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Case No: SC-2024-APP-001144

IN THE HIGH COURT OF JUSTICE
SENIOR COURTS COSTS OFFICE

Thomas More Building, Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 23/01/2026

Before :

COSTS JUDGE WHALAN

- -

Between :

The Executors of the Estate of Kenneth Collins	**Claimant**
- and -	
The Chief Constable of Thames Valley Police	**Defendant**

- -
- -

Matthew Waszak (instructed by **Brabners LLP**) for the **Claimant**
Andrew Hogan (instructed by **Kennedys Law LLP**) for the **Defendant**

Hearing dates: 8th September 2025

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Approved Judgment

This judgment was handed down remotely at 10.30am on 23rd January 2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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COSTS JUDGE WHALAN

Costs Judge Whalan:

Introduction

1. This judgment determines whether the Claimant is entitled to an order for costs to be assessed on the standard basis, or fixed recoverable costs ('FRCs'), as prescribed by CPR 45. References in parenthesis refer to a Hearing Bundle ('HB'), paginated 1-43 and an Authorities Bundle ('AB'), paginated 1-613. I am assisted greatly by the Skeleton Arguments ('SA') of Mr Waszak for the Claimant, dated 4th September 2025 and Mr Hogan for the Defendant, dated 2nd September 2025.

Background

2. In July 2015, officers from Thames Valley Police arrested Mr Kenneth Collins on suspicion of stealing a mobile phone from a taxi driver. When police attended Mr Collins's property to arrest him, his home was searched and thirteen guns were found. One of the guns, a twin-barrel shotgun, was not registered on Mr Collins's shotgun certificate. A cylinder from an antique revolver was also found along with a large quantity of ammunition. All the guns and ammunition were seized by the police.

3. On 27th February 2017, Mr Collins was convicted of common assault and criminal damage, and unlawful possession of a shotgun and ammunition. At sentencing, the judge made a destruction order that applied to some but not all of the guns and ammunition seized. Subsequently, as a result of the convictions, Mr Collins's shotgun certificates were revoked.

4. Mr Collins and his partner, Ms Lesley Morgan, then submitted an application to the police for the remaining guns to be returned into Ms Morgan's possession. These requests were refused and, on 6th November 2018, Mr Collins was informed in a letter from the police that his guns had been destroyed.

5. Mr Collins then instructed Brabners LLP to pursue a claim against Thames Valley Police for negligence and/or wrongful interference in respect of his destroyed guns. A Letter of Claim was sent on or about 12th July 2019 when the Claimant's losses were quantified at c.£228,000. The Defendant's letter of response was dated 28th October 2020 and, having analysed the relevant background, it stated: 'It follows that Thames Valley Police can currently identify no defence to the issue of liability for the claim in principle'.

6. Mr Collins died on 15th April 2022. Probate was issued on 5th August 2024 and the claim was continued by the Claimant in this action. Both parties obtained expert evidence as to the valuation of the destroyed guns.

7. On 11th January 2023, the Claimant made a Part 36 offer of £50,000.

8. On 17th January 2023, the Defendant made a Part 36 offer of £32,500 ('the Part 36 Offer'). The offer was made using Court Form N242A and it contained the usual provision that if the offer was accepted within 21 days, the Defendant would be liable for the Claimant's costs in accordance with CPR 36.13. On 1st February 2023, within the relevant period, the Claimant accepted the Part 36 Offer.

9. Correspondence followed but costs were not agreed. On 31st December 2024, the Claimant issued Part 8 costs-only proceedings. On 3rd February 2025, the Defendant served an Acknowledgment of Service indicating an intention to contest the making of an order for assessed costs.

The issues

10. The issue to be determined is whether the Claimant is entitled to an order for costs to be assessed on the standard basis, or whether she is now limited to fixed recoverable costs. The parties agree that this question turns on the court's determination of three questions, proffered in the alternative, namely whether:

    (i) FRCs are excluded by virtue of the fact that the substantive claim fell within the scope of CPR 26.9(10)(e);
    (ii) FRCs do not apply as the substantive claim was a non-personal injury claim that settled without proceedings being issued, per the transitional provisions set out in the Civil Procedure (Amendment No. 2) Rules 2023;
    (iii) FRCs were ousted by the express terms upon which the substantive claim settled in February 2023.

