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Ref: CLS/jla/502

WITHOUT PREJUDICE

Dear Keith

CCNs 297, 333a & 437- Disputed Invoices

I am writing in response to your letter of 30 July 2003.

Firstly I would like to say that our view has not changed with regard to the significance of CCNs being in Part 1 (or in Part 2) of Schedule A17 at the time of Codification. Nowhere in the Codified Agreement or elsewhere is a connection established between a CCN included in Part 1 of Schedule A17 and the payments relating to that CCN being covered by the charges in the original Codified Agreement.

We agree with your comment that the effect of clauses 810.10.1 and 101.1 is that the CCNs in Part 1 of Schedule A17 relate to the Codified Agreement – in fact they are “deemed to have been raised in relation to” it. Where we differ is that we would argue, as we have done previously, that any charges within such CCNs also apply to the Codified Agreement.

Secondly, the fact that the work may have been completed before approval of the CCNs does not diminish the case for payment being due. The work was carried out for each of the CCNs in question against a customer generated Change Request. If Pathway assumed any risk, in the interests of the project, by agreeing to commence work without a signed CCN in place, that risk was removed and the charges agreed to cover the work were confirmed by the signing, at whatever point, of those CCNs by yourselves. If it had been the Post Office’s intention not to pay for the work under these CCNs it is hard to understand why a caveat to that effect was not registered at the time of CCN signature.

On your third point, I have discussed this issue with Pathway’s negotiators at the time of Codification and they have no recollection and can find no record of this particular subject being discussed.

Nevertheless in an attempt to resolve this long outstanding matter we would like to offer a proposal on a without prejudice basis for your consideration.



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CCNs 297 (War Pension Order Books Being Barcoded) and 333a (Amend APS Client Baseline) are both related to ongoing services that continue to be provided under the Codified Agreement (as amended by CCN 1100) whereas CCN 437 (Extension of training window to 10 days for Branch Offices in Live Trial) is historic and not related to ongoing business. On that basis we would be prepared to accept payment of the charges under CCN 297 (being the sum of £5050.50 excluding VAT) and under CCN 333a (being the sum of £17,482.50 excluding VAT) in settlement of the disputed invoices for the three CCNs in question. I do not pretend that the logic behind this proposal is infallible, but it seems to me to be an equitable basis for resolving the dispute between us.

Please let me know as soon as possible if this is acceptable to the Post Office. If it is, I will prepare a letter for you to countersign confirming settlement.

Yours sincerely

GRO

COLIN LENTON-SMITH
Commercial & Finance Director, Post Office Account