



National Audit Office

Report

by the Comptroller
and Auditor General

Department for Environment, Food & Rural Affairs

Internal Drainage Boards

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National Audit Office

Department for Environment, Food & Rural Affairs

Internal Drainage Boards

Report by the Comptroller and Auditor General

Ordered by the House of Commons
to be printed on 20 March 2017

This report has been prepared under Section 6 of the
National Audit Act 1983 for presentation to the House of
Commons in accordance with Section 9 of the Act

Sir Amyas Morse KCB
Comptroller and Auditor General
National Audit Office

16 March 2017

This report addresses concerns about Internal Drainage Boards' (IDBs') activities and practices brought to our attention through correspondence with us. These focused on governance and oversight arrangements for IDBs, processes for raising concerns about IDBs and the potential for conflicts of interest.

Investigations

We conduct investigations to establish the underlying facts in circumstances where concerns have been raised with us, or in response to intelligence that we have gathered through our wider work.

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What this investigation is about

1 Internal Drainage Boards (IDBs) are local independent public bodies responsible for managing water levels in low-lying areas where there is a special drainage need and contributing to flood risk management and the protection and enhancement of biodiversity in urban and rural areas. IDBs raise funding mainly through drainage rates paid directly by farmers and landowners and through special levies on district councils and unitary authorities.

2 This report addresses concerns about IDBs' activities and practices that were brought to our attention through correspondence with us. These concerns focused on three issues:

- governance and oversight arrangements for IDBs;
- processes for raising concerns about IDBs; and
- the potential for conflicts of interest.

3 We have explored these concerns with the Department for Environment, Food & Rural Affairs (the Department), the Environment Agency and the Association of Drainage Authorities, a sector-based membership organisation. We have drawn on information provided by our correspondents and work already undertaken in this sector.

4 It is not within the National Audit Office's remit to investigate the affairs of an individual local body. We have therefore reviewed concerns at a sector level and focused primarily on the role of the Department. We have not examined individual IDBs beyond previously documented information.

Summary

1 Internal Drainage Boards (IDBs) vary in scale and range of responsibilities. There are 112 IDBs in England, covering 1.2 million hectares (9.7% of the total land area of the country), where they seek to reduce the risk of flood to homes, industries of national importance and much of the UK's critical infrastructure, including oil refineries, power stations, major industrial premises, motorways and the rail network. They operate and maintain pumping stations, watercourses, sluices and weirs. IDBs' budgets for 2015-16 ranged from as little as £7,000 to £3.7 million. Together, IDBs spent more than £61 million in 2015-16.

2 It is the responsibility of each IDB to have arrangements in place to ensure that its business is conducted in accordance with the law and proper standards, set by the Joint Practitioners Advisory Group, the sector-led body responsible for producing proper practices for smaller authorities in England. Each IDB must also ensure that public money is safeguarded, properly accounted for and used economically, efficiently and effectively. IDBs should be accountable to the communities they serve, incorporating local residents, businesses and landowners and the relevant local authority or authorities.

Key findings

Governance and oversight

3 **There is no statutory governance standard for IDBs, and the government has no legislative powers to ensure that IDBs, as public bodies, meet expectations for good-quality internal governance and sound financial management.** IDBs are independent public bodies and, under the relevant legislation, no government department has a direct oversight role in their day-to-day activities or operations. The Association of Drainage Authorities (ADA), a sector-based membership organisation, has developed non-statutory governance standards with the support of the Department for Environment, Food & Rural Affairs (the Department). Under the legislation, the Environment Agency, an executive non-departmental body sponsored by the Department, has a supervisory role, and powers to act if an IDB injures the land, but prefers to work in partnership to address issues and share knowledge. Although IDBs have to comply with relevant local authorities' Local Flood Risk Management Strategies and local authorities may review and scrutinise the exercise of IDBs' risk management functions, local authorities have no legal powers to directly influence IDBs' governance and administration (paragraphs 2.3 to 2.8 and 2.10).

4 There is limited oversight of IDBs' operations. IDBs' annual reporting requirements consist of summary financial statements and compliance declarations. These are reported using a standard form that is returned to the Department. The Department reviews the information provided, identifies any issues arising and shares them with ADA. However, the information is not routinely subject to detailed analysis and is not used to engage with IDBs or to trigger activity by the Department itself. It is not subject to any standard checks or verification for consistency with other information that is held on IDBs. ADA may carry out its own analysis of the returns and determine any actions it may feel are required. Where an IDB does not declare compliance in its report to the Department or is given a qualified opinion by its external auditor, the Department initiates a follow-up investigation, working with ADA and the Environment Agency to encourage and support IDBs to address issues. The Department does not use the data in the statements and declarations to identify areas where IDBs need support or guidance. ADA may identify the need for action independently (paragraphs 2.15 to 2.22).

5 ADA supports the Department in overseeing the sector and addressing concerns and the Department supports ADA in providing advice and support to IDBs. Although there is no memorandum of understanding or documented agreement, the Department and ADA have developed a good working relationship. ADA has become an important part of the framework supporting IDBs and aims to operate as a central hub to support good practice. The Department, working with ADA, has achieved some improvements in the governance arrangements for IDBs in recent years, for example, through increased uptake of ADA's model governance documents. ADA takes the lead in ensuring that individual IDBs comply with the guidance it has developed with the Department. However, the Department cannot compel ADA to take action against any IDB and ADA, as an advisory body, does not have authority or powers to compel an IDB to implement good practice. Although ADA has a role in defining the requirements for annual reporting, it cannot enforce them (paragraphs 2.9 to 2.14).