FRCs, CPR 45 and the scope of CPR 26.9(10)(e)

Civil Procedure Rules

11. By CPR 45.43 (Fast Track) and 45.49 (Intermediate Track), FRCs are limited to claims "*which would normally be for [are] allocated to the fast track/intermediate track*". Accordingly, pursuant to CPR 45, cases which would normally be or are allocated to the multi-track fall outside the scope of FRCs.

12. CPR 26.9 is entitled 'Scope of each track'. Sub-paragraph (10), where relevant, provides:

> "*A claim must be allocated to the multi-track where that claim is –*
>
> *...*
>
> *(e) a claim against the police which includes a claim for –*
>
> *(i) an intentional or reckless tort; or*
>
> *(ii) ...*

The Claimant's submissions

13. The Claimant submits that the substantive action against the Defendant satisfied the provisions of CPR 26.9(10)(e)(i) and that, as such, FRCs cannot apply, as this claim would have to have been allocated to the multi-track.

14. The Letter of Claim dated 12th July 2019 (HB10), stated in the first paragraph that: 'We act on behalf of Mr Kenneth Collins in relation to a claim of negligence and/or

wrongful interference with goods in connection with firearms and ammunition which were being stored by Thames Valley Police'.

15. Mr Waszak then refers to Clerk & Lindsell on Torts (24th ed.) (AB70) for the definition of 'Wrongful interference with goods':

> 16-01
>
> Despite some simplification, clarification and assimilation for procedural purposes by the Torts (Interference with Goods) Act 1977, the law concerning the protection of interests in chattels remains very complex. Some of its complexities stem from the interplay of principles of property, tort and contract, for it is as much concerned with disputed title to chattels as with their loss, destruction or damage. Much of its complexity, however, stems from history. English law never developed a single wrong of wrongful interference with goods: instead, it developed a congeries of different and often overlapping torts. Thus a defendant wrongfully interfering with a claimant's chattels may be liable for any of three torts: conversion, trespass to chattels, and a tort which will be referred to here as 'reversionary injury'. Before 1978, he could also be guilty of a fourth, detinue; but this was abolished by the Torts (Interference with Goods) Act 1977. In all these torts, moreover, liability may overlap.

16. Mr Waszak also quoted Clerk & Lindsell in respect of 'intentional conduct'. Thus, in Chapter 1 – 'Principles of Liability in Tort', in a sub-section entitled 'Intention and Motive' (AB69), the authors state (1-75): 'So too with torts such as conversion: a deliberate dealing with another's property contrary to the latter's rights can be a conversion, but a mere negligent interference cannot'.

17. Accordingly, submits Mr Waszak, the substantive action, by the application of what he describes as 'first principles', comprised an action against the police which 'included' a claim for an 'intentional tort'. 'The decision to destroy the Claimant's guns', he submits, 'was, by its very nature, a deliberate one' (SA para. 28). It was a wrongful interference with the Claimant's goods by conversion and/or trespass to chattels which, at its very nature, comprised a deliberate dealing with Mr Collins's property. Thus, the provision in CPR 36.9(10)(e)(i) is satisfied, with the result that FRCs cannot apply.

The Defendant's submissions

18. The Defendant submits that the Claimant's action did not include a claim for an intentional tort and that the provision in CPR 26.9(10)(e)(i) does not apply. This is because the claim, in legal and factual reality, only existed in negligence. Mr Hogan submits that in the absence of a pleaded statement of case, or any witness statements, the only interpretive source is the Letter of Claim dated 12th July 2019. Here, the 'language used was all redolent of negligence'. Notwithstanding the reference to 'wrongful interference with goods', there was no express reference to conversion, trespass or any reference to or elaboration on the provisions of the Torts (Interference with Goods) Act 1977. As such, the reference to 'wrongful interference with goods' was effectively a re-citation of the action in negligence. Clearly, Mr Hogan submits, Mr Collins's legal representatives thought that a claim in the tort of negligence was

sufficient, an understanding that was endorsed by the Defendant's (fairly swift) admission of liability on 28th October 2020. In all these circumstances, the substantive claim did not fall within CPR 26.9(10)(e)(i), with the result that FRCs do apply.

