

Neutral Citation Number: [2026] EWHC 3000 (KB)

Case No: KA-2025-000035

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 19/11/2026

Before:

THE HONOURABLE MR JUSTICE SWEETING

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Between:

Linda FOSTER	**Appellant (1)**
- and -	
Richard HITCHENS	**Appellant (2)**
- and -	
Wargrave on Thames Housing Association Ltd	**Respondent**

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- -

The **First Appellant** appeared in person
The **Second Appellant** appeared in person
Andrew Morrell (instructed by **Blandy and Blandy Solicitors**) for the **Respondent**

Hearing dates: 6th November 2026

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CONSEQUENTIAL JUDGMENT

Approved Judgment

This judgment was handed down remotely at 11.30am on 19.11.26 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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THE HONOURABLE MR JUSTICE SWEETING

MR JUSTICE SWEETING:

Introduction

1. The substantive appeal arose out of possession proceedings brought by the Respondent housing association against the Appellants, who occupy a flat under, what was at the material time, an assured shorthold tenancy. Under the tenancy agreement the Appellants were required to pay (separately) rent, a service charge, an Electricity Charge and a water charge. A dispute developed concerning the proper scope of the contractual Electricity Charge. The Appellants had ceased paying that charge and did not make use of the underfloor heating system provided within the flat because they regarded it as unsafe. The Respondent's case was that the Electricity Charge extended beyond the supply of electricity for underfloor heating and entitled it to recover a wider category of electricity costs associated with communal facilities and services within the development of which the Appellants' flat was part. The alleged non-payment of those charges ultimately formed the grounds for possession proceedings and a finding by the trial judge that the Appellants were in breach of the tenancy agreement.

2. The appeal was concerned with a narrow issue of contractual construction. The central question was whether, on its proper construction, the tenancy agreement permitted the Respondent to recover, through the contractual Electricity Charge, the costs of electricity consumed in connection with communal facilities and services, or whether the charge was limited to the supply of electricity for the underfloor heating provided to the Appellants' flat. The appeal did not require the court to determine the recoverability of communal electricity costs through any other contractual mechanism nor whether the Appellants were entitled to refuse to pay charges properly levied under the Electricity Charge.

3. I concluded that the contractual scheme distinguished between the service charge and the Electricity Charge. Properly construed, the Electricity Charge was confined to the electricity supplied to the premises for the purpose identified in clause B3, namely timed off-peak electrical underfloor or radiator background heating. The costs of electricity consumed in the communal parts of the development, or in providing the communal services for which the service charge was payable, did not fall within the scope of that separate Electricity Charge. It followed that the disputed sums which the Respondent sought to recover through the Electricity Charge were not wholly recoverable under the contractual provision upon which it had relied.

4. Following the appeal, a dispute arose as to the orders that should be made consequential upon that conclusion. The parties were agreed that, as the appeal had succeeded, the possession order could not stand and that the Appellants were entitled to costs. I was invited to assess costs summarily. The dispute concerned the financial and procedural consequences that should follow from that outcome. The issues for determination were:

    i) whether the Appellants were entitled to repayment of sums previously paid by way of the Electricity Charge;

    ii) whether interest should be awarded on any sums ordered to be repaid and, if so, at what rate;

iii) whether an order should be made pursuant to section 20C of the Landlord and Tenant Act 1985 and/or paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002;

iv) the extent to which the final order should contain recitals recording the parties' positions and the court's conclusions;

v) whether the Appellants were entitled to their costs of the appeal and consequential proceedings and, if so, whether those costs should be assessed on the standard or indemnity basis;

vi) the reasonableness and proportionality of the costs claimed by the Appellants as litigants in person, including the number of hours claimed and the recoverability of specific items of expenditure; and

vii) in particular, whether the cost of an artificial intelligence legal research subscription was recoverable as a disbursement.

5. Issue iv) above can be resolved shortly. The operative provisions of the order should reflect the substance of the conclusions reached in the appeal judgment and the consequences necessarily flowing from them, whilst avoiding unnecessary elaboration. It is neither necessary nor desirable to reproduce extensive portions of the substantive judgment in recital form. The judgment speaks for itself and the consequential order should remain concise and functional. I therefore consider that the recitals should be kept to a minimum and confined to those matters genuinely necessary to explain the provenance of the order.

