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Dear Pat

INDEPENDENT CONSULTANT REPORT

I am pleased to attach the final version of the Project Mentors' report. This includes my final comments on the draft report. I shall leave it to you to circulate copies to those who need to see it within the sponsor organisations.

Warmest regards.

Yours,

GRO

HAMISH R SANDISON

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REPORT

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1. Introduction

- 101 The Sponsors of the BA/POCL payment card programme, the Benefits Agency (BA) and Post Office Counters Limited (POCL), have requested Bird and Bird to conduct an independent review of the programme. The review was carried out by Andrew Davies and Andrew Wing of Project Mentors, under contract to Bird and Bird. This report documents the findings of the review.

- 102 The Terms of Reference were contained in a note prepared by Bird and Bird on 6 February 1998, attached as Appendix 1. The task was specified as:

The Consultant will analyse the defaults by any party to the Related Agreements and analyse the causes of those defaults. In particular the Consultant will review whether the Authorities have caused or contributed to a default on the part of Pathway. This assessment of past responsibility will be used to inform future negotiations with Pathway.

It was agreed that the review would not access Pathway's staff or documentation, but would be based on discussions with Sponsor and Programme Delivery Authority (PDA) staff and relevant documentation held by them, including Pathway documentation.

It was also agreed that the Consultant would concentrate on the period after the contract re-plan in February 1997, as it was recognised that there had been Pathway and Sponsor contribution to the delays that caused that re-plan and it was not an objective of the review to allocate blame for this between the Sponsors and Pathway.

- 103 The review was carried out by interviewing Sponsor and PDA staff, a list of whom is attached at Appendix 2 and by reviewing documents, a list of which is attached at Appendix 3. Detailed notes have been prepared of all interviews and of relevant points in the documents. These notes are held by Bird and Bird in case they are needed in the future.
- 104 This report was initially prepared in draft on 12 March 1998 and circulated by Bird and Bird to senior members of BA, POCL and the PDA for their comments, as a result of which amendments have been incorporated.
- 105 Since the preparation of the draft, ICL Pathway have prepared and submitted a 'Position Paper', setting out their views in relation to the project and requesting a commercial solution to compensate ICL Pathway for the loss it has suffered. We have not assessed the claims set out in this document. We understand that the Treasury propose to set up a review to decide on the future of the project.

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2. Summary of Findings

- 201 We must stress that the opinions expressed in this report are based on the interviews we held with PDA and Sponsor personnel and on our reviews of the documents made available to us by those personnel. We have listed the personnel and documents in Appendices 2 and 3. We have not met Pathway personnel or reviewed Pathway documentation, other than documents held by the PDA.
- 202 The BA/POCL payment card programme is a very large and complex Information Systems programme.
- 203 Pathway is required, under the terms of the contract, to deliver services to meet the specified requirements in accordance with the specified solutions and to develop the specified services.
- 204 The Sponsors are required, under the terms of the contract, to provide all information, services, facilities and responses designated as their responsibilities and to use all reasonable endeavours to perform these to any agreed timetable.
- 205 It is our opinion that Pathway seriously under-estimated the effort and time needed to develop the services when they prepared their proposal and did not recognise this under-estimation in the period from May 1996 to February 1997, when the contract re-plan was agreed. Pathway now appear to have recognised that the effort and time were under-estimated and have stated that much more effort and time is required to complete 'new' release 2. They have not yet finished the planning and estimating of 'new' release 2+, which will complete the development of the contracted functionality.
- 206 It is our opinion that Pathway have been responsible for the delays to the programme, since the re-plan in February 1997, that caused the November 1997 breach, by not allocating sufficient resources to complete their contracted obligations within the agreed timescale. Pathway have made no documented claims to support any verbal assertions that changes in requirements have impacted their ability to meet the timescale.
- 207 A secondary, and, in our opinion, relatively insignificant, cause of the breach is delays resulting from slow resolution of issues. Any programme of this type will have a multiplicity of issues that require resolution and the time to achieve such resolution needs to be allowed for in the planning and estimating of the programme. We do not believe that Pathway allowed sufficient time for this activity in their estimates. Pathway have made no documented claims to support their verbal assertions of delays resulting from slow issue resolution.