My analysis and conclusions

19. I am satisfied, on the particular facts of this case, that the substantive action fell within the provisions of CPR 26.9(10)(e)(i), with the effective result that FRCs do not apply. The action intimated by Mr Collins, comprising a claim against the police, included a claim for an intentional tort. Mandatory allocation to the multi-track would have ensued and FRCs could not have applied. The provisions of sub-paragraph 26.9(10)(e)(i) are not exclusive but inclusive. The action, in other words, must simply include a claim for an intentional tort. It need not be exclusively or primarily characterised by such a cause of action. The reference in the Letter of Claim to 'wrongful interference with goods' suggests clearly – and, in my view, sensibly and inevitably – an alternative claim in conversion and/or trespass to chattels. The unfortunate destruction of Mr Collins's firearms and ammunition was self-evidently the consequence of an intentional act on the part of the Defendant. Really, the facts of this case indicate irresistibly a claim in conversion and/or trespass, whatever the merits (or otherwise) of a concomitant claim in negligence. Ultimately, I am left in no real doubt that on this issue the submissions of the Claimant should be preferred to those of the Defendant.

FRCs, the transitional provisions and non-PI actions which settled without proceedings being issued

Civil Procedure Rules

20. The key terms are those set out in the transitional provisions provided by rule 2 of the Civil Procedure (Amendment No. 2) Rules 2023 ('the 2023 Rules') (AB2):

> *Transitional provisions*
>
> *2(1) Subject to paragraphs (2) and (3), insofar as any amendment made by these Rules applies to –*
>
> *(a) allocation;*
> *(b) assignment to a complexity band;*
> *(c) directions in the fast track or the intermediate track; or*
> *(d) costs,*
>
> *those amendments only apply to a claim where proceedings are issued on or after 1st October 2023.*
>
> *(2) The amendment referred to in paragraph (1) only apply –*
>
> *(a) to a claim which includes a claim for personal injuries, other than a disease claim, where the cause of action accrues on or after 1st October 2023; or*

> *(b) to a claim for personal injuries, which includes a disease claim, in respect of which no letter of claim has been sent before 1st October 2023.*

The Claimant's submissions

21. The Claimant submits that FRCs have no procedural application in this case as the action comprised a non-PI claim which settled without proceedings being issued. On a proper interpretation of the transitional provisions set out in the 2023 Rules, FRCs only apply in non-PI claims where proceedings were issued. Crucially, submits Mr Waszak, the reference to 'proceedings are issued', refers to proceedings in the substantive claim itself, not any subsequent Part 8 costs only proceedings. Thus, a claim settled under Part 36 of the CPR prior to the 1st October 2023 commencement date is not caught by FRCs, notwithstanding that a Part 8 costs only claim was issued after the commencement date. Insofar as the question turns on statutory interpretation, namely a proper construction of the 2023 Rules, Mr Waszak advances several objective and subjective propositions.

22. First, the modern approach to statutory interpretation requires the court to ascertain the meaning of the words used in the light of their context and the purpose of the provisions: Rabot v. Hassan [2025] AC 534, per Lord Burrows [36]. Thus, the court's task, within the permissible bounds of interpretation, is to give effect to the intended purpose of the provisions: R (on the application of Quintaville) v. Secretary of State for Health [2003] 2 AC 687. There is a heavy presumption against an interpretation which produces an 'absurd result': see Bennion Bailey & Norbury on Statutory Interpretation 8th Ed.) at [11.1]. External aids to construction may be permissible, especially where formal in nature, such as a White Paper, but even the express guidance of the Government department which sponsored the relevant legislation is to be given no greater weight than an opinion from a text book, with no presumption that it is correct: Bennion (ibid), [24.17]. No interpretive reliance should be placed on any personal, ex post facto views of the drafters of the legislation: R v. Abu Hanza [2007] QB 659, per Lord Phillips CJ [33-34].

23. Second, a careful interpretation of the wording used in the text of the 2023 Rules suggests that a clear distinction should be drawn between substantive claims and any subsequent claim issued in costs only proceedings. In the 2023 Rules, submits Mr Waszak, the word 'claim' is used exclusively in terms of claims for substantive relief. This contrasts necessarily with costs only proceedings which, procedurally, cannot be allocated to a track.