Repayment of Electricity Charges

6. The Appellants submitted that the natural consequence of the appeal was that all monies paid by them pursuant to the Electricity Charge should be repaid. The Respondent opposed any such order.

7. On behalf of the Respondent, it was submitted that the appeal was concerned with the proper construction of the tenancy agreement and the validity of the possession order founded upon alleged arrears under the Electricity Charge. The appeal did not determine that no sums were payable by the Appellants in respect of electricity supplied to the development or to their premises, nor did it determine that the Respondent had received monies to which it was not entitled. The Respondent contended that the expenditure in question represented genuine costs incurred in connection with the provision of electricity and associated services and that the appeal established, at most, that some part of those costs could not properly be recovered through the contractual Electricity Charge upon which the possession proceedings had been based. It was argued that the Appellants were not therefore entitled, as a consequence of the appeal, to restitution of all sums paid under that heading.

8. I accept the Respondent's submission. It is important to identify precisely what was, and what was not, determined by the appeal. The issue before the court was whether the Respondent was entitled to obtain a possession order on the basis of arrears said to be due under the Electricity Charge. I concluded that it was not.

9. However, that conclusion does not amount to a finding that no part of the Electricity Charge was payable or that all monies paid pursuant to it must be repaid. I did not conclude that no service was provided to the Appellants. The tenancy agreement required the supply of electricity to the premises for heating. Whether or not the Appellants chose to use the underfloor heating does not alter the fact that the service was made available to them. The position is analogous to the supply of water, for which a separate charge was also made. A tenant does not cease to receive the benefit of that service merely because he chooses not to turn on the tap. The charge appears to have been shared amongst tenants by reference to the overall cost of providing the service and not by individual use or supply.

10. The appeal was not concerned with whether the Appellants might have some separate contractual, statutory or restitution claim in respect of sums already paid. Equally, it was not concerned with whether some or all of the relevant expenditure might have been recoverable through some different contractual mechanism.

11. The appeal succeeded because the Respondent sought possession on the footing that the entirety of the arrears relied upon constituted sums due under the Electricity Charge. As I stated in the substantive judgment, I concluded:

> "The disputed sums were not, on the true construction of the tenancy agreement, wholly recoverable under the contractual Electricity Charge relied upon by the Respondent. The conclusion that the Appellants were in breach of the tenancy agreement by failing to pay those sums was accordingly based upon an erroneous construction of the contract."

12. This was in fact the ground on which Kimblin J had given permission to appeal. The conclusion reached on the construction of the tenancy agreement was, as the Respondent accepted, sufficient to require that the possession order be set aside. It does not follow from this that the Appellants are entitled to repayment of all monies paid pursuant to the Electricity Charge. In the circumstances and given the limited scope of the issues determined on the appeal, I am not in a position to make any such an order. Indeed, in so far as the underlying dispute appears to have arisen from the Appellants' concerns regarding the safety and effectiveness of the underfloor heating system, that complaint was rejected at trial. The question whether monies paid should be repaid was not argued at, or determined by, the appeal. I therefore decline to make the order sought.

13. Had any monies been ordered to be repaid, then the Appellants sought interest at the judgment rate. Whilst this issue no longer arises, I would not have acceded to that application. It would not follow from any order for repayment that the Respondent should be treated as having failed to satisfy a judgment debt carrying interest at the statutory judgment rate. The appropriate approach in those circumstances would have been to award interest at a commercial rate which more accurately reflects the loss occasioned by being deprived of the use of money over any relevant period.

Section 20C of the Landlord and Tenant Act 1985 and paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act

14. The Appellants sought an order under section 20C of the Landlord and Tenant Act 1985 and/or under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform

Act 2002. Landlords may seek to recover legal costs from tenants via a service charge (which spreads costs across all tenants) or use clauses in tenancy agreements to recover legal fees directly from an individual as an administration charge. Paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 allows leaseholders to apply to a court or tribunal for an order reducing or extinguishing their liability to pay a landlord's litigation costs when demanded as an administration charge; section 20C of the Landlord and Tenant Act provides equivalent protection in relation to service charges. When an order under section 20C (and/or paragraph 5A) is not made, a landlord may recover its legal costs as service or administration charges only insofar as the lease or tenancy agreement permits, and only insofar as they were reasonably incurred (section 19 of the 1985 Act). Where there is provision for recovery, an order under Section 20C of the Landlord and Tenant Act 1985 or paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act is an interference with the contractual rights of the landlord and will not be made simply as a matter of course.

