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From:
John Cook
GRO

To: Mike Coombs Pathway
fax: GRO
cc: Dave Miller
George McCorkell

Attached please find an amended version (version 1.1) of the acceptance dispute resolution paper. The amendments (which are marked) reflect suggestions made by ICL Pathway. Dave phoned them through to me and in one or two places left the specific drafting to me.

It is being copied to all three parties at Dave's request for any further comment. You will note that it is without prejudice - especially as it has not been agreed by any of the three parties yet!

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ACCEPTANCE DISPUTE RESOLUTION**1. MANAGEMENT SUMMARY**

- 1.1. It is recognised that during the acceptance testing there is increased scope for disputes between BA/POCL and Pathway over the significance of perceived acceptance incidents. This paper argues that there is a need to establish a fast track escalation route for certain categories of dispute, culminating in an opinion from an independent expert.
- 1.2. The paper outlines a process that, if it ran full term would deliver that expert opinion 7 days after the incident was first raised. The process envisages:
 - (i) the Horizon Acceptance Incident Manager identifying the dispute as one requiring escalation;
 - (ii) The Acceptance Test Managers being the first point of escalation (thereby bypassing the Incident Review Panel);
 - (iii) A senior management forum of a director of each of the three parties being the second level of escalation;
 - (iv) An independent expert opinion being the final escalation point.
- 1.3. The process would not deliver a binding opinion, but a recommendation which had to be acted on pending resolution elsewhere ~~it is felt that by pre-agreeing the approach,~~ The opinion of the expert should carry sufficient weight to influence the senior management forum to come to an agreement.
- 1.4. There ~~is~~ may also be a role for the expert ~~throughout~~ ~~at the end of~~ the acceptance period in resolving disputes about the severity level assigned to open (and otherwise agreed) incidents. However the expert opinion for these disputes would carry less weight as the issue would be more closely related to the business of the authorities.

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2. INTRODUCTION

- 2.1. This paper considers the role that a focused dispute resolution process could play in the acceptance processes on the Horizon programme.

3. BACKGROUND

- 3.1. The paper "Horizon Process for Handling Acceptance Incidents" sets out the responsibilities and processes for handling acceptance incidents. In summary the process is:
- (a) an acceptance incident form is raised (many people can raise them) and countersigned by the ICL Pathway Test Manager;
 - (b) the form is passed to the Horizon Acceptance Incident Manager (HAIM) for review and logging;
 - (c) the form is copied to the ICL Acceptance Test Manager (same day as incident);
 - (d) ICL Pathway assign a severity and inform the HAIM;
 - (e) ICL Pathway develop a rectification and retest plan as appropriate.
- 3.2. There are two forums which consider incidents, monitor progress on their resolution and attempt to resolve any related issues:
- (a) the Incident Review Panel (IRP) which meets weekly and reviews all open and new incidents;
 - (b) the Acceptance Management Forum which meets two weekly and considers an overview report and any escalation from the IRP.
- 3.3. The only provision for handling disputes is when ICL Pathway produces an outcome that is disputed by the relevant Horizon Acceptance Test Manager. The paper focusses on whether the rectification plan is agreed, rather than over more fundamental principles.
- 3.4. The first level of dispute resolution set out in the paper is the Incident Review Panel. Disputes not resolved there would be escalated to the Acceptance Management Forum. At both levels ICL Pathway are represented and there is the opportunity to find an agreement and resolve the dispute. The paper is silent however on the authority levels available in these meetings. The paper also recognises that the forums may need to meet more often than the planned weekly/two weekly cycles during busy periods. These structures may work well in monitoring work progress and co-ordinating retests etc., but given the numbers of people involved it may be practically difficult to "fast track" urgent disputes.

4. AREAS FOR RAPID ESCALATION/DISPUTE RESOLUTION

- 4.1. There are three main areas for potential and significant disputes:

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(a) Raising an incident

The process described requires some form of agreement at the point the incident is raised. The Horizon and the Pathway Acceptance Test Managers both sign the form. There is scope for them not agreeing that a perceived fault is an incident at all. In practice the contract provision is that Horizon raises an incident and Pathway must respond. Hence this may be deferred to point (b) below.

