

RESTRICTED - COMMERCIAL AND POLICY

BA/POCL

**DRAFT MEMORANDA FOR SECRETARY OF STATE
SUPPORTING PAPER 2 - CONTRACTS**

The BA-POCL (Horizon) Project involves three contracts:-

Contract 1 (the Authorities' Agreement)	DSS (1) POCL (2) ICL Pathway (3)
Contract 2 (the DSS Agreement)	DSS (1) ICL Pathway (2)
Contract 3 (the POCL Agreement)	POCL (1) ICL Pathway (2)

and there are two other relevant contracts, each between the DSS and POCL:-

Contract A	covering benefit transactions made by POCL, whether paper-based or card-based
Contract B	providing for services provided by ICL Pathway to support the benefit payment card encashment transactions.

CONTRACT 1 (the Authorities' Agreement) DSS(1) POCL(2) ICL Pathway(3)

This contract is an umbrella contract and deals with matters affecting both DSS and POCL eg the joint operational trial and the charging mechanism.

ICL Pathway failed to complete operational trial under this agreement by the due date of 21 November 1997. They also failed to complete the operational trial by the end of the 13 week cure notice period on 12 August 1998.

If failure to complete the operational trial is ICL Pathway's fault, the DSS is entitled to terminate Contract 2 (the DSS Agreement) and doing so relieves the DSS of further rights and obligations under Contract 1 (the Authorities' Agreement). Similar provisions apply to POCL and Contract 3 (the POCL Agreement).

The Joint Programme Lawyer advises that there is sufficient evidence that the failure to complete operational trial was ICL Pathway's fault. This view is supported by work commissioned by him from Project Mentors, who are independent consultants.

It follows that the DSS is entitled to terminate Contract 2 (the DSS Agreement) with the consequence that the DSS would have no further rights or obligations under Contract 1 (the Authorities' Agreement).

CONTRACT 2 (the DSS Agreement) DSS(1) ICL Pathway(2)

This contract covers cards services and benefit payment administration. Because of the provisions in Contract 1 (the Authorities' Agreement) described above, the DSS are now

entitled to terminate this contract. But to take that step ~~Notwithstanding what it says in Contract 1 (the Authorities' Agreement) to terminate this contract~~ the consent of POCL is needed under Contract B, below.

CONTRACT 3 (the POCL Agreement) POCL(1) ICL Pathway(2)

This contract covers counter services and associated "back office" and data transmission services. POCL may not terminate this contract without the consent of the DSS.

This has no particular relevance to the issues involved so far as the DSS is concerned.

CONTRACT A

This contract relates to the general benefit payment services which POCL provides to DSS.

This has no particular relevance to the issues involved so far as the DSS is concerned. It currently lasts until 31 May 2005 and would remain in force if the DSS terminated Contract 2 (the DSS Agreement).

CONTRACT B

This contract relates to the services provided by POCL to DSS which are in turn supported by POCL's contractual relationship with ICL Pathway.

Under this contract the DSS must obtain POCL's consent before it terminates Contract 2 (the DSS Agreement) and POCL must obtain the consent of the DSS before it terminates Contract 3 (the POCL Agreement). There is no requirement that the consent shall not be unreasonably withheld. The consent requirement survives the termination of Contract B.

FORMALITIES FOR TERMINATING CONTRACTS 1 and 2

Notice of termination of Contract 2 (the DSS Agreement) must be given in writing. Since the obligations of the DSS under Contract 1 (the Authorities' Agreement) end automatically on termination of Contract 2 no further action is needed to terminate Contract 1.

RESTRICTED - COMMERCIAL AND POLICY

**BA/POCL
DRAFT MEMORANDA FOR SECRETARY OF STATE
SUPPORTING PAPER 1 - NEGOTIATION STRATEGY**

By end of August

Bird&Bird to agree principle of Standstill Agreement with POCL.

SOL, Bird&Bird and POCL lawyers to agree counsel and SOL to obtain authorisation if necessary from Law Officers.

Early September

Bird&Bird to propose Standstill Agreement to ICL Pathway, to run to mid October.

Mid September

After Standstill Agreement agreed, Peter Mathison to meet ICL Pathway to notify them of the inter-Ministerial decision on Options 1-3. Negotiations to begin if decision not rejected outright by ICL Pathway.

Bird&Bird and Project Mentors to continue gathering of evidence of ICL Pathway's default (to inform both negotiations and possible litigation). Further instructions to go to junior and leading counsel; writ and statement of claim to be finalised.

Mid October

If negotiations successful, carry on in accordance with them.

If negotiations not successful, Bird&Bird to issue and serve writ on expiry of Standstill Agreement. Serve Statement of Claim.