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Electronic dreams

An ACL roundtable on the new bill of costs

AN ACL SPECIAL REPORT

Editor's comment

The Association of Costs Lawyers has played an integral role in the development of the electronic bill of costs. How could it not, given the collective experience and expertise it holds?

It is very much a living document as practitioners and judges get to grips with it, and requires close monitoring in these early days. With several months of experience now under their belts, it seemed a good time to bring together those at the frontline to discuss how it has gone so far.

This special report contains a detailed transcript of a roundtable put on by the ACL to discuss how the electronic bill has been received, where the pinch points are and where it will be going in the future.

There was a lot of say and, with such knowledge and wisdom around the table, we could easily have gone on for many more than the 90 or so minutes the discussion lasted. But that was more than enough time to know, without doubt, that this genie is not going back into the bottle.

Like any innovation that disrupts a long-established way of working, the early days of the electronic bill have not always been smooth. There will be tweaks needed along the way, along with judges and practitioners alike having to get to grips with Excel – that programme sitting on their computers they have hitherto been happy to ignore.

More than anything, though, this is about cultural change. It has been instructive to watch the evolution of some Costs Lawyers I know whose exposure to the electronic bill has transformed them from technophobes to evangelists.

As ACL vice-chairman Francis Kendall told the roundtable about the new bills: "I love them. If you asked me to draw an old-style bill now, I would probably struggle. I think they are a fantastic beast, they are the future and they have real scope for analysing the costs in a far better way than we ever did with a paper bill."

There's no going back now.

Neil Rose, *Editor*

Electronic dreams

Late last year, the ACL held a roundtable with a range of judges, Costs Lawyers, barristers and solicitors to discuss how the electronic bill of costs was developing. Kindly hosted by DWF in London, the group spent more than an hour and a half debating the good, the bad and the annoying experiences they have had. This is an edited version of the discussion

Roundtable

Participants

Neil Rose – *Editor, Costs Lawyer (Chair)*
Gary Barker – *Chair, Association of Personal Injury Lawyers' costs special interest group*
District Judge Ian Besford
Dr Mark Friston – *Hailsham Chambers*
Senior Costs Judge Andrew Gordon-Saker
Claire Green – *Chair, ACL*
Steven Green – *Costs Lawyer, Partner and National Head of Costs, Irwin Mitchell*
Alex Hutton QC – *Hailsham Chambers*
Master Jennifer James
Francis Kendall – *Vice-Chair, ACL*
Master Colum Leonard
His Honour Judge Chris Lethem
Jon Lord, *Costs Lawyer – Weightmans, attending on behalf of Normanton Chambers*
William Mackenzie – *Costs Lawyer and head of the London costs team, DWF Costs*
Alison Paget – *Senior Associate and costs recovery team supervisor, Kennedys*

Initial thoughts

Claire Green: When people get the opportunity to actually deal with it properly, I think the electronic bill is a fantastic tool. It is going to make the work of Costs Lawyers and costs experts so much easier, but I do still have concerns about whether the world is ready for it.

Steven Green: We are producing about 100 electronic bills a month at the moment. I have always been fairly enthusiastic and a supporter of the idea. It seems right in the modern world for us to take ourselves forward and share concerns. Are firms ready for it? Is the time recording? Do firms have the systems? I share that as a concern, but I think that it can work if we all embrace it. We are happy with it and it seems to be working.

Colum Leonard: My experience has been good. Issues have come up, particularly with regard to how well bills are drawn, how they are used and whether they are used properly. However, it has actually been very positive. The feedback from costs officers, who are doing the smaller bills and seeing more of them on a routine basis, is also very positive, even from those who I think initially found it quite intimidating.

Gary Barker: For those who have not already touched the electronic bill, the average solicitor's approach is something between bafflement and panic. However, once they start to get into it, the cloud starts to roll away a bit.

Ian Besford: I think that it will be a lot quicker and easier once I get used to it. The difficulty is that, unlike the SCCO, we are not going to see a huge number. Given that Excel is something the Judicial College has not really understood, or thought about at all, there is not a lot of training out there. It is all concentrating on Word. How we get the training is going to be key how well the judiciary encompass and bring in this new technology.

Andrew Gordon-Saker: My experience on the whole has been pretty positive. There has been the odd wrinkle. I think most of them have actually been because of those attending rather than latent deficiencies in the bill. It is certainly the way to go. I do not think there is any prospect that we will row back to the pre-Hutton bill situation. We are looking to extend it.


