



# **Report on the Legal Aid Agency's Client and Cost Management System (CCMS)**

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## Acknowledgements

This report has been written by Paul Seddon, Chair of the Association of Costs Lawyers Legal Aid Group. Any comments or suggestions on this report are welcomed by the ACL. Any errors or omissions should be brought to the attention of Paul Seddon ([paulseddon@costslawyer.co.uk](mailto:paulseddon@costslawyer.co.uk)).

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# 1 Key Terms and Concepts

<b>Accounts ledger</b>	A ledger of the money received and spent on the client's case.
<b>Agent</b>	An individual or organisation (other than Counsel) engaged by a Provider to undertake work on their behalf in accordance with the Legal Aid Contract.
<b>AJA</b>	Access to Justice Act 1999
<b>Assessment</b>	An assessment by the LAA or by a competent court or tribunal, of the amount which (subject to the provisions of the Legal Aid Contract) is due in respect of a Claim (on an appeal or otherwise). "Assess" has the associated meaning.
<b>Association of Costs Lawyers or ACL</b>	The representative body for Costs Lawyers. The ACL promotes the interests of Costs Lawyers and lobbies on their behalf.
<b>Association of Costs Lawyers Legal Aid Group or ACL LAG</b>	A special interest group for ACL members who provide services in legal costs funded under legal aid. It both represents the interests of those members and provides support and assistance to them.
<b>Bill</b>	A Claim submitted to the LAA for assessment and payment, or a Bill of Costs submitted to the Court for assessment and then submitted to the LAA for payment.
<b>Bill Line</b>	See Line entry
<b>Bill Preparation user</b>	Defined user on CCMS to create, but not submit, bills and requests for payments on account.
<b>CAG</b>	Costs Assessment Guidance: a manual setting out guidance as to how the courts will assess costs in Legal Aid matters and accordingly how the LAA will Assess Claims.

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<b>Care or supervision order</b>	An order made pursuant to an application issued under Section 31 of the Children Act 1989 made by the State to protect or take a child into care
<b>CCMS</b>	Client and Cost Management System, also referred to as the Online Service. The LAA's on-line system for managing the electronic transmission of information between the LAA, Providers and Counsel.
<b>Certificate or Legal Aid Certificate</b>	A certificate to carry out legally aided civil legal services in the form of licensed work and special case work. This is the main record and retainer for procurement of legal services on a particular case. It says what work is covered (scope and limitations), how much in total can be charged (costs limitations) and what date the cover ends (discharge date).
<b>Civil legal aid</b>	System of public funding made available for non-criminal legal issues that is administered by the Legal Aid Agency. The scope of funding available is defined in LASPO, Schedule 1 and AJA, Schedules 1 & 2.
<b>Claim</b>	A claim for payment of Contract Work submitted on the Contract Report Form specified by the LAA for that purpose.
<b>Client</b>	An individual who receives legal aid.
<b>Contract Documents</b>	Documents which form part of the Legal Aid Contract in the following order of priority: (a) the Contract for Signature (including the Annex) (b) the Standard Terms (c) the Schedule(s) and (d) the Specification.
<b>Contract Report Form</b>	Such form as the LAA may specify (in any format it specifies, including electronic format) for making claims.
<b>Controlled Work</b>	Civil legal aid that is not certificated and in the following forms: (a) legal help (b) help with family mediation (c) help at court; (d) family help (lower) or

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	<p>(e) legal representation for proceedings in—</p> <ul style="list-style-type: none"> <li>(i) the Health, Education and Social Care Chamber of the First-tier Tribunal under the Mental Health Act 1983 or paragraph 5(2) of the Schedule to the Repatriation of Prisoners Act 1984</li> <li>(ii) the Mental Health Review Tribunal for Wales</li> <li>(iii) the Immigration and Asylum Chamber of the First-tier Tribunal or</li> <li>(iv) the Immigration and Asylum Chamber of the Upper Tribunal in relation to an appeal or review from the Immigration and Asylum Chamber of the First-tier Tribunal.</li> </ul>
<b>Costs Lawyer</b>	Regulated legal professional who specialises in the law relating to legal costs (billing).
<b>Costs limitation</b>	A statement on the certificate that limits the maximum amount of money that can be paid.
<b>Costs Professional</b>	Someone who specialises in legal costs (billing) including costs lawyers and law costs draftsmen.
<b>Counsel</b>	A barrister or barristers in independent practice and other such persons specified as Counsel under the Specification.
<b>Court practice direction</b>	A supplemental protocol to rules of civil procedure in the courts.
<b>Disbursement voucher</b>	A form used to issue payment for a disbursement.
<b>Disbursements</b>	Expenses separate to profit costs that are paid by the Provider on behalf of the client, to other persons or bodies and include travelling expenses, court and search fees, expert's fees etc.
<b>Family Advocacy Scheme or FAS</b>	A Graduated Fee Scheme of standard fixed fees payable to Providers and Counsel on advocacy carried out in family law cases.
<b>FAS Bolt-on</b>	An additional fixed payment on a fixed fee for advocacy in family law under paid under FAS.

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<b>Fee earner</b>	A Provider or their Agent who incurs fees (a.k.a. profit costs).
<b>Financial interest</b>	Where a client is liable to pay some or all of the costs incurred for the legal services given to them under legal aid.
<b>General ledger</b>	Contains all the accounts for recording transactions relating to an organisation's assets, liabilities, owners' equity, revenue, and expenses. The general ledger is the backbone of any accounting system which holds financial and non-financial data for an organisation.
<b>High Costs Case Plan</b>	A planned budget of costs agreed to be paid on a high costs case.
<b>LAA</b>	Legal Aid Agency, Executive Agency of the Ministry of Justice established under LASPO on 1 <sup>st</sup> April 2013, through which the Lord Chancellor acts to administer legal aid in England and Wales.
<b>LASPO</b>	Legal Aid, Sentencing and Punishment of Offenders Act 2012
<b>Legal Aid Contract</b>	The agreement between the Provider and the LAA which consists of the Contract Documents.
<b>Licensed Work</b>	All civil Legal Aid Contract work except what is controlled work.
<b>Line entry</b>	An entry on a bill on CCMS for a fixed fee, timed unit of work, letters and telephone calls, or disbursement.
<b>LSC</b>	Legal Services Commission, Executive Non Departmental Body of the Ministry of Justice established under AJA on 1 <sup>st</sup> April 2000, which was responsible for the administration of legal aid until it was abolished by LASPO and replaced by the LAA.
<b>Major Projects Authority or MPA</b>	Assures, supports and reports on the Government Major Projects Portfolio (GMPP), which covers around 200 major projects with a total whole life cost approaching £500 billion.

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<b>National Audit Office or NAO</b>	An independent parliamentary body which is responsible for auditing central government departments, government agencies and non-departmental public bodies.
<b>Online Service</b>	CCMS - LAA's on-line system for managing the electronic transmission of information between the LAA, Providers and Counsel.
<b>Paralegal</b>	A non-qualified lawyer
<b>Payment on Account or POA</b>	A payment made by the LAA, on account of amounts due in respect of Contract Work, before the LAA have paid the final Claim for the relevant civil certificated case.
<b>Prior Authority</b>	Authority to incur special costs e.g. instructing a QC.
<b>Profit costs</b>	Providers' fees for work carried out by them or their Agents.
<b>Provider</b>	A party (except the LAA) to a contract with the LAA in respect of the provision of legal aid e.g. solicitor.
<b>Public Accounts Committee or PAC</b>	A select committee of the House of Commons. It is responsible for overseeing government expenditures to ensure they are effective and honest.
<b>QC</b>	Queens Counsel. A limited number of senior barristers become Queen's Counsel (receive 'silk') as a mark of outstanding ability. They are normally instructed in very serious or complex cases.
<b>Scope limitation</b>	A statement on the certificate that limits the scope of work covered under legal aid.
<b>Show cause letter</b>	A letter sent by the LAA placing a break in funding until a requirement has been met e.g. evidence of the client's means.
<b>Specification</b>	Part of the Contract Documents (Legal Aid Contract).

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<b>Standard Terms</b>	Part of the Contract Documents (Legal Aid Contract).
<b>Special Case Work</b>	A special case e.g. a case likely to exceed £25,000, a multi-party action, or appeal in the Supreme Court.
<b>Stakeholder</b>	Any individual, group, or organisation that can effect, be affected by, or perceive itself to be affected by, an initiative, be it a programme, project or activity.
<b>Supervisor user</b>	Defined user on CCMS that can submit bills to the LAA.
<b>Unified Contract</b>	Replaced the previous standard Legal Aid Contracts with a single legal aid unified contract regime on 1 <sup>st</sup> October 2007. This was subsequent to the Carter Review.
<b>VAT</b>	Value Added Tax
<b>Very High Cost Cases or VHCCs</b>	Civil high cost cases - any civil case where the final costs either to settlement or final hearing are likely to exceed £25,000. These are managed by the high cost civil team.

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## 2 Overview

### 2.1 Executive Summary

The Client and Cost Management System (CCMS) has been introduced by the LAA to receive claims for legal aid in civil certificated cases. CCMS is part of the LAA's Integrated Delivery Programme (IDP), which started in 2009 and is projected to cost at least £69m over its lifetime. The pilot ran from November 2012 to April 2014, and it will be mandatory for everyone from 1<sup>st</sup> October 2015.

ACL members participated in the pilot as users of CCMS Billing (costs) and the ACL itself engaged the LAA extensively from early 2014. Yet hardly any actual system issues have been addressed. CCMS still has multiple issues in every way a system can: it deteriorates existing business processes, functionality has been poorly implemented, and some required functionality has been missed completely.

Some functionality has been designed and built, but against a flawed process because the LAA did not fully understand the current one, which is currently largely managed by Providers and their Agents. They introduced a disjointed part-online part-paper process where not all users have access to the key funding information they need. It also interferes with the commercial operations of Providers and Agents, with no published contingency procedure for billing if CCMS goes down, and no ability to see information about a claim or who submitted it after it has been submitted.

Other functionality has been designed and built but does not work very well. This includes bugs, which the LAA takes months to fix even when it relates to core functionality like applying the wrong remuneration rate. It also includes issues like usability and system performance, which between them constitute the biggest issue with CCMS. Screens are slow to load, only a fraction of the line items on a bill can be seen at a time and they cannot be sorted by date. We have been told these things either will not be fixed or cannot be fixed, but we do not accept the justification for this.

