

**POSTMASTER GROUP ACTION
CONFIDENTIAL AND LEGALLY PRIVILEGED**

Steering Group Meeting: 22 August 2016

DECISION 1: *Should Post Office undertake further work to preserve relevant documents?*

SUMMARY:

Background

Post Office has a Court duty to take reasonable steps to preserve any documents that may need to be later disclosed in the litigation. "Document" means practically anything holding information, including electronic documents like emails.

What will satisfy the duty to preserve documents will depend upon the likelihood of documents being lost, how they may be lost and the consequence on the litigation of losing a document. For example, for documents tangentially related to one minor sub issue in the litigation, only minimal action will be required. However, where the documents are required to determine a key liability issue, it will likely be necessary to have the documents forensically imaged to avoid them being lost.

Failing to adequately preserve documents could result in sanctions against Post Office – including cost penalties, striking out of parts of Post Office's case and / or the drawing of adverse inferences by a Judge (ie. by making assumptions against Post Office in the absence of documentary evidence to disprove those assumptions).

Steps to date

At the outset of the Group Action, Post Office Legal sent "litigation hold notices" to key parts of the business asking them not to destroy relevant documents.

Since then BD has liaised with various teams at Post Office regarding potentially relevant documents and document sources. Through these investigations, we have developed an understanding of document storage, retention and deletion across the business, as well as better understanding the current IT projects that may impact on document preservation. Please see the Document Locations Table attached to this paper for details of the locations in which documents are held.

These investigations have led to the development of the "Preservation Options" attached to this paper.

Options

Given the complexity of Post Office's IT systems and the different practices operated in different business units, we do not believe that simply sending general litigation hold notices (Option 1) or even more stringent, targeted litigation hold notices (Option 2) will be sufficient.

Conversely, the work to date has revealed that the indicative costs for forensically imaging all Post Office's systems (Option 5) to be in the hundreds of thousands of pounds (if not more) and this option is not viable.

Our view is that some form of limited forensic imaging of information is required – either of documents held by key custodians (Option 3) or by undertaking a deeper review to identify more relevant locations of documents (Option 4).

ADVANTAGES:

- The nature of the claims in this matter, particularly the fraud and concealment issues, means that preservation is a relatively high risk issue in this case. Losing key documents where there are allegations of concealment would weigh against Post Office in Court and would be presented by Freeths as yet another form of concealment. This militates towards Post Office taking a more stringent approach to document preservation.

CONFIDENTIAL AND LEGALLY PRIVILEGED

- Doing nothing risks falling foul of the Court duty to preserve relevant documents. Aside from the legal consequences, this would present very badly through a public / media lens.
- By taking steps now, we can then put Freeths on notice of what Post Office is doing and seek their early engagement on this issue. This will make it harder for them to complain later about missing documents.

DISADVANTAGES:

- Preserving and disclosing documents is one of the most expensive parts of the litigation process. All the defensible preservation options come at a material cost to Post Office.
- No matter what steps are taken, many documents will have been lost already due to the passage of time. Some amount of criticism about missing documents is inevitable and further work now cannot offer complete protection for Post Office.

RECOMMENDATION:

Post Office should commission the further scoping work described in Option 4 below. This would allow a more accurate cost estimate to be drawn up. A more informed decision can then be taken to proceed with either Option 3 or Option 4 (or otherwise).

In parallel, BD should write to Freeths to draw out their view on what would be a proportionate way to proceed.

POSTMASTER GROUP ACTION
CONFIDENTIAL AND LEGALLY PRIVILEGED

Bond Dickinson

Steering Group Meeting: 22 August 2016

PRESERVATION OPTIONS

Option	Summary	Pros/Cons	Defensibility	Cost range (ex VAT)
1	<p>Take no more action</p> <p>Rely on the hold notices already sent to the business and undertake a further review once Post Office has received the Particulars of Claim.</p>	<ul style="list-style-type: none"> × High risk that documents will not be retained. × High risk of criticism as there are additional steps that POL could reasonably take at this stage. ✓ Zero cost. 	Not defensible	Nil Cost
2	<p>Send improved litigation hold notices</p> <p>Based on investigations to date, draw up a list of key individuals within Post Office and then send specific hold notices to those specific individuals.</p> <p>With respect to external documents within POL's control, identify the key external business partners and stakeholders (eg. Fujitsu) and send bespoke hold notices to them.</p>	<ul style="list-style-type: none"> × It is unlikely that all relevant individuals/teams would be fully identified based on current information. × In light of the ongoing IT projects / migrations this is still relatively high risk. × Unlikely the preservation would be effectively implemented by all individuals. ✓ Low cost/impact. 	Likely not defensible	Less than £2,500
3	<p>Forensically copy documents from key individuals</p> <p>Based on investigations to date, draw up a list of key individuals within Post Office and then take forensic mirror images of any electronic documents stored in their email accounts and personal files.</p> <p>With respect to external documents within Post Office's control, locate key external business partners and stakeholders (eg. Fujitsu) and send bespoke hold notices to them.</p> <p>With respect to hard copy documents, obtain and store any original hard copy case files relevant to particular</p>	<ul style="list-style-type: none"> × Would likely require the assistance (and therefore cost) of a third party e-Disclosure provider in order to take forensically sound images of data. × Would not secure documents held in shared workspaces (eg Sharepoint, etc.) × Would likely require updating upon receipt of the Particulars of Claim. ✓ Limited POL time/interaction required. ✓ Shows a genuine attempt to preserve documents based on the current state of 	Likely defensible in the short term but would require updating in the near future	£15,000 to £75,000