Skills to support governance

6 Most IDBs report that they do not have board members with appropriate environmental expertise, instead accessing the skills they need through consultants. Almost three-quarters of IDBs report that they have no board members with appropriate environmental expertise. Eighty-one per cent report having no directly employed staff with environmental expertise. More widely, it is a challenge for IDBs to find willing individuals with appropriate knowledge and experience of key matters such as public finance, environmental regimes or legislative controls. It is not always possible for IDBs to identify these skills gaps and fill them and 60% of IDBs reported that they had not provided any training to their board members in the last year. Although many IDBs identify interest and enthusiasm in the board's activities as a more reliable driver for success than technical expertise, ADA acknowledges the need for IDBs to have access to the right specialist expertise on environmental as well as other relevant local issues and has produced a best practice guide on accessing environmental skills. (paragraphs 1.19, 1.20, 2.23 and 2.24).¹

¹ Available at: www.ada.org.uk/wp-content/uploads/2017/01/IDB_Best_practice_guide_on_accessing_environmental_expertise.pdf

7 Some smaller IDBs have reported benefits from merging with each other, forming consortia or working collaboratively. Other IDBs have not merged or formed consortia, despite being close to one another or very similar in nature. This means they have not benefited from the better technical and administrative support and shared best practice that these measures offer. ADA actively encourages mergers and consortia working, where such arrangements are appropriate. The number of IDBs has reduced from 172 in 2006 to 163 in 2010 and 112 in 2016 (paragraph 1.21).

Raising concerns

8 If an individual has a concern about an IDB's conduct, it is not always clear whom they should approach, and no government department has a role under the legislation in ensuring that any concerns raised are addressed. Some IDBs' websites have no information on what to do if an individual wishes to make a complaint. The Department advises individuals that approach it with a complaint first to complain to the relevant IDB and, if they are not satisfied with the way the IDB handles the complaint, then to refer it to the Local Government Ombudsman (paragraph 2.25).

Conflicts of interest

9 The requirements for oversight and assurance of IDBs are not sufficient to ensure that IDBs are able to meet the expectations associated with public expenditure and leaves them vulnerable to potential conflicts of interest. Potential conflicts of interest may arise, for example, if a board's elected members pursue their own local interests or if appointed managing agents are part of a wider group of companies that can bid for contracts specified by the agent. ADA has encouraged IDBs to adopt a register of interest, and all but one IDB reports having now done so. Because IDBs rely so much on bought-in expertise, there is a risk that they will not get the best advice to achieve value for money. IDBs can seek advice or guidance from ADA, but this is at their discretion. Neither the Department nor the Environment Agency has a statutory role in addressing these possible conflicts of interest, but both support the work that ADA has done to draw attention to the potential for such conflicts to arise. Increasing use of public sector cooperation agreements between IDBs, the Environment Agency and local authorities is helping to improve transparency and should allow IDBs to get better assurance of value for money (paragraphs 2.28 to 2.32).

Part One

What are Internal Drainage Boards?

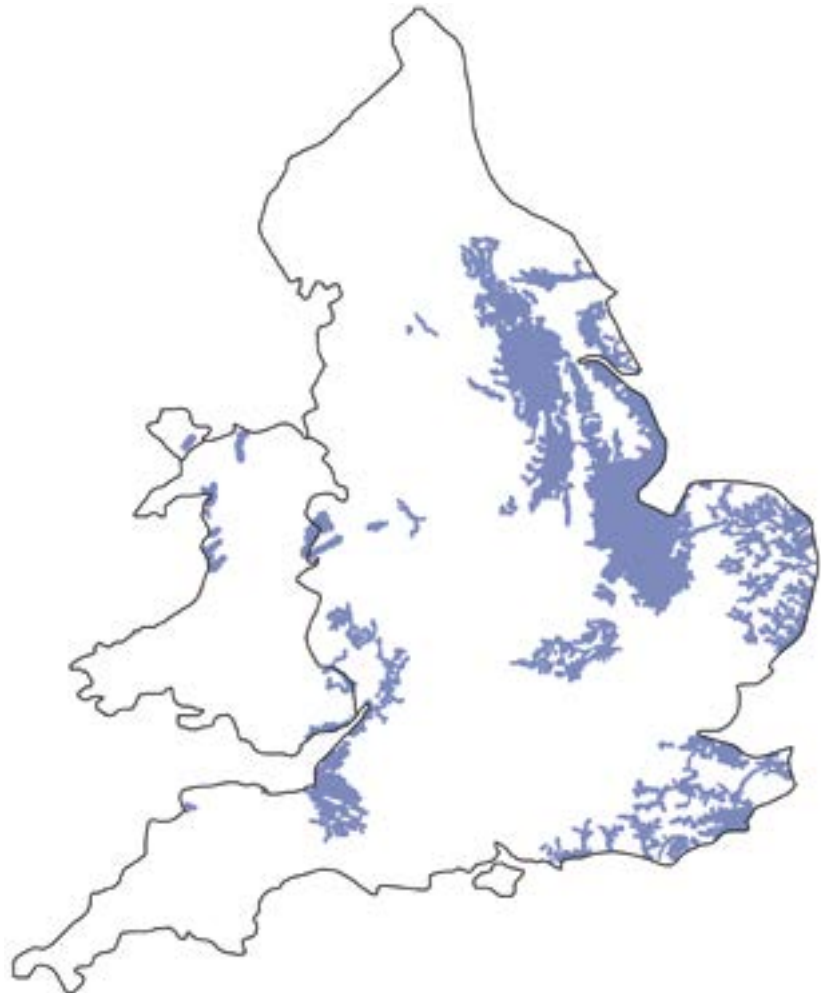
1.1 Internal Drainage Boards (IDBs) are local independent public bodies. They are responsible for managing water levels in areas of special drainage need. Historically, their main role was to ensure the drainage of agricultural land. But their responsibilities have evolved, and now include contributing to managing flood risk and protecting and enhancing biodiversity in urban and rural areas. IDBs are responsible for ordinary watercourses and the surrounding land that will derive benefit or avoid danger as a result of drainage operations. IDBs are not responsible for watercourses designated as 'main rivers', usually larger rivers and streams, within their drainage districts, the supervision of which is undertaken by the Environment Agency working in partnership with IDBs. The Environment Agency levies a precept on IDBs to contribute towards the Agency's costs in respect of water that enters the main river network from an IDB.

