



Decision Paper – Should Post Office disclose the Peak System?

1. BACKGROUND

- 1.1 When Fujitsu identify an issue in Horizon or Horizon Online which requires a fix, details of this fix are logged in a database which is known as the Peak System. To date, the Claimants' Expert (Jason Coyne) has inspected the Peak System on site at Fujitsu's offices (and there is an open offer for further visits to take place) and requested screenshots of the Peak System. Since the Peak System contains c.220,000 entries, it is not feasible to undertake a manual process of taking a screenshot of each entry and we have informed Freeths that there is built in no mechanism for extracting the entries. Fujitsu have been exploring whether a method could be developed so as to export the documents from the database and provide the Claimants' Expert with these documents.
- 1.2 Fujitsu have now developed a programme which has allowed them to extract all of the Peak entries. Post Office is therefore asked to consider whether these documents should be disclosed to the Claimants and the review process which should be undertaken to identify privileged material.

Voluntary Disclosure

- 1.3 Whilst Post Office has not been ordered by the Court to provide disclosure of the Peak System, there a number of reasons why Post Office should consider providing these documents to the Claimants now:
- 1.3.1 Providing voluntary disclosure on this scale (c.220,000 documents) will be viewed favourably by the Managing Judge and continues Post Office's approach of providing assistance to the Claimants where it is reasonable and proportionate to do so.
- 1.3.2 It neutralises some of the Claimants' Expert's requests for information, because the answers can be found in the Peaks.
- 1.3.3 These documents will be of assistance to Post Office's Expert who cannot be provided with them unless they are also available to the Claimants' Expert.
- 1.3.4 Providing disclosure of these documents now will enable the Claimants' Expert to take these into account when producing his expert report (due on 16 October 2018). Post Office will therefore have visibility of Claimants' Expert's position at an earlier stage in the proceedings.
- 1.3.5 Post Office has an ongoing duty to disclose adverse documents. Given the nature of the documents contained in the Peak System, it is likely that it will contain adverse documents and therefore, disclosure of these will need to be given at some stage.
- 1.4 It should be noted that providing disclosure of the Peak System three weeks in advance of the Claimants' Expert's report may trigger criticism that this volume of documents were not disclosed at an earlier stage. The Claimants may also seek an extension of time in which to file their Expert report. These risks can be neutralised to a certain extent through reminding Freeths that there has been an open invitation for the Claimants' Expert to inspect the Peak system, an opportunity which they have not taken up, and that Fujitsu have had to develop a unique programme to enable the documents to be extracted, which has taken time. Further, due to the lack of crystallised allegations against Horizon we cannot determinate relevancy and therefore it is necessary to disclosure all c,220,000 documents,

Privilege

- 1.5 Prior to providing disclosure of documents, WBD would normally manually review each document to ensure that legally privileged material is withheld from disclosure. Due to the volume of documents there are a number of review options:

1.5.1 **Option 1:** disclosure the documents without any manual review and explain to Freeths that if privileged material has been disclosed that Post Office did not intend to waive privilege. The risk with this approach is that we would be reliant on Freeths to inform us of privileged material which has been disclosed and although the documents could not be relied upon, Freeths would still hold knowledge of the contents of them.

1.5.2 **Option 2:** to reduce the number of documents which need to be manually reviewed, keyword searches are used to identify documents which may contain privileged material. The documents which are responsive to these searches would then be manually reviewed for privilege. There remains some risk of disclosing privileged documents, however this would be mitigated through the use of keywords and Post Office can still reserve privilege over any documents which are inadvertently disclosed.

From initial tests, this would reduce the volume of documents to be reviewed to 3,886, costing approximately £11,000.

1.5.3 **Option 3:** undertake a full manual review of all documents (approximately 200,000) for privilege, combined with keyword searching as an additional check. This approach would not be risk free as identifying privileged material within technical documents will not be a simple review process, but would be safer than Options 1 and 2.

To undertake this exercise on 220,000 documents would take approximately 7,300 hours (at a rate of 1 document every 2 minutes) and cost approximately £575,000.

- 1.6 A similar consideration was previously given to the disclosure of the Horizon technical documents and Known Error Log, for which the Steering Group approved the use of Option 2. This paper is enclosed at Schedule 1 for ease of reference.

2. RECOMMENDATION

- 2.1 We recommend that Post Office provides disclosure of these documents and proceeds with Option 2. As Post Office has not been ordered to give disclosure of Peaks it is difficult to see how this approach, which strikes a balanced approach, could be criticised.

SCHEDULE 1

CONFIDENTIAL AND LEGALLY PRIVILEGED
POST OFFICE GROUP LITIGATION
Steering Group Meeting: 11 April 2018



DECISION: Should Post Office undertake a full review of the Known Error Log and Horizon technical documents for privileged material?

1. BACKGROUND

- 1.1 As part of Stage 2 Disclosure, Post Office has been ordered by the Court to provide disclosure of Fujitsu's Known Error Log and the technical documents relating to Horizon and HNG-X. All of these documents are relevant to the Group Action and therefore the manual review process to remove irrelevant documents does not need to be undertaken. However, there is a slim chance that some of these documents may contain legally privileged material which should not be disclosed.
- 1.2 Post Office is asked to consider the level of review which the Known Error Log and the technical documents should be put through to identify privileged material.

2. OPTIONS

- 2.1 The document review options are:
 - 2.1.1 **Option 1** - disclose the documents without Post Office undertaking any review and explain to Freeths that if privileged material has been disclosed that Post Office did not intend to waive privilege. The risk with this approach is that we would be reliant on Freeths to inform us of privileged material which has been disclosed and although the documents could not be relied upon, Freeths would still hold knowledge of the contents of them.
 - 2.1.2 **Option 2** – use keyword searching to locate documents which are likely to contain privileged material. These responsive documents would then be subject to a manual review. There remains some risk of disclosing privileged documents, however this would be mitigated through the use of keywords and Post Office can still reserve privilege over any documents which are inadvertently disclosed.
 - 2.1.3 **Option 3** – undertake a full manual review of all documents (approximately 90,000) for privilege, combined with keyword searching as an additional check. This approach would not be risk free as identifying privileged material within technical documents will not be a simple review process, but would be safer than Options 1 and 2. We would estimate that reviewing 90,000 documents would cost approx. £300,000.

3. RECOMMENDATION

- 3.1 We recommend that Post Office proceeds with Option 2.