This Transcript has not been proof read or corrected. It is a working tool for the Tribunal for use in preparing its judgment. It will be placed on the Tribunal Website for readers to see how matters were conducted at the public hearing of these proceedings and is not to be relied on or cited in the context of any other proceedings. The Tribunal's judgment in this matter will be the final and definitive record.

IN THE COMPETITION APPEAL TRIBUNAL

Case No: **1750/5/7/25, 1752/5/7/25**

Salisbury Square House
8 Salisbury Square
London EC4Y 8AP

21st October 2026

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 on behalf for himself

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

Max Schaefer (Instructed by Pinsent Masons LLP) on behalf of Bupa Insurance Services Limited

Digital Transcription by Epiq Europe Ltd
Lower Ground, 46 Chancery Lane, London, WC2A 1JE
Tel No: 020 7404 1400

Wednesday, 21 October 2026

(2.00 pm)

(Proceedings delayed)

(2.05 pm)

Case Management Conference

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

Dr Herane-Vives, I want to start with, and bear in mind we are in public. I don't want to say anything confidential, but bear that in mind. But, obviously, there has been a ruling recently regarding your attendance. I understand that the defendants' solicitors and counsel haven't seen that yet. They ought to see it, so what I am proposing is that your applications -- the paperwork of your applications and that ruling be sent to the solicitors and counsel on a confidential basis. At this stage, I am not ordering that it go to their clients, just solicitors and counsel. Do you have any objection to that?

DR HERANE-VIVES: No, my Lord.

THE CHAIR: Obviously, you are at liberty to make an application for broader disclosure, if necessary. So that will be provided, one way or another, to you.

Right, who is starting and where are we starting today?

MR SCHAEFER: Sir, I will start with introductions, if you need them.

THE CHAIR: Yes, why not.

MR SCHAEFER: I appear for Bupa. My learned friend Mr Bourke appears for AXA in the other claim. Dr Herane Vives -- am I pronouncing that correctly? -- as you know, appears as a litigant in person.

THE CHAIR: Yes.

MR SCHAEFER: Sir, there is a number of things before you. The conduct of the litigation which is the matter that the tribunal raised. Bupa has an application for further information. The claimant has an application for further information, largely against AXA, and then there are applications for the costs by both defendants for the costs of and arising from the amendments to the claim.

Obviously in your hands as to how to proceed. Could I start with one correction, please? I suggest, at the end of paragraph 4 of my skeleton, that Dr Herane-Vives has recently filed a skeleton argument that replies to AXA's original defence. I apologise, that was a misreading on my part. The document was filed in October 2025. So, in essence, I took it as an example of an issue arising from the use of AI and that is unfair and I apologise to you and to him.

THE CHAIR: Thank you for that correction.

Obviously, I have read your skeletons with regards to the putting this on as a fast-track claim. Can I just hear from Dr Herane-Vives on this first?

Doctor, as I understand it, you weren't keen on the fast-track procedure for this case, although your skeleton didn't make it entirely clear to me whether you were in favour or against or thinking about it. Would you mind standing up when you address the court as well?

DR HERANE-VIVES: Standing? I have no problem in principle with fast-track, but, basically, it doesn't explain the key elements that need to be known in the first trial, like a market definition, liability, and those elemental fundamentals. I am really

concerned, if the fast-track (inaudible) -- sorry, I have my note about this, if I can bring my note that I have for this question?

THE CHAIR: Yes. I just wanted to understand your reason, it doesn't -- do you understand what a fast-track procedure is?

DR HERANE-VIVES: Yes. Basically, in principle, it --

THE CHAIR: If you wouldn't mind standing up, please. You can put your computer on the lectern.

DR HERANE-VIVES: Basically, I have no problem in principle. I recognise that the recoverable cost cap might materially protect me (inaudible). My primary request is to reserve allocation until the issues and reasonable disclosure and expert requirement are sufficiently defined. I oppose premature allocation without safeguards, not fast-track itself. Accept, for instance, judge proposed (inaudible) liability and causation under both Chapter I and Chapter II, where he suggested that expert evidence on market definition on dominance will not be required. I respectfully ask the tribunal how it is expected to determine the Chapter II claim fairly without firstly identifying the evidence necessarily to address those essential issues.

THE CHAIR: Sorry, which essential issues?

DR HERANE-VIVES: Like market definition.

THE CHAIR: So what is being proposed is there be a fast-track procedure of issues of liability except market dominance. That means market dominance is in your favour at the moment until liability on other matters is -- please let me finish. So, it is assumed in your favour that AXA and Bupa are, one way or another, dominant and then they determine liability on that assumption. And then, if you are successful, we will then go on to look at market dominance. Do you have a difficulty with that?

DR HERANE-VIVES: So the only concern is that the risk that the proposed timetable may determine the scope of the evidence before the evidential requirements have

been properly assessed.

THE CHAIR: Right. So, a fast-track procedure will take place. There will be a trial within seven months from pretty much today and the procedure will be quite efficient and, as you rightly point out, one of the benefits would be you have less exposure on costs. So, do you still have a concern about market dominance? Market dominance will obviously be heard later. So, it is assumed in your favour -- well, not in your favour, it is put to one side pending determination of liability and we will come back to it if we need to. Obviously, if you succeed on your Chapter I case, we may not need to look at Chapter II at all.

DR HERANE-VIVES: But if it can be changing, for instance, then the circumstances change and the disclosure show that the fast-track is not possible --

THE CHAIR: There is always some flexibility in the legal system, but we are determining today whether it is going to be fast-track. So that will be on the assumption it is fast-track right through to trial. That doesn't mean, if extraordinary things turn out in disclosure such that the nature of the case changes, that doesn't mean that we couldn't revisit that. But that would be the basis on which the case is progressing.

DR HERANE-VIVES: The last clarification is whether Chapter II is being deferred or whether the tribunal (inaudible) Chapter I first, while reserving Chapter II if remain necessary.

THE CHAIR: It is Chapter I and Chapter II, but the bit of Chapter II is being put to one side and that is the question of market dominance. And the reason for that is market dominance is, typically, a very complicated matter, it involves a lot of expense.

DR HERANE-VIVES: Indeed**.**

THE CHAIR: And neither you nor, at this stage, AXA or Bupa wish to incur that expense unnecessarily. If you succeed on Chapter I, it may be that Chapter II falls away. Equally well, if Bupa and AXA succeed on Chapter I and Chapter II liability,

then there will be no need to go into this matter. Does that make sense?

DR HERANE-VIVES: Only just Chapter II (inaudible) if Chapter I doesn't fully restore the claim, I might pursue the outstanding Chapter II issues.