And some functionality required to execute billing has been missed from the design completely. It is not possible to enter required information like the case background. Certain case types are not catered for properly, like high costs cases. There is even a lack of understanding about basics of billing like the difference between an estimate and an actual. This often ignores case law, court procedure rules and even requirements in the LAA's own contract with Providers. This could have been avoided if costs professionals had been involved during the system's design stage.

The LAA only talks about 'enhancing' CCMS, but we are not asking for enhancements, we are asking for fixes to do the basic minimum required of us by the LAA itself. The ability to produce bills on third-party software and then upload these directly to CCMS has been positioned as a fall-back. But it is no replacement for CCMS itself and it does not always work anyway.

The ACL calls for the LAA to acknowledge the problems with CCMS, fix them and prioritise new ones so they are not left for months before resolution. If this cannot be done, then we call on the LAA to delay the date of mandate until they can be. If they do not do this, there will be serious impact on the preparation of legal costs for legally aided certificated work. Effort will increase by at least 50%, with only partial mitigation through the use of third-party software. Costs professionals and Providers will need to assess how they manage additional effort and overhead. We will be unable to provide the

current turnaround speeds in expediting bills, and there will be significant delays to payment that will impact on the viability of Providers (who deliver key legal services that the Government wishes to procure) who are already operating with little or no contingency.

## 2.2 Introduction

The Legal Aid Agency has introduced a system to receive claims for civil legal aid in civil certificated cases, called the Client and Cost Management System (CCMS). A pilot of CCMS started November 2012 and formally ended in April 2014. It will be compulsory for all new civil certificated applications to be submitted online from 1<sup>st</sup> October 2015 and subsequent bills thereon, and all matters under certificates applied for since 1<sup>st</sup> October 2007 will also be migrated onto the system. This will be one of the most significant changes to legally aided work since the implementation of the Legal Aid, Sentencing and Punishment of Offenders Act (LASPO) in 2013.

Members of the Association of Costs Lawyers (ACL) have participated in the pilot, specifically as users of the Billing section of CCMS, and fed back to the project team at the LAA implementing CCMS. The number and nature of issues encountered led the chair of the ACL's Legal Aid Group to intercede in early 2014. Since then we have engaged extensively with the LAA up to Board level, in one-on-one meetings, deep-dive sessions to discuss specific issues, and at formal Consultative Group meetings alongside other representatives bodies including the Law Society, Bar Council, Legal Aid Practitioners Group and Resolution.

What is clear is that the specific problems encountered with the system betray systemic and underlying issues with the CCMS project. This report will outline both those system problems and the wider issues, what progress (if any) has been made in addressing them, the steps we call upon the LAA to take now, and the impact upon costs professionals, other legal aid providers and counsel if they do not.

## 2.3 Scope

In scope of this report:

All parts of the CCMS system and programme to which the ACL and its members have had visibility:

- CCMS Billing  
Namely, the part of the CCMS system that costs professionals will use.
- CCMS Project  
We will expand upon our interaction with the LAA and their IT delivery partners, in attempting to address issues encountered with the CCMS system.

Out of scope of this report:

- Other sections of CCMS (only the Claims functionality of CCMS for Providers will be examined here).
- Wider aspects of the LAA's Integrated Delivery Programme (IDP). Note: The CCMS project is part of the Integrated Delivery Programme; we will set the context of how we understand CCMS to relate to IDP, but we have not had visibility of IDP in its entirety.

## 3 What is CCMS?

### 3.1 What is the LAA trying to achieve with CCMS?

#### 3.1.1 Organisational Objectives

The LAA has published a view of what CCMS should achieve, given in Table 1 below, made up of seven objectives. We believe that taken alongside the Government's agenda regarding legal aid, and further discussions with the LAA, there are two key characteristics of CCMS:

**1. It is about saving money**

- It is supposed to drive costs savings for the LAA as part of overall drive to reduce the legal aid budget.

**2. It is part of a major business change, not just a system**

- It is not just a digitisation of the paper process; it is meant to be a complete change to the process.
- For the LAA, it is a part of the wider Integrated Delivery Programme (IDP), which is meant to join up the flow of information from the allocation of funding back to the LAA's internal ledgers.

The Ministry of Justice published a response to a Freedom of Information Request by Resolution, formerly the Solicitors Family Law Association (Ministry of Justice, 2013).

Within this response, they provided seven success criteria upon which the programme will be assessed. These are given ad verbatim in Table 1 below, alongside our comment and/or further elaboration.

*Table 1: Integrated Delivery Programme Success Criteria*

No.	Criterion Description	Comment by ACL Legal Aid Group
1	Programme that assists in enabling the civil case management team to live within their reduced budgets	We assume the criteria have been listed in priority order, with the first being savings for the LAA.
2	The introduction of a new civil case management system which enables functionality to be suppressed on the old system	That is, CCMS should successfully replace the old case management system (CIS), which was introduced in 1997, and all the costs associated with running it.
3	The introduction of an Oracle based general ledger for fund spend	Criterion met: Implemented October 2012. As has been stated, CCMS is part of a larger programme around the LAA's internal systems, including the system that tracks how the legal aid fund is spent.

No.	Criterion Description	Comment by ACL Legal Aid Group
4	Acceptance by, and participation from, the provider community	It is possible that the LAA will claim this is met based on Providers' participation in the pilot and usage rate of CCMS. But: <ul style="list-style-type: none"> <li>• Usage will be mandated, whereas 'acceptance' implies optionality</li> <li>• There was limited participation by costs professionals in the pilot</li> <li>• This was too late to involve Providers to ensure effective system design</li> </ul>
5	A programme that is endorsed by the LAA Board	
6	A programme that is in line with, and/or enables Executive Agency transition objectives	Criterion met: The LSC transitioned to an Executive Agency on 01-Apr-13
7	A reduced level of errors in respect of civil certificated work, as identified by the NAO in their report on the LAA's 2009/10 accounts	The errors in funding in 2009/10 totalled £78.6m (3% of the legal aid fund), but: <ul style="list-style-type: none"> <li>• Only a fraction of these errors (£2m) may be addressed by CCMS Billing.</li> <li>• A third of these errors relate to civil certificated work in scope for CCMS.</li> <li>• Pilot users have reported that errors (including erroneous rejections) have been disproportionately higher on CCMS than on the paper-based system.</li> </ul>

### 3.1.2 Payment Errors

We do not have access to the full business or benefits case for this system. But there are two clear ways to achieve costs savings at least: firstly by reducing the effort of administrating legal aid through automation, and secondly by reducing the amount of money paid out in error. The effectiveness of automation is dealt with in the rest of this report. But it is worth also examining the detail of payment errors: these are what led to the qualification of the LAA's accounts and to the publication of a parliamentary report by the National Audit Office (NAO) detailing those errors (National Audit Office, 2010). And their reduction is listed as a specific criterion to judge the success of CCMS.

The NAO's report into payment errors made by the LAA in 2009/10 yields the following information:

- Less than a third of errors resulting in the LAA making overpayments relate to civil certificated work, which is currently the only type of work that will go via CCMS.
- Most of the errors relating to overpayment for civil certificated work were when a person received legal aid funding when they should not have (an eligibility error).
- Only a very small fraction (3%) of overpayments would relate to the billing of civil certificated work. That's less than 0.1% of the legal aid fund.
- The legal aid fund has been reduced by 23%<sup>1</sup> since the NAO's report was published. It is not unreasonable to assume that the value of payment errors would therefore also be reduced.

<sup>1</sup> The legal aid fund was £2.2b in 2009/10 (Legal Services Commission, 2011) and went down to £1.7b in 2013/14 (Ministry of Justice, 2014)



A breakdown of the errors is depicted in Figure 1 below.

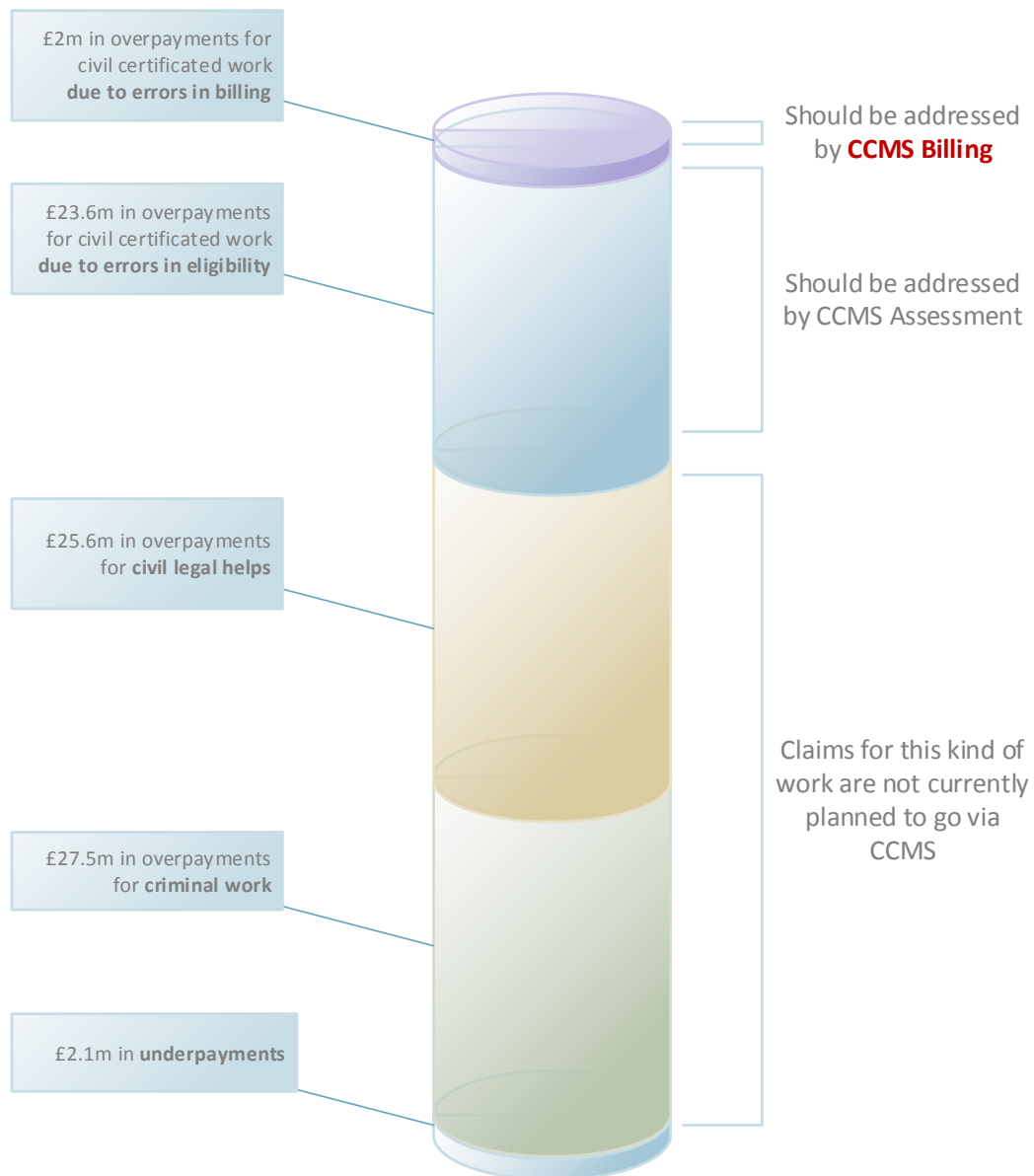


Figure 1: Errors in payments made from the legal aid fund in 2009/10

The civil certificated work that was the subject of payment error at the billing stage related specifically to Very High Costs Cases (VHCCs). Yet this is one of the case types that is not properly catered for by CCMS (see Problem P14, in Table 12 of the Appendix).

