

An introduction to eDisclosure for public sector strategic decision-makers and legal directors

Improving Confidence and Delivering Value: eDisclosure for Public Services

- Increase public confidence
- Redirect resources to frontline services
- Harness technological benefits
- Civil litigation
- Employment tribunals
- Subject access requests (GDPR)
- Freedom of Information Act Requests
- Manage increasing data volumes
- Comply effectively & efficiently
- Reduce legal service expenditure
- Public inquiries
- Major investigations
- Serious case reviews
- Internal organisational reviews

The public sector in the UK is creating, sharing and securing more electronic data than ever. When that data is required for legal disclosure, the terms eDisclosure or eDiscovery are often used. This area of legal technology concerns the platforms, processes and innovations by which electronic information, typically in vast quantities, is exchanged, primarily for the purpose of legal proceedings.

This non-technical overview of eDisclosure technology and practice hopes to provide some insight as to how eDisclosure could assist your public sector organisation, improve confidence, and deliver value.

The Crown Commercial Service's (CCS) eDisclosure Services framework (RM3717) allows public sector bodies to access eDisclosure services in a quick and straightforward way. We are very pleased to be a supplier on that framework, able to implement solutions within pressing timescales.

Eleanor Pyemont, May 2018



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Introduction

We understand that the UK public sector has been undergoing a period of sustained change and financial contraction. Public sector leaders are experiencing financial pressure as never before, alongside an increasing demand for essential services. These pressures exist within the wider context of expansion in data volumes and a growing public appetite for transparency and accountability from society's central institutions.

We know that managing information, particularly for the purposes of legal processes and disclosure - civil claims, employment tribunals, FOIA, GDPR and public inquiries, can be highly resource intensive and pose significant legal risk to already stretched public service resources. Getting quick access to the latest time-saving technologies to assist in managing these pressures, can be a challenge for public sector organisations.

The purpose of this introductory paper is to give you a brief overview of how modern legal technology, known as eDisclosure or eDiscovery, can help you as a public sector leader to reduce the heavy costs of responding to legal obligations, whilst also increasing the confidence of your key stakeholders in the integrity of your disclosure processes.

As a former public sector leader responsible for public inquiry disclosure, and a relative latecomer to legal tech, I have tried to write the introduction I would have found of most practical use when defining the scope of requirements.

We hope this document will provide a useful introduction to electronic disclosure; what it means and how it could work for your organisation. If you would like to know more, please do not hesitate to give us a call on 0203 217 0300.

Public bodies can quickly access eDisclosure services through the Crown Commercial Services framework (RM3717), of which we are very proud to be a part. Public bodies are actively encouraged to engage with suppliers in order to understand their requirements and the solutions that may be on offer. We are happy to provide initial scoping conversations and guidance on a no-fee, no-obligation basis.

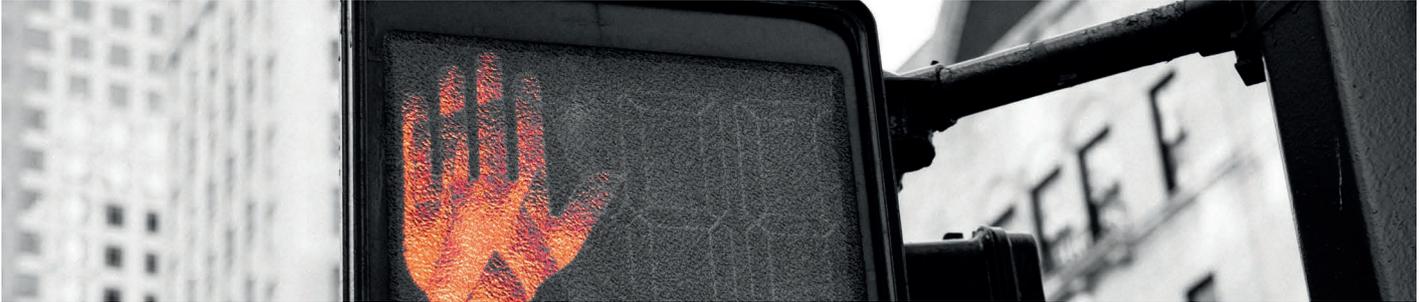
Thank you for taking the time to read this, we hope that you find it useful.

