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DEPARTMENT OF SOCIAL SECURITY

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19 November 1998

*Dear Jonathon,***BA/POCL AUTOMATION PROJECT: LEGAL ADVICE**

1. I wrote to you on 9 November about an approach your legal team had made to Bird & Bird around POCL concerns over a potential conflict of interest for the Joint Programme Lawyer in providing DSS/BA, POCL and the Ministers involved, with the legal advice they need in relation to the three contracts governing the BA/POCL Automation Project.

2. We discussed the issues both before and after I sent that letter, and my understanding is that we - the guardians of our respective organisations' interests in this matter - are agreed about the role the Programme Lawyer can play in providing advice for his two clients, including Ministers, on the operation of the relevant contracts. As you may be aware, there is already a set of agreed ground rules in the provision of such advice. Under these ground rules and the terms of the contracts under which the Programme Lawyer provides advice to us and yourselves, both parties are free to call on his advice as required. As you know, so far as DSS/BA is concerned, our Ministers and their official advisors choose to draw heavily on the expertise of the Programme Lawyer as a valuable resource in helping us understand the operation of the contracts and the consequent implications for any given course of action; equally, it is open to POCL to draw unilaterally on the Programme Lawyer's advice - as they have done in the past.

3. I was therefore very surprised to see the letter from Dave Miller to George McCorkell, suggesting that there should be constraints on our organisations' individual ability to seek the Programme Lawyer's advice on the relevant contracts. So far as we are aware, there is nothing in the contractual or other agreed arrangements about the provision of advice from Bird & Bird that would justify the restrictions Dave Miller proposes. It is unacceptable that our Secretary of State and his advisors should be constrained in their ability to call on the advice of the Programme Lawyer in relation to the project. George McCorkell will be writing to Dave Miller accordingly.

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4. It is also of some concern to me that there seem to be so many different players now involved in pursuing issues around the provision of the legal advice for which we have contracted from the Programme Lawyer. Hence this letter which, as before, seeks to draw in the various interests and ensure that all are aware of the wider context against which specific issues should be set. In this regard, we believe it would be helpful for the two legal teams representing our respective organisations - DSS/BA and POCL - to get together as soon as possible to sort out any specific issues around the way we are drawing on the Joint Programme Lawyer's advice. Marilynne Morgan, the DSS Solicitor, will be contacting Catherine Churchard to arrange this.

5. I do hope we can now draw a line under these various exchanges about the provision of legal advice. In short, I hope we can agree:

- where DSS/BA and/or POCL are seeking advice on the relevant contracts, there are satisfactory, agreed procedures in place for how that should be handled; if there are any specific concerns on this front, our respective legal teams should attempt to sort them out;
- DSS/BA or POCL are free to seek advice unilaterally from the Programme Lawyer in accordance with these agreed arrangements and procedures;
- there is no current conflict of interest between DSS and POCL which, under Law Society rules, would cut across this freedom.

6. I am copying this to Catherine Churchard, Dave Miller, Marilynne Morgan and George McCorkell. Also to David Harriss at Bird & Bird, with whom I believe Catherine Churchard is in touch on some of the issues covered in this letter.

Best wishes;

GRO

MRS SARAH GRAHAM
Department of Social Security