THE CHAIR: Yes, of course. The Chapter II issues are still the liability on Chapter II. That is as I understand your suggestion. The liability on Chapter II will be in, so you are losing nothing on this respect, it is just about how we timetable things. That is all it is.

Now, the fast-track procedure will mean that the case, the suggestion is it will be limited to three days. I need to discuss with all the parties what issues and what sort of evidence we need and to see whether that can be accommodated in three days. Again, if it can reasonably be accommodated in three days, do you have any particular objection to that?

DR HERANE-VIVES: No (inaudible).

THE CHAIR: Very good. I am grateful.

I actually just have a note with reference to AXA's skeleton, but I am sure it applies equally to Bupa, so I just really want to -- I was just looking at AXA, page 5, where you are dealing with -- at page 5, paragraph 14 -- the complexity of the case and AXA say, quite reasonably:

"The first question is whether the GMC Specialist Register Criterion is contrary to the Chapter I and/or the Chapter II ..."

I just want to break that down into the issues that arise. I don't know if you are in a position to do that? What are the sub-issues within that heading that we will be considering at trial?

MR BOURKE: Yes, so, on liability, we have divided it into the recognition criteria, including the GMC Specialist Register Criterion, which the claimant says is contrary to Chapter I and Chapter II. And then the pricing arrangements which he pleads are

contrary to Chapter I, and it is unclear --

THE CHAIR: Yes. Leave the pricing for the moment. Just on the first point, what are the sub-issues that arise on that? What evidence is going to be presented, or needs to be presented?

MR BOURKE: Yes, well, we certainly would present factual evidence on the criteria in question. Particularly the GMC Specialist Register Criterion.

THE CHAIR: That is, as I understand, fairly straightforward. It is a document.

MR BOURKE: Yes, that's right, it is a straightforward policy. I don't want to try and pre-empt it at all, but I imagine we would give an explanation of the purpose of that criterion, why it exists, what it tries to achieve, how long it has been in place for. All those type of points. And so we need to give the story about that criterion and explain it for the tribunal. And then we would need to explain its application to the claimant himself. Obviously, all the -- we need to give some sort of an explanation -- also disclosure on this. We have given him the contemporaneous emails and correspondence again. He had it already, but we have given it to him again. We would explain how this criterion was applied to him and we would also need to explain the other criterion he failed, which was the practising privileges.

THE CHAIR: Yes. No, I understand that. What else will we need to -- do you anticipate needing to address?

MR BOURKE: Well.

THE CHAIR: What about economic content and structure of profession? So what I was in particular thinking -- I don't know, sorry, I have obviously not been educated on this yet, but how many junior psychiatrists, if I can put it that way, are practising? How many are practising in private practice, how many are capable of practising in private practice?

MR BOURKE: Yes, absolutely.

THE CHAIR: Sufficient standard of care, what are the various grades of qualification between graduation and obtaining a consultancy position? That sort of background seems (overspeaking) --

MR BOURKE: Absolutely. Certainly. If we look at the four factors that the Court of Appeal has reminded us in Up and Running, you are absolutely right, sir, that, of course, we need to go into the economic context and explain it.

THE CHAIR: I am not even sure -- this was going to be one of my questions. I am not even sure that is economic. That seems to be about standards of practice, and so, it wouldn't necessarily -- an economist wouldn't be able to inform the tribunal.

MR BOURKE: No, I wasn't suggesting it would necessarily be an economist who would do it. To explain all of that, I think we could have somebody within AXA and, presumably, Bupa, who would be able to address the tribunal on those issues.

THE CHAIR: Well, I don't know.

MR BOURKE: An industry expert. We would need to probably think about that more.

THE CHAIR: I think an independent expert would be whether you feel someone within AXA would be independent or not, but it does seem we need a view of how the professions are structured, from that perspective.

MR BOURKE: Clearly, if the Tribunal thinks it would be helpful to have that, it is something we can go away and think about. The thought has crossed our minds that it might be something we could think about and consider. We probably need to direct our minds a bit more closely to that, I think.

THE CHAIR: Yes. Then the other thing would be whether we need -- you mentioned Up and Running, whether we need an economic context which is distinct from the structure of the healthcare system.

MR BOURKE: Right.

THE CHAIR: Whether there is a healthcare specialist who can do both or whether

you need a -- I mean, obviously, this will need to be -- I am not anticipating anything lengthy, certainly on the healthcare side, but ...

MR BOURKE: Yes. We certainly would take that away and give it some consideration. I would need to take instructions on it.

THE CHAIR: Right. What is Bupa's view on this?

MR SCHAEFER: Sir, likewise, we would need to think quite hard about whether you really needed an actual expert economist or whether this was something that could be explained sufficiently, the economic context as a matter of fact.

In terms of facts, for example, I don't want to pre-empt before we have given this proper thought and, as you know, we are suggesting that any proposal for expert evidence be dealt with shortly, but not today, for that reason, but it may be that it's possible to deal with a lot of this as a matter of fact and law and we would try to constraint the evidence as much as possible. But I can't say today that we wouldn't need expert economic evidence.

THE CHAIR: I am just looking for your defence.

MR BOURKE: It is in the core bundle.

THE CHAIR: Yes, for example, paragraph 11, Bupa is saying:

"Private health insurance does not operate solely as a funding mechanism. Customers expect health insurers to add value by providing a level of assistance with their claim treatment pathways."

I mean, how is that going to be addressed? Is that internal Bupa evidence? Are you going to industry (overspeaking)?

MR SCHAEFER: It could well be factual evidence --

THE CHAIR: It is not factual, is it? It is opinion.

MR SCHAEFER: If the tribunal feels it is more assisted by more independent industry evidence, that is certainly something we would seek.

THE CHAIR: I would certainly like you to address your minds. As you say, perhaps today is not the day to bring this down. Obviously, we are going to need to get on with it.

Doctor, what is your -- you have put in your skeleton argument that you envisage some expert evidence.

DR HERANE-VIVES: Yes.

THE CHAIR: Just tell me, will you have funds available to pay an independent expert?

DR HERANE-VIVES: I pay for one already.

THE CHAIR: That was on your loss; is that right?

DR HERANE-VIVES: Yes. So, basically, potentially, a very narrow scope (inaudible) competition and economics report addressing matters such as market definition, competitive effect and causation and, later, the damage methodology. I don't ask for a restricted report now, Judge. The question should be defined after a stage 1 disclosure, for instance, and approved by the tribunal.

THE CHAIR: Right. So, we won't need -- at this stage, we won't need an expert on market definition?

DR HERANE-VIVES: Yes.

THE CHAIR: We won't need an expert on quantum, though I see we have evidence on that. But what we may need is evidence on how competent junior psychiatrists -- non-consultant psychiatrists, if we can put it that way, how competent they are to treat privately insured patients. That sort of thing. Do you think that will be part of the case?