24. Mr Waszak points to a supportive interpretation in a question/answer set out in a publication entitled *Costs & Funding following the Civil Justice Reforms: Questions & Answers* (11th Ed.) (AB199), which is effectively a supplement to the White Book. Question 3 is relevant:

> **Q3 The notes to the new rules deal with transitional arrangements, and at para. 10, state that 'the new FRC will apply to claims where proceedings are issued on or after 1 October 2023, save for personal injury'. The question arises as to what happens to non-PI claims settled**

> **prior to issue, both for claims that begin before and after 1 October 2023. In the first instance there will be claims which began before 1 October 2023, but settle after that date without the necessity of issuing proceedings. Is it the case the FRC will not apply to these claims? Going forward, there will be matters which begin after 1 October 2023, but again settle without the need to issue proceedings. On the strict reading of the rules, these claims will not fall within the FRC as proceedings were not issued after 1 October 2023. Is this correct and if not, where in the rules does it state how these costs are brought within the FRC regime? If it is intended only for matters which begin after 1 October 2023 but settle without proceedings to be within the regime, what is the cut-off point for such matters to be included? We foresee satellite litigation as to whether work was commenced on or before 1 October 2023. Finally, it appears that the rules allow the defendant to recover costs for a claim which is intimated, but abandoned before the issue of proceedings. Is this correct? If so, by what mechanism will the defendant obtain costs, and when will a claim be considered abandoned?**
>
> Non-PI claims which have not been issued at all will not be caught by the post-30 September 2023 regime. If by 'begin' what is intended is 'cause of action', then in a non-PI claim where the cause of action arises after 30 September 2023 and which settles before issue, again such a claim will not be caught by the post-30 September 2023 regime. The trigger is the issue of the claim, not when work commenced and so the anticipated satellite litigation is unlikely.
>
> Simply put: not issued and not a PI claim, then the post-30 September 2023 regime does not apply.
>
> CPR r.45.6 provides for the recovery of the defendant's costs. It includes within its provision for where claims are discontinued. Non-PI claims which are merely 'intimated', rather than issued, are not caught by the post-30 September 2023 regime.

25. Mr Waszak also cites with approval the decision in Knowles v. Roberts (1888) 38 ChD 263, in which the court concluded effectively that costs proceedings are not proceedings or a claim, but rather proceedings to give effect to the parties' compromise.

26. Third, Mr Waszak refers to a number of other 'key points' to support his interpretation of the transitional provisions in the 2023 Rules. There is, he submits, an 'entrenched presumption' against legislation which affects a party's substantive rights having retrospective effect. Thus, in Phillips v. Eyre (1870) LR QB 1, Willes J stated (at page 23 of the judgment) that:

> Retrospective laws are, no doubt, prima facie of questionable policy, and contrary to the general principles of legislation by which the conduct of mankind is to be regulated ought, when introduced for the first time, to deal with future acts, and ought not to change the character of past transactions carried on upon the face of the then existing law. In the circumstances of this case, where the substantive claim was instigated, proceed and settled within

> the perimeters of the pre-1 October 2023 regime, was presumption against retrospective effect strongly supports the Claimants' interpretation against that of the defendants. Put a slightly different way, to impose retrospectively a fixed costs regime on an action pursued against the collective understanding of costs assessed on the standard basis would follow, would be 'manifestly unjust'.

This consequence, submits Mr Waszak, would also represent an approach that is 'incoherent to the point of being simply absurd'. For example, it would mean that fixed costs do not apply where a pre-issue settlement was before costs proceedings are issued, but would apply the moment such proceedings are issued. This would militate inevitably against the amicable settlement of costs, as the paying party would invariably be incentivised to force the issue of cost proceedings, whereupon fixed costs would be triggered.

The Defendant's submissions

27. The Defendant submits that the Claimant's Part 8 costs only claim, issued on 31st December 2024, a date sometime after the 1st October 2023 commencement date cited in the transitional provisions, is 'caught' by the 2023 Rules, with the consequence that FRCs apply. Mr Hogan, when construing the reference to 'claim' in rule 2, makes no distinction between a Part 7 substantive claim and a Part 8 costs only claim. He also cites a number of objective and subjective points in his submissions.

28. First, in support of the proposition that a 'claim' includes the entirety of the relevant elements in dispute, including a claim for costs, Mr Hogan cites the judgment in Ayton v. RSN Bentley Jennison & Others [2018] 5 Costs LR 915 (AB455). In that case, May J held that there was 'no extinction of a claim' where the substantive issues or dispute were settled. Instead, the 'claim' remained in being until all elements, including costs, were concluded. Litigation, in other words, would not be construed as a claim for damages, followed by a claim for costs, but rather as an ongoing claim for damages and costs.

