

WATER MANAGEMENT ALLIANCE

Arrangements for dealing with complaints under the Code of Conduct for Members

1. Introduction

- 1.1 The internal drainage board(s) (collectively IDBs and individually IDB) which comprise the Water Management Alliance (WMA) have each adopted a Code of Conduct for Members which is based on the 7 principles of public life, known as the Nolan Principles: Selflessness, Integrity, Objectivity, Accountability, Openness, Honesty and Leadership.
- 1.2 Under the Minute references listed in Appendix 1, each IDB Board has adopted the “Arrangements for dealing with complaints under the Code of Conduct for Members” (The Arrangements). In the same Minute references listed in Appendix 1, each IDB has also delegated responsibility for dealing with complaints under the Code of Conduct to the Consortium Management Committee and the Governance Advisor in accordance with these Arrangements.
- 1.3 The Arrangements apply when a complaint is received that a directly elected member or a local authority appointed member of an IDB has, or may have, failed to comply with the IDB’s Code of Conduct for Members.
- 1.4 The person making the complaint will be referred to as “the complainant” and the person against whom the complaint is made will be referred to as the “subject member”.
- 1.5 No member or officer will participate in any stage of the Arrangements if he or she has, or may have, any personal conflict of interest in the matter.
- 1.6 These Arrangements set out a transparent and fair procedure for managing complaints raised under the Code of Conduct, in accordance with the principles of common law – the right of public bodies to investigate the behaviour of its members and act in a disciplinary capacity if necessary.

2. Making a complaint

- 2.1 A complaint must be made in writing either by post or email to: the Chief Executive at Pierpoint House, 28 Horsley’s Fields, King’s Lynn, PE30 5DD or to ceo@wlma.org.uk.

3. Initial Assessment of Complaint

- 3.1 The Governance Advisor will review the complaint and, following consultation, if necessary, with the internal auditor, take a decision (initial assessment) as to whether it merits investigation or another course of action. This decision will normally be taken within a month of receipt of a complaint. If there is likely to be any delay in this decision, the Governance Advisor will notify the complainant.
- 3.2 The Governance Advisor will then apply the following criteria in deciding whether a complaint should be accepted for investigation, dealt with informally, or rejected:
 - (a) whether the complaint is within the IDB’s jurisdiction i.e. that the complaint is against one or more named members of the IDB;
 - (b) whether the subject member was in office at the time of the alleged conduct;

- (c) whether the subject member was acting in their official capacity as a member at the time of the alleged conduct.
- (d) whether the complaint is a 'repeat complaint', unless supported by new or further evidence substantiating or indicating that the complaint is exceptionally serious or significant;
- (e) whether the complaint is about something that happened so long ago that those involved are unlikely to remember it clearly enough to provide credible evidence, or where the lapse of time means there would be little benefit or point in taking action now. As a guideline, complaints about matters which happened more than 3 months ago will be rejected;
- (f) whether the complaint is anonymous, unless supported by independent documentary evidence substantiating or indicating that the complaint is exceptionally serious or significant;
- (g) whether the allegation discloses a potential breach of the Code of Conduct, but the complaint is not serious enough to merit any action and:
 - (i) the resources needed to investigate and determine the complaint are wholly disproportionate to the allegations; and
 - (ii) in all the circumstances there is no overriding public benefit in carrying out an investigation;
- (h) whether the complaint is malicious, trivial, politically motivated or 'tit-for-tat';
- (i) whether the complaint suggests that there is a wider problem throughout the IDB;
- (j) whether it is apparent that the subject of the allegation is relatively inexperienced as a member or has admitted making an error and the matter would not warrant a more serious sanction;
- (k) whether training or conciliation would be the appropriate response.

3.3 There is no right of appeal against the Governance Advisor's decision. However, if the complainant submits additional relevant information, the Governance Advisor will consider and decide if the matter warrants further consideration under these Arrangements, in which case it shall be treated as a fresh complaint.

4. Confidentiality

4.1 If the complainant has asked for their identity to be withheld, this request will be considered by the Governance Advisor at the initial assessment stage.

