

COMMERCIAL IN CONFIDENCE

Chairman of NHS 24 NHS 24 Caledonia House Cardonald Park Glasgow G51 4EB

23 May 2014

Dear Sir

Review into the Minute of Amendment process for both BT and Capgemini contracts

Background

You have asked us to review the Minute of Amendment process for both the BT and Capgemini contracts. As agreed our review sought to confirm:

- the precise dates it became known that there were omissions in the contracts;
- the circumstances around how these omissions were discovered;
- when was, and; were advised of these omissions, by who, and what the handling advice
- the subsequent processes which led to the BT Minute of Amendment being signed, but the Cappemini not being signed.

Our work has been informed by a significant email trail provided by NHS 24 staff and through interviews with the following NHS 24 staff:

The Procurement Process

Although our review predominantly focuses on the events after the contracts were signed on 2 March 2012 it is important to understand the events leading up to the signing of the contracts to understand why truncated versions of the performance criteria manifest themselves in various versions of the contract and Minute of Amendments (MoAs) after 2 March 2012.

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In June 2010, NHS 24 approved its SFLA Procurement Strategy which set out a number of potential procurement routes, which would have been compliant with current regulations. As the procurement was particularly complex and NHS 24 were unable to define the specific means to satisfy the needs and objectives of the programme, the SFLA Programme Board decided to use the competitive dialogue procedure.

In procuring the SFLA, NHS 24 opened competitive dialogue with suppliers. The procurement was split into two lots. Lot 1 encompassed the procurement of clinical content and applications software (Capgemini) while Lot 2 covered the managed infrastructure and hardware (BT). The procurement was scheduled to take 18 months commencing July 2010 when the OJEU advertisement was placed

The key milestones followed by NHS 24 during the procurement are summarised below:

- a Pre-Qualification Questionnaire (PQQ) undertaken from July to September 2010 sought responses from interested parties in relation to their technical knowledge, experience, organisational, financial standing and legislative compliance;
- an Invitation to Participate in Dialogue Stage 1 (ITPD 1) was issued in September 2010 to bidders that were short listed at the PQQ stage. This was to assess which bidders could best deliver the most economically advantageous tender in accordance with the NHS 24 evaluation criteria;
- The Invitation to Participate in Dialogue Stage 2 (ITPD 2) also known as the competitive
 dialogue phase commenced in January 2011 and each Bidder was invited to take part in detailed
 dialogue discussions with NHS 24. The competitive dialogue sessions were in various formats
 and included bidders providing functional demonstrations, vision and architecture sessions,
 bidders hosting site visits and reference site conference calls;
- The Invitation to submit Final Tenders (ITSFT) for Lot 1 was issued in July 2011 and a
 preferred bidder selected in August 2011, whilst the ITSFT for Lot 2 was issued in September 2011
 with final responses and preferred bidder selection in October 2011.

As part of the procurement process a full version of the performance criteria was included in ITPD 1 [Appendix 1] and was issued to potential suppliers for response on 29 October 2010. However, on 18 July 2011 the ITSFT that was issued to potential suppliers contained a truncated version of the performance criteria called G.TP-027. During our interviews with staff it was confirmed that this was a result of system error whereby the text that was included in G.TP-027 stopped mid paragraph.

n explained in an email dated 4 August 2011 to , entitled subject Truncated Requirement G.TP-027, "this seems to have been truncated somehow when uploaded into Quality Centre and hence the truncated text is included in the issued OBS [Output Based Specification] for ITST Lot 1 and the current draft Lot 2."



In preparation for sending out the OBS for ITSFT Lot 1, NHS24 utilised Hewlett Packard Quality Center ("HPQC"). This is quality management software which offers software quality assurance, including requirements management, test management and business process testing for IT and application environments. In April 2011 the original ITPD1 requirements were placed in an import file/spreadsheet to be uploaded into the HPQC [Appendix 2]. This file was uploaded on 26 April 2011. This was done to manage the change to requirements during the Competitive Dialogue process. On completion of the dialogue process, requirements were exported to validate and prepare the final OBS for ITSFT. The final ITSFT was then issued on 18 July 2011.

It has been identified after comparison of the original input file to that situated in the original HPQC database that the truncation of G.TP-027 occurred during the initial import in April 2011 [Appendix 3]. The data imported utilised the functionality within the HPQC to upload the data from the import file. In [Appendix 4] we have set out a diagram providing an overview of the process.