Claire Green

In particular, I am keen that we extend it to Court of Protection bills.

At the SCCO, we get over 8,000 Court of Protection bills per year. Now that we have electronic filing, it is crazy that somebody files a bill electronically, and we have to print it off for somebody to assess, and then scan it back on. I also think Court of Protection bills lend themselves to an electronic format. After that, we can look at legal aid bills, and solicitor and own client bills.

Alex Hutton: Judicial review?

Andrew Gordon-Saker: We could, yes. There may be a degree of resistance to extending it to smaller cases. At the moment, it obviously only applies to part 7 multi-track claims. I suppose there is no reason why it cannot become universal once everybody is happy with it and used to it.

Seeing the opportunities

Alison Paget: We might have missed a fundamental point when we have been looking at bill preparation itself: fee-earner education on how they are recording their time. The level of block recording that I am still seeing does not sit with an electronic bill. It is probably a national issue. We need to get back to basics, think about how solicitors record their time and re-educate from the ground up. Other than that, the experience is positive in terms of being able to utilise and deal with the actual electronic bill, and maybe manipulate figures. However, there still seems to be a real lack of knowledge and understanding of how the Excel document itself works.

William Mackenzie: We are quite excited about the electronic bill. We are a predominantly paying party, but we are looking to the future and trying to see where we can take this. At the moment, you can dive into the figures and there is more data. We are trying to gather a whole load of bills so that we can identify trends. We will be able to see what is going on with solicitors, where the bulk of their costs

> *“Issues have come up, particularly with regard to how well bills are drawn, how they are used and whether they are used properly. However, it has actually been very positive”*

are and how we can work with our insurers to limit their exposure and litigation spend. Once we have a lot of data together, I think we will be quite excited to see what we can do with it.

In terms of the paying party, we definitely think that it speeds up the process. Anecdotally from our fee-earners, we think it is maybe 25-30% quicker to review that bill, draft your advice and actually come up with your settlement parameters. We like the ACL bill and we like having the PoDs within the actual document. We would like to see a bit more uniformity because people are drafting their bills in different ways. It would speed up the process if everyone could draft it in the same way.

Echoing the comments that fee-earners are not time-recording correctly, drafting the bill does seem to take longer. However, we think this is the future.

Francis Kendall: We have only just begun to imagine the electronic bill's capabilities. We are going to see massive changes in assessment based on them. I love them. They have real scope for analysing the costs in a far better way than we ever did with a paper bill.

I have recently inherited a case where the bill was incorrectly drawn and I have to redraft it. My quote is two weeks' work for doing that. It is a massive bill and it is a simple date split. In an electronic bill, I could have done it in half an hour to an hour.


Alex Hutton QC

Getting to grips with Excel

Chris Lethem: My concern is that, while the regional costs judges had some very good training, it was quite some time ago. I do not see a lot of training going on within the Judicial College at the moment. I am just wondering how well-equipped the judiciary is to deal with electronic billing outside the SCCO or the regional costs judges. There is a double hurdle: for some of my colleagues, actually knowing how to work Excel and use filters, and understanding the bill.

Claire Green: That has to be the starting point. People have to upskill themselves on the basics of the use of something like Excel.

Ian Besford: I suspect the powers-that-be do not see a need for Excel training at this moment in time. They are concentrating on Word-based systems.

Chris Lethem: If we are going to have an electronic bill, we have got to have judges who know how to work it. I think there is a window of opportunity.

Mark Friston: Why was it decided to use Excel, which does not record a history, as opposed to something like a relational database that would record history?

Andrew Gordon-Saker: You can use any spreadsheet format.

Alex Hutton: There is a problem if we require everyone to do it in Microsoft Excel. The court service cannot be seen to be endorsing one particular product, even though it is almost universal.

Jon Lord: We are using Excel almost as the standard format. The extension has to be in XML format, but it does not have to be a Microsoft product. The reasoning behind that was that it should be open source and free to use to people who have not got the money to pay for bill software.

Trying to escape the new format

Neil Rose: Is there much evidence of parties trying to get out of electronic bills?

William Mackenzie: I have seen a number of *Tomlin* orders where people are just trying to get the sign-off that it is not needed. It is regularly granted. In fact, I have not seen it kicked back anywhere.

Ian Besford: It is very different if the order is by consent as opposed to a judicial order in the face of objection. If there is an application to avoid an electronic bill, I would like to think that application would be heard by a regional cost judge or somebody with a costs expertise. Taking a steer from London, I think you are likely to be refused.

