the patient chooses to be treated by?

MR O'DONOGHUE: Well, sir, I certainly don't accept for the purposes of today that Bupa would have zero legal interest or potential liability insofar as concerns the selection of approved doctors, but -- so the reason I've raised this point is that of course we have no objection in principle to a stay, of course we're all minded to a mediation. But what is a concern for Bupa is if the -- the implication is that these requirements should be diluted, that is something in the public interest we would have a concern about.

What we try to understand from one of our requests for information is if the claimant

has the necessary qualifications and training to apply for the Specialist Register, and if not, why not? Because to put my cards on the table, a mediation where the premise is that the claimant can apply inferior standards, that may present challenges. So I want a degree of realism as to what can be achieved in the context of mediation. It does seem to us as a starting point that understanding what, if anything, the claimant has done in terms of the three routes to the Specialist Register would be important information from the outset.

THE CHAIR: Well, that may be in due course. I can see there's going to be a case for both claimants and defendants providing much more information in relation to their respective cases, and of course these points --

MR O'DONOGHUE: Sir, no objection in principle to a stay or to scoping out a mediation.

THE CHAIR: Mr Bourke, sorry, your hand is up. I was going to come to you anyway.

MR BOURKE: Thank you, sir. To start off, I would certainly agree and AXA would certainly agree with what Mr O'Donoghue has said with respect to the lack of any kind of basis for the claimant's claim here. We don't accept that for a moment. Again, I would also need to take instructions properly, but I think AXA would not be opposed to a stay. But the idea of mediation in a situation like this is difficult for us, where we think that there is no basis for what the claimant has argued.

Chapter I is just completely inadequately pleaded, and we think that the criteria that we apply -- that AXA applies -- are designed to ensure quality. We're not dominant in the first place, and the criteria are designed to ensure quality. That's a decision by AXA in order to ensure quality for its customers, ultimately, and to say that that's abusive goes very far. Indeed, I'd say it's far-fetched.

THE CHAIR: Well, Mr Bourke, I mean, this is all for argument in due course, but if I have my house insured and it burns down, my insurance company, I expect them to

be alert to the costs of rebuilding it. I don't expect them to say, "Well, you can't use these builders, you can't use that builder, because they don't have that particular qualifications".

At the moment -- and I'm yet to be educated -- I don't understand why the medical profession is any different. Because the insurance companies are not -- they're not Bupa employees who are doing the treatment, or AXA employees in your case. So why the insurance company is getting involved in this at all is something that at the moment requires further explanation. It may be there are a very good answers to it.

MR BOURKE: Yes, sir. I think that's right. I think we would have to go into it in more detail substantively and have factual evidence, et cetera, but I think our starting point would be to say that this is a different context to a rebuilding of a house or fixing a house, where you're dealing with medical patients and ensuring a high quality there is (overspeaking).

THE CHAIR: Maybe. When I tuck my small children into bed of an evening, I like to know the house is going to be well built. But that's a matter between me and the builder. I don't expect my insurance company to get involved in that.

Mr Herane, I don't particularly want to get involved in the arguments today. If you've got any comments you wish to make, I'm certainly happy to hear them.

DR HERANE-VIVES: Yes, I prepared a very brief opening statement.

Sirs, members of the tribunal, AXA and Bupa, thank you. This case concerns exclusionary consultant recognition policies used by AXA and Bupa which restrict market access for eligible and qualified psychiatrists, limits patient choice and creates foreclosure effects, particularly within psychiatric services and employer-funded private medical insurance schemes.

Both respondents apply restricted entry criteria linked to the GMC Specialist Register, so that it doesn't apply only for the NHS, for the public sector and only for substantive

posts. I have personally worked for the NHS as a consultant. Bupa requires consultant to be on the GMC Specialist Register, but another company of Bupa, Bupa Global -- I am member and I treat the patients of Bupa Global -- to be in their Specialist Register with no exception. AXA requires both Specialist Register status and practising privileges at the AXA-recognised acute hospital. This requirement goes beyond that what is legally required for private psychiatric practice.

Bupa is now also seeking (inaudible) information and internal correspondence about my specialist registration status, which is completely unrelated, and it doesn't have nothing with this case management issue. For the purpose of today, the CMC, as I understand, is to set directions for disclosure, evidence --

THE CHAIR: Mr Herane, we're not dealing -- Dr Herane, I do apologise -- with disclosure today. So my proposal is that we don't argue this case today. I'm not going to make any orders today. You don't have to produce anything. Equally, well, the defendants don't have to produce anything. We have a halt, and then we go to some form of mediation which I'm going to come on to and discuss in a moment.

But do not assume from that, Dr Herane, that these requests are not reasonable. The sort of requests -- I haven't considered them in detail and we can argue about them in due course -- that are being made by both Bupa and AXA are the sort of requests one would expect to be made. They seem to be issues relevant to the case. So in due course, if we get to that stage, you may well be required to produce that information, but it's not going to happen today.

Now, what I propose is to direct that there'll be a without prejudice discussion and mediation to be conducted by one or possibly two ordinary members of this tribunal who will have read the key documents. So, Dr Herane, just so that you understand, I'm a chair of the tribunal. Normally, when it gets to trial, we sit as threes: we have one chair and two ordinary members. Some of the ordinary members are economists,

which clearly wouldn't be appropriate for this stage of proceedings. But we have a large number of lawyers, specialists in competition law.