DR HERANE-VIVES: Judge, I already have worked as a consultant for the NHS, a locum consultant. My application has never been refused. I withdraw, once only, my application because I only worked as a locum consultant for the NHS, but I am not interested to work as a substantive NHS consultant. And, already, without any

disclosure, Judge, I found already five doctors that are not part of the Specialist Register and belong to AXA and Bupa without any disclosure. So --

THE CHAIR: You said you wanted experts on the split trial on the liability side. Will you be calling your own expert to deal with economic matters?

DR HERANE-VIVES: Yes.

THE CHAIR: You will?

DR HERANE-VIVES: Yes. I have to.

THE CHAIR: Well, you don't necessarily have to, but ...

DR HERANE-VIVES: We are proposing a very narrow scope (inaudible) economics and competition economics report addressing matters such as market definition.

THE CHAIR: No, we are not doing market definition. If you recall, we just decided we weren't going to do market definition in the first trial. All right?

DR HERANE-VIVES: Yes.

THE CHAIR: So, you won't need an expert on market definition.

DR HERANE-VIVES: But I understand the market definition has been included in the trial while the determination of the market dominance under Chapter II is being deferred. I understand that; right?

THE CHAIR: Yes, it is being deferred.

DR HERANE-VIVES: So, your question, Judge?

THE CHAIR: So, for the things that we are going to hear in the first trial, do you anticipate calling an expert?

DR HERANE-VIVES: So, for the topics already, yes, I anticipate expert evidence might be necessary, in particular, on the market definition application and competitive effect on causation.

THE CHAIR: Right, we are not doing causation and we are not doing market definition.

DR HERANE-VIVES: Yes.

THE CHAIR: So, why do you want an expert on market definition if we are not doing market definition?

DR HERANE-VIVES: We will be doing in trial 1, my apologies?

THE CHAIR: So, let's have a look at the draft order.

Have you seen this draft order, Doctor? Have you seen the draft order?

DR HERANE-VIVES: The one that the -- this one?

THE CHAIR: No, not that one. So, there is a draft order that has been filed by Bupa and AXA.

DR HERANE-VIVES: Yes.

THE CHAIR: Can he be handed -- do we have a spare copy? Thank you very much. If you look, what has been suggested and I think what we have all agreed is that there is going to be a -- paragraph 2:

"There be a split trial in these proceedings. Trial 1 will deal with the question of liability under the Chapter I prohibition."

Okay? So, has there been a breach of the Chapter I prohibition? And the Chapter II prohibition. And whether the alleged anti-competitive conduct has caused loss to the claimant. That is not going to be the amount of loss, just whether it has caused you any loss. Then all other questions to be adjourned until after trial 1. So, questions of market dominance are going to be adjourned. So, it is just what we call liability on the Chapter I and Chapter II.

Dr Herane-Vives, I get the impression you are using AI for a lot of this case.

DR HERANE-VIVES: My Word documents and they have a list of indexes.

THE CHAIR: Yes. You can't necessarily -- these won't necessarily be notes you have made before.

DR HERANE-VIVES: Can I clarify one point? If market dominance is deferred, when

trial -- will trial 1 determine only those Chapter II issues that can properly be resolved without deciding dominance with the remaining Chapter II issues expressly preserved?

THE CHAIR: Yes.

DR HERANE-VIVES: Perfect. So, as to expert evidence, I will be content to identify the precision question required especially assisted after the issues of the trial 1 has been settled. Yes.

THE CHAIR: Right. So you don't think at the moment -- right, so there is a possibility of a joint expert, the parties having a joint expert on once we have nailed the issues down.

Do you have -- that obviously has the benefit that it is a neutral expert, so it's not just giving Bupa's story or AXA's story, it is not just giving your story it is giving a neutral opinion to the court, this expert. Is that something that appeals to you or not?

DR HERANE-VIVES: Yes.

THE CHAIR: But you would have to pay half of that expert.

DR HERANE-VIVES: Yes. I think this is very important. I have progressed a lot on this and I think I need to have an expert.

THE CHAIR: I am not going to order a joint expert at the moment, but maybe that is a matter that needs to be considered. There needs to be a budget in correspondence with -- if you can afford that and how much it is going to cost and so forth. I think the parties should actively consider whether a joint expert is appropriate in the case.

MR BOURKE: Thank you, sir, for that indication. May I just ask, given -- obviously, there is a delicate balance here. On the one hand, we fully understand that the claimant is a litigant in person and we have duties towards him. On the other hand, we face certain challenges here in terms of collaborating on certain issues.

Now, ordering a joint expert would -- I would have to look at how the instructions work

for that.

THE CHAIR: Well, we need to agree -- I say "agree" -- within the tribunal what questions are being put to certain experts. That may need a little bit more detail than --

MR BOURKE: Absolutely, an intervention from the tribunal.

THE CHAIR: So it wouldn't be a free-for-all.

MR BOURKE: Exactly. Again, we will go away and think about it, the idea of the joint expert, but the only -- just the immediate thought that comes to my mind on the substantive issue is, if we think about this from the abuse framework, the question is whether the conduct of my client, AXA, and also Mr Schaefer's client, departs from competition on the merits. Are we doing something bad on the market? And our position is that we certainly are not. We are trying to achieve a high level of quality. We don't want to kind of get into a world where an independent expert is saying: well, I think that all doctors are equally competent, and that could, you know --

THE CHAIR: That's a second order opinion that is not appropriate, I think. What an expert could say, for example, is these are the qualifications junior doctors have. I mean, I don't know, for example, whether they have any qualifications at all, certificates, diplomas. Tens of thousands of people are treated for psychiatric disorders. I don't know what percentage are treated by juniors on the NHS and things like that. So, understanding the frameworks would be seem to be -- I wasn't thinking about forming some quasi-judicial function.

MR BOURKE: No, I apologise if I got the wrong end of the stick.

THE CHAIR: It may be that this is a bad idea. An alternative, given where we are, may be that you put in expert evidence on the issues that you think and then we give Dr Herane-Vives an opportunity to get an expert to respond to those issues. That may be an alternative practical way of going about it.

MR BOURKE: Yes.

THE CHAIR: But I would like you to address your minds to that. Obviously, we are -- in a fast-track procedure, we don't have a lot of time. We have to really get on with this.

MR BOURKE: Understood. Yes, thank you, sir, for the indications.

THE CHAIR: Where are we off now?

MR SCHAEFER: Sir, I don't know whether you had concluded your deliberations on directions.

THE CHAIR: Yes. As I understand, I think we are going to have a split trial and we are going to be on fast-track unless there is anything Dr Herane-Vives wants to add? So that will be a trial within seven months, Dr Herane-Vives.

