

NEW BILLS OF COSTS - FAQ'S

Clarion

What is the new electronic bill of costs?

The electronic bill of costs is a new format bill that the courts are introducing. The main feature is that it is electronic and self-calculating through the use of a spreadsheet. Whilst the appearance of the bill is radically different to a traditional bill of costs, the content and the principals upon which work is recorded and recovered remain the same. Therefore, it is simply the new layout that will require some getting used to.

At first glance, the layout of the electronic bill appears quite complex. However, upon closer inspection, it is apparent that the foundations of a traditional bill are still present: there is a narrative, a chronology of procedural steps, a summary of parts and fee earners, a certificate for signature, a precedent Q (fully integrated within the bill), and the usual bill detail. Each section is set out on different tabs and it is relatively easy to navigate between.

The main innovation that the electronic bill introduces are the new bill codes: namely Phase, Task and Activity (PTA codes).

What are Phase, Task and Activity codes?

It is likely that litigators will now be familiar with the budgeting phases which were introduced in the costs management reforms to break down the costs of litigation into separate distinct sections. Whilst phased bills of costs have been around for a while, they still did not provide the detailed breakdown and access to a general overview of the type of work completed in each phase. As such, Task and Activity codes have been introduced and are to be applied to all work undertaken.

Tasks are essentially a sub-genre of Phase. They break down a phase into further distinct areas of work. For example, the witness statements phase is now made up of two tasks: 'taking, preparing and finalising witness statements', and 'reviewing other party witness statements'.

Activities are not about the content of the work done, but instead describe the type of work undertaken. For example, there are number of categories of activities relating to correspondence upon different parties (i.e. communicate (with client), communicate (experts), and the all-encompassing activity 'Plan, Prepare, Draft, Review').

The introduction of these additional bill codes provides further information within the electronic bill. The spreadsheet format presents a detailed summary in respect of the time spent on specific tasks and/or activities.

When does the new electronic bill of costs become mandatory?

The use of an electronic bill of costs becomes mandatory for all work undertaken from 06 April 2018. This is the line in the sand that has been drawn. As a result, during the transitional period, there will be a large number of

bills where work undertaken spans either side of this date. It is up to the draftsman and their client to decide whether an electronic bill is used throughout, or if a traditional bill of costs is used for work up to 06 April 2018, and the new electronic format thereafter.

The Costs Practice Direction supplementing CPR 47 (92nd update) confirms that an electronic bill of costs must be used if **the case is a Part 7 multi-track claim, except:**

- (i) for cases in which the proceedings are subject to fixed costs or scale costs;
- (ii) cases in which the receiving party is unrepresented; or
- (iii) where the court has otherwise ordered.

There could, therefore, be a number of circumstances where the electronic bill is not mandatory. However, we would always recommend that if in any doubt (i.e. if the matter is suitable for the multi-track but has not been formerly allocated), the electronic bill should be adopted based on a cautious approach.

Why is it important to me?

It is important for our clients to have a broad understanding of the new electronic bill and the way the content is displayed because there is still a requirement to certify the accuracy of the costs claimed. We will always try and provide help and advice in respect of the costs which have been included within the bill, but ultimately it is the solicitor's responsibility to confidently certify the bill with a full understanding of the costs claimed.

What can I, as a litigator, do to help?

Good, accurate time recording is becoming more and more important. The benefits of good time recording practices will only continue to grow following the introduction of the electronic bill of costs and the new PTA codes.

Senior SCCO Judges have indicated that there will be 'honeymoon' period where a reasonable amount of additional time taken to prepare the new bill will be recoverable inter partes. However, in the long term this grace period will end as the electronic bill becomes the norm. Therefore, if the extent of the information provided does not include the relevant PTA codes then it may be that some of the additional bill drafting time will have to be recovered from the client direct instead of inter partes.

Litigators can therefore proactively help themselves to avoid any additional expense that the electronic bill may cause by adopting PTA code time recording for all work undertaken from 06 April 2018 onwards. If this is not adopted, then a costs draftsman will still be able to prepare the electronic bill, albeit at a higher cost with the full amount potentially not recoverable inter partes.