

What is the practical significance of the New Format Bill of Costs?

White Paper Costs Conference 2017

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The Current Format

- Jackson Final Report (December 2009) Chapter 45:
- Expensive and cumbersome to draw.
- Does not make use of the available technology.
- Not easy to digest.
- Documents generally the most contentious item, upon which large sums turn. Bills usually give insufficient information.
- Mismatches between recorded time and bills.

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The New Bill Format

Jackson Final Report recommended 3 requirements of a new bill of costs:

- (1) More transparency;
- (2) User friendly synopsis of work done;
- (3) Inexpensive to prepare.

“In my view, modern technology provides the solution...”

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Jackson's Prescription

“A new format bill of costs should be devised, which will be more informative and capable of yielding information at different levels of generality...

Software should be developed which will (a) be used for time recording and capturing relevant information and (b) automatically generate schedules for summary assessment or bills for detailed assessment as and when required.

The long term aim must be to harmonise the procedures and systems which will be used for costs budgeting, costs management, summary assessment and detailed assessment.”

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The Structure

- *A bill should be presented in the order “phase, task, activity”.*
- *According to these proposals, the bill is divided into “phases”:*
- *Each phase is then broken down to identify different tasks.*
- *A summary sheet lists the profit costs and disbursements in respect of each task in each phase.*
- *In the body of the bill itself, each task in each phase is set out in chronological order, with an indication of the time spent and the amount claimed.*

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The Advantages... hailsham chambers

- *A bill in this form could easily be transmitted in electronic form*
- *Provided that all those involved had compatible IT software.*
- *If bills were to be prepared along the lines suggested, and dealt with electronically, there would potentially be large savings in time and costs.*

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...And the Price

- *I readily accept that developing new software will be expensive.*
- *However, if successful, it will generate major savings.*
- *Work on documents (the largest item in nearly all bills) will become intelligible*
- *The huge costs of drafting bills of costs will be avoided.*

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UTBMS

- The means of achieving these aims – adapting Uniform Task-based Management System, an international standard for e-billing (overseen by LEDES) for use in UK litigation (“EW-UTBMS”)
- International e-billing body provides a common standard

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The J Codes

- Hutton Committee's report on J Codes (<http://utbms.com/jackson-ew-utbms/>) approved by Lord Dyson MR, Jackson LJ and Senior Costs Judge Hurst by a letter dated 30.7.14:
- *“Developing the J-Codes to capture time-recording information is an essential element of the implementation of the [new format bill of costs] recommendations in the Final Report.”*

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What is a J-Code?

- Time record contemporaneously work under an assigned code (adapted by the Committee to apply to England and Wales litigation) so that it is categorised contemporaneously as time recording within Precedent H hierarchy of phases:

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The “J-Codes”

- (1) **Phase** – i.e. essentially Precedent H Phases - e.g. witness statements – Phase Code JG00 (do not need to enter this)
- (2) **Task** – “what” is being done - e.g. preparing own side’s witness statements or reviewing other side’s – Task Code JG10 or JG20 respectively
- (3) **Activity** – “how” it is being done e.g. communicating with the witness – Activity Code A113. Now simplified

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How does it work?

- Select Task Code (e.g. JG 10) and Activity Code (e.g. A113) together at time of recording
- Can and should give further detail of work under heading (i.e. “attendance note”) just as in any sophisticated time-recording system now
- Can then import the time recording record into a bill of costs

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Expense/Disbursement Codes

- Also provided

Jackson LJ's Law Society Talk

- 21/4/16 Jackson LJ talk on the New Format Bill
- The new format should have a choice of codes, not mandatory (just recommended) to use J-Codes
- But an electronic form of bill should be in place with the use of codes for all work done on or after 1/10/17

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Committee Sub-Committee

- Headed by Birss J
- CPRC decides to adopt Jackson LJ's proposal and revise the Practice Direction in force since 1.10.2015
- Revised version of the new bill adopted – Precedent AB