William Mackenzie: The issue is that fee-earners do not have any interests in costs. If somebody says, 'Let's dispense with this', any defendant fee-earner is going to think, 'Well, it doesn't really make a difference to me. I'll agree to that'. Any claimant that asks for it pretty much gets it.

Steven Green: We have seen some judicial responses of negativity and not wanting to assess electronically.

Alison Paget: We are still seeing quite a few hybrid bills which are 'pre' and 'post'. As much as I would say that people are trying to get out of it, I can see a point as to why you have to adopt one approach or the other.

Neil Rose: Are judges eventually just going to have to put their feet down with these hybrid bills?

Steven Green

Chris Lethem: They are. However, I am hearing anecdotal evidence that, while regional costs judges will put their foot down, some other judges will show no resistance to an application to have an old-style bill. Perhaps they are led by parties that do not want the electronic bill. Again, it comes down to competence. It is teaching old dogs new tricks.

Alex Hutton: It is not that different to when cost budgeting came in. It dies after a time. It will be interesting when the N260 electronic version comes in as mandatory. Trial judges are going to have to grapple with Excel.

Relying on the Costs Lawyers

Gary Barker: Getting the fee-earners into the right approach is a major problem. Many have grown up with the idea that you see the client for an hour and you put it down as an hour for the client. You do not break it down to what you have actually been doing. You then get the situation where the information has to be cut and recut in order to get into the bill. It makes the process longer and more expensive.

Claire Green: And fraught with difficulty. Getting your budget phases to match your actual physical billed phases is a nightmare.

Alison Paget: We are seeing an average of probably 10% of profit costs as drawn as drafting time, as opposed to 6% historically. A lot of it is purely down to more apportionment. We live in an electronic world now. It should be easy just to put this information in, with a little bit of a tweak, and it is done.

Steven Green: Historically, case handlers have relied very much on the draftsman, certainly in areas like personal injury. "I record my time. If I am a bit lazy one day, the times are on the clock. At the end, my Costs Lawyer will go through it." We are not in that world any more.

For me, it is trying to get people to understand the end product. "If you don't record like this, that's going to take a lot more time. That's going to be less profitable for the firm in terms of the drafting fees and the amount of time for cash flow to get cases through the system."

We are trying to change that culture in the business. We are getting there. We have done a lot of training and workshops. We have had

Gary Barker

“At the SCCO, we get over 8,000 Court of Protection bills per year. Now that we have electronic filing, it is crazy that somebody files a bill electronically, and we have to print it off for somebody to assess, and then scan it back on”

people involved with the costs team and seeing how bills are generated.

Time-recording pressure

Neil Rose: How do firms start turning this around?
Gary Barker: Many firms looked at J-Codes and panicked. They would not have anything to do with them. That panic is still there to some extent. It is about getting the detail.

Larger firms can impose a regime; smaller firms are finding it much more difficult to cope with. They probably have more ingrained habits; many of them shy from the new in exactly the same way we were talking about some judges doing as well.

We are probably talking about a generational change, to some extent. Over the next five to 10 years, the people will be coming through for whom this sort of activity is something they have always done and find no fear in it.

Chris Lethem: Are you telling me that there still a hardcore of firms who are not recording time use in J-Codes?
Claire Green: Yes, a huge number.
Steven Green: They still trust the draftsman, that somebody will sort things out and recode things for them with a paper file.
Alex Hutton: Presumably, when it gets to the costs office, they are not going to be allowed all those fees that they have generated because they have not done it electronically?
Jennifer James: I and the other costs judges recognise that drafting fees have gone up. There is going to be a period during which that is going to be acceptable. But, at a certain point, we are going to be saying there has been enough time now and it is not proportionate to be charging these kinds of fees.
Steven Green: We are all waiting on tenterhooks to a degree, when that day comes, for what it should cost to actually prepare an electronic bill. Those firms that are ready for it will then be able to adapt, and those that are behind will have a large overhead that will not be recoverable.
Neil Rose: Presumably it will ultimately take the budgeting equivalent of being awarded a


Ian Besford


Colum Leonard

court fees-only budget to start shocking people into action?
Alex Hutton: Yes, that is probably right.
Steven Green: Yes, but hopefully not as harsh as that. If you start losing 50% of your drafting fees and firms realise that they are going to have to stand that as an overhead, it will kick people into action.