CONFIDENTIAL AND LEGALLY PRIVILEGED

	Claimants.	✓ the claim.		
4	<p>Undertake further scoping work and then forensically copy documents from key individuals and in key locations</p> <p>Undertake a detailed further review of document locations/custodians and attend meetings with potential custodians and/or teams to obtain information on storage processes.</p> <p>Also scope out documents held in relation to each individual Claimant.</p> <p>This scoping work would allow a list to be drawn up of key individuals and key shared document locations (eg. relevant parts of Sharepoint, etc).</p> <p>Forensic images can then be taken of any electronic documents stored on key individual email accounts and personal files and in any other key shared workspaces.</p> <p>With respect to external documents within Post Office's control, locate key external business partners and stakeholders (eg. Fujitsu) and send bespoke hold notices to them.</p> <p>With respect to hard copy documents, obtain and store any original hard copy case files relevant to particular Claimants.</p>	<ul style="list-style-type: none"> × Would require time from business units in order to scope locations of documents. × Would require the assistance of a third party e-Disclosure provider. × Provides a good level of protection but protection is limited by the value of the information extracted from Post Office teams and is not future proof (eg. more documents could be created after copies are taken). ✓ Likely to preserve major locations of key documents. ✓ Shows a genuine attempt to preserve documents. ✓ Reduces the burden when Post Office reaches the disclosure stage in this action. 	Defensible but not perfect.	<p>Cost of scoping work: £10,000 - £20,000</p> <p>Cost of imaging documents: £25,000 - £150,000</p>
5	<p>Forensically image all key IT systems</p> <p>Engage an external e-Disclosure service provider to take a forensic mirror image of all Post Office servers and document storage locations.</p> <p>With respect to external documents within Post Office's control, we would propose locating the key external business partners and stakeholders and send bespoke hold notices and/or document requests to them (with the option to obtain forensically sound copies where appropriate).</p>	<ul style="list-style-type: none"> × Time consuming (but less so than above). × Most expensive option (due to IT costs of mirroring very large amounts of data). × Provides full protection with respect to historic electronic documentation only (still need to rely on the hold notices to prevent future deletions). ✓ Less invasive/time consuming than option 4 above. 	Gold standard, minimal risk of preservation failure.	£700,000 - £1,500,000

CONFIDENTIAL AND LEGALLY PRIVILEGED

	With respect to hard copy documents, obtain and store any original hard copy case files relevant to particular Claimants.	✓ Provides full protection with respect to historic documentation and avoids the need to revisit retention (certainly in the short term).		
--	---	---	--	--

POSTMASTER GROUP ACTION
CONFIDENTIAL AND LEGALLY PRIVILEGED

Bond Dickinson

Steering Group Meeting: 22 August 2016

POST OFFICE - DOCUMENT LOCATIONS TABLE

HOLDER	SOURCE	POSSIBLE PRESERVATION ACTION	COST (EST.) – provided by business and not verified.
Post Office	OLD ELECTRONIC		
	<ul style="list-style-type: none"> Lotus (old emails and archive) 	None – we understand that these emails are preserved on tape (below)	-
	<ul style="list-style-type: none"> Archive Tapes (fixed email archives prior to the change to Office) 	These tapes could be requisitioned – we understand these emails were not otherwise transferred when the provider changed	£20k CSC time
	<ul style="list-style-type: none"> NetApp (old OneDrive equivalent) 	None – we understand that these documents have been transferred to SharePoint and/or OneDrive or were otherwise lost on transition in 2015	-
	<ul style="list-style-type: none"> Microsoft Office 	None – email system used post Lotus and pre Office 365 – all copied to Office 365 and Mimecast	-
	<ul style="list-style-type: none"> FileServers (CFC Cloud) 	Not all of these have been transferred to Home Drives, OneDrive and/or SharePoint - forensically sound images could be taken of all documents on this system	£150k CSC time
	NEW ELECTRONIC		
	<ul style="list-style-type: none"> Computers (personal) 	None – should be captured by the proposed hold emails / could forensically image hard-drives.	-
	<ul style="list-style-type: none"> Phones (personal) 	None – should be captured by the proposed hold emails / could forensically image hard-drives.	-
	<ul style="list-style-type: none"> External Storage Devices 	None – should be captured by the proposed hold emails / could forensically image hard-drives.	-