So when it comes to CCMS Billing at least, it is unclear how the system is supposed to deliver savings against one of the scenarios that led to its inception.

## 3.2 What is the CCMS Project?

### 3.2.1 CCMS is part of the Integrated Delivery Programme (IDP)

The accounts of the Legal Services Commission were qualified for three consecutive years from 2008/09 to 2010/11 (Legal Services Commission, 2011), due to errors in payments to legal aid Providers. In addition, “significant internal control weaknesses” were identified, including the lack of a traditional accounting system and insufficient financial controls in the existing systems (Legal Services Commission, 2010).

*CCMS Fast Facts*

**2009**

The year that IDP started

The Integrated Delivery Programme (IDP) was commenced in 2009 (Cabinet Office, 2013) to help address some of these issues. This included the implementation of back-end accounting systems, including a general ledger to track spend of the legal aid fund, which went live in 2012.

CCMS is a significant part of IDP, extending it to a front-end to be used by both the LAA and Providers to enter claims for civil certificated work. It is more than just a transfer from paper to online. As a system, it is integrated into a larger renovated IT estate. As a way of working, it represents new processes and controls for how civil certificated work is to be administered.

### 3.2.2 CCMS/IDP is a Major Project with External Oversight

IDP qualifies as a ‘major project’, meaning it involves costs at a level that require HM Treasury approval, and as such it must be monitored by the Major Projects Authority (part of the Cabinet Office) to check that it can be delivered on time, on budget and still delivering the benefits it originally set out to (Cabinet Office, 2012). Major projects are also often the subject of review by the Public Accounts Committee.

*CCMS Fast Facts*

**£69m**

The estimated total cost of IDP/CCMS

IDP is one of around 200 major projects across government, and 19 within the Ministry of Justice (as at September 2013). It is by no means the largest MoJ project, but it is still predicted to cost £68.8m in total<sup>2</sup> (Cabinet Office, 2013), having cost several tens of millions so far (Ministry of Justice, 2013).

It was given an Amber rating in 2013 (Cabinet Office, 2013), meaning that successful delivery appeared feasible but there were significant issues requiring management attention (Cabinet Office, 2012). Such a rating is not unusual: over half the MoJ's major projects in the same year were rated Amber or worse, and as the Major Projects Authority states, “major projects are complex and ambitious. Getting them right is a huge challenge, and even the best-run projects rarely go smoothly from start to finish” (Cabinet Office, 2014).

*CCMS Fast Facts*

**Amber**

The status given to IDP/CCMS in 2013

But what we do know is that CCMS is considered a ‘major project’ that is subject to monitoring outside of the MoJ, with annual updates, and that it has been flagged as requiring attention.

<sup>2</sup> The ‘estimated total cost’ refers to what HM Treasury calls ‘whole life costs’: everything from the project start until the predicted end of the system’s useful life.

## 4 Problems encountered with CCMS

Multiple problems have been encountered by pilot users of CCMS Billing and flagged to the LAA, in most instances many months ago, some even years ago. Despite this, and subsequent escalation by the ACL, the LAA has failed to address them. In many instances, the only steps taken have involved communication and training. Few actual system issues of concern to CCMS Billing users have been resolved and the LAA should not have mandated the use of the system before addressing them.

### 4.1 Summary of Problems

#### 4.1.1 Problems by Severity

A summary list of these problems (23 in total) is given in order of severity in Table 2 below.

Problem severity is based on our assessment of the risk a problem has of increasing effort, time or cost, or reducing quality of work. This assessment is described further in section 4.1.2.

*Table 2: Summary of problems in order of severity*

ID	Problem Title	Impact	Likelihood	Severity
P16	Unable to sort entries by date	5	5	25
P18	Display limit of 10 lines for timed entries	5	5	25
P22	Unable to enter required information on disbursements	4	5	20
P23	Unable to enter required information on background of case	4	5	20
P03	Incorrect scope and costs limitations displayed	5	4	20
P28	No contingency for Billing if CCMS goes down	5	4	20
P17	No default VAT rate or fee earner	3	5	15
P19	FAS bolt-on defaults to "Yes" when it should default to "No"	3	5	15
P11	Unable to see claim after submission and who submitted it	3	5	15
P01	May receive poor information about why claims are reduced	3	4	12
P04	Costs users may not receive critical 'show cause' information	4	3	12
P10	Claims not submitted within 12 weeks will be deleted	2	5	10
P14	Unable to enter more than one claim at a time on the same case	2	5	10
P15	Unable to use keyboard to select Activity Type	2	5	10
P12	Incorrect remuneration rates applied	5	2	10
P26	Must upload evidence for each line entry individually	2	5	10
P06	Costs users may not receive critical information on counsel fees	3	3	9
P05	Unreliable information on prior authority	3	3	9
P25	Unable to combine bill for multiple non-family certificates	2	4	8
P13	Unable to enter multiple court rates	1	5	5
P24	Unable to calculate actual profit costs before declaring them	1	5	5
P20	Unable to identify cases falling outside fixed fees (ss 7.19)	1	5	5
P27	Must allocate a fee earner to disbursements	1	5	5

### 4.1.2 Severity Assessment

Prioritisation is based on our assessment of the risk each problem presents. A risk score between 1 (no risk) and 25 (the most severe) was calculated as a function of the likelihood of the risk manifesting and the impact it would have if it did.

The impact of each problem is described between 1 (insignificant) and 5 (extensive) based on a consideration of:

- The nature of the impact, including
  - Increased effort e.g. duplication of work
  - Increased time e.g. delays in submitting or assessing a claim
  - Increased cost e.g. additional outlay or loss of revenue
  - Reduced quality e.g. being forced to misrepresent the facts of a case due to system limitations.
- Who would be impacted - not just costs professionals but other providers, the legally aided public and the LAA itself.
- How many of each group would be impacted e.g. all costs professionals or only those who deal with certain types of cases.
- How often these people would be impacted e.g. every time they make a claim or just occasionally.
- What the extent of the impact would be e.g. doubling the effort required to complete a claim rather than nominal extra effort.

The likelihood of each problem resulting in such an impact is described between 1 (rare) and 5 (almost certain). In many cases likelihood is 5 since the impact of a problem is already being felt by pilot users.

## 4.2 Problem Details

### 4.2.1 Problem Types

In order to better describe and understand each problem, they have been grouped into one of three types:

- **Process deterioration:** functionality has been designed and built, that works, but against a business process that is flawed.
- **Poor system implementation:** functionality has been designed and built, but either does not work or does work but in a very poor way.
- **Design gap:** functionality required to execute billing has not been designed or built in the first place: it is missing.

These types, and the problems grouped under them, are discussed throughout the rest of this section. Details of each problem and its potential impact can be found in the Appendix (see section 6).

Severity information is included, which shows that severe problems of every type exist. The worst are as a result of poor system implementation, followed by serious issues as a result of design gaps.

## 4.2.2 Process Deterioration

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*"It's been designed and built, it works, but why are we doing it like this?"*

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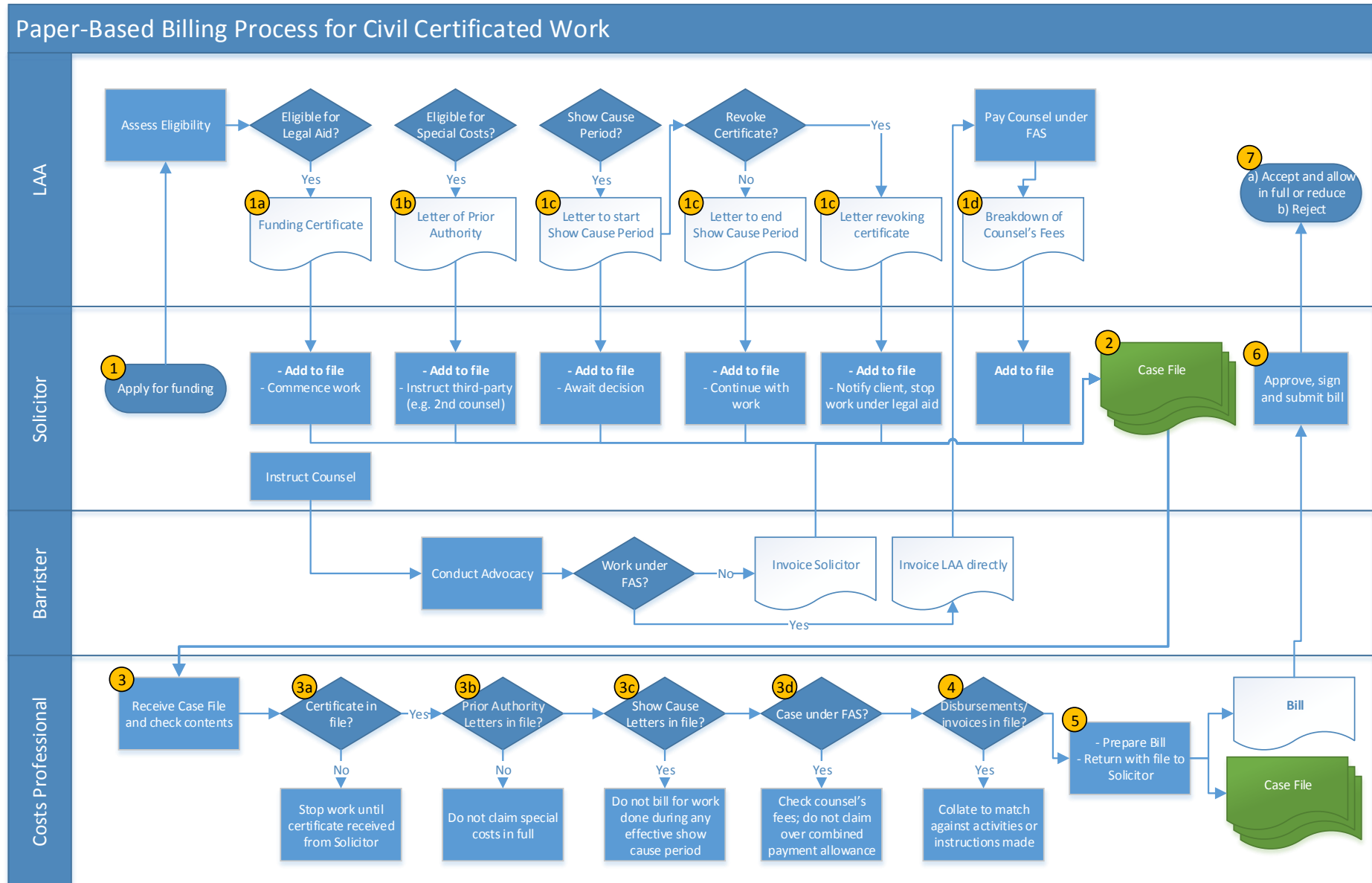
### 4.2.2.1 The Billing Process