Commercial reality

Francis Kendall: I am hearing a complete disconnect with commercial reality. You are talking about fee-earners recording their time properly in accordance with J-Codes and Costs Lawyers not sorting that mess out at the end. If a fee-earner like a grade A partner is recording their time, they are going to waste at least half an hour per day doing that, as opposed to a Costs Lawyer reworking it at the end of the day with the sorts of rates we charge.
Steven Green: I disagree with that to a degree, just in terms of the half an hour. In commercial cases, some clients insist on bills that are broken down. You cannot have a Costs Lawyer break down your solicitor-client bills; you have to do it. They are so skilled at doing it, I do not think it does take them very much longer.

A lot of my partners and fee-earners panicked a little bit with J-Codes. They now tell me it is easier than it was before. It takes seconds, not hours.
Francis Kendall: That is good to hear.
Alison Paget: Our insurer clients demand a clear picture of what we have charged, every item, and rightly so. Some of our clients even send it through a further case management system to check our time recordings and look for anomalies.
Steven Green: For smaller firms, it is not just a culture change; a high street firm has to implement a new case management system. There is a cost to it and they have to see the benefit.
Chris Lethem: This poses the question of whether the rule committee should make some tweak to sharpen the focus of the indolent firms who are not doing this.
Ian Besford: No, it's commercial. That is the bottom line. Either the solicitors continue in their old way and pay a premium to the Costs Lawyers, or they modernise, save themselves a bob or two and possibly even increase their bottom line because they are more efficient. Is it not ever thus?

Accessibility concern

Mark Friston: I want to raise the issue of accessibility by disabled people. I identify myself as being disabled – I have a visual field defect. Excel is not easy for people with any disability, especially a visual disability, to read. One person [who has contacted me] is going to have to think about whether they can continue practising.

I am going to give one illustration. He is a 61-year-old man with type 2 diabetes. He has mild diabetic retinopathy, he has Dupuytren's contracture and he has other limb girdle problems that are very common in type 2 diabetes. He is entirely unable to use the

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electronic bill because the visual problems mean that he is unable to easily scan and find the relevant cells.

His Dupuytren's contracture makes it particularly difficult to move from side to side, and it makes it very difficult to navigate to the relevant worksheets. Of course, that is something you need to do constantly with the electronic bill because the information you want is usually way over to the right-hand side, and then the information that summarises is over to the left-hand side. The mere fact that he is forced to use a screen means that he has to sit forwards all the time, which causes upper limb girdle problems.

He tried to use the accessibility tools provided with Excel, blowing up the font, using magnifiers and so on. It is virtually impossible. He tried to use the paper version. If you print up the paper version, you have a font that is absolutely tiny. If you try to blow up that font, you end up with pages and pages that you have to stick together to be able to see what is going on.

I view with some horror the thought of points of dispute and replies put into the same document. Excel just simply is not designed to allow accessibility under the circumstances.

I will just finish by saying that there is clearly a moral obligation to make sure that disabled judges and disabled practitioners are able to use the electronic bill. There is also a specific legal one. It is in section 20(6) of the Equality Act, which specifically relates to the provision of information.

Jennifer James: Just in terms of the PoDs being within the bill, I have not come across a great deal of that yet. I am insisting on paper PoDs for two reasons. You already have to switch between tab 14 and tab 8 to do the figure work. If you also have to dodge across to the PoDs, I find that quite difficult.

The second reason is slightly more Stone Age, but it is a real practical issue. If I suddenly get the blue screen of death, what am I going to do? At least if I have paper PoDs, we can make some use of the time.

A single format?

Neil Rose: Let us get to the courts. Would it help to have a single format?

Ian Besford: Yes. From a training point of view, if you only have the one bill, you learn how to use and navigate around that one bill. That has got to be easier than having nuances with different bills.

Jennifer James and Andrew Gordon-Saker

Colum Leonard: That has not been my experience. The skills translate from one format to another and you just get used to it.
Andrew Gordon-Saker: Part of the thinking for allowing people to do their own thing, to the extent that it is prescribed by the practice direction so it has to comply with five or six criteria, is that we will see what works best. Alex and his committee did a huge amount of work and came up with a precedent that works. I suspect that everything that has been produced since then has simply been a variant on Precedent S.
Alex Hutton: Our thinking was that we were not the font of all knowledge about this and people might have better ideas that developed it further and had useful innovations. The ACL bill is one example of that.
Andrew Gordon-Saker: One thing I have found really helpful is to have an extra column in which the points of dispute that relate to each item are set out. When you get to objection 7 in the points of dispute, you just filter out those items to which objection 7 relates. It is not a hugely radical departure from Precedent S, but it is useful.

