**THE ELECTRONIC COURT OF PROTECTION BILL: CONSULTATION NOTES**

**The Introduction of Electronic Bills**

In October and November 2017 the Civil Procedure Rules were amended to require (for all work undertaken after 6 April 2018) that bills of costs between the parties to most CPR Part 7 multitrack claims be in electronic spreadsheet format. The published model for such bills is Precedent S, annexed to Practice Direction 47.

Precedent S is a self-calculating spreadsheet. It produces automatic summaries for ease of reference (for example, comparing incurred costs to approved budgeted costs) and it allows an assessing judge or costs officer to isolate particular entries or groups of entries for fast review and adjustment. The bill will recalculate itself automatically as changes are made. Ultimately, electronic bills like Precedent S should be capable of production primarily from electronic time records rather than through a labour-intensive and expensive manual process.

In early 2020 the Senior Costs Judge invited representatives of the SCCO and costs professionals specialising in Court of Protection to form a working group, with a view to designing a form of electronic bill suitable for use in the Court of Protection. “COP-E” is the result and is the subject of this consultation.

Accompanying this note are two versions of “COP-E”. One contains no information and is intended to be completed by the user. The second, “example data “version is intended to show what a completed “COP-E” will look like and how it will work on assessment.

**The Content of “COP-E”**

“COP-E” comprises a series of “worksheets” (spreadsheet pages) containing, apart from familiar items such as the cover sheet and certificates, summaries designed to facilitate assessment, supported by full details of the costs claimed.

Each worksheet is divided into “cells”, into which the figures making up the bill are entered. Spreadsheet cells can interact with each other to perform complex calculations: built-in mathematical formulae and “pivot tables” (summaries automatically derived from the detailed data entered into the spreadsheet) ensure that changes made to the detail of the bill feed through to the summaries, disposing of the need for manual recalculation of the bill on assessment.

Spreadsheets place more emphasis on function, and less on presentation and printing, than do word processing applications. “COP-E” has been designed to cope with large bills of costs and is designed for electronic transmission and management on screen rather than on paper.

Spreadsheets are however designed to present very large amounts of information in any number of ways, in as much or as little detail as is needed. Once familiar with the bill’s structure and with certain spreadsheet management techniques, users can navigate through the bill, cut worksheets down to size, isolate required information, make unwanted information disappear and have the bill automatically perform such calculations as may be required for the purposes of assessment.

The worksheet containing the full bill detail may be impracticable to print. The summaries can be printed. A reduced version of the detail worksheet is also included in “COP-E” to allow as complete a version as possible of the bill to be converted to PDF format. The spreadsheet and printable pdf versions of “COP-E” accompany this note. It is envisaged that the court will require only the spreadsheet version to be uploaded to CE-File, but a printed version may be needed, for example, for service on a third party.

**Work Categories**

To perform its functions, “COP-E” requires every entry in the bill to be assigned at least one “code” (letters and numbers identifying the type of work, the fee earner undertaking it etc). Codes allow the bill to process information and perform its calculations, and allow an assessing costs officer to use the bill’s built-in filters quickly to find and review the type of work or expense which he or she wishes to consider.

“COP-E” incorporates 17 pre-set types of work activity and 15 types of expenses, each with its own code. They are listed at “Reference” worksheets 16 and 17, and are reproduced at Appendices A and B to this note.

Although “COP-E” generally uses the term “disbursements”, for coding purposes the word “expenses” is used, for maximum compatibility with time recording software. Items should only be included in “other disbursements” if they do not fall within any of the other specified types of expense.

Work undertaken which falls within the four OPG categories (communication with care providers, communication with client and family, communication with others and work on documents) must also be assigned a “category code” so that “COP-E” can produce a summary allowing ready comparison of the total OPG costs claimed with any previous OPG105 estimate.

**Generic Findings**

There is no limit to the findings that an assessing officer might make as to the costs claimed in a bill, but certain findings are common to many Court of Protection bills. “Reference” worksheet 15 of “COP-E” lists 21types of “generic finding”, with their codes. These findings can be added by the costs officer to the bill detail, to demonstrate that a particular generic finding has been applied to a particular item or items.

It will be open to a costs officer to expand this list of findings, create additional codes for the new findings and apply them throughout the bill. Suggestions for adding to the current list will be invited from costs officers during the consultation period.