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3. History of the Project

- 301 The history of this project is a long story which we do not need to repeat in detail. There are, however, a number of important dates which are relevant to our review and we document these below.
- 302 In 1992-93 the Sponsors, BA and POCL, worked to develop a new approach to move away from paper-based authorisation of payment of benefits. In 1994 a joint programme was set up to develop an approach based on using a plastic card for payment authorisation and an advertisement was placed in the Official Journal of the European Communities in August 1994.
- 303 The joint programme continued with a lengthy procurement process, concluded by the signing of three PFI contracts with ICL Pathway on 15th May 1996. The contracts laid out a short timetable, with the national roll-out to all Post Offices scheduled to start in June 1997. The PDA was set-up to manage the programme for the Sponsors.
- 304 The contracts were signed on the basis of requirements prepared by the Sponsors and solutions proposed by ICL Pathway. A process was then initiated to 'drop-down' these requirements and solutions into service definitions, a process which took six and a half months against the planned three, although a further three months were allowed in the contracts. While the first deliverable, an 'Initial-go-live' system supporting payment of child benefit in 10 Post Offices, went live on schedule in October 1996, it was soon realised that the planned timetable was not achievable.
- 305 The Sponsors, Pathway and the PDA co-operated to develop a new timetable based on a series of releases, each with additional functionality, with the start of national roll-out scheduled for November 1997 following the completion of a Live Trial at 300 Post Offices by 21 November 1997. This was agreed in February 1997 and was detailed in Master Plan Version 3, issued in April 1997.
- 306 The first deliverable under the new timetable was Pathway release 1b, scheduled to roll-out the Order Book Control System (OBCS) to 205 Post Offices, commencing 28 April 1997. OBCS roll-out started on 2 May 1997 and 112 Offices were installed in the scheduled 4 weeks, but it took a further 5 months to complete installation in the remaining 93 Offices.
- 307 The second deliverable was Pathway release 1c, a version of the system based on the Benefit Payment System (BPS) and suitable for roll-out to the 205 automated Offices for payment of Child Benefit. This was scheduled for release on 30th June 1997, but suffered three slippages before being released on 2 November 1997, 18 weeks later than planned.
- 308 By June 1997 it was recognised that the dates for subsequent releases would slip by more than the slippage of release 1c. A process of re-planning commenced, which Pathway initially estimated would take about 6 weeks. After further delay, Pathway proposed a plan in December 1997 which envisaged a delivery of software for a release 2 in October 1998. Migration from release 1c, implementation of a second

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data centre and the impact of Christmas implies a start of roll-out in January 1999. Applying some contingency against the risk of delays in software delivery has produced a suggested date for the start of roll-out of April to July 1999. No date has yet been proposed for release 2+, which is to complete the contracted functionality.

- 309 Pathway have also suggested some changes to the commercial arrangements, to improve the financial implications of the project for them. These changes are not acceptable to the Sponsors and there have not been any serious negotiations.
- 310 There have been a number of reviews of activities of the various parties in the programme. Andersen Consulting reviewed the BA contribution to the CAPS and payment card programmes, French Thornton reviewed POCL, ICL reviewed Pathway and then PA Consulting reviewed the entire programme and the activities of the PDA, BA, POCL and Pathway. These reviews resulted in proposals for changes to the organisations of the various parties in the project. The implementation of these changes is still in process.
- 311 As is to be expected with a project of this size, there are many issues which have arisen. The most important of these we consider to be:
- The specification of requirements and solutions has generated a very large number of 'agreements-to-agree' (A2As) and 'Change Control Notices' (CCNs), which have taken a considerable time to agree, with a number still to be agreed.
 - There has been much debate on security controls and procedures, with Pathway alleging that 'Security requirements are complex and demanding'. The BA/POCL view is that security requirements are reasonable, being based on BS7799 and BA and POCL security standards.
 - There has been much debate about the Estate of the 19000+ Post Offices. Concerns relate to such aspects as the space for the equipment, the electrical supply, the physical environment, Health and Safety aspects of the installation and the availability of ISDN network connections. Problems have arisen with the installation of equipment at the 205 offices automated to date, extending the roll-out of OBCS (see 306 above). It has been estimated that the additional costs needed to enable installation in all offices will amount to some £17 Million, and the payment of this money is in dispute between POCL and Pathway.
 - The Pathway systems interface to BA and POCL systems. Some of these are new systems, being developed in parallel with Pathway, others are being modified to include the Interfaces. Pathway have raised a number of issues concerning the interface systems, particularly with the BA CAPS programme and the POCL reference data.
 - Definition and management of the programme to inform benefit recipients of the changes in payment method.
 - Major slippages in the timetable for functionality releases, together with transfer of elements of functionality to subsequent releases.

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4. The Contract

- 401 The 'contract' is actually three related contracts, an 'umbrella' contract between the two sponsoring authorities (DSS and POCL) and Pathway, a contract between the DSS and Pathway and a contract between POCL and Pathway. The contracts have evolved since the initial signing in May 1996, with Change Control Notices (CCNs) being agreed and signed subsequently.
- 402 The three contracts follow a similar format. In Appendix 4 we list the clauses and schedules that we consider to have particular relevance to our review. These identify contractor and sponsor responsibilities, the approach to contract management and the dispute resolution procedure.
- 403 The contractor is required to deliver services to meet the specified requirements in accordance with the specified solutions and to develop specified services.
- 404 The sponsors are required to provide all information, services, facilities and responses designated as their responsibilities and to use all reasonable endeavours to perform these to any agreed timetable.
- 405 A Contracts Steering Group is to be established to co-ordinate the umbrella contract and Contract Administration Groups are to be established to co-ordinate each of the Sponsor contracts. In practice, all three contracts have been co-ordinated by the Core Negotiating Team (CNT) which has met regularly (monthly or fortnightly) since contract signing.
- 406 All disputes to be referred to the Contracts Steering Group (umbrella contract) or the Contracts Administration Groups (sponsor contracts). Umbrella contract disputes are to be referred to the PDA Board if they cannot be resolved within 14 days by the Contracts Steering Group, sponsor contract disputes are to be referred to the Contracts Steering Group if they cannot be resolved within 14 days by the Contract Administration Groups.
- 407 We interpret this to mean that Pathway are to develop and deliver services, the sponsors are to carry out their responsibilities and that any disputes should be referred to the CNT meeting and then to the PDA Board meeting if they cannot be resolved by the CNT. We would therefore expect to find reference to any significant default in the CNT and PDA Board minutes of meetings. We have reviewed these minutes from January 1997 to February 1998 to identify such references and set out our findings in Section 6 of this report.

