








Water level management

What IDBs do:

MAINTAIN  Maintain capacity and conveyance of 22,000km ordinary watercourses and function of drainage assets	CONTROL  Operate assets that control water levels like pen stocks, sluices, weirs, and 500 pumping stations	REGULATE  Use section 23 of LDA and byelaws to secure the efficient working of the drainage system, to reduce flood risk and environmental damage	IMPROVE  Build new, or improve existing, infrastructure for the management of water.	CONSERVE  Have due care for the environment and deliver improvements to aquatic habitat and species
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Board Members and Meetings

Iain Smith



Roles of IDB Members

- Accountable for IDB actions and omissions and take reasonable steps to ensure IDB is achieving what it sets out to do.
- Generally unpaid.
- IDBs exist to provide local Flood Risk Management therefore members are those reliant on IDB to protect their interests and property.
- Need to act and take decisions in interests of IDB and no-one else.



Numbers of IDB Members 1

- Statutory Order setting up IDB sets out the number of Elected Members of the IDB.
- Number of Appointed Members always additional to that number.
- Number of Appointed Members

Pro rata to the proportion that the Council's Special Levies bears to the IDB's Rates and Special Levies.



Numbers of IDB Members 2

- BUT, where Special Levies represent the majority of the total of Drainage Rates and Special Levies Appointed Members restricted to a majority of 1
- IDB could propose changing number of Members and ask EA to draw up a scheme for submission to Defra.
- Defra advise max 21 Members for large IDBs and 13 for smaller ones.



Who are IDB Members? 1

- Elected Members who are Representatives of Agricultural occupiers are voted for by those occupiers with elections every three years.
- Taking office on 1st November following the election.
- Each elector has between one and 10 votes.
See Schedule 1, Land Drainage Act 1991.
- Casual Vacancies can be filled by the IDB between elections.



Who are IDB Members? 2

- Appointed Members who are appointees of District/Unitary Councils who pay the Special Levy ('rates' on non-agricultural properties) to the IDB.
- NOT necessarily Councillors, but must consider desirability of appointing person with knowledge and experience of relevant IDB issues, term of appointment and filling of vacancies up to appointing Council.
- Should report to Council.



Board meetings

- Sufficient frequency to properly deal with all relevant business.
- At least two meetings a year; one for the rates/levies held on/before 15th Feb and one to approve the accounts and governance statements held on/before 30th June.
- Usually open to the public but can exclude for confidential business.
- Attendance is important!! Must be/remain quorate in accordance with Standing Orders.
- If fail to attend for 6 months, without good cause, your membership CEASES.



Agendas

- List of business to be transacted.
- Make clear actions required and decisions to be reached.
- Issued by the Clerk in consultation with the Chair.
- Items governed by Standing Orders.



At the meeting

- Deal with issues on the Agenda, by majority vote.
- Come prepared.
- Proper discussions on issues, listening to others' views.
- Reach appropriate decisions, which are corporate.
- Take relevant issues into account.
- Don't hog the floor; contribute clearly and concisely.



Role of the Chair

- Manage the meeting.
- Working relationship with Clerk.
- Introduce items.
- Invite discussion.
- Clarify matters for decision and ensure proper decisions are made.
- May have casting vote.
- Signs minutes and accounting/governance statements.
- May receive an allowance, with Defra approval.
- Strong Presumption 10 year maximum in post, *Cabinet Office Governance Code on Public Appointments*.
- **AND REMEMBER.** Decisions made are corporate decisions and should not be "made" by a dominant minority.



Disclosure of interests 1

I want a salary increase.
I propose my salary increase!!
I approve my salary increase!!
 Bedford Level Corporation 1666



Disclosure of interests 2

- IDB Decisions must be made and seen to be made in the public interest.
- Code of Conduct and Register of Interests.
- Need to declare interests before/at meeting and where applies NOT take part in discussion/leave room.
- Applies where ability to be impartial could be influenced by secondary interest e.g. where could carry out work for IDB or receipt of gifts.
- N.B. *Bribery Act*.
- Safeguards, Registers and Policies.



After the meeting

- *"I went back to New York"*



- Clerk to write up the minutes, which should be prompt, accurate and clearly record actions taken. Minutes of previous meeting therefore to be confirmed at start of meeting and published on IDB's website.



Delegation

- To you, to me!!