**Colour Coding**

Most of the cells in “COP-E” have a white background. Cells containing formulae which are not meant to be overwritten have a purple background. Cells coloured blue are intended for use by the costs officer on assessment. The background to cells showing changes made on assessment will be highlighted in yellow for ease of reference.

The figures in the bill may change up to three times: on provisional assessment, on reconsideration on paper and in any hearing before a Costs Judge. Changes made on provisional assessment will automatically be highlighted in yellow-background cells, but it is not possible to build into the bill automatic colour changes for the next two stages.

Users should still be able to spot quickly the changes made at those stages because the costs officer or judge will have saved the assessed bill under a new name and the summaries automatically produced by each version can be quickly compared and changes noted.

**File Naming**

Electronic Court of Protection bills submitted to the SCCO should be named by reference to the year of management/authority type and the client, for example:

SMITH – 2018-2019 – BILL

SMITH – 2019-2020 – BILL

SMITH – PROPERTY SALE – BILL

Examples of “authority type” can be found in these notes for Worksheet 13.

**The structure of “COP-E”**

“COP-E” comprises 18 worksheets (pages), the last three of which contain the reference data for work, expenses and findings. This is a short summary of the content of the 14 “active” worksheets shown in the working “example data” version of “COP-E”.

**Worksheets 1 and 2**

These are the bill’s cover sheet and summary of the relevant background. Some details such as the case number will feed through to the Final Costs Certificate (at worksheet 13).The SCCO will add its reference to worksheet 1 on submission of the first bill on a given case. After that it should be included when drafting the bill.

The person drafting the bill can enter in worksheet 2 a general overview, including but not limited to:

* Why the Protected Party lacks capacity to manage their property and financial affairs, e.g. dementia diagnosis, injury at birth, road traffic accident.
* The Protected Party’s current living and care situation, e.g. living at home, care team employed etc.
* Litigation position (if relevant) including details of the settlement and any periodical payments.
* Main events in the year, or details of application/order if not general management.
* Any problems/issues that have arisen.
* Any applications made to the court and resulting orders.
* Who the main fee earner is dealing with the matter.
* Any other appropriate information for the Costs Officer.

In the box provided, worksheet 2 should show the OPG105 overall estimated costs for this period (if applicable). If the costs in the bill relate to general management and exceed the OPG105 estimate for the relevant period by 20% or more, an explanation must be included in the background information.

As the “example data” version of “COP-E” shows, the client’s total asset figure, if known, should be shown in the expandable box headed “Value and breakdown of P's assets (if known)”, along with a breakdown to show, for example, the split between properties, bank accounts, investments and other assets.

The “Assessor’s Comments” box will be completed by the assessing officer and will expand automatically to accommodate the assessing officer’s observations.

**Worksheet 3: Fee Earners and Rates**

Worksheet 3 provides details of each fee earner and of their hourly charging rates for given periods. This is the first of two worksheets (3 and 5) from which changes made by the assessing costs officer, for example to a solicitor’s hourly rate, will feed through to the relevant parts of the bill, automatically changing the summaries and the bill total. Overwriting the summaries on other pages may erase the bill’s built-in formulae and stop it functioning as it should.

Alongside the column showing the hourly rate claimed for each fee earner (column F) is a column showing the hourly rate allowed (column G). When the bill is drafted, the claimed figure entered in column F will automatically be duplicated, using a built-in formula, in column G. The assessing officer can change the amount allowed simply by entering a new figure in the “allowed” column (overwriting the formula). The bill will recalculate accordingly.

It is intended to be a requirement that every fee earner whose work is included in the bill be individually identified, rather than, for example, identified only by grade. This will allow the assessing costs officer to consider properly any element of duplication. Rows can be added to worksheet 3 to accommodate any number of fee earners.

Just below the entries in columns A and C (fee earner code and status) are three additional entries which the assessing costs officer will, if required, complete. They are: Z1 (Blended Rate); Z2 (Payroll Rate); and Z3 (Non-Fee Earner Rate). The assessing costs officer will set these rates and, if he or she takes the view that particular work should have been done at those rates, can substitute Z1, Z2 or Z3 for other fee earner codes in the bill detail. Page 3 incorporates comment boxes for the assessing officer to add observations on hourly rates.