In order to understand the changes to the billing process, we should first outline what the current one is. This will also help to explain the gravity of system errors and design gaps later on.

In the following outline, the term 'costs professional' refers to someone who specialises in legal billing. This person may be in-house (an employee of the Provider), or an external subcontractor. The latter is recognised under the Legal Aid Contract as an Agent of the Provider.

The current core process for billing a legal aid file is laid out in the flow chart on the next page:

1. A fee earner applies for legal aid funding for a case. If granted, the LAA will send a series of written communications to them throughout the case. Once received, each communication is placed in the case file, which is the single location for all information relating to a case:
  - a. **Legal Aid Certificate:** (mandatory) the main LAA record and retainer for the case. It says what work is covered (scope and limitations), how much in total can be charged (costs limitations) and what date the cover ends (discharge date).
  - b. **Letters of Prior Authority:** (optional) sent by LAA if authority for special costs is applied for and granted e.g. instructing more than one barrister (counsel) at a time.
  - c. **Show Cause Letters:** (optional) sent by LAA if there is a break in funding where work is not covered. They come in pairs, the first stops cover, the second starts it again (unless the certificate is revoked in the meantime).
  - d. **Breakdown of Counsel's Fees:** (optional) sent if counsel instructed under the Family Advocacy Scheme (FAS); counsel invoices the LAA directly instead of the solicitor.
2. Once the case is complete, the case file is given to the costs professional to draw up the bill.
3. The costs professional checks the contents of the bill for the LAA correspondence above. The only thing that must always be in the file is the certificate, but the presence or absence of the rest will impact how the bill is drawn:
  - a. If there is no **certificate**, they might not proceed, and stop and request it.
  - b. If no **letters of prior authority**, they will not claim for any special costs in full.
  - c. If no **show cause letters** on file, they will bill for the whole duration of certificate.
  - d. If no **counsel's FAS payments**, they bill for the whole combined payment allowance.
4. The costs professional checks the Provider's internal records for disbursement vouchers / accounts ledger. If present, they collate and match them against activities and instructions.
5. The costs professional prepares the bill, then returns it to the fee earner.
6. The fee earner approves and certifies the bill, then submits it to the LAA (if assessable costs are under £2500) or Court (if over £2500).
7. The LAA or Court accepts the bill, reduces amounts therein or rejects it entirely. If reduced or rejected, the costs professional may work to reinstate the bill or parts that were reduced.



#### 4.2.2.2 *Changes to Process as a result of CCMS*

As has been stated, CCMS is part of an overhaul to how legal aid cases are managed. The ACL welcomes positive change:

- There are many opportunities to improve the current process that may be facilitated by the transfer to online, which could reduce errors and save time for both Providers and the LAA.
- Costs professionals already use software extensively, from specialist costing software to in-house case management software. In terms of digital progress, legal aid claims are behind.
- We are used to change: the seismic 2007 Carter reforms led to integral changes and new complexities in how legal aid costs are quantified and claimed, even before LASPO in 2013.

But there are essential characteristics to the current process that need to be taken into account:

- The LAA provides funding information in a single consistent format via a single route.
- It is in a form that can easily be accessed by and passed between appropriate individuals—fee earner, secretary, administrative assistant — for efficient division of labour in curating the case file.
- Information is kept in one place (the case file) that reaches a 'finished' state to be handed over as a single self-contained artefact to the costs professional at the end of the case.
- Costing can be in-house, but much is also done externally by Agents under contract.

In CCMS Billing, the LAA is expanding its reach into parts of the billing process that up until now were managed wholly by Providers, replacing parts of it with online functionality in order to drive benefit to the LAA. But they have failed to take into account the above. Instead:

- CCMS provides some funding information as tables on screen, but some only as a PDF.
- PDF documents are sent to a single nominated person, normally the fee earner; it must then be downloaded and printed or saved elsewhere by that specific person before it can be accessed by anyone else.
- The LAA has defined CCMS as a means to communicate funding information<sup>3</sup>. Although this is in potential conflict with the 'case file as single version of the truth' model, it would be logical and therefore *intuitive* were all funding information available to all relevant users. It is misleading when only some information is available to some users (as a PDF).
- The LAA has built something with limited tolerance for user error or missed steps, which is challenging when all users are full-time employees of the Provider, but even more so when they are external. For example, missing documentation must be mailed or couriered.

So far from streamlining the billing process and making it more efficient, CCMS adds unnecessary complexity on the one hand, whilst making required information unavailable on the other. This will in turn increase the likelihood of errors in billing and delays to payment.

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<sup>3</sup> Standard Civil Contract 2013 – Standard Terms, Clause 1.1: "Online Service" means our on-line system for managing the electronic transmission of information between us and Providers. (Legal Aid Agency, 2013)

The process issues we have seen to date fall into two categories:

*1. Interference with the commercial operations of Providers and their Agents*

*Table 3: Problems with CCMS – Process Deterioration resulting in Operational Interference*

ID	Problem Title	Impact	Likelihood	Severity
P28	No contingency for Billing if CCMS goes down	5	4	20
P11	Unable to see claim after submission and who submitted it	3	5	15

*Further details can be found in the Appendix - Table 8 on p.26*

- CCMS leaves Providers unclear as to what their level of exposure is in terms of potential inability to conduct business and/or interruption to cash flow as a result of system outage. There have been several multi-day outages, and whilst the LAA quickly implemented contingency procedures to ensure live cases continued, they did not do so for billing. Even upon request to allow submission of paper claim forms, the LAA delayed allowing this despite the Legal Aid Contract stating that if the system is down then an alternative form of communication is acceptable<sup>4</sup>. They have since not published a maximum time the system would be down for before they commit to invoking contingency procedures for billing.
- CCMS removes Providers' ability to effectively track and retain information provided in claims for payment (no information about who certified and submitted a claim and the content of that certified claim can be accessed), hindering our ability to regulate our own internal operations.

*2. Introduction of a disjointed part-online part-paper process that means more points of failure*

*Table 4: Problems with CCMS – Process Deterioration resulting from a Disjointed Process*

ID	Problem Title	Impact	Likelihood	Severity
P01	May receive poor information about why claims are reduced	3	4	12
P04	Costs users may not receive critical 'show cause' information	4	3	12
P26	Must upload evidence for each line entry individually	2	5	10
P06	Costs users may not receive critical information on counsel fees	3	3	9

*Further details can be found in the Appendix - Table 9 on p.28*

This seems due to a failure to migrate the whole process to the online platform for all external users, such that some external users can see case information online, but not all, so those who can must then print out and send hard copies to those who cannot.

<sup>4</sup> Standard Civil Contract 2013 – Standard Terms, Clause 7.19: Where you are required to provide information to us through your Online Account, to the extent that the Online Service is unavailable you must notify us and you must send to us the information by such method as we may reasonably require including by fax, post or any reasonable electronic method. Provided that you have complied with your obligations in this Clause 7.19, you shall not be deemed to be in breach of your obligation to provide us with the relevant information through your Online Account.



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The LAA's justification for this is that CCMS is not a case management system, the inference being that CCMS is not attempting to replace Providers' own management of case records.

We agree with the statement that CCMS is not a case management system, but we do not agree that allowing the right users to see funding information expands the scope of CCMS to being one:

- *You should not need a case management system to do costing*: some case management systems offer costing capability and we may use it (especially if in-house), but many external costs professionals have never logged into a law practice's system despite drawing hundreds of bills for them.
- *This is funding information owned by the LAA and communicated via CCMS*: the designers of CCMS have decided that making some LAA information (like funding scope and prior authorities) available to costs users is 'billing'. However, it appears that making other information (like breaks in funding) available to costs users (and not just the fee earner) equates to providing 'case management'. There seems to be no logic for such a distinction.

Since the introduction of mandatory contracts in 2000, and especially with the advent of the Unified Contract in 2007, Providers have had a number of contractual obligations to ensure timely and accurate billing. But legal aid is one of the most procedurally complex areas of legal costs, a complexity that the NAO agreed was a key reason for payment errors (National Audit Office, 2010). So Providers have developed and implemented a range of commercial operations to ensure that they fulfil their contractual obligations. One of these is the existing process to ensure that the right funding information is available to the right individuals at the right time. Whilst CCMS eases complexity in some areas, it adds far more overall: rather than removing or complementing many commercial operations, CCMS either obstructs or inflates them and has the potential to hinder Providers' ability to do the very things the LAA requires of them through their contract.