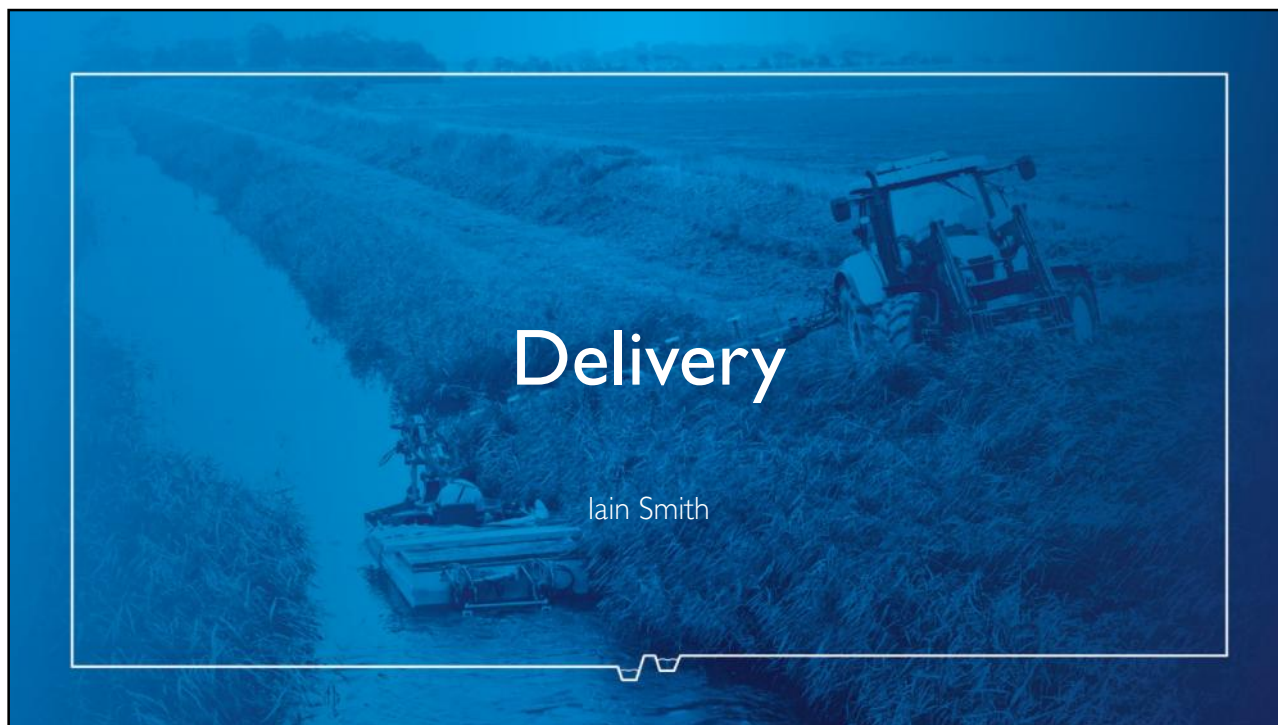
1. Chair could call EGM, or
2. Importance of proper delegation to committees authorised by Standing Orders which can give detailed consideration to matters.



Committees

No legal requirement to have them, BUT:

- Can be established for a variety of purposes,
- Membership and duration and terms of reference a matter for IDB,
- Membership should reflect make up of IDB,
- Reconsider after IDB elections,
- ALSO Advisory Groups which just make recommendations.



Delivery

Iain Smith



Delivery of works

- Maintenance
- Consents
- Environment
- Partnership Working
- IDB Districts are of necessity areas at flood risk. Therefore need to plan and deliver works to alleviate that risk and regulate the actions of others that may affect that risk. BE DYNAMIC! Capital and Maintenance.



IDB is a Statutory Body

- It can only do what statute permits and no general power of competence.
- Statutory Duty = **MUST ACT**
- Statutory Power = **MAY ACT**



Must

- Exercise powers consistently with national (EA) and local (LLFA) FCERM Strategies. Have a formal Policy Statement setting out how it will exercise its statutory powers in that consistent manner. (See Defra Template).
- Conservation Duties.



Conservation - General

- Must have regard to impact on the environment and, in particular, protected sites and species.
- Conserve and enhance biodiversity.
- Employ or have access to a proper conservation officer/adviser.



Conservation duties 1

- Further the conservation of the Environment.
- Have regard to the desirability of protecting buildings, objects etc of interest.
- Take into account effect of proposals on area and flora/fauna etc.
- Have regard to the desirability of preserving public access.
- Make water or land available for recreational access where suitable.



Conservation duties 2

In particular:

- Consider the timing of works.
- Produce a BAP setting out objectives for biodiversity within the IDD and report on progress.
- Consult Natural England under *Wildlife and Countryside Act section 28G*.
- Produce/be party to WLMP, where appropriate.
- Deal properly where protected sites (SSSI) or species are affected, eg badger licences and seek class licences where appropriate.
- Consider impacts of non-native species.
- Follow the requirements for Environmental Impact Assessment when carrying out improvement works.
- Have regard to the relevant River Basin Management Plan (Water Framework Directive) when working or granting consents to others.
- Consider fish passage when building/modifying structures.



Principal powers I

May:

- Maintain and improve ordinary watercourses (not Main River) and drainage works.
- Construct new works and watercourses generally within District.

N.B. sea defence works require EA consent unless maintenance.



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Principal powers 2

- Appropriate and dispose of matter removed in course of widening, deepening or dredging an ordinary watercourse or deposit material on watercourse banks or within "one machine width".
- NB Environmental Permitting Regulations and need for waste exemption registered with or permit from EA.

