

LONDON BOROUGH OF BRENT

GENERAL PURPOSES COMMITTEE – 22 May 2003

**JOINT REPORT FROM THE ACTING DIRECTOR OF HUMAN RESOURCES AND
THE BOROUGH SOLICITOR**

FOR ACTION

**NAME OF WARDS
ALL**

**Title of Report: Indemnities for Senior Officers in respect of signing
Contract Certificates under the Local Government
(Contracts) Act 1997**

1.0 SUMMARY

This report seeks members approval to the variation of the contracts of Chief Officers and Deputy Chief Officers to provide for an indemnity from the Council in circumstances where the officer signs a certificate under the Contracts Act following authorisation by the Executive or a relevant Council Committee or by the Chief Executive.

2.0 RECOMMENDATIONS

That members agree:

- 2.1 that a variation be made to the contracts of existing Chief and Deputy Chief Officers to provide for an indemnity in the form set out in Appendix 1 where the officer signs a contract certificate under the Local Government (Contract) Act 1997 following authorisation by the Executive, a Council committee or by the Chief Executive.
- 2.2 that a similar indemnity be included in contracts issued to Chief and Deputy Chief Officers in the future.

3.0 FINANCIAL IMPLICATIONS

None arising directly from this report.

4.0 LEGAL IMPLICATIONS

These are set out in the body of the report.

5.0 STAFFING IMPLICATIONS

The proposed variation to the contracts of Chief and Deputy Chief Officers will provide them with personal protection where they sign certificates under the Act.

DETAIL

6.0 Background

- 6.1 The Local Government (Contracts) Act 1997 was introduced to clarify the powers of Local Authorities to contract with third parties. It contains express provisions enabling Local Authorities to enter into contracts. It makes provisions for some contracts to be certified. Certified contracts are protected from challenge, (except judicial or audit review). The Act also provides powers for Local Authorities to agree terms which will survive a setting aside of the main contract. The certification process ensures that the third party would be compensated where the contract is set aside. A certificate is generally required by contractors entering into private finance or other high risk contracts with the Council and is increasing being sort in respect of more traditional contracts where they are for a period in excess of 5 years.
- 6.2 A contract for services (whether or not together with assets or goods) entered into for the purpose of discharging any of the functions of a Local Authority and which lasts at least five years can be certified. The officers who can sign such a certificate are the statutory chief officer (the chief finance officer) or any non statutory chief officer or deputy chief officer. In summary, this means the Chief Executive, the Corporate Management Team and any employee reporting directly to any of them whose role is not in the nature of support or clerical assistance. An officer signing a contract certificate under the Act is potentially exposed to personal liability if the information certified turns out to be incorrect. Officers called upon to sign such certificates in the case of their employment may be unwilling to do so without some certainty that their personal position is protected in doing so.

7.0 Indemnities

- 7.1 The general position regarding indemnities is that officers of the Local Authority are protected by Section 265 of the Public Health Act 1875 (as amended) which provides a form of statutory indemnity. Whilst this is a wide indemnity it is not totally comprehensive. The indemnity provides immunity from liability together with an indemnity for costs. However, in a case where a Council enters into a contract which subsequently transpires it had no power to enter into, then the activities of the officer who certified the contract would not be within the scope of the indemnity. It is possible, however, to address this issue by issuing a contractual indemnity.
- 7.2 The power to employ officers (Section 112 of the Local Government Act 1972) gives an authority wide discretion as to the terms and conditions upon which an officer is appointed. This discretion would enable an individual officer's contract of employment to include an indemnity whilst they were acting in the course of their duties. Such an indemnity would have the advantage of offering protection even where the authority has acted *ultra vires*.
- 7.3 The legality of a contractual indemnity of this type has never been directly tested in the courts. However, judicial comment in a case dealing with the extent and effect of the statutory indemnity supports the view that a carefully drafted contractual indemnity would protect an officer, even if the authority acted *ultra vires*.
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7.4 In considering the question of whether to offer a contractual indemnity, the Council must clearly address itself to the reasonableness of doing so. If the Council wishes to enter into major contracts involving substantial expenditure, which will last for more than five years, then it is likely that as part of that process, the Council will be dependent upon an officer signing a certificate to enable it to enter into the contract. Officers run the risk of personal liability upon the certificate, given the possible existence of the duty of care arising to the person relying on the certificate. Given this situation it is reasonable to afford the officer concerned a contractual indemnity for his or her protection, where the Council has itself resolved to enter into a particular contract.

8.0 Proposed Contract Variation

8.1 On a number of previous occasions this issue has been considered by members on a case by case basis and in each instance where the signing of a certificate under the Act has been agreed an indemnity has been provided to the officers who is to sign it. This has been achieved by way of a variation of the officers contract to incorporate terms similar to those in Appendix 1 of this report.

8.2 In order to avoid the need to consider this issue afresh each time a certificate is agreed, it is proposed that a general variation be made to the contract of Chief and Deputy Chief Officers to provide for an indemnity where a certificate is signed following the approval of the Executive or a Council committee or by the Chief Executive.

8.3 The proposed amendment to the terms and conditions of this category of officers set out in Appendix 1 would ensure that the indemnity would only apply to contracts for which Members or the Chief Executive had agreed a certificate can be given. With these safeguards in place, it will be reasonable for the Council to make the changes to officers' contracts.

BACKGROUND INFORMATION

Any person wishing to inspect the above or seeking further information concerning this report should contact Debra Norman, Deputy Borough Solicitor at the Town Hall Annexe, Forty Lane, Wembley, Middlesex HA9 9HD. Telephone 020 8937 1322.

APPENDIX 1

AMENDMENTS TO TERMS AND CONDITIONS OF THE CONTRACTS OF EMPLOYMENT OF []

If you are authorised by the Executive, a Council Committee or the Chief to sign a certificate or certificates within and for the purposes of the Local Government (Contracts) Act 1997 in respect of a contract to be entered into by the Council, the authority shall, subject to the exceptions set out in paragraph (1) below, indemnify you against any claim made against you (including costs incurred by and awarded against you) and will not itself make claims against you for any loss or damage (other than claims falling within the cover provided to you under any policy of insurance taken out by you) occasioned by neglect, act, error or omission committed by you in the course of, or in connection with, signing that certificate.

1. the exceptions referred to above are:
 - 1.1 any claim for any amount which results directly or indirectly from the commission of a criminal offence of which you are convicted, save where the Council, upon consideration of the circumstances, determines that you shall nonetheless benefit from this indemnity; and/or
 - 1.2 any claim for any amount which results directly or indirectly from the fraud or dishonesty of on your part.
2. This indemnity shall continue beyond your employment with the authority.
3. This indemnity shall not apply if you, without the prior written approval of the authority, admit liability or compromises any claim falling within the scope of this indemnity.
4. This indemnity shall not apply if, before you sign the certificate under the Local Government (Contracts) Act 1997, the Council has resolved that it shall not provide the indemnity.

References to statutory provisions in this clause apply to such provisions as amended from time to time replaced with subsequent enactment