Eleanor Pyemont, Anexsys, May 2018





Public Sector Disclosure before eDisclosure



Manual disclosure without technical enablers involves huge reliance on human accuracy, skill and consistency. Below, we have illustrated some ways in which organisations and teams may attempt to comply with disclosure requirements without the support of technology.

- A member of staff or the legal services team may manually search each relevant term, where possible, within each relevant system, printing out hard copies of the documents.
- Searches are highly likely to be limited by the search functionality of the system used - i.e. if no 'near' searches, Boolean or complex search strings are available, then material can be missed (for example, the Outlook search tool does not search within attachments to emails).
- Issues of data standards and variation are well-known within the public sector, and a challenge to ensure all relevant information is considered and reviewed. Data standards, input variation and search and review methodologies were central failings as identified by the Bichard Inquiry (The Bichard Inquiry Report, 2004).
- Accurate recall of significant details is as key to compliance with information legislation as it is to safeguarding decision-making.
- Electronic documents are then often printed and scanned into a legal case management system before legal review and manual disclosure takes place (possibly again in hard copy).
- Any redactions may be applied in pdf, then printed and scanned again to ensure full security of sensitive information.
- Staff managing a disclosure and review exercise in these scenarios may need to maintain increasingly complex spreadsheets tracking search methodologies, documenting references and review decisions - each entry is reliant on perfect human accuracy.
- Disclosure is likely to take place in hard copy with manual indices being compiled by lawyers with printing and compiling completed by paralegals.
- Manual disclosure work flows not only increase legal and organisational risk through greater reliance on human accuracy and compliance, they also struggle to cope with rapidly increasing data volumes.
- If any new searches or questions arise relating to this document, they will need to be reviewed again for different purposes.

We believe that as soon as a case involves more than 300 pages or 50 documents, eDisclosure techniques can provide a cost saving opportunity for public sector organisations.



Section 1: High Impact Disclosure Scenarios

Here are some practical examples of how eDisclosure services could be of benefit to your organisation:



Civil Litigation

A member of the public alleges that your organisation has failed in its statutory duties.

They cite five to ten individuals whose work may be relevant to the alleged systematic failure covering a period of five years. Relevant documents are emails, documents, meeting minutes,

shared drives and numerous, complex entries on your organisation's case management system, call handling and other information management systems. The member of the public reports limited confidence. There are likely to be upwards of 100 relevant documents to this claim.

Global Data Search Capacity

Using eDisclosure, you can create a central 'pot' of all these data sources by forensically capturing them from their 'home' system, and then running search terms across all the documents in one go. Our preferred platform even creates an internal dictionary which learns all the different ways a word may have been entered onto a system, giving you confidence that you've captured all the material. This is particularly useful for commonly misspelled names, where many users may have inputted a range of spelling variations. With eDisclosure techniques, you can always trace back instantly as to where a document came from, as original file structures and mailboxes are locked down.

Search Term Reporting

Litigation in the public sector often involves highly emotive topics where a lack of organisational trust has become a factor. With a platform such as Relativity, you can easily produce and share 'search term reports' along with your disclosure, to demonstrate the integrity of your processes and exactly what searches have been completed. Every key stroke is retained, retraceable and reportable.



Public Inquiries, Serious Case Reviews and Major Investigations

A devastating public safety incident takes place, and your organisation has been involved in providing services to those involved before, during, and in the aftermath of the event.

There could be relevant information spread across numerous corporate and individual systems, geographic and specialists teams. There is likely to be relevant material

which exists within your organisation, that you may not be aware of without a physical and technical scoping or mapping exercise. The relevant material may relate not just to individuals, but to the functioning of entire teams and the strategic decision-making of the executive level. The number of relevant documents could number in excess of 100,000 from a pool of up to several million.