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Principal powers 3

- To enter land and to authorise persons to do so for the purpose of performing the IDB's functions. All functions are covered. 7 days' Notice in writing should be given to the occupier of the land except in an emergency.
- No notice; No entry power!!
- To make Byelaws to protect system and access to it and regulate the activities of others. Lack of "offences" in LDA and FWMA.



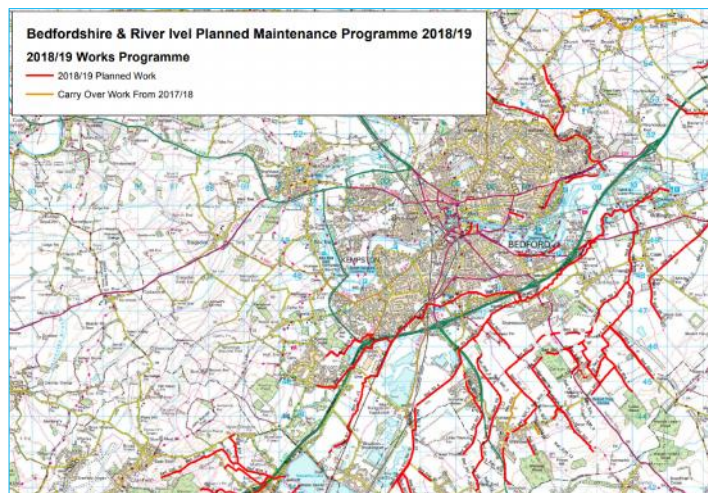
Principal powers 4

- With consent of EA to manage level of water in a watercourse to facilitate spray irrigation.
- NB definition of drainage includes letting water into District but Transfer Licence now required to do so.
- To acquire land/interests in land by agreement or (with Defra sanction) compulsorily.
- To dispose of land/interests in land, normally for the best consideration reasonably obtainable.



Principal powers 5

- IDB will normally maintain the important arterial watercourses.
- IDB should proactively plan maintenance and publish plans and maps.



Compensation

- Payable where injury/damage results from IDB operations.
- Determined, if not agreed, by Upper Tribunal.
- No payment for non-negligent disposal of dredgings.
- Right to compensation replaces court remedy for nuisance and trespass.



Byelaws

- VERY IMPORTANT.
- Enables appropriate regulation of waterway “activities” and protection of accesses for which IDB consent is then required.
- Strongly recommended as few direct powers in LDA and FWMA.
- Made by resolution and confirmed by Defra, who produce templates.
- Breach is criminal offence and remedial action can be taken.



Other consents

- IDB consent is required for erection of mill dam, weir or like obstruction or culvert or alteration of culvert where flow affected in any watercourse in the IDD.
- Application fee £50.
- Decision within 2 months or deemed GRANTED.
- Can be conditioned.





Enforcement

- If works without consent:
- Serve notice on responsible person and if no action IDB can take action and recover expenses and offence; level 5 fine.

N.B. If IDB carry out such work themselves, must consult EA first.



Impediment to flow

- Where watercourse is impeded (unless due to mining subsidence) notice may be served on person having control, adjoining occupier or person responsible for impediment.
- Failure to comply is offence with level 4 fine and IDB may remove obstruction
- N.B. Right of appeal to magistrates



Mining subsidence

- See *Coal Mining Subsidence Act 1991*, which requires the 'Coal Authority' to carry out remedial measures where a drainage authority's system is affected and within the specific area the *Doncaster Area Drainage Act 1929*.



Structure designation

- IDB may designate a structure or natural or man made feature if existence or location affects the risk of flooding.
- Consent required for works to structure/feature.
- Registrable as Local Land Charge and enforcement notice if breach.



Exempt bodies 1

- N.B. Certain statutory bodies listed in the byelaws are exempt from their provisions e.g. water and sewerage companies and highway authorities.
- BUT their own legislation may require them to obtain consents.



Exempt bodies 2

- Section 23 consents do not apply to the exercise of statutory powers and the consent of certain bodies listed in Sch 6 LDA is required before the IDB may itself interfere with their operational land or functions.



Development control

- Some control through byelaws.
- IDB not statutory consultee, BUT flood risk is a material planning consideration and therefore must be considered by LPA when deciding on application.
- IDB has knowledge of local flood risk and their views should be important and taken into account.
- Role of appointed members and arrangements with LPA.



Partnership working

- Important to ensure best value
- Liaison with EA, local authorities and other RMAs
- PSCA developed to enable one RMA to undertake work for another eg enable IDB work on Main River. Aim to secure efficiency and use local skill and experience
- Undertake admin, technical and professional work for another IDB.
- Co-operation and information sharing under *FWMA ss13 and 14* and exercise of another RMA's functions
- Consult the Community. IDBs are, after all local!!





Managing Risks and Hazards

- Risk Management
- Health and Safety
- Use of Insurance

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Concept of Risk

A probability, or threat of damage, injury, liability or loss, or any other negative occurrence, that is caused by internal or external vulnerabilities, and, that may be avoided through pre-emptive action.