15. Whether an order is required must be considered in the context of the dispute which has been determined, the terms of the tenancy agreement and the consequential relief which is to be granted. The Appellants submitted that, having succeeded on appeal, they ought not to face the possibility that the Respondent would indirectly recover its litigation costs through the service charge or by way of an administration charge.

16. The Respondent opposed the application. It submitted that the proceedings were not a conventional service charge dispute but arose from possession proceedings and an issue as to the proper construction of the Electricity Charge provisions of the tenancy agreement. It argued that the making of the orders sought had not been ventilated at the appeal and there was no basis for the court to assume that litigation costs could in fact be recovered through the service charge regime or as an administration charge. Further no sufficient grounds had been advanced for the exercise of the court's discretion. My attention was drawn to the practitioner *text "Service Charges and Management"* (5th Edition), where it is noted [15-10]:

> "A further matter for both landlords and tenants to consider is whether the terms of the lease allow recovery of any costs incurred in connection with proceedings at all. Where the terms of the lease would not allow for recovery of such costs, the tenant need not make an application for an order under s.20C, as any such application or order under s.20C would be pointless."

17. The Respondent therefore invited the court not to make an unnecessary order.

18. The Appellants could not point to any power to recover legal costs in their tenancy agreement but suggested that it would not prejudice the Respondent to make the orders sought and suggested that a surreptitious charge might be imposed even absent a power in the Tenancy Agreement to do so.

19. Whilst it is open to this court to make such orders this was not a conventional service charge dispute before the First-tier Tribunal. There is no basis on which to assume that the Respondent would breach the terms of the Tenancy Agreement by hiding a charge for litigation costs that it was not entitled to levy and which would in any event give rise to a remedy. There is otherwise no power under the Tenancy Agreement (as the Respondent accepted), to pass on litigation costs as charges. It is preferable in the

circumstances not to make an order that is unnecessary given the lack of any recovery mechanism in the tenancy agreement or to make an order which is not required to give effect to the outcome of the appeal. It might in any event be a moot point as to whether it would be just and equitable to make any such order in this case given the narrow point involved and the overall outcome (see *Birch v Meredith* [2026] UKUT 6 (LC)).

Other Claims

20. A further issue concerned the effect of the appeal on two claims which had been heard together with the possession proceedings and disposed of by the order of His Honour Judge Davies dated 25 February 2025. These were claim L5QZ60D8, brought by the Respondent for unpaid Electricity Charges, and claim 462MC299, brought by the Second Appellant seeking repayment of Electricity Charges previously paid.

21. The Appellants submitted that the consequential order should deal expressly with all three claims. They argued that the claims had been tried together, turned on the same issue of contractual construction and had all been disposed of, in effect, by the same order. In relation to claim L5QZ60D8, they contended that the judgment could not stand because it rested on the same analysis of the Electricity Charge which had now been rejected on appeal. In relation to claim 462MC299, they submitted that the claim for repayment had been dismissed by an order which had itself been set aside and that the sums sought in that claim should now be addressed within the consequential order.

22. The Respondent took a different position. It submitted that the appeal was brought only against the order made in claim K01RG966 and that there had been no appeal against the orders made in claims L5QZ60D8 or 462MC299. It relied upon the limited scope of the appeal, which concerned only whether the Respondent was entitled to obtain possession on the basis of arrears said to be due under the Electricity Charge. On that basis, it argued that the proper disposal of the appeal was simply to dismiss claim K01RG966.

23. I accept, in part, the arguments of both parties. I have refused to order repayment for the reasons already given and, in those circumstances, there appears to me to be no reason to interfere with the order dismissing the claim for repayment of Electricity Charges. Although I acknowledge that on the judge's conclusion as to the contractual issue that order was inevitable; my own determination of the limited appeal point does not establish a right to repayment. As I have observed, Mr Hitchens' may or may not have a basis for a refund but equally there is no finding that he has been overcharged in the round.

24. On the other hand, I accept the Appellants' submissions in relation to the need to make an order in relation to the Respondent's claim for unpaid Electricity Charges. Whatever may be the amount, if any, which is due from the Appellants it is not the sum referred to in the order. The judge began his judgment by observing that he was dealing with three sets of proceedings and it is incontrovertibly the case that his conclusion in the possession claim simply carried across into the claim for arrears and vice versa, as his orders indicate. The question of whether and to what extent the Respondent can recover was not the subject of argument before me. It would not be proportionate at this stage to remit the matter to the County Court for a fresh decision in the light of the appeal.

