

24-09-98 12:31 FROM: PEP TEAM HM TREASURY

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HM Treasury

Parliament Street  
London SW1P 3AG25 SEP 1998  
1506FAX MESSAGE FROM ADAM SHARPLES  
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To: ...DAVID...SIBBICK..... Fax No: ✓..... GRO

To: ...ISABEL...ANDERSON..... Fax No: ✓..... GRO } PLEASE COPY...

To: ...TERESA...CRUICK..... Fax No: ✓..... GRO

To: ...CHRIS...WOOD..... Fax No: ..... GRO

To: ...GEOFF...MULLEN..... Fax No: ✓..... GRO

To: ...JONATHAN...EVANS..... Fax No: ..... GRO

GEORGE MCCORKELL

GRO

Department/Building .....

Date .....24.9.98.....

Number of pages (including this one) .....8.....

## MESSAGE

PAPERS HERewith FOR BA/POCL MEETING

25. SEPTEMBER.

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HM Treasury

Parliament Street  
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Head of Public Enterprise  
Partnerships TeamTel: GRO  
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adam.sharples: GROSarah Graham  
DSS  
Adelphi Building  
1/11 John Adams Street  
London

24 September 1998

*Dear Sarah,***BA/POCL - MEETING OF WORKING GROUP**

The second meeting of the Working Group will be at noon on Friday, 25 September in room 32G at the Treasury. We'll lay on some sandwiches.

KPMG have been appointed to work with Graham Corbett, particularly on assessing Pathway's financial projections, and appraising proposals put forward by the parties. KPMG will also be helping with the analysis of fallback options, and Chris Nicholson, who will be leading this strand of the work, will be attending our meeting on Friday.

I suggest we structure the meeting around;

- the work programme on fallback options (you are circulating a paper);
- progress in negotiations; and
- other issues, including legal advice.

I attach a list of participants in the Working Group (please let me know if any of these details are wrong); and a slightly revised note of our first meeting, which picks up some amendments you asked for.

Copies go to the attached list.

Yours sincerely,

**GRO**ADAM SHARPLES  
PEP

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## Horizon Working Group Members

| HM TREASURY                   |  | Phone. | Fax      |
|-------------------------------|--|--------|----------|
| Adam Sharples<br>(Chair)      | Public Enterprise<br>Partnerships Team | GRO    | GRO      |
| Adrian Montague               | Private Finance Panel                  | GRO    | GRO      |
| Joseph Halligan               | Social Security Team                   | GRO    | GRO      |
| Sarah Mullen<br>(Secretariat) | Public Enterprise<br>Partnerships Team | GRO    | GRO      |
| Elizabeth Hambley             | Treasury Lawyer                        | GRO    | GRO      |
| DSS                           |  |        |          |
| Sarah Graham                  | Special Project                        | GRO    | GRO      |
| DTI                           |  |        |          |
| David Sibbick                 | Director Post                          | GRO    | GRO      |
| Isabel Anderson               | Post Office                            | GRO    | GRO      |
| CITU                          |  |        |          |
| Jeremy Crump                  |  | GRO    | 238 2068 |
| CABINET OFFICE                |  |        |          |
| Chris Wood*                   | Cabinet Office                         | GRO    | GRO      |
| No. 10                        |  |        |          |
| Geoff Mulgan                  | Policy Unit                            | GRO    | GRO      |
| Post Office                   |  |        |          |
| Jonathan Evans                | POCL                                   | GRO    | GRO      |
| BA                            |  |        |          |
| George McCorkell              |  | GRO    | GRO      |
| ADVISERS                      |  |        |          |
| Chris Nicholson               | KPMG                                   | GRO    | GRO      |

\* Papers only

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**RESTRICTED - POLICY****HORIZON WORKING GROUP MEETING: 17 SEPTEMBER 1998****Present:**HMT

Adam Sharples (chair)