MR SCHAEFER: Then, sir, perhaps the next question is directions to any future CMC at which the outstanding questions such as expert evidence are determined.

THE CHAIR: We need issues for disclosure. That has not been not got as far as --

MR SCHAEFER: Yes, we need issues and then disclosure categories proposed by reference to those issues and proposals or applications for expert evidence.

There are, actually -- in the claimant's draft order, there are proposals on that front which might be a start, because they do effectively set that out at paragraphs 4, 5 and 12.

THE CHAIR: In the skeleton?

MR SCHAEFER: This is the claimant's draft order, which was filed with his skeleton.

THE CHAIR: Oh, yes, sorry, I got that today. Yes, claimant's alternative draft order. Yes, I have that.

MR SCHAEFER: So, as you will see, what is proposed is effectively fairly standard. First, at paragraph 4, a list of issues. The part about fast-track would come out because -- insofar as you have decided that already, and then 12 to 14 deal with issues-based disclosure.

The main question I suggest is -- there are two things that arise. One is it will be necessary for the parties to attempt to discuss and agree these. If not, obviously we will --

THE CHAIR: Agree?

MR SCHAEFER: Agree a list of issues.

THE CHAIR: Yes. So, if you propose a list of issues, give them to Dr Herane-Vives, then you can add to them or disagree with them. So, you can produce those list of issues and send them to him by when?

MR SCHAEFER: I think the defendants collectively would suggest ten days to two weeks.

THE CHAIR: Let's say 14 days. It is quite an important step and I would expect those to be agreed between the two of you. I would hope they would be agreed between the two of you, and then, if you send them to Dr Herane-Vives, and then we need to get a date in the diary for another CMC which will need to be in November.

MR SCHAEFER: But between the list of issues and the CMC, one also needs to deal with exchanging the proposals for disclosure.

THE CHAIR: Yes. That will need to be done as well. So maybe you can bring that along with the list of -- if you can bring them in parallel, so, when you send it to Dr Herane-Vives, I wonder if you can just do the list of issues and the disclosure categories as well together. Is that possible?

MR SCHAEFER: Oh, together. Yes.

THE CHAIR: If you send him the list of issues and then, seven days later, do the categories. So, we would be coming back at half a day at some point in the middle of November, I guess.

MR SCHAEFER: So that would be three weeks to sending Dr Herane-Vives the disclosure proposals, which takes us to -- I think the proposal on both sides was

a CMC around 23 November.

THE CHAIR: I think we will have to liaise on that. It will need be to around the middle. I have some difficulties, but I will try and find some time for it.

MR SCHAEFER: I think that is all I had on directions to the CMC.

MR BOURKE: Yes, the only other point to add is, again, going back to our order, the AXA/Bupa order, we also envisaged for the next CMC that we would do the costs. We said, paragraph 4 of our draft order, we need to do costs budgeting, and we proposed, in paragraph 5, that by no later than 14 days before the date listed for the CMC, we would file and serve our costs budgets.

THE CHAIR: Yes. Okay. Good.

And then, do we have -- sorry, we are cantering through this.

Dr Herane-Vives, what we are talking about is there needs to be disclosure. You will want some documents from Bupa, and the way -- and from AXA. The way we normally go about this -- it will happen both ways, by the way. They may want some documents from you. The way we go about this is identify what the relevant issue is -- like, what was your policy, or something like that -- then, once we have decided what the issue is, we then decide what documents they should look for and how they should look for them. This is completely standard in litigation.

DR HERANE-VIVES: No problem.

THE CHAIR: It works both sides. What is going to happen, you are going to be sent a list of issues. Decide if you are happy with that. You may say there is some additional issues and then disclosure will be given. Does that sound fine? As I say, this is all -- it happens in both directions.

DR HERANE-VIVES: No problem, Judge.

THE CHAIR: Fine. That is that.

What about -- we have requests for information, I think.

MR SCHAEFER: Yes, there is a request from the claimant largely against AXA and a request, a very similar request, by Bupa and AXA. Ours is a bit longer so I was going to deal with that, but I don't know whether you want to take the claimant or us first.

THE CHAIR: I don't mind. Let's do the claimant first.

Doctor, you are asking for some further information from AXA and Bupa, as I understand. Sorry, can somebody help me where I find that?

MR BOURKE: Sir, I think --

THE CHAIR: It is in the draft order, is it?

MR BOURKE: Yes, in his draft order at -- sorry, the claimant's draft order at paragraph 20. Sorry, I have the wrong reference there. No, it is paragraph 10.

THE CHAIR: Yes. Claimant's request for further information. Yes.

MR BOURKE: So, our position on this application, sir, is that we have provided the vast majority of this information or clarified our position and the application basically has become moot or -- if I may say so --

THE CHAIR: In your defence, you say?

MR BOURKE: He has this information. We have given it to him and clarified our position.

THE CHAIR: In the defence?

MR BOURKE: It's either in the defence or in our request for information or reply to request for information. If I go through the four categories that he has. The first one is 10A. Each criterion actually relied upon at the time of the decision not to recognise him and we had explained that he failed.

THE CHAIR: Just show me where it is.

MR BOURKE: Yes, sir. If you go to the -- our defence, which is in bundle A.

THE CHAIR: Yes, give me a page number.

MR BOURKE: Page 35.

THE CHAIR: Yes.

MR BOURKE: No, I am sorry, it is page 31.

THE CHAIR: Yes. That is in the generality, isn't it? It is not dealing with the defendant; is that right? Paragraph 16, are you looking at?

MR BOURKE: Yes. Then, where we plead back to -- we might have to go back to his pleading again because, obviously, we are pleading back to him. Yes. So, if you go to -- I am sorry, if we go back to page 6 so we can see his pleading. Page 6, at paragraph 5.1. So, this is his amended statement of case.

THE CHAIR: Page 6, yes.

MR BOURKE: Paragraph 5.1, in the middle of the page there:

"AXA refused his recognition on stated grounds including that the claimant did not satisfy criteria relating to the practising privileges at an acute hospital and being on the GMC Specialist Register."

And we admit that in paragraph 20.

THE CHAIR: Right, so those were the only grounds: he didn't have practising privileges at an acute hospital in AXA's directory; and wasn't on the GMC Specialist Register?

MR BOURKE: They were the reasons, they were the two reasons, why he was rejected.

THE CHAIR: Right.

MR BOURKE: I have to say this in terms of full and open disclosure. There was a confusion about a different criteria called the consultant criterion where we said in our defence, erroneously, we said that he also failed that criterion.

THE CHAIR: Right.

MR BOURKE: We have now corrected that in our response to the request for

information. So we said we did not apply that criterion to them.