In order to prepare the OBS this involved a download from the HPQC into excel [Appendix 5] and then a manual cut and paste process into the OBS word document template [Appendix 6]. As the performance requirements G.TP-027 were truncated within the HPQC this truncated version of the requirements also was therefore truncated within the Lot 1 IFSFT OBS document sent to the potential bidders.

Potential suppliers, including Capgemini responded to the truncated version of G.TP-027 by 1 August 2011.

On 1st August 2011 Capgemini provided a response to the original Invitation to Submit Final Tender. [Appendix 7]. It should be noted that in responding Capgemini had changed the formatting (by adding bullets) and changed the content of the requirement (by altering the "dat" to "data").

The issue of a truncated version of G.TP-027 was identified by NHS 24 3 days later on 4 August 2011 and as a result, suppliers were contacted to inform them of this error and asking them to complete G.TP-027 based on the full criteria [Appendix 8]. Cappendix 9] on 8 August 2011. It is this version that Cappendix were subsequently scored on. The version of the G.TP-027 in the HPQC system was subsequently corrected [Appendix 10].

Constructing the Contract

The contract finalisation for Lot 1 was overseen by the NHS 24 Core Team, consisting of

Due to financial, TUPE, due diligence and procurement, with an NHS 24 lead and Pinsent Masons lead assigned to each, together with the relevant areas of the contract assigned to each workstream. The contract consisted of Substantive Terms, together with the 28 schedules. Additional support for pulling together the 28 schedules in the contract included



The contract and supporting schedules were maintained within the Pinsent Masons extranet site and were subject to ongoing clarification and amendment. Through discussions with NHS 24 staff it is our understanding that any changes or amended documents were passed to at NHS 24 who would liaise with Pinsent Masons to ensure the most up to date information was included in the extranet site.

There were a number of folders within the extranet site including a final folder that was used to print the final contract. Pinsent Masons set out in an email dated 27 October 2011, from (Pinsent Masons' , to , copied to , how the extranet site would operate. , confirms that she would be the main contact responsible for uploading the contract/schedule parts into the relevant site folders.

It has been identified that the truncated G.TP-027 was used as part of the final contract despite the alternative, full version G.TP-027, also having being uploaded onto the extranet. During our interviews no member of staff could explain why only the truncated version of G.TP-027 had been taken into the final contract folder.

On 29 February 2012 (Pinsent Masons) sent an email to copied to asking him to confirm if the Lot 1 and Lot 2 and Lot 1 OBS were in an agreed form. replied by email on 29 February 2012 confirming Lot 1 OBS and the Lot 2 OBS were in final form on the extranet, and therefore could be printed and bound.

We understand that no complete page turning exercise was performed due to time constraints, although a thorough check to ensure that the final contract was complete and accurate would be regarded as best practice.

Signing the Incomplete Contract

Both Lot 1 and Lot2 contracts were signed on 2 March 2012. Through our discussions with staff this was approximately 2 months later than what had been anticipated and that Capgemini had already initiated design work, at their own risk, prior to the contract being finalised and signed.

On 19 April 2012 it was identified by NHS 24 staff that there were some sections missing in the CD version of the signed contract. This was identified by when undertaking work comparing high level solution design from Cappemini to the original contract. This was reported in an email to This information was also

communicated later that day to

On 3 May 2012, sent an email to summarising that NHS 24 were now aware of two issues with the OBS as contained in SPLA agreements of Lot 1 and Lot 2. In Lot 1, part of section 2.1.1, Consent, Confidentiality, Security and Data Integrity, together with sections 2.1.2, Technical Performance and Standards, 2.1.3, Management Reporting, 2.1.4, Documentation, 2.1.5, Usability and 2.2.1, Patient Contact Management were omitted. In Lot 2, Appendix 2 (which included the BT responses to requirements provided by Capgemini) had been omitted. Pinsent Masons offered to progress a Minute of Amendment and Change Control Notice with both Capgemini and BT without charge. In addition to the follow up work being performed by NHS24 on the Lot 1 MoA we advise that the status of the Lot2 MoA is also confirmed.



The email states that "it appears to have been a printing error as the sections are included in the version of the OBS on the Pinsent Masons extranet." Note this printing error is quite separate from the original error that occurred in the HPQC upload when the G.TP-027 truncated error originally occurred.

