Why preserving email is harder than it sounds…

Stephen Howard

Information Management Officer

Special Tribunal for Lebanon

GLOBAL SPREAD OF INTERNATIONAL CRIMINAL JUSTICE

Key Figures

Chart (as of 20 August 2010):

	ICTY	ICTR	SCSL	ICC
Number of persons indicted or against whom arrest warrants issued	161	90	13	16
Number of indicted persons against whom proceedings concluded*	124	49	11	1

as of 20 August 2010

- **Number of persons indicted or against whom arrest warrants issued**
- **Number of indicted persons against whom proceedings concluded***

* Includes accused who died, whose cases were referred or whose indictments were withdrawn

Map labels

Netherlands; Nuremberg, Germany; Former Yugoslavia; Lebanon; Sierra Leone; Liberia; Central African Republic; Sudan; Democratic Republic of Congo; Uganda; Rwanda; Tanzania; Cambodia; Indonesia; East Timor; Tokyo, Japan

Inset: Slovenia; Croatia; Bosnia and Herzegovina; Serbia; Montenegro; Kosovo; Former Yugoslav Republic of Macedonia

Legend
- Crime scenes or origin of Accused
- Courts *(in same country as crime scenes or origin of Accused)*
- Courts *(in different country from crime scenes or origin of Accused)*

Dates of Establishment

1945 & 1946
Nuremberg & Tokyo International Military Tribunals

1993
UN International Criminal Tribunal for the former Yugoslavia (ICTY)

1994
UN International Criminal Tribunal for Rwanda (ICTR)

1999
Hybrid Courts in Kosovo

2000
East Timor and Indonesia*

2002
Special Court for Sierra Leone (SCSL)

2002
International Criminal Court (ICC)

2005
War Crimes Section, State Court, Bosnia and Herzegovina

2006
Extraordinary Chambers in the Courts of Cambodia (ECCC)

2007
Special Tribunal for Lebanon (STL)

* Special Panels for Serious Crimes, Serious Crimes Investigation Team and the Indonesian ad hoc Tribunal for East Timor

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25.05.1993
The International Criminal Tribunal for the former Yugoslavia (ICTY) is established by the UN Security Council to sit in The Hague, The Netherlands.

07.11.1994
First ICTY indictment (Dragan Nikolić), for crimes in Bosnia and Herzegovina.

08.11.1994
The International Criminal Tribunal for Rwanda (ICTR) is established by the UN Security Council to sit in Arusha, Tanzania.

07.05.1996
The first ICTY trial begins (Duško Tadić).

29.11.1996
First ICTY judgement (Dražen Erdemović, "Srebrenica").

17.07.1998
Adoption of the Rome Statute, providing for the establishment of the permanent International Criminal Court (ICC).

02.09.1998
First-ever conviction for rape as a crime against humanity, and first ICTR conviction for genocide, in the ICTR case of Jean-Paul Akayesu.

24.05.1999
The ICTY issues the first indictment by an international court against a sitting head of state: Yugoslav President Slobodan Milošević is charged with crimes in Kosovo.

10.06.1999
The United Nations Interim Mission in Kosovo (UNMIK) is created to oversee the re-establishment of Kosovo's justice system, including courts with both local and international prosecutors and judges to hear war crimes cases.

06.03.2000
Special Panels with local and international judges open in East Timor, established by the country's UN administration to work in parallel with the ad hoc Human Rights Court in Indonesia to prosecute those persons responsible for the atrocities of the 1999 conflict.

22.02.2001
First-ever convictions for enslavement as a crime against humanity, and first ICTY convictions for rape as a crime against humanity in the case of Kunarac et al.

29.06.2001
Slobodan Milošević is transferred into the custody of ICTY.

16.01.2002
The Special Court for Sierra Leone is established in Freetown by agreement between the UN and the country's government, with a mixed international and local bench.

12.02.2002
The Trial of Slobodan Milošević begins at the ICTY.

01.07.2002
The ICC – the world's first permanent war crimes court – begins operating in The Hague.

19.04.2004
First ICTY conviction for aiding and abetting genocide in the case of Radislav Krstić (Srebrenica).

09.03.2005
The War Crimes Chamber in the Court of Bosnia and Herzegovina starts adjudicating war crimes cases by mixed panels of international and national judges. Its establishment was advocated by the ICTY as a vital legacy endeavour needed to further strengthen the rule of law.

18.01.2006
The Extraordinary Chambers in the Courts of Cambodia (ECCC) begin operating. The joint Cambodia-UN court prosecutes those most responsible for the 1975-1979 Khmer Rouge mass murders.

17.03.2006
First arrest of an ICC accused: Thomas Lubanga Dyilo, Democratic Republic of the Congo.

30.05.2007
The Special Tribunal for Lebanon is created by the UN Security Council as agreed with the Lebanese government, to punish those responsible for the assassination of Prime Minister Rafik Hariri and others.

04.06.2007
The Trial of Charles Taylor, former President of Liberia, begins before a Trial Chamber of the SCSL, sitting in The Hague.

20.06.2007
First-ever international court conviction for conscripting child soldiers in the SCSL case against three leaders of the Armed Forces Revolutionary Council.

30.07.2008
Bosnian Serb leader Radovan Karadžić is transferred to the ICTY to face trial for genocide and other alleged crimes committed in Bosnia and Herzegovina.

25.02.2009
First-ever conviction for forced marriage as a crime against humanity in the SCSL case against three Revolutionary United Front leaders.

26.02.2009
An ICTY Trial Chamber sentences five senior Serb politicians, military and police officials to a combined total of 96 years' imprisonment for crimes committed against Albanians in Kosovo during the 1999 conflict.

05.03.2009
The ICC issues an arrest warrant for Sudan's President Omar al-Bashir for war crimes and crimes against humanity in Darfur. The charge of genocide is added to his indictment on 12 July 2010.

17.03.2009
The ICTY Appeals Chamber sentences Momčilo Krajišnik, one of the highest-ranking wartime members of the Bosnian Serb leadership, to 20 years' imprisonment for crimes committed during the Bosnian conflict.

