The Background:

In a consequential costs judgment following a successful appeal brought by two litigants in person, Mr Justice Sweeting considered for the first time the circumstances in which the cost of an artificial intelligence legal research tool may be recoverable as part of litigation costs.

The Law:

The Court held that the cost of an AI subscription is not, without more, a payment for "legal services" within CPR 46.5 [51]. The service provided was access to a software platform rather than legal advice from a qualified lawyer, and the use of artificial intelligence did not alter the essential character of the expenditure [55]. The Court therefore rejected the contention that the subscription was recoverable as a payment for legal services [57].

However, the Court also held that AI-related expenditure should not automatically be treated as irrecoverable [64]. Applying established costs principles, the question is whether the expenditure can properly be characterised as a recoverable litigation expense and whether it was reasonably and proportionately incurred for the conduct of the proceedings. The judgment emphasises that artificial intelligence does not require the creation of special costs rules and should be analysed in the same manner as other forms of litigation technology and support services [60].

The Court recognised that responsible use of AI tools may assist litigants who are unable to obtain legal representation and may promote greater equality of arms in appropriate cases. At the same time, the judgment stresses that recoverability will depend on the particular facts of the case and that the use of AI to generate excessive or unhelpful material may result in costs being disallowed [61].

The Facts:

On the facts of the case, the appellants were pensioners acting without legal representation in litigation concerning possession of their home [62]. The Court found that they had purchased a specialist AI legal research tool specifically for the proceedings, had incurred the expense through borrowing, and had used the service to assist with legal research, identification of authorities and preparation of submissions [51; 63]. The Court was satisfied that the subscription had made a genuine contribution to the proper presentation of their case and that the cost was reasonably and proportionately incurred [62; 64]. The sum claimed was therefore allowed as a recoverable item of costs [64].

The Decision:

The judgment concludes that, while artificial intelligence may be a new technology, the legal principles governing costs recovery remain unchanged. Whether AI-related expenditure is recoverable will depend on the nature of the service provided, the purpose for which it was incurred, and whether it was reasonable and proportionate in the circumstances of the individual case [64].