Our interviews with staff confirmed that no complete "read through" of the documentation was undertaken prior to the contract being signed. Staff also confirmed that some changes were still being made to the contracts on the day the contract was signed, limiting the ability to perform a cold read of the documentation before signing.

explained that a cold read through on the date of signing would not have been possible due to the size of the contract. He said that the substantive terms were read but responsibility for individual schedules had been allocated out to individuals with proofs performed for changes as they went. This involved weeks of work and it would take several days to proof read the document in its entirety.

It is important to note at this stage, that if the contract final file had been printed accurately it would have included the truncated version of G.TP-027, as the full version of G.TP-027 had not been included in the final file.

Progressing the Memorandum of Amendment

Between 23 May 2012 and 27 July 2013 there are a number of emails that indicate the process followed to progress the signing of the MoA for both lots. These are summarised below:

- e 23 May 2012 sent an email to and outlining his findings following a full review of both signed contracts. This email provided detail of those sections missing in the signed contract when compared with the expected contract as held on the Pinsent Masons extranet site (detailed above). This email was prepared in advance of a scheduled meeting between NHS 24 and of Pinsent Masons on 25 May 2012 to discuss the gaps in the contract identified by NHS 24.
- Between 22 June 2012 and 26 June 2012 there is evidence that demonstrates work had been undertaken to progress the development of the MoA for both lots 1 and 2, including an email from indicating that Capgemini are "generally comfortable with the proposed approach". When the MoA was discussed with indicated that Pinsent Masons said the contract omissions were not an unusual event and that an MoA was typically an administrative matter.

 confirmed that did not escalate this matter to because of the many other major issues being dealt with at the time within NHS 24, the assurances given by Pinsent Masons that it was an administrative matter and that Capgemini indicated their agreement with MoA.
- 9 July 2012 Pinsent Masons prepared the MoAs for review by NHS 24, in particular

It is unclear from the email trail who authorised Pinsent Masons to share the MoA with Capgemini for comment however this occurred on 13 July 2012 as evidenced in an email from to Capgemini employees and . This version contained the truncated version of G.TP-027.



- 3 August 2012 NHS 24 completed a second review of the Lot 1 and Lot 2 MoAs...
 informs Pinsent Masons of a number of corrections that would be required, including the need to
 ensure a non-truncated version of G.TP-027 is included within the contract. On 6 August 2012
 provides further evidence to Pinsent Masons indicating why G.TP-027 should be
 included in the final contract. The reason that the truncated version of the G.TP-027 was only
 identified on the completion of the second review appears to be due a more thorough check being
 performed at this stage with the initial review on 9 July 2014 appearing to be have been more
 focused on ensuring that the original omitted sections of the contract were now included.
- 14 August 2012 An email exchange between and whereby is informing that he has started to have informal conversations with Capgemini around how they plan to progress the work on signing the MoA.
- 16 August 2012 drafts an email to and providing an update on the work performed to date on progressing both MoAs. This was prepared in advance of a meeting between NHS 24 and Pinsent Masons on 17 August 2012.
- 20 August 2012 to 5 November 2012 There were ongoing discussions between and Capgemini , regarding the MoA for Lot 1 contract and getting it finalised so it could be signed.
- 20 November 2012 Confirmation that subject to a resolution of Appendix B, Capgemini were satisfied with the MoA. Pinsent Masons also confirm that Capgemini are satisfied with the MoA on 24 December 2012. Appendix B is a list of legislative, organisational and procedural requirements the Lot 1 solution would have to satisfy.

Between 24 December 2012 and 17 April 2013 there was no evidence provided to us to suggest that the Lot 1 MoA was being progressed.

- 17 April 2012 An email from indicating that Capgemini are happy with the process to finalise the MoA and that Appendix B should be included but on the provision that Appendix B could be subject to further review.
- 9 May 2013 to 22 May 2013 of emails aimed at getting the contract finalised ready for signature by NHS 24 and Capgemini.
 was copied into these emails. . . confirmed that himself and had completed a final page turn of the document and that subject to the insertion of two diagrams they were happy with the Lot 1 MoA. This review did not pick up that the truncated G.TP-027 was included in the contract even though this had been identified as an issue on 3 August 2012 by
 We understand that the key purpose of this review at this stage was a page turn consistency check of the printed document and not a line by line review of the final version.
- 30 May 2013 signed the Lot 1 MoA with the truncated G.TP-027 included.
- 18 June 2013 Final version of MoA was issued to Capgemini.



