



Decision paper: POLSAP data hosted by Fujitsu

1. BACKGROUND

- 1.1 Post Office has copied the POLSAP data hosted by Fujitsu to a platform hosted by Accenture. Fujitsu would now like to delete the data which they hold. This paper seeks a decision on whether the data should be deleted, or maintained for the duration of the Group Action.

2. THE PROCESS

- 2.1 POLSAP was historically hosted by Fujitsu and Post Office have undertaken an exercise of copying the data from Fujitsu to Accenture. For this process, POLSAP has been taken out of use and the data has been transferred and now stored on Accenture's azure platform in read-only mode. This has effectively placed a litigation hold on the data which should prevent the deletion of this data from the new platform. Fujitsu continue to hold a copy of the historic data until confirmation is given by Post Office that it can be deleted.
- 2.2 The cost of Fujitsu continuing to host the data is around £1.3 million for a further 12 months (circa. £110,000 per month).
- 2.3 Fujitsu and Accenture have undertaken a number of checks to confirm that the data extracted and uploaded matches and that Post Office can still access the same data as before. The enclosed paper from Post Office IT explains the checks which have been undertaken.
- 2.4 Whilst Post Office can take some comfort from the checks and validations produced by Post Office IT, we as lawyers cannot confirm whether there have been any issues with the data migration or whether there will be any issues with accessing the data going forward.

3. RISKS OF DELETING THE DATA

- 3.1 Parties to litigation must not destroy any documents which might be relevant to the matters in issue. Parties are expected to suspend all routine document destruction policies when litigation is afoot. Failure to comply with the court rules on preserving documents could lead to the court drawing adverse inferences if any disclosable documents are destroyed.
- 3.2 The data in POLSAP is relevant to the Group Action and therefore needs to be preserved for the purposes of the Group Action. POLSAP is a document repository which we have not had cause to search yet as part of the disclosure exercises for the Common Issues and Horizon Issues Trials. We estimate that access to POLSAP will be needed for Trial 3 and so access will be necessary for at least the next 12 months (if not longer).
- 3.3 If POLSAP data is deleted from Fujitsu's system, Post Office would be reliant on the migration to Accenture's azure platform being correct. If the migration has not been successful this will cause risks for the Group Action.
- 3.4 In light of the criticisms from the Common Issues Trial, whilst this judgment remains in place the disclosure and preservation of documents by Post Office will be under heightened scrutiny. The ongoing attitude of the Judge is that anything that looks like Post Office failing to preserve materials is likely to be heavily criticised. Adverse inferences could be drawn that Post Office is hiding something and risks feeding into the Judge's current perception of Post Office.

3.5 If the preservation of POLSAP data is challenged in the litigation, a member of Post Office IT (probably Ben Cooke) will need to provide a witness statement explaining what happened. We may also require a second witness statement from a senior employee explaining why the decision to delete the data was made.

4. OPTIONS

4.1 This is ultimately a business decision on whether Post Office is willing to accept the litigation risks vs. the ongoing costs of hosting POLSAP by Fujitsu.

4.2 Post Office options are:

4.2.1 **Option 1** - Delete the data from Fujitsu's systems and rely upon the data in Accenture's platform.

4.2.2 **Option 2** - Continue to instruct Fujitsu to host the data for a further 12 months.

4.2.3 **Option 3** - Obtain a third party report to certify that the migration has been carried out effectively (which could be carried out alongside Option 1 and 4). We understand that Ben Cooke of Post Office IT is currently looking into this matter.

4.2.4 **Option 4** - Approach Freeths to seek agreement that they are satisfied that the migration has been carried out effectively and that Post Office can rely on the data stored on Accenture's platform.

4.3 If Option 1 is followed, we recommend producing and signing witness statements from the relevant individuals before the data is deleted.

4.4 If Option 2 is followed, we recommend re-assessing this decision in 12 months' time when the landscape of the litigation has evolved.

4.5 Option 3 does not remove the risks that the court makes an adverse finding against Post Office if data is destroyed. However, it will help lay an evidence trail of internal considerations if Option 1 is selected.

4.6 If Option 4 is followed, we recommend obtaining the third party report first to give assurances to Freeths. If Freeths agree to the deletion of the data this would provide Post Office with the maximum level of protection, although not complete as the Judge may still raise concerns in any event. However, it is unlikely Freeths would agree to Post Office deleting the data. In these circumstances, Post Office will still need to make a decision of whether to delete or retain the data, with the additional factor that Freeths have objected to the deletion. For this reason, although Option 4 provides the greatest cost benefit, we would not recommend this approach.