4.2 As a matter of fairness and natural justice the subject member should usually be told who has complained about them and receive details of the complaint. However, in exceptional circumstances, the Governance Advisor may withhold the complainant's identity if, on request from the complainant, or otherwise, they are satisfied that the complainant has reasonable grounds for believing that they or any witness relevant to the complaint may be at risk of physical harm, or his/her employment may be

jeopardised if their identity is disclosed, or where there are medical risks (supported by medical evidence) associated with the complainant's identity being disclosed.

- 4.3 If the Governance Advisor decides to refuse a request by a complainant for confidentiality, they will offer the complainant the option to withdraw the complaint, rather than proceed with his/her identity being disclosed. The Governance Advisor will balance whether the public interest in taking action on a complaint will outweigh the complainant's wish to have his/her identity withheld from the subject member.
- 4.4 The Governance Advisor will acknowledge the complaint and will notify the subject member that a complaint has been made, the name of the complainant (unless confidentiality has been agreed), details of the complaint and which section(s) of the Code of Conduct are alleged to have been breached.
- 4.5 The Governance Advisor will usually not accept anonymous complaints, subject to 4.2 above.

5. Referral to Police

- 5.1 If the complaint identifies criminal conduct or breach of other regulations by any person, the Governance Advisor is authorised to report this to the Police or other prosecuting or regulatory authority in addition to any action taken pursuant to the IDB's or Appointing Authority's Code of Conduct.

6. Additional Information

- 6.1 The Governance Advisor may require additional information to make a decision and may request information from the complainant or subject member and/or other person relevant to the complaint before deciding whether the complaint merits formal investigation or other action.

6.2 Internal Auditor

At any stage in the process detailed in these Arrangements, the Governance Advisor may consult with the WMA Member Board's Internal Auditor, who will act as a "critical friend" to assist the Governance Advisor

What process to apply – no action/informal resolution/investigation

7. Informal Resolution

- 7.1 The Governance Advisor may, at any stage, (whether without the need for an investigation or before or after the commencement or conclusion of an investigation) seek to resolve the complaint informally. Such informal resolution may involve the subject member accepting that his/her conduct was unacceptable and offering an apology or taking other steps. Where the subject member or the IDB (in appropriate cases) makes a reasonable offer of informal resolution, but it is rejected by the complainant, the Governance Advisor will take account of this in deciding whether the complaint merits formal investigation. Examples of circumstances which might merit informal resolution include, but are not limited to:

- complaints that one member has failed to show respect and consideration for others;
- vexatious, malicious and trivial complaints which are considered low level and political tit for tat;

- other low-level complaints which the Governance Advisor believes are suitable for informal resolution.

7.2 Where the Governance Advisor decides that informal resolution is appropriate after an investigation, the process is called Resolution Without a Hearing and is referred to below at section 11.

7.3 Informal resolution might take the form of one of the following remedial actions:-

- An explanation, retraction and/or apology from the subject member;
- Mediation;
- Training;
- Some other practical conflict management agreement between the complainant and subject member.

8. Investigation

8.1 The Governance Advisor will consider whether the complaint is serious enough to merit investigation, considering the following factors:

- (a) public interest factors including the seriousness of the alleged breach, and whether the matter is serious enough that, if proven, it would justify the range of sanctions available;
- (b) whether there has been any breach of trust, the extent of any harm caused and whether there has been any discrimination;
- (c) proportionality by balancing the seriousness of the allegation against the resources required to investigate the allegation;
- (d) whether there are any aggravating factors or significant mitigating factors;
- (e) whether a prompt acknowledgment and apology has been offered;
- (f) whether the complaint is one of a pattern of less serious behaviour that is unreasonably disrupting the business of the IDB and there is no other avenue left to deal with it other than investigation;
- (g) whether the complaint appears to be malicious, frivolous or vexatious;
- (h) whether the complaint suggests that there is a wider problem that affects the IDB;
- (i) whether training or conciliation would be the appropriate response.

8.2 Where the complaint is referred for investigation, the Governance Advisor will appoint an investigating officer who may be an officer from within the IDB or WMA, an officer from another public authority, or an external investigator.