Bespoke Workspace Design

You can create workspaces that can grow with your review, with every document retaining its source identifiers and location details to give you a global view of all your material as it grows and develops (in all likelihood over several years in such a scenario), whilst 'unbreakably' retaining the links to where, when and how that material was collected. This continuity trail is particularly crucial in a public inquiry environment when the source, circulation and dating of a document is often as important as the document itself.

Unchangeable Unique Document Identifiers

eDisclosure review platforms create and apply automatically created unique document identifiers that permeate throughout the system, and cannot be 'divorced' or changed in relation to the electronically stored information (or ESI) to which they refer - this makes the disclosure process easier to track, trace and referable within legal services teams.



Employment Tribunals

A former member of staff from your organisation alleges that they were subject to discriminatory treatment over a five-year period.

They believe that the management of their performance at work was discriminatory on the basis of their protected characteristics under the Equalities Act 2010. In their statement, they cite comparisons with the treatment of five

other colleagues over the same period as evidence of their adverse treatment using examples such as volume, length, timing and tone of communications, as well as the quantity and quality of the work itself. All members of staff are engaged with front-line service delivery, and have had thousands of interactions with the relevant manager across several systems over the cited period.

Data Visualisation

We can apply powerful data visualisation analytics such as sentiment analysis and concept clustering to significant data-sets, enabling your legal team to quickly understand and summarise the complete picture of the supervisor's interactions over that period - not just with the claimant, but with all their management communication and task allocation. This rapid insight into the data relevant to a case, enables quicker decisions to be reached as to whether or not to defend a claim. In this case, a legal team could quickly form a view as to the merits of the claim or otherwise. Using early case assessment techniques, the most impactful or significant data can be brought to the fore at the start of legal consideration, enabling faster, more empowered legal decision-making.

Automatic Timelining

Timelining and 'parsing' tools can quickly rebuild an accurate timeline of a member of staff's interactions with their supervisor, arranging interactions dispersed across channels such as text messages, email and corporate system case management notes into a meaningful chronology. In this scenario, timelining could rapidly decrease the decision-making time of a case, increase confidence and reduce cost.



Data Subject Access Requests & FOIA Requests

A journalist is working with interested members of the public, exercising their rights under the Data Protection Act 1998, the General Data Protection Regulation from May 2018, and the Freedom of Information Act 2000.

Your organisation has provided a reduced scope of information to date under Section 8(2) of the Act, due to the disproportionate effort required to locate the further known material.

An appeal has subsequently been made to the Information Commissioner, citing technical advances which reduce that disproportionate effort. The ongoing appeal and disclosure requests resulting in adverse media comment, is regarding the apparent transparency and information law compliance of your organisation.