30.03.2009
The first trial before the ECCC opens against former prison commander Kaing Guek Eav, a.k.a. Duch.

26.10.2009
The Trial of Radovan Karadžić begins at the ICTY.

10.06.2010
A Trial Chamber sentences two accused to life imprisonment for genocide and five others to a combined total of 89 years' imprisonment for crimes committed in Srebrenica in July 1995. This is the largest ICTY trial to date.

The Nuremberg Military Tribunal: the mimeograph room (1948)

ICTY: the Milosevic defence case (2004)

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The Libyans of Misrata have performed a service for history

Documents can help all sides. It is vital for those caught in conflicts to grab the documentary record wherever possible

Geoffrey Nice
guardian.co.uk, Saturday 18 June 2011 21.30 BST

A larger | smaller

I can express no view on how genuine or useful are the documents that the *Observer's* Chris Stephen has seen, but this much is clear: when the citizens of Misrata made the decision not to burn the archive left to them, they were certainly serving history well.

At Nuremberg, 21 Nazis were tried – most to conviction, some to acquittal – in only nine months, despite most defendants giving evidence. The trial was this short because the prosecution had all the paper exhibits it needed.

The Einsatzgruppen Trial – of 23 SS Death Squad members who killed more than a million Jews – occupied about four months, with all defendants giving evidence. But the prosecution case lasted two days because the prosecutor, Benjamin Ferencz, had all the documents he needed. All 23 defendants were convicted.

Prosecutors of the more recent Yugoslav trials started with little access to documents and the odd armed execution of a search warrant in Bosnia did not reveal much – many documents had been hidden. Slobodan Milosevic, the former president of Serbia, was careful, usually meeting interlocutors alone and with no visible recording of any kind. But the most important meetings of the Milosevic period – records of the supreme defence council that met between 1992 and 1998 - were stenographically and tape recorded. Until recently, the Serbs had managed to keep these records from the public, but many (not all) can now be seen. They do not present a simple picture of obvious culpability, but rather the workings of a government that was deeply into war crimes (the prosecution would have alleged) through the agency of a functioning state. They would have contributed enormously to the integrity of any verdict on Milosevic had he not died first.

This dimension too should be borne in mind. Where no or few documents exist for a prosecutor to work with, she or he may overstate the case that comes from live witnesses. This is alleged in another case before the ICC in which documents, if they come to light, may correct that overstatement. Documents can help all sides.

We now leave paper trails of emails and texts behind so complete that the intending criminal, unlike Milosevic in his private meetings, may find it ever harder to destroy all records, or to leave none behind. In their zeal to preserve the records of their plight, the citizens of Misrata may have also performed the service of alerting others caught in conflicts to come to see the post-conflict value of grabbing the documentary record when you get the chance.

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Sir Geoffrey Nice QC was the lead prosecutor in the trial of Slobodan Milosevic

Digital preservation strategies

- Selecting storage media most appropriate for long-term data retention
- Converting data to standard formats to facilitate its processing on a variety of computing platforms
- Migrating data to new technology platforms when the computing environment is upgraded
- Preserving systems documentation required to process the data
- Copying or recopying the data into new storage media at regular intervals
- Taking steps to store and maintain these media properly, and the systems that support them

A hierarchy of email system needs

Email User Behaviour

Email Records Management Policy and Capability

Email Storage Capability

Email System Recovery and Availability
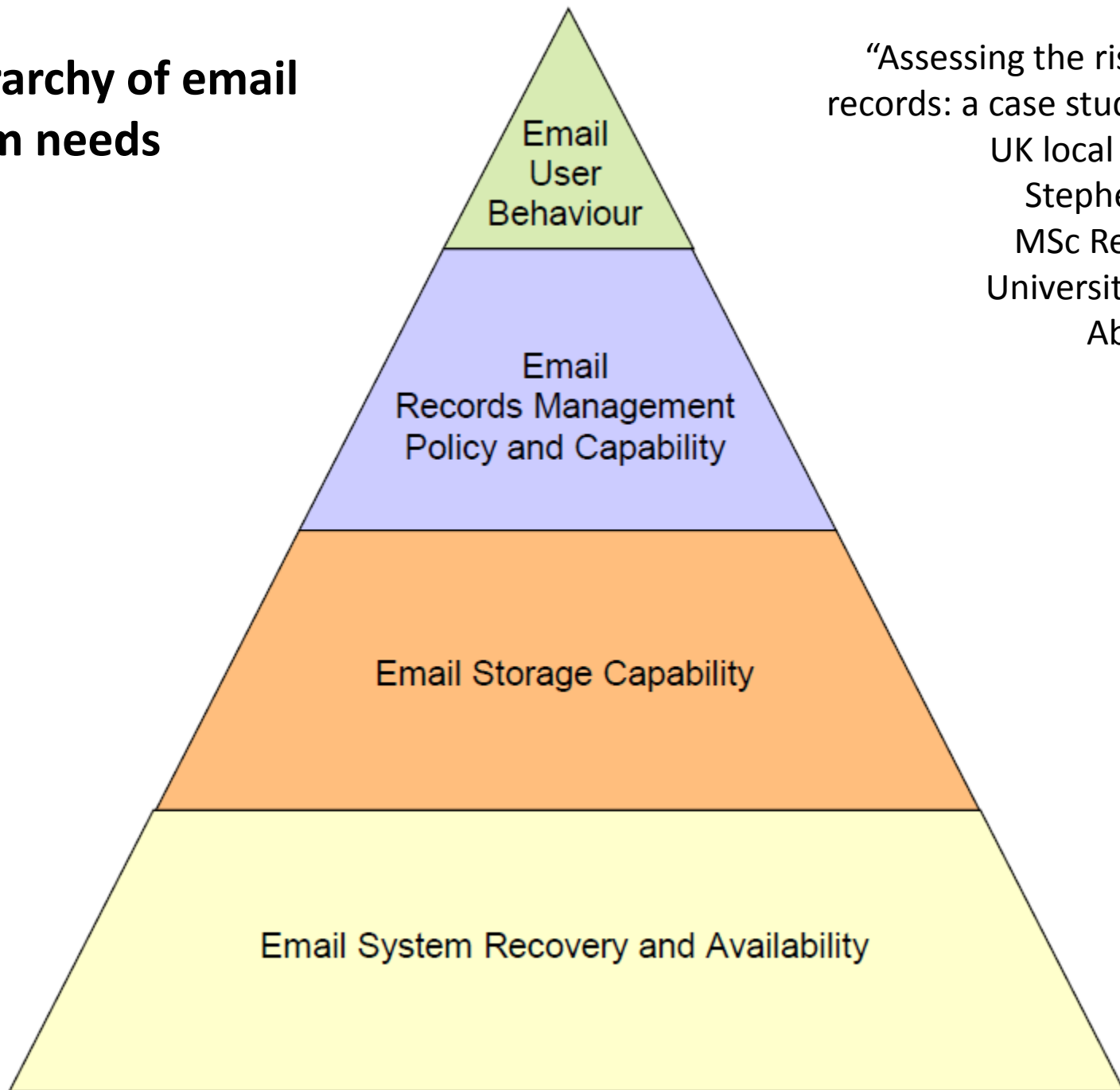
Assessing the risk to email records