25. I therefore conclude that the order should include the setting aside of the present order in claim L5QZ60D8.

Costs

26. The Appellants' schedules and submissions related to the entirety of the costs of the litigation. The hearing before me lasted a day but, it was accepted, disposed entirely of the claim in which the appeal had been brought and for all practical purposes the underlying litigation. The Appellants invited me to summarily assess the costs without distinction between the appeal, the hearing below or the wider litigation. Given the extent of the overlap between claims, the centrality of the issue as to contractual construction and the comparatively low amounts involved, they submitted that this would be the proportionate and just approach. The Respondent did not raise any objection to that course and made submissions on all aspects of the Appellants' costs as claimed.

The Basis of Assessment

27. The Appellants sought costs on the indemnity basis. They submitted that they had succeeded on the appeal, had made offers to settle and that the Respondent's conduct of the litigation justified a departure from the ordinary rule. They further contended that the proceedings had become unnecessarily protracted and complex and that they had been required, as litigants in person, to devote substantial time and effort to resisting the Respondent's case. Mr Hitchen's status as a tenant was also, it was submitted, unnecessarily challenged, only for there to be a capitulation on the point at the last minute.

28. The Respondent submitted that any costs awarded should be assessed on the standard basis. It argued that this was not an exceptional case and that there was nothing in its conduct of the litigation sufficient to justify the court making an order for indemnity costs. The Respondent emphasised that it had succeeded at first instance and that the appeal concerned a genuine dispute as to the proper construction of the tenancy agreement. It submitted that the ordinary principles applicable to costs should therefore apply.

29. The Respondent also contended that the costs claimed by the Appellants were excessive and disproportionate. It submitted that, if costs were awarded, they should be subject to assessment on the standard basis, which would permit scrutiny of both the reasonableness and proportionality of the sums claimed. In particular, it argued that the number of hours claimed by the Appellants as litigants in person was substantially greater than could reasonably be justified by the nature and value of the dispute.

30. I accept the Respondent's submission on this issue. Whilst the Appellants succeeded on the appeal, I am not persuaded that the circumstances took the case outside the norm so as to justify an award of indemnity costs. The judgment below in fact contains several references to Mr Hitchen's conduct which are far from complimentary. The dispute concerned a question of contractual construction upon which the Respondent had succeeded before the judge at first instance. Costs should therefore be assessed on the standard basis.

The Appellants' Costs

31. The Appellants main schedule of costs claims for 649 hours in total. Those hours are said to comprise 113 hours of case preparation, 165 hours of legal research and consideration of authorities, 116 hours drafting court documents, 105 hours of correspondence and case management and 150 hours attending hearings. The Appellants did not contend that they had suffered any quantifiable financial loss and accordingly advanced the claim on the basis of the prescribed litigant in person rates. The Appellants' time element was thus applied to the applicable rates of £19 per hour and £24 per hour (from October 2025).

32. As to the reasonableness and proportionality of the hours claimed, the Appellants emphasised the scale and duration of the litigation. They pointed out that the proceedings extended over approximately three years, involved three linked claims, ten hearings at four different court centres, a two-day trial and an appeal. As 150 of the claimed hours are said to relate to attendance at hearings and associated travel, that leaves approximately 499 hours attributable to preparation and conduct of the litigation. The Appellants characterised the latter figure as amounting to approximately three hours of work per week over the course of the proceedings and submitted that such a figure is not excessive when viewed against the history of the litigation which, as they emphasised related to their home.

33. The Appellants also submitted that the restriction in CPR 46.5(2), limiting a litigant in person to two-thirds of the costs that would have been recoverable had the litigant been represented, is not engaged. They argued that no realistic assessment of the costs of a represented party conducting litigation of this scale could produce a figure low enough to trigger the restriction. In support of that submission, they noted that the Respondent was represented throughout by solicitors and counsel and that, for the appeal hearing alone, served a statement of costs claiming £12,554.40.