Disproportionality Exemption

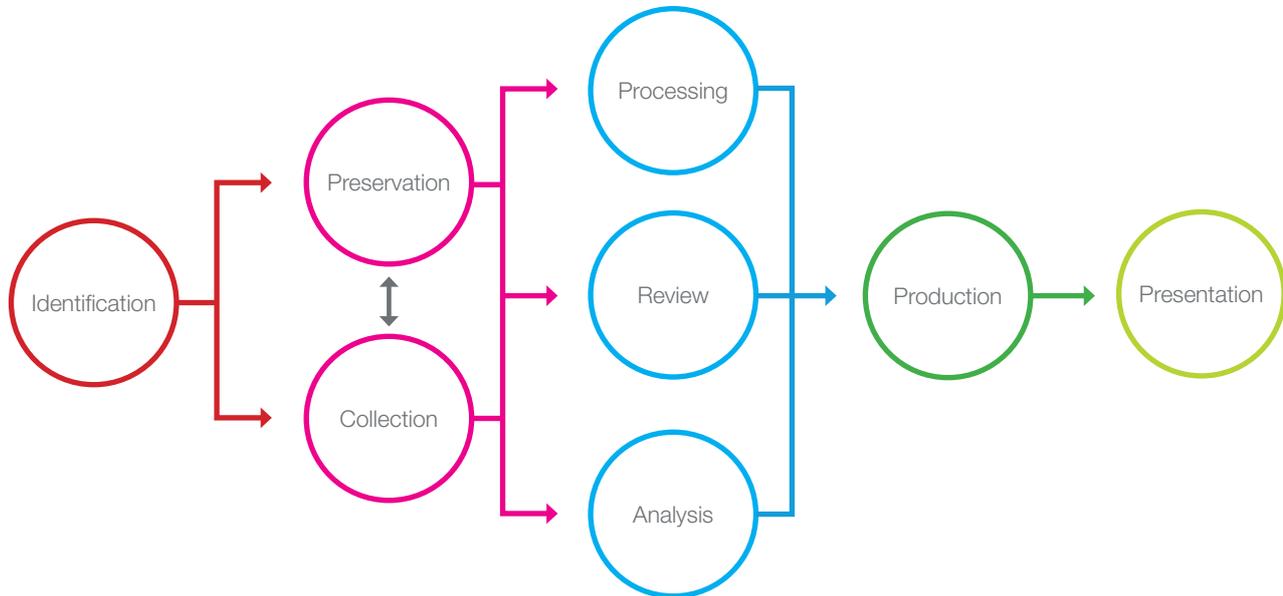
eDisclosure consultants can forensically collect, sift and sort even the most unstructured of shared drives and unregistered data repositories. The ICO is more and more aware of technical enablers to support proportionality. The Court of Appeal recently set a high bar as to what disproportionality of effort should involve (Dawson-Damer v Taylor Wessing, 2017). We predict that Section 8(2) will become increasingly less viable for public sector organisations as technical offerings become more prevalent.

Redaction solutions

The nature of personal data within public sector organisations, nearly always means that redaction becomes a crucial activity whenever material is to be released - primarily to protect the privacy of any third-parties aside from the data subject. Manual redaction relies on human accuracy and often circuitous processes, leaving room for error and confusion. Apply redactions securely to documents with customisable features and a full audit capability. This prevents risky workaround processes such as 'flattening' black highlight text onto re-saved pdf documents, as these may then be removed with pdf editing software.



Section 2 : The Electronic Discovery Reference Model (EDRM)



The EDRM is the internationally accepted process by which electronically-stored information (ESI) is brought in and managed through legal processes, with a focus on civil litigation. Duke University School (US) is the leading institution for EDRM development, research and innovation. Further resources can be found here (Edrm.net, 2017).

Data Identification

In the public sector, understanding service provision and structure is essential in order to correctly identify all the relevant data locations.

These may be the email accounts of key

staff, hard copy documents in storage, database entries of various reporting and case management systems, as well as shared drive or sharepoint documents relating to a policy area, team management or service area.

Data mapping - working out what you have, where it is and how to collect it

This is the process of scoping and identifying all locations and formats for relevant data. This may involve speaking with key people within the organisation who can describe all the various systems and individuals who may be involved in the relevant areas. This may also involve interrogating legacy electronic systems which have been mothballed ahead of new IT infrastructure roll-outs.

continued ►



Identifying Data 'Custodians'

Whilst it is possible to extract and process entire mailboxes or file systems, (dependent on the nature of the disclosure or the purposes of the search) careful and forensic search term identification and collection might be more appropriate. You may look for 'all files created or amended between 2004 and 2009' or 'all emails sent to a certain individual'. Understanding ESI, electronically-stored data, from the point of view of a computer scientist or a computer forensic expert, is essential in order to conduct and report with sufficient legal defensibility.

Reducing Volume Through Keyword Searches

Depending on the context of your disclosure requirement, applying search terms in order to 'corral' relevant data is often appropriate (i.e. in the case of a Subject Access Request where an individual requests all emails they are legally entitled to through the provisions of the GDPR legislation).