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5. Defaults and Causes

Introduction

501 This subject is more difficult to document than we would have expected, since, despite the many problems and delays which have occurred, we have found no documentation which refers specifically to defaults other than the notification of breach sent to Pathway on 24 November 1997, identifying the failure by Pathway to complete the Operational Trial by 21 November 1997. We have, therefore, identified from our interviews and document reviews those issues which might be considered to be defaults or which have contributed to the Operational trial default. We have also extracted relevant comments and issues from reports prepared by external consultants and from Pathway correspondence and presentations.

Slippages

502 The slippage in the timetable which occurred towards the end of 1996 and in early 1997 was clearly a default, which was resolved by the preparation of a new timetable in February 1997. We have been asked to concentrate on the period after the contract re-plan, as it was recognised that there had been Pathway and Sponsor contribution to the delays that caused that re-plan and it was not an objective of the review to allocate blame for this between the Sponsors and Pathway.

503 Pathway release 1c was scheduled to go live on 30 June 1997, with a full child benefit service for roll-out to 200 Post Offices. After three separate notifications of slippage, it went live on 2 November 1997, a delay of 18 weeks. Delivery of this service was clearly a Pathway responsibility and they have made no documented claims of fault by the Sponsors for the delay, other than some general assertions made in a presentation of the ICL Pathway programme review dated July 1997 (see 507 below). There is also some documentation (Steering Committee minutes 8 May 1997) suggesting that Pathway were at fault, identifying software problems with the Riposte software. One piece of documentation (PDA report for period ended 30 June 1997, paragraph 4.1) suggests that CAPS failures caused some delay to the start of Model Office Rehearsal. Internal PDA documentation indicates that this delay was two days, and in practice this period was subsumed in the delays resulting from the Pathway overall slippage.

504 We must, therefore, conclude that the cause of the delay to release 1c can be attributed primarily to Pathway.

505 Pathway release 1e, the release which was to deliver most of the contracted functionality, was scheduled to be delivered for live running on 8 September 1997. It was then scheduled for 'Live Trial' at 300 Post Offices until 21 November 1997. The completion of Live Trial on that date was a contractual milestone. This milestone was not achieved because of the delays to release 1c. At the time of writing (March 1998), the milestone had still not been achieved. The current re-planning indicates a likely target of January 1999 to April 1999, or possibly July 1999, for the milestone. There is extensive documentation on this re-plan, none of which ascribes fault for this delay to the Sponsors or the PDA. It is clear from the documentation that the

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delay is caused by past under-estimation by Pathway of the development work required and the resultant shortfall in the resources allocated to carry out the work.

- 506 There is a dispute between Pathway and the PDA, first raised at the CNT meeting on 8 April 1997 and discussed at many subsequent CNT meetings, about the relevance of a delay in the preparation of CAPS release 2.2. We describe the background to this dispute below.

The February 1997 re-plan was implemented through two primary documents:

- CCN (Change Control Notice) 105
- Master Plan, Version 3

CCN 105 incorporated new programme timetables for contractual milestones and for performance of the Authorities responsibilities, together with target dates for interim releases, but did not include a date for CAPS availability, which was required to update paragraph 2.5 of Schedule B7 of the Authorities' Agreement. This paragraph establishes dates when CAPS releases and functionality are to be made available to the Contractor (Pathway).

Master Plan V3 Appendix C includes the following dates (all in 1997) for the preparation of CAPS release 2.2:

Pathway Release 1d (Pway BPS / CAPS 2.2)

CAPS 2.2 System Test	03/02 - 18/05
CAPS 2.2 ChB/PACS Interface Test	21/04 - 18/05
CAPS 2.2 Service Provider Testing	02/06 - 11/07
CAPS 2.2 UAT	02/06 - 20/06
Pway BPS / CAPS 2.2 Direct Interface Test	21/04 - 18/05
Pway BPS / CAPS 2.2 Business Regress Test	19/05 - 30/05
Implementation	14/07 - 20/07
CAPS Release 2.2 testing complete and accepted for use	21/07
Pathway R1d Live	21/07

Master Plan V3 also states (page 5) that CAPS release 2.2 interfaces to Pathway Release 1d, which is scheduled to be implemented on 21/07, 3 weeks after Pathway Release 1c on 30/06 (It should be noted that Release 1d was a version of 1c modified to interface to CAPS 2.2 rather than CAPS 2.1).

A concept of a 'code freeze' date has been introduced, to define the point at which a system which interfaces with another is effectively complete, allowing the second system to rely on the stability of the first. Pathway proposed that this date be used in Schedule B7. This concept is not widely used in IT systems project management, as these interfaces are usually complex and are handled by a formal process known as 'Configuration Management'. Hence the absence of any reference to 'code freeze' in Master Plan V3. However, we recognise that in this specific contractual environment, a process is needed to manage the parallel development by different parties of

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interfacing systems. Unfortunately, this has led to some difficulty in defining the 'code freeze' date. But there seems to be a level of agreement that the completion of Pathway BPS / CAPS 2.2 Business Regression Test and the commencement of CAPS 2.2 User Acceptance Test represents a sensible date to use, even though any subsequent test faults may result in the need to modify code. Therefore the date proposed by Pathway for CAPS 2.2 'code freeze' is 02/06.

