



The Electronic Bill: Where are we now?

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New Format Bill recap – what is it?

- A large spreadsheet (Excel document), rather than the old style ledger bill
- Next evolution of phased bills – breaks work into Phase, Task and Activities
- Much more detailed! – this can be a positive (allows us to defend work by being very precise and specific), and a negative (by giving so much information there are arguably more areas to attack)
- Puts files under the microscope!

What does the New Format Bill look like?

- See example in your PIC “packs”
- Essentially broken down into sections:
 - Front page
 - Certificate
 - Narrative
 - Detail of hourly rates
 - Breakdowns by part, phase, budgeted costs, tasks and activities, communications and then the main spreadsheet element in two forms, printable and full detail

What files does it affect?

- Applies to all work done on Part 7 Multi-Track claims
- Was introduced on 6 April 2018
- Work from that date onwards needs to be in new style bill
- Work done before this date can be done in old style bill
- Will end up having two bills covering different periods in the same case, a traditional bill pre 6 April 2018 and an electronic one thereafter

When do I not need it?

Exceptions include:

- Part 8 claims
- Fixed/scale costs cases
- Cases where the receiving party is a litigant in person and,
- Where the “Court orders otherwise”

How does it affect me?

- Will affect time your time recording
- Will affect your recovery
- File handlers need to know what they are certifying
- Mis-certification is a serious offence (*Bailey -v- IBC Vehicles Limited [1998] EWCA Civ 566*)
- A mis-certified bill can be struck out!

How to Record Time for the New Format Bill?

- Each item of work (down to individual routine letters and calls) needs the following information attaching to it, preferably in a case management system that can produce a ledger in .xml format:
 - Date
 - Description of the work done
 - The fee earner who did the work
 - Time taken
 - Phase
 - Task
 - Activity

Phase/Task Activity Codes

- 410 different possible combinations for each and every piece of work
- Work may need to be apportioned between codes if multiple subjects covered
- Big step forward from the 1,479 different combinations in the original “J-Codes”
- Based on a system that has been in use in the USA for some time

Time recording

- Need to understand **Phases** first!
- Be aware of your budget (if you have one) or will be preparing one
- Pay close attention to your **assumptions**
- Putting items in the wrong phases can undermine bill (and lead to reduced recovery!)
- If you go over budget in a phase it can be clearly seen
- Justifying an over spend requires a high bar to be met (*Sharp & Ors – v- Blank & Ors* [2017] EWHC 3390 (Ch))

Phases for Precedent S

- Initial and Pre-Action Protocol Work
- Issue/Statements of Case
- Case Management Conference
- Disclosure
- Witness Statements
- Expert Reports
- Pre-Trial Review
- Trial Preparation
- Trial
- ADR/Settlement
- **Interim Applications & Hearings**
- **Funding**
- **Budgeting including costs estimates**
- **Costs Management Conference**
- **Costs Assessment**

Tasks

- Some tasks are very prescriptive (arguably too prescriptive!)
- Some are suitably broad
- Not everything fits in neatly
- Need to make sure you have a **consistent approach** within your file, team and department

Why?

- Data will be misrepresented if people use different approaches to time recording within a file!
- This could affect recovery and give an artificial picture (and could even suggest you are over budget when you are not!)

Examples of tasks...

- For work under the Disclosure phase there are 4 different tasks:
 1. Preparation of the disclosure report and the disclosure proposal
 2. Obtaining and reviewing documents
 3. Preparing and serving disclosure lists
 4. Inspection and review of the other side's disclosure for work undertaken after exchange of disclosure lists.

Further examples of tasks...

- For work under the Experts Phase, there are 3 different tasks:
 1. Own expert Evidence
 2. Other Party(s)' expert evidence
 3. Joint expert evidence

e.g. Joint statement of experts. Which task do you use??

Know your Activities

- Appear For/Attend
- Communicate (with Outside Counsel)
- Communicate (with client)
- Communicate (witnesses)
- Communicate (experts)
- Communicate (Other Party/other outside lawyers)
- Communicate (other external)
- Communicate (internally within legal team)
- Billable Travel Time
- Plan, Prepare, Draft, Review

The good...

- More **detail** can be persuasive in defending costs
- More scope for isolating **funding time (still not recoverable though)**, thereby helping to insulate the recoverable costs
- Can recalculate in real time – especially in assessment - *“Gives judges a conscious”*
- Served electronically (less paperwork)
- You can keep an accurate record of what areas/activity codes are being reduced most at assessment

The bad...

- More detail means more scrutiny (eg routine letters now require dates; voicemails are no longer lost in the mix of routine calls)
- Takes longer to prepare and review
- Information presented in various ways – can be difficult to understand what you are reading
- Paying parties will be able to recalculate in real time too
- Time recording can be more confusing
- Lack of guidance regarding allocating work

New bills and cost budgets

- Precedent H has 10 phases
- Precedent S (“new bill”) has 15 phases
- Case law tells us that we get our budgeted costs unless there is a “good reason to depart”
- Good reason is not defined
- Proportionality still key
- An eagle eyed paying party may well find a good reason amongst the extra detail in the new bill

What do paying parties say?

- Points of Dispute are not noticeably more detailed at the moment (especially for matters where the bill is less than £75,000.00, and subject to PA cap)
- Some paying parties are relishing the detail (can be very specific)
- Can attack not only the phase, but the specific task or activity
- Bulk time recording stands out
- More scope for errors – e.g. file where date of letter was stated as 1981!

What do the courts say?

- Lack of court training on new bills
- Reliance on advocates to direct Judge
- Mixed reactions to the bill
- Helpful to see changes in real time (eg when reducing rates)
- They recognise it takes longer to do bill
- Here to stay!

What we have found so far...

- Some firms have adapted time recording
- Where this is not done it can take longer to prepare a bill (eg standard 1 unit letters now need to state which date they were sent on)

Tips to make process more efficient

- Incorporating terminology from the Practice Direction (47, Schedule 2) into file notes and/or ledger if possible
- For lengthy file notes where multiple issues are covered, provide an indication of how much time was spent dealing with each phase (e.g. 2 hour attendance could be split 50/50 Experts/Issue pleadings)
- If unsure which phase is best, don't commit to one on file note (as it will be difficult for a Costs Draftsperson to justify it should in fact be in another phase)

The future...

- Electronic bills will become the norm
- Paying parties will be able to sift through information much quicker
- More detailed cost negotiations
- More focused Points of Disputes
- Work will be scrutinised more closely
- Electronic time recording can streamline the process....
....but only if it is done effectively and correctly!

Thoughts on new bill...

- Not everything fits neatly into a specific Phase/Task/Activity
- Need to be consistent within each file...and department
- Activities can cause confusion very easily...
- e.g. “Communicate” and “Appear/Attend” are 2 separate activities in the new bill
- Paying parties and Judges now have much more data to go through with a fine toothcomb
- Need to be tactical
- The new bill is here to stay!



Thank you!

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