1.2 In 1991, the then Ministry of Agriculture, Fisheries and Food introduced water level management plans. These plans are produced by flood authorities for areas where it is necessary to manage water levels, giving priority to the conservation objectives of wetland Sites of Special Scientific Interest but also taking into account local flood risk management and agricultural interests. Natural England works with IDBs to produce the plans for Sites of Special Scientific Interest where water level management is important for managing habitats and species. IDBs are responsible for any hydrological investigation necessary, installing water control structures and putting a water level management plan in place. IDBs must ensure that they are working in alignment with landowners and other relevant agencies. They are responsible for the core measures in the plans, but other agencies may have to carry out specific actions.

1.3 There are currently 112 IDBs in England, covering 1.2 million hectares (9.7% of the total land area of the country). Their remit is to reduce flood risk to 900,000 homes, industries of national importance and much of the UK's critical infrastructure, including oil refineries, power stations, major industrial premises, motorways and the rail network. They operate and maintain more than 500 pumping stations, and contribute to the maintenance of 22,000 kilometres of watercourses.

1.4 Figure 1 shows the geographical distribution of IDBs. Some areas have several adjacent IDBs, for example around the Wash, the lower reaches of the Trent and the Yorkshire Ouse, and the Somerset Levels. But in other parts of the country, such as Norfolk, Suffolk, Sussex and the northern Vale of York, IDBs stretch in narrow ‘fingers’ up river valleys, separated by areas of higher ground. The boundaries of IDBs are largely determined by low-lying flood-prone ground, as defined by the Ministry of Agriculture, Fisheries and Food’s ‘Medway Letter’ of 1933.² This definition of the boundaries determines the properties for which rates are levied for each IDB. However, boundaries may sometimes be modified to manage water levels, and flood risk in particular.

Figure 1
Geographical distribution of Internal Drainage Boards



■ Areas covered by Internal Drainage Boards

Source: Association of Drainage Authorities

² The Medway Letter states that “the areas which may be brought within the limits of drainage districts are those which will derive benefit or avoid danger as the result of drainage operations”. The letter can be found at: www.lowersevernidb.org.uk/downloads/Medway%20Letter.pdf

1.5 The annual expenditure of IDBs ranged from as little as £7,000 in 2015-16 to as much as £3.7 million. In total, IDBs spent £61 million in 2015-16 and the 14 largest IDBs accounted for more than half of this. **Figure 2** shows how IDBs spent their money.

Legislation

1.6 The Land Drainage Act 1991 (the Act) requires IDBs to manage water levels within their districts, and to use the powers and fulfil the duties set out in the Act. These duties include:

- exercising a general supervision over all aspects of land drainage within the district;
- general duties with respect to the environment and recreation; and
- general duties in respect of the natural and built environment and public access.

1.7 The Act also grants permissive powers to IDBs, which include:

- undertaking works to alleviate flooding;
- improving and maintaining the drainage system, including operating pumping stations, weed screens and sluices;
- regulation and control of activities in and alongside the drainage system to ensure that flood risk management and land drainage standards are not impaired by the actions of others;
- creating by-laws (which have to be approved by the minister); and
- raising income through general charging arrangements to cover the costs of flood and water level management schemes and other work related to land drainage.

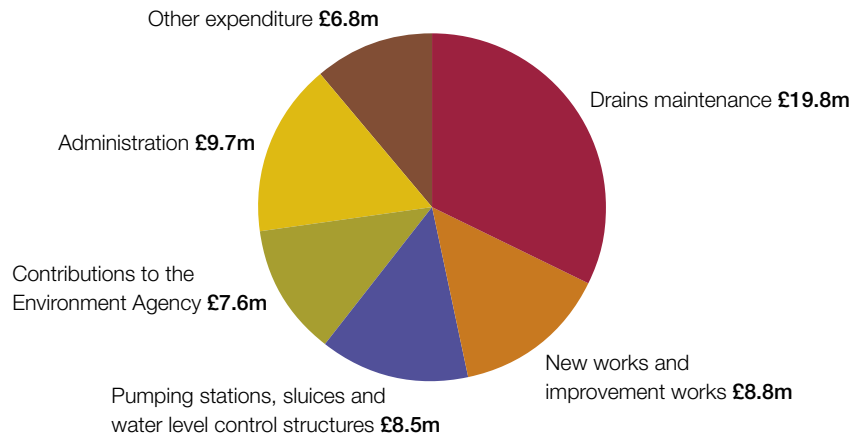
1.8 Under legislation for specific districts, some IDBs may also be granted other duties, powers and responsibilities. For instance, some IDBs are also navigation authorities, with responsibility for navigable canals or rivers.