Risk management

- A systematic and strategic process for managing all Risks and Hazards faced by an individual or organisation
- Pre Loss - To prepare for, or prevent, potential damage, loss, injury, or interruption to business operations, in the most effective and economic way possible.
- Post loss risk management
 - Disaster Recovery Planning
 - Minimise interruption of operations
 - Plan for effective recovery, in advance
 - Strategic framework for post loss recovery



The Risk Management Process

- Identify your Risks
- Analysis and evaluation of potential and frequency
- Risk response planning
- Monitor and review



Risk Identification

- Identify threats, risks and hazards to your organisation infrastructure and surroundings
- Damage to, or, loss of use of, your assets and structures
- Interruption of operations and protections
- Injuries to your staff or other people
- Loss, injury, illness of key personnel
- Fraud dishonesty or crime
- Loss of your data or electronic functions and protections



Set up a Risk Register

- How best to record all potential risks and failures
- To understand what happens, the causes and the effects.

Risk - Failure	Cause	Effect
Risk of....	Due to....	Leads to....
Failure to/of....	Because.....	Results in.....
Lack of....		
Loss of use of.....		
Uncertainty of....		
Delay in.....		
Inadequate.....		
Inability to.....		
Damage to....		



Risk registers

Risk Register sets the information to:

- Record and assess severity of all aspects of risk and hazard
- Analyse your organisations vulnerability

Next steps

- Calculate and estimate their likely frequency
- Categorise all threats according to severity
- Decide upon Board responses
- Establish ownership



Risk Management Matrix

Analyse frequency and severity of Risk

Frequency	High frequency			
	Medium			
	Low frequency			
		Low	Medium	High
		Severity		



Manage and Control

- Develop effective Risk Management strategies
- Integrate into existing Board working concepts and practice
- Prioritise your critical exposures
- Implement, manage, record, review
- Document all protections
- Fully integrate into the Board operations, management and governance
- Board Ownership
- Key personnel responsibility
- Implement a risk reduction and elimination culture
- Full buy in at all levels of operation.
- Measure and manage
- Use all Management Information Tools





Health and Safety

Governed by Health and Safety at Work Act 1974 and subsequent legislation and directives

- Created Health and Safety Executive
- Set its extensive powers to investigate and enforce
- Vehicle to promote development and change by regulation

Management of Health and Safety at Work Regulations 1999

- Risk assessments required
- Nomination of a health and safety competent person
- Operation of written Health and Safety policy for +4 employees



Health and Safety

Some relevant legal duties of an Employer:

- Full Health and Safety Policy if they have 4 + employees
- To employ competent employees
- To provide and maintain
 - a safe place of work
 - A safe system of work
 - Suitable and safe plant and equipment



Legal requirements to assess your Risks and Hazards

- Control of Substances Hazardous to Health
- Personal Protective Equipment at Work
- Manual Handling Operations Regulations
- Confined Spaces Regulations
- Lone Working Regulations
- Provision and Use of Work Equipment Regulations
- Working at Heights
- Reporting of Injuries Diseases and Dangerous Occurrences Regulations
- Electricity at Work Act
- And many more.....



Investigate and Identify your areas of risk:

- Legal obligations
- Working Environment
- Locations and contract sites
- Supervision, monitoring and reporting
- Plant equipment and tools
- Practices and processes
- Surrounding environment
- Site hazards
- Training and development
- Offices
- Management Information (MI)

Utilise risk assessment and management process:

- All practices, activities, operations, equipment and competencies
- Categorize by severity and extent of risks to employees
- Prioritise action plans
- Formulate the steps to be taken to deal with these risks
- Set protections to be put into place
- Continuous monitoring and reporting
- Evaluation, failures, exceptions
- Review, manage and develop





Formulate and agree improvements to the working environment:

- Changes to operational practices
- Eliminate some risks
 - e.g. Jobs to contract out
- Changes to PPE
- Alternative materials/machinery
- New maintenance regimes
- How to evolve the present plan
- Future legislation developments

Staff development:

- Effective training and staff improvement programmes
- Induction training
- On going training for role
- Creation of training plans
- Utilise training matrix
- Tool box talks
- Continuous reporting
- Planned auditing and review



Good Risk Management / Health and Safety Indicators

- Fully embedded and Integral Board values and criteria
- Single strategic Board planning
- Top to bottom engagement and staff to Board buy in
- Visible Senior Management and Board leadership
- Visible risk awareness in all decision making
- Learning culture driving continual improvement
- Regular self checking and upward reporting.
- Full documentation to enable in depth reporting
- Annual auditing and reporting
- Utilise full MI and KPI



Consider how your risks or hazards should be regarded, are they acceptable to present Board strategic planning?