The actual events appear to be as follows:

By 8 May, Pathway had realised that they were late with the preparation of Release 1c and requested a reduction in the PDA testing time. This was not acceptable to the PDA, and so Pathway declared a slippage of 6 weeks in the delivery date of 1c, from 30/06 to 13/08. This was acknowledged by Tony Oppenheim of Pathway at the CNT meeting on 8 May. He is quoted as saying that *'the current re-plan timetable was probably not only at risk but unachievable...the timetable needed to be moved again to make it realistic'*.

Nevertheless, development of both Pathway 1c, 1d and CAPS 2.2 proceeded and we have notes that the CAPS developers were attempting to carry out Pathway interface tests in the last week of May. The notes indicate that Pathway did not send the requisite data to enable these tests to be carried out, despite requests from CAPS on 29 and 30 May. The whole process then slipped, apparently by mutual agreement, until Pathway were ready to submit the data, when the tests were carried out and completed. As noted in paragraph 503 above, Pathway Release 1c eventually went live on 2/11, and CAPS 2.2 duly followed 3 weeks later. It is clear that the reason that CAPS 2.2 failed to meet the 'code freeze' date of June 2 was that Pathway failed to submit the data necessary for interface testing to be completed by that date.

Pathway have adopted a very aggressive attitude to this issue, based apparently on the wording of paragraph 2.5 of Schedule B7 of the Authorities' Agreement, which states that *'The above dates in the contractual milestones table are conditional on CAPS releases and functionality being available to the CONTRACTOR as set out in the table below this paragraph, and shall be delayed by an amount equal to any delay of such availability'*. In the following paragraphs we quote some of the statements from minutes of CNT meetings:

At the CNT meeting on 11 June, Tony Oppenheim of Pathway is quoted as saying *'that if any argument arose over delays after the CCN 105 re-plan, Pathway would want to cite the various changes and delays in its defence, since otherwise there would be scope for the Authorities to argue that only Pathway had been at fault.'*

In a discussion at the CNT meeting on 23 July he is further quoted as accepting *'that if Pathway caused a delay to CAPS delivery dates, then the Authorities would not be in default'*.

At the CNT meeting on 17 September 1997, it was agreed that the issue concerning the CAPS 2.2 date would be one of the many commercial issues that would be addressed in the new replan that was taking place. The commercial negotiation of

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the replan was not expected to start for another 4 weeks. In practice, this commercial negotiation has not started at the time of writing (March 1998).

At the CNT meeting on 16 February 1998, Pat Kelsey of the PDA asked *'if the Authorities were to insert 2nd June 1997 as the code freeze date for CAPS 2.2, what would Pathway request?'.* Tony Oppenheim is quoted as replying that *'his initial reaction would be that as the actual release was sometime in October Pathway would request a four month extension'.* Warren Spencer of Pathway is quoted as then saying that *'Pathway did not have to prove any effect on Pathway due to the delay in the release of CAPS 2.2. Merely the fact that CAPS had failed on a particular day meant that there would be an extension'.*

We consider that this 'failure' occurred because Pathway were not ready to meet their responsibilities for interface testing by the scheduled completion date of 30/05. Following the missing of this date by Pathway, there appeared to the staff on the ground at both CAPS and Pathway to be no requirement to formally meet the time schedule for this activity, given that Pathway had already declared a 6 week slippage in their schedule for release 1c, which was a pre-requisite for CAPS 2.2. Pathway had already acknowledged, on May 8, that *'the timetable needed to be moved to make it realistic'.* The implementation of CAPS 2.2 stayed linked to Pathway 1c through the subsequent further delays to 1c, eventually being implemented on 24 November, 3 weeks after 1c, as had been planned in Master Plan V3.

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ICL Pathway Programme Review

507 ICL Pathway conducted a review of their programme in mid 1997, the results of which were presented to the PDA Board at the meeting on 15 July. The presentation covered a Programme Audit, a review of Security, a review of Release 1c testing, conclusions and a Programme Plan. The key findings presented were:

Programme Audit:

- *Too much change late in the development cycle*
 - *Requirements definition freeze*
 - *Release contents freeze (Release 1c still not signed off)*
 - *Elapsed time through design, development and test*
 - *CRs/CCNs*
- *Too much overlap and compression in the phased releases*
- *Knock-on effect of close incremental releases*
- *End-to-End Security is difficult to test and is the gating item*
- *Need more time between releases to improve productivity and quality*
- *Multiple CAPS and Pathway Releases creates too many baselines*

Security Review:

- *Access Control Policy not agreed until 30th April 1997*
- *Complex and demanding requirements*
- *Contents of 1c are extensive and mandated*
- *Very limited time to develop and test*
- *End-to-End testing is comprehensive and difficult*

Release 1c Testing Review:

- *Late agreements on Security and MIS for Release 1c*
- *Serious impact on establishing the Release 1c baseline*
- *Resulting in delays to integration testing and a build up and slow clearance of PinICLs*
- *Need to rebuild the release baseline for MOR2*
- *Security is on the critical path*
- *Need access to Data Centres to rebuild and prove Release 1c*
- *Need to change testing strategy for future releases*

Conclusions:

- *Circumstances have changed*
- *Programme rethink required*
- *Reduce the number of releases*
- *Reduce the inter-dependencies*
- *Rephase outputs into manageable tasks*

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These findings identify Pathway's view of the primary reasons for the delay to Release 1c, for which they then proposed deferral of the release date from August 18 to October 13. It should be noted that Pathway made no attempt in the presentation to quantify the impact on the programme schedule of the individual items they listed, nor did they attempt to allocate fault. There was, however, a clear implication that they considered that some of the Sponsor actions had contributed to the delays.