A costs officer allowing time at e.g. Grade C for work claimed at Grade A can also either substitute the initials of a more junior fee earner or, if there is no available substitute, create a “virtual” grade C fee earner at a suitable grade C rate and substitute the Grade C initials for the Grade A where appropriate.

**Worksheet 4: Parts**

This worksheet allows the bill to perform calculations which in paper bills can only be performed by physical division of the bill into parts. (The bill will still effectively be divided into parts, but in a more user-friendly way). Where for example different VAT rates apply during periods covered by the bill, an identification code (“Part ID”) will be created for each relevant period and entered in this worksheet. The person drawing up the bill will apply the appropriate code to each item of cost. The bill will then automatically calculate the correct VAT rate on each item and send that to the summaries. If individual items are adjusted on assessment, the VAT will be recalculated automatically. (The need to make a manual adjustment where an individual entry does not carry the standard rate of VAT is addressed below).

If there is no need to distinguish between different stages, it will still be necessary to enter a part code against each item of work so that VAT will be calculated automatically, but a single part code can simply be pasted into every row on worksheet 5 (bill detail) rather than entered multiple times.



**Worksheet 5: The Bill Detail**

This is the second of the two worksheets (3 and 5) on which the assessing costs officer may make changes to the figures. It is where all of the individual, detailed entries appear. From these entries the bill derives its summaries and calculates the total of the bill as claimed and as allowed. Worksheet 5 is where most of the work is likely to be done on assessment.

As with worksheet 3, when the bill is drafted columns M and O (time allowed and fee earner allowed) will automatically duplicate the claimed figures entered in columns L and N (time claimed and fee earner claimed). The claimed time at column L can be entered in any number of minutes (though the six-minute unit remains the accepted standard). The bill will round all individual entries to two decimal places but will calculate totals by reference to the actual number of minutes claimed or allowed.

The assessing costs officer will make any changes to column M (time allowed) and column O (fee earner allowed) by overwriting the figure duplicated from columns L and N. “Cut and paste” can be used to quickly change multiple entries. The bill will automatically change the summaries and totals as these changes are made.

The mass of detail at worksheet 5 can look intimidating at first sight but it can be reduced to show only what the assessing costs officer needs to see with a few mouse clicks. Unwanted columns can be “hidden” to allow the costs officer to focus on those of most use.

Filtering will isolate the entries in each column that the costs officer wishes to see. So, for example, if the costs officer takes the view that a grade C fee earner should have undertaken some of the work done by a Grade A fee earner, the costs officer can use filters to show only the work done by the Grade A Fee Earner, filter further to identify only the work that should have been done at grade C and in column O enter the Grade C fee earner code for all those entries at once.

At the foot of key columns such as L and M (claimed and allowed time) and W and X (claimed and allowed disbursements) is a subtotal of all of the entries in that column. Subtotals automatically adjust when the person reviewing or assessing the bill uses filters to view particular entries. So, for example, if filters are used so that worksheet 5 shows only communications with a particular person, the subtotal at the foot of column L will change to show the total time claimed for those communications. Subtotals also change automatically when changes are made to the figures. This should assist cost officers, in particular in making broad-brush adjustments, and provide parties with a quick overview of reductions made to particular categories of work.

For simplicity’s sake, broad-brush adjustments may be made against a single entry. For example, a broad-brush reduction of one hour for communications with the client, in accordance with the *Trudy Samler* decision, could be made by substituting, for a six-minute entry, a minus figure of 54 minutes, with an explanation provided in the ‘Findings’ column.

Communication methods at column K includeuntimed letters and calls (6 minutes), enclosure letters (3 minutes), and timed letters and calls. “Letters” include emails. The term “routine” is not used, to avoid confusion between untimed (6-minute) letters and enclosure (3-minute) letters.

Untimed letters, untimed calls and enclosure letters must be entered collectively under each category rather than listed individually, showing in column D (“ Description of work”) the total number of items claimed. A bill might include for example 25 Letters (2.5 hours), 19 calls (1.9 hours) and 25 enclosure letters (1.25 hours). Timed communications must be individually identified.

Where billable travel and waiting time is claimed at columns E and F, the relevant external party must be identified at column J. In order to ensure that all travel and waiting time incurred in meetings with a client is shown in the bill’s summaries, such travel and waiting time is identified not only as an activity, but as a communication method.