29. Second, Mr Hogan refers to the Minutes of the Civil Procedure Rules Committee held (remotely) on 3rd November 2023 (AB202). The final two bullet-points at paragraph 26 of the Minutes state (AB205) that:

> - where proceedings have not already been issued on or after 1st October and the parties do not expressly agree to costs on a non-FRC basis, but they agree on the incidence, but not the amount, of costs, then they may issue costs only proceedings for the determination of those costs (in respect of FRC, costs only proceedings under rule 46 … amount to proceedings);
> - if those proceedings are issued on or after 1st October, FRC would apply to all costs in respect of that claim, irrespective of whether they were incurred before or after 1st October

Mr Hogan accepts this comprises an ex post facto opinion on the construction of rules that were already in force, and that accordingly the court is not entitled to rely upon it. It nonetheless confirms his submission and interpretation of the effect of the transitional provisions in the 2023 Rules and so he 'notes it with gratitude'.

30. Third, turning to the question of retrospective effect, Mr Hogan submits this should not trouble the court, as the 2023 Rules relate to the application of a procedural process, and procedural changes are not subject to the rule of retrospectivity. Referring to Bennion, Bailey & Norbury on Statutory Interpretation, (8th Ed.), it is clear that while transitional provisions must be interpreted in the same way as any other kind of legislation, taking account of their function and purpose [7.10] (AB93), the principle that legal policy changes in the law should not take effect retrospectively applies 'except in relation to procedural matters' [7.13] (AB98). The receiving parties' entitlement to costs is not an accrued right, but rather an entitlement to be construed by reference to the relevant procedural rules. Insofar as the transitional provisions in the 2023 Rules invoke procedural changes, they are not, therefore, subject to the rule of retrospectivity.

31. Mr Hogan then referred to two recent judgments at first instance where the court followed his interpretation of the transitional provisions in the 2023 Rules.

32. In Asmat Bi v. Tesco Underwriting Limited (2024) Manchester County Court, Case No: K04MO298, the court considered the effect of the transitional provisions of the 2023 Rules in the costs of a claim settled under CPR 36 prior to the 1st October 2023 commencement date. The claimant had suffered loss and damage (but not personal injury) in a road traffic accident on 19th August 2022. A letter of claim was sent on 6th September 2022 and the case settled on 11thApril 2023, prior to the issue of proceedings, when the claimant accepted the defendant's Part 36 offer. On 10th October 2023, the claimant delivered to the defendant an informal bill of costs, on the assumption that costs would be assessed on the standard basis. Indeed, on 23rd December 2023, a District Judge made an order that the defendant pay the claimant's costs to be subject to a detailed assessment on the standard basis, if not agreed. The defendant then applied to set aside that order, claiming that FRCs applied. HHJ Sephton KC agreed that FRCs should apply and set aside the order made by the District Judge. His judgment summarised at paragraph 31 (AB403):

> I conclude that the Part 36 offer did not prescribe the basis upon which costs were to be paid. The offer was made and accepted on the basis that the costs would be determined in accordance with the Rules. The Rules were changed in order to implement an extension of the fixed recoverable costs regime. Because the claimant did not issue her costs-only proceedings until after the amendments to the rules came into force, the costs of her claim for damages fall to be determined under the amended Rules.

33. In Bek v. Sinsek (2025), Liverpool County Court, Case No: K08LV035, the court also concluded that FRCs applied to a non PI claim which settled without proceedings by way of a Part 36 before 1st October 2023, where costs-only proceedings were issued after 30th September 2023. The claimant had suffered loss and damage (but not personal injury) in a road traffic accident on 22nd November 2022. On 23rd August 2023, the claimant accepted the defendant's Part 36 offer made on Court Form N242A. Costs could not be agreed and so on 18th December 2023 the claimant commenced Part 8 costs-only proceedings, seeking a standard basis assessment. On 18th January 2024, the court made a costs order in the claimant's favour, and detailed assessment proceedings were commenced on 31st January 2024. At a subsequent hearing DJ Baldwin stated that FRCs applied to the assessment of the costs of the

original claim. His conclusion was summarised at paragraph 47 of the judgment (AB421):

> Overall, therefore, in my judgement and in the light of my above analysis, the 2023 SI can safely and should be plainly read as meaning that if proceedings of any sort are required to conclude a claim, to include obtaining an order for the costs of that claim, then if those proceedings are or were issued after 30th September 2023, FRC apply…