Scale of Data

Real-time reporting on the size of the data is key to understanding the size of a task and defining a defensible and appropriate collection strategy. It will also enable you and your legal team to make informed applications and give realistic, achievable undertakings to your stakeholders. eDisclosure techniques can give you these metrics quickly.

Data Preservation

Where issues of organisational confidence and integrity are central to a legal process or claim, ensuring procedural rigour in collection of data is essential - the same principles apply to retrieving and handling archive boxes or the digital forensic collection of data from an 'Internet of Things' device such as 'Alexa'. The objective is to isolate and protect potentially relevant data from alteration, destruction or modification. We use detailed chain of custody procedures to ensure continuity and integrity of data - whether that data is an archive box of papers or an encrypted hard drive.

Data Collection

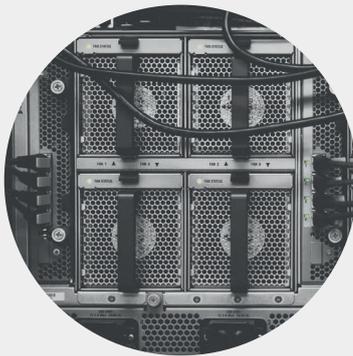
This stage encompasses a wide array of manual techniques and is driven by the format of the data - from scanning and coding of hard copy paper to the logical and physical imaging of hard drive storage. Collecting data must always take place securely, whether it is on site in your organisation, remotely for a web-based mailbox collection, or within our secure digital forensic laboratory.

continued ►



Data Processing

Once collected, all data must then be formatted so it can be used in review tools for the next stage. This may include extracting files, separating attachments, extracting metadata, and removing files that do not contain user generated data etc. These processes, called de-duplication and de-NISTing (using internationally-recognised standards and formats to siphon off universally agreed 'junk' files), all reduce volume and bring down the number of documents or files that are required for review - along with the cost of data-hosting.



There are four stages within the processing stage:

1. **Assessment:** to ensure the data being processed correlates with the original strategy
2. **Preparation:** to determine relevant data to move forward to review, and handle reduction of data
3. **Selection:** the de-duplication of documents
4. **Output:** the conversion of documents into the relevant format for reviewing

Review

This stage involves the process of selecting appropriate data to move forward to analysis and ultimate disclosure, as well as selecting irrelevant data to disregard and 'demote', which ultimately reduces the size of data and refines the relevant pool of documents.

Defining and applying a cohesive review methodology here, supported by innovative, yet tested technical enablers, means that large volumes of material can be sifted, sorted and assessed within short time frames.

A high-profile example of 'eDiscovery in action' includes the FBI's review in November 2016, of the then US Secretary of State, Hillary

Clinton, which included 691,200 emails within eight days. This was subject of an interesting blog (Galliani, 2017) from our review platform partners, Relativity, where he explains that management of such volumes are actually now considered routine within the eDiscovery community.

eDiscovery workspaces are setup to allow reviewers to speed through documents at a rate of hundreds a day and often more. Detailed review reports are automatically produced, in order to answer questions and mitigate any uncertainty regarding defensibility. Workspaces, decision prompts and tagging actions are easily customisable to the matter-at-hand.



Analysis

In this stage, we use powerful technological techniques to determine key information: key topics, critical individuals, specific vocabulary, relationships within the data and so on. Using analytic techniques such as 'email threading visualisation', we can instantly boil down, piece together and shine a light on complex email threads which let you see the journey of a conversation, such as where it went, to whom and when. All of this, enables your organisation to quickly move through critical legal strategy decisions, all with increased confidence and peace of mind.



At this analysis stage we focus on:

Content Analysis: we are concerned with understanding the data contained within the documents, giving a clear understanding of circumstances, facts and potential evidence relevant to the matter.

Search Enhancement: we use our technical knowledge to build search terms unique to your search, review and disclosure requirements - there is an opportunity here for parties to exchange and agree search terms and thereby increase confidence.

