

WATER MANAGEMENT ALLIANCE

THE DUTIES, RESPONSIBILITIES AND LIABILITIES OF IDB MEMBERS

BOARD MEMBERS

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Reviewed by: WMA Consortium Management Committee

Adopted by:

Broads Internal Drainage Board

East Suffolk Internal Drainage Board

King's Lynn Internal Drainage Board

Norfolk Rivers Internal Drainage Board

South Holland Internal Drainage Board

Waveney, Lower Yare and Lothingland Internal Drainage Board

Pevensy and Cuckmere Water Level Management Board

This document sets out the main duties and responsibilities of IDB members whose Boards are part of the Water Management Alliance. It should be read in conjunction with the Members Code of Conduct and the Boards' Key Roles and Responsibilities. Both of these documents can also be accessed from the Group's website.

THE DUTIES, RESPONSIBILITIES AND LIABILITIES OF IDB MEMBERS

Contents

1. RESPONSIBILITIES	3
2. APPOINTMENT	3
3. POWERS	4
4. DUTIES	4
5. LIABILITIES.....	5
6. INSURANCES.....	8
7. RECOMMENDATIONS.....	8

THE DUTIES, RESPONSIBILITIES AND LIABILITIES OF IDB MEMBERS

1. Responsibilities

- 1.1. The Board of members of an Internal Drainage Board (IDB) is primarily responsible for:
- determining the IDB's strategic objectives, plans and policies;
 - monitoring progress towards achieving the objectives, plans and policies;
 - appointing senior management;
 - accounting for the IDB's activities to relevant parties, e.g. Ratepayers, Billing Authorities, Local Planning Authorities, Lead Local Flood Authorities, the Environment Agency and Natural England.
- 1.2. The Chief Executive is responsible for the performance of the IDB, as dictated by the Board's Business Plan and overall strategy. He or she reports to the Board of members.

2. Appointment

- 2.1. The first members of an IDB are appointed by the relevant Minister at the time it is constituted or reconstituted and hold office for a period of one year from 1 November next, following the day on which they are appointed. The number of elected IDB members is set out in the Board's constitution, a copy of which can be accessed from the Board's Governance webpage. Subsequent appointments are made triennially thereafter, following an election of members which is governed by Schedule 1, Part 1 of the Land Drainage Act 1991 and the Land Drainage (Election of Drainage Boards) Regulations 1938, as amended by the Land Drainage (Election of Internal Drainage Boards) (Amendment) Regulations 1977. Occasionally a casual vacancy in the elected membership may also arise when an elected member resigns or otherwise vacates their office. When this happens, the Board will elect a new member to fill the vacancy, in accordance with its Election of Members Policy.
- 2.2. Constituent Billing Authorities are also entitled to appoint members to serve on the Board directly, in accordance with Schedule 1, Part 2 of the Land Drainage Act 1991. The number of members each authority is entitled to appoint will depend upon how much of the Board's expenditure they pay. However the number of appointed members can never collectively exceed by more than one the number of elected members, as set out in the constitution (this bare majority cap of one is a matter of law: section 6(2)(a), Schedule 1, Part 2 of the Land Drainage Act 1991). The Board has produced some guidance for Local Authorities to assist them with making these appointments, which can be accessed from the Board's Governance webpage. Such appointees must always act in the best interest of the IDB and not as a representative or delegate of the Billing Authority.
- 2.3. On appointment a new member will need to provide certain personal information e.g. full name, date of birth (for insurance purposes), a postal and email address, a recent digital photograph, business occupation, a record of dis-closable interests etc. to be included on the relevant form which he/she is required to sign to signify consent to act as an IDB member that will be published on the Board Members webpage. It is possible for a member to file a service address as well as his or her home address: it will be the service address

THE DUTIES, RESPONSIBILITIES AND LIABILITIES OF IDB MEMBERS

(which can be the IDB's office address) that appears on the public record. Elected members will also be provided access to a WLMA email address and should use this for all IDB business, to avoid any Freedom of Information requests being made on their personal email accounts and to reduce the risk of any breaches in data security. The member will also need to sign and agree to abide by the Members Code of Conduct and acknowledge their duties and responsibilities as stated herein. New members will also be expected to undergo an Induction programme.

- 2.4. On a practical note the new member should make sure that he/she reviews the following documents as available on the website: a copy of the IDB's constitution, its reserved matters, byelaws, standing orders, scheme of delegation and financial regulations, health and safety policy and environmental policy; details of the business and affairs of the IDB, e.g. the current Business Plan, recent Board minutes and Management Accounts; and the statutory reports and accounts for the past two years.