Adrian Montague

Ross Newby

Sarah Mullen

Stuart Culverhouse

DSS

Sarah Graham

Ruth Calder

DTI

David Sibbick

Isabel Anderson

CITU

Mark Gladwyn

No. 10 Policy Unit

Geoff Mulgan

**Papers:** Chief Secretary's letter of 10 September to Alastair Darling \*

Peter Mandelson's letter of 14 September to the Chief Secretary

Alastair Darling's letter of 14 September to the Chief Secretary

Chief Secretary's letter of 15 September to Keith Todd at ICL

Keith Todd's letter of 16 September to the Chief Secretary

Adam Sharples' letter of 16 September to Sarah Graham

Sarah Graham's letter of 17 September to Adam Sharples

**Agenda:**

- (1) The purpose of the Working Group and membership
- (2) The negotiation process
- (3) DTI's programme of work
- (4) Fallback options and appointment of consultants
- (5) Legal Advice

**Action points:**

- POCL and BA to be invited to join the Working Group
- DTI/DSS to ask POCL and BA to consider who might act as their joint representative in the negotiation
- Ross Newby to brief GC on need to establish a joint BA/POCL position
- David Sibbick to draw up a specification for work on a transparent funding regime for POCL and circulate

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- Sarah Graham to carry forward work on fallback options and circulate a paper before the next meeting of the group considering in more detail what work was required
- HMT to speak to Lord Falconer's office to arrange a meeting of the lawyers

Date of next meeting: Friday 25 September (morning).

**Discussion:****(1) The purpose of the Working Group and membership**

1. It was agreed that the role of the group was two-fold:
  - to pull together the various strands of work commissioned in the CST's letter to Alistair Darling in the short timescale available;
  - to lead the work on the fallback options, with the help of consultants.
2. Membership of the group was discussed. Sarah Graham (SG) suggested that both BA and POCL should be represented on the Group. On the one hand it was important to keep the negotiation separate from the work of the group, and this might be difficult if they were included. On the other hand there was presentational value, not to mention advantages in terms of speed (since they would need to be closely involved in the work on fallback options), with having them represented. It was important to overcome POCL's view that they were separate from government. It was therefore agreed that BA and POCL would be included in the Working Group, but on the understanding that there may need to be some meetings without them present (particularly towards the end of the process, when the central government parties were brokering recommendations to Ministers). Adam Sharples (AS) said that it was for DSS and DTI to decide whether BA and POCL respectively saw copies of the Report that went to Ministers.
3. Other interested parties (e.g. SS and CI teams within HMT) would be invited to meetings as appropriate. Any necessary meetings with ICL would be kept separate.

**(2) The negotiation process**

4. AS summarised the state of play:
  - Graham Corbett (GC) had been appointed as the independent adviser reporting directly to the Chief Secretary. Ross Newby would be providing support;
  - The Chief Secretary had written to ICL setting out the terms of the negotiation;
  - ICL (Keith Todd) had responded, denying the breach of contract but accepting the terms set out in the CST's letter. The clock was therefore ticking on the month agreed for negotiations to be concluded;

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- The first step would be a series of meetings with the individual parties in order to establish the parties present view of the contractual position and their objectives for the negotiation. Then GC would need to evaluate the strength of their positions.
- 5. There was then a long discussion about the role of the GC. The terms of reference for CG's appointment were clear that the role of the independent adviser was to facilitate the negotiations rather than act as negotiator himself. At the same time CG was directly accountable to the Chief Secretary and other Ministers, and was therefore responsible for ensuring that the public sector achieved a satisfactory deal. In that sense GC was not neutral. \*
- 6. There were clearly differences of view between POCL and BA, and it would be important to ensure that ICL did not exploit these differences in the negotiation. A united public sector front was required. It was agreed that it would be for GC to bring BA and POCL together to establish a joint negotiating position prior to any discussion with ICL, but that he could not negotiate on their behalf with ICL. SG therefore suggested that someone should be appointed to act as a spokesperson for the public sector (once the negotiating brief had been established) and suggested that the programme lawyer Hamish Sandison would be suitable, for the reasons set out in her letter. In particular ICL had appointed Richard Cristou as their lead negotiator who was a lawyer and had extensive experience in litigation.
- 7. David Sibbick (DS) agreed that the negotiation should be two-sided, between Government/public sector and ICL; and that a spokesperson was needed. \*
- 8. Adrian Montague (AM) was strongly of the opinion that the negotiation should not be undertaken by legal representatives and should be firmly grounded in a commercial discussion. He did not think that Hamish or Richard Cristou would therefore be suitable. ICL could be told that they would have to find an alternative negotiator. AS suggested that Adrian Montague himself might act in this role, although SG was concerned that he might be unacceptable to POCL and BA given his previous role as chair of the Independent Panel and that he had no "locus" to speak for the parties. Ross Newby (RN) said that whoever represented BA and POCL would need to have the authority to enter into a negotiation with ICL: the deal would collapse if the parties did not "own" the solution. It was agreed that DSS and DTI would ask POCL and BA to consider together who might best act in this role on their behalf.
- 9. RN agreed to brief GC on this discussion and the suggestion that he should in the first instance establish a joint negotiating position between POCL and BA before negotiations with ICL began. If a joint BA/POCL position could not be established then it would be \* important to report this back to Ministers very early on in the process.
- 10. In the course of the discussion AM expressed his view that it would be impossible to achieve a documented deal in one month, but that the aim should be to achieve broad heads of agreement to a deal. A fully documented deal could probably be achieved in two months, although this would be tight.
- 11. SG made the point that the outcome after one month must have sufficient "bite" for