- 27 July 2013 An email from Pinsent Masons informed copied to that both the Lot 1 and Lot2 contracts had been signed by NHS 24 but had not been returned by either Capgemini or BT. The email states that at BT hoped to have the process complete by the start of August 2013. The email states that Pinsent Masons had heard nothing from Capgemini. It is important to note that

It is our understanding that the BT MoA was signed but that there was no further evidence to suggest that the Capgemini MoA was chased for signature after 27 July 2013.

In addition, during our discussions, we were informed by staff that the milestone payment TKM3, effectively signing off the blueprints, had been paid without any caveats. It is our understanding from interviews with staff that these blueprints supersede aspects of the OBS and were approved without the traceability matrix having been completed. The purpose of the traceability matrix is to ensure that all the requirements outlined in the contract can be mapped to the final design.

Furthermore, it is our understanding that the design includes references to the truncated version of G.TP-027 in addition to a number of other truncated versions of the requirements that constituted the original contracts. We would recommend that this is reviewed in greater detail by NHS 24 to understand the extent the requirements of the original contract have been amended as part of the iterative design process.

A summary of the key dates has been prepared in a flow chart by staff at NHS 24. This is consistent with the emails we have reviewed and the testimony of staff. This has been included at [Appendix 11].

Through our interviews with staff and our review of the minutes of the Programme Board and the Future Service Committee it is clear that this issue was not y.

Y. There is no mention of any discussion within the Contract Implementation Board minutes of the contract omissions or errors. At no time during this period from the point that the omissions were first identified in April 2012.

The full size and nature of the omissions from the contract and the handling process of the MoA became evident to the in the week commencing 13 January 2014, from various meetings between the , from a meeting between the Chief Executive and on 16 January 2014, and from a meeting on 16 January 2014 between of Pinsent Masons,: .r of Anderson Strathern and the ... during which handed over the MoA documents. This information was considered at the consultation meeting with QC on 17 January 2014, which was also attended by .. and , and reported to the Board on 30 January 2014, which in turn led to requesting PwC to undertake this review.



If you have any questions on the content of this letter please do not hesitate to contact me on

Yours faithfully



Appendix 1 - ITPD1 Issued Requirement G.TP-027

(Extract from the Lot 1 ITPD1 OBS Word document)

RegID	Description	Classification	SupplierResponse
G.TP- 027	The solution must be capable of performing within agreed acceptable performance levels within a distributed environment. It shall achieve the following response time targets at all times. Response time targets; Data entry: For the entry of a typical data entry screen with no validation 0.25 sec; and For the entry of a typical data entry screen with validation a maximum of 1 sec. Enquiry: For key enquiries where up to three data items are entered for the Solution to return a prepopulated screen or a warning that duplicates exist 2 sec; For a simple search with a single search term a maximum of 0.5 sec; and For moving between screens 0.25 sec ' In the following the term 'response time' means the time between the user pressing the enter/ send key, move from field to field and for data entry, the readiness of the solution to receive further input or in the case of an enquiry the full display of the requested information at the users screen.		
28	The solution must support current patient volumes of 1.6 million per year and be scalable to meet increased fuire demands of the service	Primary	



Appendix 2 – Extract of Requirement G.TP-027 from the MS Excel Import file

The solution must be capable of performing within agreed acceptable performance levels within a distributed environment. It shall achieve the following response time targets at all times.

Response time targets;

Data entry:

For the entry of a typical data entry screen with no validation 0.25 sec; and For the entry of a typical data entry screen with validation a maximum of 1 sec.

Enquiry:

For key enquiries where up to three data items are entered for the Solution to return a prepopulated screen or a warning that duplicates exist 2 sec;

For a simple search with a single search term a maximum of 0.5 sec; and

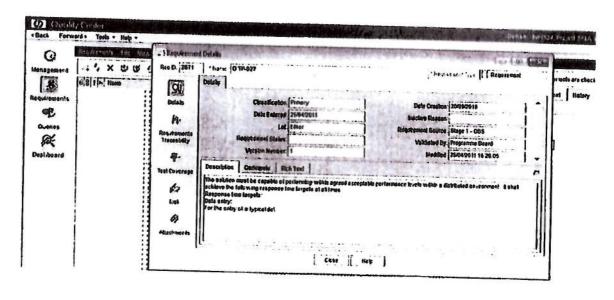
G.TP-027

For moving between screens 0.25 sec

* In the following the term "response time" means the time between the user pressing the enter/ send key, move from field to field and for data entry, the readiness of the solution to receive further input or in the case of an enquiry the full display of the requested information at the users screen.