THE CHAIR: Okay. And Bupa?

MR SCHAEFER: There is no application against us for corresponding information. We just have the Specialist Register pleaded against us.

MR BOURKE: So, I apologise. Regrettably, there was a mistake there and probably we will have to correct our amended defence on that to correct that point.

THE CHAIR: Right.

MR BOURKE: That is the first one. But he has been given that information. So, if we go back to his order again in 10B -- sorry, we have done 10A now. The second one is 10B, looking for the status -- sorry, the contemporaneous record -- document or record in which the reasons were recorded. We have provided that information to him.

THE CHAIR: Provided the document?

MR BOURKE: We have provided those contemporaneous communications with him.

THE CHAIR: Right.

MR BOURKE: And we gave --

THE CHAIR: Internal documents that were called that or --

MR BOURKE: We have internal documents and, presumably, they will be part of what will be considered for disclosure.

THE CHAIR: Okay, very good.

MR BOURKE: He received -- obviously, he received those communications at the time he was applying to AXA in, I think, 2024 and 2025, but we have re-sent them to him recently in correspondence to make his life -- or in an attempt to make his life easy. So, we sent them to him again.

Category C -- so 10C I am on to now -- is the wording and applicable dates of the consulting criteria and the practising privileges criterion. That is in our defence.

THE CHAIR: Paragraph 16D?

MR BOURKE: Sorry, this is, again, core bundle.

THE CHAIR: There is the wording and applicable dates with the consultant criterion and practising privileges criterion.

MR BOURKE: So, if we go to the amended defence, which is in the core bundle at page 31. Paragraph 16 here, it basically lists all the criteria from A onwards, and it gives the link in footnote 7 to where the recognition criteria are available.

THE CHAIR: That will be an issue for disclosure.

MR BOURKE: I mean, we have given -- they are the criteria. He knows what the criteria are.

THE CHAIR: They are presumably in a document, an internal document?

MR BOURKE: I am sure they are in an internal document as well, but they are certainly on our website. I have seen them there.

THE CHAIR: Yes. That will need to be dealt with, one way or another, in disclosure. The explanation for the inconsistencies, yes, that is the point.

MR BOURKE: That is the point I have dealt with already. There was a mistake. It has been corrected. I don't know if there is any point in spending -- incurring more costs on trying to solve this -- or not solve it, but going back and explaining it again. It is an issue on which we have had a lot of correspondence, over and back and over and back, as you can imagine, sir. So, we will amend the amended defence in due course to correct the point, but it is a very small point, and it doesn't matter, there is no prejudice suffered here. It is just irrelevant really.

Then the last one, 10E, is the AXA legal entity which is responsible for the recognition policy. The decision concerning the claimant and the relevant individual specialist agreements. We have also given him all this information. We have said that the responsible entity is the first defendant, which is AXA PPP Healthcare Limited which

goes under the trading name of AXA Health.

In our amended defence, and I can give you all the paragraphs, sir, we have explained that it is the responsible entity for the policies, the decision not to recognise him, and that it was the party that entered into the individual specialist agreements with psychiatrists. The claimant seems to be looking for a whole range of other information relating to other AXA entities, but he actually has the right one as the defendant in this case.

The second defendant, actually, by the way, is not responsible for any of this, but he has been included, AXA Insurance UK Plc. But, anyway, it shouldn't really be included, but there we go.

THE CHAIR: Doctor, you have heard those responses to these various criteria. If I just summarise. I think 10A, C, D and E, you have that information already and they have just shown it -- that is where it is. B, you are going to get in disclosure.

DR HERANE-VIVES: So, basically, it is slightly different. My concern is not simply whether AXA had provided the information, it is whether he has clearly identified the precise criterion or criteria actually relied upon at the time that I applied for. It is an important distinction between the contemporaneous reason for a decision and explanation to sequentially advance in litigation. If AXA maintain its defence, if I in response contain the definite position, I respectfully ask they identify the precise paragraph and complete whether those were the actual (inaudible) reasons at the time.

THE CHAIR: Sorry, you are speaking very quickly and --

DR HERANE-VIVES: My apologies, Judge.

THE CHAIR: What are you after?

DR HERANE-VIVES: Basically, one thing is providing the information and the other thing is what criteria they apply for against me at the time that I applied to be registered

with AXA, because that information has never been provided.

THE CHAIR: Well, they say you had some emails and they provided them to you, giving the reasons.

DR HERANE-VIVES: This have changed. They have changed information. As you rightly noticed, they have provided different information a long time. They were saying, first, because I didn't part of the GMC Specialist Register. Now they are saying --

THE CHAIR: Stand up when you are speaking.

DR HERANE-VIVES: Sorry, my apologies. They say that at the beginning, because I was not part of the GMC Specialist Register. Now they change the position and they say that because I am not part of their practice privilege. So --

THE CHAIR: Yes. So, they made a mistake and they have explained that.

DR HERANE-VIVES: Okay. So --

THE CHAIR: Stand up. Stop sitting down.

DR HERANE-VIVES: Sorry, it is possible to be recorded what is the definitive position and what were the criteria that they applied against me at the time that I submit my application for them, because this is not clear for me.

MR BOURKE: Sir, it might help if I show you one of the actual documents which was contemporaneous and explains to him.

THE CHAIR: Yes.

MR BOURKE: If we go to bundle D, please. This is the bundle containing all the documents.

THE CHAIR: All right. Hold on.

Yes, I have it. Right. Sorry, bundle D.

MR BOURKE: Bundle D. This is the claimant's bundle, these are the documents he wanted.

THE CHAIR: Page number, yes?

MR BOURKE: It is page 765.

THE CHAIR: Yes.

MR BOURKE: You will see, sir, that it is dated at the top 21 February 2025. The application is to AXA Health in the subject line, and then it is from -- well, it's from AXA, I won't list out the names to the claimant. And it addresses him as:

"Dear Dr Herane-Vives.

"Thank you for the application. When we reviewed, we can see no ..."

This is the first one, in the second paragraph. This is the practising privileges criterion:

"When reviewing, we can see no details advising us that you provide your services at an acute hospital which is within our directory."

THE CHAIR: Do you have a copy of this, Dr Herane-Vives? Do you have a copy of this document we are reading?

MR BOURKE: This was attached to his reply.

THE CHAIR: I know. Do you have this in front of you?

DR HERANE-VIVES: No, I am sorry.

THE CHAIR: Do you have the bundle of documents?

DR HERANE-VIVES: I am a bit confused with so many bundles the same name.

THE CHAIR: Okay. So, you provided a bundle of nearly 800-odd documents and, on page 765, there is an email from AXA Health, dated 21 February 2025, which explains the criteria that have been applied to you, which you don't satisfy.

