

A blue-tinted photograph showing a tractor in the upper right and a boat in the lower left, both situated in a field with a drainage ditch. The tractor is pulling a piece of equipment. The boat is carrying a person and some equipment. The text is centered in the middle of the image.

GOOD GOVERNANCE
FOR INTERNAL DRAINAGE BOARD MEMBERS



GOOD GOVERNANCE

FOR INTERNAL DRAINAGE BOARD MEMBERS

Published by:



Version One printed November 2018

Many people contributed to the writing of this guide and ADA is grateful for all contributions received.

Authors

Iain Downey

Ian Moodie

Forward

Robert Caudwell

Commissioning Editor

Innes Thomson

Editors

Peter Bateson

Frances Bowler

Phil Brewin

Phil Camamile

Hazel Durrant

Rachel Godfrey

Andrew McLachlan

Colin Mellors

David Sisson

Carol Tidmarsh

Review

Members of the ADA Board and ADA
Policy & Finance Committee

Department for Environment Food & Rural
Affairs

Photography

Cliff Carson (p.29)

Emma Dixon (p.63)

Ian Moodie

Martin Redding (p.42)

Innes Thomson

Design and Typesetting

Ryan Dixon

This publication was made possible with
the financial support of:

ADA

DEPARTMENT OF ENVIRONMENT
FOOD & RURAL AFFAIRS

This booklet is an introduction to being a member of an internal drainage board. It is not intended to be a definitive legal guide. The guidance and information contained in this publication should not be relied on, or used, as a substitute for legal advice. Whilst every effort has been made to ensure that the contents of this publication are correct at the time of publication, ADA cannot accept responsibility for errors, omissions and changes to information subsequent to printing. Electronic copies of the guide are also available from www.ada.org.uk

CONTENTS

INTRODUCTION

Welcome

1 MANAGING FLOOD RISK IN ENGLAND

- 1.1 Historical basis
- 1.2 The Department for Environment, Food and Rural Affairs (Defra)
- 1.3 Risk Management Authorities (RMAs)
 - 1.3.1 the Environment Agency (EA)
 - 1.3.2 the County Council/Unitary Authority
 - 1.3.3 the District Council/Unitary Authority
 - 1.3.4 Water and Sewerage Companies
 - 1.3.5 Highways Authorities
- 1.4 The Regional Flood & Coastal Committee (RFCC)
 - Important legislation
 - Key terms

2 ABOUT YOUR IDB

- 2.1 What is my IDB?
- 2.2 Where do you find IDBs?
- 2.3 What is my IDB's role?
- 2.4 Exercising powers and duties
- 2.5 How was my IDB created?
- 2.6 Are all IDBs the same?
- 2.7 Can IDBs employ staff?
- 2.8 Key appointments
- 2.9 Your Clerk

3 BOARD MEMBERS

- 3.1 Role

- 3.2 Number of Board Members
- 3.3 Qualification and Election of Board Members.
- 3.4 Appointed Members
- 3.5 Objectivity and independence
- 3.6 Your IDB's Chair
 - 3.6.1 Role and responsibilities
 - 3.6.2 Remuneration
 - 3.6.3 Length of tenure

4 GOVERNANCE

- 4.1 Responsibility
- 4.2 Guiding Principles
- 4.3 Important documents
 - 4.3.1 Standing Orders
 - 4.3.2 Policy Statement
 - 4.3.3 Financial Regulations
 - 4.3.4 Code of Conduct
- 4.4 Employment
- 4.5 Training

5 MEETINGS

- 5.1 General
- 5.2 Meeting frequency
- 5.3 Openness
- 5.4 The Agenda
- 5.5 Attendance
- 5.6 At the meeting
- 5.7 Disclosure
 - 5.7.1 The disclosure and declaration of interests
 - 5.7.2 A conflict of interest
 - 5.7.3 Accepting significant gifts
- 5.8 After the meeting
- 5.9 Delegation
- 5.10 Committees

6 DELIVERY

- 6.1 An essential water management authority
- 6.2 Powers and duties
 - 6.2.1 Policy Statement
- 6.3 The primary operational powers
 - 6.3.1 Important Considerations
- 6.4 Maintaining and improving watercourses and assets.
 - 6.4.1 Planning and preparation
 - 6.4.2 Waste regulation
 - 6.4.3 Main Rivers
 - 6.4.4 Rechargeable works
 - 6.4.5 Notices
 - 6.4.6 Compensation
- 6.5 Regulatory Powers
 - 6.5.1 Byelaws
 - 6.5.2 Consents
 - 6.5.3 Designating structures
 - 6.5.4 Exemptions for Certain Undertakings
- 6.6 Development control and planning
- 6.7 Conserving and enhancing the environment
 - 6.7.1 Biodiversity Action Plan (BAP)
 - 6.7.2 Protected Sites
 - 6.7.3 Protected species
 - 6.7.4 National Parks
 - 6.7.5 Invasive Non-Native Species
 - 6.7.6 Environmental Impact Assessments
 - 6.7.7 Water Framework Directive (WFD)
 - 6.7.8 Fish passage
 - 6.7.9 Environmental expertise
- 6.8 Working Together
 - 6.8.1 Cooperation
 - 6.8.2 Public Sector Co-operation Agreements (PSCAs)
- 6.9 Involving the Community
 - 6.9.1 Websites
 - 6.9.2 Communications

7 FUNDING

- 7.1 Drainage Rates and Special Levies
- 7.2 The Annual Value
- 7.3 Drainage Rates
- 7.4 Differential Rates
- 7.5 Arrears
- 7.6 The Special Levy
- 7.7 The calculation of the Special Levy
- 7.8 Other funding sources, available to your IDB
 - 7.8.1 Highland/Upland Water Contributions
 - 7.8.2 Capital Schemes
 - 7.8.3 Local Enterprise Partnerships (LEPs)
 - 7.8.4 A local authority
 - 7.8.5 Consenting to obstructions etc. in watercourses
 - 7.8.6 Consultancy and Rechargeable Work
 - 7.8.7 If byelaws have been made
 - 7.8.8 Grants
- 7.9 Borrowing
- 7.10 Taxation
- 7.11 Precept

8 FINANCIAL MANAGEMENT

- 8.1 Taking responsibility
- 8.2 Financial Rules
- 8.3 Internal control
- 8.4 The Budget
 - 8.4.1 How the budget is put together
 - 8.4.2 Regular monitoring of the budget
- 8.5 Value for money
- 8.6 Banking
 - 8.6.1 Approval process
 - 8.6.2 Cash and cheques received
- 8.7 Reserves
- 8.8 Investments

- 8.9 Adequate insurance
- 8.10 Accounts and audit
 - 8.10.1 The Annual Governance Statement
 - 8.10.2 Accounting Statements
 - 8.10.3 An internal audit
 - 8.10.4 External audit
 - 8.10.5 Appointing an external auditor
 - 8.10.6 Exemptions
 - 8.10.7 Publicising the accounts and audit

9 TRANSPARENCY AND ACCOUNTABILITY

- 9.1 Holding your IDB to account
- 9.2 Transparency Codes
 - 9.2.1 The Transparency Code for Smaller Authorities
 - 9.2.2 The Local Government Transparency Code
- 9.3 Publications
- 9.4 An Annual Report
- 9.5 Supervision
- 9.6 Scrutiny
- 9.7. Freedom of Information
 - 9.7.1 Publication Scheme
 - 9.7.2 Receiving an information request
 - 9.7.3 Refusing an information request
 - 9.7.4 Charging
 - 9.7.5 Environmental and spatial data
 - 9.7.6 Re-use

10 MANAGING RISKS AND HAZARDS

- 10.1 Working effectively
- 10.2 Risk Management
 - 10.2.1 Be strategic
 - 10.2.2 A register
 - 10.2.3 Risk Assessment
- 10.3 Health and Safety
 - 10.3.1 Leading safely
 - 10.3.2 Planning safely
 - 10.3.3 Risk assessments
 - 10.3.4 Recording and reporting accidents
 - 10.3.5 Reviewing health and safety performance
- 10.4 Data Protection
 - 10.4.1 Personal data
 - 10.4.2 Data Protection Principles
 - 10.4.3 Privacy Notice
 - 10.4.4 As a statutory body
 - 10.4.5 Access to their personal data
 - 10.4.6 Public interest
 - 10.4.7 Data breaches
- 10.5 Continuity planning
- 10.6 Complaints

11 SOURCES OF ADVICE AND INFORMATION

- 11.1 ADA
- 11.2 Principal Acts of Parliament
- 11.3 Helpful websites

Welcome

It gives me great pleasure to introduce this essential guidance for Internal Drainage Board Members. This guide is a welcome and much needed resource for both new and existing Board Members, and also for those who are thinking about joining an Internal Drainage Board (IDB).

As a Board Member, you are both part of the democratic framework of the country representing the interests of your community, and the long and eventful history of living and working with water in lowland England. This guide will help you understand more about your role and the difference you can make.

Ever since Roman times, efforts have been made to control the water, protect the land, and shape our water landscape. Early on, people realised that they would be better off working together than going it alone. They pooled their resources, reclaimed land, dug new rivers, and built new embankments. This required rational collective action and they formed drainage boards to negotiate the works and their maintenance. In doing so they laid an important foundation for the democratic governance of water, and the public water management authorities that continue to this day.

The principle of collective responsibility for water management endures at the heart of today's IDBs. It remains more efficient to build and maintain our water environment together, and to delegate the design and execution of works to professional well governed organisations. The current primary legislation for IDBs is the Land Drainage Act 1991 and the Flood and Water Management Act 2010, which provide some helpful tools for IDBs to play an even stronger role in all aspects of flood and water management in their

local area. To take advantage of these opportunities, it is more important than ever to engage with your community and other public authorities in a positive and proactive way. IDBs need active, interested and committed people to serve and get involved in their work.

If you are not yet a Board Member, but are thinking of putting yourself forward, I encourage you to read this guide and to contact your local IDB to find out how you might get involved. Whilst elections normally take place every three years, there are still frequent opportunities to become a Board Member when vacancies arise, so I urge you to express an interest in joining so that you can keep abreast of these windows of opportunity.

Being elected or appointed as a Board Member does not mean you are expected to have all the solutions for managing water in your local area, but through your local knowledge and expanding grasp of your role you will be better placed to deal with the range of issues that arise. Engaging in learning, training and development will build your confidence as a Board Member giving you the satisfaction of knowing that you and your IDB have made a difference; reading this guide is the first step in this process.

I hope you enjoy working with your community to reduce the risk of flooding, manage water resources and enhance your local water environment by serving your local IDB. I wish you every success and I am confident that this guide will help you to develop your role as a Board Member.

Robert Caudwell, Chairman, ADA

I MANAGING FLOOD RISK IN ENGLAND

Discover the historical basis for the management of flood risk in England, those authorities involved in managing flood risk today, and the important legislation that underpins their functions.



I MANAGING FLOOD RISK IN ENGLAND

- 1.1 **Historical basis.** In medieval times, drainage operations to help prevent or manage the inundation of land by flood waters or the sea were typically undertaken by neighbouring landowners. English law still retains the basic principle that the landowner is the person with primary responsibility for preventing the flooding of his or her own land. However, this led to disputes as to what works should be done and who should maintain these works and pay for them. So in 1427, a statute of Henry VI appointed the first Commissioners of Sewers to oversee drainage arrangements. Over the centuries, this need to manage flood risk, within a catchment or flood prone area, for public benefit, has led to the creation of a framework of statutory bodies that today includes your Internal Drainage Board (IDB). These have the power, in the public good, to raise funds to deliver "Flood and Coastal Erosion Risk Management" (FCERM) works within and for the benefit of a specific catchment, area or locality.
- 1.2 **The Department for Environment, Food and Rural Affairs (Defra)** is the Government Department responsible for leading on FCERM policy in England.
- 1.3 **Risk Management Authorities (RMAs)** are, according to the Flood and Water Management Act 2010, the main statutory bodies with powers to carry out flood risk management functions. All IDBs are RMAs, as are:
- 1.3.1 **the Environment Agency (EA)**, which is responsible for taking a national strategic overview of the management of all sources of flooding and coastal erosion in England. This includes, setting the direction for managing the risks through strategic plans (such as the National FCERM Strategy), providing evidence and advice to inform Government policy and supporting others, working collaboratively to support the development of risk management skills and capacity, and providing a framework to support local delivery. For watercourses, the Environment Agency's primary jurisdiction relates to Main Rivers, which are usually larger rivers and streams and are those shown on the statutory map held by the Environment Agency.
 - 1.3.2 **the County Council/Unitary Authority**, which is designated as a Lead Local Flood Authority (LLFA) under the Flood and Water Management Act 2010. For their area each LLFA: must formulate a strategy for local flood risk management, maintain an asset register of flood management structures and features, can undertake works to deal with flooding from surface water or groundwater, and is responsible for investigating significant local flooding incidents and publishing the findings.

Outside of Internal Drainage Districts, the LLFA can regulate Ordinary Watercourses (those that are not Main Rivers) to maintain a proper flow by issuing consents for altering, removing or replacing certain structures or features on the watercourse, or enforcing obligations to maintain flow in a watercourse and repair watercourses, bridges and other related structures. These powers are similar to those exercised by an IDB within its Internal Drainage District (see 6.3), and in some areas IDBs have agreed to perform consenting and enforcement functions on behalf of the LLFA.

1.3.3 **the District Council/Unitary Authority**, which is empowered to undertake works to Ordinary Watercourses, outside of Internal Drainage Districts. In coastal areas, District or Unitary Authorities are designated as Coastal Protection Authorities under the Coastal Protection Act 1949. They lead on coastal erosion risk management activities in their area and are responsible for developing Shoreline Management Plans (SMPs), which provide a long term framework for managing the risk of coastal change on their section of the coast.

1.3.4 **Water and Sewerage Companies**, which manage the risk of flooding to water supply and sewerage facilities and flood risks from the failure of their infrastructure. They have a duty under Water Industry Act 1991 (Section 94) to ensure that the area they serve is “effectually drained”.

1.3.5 **Highways Authorities** include the Highways England (for motorways and major A roads) and Unitary/County Councils (for all other roads and public rights of way). They have the lead responsibility for providing and managing highway drainage and roadside ditches under the Highways Act 1980.