Accept *Acceptable to present, or target, Board business operations*

Avoid *Contract out difficult, dangerous or inefficient, time consuming practices*

Reduce *Risk manage to improve, reduce risk and improve efficiency*

Transfer *Utilise insurance options*



Insurance to transfer risk

Mainly low frequency - high risk large loss

- Compulsory Insurance requirement:
 - Employers Liability
 - Third Party Motor cover

Other insurance obligations:

- Under Contract:
 - Employers and Public Liability
 - Professional Indemnity
 - Plant Hired In
- Auditors - Fidelity Guarantee
- Land Drainage Act - Personal Accident
- Other – (Inspection service)
 - Lifting Operations and Lifting Equipment Regs
 - Provisions and Use of Work Equipment Regs
 - Pressure Systems Safety Regs



Key areas of cover to be considered:

- Employers and Public Liability
- Property Damage
- Plant and equipment including pump equipment
- Comprehensive Motor Insurance,
- Contractors All Risks,
- Management Liability
- Financial Covers
- E Risk losses, Data and cyber protection
- Environmental
- Professional risks
- Personal Accident
- Environmental
- E-Risk losses and Latent Defect



Insurers Involvement

Effect of quality risk management on:

- Number of claims
- Severity of claims
- Speed of recovery
- Defence of Liability claims

Quality risk management to insurers:

- Proactive/predictive maintenance
- Effective Health and Safety policy
- Full scope of Risk Assessments
- Staff development programmes
- Full corporate governance
- Personal Protective Equipment usage
- Incident reporting and investigation
- Documentation, documentation, documentation.....



Insurance Act 2015

Duty to make a fair presentation of all material circumstance that an insured knows or should know, and to undertake a reasonable search to reveal all appropriate material information.

Reasonable Search

Must be evidenced and recorded and sufficient to make available for declaration all appropriate material information.

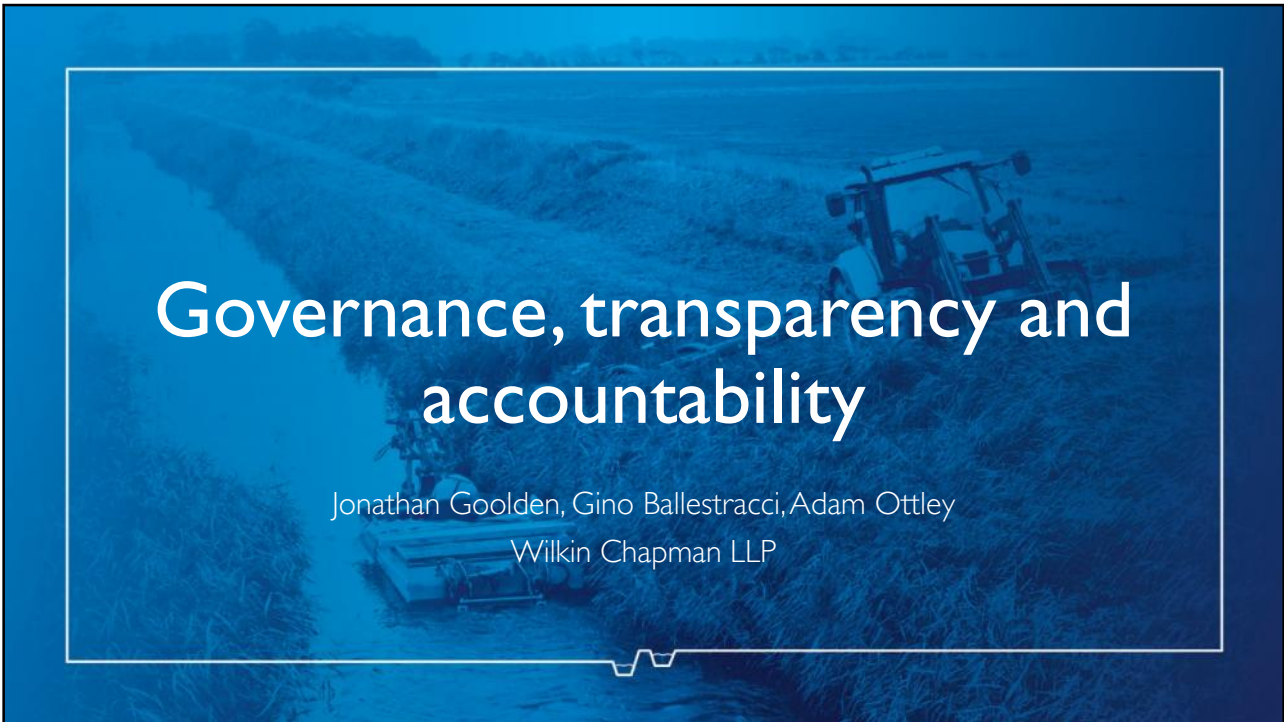


Towergate Insurance Brokers

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Specialist Insurance Risk Advisors to the industry
25 years experience







Wilkin Chapman LLP

- 104th largest law firm in UK
- c500 staff in Lincolnshire, South and East Yorkshire
- National and regional specialists
 - NFU panel solicitors
 - 100 principal local authorities
 - National legal advisors to Society of Local Council Clerks
 - Solicitors to ADA and IDBs
 - Land drainage (water management?) team



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Information governance (and why complaints are great)

