

# North Kent Marshes Internal Drainage Board

## *Duties, responsibilities and liabilities of IDB Board Members*

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## **1 Responsibilities**

Members of an Internal Drainage Board (IDB) are primarily responsible for:

- Determining the IDB's strategic objectives, plans, and policies;
- Monitoring the progress towards achieving the objectives, plans and policies;
- Accounting for the IDB's activities to relevant interested parties, e.g., Ratepayers, Billing Authorities, Lead Local Flood Authorities, the Environment Agency and Natural England.

The Clerk and Engineer is responsible for the performance of the IDB as dictated by the Board's plans and overall strategy and reports progress to the Board Members.

## **2 Appointment**

The first members of the IDB Board are appointed by the relevant Minister at the time that the IDB is constituted or reconstituted and hold office for a period until one year after the 1 November following the day on which they were first appointed and the Board was (re)constituted. The number of elected IDB members is set out in the Boards constitution. Subsequent appointments are made triennially thereafter, following an election of members undertaken in accordance with 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 arise when an elected member resigns or otherwise vacates their office. If this should happen, the Board may elect a new member or co-opt a member dependent upon the remaining term of office.

In accordance with Schedule 1, Part 2 of the Land Drainage Act 1991; Constituent Billing Authorities are also entitled to appoint members to serve on the Board. The number of members each billing authority is entitled to appoint is dependent upon the proportion of IDB expenditure they provide. However the number of appointed members can never collectively exceed by more than one, the number of elected members. This bare majority limit is a matter of law and specified in Section 6(2)(a), Schedule 1, Part 2, Land Drainage Act 1991. As stated in the Cabinet Office – *Code of Conduct for Board Members of Public Authorities*, all such appointees must act in the best interest of the IDB and not as a representative or delegate of the Billing Authority.

### *Number of Members*

Guidance produced by ADA and the EA (Establishing new Internal Drainage Boards) suggests that small IDB's should have a total membership not exceeding 13, and that Elected Members should represent areas arranged geographically of between 500-5000ha in size. On this basis, the North Kent Marshes IDB was constituted with 5 Elected Member, sharing a total of 10,000ha area.

Special Levy paying Authorities may appoint Members to an Internal Drainage Board. The number of which relates to the proportion of income, however the number of Appointed Members may not exceed by more than one the number of Elected Members of an IDB. The North Kent Marshes IDB has 6 Appointed Members comprising 3 from Gravesham Borough Council and 3 from Medway Unitary Authority. Therefore the full complement for the North Kent Marshes IDB is 11 Members.

On appointment a new member will need to provided certain personal information (e.g. full name, postal and e mail address, date of birth, business occupation, a record of disclosable interests, etc.) to be included on the relevant form which the member is required to sign to signify consent to act as an IDB member. A Register of Members Interests is published on the Boards website. It is possible for a member to file a service address as well as their home address. 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 in this document.

All new members should ensure they receive a copy of the Boards Governance documents, namely: Standing Orders, Scheme of Delegation, Financial Regulations, Financial Risk Assessment, Health and Safety Policy, accounts and recent Board Minutes. The majority of this information is also available on the Boards website.

## **3 Powers**

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.

Generally, the members must act together as a Board. However, the Standing Orders entitle the Board to delegate powers to committees/sub committees as they consider appropriate. The nature and extent of this delegation is detailed in the Scheme of Delegation. In practice, individual employees implement policy and carry out the majority of the Boards day-to-day activities.

## 4 Duties

IDB members need to be aware that they are personally subject to a number of duties in relation to their capacity as members of the Board. 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 any such statutory duties.

The principle duties of IDB members are:

To act within the powers, in accordance with statute and the IDB's constitution and to use those powers only for the purpose for which they are 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;
- To avoid conflicts of interest;
- Not to accept benefits from third parties;
- To declare and interests in any proposed transaction, arrangement or discussion;
- To safeguard public funds and the custody of assets which have been publicly funded;
- To ensure the IDB uses its resources efficiently, economically and effectively, avoiding waste and extravagance;
- To abide by the Members Code of Conduct at all times.