1.9 The general environmental duties of IDBs under the Act need to be carried out alongside related obligations that arise under nature conservation legislation, particularly the Wildlife and Countryside Act 1981, the Countryside and Rights of Way Act 2000 and the Habitats Regulations 1994. The 1994 regulations make specific provision that requires IDBs to undertake conservation works within European Union-designated protection sites. IDBs have responsibilities associated with 398 Sites of Special Scientific Interest that fall within IDB boundaries, plus other designated environmental areas.

Figure 2

IDB expenditure 2015-16

Almost half of IDB expenditure was on maintaining drains, pumping stations, sluices and other structures



Source: Analysis of IDB1 forms

Funding

1.10 IDBs are financed in two main ways:

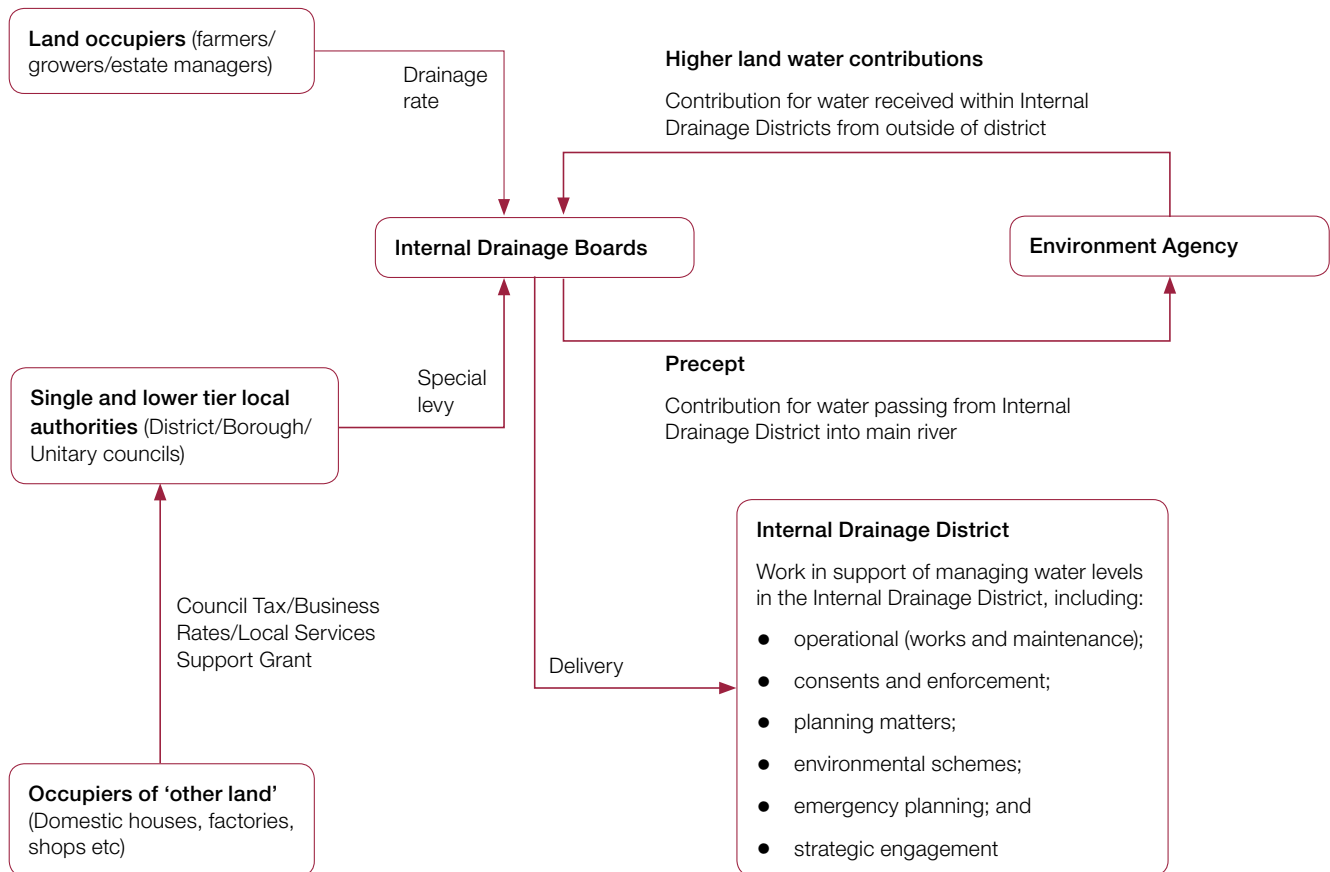
- drainage rates levied on owners of farmland; and
- special levies on district councils and unitary authorities.

1.11 These funds are collected through district councils or unitary authorities. The split of levies reflects the ownership and use of land within an IDB district. The special levies collected by district and unitary authorities and the drainage rates are set in public meetings by the IDB board.

1.12 The Department for Environment, Food and Rural Affairs (The Department) currently also provides funding for IDBs through the Environment Agency. This funding is mainly capital grants for specific capital projects. The amount varies depending on the projects being carried out in any given year, but it usually amounts to around £5 million per year.