VAT columns T, Y and Z may, in exceptional cases, need some attention when drawing the bill and on assessment.Column T, “VAT Rate”, applies the prevailing VAT rate (as entered in worksheet 4, “Parts”) to all time and disbursements claimed and allowed. Column Y shows the resulting “VAT claimed” figure and column Z shows the resulting “VAT allowed” figure.

Although in the great majority of cases the calculation of VAT on each entry will be entirely automatic, a manual calculation may be required in the following instances:

* An item attracts VAT at a different rate to the prevailing rate for the relevant part. The person drafting the bill must manually alter the VAT rate at Column T. (If the item does not attract VAT the rate to enter will be 0). The bill will then automatically recalculate the “VAT claimed” figure at column Y and the “VAT allowed” figure at column Z.
* A disbursement includes items that are both subject to VAT and not subject to VAT. The person drafting the bill cannot rely on automatic calculation and must instead manually enter the “VAT claimed” figure in column Y. The “VAT allowed” figure at column Z will automatically change to match. If the amount allowed for the item then changes on assessment the assessing officer will have to recalculate the “VAT allowed” figure at column Z manually, as only the assessing officer will know the extent to which the change affects the vatable or non-vatable element of the disbursement

Columns AA and AB, to the far right of worksheet 5, show the code for and brief details of any “generic findings” (see Appendix C) applied by the costs officer to particular entries. Again, these findings can be applied to multiple items by filtering, copying and pasting.

Users completing worksheet 5 should be aware of COP-E’s “data validation” function and the potential problems arising if data is pasted from a time recording system directly into the bill. Please see Appendix D to these notes for details.

**Worksheet 6: Main Summary**

This is a simple summary of the amounts claimed and allowed, with a box for the assessing officer to enter any necessary directions, e.g. where a bill is provisionally assessed subject to service on interested parties or filing of documents.

To demonstrate the way in which the bill recalculates summaries when individual items change, one can note the summary of the total bill at worksheet 6, then return to worksheet3 (Fee Earners and Rates) and change any of the hourly rates. Using the spreadsheet’s “data/refresh” function (this may vary depending upon the type and design of spreadsheet) will automatically update the “allowed” totals at worksheet 6.

It is important to remember that some of the bill’s summaries (those created by “pivot tables”) may not automatically change to reflect changes in the bill unless the “refresh” function is used. This can be done in several ways, including by selecting “Refresh All” on the “Data” tab in the menu ribbon at the top of each worksheet, or by right-clicking on any pivot table such as the OPG Category summary on worksheet 7 (see below) and choosing “refresh”.

If the assessing officer forgets to refresh, as long as the changes to the bill are saved before closing it, the bill will refresh itself when next opened and all summaries will be updated automatically.

**Worksheet 7: Summary by OPG Category**

This worksheet summarises costs claimed and allowed in each OPG category, for ready comparison with OPG105 estimates. The OPG categories only apply to general management costs.

**Worksheet 8: Summary by Activity**

This worksheet provides an at-a-glance collective summary of the level of communication with individuals and particular groups such as financial bodies***.*** It also shows overall travel/waiting times. This summary has been carried over from Precedent S. Views will be sought, on consultation, as to its likely usefulness in the Court of Protection but it is hoped that it willaid transparency, for example in summarising all internal communications.

**Worksheet 9: Communications Summary**

This worksheet provides a breakdown of the total time spent on and cost of communications with each party within the bill of costs. This allows the costs officer to assess if the overall level of contact with each party was reasonable and proportionate.

By summarising communications with identified individuals and companies, it also provides a further breakdown of the communications referred to in Worksheet 8, to give a broader overview. For instance, under the general heading of ‘Communicate with financial bodies/IFA’ this will show ‘Company A, Company B, Company C’ etc.

**Worksheet 10: Summary by Grade of Fee Earner**

This worksheet provides a breakdown of all work claimed by each grade of fee earner and the time/costs allowed on assessment. The breakdown will assist the assessing officer to see at a glance what level of work the bill has been pitched at, and will help the billing firm to know what grades have been allowed. The summary automatically calculates from the main bill detail and so will include any new fee earner rates that have been applied by the assessing officer, such as the Z1 ‘blended rate’.