- Information you need to look after
 - GDPR and Data Protection Act 2018
 - Cyber security
- Information you need to make available
 - Transparency codes
 - Freedom of Information Act 2000 (FoI)
 - Environmental Information Regulations (EIR)
 - Public sector website accessibility regulations
- How to make the most of complaints



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GDPR and DPA 2018

- 10.4 pp 69-70 of the guide
- General Data Protection Regulation + Data Protection Act 2018
- Personal data must be:-
 1. processed lawfully, fairly and transparently
 2. collected for specific, explicit and legitimate purposes
 3. adequate, relevant and not excessive
 4. accurate and up to date
 5. kept no longer than necessary
 6. processed securely



GDPR and DPA 2018

General conditions for processing personal data

- consent (see later)
- processing necessary for:-
 - contract with data subject
 - compliance with legal obligation
 - protection of vital interests of data subject or another person
 - **task carried out in public interest or exercise of official authority**
 - legitimate interests of data controller or third party



GDPR and DPA 2018

conditions for processing sensitive personal data – article 9

- explicit consent (see later), or
- processing necessary for:-
 - carrying out obligations under employment, social security or social protection law (if DC has policy in place)
 - protection of vital interests of data subject or another person where data subject is physically or legally incapable of giving consent
 - health reasons
 - legal advice and court cases
 - preventative or occupational medicine for assessment of medical diagnosis, provision of health or social care or treatment
- processing relates to personal data made public by the data subject



GDPR and DPA 2018

Consent

- “freely given, specific, informed and unambiguous” and involve a “clear affirmative action”, “granular”
- not a pre-condition of employment
- all parties involved must be named
- clear records must be kept
- easy right to withdraw

DURATION
ARTICLE 18, PARA 2, c.

UNAMBIGUOUS, SPECIFIC AFFIRMATIVE ACTION. NOT YES BY DEFAULT.
ARTICLE 7, PARA 3, AND ARTICLE 32.

CONTRACT DETAILS OF THE DATA CONTROLLER, AND LIST OF CATEGORIES OF PROCESSED.
ARTICLE 13, PARA 1, a, AND ARTICLE 12.

PURPOSE OF PROCESSING, AND NOTIFICATION OF PROFILING.
ARTICLE 6, PARAGRAPHS 1, AND ARTICLE 13, PARA 1, c, AND PARA 2, e.

GRANULAR OPT-IN FOR SEVERAL PURPOSES
ARTICLE 13, AND ARTICLE 25 ADDITIONAL PRVT GUIDANCE NOVEMBER 2018.

DETAILS OF RIGHTS TO COMPLAIN TO SUPERVISORY AUTHORITY, AND TO ACCESS, CORRECT, AND TRANSFER DATA, ETC.
ARTICLE 13, PARA 2, b, c, AND 13.

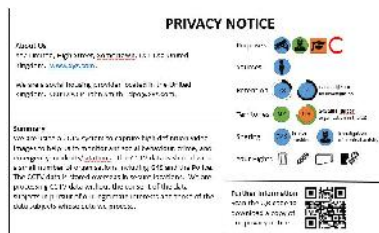




GDPR and DPA 2018

Privacy notice

- you should tell data subjects how you process their personal data:-
 - concise, transparent, intelligible and easily accessible
 - clear and plain language (especially if to children)
 - free of charge
- Data Controller and Data Protection Officer contact details
- purpose and legal basis for the processing
- legitimate interests of the Data Controller if applicable
- categories of personal data processed
- any transfers out of EEA
- retention period
- Data Subject rights



GDPR and DPA 2018

Subject access requests

- Respond promptly and within 30 days
- Generally **no fee** (might be for manifestly unfounded and excessive requests)

- Data subject has right to:-
 - Whether personal data is processed
 - Access the data (have copies)
 - **Purposes of the processing**
 - The categories of personal data concerned
 - Who has received the data
 - How long it is being stored
 - Be told of the right of rectification and erasure
 - How to complain to the ICO





GDPR and DPA 2018

Subject access requests

- Exemptions to the right of subject access include:-
 - Third party personal data
 - Legal advice
 - Disproportionate effort
 - Not held in structured filing system
- Beware of “fishing expeditions”



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Cyber security and data breaches

- Assume your IDB will be hit sooner or later
- Phishing, whaling, ransomware, denial of service
- Handling a data breach
 1. Containment and recovery
 2. Assessment of ongoing risk
 3. Notification of breach
 4. Evaluation and response



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Transparency codes

Smaller Authorities Transparency Code

- Applies to IDBs with less than £25,000 pa expenditure in place of audit
- Must publish:-
 - Expenditure over £100
 - End of year accounts
 - Annual governance statement
 - Internal audit report
 - List of board member responsibilities
 - Land and buildings owned by the Board
 - Minutes, agendas and meeting papers of formal meetings



Transparency codes

Local Government Transparency Code 2015

- Does not formally apply to IDBs but recommended
- Must publish:-
 - Expenditure over £500 (quarterly)
 - ITTs and contracts over £5,000 (quarterly)
 - Land (annually)
 - Organisation chart (job title, salary in £5,000 brackets, grade, max salary)
 - TU facility time,
 - Senior staff details (+£50,000 pay, +£150,000 pay)