Questions	% YES 2005	% YES 2011
1. Do you think your email system has the ability to make reliable email backups?	91%	84%
2. Do you think that your email system can perform email backup and restore operations within strict time limits?	73%	63%
3. Can your email system remain available for the uninterrupted periods required by the business?	55%	69%
4. Do you think you can accommodate your rising email data storage requirements?	68%	59%
5. Do you have an audited policy for managing email records?	27%	22%
6. Do you think that your ICT infrastructure and applications permit you to capture, manage and preserve email records in practice?	32%	38%
7. Do your users understand your policies and implement rules on email etiquette, housekeeping and records management?	23%	38%

Informal survey of RECORDS MANAGEMENT-UK Jiscmail listserv members in Feb 2005 (22 responses) & Jul 2011 (32 responses) from academic, commercial, health & government sectors.

Corporate Email Infestation

Posted by Greg Buckles

http://ediscoveryjournal.com/2011/03/custodial-email-preservation-%E2%80%93-email-infestation/
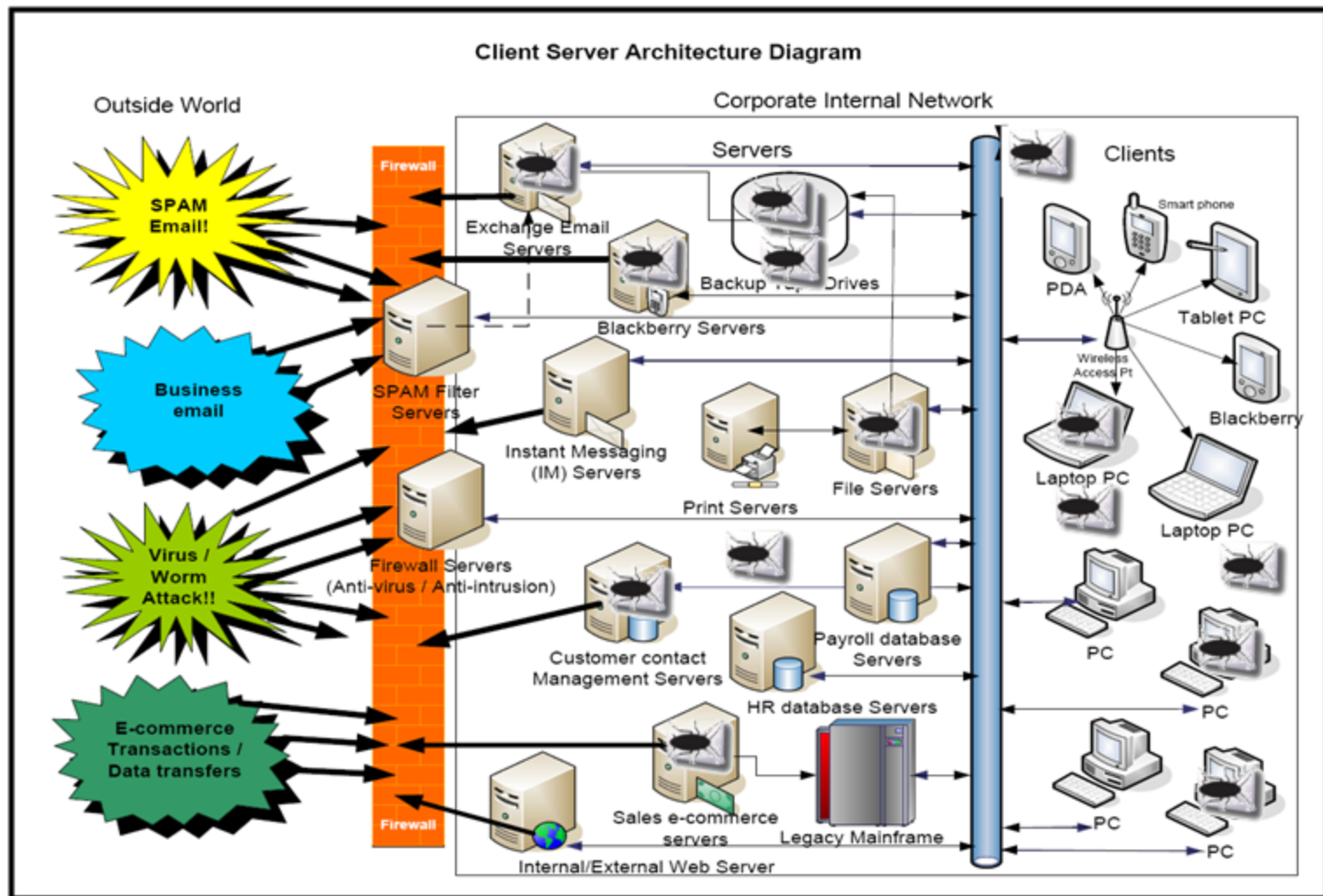
What were the conclusions of the Suffolk case study?