The statements that 'End-to-End Security is difficult to test and is the gating item' and that 'Security is on the critical path' imply that they consider the on-going debate about Security to be the most serious issue. We explore this in paragraph 509 below.

The other concerns expressed mostly relate to late or slow resolution of issues and to the multiplicity of releases and consequent inter-dependencies. Issue resolution is addressed in 514 below. The multiple release problem resulted from the decision to deliver functionality in a series of releases, as agreed in the February 1997 replan. It proved difficult for Pathway to interface with CAPS as the Pathway development slipped and CAPS had to slip with them because of inter-dependencies between the two programmes. The PDA, Pathway and BA have subsequently 'de-coupled' CAPS and Pathway so that development of each programme is now independent, although there are inter-dependencies related to joint testing of interfacing components. No fault appears to have been implied by this change.

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PA Programme Review

508 In July 1997, following the delay to Release 1c, an Independent Programme Review was proposed, to examine ways to improve the future delivery of the programme. PA Consulting Group (PA) were commissioned to conduct this review, which took place in August and September 1997, with the final report published to a very restricted circulation list on 1 October. The review was of the PDA, BA, POCL and Pathway. The findings in the PA report that we consider relevant to our review are:

- *Recognition towards the end of last year (1996) of the scale of data and business migration and the need to move towards phased CAPS releases have affected BA cost estimates and have contributed to an increased understanding of the complexity of the overall implementation. This increased understanding led to the change in time scale for the Programme agreed by all parties early this year and which is reflected in Master Plan V3. (M3.1)*
- *Despite an apparent focus on planning rather than doing (by POCL) and a general underestimation of the resources required, PA do not believe this has contributed in any significant way so far to slippage in the Programme. (M3.2)*
- *There is evidence of a (PDA) change management process that requires time which is not always allowed for in the plans. (M3.3)*
- *At the outset of this procurement, it appeared to Pathway that the development of a service to meet the PFI requirement could be achieved largely through systems integration, and that its role was essentially one of a systems integrator. In reality, the amount of development work needed was in PA's opinion, seriously misjudged. As a result, time scales and resource needs were underestimated. (M3.4)*
- *As Pathway and sponsors have worked with the PDA to resolve the detail of the requirement and also to incorporate change requests into planning, the extent of the development needed has become clear. (M3.4)*
- *PA believe that there are direct causes of slippage but that these need to be set in the context of a small number of underpinning root causes. The root causes are Marginal business cases, Agendas in conflict and PFI structural problems. The direct causes are Resourcing, Development and control disciplines, Requirement clarification and solution drift and The Escher dependency. (M4)*
- *Although PA expect further slippage in the BA/CAPS programme...and PA believe that POCL are not moving fast enough into implementation mode, these delays are not, in PA's judgement, on the critical path. It is PA's assessment that the primary driver of time scale slippage will now be Pathway as they come to terms with the scale of what has to be done. (M5.1)*

The PA view of the causes of slippage to date implies that fault lay with the nature of PFI, with the CAPS programme and with Pathway. However they did not separately consider the delays up to the first re-plan and the subsequent delays to release 1c and future releases.

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PA Security Review

509 As noted in paragraph 507, there is an implication from Pathway's programme review that the most important Sponsor issue that has caused delay is Security. As a result, the PDA has recently commissioned, from PA Consulting Group, a review of BA/POCL Security Requirements. The objective of the review was to determine whether the Security Requirements were appropriate for a PFI procurement of this nature or if not appropriate, could be considered 'onerous, ill-defined and constantly changing', which was the impression of the views of ICL Pathway which had been given orally to members of the PDA by ICL Pathway staff. The review was restricted to the PDA, not involving ICL Pathway.

PA reported that *'their investigations found no evidence to suggest that the Security Requirements were onerous, ill defined and constantly changing. The Requirements were developed in conjunction with Government standards and industry best practice and as such are appropriate and adequate for the programme. They have been stable since February 1996 (before award of contract), with the only post-contract change being a modification requested by Pathway'*.

We have, accordingly, not pursued further investigations into the Security issue, as the PA report has found no justification in ICL Pathway's claims and no fault in PDA or Sponsor actions.