1.4 **The Regional Flood & Coastal Committee (RFCC)** is responsible for ensuring coherent plans are in place for identifying, communicating and managing flood and coastal erosion risks across catchments and shorelines in their region. The Environment Agency must consult with the RFCC about FCERM work in their region and take their comments into consideration. The RFCC approves the annual programme of FCERM work in their region and sets the local levy that funds those FCERM activities within the region that are a local priority. Each RFCC brings together members appointed by LLFAs, and independent members with relevant experience appointed by the Environment Agency.

Important legislation. There are a few specific Acts of Parliament related to the management of water and flood risk that it is helpful to be aware of:

Land Drainage Act 1991 (LDA) sets out the functions of IDBs and local authorities in relation to land drainage.

Flood & Water Management Act 2010 (FWMA) provides for better, more comprehensive management of flood risk, defines RMAs and the role of LLFAs.

Water Resources Act 1991 consolidates previous water legislation concerning water resources. It defines the responsibilities of the Environment Agency in relation to watercourses and groundwater.

Water Industry Act 1991 sets out the main powers and duties of the Water and Sewerage Companies in relation to the supply of water and the provision of sewerage services.

Key terms. The flood and water level management sector contains a myriad of terms and acronyms and legal definitions that can be confusing and easily misunderstood. Below is a short guide to some of the key commonly used terms.

Watercourse, is widely defined under the Land Drainage Act 1991 (Section 72) to include all rivers and streams and all ditches, drains, cuts, culverts, dikes, sluices, sewers and passages, through which water flows. But not public sewers.

Drainage, is defined under the Land Drainage Act 1991 (Section 72) as the carrying on, for any purpose, of any other practice which involves management of the level of water in a watercourse. It therefore covers far more than the simple evacuation of excess water, including irrigation and defence against flooding.

Flood, is defined in the Flood and Water Management Act 2010 (Section 1) as where land not normally covered by water becomes so covered.

2 ABOUT YOUR IDB

Learn about the fundamentals of your IDB. Understand its legal status, how it was formed, and how it exercises its permissive powers and statutory duties to deliver its role as a local public authority. Find out about the key appointments your IDB should make.



2 ABOUT YOUR IDB

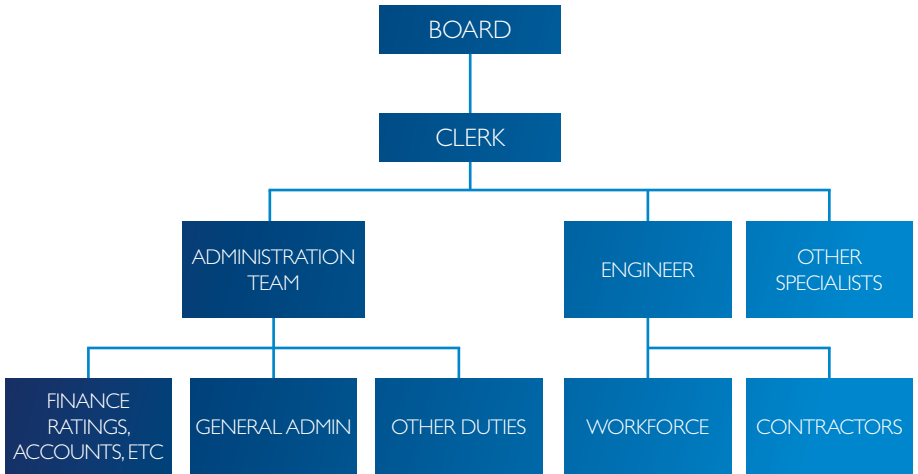
- 2.1 **What is my IDB?** Your IDB is a local public authority, existing to defend a local area from flood risk, and to manage water levels. It should have a close relationship with those who rely on it for such defence and management. Each IDB is a corporate body, meaning that it acts as an entity with a legal existence separate from its Board Members. It can therefore own land, enter into contracts and be subject to court proceedings.
- 2.2 **Where do you find IDBs?** IDBs occur where there is a particular flood risk to an area and where the existence of a local public authority is thought necessary to alleviate that risk. Formally, an IDB exists where an area will derive benefit or avoid danger as a result of drainage operations, this is known as its Internal Drainage District. It is the area that is considered to directly benefit from your IDB's activities and within which the IDB may levy Drainage Rates and issue Special Levies (see 7.1). You can find an interactive map of all of the IDBs in England via www.ada.org.uk.
- 2.3 **What is my IDB's role?** Your IDB's role is to represent the relevant interests within its Internal Drainage District. It is therefore important for your IDB to understand the needs of different groups and to be able to work towards resolving conflicts, particularly where maintenance work or capital projects may raise sensitive issues. As a Board Member, you have a responsibility to be well-informed, especially about diverse local views.
- 2.4 **Exercising powers and duties.** IDBs operate within a framework laid down by statute. Your IDB's activities normally involve the exercise of a permissive power, enabling them to undertake defined activities if they so wish, rather than a statutory duty which your IDB is required to fulfil as a public authority. Therefore, the action to be taken in a particular case is predominantly within the properly exercised discretion of your IDB. As locally funded bodies, it is therefore important for your IDB to meet regularly and reflect the proper needs of the local communities for which it performs those functions. Your IDB will, whether it is exercising powers or duties, wish to manage effectively the flood risk to its Internal Drainage District so far as can be done at a cost which is acceptable to the local community that funds the IDB through Drainage Rates and Special Levies. It should, therefore, be dynamic and professional in delivering its services and draw up and publish strategic plans, setting out: how it intends to perform its functions, maintain and improve its assets, and schedule the construction or acquisition of new assets as required. While, to do so, your IDB needs the advice and input of professional staff/advisers, your own input as a Board Member with local knowledge cannot be underestimated and, therefore, it is most important that you play your full part in your IDB's business.

- 2.5 **How was my IDB created?** Many IDBs were originally created several hundred years ago and, while a number have been reconstituted to take account of changing circumstances, they have a long history of undertaking local works, often under local legislation. Today, your IDB will normally have been constituted by Statutory Instrument under the Land Drainage Act 1991. This Statutory Instrument will contain the details relating to the names and extent of the Internal Drainage District by reference to a formal map, and the number of Board Members. It will also designate the first Board Members of the IDB. Where your IDB has been specifically created by statute, similar remarks apply, except that the provisions may be somewhat older. Your IDB's Clerk will be able to provide further details, where this applies.
- 2.6 **Are all IDBs the same?** IDBs are not identical. They differ because they are established to manage the specific water management needs arising within their local area. Their Internal Drainage Districts vary in extent depending on the size of the catchment in which they work. Some IDBs will have one or more pumping stations while others will rely on gravity systems. A few have a specialist primary purpose, such as the management of water flows into their Internal Drainage Districts in summer particularly in respect of environmentally protected areas.

The Medway Letter. There is no formula laid down in statute as to how the boundaries of an IDB are drawn. However, the "Medway Letter", dating from 1933, set out the views of the then Minister of Agriculture on the land levels relative to flood levels, which it was appropriate to incorporate within an Internal Drainage District. Whilst these do provide some guiding principles, today flood risk managers typically refer to Flood Zones that are based on the predicted annual probability of river and sea flooding occurring. Reassuringly, these Flood Zones often correlate closely with existing IDB boundaries.

- 2.7 **Can IDBs employ staff?** Yes, ensuring your IDB has access to people with the appropriate skills and knowledge is essential. Some IDBs will have a number of employees, while others will have no employees and instead arrange for their work to be carried out by another person or body. Consortia exist where one or more IDBs utilise the services of another IDB, as provided for by the Land Drainage Act 1991 (Section 11). Where your IDB has employees, the Land Drainage Act 1991 states that reasonable remuneration can be paid and housing accommodation provided, but otherwise the general law applicable to employment will govern the relationship.

TYPICAL STAFF AND MANAGEMENT STRUCTURE OF AN IDB



- 2.8 **Key appointments.** Your IDB should have a Chair, who is responsible for running IDB meetings and its business (see 3.6), and if desired a Vice Chair. Your IDB should also have a Clerk, who is the formal point of contact for the IDB (see 2.9), and a Responsible Financial Officer (RFO) to manage its financial affairs (see 8.1), and an Engineer to look after maintenance and improvement works (see 6.3), regulatory functions (see 6.5), and environmental delivery (see 6.7). In some cases these roles may be undertaken by the same person. Your IDB should also appoint an independent and competent internal auditor (see 8.10).
- 2.9 **Your Clerk.** Whether an employee or not, your IDB should have a Clerk who provides advice, administrative and financial support, and take action to implement the IDB's decisions. It is the Clerk's job to receive information from other bodies and keep up-to-date on the laws and procedures affecting your IDB. Your IDB should ensure that your Clerk and Board Members therefore work as a team to provide an effective service for the Internal Drainage District.

Remember, your Clerk answers to the IDB as a whole. Where the IDB has other staff, these are often managed by the Clerk who may therefore be referred to as the IDB's Chief Executive or Senior Officer. No one Board Member can act as the line manager of either the Clerk or other employees. These rules and principles should build on mutual respect and consideration between employee and employer.

3 BOARD MEMBERS

Understand your role as a board member; how members are elected or appointed to your IDB, the importance of objectivity and independence in your decision making, and the role of your IDB's Chair.



3 BOARD MEMBERS

- 3.1 **Role.** As a Board Member, you are accountable for your IDB's actions or omissions and must take all reasonable steps to ensure that the IDB acts properly in achieving what it sets out to do. It must proceed with due care and attention to the law. You will also be a volunteer as, save possibly for an allowance for the Chair, Board Members do not receive any payment, apart from the reimbursement of legitimate expenses. Why therefore should you get involved? You will appreciate that, as the IDB is specifically created to manage land drainage and flood risk within its Internal Drainage District, you almost certainly will be or will represent those who will be reliant on the IDB for protection from flooding and will therefore directly benefit from its operations. Your task as a Board Member is to bring relevant local issues to the attention of the IDB, and help it make decisions on behalf of its Internal Drainage District.
- 3.2 **Number of Board Members.** Board Members of your IDB are either Elected Members or Appointed Members. Elected Members are those representing drainage ratepayers from the agricultural community within your Internal Drainage District. Appointed Members are those appointed by the local authorities that collect funds for your IDB through a demand mechanism called the Special Levy (see 7.6). The number of places for Elected Members on your IDB is set out in the Order constituting the IDB. This means that the number of Appointed Members on your IDB is always additional to that number.

Special Levy paying Council(s) are entitled to assign Appointed Members onto your IDB in proportion to the proceeds of Special Levies that they must contribute to your IDB's total Special Levy and Drainage Rates income. However, where the special levies represent the majority of an IDB's combined income from Special Levy and Drainage Rates, the overall number of Appointed Members is capped at one more than the total number of Elected Members.

The numbers of Board Members on an IDB varies around the country. However, Defra suggests that in general IDBs should not be larger than 21 Board Members, and for smaller IDBs, not larger than 13. IDBs larger than this may wish to consider reconstituting to a smaller size, to see fewer vacant seats, more contested elections, and better attendance at meetings. Constitutional changes to your IDB are submitted by the Environment Agency (see 9.5).

- 3.3 **Qualification and Election of Board Members.** IDBs hold elections every three years. Elected Members are directly voted for by drainage ratepayers and the duly Elected Members take office on 1st November following the election. The qualifications for voting, and eligibility to stand for election, are set out in the

Land Drainage Act 1991 (Schedule 1). The electorate being the occupiers of property liable to pay Drainage Rates. Each elector has between 1 and 10 votes, depending on the Annual Value of their property within your Internal Drainage District (see 7.2). In between such elections, a vacancy occurring in the elected membership may be filled by simple co-option by the remaining Board Members, the person co-opted should be someone qualified to stand for election as an Elected Member.

3.4 **Appointed Members** do not have to be a Councillor or employed by the Special Levy paying Council, but the Council must consider appointing someone who has knowledge or experience of some matter relevant to your internal drainage district, or your IDB's functions. This is therefore an opportunity for the Council to encourage and facilitate the diversity of membership and relevant interests and experiences on your IDB. Such interests may include for instance: biodiversity and conservation, business and commerce, local democracy (e.g. parish council), a local flood group, industry, highways, service infrastructure, recreation and amenity, heritage and archaeology, navigation, or angling. It is recommended that the Council routinely engages with, and has a mechanism to receive feedback from, Appointed Members regarding the work and decisions of the IDB.

A vacancy occurring in the appointed membership is filled by the relevant Council and the term served by such Appointed Members is a matter for the appointing local authority. It is important to note that when acting as a Board Member of your IDB, you are there to serve the interests of the IDB (see 3.5), which may, on occasion, differ from party political wishes, or those of another body.

Commissioners. There are some IDBs, usually called Commissioners, which are subject to provisions, particularly regarding eligibility and elections of Board Members, which are within local legislation and differ from those applicable to the majority of IDBs. Board Members of such a body should seek the advice of its Clerk as to these provisions. The term IDB is, however, used within this Guide to include such Commissioners, unless the contrary is stated.

3.5 **Objectivity and independence.** Discussions and decisions taken by your IDB should not be influenced by external or political influences unrelated to the functions of the IDB. All Board Members of your IDB are required to take any decision in the best interests of the IDB and Internal Drainage District, its drainage rate and Special Levy payers, and the local community it serves. In doing so, you

should take into account the full range of factors, including the need to deliver effective land drainage and flood management, the importance of promoting biodiversity, and the need to deliver value to both the local agricultural community that pays drainage rates, and to the wider local community on behalf of which the Special Levy is demanded from Councils.

3.6 Your IDB's Chair. The Chair has a very important role within your IDB and should have a close working relationship with the Clerk and its senior officers to ensure the smooth and proper functioning of the Board.

3.6.1 Role and responsibilities. The Chair will liaise with the Clerk in compiling the agenda and managing the meeting and its business and ensure that proper procedures are followed. Board Members should therefore always work through them. When a vote on a proposal is tied, the Chair may be allowed a casting vote, in accordance with the IDB's Standing Orders. The Chair will also sign minutes of meetings and your IDB's accounting and governance statements within its Annual Governance and Accountability Return. The Chair should ensure that these and any other documents which he/she is called upon to sign, approve or authorise are properly scrutinised. The Chair would also normally be requested to call any extraordinary meetings which your IDB may require.

Best practice is to have a document, approved and periodically reviewed by your IDB, which sets out the respective roles and responsibilities of your IDB's Chair and Clerk. A model 'Division of Responsibilities' document is available from the ADA website.

3.6.2 Remuneration. Your IDB can, with the Minister's approval, pay an allowance to the Chair in accordance with the Land Drainage Act 1991 (Schedule 2).