- Purchase suitable monitoring tools
- Implement consistent service level agreements for backup and restore
- Consider dedicated backup and restore infrastructure
- Implement server quota management
- Limit the size of emails that can be sent
- Provide business continuity
- Install the latest proven anti-virus technology
- Apply mailbox limits consistently (e.g. 100MB limit)
- Turn off PST functionality
- Improve the leaver process
- Consolidate guidance and policies and audit compliance
- Provide extensive email induction programmes and user training and support
- **Resist the pressure to implement third party email archiving products, given their inherent weaknesses, until proper EDRM tools are available.**
- **Preparatory work for EDRM implementation should be brought forward.**

The conventional wisdom

- Focus on mail, not mailboxes or systems
- Email records (and the rest…)
- Policies that define appropriate business use
- Restrictions on forwarding to personal accounts or devices
- Attachments
- Who saves what? (Creator/Primary Recipient)
- Print or declare?

Are will losing our grip?
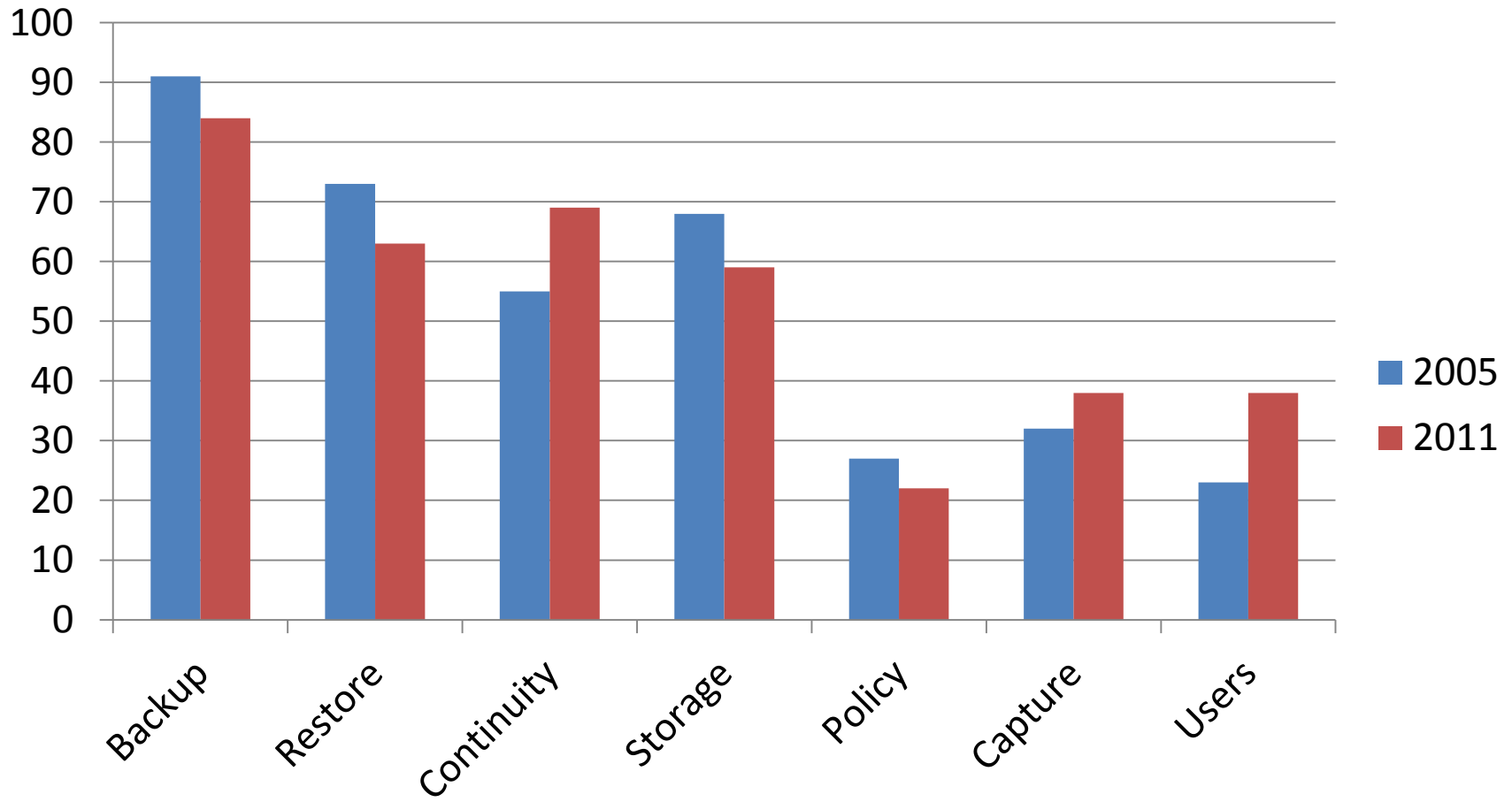
What kind of email user are you ?

- No filers
- Frequent filers
- Spring cleaners
- Prioritizers
- Archivers
- Folderless cleaners
- Cleaners
- Keepers
- Pilers

Why are email users unhappy?

Optional Question – Email Components

4c. For additional feedback and using a scale of 1-5 where 1 is "Very Dissatisfied" and 5 is "Very Satisfied", how satisfied are you with each of the following email components and please rate their importance to your work (optional)
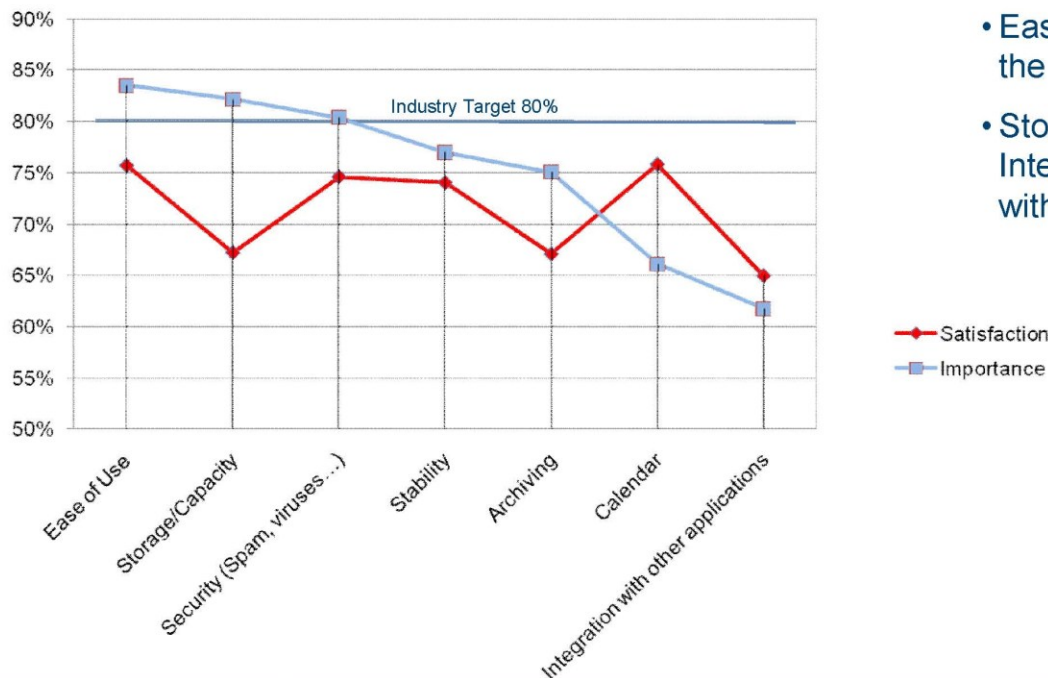
- Email satisfaction has dropped by 3.1%.