Do you have a copy you can just hand?

MR BOURKE: Yes, I just did.

THE CHAIR: Oh, you did. Thank you very much.

DR HERANE-VIVES: So, Judge, I respectfully -- the point here is we distinguish between the criteria mentioned in this communication and the grounds actually relied upon in breaching the refusal decision. So, one thing is what they say in this

communication and what were the grounds that they based the decision. There is no explaining in this letter.

THE CHAIR: It says:

"... we can see no details advising ... you provide your services at an acute hospital ..."

That is one of the grounds.

MR BOURKE: And then the next one is -- so then it goes on:

"We advise that, to become a recognised psychiatrist, you must have practising privileges at an acute facility."

And they are saying he doesn't have that. Then:

"In addition to the above, we also note that you are not on the Specialist Register with the General Medical Council, which is required as per our recognition criteria."

So, this is clear, sir, and we did provide him again with this document and all the other emails.

THE CHAIR: I understand that. Dr Herane-Vives, do you see this? Those are the reasons.

DR HERANE-VIVES: Yes, it is okay.

THE CHAIR: Whether they are good reasons or bad reasons we will decide at a trial in due course. But those are the reasons.

DR HERANE-VIVES: Perfect. However, the remaining question is whether it does require and were objectively justified.

THE CHAIR: Yes, that is all for another day.

DR HERANE-VIVES: Okay. Perfect.

THE CHAIR: Right. That's done.

Where are we off? Thank you very much for providing that.

MR SCHAEFER: Sir, you may note Bupa's application for further --

THE CHAIR: Yes, yes.

MR SCHAEFER: For your reference, sir, our application is at page 146 of the core bundle.

THE CHAIR: I am just looking at the draft order. Can I get it from the draft order?

MR SCHAEFER: Yes, the draft order in the defendant's draft order, this is paragraph 12.

THE CHAIR: Yes.

MR SCHAEFER: The application is in two parts. So, subparagraphs 12A to E are all the first part which is the Specialist Register part, and then F is other litigation. So, I can deal with those separately.

THE CHAIR: Does Dr Herane-Vives have a copy of this? Do you have spare copy of the order so he can have it in front of him?

MR SCHAEFER: Yes. Apparently, my learned friend has given him --

THE CHAIR: Yes. So, we are looking at paragraph 12.

MR SCHAEFER: Of this document.

THE CHAIR: And these are documents -- these are information, not documents. These are questions -- well, some of them are documents. So, copies for all applications, why can't that wait for disclosure?

MR SCHAEFER: Sorry, yes, I take the point that some of this is disclosure and some of this is information.

THE CHAIR: Right. Let's leave the -- I just think it will be simpler if we can leave the disclosure for the disclosure and deal with the information today. So 12A will be adjourned. You can put it in as an issue and category in the disclosure and we can discuss it then, if need be.

At 12B -- so what -- Bupa is asking for an explanation. Do you see that, Dr Herane-Vives, at B? Is there any reason why you can't provide that within the next

14 days?

DR HERANE-VIVES: I have no problem providing an explanation.

THE CHAIR: Okay. Thank you very much.

C. What about C? Is that something you can provide? So, any reasons given by the GMC as to why you can't be admitted to the Specialist Register? You don't have to answer it now, but can you provide that within the next 14 days?

DR HERANE-VIVES: Yes. I have -- I never submit an application for the GMC Specialist Register. It is very straightforward. I withdraw one, but I never submit one.

THE CHAIR: Right. So, there is nothing in C to deal with.

MR SCHAEFER: There is no C. Yes, there was only withdrawal, as I understand what he is saying.

DR HERANE-VIVES: I withdraw an application, but it was never completed. I never been interested.

THE CHAIR: Sorry, you say there is no C. I am looking at your category C, 12C.

MR SCHAEFER: Yes, sorry, I understand Dr Herane-Vives to say there is no C.

THE CHAIR: Exactly, yes, sorry.

MR SCHAEFER: Because the GMC never identified any deficiencies. So, if that is the answer, that is the answer.

THE CHAIR: Right, well, you have it on the transcript, presumably. Then that deals with D as well.

MR SCHAEFER: Sir, yes. Although, if the answer is that he decided to withdraw his application, then, pending the explanation of why, there may be a question of any steps he took.

THE CHAIR: Let's leave it at B for the moment. You can come back if you need anything in the light of that explanation.

E is disclosure, I am going to leave that for ...

F:

"Full details of any claims in the UK court and tribunals that relate to professional qualifications, employment, nature of the claim, identity of the defendants, subject matter of the claim, whether he attended any hearings in person, the outcome of the claim and whether any appeals are pending."

I am going to delete "whether he attended any hearings in person". I am going to delete "full details". Sorry, this is provisional, of course. It should be:

"... identify any claims the claimant has brought in the UK courts and tribunals, insofar as they relate to his professional qualifications or employment, giving details of the nature of the claim, the identity of the defendant, the subject matter of the claim and the outcome of the claim."

Dr Herane-Vives, do you have any objection to providing that?

DR HERANE-VIVES: Judge, the system for the proceedings doesn't determine the merit of this claim. If Bupa relies on issue estoppel, res judicata, abuse of process or any other legal consequence, it should identify the particular final determination, the precise issues said to have been set aside and the consequence to follow. Otherwise, a general characterisation of me as a frequent litigant is not relevant evidence. I ask the tribunal to decide this proceeding on the pleading, evidence and applicable law.

THE CHAIR: Right. So, is there any reason why you can't provide -- just trying to identify the claims at this stage, so you have to just identify the nature of the claim, the identity of the defendants and the subject matter of the claim. Is there any reason why you say you shouldn't do that?

DR HERANE-VIVES: I don't see -- if there has been any other claim, personal claim, I don't see --

THE CHAIR: It is not a personal claim, it is relating to your professional qualifications.

DR HERANE-VIVES: If there has been any other related to my professional

classification, it is completely unrelated to this claim. Absolutely no relation, if there has been any. I don't see the relation.

THE CHAIR: Right. What do you say about this?

MR SCHAEFER: Sir, perhaps it would be easiest to take you very quickly through what Bupa has managed to identify so far, which is at page 146 of the core bundle. If you look at paragraph 2.2, you will see that it lists three matters. There is a 2020 employment tribunal claim against something called Implemental Worldwide, and also the South London Maudsley NHS Trust; there is a 2018 employment tribunal claim against, in fact, all of the Institute of Psychiatry at King's College London -- these aren't all listed here, but I can tell you, Health Education England, National Institute of Health Research, and the Royal College of Psychiatrists.

THE CHAIR: Sorry, this is 2.2.2 or ...?