3.6.3 Length of tenure. The Chair of your IDB should, withstanding exceptional circumstances, follow the principles within the Cabinet Office's Governance Code on Public Appointments 2016, which states that there is a strong presumption that no individual should serve more than two terms or serve in any one post for more than ten years.

4 GOVERNANCE

Good governance is the key to any well run public authority. This section explains the responsibilities and guiding principles involved in good governance. The important documents that underpin your IDB's own governance and how these are supported by training and learning and the staff your IDB employs.



4 GOVERNANCE

- 4.1 **Responsibility.** It is most important that your IDB adheres to a proper and robust governance and regulatory framework, with appropriate arrangements for monitoring and review and that you, as a Board Member, play a proper role in this; ensuring that any decision taken by your IDB is soundly based with an effective process to support it. Proper governance is the responsibility of all Board Members.

Your IDB should, therefore, ensure that it listens to and communicates with all its rate and levy payers, has written employment contracts with staff, keeps its records in order; has a robust system of financial control, manages meetings effectively and is well-informed on relevant topics. Well-prepared and well-informed Board Members and officers have more chance of avoiding difficulties and ensuring the smooth running of your IDB and its operations.

- 4.2 **Guiding Principles.** The Committee on Standards in Public Life (the Nolan Committee) in 2015 identified and defined seven general principles of conduct which should underpin public life, and it is recommended that all public bodies, including your IDB, reflect these principles in their codes of conduct. These principles of public life are:

- **Selflessness:** acting in the public interest
- **Integrity:** you should not put yourself under any improper obligations to others or allow them improperly to influence you
- **Objectivity:** you should act fairly
- **Accountability:** you should be prepared to submit to proper public scrutiny
- **Openness:** you should be open and transparent in your actions and decisions
- **Honesty:** you should always be truthful
- **Leadership:** as a Board Member, you should promote, support and exhibit high standards of conduct and be willing to challenge poor behaviour.

These principles, together with [respect for others](#), the [promotion of equality](#), and the [upholding of the law](#), should underpin your IDB's governance arrangements. As a body spending public money and delivering a public service, your IDB should provide:

- a clear definition of purpose, responsibilities and desired outcomes,
- an appropriate corporate culture,
- transparent decision making,
- a strong governance team and real accountability.

It is therefore essential that your IDB, and its Board Members and officers, actively and regularly consider its compliance with these principles and identify and deal with any issues.

4.3 Important documents. Standing Orders, Policy Statement, Financial Regulations and Code of Conduct are the core documents required by your IDB and contain much of the detail that will go to show good governance. They must be approved by the full IDB Board. In order to properly undertake your duties and ensure that the above principles are met, you should either personally have or know the whereabouts of your IDB's important documents and the budget for the current year; the map of your Internal Drainage District, your IDB's byelaws, risk assessment documentation, policies, and procedures for emergencies.

4.3.1 Standing Orders. These are the detailed rules for meetings and proceedings of your IDB, including the quorum required for meetings, the constitution of committees, delegation and the rules for the discussion of business. Your IDB must make such Standing Orders, with the approval of Defra, which has produced a template, to demonstrate good governance. These Standing Orders will also set time limits in relation to meetings and the production of meeting papers but normally, save in an emergency, you should receive fourteen days' notice of a meeting and an agenda seven days before the meeting, to ensure you are notified of the matters to be discussed. Unlike local authorities however, IDBs have only a very specific and limited power of formal delegation, and the decisions reserved for the full IDB and those devolved to a committee should be clearly set out. If, in practice, some delegation to officers occurs, any decisions so taken should be in accordance with your IDB's policies and endorsed by the Board Members. The respective roles of the full IDB, any committees and the Clerk must be made clear. Although the relevant Land Drainage Act 1991

provisions do not apply to Commissioners, they should still make such Orders as a matter of best governance practice.

- 4.3.2 Policy Statement.** This provides a public statement of your IDB's approach to its management of water levels and flood risk within its Internal Drainage District.
- 4.3.3 Financial Regulations.** These set out how your IDB manages its financial affairs. For example, they will detail the process for making and approving payments and for purchasing goods and services, including how and when tenders and quotes are required (see 8).
- 4.3.4 Code of Conduct.** Board Members should also have a Code of Conduct, setting out the standards expected from both them and your IDB collectively. This Code should be based on the Code of Conduct for Board Members of Public Bodies issued by the Cabinet Office. Good practice dictates that there should be a similar code of conduct for employees.
- 4.4 Employment.** The law requires that at all times your IDB must act as a responsible employer; and should be careful to appreciate its obligations to any "workers" regardless of whether they are direct employees or otherwise. It is most important for your IDB to ensure that all staff have a written contract of employment. IDB employees enjoy the full security of the law whether they are full-time or part-time workers and the law protects them in terms of pay, annual leave, sick leave, maternity and paternity leave, pay and from bullying, harassment or discrimination. Your IDB will need a Code of Conduct for Employees setting out the levels of expected and accepted behaviour and an agreed grievance procedure to ensure that concerns raised by an employee are handled properly if they occur. Health and safety law (see 10.3) also protects employees (and members of the public); your Clerk should be able to advise on such matters. Many IDBs follow the employment conditions set out in the ADA Lincolnshire Branch Wages, Salaries and Condition of Service Manual, known as the "White Book".
- 4.5 Training.** As a Board Member you should keep up-to-date with legal and administrative changes and the duties placed upon your IDB. Training for Board Members and structured professional development for employees is recommended, and it is good practice for your IDB to routinely review Board Members' and employees' training needs to ensure that your IDB's knowledge remains current, and seek appropriate courses or guidance.

5 MEETINGS

Find out what happens at an IDB meeting, how you should behave at board meetings, and the importance of disclosure and declarations of interest. Understand how some matters may be delegated to committees by your IDB.



5 MEETINGS

- 5.1 **General.** Board Meetings are for making decisions by the full IDB, while Committee meetings may involve a smaller number of Board Members for a specific issue or issues.
- 5.2 **Meeting frequency.** Your IDB should decide on, and publish, its yearly schedule of meetings. Your IDB must have at least two full Board Meetings in every financial year, to consider not only the general business, but also the budgets and the levels of Drainage Rates and Special Levies (see 7.1), the Annual Governance and Accountability Return, and the accounts for the previous financial year (see 8.10). The Board Meeting to approve the budget and to set the Drainage Rates and Special Levies must be held on or before the 15th February prior to the financial year in question, while the Annual Governance and Accountability Return and the IDB's accounts must be approved on or before 30th June after the end of the relevant financial year. One of your IDB's meetings each year must act as an Annual General Meeting (AGM) at which the election of your Chair and Vice Chair will be made.
- 5.3 **Openness.** Meetings of your IDB must generally be open to the public and reasonably accessible to any attendee. Openness and transparency fosters good relationships with communities and other public authorities. The recording, filming and reporting of all public meetings is permitted but should not disrupt the meeting, and the IDB may wish to set reasonable rules to prevent disruptive behaviour. However, on occasions when publicity would be prejudicial to the public interest by reason of the confidential nature of the business being discussed or for other special reasons, your IDB can agree by resolution to exclude the press and public and preclude the filming or recording for that item in line with the Public Bodies (Admission to Meetings) Act 1960.
- 5.4 **The Agenda** is the list of business to be transacted at meetings and each item should make it clear what it is about, what (if any) actions are required, and what decisions may be made. The Clerk will compile and issue the agenda and accompanying papers usually in consultation with the Chair. You may ask the Clerk to add items to the agenda but must consider the time limits set by the Standing Orders as to when this may be done.
- 5.5 **Attendance.** Your IDB membership is important and only very good reasons should prevent your attendance. If you are unable to attend, you should contact the Clerk with an apology and explanation. If you fail to attend any meetings of your IDB for six months, your membership ceases unless the absence is due to illness or some other reason approved by the IDB.

5.6 **At the meeting.** It is the Chair's job to manage the meeting by introducing agenda items, inviting Board Members to speak, focusing discussion and clarifying matters for decision. Board Members, having engaged in discussion, vote for or against a proposal, usually by a show of hands, and the minutes then record those decisions. If you cannot decide, you may abstain. Remember however, that IDB decisions are corporate decisions, and your Chair should not allow one person or a small group of Board Members to dominate your IDB's work, or to make decisions on its behalf. The meeting should remain quorate at all times, so remember to inform the Clerk in good time ahead of a meeting if you need to leave early. Normally voters' names are not minuted but if necessary, you can ask for names to be recorded. You should keep contributions short and to the point and always work through your Chair. Never engage in personal attacks on others.

Good meeting etiquette. The following ten points will help you and your IDB have productive and fulfilling meetings:

- 1 Start on time.
- 2 Come prepared, read the agenda, previous minutes, and any accompanying papers, think about anything you may wish to ask in advance.
- 3 Switch any electronic devices to silent.
- 4 Laptops and other devices should remain closed unless being used in place of hard copy papers, or to present, contribute or take official minutes.
- 5 Actively listen to other points of view.
- 6 Avoid interrupting the speaker.
- 7 Contribute clearly and concisely.
- 8 Don't engage in side conversations.
- 9 Stick to the agenda and reach and communicate conclusions and resolutions.
- 10 Finish on time. Ideally, a meeting should not last more than two hours otherwise concentration begins to lapse.

5.7 **Disclosure** is important because there needs to be total confidence that all Board Members of your IDB are putting the public interest first and not benefiting themselves. Accordingly, your IDB is required to adopt a Board Members' Code of Conduct (see 4.3.4) and to have a register of Board Members' interests, which your IDB's Clerk must establish and maintain. Registrable interests include contracts, ownership of land and assets, and employment or business interests in or affecting the Internal Drainage District. A Board Member should disclose any such interests within 28 days of becoming a Board Member or, if later, the interest arising. Disclosure also applies to the relevant interests of Board Members' spouses, civil partners or cohabitants. The register should then be made available to the public. If the Clerk decides, on reasonable grounds, that, by making a disclosable interest public, a Board Member might be subject to a threat of violence or intimidation, the fact, rather than the details of the interest can be registered. This is known as a "sensitive" interest.

5.7.1 **The disclosure and declaration of interests** at meetings is also intended to give the public confidence in decision making and should be done at the beginning of each meeting and during the meeting if the need arises. If you have an interest, you must not take part in the discussion or vote on a matter and should leave the meeting for that item, in accordance with the Standing Orders. However, the general liability to pay either Drainage Rates or through payments to the local authority, the Special Levy, is not such an interest, as it is a decision affecting the Board Members as a whole, rather than an individual. The Land Drainage Act 1991 (Schedule 2) also makes specific provision by stating that a Board Member who is interested in any company with which your IDB has, or proposes to make, any contract is to disclose the fact and nature of his interest; and take no part in any deliberation or decision relating to such contract. Any declaration is recorded in the IDB minutes.

5.7.2 **A conflict of interest** therefore arises where there is a risk that an individual's ability to apply judgment or act in one role is, or could reasonably be perceived to be, impaired or influenced by a secondary interest. This would include cases where a Board Member (or their employer or other close associate) carries out work for your IDB, where your IDB's decisions on commissioning and procurement are influenced by a Board Member (or officer) using their power while in office to shape a policy or decision, with a view to opening up opportunities to future employment, where they might profit from public office by drawing on information or knowledge derived from their public role to profit financially, where gifts are received or where staff are recruited without proper processes, particularly where relatives are employed. In all cases, it

is sensible to err on the side of caution and, where you are uncertain, to discuss the potential conflict in advance with the Clerk.

- 5.7.3** **Accepting significant gifts** or hospitality also creates a perception of biased decision-making even if the gift has no bearing on judgment and your IDB should be aware of the provisions of the Bribery Act 2010, which both defines and creates criminal offences of bribery. Your IDB therefore needs to manage this risk by putting in place appropriate safeguards around these activities by adopting a Gifts and Hospitality Policy or equivalent. The Cross Government report on Conflicts of Interest issued by the National Audit Office is a useful reference work in this area (see [11.3](#)).
- 5.8** **After the meeting**, the Clerk, or the Committee Clerk, writes up the minutes as a legal record of what was decided. It is, therefore important that the minutes are accurate and record clearly the actions to be taken and accordingly, the minutes of the previous meeting should be confirmed and signed at the start of every meeting. The Land Drainage Act (Schedule 2) provides that, until the contrary is proved, an IDB or committee minute signed by the Chair of that meeting is to be regarded as a proper record and that all IDB and committee meetings were duly convened and their proceedings in order. Your IDB's proceedings are also not affected by any vacancy in the membership or by any issue relating to a Board Member's appointment or qualification. Minutes of meetings should be published on your IDB's website.
- 5.9** **Delegation**. If a decision needs to be taken between meetings and the matter needs full discussion, the Chair may call an extraordinary meeting. However, delegation is also a useful tool and the Standing Orders allow your IDB to make arrangements to appoint committees and for the delegation of decision making to such a committee or a sub-committee. While there are no legal requirements for your IDB to so delegate matters, such delegation may assist in the effective consideration and resolution of appropriate matters.
- 5.10** **Committees** can be established for a variety of purposes and durations. There is also no standard term for the appointment of a Committee, with its duration being a matter for your IDB, although, at the very least, its membership will require reconsideration after the election of Elected Members or material changes in the Appointed Members. A Committee's membership should however, reflect the membership of your IDB, in terms of the proportion of Elected and Appointed Members. Some "Committees" are also simply informal advisory groups whose recommendations do not bind your IDB. These may usefully contain representatives of other interests who are not Board Members of your IDB.

6 DELIVERY

In this section we delve deeper into what your IDB's operational powers and duties are that enable it to maintain and improve watercourses and assets, regulate water management within your Internal Drainage District, conserve and enhance the environment, and work effectively with others.



6 DELIVERY

6.1 **An essential water management authority.** The best IDBs want to be dynamic and professional in their management of water levels within their Internal Drainage District to the benefit of the local landscape, ratepayers and communities. This means planning and delivering work, such as: maintaining watercourses, operating assets such as pumping stations and sluices, improving the system by building new or enhancing existing infrastructure for the management of water; and conserving and enhancing the environment.

It also means regulating changes that may affect the watercourses and assets within your Internal Drainage District, including development. This is achieved through your IDB's regulatory powers (byelaws and consents), and by engaging with the planning system.

Finally, by working closely with other Risk Management Authorities (see 1.3) and your local communities, your IDB can build strong and effective partnerships that collectively deliver more to reduce flood risk and manage water levels than could be achieved by your IDB on its own.