- Ease of use and Storage are the most important features.

- Storage, Archiving and Integration are the features with the highest dissatisfaction.

Industry Target 80%

Satisfaction
Importance

Ease of Use • Storage/Capacity • Security (Spam, viruses...) • Stability • Archiving • Calendar • Integration with other applications

Saving email as .PST

Received: from IMSWWWEMM01 by pdcp_echl01.wcc.com with SMTP (Microsoft Exchange Internet Mail Connector Version 4.0.994.63)
        id K6FCDDG9; Tue, 12 May 1998 16:54:43 +0100
Received: from darkstar.cwc.ac.uk (unverified [194.82.145.131]) by imswwwemm01.westminster.gov.uk
 (Integralis SMTPRS 2.04) with SMTP id <B0000025547@imswwwemm01.westminster.gov.uk>;
 Tue, 12 May 1998 16:48:01 +0100
Received: from holly.cwc.ac.uk (194.82.144.200) by darkstar.cwc.ac.uk
 (EMWAC SMTPRS 0.81) with SMTP id <B0000007020@darkstar.cwc.ac.uk>;
 Tue, 12 May 1998 16:55:41 +0100
Received: from qp1m3a0699 (194.82.147.11) by holly.cwc.ac.uk
 (EMWAC SMTPRS 0.81) with SMTP id <B0000023165@holly.cwc.ac.uk>;
 Tue, 12 May 1998 16:48:56 +0100
Message-Id: <B0000023165@holly.cwc.ac.uk>
From: "Max Morton" <max.morton@cwc.ac.uk>
To: "Howard, Stephen" **<showard@westminster.gov.uk>**
Subject: Re: NVQ Assessment
Date: Tue, 12 May 1998 16:52:21 +0100
X-MSMail-Priority: Normal
X-Priority: 3
X-Mailer: Microsoft Internet Mail 4.70.1161
MIME-Version: 1.0
Content-Type: text/plain; charset=ISO-8859-1
Content-Transfer-Encoding: 7bit

Saving email via listserv
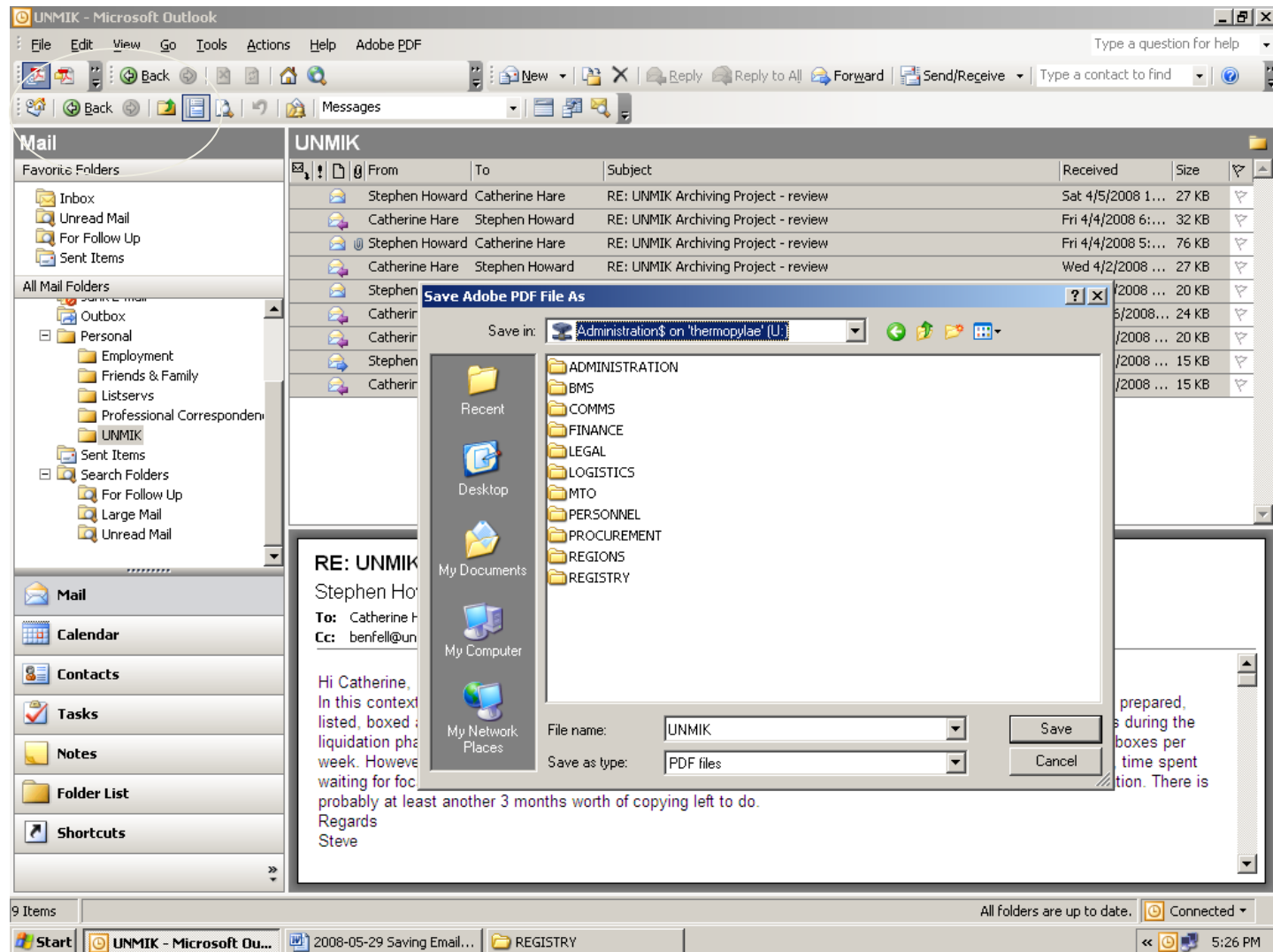
Proposed EULEX Post / Email Registry Workflow