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Other claims

- 510 We understand that there have been a number of discussions between senior executives of ICL and the Sponsors at which ICL have expressed their view that there is Sponsor fault for the delays to the programme. No correspondence has preceded these meetings and most have not been minuted, at least not to the level of being available to members of the PDA. We have, however, seen copies of the slides from a presentation made on 15 January 1998 by Keith Todd, Chief Executive of ICL, to Peter Mathison, Chief Executive of the Benefits Agency, on the reasons for delay, the key slide of which we reproduce below:

Programme Delays

- *PFI Contract flawed*
 - *high dependencies on processes and interfaces to new BA and POCL systems*
 - *problems with risk transfer restrict solution design*
 - *serious delays in CAPS programme*
- *Incomplete specifications*
 - *key area not defined at contract*
 - *"drop-down" process not successful*
 - *security definitions very complex, late and mandated*
 - *slow resolution to Agreements to Agree, CARs and Change Control*
- *Serious under-estimate of development work*
- *Problems with Management arrangements*
 - *PDA not comprehended in contract*
 - *poor end-to-end management*
 - *sponsors agendas in tension/conflict*
 - *need for change accepted*

This document contains no quantified claims. It repeats a number of the assertions made in the Pathway July presentation and includes some findings from the PA Consulting October review. However it does raise a number of 'new' claims, which we consider in the following paragraphs.

- 511 'serious delays in CAPS programme'

We understand that the CAPS programme had some problems in 1996, which were one of the causes of the need for the February 1997 re-plan. From our interviews and document searches we have found no suggestion of CAPS delays since then, other than some suggestions that CAPS problems contributed to the delays to release 1c (see paragraph 503 above) and the debate about the delay to CAPS 2.2 (see paragraph 506 above). We can therefore identify no significant delay since February that can be attributed to CAPS.

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512 'key area not defined at contract'

We do not understand this claim. No such assertion was documented in the PA report and we have found no reference to such a claim in any of the programme documentation we have reviewed. The PDA Programme Director also does not understand this claim.

513 '“drop-down” process not successful'

We do not understand this claim. Again no such assertion was documented in the PA report and we have found no reference to such a claim in any of the programme documentation we have reviewed. The PDA Programme Director and other interviewees considered that the process had been successful, albeit slower than planned.

514 'slow resolution of issues'

Our review of documentation has identified that some of the hundreds of issues (A2As, CARs and CCNs) have taken a long time to resolve and there are a few instances of documented Pathway claims that delay will be caused if resolution is not achieved quickly. We have not found a single documented claim by Pathway that quantifies the extent of such delay or that states that such delay has occurred.

It is normal in a project of this size and complexity for there to be many issues that require resolution and such resolution may be slow in some cases. We would have expected the development manager (Pathway) to have identified any critical path activities that were dependent on Sponsor resolution and to have documented these to the PDA.

From our interviews, we understand that the responsibility for slow resolution of issues lies with Pathway as well as the Sponsors, as there have been many instances where Pathway have been late in delivering documents or have delivered documents of poor quality.

We illustrate the joint responsibility for issue resolution by a table showing the number of Change Control Notices (CCNs) classified by the party responsible for initiating the notice:

Initiator	Raised	Withdrawn	Total
PDA	67	24	43
Pathway	107	13	94
POCL	15	5	10
CAPS	30	6	24
BA	4	1	3
Total	223	49	174

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515 'Serious under-estimate of development work'

This appears to be an acceptance of the claim made to us by all interviewees and confirmed in the PA programme review, that Pathway seriously under-estimated the development work required for the programme. It would appear that this under-estimation continued until the re-organisation of Pathway in July through September 1997. Several interviewees have said that they now believe that Pathway are more professional and that they have more confidence in Pathway's, greatly increased, estimates for completion of the development work. As no deliveries have been made since then and none are due for some months, the verdict is open on whether this will prove to be the case. We note that Pathway have just (8 April 1998) indicated that they will not achieve the planned date of 5th October 1998 for delivery of new release 2 tested code.

Conclusion

516 The BA/POCL payment card programme is a very large and complex Information Systems programme.

Pathway is required, under the terms of the contract, to deliver services to meet the specified requirements in accordance with the specified solutions and to develop the specified services.

The Sponsors are required, under the terms of the contract, to provide all information, services, facilities and responses designated as their responsibilities and to use all reasonable endeavours to perform these to any agreed timetable.

It is our opinion that Pathway seriously under-estimated the effort and time needed to develop the services when they prepared their proposal and did not recognise this under-estimation in the period from May 1996 to February 1997, when the contract re-plan was agreed. Pathway now appear to have recognised that the effort and time were under-estimated and have stated that much more effort and time is required to complete 'new' release 2. They have not yet finished the planning and estimating of 'new' release 2+, which will complete the development of the contracted functionality.

It is our opinion that Pathway have been responsible for the delays to the programme, since the re-plan in February 1997, that caused the November breach, by not allocating sufficient resources to complete their contracted obligations within the agreed timescale. Pathway have made no documented claims to support any verbal assertions that changes in requirements have impacted their ability to meet the timescale.

A secondary, and, in our opinion, relatively insignificant, cause of the breach is delays resulting from slow resolution of issues. Any programme of this type will have a multiplicity of issues that require resolution and the time to achieve such resolution needs to be allowed for in the planning and estimating of the programme. We do not believe that Pathway allowed sufficient time for this activity in their estimates. Pathway have made no documented claims to support their verbal assertions of delays resulting from slow issue resolution.

