



The Duties, Responsibilities and Liabilities of Board Members

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1. Introduction

This document sets out the main duties and responsibilities of Board members who serve on the Black Drain Drainage Board. This document should be read in conjunction with the *Members' Code of Conduct* and the Board's other governance documents and policies. These documents are available in the Members Handbook by contacting the Chief Executive and on the Boards website at www.yorkshirehumberdrainage.gov.uk

2. Responsibilities

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

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

The Chief Executive is responsible for the Board's performance as dictated by the Board's plans and overall strategy. The Chief Executive reports to the Board's members.

3. Appointment

The first members of the Board are appointed by the relevant Minister at the time that the Board is constituted or reconstituted and hold office for a period until one year after the 1st November following the day on which they were first appointed. The number of elected Board members is set out in the Board's constitution, a copy of which can be accessed on the Board's website. Subsequent appointments are made triennially thereafter, following an election of members undertaken in accordance with Schedule 1, Part 1, of the Land Drainage Act 1991 and the Land Drainage (Election of Drainage Boards) Regulations 1938 as amended by the Land Drainage (Election of Internal Drainage Boards) (Amendment) Regulations 1977. Occasionally a casual vacancy in the elected membership may arise when an elected member resigns or otherwise vacates their office. If this should happen, the Board may elect a new member or co-opt a member dependent upon the remaining term of office.

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

On appointment, a new member will need to provide certain personal information (e.g. full name, postal and email address, date of birth, business occupation, a record of disclosable interests, etc.) to be included on the relevant form which the member is required to sign to signify consent to act as

an IDB member. It is possible for a member to file a service address as well as their home address (that can be the Board's office address) that appears on the public record. The member will also need to sign and agree to abide by the *Members' Code of Conduct* and acknowledge their duties and responsibilities as stated in this document. New members will be expected to undergo a full induction programme.

All new members should ensure they receive a copy of the Board's Governance documents, namely: a copy of the Board's Constitution, Schedule of Reserved Matters, Byelaws, Standing Orders, Scheme of Delegation, Financial Regulations and Audit Controls, Corporate Strategy, recent Board Minutes and Management Accounts. The majority of this information is also available on the Board's website and is included in the Members' Handbook.

4. Powers

The members are generally responsible for managing the direction of the Board and they may collectively exercise all the powers of the Board as set out in the Land Drainage Act 1991 and the Flood and Water Management Act 2010.

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

5. Duties

Board members need to be aware that they are personally subject to a number of duties in relation to their capacity as members of the Board. In addition, the Board itself, as a separate legal entity and public body, is subject to statutory duties and the members are responsible for ensuring that the Board complies with any such statutory duties.

The principle duties of Board members are:

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

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

- Wildlife and Countryside Act 1981;
- Protection of Badgers Act 1992
- Conservation of Habitats and Species Regulations 2010;
- Conservation (Natural Habitats) Regulations 1994;
- Countryside Rights of Ways Act 2000
- Eels (England and Wales) Regulations 2009;
- Natural Environment and Rural Communities Act 2006;
- Salmon and Freshwater Fisheries Act 1975;
- Water Environment (Water Framework Directive) (England and Wales) Regulations 2003;
- Local Audit and Accountability Act 2014;
- Land Drainage Act 1991 and 1994;
- Flood and Water Management Act 2010;
- Health and Safety at Work Act 1974;
- Corporate Manslaughter and Corporate Homicide Act 2007;
- Water Act 2014;

One of the main statutory responsibilities falling on members is the preparation and approval of the Accounts and Annual Return. It is the responsibility of the members to ensure that the Board maintains full and accurate accounting records, manages risk and maintains a proper system of internal controls. This includes the preparation of a Balance Sheet, and an Income and Expenditure account for each financial period and the publication of these accounts.

Board members may also be personally liable for certain penalties if the Board fails to carry out its statutory duties. However, the members may have a defence if they had reasonable grounds to believe that a competent person had been given the duty to see that the statutory provisions were complied with.

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

6. Liabilities

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

It is beyond the scope of this briefing paper to list all the possible and various matters for which Board members can be held personally liable. However, existing and prospective members should be aware of the risks of failing to comply with the *Members' Code of Conduct*, the Local Audit and Accountability Act 2014, the Land Drainage Act 1991 and other legislation listed, but not restricted to, in the previous section (*Duties*).

7. Members' Code of Conduct

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

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

8. Local Audit and Accountability Act 2014

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

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

9. Land Drainage Act 1991

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

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

Members who have an interest in any company with which the Board has, or proposes to make a contract have a legal obligation to disclose the fact and nature of this interest and to take no part in the decision making process relating to that contract. Failure to do so could result in the Board member receiving a significant fine and, in some cases, a custodial sentence.

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

10. Environmental Legislation

As a statutory Risk Management Authority, the Board has various national and international legislative duties to comply with regarding the aquatic environment, biodiversity and wildlife sites and habitat within its Drainage District. This is particularly relevant to protected species and designated sites such as SSSI, etc. Failure to comply with any of these statutory obligations has the potential to result in both personal and corporate liability being brought about to both the individual Board members and the Board itself by the Enforcement Body. As a result, the court may issue a fine dependent upon the severity of the offence and insist on restorative works being carried out at the expense of the offender, some fines of which may be unlimited. Certain offences may also attract a custodial sentence.

The Board has formal procedures for auditing and reporting environmental performance and has access to environmental expertise to advise the Board accordingly. The IDB also has a Maintenance Policy, Planning Policy and Biodiversity Action Plan which can be accessed from the Board's website. Performance of these policies is regularly reviewed and monitored by the Board and appropriate executive officers.

11. Health & Safety at Work Act 1974

Health and Safety law places duties on organisations and employers. The founding principle of the Act is based upon the Duty of Care organisations have for the safety and wellbeing of their employees and members of the general public. Board members can be personally liable when these duties are breached. Members of the Board have both collective and individual responsibility for health and safety.

The Board has formal procedures for auditing and reporting health and safety performance and has access to an appropriate level of expertise to advise Board Members accordingly. The Board also has a Health and Safety Policy which is regularly reviewed and monitored by the appropriate executive officers. Detailed risk assessment and safe systems of work are issued to all staff members and are permanently available for examination by interested parties.

If a Health and Safety offence is committed with the consent or connivance of, or it is attributable to any neglect on the part of any member or employee of the Board, then that person (as well as the Board) can be prosecuted under Section 37 of the Health and Safety at Work Act 1974 and its supporting legislation. Those found guilty are liable for fines and dependent of the severity of the offence, imprisonment.

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

12. Corporate Manslaughter and Corporate Homicide Act 2007

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

13. Insurances

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

14. Recommendation

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