Saving email via departmental mailbox registers
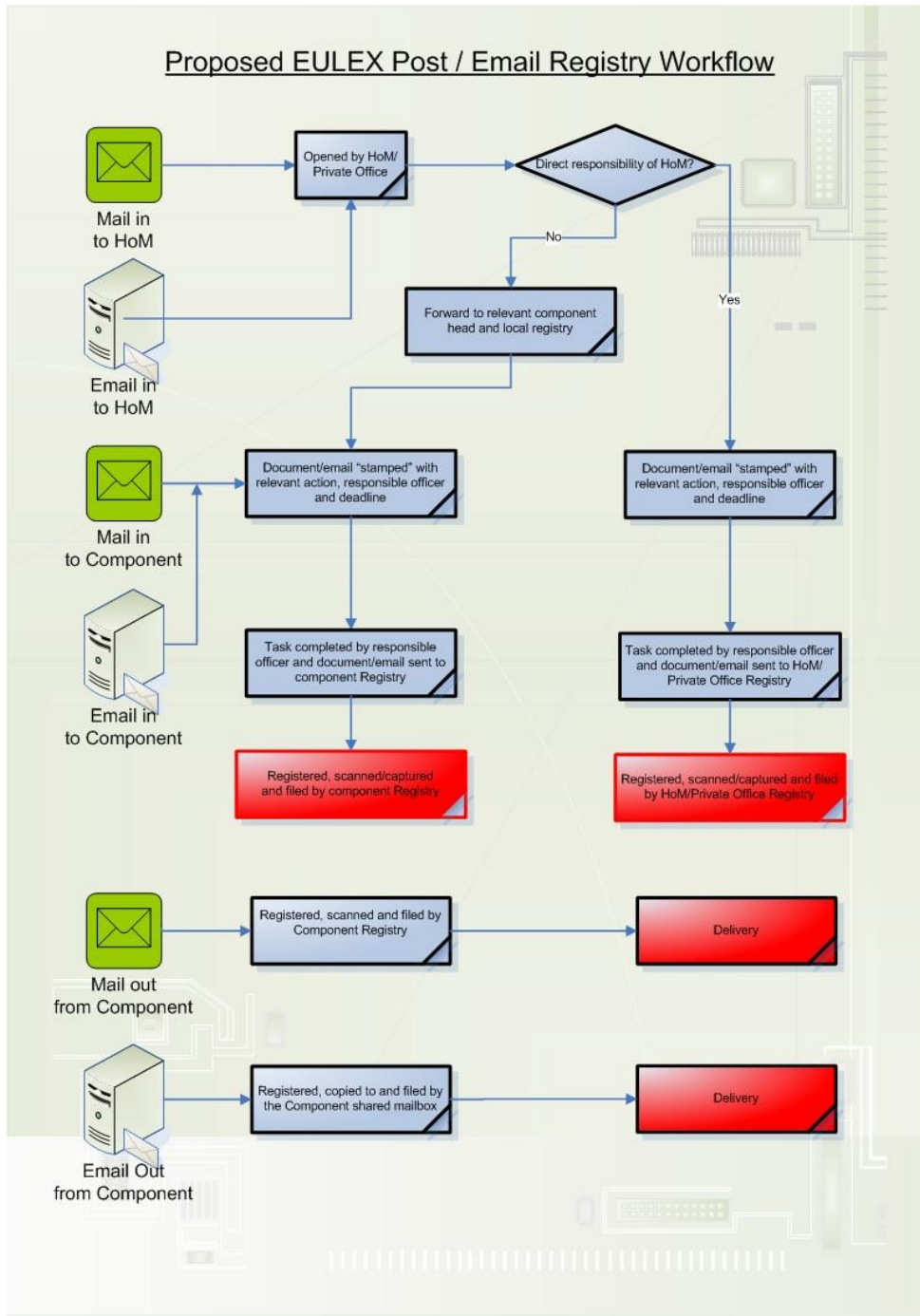
Saving email as .msg