These duties will be interpreted by the courts in accordance with previous case law and cannot be taken in isolation as the IDB and its Board members are also subject to a wide range of legislation and regulation. For example:

- Wildlife and Countryside Act 1981;
- Protection of Badgers Act 1992
- Conservation of Habitats and Species Regulations 2010;
- Conservation (Natural Habitats) Regulations 1994;
- Countryside Rights of Ways Act 2000
- 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 and 1994;

- Flood and Water Management Act 2010;
- Health and Safety at Work Act 1974;
- Corporate Manslaughter and Corporate Homicide Act 2007;
- Water Act 2014;

One of the main statutory responsibilities falling on members is the preparation and approval of the Accounts and 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 controls. This includes the preparation of a Balance Sheet, and an Income and Expenditure account for each financial period and the publication of these accounts.

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.

The Clerk is the Boards Responsible Financial Officer and as such is responsible for carrying out many of the administrative and financial management duties imposed under legislation, without which these duties and responsibilities would fall on the individual Board members.

## **5 Liabilities**

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

It is beyond the scope of this briefing paper to list all the possible and various matters for which IDB members can be held personally liable. However, existing and perspective members 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 and other legislations listed, but not restricted to, in the previous section.

## **6 Members Code of Conduct**

If a bare majority of the IDB consider 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 of and the 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 from.

## **7 Local Audit and Accountability Act 2014**

If an auditor applies to the court for a declaration that an item of accounts is contrary to the law and the court agrees and subsequently orders the rectification of the statement of accounts or accounting records under Section 28 of the Local Audit and Accountability Act 2014, 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.

## **8 Land Drainage Act 1991**

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

Members who have an interest in any company with which the IDB has, or proposes to make an 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 that contract. Failure to do so could result in the IDB member receiving a significant fine and, in some cases, a 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 result in the member losing their seat on the Board.

## **9 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 and habitat within its Drainage District. This is particularly relevant to protected species and designated sites such as SSSI, etc. 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 the individual Board members and the IDB itself by the Enforcement Body. As a result the court may issue a fine dependent upon the severity of the offence and insist on restorative works being carried out at the expense of the offender. Some offences may attract an unlimited fine or custodial sentence.

Current Board maintenance activities have been agreed with Natural England via Assent reference TQ77-10 NKM IDB which covers the time period October 2016 to September 2021.

## **10 Health and Safety at Work Act 1974**

Health and Safety law places duties on organisations and employers. The founding principle of the Act is based upon the Duty of Care organisations have for the safety and wellbeing of their employees and members of the general public. 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 a Health and Safety Policy which is regularly reviewed and monitored.

If a Health and Safety offence is committed with the consent or convenience of, or it 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 Act 1974 and its supporting legislation. Those found guilty are liable for fines and dependent of the severity of the offence, imprisonment.

Individual IDB members are also potentially liable for other related offences, such as the common law offence of gross negligence manslaughter. Under common law, gross negligence manslaughter is proved when individual officers of a corporate body (members

or executive officers) caused death through their own grossly negligent behaviour. This offence is punishable by a maximum sentence of life imprisonment.

## **11 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 breaches 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. In addition, the court can make a Publicity Order requiring the IDB to publish details of its conviction and fine.

## **12 Insurances**

The Board holds a comprehensive range of insurance policies as part of its Risk Management Strategy. The purpose of the Risk Management Strategy is to identify, quantify and allocate risk associated with the IDB's business. The Board holds Directors and Officers Liability insurance for the benefit of Members and officers. The Board also holds Professional Indemnity in relation to its wider business, operational and administrative activities. Full details of these insurances are available from the Clerk/Engineer.

## **13 Recommendation**

This paper is only a brief summary of the duties, responsibilities and liabilities an individual will assume when appointed as a Board member of an IDB. If a prospective IDB member has any specific concerns about the liabilities they will assume upon appointment, they should discuss them with the Clerk or seek independent legal advice. On appointment it is strongly recommended that more detailed information is obtained from the Clerk. It is also strongly recommended that all members attend regular members training events to ensure they remain familiar with the matters outlined in this document and to ensure they are informed of any future changes that may take effect as a result of new legislation or guidance.