I have to say I found the points of dispute being embedded in the bill a little bit too unwieldy. There is just too much information to squeeze onto the screen.
Jon Lord: The point number is a good idea. I do that where it is practicable, but sometimes you get four different points of dispute that relate to one item in the bill. How do you then filter that out?
Colum Leonard: One of the useful tricks with any electronic bill is just to hide some of the information and bring the columns closer together so you can look at what you want to look at.
Francis Kendall: I do not think we need to talk about different formats. Fundamentally, Excel is a database. It's about what you do with the bill. If it breaks in court, that is on the practitioner's head.

Advocacy failings

Ian Besford: My colleague is struggling through a £450,000 bill. The difficulty he has hit is that you spend far too much time on where the objection is. There has followed six pages of objections where they have listed all the item numbers in the document schedule, in which they say nothing more helpful than 'excessive'. The difficulty is that just to bring up and input all that is going to take him hours.


Alison Paget

There should be something within the practice direction to say that objections from an electronic point of view have got to be far more focused so that they can be brought up quicker.
Jennifer James: They could highlight them in different colours. You filter by that colour, and there you are.
Ian Besford: Another colleague has found that some of the advocates have been unable to replicate on screen in front of him how they reached a particular objection when asked to do so. They would say so many hours had been spent on witness statements. When he said, "Can we highlight that?", they could not do it.

The other horror story from colleagues is advocates having different pages for the different tabs. It resulted in the whole thing going out to be adjourned. The other thing I have had is corrupted bills coming through. Some formula has probably been slightly out, which has then bled through.

My colleagues are not really complimentary at the moment, which perhaps goes to the issue of training. Maybe they could identify where these problems were coming from and put them right if they knew more about Excel. However, if the advocates cannot help and assist, as we always look to the advocates to help and assist, we are all snookered.
Claire Green: When we are teaching people how to draw a bill on an electronic basis, one of the major issues is that people do not have any concept of version control. When they draft a bill, instead of saving it as 'version 1', and then calling it 'version 2' when it is looked at and reconfigured in any way at all, they just do not call it anything different.

Getting the broad brush out

Chris Lethem: Because there is so much more detail, the objections are tending to be line-by-line and this is just an appeal waiting to happen. Sooner or later, somebody is going to say, 'We are going to do it broad-brush', which is the way we have always done it, and they will say 'No, we have asked for line-by-line and to hell with proportionality', and there will be some problem.
Alex Hutton: The whole advantage of the coding system and the tasking system is you can identify all the work that has been done on X and then say that is just far too much globally, without having to go through it line-by-line.
Ian Besford: The advocates must be able to do that on the day, though, or provide a separate way of doing it. My colleague is saying if the advocates cannot actually tell him what to do, it is the blind leading the partly sighted, as he had 2,000 entries for this document to try to filter.
Claire Green: It is not a level playing field any more. If you have an advocate who is more skilled in the use of the computer, they can think ahead and make the legal argument while they are manipulating the data and directing the judge to where they need to go. The advocate that does not have that ability is immediately at a disadvantage. Also, people's laptops all work at different speeds, so you can be sat there while one advocate is waiting for their laptop to catch up with the other advocate's. These are small but very practical difficulties.


Jon Lord

> *"Our thinking was that we were not the font of all knowledge about this and people might have better ideas that developed it further and had useful innovations"*

Francis Kendall

Colum Leonard: That is not an uneven playing field; that is different mental skills, which is true in all advocacy. The better guys tend to win.

I have no doubt that all of these problems can be addressed by case management and maybe by tweaking the practice direction in some respects.

Line-by-line woes

Alex Hutton: There is a sub-committee of the rules committee headed by [Mr Justice] Colin Birss. We are prepared to say: 'This is a problem. This needs changing. We will change the practice direction.'

Chris Lethem: I am not sure the sub-committee needs to beaver away on [the line-by-line issue], because you are required under the rules already to deal with matters proportionately and, if I got a line-by-line and I want to go broad-brush, I will be careful how I word it. Alex will take it up to an appellate court, which will uphold.

Alex Hutton: I would not dare, Chris.

Chris Lethem: I think the rules already provide for a proportionate approach. It is whether you are going to be brave enough to do it. Plainly, somebody is getting bogged down in 2,000 lines, which just cannot be done.