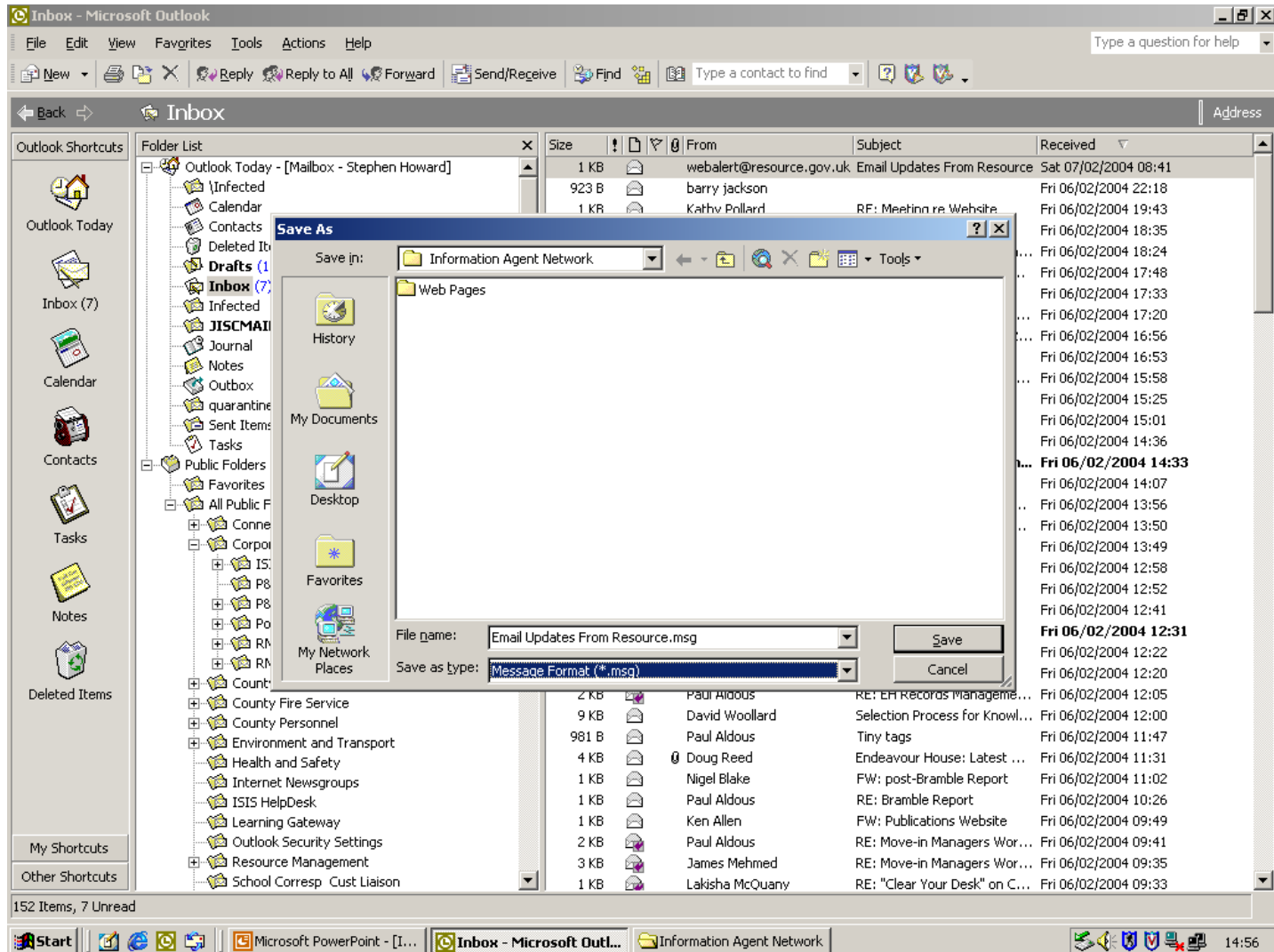
Saving email as .PDF
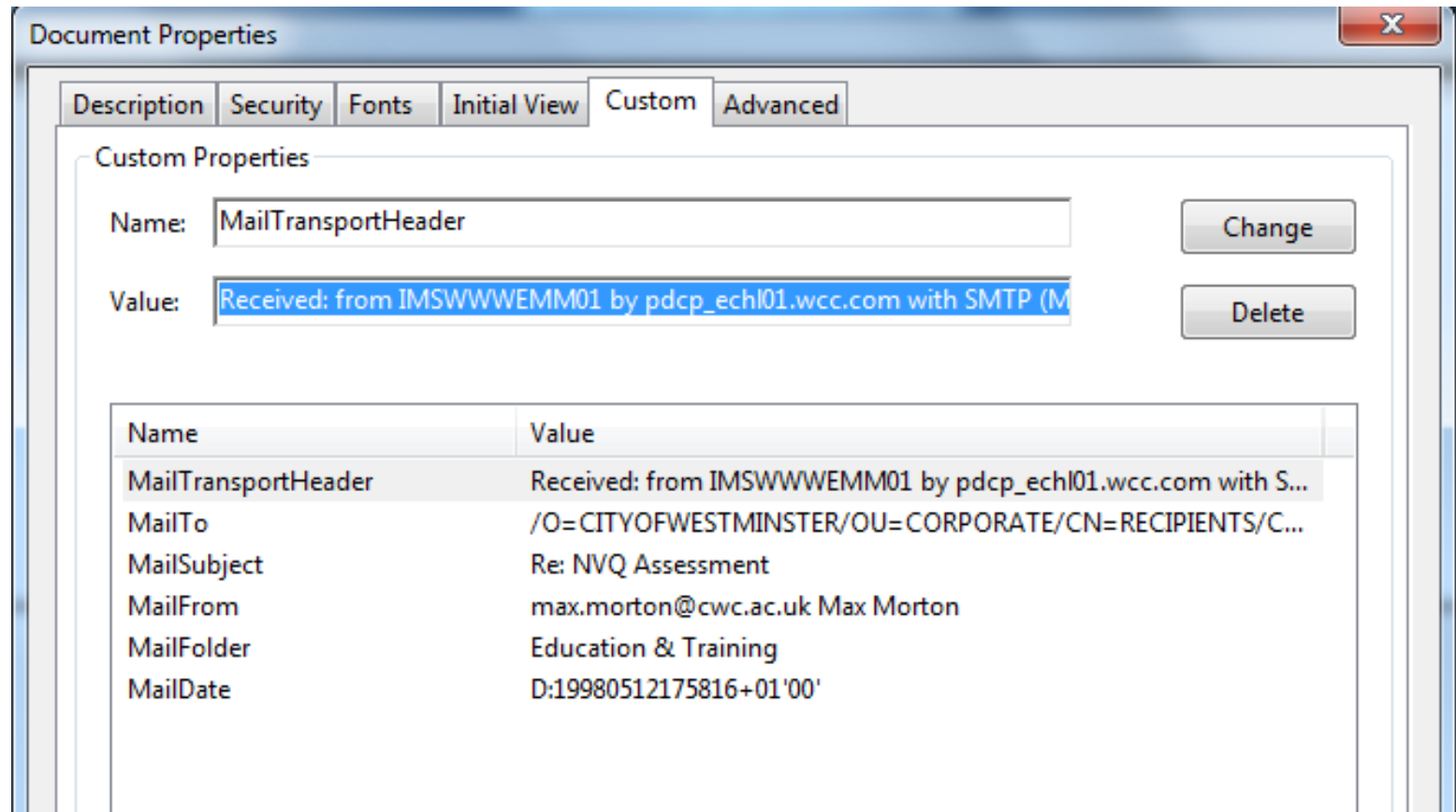
Saving email as .PDF