6.2 **Powers and duties.** An IDB is not like an individual, who generally has the legal ability to do anything that the law does not forbid. Instead your IDB must work within the statutory rules which govern what your IDB can do, what it must do, or what it must not do. These are set out in legislation, such as Acts of Parliament and Statutory instruments (e.g. orders, regulations, rules, codes etc.) some of which apply specifically to IDBs, others which apply more generally. Your IDB must therefore be careful not to act beyond its powers or enter into an unnecessary risk which could lead to financial and legal difficulties. It is important that you understand the distinction between a **statutory duty** which **requires** your IDB to act, and a **permissive power** which **enables** the IDB to act. While exercising your IDB's permissive powers, the work done is a matter for you as Board Members to decide.

6.2.1 **Policy Statement.** Your IDB must exercise its flood and coastal erosion risk management functions in a manner that is consistent with both the National FCERM Strategy produced by the Environment Agency, and the Local FCERM Strategy published by your LLFA/s. This is in accordance with the Flood and Water Management Act 2010 (Section 13 and 14). By adopting and publishing a formal Policy Statement, your IDB can set out how it intends to exercise its statutory powers in a consistent manner. ADA with Defra have produced a template of such a Policy Statement which your IDB can use (see 11.3).

6.3 The primary operational powers conferred on your IDB are:

to maintain and improve any existing ordinary watercourses or drainage works, and to construct new watercourses or drainage works, within its Internal Drainage District (see 6.4). If managing flood risk from the sea your IDB requires the consent of the Environment Agency unless this is to carry out the maintenance or operation of existing works.

to dispose of any matter removed when widening, deepening or dredging any ordinary watercourse; or to deposit this matter on the banks of such a watercourse, or on a width of adjoining land as enables the matter to be removed and deposited by mechanical means in one operation (see 6.4.2). Your IDB may also enter into arrangements with a District/Unitary Council regarding the removal of this matter:

to authorise persons to enter land to perform your IDB's functions. Seven days' written notice must be given to the occupier of the land in accordance with the Land Drainage Act 1991 (Section 64). Exceptions to this apply when acting in an emergency. Provisions as to notice are contained in the Land Drainage Act 1991 (Section 71) (see 6.4.5).

to make byelaws under the Land Drainage Act 1991 (Section 66) (see 6.5.1).

to operate drainage works with the consent of the Environment Agency, so as to manage the level of water in a watercourse to facilitate spray irrigation. IDBs will often let water into their Internal Drainage Districts to retain and maintain water levels for conservation, irrigation and other associated purposes. A Transfer Licence from the Environment Agency is however, now required for such intake of water from Main Rivers.

to acquire land or interests in land either by agreement or, if authorised by Defra, compulsorily, for the purposes of your IDB's functions. Land or such interests acquired must generally be disposed of for the best consideration and restrictions apply to the disposal of acquisitions made at a time when compulsory acquisition was authorised.

6.3.1 Important Considerations. When delivering any of these operational powers your IDB, in accordance with the Land Drainage Act 1991 (Section 61A), must:

- further the conservation and enhancement of the environment;

- have regard to the desirability of protecting and conserving buildings, sites and objects of archaeological, architectural or historic interest;
- take into account any effect which the proposals would have on the beauty or amenity of any rural or urban area or on any such flora, fauna, features, buildings, sites or objects;
- have regard to the desirability of preserving public access to such areas and other areas of natural beauty; and
- ensure that any rights to water or land that it has are suitably made available for recreational purposes. In this regard it specifies that for recreational purposes a charge may be levied and that your IDB must take into account the needs of chronically sick or disabled persons.

6.4 Maintaining and improving watercourses and assets. Watercourses and assets used to control water, such as pumping stations, sluices, weirs, flap valves etc., periodically require maintenance, refurbishment and improvement. An IDB will normally maintain the most important arterial ordinary watercourses and associated water control assets within its Internal Drainage District, and such other watercourses where there is sufficient public benefit. Having good strategic plans will help your IDB prioritise works, make suitable financial forward plans and budgetary decisions, and better engage with other local partners, ratepayers, and the wider community.

6.4.1 Planning and preparation. Your IDB should proactively plan maintenance and improvement works, by preparing, and publishing, both an annual and a longer-term plan that sets out the works which it intends to undertake. To build greater public understanding of your IDB's work, your IDB should also publish a record or map of the watercourses it periodically maintains, and a statement of the types of general maintenance activities it routinely undertakes and why.

6.4.2 Waste regulation. When using, treating, storing and disposing of waste, including dredged material, the provisions of the Environmental Permitting Regulations 2016 apply. For most routine IDB maintenance related activities, suitable waste exemptions exist which must be registered with the Environment Agency before these operations take place. For instance the DI exemption allows your IDB to deposit dredged material on the banks of the waters it was dredged from and to treat it by screening and removing water. If a suitable exemption is not available your IDB will need to apply to the Environment Agency for an appropriate permit (these

may either enable waste disposal following a set of standard rules or be bespoke to the operation. You can find out more about waste regulation from the Environment Agency.

- 6.4.3 Main Rivers** are those watercourses as shown on the formal Main River map held by the Environment Agency. The Environment Agency possesses the primary statutory jurisdiction over Main Rivers, and an IDB is not able to undertake works on such watercourses without specific consent and agreement of the Environment Agency (see 6.8). Watercourses which do not form part of the Main River system are termed “ordinary watercourses”.
- 6.4.4 Rechargeable works.** Your IDB may also carry out and maintain, by agreement with any person and at their expense, any drainage works, (other than on Main Rivers) which that person is entitled to undertake, although in such a case, your IDB will, in carrying out the work, only have the rights, for example, to enter land, possessed by that person.
- 6.4.5 Notices** served under the Land Drainage Act 1991 must be in writing and may be served by delivery to the person concerned, by leaving it at his proper address or by sending it by post to him at that address. Your IDB should ensure that proper notice is served where this is required under the Land Drainage Act 1991 as, without such notice, your IDB will not be able to rely on its statutory powers of entry onto land (see 6.3).
- 6.4.6 Compensation** is generally payable by your IDB where injury or damage results from its operations and is determined, in the absence of agreement, by the Upper Tribunal, which is part of the administrative justice system of the United Kingdom. However, under the Land Drainage Act 1991 (Section 15), no compensation is payable as of right for loss sustained in the exercise of the powers to remove or deposit matter, unless such loss is due to lack of reasonable care. Your IDB may, if it thinks fit, make an *ex gratia* payment in accordance with the Land Drainage Act 1991 (Section 15).
- 6.5 Regulatory Powers.** Your IDB is also a regulatory authority and its consent is therefore required for certain activities. The extent of the activities affected by this requirement will depend on whether your IDB has made byelaws, governing its Internal Drainage District.
- 6.5.1 Byelaws** are by far the most important power available to your IDB to control the activities of others that may affect your IDB’s system. Both the

Land Drainage Act 1991 and Flood and Water Management Act 2010 contain only a few provisions regulating watercourses and therefore, it is strongly recommended that your IDB makes byelaws to more closely protect its system, and by extension the landscape and communities it serves. Byelaws can be made for the purposes set out under the Land Drainage Act 1991 (Section 66). For example, byelaws may provide that without your IDB's consent, no increase in volume or flow should be discharged to watercourses in the Internal Drainage District, and that no buildings or structures constructed within a certain distance of an IDB maintained watercourse or structure. Breach of byelaw is a criminal offence and your IDB may take remedial action and recover its expenses.

Your IDB makes the byelaws by resolution. They must then be formally advertised and confirmed by Defra before they come into force. While your IDB is free to draft its own byelaws and seek such confirmation, Defra do have a template set of byelaws that should cover the activities and omissions to be safeguarded by your IDB. Your IDB should therefore find little difficulty in making byelaws which follow that template, but if your IDB wishes to add to or amend these, they would have to justify any changes to Defra and possibly, objectors.

6.5.2 Consents. Whether or not such byelaws exist, however, your IDB's consent will still be required under the Land Drainage Act 1991 (Section 23) for works in an ordinary watercourse for the erection or alteration of a mill dam, weir or like obstruction; the erection of a culvert or the alteration of a culvert where the flow of a watercourse is affected. An application fee of £50 may be charged for the consideration of such an application. Consent must be given or refused in writing within two months from application and must not be unreasonably withheld. Consent may be given subject to reasonable conditions. Failure by your IDB to approve or refuse consent within this timeframe means that the IDB is deemed to have consented and will result in the application being granted.

Where works are carried out without your IDB's consent, your IDB may serve a notice, which is normally served on the person responsible for the obstruction. Failure to comply with the notice is an offence and your IDB may remedy the contravention and recover its expenses of so doing. Your IDB should note, however, that to comply with the Land Drainage Act 1991 (Section 23) it must consult the Environment Agency before itself carrying out this type of work.

Where the proper flow of a watercourse is impeded, except where due to mining subsidence, your IDB may also, under the Land Drainage Act 1991 (Section 25), serve a notice on the person having control of the part of the watercourse where any impediment occurs, an adjoining occupier or any person responsible for the impediment. Failure to comply with the notice is an offence and your IDB may, where a default occurs, remove the obstruction and recover its expenses of so doing. There is, however, a right of appeal to the Magistrates' Court against the notice under the Land Drainage Act 1991 (Section 27). Your IDB should also be aware of the powers available to private owners regarding the clearance or improvement of ditches in the Land Drainage Act 1991 (Sections 28-30).

Mining subsidence. Where subsidence occurs that affects a drainage system maintained by a drainage authority as a result of mining activity, the Coal Mining Subsidence Act 1991 (Section 36) requires the Coal Authority to carry out or meet the cost of appropriate remedial measures to the reasonable satisfaction of the appropriate drainage authority. An IDB is the appropriate drainage authority in relation to measures to be carried out within its Internal Drainage District. This is with exception of Main Rivers for which the Environment Agency is the appropriate drainage authority, as it is for all areas outside of Internal Drainage Districts. The Coal Authority are, however, able to issue a "Stop Notice" to delay any non-emergency work, where it considers that further subsidence is likely to occur.

The Coal Mining Subsidence Act 1991 applies to any area in England and Wales outside of the Doncaster Drainage Area. This Area is defined by the Doncaster Area Drainage Act 1929, as amended by the Doncaster Area Drainage Act 1929 (Amendment) Order 1994, for which there are specific provisions set out in this local legislation. Where this is relevant your Clerk should be able to advise further.

- 6.5.3 **Designating structures.** Your IDB may also designate a structure, or a natural or man-made feature of the environment, if its existence or location affects the risk of flooding. If such a designation is made under the Flood and Water Management Act 2010 (Schedule 1), the consent

of your IDB is required for any works to the structure or feature, and the designation is registrable as a local land charge. If a breach occurs, your IDB may serve an enforcement notice, requiring the contravention to be remedied. Structures or features that are designated or owned by another relevant authority may not be designated by your IDB and a number of ancillary provisions regarding this designation procedure and its effect are contained in the Schedule.

6.5.4 Exemptions for Certain Undertakings. Your IDB should note that, while certain bodies, for example, Water and Sewerage Companies or the Highway Authority will normally be exempt from byelaw requirements to obtain consent, their own legislation, for example, the Water Industry Act 1991 or the Highways Act 1980, may well contain similar protections. As regards your IDB's own operational activities, the Land Drainage Act 1991 (Section 23) does not apply to actions carried out under statutory powers and, under Section 67 and Schedule 6, there are a number of bodies that enjoy special protection with your IDB generally requiring their permission (not to be unreasonably withheld) before entry can be made or works undertaken on their property or any of their statutory functions interfered with.

6.6 Development control and planning. Your IDB's regulatory powers and strategic plans will enable it to manage changes in land drainage and flood risk within your Internal Drainage District. However, the wider Town and Country Planning system could also affect the flood risk posed to both a new development itself, and to other land and properties as a result of the development. While your IDB is not a Local Planning Authority or formally a "statutory consultee" on planning matters, flood risk is a "material consideration" meaning that the Local Planning Authority must consider it in deciding the outcome of a planning application. Therefore, as a local public body established to manage flood risk in a vulnerable area, your IDB's views, knowledge and expertise should be important to the Local Planning Authority.

It would therefore be good practice for a Local Planning Authority to consult your IDB on planning matters and your IDB's Appointed Members can particularly help ensure that your IDB's views are considered. A number of IDBs have formal or informal arrangements with their Local Planning Authorities and your IDB should be encouraged to establish such arrangements to seek to manage development and flood risk. The use of your IDB's byelaws will however, allow development close to or directly affecting an IDB watercourse or structure to be controlled, even where planning permission is granted.

6.7 Conserving and enhancing the environment. When carrying out its functions, your IDB must pay particular regard to the effect on the environment. Some environmental legislation relates specifically to maintaining or restoring the condition of protected sites or protecting certain species, but there are statutory duties for your IDB to conserve and enhance biodiversity in the wider landscape, such as within the Natural Environment and Rural Communities Act 2006 (Section 40).

Your IDB should seek to have relevant processes in place, suited to its functions and local environmental needs, and follow any conditions, guidance, or codes of practice issued by an appropriate environmental authority. The ADA website has a range of helpful environmental guides aimed at IDBs (see 11.3).

6.7.1 Biodiversity Action Plan (BAP). Your IDB should have a BAP setting out objectives it has approved for the conservation and enhancement of biodiversity within the Internal Drainage District. These objectives will be set based on those local habitats and species that would benefit from particular management or actions by your IDB. At least once per year, at a Board meeting, your IDB should report on progress towards the implementation of the BAP. A template BAP and guidance for IDBs are available from the ADA website (see 11.3).

6.7.2 Protected Sites. Within the UK, sites that are nationally important for plants, animals or geological or physiographical features are protected by law as Sites of Special Scientific Interest (SSSIs).

Under the Wildlife and Countryside Act 1981 (Section 28G), your IDB, as a public authority, must take reasonable steps to further the conservation and enhancement of any SSSI. Your IDB must ask for advice and approval (known as 'assent') from Natural England before carrying out works in line with its functions, where they are likely to damage the condition or special features of a SSSI, even if the work is not within a SSSI, e.g. changes in water levels. Natural England may give your IDB advice, and/or give their assent with conditions, that must be followed. In an emergency, your IDB may undertake necessary operations but must immediately inform Natural England. This system provides the underpinning statutory protection for all sites, including those which are also of international importance, such as Special Protection Areas (SPAs) or Special Areas of Conservation (SACs), which have also been designated for their European importance.

