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Subject: Horizon - document retention options

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Importance: Normal

Attachments: _DOC_33142784(1)_RETENTION_-_POL_document_locations_-_July_2016.docx;
_DOC_33472550(1)_RETENTION_-_POL_Options_document_-_July_2016.docx

Inline-Images: image007.jpg; image008.jpg; image009.png

Rodric

Action required: please let us know when you might be around for a call / meeting to discuss the below.

Further to our various discussions, we write now to set out our current thinking on document preservation in this claim. We've set this out in some detail (see below and attached) so that we have documented the audit trail of this activity. The output from this work is attached:

Document location summary (showing how Post Office documents are stored) – red font highlights potential retention actions for illustration only.

A preservation options summary (showing the various options and the pros/cons of each). Our current view is that Option 3 or 4 are the most proportionate options.

Preservation rules

Practice Direction 31B (7) states that:

"As soon as litigation is contemplated, the parties' legal representatives must notify their clients of the need to preserve disclosable documents. The documents to be preserved include Electronic Documents which would otherwise be deleted in accordance with a document retention policy or otherwise deleted in the ordinary course of business."

What will satisfy the need to "preserve" documents will depend upon the likelihood of documents being lost, how they may be lost and the consequence of the same. For example, for documents tangentially related to one minor sub issue, it may be enough to send hold emails to the relevant team (assuming there is not periodic deletion process). However, where the documents are financial accounts required to determine a key liability issue, it will likely be necessary to have the documents forensically imaged to avoid adverse inferences being drawn.

Failing to adequately preserve documents could result in sanctions – including cost sanctions, striking out the statement of case (or parts of it), and the drawing of adverse inferences by a Judge. Falling foul of the requirement to preserve potentially relevant documents could also look very bad through a public / media lens.

The nature of certain 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 obviously play out badly. This militates towards POL taking a more stringent approach to document preservation.

Steps taken to date

To date we have liaised with the Company Secretary (regarding retention policies), the IT team (regarding document creation/migration/storage/extraction/deletion), and the Issues Resolutions, Support Services, Agency Contracts and Contract Advisors teams regarding potentially relevant documents and document sources. This has included discussions with:

Victoria Moss

Sharon Gilkes

Dave King

Craig Tuthill

Kath Alexander

Shirley Hailstones

Through these discussions we have developed an understanding of document storage, retention, and deletion, as well as better understanding the current IT projects that may impact on document preservation (including an ongoing migration exercise from RMG). We have also obtained indication of Post Office's business wide document storage solutions, extraction logistics, and the size and locations of the associated document locations.

Through this work we have established that documents that are potentially relevant to the claim are held in many different business groups, and that it is not possible to produce a definitive list of business groups that hold/control/can affect potentially relevant documents.

We also understand that there is an ongoing project to migrate documents to new systems. This appears to be being led by Victoria Moss, with Sharon Gilkes dealing with the IT side of the transition. POL need to be doubly sure that it has documented the instruction that historical documents are not to be deleted as part of the current migration. We have explained this to Victoria Moss and Sharon Gilkes but we also recommend sending an internal memo to the powers that be dealing with this point explicitly.

Off the back of these discussions, we have developed the preservation options set out in the attached document.

Options

Through our discussions with the various teams at Post Office we now have a good idea of how Post Office's documents are held, how the retention policies operate, and which teams are likely to hold/control/affect potentially relevant documents. From this we could draw up a basic list of key custodians. However, we have not yet identified all custodians or the specific locations in which each custodian holds information.

Given the complexity of POL'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 indicative costs for forensically imaging all Post Office's systems (Option 5) has been in the hundreds of thousands of pounds and this option is therefore not viable.

Our view therefore 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 (Option 4).

Both of these options afford Post Office a very good level of protection from adverse inferences in the event that relevant documents are lost between now and disclosure/trial. They also allow us to present a reasonable position to Freeths in correspondence.

Next steps

We haven't at this stage costed any of these options. We would first like to talk these through with you so to make sure we are on the right track, we can then cost up which is the preferred option.

Kind regards

Tom

Tom Porter

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