Saving email as .PDF portfolio

Failure to convert email to PDF/A
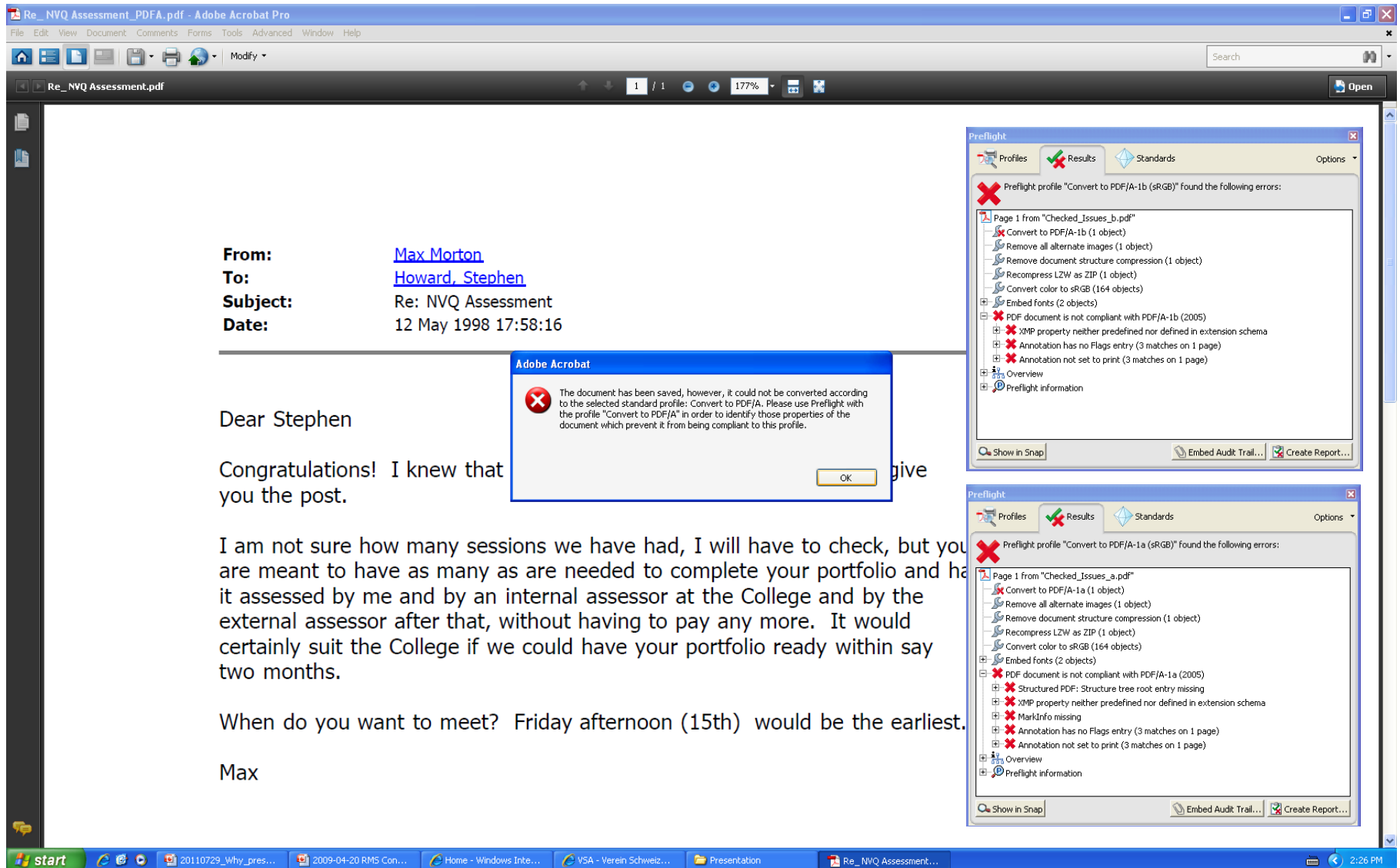
Where are we now?

- **Despite the strategies being known and systems deployed to manage the recordkeeping risks associated with email, there is significant reluctance on the part of government employees to routinely save their business related emails into their local EDRMS…**Digital recordkeeping: are we at a tipping point? Kate Cumming and Cassie Findley (RMJ, Vol. 20. No.3, 2010)

- **…even where departments have implemented an EDRMS there are always significant emails that do not make it onto the records folder. This is owing to the sheer volume of emails that individual receive, and to a lack of perceived benefit to the individual of moving email to a records folder** What will be the next records management othodoxy? James Lappin (RMJ, Vol. 20. No.3, 2010)

Automated solutions subject to records management controls

- Print to paper unsatisfactory
- Rising ESI Costs of searching backup tapes
- Problem of reliably saving to folders
- Judges increasingly critical of user-based approach
- Preservation in native format
- Approach support by NARA bulletin
- Reliance upon information search tools

Conclusion

- Email is a simple tool used for complex activities and processes
- The volume and diverse nature of mail overwhelms end-user solutions
- Need to reconsider system approach
- Automated email archiving would appear to be the "least worst solution"
- Migration to PDF/A and XML must be made easier for organisations

How not to do it…

Reporters load boxes of Sarah Palin's emails

http://blogs.telegraph.co.uk/news/tobyharnden/100091820/american-way-sarah-palin-email-frenzy-backfires-on-her-media-antagonists/

activity administrators archiving available **backup** behaviour **business** capability cluster communications content create **data**
directorate electronic **email** exchange file folders **information** items **limits mail**
mailbox management message needs network number organisations **personal** **policy** **pst** public receive
records research **restore** risk sent **server** service size **storage** store **study system** tasks total
user

Stephen Howard
Information Management Officer
Special Tribunal for Lebanon
howard4@un.org
www.stl-tsl.org/