

DEPARTMENT OF SOCIAL SECURITY



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From the Secretary of State for Social Security

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**BA/POCL AUTOMATION PROJECT: COMMUNICATION OF OUR
AGREED ROUTE FORWARD TO ICL**

Thank you for your letter of 10 September 1998, following up our discussion with Jack Cunningham, Peter Mandelson and Ian McCartney the previous evening.

I am grateful for the more detailed account you have now provided of the proposed way forward outlined in the joint Number 10 Policy Unit/HMT paper we had before us. As I said at our discussion, it is important for there to be a rigorous process, at the end of which it would be clear that the route forward produced better value for money for Government. And on this basis I agree with what is proposed. I would particularly support what you say about the need to provide sufficient analysis of the three main options to allow us to judge, at the conclusion of the discussions with ICL Pathway, whether the outcome of the negotiations offers the best value for money for the public sector as a whole.

There is one specific point from the Number 10 Policy Unit/HMT paper that I would like to see included in the letter to ICL: that this Department's ability to migrate to an ACT-based system, in preparation for the end of card usage by contract end date, should be transparent to ICL. We are working on a strategy to do that as we agreed.

E.R.

More generally, there are some important points we need to establish before we take forward discussions with ICL:

- **the Government's view of the strength of its negotiating position with ICL:** it is important that we establish a cross-Government view on this *before* we enter negotiations with ICL, because clearly our view of the strength of our case will influence the negotiating strategy that we should follow. The clear legal advice I have from the DSS lawyers and the Joint Programme lawyer is that the Government/Benefits Agency/POCL are in a strong position to terminate the contracts with ICL Pathway, and to claim damages up to the contractual limit of £200 million, on grounds of ICL's failure to deliver: advice is that the delays are ICL's fault in all material respects; this advice is endorsed by two separate reports commissioned by the Joint Programme lawyer from independent assessors to consider the BA/POCL position both pre- and post-February 1997. I haven't seen the DTI advice. I do think that the Government must have a common position. We must avoid ICL believing that they can play BA off against POCL. If we are to proceed in the way agreed, we need to be clear about our position overall;

- **that discussion of any option to continue, is clearly presented at all times against a backdrop of Government's right to terminate for ICL's failure to deliver**, and that nothing should be done to prejudice the strength of the Government's current position in negotiations: for example, if there is at any stage tacit acceptance of the delays for which ICL were placed in breach, this could later be used by ICL in any negotiation around an alternative option involving cancellation to claim that Government was attempting to terminate the contracts on grounds of "convenience" rather than breach, which in turn would expose us to liability for a £350 million termination charge;

- **agreement on the legal and financial parameters of the negotiations;** in particular that the contract cannot safely be carried on beyond 2007 and that prices cannot be significantly increased.

On the funding of an option to continue, I welcome your assurance at the meeting that HMT would be prepared to provide the additional requirement if it fell to my budget. There will, as you know, be additional funding required whatever option is finally pursued. Funding arrangements should be resolved before any final agreement on a way forward is reached.



E.R.

Copies of the letter go, as yours, to the Prime Minister, Jack Cunningham, Peter Mandelson and Sir Richard Wilson.

GRO

ALISTAIR DARLING