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Ministers to be able to establish a reliable view of the VFM of continuation versus the alternatives, and sign up to any decision to continue with confidence: a further round of substantial negotiations with ICL would not be acceptable and was not what Ministers had agreed.

#### (3) DTI's programme of work

12. DS reported that he had had an initial discussion with POCL (Jerry Cope) on the remit given to DTI in the CST's letter. POCL recognised that more work was required on the fallback options and they were prepared to co-operate fully. DS said that POCL felt they had already strengthened the management of the project in the light of the previous review of the project in 1997. In their view ICL were content with POCL's arrangements. POCL would also gear up to set a timetable for taking forward banking services once it became clear where things were going. It was pointed out that whatever the outcome of the negotiation POCL needed to develop banking services quickly - there was no reason for delay.

13. AS said POCL had to recognise that there was a clear view that POCL's management of the project had been complacent and ineffective. Ministers would need concrete assurances by the end of the month that POCL could deliver. This included taking action to strengthen the management of the project as recommended by the Independent Panel's report. POCL had to recognise that the project was not "in the bag": Ministers would judge at the end of the month whether going ahead would represent good VFM.

14. DS also said that POCL were taking forward work with McKinseys on developing strategic partnerships. They were also considering what work could be done to establish the social value of the network. Geoff Mulgan (GM) said that he saw the necessary work as being more for DTI. DTI needed to give some thought to transparent funding criteria for achieving the required managed decline of the network (either after the end of the contract if the project went ahead or under the fallback options) which related payments to social goals. This could be subject to competition. It was agreed that DS would draw up a specification for this work for the Group to consider. DS also reported that POCL were giving thought to how they would manage the transition from the benefit payment card to a smartcard.

#### (4) Fallback options and appointment of consultants

15. It was intended that consultants would be appointed (as part of the wider negotiation tender) to provide assistance to the Working Group on fallback options. Their work would comprise four elements:

- the impact on the network of the loss of BA income and associated footfall;
- the viability of an early shift to ACT including the impact on the banks;
- the timescale and costs of an alternative technology platform;
- the viability of pursuing Horizon without the benefit payment card.\*

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16. It was likely that the consultants would be appointed next Monday. AS suggested that the work on fallback options should be the focus of the next meeting of the group. It was agreed that SG would carry forward the work on fallback options and circulate a paper before the meeting setting out in more detail the main areas where further work was required and how any additional advice required would be provided.

(5) Legal Advice

17. GM said that Lord Falconer, the Minister Without Portfolio, had offered to assist with drawing together the legal aspects of the negotiation and establishing a Government view of the legal constraints (he has a background in commercial law). It was agreed that HMT would contact his private office to arrange a meeting between the relevant lawyers. AS would also speak to Elizabeth Hambley.

(6) Lines To Take

18. It was agreed to continue the government's present holding line that officials were keeping Ministers informed of progress on the project and discussions were continuing with ICL to ensure the successful completion of the project. It was agreed that a more pro-active announcement that there was a re-negotiation would be unhelpful, and would increase uncertainty (although it might be appropriate at a later stage in the negotiations).