8.3 The investigating officer will ensure that the subject member has received a copy of the complaint, subject to the Governance Advisor's decision on confidentiality.

8.4 At the end of their investigation, the investigating officer will produce a draft report and will send copies of that draft report to the complainant, subject member and

Governance Advisor for comments. The investigating officer will take such comments into account before issuing their final report to the Governance Advisor.

9. Investigating Officer's finding of no failure to comply with the Code of Conduct

9.1 Where the investigating officer's report finds that the subject member has not failed to comply with the Code of Conduct, the Governance Advisor will review the investigating officer's report and, if satisfied, confirm the finding of no failure to comply with the Code of Conduct and give reasons.

9.2 The Governance Advisor will write to the complainant and the subject member within 10 working days with a copy of the decision and the investigating officer's report.

9.3 If the Governance Advisor is not satisfied that the investigation has been conducted thoroughly, the investigating officer may be asked to reconsider the report and the conclusions.

10. Investigating Officer's finding of sufficient evidence of a failure to comply with the Code of Conduct

10.1 Where the investigating officer's report finds that the subject member has failed to comply with the Code of Conduct, the Governance Advisor will review the investigating officer's report and will then either send the matter for hearing before the Hearings Panel or seek a resolution without a hearing.

11. Resolution without a Hearing

11.1 If the Governance Advisor considers that the matter can reasonably be resolved without the need for a hearing they will consult with the subject member and the complainant and seek to agree a fair resolution. Such resolution may include the subject member accepting that their conduct was unacceptable and offering an apology, explanation or retraction, and/or other remedial action such as training, mediation or other practical conflict management agreement between the complainant and the subject member.

11.2 If the subject member accepts the suggested resolution, the Governance Advisor will report the outcome to the IDB Board.

11.3 If the subject member refuses this method of resolution in principle or to engage with the agreed outcome and/or the Governance Advisor believes that the process of resolution without a hearing is not going to successfully conclude the complaint, the Governance Advisor will consider what further action should be taken. This could include referring the matter for a hearing without further reference to the complainant or the subject member.

11.4 It should be noted that there are occasions when it is not possible to resolve a complaint other than by a hearing.

12. Hearing

12.1 Where, in the opinion of the Governance Advisor, resolution without a hearing is not appropriate or the complainant and/or subject member refuses to accept this form of resolution, then the Governance Advisor will report the investigating officer's findings to the Consortium Management Committee which will refer the matter for a hearing

before deciding whether the subject member has failed to comply with the Code of Conduct and, if so, what action to take in respect of the subject member.

- 12.2 If a hearing is required, the Governance Advisor will write to the subject member proposing a date for the hearing. This date will normally be within six weeks of the investigation report and will be before the Hearings Panel.
- 12.3 The Governance Advisor will decide whether a hearing can go ahead on the papers only, negating the need for attendance by either party.
- 12.4 If it is decided there will be a hearing on the papers only the Governance Advisor will notify the complainant and subject member. The Governance Advisor will ask the subject member whether:
- the subject member disagrees with any of the findings of fact in the investigation report and, if so, which findings and the reason for disagreement;
 - the subject member wishes to provide a written submission;
 - the investigating officer wishes to provide a written submission.
- 12.5 If the matter proceeds to a hearing, the Governance Advisor will engage the subject member in a pre-hearing process. The Governance Advisor will outline the hearing procedure and the subject member's rights and ask for a written response from the subject member within a set time to establish whether:
- the subject member wishes to attend the hearing;
 - the subject member disagrees with any of the findings of fact in the investigation report and if so which findings and the reason for disagreement;
 - the subject member wishes to give oral evidence, or rely on written submissions;
 - the subject member wishes to call witnesses to give evidence (there is no power on the part of the IDB to compel attendance by a witness).
- 12.6 If the Governance Advisor considers that a preliminary hearing is necessary to consider these matters, they shall convene one.
- 12.7 The parties and the Hearings Panel will be sent a full bundle of documents for the hearing at least 5 days prior to the hearing.

