

Mr David Miller
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*Copies
John Jones
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17th February 1998

Dear David,

Post Office Estate/Space Issue



Rather than wait until 5th March to crystallise the issue, I think it would probably be helpful to set out ahead of time the ICL Pathway position in response to your letter to Mike Coombs of 4th February.

It is as follows:

- POCL advertised in August 1994 for a service provider to automate its post office estate. It did not advertise for someone to firstly rebuild and then automate that estate. Notwithstanding what Clause 707 purports to say about implied warranties, there was a clear and wholly fundamental implication that the estate was fit for automation. The position as we now know it is so bad that we consider POCL to have breached its duty of care to either provide sufficient information to enable the Contractor to assess the real task or to issue an explicit "health warning" about its own lack of knowledge.
- Clause 406 of the POCL Agreement includes a statement that the Contractor confirms that "it has been offered the opportunity to inspect the POCL premises in order to satisfy itself that the POCL Premises are suitable for the installation and operation of the Products." Unfortunately, that statement is not true: we were given limited access to just ten pre-selected offices under strictly controlled conditions which did not permit us to properly assess the space risk overall. We signed the contract including the Clause 406 "confirmation", not because it was true but because to have done otherwise would have meant bidding non-compliantly. We had been told that a second non-compliant bid (we had bid non-compliantly during the first tender round) would probably rule us out of the contest. In other words, we acquiesced under duress in the face of POCL's disproportionate negotiating strength, and in circumstances where POCL understood the nature of the problem they were seeking to shift to the Contractor's risk account and the Contractor himself could not (by definition, because access had been denied). In court, we would argue that the disclaimer should be set aside for these reasons.
- The limited assessment we were able to make was however sufficient for us to recommend immediately post award (Functional Specification V3.0) that a small footprint keyboard be adopted in preference to the "Lift" keyboard for the express reason of general space limitation. Our recommendation was

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rejected and the Lift keyboard was selected by POCL notwithstanding ICL Pathway's declared risk assessment. By making that choice, POCL directly inhibited ICL Pathway's ability to manage the space risk and effectively took responsibility for so doing.

- In Solution 491, we define the work that we have undertaken to do (in the limiting context of Clause 406) as "the installation of electrical wiring back to the power distribution box, the LAN and WAN cabling", and "any carpentry required at counter positions required to position and connect the OPS equipment". "Carpentry" has a generally accepted meaning, as do "position" (the verb) and "connect". In the context, "counter position" clearly means *existing* counter position. This in turn leads us to the reasonable interpretation that ICL Pathway is responsible for "optimising" existing counter space, but that expanding that space is a matter for POCL. That is what we agreed prior to implementing the initial 205 live trial offices and which we stand by.
- The experience of the 205 offices still has to be fully assessed in relation to the estate at large. That work is in hand. However, an interim assessment indicates that barely half can be implemented without major surgery of one kind or another, ie. work which goes beyond "optimisation" or "carpentry". That is *before* factoring in the additional constraints imposed by the latest Health and Safety guidelines. These guidelines (produced by POCL just last month, some 41 months after the OJEC notice) will inevitably restrict still further ICL Pathway's ability to optimise the use of the space currently available. We hold that POCL should have provided such guidelines in a timely fashion.
- Recent RCD discussions have focused on the mobile configuration, not so much for its mobile features but as an assumed remedy for the space problem. POCL had identified the need for up to 100 "mobile" configurations prior to contract. During Drop Down, POCL requested, and ICL Pathway agreed, that the limit be increased from 100 to 250. Subsequent discussion at the Commercial and Finance Forum indicated that the number would probably need to go up to circa 600 and ICL Pathway was asked to quote an incremental price for the additional number. The driver for the predicted increase was again the lack of space rather than the need for mobility. It has since become clear that 600 is far short of the actual requirement.
- Although the full extent of the problem has yet to be quantified, it is quite likely that more than half the post office estate (some 10,000 offices) will require surgery to provide the space required for the standard configuration equipment. (That number being arrived at after consideration of approved stands and extensions, etc. but before consideration of flat screen, chair or "self-inking date stamp".) The cost of expanding the space has yet to be assessed but is likely to be between £10m and £20m.



- ICL Pathway is quite prepared to look at alternative solutions which reduce the demands on space so as to reduce the requirement for site surgery. The flat screen is a possibility. Each alternative drives additional costs which ICL Pathway will expect POCL to bear. These costs may however be significantly less than that of surgery and may well represent "good value" for POCL. ICL Pathway will do all it reasonably can to expedite such solutions once POCL have accepted the associated price.
- A lower cost alternative for the lower volume offices is Pathway Light. Work is in hand to evaluate this option by end April. Although a functionality trade off is involved, it may be worth revisiting the upper limit of applicability of such a solution if cost is the key. As stated previously, availability should not be assumed before early 2000. Hence there is a dependency on agreeing with the BA that roll out can be accommodated in two waves, standard configuration first and Light later. There must also be sufficient confidence in the Pathway Light approach that its non-availability at start of roll out does not get in the way of Acceptance.
- The alternative, if post offices are found still not to be fit for automation, is for POCL to close them. This is an opportunity for POCL to establish minimum service standards and to improve profitability by pruning out surplus offices. The short term cost of closure should be weighed against cost of radical surgery (which has so far exceeded £10,000 per office in the case of two offices).
- Finally, and in summary, ICL Pathway rejects the proposition that we have undertaken to provide a service to all post offices irrespective of their actual fitness for purpose.



I recognise that this is a long and rather uncompromising letter but see no point in beating about the bush. Unless we can agree on 5th March how practically we will deal with the issue of the poor quality of the post office estate, progress will stop. Finding an answer depends on POCL being prepared to put new money on the table, either for more expensive equipment or for remedial works to its post office estate. If progress does stop on 5th, we will hold POCL to blame for soliciting work which they could not reasonably have believed was achievable within the parameters set out in the contract.

Yours sincerely,

GRO

GRO Tony Oppenheim
Commercial and Finance Director

CC: Mena Rego, Keith Baines
Mike Coombs, Barrie Davies, Liam Foley