1.13 The Environment Agency also provides 'high land or higher land' payments to IDBs. These vary depending on rainfall and the cost to the IDB of transporting main river water through their area, but they are generally around £3 million per year.

Figure 3
How Internal Drainage Boards are funded



Source: Association of Drainage Authorities, *An Introduction to Drainage Boards (IDBs)*

Composition of the boards

1.14 Most IDBs operate as independent bodies with a board. IDBs are responsible for ensuring that their board operates correctly and that its members are clear about their responsibilities. The composition of each board depends on the IDB’s catchment area. Boards contain a locally determined mix of interested parties, drawn from landowners (elected members), the local authority (appointed members) and specific interest groups (co-opted members). The number of people involved or employed by an IDB varies considerably, depending on its area, income and the complexity of its operations. The largest boards consist of several dozen members. Smaller boards with only six or seven members generally have a majority of elected members, primarily local landowners (**Figure 4**).

1.15 IDBs employ nearly 600 people in total. However, some have only administrative staff employed on a permanent basis and use contractors or volunteers for the majority of their work, while others may directly employ maintenance workers and environmental specialists.

Figure 4 Board composition

Board membership of the five Internal Drainage Boards with the largest boards

	Total members	Elected members	Appointed members	Co-opted members
Axe Brue	57	28	29	0
Parrett	47	23	24	0
Ouse and Derwent	45	22	23	0
Broads (2006)	39	19	20	0
Haddenham Level Commissioners	35	33	2	0

Board membership of the five Internal Drainage Boards with the smallest boards

Stringside	7	5	1	1
Feldale	7	6	1	0
Muston and Yedingham	6	5	1	0
Northworld	5	5	0	0
Goole Fields	5	5	0	0

Source: Department for Environment, Food & Rural Affairs and Association of Drainage Authorities, *Internal Drainage Board Membership and Representation Survey Analysis*, 2012

1.16 Board members need a wide range of skills and knowledge, including an understanding of the local area and knowledge of public finance and procurement, the social and economic impact of IDBs' operations, and environmental and legislative controls. Although the boards draw from a wide range of stakeholders, many elected board members, including local land or business owners, have limited experience in at least some of these areas. It is not always possible for IDBs to identify and fill these skills gaps. The survey of IDBs by the Department and the Association of Drainage Authorities (ADA) also highlighted the issue of ageing membership and the need to attract younger board members.³

1.17 Levy-paying local authorities appoint a number of members outside the IDB election process. These members generally sit on the board for three years although some local authorities appoint members annually. The number of appointments relates to the proportion of the IDB's income derived from the special levies. The number of unelected appointed members may not exceed the number of elected members by more than one. Across all boards, 63% of members are elected, 36% are appointed and 1% are co-opted. Many boards are constituted with a majority of elected members, primarily local land and business owners.

³ Department for Environment, Food & Rural Affairs and Association of Drainage Authorities, *Internal Drainage Board Membership and Representation Survey Analysis*, 2012.

1.18 Some local authorities are able to appoint a good spread of councillors that complement the elected members, including members of the planning or finance committees on the local council. However, others find it challenging to find councillors or specialist officers willing to sit on an IDB. Most appointed members on IDBs are councillors (77%). Only 4% are council officers. The remainder include specialists in areas such as the environment, industry, infrastructure or recreation and representatives of the wider local community.

1.19 The appointment of technical experts (such as drainage engineers or conservation representatives) could enhance the value of appointed members to the boards. However, analysis of the 2012 membership and representation survey suggests that interest in and enthusiasm for the board's area and functions is often a more reliable factor in successful board membership than technical expertise.⁴ Although the work of IDBs is a key part of flood management, many councillors and council officers may feel that it is not sufficiently high profile or interesting to merit the high level of commitment it requires.

1.20 ADA reported that training and support available to board members varies widely. Some have received training in finance, governance, health and safety, and responsibilities and duties. This training has created a strong basis for their board's ability to conduct itself appropriately. Other boards are reported to receive far more limited training. Information on training provided is collected through the IDB1 forms and, in 2015-16, 60% of IDBs reported that they had not provided any training for their members during the last year. ADA provides a range of other support and resources, including its website, the quarterly magazine, *Gazette*, and a monthly news stream and it is committed to extending the resources it provides to support training of IDB officers and board members.

1.21 The Department commissioned a review of IDBs in 2005, with a particular focus on organisational arrangements and their efficiency, accountability and ability to represent levy-payers and wider interests. This was undertaken by JBA, an environmental consultancy, and the report was published in 2006. Following this, many IDBs rationalised their operations through mergers or by forming consortia. In 2010, this review was followed up by ENTEC, an environmental and engineering consultancy. ENTEC found that it remained reasonable to expect IDBs that are close to one another or of a similar nature to combine or operate as consortia.⁵ It also found that IDBs that are geographically isolated or different from others should be encouraged to join a consortium. This would ensure that they receive appropriate technical and administrative support, and benefit from sharing best practice. There is still the potential for further amalgamation of smaller IDBs. The number of IDBs has reduced from 172 in 2006 to 163 in 2010 and 112 in 2016. ADA suggests that this is beneficial to the sector and anticipates that the number of individual IDBs will continue to fall.

4 See footnote 3.

5 *Internal Drainage Board Review: Extension*, ENTEC, December 2010.