Andrew Gordon-Saker: Part of the problem is that we know how many lines and words there are because you just have to push a button to find them. I have had paper bills fill 60 lever-arch files. Goodness knows how many lines and words that would be. Probably because of what we do for a living, we get a little bit hung up with numbers.

Jennifer James: [Talking about a mock assessment she carried out] It just seemed as though the paying party had got sucked into thinking: 'I've got all these lines. I've got to object to each and every one'. These PoDs were absolutely crazy. I have gone on holiday and sat on the sun lounger reading a novel that is shorter than these PoDs. I hasten to add, it was not a bill big enough to warrant 38,000 words.

Driven by the technology

Jon Lord: I've heard it said that the process is being driven by the technology rather than the other way around. The fact is that we have this long bill document that is in chronological order. It is not always possible to sort it by a particular code to get all the items out of that because sometimes things can be hidden elsewhere; there is user error; some things

can be pre-action that might belong somewhere else. I had one bill that had two items relating to the same thing that were done on the same day, but they were about 300 lines apart in the bill. I only came across that by pure accident.

Sometimes doing a word search or searching for a particular word is perhaps more instructive or can add more to PoDs than simply doing a search by code, because there is so much room for user error in codes at all stages of the process. I can see the temptation of some drafters of PoDs to actually then say: 'I am just going to have to go through each item in turn and see where that leads me.' Often, that can be the most efficient way of doing it.

I do not agree with that. I do not prepare my PoDs that way, but that is the temptation and it has been driven by the technology. The lack of compatibility of Precedent G to Precedent S, particularly if one is in Excel and the other in Word, means it is not easy to get around it. I think that disconnect needs to be dealt with, whether it is by rule or whether it is by training users at all ends of the system.

Ian Besford: You can send us as much as you want, but you might not get paid doing the analytics on these bills. The true skill of an advocate is to boil down hours and hours of work to a very pithy submission of 10 or 20 minutes at most to be able to get your point across to the judge, and the complaints my colleagues are raising generally are that the advocates are just throwing it in and saying they have spent too long. That does not help the judge.

"Fundamentally, Excel is a database. It's about what you do with the bill. If it breaks in court, that is on the practitioner's head"


Mark Friston


William Mackenzie

Other problems

Claire Green: We still have a practice direction that details the bundles that have to be filed at court. Those bundles bear no resemblance to the electronic bill. That is the next big thing we are going to have to look at.

The sub-committee could also consider consistency in descriptions. One thing causing problems is if you use a filter and you have a different set of drafters who all put things in a different way.

Jennifer James: The one that came up in the mock assessment was letters to the GP, where there were 'letters to the GP', 'correspondence with the GP' and 'letters to Dr X'. They have managed to describe the same thing about 10 different ways, which is very counterintuitive and suggests it may have been done on purpose to hide things.

From the Costs Lawyer's perspective, it is giving you a very powerful new advocacy tool that you can filter things out and say to me: 'Master, I want you to look at this.'

Closing comments

Neil Rose: Will these bills virtually draft themselves in time?

Steven Green: No. You still have to look at your orders, write a narrative and sense check it, and, with the greatest will in the world, some things will need transferring across. It is time recording. It is never be going to be, 'Press a button, here it comes'. We said that to Rupert Jackson. But it should save time if properly recorded. To my mind, that is the end of the story.

Alex Hutton: Although we have been talking about problems, I felt the amount of positivity in the room. Given the amount of opposition that we had to bringing this in, the struggle that it was and the people who said: 'You will never bring it in and it will never work,' I find this generally encouraging. Of course there are problems and things to be ironed out, but there were very few negative thoughts about the process and the fact that it is taking us forward.

Steven Green: We all have problems in terms of bill preparation but, a couple of years on, we are getting through those problems. What I have heard a lot about today is the next stage, which is the detailed assessment. We are at such an early stage, we are obviously going to see the problems.

Neil Rose: In five years' time, is it all going to be lovely, smooth and purely electronic?

Colum Leonard: I've been doing full-time cost assessment for nine years and the phrase 'lovely and smooth' has never come to mind.

> *"Sooner or later, somebody is going to say, 'We are going to do it broad-brush', which is the way we have always done it, and they will say, 'No, we have asked for line-by-line and to hell with proportionality', and there will be some problem"*

Chris Lethem

Roundtable

A barrister's view from the front line

Matthew Smith of Kings Chambers was unable to attend the roundtable, but he sent a note to be read out by Master James on his experience of a part paper and part electronic bill assessment.