My analysis and conclusions

34. I am satisfied that the Claimant's Part 8 costs-only proceedings issued on 31st December 2024 triggered the application of the FRC regime to this claim. I reject Mr Waszak's submission that FRCs do not apply to this non-PI action, settled prior to 1st October 2023 without proceedings being issued. It is clear to me, on an ordinary reading of the transitional provisions in the 2023 Rules, that 'claim' includes Part 8 costs-only proceedings issued to obtain a costs order. No material distinction should be drawn between the substantive claim and costs only proceedings. There is instead a single, continuing claim, which subsists until all elements have been concluded. Costs-only proceedings accordingly comprise a claim for the purpose of the Rules. The Rules invoked procedural changes designed to implement an extension of the fixed recoverable costs regime. I am satisfied that such procedural matters do not violate the general principle of legal policy that changes in law should not take effect retrospectively. This court is not in any way bound by the decisions in Asmat Bi v. Tesco Underwriting Limited (ibid) and Bek v. Simsek (ibid), but it is reassuring nonetheless to see different judges, sitting in different courts reach the same conclusion, albeit in the context of different types of claim. I should not and do not place any reliance on the CPRC Minutes for 3rd November 2023. I do not find this outcome to be in any way unfair or 'absurd', as submitted by Mr Waszak. The transitional provisions implemented a relatively simple scheme which, inter alia, imposes a 'bright line' demarcation between FRCs and the previous regime. These changes were publicised well in advance and on the facts of this case the Claimant had eight months to issue costs-only proceedings prior to the 1st October 2023 commencement date. On this issue, for all these reasons, I prefer the submissions of the Defendant to those of the Claimant, so that the FRCs regime would have applied, but for my conclusions set out at paragraph 20 above.

FRCs ousted by the express terms on which the claim settled

The Claimant's submissions

35. Pursuant to CPR 45.1(3), as upheld by the Civil Procedure Amendment Rules 2024 (made on 30th January 2024), FRCs do not apply where the parties have expressly agreed they should not. Mr Waszak submits that the Claimant's acceptance on 1st February 2023 of the Defendant's Part 36 offer made on 17th January 2023 amounted to an express and effective 'contracting out' for the purposes of FRCs. This is because the offer, made on Court Form N242A, included the standard proviso that if the offer was accepted within the relevant period, 'the Defendant will be liable for the Claimant's costs in accordance with rule 36.13'. CPR 36.13(3) provides for costs 'to

be assessed on the standard basis, if not agreed'. Thus, notes Mr Waszak, by the acceptance of the offer, the parties had effectively agreed the Defendant would pay the Claimant's assessed costs. Such 'express agreement', concludes Mr Waszak, 'therefore ousts FRCs in any event' (SA para. 48).

The Defendant's submissions

36. Acceptance of the Part 36 offer, submits Mr Hogan, did not amount to an agreement that the parties 'contracted out' of FRCs. Acceptance 'simply gave the Claimant an entitlement to costs in accordance with CPR 36.13 (SA para. 58)'. Such entitlement is subject to the application of the rules as a whole. CPR 36, in any event, establishes a self-contained procedural code, meaning that its engagement cannot be construed as establishing some form of a contractual agreement or entitlement.

My analysis and conclusions

37. Offer and acceptance pursuant to Part 36 cannot, in my conclusion, be construed as an effective 'contracting out' of FRCs. Quite apart from the fact that it invokes a procedural and not a contractual process, it is clear that the entitlement to costs conferred by 36.13 is simply a right to have those costs determined by the Rules. Thus, the wording of 36.13(3) includes the proviso: 'Except where the recoverable costs are fixed by these Rules, …'. Insofar as the Claimant's entitlement to costs could be otherwise fixed by the Rules to comprise FRCs, therefore, a Part 36 agreement cannot possibly be construed as a contracting out of this consequence.

Conclusions

38. My conclusions are summarised as follows:

    (i) This claim falls within the scope of CPR 26.9(10)(e)(i) and so FRCs do not apply. The Claimant is entitled to an order for costs to be assessed on the standard basis, if not agreed.
    (ii) On the correct interpretation of the transitional provisions set out in the Civil Procedure (Amendment No. 2) Rules 2023, FRCs would otherwise have applied, as the Claimant's Part 8 costs-only proceedings were issued after the commencement date of 1st October 2023.
    (iii) An agreement pursuant to CPR 36 cannot be construed as the parties contracting out of the FRCs regime.