MR SCHAEFER: 2.2.2, yes.

Then, C, a letter which is in the bundle, for your reference, at page 156, which states that the claimant is considering challenging the lawfulness of the Royal College of Psychiatrists MRCPsych requirement for consultant level practice.

THE CHAIR: And so you know about these two cases, why can't you get access to the -- is it not public?

MR SCHAEFER: Some of them are public. So, we have the judgment in the 2018 claim, but the 2020 -- the history is as follows. The claimant withdrew the claimant against one respondent. It was issued in 2018. The claimant withdrew the claims against one respondent and claims against two others were struck out. In 2023, his solicitors applied to come off the record successfully and he applied successfully to postpone the hearing. The hearing against the remaining defendant was listed for six days in January 2024. We can find nothing after that.

THE CHAIR: Right. Why is it relevant to this dispute?

MR SCHAEFER: Sir, because, if you go over the page, you will see that all of these claims and threatened claims are raising questions of the Claimant's qualifications. What is centrally in issue in this case is his decision, which so far we don't have the reason for, because he hasn't given it to us, not to apply to the Specialist Register. All of that turns on whether he could apply -- central to the case is whether he could apply to the Specialist Register. If he could, then there is a mitigation answer to everything. If there is a good reason he couldn't apply to the Specialist Register, it will depend on what that reason is, what qualifications are in issue, whether those reasons would be a good reason to refuse him recognition anyway, and all of these cases are to do with his qualifications. We are simply trying to --

THE CHAIR: What you are asking is whether there are reasons why he is not fit to practice?

MR SCHAEFER: He has a history, it appears, of litigating over his qualifications. These should be in public, but we just don't have them. We have asked for very brief details of the claims.

THE CHAIR: Well, you have the one.

MR SCHAEFER: The question is just are there any others, and what happened?

THE CHAIR: I am not sure ...

So, what do you know about 2.2.2?

MR SCHAEFER: That is the 2018 claim. That is the one whose history I just gave you. So, as far as we know --

THE CHAIR: What was the case about?

MR SCHAEFER: This was a challenge to -- I have it, sorry, I didn't want to start getting into the details of the case. So, this was a challenge to a refusal to -- I am sorry, this is actually in the letter in fact, at 2.3.3. So, this was a challenge to his rejection for a postdoctoral position. The rejection turned on him not having the

MRCPsych examination or equivalent EEA ability.

THE CHAIR: Right.

MR SCHAEFER: We don't know -- as I say, this letter is, in fact, slightly incorrect in saying that his -- the challenge was unsuccessful. We don't know the ultimate outcome. We know that it was unsuccessful against three of the four.

THE CHAIR: Right. He doesn't have -- let's assume, on its face, he doesn't have -- so he was refused this position because he didn't have MRCPsych. What does this have to do with this case?

MR SCHAEFER: Sorry, I am neither in a position, nor wish to, start giving evidence on how these various qualifications relate to each other.

THE CHAIR: You didn't refuse him because he doesn’t have MRCPsych, you are not suggesting he does have --

MR SCHAEFER: No, but there is an important counterfactual question. He says we shouldn't have this Specialist Register qualification requirement. He says we could have other requirements which are less restrictive. Assuming that that is made out, the question is what are those other requirements and would he meet them?

THE CHAIR: Right. But you don't have to go trawling through past litigation to get that answer, you can just ask him: do you have MRCPsych? He will no doubt say no.

MR SCHAEFER: I accept that.

The other point is that obviously this is based on that there appears to be a history of litigation. We are trying to understand how far it goes.

THE CHAIR: Yes. No, I am not prepared to order category F at the moment. I don't see its direct relevance to the case.

DR HERANE-VIVES: Judge, may I say something?

THE CHAIR: I don't think you need to. I have refused this request. You are welcome to say something --

DR HERANE-VIVES: So, I respectfully challenge the suggestion that I have a history of misrepresenting my professional qualifications.

THE CHAIR: No, he has not said that.

DR HERANE-VIVES: The claim against and implemented CRS is because I had to training programme for two years, that opposed to the higher training in this country. I was not paid and I had to pay £60,000. The other, as he rightly said, for a postdoctoral qualification, academic classification, I was requesting to have a clinical classification. There is no request to the European or other training. So, this is the picture that I would like to clarify. If you want to go through the trial, they are publicly available --

THE CHAIR: No doubt you will be putting in evidence as to all your qualifications in due course.

DR HERANE-VIVES: Okay, yes.

MR SCHAEFER: I just want to put on the record that I have not suggested --

THE CHAIR: No, I know you haven't.

Right. What else do we need to deal with today?

MR SCHAEFER: Sir, it struck me, rather late in the day, that the outstanding parts which you haven't considered of our draft order are the directions between the second CMC and the trial. I don't know how many of those you want to make now and how many you want to leave to the second CMC.

THE CHAIR: Yes. I think -- well, cost budgets need to file. That is just --

MR SCHAEFER: Yes, 6 to 11 are the post-CMC directions.

THE CHAIR: Yes. I think, factual evidence. Perhaps, if we are not dealing with expert evidence, can we come back to that in November or -- I am not saying those dates aren't very sensible, but we will have a better idea of the issues, I think, when we come back in November. So -- and pre-trial review, we will deal with that in November as

well.

I think the other directions, we will deal with all those next time we come back, if that is all right. Those seem sensible suggestions. I would just like a better idea of the shape of the case, I think, before --

MR SCHAEFER: That's understood.

THE CHAIR: Is there anything else, Dr Herane-Vives, you need to deal with today?

DR HERANE-VIVES: So, there were some application that my understanding were going to be deal with today, if possible. My application were going to be deal today.

THE CHAIR: So, the request for further information, I have ruled that you have it or there will be some documents coming when we get disclosure.

DR HERANE-VIVES: Yes.

THE CHAIR: So you are not getting anything on that today.

DR HERANE-VIVES: So, there was a complete Annex 2 that were replacement of the incomplete copy with the complete June 2019 AXA agreement. This is an evidential correction within the 16 application, no new cause of action that it was omitted within the core bundle.

THE CHAIR: Okay. We don't have to worry what is in the core bundle.

DR HERANE-VIVES: Okay.

THE CHAIR: The bundles, I won't say they are not important, they are important, but we can always add documents as we need them.

DR HERANE-VIVES: Thank you.

THE CHAIR: That's not a problem. They are not, like, for good.

DR HERANE-VIVES: Thank you. My last point is what about the staged disclosure?

THE CHAIR: We are going to come back and discuss disclosure in about a month.

DR HERANE-VIVES: Thank you. Perfect.

THE CHAIR: Both sides.