Freedom of Information Act 2000

*"You naïve, foolish,
irresponsible nincompoop.
There really is no description
of stupidity, no matter how
vivid, that is adequate.
I quake at the imbecility of it."*



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Freedom of Information Act 2000

- IDB must adopt a publication scheme (ADA model available)
- Any person for any motive may request disclosure of information – 20 working days, can charge a fee
- **Absolute exemptions** (as relevant to an IDB):-
 - Information available by other means
 - Personal information – s40
 - Confidential information obtained from others – s41
 - Other statutory prohibitions on disclosure – s44

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Freedom of Information Act 2000

Qualified exemptions

- Public interest test + prejudice
 - Law enforcement – s31 (includes crime and public functions)
 - Audit functions – s33
 - Effective conduct of public affairs – s36
 - Health and safety – s38



Freedom of Information Act 2000

Qualified exemptions

- Public interest test only
 - Information intended for future publication – s22
 - Environmental information – s39 (deal with under EIRs)
 - Personal information – s40 (deal with under GDPR/DPA 2018)
 - Legal professional privilege – s42 (only lawyer – client)
 - Commercial interests – s 43(2) (includes IDB's interests – contrast s41)



Environmental Information Regulations 2004

Information about:

- the state of the elements of the environment and the
- interaction among these elements;
- factors affecting or likely to affect those elements;
- measures or activities affecting or likely to affect those factors or elements, or designed to protect those elements;
- reports on the implementation of environmental legislation;
- cost–benefit and other economic analyses and assumptions used within the framework of those measures and activities;
- the state of human health and safety, conditions of those measures and activities; and
- the state of human health and safety, conditions of human life, cultural sites and built structures in as much as they are or may be affected by those elements



Environmental Information Regulations 2004

- Publication scheme
- 20 working days to respond to disclosure request
- Can charge a fee
- Exemptions (public interest test, except *):-
 - Personal information *
 - Manifestly unreasonable
 - Unclear
 - Unfinished documents
 - Internal communications
 - Adversely affect public safety
 - Intellectual property rights
 - Commercially confidential information
 - Adversely effect interests of info supplier





Your website

- Critical tool in information governance
- The more content, the less there is to disclose
- **Public Sector Bodies (Website and Mobile Applications)(No.2) Accessibility Regulations 2018**
 - applies to existing websites after 22nd September 2020
 - mobile apps after 22nd June 2021
 - must be perceivable, operable, understandable, robust
 - WCAG 2.1AA or EN301 549 are accessibility standards
 - Accessibility statement
 - www.gov.uk/guidance/accessibility-requirements-for-public-sector-websites-and-apps



Complaints

- No absolute requirement to have a complaints process
- But IDBs subject to jurisdiction of Local Government and Social Care Ombudsman
- Maladministration causing injustice
- “Complaints R Great”
 - pathway for service issues
 - cheapest customer research
 - alternative to formal legal challenge to exercise of powers
 - judge the complaint, not the complainant

Local Government &
Social Care
OMBUDSMAN





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Funding, Financial Management and Audit

Iain Smith



Main funding sources

- Drainage Rates and Special Levies.
- Each year before 15th Feb IDB must calculate the overall Annual Value of all the agricultural and non-agricultural properties within the Drainage District (IDD).
- Agricultural Proportion is:

$$\frac{\text{Agricultural Properties}}{\text{Total Value of IDD}}$$



Agricultural properties

- Land and buildings used for purposes of agriculture and not having Council Tax band or non-domestic rating valuation.
- For definition of "agriculture" see *LGFA 1988*.
- These properties assessed for drainage rates, all other property types in Special Levy.



Drainage rates

- Assessed on basis of notional rent at which property could have been let as at 1st April 1988. See LDA section 41 for terms of tenancy.
- Assessed at Xp in the £1 and payable by occupier of property/any occupier for part of relevant year.
- Made before 15th Feb but not invalid if made later. Demand in prescribed form and publically available notice detailing rate within 10 days.
- Normally uniform rate but Defra may approve differential rates or exemption from rates.
- Arrears of rates recovered in the Magistrates Court/Small Claims.
- IDB may authorise officer/member to conduct proceedings.



Special levy

- Raises remaining expenses after drainage rates
- Recovered from District/Unitary Councils
- Issued under *IDB (Finance Regulations) 1992*
- Made before 15th Feb but not invalid if made later.
- Issued within 10 days, stating amount of levy, Council to which issued and payable in two instalments
- Calculated by reference to the 1989 rateable values of then existing properties to produce "average hectare valuation" which is used to calculate value of properties becoming included within the special levy calculation eg change from agriculture to domestic.



Possible funding changes

- Defra Consultation
- Council Tax Bands and Non-Domestic Rate values?
- Revalue agricultural properties?