CONFIDENTIAL AND LEGALLY PRIVILEGED

<ul style="list-style-type: none"> • POL SAP 	PO product from Horizon - forensically sound images could be taken of all documents on this system	£250k Fujitsu and Steria time
<ul style="list-style-type: none"> • Home Drives 	Drives held on file servers - forensically sound images could be taken of all documents on this system	Included in FileServers
<ul style="list-style-type: none"> • OneDrive 	New cloud based location for certain of the Home Drives and NetApp docs (and for use in the future) - forensically sound images could be taken of all documents on this system (would need Microsoft support)	£150k Licencing and time from Microsoft?
<ul style="list-style-type: none"> • Office 365 	None – new emails should be captured by hold notices. Old emails will be stored on the Mimecast archive	-
<ul style="list-style-type: none"> • Mimecast 	New email archive (all in and out and a full copy of historic archive/email accounts) - forensically sound images could be taken of all documents on this system	Already forensically sound immutable archive, just access required
<ul style="list-style-type: none"> • SharePoint 	Team and project specific drives - forensically sound images could be taken of all documents on this system. No historic log of documents so old documents could have already been deleted.	£150k Microsoft licencing and time
<ul style="list-style-type: none"> • FileServers (cloud CSC) 	FileServers copied from the RMG estate, not held elsewhere by design - forensically sound images could be taken of all documents on this system	Included in CSC FileServers above
<ul style="list-style-type: none"> • Proofpoint 	None - old emails from 2012 – 2015 which may, or may not, be stored elsewhere on Mimecast, Lotus and/or tape	-
<ul style="list-style-type: none"> • Huddle • 	Copies of the relevant group areas could be forensically imaged	-
HARD COPY <ul style="list-style-type: none"> • Offices • Home Offices 	These documents should be captured by hold notices already sent to individuals within Post Office, and the further team specific hold notices could be sent.	-

CONFIDENTIAL AND LEGALLY PRIVILEGED

	<ul style="list-style-type: none"> Box-it archive (used to be Iron Mountain) 		
	<p>SUPPLEMENTAL</p> <p>These sources will be used differently by different teams within Post Office. We understand that certain teams have team specific retention policies/schedules.</p> <p>We understand that the following software/programmes also interact with Horizon and short term documents are accessible by Post Office:</p> <ul style="list-style-type: none"> Branch Databases Credence HORis MDM Eternis 	<p>Could send hold notices to all internal team managers – including the following:</p> <ul style="list-style-type: none"> Finance and FSC Audit Security Contract Advisors Contract Admin Training Teams NBSL Fraud Analysis Legal IT <p>Could also consider sending bespoke communications to the individuals on the Steering Group, Working Group, and any Horizon conception/testing/maintenance specific teams within Post Office.</p> <p>The software in the left column should not be imaged on the basis that they provide short term access to Fujitsu master data, not separate documentation and not relevant to historic claims.</p>	-
Fujitsu	<p>Generic files and servers as well as the following specific sources that we believe exist:</p> <ul style="list-style-type: none"> Eternis PEAK system Horizon Service Desk SharePoint (or equivalent) containing Horizon design docs etc. 	<p>Could send itemised hold notice to key relationship managers – containing a generic preservation request, as well as specific requests with respect to the source documents listed in the left hand column.</p> <p>Consider the need to also meet in person to discuss document sources and required preservation actions.</p> <p>Contractual notice to preserve to be issued if available.</p>	- - -

CONFIDENTIAL AND LEGALLY PRIVILEGED

Royal Mail	Historic documents and emails predating the division of Post Office and RMG. 90% of these documents (approx.) were transferred – gauged by access/unit of time.	None – where possible all Post Office documents have been extracted and transferred. Consider sending hold notice (if current holds insufficient).	-
Second Sight	Unknown	It is understood that SS have provided a complete copy of their documents to POL already. This is held by BD.	-
CRK	Unknown	Still investigating this source.	-
ATOS	Unknown	Could send itemised hold notice to key relationship managers – containing a generic preservation request. Could possibly obtain copy documents now.	-
Deloitte	Unknown	Could send itemised hold notice to key contacts.	-
Clients (Banks, Lottery etc)	Unknown	None – these files are not within Post Office's control so are outside of Post Office's preservation duty.	-
Bond Dickinson and other law firms	Various	Legal files should be preserved already. Many files already held on CCRC database. Specific requests could be sent to Cartwright King for criminal files.	-