Part Two

Governance and oversight

2.1 The policy and operational responsibilities of Internal Drainage Boards (IDBs) are split between two government departments. When the Department of Environment, Transport and Regions was disbanded in the 1990s, policy responsibility for the IDBs remained with the Department for Environment, Food & Rural Affairs (the Department). However, as IDBs operate as local bodies (similar to small authorities such as parish councils), they were formerly under the remit of the Audit Commission, but are now classified as relevant authorities under the Local Audit and Accountability Act 2014 and subject to limited assurance. As of April 2015, the Comptroller and Auditor General has published the Code of Audit Practice and guidance to support reviews carried out by external auditors, such as those of the IDBs.

2.2 The Department has policy responsibility relating to IDBs. It has no statutory powers to intervene in their day-to-day activities or management, as IDBs are local independent bodies. However, IDBs are ultimately answerable to the minister, as defined in the Land Drainage Act 1991 (the Act). This is currently the Secretary of State for the Environment, Food and Rural Affairs. IDBs do not fall within the Department's accounting boundary and their activities and finances are not included in the Department's accounts.

Governance

2.3 The governance of an IDB varies depending on the legislation under which it is constituted and its management arrangements:

- IDBs created under the Act are governed by a board, with a chairman and vice-chairman elected by the board members from their own membership.
- IDBs constituted under earlier local legislation such as drainage commissioners. Most provisions of the Act apply to these commissioners, and they are statutory public bodies. The commissioners are anyone who owns more than a defined amount of land in the district.
- Currently, one IDB is administered by the Environment Agency. This IDB has no elected or appointed members. The Environment Agency board acts as the IDB, and the Environment Agency carries out the work, which is overseen by the Regional Flood and Coastal Committee, a committee established by the Environment Agency under the Flood and Water Management Act 2010.

2.4 Under the Act, an IDB has a duty to provide the relevant minister and the Environment Agency with a copy of its annual report (known as the IDB1 form). The minister exercises a limited power of control over the governance of IDBs by stipulating what information must be included in their annual reports.

2.5 The Department is responsible for the legislation that creates, abolishes, amends and manages IDBs. It has a policy team covering IDBs within its flood risk management team. IDBs operate under their own individual set of financial regulations and standing orders. The policy team deals with statutory orders and any queries about IDBs and their operations. For each IDB, matters such as standing orders, by-laws and chair's allowances are approved and signed off by the team on behalf of ministers and reviewed each year by the Association of Drainage Authorities (ADA).

2.6 The Department has a policy advisory group whose members include ADA, the Environment Agency, RSPB and the National Farmers Union. The group meets three times a year and the Department told us that it provides a forum for discussion, an opportunity to exchange ideas and to identify and drive forward actions in the interests of IDBs. The Department also attends ADA's board of directors and Policy and Finance Committee meetings.

2.7 Under the Act, the Environment Agency has a supervisory role, and powers to give directions to IDBs to secure, for example, the efficient working and maintenance of existing drainage works and the construction of new drainage works as necessary, and the power to act if an IDB injures the land. In some circumstances, the Environment Agency can become the drainage board for a district. However, it prefers to work in partnership with IDBs to address issues and share knowledge. The Environment Agency also has a role in administering capital grants under the Floods and Coastal Erosion Risk Management Partnership Funding mechanism.

2.8 Local authorities do not have the authority to direct the IDBs in their area. If councillors or officers sit on the board, they must act in the best interests of the IDB, and not seek to impose the local authority's preferences. Local authorities typically aim to work in partnership with their IDBs to achieve common objectives. IDBs have a duty to comply with the relevant local authorities' Local Flood Risk Management Strategies and a local authority may review and scrutinise the exercise of relevant IDBs' risk management functions. If the local authority grants planning permission that results in agricultural land being taken out of agricultural use, it is dependent on the IDB to manage water levels for it. This typically increases the IDB's costs and therefore the amount of the special levy paid.

The Association of Drainage Authorities

2.9 ADA is an important part of the framework supporting IDBs. It is a membership organisation, established in 1937. Its members include most of the IDBs in England and Wales, interested local authorities, the Environment Agency, Northern Ireland Rivers Agency and Natural Resources Wales, as well as contractors, consultants and suppliers who work in the sector. The Department is not a member of ADA, but actively engages with it.

2.10 ADA's core role is to provide national leadership and support for IDBs. It is keen to be a central hub for sharing good practice, disseminating information and making sure that guidance is appropriate, codes of practice are up to date and smaller boards understand their duties. For example, it has developed non-statutory governance standards with the support of the Department. It also extends its assistance to non-member IDBs. The Department is very supportive of ADA's role in providing advice and support on many governance and operational matters and has made some progress through its work with ADA to improve the governance of IDBs. For example, uptake by IDBs of model governance documents has increased from 89% in 2013-14 to 97% in 2015-16.

2.11 ADA is the IDB sector representative of the Joint Practitioners Advisory Group (JPAG), which is responsible in statute for producing proper practices for smaller authorities in England regarding accounting, governance and financial management. These practices are incorporated in a 121-page Practitioners' Guide, produced with support from the Department for Communities and Local Government (DCLG), the Audit Commission, Wales Audit Office and the Environment Agency. The Guide was first published by ADA in 2006 and is soon to be relaunched to comply with recent legislative changes.⁶ Other members of JPAG include the Society of Local Council Clerks and the National Association of Local Councils, together with stakeholder partners representing the Department, DCLG, the Chartered Institute of Public Finance and Accountancy, the National Audit Office and a representative of the external audit firms appointed to smaller authorities.