Review Enhancement: this stage focuses on achieving the ambition of each document only being reviewed once, and for all relevant legal decisions to be made at that stage. Your review workspace is adapted to the review - so that themes, tags, risks, critical factors, redaction and legal privilege decisions can all be covered, tracked and reported upon.

There are a huge amount of tried and tested techniques that can be applied to the data, set in order to respond to critical areas of your disclosure requirement:

- Do you need to batch emails within a team into those which included or did not include certain individuals? (useful if there is an allegation relevant to an employment tribunal).
- Do you need all the attachments emailed that are within 5% identical content to each other? (useful if the key issue revolves around evolution of critical documents).
- Do you need to identify any emails sent to any individuals which contain any text from specific policy documents? (useful if the determining factor is awareness of policy directions).



Production

This is the ‘handing-over’ stage of the process, here are some examples of productions:

- 75 redacted hard copy emails sent regarding the performance management process of a former employee are requested through GDPR subject access request provision.
- 150,000 native files relating to a high-profile public inquiry resulting from the forensic extraction of an entire department’s shared drive or Sharepoint files are filtered for relevance on the basis of governance and decision-making records.
- 900 images of files including emails, word documents, database exports, and performance data spreadsheets, are all identified as relevant financial material for a civil claim and are required by a given tribunal.



Please find below a more technical description regarding file production formats:

Native:

The original format of the document and if required, the original application when viewing. For example, Excel files relating to training data.

Near-native:

The original format, slightly altered or converted to pinpoint content while maintaining serviceability to the original document. For example, conversion of the native Excel file to a TIFF image with OCR to support redactions.

Image:

Simply a picture of the data/document. For example, a pdf of a police officer’s notes from a witness statement.

Paper:

The ESI is produced in paper format either in the native form or the image form. For example - print-outs of witness statements.



Section 3 : Public Sector

Benefits of eDisclosure

- Save time and increase accuracy through the creation of a single, fully auditable, 'data pot' of all our relevant material - whatever the original format (audio files, emails, hard copy notebooks, loose-leaf letters, IT system exports).
- Enhance integrity by always being able to track back exactly from whom and where any given document came from.
- Promote productivity by searching across numerous data sources from one workspace, using the auto-generated dictionary identifying spelling variations within your data.
- Increase confidence and speed up searches by using smart search, Boolean techniques and semantic searching (i.e. door+porch+gateway+doorstep+front door+entry etc.).
- Cut out noise by narrowing down your relevant material through applying time, date, recipient, and file type filters.
- Keep track of your team by using 'batched' bundles of documents for review to track progress and promote productivity.
- Make sure nothing is missed or lost - automatically watermark, number and security mark your document bundles before they are produced to any other organisation or individual.

Crown Commercial Service RM3717 Framework

Being on the eDisclosure service framework means that we have been stringently assessed by the Crown Commercial Service as to our technical capabilities, references, security credentials, background and pricing.

The UK Government's Digital Marketplace guide to accessing services, including the eDisclosure service framework providers can be found [here](#). Gaining access to the tools and techniques through the framework could move as quickly as three to four weeks.

To enquire about how to access services, do contact us or the Crown Commercial Service. Further information from the CCS can be found [here](#) (ccs-agreements.cabinetoffice.gov.uk, 2017).

The Crown Commercial Service will help you to set your requirements, and given that much of the legal and commercial procurement work has already been carefully put in place, turn around times can be very fast, particularly if you are responding to an urgent request or pressing legal directions.

The framework covers end-to-end services so that your organisation can identify and receive exactly the support you need.

Furthermore, security credentials of suppliers have been thoroughly assessed, including identifying suppliers with sufficiently secure operations and staff are trusted with government material up to the highest security classification levels.



