

21 October 2004

**Nigel Griffiths MP**

PARLIAMENTARY UNDER-SECRETARY  
OF STATE FOR CONSTRUCTION, SMALL  
BUSINESS AND ENTERPRISE

Sir Michael Latham  
Chairman  
Construction Act Review Group  
C/O Construction Industry Training Board  
Carthusian Court  
12 Carthusian Street  
London  
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Dear Sir Michael,

Many thanks for your letter of 17 September. I would like to let you know how I intend to take matters forward following your review of Part II of the Housing Grants, Construction and Regeneration Act 1996 (the Act). I am extremely grateful for all your efforts.

Your review is a valuable piece of work. It is in large part down to your considerable skill, tact and diplomacy, and that of your working group chairs, Richard Haryott and Graham Watts, that we have been able to make so much progress in what is a comparatively short period of time. I am also grateful for the positive contributions you have received from all parties in the industry and from the legal profession. The review provides an excellent starting point for the DTI to embark on a full consultation exercise.

You have identified some issues on which there is cross-industry consensus and a clear, agreed way forward. It is a credit to you, Richard and Graham that the review generated as much agreement as it did. But even where there was no agreement, the discussion recorded is extremely helpful. There is agreement on the nature of the issues, though there are differences as to their significance in some instances.

It is important that the DTI consultation exercise keeps both sets of issues firmly on the agenda. The consultation paper will contain quite detailed proposals to establish the degree of support across the industry for some quite specific changes to the Act. However, to cover those issues where, so far, there has been less clarity, the

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consultation paper will also need to contain more discursive passages and invite more general comment in certain areas. The objective has to remain that of building further consensus wherever possible. An opportunity such as the one offered by this review does not come along often and I share your review group's determination to make the most of it.

I intend that the Department's consultation should proceed on a broad front of issues in a number of stages. However, it would not be appropriate at this stage to specify any one mechanism to deliver the resulting amendments to the legislation.

Finally, I am pleased we have agreed that a number of issues raised in the review should not be subject to consultation. These issues relate to the application of the legislation to contracts which are currently excluded. I would like to take this opportunity to set them out in writing.

It seems inappropriate to apply what is effectively a commercial alternative dispute resolution process to domestic customers. I believe this would represent an unwanted shift in balance away from the customer and towards the industry.

The adjudication working group also recommended removing the current exclusion of head contracts under the Private Finance Initiative. A PFI contract is far removed from a traditional, adversarial construction contract. Its duration requires a detailed alternative dispute resolution mechanism in any respect and I am not aware of any fundamental weakness in the general operation of these contracts.

On the issues raised in relation to the exclusion of certain contracts for operations related to process plant, there are a number of differences between the process plant and construction industries. There have been cases at the intersection between the two where this exclusion has required practical interpretation by the courts but this in itself does not justify a change in the law. A better solution would be for the industry to issue guidance on the implications of the case law that has emerged.

Having agreed this approach with you, I believe it represents the best way forward in response to your review's recommendations. Potentially we have an opportunity to significantly improve contracting under the Construction Act and to make a step change in the performance of the construction industry and its clients on prompt and fair payment.

I would like, once again, to thank you for your very considerable efforts in bringing this review to the point we have now reached. I do hope you will allow me to call on your wise counsel, and that of your working group chairs, over the coming weeks and months as I take the review forward.

I am sending copies of this letter to Richard Haryott and Graham Watts.

Best wishes.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Nigel". The signature is written in a cursive style with a prominent initial 'N' and a long, sweeping tail.