Where the conservation interests of a SSSI are dependent, in whole or part, on the proper management of water levels, your IDB should either

prepare, or be party to, a Water Level Management Plan, setting out the relevant objectives for the Site and the water level management actions required to restore, or maintain, the favourable conservation status of the SSSI.

6.7.3 Protected species are those species that are specifically protected by legislation. Your IDB may need to apply for a licence from Natural England if its work will have an impact on a protected species.

The Wildlife and Countryside Act 1981 (as amended) make it an offence to intentionally, or recklessly kill, injure, or take a protected species, or damage, destroy or obstruct access to structures or places used by protected species for shelter, breeding or protection. Protected species that IDBs are most likely to encounter include: badgers, bats, freshwater fish, otters, reptiles, water voles, white-clawed crayfish, and nesting birds. The legal protection, licencing requirements, actions and mitigations vary between protected species and specific advice should be sought. Your IDB can apply for class licences that enable IDB maintenance activities, working under specific licence conditions, in areas where disturbance of badgers or water voles might be an issue.

6.7.4 National Parks. If your IDB is within a National Park it may be notified by the appropriate National Park Authority of land of importance for conservation purposes. Your IDB must consult the National Park Authority before undertaking any activities on such land likely to destroy or damage anything of conservation importance. In an emergency, your IDB may undertake necessary activities, but should immediately inform the National Park Authority.

6.7.5 Invasive Non-Native Species are a widespread and increasing problem nationally. If left uncontrolled non-native species that have been introduced or escaped can present a threat to aquatic and riparian systems. Your IDB should consider how its operations and functions may impact on and be impacted by invasive non-native species and notifiable diseases. Your IDB should plan its biosecurity measures accordingly, addressing relevant issues and risks. A template biosecurity policy and procedures for IDBs are available from the ADA website (see [11.3](#)).

6.7.6 Environmental Impact Assessments may be required by your IDB for 'improvement works', if those works are likely to cause significant effects on the environment. Under the Environmental Impact Assessment (Land Drainage Improvement Works) Regulations 1999, and subsequent

amendments, 'improvement works' are those that aim to deepen, widen, straighten, or otherwise improve or alter any existing watercourses, or raise, widen or otherwise improve or alter any existing drainage works. These regulations require your IDB to follow the Environmental Impact Assessment procedure, and may require the preparation of an environmental statement, before carrying out any of these specified 'improvement works'.

6.7.7 Water Framework Directive (WFD). This is European Union legislation, which establishes a framework for the protection of inland surface waters, estuaries, coastal waters and groundwater in terms of their chemistry, ecology and morphology.

Your IDB must have regard to the relevant River Basin Management Plan (RBMP) when undertaking works and issuing consents to others. This should include ensuring all IDB activities and consents are compatible with local WFD objectives and may require your IDB to undertake a WFD compliance assessment. In practice this means considering what actions or measures contained in the RBMP relate to your IDB's functions, and implementing the necessary actions to either improve those water bodies that are at a lower status/potential than they should be, and/or ensure that there is no deterioration of them. Further guidance or direction may be issued by the Environment Agency.

6.7.8 Fish passage. There is also specific legislation your IDB will need to consider when building or modifying structures that may cause obstruction, or mortality, to migratory fish or eels, such as pumping stations, or any weir or dam that might cause an obstruction.

6.7.9 Environmental expertise. It is, therefore, vital that your IDB is able to fully access proper professional ecology and conservation advice and strongly recommended that your IDB either employs its own conservation officer or ensures that it has proper access to someone properly qualified, who understands their role and can provide the necessary advice.

6.8 Working Together. It is particularly important that there is a close working relationship between your IDB, the Environment Agency, local authorities and, other statutory bodies, to ensure best value and the best use of the available powers and resources. It is good practice for your IDB to liaise with these other Risk Management Authorities (see 1.3), and vice versa, on the development of, and updates to, relevant strategies, plans and long term investment programmes where they relate to flood risk management. Often a particular issue requires the

exercise of powers by more than one body, or a partnership working approach being adopted. This may occur where powers need to be exercised in different areas or over different forms of flooding, or where one body is able to authorise another to work on its assets or systems.

For instance, while Main River works may not be undertaken by your IDB under its own powers, arrangements may be made with the Environment Agency for it to do so, or for the Environment Agency to work on your IDB's system, either under the Land Drainage Act 1991 (Section 11) or a Public Sector Cooperation Agreement (see 6.8.2). Your IDB may also carry out administrative, professional or technical work for another IDB and work outside its Internal Drainage District under the Land Drainage Act (Sections 14 and 20).

6.8.1 Cooperation. The Flood and Water Management Act 2010 (Sections 13 and 14) requires your IDB to cooperate and share information with other Risk Management Authorities. The Flood and Water Management Act 2010 (Sections 13) also enables your IDB to enter into arrangements with other Risk Management Authorities for a flood risk management function to be exercised on its behalf by another Risk Management Authority, or vice versa.

6.8.2 Public Sector Co-operation Agreements (PSCAs). These Agreements have been developed to enable a Risk Management Authority to undertake flood risk management maintenance works and other activities on behalf of another for mutual benefit, in accordance with the Flood and Water Management Act 2010 (Section 13). They aim to secure efficient local working arrangements, achieve greater value for money, and take advantage of local skills and experience. Such agreements are routinely used where an IDB wishes, and is best able, to deliver maintenance work on main rivers with the resources available. PSCAs can also be used to enable mutual assistance during flood events and subsequent flood recovery works. It is suggested that each agreement covers a period of up to five years with annual reviews to refine the specific extent of activities to be carried out. Guidance and a template PSCA is available from ADA and the Environment Agency (see 11.3).

6.9 Involving the Community. Your IDB is a local body and should aim to achieve the optimum flood risk management for local people and be active in service delivery. The community should therefore be involved in the IDB's plans and of course, an increase in Drainage Rates and Special Levies required for works may be more acceptable to local people if they can understand the need, see real benefits and know and trust your IDB. By involving the community, your IDB can speak for them and by consulting, listening and identifying needs, priorities can be agreed.

- 6.9.1 **Websites.**Your IDB should have a publicly accessible website that is regularly maintained and kept up to date with the latest information, meeting dates and documents. ADA has published guidance on the basic content for an IDB website. This will act as an information hub for anyone wishing to find out about the work and functions of your IDB, and it will assist your IDB's transparency and accountability (see 9).
- 6.9.2 **Communications.**Your IDB should also take every opportunity to raise its profile and make more people aware of its existence and work. Many IDBs now issue a newsletter periodically to ratepayers, often with their annual Drainage Rate Demand (see 7.3). However, as householders and non-agricultural businesses no longer receive any Drainage Rate Demand from your IDB, it is too easy for them to be unaware of its work or, even, its existence. Your IDB can decide the best way of doing so, but may for example include: engaging with local media, taking part in local events (e.g. agricultural shows), making visits to schools or colleges, holding open days, presenting to local groups and organisations, or inviting representatives to attend a tour (known as an Inspection) of the Internal Drainage District.

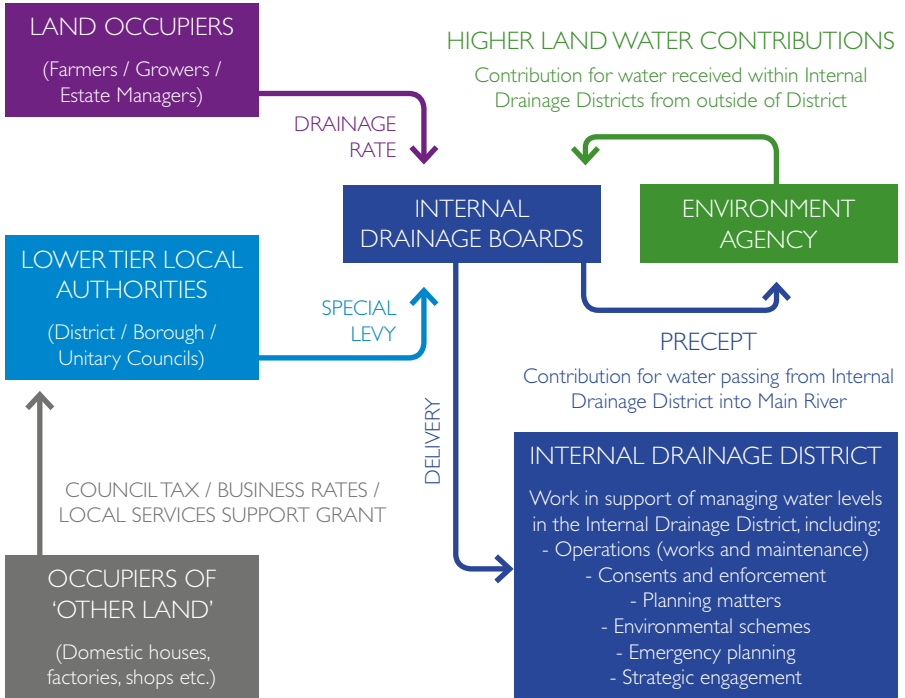
7 FUNDING

It has always been a principle in the law of land drainage that those who benefit from it, or create a need should pay for it. Here you can understand the core mechanisms by which your IDB is funded, how these rates and levies are calculated, and discover other sources of funding that may be available to your IDB.



7 FUNDING

FLOW CHART SHOWING THE TYPICAL INCOME AND EXPENDITURE OF AN IDB



7.1 **Drainage Rates and Special Levies** are the main sources of funding the work of your IDB. In order to raise this finance, your IDB is required each year to calculate, before 15th February preceding the relevant financial year, the overall Annual Value (see 7.2) of the agricultural and non-agricultural properties and land within its Internal Drainage District. The total agricultural proportion of the value of the Internal Drainage District is therefore the total Annual Value of the agricultural properties, divided by the total value of the Internal Drainage District.

The agricultural properties are land and/or buildings used for the purpose of agriculture and not being property with a banded value for Council Tax or a property with a non-domestic rating valuation. These are assessed for Drainage Rates while all other land, property, and infrastructure in the Internal Drainage District, of whatever type, is assessed for the Special Levy. The definitions of “agricultural buildings” and “agricultural land” are found in the Local Government Finance Act 1988.

- 7.2 **The Annual Value** of a property for the purposes of Drainage Rates is equal to the yearly rent at which that property might have been let, on a tenancy from year-to-year beginning on 1st April 1988 and on the relevant terms, set out in the Land Drainage Act 1991 (Section 41). Whether the property is actually rented or not does not matter. Your IDB had to assess its Annual Value not later than 31st December 1992 or, if later, when the property became chargeable to Drainage Rates and must notify the occupier of the property of this assessment. There are also provisions in the Land Drainage Act 1991 for the value of a property to be increased or decreased, where circumstances make this appropriate, together with appeal rights.
- 7.3 **Drainage Rates** are set at a specified amount of pence per £1 of Annual Value. Drainage Rates are demanded directly from the occupier of the agricultural property (or the owner if the property is unoccupied). Where the name of the occupier is unknown, the Drainage Rate Demand can simply be addressed to "the occupier". The demand must, however, be in the form prescribed in the Schedule to the Drainage Rates (Forms) Regulations 1993. The full amount of the Drainage Rate can be recovered by your IDB from any person who occupies the property at any time during the financial year.

The Drainage Rate must be made before 15th February in any year. This is the date on which the rate resolution is passed. However, it is not invalid if made later. It must be sealed by your IDB and your IDB must then within 10 days, publish a notice stating: the amount of the Drainage Rate, the amounts of your IDB's expenses to be raised by means of Drainage Rates and Special Levies respectively, and the date on which the rate was made. This notice should be placed either, in one or more public places in the Internal Drainage District, or otherwise so as to be reasonably publically available. Payment of a Drainage Rate is due on demand.

Your IDB must also, under the Land Drainage Act 1991 (Section 52), keep both a register containing information about properties liable to Drainage Rates and a map showing those properties, which must both be kept open to inspection by members of the public. In addition, because the demand for Drainage Rates must be served on the occupier, your IDB is entitled to serve on the owner of property liable for Drainage Rates a notice requiring them to state in writing the name and address of the occupier of the property. An error in the current or last preceding Drainage Rate can be corrected with notice of any changes being given to any affected occupier.

- 7.4 **Differential Rates.** Normally, Drainage Rates are set at a uniform amount throughout the Internal Drainage District but the Land Drainage Act 1991 (Section 38) provides that, where appropriate, for instance perhaps because of different levels of benefit derived, your IDB may, after consultation with the Environment Agency and subject to approval from Defra, make a Differential Rating Order and

levy differential Drainage Rates and Special Levies. Your IDB, may, by the same procedure, decide that some of the Internal Drainage District should be exempt from Drainage Rates under the Land Drainage Act 1991 (Section 47). An occupier may also request your IDB to make an exemption order:

- 7.5 **Arrears** of Drainage Rates may be recovered by proceedings in the Magistrates' Court for a Liability Order. It is however normal practice to first issue both reminders and a final warning prior to commencing the full legal recovery proceedings through the courts. In addition to this, when recovering debts from an individual, an IDB must comply with the Pre-Action Protocol for Debt Claims. Further information about the protocol can be found from the Ministry of Justice website. Your IDB may authorise any Board Member or officer to conduct proceedings or any proceedings for a warrant of control, which is the first stage of the formal enforcement process for the recovery of arrears. Your IDB could also take Small Claims proceedings in the County Court to recover such arrears.
- 7.6 **The Special Levy** raises the remaining expenses of your IDB after Drainage Rates have been assessed and is issued under the Internal Drainage Boards (Finance) Regulations 1992 (Regulation 6). It is demanded from District/Unitary Councils in proportion to the aggregate value of all 'other land' (non-agricultural land and property) within the Internal Drainage District. As with Drainage Rates, it must be issued before 15th February in each year, but is not invalid if issued later, and a substituted levy may be issued to correct any errors, but only in respect of the current financial year. The Special Levy is also sealed by your IDB and, unlike Drainage Rates, is sent to the relevant District/Unitary Council. Where there is more than one such Council, the individual levies are assessed on the areas within each such authority liable to the Special Levy.