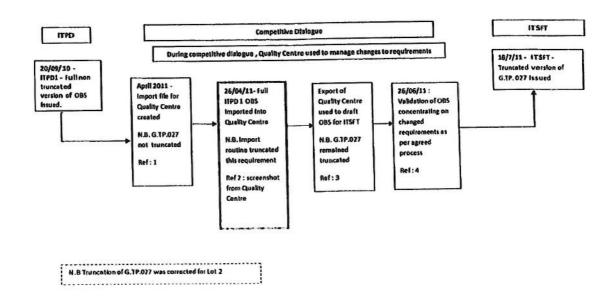


Appendix 3 - Screenshot of Requirement G.TP-027 in HP Quality Centre After Data Import





Appendix 4 - Overview of HPQC to OBS process





Appendix 5 – Excel file Extract of Requirement G.TP-027 - In Preparation of the Lot 1

G.TP-027 Pri	mary	The solution must be capable of performing within agreed acceptable performance levels within a distributed environment. It shall achieve the following resignores time targets at all times. Response time targets: Data entry: For the entry of a typical dat
		The same of the sa



Appendix 6 - Word Document Extract of Requirement G.TP-027 From the Lot 1 ITSFT OBS released to Bidders

G.TP-027	Primary		within a distr times. Response ti Data entry:	Response time targets;			
Availa (please m option that	ark one applies)	uvaliable now by contract effective date (CED) within 3 miles of CED	within 6 miths of CED within 12 miths of CED beyond 12 miths; indicate when av not on product development reads		Included In Bid Price?	□ NO	Additional Cost (if not included in Bid Price)



Appendix 7 - Capgemini Response to Original ITSFT Requirement G.TP-027 (Extract from the Capgemini response to the Lot 1 ITSFT OBS Word document)

Req ID	Description		Classification	
G.TP-027	The solution must be capable of p performance levels within a distri the following response time targe Response time targets; Data entry: For the entry of a typical data	erforming within agreed acceptable buted environment. It shall achieve ts at all times.	Primary	
Availability	(please mark one option that applie	s		
	act effective date (CED) mths of CED	within 12 mths of CED beyond 12 mths; indicate when not on product development re		
Included in Bid Price?		Additional Cost (If not included in Bid Price)		
Supplier Res	□ NO			
Ouring the de esponse time ystem. These xercise during	sign phase of the project, detailed SLAs was and measurement points that relate did will be used to design the solution infragate testing phase of the project.	o relate these particular metrics to our de performance of the client workstation and with appropriate metrics will be captured we rectly to the performance of the various constructure, to fine tune it, and will then be	the network. which will include emponents of the eproven in a PVT	
Dialogue r	esponse time less than 1 seconds;	r clients with similar call-centre based requ	irements are:	
Database	esponse time less than 0.5 seconds; and			
	esponse time less than 0.1 seconds.	design phase of the project in order to		
Network re				



Appendix 8 — Copy of Email Request Issued to Lot 1 Bidders Containing Full Version of Requirement G.TP-027

Dear Bidders

We have noticed that some of the text was missing in one of our OBS points GTP-027

I provide the full text that would be used in any resulting contract and ask that if you think you would have answered this point differently on the basis of the full text (which you may have already seen in previous drafts) you should do so now by responding to this email

Please let me know / you will require to respond or not

The solution must be capable of performing within agreed acceptable performance levels within a distributed environment. It shall achieve the following response time largets at all times. Response time largets For the entry of a typical data entry screen with no valdation 0.25 sec, and For the entry of a typical data entry screen with validation a maximum of 1 sec Enquiry. For key enquiries where up to three data items are entered for the Solution to return a pre-populated screen or a warning that duplicates exist 2 sec. For a simple search with a single search term a maximum of 0.5 sec. and For moving between screens 0 25 sec ' in the following the term response time' means the time between the user pressing the enter send key move from field to field and for data entry, the readiness of the solution to receive further input or in the case of an enquiry the full display of the requested information at the users screen G 1P-027 Primary Additional Availability a a atteres and 12 mins of CED Included Cost to or teat! te, and 12 mans, no cate please mark one E E effect e date if no in Bid 41" A.A.N. C opinion that applies CEC Von Peers of CEC miluded m Price? ner in product der elegenter." Bid Pinte rasena,