3. Powers

- 3.1. The members are generally responsible for managing the direction of the Board and they may collectively exercise all the powers of the IDB as set out in the Land Drainage Act 1991 and the Flood and Water Management Act 2010 (please see our explanatory document listing the IDB's key roles and responsibilities, which can be accessed from the Group's 'About our Members' webpage).
- 3.2. Generally, the members must act collectively as a Board to bind the IDB. However, the standing orders entitle the Board to delegate powers to its committees/sub-committees as considered appropriate. The nature and extent of this delegation is recorded in the scheme of delegation, which can be accessed from the Board's Governance webpage. In practice individual employees implement policy and carry out many of the IDB's day-to-day activities (please see the Organisation Chart on the Board's Organisation webpage to gain an understanding of who does what).

4. Duties

- 4.1. IDB members need to be aware that they are personally subject to a number of duties in their capacity as Board members. In addition, the IDB itself, as a separate legal entity and public body, is subject to statutory duties and the members are responsible for ensuring that the IDB complies with such statutory duties (please see our explanatory document listing the Board's key roles and responsibilities, as previously referred to).
- 4.2. The principal duties of IDB members are:
 - to act within powers, in accordance with statute and the IDB's constitution, and, to use those powers only for the purposes for which they were conferred;
 - to promote the success of the IDB for the benefit of the public it serves;
 - to exercise independent judgement;
 - to exercise reasonable care, skill and diligence;

THE DUTIES, RESPONSIBILITIES AND LIABILITIES OF IDB MEMBERS

- to avoid conflicts of interest;
 - not to accept benefits from third parties;
 - to declare an interest in any proposed transaction or arrangement;
 - to safeguard public funds and the custody of assets, which have been publicly funded;
 - to ensure that the IDB uses its resources efficiently, economically and effectively, avoiding waste and extravagance;
 - to abide by the Members Code of Conduct at all times.
- 4.3. These duties will be interpreted by the courts in accordance with previous case law and cannot be taken in isolation because in addition an IDB Board member will be subject to a wide range of regulation and legislation, for example:
- Wildlife and Countryside Act 1981;
 - Protection of Badgers Act 1992;
 - Conservation of Habitats and Species Regulations 2010;
 - Conservation (Natural Habitats & C) Regulations 1994;
 - Countryside Rights of Way Act 2000, the Eels (England and Wales) Regulations 2009;
 - Natural Environment and Rural Communities Act 2006;
 - Salmon and Freshwater Fisheries Act 1975;
 - Water Environment (Water Framework Directive) (England and Wales) Regulations 2003;
 - Local Audit and Accountability Act 2014;
 - Land Drainage Act 1991, the Land Drainage Act 1994;
 - Flood and Water Management Act 2010;
 - Health and Safety at Work etc Act 1974;
 - Corporate Manslaughter and Corporate Homicide Act 2007.
- 4.4. One of the main statutory responsibilities falling on members is the preparation of the Accounts and the Annual Return. It is the responsibility of the members to ensure that the IDB maintains full and accurate accounting records, manages risk, and maintains a proper system of internal control. This includes the preparation of a Balance Sheet and an Income and Expenditure account for each financial period of the IDB, and the publication of these accounts.
- 4.5. Board members may also be personally liable for certain penalties if the IDB fails to carry out its statutory duties. However, the members may have a defence if they had reasonable grounds to believe that a competent person had been given the duty to see that the statutory provisions were complied with.
- 4.6. The Finance and Rating Manager is the Board's Responsible Finance Officer and is responsible for carrying out many of the administrative and financial management duties imposed under the legislation, without which these duties and responsibilities would fall on the individual members. Executive responsibility for environmental performance and health and safety compliance can be established from the Board's Organisation webpage.

THE DUTIES, RESPONSIBILITIES AND LIABILITIES OF IDB MEMBERS

5. Liabilities

5.1. Board members may incur personal liability, both civil and criminal, for their acts or omissions in directing the IDB.

5.2. It is beyond the scope of this briefing paper to list all the various matters for which IDB members can be held personally liable. However, members (both existing and prospective) should be aware of the risks of failing to comply with the Members Code of Conduct, the Local Audit and Accountability Act 2014, the Land Drainage Act 1991, the Environmental Legislation previously listed, the Health and Safety at Work etc Act 1974, and the Corporate Manslaughter and Corporate Homicide Act 2007:

5.3. **Members Code of Conduct**

If a bare majority of the IDB considers that one or more of its members has failed to comply with the Members Code of Conduct, the member(s) will be expected to resign with immediate effect.

Depending on the nature and extent of the failure to comply with the Members Code of Conduct, the Board may also take legal action against the member(s) to remedy any losses or liabilities howsoever arising there from.

5.4. **Local Audit and Accountability Act 2014**

If an auditor applies to the court for a declaration that an item of account is contrary to law and the court agrees and then orders rectification of the statement of accounts or accounting records under section 28 of the Act, this could result in the IDB members being held personally liable for making good the unlawful expenditure.

If an auditor serves an advisory notice under section 29 of the Local Audit and Accountability Act 2014 and the IDB then effectively ignores the notice, this could result in the IDB members being held personally liable for any consequences which may arise from the unlawful act or unlawful item of expenditure.