2.12 Although there is no memorandum of understanding or documented agreement, the Department and ADA have developed a good working relationship. ADA is an advisory body and has no authority or powers to compel an IDB to make changes. Instead, it relies on its influence. If an individual or organisation raises concerns about an IDB, ADA would approach the chair of its board to discuss the matter.

⁶ Joint Practitioners Advisory Group, 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, March 2016.

2.13 The Department cannot compel ADA to take action against any IDB. However, it recognises that ADA plays an important role in supporting good practice and takes a lead role in reviewing procedures for good governance. ADA oversees the sector through its Policy and Finance Committee, of which the Department and the Environment Agency are members. ADA also has a Technical and Environment Committee, which is attended by the Environment Agency and Natural England. ADA's current chief executive officer was previously with the Environment Agency and this has helped further align working partnerships.

2.14 ADA recognises that public awareness of IDBs is very limited and is working to raise their profile.

Oversight

2.15 Each year, IDBs must submit an annual return to the Department (the 'IDB1 form') and undergo a 'limited assurance review' by their auditor.

The IDB1 form

2.16 An IDB makes an annual return to the Department via a standard IDB1 form. This reports on the IDB's finances and confirms that it has been run according to good practice over the previous year. There are three parts to the return:

- financial information from their internal audit report setting out income (for example, drainage rates, special levy, Environment Agency contributions) and expenditure, and a forecast of next year's levy incomes; and
- a series of declarations that the IDB has complied with relevant guidance and best practice for the sector during the preceding year.

2.17 Most IDBs make their IDB1 form publicly available through their websites and it is the Department's expectation for them to do so to improve transparency and public accountability. Those IDBs that do not declare compliance are targeted by the Department for follow-up investigation through ADA.

2.18 The Department manages the IDB1 process through ADA, which sends the forms out each year. IDBs make the returns to the Department, which then reviews the information, identifies any issues arising and shares them with ADA. However, the information is not routinely subject to detailed analysis or used to engage with IDBs or trigger activity by the Department itself. Nor is it subject to any standard checks or verification to ensure consistency with other information on the IDB such as the limited assurance review (see below). ADA may carry out its own analysis on the returns and determine any actions it feels are required.

Limited assurance reviews

2.19 Under the Local Audit (Smaller Authorities) Regulations 2015, audit arrangements for all smaller authorities are put in place by Smaller Authorities' Audit Appointments Ltd (SAAA) unless the authority has given notice that it wishes to make its own arrangements. SAAA is an independent company set up to procure external audit services for smaller authorities following the closure of the Audit Commission. Smaller authorities, such as IDBs and parish councils, receive a 'limited assurance review' designed to meet the statutory requirements for annual reporting.

2.20 The reviews are carried out according to the National Audit Office's code of audit practice and supporting guidance from the Comptroller and Auditor General. IDBs state whether they have complied with the proper practices set by JPAG, which have regard to the principles set out in HM Treasury's *Managing Public Money*. The external auditors then provide a basic level of review of a summary financial statement and an annual governance statement. The external auditors can also undertake further work if they identify risks or questions or objections have been raised. The auditors would also report any information regarding an IDB failing to meet compliance standards, but they are not required to routinely test the veracity of all statements every year. The reviews must also consider any qualified opinions given by the IDB's internal auditors, and to set out the background to any qualified opinions by the external auditor during the past year.

2.21 The limited assurance review is separate from the IDB1 regime. The externally appointed auditors that undertake the review are not responsible for reviewing the IDB1 form. The limited assurance reviews are submitted to the Department. However, as IDBs are locally funded and do not fall within the Department's accounting boundary, the reviews are of limited interest to the Department. An IDB may take information from the audited limited assurance review to populate its IDB1 form, but there are no standard checks in place to confirm that the two returns are consistent.

2.22 Each year, Public Sector Audit Appointments Limited notifies the Department of those IDBs that have received a qualified opinion from their external auditors (4% of IDBs in 2015-16). ADA follows these up with IDBs to discover the reasons for the qualification and reports these to the Department. The Department told us this exercise has not warranted any follow-up action as the reasons for qualification have been of a technical nature and have not raised any substantive issues.

Skills and expertise

2.23 Given the wide range of challenges that IDBs face, it is important that they have access to the skills and expertise they need to fulfil their role. The IDB1 form gives IDBs an opportunity to give their own assessment of the skills they have at their disposal. In their 2015-16 returns, 85% of IDBs reported that they have no board members with appropriate environmental expertise and 76% that they have no directly employed staff with the environmental expertise required.

2.24 More widely, it is clearly a challenge for IDBs to recruit board members or members of staff with sufficient expertise. This challenge is exacerbated by the low level of awareness of their function, and means that most IDBs rely heavily on buying in skills and expertise. ADA acknowledges the need for IDBs to have access to the right specialist expertise on environmental as well as other relevant local issues and has produced a best practice guide on accessing environmental skills.⁷

Raising concerns

2.25 IDBs are intended to be accountable to the communities they serve. These are made up of local residents, businesses and landowners within the district and the relevant local authority. The structures described in this report generally facilitate this accountability, but do not provide a way for individuals or organisations to raise concerns about an IDB. The Department advises individuals that approach it with an issue or complaint first to complain to the relevant IDB and, if they are not satisfied with the way the IDB handles the complaint, then to refer it to the IDB's external auditor. They also have recourse to the Local Government Ombudsman. **Figure 5** sets out the channels available to someone wishing to raise a concern, but our review has highlighted a need for better support for complainants and for IDBs to resolve any concerns raised.