The Special Levy demand must be issued within 10 days of being made and must state the amount of the levy, the authority to which it is issued and the date of issue and be issued to every Special Levy paying Council wholly or partly in your Internal Drainage District. Your IDB must keep a record of any Special Levy issued by it, showing the required information in respect of each Special Levy and keep this record open to inspection by members of the public. In default of any other agreement between your IDB and the relevant local authority, Special Levies are payable in two instalments, on 1st May and 1st November:

- 7.7 **The calculation of the Special Levy** is based on the values of the non-agricultural properties that existed in 1989, which were valued on the basis of their previously existing rateable values under the former General Rate Act 1967. These values were then used to calculate an average hectare valuation for all such properties and infrastructure within the Internal Drainage District, which is then applied to

and used to value properties to be comprised in the Special Levy which have either been constructed since that date or have otherwise become included in the Special Levy, for example through a change of land use from agriculture to another use, e.g. commercial, amenity or domestic. Such a change will lead to the former agricultural property being no longer liable to Drainage Rates and to the average hectare value for the Special Levy applying instead to the newly developed area. Accordingly, this would lead to the area in respect of which the Special Levy is paid increasing and therefore the proportion of the IDB's expenditure paid through that levy, also increasing. Since the value apportioned to the transferred property would be the "average hectare valuation", it is likely that it will not be the same as the value previously assessed for Drainage Rates.

7.8 Other funding sources, available to your IDB, might include:

7.8.1 Highland/Upland Water Contributions are payable towards an IDB's expenses in dealing with flows which pass into the Internal Drainage District from an area of "highland" or physically higher land. Under the Land Drainage Act 1991 (Section 57) such contributions may be requested by the IDB from the Environment Agency. There is no statutory formula for such payments, which are made on arrangements agreed between the IDB and the Environment Agency. However, they should be related to the proportion of upland water passing through your Internal Drainage District and the cost/extent of the works undertaken by the IDB to deal with such flows. These payments are approved by the local RFCC, to which your IDB will also pay the precept (see 7.11).

7.8.2 Capital Schemes undertaken by your IDB may qualify for Grant in Aid if the scheme meets Defra's qualifying criteria. This funding is administered by the Environment Agency, in accordance with the Land Drainage Act 1991 (Sections 59) and the Flood and Water Management Act 2010 (Section 16). To obtain such funding, your IDB must demonstrate that there will be a sufficient level of public benefit obtained from the works. The present arrangements, termed "Partnership Funding", envisage that, in normal circumstances, a local contribution is also required. The amount of Grant in Aid is determined by the project's assessed level of public benefit. Any shortfall can be met from a variety of sources, but, in the case of IDB works, is likely to be represented by a contribution from the IDB's own funds, raised through the Drainage Rates and Special Levies, or through borrowing. At present, however, the rules for Grant in Aid are largely based on numbers of properties protected and agricultural land does not command a high value for these purposes. Increasingly IDBs are making joint bids for Grant in Aid with other local Risk Management Authorities.

- 7.8.3 **Local Enterprise Partnerships (LEPs)** are non-statutory business led partnerships between local authorities and local private sector businesses. They help determine local economic priorities and undertaking activities to increase economic growth and job creation, improve infrastructure and raise workforce skills within their local area. They can allocate funding towards projects to reduce flood risk and enhance water related infrastructure where this would benefit strategic growth in their local area.
- 7.8.4 **A local authority** can make additional contributions under the Land Drainage Act 1991 (Section 60), towards your IDB's expenses of carrying out or maintaining any drainage works.
- 7.8.5 **Consenting to obstructions etc. in watercourses** is subject to a statutory application fee of £50. This can be demanded where your IDB receives an application, under the Land Drainage Act 1991 (Section 23), for the erection or alteration of a mill dam, weir or like obstruction or a culvert in a watercourse (see 6.5.2).
- Major development.** Where a major infrastructure project is being undertaken under a Development Consent Order, in accordance with the Planning Act 2008, IDB byelaws and consenting powers are suspended, but those provisions are enshrined in the DCO itself. In this case, your IDB can recover the full costs of consenting and supervision activity from the development.
- 7.8.6 **Consultancy and Rechargeable Work.** An IDB with employees may also receive income from consultancy work. Some IDBs also offer a contractual voluntary "pre-application procedure" to developers, giving them the opportunity to discuss potential applications for the IDB's consent, whether or not also involving an application for permission, before such application is submitted.
- 7.8.7 **If byelaws have been made,** in accordance with the Land Drainage Act 1991 (Section 66) (see 6.5.1) which require your IDB's consent before any increased flows may be discharged to or within its Internal Drainage District, it may seek contributions from a developer to cover the increased costs of accepting and evacuating such flows. Such contributions should however, be limited to the recovery of such costs and not be a source of profit.
- 7.8.8 **Grants.** Your IDB should investigate grant and award funding to implement its plans, especially where these will provide environmental or community enhancements.

- 7.9 **Borrowing** by IDBs is permitted under the Land Drainage Act 1991 (Section 55) for up to 50 years from any appropriate lender; for the purposes of their functions, subject to Ministerial approval. In practice, IDBs usually borrow from the Public Works Loan Board (PWLB), which is a government department that makes available finance to public authorities. Before your IDB may borrow, it must first submit an application for such borrowing to the local EA office, setting out the reasons why the loan is required, the amount which it wishes to borrow and the proposed term of the loan. If sanction for the loan is given, Defra will then send to your IDB a borrowing approval letter, which will set out the conditions that need to be fulfilled, how much the IDB can borrow, and the maximum term of the loan period. There is a fee payable, with repayments made half-yearly. Any borrowing is secured by an automatic charge on the revenues of the IDB and both fixed rate loans and variable rate loans are available.
- 7.10 **Taxation.** As a non-profit making statutory body, your IDB is not liable to income or corporation tax and can recover the Value Added Tax (VAT) paid out for its activities as a public authority. For many IDBs, this may just mean submitting a VAT claim form. However, where your IDB undertakes work for others and therefore undertakes “business activities”, it will need (subject to the taxable limits) to register for VAT and then charge VAT on such work. Your IDB must also account to HMRC for any income tax, national insurance and other PAYE payments deducted from employees.
- 7.11 **Precept.** This is paid by your IDB to the Environment Agency under the Water Resources Act 1991 (Section 139), as a contribution of such an amount as is “fair”. Whilst there is no statutory formulae for the precept calculation, the principle was decided by the Minister of Agriculture Fisheries & Food in 1982 that the Environment Agency will relate their precept charges to the costs of those parts of their programme of works which benefit IDBs. This contribution can amount to a substantial part of an IDB’s expenditure. The charge is very much one to be settled locally between your IDB, the RFCC, and other IDBs within the RFCC’s area. It is expected that the Environment Agency will describe the nature of the work being undertaken as the basis for each year’s precept. Your IDB may appeal to Defra against the amount of the precept.



8 FINANCIAL MANAGEMENT

You and your fellow Board Members share collective responsibility for your IDB's financial management. Here you can learn about the financial rules that must be followed, how the budget is put together, banking provisions, reserves, investments, and how your IDB is audited.

8 FINANCIAL MANAGEMENT

- 8.1 **Taking responsibility.** As a Board Member, you share collective responsibility for the financial management of your IDB, you should ensure that you have an up-to-date knowledge of your IDB's financial position throughout the year. Your IDB will have made arrangements for its finances to be administered by an officer known, in law, as the responsible financial officer (RFO), who may also be your IDB's Clerk. Your role is to ensure that the RFO acts properly so that your IDB avoids the risk of loss, fraud or bad debt, whether through deliberate or careless actions. Robust financial checks and oversight are of great importance. Your IDB may make electronic payments or pay by cheque, whatever arrangement is in place you should ensure that there is a system to reduce the risks of error or fraud, for example never sign a blank cheque.
- 8.2 **Financial Rules.** The statutory powers to raise and spend money through Drainage Rates and Special Levies mean that financial rules and procedures have been set by Government, which are designed to protect your IDB and ensure that it takes no unacceptable risks with public money. The financial rules applicable to your IDB are therefore set out in the Land Drainage Act 1991, your IDB's Financial Regulations, and ancillary documents such as a "Policy for Safeguarding Public Money" and a "Fraud and Corruption Policy". Model versions of these documents are available from ADA and Defra. At all times in dealing with public money your IDB must exercise due care and attention and adhere to its Financial Regulations.
- 8.3 **Internal control.** Your IDB must operate an overall system of internal control appropriate to its expenditure and activity, and effective mechanisms for documenting and recording the criteria, rationale and considerations on which decisions by the IDB were based. There is extensive guidance on risk and internal control in Governance and Accountability for Smaller Authorities in England - A Practitioners' Guide to Proper Practices to be applied in the preparation of statutory annual accounts and governance statements – published jointly by ADA, the National Association of Local Councils, and the Society of Local Council Clerks. This guidance can be found on the ADA website (see [11.3](#)).

Your IDB must also clearly set out the terms and conditions for any Chair's Allowance and the terms and conditions applicable to officers pay and conditions, and ensure that there is an effective structure for managing the process.

Ultimately you should ensure that all Board Members of your IDB, and particularly the Chair, work together with your Clerk and Responsible Financial Officer so that: appropriate advice is given, all legal requirements are met, proper financial records and accounts are kept, an effective system of internal control maintained, and proper procedures followed.

8.4 The Budget. Preparing the annual budget is one of the key statutory tasks undertaken by your IDB. It is the plan for income and revenue and capital expenditure over the forthcoming year and results in your IDB setting its Drainage Rates and Special Levies for the year (see 7.1). Your IDB's financial year runs from 1st April to 31st March in line with the Government and other public authorities' financial years. The budget gives your IDB the overall authority to make spending commitments by demonstrating where your IDB's income is raised and is to be spent and enables your IDB to monitor its progress during the year by comparing actual spending against planned spending. It also, by checking spending against budget plans on a regular basis, your IDB can control its finances during the year so that it can confidently make progress towards what it wants to achieve.

8.4.1 How the budget is put together and how it should be used is extremely important for Board Members to understand. The budget is an essential tool for controlling the finances, and demonstrates that your IDB will have sufficient income to meet its objectives and carry out its activities. The key stages in the budgeting process are the review of the current year's budget and spending, the determination of the plans for spending, the assessment of levels of anticipated income and the provision for contingencies, bad debts and reserves. The budget should then be approved and the Drainage Rates and Special Levies set. It is good practice for your IDB to openly discuss forward financial planning with their Special Levy paying Council, so that they can also plan for any additional demands, making them aware of the purpose of proposed IDB activities.

8.4.2 Regular monitoring of the budget will be achieved during the year by the Clerk/RFO producing at meetings, budget monitoring documents, and financial position statements. These working papers are designed to help you decide whether your IDB's finances are "on schedule" and should include comparisons with previous financial years. By reviewing the budget against actual expenditure on a regular basis at meetings, your IDB can control and monitor its finances and gain early warning of any potential shortfall and what action may need to be taken.

8.5 Value for money is essential for any public body, including your IDB. This means ensuring that funds are spent efficiently to provide an effective service that enjoys the widest possible local support. The aim is to get more benefit for the least possible expense, without compromising quality. It helps the IDB to assess "value for money" if it regularly asks whether it is really necessary to spend the money or whether it can find a way of doing it better, such as through innovation or with a different supplier. It is good practice to consult with other IDBs and ADA to ensure that all reasonable steps are being taken to effect this and to deliver a more economic service.

- 8.6 Banking.** Your IDB should have a current bank account for its day to day banking requirements, either with one of the traditional high street providers, or another appropriate and secure bank/building society. Your IDB may also have separate interest-bearing accounts to hold funds either for general reserves or specific projects. The IDB and its officers are responsible for setting up the banking arrangements as approved by the IDB.
- 8.6.1 Approval process.** The bank accounts, bank mandate, and list of authorised signatories must be approved by your IDB. It is sensible to have a number of Board Members as signatories to allow for absences and changes. Whilst not all Board Members will be bank account signatories, all Board Members still remain responsible for your IDB's finances. The bank mandate should be in line with your IDB's Financial Regulations, and there should be a system in place to reduce the risks of error or fraud. All payments, including those made by direct debit, standing order or bank transfer must be authorised either by your IDB itself or under delegated authority and should be supported by invoices and/or receipts. Blank cheques should never be signed as this presents a very high risk of fraud. If you are asked to sign as an approved signatory, always make sure that both purchase and payment have been properly agreed, and that supporting paperwork matches the cheque or other payment voucher. Cheques should also not be passed through any other bank account, nor should your IDB account be used to pass cheques for other parties. It is of course also important to remove a Board Member from the bank mandate as soon as they cease to be a Board Member of your IDB. Cash and cheques received should be entered into the accounting records on the date of receipt and banked promptly.
- 8.6.2 Cash and cheques received** should be entered into the accounting records on the date of receipt and banked promptly. A financial report should be a regular part of Board Meeting agendas. This should include summary details of receipts and payments to and from the Boards bank accounts, bank account balances and details of any investments held, including interest rates and interest earned. If your IDB does not provide payment information on their website, as per the Transparency Code for Smaller Authorities (see 9.2), they should include a list of all payments made, including the date and amount, with the financial report.
- 8.7 Reserves.** The notional view that IDBs should simply produce a balanced budget each year does not square with practical reality. Retention of a sensible level of reserve is therefore prudent to enable them to operate should an event occur. A reserves policy will help your IDB evidence where reserves are being accrued towards specific causes to meet the IDB's strategic and operational plans.

Your IDB may be considering a capital project and wish, quite sensibly, to begin to accrue funds in advance of expenditure. Indeed, the most prudent approach to large capital expenditure is likely to be the building up of appropriate reserves that will reduce the need for further Drainage Rate and Special Levy rises or for borrowing. Additionally, as an authority established to manage flood risk, whose expenditure will to a very large extent be weather dependent, your IDB will as a practical requirement, need to retain adequate reserves to maintain an adequate level of operations during "wet years".

In practice, auditors tend to view IDBs as acting properly if proper and adequate, but not excessive, reserves are retained. As a general rule, in the absence of a specific cause, an IDB can regard this to be a normal year's expenditure, less any grant funding received, being retained. Your IDB should, however, always be prepared and ready to justify any balances held to its auditors and the general public.

- 8.8 **Investments**, of such retained monies should be made prudently and safely by your IDB. Typically IDBs hold their reserves in the form of easily accessible bank deposits or other short-term investments. Occasionally, circumstances require IDBs to consider making other types of investment, such as when saving for a future capital project or while deciding how to apply the proceeds of an asset sale or a donation. In deciding whether it is appropriate to make longer-term investments, the IDB should follow the latest guidance on local government investments issued by MHCLG (see 11.3).