Bidder Response



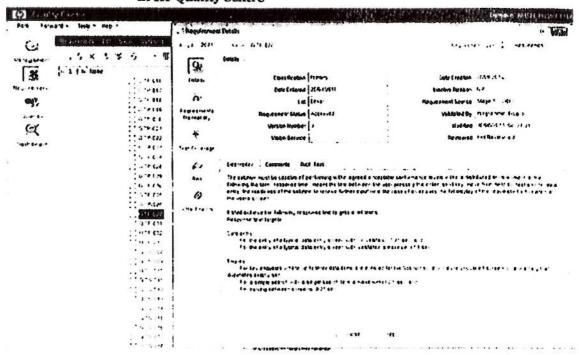
Appendix 9 – Capgemini Response to the Pull Version of Requirement G.TP-027

G.TP-027

Reg ID	Description	Classification		
G.TP-027	The solution must be capable of performing within agreed	Primary		
	acceptable performance levels within a distributed			
	environment. It shall achieve the following response time targets at all times.	1		
	megers at an times.			
	Response time targets;			
	Data entry:			
	For the entry of a typical data entry screen with no validation 0.25 sec; and			
	· Por the entry of a typical data entry screen with			
	validation a maximum of 1 sec.			
	Enquiry:			
	For key enquiries where up to three data items are			
	entered for the Solution to return a pre-populated screen or a warning that duplicates exist 2 sec:			
	· For a simple search with a single search term a			
	maximum of 0.5 sec; and			
	· For moving between screens 0.25 sec			
	* In the following the term "response time" means the time			
1	between the user pressing the enter/ send key, move from field			
	to field and for data entry, the readiness of the solution to			
	receive further input or in the case of an enquiry the full display of the requested information at the users screen.			
	display of the requested information at the users screen.			
Availabilit	y (please mark one option that applies)			
X available	e now within 12 mths of CED			
by contr	act effective date (CED) beyond 12 mths; indicate v	then available		
	inths of CED			
	milis of CED not on product developmer Bild Price? Additional Cost at not included.			
YES	Bid Price? Additional Cost (if not included)	n Hid Price)		
Supplier R				
The exect crit	eria specified cennot be measured by the SAP application, although we are confid capable of moeting them. We typically measure SAP using a combination of dialog	ent the SAP		
notwork resp	onse times which includes both data entry and enquiry type transactions.	gue, database and		
and the 95 pe	the dialogue response times to measure and monitor data entry. We typically m reentile (which provides the maximum response time for the fastest 95% of scree	sasuro the average n entried		
	ase times we have achieved for other cilents with similar call-centre based operati			
 Dialogue response time - less than 1 seconds (this measure provides the everage response time for users, it is also possible to measure the maximum response time if required) 				
 Database response time - less than 0.5 seconds (this confirms that the database is coping with the load and not degrading during housekeeping activities such as backups) 				
 Network response time - less than 0.1 seconds (this ensures that the network is supporting the application requirements) 				
Although the SAP application is capable of delivering the response times specified, this is dependent on factors				
other than the software application itself. These include the infrastructure the application is running on, the network and the individual desktop configuration for each user. The Lot 2 supplier will be responsible for delivering				
these components and we will work closely with them to ensure the specification they build is able to deliver the response times you require.				
During the design phase of the project, appropriate metrics will be captured which will include response times and				
measurement points that relate directly to the performance of the various components of the system. These will be used to design the solution infrastructure, to fine tune it, and will then be proven in a PVT exercise during the testing phase of the project.				
The solution	we implement for NHS 24 will be put through a rigorous process of performan	co and stress testine		
before go-live. NHS 24 will have sign-off of this testing to ensure it complies with your standards for performance response times. These will align with the targets specified here, although the precise methods of measurement may differ.				
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Appendix 10 – Screenshot of Corrected Requirement G.TP-027 in HP Quality Centre



Appendix 11 – Flow Chart of Events

