



RESTRICTED - COMMERCIAL

Post Office Counters Ltd

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Managing Director

Peter Mathison  
Chief Executive



8 April 1999

Dear *Pete*

Horizon - Release Authorisation Board  
Litigation Privilege

I thought I should express to you my concerns over the Benefits Agency's stance at yesterday's meeting of the Release Authorisation Board. At that meeting POCL, ICL Pathway and the Programme Director agreed, with supporting papers, that the Programme should proceed to the Live Trial stage but the Benefits Agency did not wish to proceed, preferring to hold a further round of model office testing.

My most major concerns are twofold.

First, if plans to proceed to Live Trial are to be halted this will need to be communicated to all the post offices scheduled to be involved, and many subpostmasters and ICL subcontractors will need to be stood down from their scheduled activities. This would be bound to cause widespread comment, rumour and speculation and would seriously damage our communication strategy, which to date has been carefully contained. This risks causing difficulties with ministers' decision-making later in the month, and is a potential source of embarrassment at next week's meeting between the Prime Minister and Mr Naruto of Fujitsu.

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-2-

Secondly, we know that the Benefits Agency's position at the RAB has reinforced ICL's already strongly-held view that the Benefits Agency is doing all it can to kill off the benefit payment card in advance of ministers' decision. Naturally we have not agreed with this assertion. However, we do regard it as potentially very dangerous in the context of the public sector's fallback position should the Related Agreements be terminated.

It is fundamental to our litigation strategy and, therefore, to our current negotiating position, that we can demonstrate that any termination of the Related Agreements will be as a result of ICL Pathway's repudiatory breach. As is generally accepted now, there is a strong argument that ICL Pathway's failure to meet the contractual milestone in November 1997 has effectively been waived. This means that we would now have to give a time of the essence notice in order to terminate, or rely on ICL Pathway carrying out its threat to down tools.

Either way, if the current phase of negotiations fails (as is not beyond the realms of possibility) and ICL Pathway stops work then the public sector's stance has to be that termination of the Related Agreements was a result of ICL Pathway's repudiatory breach. This inevitably involves the contention that but for ICL Pathway's breach the Related Agreements would have been performed by the public sector parties.

If the public sector continues to give to ICL the impression - however false it may be - that it is simply not prepared to go ahead with the benefit payment card then ICL will interpret this as the public sector - or at least DSS - not being prepared to continue to perform the Related Agreements. This could seriously prejudice the public sector position on termination, as ICL Pathway will argue that the failure to meet the operational trial milestone in November 1997 has been waived and that the real reason why the Related Agreements are now being terminated (should that be the case) is that the DSS is no longer prepared under any circumstances to take the benefit payment card for which it contracted - in other words the public sector parties would be terminating for convenience, with the huge financial cost which that would entail.

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-3-

Of course, that would not be an issue if the DSS arguments for delaying the release authorisation until a further round of testing had been completed were well founded. However, I have to say that POCL has not yet seen any convincing arguments for this. These issues have been covered in detail in previous correspondence and Bruce McNiven again to Vince Gaskill about this. In summary, DSS's arguments appear to us to be based on a false assessment of risks related to steady state volumes that would only be reached on completion of roll-out. This is inappropriate to a decision which only commits us to the live trial, and only to Child Benefit payment on the card, and would incur wholly disproportionate costs of delay for all three parties.

Richard Christou has stressed to me on a number of occasions that ICL Pathway is ready and willing to perform the Related Agreements as they currently stand but believes that the DSS is not. This line is reinforced by the letter Bruce McNiven has received from Steve Muchow as a follow up to the RAB. We should do all we can to disabuse him of this notion, for the sake of our legal position should termination happen.

Yours sincerely,



**GRO**

STUART SWEETMAN