MR BOURKE: Sir, sorry, may I just add to what the claimant has mentioned there, just in case we are at slight cross-purposes. One of the applications he had made was that one of our agreements, one of AXA's agreements, would be included in the file. So, the AXA agreement in question is a specialist -- it is an AXA PPP individual specialist agreement with psychiatrists, with its consultant psychiatrists. The claimant included it with his statement of case, but he omitted one page.

THE CHAIR: I see.

MR BOURKE: We admitted in our defence that it was the right version but it was missing one page. I wish we had put in the missing page, that would have been easier. The claimant has sought permission now to introduce a new version, a new version of that document. We have said no because it is not actually an identical version. It is marked as kind of forensic evidence, with some sort of -- so we have said no to that. It doesn't matter as an issue, because these documents will be provided in disclosure anyway. But I just wanted to mention it to you in full disclosure. We had that.

Thank you, sir.

While I am up, may I just make one point about -- because you and my friend have made me think about the issue of working on the draft order after this hearing, just to make it go as smoothly as we possibly can. Could I propose that AXA and Bupa counsel coordinate on an agreed draft order, we send it to the claimant who can make his proposals and additions in, I suggest, one response to us.

THE CHAIR: Yes.

MR BOURKE: We will then send in a version to the tribunal with different colours. But I am trying to anticipate and avoid a situation where we have had a lot of communication on certain issues, if that would be okay.

THE CHAIR: Indeed**.**

MR BOURKE: Thank you, sir. I am grateful.

THE CHAIR: Is that all right? Next?

MR SCHAEFER: I think that leaves the defendants' application for costs of and occasioned by the amendments to the claim.

THE CHAIR: Yes. I am not going to summarily assess them today. Yes, I am going to order that you are entitled -- Dr Herane-Vives, you have amended your case. The standard order is that the costs of and occasioned by the amendments have to be paid by the claimants. It is very common. Are there any particular reasons why -- I am not saying you are going to have to pay them today, they will get added on to the running tab for the litigation, if I can put it that way, but are there any reasons why you shouldn't pay those costs? The thinking is that you should have got your case right the first time, and if you have amended it and made everybody replead their defence, the normal course of events is that you have to pay for that privilege.

DR HERANE-VIVES: So, basically, it is because they may order reserved costs. I didn't determine the liability or quantum. The amendments were made at a very early stage, in a case management stage, to clarify a very complex standalone competition claim. And the proceedings remain ongoing. I therefore ask that the costs remain reserved or be costs in the case.

I don't suggest that the cost reserved means costs are extinguished or that I am immune for an order. It mean liability and amount are left for a later determination. The tribunal retains discretion under rule 104.

THE CHAIR: Okay. I am going to do costs of and occasioned by the amendments.

MR SCHAEFER: I am grateful. I feel obliged to raise the alternative possibility of an interim payment.

THE CHAIR: Yes. No, I am not going to do that.

MR SCHAEFER: I am grateful.

THE CHAIR: Dr Herane-Vives has not got any legal assistance. We did identify for

you last time some sources of legal assistance. This is clear that this is a very complicated litigation.

DR HERANE-VIVES: It has been.

THE CHAIR: I would invite you to reconsider that. If there is someone to sit alongside you and help you present your case -- it is going to get harder not easier.

DR HERANE-VIVES: Yes. I know UK lawyers.

THE CHAIR: I would strongly advise that you give it serious consideration going forward and, again, if there is any possibility of fighting/funding this litigation, you should be alive to that.

You need to also keep in mind how large your claim is. I see you have quantified it here. I am not sure I quite understand the calculation at the moment, no doubt someone will explain it in due course, but obviously you need to weigh that against your potential risks of costs and decide whether, even if you are right, whether financially this makes sense for you. Keep that under review.

Thank you very much.

DR HERANE-VIVES: So, I would like to finish saying that I understand how complex this is. Basically, without any disclosure already found, there are no apparent (inaudible) to insurance without GMC Specialist Registration. Without any disclosure, I have found they have changed the criterion in a very similar time period. So, obviously, regardless the difficulty that I have been facing, I know them, obviously those are very strong points.

Also, I am part of all other insurers, I work as a consultant for the NHS, so obviously I have also very strong point for carry on with this.

THE CHAIR: You do work with other insurers, is that right?

DR HERANE-VIVES: I am part of all of the other insurers, apart from AXA and Bupa. I belong to all of them.

THE CHAIR: Again, you need to consider whether and how much value there is to you of continuing.

DR HERANE-VIVES: Yes.

MR BOURKE: Sorry, sir, can I raise one very quick final point?

THE CHAIR: Of course, yes.

MR BOURKE: This relates to the issue of costs going forward in this case. So, under the fast-track, obviously we will have a costs cap, that will be in place, which makes our lives difficult more difficult than they already are. We are facing a situation where we have a claimant who is -- I think he has accepted that he is using AI in the proceedings. He is generating a huge amount of correspondence and applications. I don't want to be critical of that, I mean, clearly he is a litigant in person; so be it. I wonder if -- and maybe it is for the next CMC -- we can think about constructive ways to manage this. So, for example, can we potentially impose word limits on submissions?

THE CHAIR: Yes. We will need to keep this an eye on this, I agree.

Dr Herane-Vives, one of the issues is that you are generating -- you are using AI, plainly. You are generating huge amounts of paperwork. We are not using AI, we have to read it and understand it. Some of it is very difficult to understand, because it has lots of legal terms in it and is not necessarily that coherent as a document when produced by AI. So, for example, you have made, I think, six applications to me this week.

DR HERANE-VIVES: My apologies.

THE CHAIR: So, we just need to find ways of managing that. Of course you need to be able to put your case, of course you need to be able to ask appropriate questions, but we can't have as much paper generated.

DR HERANE-VIVES: I understand. Judge, I would like to say that the applications

were only after the lack of coordination with the respondent, that they didn't want to include my key documents.

THE CHAIR: Bear in mind they have very expensive lawyers, I suspect, and those lawyers, every time you ask them to do something, they have to charge their clients.

DR HERANE-VIVES: Yes.

THE CHAIR: And they need to just -- we need to be proportionate and sensible in the amount of work you generate for them.

DR HERANE-VIVES: And the amount of information -- they sent me a bundle with 1,750-pages, that they made by mistake that they have to amend later on. So, if they say that amount of information provided, I think it has to be put in the balance.

THE CHAIR: Absolutely. That is a very fair point. It applies to both sides.

DR HERANE-VIVES: Thank you very much.

THE CHAIR: Good. Thank you. Costs. What are we doing, costs in the case for this? Thank you.

DR HERANE-VIVES: Thank you very much.

THE CHAIR: Thank you.

(3.15 pm)

(The hearing concluded)

1

2

3

4

5

6

7

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?