13. Constitution of the Hearings Panel

- 13.1 The Hearings Panel shall comprise three Members from the Consortium Management Committee (one from any three WMA Member Boards), one of whom shall be elected as Chairman.
- 13.2 If the Governance Advisor has involved the Internal auditor in consideration of the complaint, the internal auditor may also attend, and their views may be sought and may be taken into consideration before the Hearings Panel takes any decision on whether the subject member's conduct constitutes a failure to comply with the Code of Conduct and as to any sanction to apply.

- 13.3 If the internal auditor is unable to attend the meeting, they may instead submit their views on the complaint to the Hearings Panel, in writing.
- 13.4 All matters/issues before the Hearings Panel will be decided by a simple majority of votes cast.
- 13.5 Where the subject member fails to attend the Hearings Panel and where the Hearings Panel is not satisfied with the explanation for their absence, the Hearings Panel may in the first instance have regard to any written representations submitted by the subject member and may resolve to proceed with the hearing in the subject member's absence and make a determination or, if satisfied with the subject member's reasons for not attending the hearing may adjourn the hearing to another date.
- 13.6 The Hearings Panel may also resolve in exceptional circumstances that it will proceed with the hearing on the basis that it is in the public interest to hear the allegations expeditiously.
- 13.7 The hearing will be open to the public although the Hearings Panel may resolve to exclude the press and public if it is likely that discussion will include exempt information. The Hearings Panel may only exclude the press and public if the public interest in maintaining the exemption outweighs the public interest in the meeting being open and visible to the public. Prior to taking the decision whether to hold the hearing in private, the Committee will invite the Governance Advisor and subject member to make any representations about the issue of whether the hearing should be open to the public or not.

14. Right to be accompanied by a representative

- 14.1 The subject member or any party may choose to be accompanied and/or represented by a fellow Board member, friend, colleague or other representative, provided that in the case of representation the Governance Advisor and other party have been given 21 days' notice to this effect.

15. The Conduct of the Hearing

- 15.1 Subject to paragraph 16.2 below, the order of business will be:
- (a) elect a Chairman;
 - (b) apologies for absence;
 - (c) declarations of interest;
 - (d) in the absence of the subject member, consideration as to whether to adjourn or proceed with the hearing (refer to paragraphs 13.5 and 13.6 above);
 - (e) introduction by the Chairman, of members of the Hearings Panel, Governance Advisor, investigating officer, legal adviser/clerk, complainant, subject member and their representatives;
 - (f) to receive representations from the investigating officer and subject member as to whether any part of the hearing should be held in private and/or whether any documents (or parts thereof) should be withheld from the public/press;

- (g) to determine whether the public/press are to be excluded from any part of the meeting and/or whether any documents (or parts thereof) should be withheld from the public/press.
- 15.2 The Chairman may exercise their discretion and amend the order of business, where it is considered expedient to do so in order to secure the effective and fair consideration of any matter.
- 15.3 The Hearings Panel may adjourn the hearing at any time.
- 15.4 Presentation of the complaint
 - (a) the investigating officer presents the report including any documentary evidence or other material and calls witnesses (if any). No new points will be permitted;
 - (b) members of the Hearings Panel and/or the subject member or their representative may question the investigating officer and any witnesses called by the investigating officer;
- 15.5 Presentation of the subject member's case
 - (a) the subject member or their representative presents their case and calls their witnesses;
 - (b) members of the Hearings Panel may question the subject member and any witnesses called by the subject member;
- 15.6 The investigating officer will sum up the report.
- 15.7 The subject member or their representative will sum up their case.
- 15.8 The Chairman will invite the Internal Auditor, if present, to express their views on the matter.
- 15.9 The Hearings Panel will adjourn the hearing and deliberate in private (assisted on matters of law by a legal advisor/clerk) to consider whether or not, on the facts found, the subject member has failed to comply with the Code of Conduct.
- 15.10 The Hearings Panel may at any time come out of private session and reconvene the hearing, in order to seek additional evidence from the investigating officer, the subject member or the witnesses. If further information to assist the Panel cannot be presented, the Panel may adjourn the hearing and issue directions as to the additional evidence required and from whom.
- 15.11 The Hearings Panel will make its decision on the balance of probabilities, based on the evidence before it during the hearing.
- 15.12 The Chairman of the Hearings Panel will announce whether the subject member has failed to comply with the Code of Conduct and the principal reasons for the decision.
- 15.13 The Chairman of the Hearings Panel will announce what sanctions (if any) will be applied and/or recommendations to the Governance Advisor.