Your IDB's investment strategy should set out management arrangements for the investments held and procedures for determining the maximum periods for which funds may prudently be committed. The strategy should ensure and demonstrate that your IDB has properly assessed the risk of committing funds to longer term investments and complies with legislative requirements. Long-term investments in assets whose capital values may fluctuate carry considerable risks and require active management. Investment management is a specialist area and your IDB may therefore wish to seek independent professional assistance from a Regulated Investment Broker when developing its investment strategy.

- 8.9 **Adequate insurance** through a reputable insurance company is extremely important for your IDB and, of course, some insurance covers will, depending on your IDB's circumstances, be required by law. Society has also, in recent years, become more litigious. Key areas of risk that therefore either ought to be covered or for which insurance cover should be considered (where appropriate to your IDB) are Public Liability, Employer's Liability, Fidelity Guarantee, Professional Indemnity, Personal Accident, Engineering, Engineering Inspection, Property, Motor Vehicles and Plant, Fidelity Guarantee, Cyber Security, Contractors' All Risks, Marine, Libel and Slander and Terrorism. Specific power to insure Board Members against personal accident,

while they are engaged on IDB business, is conferred by the Land Drainage Act 1991 (Schedule 2), which also provides that any sum received under such a policy is to be paid to, or to the personal representatives of, the insured person. To ensure best value for money your IDB should review its insurance arrangements and the use of any broker at regular intervals. Full and proper disclosure (see 5.7) of every material circumstance relevant to making a fair presentation of a risk to your IDB's insurer is required under the Insurance Act 2015.

Consultants, contractors and other third parties working for your IDB should of course, have their own insurance and your IDB should have a system in place for checking the adequacy of such policies.

8.10 Accounts and audit. All smaller public authorities, including you IDB, must complete an Annual Governance and Accountability Return (AGAR) to communicate their financial, operational and administrative position. It is the principle means through which your IDB is held accountable. It consists of three parts: an Annual Governance Statement from your IDB, your IDB's Accounting Statements, and where relevant, the external auditors report and certificate. As a Board Member, you have a responsibility for ensuring that the AGAR accurately sets out your IDB's position.

8.10.1 The Annual Governance Statement requires Board Members to confirm whether your IDB has made proper governance arrangements and/or addressed any weaknesses found. This is completed through your IDB answering a number of assertions either "Yes", confirming that all is in order or "No", which indicates that some remedial action and an explanation are required. Your IDB will, of course, need to have the requisite evidence to support the answers given regarding financial management; internal control; legal compliance; exercise of electors' rights; the assessment and management of risks; internal audit, and any litigation, or other matters or events that had a financial impact on the IDB.

Your IDB's Annual Governance Statement must then be approved by the IDB, before approval is given to the Accounting Statements. It is then signed by the Chair and Clerk. Signed statements confirm your IDB's responsibility for governance arrangements during the year.

8.10.2 Accounting Statements must be prepared each year by your IDB's RFO following proper practices. This is in accordance with the Local Audit and Accountability Act 2014 and the Accounts and Audit Regulations 2015.

They will be based on your IDB's income and expenditure for the year; and include the previous year's figures as a comparator; opening and closing

balances, and asset values based on historic cost. If your IDB's gross income or expenditure does not exceed £200,000, it has the option to report its financial details either on an income and expenditure basis or on a receipts and payments basis.

Your RFO will need to demonstrate, to the satisfaction of Board Members, how the figures in the Accounting Statement reconcile to those in the primary accounting records. It is worth mentioning that the restrictions on the use of funds that arise from the sale of fixed assets, set out in the Local Authorities (Capital Finance and Accounting) (England) Regulations 2003, do not apply to IDBs.

The Accounting Statement must be signed by your IDB's Responsible Financial Officer and then approved at a Board Meeting, following which they are signed by the Chair.

8.10.3 **An internal audit** must be arranged as part of your IDB's system of internal control. This is where a properly competent and independent person scrutinises and carries out checks on your IDB's financial processes, systems, controls and governance arrangements.

The findings of internal controls are reported to your IDB, so, together with regular feedback from the RFO on the accounts, all Board Members should be aware of your IDB's financial position. This ensures everything is open and above board and you have what you need as a Board Member accountable for the IDB's finances. This internal audit should be an ongoing process with the auditor carrying out tests during the year focusing on areas of risk.

After the year end they are required to complete and sign a report, which is part of the AGAR, to confirm that your IDB's system of controls is in place and operating. The audit does not, however, involve a detailed inspection of all records and transactions. The internal auditor reports his findings to your IDB and will give a level of assurance so that all Board Members are aware of the financial and governance controls in place. Your IDB should of course regularly review the effectiveness of its internal audit function.

8.10.4 **External audit** is also carried out in addition to internal audit for most IDBs. It is based on a review of your IDB's Annual Governance Statement and Accounting Statements for the year. The external audit takes the form of the checking at distance of the written return submitted by the IDB, this is known as a 'limited assurance regime'. That is unless your IDB is chosen for the sample detailed on site audit.

The external auditor's report and certificate becomes the third and final part of the AGAR. If there are no issues found by the external auditor, then your IDB will receive their certificate and an unqualified opinion on the limited assurance, meaning that there is no cause for concern. However, your IDB must meet as soon as possible to consider any report on serious weaknesses or irregularities, or any public interest report, issued by the external auditor:

- 8.10.5 Appointing an external auditor.** While your IDB may appoint its own external auditor, this is not recommended as it requires the IDB to follow the cumbersome and time consuming provisions of the Local Audit and Accountability Act 2014, including the formation of an audit panel. As a much more convenient alternative, your IDB should join, a sector-led body which will procure and appoint the external auditors. Smaller Authorities Audit Appointments Ltd (SAAA) is currently appointed by the Secretary of State as that body for IDBs. Further information about IDB audit procedures are available from the SAAA's website (see [11.3](#)).
- 8.10.6 Exemptions.** Your IDB may be able to declare itself as an exempt authority in regards to an external audit if it has an annual turnover of £25,000 or under. Such IDBs are still required to produce the same information and the same accounts prior to audit and must abide by the requirements of the Transparency Code for Smaller Authorities (see [9.2](#)). They should submit a copy of the exemption certificate to their notified external auditor.
- 8.10.7 Publicising the accounts and audit.** Local government electors have the right to inspect the accounts and records of your IDB, and raise any issues with its external auditor. Your IDB's Responsible Financial Officer must publish a notice with details of the public inspection rights on, at least, your IDB's website. The period of inspection is 30 working days, which must include the first 10 working days of July after the end of the accounting period, and as soon as possible after the accounts have been signed. This must be accompanied with the publishing of your IDB's Annual Governance and Accountability Return (stating that at this time it is unaudited).

Following external audit your IDB must, by 30th September, also publish its Annual Governance and Accountability Return and the external auditor's certificate along with any report or recommendations that they may have made. Your IDB must publicise that the external audit has been completed, that the statement of account has been published and details of the right of inspection conferred by the Local Audit and Accountability Act 2014. The IDB is also required to approve acceptance of the external auditor report at the next Board Meeting.

9 TRANSPARENCY AND ACCOUNTABILITY

Learn about the importance of transparency and how your IDB is held to account by the public through: the relevant transparency code, annual reporting to Defra, the supervisory functions of the Environment Agency, scrutiny by local authorities, and the Freedom of Information Act 2000.



9 TRANSPARENCY AND ACCOUNTABILITY

- 9.1 **Holding your IDB to account.** Openness and transparency should be the fundamental principle behind everything your IDB does. It can save money, strengthen people's trust in public bodies, encourage greater public participation in decision-making, and help local people shape local public services. This implies a proactive culture of transparency and openness as well as adherence to processes that are based on strict accountability. To facilitate this, data held and managed by IDBs, and other public bodies, should be made available to the public unless there are specific sensitivities or a specific exemption applies. Local people should be able to see data covering the use of assets, how money is spent, and how and what decisions are made.
- 9.2 **Transparency Codes.** The Ministry of Housing, Communities and Local Government has published two transparency codes setting out how public bodies should make information available to the public. Both provide a sensible way of ensuring that the work of IDBs is publicly recognised and their independence valued. Your IDB should be clear which transparency code it is following.
- 9.2.1 **The Transparency Code for Smaller Authorities** requires the online publication of key financial, governance and meeting information. It applies to IDBs with an annual turnover not exceeding £25,000, and has replaced the need for external annual audit for most IDBs where this is the case.

The Smaller Authorities Code requires IDBs to publish the following information:

- all items of expenditure above £100
- end of year accounts
- annual governance statement
- internal audit report
- list of councillor or member responsibilities,
- the details of public land and building assets,
- minutes, agendas and meeting papers of formal meetings.

This information should be published at least annually and not later than 1 July in the year immediately following the relevant accounting year. Separately, all IDBs must publish their annual end of year accounts online.

Whilst this Code only applies to IDBs with an annual turnover of £25,000 or less, it is considered best practice for IDBs to be meeting the transparency requirements set out in this code. Those IDBs with annual turnover exceeding £200,000 are expected to follow the Local Government Transparency Code for larger authorities (see 9.2.2).

9.2.2 The Local Government Transparency Code aims to facilitate greater transparency of larger local authorities' activities. While this Code does not, at present, specifically refer to IDBs, those with an annual turnover exceeding £200,000 are expected to follow it. The code sets out details of the minimum data that local authorities must publish, and further data that it is recommended they should published. Such data includes:

- any items of expenditure above £500 (excluding VAT),
- procurement information for goods or services,
- land and assets held by local authorities,
- their organisation charts and
- certain detailed information regarding staff.

9.3 Publications. Both Transparency Codes require IDBs to routinely publish information about their activities, spending and governance on a website which is publicly accessible and free of charge. Ideally this should be on your IDB's own website, or failing that, the website of a local authority covering the Internal Drainage District. Documents to be published include: the Annual Governance and Audit Return, the list of any Board Member responsibilities, and details of public land and building assets that have a market value and appear in the Fixed Assets Register. In relation to each asset, your IDB should publish: a description, the location, owner/custodian, the date of acquisition (if known), the cost of acquisition (or proxy value), and present use. If no land and buildings are owned then it is useful to state this fact. Minutes of formal meetings should be published no later than one month after the meeting has taken place. Meeting agendas, which should be as full and informative as possible, and associated meeting papers, must also be published not later than three clear days before the meeting.

- 9.4 **An Annual Report** of your IDB's proceedings during the previous year must be sent to Defra each year in accordance with the Land Drainage Act 1991 (Schedule 2). This is known as the 'IDB1 report'. The Minister of State sets the format of the report each year and the deadline for when it must be submitted, typically 31 August. A copy should be published on your IDB's website, and copies must be sent to the Environment Agency and to every County, County Borough and London Borough Council within the Internal Drainage District. The report includes a section on financial information which should be consistent with the information submitted in your IDB's Annual Governance and Accountability Return (see 8.10). The remainder of the report seeks information on a number of areas, including details of: the Special Levies (see 7.6), how your IDB accesses environmental expertise, your IDB's governance, Board Members' attendance, your IDB's public engagement process, asset management, health and safety, and your IDB's complaints procedure. It is therefore a comprehensive document by which your IDB can be held to account but also by which the success of and good practices adopted by your IDB can be shown.
- 9.5 **Supervision.** The Environment Agency has certain supervisory functions relating to your IDB. They may for instance, send for the approval of Defra, a scheme to alter the boundaries of or constitute, reconstitute, amalgamate or abolish an IDB, become an IDB, give directions to your IDB for securing the maintenance and efficient working of drainage works and the construction of necessary new works, and, where they take the view that land is likely to be injured by flooding which could be remedied by your IDB, they may exercise your IDB's operational and revenue raising powers. The Environment Agency are generally empowered but not required to carry out works and exercise their functions in this respect through the RFCC (see 1.4).
- 9.6 **Scrutiny.** The Local Government Act 2000 permits the Overview and Scrutiny Committee (OSC) of a local authority to review and scrutinise Risk Management Authorities (including IDBs) in relation to their flood management functions. Whilst not routinely used, an OSC could, for example, use these powers if there were a flooding event in the area and the OSC wanted to undertake a review of the event or to review current arrangements for local flood risk management in the area. IDBs must comply with a request for information made by an OSC or for a response to a report made by an OSC.
- 9.7 **Freedom of Information.** The public has a general right of access to recorded information held by public authorities under the Freedom of Information Act 2000. This obliges your IDB to publish certain information about their activities; and entitles members of the public to request information from your IDB. Recorded information includes printed documents, computer files, letters, emails, photographs, and sound or video recordings.

Further information about all aspects of Freedom of Information can be obtained from the Information Commissioner's Office (ICO) (see 11.3). There is specific information on what every public authority needs to publish.

9.7.1 Publication Scheme. All IDBs are required to adopt and maintain a publication scheme, setting out the classes of information your IDB holds, the manner in which it intends to publish the information, and whether a charge will be made for the information. The purpose of a scheme is to ensure a significant amount of information is proactively published, without the need for a specific request, developing a greater culture of openness.

The ICO has prepared and approved a model publication scheme that may be adopted by any public authority without further approval and will be valid until further notice. Guidance and examples specifying what should be incorporated in an IDB's publication scheme are also available from ADA.

The information your IDB releases in accordance with its publication scheme represents the minimum that it must disclose. If a member of the public wants information not listed in the scheme, they can still ask your IDB for it.

9.7.2 Receiving an information request. Your IDB has two separate duties when responding to a valid request for information, to tell the applicant whether your IDB holds any information falling within the scope of their request, and to provide that information. Your IDB normally has 20 working days to respond to a request.

9.7.3 Refusing an information request. However, this does not mean your IDB is always obliged to provide the information requested. In some cases, there will be a good reason why your IDB should not make public some or all of the information requested.

Your IDB can refuse an entire request under the following circumstances:

- It would cost too much or take too much staff time to deal with the request.
- The request is vexatious.
- The request repeats a previous request from the same person.

In addition, the Freedom of Information Act 2000 contains a number of exemptions that allow your IDB to withhold information from a requester:

If your IDB is refusing all or any part of a request, it must send the requester a written refusal notice.

9.7.4 Charging. Your IDB may also charge a fee associated with answering an information request in certain circumstances, and in accordance with the regulations that govern this. Fees may be, either to recover communication costs, such as for photocopying, printing and postage, or to recover the cost of complying with a request which would exceed the cost limit referred to in the legislation. In the latter case your IDB can offer to supply the information and recover its full costs (including staff time), rather than refusing the request.