(b) Assigning a severity

There is scope for a disagreement over the severity of an incident. If the incident is accepted and the dispute is only about the severity, then this only becomes significant at the end of the acceptance process if the incident has not been resolved. It can be argued therefore that there is less urgency in this area (although potentially more significance in the end).

(c) "Substantive faults"

The most likely area for significant and urgent dispute is that of substantive faults - i.e. those faults which do not explicitly link to an acceptance condition, but which Horizon consider (and need to show) link to an obligation under the contract that has not been met. Pathway may have the view that an incident is not a fault and therefore they do not need to work on it in order to achieve acceptance. This is a dispute that needs urgent resolution.

5. PROPOSED RESOLUTION OPTIONS

5.1. Introduction

- 5.1.1. It is proposed that the HAIM should be able to fast track substantive fault disputes under any of a, b and c in paragraph 4.1 above, initially to the Horizon Acceptance Manager, who should have responsibility for making a rapid decision that day if he feels that the point may be conceded or there is a lack of supporting material for the issue. If he feels there is a dispute, he should involve the other two Acceptance Managers (BA and Pathway) in a specific discussion to resolve the dispute within 24 hours. If the Acceptance Managers cannot resolve it within 24 hours it should be escalated for senior management action.

5.2. Senior management action

- 5.2.1. In recognising that a dispute that cannot be resolved by the Acceptance Managers will be of significance to the businesses (POCL, BA and ICL), it is proposed that there should be a route to immediately escalate such disputes to senior managers in each of the three parties - at a sufficiently senior level to have the authority to make a decision and deliver it (and this authority can only be delegated to a peer or a superior level). It is therefore suggested that the senior managers should be the CAPS Director for BA, The Horizon programme Director for POCL and Director of Programmes for Pathway.

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5.2.2. If between these senior managers no agreement can be made within 2 days, the issue should be referred to an independent expert for review and an opinion.

5.3. Expert opinion

5.3.1. Almost by definition the proposed expert review step is only relevant to disputes that are urgent and revolve round an interpretation of a contract, controlled document, the conduct of an agreed process or other agreed specification (see substantive fault paragraph 4.1(c) above). If the Acceptance Managers and the senior managers cannot agree this between themselves, then it is unlikely that simply escalating the issue further up the respective management chains will produce a result - other than further delay.

5.3.2. It has therefore been proposed that an independent expert be set up in readiness to provide an opinion on such disputes. The expert should be a joint appointment agreed with all parties. While the opinion of such an expert would not be binding, the fact that some-one acknowledged as an expert by all three parties had formed an opinion on the interpretation of the facts set before him would be very persuasive. If the parties failed to settle on his advice the only other recourse would be either the binding expert determination provided for in the Related Agreements, or in the courts. In any event, the parties would act on the basis of the expert opinion pending any other resolution from such recourse, as - in binding determination or in the court ~~either ease an opinion from the~~ agreed expert would point the way to the likely conclusion.

5.3.3. In terms of timescale for the expert opinion process it is proposed that one extra day is allowed to prepare the material on the matter to be referred to him from the senior managers' group, and that he is required to deliver his opinion within 1 day of receipt. It is also proposed that an issue cannot be taken back to the expert once he has delivered his opinion (otherwise a party not liking the outcome could amass further argument and keep the issue running).

5.3.4. The overall timeline is shown schematically in annex A.

6. ~~END OF ACCEPTANCE PERIOD~~

6.1. ~~As touched on above, there may be a different kind of dispute that becomes urgent at the end of the acceptance period. If at this point an incident has not been resolved, the significance of its severity level will become important. While the expert opinion route may still have a role to play, it may be more difficult to delegate this aspect to an "expert". The severity of a fault is a business issue - the dispute is likely to be over the impact that an outstanding fault would have on the day-to-day operations in post offices or on people's ability to collect their benefits.~~

6.2. ~~At this point there is more likely to be a commercial negotiation at senior management level on how the open issues may be resolved, the timescales and consequent costs. The expert opinion would only be one input to such negotiations.~~

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Time line of full process escalation