34. Mr Hitchens emphasised in his oral submissions that the Appellants' costs were substantially lower than the Respondent's costs. Whilst that is not a determinative consideration in an assessment it is of even less significance in the present case given the difference in the rates which may be claimed. It is in fact somewhat doubled-edged. The real dispute is about the extent of the hours claimed for preparation. Applying the Respondent's grade D rate to the Appellants' claimed hours would, for example, produce a figure of approximately £120,000. The grade A rate would give £227,150. Splitting the hours equally between those grades would produce a figure of over £170,000. Professional costs of this magnitude would, without more, if sought by represented parties be well in excess of what could be recovered for litigation of this nature.

35. I nevertheless accept that the litigation required a substantial investment of time and effort on the part of the Appellants. The appeal was competently presented before me, the written submissions were detailed and carefully researched and the Appellants succeeded on an issue of contractual construction on which the Respondent had prevailed at first instance. I also accept that litigants in person will frequently require more time than experienced legal representatives to undertake legal research and prepare documents. Those are all matters which must be borne in mind when assessing the costs claimed.

36. However, the fact that time has been spent does not of itself render the resulting costs recoverable. On an assessment on the standard basis the court must consider not only whether the work was undertaken but also whether the costs claimed are reasonable and proportionate. The proceedings ultimately concerned a tenancy dispute which raised a relatively narrow issue of contractual construction, namely the proper scope of the Electricity Charge provisions and the validity of the possession order founded upon them. Although the litigation generated a substantial volume of correspondence and procedural activity, it did not involve factual or legal complexity of a kind which would ordinarily justify costs on the scale claimed.

37. Standing back and viewing the matter as a whole, I consider there to be force in the Respondent's submission that the costs claimed are disproportionate to the nature, importance and value of the dispute. The claim for 649 hours of time is particularly striking. Whilst a considerable amount of work was plainly undertaken, the court is required to assess what was reasonably necessary and proportionate rather than compensate for every hour expended. The fact that the Appellants acted in person cannot relieve the court of its obligation to apply the requirements of reasonableness and proportionality. The Respondent submitted that allowing 150 hours would be generous in all the circumstances.

38. Similar considerations apply to the disbursements. Court fees, transcript fees and reasonable travel expenses are, in principle, recoverable. Other items require closer scrutiny. In particular, the Appellants seek to recover £1,488 in respect of an AI-assisted legal research subscription, which forms the largest disbursement. I consider this separately below.

39. In the circumstances, whilst the Appellants are entitled to their costs as the successful party on the appeal, I am satisfied that the figures advanced in the schedule substantially exceed what is proportionate. Significant reductions will be required both to the hours claimed and to certain categories of disbursement.

40. As far as disbursements are concerned (other than, for the moment, the artificial intelligence subscription), litigants in person are entitled to recover disbursements of the types which would have been incurred by a legal representative. The costs of printing, photocopying, binding, postage and similar administrative activities are ordinary incidents of conducting litigation. They are usually characterised as overhead expenditure rather than disbursements recoverable from an opposing party (subject to a discretion to allow them in exceptional cases). However, litigants in person are not in the same position as solicitors or counsel and do not have legal business overheads within which such costs can be subsumed nor, generally, the facilities to carry out tasks such as printing in bulk. Accordingly claims for disbursements in these categories have been allowed in principle (see for example *Tanya Grand v Param Gill* [2011] EWCA Civ 902, 2011 WL 2747870). I am by no means certain that it was necessary to print or photocopy all of the material which was deployed before me and I have no information as to how the costs are allocated between the appeal and earlier stages of the litigation. In the circumstances I propose to allow the sum of £300 (rather than the figure of £822 which is claimed).

41. Mr Hitchens indicated at the hearing that he no longer pursued the Appellants' unparticularised claim for miscellaneous costs. That leaves court fees, transcript fees and travel/parking expenses which total £946. I add to that the sum of £300 bringing

the overall total for disbursements (less artificial intelligence subscription costs) to £1,246.

42. As to professional costs, the hours claimed in periods at differing rates are more or less equivalent so that a single reduction can be applied. Adopting a broad brush approach, bearing in mind the wider sweep of the litigant and the orders made below I reduce the overall sum claimed to £5,600 (approximately 40% of the sum claimed).

The Costs of the Consequential Proceedings

43. The Appellants also seek their costs of the consequential proceedings. By a supplemental statement of costs covering the period from 24 July 2026 to 6 November 2026 they claim a further £2,086, comprising £1,776 for professional time and £310 for disbursements. The professional time claim is based upon 74 hours at the litigant-in-person rate of £24 per hour.