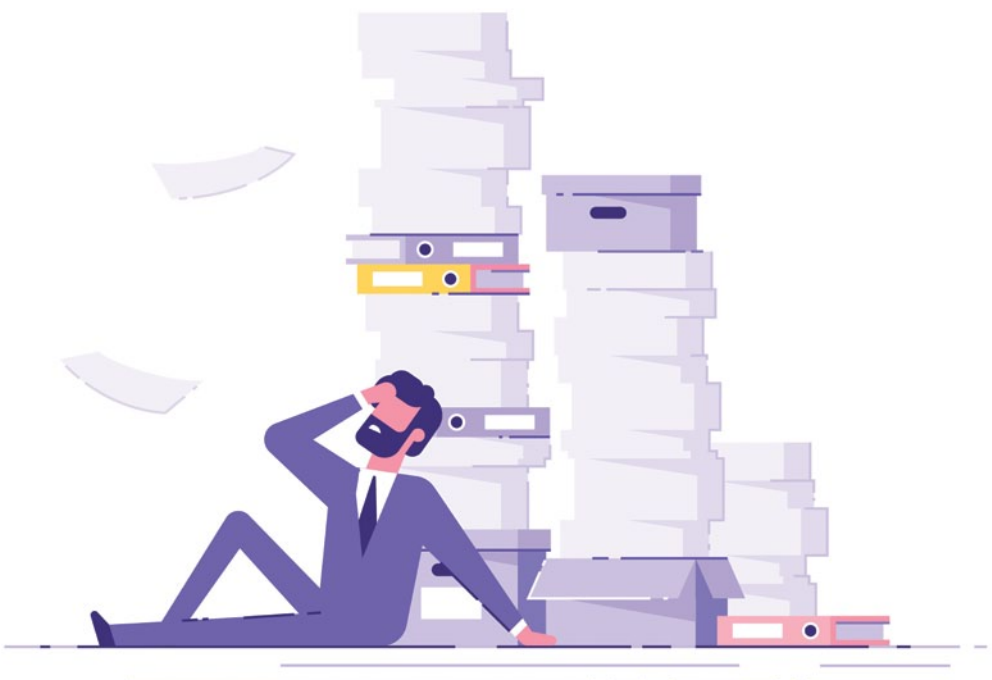
The bill was for approximately £126,000 in a clinical negligence matter, budgeted for liability only. The bill was for liability and quantum. He said it produced "a huge volume of work"; a feeling which was shared by his opponent, Kevin Latham, also from Kings Chambers. This had nothing to do with the instructing solicitors.

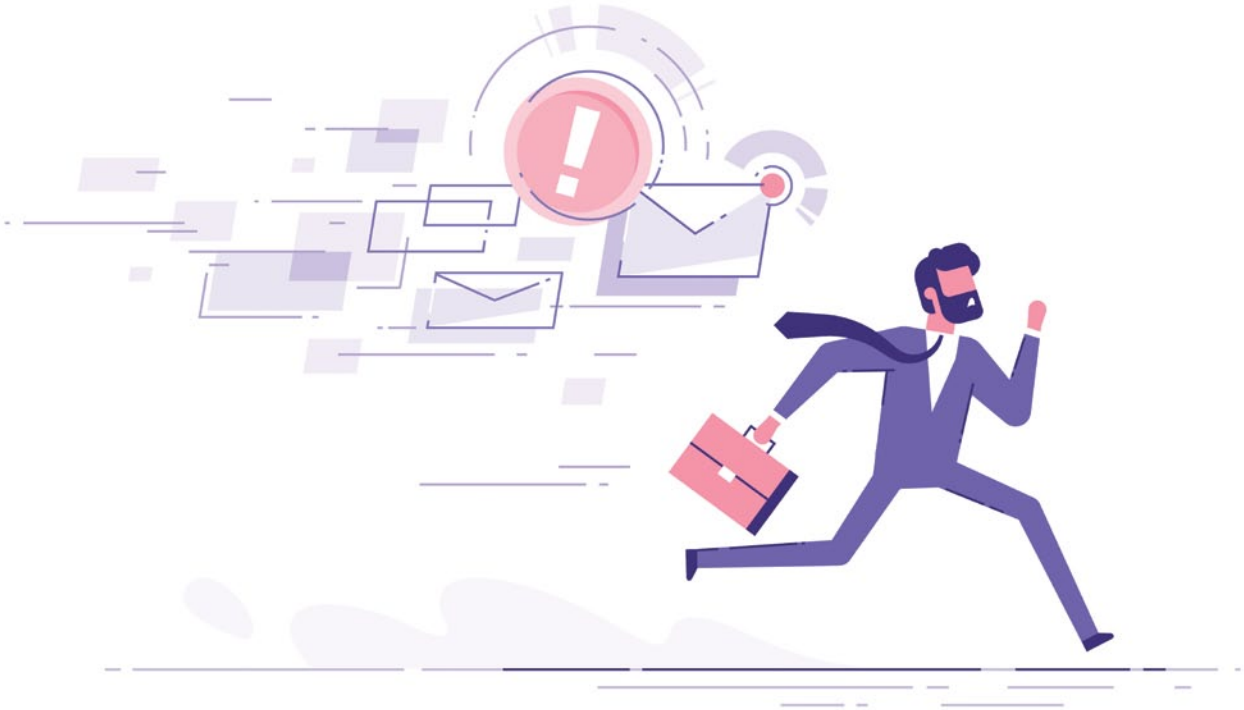
"Firstly, the papers were delivered to me attached to a huge number of emails. Compiling them was a job in itself. Then the paper bill, which accounted for £80,000-odd, had to be put in the spreadsheet by me before I could do any sensible analysis and in order to assist calculation at the end. That was a treat in itself because the paper bill alone had 21 hourly rates.