**Worksheet 11: Certification**

This is where the bill certificates are completed. Following *Barking, Havering and Redbridge University Hospitals NHS Trust v AKC* [2021] EWHC 2607 (QB) it is anticipated that a printed signature on this page will be acceptable, provided that it signed by an individual identified either as the deputy or as a solicitor acting for the deputy.

**Worksheet 12: Certificate Summary**

The certificate summary is designed to show what has been allowed on provisional assessment against what was originally claimed in the bill. Most details are automatically updated as a result of input into the earlier worksheets. Where a costs officer has given directions in worksheet 6 “Main Summary” you must state at row 17 whether the directions have been complied with. If for any reason directions have not been fully complied with, this should be explained in the answer box or if necessary, a separate letter. Where the direction is in relation to service of the bill on interested parties, the date of service must be completed at row 19.

Like any single page of the spreadsheet, the certificate summary can be saved to PDF format and filed with the court, as a separate document, for approval.

**Worksheet 13: Final Costs Certificate**

This is the final order as to costs and is only valid where it carries the seal of the court. All entries highlighted are automatically updated from input into earlier worksheets.

When the figures in the Final Cost Certificate are accepted, the blank areas need to be completed and the information will be dependent on the type of bill it relates to. In every case the solicitor must date the certificate at column E before submitting to the court (SCCO).

Where the bill relates to “General Management” the date of the order appointing the deputy/deputies should be given at row 16 and/or the date of the General Direction of the Court of Protection (i.e. ‘19 November 1982’). At row 18, details of the general management period should be given, for example ‘Upon the Deputy filing a completed bill of costs in respect of the general management for the period 10.01.2020 to 09.01.2021’.

Where the bill relates to a specific application, the date of the order giving authority to have costs assessed in respect of those proceedings should be entered at row 16.  At row 18, further details of the authority should be given including details of the party to whom the bill is on behalf of, for example, ‘Upon the Second Respondent filing a completed bill of costs in respect of a Statutory Will application’.

Where the bill relates to a mix of both scenarios, for example appointment of deputy and first year of general management, the solicitor will need to refer to both the specific order and the dates covered by the general management period.

There are many different types of authority and the following is an example but not exhaustive list of the most common types of authority:

* Appointment of deputy \* Statutory Will
* Appointment of new deputy \* Statutory Codicil
* Appointment of new Trustee \* Order in respect of an EPA
* Order for gifts \* Order in respect of a LPA
* Order for sale \* Order in respect of Welfare Matters s.16

Like any single page of the spreadsheet, the Final Costs Certificate can be saved to PDF format and filed, as a separate document, with the court for approval.

**Worksheet 14: Bill Detail (Print Version)**

This is a reduced version of the full bill detail worksheet 14 (see below), suitable for printing and designed for a pdf or paper copy of the bill.

**Appendix A: Activities**

These are listed at worksheet 16 of “COP-E”. They are:

|  |  |
| --- | --- |
| C01 | Communicate with client |
| C02 | Communicate with family/friends |
| C03 | Communicate with case manager |
| C04 | Communicate with care team and social services |
| C05 | Communicate with financial bodies/IFA |
| C06 | Communicate with OPG |
| C07 | Communicate with external lawyers |
| C08 | Communicate with other external |
| C09 | Communicate with Court |
| C10 | Communicate with Counsel |
| C11 | Communicate internally within COP team |
| C12 | Communicate internally with other legal teams |
| C13 | Billable travel and waiting time |
| C14 | Plan, Prepare, Draft, Review |
| C15 | Arranging electronic payment |
| C16 | Arranging cheque payment |
| C17 | Bill of costs |

**Appendix B: Expenses Categories**

These are listed at worksheet 17 of “COP-E”. They are:

|  |  |
| --- | --- |
| D01 | Travel Expenses |
| D02 | Draftsman Fees |
| D03 | Counsel's Fees |
| D04 | Court Fees |
| D05 | Bank Fees |
| D06 | Internal Solicitor Fees |
| D07 | External Solicitor Fees |
| D08 | OPG Fee |
| D09 | Office copy |
| D10 | Courier charges |
| D11 | Land Registry Fee |
| D12 | Medical fee |
| D13 | Capacity assessment fee |
| D14 | Forensic Accountant fee |
| D15 | Other Disbursements |

