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Charles Leighton,
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6th February 2001

Dear Charles

WITNESS STATEMENT REQUEST

I am writing to respond to the exchange of emails between yourself and Graham Hooper recently re your request for the provision of witness statements.

I believe that the relevant provision is Requirement 829/1 which states:

‘The CONTRACTOR shall ensure that all relevant information produced by the POCL Service Infrastructure at the request of POCL shall be evidentially admissible and capable of certification in accordance with the Police and Criminal Evidence Act (PACE) 1984, the Police and Criminal Evidence (Northern Ireland) Order 1989 and equivalent legislation covering Scotland.’

My concern is that POCL sees this requirement as an open ended obligation on Pathway to produce information related “witness statements” at POCL’s request. This is not how we see it. The requirement is that relevant information produced by the Horizon system at POCL’s request be admissible evidence in Court (which so far as such information in itself can be, it is) and capable of certification in accordance with PACE (or equivalent in Northern Ireland and Scotland). As you are no doubt aware, the relevant sections of PACE (s69 and s70) were repealed by the Youth Justice and Criminal Evidence Act 1999, which came into force on 14 April 2000.

We have made our position with respect to requirement 829 clear on a number of occasions. However, given that you seem surprised by the stance taken by Graham Hooper, it may be of assistance if I set out some of the background. The issue of witness statements was discussed in meetings between Barry Proctor (then our Security Manager), Bob Martin and Paul Harvey in July 1999. It was made clear in those meetings that Pathway did not consider the production of witness statements to be included in the scope of the requirement. An Acceptance Incidence (370) was raised by POCL (Bob Booth) on 23rd July 1999 and a clearance action for this incident was agreed as follows:

‘Pathway will provide PACE statements as necessary to support a fraud prosecution. Pathway will undertake the work required to produce draft witness statements when POCL have raised an appropriate Change Request, as indicated in the letter from Barry Proctor to

continuation page 2

Paul Harvey dated 8th July 1999. The reason why this is necessary is because Pathway has no contractual obligation to provide POCL with any evidence to support a prosecution'.

The statutory requirement for PACE statements and certification no longer exists (as above). POCL has never submitted the required Change Request hence my negative response to your request to Graham Hooper for draft witness statements. In answer to your query as to what change could be requested, the Change Request would either be for a particular statement required by POCL, or (which would appear the more sensible option) to change Requirement 829 such that it incorporates a more general obligation to produce witness statements. Any such Change Request would be subject to impact assessment and costing in the usual way.

As things happened, Acceptance Incident 370 was not closed on the basis of the clearance action referred to above. It was closed instead, without concession by Pathway, on the basis of agreement between POCL and Pathway concerning access to audit information. The background to the audit information agreement (as you are probably aware) is that during the first few months of 2000 there was discussion and correspondence about the requirement to produce audit information to support investigations. This culminated in agreement in principle being reached at a meeting on 29th March 2000 that Pathway would provide up to 50 audit data extractions per annum for audit and security investigation purposes, with a maximum of 7 in any calendar month. The basis of agreement was described in more detail in my letter of 24th May 2000 to Keith Baines and confirmed subsequently in connection with closure of Acceptance Incident 370 in September 2000 (see documents attached). Pathway has been providing access to audit information in accordance with the agreed limits and other matters set out in that letter [in relation to which, by way of further confirmation of the agreed arrangement, Pathway will raise a CCN].

I trust that the above makes Pathway's contractual position clear. In accordance with your email to Graham Hooper of 10th January stating that you 'would be happy to agree to accept the cost to produce the Statements on a 'Without Prejudice subject to Contract' basis at this time, pending the outcome of Commercial discussions.', Pathway is willing to provide witness statements. However, I emphasise that this is without prejudice to the above position and Pathway does not accept that it is contractually obliged to do so.

Yours sincerely

GRO

Martyn Bennett
Quality Director
ICL Pathway

Cc: Chris Paynter, POCL Group Internal Audit, Chesterfield
Keith Baines, POCL, Greville Street
Tony Oppenheim
Graham Hooper