

## **Electronic Document Retention And Storage Gives You The Edge In Litigation.**

According to the Civil Procedure Rules (“CPR”) In any civil court case, each party must disclose to the other all documents that each wishes to rely on, or which adversely affects their own or another party’s case.

The procedure, referred to as Disclosure, is often crucial to the progression of a case, giving each party its first true indication of the strengths of the opponents’ and their own cases. The procedure can also be time consuming and costly. The costs of Disclosure typically form 30% of the total costs of an action.

A document is defined within the CPR as anything in which information of any description is recorded. Increasingly, Disclosure is concerned with the provision of information stored electronically. By way of example, the CPR specifically mentions, emails, text messages, voicemails, word processed documents and databases, documents held on portable devices such as memory sticks and mobile phones, documents stored on servers and back-up systems, documents that have been deleted, metadata and other embedded data.

Given the diversity and often the immense volume of documents a party is obliged to consider prior to Disclosure, the advantages of a well thought out document retention and storage policy are significant.

Simply put, it will greatly increase your chances of achieving a positive result in litigation and minimize your costs.

As soon as litigation is contemplated the CPR states that a solicitor must advise a client that all documents that are potentially to be used in the case must be preserved. If no retention policy is in place at this stage, you are faced with a potentially lengthy and difficult attempt to secure documents that may have been generated many months or even years ago and that may have been deleted, in some cases deliberately in order to conceal them.

If all documents are accessible, you can commence preparation of your case and along with your solicitor evaluate the likely prospects of success. Being prepared early in a case may give you the opportunity to make an offer to settle at the right level, to either avoid court proceedings all together or to put you at an advantage in later arguments about costs.

If court proceedings are necessary, being able to access the evidence in support of your case can assist your legal team in putting together a well focused case that can maximize your chances of success from the outset.

Once proceedings have been commenced, the Court places an emphasis upon the parties agreeing the terms of disclosure of electronic documents and in more complex cases you will be obliged to complete a questionnaire about what steps you have taken regarding disclosure of electronic documents. If you have all documents at your disposal, through your solicitor you can set the agenda for Disclosure, putting the other side under pressure which may result in their case not being as well prepared as it should have been and if they fail to comply with Court directions obtain an interim costs order against them.

Being prepared for disclosure also allows you and your solicitor to focus on the documents you receive from the other side. If there are obvious deficiencies in the other party’s disclosure this can be addressed. An application to the Court for “specific disclosure” can be made if you are aware of

information, which is not in your opponents original Disclosure. This obliges the other party to try to retrieve documents that they possibly had not considered before and force them to incur further costs.

Your solicitor should work closely with your IT professionals, not only to ensure that all your information is properly recovered, but that analysis of all documents is carried out as thoroughly and cost effectively as possible using the latest "intelligent Prioritisation" and "Intelligent Categorisation" software.

Proper and thorough analysis of all documents in a case has obvious benefits in the preparation of witness statements and instruction of expert witnesses and ultimately final preparations for trial. Not only ensuring that you achieve the best result from a case, but also that it is done cost effectively.

A considered and comprehensive document retention and storage policy is a first and essential step to giving you an advantage in litigation. It will not only assist you in a court action but can also help prevent the need for litigation in the first place.

### **How Long Do I Need To Keep My Documents**

With regard to how long documents should be retained, as well as the requirements of professional bodies regarding archiving, you should also consider the time limits for possible actions as set out in the Limitation Act 1980. This puts a time limit on when actions can be brought, but those limits are lengthy. For example, an action based on a contract can be brought at any time up to 6 years after the cause of complaint occurred. If that action is based on a "specialty", a document such as a deed, the period is 12 years. For actions relating to defective products a claimant has up to 10 years to bring an action. Time limits can even be open ended and so it is essential to seek professional legal advice.

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