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6. Relevant Documents

- 601 In paragraph 407 we note that, under the terms of the contracts, any disputes should be referred to the CNT meeting and then to the PDA Board meeting if they cannot be resolved by the CNT. We would therefore expect to find reference to any significant default in the CNT and PDA Board minutes of meetings. We have reviewed these minutes from January 1997 to February 1998 to identify such references.
- 602 We reviewed the minutes of the 16 meetings of the CNT in the period January 1997 to February 1998. Most of the meeting content was discussion of the multitude of detail relating to the on-going process of maintaining the contracts with Change Control Notices (CCNs) to reflect the reality of the programme. There are a small number (<10) of instances where a Pathway representative suggested that a delay would occur unless agreement was achieved quickly on a particular item, but no instances of a report of any such delay occurring. There were a number of instances where Pathway stated that they were progressing on the assumption that agreement would be achieved and that failure to agree on the basis of their assumption would cause delay, but again no instances of such a delay occurring. We therefore conclude that Pathway had not used the CNT meeting procedure to notify any defaults by the Sponsors in this period.
- 603 We reviewed the minutes of the 11 meetings of the PDA Board in the period January 1997 to February 1998. Most of the meeting content was discussion of the progress of the programme, with considerable emphasis on the delays to the delivery of release 1c and to the schedule for release 2 (replacing 1e). There are no minuted items suggesting any fault by the Sponsors or the PDA for these delays. Again we must conclude that Pathway had not used the PDA Board procedure to notify any defaults by the Sponsors in this period.
- 604 We found two reports prepared by the PA Consulting Group to have particular relevance. The review of BA-POCL Programme, dated 1 October 1997, is quoted in paragraph 508 and the draft review of BA/POCL Security Requirements, produced in February 1998, is quoted in paragraph 509.
- 605 We have reviewed all of the other documents listed in Appendix 3. From our interviews with the people listed in Appendix 2, we understand that these documents cover all major programme progress reports and correspondence with Pathway. We understand that there is also a very large volume of documentation at a lower, even more detailed level, which we have not been able to review given the time constraints of our review. However, if there were any important issues raised in detail documents, we would have expected these to have been escalated to higher level documentation and meetings.
- 606 We have prepared detailed notes of all relevant statements in the documents reviewed. These notes will be held by Bird and Bird in case there is a future need to review this documentation.

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Appendix 1 Terms of Reference

INDEPENDENT CONSULTANT - TERMS OF REFERENCE

6th February 1998

1. The Consultant must be independent of all three parties.
2. The Consultant must be adequately qualified to address the technology involved in the BA/POCL Programme.
3. The Consultant will complete his written report to the Authorities within 6 weeks to 3 months, depending on the scope of work (see paragraph 6 below). The Consultant will provide initial feedback on his findings within 2 weeks after commencing work.
4. The Consultant will have access to members of the BA/POCL Programme and/or relevant documentation held by the BA/POCL Programme.
5. The Consultant will have access to the Authorities' staff and all relevant documentation held by the Authorities.
6. At present, the Authorities will not request access for the Consultant to Pathway's staff or Pathway's documentation, and the Consultant will be required to prepare a report based only on the Pathway documentation held by the Authorities. On this basis, it is estimated that the Consultant will complete his written report within 6 weeks. However, it is accepted by the Authorities that the report would be more definitive if it were based on all available information, including all of Pathway's documentation and comments.
7. The Consultant will analyse the defaults by any party to the Related Agreements and analyse the causes of those defaults. In particular the Consultant will review whether the Authorities have caused or contributed to a default on the part of Pathway. This assessment of past responsibility will be used to inform future negotiations with Pathway.
8. The Consultant will keep all information received confidential and the content of his report confidential to the Authorities and their legal advisers. The Consultant (and his assistant) will enter into confidentiality agreements with each Authority to this effect.
9. The Consultant will not have access to or investigate any aspect of the commercial contracts between the Authorities.
10. The Consultant will work under the supervision of and report to the Programme Lawyer.

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Appendix 2 List of interviewees

Hamish Sandison	Partner, Bird and Bird
George McCorkell	Projects Director, Benefits Agency
Paul Rich	Development Director, Post Office Counters
Peter Crahan	Programme Director, PDA
Dave Miller	Horizon Programme Director, Post Office Counters
Mena Rego	Head of Horizon Commercial, Post Office Counters
Pat Kelsey	Head of Contracts, PDA
Bruce McNiven	Deputy Director, PDA
John Meagher	Service Development Manager, PDA
Mitchell Leimon	Release Manager, PDA
Stuart Riley	Commercial and Corporate Manager, PDA
John Cook	Contracts Team Leader, PDA
Gareth Lewis	Fraud and Security Manager, PDA
Jeremy Folkes	Technical Manager, PDA
Colin Oudot	Product Manager, PDA

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Appendix 3 List of documents reviewed

Minutes

Programme Steering Committee Minutes	PSC
PDA Board Minutes	PDA
PDA Pre-Board Minutes	
CNT minutes	CNT
Commercial Minutes - PDA/BA	
Commercial Minutes - POCL	
CCB Minutes	CCB
Checkpoint (Nile and Congo) Minutes	

Progress reports

PDA Progress Reports	
Contracting Authorities Responsibilities Status	CARs
CARs Correspondence	CARs
Notes of Meetings with ICL	
Release Management Team Progress Reports	
Service Development Team Progress Reports	

Reports and specifications

Contract (Files 1-12)	
Statement of Service Requirements	SSR
SADD Version 2.1	SADD V2_1
SADD Version 4	SADD V4
SADD Version 4 - Caveat Letter	
PA Consulting Review of BA-POCL Programme	
French Thornton Report	
Review of the Payment Card Programme	
Lessons Learned Report	
Status of Security Requirements & Developments	
End to End Security Paper	
PA Consulting Review of BA/POCL Security Requirements	
PDA Master Plan Version 3 (10/4/97 - Approved)	
PDA Master Plan Version 3 (14/2/97 - Draft)	
Pathway New Release 2 Replan Review	