44. The claim includes time spent corresponding with the Respondent and the Court regarding the form of order, preparing a draft minute and supporting note, preparing submissions concerning consequential relief and the section 20C application, preparing the skeleton argument for the consequential hearing, preparing and agreeing the hearing bundle, preparing the supplemental costs statement and attending the consequential hearing. The largest single item is 25 hours claimed for preparation of the skeleton argument for the hearing of consequential matters.

45. The Appellants emphasise that the hours claimed were recorded contemporaneously, that they have already reduced the hours actually recorded and that no claim is made in this supplemental statement in respect of the artificial intelligence research subscription which formed part of the original costs claim.

46. Unlike the principal costs claim, the supplemental claim relates to a discrete period of just over three months and to the resolution of issues which arose directly from the appeal judgment. Much of the work claimed was plainly necessary. It was inevitable that the parties would need to address the form of the order, costs, the proposed section 20C application and the financial consequences of the appeal. The preparation of written submissions and attendance at the consequential hearing were also necessary.

47. Nevertheless, the same principles of reasonableness and proportionality apply. The consequential issues were considerably less complex than the appeal itself. Whilst I accept that the Appellants devoted substantial time to the preparation of detailed written submissions, the court must consider not merely whether the work was undertaken but whether the amount of time claimed was reasonably incurred and proportionate to the issues requiring determination. In particular, 25 hours for preparation of the skeleton argument and a total claim of 74 hours for consequential matters appear high when viewed against the limited range of issues ultimately requiring resolution. Further the Appellants have not been successful on all of the issues which they chose to raise at the hearing.

48. Standing back and considering the supplemental claim as a whole, I accept that the Appellants are entitled in principle to recover the costs of the consequential proceedings as the successful party. However, I do not regard the figures claimed as automatically reasonable merely because the work was undertaken. Consistently with my conclusions

in relation to the principal costs claim, the supplemental costs should be assessed on the standard basis and require some reduction to reflect the requirements of reasonableness and proportionality as well as a mixed outcome on the issues argued.

49. As to the disbursements, the claim comprises travel expenses of £120, printing, copying and binding costs of £160 and postage costs of £30. The travel expenses appear unobjectionable. I reduce the other items to £100, giving a total of £220.

50. As far as the professional time claim is concerned, I reduce the number of hours allowed by 50% giving a total sum allowed of £888.

The Cost of the Artificial Intelligence Subscription

51. The Appellants seek to recover £1,488 representing twelve monthly payments of £124 for a subscription to an artificial intelligence legal research tool. They were unable to fund this themselves and borrowed the money from Mr Hitchens's brother. They selected a well-known, major supplier and as part of the customisation of their subscription they selected the provider's legal agent. They contend that the expenditure was incurred specifically for the purposes of this litigation and was used to identify authorities, conduct legal research and assist in the preparation of submissions. They acknowledge that there is no direct authority on the recoverability of such expenditure by a litigant in person but submit that it falls within CPR 46.5(3) as a payment reasonably made for legal services relating to the conduct of the proceedings:

> "(3) The litigant in person shall be allowed—
>
> (a) costs for the same categories of—
>
> (i) work; and
>
> (ii) disbursements,
>
> which would have been allowed if the work had been done or the disbursements had been made by a legal representative on the litigant in person's behalf;
>
> (b) the payments reasonably made by the litigant in person for legal services relating to the conduct of the proceedings; and
>
> (c) the costs of obtaining expert assistance in assessing the costs claim."

52. They further argue that any analogy with a solicitor's overheads is inapt. A solicitor's hourly rates already contain an element reflecting the costs of research infrastructure and database subscriptions as an overhead, whereas a litigant in person recovering only the prescribed hourly rate receives no allowance for such expenditure. On that basis, they submit that the cost should, alternatively, be recoverable as a separate disbursement.

53. The first argument requires analysis in principle. A legal service ordinarily involves the provision of legal advice, legal representation or legal assistance by another person or organisation. By contrast, the subscription in the present case gave the Appellants

access to a software platform which they then used to undertake their own research and preparation. The service provided by the subscription provider was access to the platform. The legal analysis, legal research and preparation of argument remained the work of the Appellants themselves.

54. The position is analogous to a subscription to a legal database, the purchase of a practitioner text or the acquisition of legal software. Such resources may assist a litigant in conducting proceedings, but they are not themselves legal services. They are tools used in the performance of legal work.

