



DECISION: Should Post Office extract all documents from SharePoint?

1. BACKGROUND

1.1 This paper is in two parts:

1.1.1 Part 1 provides a general update on disclosure.

1.1.2 Part 2 asks whether Post Office should extract the whole of SharePoint to assist with disclosure.

2. PART 1 – DISCLOSURE UPDATE

2.1 There is a hearing on 2 February 2018 at which the Court will decide what further disclosure of documents should be given by both sides. We are trying to agree the scope of the disclosure with Freeths and held a meeting with them on 22 December 2017.

2.2 Our meeting with Freeths was cordial and constructive in tone. We are however in completely different positions on disclosure:

2.2.1 The Claimants are seeking standard disclosure on all issues, but delivered in tranches with the first tranche in around March 18 and all tranches having been given before the Common Issues trial in November 18. This is effectively a call for the disclosure of all documents upfront.

2.2.2 Post Office's proposal was for staged disclosure, with the stages tying into the future course of the litigation. The first stage would be aimed at the documents needed for the Common Issues trial in November 2018. Further stages of disclosure can then be agreed once the scope of future Court hearings has been set – see our paper of 15 December 2017 that describes the proposed long term strategy.

2.3 Freeths currently have no proposals for a trial in March 2019 and no view on our proposal of a Lead Claimants Trial in 2020. They think the judge will want to do something in March 2019 that moves this litigation close to resolution and will not be attracted to a later trial in 2020. With that in mind, they want standard disclosure on all issues before the November 2018 trial so that the judge can then order anything he wants for a trial in March 2019.

2.4 Freeths suggested that the March 2019 trial should cover a "*wide range of substantive issues*" but when pressed on which ones, they could not provide any indications. We pointed out that to do something this broad would require more Lead Claimants, pleadings, disclosure, witnesses and experts to be prepared in parallel to the Common Issues trial in November 2018 and that would require work to start now. We also flagged that the scope and preparation for a trial in March 2019 may be dependent on the judgment arising from the Common Issues trial in November 2018. It became apparent that Freeths have not thought about the practicalities of running a significant trial in March 2019 or the prior steps that might need to be taken.

2.5 The general impression from the meeting was that Freeths have done little forward planning beyond November 2018 and that they do not really understand how to undertake a major disclosure exercise. We therefore believe it is likely that we will be going into the 2 February 2018 hearing without any agreement on disclosure.

2.6 We have a further meeting with Freeths on 5 January 2018 and will report back on any progress.

3. PART 2 – EXTRACTING SHAREPOINT

- 3.1 SharePoint is the key repository of documents used by Post Office. A decision was taken by the Steering Group last year to preserve some of SharePoint by extracting the documents from the Contract Advisor's SharePoint sites and storing these in a litigation data room hosted by Advanced Discovery. Post Office is now asked to consider whether the remainder of SharePoint should be extracted.
- 3.2 At some stage in the Group Action, Post Office will be required to disclose to the Claimants documents which are stored in SharePoint. To do this, a copy of the documents in SharePoint will need to be moved into the litigation data room. This enables WBD to run keyword searches on the documents so to identify those that are relevant to the Group Action and then review those relevant documents so to decide which should be disclosed to the Claimants. Due to the limited searching and reviewing facilities within SharePoint it is not possible to undertake this work without first extracting documents from SharePoint into the data room.
- 3.3 A full extraction of SharePoint now offers the following advantages:
- 3.3.1 **Tactical advantage** – we will need to agree with Freeths the scope of disclosure, which includes agreeing sources of documents and keyword searches. If we try to do this before having extracted SharePoint we will largely be guessing how many documents need to be disclosed. Once all the documents are in the data room, we can run test searches and therefore scope disclosure much more accurately. This also gives us better information on which to oppose any unreasonable requests eg. we could oppose certain keyword searches if the test searches showed the proposed keywords were returning millions of irrelevant documents.
 - 3.3.2 **Early disclosure** – part of our strategic approach to disclosure is to give an early tranche of documents to the Claimants by the end of February 2018 so that Post Office looks to the Court as if it is cooperating with giving disclosure and looking to progress matters with speed. To do this, we need access to the SharePoint documents.
 - 3.3.3 **Speed of response** – we do not know what the Court might order in respect of disclosure. Extracting the whole of SharePoint is expected to take around 30 days (though technical tests to verify this are still ongoing). If Post Office waits until later, or extracts SharePoint in stages, we are likely to lose several weeks of valuable time which may be needed depending on the timetable set by the Court.
 - 3.3.4 **Reduce technical issues** – extracting SharePoint is technically challenging and time consuming process. A single extraction would minimise the technical assistance required from Advanced Discovery, Computacenter and POL IT.
- 3.4 Further, Post Office has a Court duty to preserve documents and the failure to do so could result in sanctions against Post Office (i.e. cost penalties, striking our parts of Post Office's case, allowing the Court to draw adverse inferences against Post Office). Whilst the business has been informed that documents relating to the Group Action should not be destroyed, there remains a risk that relevant documents stored in SharePoint may be inadvertently deleted. Once documents have been deleted from SharePoint they cannot be recovered. Extracting the entirety of SharePoint would further reduce this risk by taking a permanent snapshot of the documents which exist in SharePoint on the date of extraction.
- 3.5 The downside of this exercise is cost. SharePoint contains 1 TB of data (which is a lot). Advanced Discovery estimate that to extract all of SharePoint would cost approximately £145,000. This is a ball park figure dependent on the speed / technical limits of extracting SharePoint. Once extracted, SharePoint would be hosted in the litigation data room with hosting costs of £15,000 per month. These costs will be ongoing until the conclusion of the Group Action, although they could be reduced by placing any documents that are extracted from SharePoint but do not relate to the Group Action into archiving.

4. RECOMMENDATION

- 4.1 WBD recommend that Advanced Discovery are instructed to extract all documents stored in SharePoint into the litigation data room.