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Miscellaneous

Replan Audit Trail (P Crahan file)
Catalogue of Safe Contents
Contract "Umbrella" and Contract Notes
Pathway Correspondence File (P Crahan file)
CAPS Overview
PDA Organisation Structure (Migrating)
PDA Organisation Structure
Pathway Organisation
Glossary of Terms
Miscellaneous Pathway correspondence and presentations
Pathway Files (B McNiven files)

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Appendix 4 Relevant contract clauses and schedules

The clauses and schedules listed in this appendix are related to the contract containing them by the following acronyms:

JNT: The 'Joint' Authorities Agreement

BA: The Benefits Agency Agreement

POCL: The Post Office Counters Agreement

All: All three agreements

Relevant clauses

201(JNT) A complex clause specifying Contractor and Authorities responsibilities, specified in schedules B1-5 & 7, to be extrapolated and transposed into schedules in the DSS and POCL contracts within 3 months extendable to 6 months. This was done.

201(DSS) Contractor to meet the requirements specified in Schedule A15 in accordance with solutions specified in Schedule A16 by performing the Basic DSS services referred to in clause 201.2:

DSS Development services in clause 402
Roll out services in clause 404
DSS Steady State services in clause 405
Management services in clause 602
DSS Contingency services in clause 409
Transfer services in clause 906

201(POCL) Contractor to meet the requirements specified in Schedule A15 in accordance with solutions specified in Schedule A16 by performing the Basic POCL services referred to in clause 201.2:

POCL Development services in clause 402
Roll out services in clause 404
POCL Steady State services in clause 405
Management services in clause 602
POCL Contingency services in clause 410
Transfer services in clause 906

401(JNT) Contractor to develop:

 Service Architecture Design Document
 All necessary interfaces to create the Service Architecture.

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- 402(DSS) Contractor to develop:
- Optional DSS Services (Schedule C1)
 - Card Management Service (Schedule E1)
 - Payment Authorisation Service (Schedule D1)
 - Service Architecture Design Document
 - DSS Contingency Services (Schedules D9 & E9)
- 402(POCL) Contractor to develop:
- Optional POCL Services (Schedules C1 & H1)
 - Benefits Encashment Service (Schedule D1)
 - Automated Payment Service (Schedule E1)
 - EPOSS (Schedule F1)
 - POCL Infrastructure Services (Schedule G1)
 - Service Architecture Design Document
 - POCL Contingency Services (Schedules D9,E9,F9,G11 & (optionally)H9)
- 601(All) Authorities entitled to monitor Contractor performance per Schedule A4 procedures.
- 602(All) Contract management performed per Schedule A4
- 602(DSS) DSS Services to be managed per Schedules D5 & E5
- 602(POCL) POCL Services to be managed per Schedules D5, E5, F5 & G7.
- 605(DSS) DSS undertakes to provide all information, services, facilities and responses designated as DSS responsibilities in Schedules D3 & E3. DSS to use all reasonable endeavours to perform these to any agreed timetable per Schedule B9.
- 605(POCL) POCL undertakes to provide all information, services, facilities and responses designated as POCL responsibilities in Schedules D3, E3, F3 & G5. POCL to use all reasonable endeavours to perform these to any agreed timetable per Schedule B9.
- 807(JNT) All disputes shall be referred to the Contracts Steering Group (Schedule A4) for resolution.
- If the dispute cannot be resolved within 14 days, it shall be referred to the PDA Board for resolution.
- If it cannot be resolved by the Board within 14 days, it shall be referred to Expert resolution or the English courts.
- 807(DSS) All disputes shall be referred to the Contract Administration Group (Schedule A4) for resolution.

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If the dispute cannot be resolved within 14 days, it shall be referred to the Contracts Steering Group (Schedule A4 of the Joint contract) for resolution.

If it cannot be resolved by the Group within 14 days, it shall be referred to Expert resolution or the English courts.

807(POCL) All disputes shall be referred to the Contract Administration Group (Schedule A4) for resolution.

If the dispute cannot be resolved within 14 days, it shall be referred to the Contracts Steering Group (Schedule A4 of the Joint contract) for resolution.

If it cannot be resolved by the Group within 14 days, it shall be referred to Expert resolution or the English courts.

Relevant schedules

A4(AII) Contract Management:

1 Objectives

(JNT) To monitor and manage the relationship between the three parties and to authorise actions affecting the interests of both Authorities.

(DSS) To monitor and manage the delivery of the DSS services and to authorise actions which improve those services.

(POCL) To monitor and manage the delivery of the POCL services and to authorise actions which improve those services.

2 Organisation

(JNT) A Contracts Steering Group to be established to co-ordinate the agreement.

(DSS) A Contract Administration Group to be established to co-ordinate the agreement.

(POCL) A Contract Administration Group to be established to co-ordinate the agreement.

D3, E3 (DSS) DSS Responsibilities

Lists specific DSS responsibilities

D3, E3, F3, G5 (POCL) POCL Responsibilities

Lists specific POCL responsibilities