55. Nor does the fact that the software uses artificial intelligence alter its essential character. The subscription did not involve the provision of legal advice by a qualified lawyer, nor did it transfer responsibility for the legal content of the Appellants' submissions to the provider. It simply provided a means by which the Appellants could undertake research and develop arguments more efficiently.

56. More fundamentally in the present context, whilst r.46.5(3)(b) does not say so in terms, the use of the phrase "legal services" has been determined to refer to services provided by or under the supervision of a lawyer (see *United Building and Plumbing Contractors v Kajla* [2002] EWCA Civ 628, and *Francois v Waltham Forest LBC* [2024] EWHC 1162 (KB)).

57. In those circumstances, I conclude that the subscription was not a payment for legal services within CPR 46.5. Rather, it was expenditure incurred by the Appellants in carrying out their own legal work. That leaves the question of whether it can be regarded as a recoverable disbursement rather than part of inherent cost of conducting litigation.

58. The Respondent submits that the claim should be disallowed in its entirety and contends that such expenditure constitutes overheads and not a recoverable disbursement. It further submits that permitting recovery would represent an unwarranted extension of the categories of recoverable litigation expense and could have wider implications for costs recovery in cases involving litigants in person.

59. The Appellants contend that the subscription materially assisted them in undertaking legal research, identifying authorities and preparing submissions and that it should be recoverable as a cost reasonably incurred for the purposes of the litigation.

60. In my judgment, the introduction of artificial intelligence does not require the Court to formulate any special rule. The question is not whether a cost involves artificial intelligence but whether, applying established principles, it should properly be characterised as a disbursement and if so whether the expenditure was reasonably and proportionately incurred for the purpose of conducting the litigation. The same approach has historically been adopted in relation to electronic disclosure platforms, document management systems, litigation support services and other technological developments. The technology itself neither renders the expenditure automatically recoverable nor automatically irrecoverable.

61. Nor do I accept that all expenditure associated with artificial intelligence necessarily falls to be treated as an overhead. Whether a particular cost is recoverable depends upon the nature of the service provided. A distinction may properly be drawn between expenditure forming part of a party's general infrastructure and expenditure which is

incurred in obtaining a specific litigation support service for the purposes of particular proceedings. The latter is a recognised category. The analysis is fact-sensitive and must be undertaken on a case-by-case basis. In general terms however it would be an odd outcome if legal professionals could deploy their standing artificial intelligence resources in support of litigation but litigants in person were, in effect, precluded from using similar tools. That would do nothing to encourage equality of arms and might deprive the court of the assistance to be gained from the responsible use of artificial intelligence. I emphasise the word "responsible". The use of artificial intelligence to generate prolix and unhelpful material is likely to lead to costs being disallowed even if in principle they might otherwise be recoverable.

62. In the present case the Appellants were litigants in person engaged in appellate litigation raising a point of contractual construction. The issues were primarily legal rather than factual and their resolution had potentially serious consequences for them. The underlying proceedings arose out of a claim for possession of their home. They are pensioners in their 70s living in social housing. I was told that they could not obtain legal aid nor afford legal advice. The material before me demonstrates that the subscription was used as a research and litigation support tool in connection with the preparation of their arguments and the identification of relevant authorities. They did not use a general or free LLM. They purchased a subscription which gave access to a sector specific artificial intelligence agent. The written and oral submissions advanced by the Appellants were careful, reasonably focused and ultimately successful on the principal issue before the Court. I am satisfied that the subscription claimed made a real contribution to the proper presentation of the Appellants' case.

63. I also take account of the fact that the Appellants incurred the expense specifically for the purposes of the litigation and funded that expenditure through borrowing. The subscription was not one maintained for other purposes. It represented a discrete item of expenditure incurred in order to assist with the conduct of these proceedings.

64. Standing back and considering the matter in the round, I am satisfied that the sum claimed was reasonably incurred and proportionate. I therefore allow this item in the sum claimed of £1,488. In doing so I do not hold that the cost of AI-assisted support is automatically recoverable. The recoverability of such expenditure will depend upon the circumstances of the individual case, including the nature of the service provided, the purpose for which it was incurred, whether it was reasonable and proportionate and its proper characterisation under established costs principles. The technology may be new, but the principles governing recoverability are not.

END