**Appendix C: Standard Findings**

These are listed at worksheet 15 of “COP-E” and are subject to consultation with costs officers.

|  |  |
| --- | --- |
| AR | As reasonable |
| AV | Assurance visits subsumed under overheads as instructed by the OPG |
| EP | Supervision - Ellen Padley decision |
| GG | Double charging visits where two fee paid earners attend a meeting without sufficient reason – Garylee Grimsley decision |
| IC | Incoming correspondence – disallowed |
| IFE | Inter fee earner communications – overheads – Leighanne Radcliffe decision |
| ESD | Enclosure letters at 3 mins each - Master O'Hare's decision in Jamie Walker – Very Short/Duplicates at 50% |
| JW | Checking and paying invoices allowed at 3 mins each – Master O’Hare’s decision in Jamie Walker |
| K | Payments 3 mins at D - Master Haworth's decision in Kirby |
| KT | Where a city of London firm is claiming their City rates, on the basis a London Central firm could have been employed – Decision in King v Telegraph |
| LC | In my opinion these costs should more properly be claimed within the litigation proceedings |
| LS | Where a fee earner is claiming their rates when the work done is more junior and could be handled by a lower grade fee earner such as C or D |
| NFE | Considered non-fee earner work - allowed at £50 per hour |
| O | Overheads |
| P | General bookkeeping - Overheads - Philpott decision |
| SER | Provisionally assessed subject to solicitors serving on all interested parties in accordance with the Rules. Any party wishing to object should lodge with the SCCO, and serve on interested parties, specific written points of dispute within 21 days of service of the bill. |
| TS | In my opinion the level of contact is too high - general reduction to reflect decision in Trudy Samler |
| Y | Scope for delegation - blended rate applied in accordance with the decision in Yahiaoui |

**Appendix D: Data Validation**

COP-E’s automatic summary mechanisms recognise selected types of entry and pull them through to the summaries. For that to work, the bill must be able to recognise all the relevant entries. Even a small variation in terminology, such as an extra comma, may render an entry unrecognisable for summary purposes.

“Data Validation” is a means of preventing entries going unrecognised and, for that reason, being left out of COP-E’s automatic summaries. The bill is set up so that certain categories of entry will only be accepted if they match one of a set of pre-defined descriptions.

There are two instances where data validation has been applied in COP-E’s bill detail (at worksheet 5). These are the “OPG Category” column (column I) and the “Communication Method” column (column K). The permitted entries are defined in worksheet 18:

|  |  |
| --- | --- |
| **Comm Methods** | **OPG Categories** |
| Personal Attendance | Contact with the client, their family and friends |
| Telephone Call | Contact with case managers and care providers |
| Timed Telephone Call | Contact with other parties |
| Letter | Work on forms and other documents |
| Timed Letter |  |
| Enclosure Letter |  |
| Travel & Waiting |  |

For users entering data manually, the cells in these columns can be completed either by typing in the right wording or (the easier option) by clicking the arrow that appears to the right of the cell and selecting from the drop-down list. Typing an entry incorrectly will result in an error message and the entry will not be accepted without correction.

**Pasting Entries: Warning**

Some users may want to complete COP-E by pasting data from their time recording systems directly into the bill. Pasting in data in this way can override both COP-E’s pre-set formulae and its data validation mechanism, so great care must be taken to ensure that formulae are not overwritten and that any data pasted into the “OPG Category” and the “Communication Method” columns in spreadsheet 5 matches the specified categories. If this is not done, the OPG and Communications summaries at worksheets 7 and 9 may be rendered incomplete. If formulae have been overwritten or summaries are incomplete, the bill may be rejected by the Court.

Assessing Officers can check for incomplete summaries by clicking on the filters at column A (“OPG Category”) of the OPG category summary at worksheet 7 and column B (“Communication Method”) of the communications summary at worksheet 9, in each case inspecting the drop-down list. The list should show a series of ticked categories (e.g. “Timed Telephone Call” or “Contact with other parties”) and one or two unticked categories, “(blank)” and/or “None”. If this is the case then the summaries are complete.

If there are other unticked entries on the list, that could mean that there are invalid entries in the bill detail. Ticking all the items other than “(blank)” or “None” will ensure that all relevant work is included in the summaries and should avoid the need to return the bill for this reason.