15.14 There is no right of appeal against the Hearings Panel's decision and/or recommendations, although the subject member can complain to the Local Government and Social Care Ombudsman about the management of the complaint.

16. Range of possible sanctions

16.1 Where the Hearings Panel determines that the subject member has failed to comply with the Code of Conduct, one or more of the following sanctions may be applied or recommended to the IDB Board to be applied.

- the subject member submits a written apology or retraction in a form specified by the Hearings Panel;
- the subject member undertakes specified training;
- the subject member participates in such conciliation as may be specified;
- the subject member deals with IDB business through one specified point of contact;
- placing such restrictions on the subject member's access to staff which may be reasonable in the circumstances providing that such restrictions do not prevent the member from carrying out their duties;
- a requirement that the subject member does not attend at the IDB's offices for a specified period of time, unless attending statutory meetings;
- reporting the subject member to his/her Unitary, District, Borough or City Council, Secretary of State as appropriate;
- reporting the matter to the IDB Board with a recommendation that the subject member be removed/suspended from any committee to which they are currently appointed, including membership of the Consortium Management Committee if appropriate;
- the subject member be issued with a formal request by the IDB Board to resign from the IDB;
- in the case of a local authority appointed member, the IDB requests the local authority to remove the subject member and that the local authority provides a replacement member.
- sending a formal letter to the subject member;
- recommending that the IDB Board issues a press release or other form of publicity;
- Depending on the circumstances at the time, no sanction or recommendation that the Governance Advisor applies one of the informal resolution actions.

16.2 The Hearings Panel has no power to suspend or disqualify the subject member or to withdraw basic or special responsibility allowances, or to impose any sanction that

impedes an elected member as defined in the Land Drainage Act 1991 from carrying out their democratic duties.

16.3 The Hearings Panel may specify that any sanction takes effect immediately or takes effect at a later date and that the sanction is time limited.

16.4 the subject member must not attempt to impugn the integrity of the IDB, the Consortium Management Committee, the Hearings Panel, or the process under these Arrangements. Members are within their rights to disagree with the conclusions or sanctions imposed but should not attempt to question the integrity of individuals or the process. The Hearings Panel may take the subject member's behaviour during the investigation into account when considering sanctions.

17. Publication and notification of the Hearing Panel's decision and recommendations

17.1 Within 20 working days of the announcement of the Hearing Panel's decision, the Governance Advisor will provide a full written decision and the reasons for the decision, including any recommendations, to:

(a) the subject member;

(b) the complainant;

17.2 Within 20 working days of the Hearing Committee's announcement of its decision and recommendations, the IDB will publish the name of the subject member and a summary of the Hearing Panel's decision and recommendations and reasons for the decision and recommendations on the IDB's website.

17.3 The Governance Advisor will report the Hearings Panel's decision and recommendations to a meeting of the IDB Board for information.

17.4 In the case of a local authority appointed member, the Governance Advisor will report the Hearings Panel decision and recommendations to the Monitoring Officer of the relevant local authority.

Appendix 1

Minute references of IDB meetings at which these Arrangements have been approved:

IDB	Minute Reference	Date of Meeting
Broads (2006) Internal Drainage Board	68/23/02	30 October 2023
East Suffolk Water Management Board	73/23/02	13 November 2023
Kings Lynn Internal Drainage Board	80/23/03	10 November 2023
Norfolk Rivers Internal Drainage Board	104/23/02	03 November 2023
Pevensey and Cuckmere Water Level Management Board	26/24/01	16 January 2024
South Holland Internal Drainage Board	103/23/02	16 November 2023
Waveney, Lower Yare and Lothingland Internal Drainage Board	30/24/01	13 February 2024