5.5. **Land Drainage Act 1991**

If an elected IDB member is adjudged bankrupt, the estate of such a member is sequestrated, or the member makes a composition or arrangement with, or grants a trust deed for, his/her creditors, then he/she will be disqualified from being a member of this and any other IDB. Failure to disclose this fact and resign could result in the member being held personally liable for their acts or omissions whilst continuing to direct the IDB.

If any IDB member is an un-discharged bankrupt or has at any time within the preceding five years made a composition or arrangement with, or granted a trust deed for, their creditors they will be disqualified from being a member of this and any other IDB. Failure to disclose this fact and resign could result in the member being held personally liable for their acts or omissions whilst continuing to direct the IDB.

Members who are interested in any company with which the IDB has or proposes to make a contract have a legal obligation to disclose the fact and nature of this interest and to take no part in the decision making process relating to the contract. Failure to make such disclosures could result in the IDB member receiving a significant fine and, in some cases, a

THE DUTIES, RESPONSIBILITIES AND LIABILITIES OF IDB MEMBERS

custodial sentence.

If an elected member is absent from IDB meetings for more than six months consecutively, they will cease to be an IDB member, unless their absence is due to illness or some other reason approved by the Board. Failure to regularly attend IDB meetings does not prevent any risk of personal liability arising from decisions taken by the Board in their absence and could also mean that the member ultimately loses their seat on the IDB.

5.6. **Environmental Legislation**

As a statutory Risk Management Authority, the IDB has various National and International legislative duties to comply with regarding the aquatic environment, biodiversity and wildlife sites within its Drainage District, particularly in protected areas. Failure to comply with any of these statutory obligations has the potential to result in both personal and corporate liability being brought about to both individual Board members and the IDB itself, by the Enforcement Body. As a result, the court may issue a fine dependent on the severity of the offence and insist on restorative works being carried out and paid for by the offender; some fines of which may be unlimited. Certain offences may also attract a custodial sentence.

The IDB has formal procedures for auditing and reporting environmental performance and has access to environmental expertise to advise the Board accordingly. The IDB also has a Standard Maintenance Operations policy document, a Sustainability policy and a Biodiversity Action Plan, which can be accessed from the Board's Operations webpage. Performance of these policies and plans is ISO 14001 quality assured and regularly reviewed/ monitored by the IDB with the appropriate executive officers.

5.7. **Health and Safety at Work etc Act 1974**

Health and Safety law places duties on organisations and employers, and IDB members can be personally liable when these duties are breached: members of the Board have both collective and individual responsibility for health and safety.

The IDB has formal procedures for auditing and reporting health and safety performance and has access to an appropriate level of expertise to advise the Board accordingly. The IDB also has a Health and Safety policy, which can be accessed from the Board's Operations webpage. Health and Safety performance is ISO 9001 quality assured and regularly reviewed/ monitored by the IDB with the appropriate executive officers. Detailed risk assessments and safe systems of work can be accessed by IDB members from the Members Area of the Group's website.

If a health and safety offence is committed with the consent or connivance of, or is attributable to any neglect on the part of, any member or employee of the IDB, then that person (as well as the IDB) can be prosecuted under section 37 of the Health and Safety at Work etc Act 1974. Those found guilty are liable for fines and, in some cases, imprisonment.

Individual IDB members are also potentially liable for other related offences, such as the common law offence of gross negligence manslaughter. Under the common law, gross negligence manslaughter is proved when individual officers of a corporate body (members or executive officers) by their own grossly negligent behaviour cause death. This offence is punishable by a maximum of life imprisonment.

THE DUTIES, RESPONSIBILITIES AND LIABILITIES OF IDB MEMBERS

5.8. **Corporate Manslaughter and Corporate Homicide Act 2007**

Under this Act, an offence will be committed where failings of an IDB's senior management are a substantial element in any gross breach of the duty of care owed to the IDB's employees or members of the public, which results in death. The maximum penalty is an unlimited fine and the court can additionally make a publicity order requiring the IDB to publish details of its conviction and fine.

6. Insurances

- 6.1. Details of the Board's Insurance policies can be found on the website or requested from the Chief Executive (The IDB holds Directors and Officers Liability Insurance for the benefit of its members and officers).

7. Recommendations

- 7.1. This paper is only a brief summary of the duties, responsibilities and liabilities an individual will assume on being appointed as a Board member of an IDB. If a prospective IDB member has any specific concerns about the liabilities they will assume on being appointed they should discuss them with the IDB's Chief Executive and/or take independent legal advice. On appointment, it is strongly recommended that more detailed information is obtained from the IDB's Chief Executive and that appointees attend the Members Training and Induction Programmes, as advised. The Chief Executive's contact details can be accessed from the Group's Organisation webpage. More information can be found in the Association of Drainage Authorities Guide to Good Governance.