"I was then sent two hardcopy lever-arch files. The solicitors tried to put the relevant documents to each point of dispute behind appropriate terms. When that works, it is a great help. With a budgeted or phased bill, it is not unusual for the compiler to get it completely wrong. Unless clear markings are made on documents collated at the time, trying to make sure the right routine communications go in the right tab is almost impossible. I spent hours trying to identify where the documents were wrong. I gave up and chose instead to work from the mass of electronic documents that I had."

Analysing the points of dispute was massively time-consuming, Mr Smith continued. "Challenge to documents was dealt with all in one go and made up five pages, excluding the reply. It was broken into heads and, for example, the challenge to work on medical evidence was about a quarter of a page, mostly a list of 50 or 60 dates relating to work about which there was complaint. Challenge to internal discussions was a similar list of dates. That filled about two-thirds of a page." Nearly all of the 184 hours of work on the documents in the paper bill had been challenged.

"Unfortunately, the references of the points of dispute to the electronic bill were initially almost impossible to cross-refer. I was working from the electronic version of the electronic bill and the item numbers simply did not correspond. The item numbers in the printed electronic





bill differed from the Precedent S." This took several more hours to sort out.

The assessment was dealt with "briskly". Mr Smith wrote: "In order to get through, everyone agreed that a lot of it, particularly the work on documents, should be the subject of broad-brush submissions and judgments. Whereas the challenge to the documents work in the paper bill had been put on a broad-brush basis, there were individual challenges to work on documents in the electronic bill.

"The judge gave a broad-brush assessment of the work on documents in the paper bill and everyone agreed to apply the same percentage to the individually challenged documents item in the electronic bill.

"While that is rough and ready, individual adjudication on those specific items would have taken far too much time. Had this been an old-style purely paper bill, Kevin Latham and I probably would have been able to calculate and agree the outcome before leaving court. Out of caution and in order to minimise the risk of mistake, we and the judge all agreed that we would provide her with the outcome by four o'clock on the Monday after the assessment."

Mr Smith said he spent the next day doing the calculations. "No change had been made to the budgeted work. PoDs had only challenged two items of budgeted work. Each of those challenges was dismissed. Even that absence of change required work because the electronic bill had one set of hourly rates for both the budgeted and non-budgeted costs. I had to double up the hourly rates so that the reduced hourly rates only affected the non-budgeted parts of the electronic bill.

"The paper bill did not include any budgeted costs at all. Then I had to go through a large number of individually challenged documents in the electronic bill and apply the percentage referred to above."

All in all, Mr Smith said, it took many frustrating hours. "None of this is difficult, but it is intricate. If we make mistakes, we will be sued. If the judge and the advocates enter data judgment by judgment and compare notes, the assessment will plainly take much longer. If the assessment is done briskly, my experience is the calculation can be a lot more intricate, though not more difficult than was the case with the old-style paper bill."

What made the whole experience "so terrible", however, was that Mr Latham ended up winning.

Steven Green observed that many of these problems came from it being a hybrid bill. "If that had been all electronic, they would not have had to put it into a spreadsheet and he would not have had to do a lot of that."

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