Public Sector Experience



Ellie Pyemont

Managing Consultant

Ellie joined Anexsys in 2016 and leads our public sector services. Previously 'client-side' as an experienced Detective Inspector in the Metropolitan Police Service, Ellie brought an eDisclosure solution in-house, within a secure environment to service a major public inquiry. Ellie also enjoys providing project management support and oversight for many of our international engagements.

- **Information Governance**

Ellie provides consultation on public sector information governance projects, particularly where organisational culture, risk and service provision intersect. Previously, Ellie was operational lead for a major project to review storage of millions of hard copy files held by Met police, in order to improve compliance with legislation on disclosure, management of police information, and data protection to develop an information asset register.

- **Risk and Accountability**

Having led teams of up to 28 officers, delivering 24/7 domestic abuse services in the London Borough of Lambeth, Ellie has a deep understanding of the high-level of risk and accountability that is part-and-parcel of every public sector leader's professional life.

- **Information Security**

Ellie takes the lead on our internal development programme - including information security (ISO 27001 and Cyber Essentials Plus) as well as skills development, performance management and people engagement.

- **Process Integrity**

Having regularly appeared in court as an Investigating Officer, Ellie was judicially commended for an attempted murder investigation, and brings extensive expertise regarding continuity of evidence and chains of custody.



Anexsys Ltd was set up in 2004 and offers dedicated outsourced services to law firms, corporations and the public sector, operating from ISO9001 accredited sites in London, Manchester, Birmingham, Leeds and Bristol. The company provides a full range of services including data collection, computer forensics, data processing, document hosting, managed services, outsourced review and reprographic services. As well as being ISO27001 accredited at all five of our locations, we are also Cyber Essentials Plus certified.

The Hobs Group consists of three companies: Hobs Repro, Hobs 3D and Anexsys. Our aim is to help our customers add value to their businesses. We provide the very best 2D and 3D content, innovative document solutions, inspiring creative ideas and exceptional, hassle-free, service quality. We have over 410 employees nationwide, a group turnover of +£35m.

Anexsys Security Credentials

We understand that you and your clients require and deserve the utmost confidence in information security procedures, and the culture of your service providers.

We are ISO27001 and UK government Cyber Essentials Plus accredited in all five of our UK locations.

We have numerous 'Security Cleared' (HM Government SC-level) staff, including our entire Management Team – trusted to handle government material at Secret and Top Secret level.

- We are one of a handful of suppliers on the Crown Commercial Service

eDisclosure Framework (RM3717) selected to provide end-to-end services for Secret and Top Secret levels.

- All staff are background checked to BSSP (Baseline Personnel Security Standard) – including Disclosure and Barring Services, Experian, Right to Work and non-recent References
- We have extensive experience providing international and in-house services, air-gapped multi-year eDiscovery Managed Services to UK law enforcement
- UK-located ISO27001 Data Centre (Rackspace)

Crown
Commercial
Service
Supplier



Anexsys Differentiators



A Full Range of Litigation Support Services

We are one of only a few companies able to supply the full range of litigation support services, ranging from digital forensics and collection (using forensic professionals with expert witness experience), through to data processing and document hosting, as well as managed document review and hard copy services.



Relativity Best in Service

There are numerous eDisclosure vendors and Relativity providers in the UK, but we're the only UK-owned company with the Best in Service designation. This accreditation can only be achieved after a rigorous assessment of infrastructure performance, client satisfaction, certified administrators and disaster recovery planning. To maintain this designation, the performance of our infrastructure is continually monitored to ensure it is running optimally.



Geographic Spread

Our eDisclosure teams include Relativity certified administrators and forensic expert witnesses in both of our London and Manchester offices. We also offer a full range of hard copy services including scanning and coding from our offices in London, Manchester, Leeds, Birmingham and Bristol.



Software Development

We're the only UK and European vendor of Relativity with a dedicated Relativity software development team. Our innovative products listed on Relativity's ecosystem, extend and enhance the function of Relativity. Products include the ability to import social media data into Relativity, a native Excel redaction program, and an improved Review Tracking application.

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