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The Way Forward

- **Revised Practice Direction 51L** with revised “new” bill in force from 3.10.16 and allows any receiving party in the SCCO only to use the new bill format instead of the existing model:
- *“(a) reports and aggregates costs based on the phases, tasks, activities and expenses defined in Schedule 1 to this Practice Direction [i.e. on the revised J-Codes]; OR*
- *(b) reports summary totals in a form comparable to Precedent AB”;*

i.e. can be on codes other than the J-Codes if you think you have a better set but must have similar summaries

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The Revised New Bill

- We have listened to complaints of over-complication!
- The Activity Codes are now *much* simpler
- There are now only 10, 7 of which are communicating with (client, witness, expert, counsel, other side, court, internal etc)
- 1 “appear for/attend”
- 1 travel time
- And 1 “Plan, prepare, draft, review”

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The Revised New Bill

- The new form remains **voluntary** at this stage [but there is now an express plan in the Practice Direction that it will become mandatory]

Different Levels of Generality

- No need to reinvent the wheel every time a bill is produced.
- The system should be able to:
 - (1) Produce a statement of costs for summary assessment;
 - (2) Produce a Precedent H budget
 - (3) Produce a bill of costs

Different Levels of Generality

- (4) Produce a comparison between each phase of the budget and the final bill – which phases are over or under budget?
- (5) Give a series of summaries drilling down to the detail as much or as little as possible: e.g. Broken down into phases, or tasks within phases or activities too: how much time spent on witness statements? Or how much time on drafting your own witness statements? etc

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The New Bill

- The specification is designed primarily for electronic use but allows for a printed version
- The printed version does not have all the columns of the full electronic version (it simply not printable in full) but the electronic version can be served to see what is “under the bonnet”

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The New Bill

- The format can be used by those who do not have a time-recording system or any billing software but obviously some of its advantages will be lost to them
- You do **NOT** have to use J-Codes to use the new bill – you can use your own codes
- But the bill is based on J-Codes because that is all there is at the moment

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The New Bill

- Whether producing Precedent H, or summary assessment or detailed assessment bills, it will always require some human intervention (privilege, particular costs orders etc), but far less than at present

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The New Bill

- See the versions in your packs –
- It is essentially a spreadsheet – it has been developed in Excel
- It has traditional elements such as a **narrative**, a **chronology**, a summary of the legal team and rates, and...

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The Make Up of the New Bill

- a summary of the bill **structure**,
- the detailed body of the bill itself arranged by **phase**,
- then a Master Summary,
- Summaries of base costs and additional liabilities separately
- a summary **comparing the costs in the bill with the last approved/agreed budget** and
- such other summaries as may be useful in the particular case

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The New Bill

- It aims to get rid of bills in parts, since it automatically calculates the work at the relevant hourly rate and/or VAT rate and/or the relevant firm at that date
- The summaries are almost all “pivot tables” (or the like) where the figures are automatically calculated for you

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The New Bill

- Some of the challenges have been the indemnity principle (General of Berne...), interim statute bills, partial costs orders, multiple parties of whom only some are paying etc
- The new bill takes account of most of these (but it is not possible to envisage every scenario imaginable!). The testing stage will help on this...

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Timescales

- The new PD51L:

“1.1A The timetable for this Pilot Scheme is as follows:

(a) the Pilot Scheme in its amended form will come into effect on 3 October 2016 with a view to establishing a mandatory form of bill of costs to apply to all work done after 1 October 2017;

(b) the Rule Committee will monitor and review the Pilot Scheme and aim to fix the mandatory form of the new bill of costs at its meeting in May 2017.”

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What should you do now?

- We think it is no longer safe to ignore the J-Codes and/or this project
- You are **strongly recommend** to record time under Precedent H phases asap, and one way of doing that efficiently is to time-record by J-Code and all get used (if you are not already) to using spreadsheets to produce bills of costs
- The sooner this is started, the easier the task will be in the future....

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The Future

- Henry Ford on developing the mass market motor car: *“If I had asked people what they wanted, they would have said “faster horses””* .
- The present system is surely indefensible
- The change is going to save time and money and increase efficiency: in the interests of clients at the very least...
- But if you have improvements to the new version, please tell us!

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