This concerns a larger principle beyond the specifics of the Legal Aid Contract: in procuring legal services from independent Providers, the Government enjoys the benefit of such provision whilst obviating responsibility for those who provide it. The Government should therefore take care to understand completely the impact of any action that might blur the boundaries of that responsibility.

### 4.2.3 Poor Implementation

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*"It's been designed and built, but it doesn't work very well."*

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Required functionality has been implemented (i.e. designed, built and tested) but errors are observed, or there are no errors but the implementation is poor in terms of performance, usability, etc.

These fall under two categories: system errors and non-functional issues.

#### 4.2.3.1 System Errors

System errors (or 'bugs') are where the system behaves in a way that clearly it was not intended to by those who designed it.

*Table 5: Problems with CCMS – Poor Implementation resulting in System Errors*

ID	Problem Title	Impact	Likelihood	Severity
P03	Incorrect scope and costs limitations displayed	5	4	20
P12	Incorrect remuneration rates applied	5	2	10
P05	Unreliable information on prior authority	3	3	9

*Further details can be found in the Appendix - Table 10 on p.30*

All systems will have bugs after they are put live; this is to be expected. It is how bugs seen during the pilot have been treated by the LAA, and how quickly (or rather, slowly) they have been fixed that is of particular concern:

- It takes many months for errors to be fixed, even when they relate to core functionality, such as the wrong rate being applied for payment.
- The error is not fully resolved, since it is only fixed for the CCMS user interface, but not for claims coming in via integration ('Bulk Upload') from third-party costing software.

In the meantime:

- The LAA does not find a workaround, and leaves affected claims unpaid for many weeks until, after additional effort spent by the Provider/Agent in following the issue up, a concession for the claim to be submitted via the paper-based process is allowed.
- The LAA does not communicate known issues awaiting a fix to the user community as a whole: there is no list of known issues or notification when a fix has been implemented.

#### 4.2.3.2 Non-Functional Issues

Many of the issues observed with CCMS seem to be non-functional i.e. they relate less to what CCMS does and is more to how well it does it: how fast it is, how much data it can handle and store, how easy it is to use, etc.

*Table 6: Problems with CCMS – Poor Implementation resulting in Non-Functional Issues*

ID	Problem Title	Impact	Likelihood	Severity
P16	Unable to sort entries by date	5	5	25
P18	Display limit of 10 lines for timed entries	5	5	25
P17	No default VAT rate or fee earner	3	5	15
P19	FAS bolt-on defaults to "Yes" when it should default to "No"	3	5	15
P15	Unable to use keyboard to select Activity Type	2	5	10

*Further details can be found in the Appendix - Table 11 on p.32*

The most pressing issue here is usability, the lack of which slows down the speed at which bills can be entered, introduces needless duplication of effort, and in many instances increases the risk of errors appearing on bills.

These issues have such a serious impact for the same reason they appear at first glance to be so innocuous: they are so basic that what happens when they are not given due consideration is often over-looked. These include the inability to date-sort hundreds of line entries that make up a bill or see more than 10 entries at a time on screen.

The results of CCMS's poor usability are:

- Significant increase in the effort required to complete a bill via CCMS (up to 50% more).
- Potential errors on bills since additional effort can only compensate for so much.

On raising these issues with the LAA, no commitment was given to when they would be addressed. We were told one of the following three things:

- A change request had been drafted but would not be included in this release and no timescale for its implementation could be given (e.g. to default the VAT rate and fee earner).
- That although the change was feasible, it would be a major change and there was currently no intention to implement it (e.g. to change the default for FAS bolt-on from "Yes" to "No").
- That the change was not feasible since this was a limitation of an online system (e.g. displaying more than 10 lines onscreen at a time).

It is unclear how changing the default value for a field from "Yes" to "No" is a major system change.

And we find the statement that it is not possible for a web-based interface to display more than 10 lines at a time inconsistent with the convention established by others, such as online shops who normally display a default of 25 items and then give the user the option of displaying up to 100.

The concern here could be about system performance: displaying more lines means more data to pass from the server to the user's web browser, and longer for the screen to render this information. We

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have also been informed by users that CCMS has very slow performance, and that although a performance fix was applied last year, screens are still very slow to load. It is disappointing, however, that after tens of millions of pounds of public investment, and over two years of live running, we see a system that cannot achieve what a basic e-Commerce platform can.

#### 4.2.4 Design Gaps

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*"It hasn't been designed and built in the first place."*

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There are many instances where the necessary steps required to successfully claim have not been taken into account or properly understood. This means there are gaps between what the system provides and what is needed in order to bill and claim costs due under the contract.

*Table 7: Problems with CCMS - Design Gaps*

ID	Problem Title	Impact	Likelihood	Severity
P22	Unable to enter required information on disbursements	4	5	20
P23	Unable to enter required information on background of case	4	5	20
P10	Claims not submitted within 12 weeks will be deleted	2	5	10
P14	Unable to enter more than one claim at a time on the same case	2	5	10
P25	Unable to combine bill for multiple non-family certificates	2	4	8
P13	Unable to enter multiple court rates	1	5	5
P24	Unable to calculate actual profit costs before declaring them	1	5	5
P20	Unable to identify cases falling outside fixed fees (ss 7.19)	1	5	5
P27	Must allocate a fee earner to disbursements	1	5	5

*Further details can be found in the Appendix - Table 12 on p.35*

These gaps seem to fall into three categories:

1. It is not possible to enter required information

This includes basic information like the case background and explanations of disbursements. This does not seem to have been agreed with the responsible team within the LAA (the Civil Assessment Team), who now wish to implement effort-heavy workarounds to compensate.

2. Certain case types have not been taken into account

This includes characteristics of some high costs cases, cases with more than one certificated party, cases that go from a lower court to the High Court or above, and non-fixed fee cases.

3. A lack of understanding of the basics of billing

This includes the difference between estimates and actuals, the difference between profit costs and disbursements.

As regards (3) above, the LAA has recommended system usage that fails to take into account the relevant case law, the civil procedure rules, and even the LAA's own contracts with Providers.

CCMS appears to have been designed around simple family fixed fee cases and indeed it deals well with the claims for some (but by no means all) of these as a result. However, the moment these claims become complex the functionality is insufficient. We cannot say how many claims exactly this applies to: we asked for a breakdown of claim types processed so that we could concentrate our own efforts

to assist the LAA, but they have not been provided. So we cannot be precise about how many claims CCMS may cater for well or badly, and it would appear neither can the LAA, at least for now. This also begs the question how well they are able to i) prioritise their effort in resolving the many issues identified, and ii) assess the ongoing likelihood of realising the benefits from CCMS that they hope to.

As for the system errors described in 4.2.3.1 above, design gaps once identified take too long to resolve, even once the LAA has accepted them as an issue. For example, by following the process laid out in the system, it is not possible to create a bill in which a client has a financial interest. This can happen if the client is found liable to pay part or all of it themselves after a certificate is revoked; the Provider submits the bill to the LAA, who pay it and then seek to recover costs from the client later. But there is a time limit on recovery and the clock starts ticking from the point of revocation<sup>5</sup>, so timely receipt of the Provider's claim is important. CCMS did not allow for this, meaning if the situation occurred, the subsequent delay caused whilst an alternative method is identified would eat into the set window the LAA has to recover public funds.

This was raised on the pilot in 2013 and then repeatedly by the ACL from January 2014, but an alternative method was not identified until March 2015.

And like system errors, many design gaps are not listed in a single place under a known issues list so that users may beware of them. We asked the LAA in August 2014 for a centralised list of all identified problems to be published on the CCMS website, to be updated when they were resolved. We explained our concern that the current lack of communication would lead to further confusion amongst stakeholders and consequent negative perception of the system. The LAA have not done this. For example, it took 18 months to address the above issue by identifying and documenting a workaround, there was no notification that they had done this. Instead, a new two-page document outlining what to do was added to a long list of existing training quick-guides under the rather vague title 'Billing Interim Process' (i.e. a workaround for something to do with billing). Some (but by no means all) issues are listed (erroneously) as 'enhancement requests' (see section 4.2.5 below for more on this).

We believe that many of these design gaps may well have been avoided had costs professionals been involved at the design stage of CCMS. A possible justification for our exclusion may have been that CCMS was designed to processes that the LAA itself owns and therefore only LAA stakeholders needed to be involved in design.

But what we have seen of project output, both in terms of the system itself and training delivered around that system, leads us to conclude that:

- Either the CCMS project has failed to sufficiently draw on the knowledge held in the relevant LAA teams
- Or the right LAA teams have properly contributed to CCMS, but they themselves do not have sufficient understanding of what their own policies require of Providers and their Agents

This represents one of the most significant issues with the project, since resolving design issues so late in the process is both time-consuming and costly.

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<sup>5</sup> Legal Services Commission v Rasool [2008] EWCA Civ 154

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#### 4.2.5 Enhancements vs. Required Changes

The only system changes referred to by the LAA are 'enhancements', and the CCMS system is only ever 'enhanced'. A list of these is published on the CCMS website<sup>6</sup>.

But in the context of a computer system, an enhancement is normally a 'nice-to-have' requested by a user after the system has gone live. It is *in addition* to functionality that already works i.e. it is not a bug fix. It is *in addition* to functionality that already fulfils the basic business process i.e. it is not a required change to plug a design gap. None of the system errors referred to in section 4.2.3.1 above are listed as the subject of enhancements (nor should they be), yet the LAA continues to refer to many non-functional issues and design gaps as enhancements and/or lists them under 'Delivered Enhancements' on the website.

It is concerning that the LAA does not acknowledge issues and design gaps for what they are. Whilst it may be convenient to recast their resolution as 'enhancements', it is inaccurate to do so and when there are as many problems with a system as there are with CCMS, all this does is:

- Reduce the credibility of the LAA
- Fail to recognise the role that Providers have had during the pilot (essentially that of testers, rather than pilot users) and the impact of the problems CCMS has incurred on them
- Imply that problems are not being properly prioritised within the context of the overall project delivery

We are not asking for (nor have we ever asked for) the system to be enhanced, we are asking for it to be fixed. We are not asking for extra bells and whistles, we are asking for the basic functionality that allows us to execute the tasks on CCMS that the LAA says we must.

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<sup>6</sup> <http://ccmstraining.justice.gov.uk/enhancingccms>

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## 4.2.6 Bulk Upload

There are two ways to get billing information into CCMS:

- User interface: CCMS's own user interface accessed via a web browser
- File integration: the ability for users to prepare the bill on third-party software, then export the information into an XML file that they then upload to CCMS. This is an alternative to the CCMS user interface, and is known as the 'bulk upload' facility.