Other funding sources I

- Highland Water payable by EA in respect of flows originating outside but passing through IDD.
- Payable in respect of pumping stations and drains (Felixstowe Inquiry)
- Grants from Defra/EA for qualifying capital works linked with partnership funding.
- Consent fees
- Byelaw fees and developer contributions
- Rechargeable work e.g. pre-application procedures



Other funding sources 2

- Grants from others e.g. LEP
- Borrowing up to 50 years from an appropriate lender. Application to Defra through local EA office.
- Most loans from Public Works Loan Board (PWLB)



Other funding issues

- TAX IDB is NOT liable to income or corporation tax and can recover VAT. May need to register for VAT if undertakes “business activities” above taxable limits. MUST of course pay over income tax, NI etc deducted from employees.
- Precept payable to EA as a “fair” contribution to EA expenses. No statutory formula, but the Felixstowe Inquiry decided EA must relate their precept charges to those parts of their programme which benefit IDBs.



Financial management

- Board members have collective responsibility for this.
- Members must appoint an IDB's Responsible Financial Officer (RFO) and ensure they properly perform their duties.



Financial rules and procedures

- See *Land Drainage Act 1991*.
- Financial Regulations and other documents e.g. safeguarding public money. Defra and ADA templates.
- Proper system of internal control. See the *Practitioners' Guide*.
- Ensure any employees' terms and conditions are clearly set out and approved.



Budget

- Budget preparation is one of the IDB's key tasks. Financial Year runs from 1st April to 31st March.
- Plan for income and spending over next year.
- Basis for Drainage Rates and Special Levies: need to discuss with LA.
- Shows where expenditure is planned and enables it to be monitored.
- Demonstrates IDB will have sufficient income to meet objectives and carry out activities.
- Review current year, plans for spending, anticipated income, contingencies, bad debts and reserves. Need to monitor Budget through year.



Value for money

- Funds spent efficiently to provide effective service, enjoying local support!
- More benefit for least expense, without compromising quality.
- Is spending the money necessary?
- Could it be done differently?



Banking I

- IDB should have a current account with appropriate lender and may hold additional interest bearing accounts for reserve funds.
- IDB must approve the establishment of all bank accounts, including mandate and authorised signatories.



Banking 2

- List of authorised signatories and kept up to date by ensuring only current signatories appear.
- Ensure bank mandate follows Financial Regulations and all payments are properly authorised with proper receipts etc.
- Bank monies promptly
- Finance report to each IDB meeting
- Steps to reduce fraud



Reserves

- Strictly, IDB should have balanced budget; but reality!
- Sensible level of reserve is prudent for “events” and also for specific projects.
- Investment Strategy
- “Year in hand”?
- Justify to auditors.
- Follow MHCLG investment guidance



Insurance

- Ensure proper and adequate insurance with a reputable company.
- Some covers compulsory, some discretionary.
- More litigious society.
- Review arrangements at regular intervals and check third parties' insurance.



Governance and accountability 1

- IDB must complete Governance and Accountability Return annually to demonstrate its financial, operational and admin positions.
- Three parts of this Return:
 1. Annual Governance Statement,
 2. Accounting Statements,
 3. External Auditors' Certificate and Report.
- IDB Members must ensure these accurately set out IDB's position.



Governance and accountability 2

- *Annual Governance Statement*. Has IDB made proper governance arrangements and addressed any weaknesses?
- Requires answers to series of questions 'yes' or 'no'.
- N.B. Evidence of e.g. electors' rights should be available
- Statement approved by IDB and signed by Chair and Clerk.



Governance and accountability 3

- Accounting Statements prepared each year by Responsible Finance Officer (RFO), following proper practices; *Local Audit and Accountability Act and Accounts and Audit Regs.*
- Based on IDB income and expenditure for year and include previous year as comparator. If income does not exceed £200,000, can report on income/expenditure or receipts/payments basis.
- RFO must demonstrate to members how figures in statement reconcile to primary accounting records.
- Signed by RFO, approved at Board meeting and then signed by Chair.



Internal audit

- Part of internal control carried out by a properly competent and independent person who examines financial processes, systems, controls and governance arrangements.
- Prepares and signs report to IDB that IDB's internal controls are properly in place and operating but NOT detailed inspection of records and transactions.



External audit 1

- Normally based on distance review of Governance and Accounting Statements.
- Report forms part of governance statements.
- If no issues, auditor issues certificate and unqualified opinion, BUT IDB must meet if report refers to weaknesses or irregularities.
- Appointed by Smaller Authorities Audit Appointments Ltd. IDB can appoint, but cumbersome procedure.



External audit 2

- Local Government Electors have right to inspect accounts and raise issues with Auditor and IDB must publish notice of this right
- Following External Audit, IDB must publish its *Governance and Accountability Return* and the *Auditors' Certificate* along with any report/recommendations by 30th Sept and approve Auditors' report
- N.B. For IDBs with turnover of £25,000 or less which can be exempt from external audit under the *Transparency Code for Smaller Authorities*. But still must otherwise produce and publicise same information.

