

Collection of documents: Choosing a provider

1. The first question to ask is whether you want to deal with the disclosure process internally or externally?
2. That will depend on a number of factors not least of which is whether your law firm has the in-house capability to deal with e-disclosure itself.
3. If your law firm does have litigation support, it may be possible to deal with the e-disclosure internally. Alternatively, internal litigation support can assist in going out to the market to select a suitable product and external service provider. If your firm has its own software and you are considering undertaking the disclosure process internally, you will need to consider the following:
 - a. Is there the expertise to deal with collection of the documentation, e.g. in terms of preserving the meta data attached to the electronic documentation.
 - b. What sort of database do you think you require for the documents? Do you want a straightforward review platform only or do you want analytical tools also? Do you think you need an "early data assessment" database, and then migrate documents onto a review platform afterwards?
 - c. What volume of documentation is involved?
 - d. How many people do you think will need access to your documents for review purposes?
 - e. How much support do you have in-house to help you through the process from collection through to disclosure and beyond? If so, is their time charged to the client and how much time do you think is required?
4. Don't forget to consider the professional risks of undertaking the work in-house.
5. For the purposes of this talk, let's assume that you are considering using an External Services Provider ("ESP").
6. There are many advantages to using an ESP. In particular:
 - a. The ESP should be able to provide the database that is right for your particular needs;
 - b. There will be the expertise to extract documents in the best way possible to ensure basic meta data is preserved etc;
 - c. There will be IT and litigation support provided late into the night and weekends – unlike many firms' own in-house provision;
 - d. Reducing professional risk – let a third party service provider shoulder some of the risk if things go wrong vis-à-vis the client.

7. When considering an ESP, thought should be given as to whether this is a one off job or whether you wish to establish a framework for one or two preferred suppliers through the provision of a framework agreement and call off contracts for work in the future.
8. In reality, the most common situation is a one off job that may mushroom into a long-lasting relationship between law firm and ESP.
9. The advantage of establishing a formal relationship will be cost as both law firm and ESP can share risk together through a suitable pricing structure. In a one off situation, the ESP will seek to place the risk all on the law firm by way of higher costs (usually through the per GB hosting cost).
10. If you want to establish 1 or 2 preferred providers, what is your firm's procurement policy? Who are the stakeholders within the firm who need to be involved in the process? What are the advantages of having a preferred supplier:
 - a. A relationship of trust with wraparound support that isn't just 9 to 5 – reducing the risk of things going wrong;
 - b. A more competitive pricing structure – by sharing out the risk. May achieve a fixed price on each particular job – better than the per GB pricing model;
 - c. A call-off contract can be made at any time which will assist with last minute or urgent document reviews that are required or when preparation is required ahead of the first CMC – the infrastructure is in place to initiate the appraisal process;
11. So, what recommendations can I make in terms of choosing an ESP?
 - a. The market is awash with ESPs. Consider first what your likely needs are going to be - how many documents there are, what types of documents there are, how many people there may be reviewing the documents, where the documents are physically located and whether there are any unusual features (e.g. unusual software, different languages etc), whether there are any hard copy documents that will need copied, scanned and coded, how long you are likely to need the database(s) for and, finally, what you will need to do with the documents to get them ready for disclosure.
 - b. If you already have a particular database in mind, make sure that the ESPs you plan to approach for a quotation can offer that particular database to you.
 - c. Check around your firm for any recommendations.
 - d. Bearing this in mind, approach about 4-6 different ESPs and discuss your requirements. Ask for a price based on those requirements and ask that the prices are broken down so that you can see each component and how the price has been built up. The way prices are quoted inevitably vary in how they are structured.
 - e. When the prices come in, consider what contingencies or assumptions have been built in. Look, in particular, at project management or IT support costs provided by the ESP – are they included in the price and based on an assumed number of hours? Or, will they be charged separately? Does the price including up-front training (and, if so, for how many users)? Do you agree with their estimate of time spent in project management? What terms and conditions apply (as to notice periods for ending the arrangement etc)?
 - f. Go back to each ESP to clarify any issues. At this stage, you should be able to compare and contrast each ESP quote. Now draw up a shortlist of 2-3 ESPs.

- g. The next stage is to invite each ESP on your shortlist to your office to give you a demonstration of whatever database they recommend or that you have specified. Ensure:
- i. that the person who will be providing the project management support and the main fee earner from your law firm who will be liaising with the project manager will be in attendance at the demonstration.
 - ii. you have a list of questions for each ESP about the practicalities of using the database – will the software sit in your own network or externally and, therefore, (if necessary) can it be accessed by users anywhere? Do users need particular software downloaded to their viewers in order to be able to access the database? Can it cope with the scale of documents? Are there times of day or week when it will not be available to reviewers (due to back-of-house work)? How long does it take to load up a 10 page PDF document as opposed to an Excel spreadsheet? Can documents be downloaded or printed off the database in bulk? Can documents be viewed in their native format when available? Will the database highlight all key word hits within a document? Can the software separate parent documents from attachments?
 - iii. Ask about project management/support – what hours of the day will someone be available to help with IT difficulties or with IT questions (such as setting up complex searches, fixing errors, performing certain administrative functions etc) (and does this include weekends if necessary?), if there's a bug in the system, who will fix it and how long will it take?