If there is any problem with the file or CCMS's ability to process it, the whole upload fails. If the bill is uploaded, it may not be further amended on CCMS – it may only be submitted.

Issues of concern around the bulk upload are:

- *There is an over-reliance on bulk upload:* when raising with the LAA the serious usability issues listed in section 4.2.3.2 above, the response has been to assure us that we can use the bulk upload instead.
- *The bulk upload is often left not fully working:* where a bug affects both the user interface and bulk upload, it already takes a long time to fix the former and then there is a significant lag period before fixing the latter. For example, problems P12 (incorrect remuneration rate applied), P13 (cannot enter multiple court rates on same bill) and P20 (cannot identify cases falling outside of fixed fees) are still awaiting a fix for the bulk upload months after the user interface was fixed.

So firstly, we risk being left with neither a user interface through which we can sensibly execute claims, nor working integration with third-party software that represents our only alternative.

And secondly, even if bulk upload bugs were fixed promptly, it is flawed logic to suggest that this represents an acceptable mitigation for an unusable user interface. Both a fit-for-purpose user interface and integration with third-party software are essential:

- If working integration with third-party software were not provided, this would imply that:
  - The LAA can provide comparable functionality themselves, when everything we have seen so far shows that they cannot.
  - The LAA is willing to remove a significant market segment from independent software providers with no clear benefits case for doing so.
- If a fit-for-purpose user interface were not provided, this would mean that:
  - The LAA has failed to deliver a core part of the system's scope despite spending tens of millions of pounds of public funds.
  - The LAA is willing to make it mandatory for Providers and their Agents to purchase certain third-party software in order to make a claim, which would require a change to the Legal Aid Contract.



## 5 Conclusion

### 5.1 Analysis

The CCMS project formally exited an 18 month pilot over a year ago. Throughout that pilot and since, serious issues with the system have been raised by users, which have been repeatedly escalated by the ACL over the past year, with many meetings but little system improvement.

The problems with the system outlined in this report point to what we believe to be several underlying issues. Firstly, we have questions as to the actual benefits that CCMS will derive given the system produced, these benefits being operational costs savings for the LAA and reduction in payment errors. Secondly, the LAA failed to recognise the need for and thus engage the right external stakeholders in the design and test of this system. Thirdly, the LAA seems to be in institutional denial as to the problems seen and what they really are, not enhancements but fixes to serious issues. This may explain why fixes take so long because they are not being prioritised properly. And lastly, we see external users' own third-party software potentially becoming a crutch for the project to mitigate its own shortcomings.

CCMS is supposed to drive the LAA's operational efficiency. But the unresolved issues we have seen imply that efficiency will decrease, not only for the LAA but very seriously so for Providers. CCMS is supposed to reduce payment errors. But the serious challenges to system use will lead to an increase in errors on bills, which could result in an increase in payment errors.

CCMS Billing has been built against a flawed business process, after the LAA have tried to change something they have not taken the time to understand. In doing so, they have ignored both the essential characteristics of what make it work at the moment and the basics of information management: to make the right information available to the right people at the right time. And when the system is not available at all, the LAA has in the past prioritised procuring legal services over honouring timely payment by failing to implement contingency procedures for billing.

The user interface seems to have been designed without talking to anyone who has ever drafted a bill. Several of the requests to address this have been met with the response that it would be a major change or it is technologically impossible. We do not accept this.

And there are also things needed to effect billing that have not been built at all. It is not possible to enter required information, several case types are not catered for (even though the LAA say they want us to use CCMS for such cases) and the design has been done without understanding certain fundamentals of billing that we would expect any trainee costs lawyer to have a grasp of.

What has been built does not always work very well, with system errors that often leave incorrect the limited funding information available to costs users via CCMS. When errors are fixed, it takes months to do so, leaving the Provider having to spend more time and effort to try and get paid.

The LAA also seems to be running a project that does not acknowledge issues or design gaps for what they are, in a variation on the tired "It's not a bug, it's a feature" argument.

The ability to produce bills on third-party software and then upload these directly to CCMS has been positioned as a fall-back. But the upload does not always work and it is not appropriate for the LAA to spend significant public funds on building its own system, fail to make it fit-for-purpose, then require Providers to procure their own expensive third-party software to compensate.

The system should not have been put into pilot in this state, indeed, it feels less like a proper pilot and more like trial by error, only without addressing the errors. Yet the LAA has proceeded to set a date at which CCMS will be mandated for all claims, presumably because they have spent so much time and money on it that they can delay no longer. If issues are not addressed, we will essentially be continuing to test a system on the LAA's behalf, a test with real-life cases and with prejudice to Providers' ability to provide the legal services the Government wishes to procure.

## 5.2 Steps for the LAA

We call upon the LAA to:

- Acknowledge the problems with CCMS: these are not enhancement requests, they do not constitute case management functionality, and file integration with third-party software does not negate the need for their resolution.
- Fix the problems outlined in this report: there are a number of them, but they have been listed in priority order.
- Prioritise new problems that arise properly: do not take months (or even years) to fix them.
- If major problems cannot be fixed, delay the date when CCMS will be mandated for all new applications until they can be.
- Address these problems before expanding the scope of CCMS: get the basics to work first.

## 5.3 Impact on Costs Professionals and Providers

If the LAA fails to address the problems with the system, then there will be serious impact with regard to the preparation of legal costs for legally aided civil certificated work. Effort in terms of more work for the costs professional will increase by at least 50%, and use of integrated software that is privately procured by the costs professional will only go some way to eliminating this. None of the functionality that CCMS purports to offer brings significant (if any) improvement to the efficiency of a properly trained legal aid costs professional in 2015.

There will be new tasks that appear in addition to, rather than in place of, current tasks, such as:

- Scanning evidence into separate PDFs and uploading these to each corresponding line entry.
- Investigating and preparing additional information requested by the LAA, that was not foreseen when a claim was prepared prior to submission.
- Preparing multiple claims for a single case funded under multiple non-family certificates.
- Liaising with the LAA on invoking contingency procedures.
- Obtaining funding information not initially given by the Provider (e.g. show cause letters).

Who owns these tasks will need to be identified and costs professionals and Providers will need to assess how they manage this additional effort and overhead, and how much of this they can absorb themselves.

Costs professionals will be unable to provide the current turnaround speeds in expediting bills. Bills will take longer to complete and likely to be held up by requests from the LAA for standard information that cannot be initially included within the bill, and are more likely to be rejected due to errors caused by process deterioration. This will result in significant delays to payment which will impact upon cash flow of Providers who are already operating on profit margins that do not allow significant (if any) contingency.

Since the introduction of the Legal Aid, Sentencing and Punishment of Offenders (LASPO) Act 2012, there are fewer and fewer situations where those who cannot afford to pay have access to legal advice and representation. Mandating this system in its current state will obstruct the efficient provision of what remains, further constraining representation under a series of scenarios. These include where the State seeks to remove a child from its family, people who are trying to escape domestic violence, and people who face losing their home.



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## 6 Appendix: Tables of Detailed Problem Description

Table 8: Details of Problems with CCMS – Process Deterioration resulting in Operational Interference	p.26
Table 9: Details of Problems with CCMS – Process Deterioration resulting from a Disjointed Process	p.28
Table 10: Details of Problems with CCMS – Poor Implementation resulting in System Errors	p.30
Table 11: Details of Problems with CCMS – Poor Implementation resulting in Non-Functional Issues	p.32
Table 12: Details of Problems with CCMS - Design Gaps	p.35

Table 8: Details of Problems with CCMS – Process Deterioration resulting in Operational Interference

Problem Type	Problem		Impact		Likelihood	Risk Score	Raised to LAA
	ID	Description	Score	Description			
Process Deterioration – Operational Interference	P28	<p><b>No contingency for Billing if CCMS goes down</b></p> <p>The LAA have not committed to and published full contingency procedures and agreed the principles of use of contingency. As at 19-Apr-2015, the <a href="#">CCMS website</a> just states that “When CCMS is not working [...] we will notify you by email and outline what the contingency process is.”</p> <p>There should be a Service Level Agreement for the guaranteed maximum amount of time that the system is down for before contingency procedure is invoked in line with Standard Terms.</p> <p>Neither the Standard Terms nor what has been published have the level of detail to enable Providers/Agents to properly plan contingency for their own operations, helping limit disruption to their organisations.</p> <p>The LAA have not agreed the principle that whichever medium a claim is started in because of system error will be the medium that it is submitted in – requests from the LAA to switch process when the system comes back up, ignoring the duplication of effort involved, has proven a problem on the pilot.</p>	5	<p>a) Without agreed contingency procedures and a maximum system downtime before those procedures are invoked, Providers and costs professionals are unclear what their level of exposure is for:</p> <ul style="list-style-type: none"> <li>- Inability to conduct business</li> <li>- Interruption to cash flow</li> </ul> <p>b) Delay to payment for Providers, and additional effort to persuade the LAA to expedite this via an alternative method.</p> <p>c) Inability for costs professionals to do any work, leading to significant loss of revenue. (Some staff had to be sent home due to lack of work during the June 2014 outage.)</p>	4	20	Raised on 24-Jun-14

Problem Type	Problem		Impact		Likelihood	Risk	Raised to LAA
	ID	Description	Score	Description		Score	
Process Deterioration – Operational Interference	P11	<p><b>Unable to see claim after submission and who submitted it</b></p> <p>On CCMS any user, (employee or Agent) by the Provider can approve and submit a bill.</p> <p>After submitting a claim, the only thing that is accessible to the Provider is confirmation that a claim has been submitted, but neither the claim itself nor information about which user submitted it is made available. The Provider is left unable to check what was submitted, when it was submitted and which one of their users submitted it.</p> <p>In the event of any dispute between the Provider and the LAA, or between other users (especially the Provider and Agents), the Provider will have to request the LAA to pull the system audit records. No specific protocol has been given by the LAA for how they will deal with requests for this information.</p>	3	<p>a) The LAA fails to provide this information, leaving the dispute unresolved.</p> <p>b) The LAA provides this information but this incurs additional time and delay to both the LAA and the Provider.</p> <p>Our primary concern is that the longer any dispute continues, the further damage done to the professional relationship between Providers and Agents or employees.</p>	5	15	Raised on 23-Jun-2014