If your IDB wishes to charge such a fee, it should send the requester a fees notice. The information does not need to be sent until your IDB has received the fee and the time limit for complying with the request excludes the time spent waiting for the fee to be paid.

9.7.5 Environmental and spatial data. As a public authority that holds environmental and spatial data, your IDB has a legal obligation to make that information available under the Environmental Information Regulations 2004 and INSPIRE Regulations 2009. Spatial data is any data with a direct or indirect reference to a specific location or geographical area, it is often referred to as geospatial data or geographic information.

9.7.6 Re-use means using public sector information for a purpose other than the initial public task it was produced for. Typically, this would mean an individual, a company or other organisation taking information your IDB has produced and republishing it or using it to produce a new product or resource, often by combining it with other information. This is sometimes, though not always, on a commercial basis.

Under the Re-use of Public Sector Information Regulations 2015 (RPSI), your IDB must permit re-use of information you hold the intellectual property rights to in response to a request and respond within 20 working days, but certain information is exempt. It may charge for the marginal costs of reproducing, providing and disseminating the information for re-use. It may also impose conditions on information re-use, but the conditions must be as open and non-restrictive as possible.

If your IDB makes certain information available under the Open Government Licence (OGL), no request has to be made, but re-users must follow the terms of the OGL.



10 MANAGING RISKS AND HAZARDS

Understand how the principles of risk management relate to your IDB and its management of: health and safety, data protection, continuity planning, and complaints.

10 MANAGING RISKS AND HAZARDS

- 10.1 **Working effectively.** As a small public authority, your IDB should be well placed to establish good working arrangements involving a limited number of personnel. However, things may go wrong from time to time and your IDB, with the assistance of your Clerk, should recognise when something needs attention and when external advice is needed. Good risk management will enable your IDB to anticipate where breakdowns and accidents might occur, and put preventative measures in place. It is important that the Clerk and Board Members are confident in their respective roles, duties and responsibilities, work as a team and properly communicate with each other.
- 10.2 **Risk Management.** Being responsible for the running of a public body can be challenging. However, by identifying those risks that are truly business critical will enable your IDB to successfully assess, manage, and monitor them. This is what effective "risk management" is all about, and it is designed to protect you and your IDB from possible problems, minimising losses and maximising gains.

Your IDB will need to identify the most effective process to enable it to manage risks. This should cover areas including finance, security, damage to property, legal, IT and potential damage to reputation. Over time these risks and your IDB's objectives will change so these processes should be regularly reviewed and flexible enough to respond to these changes.

10.2.1 **Be strategic.** As a minimum, your IDB should have a risk management strategy or policy that has been approved by Board Members and adopted. This strategy or policy requires your IDB to identify corporate and operational risks, assess the risks for likelihood and impact and identify and allocate responsibility for mitigating controls, as well as appropriate insurance cover. Your IDB and officers should clearly focus on those significant risks that would prevent the achievement of your IDB's strategic objectives. For instance, pumping stations and other assets should be regularly checked and these checks properly recorded.

10.2.2 **A register** of your IDB's corporate business risks should be established, linking them to strategic business objectives and assigning ownership for each risk. The risks arising from and within working arrangements should be identified as part of this process. There should also be a link between this function and your IDB's arrangements for reviewing its system of internal control.

10.2.3 Risk Assessment. Reports to support any strategic policy decisions, and any project initiation documents should include a risk assessment and the identification of mitigating actions. By identifying both the likelihood and potential impact of a risk may assist your IDB in assessing whether a risk can be tolerated, what mitigation should be put in place, or whether the risk should be transferred, for example through insurance, or must be addressed by stopping the relevant activity or method of delivery.

10.3 Health and Safety is one of the most important areas of risk management for your IDB, and members of the board have both collective and individual responsibility. Your IDB has a duty to operate a safe working environment, and must protect employees and anyone who may be affected by your IDB activities, including members of the public. The Health and Safety at Work etc Act 1974 is the primary piece of legislation covering occupational health and safety in Great Britain, and the Health & Safety Executive (HSE) is the body responsible for the encouragement, regulation and enforcement of workplace health, safety and welfare, and a key source of information on such matters (see [11.3](#)).

By law, your IDB must:

- ensure risk assessments are carried out, assessing the risks to employees and any other people who could be affected by your IDB's activities;
- ensure it has access to competent health and safety advice;
- arrange for the effective planning, organisation, control, monitoring and review of preventive and protective measures;
- have a written health and safety policy if it has five or more employees; and
- consult employees about their risks at work and current preventive and protective measures.

It is important that health and safety arrangements are adequately considered and resourced as failure to comply with these requirements can have serious consequences, and sanctions include fines, imprisonment and disqualification. Under the Corporate Manslaughter and Corporate Homicide Act 2007, an offence will be committed where failings by an organisation's senior management are a substantial element in any gross breach of the duty of care, which results in death. The maximum penalty is an unlimited fine and the court can additionally require the organisation to publish details of its conviction and fine.

- 10.3.1 Leading safely.** Health and safety is a corporate governance issue. Your Board should set the direction for effective health and safety management, and it should be integrated into your IDB's governance structure, including committees.

Health and safety should appear regularly on the agenda for board meetings. Your Clerk and Engineer can each give clear visibility of leadership to other staff, but some IDBs find it useful to name one of their number as the health and safety 'champion' on the Board. Their presence can be a strong signal that the issue is being taken seriously and that its strategic importance is understood. Providing health and safety training to some or all of the Board can promote understanding and knowledge of the key issues in your IDB.

- 10.3.2 Planning safely.** Your IDB needs to ensure it is aware of the significant risks faced by its activities. It is advisable for your IDB to have a written health and safety policy even if it employs less than five people. It should set out the Board's own role, requiring it to 'own' and understand the key issues involved, and decide how best to communicate, promote and champion health and safety.

The health and safety policy is a 'living' document and it should evolve over time. For instance, your IDB should consider the health and safety implications of introducing new processes, new working practices or new personnel, dedicating adequate resources to the task and seeking advice where necessary.

- 10.3.3 Risk assessments.** Your IDB will have to carry out and document risk assessments for its activities to ensure it operates safely. It is particularly important that your IDB establishes rules covering: working site safety, the wearing of protective clothing, and safe use of equipment (including ensuring proper maintenance).

Remember, the health and safety arrangements of partners, key suppliers and contractors should also be assessed as their performance could adversely affect your IDB. Under the Construction Design and Management (CDM) Regulations 2015 specific legal duties are placed on designers of construction projects. Your IDB must ensure that any work requiring specialist input, for instance the removal of asbestos, is legally undertaken.

- 10.3.4 **Recording and reporting accidents.** Your IDB should keep an Accident Book available to record details of any accidents, and your IDB should nominate an individual to ensure that health and safety requirements are met. The Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 2013 (RIDDOR) puts duties on your IDB as employers and those in control of work premises (the Responsible Person) to report certain serious workplace accidents, occupational diseases and specified dangerous occurrences (near misses) to the HSE.
- 10.3.5 **Reviewing health and safety performance** should be completed by your IDB at least once a year. The review process should examine whether the IDB's health and safety policy reflects its current needs. It is important to report health and safety shortcomings, and the effect of all relevant Board and management decisions. Your IDB should then decide actions to address any weaknesses and a system to monitor their implementation, considering immediate reviews in the light of major shortcomings or events.
- 10.4 **Data Protection.** Your IDB must comply with the Data Protection Act 2018 and the General Data Protection Regulations (GDPR). Together this legislation seeks to give people stronger rights over personal data use, and increases the requirement for consent, which must be an active choice by the individual (the data subject). In short they make the legislation more relevant to the way technology is used today when processing personal data.

As a public body, your IDB must appoint a Data Protection Officer (DPO) to monitor internal data protection compliance, inform and advise on your data protection obligations, and act as a contact point for those individuals you hold data on and the supervisory authority. A DPO may be shared with other IDBs or organisations.

- 10.4.1 **Personal data** is information relating to a living individual who is identifiable from that data either alone or in combination with other information held by your IDB, which is a data controller because it processes personal data. The term "processing" is very broad, it essentially means anything that is done to, or with, personal data (including simply collecting, storing or deleting those data). Online identifiers, such as IP addresses are also now classed as personal data and data will have to be stored in commonly used formats.

10.4.2 Data Protection Principles. Everyone responsible for using personal data, including your IDB, has to follow strict rules called “Data Protection Principles”. They must make sure the information is:

- used fairly, lawfully and transparently,
- used for specified, explicit purposes,
- used in a way that is adequate, relevant and limited to only what is necessary,
- accurate and, where necessary, kept up to date,
- kept for no longer than is necessary,
- handled in a way that ensures appropriate security, including protection against unlawful or unauthorised processing, access, loss, destruction or damage.

Particular care should be taken before processing “sensitive personal data”, which relate to matters such as ethnic background, health, religious beliefs, political opinions, trade union membership, biometrics and sex life or orientation. In deciding what information to process, your IDB should consider whether certain information should be withheld.

10.4.3 Privacy Notice. GDPR requires that your IDB provides information about why and how it processes personal data about a data subject. This must be concise, transparent, intelligible and easily accessible; written in clear and plain language, particularly if addressed to a child; and provided free of charge. The most common way to provide this information is through a Privacy Notice/Policy, which is a public statement of how your IDB applies the data protection principles to processing data. Your IDB should ensure that it clearly sets out the purposes for which data is held by your IDB.

10.4.4 As a statutory body with rating and levying powers, your IDB will retain the right to process certain data, whether or not consent is given, but will have to ensure that its model for obtaining consent, where this is required, is brought up-to-date.

10.4.5 Access to their personal data can be requested by an individual at “reasonable intervals” and your IDB should respond to such requests within one month, free of charge. It will therefore be in your IDB’s

interests to have proper systems in place that avoid individuals feeling the need to make such requests.

- 10.4.6 **Public interest** makes it unlikely, however, that the law would restrict the publication of information naming Board Members or officers of your IDB who have taken certain decisions or your IDB's suppliers.
- 10.4.7 **Data breaches** are a matter for the Information Commissioner's Office (ICO) who can impose fines and other sanctions for a breach and your IDB must inform the ICO of any breach that risks people's rights and freedoms within 72 hours of becoming aware of it.
- 10.5 **Continuity planning** is very important for your IDB, not only to deal with issues around succession planning, especially where reliance is placed upon consultants or an individual Board Member, Clerk or Responsible Financial Officer; but also to deal with emergencies and potential business interruption. Business continuity plans should ensure that, as far as possible, your IDB can continue to perform its services even when conditions or circumstances are adverse.
- 10.6 **Complaints.** Even in the best run IDB, complaints about its activities (or inactivities) will be received from time to time. Your IDB should therefore ensure that it has a proper procedure, detailed on its website, by which complaints can be made and setting out a normal timetable within which they will be considered and a proper response sent. A proper procedure could involve complaints first being considered by your IDB's officers and then, in the absence of resolution, by the IDB or a committee. Your IDB should also be aware that a complainant regarding your IDB can be referred to The Local Government & Social Care Ombudsman, but only after a complainant has gone through all stages of your IDB's complaints procedure.

II SOURCES OF ADVICE AND INFORMATION

Here you can find out where to go for further information and advice on a whole range of matters your IDB may come across when performing its functions. You can also find out about what ADA is and how they can help.



11 SOURCES OF ADVICE AND INFORMATION

- 11.1 **ADA** is your IDB's representative organisation. ADA provides advice, guidance and representation on a regular basis to IDBs through its head office, branches and committees and is in regular contact with Defra and other government departments and agencies. Details of your local ADA Branch can be found on the ADA website. In order to benefit from ADA's services, and to keep abreast of developments affecting IDBs, your IDB must be a member of ADA. To keep members informed and up to date on relevant news, advice and updates ADA publishes a quarterly magazine, the ADA Gazette, and a monthly email called the News Stream. ADA has also publishes templates of governance documents that it is recommended that your IDB makes use of.
- 11.2 **Principal Acts of Parliament** that affect or govern your IDBs function include: the Land Drainage Act 1991, the Flood and Water Management Act 2010, the Water Resources Act 1991, the Local Audit and Accountability Act 2014, the Accounts and Audit Regulations 2015, the Wildlife and Countryside Act 1981, and the Data Protection Act 2018. There are of course a host of other Acts of Parliament, Statutory Instruments and local legislation that affects the running of your IDB. You can access most of these from www.legislation.gov.uk, but some older or local legislation may not be available online.
- 11.3 **Helpful websites.** Further useful information, and documents referred to in this Guide, can be accessed from the web addresses below:

www.ada.org.uk | ADA's website contains important news, and information about key topic and events that are relevant to IDBs and other Risk Management Authorities. You can also find links to the websites of all the IDBs and other organisations that are members of ADA.

www.defra.gov.uk | Department for Environment, Food and Rural Affairs

www.environment-agency.gov.uk | Environment Agency

www.hse.gov.uk | The Health and Safety Executive have a host of information about health and safety at work.

www.ico.org.uk | The Information Commissioner's Office is the independent authority set up in the UK to uphold information rights in the public interest, promoting openness by public bodies and data privacy for individuals. It has important information about data protection and transparency.

www.justice.gov.uk | Ministry of Justice, information about court procedures and rules, including the Pre-Action Protocol for Debt Claims.

www.legislation.gov.uk | Comprehensive and authoritative source of UK legislation.

www.lgo.org.uk | The Local Government and Social Care Ombudsman is the final stage for complaints about IDBs, councils, adult social care providers and some other organisations providing local public services.

www.localaudits.co.uk | Smaller Authorities' Audit Appointments Ltd (SAAA) is the sector led company appointed by the Government to procure and appoint external auditors to smaller authorities, including your IDB. Their website contains information and guidance about audit procedures.

www.mhclg.gov.uk | Ministry of Housing, Communities & Local Government

www.nao.org.uk | The National Audit Office (NAO) scrutinises public spending for Parliament and can investigate public bodies such as IDBs, issuing reports with their findings.

www.naturalengland.gov.uk | Natural England

www.nonnativespecies.org | The Non-Native Species Secretariat provides tools and information for those working to control the spread of invasive non-native species.

www.therrc.co.uk | The River Restoration Centre provides practical advice and case studies about river restoration and wetland habitat enhancement.



Published by ADA

For further information about Internal Drainage Boards, please contact:

Association of Drainage Authorities,
Rural Innovation Centre
Avenue H
Stoneleigh Park
Warwickshire
CV8 2LG



 www.ada.org.uk

 admin@ada.org.uk

 [@ada_updates](https://twitter.com/ada_updates)