My suggestion is that we -- or what I'm going to direct is that we will have, ideally, two ordinary members who will conduct a mediation and who will have read the key documents. I propose to timetable it for 90 minutes and we'll communicate an appropriate date to you in writing in due course. But we're aiming for January.

The meeting, just so you understand, will be confidential and it will be without prejudice. No notes will be taken during the meeting. The tribunal members attending the meeting will not otherwise be involved in the case at all, and they will not disclose information relating to the case to me or anyone involved with the case. So although I may speak to them before the meeting takes place, I'm not going to ask them the details of what went on in the meeting afterwards.

Dr Herane, you'll need to attend in person. If you have a lawyer or someone you wish to accompany you, you can invite them to attend. That meeting should be attended by a single lawyer -- a single person -- from each of the defendants, who I assume will be a lawyer -- it doesn't have to be -- and the parties will bear their own costs of this meeting.

A week or so after the meeting has taken place, there should be a further short hearing like this which can be remote, during which we can discuss how we will go forward in the litigation. That will be a very short meeting and we won't deal with directions at that stage; it will just be to see where we are.

That's the outline of what I propose. Dr Herane, do you have any objection to that?

DR HERANE-VIVES: No, thank you very much.

THE CHAIR: Mr O'Donoghue?

MR O'DONOGHUE: Sir, no objection in principle but to reiterate the expectation management, given the issues with this claim.

THE CHAIR: Well, obviously the objective is to resolve this claim, so I'm sure all the parties will do their best to do that. I appreciate you're looking at a wider picture. That's fully understood.

Mr Bourke -- am I pronouncing your name correctly, Mr Bourke?

MR BOURKE: Yes, thank you, sir. No objection from our end. We will engage as best we can, given the caveats that we've already mentioned and raised.

THE CHAIR: Of course.

MR BOURKE: Can I just clarify that one person means just one person? It's not one lawyer and then one person from the client; it's literally one --

THE CHAIR: Just one person. We want to keep the room small and friendly. It's up to you whether it's a lawyer or whether it's your client. It's up to you.

MR BOURKE: Thank you, sir.

THE CHAIR: So it's entirely without prejudice.

Dr Herane, I -- yes, Dr Herane?

DR HERANE-VIVES: My apologies. I will be back in the UK -- going to my home country for Christmas -- on the 13th. I don't know if it will be possible after 13 January.

THE CHAIR: Yes, of course we'll make sure it fits in with your travel plans.

DR HERANE-VIVES: Thank you very much. Much appreciated.

THE CHAIR: Dr Herane, please do give earnest thought to the matters that I've cautioned you about, in particular the risk benefit. I mean, you will have some figures in your mind, but obviously, if you thought, "Well, I've lost £100,000 worth of business, but I've got a potential liability for £1.5 million", this litigation makes no sense. It makes no sense.

So if you want to proceed with this as a complaint, you need to think of other avenues or take advice as to the various ways of doing that.

DR HERANE-VIVES: Thank you very much.

THE CHAIR: Good. Is there anything else we can deal with today? So there'll be no orders today, no further costs expended on the litigation -- no recoverable costs anyway -- prior to the meeting in January. We will write to you in a week or so, setting out in a little more detail what I've just outlined today. Then we'll see you at the meeting and then we'll have a short hearing like this after that meeting has taken place. Anything further to add?

MR O'DONOGHUE: Thank you, sir. Sir, this may be clarified in the letter, but the mediation, as I understand it, is in the traditional sense of civil mediation with a non-binding mediator. Does the tribunal have anything in particular in mind in terms of process? Is it envisaged that there would be a short statement from each side or the (overspeaking).

THE CHAIR: No, not envisaged. There'll be no statement from each side. The mediators -- if I can call them that -- the ordinary members will have read into the case as I have and so there'll be no need for opening statements.

It's really just so that we all appreciate what the risks of going forward are with the litigation. Not only the claimants, but the defendants, so we're aware of the terrain, Mr O'Donoghue, and then see if there's a way of compromising this.

MR O'DONOGHUE: Thank you, sir.

THE CHAIR: Obviously, it will be up to the ... (Pause)

Mr Bourke, yes.

MR BOURKE: Sorry. Sorry, sir. I may just have missed something. I've understood that for the mediation session, there would be no costs claims by either side --

THE CHAIR: Yes.

MR BOURKE: -- but that's separate from the cost that we've incurred already in litigation, which remain open and --

THE CHAIR: Yes. Yes.

MR BOURKE: -- will have to be dealt with at some point. Thank you. (Pause)

THE CHAIR: Thank you. Unless there's anything else, I will bring an end to the proceedings and we will be communicating with you in due course.

MR O'DONOGHUE: Thank you, sir.

MR BOURKE: Thank you, sir.

DR HERANE-VIVES: Thank you very much.

(10.58 am)

(The hearing concluded)

Key to punctuation used in transcript

--	Double dashes are used at the end of a line to indicate that the person's speech was cut off by someone else speaking
…	Ellipsis is used at the end of a line to indicate that the person tailed off their speech and did not finish the sentence.
- xx xx xx -	A pair of single dashes is used to separate strong interruptions from the rest of the sentence e.g. An honest politician - if such a creature exists - would never agree to such a plan. These are unlike commas, which only separate off a weak interruption.
-	Single dashes are used when the strong interruption comes at the end of the sentence, e.g. There was no other way - or was there?