Table 9: Details of Problems with CCMS – Process Deterioration resulting from a Disjointed Process

Problem Type	Problem		Impact		Likelihood	Risk	Raised to LAA ID
	ID	Description	Score	Description			
Process Deterioration – Disjointed Process	P01	<p><b>May receive poor information about why claims are reduced</b></p> <p>Currently receive covering letter with standard reasons given for reductions, which often bear little relation to the actual reason. Instead, we rely on the handwritten annotations from the LAA case worker on the copy claim form attached. We will no longer receive an annotated copy and there is a risk that only the standard reasons are given on CCMS.</p>	3	Costs professionals and/or Providers may find that it is impossible to prepare proper submissions for review of assessment based on the standard reasons alone. This will effectively prevent the Provider from executing their contractual right to review of assessment.	4	12	Raised on 23-Jun-2014
Process Deterioration – Disjointed Process	P04	<p><b>Costs users may not receive critical 'show cause' information</b></p> <p>Show cause information, which imposes an embargo upon the funding, is only made available to the CCMS case management user (i.e. the fee earner) via a PDF attachment in the CCMS notifications area. This then needs to be exported out of CCMS, printed and attached to the rest of the hardcopy case file, to be sent to the CCMS bill preparation / supervisor user (i.e. the costs professional). This is an additional step to the current process, which may be forgotten, or (given the paucity of the training provision we have witnessed) the user may not be aware of this step at all.</p>	4	<p>a) The costs professional is left unaware of any show cause period applying to the case. A bill is submitted for costs that should not be claimed. This bill is either rejected, meaning more time and effort to amend and resubmit the bill, or the bill is not rejected / reduced accordingly, resulting in overpayment.</p> <p>b) The costs professional is aware of a show cause period through other means, and there is further effort and delay in procuring this from the fee earner.</p>	3	12	Raised on 23-Mar-2015



Problem Type	Problem		Impact		Likelihood	Risk	Raised to LAA ID
	ID	Description	Score	Description			
Process Deterioration – Disjointed Process	P26	<p><b>Must upload evidence for each line entry individually</b></p> <p>Currently, all supporting evidence (e.g. invoices, disbursement vouchers, court orders) is submitted to the LAA in a single hardcopy bundle with the paper claim form.</p> <p>With CCMS, we had expected the online equivalent to be for the Provider to scan and upload a single file of supporting evidence.</p> <p>Instead, the LAA has stipulated that each piece of evidence must be individually scanned and attached to each corresponding line entry on the bill.</p>	2	<p>The Provider had already expected to incur additional effort in having to scan in and upload hardcopy evidence, albeit in one go as one file.</p> <p>Significant extra effort is required to scan each piece of evidence as a separate file, identify the corresponding line entry and upload.</p> <p>Instead of printing out a PDF file and matching its pages to bill lines, the LAA is shifting this task back to Providers in a way that makes it wholly disproportionate to the value delivered.</p>	5	10	Raised on 23-Mar-2015
Process Deterioration – Disjointed Process	P06	<p><b>Costs users may not receive critical information on counsel fees</b></p> <p>The breakdown of family counsel's fixed fees is only made available in the same way and to the same user as 'show cause information' (see P04 above). This additional step may be missed.</p> <p>Failure to pass on details of counsel's fees is already an issue on the paper-based process and is likely to be made worse by the additional step imposed by CCMS.</p>	3	<p>The costs professional is left unaware that two bundle payments have already been claimed and should not claim for any more. They submit a claim for a bundle payment. This bill is either rejected, meaning more time and effort to amend and resubmit the bill, or the bill is not rejected / reduced accordingly, resulting in overpayment.</p>	3	9	Raised on 23-Jun-2014

Table 10: Details of Problems with CCMS – Poor Implementation resulting in System Errors

Problem Type	Problem		Impact		Likelihood	Risk Score	Raised to LAA
	ID	Description	Score	Description			
Poor Implementation – System Error	P03	<p><b>Incorrect scope and costs limitations displayed</b></p> <p>Scope limitations are statements on the certificate that limit the scope of work covered.</p> <p>CCMS displays scope limitations online but these are either:</p> <ul style="list-style-type: none"> <li><u>Incomplete</u>, since only the latest limitation is displayed and not previous limitations that may still apply to the work done at the time the previous limitations were in force</li> </ul> <p>or:</p> <ul style="list-style-type: none"> <li><u>Completely missing</u></li> </ul> <p>Costs limitations are statements on the certificate that limit the maximum amount of money that can be claimed.</p> <p>CCMS displays costs limitations in various places online but sometimes these are:</p> <ul style="list-style-type: none"> <li><u>Incorrect</u>, displaying an old value before the amount was extended by the LAA</li> </ul>	5	<p>1. The costs professional and Provider may be misled by incorrect information and:</p> <p>a) A bill is submitted for costs that should not be claimed. This bill is rejected, incurring extra effort to the LAA case worker who must reject or provisionally assess, and extra effort to the costs professional to amend and resubmit the bill.</p> <p>b) A bill is submitted for costs that should not be claimed. The claim is accepted, resulting in overpayment at cost to the LAA.</p> <p>c) A bill is submitted omitting costs that should be claimed, due to the false belief that a limit has been reached. This results in underpayment at cost to the Provider and their Agents.</p> <p>2. The costs professional is aware through other means that the information online is incorrect, and there is further effort and delay procuring a printout of the certificate from the fee earner.</p>	4	20	Raised on 23-Mar-2015

Problem Type	Problem		Impact		Likelihood	Risk Score	Raised to LAA
	ID	Description	Score	Description			
Poor Implementation – System Error	P12	<p><b>Incorrect remuneration rates applied</b></p> <p>Legal aid has some of the most complex application of rates in all of legal costs: there are currently 14 different sets of rates that may be applied to individual line entries on a bill, and potentially hundreds of different value combinations that dictate which rate to select.</p> <p>Currently this is done by the costs professional on a case-by-case basis. But with CCMS this is done automatically and cannot be overridden by the user.</p> <p>The miscalculation of a rate by CCMS has already been seen and it took over 6 months to fix.</p> <p>So when such issues do arise, their resolution is not prioritised despite the fact that:</p> <ul style="list-style-type: none"> <li>• There is no communication to other users that this problem exists.</li> <li>• Such claims, if left inactive, would exceed the 84 day retention period for claims on CCMS and could be automatically deleted (see P10 in Table 12).</li> </ul>	5	<p>a) The Provider is unable to claim because they have prepared the claim on third party software to be used with the Bulk Upload Facility which will be treated by CCMS as incorrect, and Bulk Upload will fail.</p> <p>b) The Provider is under/overpaid because they prepare the claim directly on CCMS, which subsequently applies an incorrect rate.</p> <p>c) The Provider's claim is rejected because the claim is for payment of a Court Bill, which CCMS then flags to the LAA case worker as being calculated at the wrong rate.</p>	2	10	Raised early 14-April-2014
Poor Implementation – System Error	P05	<p><b>Incorrect information on prior authority displayed</b></p> <p>On the basis that none of the other funding information displayed online is reliable, this too may be unreliable.</p>	3	Without knowledge of a prior authority, the costs professional is unaware that special costs (e.g. use of a QC) may be claimed in full. This results in underpayment, at cost to the Provider and/or their Agents.	3	9	Raised on 23-Mar-2015

Table 11: Details of Problems with CCMS – Poor Implementation resulting in Non-Functional Issues

Problem Type	Problem		Impact		Likelihood	Risk Score	Raised to LAA
	ID	Description	Score	Description			
Poor Implementation - Non-functional Issue	P16	<p><b>Unable to sort entries by date</b></p> <p>The entire structure of any LAA assessed bill is based on chronological order. With from 30 to over 300 entries on a bill, sorting these by date is key to its effective preparation and assessment.</p> <p>This is why sorting entries by date is one of the most rudimentary pieces of functionality of any software used to prepare LAA assessed bills, from specialist costing software to Microsoft Excel.</p> <p>Except for CCMS, which does not provide this.</p> <p>Entries are not even divided up into the logical sections of a bill: profit costs, counsel's fees and other disbursements. They all appear together under "Bill Line" and in the order in which they were entered.</p> <p>When printing the Bill Line screen, it comes out in a random order each time you print.</p> <p>It is impossible to enter all items in chronological order because:</p> <ul style="list-style-type: none"> <li>Some Providers' files are first organised into categories of work, and then chronological order</li> <li>This does not account for scenarios where not all work records are included in the initial file given to the costs professional</li> </ul>	5	<p>a) Significant effort is required to cross reference work on the claim with events of the case, and ensure clear justification can be given for any unusually high claims for work.</p> <p>b) Duplications of work cannot be identified without significant effort.</p> <p>c) On large bills, even with major additional effort, it is impossible to fully compensate for this issue.</p> <p>There will be the same amount of effort for LAA case workers assessing the bills, and there will be significant risk of either under or overpayment.</p>	5	25	Raised on 28-Aug-2014

Problem Type	Problem		Impact		Likelihood	Risk	Raised to LAA
	ID	Description	Score	Description		Score	
Poor Implementation - Non-functional Issue	P18	<p><b>Display limit of 10 lines for bill line entries</b></p> <p>Only 10 entries can be viewed on screen at one time and it is not possible to skip screens e.g. go straight from the first 10 entries on a bill to the last 10 entries.</p> <p>The number of entries can range from 30 to over 300 on bills, meaning that entries for a single bill be split between approximately 3 to 30 screens.</p>	5	<p>More effort for the costs professional to prepare the claim, cross reference work and again identify any duplications of work, and more effort for the billing supervisor role user to check and authorise it.</p> <p>This is compounded by the fact that print-outs of the entries are put into a different random order every time that they are printed, meaning that checking and cross referencing can only be done on screen.</p>	5	25	Raised on 28-Aug-2014
Poor Implementation - Non-functional Issue	P17	<p><b>No default VAT rate or fee earner</b></p> <p>VAT rate and fee earner must be manually selected for every line entry.</p> <p>The number of entries can range from 30 to over 300 on bills, but only 1 to 3 fee earners are used on most cases.</p> <p>A single VAT rate is used for all entries regardless of when the work was done, with the exception of disbursements where VAT was paid to the third party.</p>	3	<p>Additional effort for the costs professional to select the fee earner and VAT rate on every line entry.</p> <p>This additional step increases the likelihood that the incorrect VAT amount will be claimed and paid on some entries.</p>	5	15	Raised on 28-Aug-2014

Problem Type	Problem		Impact		Likelihood	Risk	Raised to LAA
	ID	Description	Score	Description		Score	
Poor Implementation - Non-functional Issue	P19	<p><b>FAS bolt-on defaults to "Yes" when it should default to "No"</b></p> <p>Payments under the Family Advocacy Scheme (FAS) can attract an additional fixed payment, known as a 'FAS bolt-on'. When selecting a FAS payment, the bolt-on option defaults to "Yes", even though this only applies to a minority of FAS payments.</p>	3	<p>a) Additional effort for costs professionals to reset the entries for each family law hearing to 'no bolt-on'.</p> <p>b) Increased likelihood that a FAS bolt-on will be erroneously selected. This means extra effort for the LAA case worker to reject or provisionally assess the claim, extra effort for the costs professional to amend and resubmit the bill, and delay in payment to the Provider.</p>	5	15	Raised on 28-Aug-2014
Poor Implementation - Non-functional Issue	P15	<p><b>Unable to use keyboard to select Activity Type</b></p> <p>The activity type must be selected from a drop-down box for every line entry. This can only be done by using the mouse, not the keyboard.</p>	2	Additional effort for the costs professional in using the mouse rather than using the keyboard, as is the norm for a high speed data entry process such as this.	5	10	Raised on 28-Aug-2014

Table 12: Details of Problems with CCMS - Design Gaps

Problem Type	Problem		Impact		Likelihood	Risk Score	Raised to LAA
	ID	Description	Score	Description			
Design Gap	P22	<p><b>Unable to enter required information on disbursements</b></p> <p>There is no field to enter case specific information on disbursements e.g. how many miles were travelled as part of a mileage claim.</p> <p>Upon assessment of the bill information is sought by the LAA via an 'additional information' request.</p>	4	Additional effort for both the Provider and LAA case worker on a process that can often concern amounts of no more than around £5. As well as additional time in delaying the process and payment to the Provider.	5	20	Raised on 28-Aug-2014
Design Gap	P23	<p><b>Unable to enter required information on background of case</b></p> <p>Information on background of the case will explain the salient points that affect the costs being claimed, including directions and orders for evidence, and that dictate what can be claimed on some of the family law advocacy fixed fees.</p> <p>Upon assessment of the bill this information is sought by the LAA via an 'additional information' request.</p>	4	<p>a) Additional effort for the costs professional who must revisit (often after a period where they are doing so anew) to prepare the information.</p> <p>b) Additional effort for the Provider and LAA case worker, as well as additional time in delaying the process and for payment to the Provider.</p>	5	20	Raised on 23-Mar-15
Design Gap	P10	<p><b>Inactive claims not submitted within 12 weeks (84 days) will be deleted</b></p> <p>There are claims that will be inactive for more than 12 weeks, including but not limited to:</p> <ul style="list-style-type: none"> <li>Claims awaiting agreement of a high costs case plan</li> <li>Claims awaiting invoices (this is a particular issue for transcription of final judgement)</li> </ul>	2	<p>Claims containing extensive amounts of data would be deleted and have to be re-entered from scratch.</p> <p>Whilst this may not happen frequently, it will incur significant effort and cost for the Provider when it does.</p>	5	10	Raised 03-Jun-2014 and extended from 28 to 84 days, but still does not account for this scenario

Problem Type	Problem		Impact		Likelihood	Risk	Raised to LAA
	ID	Description	Score	Description		Score	
Design Gap	P14	<p><b>Unable to enter more than one claim at a time on the same case</b></p> <p>High cost cases (i.e. exceeding £25,000) are split into stages. Each stage is a separate claim.</p> <p>If these claims are submitted in lieu of the case plan, all of the claims must be submitted within 4 weeks of the conclusion of the case. This deadline is strictly applied by the LAA and they may completely disallow any claim submitted after it.</p> <p>In order to meet this deadline, claims must be set up and prepared concurrently. But CCMS does not allow this.</p>	2	<p>a) The LAA refuses to pay outstanding high value claims, resulting in additional effort for the costs professional and Provider in trying to rectify this</p> <p>b) If the LAA does eventually pay, there is still a delay in payment for the Provider.</p> <p>c) If the LAA does not eventually pay, the Provider incurs major cost in loss of payment to the Provider.</p>	5	10	Raised on 28-Aug-2014
Design Gap	P25	<p><b>Unable to produce combined bill for multiple non-family certificates</b></p> <p>Multiple non-family certificates funding the same case cannot be linked to each other e.g. joint tenants subject to a possession claim.</p> <p>Therefore bills cannot be apportioned between certificates, and two individual claims must be prepared for the same case (with line entries being manually split), unless one of the certificates has a sufficient costs limitation to accommodate the full costs of the entire case.</p>	2	Duplicated effort for both the costs professional to prepare, the bills supervisor role user to check and authorise, and the LAA case worker to assess the costs of these cases.	4	8	Raised on 28-Aug-2014



Problem Type	Problem		Impact		Likelihood	Risk Score	Raised to LAA
	ID	Description	Score	Description			
Design Gap	P13	<p><b>Unable to enter multiple court rates</b></p> <p>A different rate must be used if the case transfers from a lower court to the High Court or above. CCMS would not originally allow a different rate to be used; this was fixed on CCMS, but:</p> <ul style="list-style-type: none"> <li>It took 10 months to fix this, and in that time, it was not properly communicated as a known issue</li> <li>It has not been fixed for claims submitted via integrated external software (Bulk Upload).</li> </ul>	1	<p>a) The costs professional is unable to use third-party software and must use CCMS in order to prepare the claim. Not only do they incur cost in terms of lost return on their investment in third-party software (which they buy to increase their productivity), but they also incur additional effort using CCMS due to usability issues outlined in section 4.2.3.2 above. There will also be a delay in submitting the bill.</p> <p>b) The costs professional is unaware that the issue exists and duplicates effort by preparing the claim on third-party software and then again on CCMS after the upload fails.</p> <p>c) Even if the costs professional is aware of the issue, they may be unaware that a case is subject to multiple court rates until halfway through preparing the bill, meaning they still waste time preparing it on third-party software.</p>	5	5	Raised in March 2014

Problem Type	Problem		Impact		Likelihood	Risk Score	Raised to LAA
	ID	Description	Score	Description			
Design Gap	P24	<p><b>Unable to calculate actual profit costs before declaring them</b></p> <p>When entering a fixed fee bill line, the user is expected to enter the total Actual Profit Costs incurred under that fixed fee. But this is before they have entered the individual units of profit costs that make up that total; in short, they are expected to know the sum of a set of values before adding up those values.</p> <p>Only if the profit costs exceed the fixed fee escape threshold will CCMS then allow the user to enter the individual units of profit costs.</p> <p>The LAA has stated during CCMS training that the Actual Profit Costs should be taken from the Provider's Work In Progress (WIP). But the WIP is an estimate, not an actual.</p> <p>This is an inappropriate use of the WIP.</p> <p>Both case law and the Court's practice direction are clear on what an estimate is and how it should be treated for the purpose of billing: it cannot be used to impose an automatic cap<sup>7</sup> (which is essentially what the escape threshold on a fixed fee is), it is only a useful yardstick<sup>8</sup> and should be expected to vary from the actual up to 19.9%<sup>9</sup>.</p>	1	<p>a) The costs professional relies on the Work In Progress (WIP), using an estimate as an actual, and risks failing to identify actual costs that are higher than the estimate and escape the threshold of fixed fees. (The amount that could be claimed instead will be over 2-3 times the fixed fee.) This results in underpayment at a cost to the Provider.</p> <p>b) The costs professional does not rely on the WIP, but instead draws the claim elsewhere in order to calculate the Actual Profit Costs before then entering these onto CCMS. Where the fixed fee threshold is escaped, this will result in a duplication of effort by the costs professional who must enter individual line entries once again, this time onto CCMS.</p>	5	5	Raised on 23-Jun-14

<sup>7</sup> MasterCigars Direct Ltd v Withers LLP [2009] EWHC 651

<sup>8</sup> Leigh v Michelin Tyre plc [2003] EWCA Civ 1766

<sup>9</sup> Civil Procedure Rules Part 43 Practice Direction 6.5A

Problem Type	Problem		Impact		Likelihood	Risk Score	Raised to LAA
	ID	Description	Score	Description			
Design Gap	P20	<p><b>Unable to identify cases falling outside fixed fees (ss 7.19)</b></p> <p>CCMS treated every case as if it were a fixed fee, when not all cases are, specifically when:</p> <p>i) Instructions are for less than 24 hours</p> <p>ii) Acting for a client whose application to be joined into proceedings for a care or supervision order is refused</p> <p>It is now possible for users to flag this via the CCMS user interface, but this functionality has still not been added for claims submitted via integrated external software (Bulk Upload).</p>	1	<p>a) The costs professional is unable to use third-party software and must use CCMS in order to prepare the claim. Not only do they incur cost in terms of lost return on their investment in third-party software (which they buy to increase their productivity), but they also incur additional effort using CCMS due to usability issues outlined in section 4.2.3.2 above. There will also be a delay in submitting the bill.</p> <p>b) The costs professional is unaware that the issue exists and duplicates effort by preparing the claim on third-party software and then again on CCMS after the upload fails.</p> <p>c) Even if the costs professional is aware of the issue, they may be unaware that a case falls outside fixed fees until a significant way through preparing the bill, meaning they still waste time preparing it on third-party software.</p>	5	5	Raised on 28-Aug-2014

Problem Type	Problem		Impact		Likelihood	Risk	Raised to LAA
	ID	Description	Score	Description		Score	
Design Gap	P27	<p><b>Must allocate a fee earner to disbursements</b></p> <p>Profit costs and disbursements are fundamental concepts of legal billing.</p> <p>One of the many differences between them is that a profit costs line is a unit of work done by a fee earner, whereas a disbursement is not normally associated with a fee earner.</p> <p>But CCMS requires a fee earner to be allocated to every line, including disbursements. This is not mandatory convention on legal bills in general, it is not required by the LAA paper process, and it is certainly not necessary in order to demonstrate whether the disbursement is properly claimable.</p>	1	Increased effort for the costs professional on this additional step, especially when multiple fee earners have worked on the same case and the correct fee earner who instructed the third party must be identified.	5	5	Raised on 28-Aug-2014

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