2.26 The Wales Audit Office published a report regarding the Caldicot and Wentlooge Levels IDB in 2012. It was initiated in response to a number of concerns raised by former officers and a former member of the board relating to the IDB's operation. It found that:

- governance arrangements were inadequate and ineffective;
- some members and officers acted in a way that was likely to undermine public confidence in how the IDB operated;
- the IDB did not exercise good financial control at a corporate level;
- the IDB failed to demonstrate that it had achieved value for money; and
- the IDB had acted unlawfully in some key areas.

2.27 Although the Department no longer has policy responsibility with regard to Welsh IDBs, it worked alongside ADA to ensure that these concerns were addressed both with individual English IDBs and across the sector as a whole. ADA circulated material on the report's findings to IDB chairs and chief executive officers, advising them on the matters that they should check. It also produced model governance documents for its members to address the concerns raised.⁸ ADA encouraged all its members to adopt this guidance as good practice and offered support to IDBs through their local area meetings. However, as ADA is not a mandating authority, it could only advise its members to adopt this good practice. The existing legal framework means the Department also lacks legal powers to require IDBs to adopt this guidance. The information provided in the limited assurance reviews and the IDB1 returns and the limited use that is made of it are insufficient to prevent similar problems in the future.

⁷ Association of Drainage Authorities, *Best Practice Guide for IDBs on accessing environmental and other specialist expertise*, January 2015. Available at: www.ada.org.uk/wp-content/uploads/2017/01/IDB_Best_practice_guide_on_accessing_environmental_expertise.pdf

⁸ Links to a range of model government documents can be found at: www.ada.org.uk/key-topics/governance-and-accountability-for-idbs

Figure 5**Steps available to raise a concern about an Internal Drainage Board (IDB)**

- | | |
|---|--|
| 1 Raise it with the IDB in the first instance | The complainant should put their concerns to the IDB, to give board members the opportunity to address them. Members should give a response explaining their findings and any actions to be taken. Some IDBs with an appointed managing agent prefer matters to be raised with the agent. Board members, however, must recognise that responsibility for the operation and activities of the IDB remains with them and that it is their duty to seek to resolve concerns raised. |
| 2 Raise it with the IDB's external auditor | Where there is good reason not to approach the board directly, or if the board is unwilling or unable to resolve the concerns, the complainant may raise their concerns with the IDB's external auditor. The external auditor will consider whether the concern is relevant to their responsibilities. They will take any action that they consider appropriate for relevant concerns and provide a response to the complainant. |
| 3 Raise it with the Local Government Ombudsman (LGO) | The LGO will expect concerns to have been raised with the IDB directly before it will review them. Provided this is the case, the LGO will decide whether there is a matter to investigate. If there is, it will explore the concerns with the IDB and any other relevant organisations. The LGO will explain its decision as to whether or not to investigate the matter. If it does investigate, its findings will be published on the LGO's website. ¹ |

Other possible approaches

- | | |
|---|--|
| Environment Agency | If the LGO cannot resolve the concerns raised and they are significant enough to challenge the IDB's operational capability, the Environment Agency can, as a last resort, take over some or all of the IDB's responsibilities. ² |
| Association of Drainage Authorities (ADA) | ADA works collaboratively with the sector to disseminate good practice and support IDBs in carrying out their role effectively. ADA has no authority to investigate complaints and no power to compel IDBs to change. However, it can issue guidance and use its influence to persuade IDBs to implement it. |

Notes

- 1 A search of the LGO website reveals four complaints against IDBs since January 2005. Two of these were not upheld and the others were closed after initial enquiries.
- 2 The Environment Agency would review the concerns raised with the IDB and also with the Department, which would raise them with ADA through the Policy Advisory Group. At this point, any major issues would be flagged to the minister.

Source: National Audit Office analysis

Managing conflicts of interest

2.28 This review has highlighted that the oversight and assurance of IDBs are not sufficient to ensure that IDBs are able to meet expectations that all public sector organisations have good-quality internal governance and sound financial management. IDBs may also be vulnerable to conflicts of interest in their proceedings.

2.29 Some IDBs have professional support and operational staff, but others are too small. In some cases, operational support is provided by contractors, who consider their own interests as well as those of the board. Often these contractors are part of a larger group that offers a range of relevant services through different companies. Such situations need to be managed robustly to ensure that value for money is achieved through good practice. IDBs can seek advice or guidance from ADA, but this is at the board's discretion.

2.30 There are a number of areas that may lead to possible conflicts of interest:

- Some IDBs appoint managing agents to support their operations. These agents may handle all or some aspects of procurement and contract management. There is a risk that this may create conflicts of interest, as managing agents can be part of a wider group of companies, one of which could tender for the works the managing agent is specifying.
- An IDB or its agent may, intentionally or not, specify works in a manner that favours or appeals more directly to particular contractors. This may eliminate the opportunity for smaller, local contractors that do not reach predetermined benchmarks to tender for works for which they may be well suited. It may also provide an unfair advantage to contractors from the same group of companies, as they can more easily demonstrate their ability to match the tender requirements.
- If works are specified by a managing agent and delivered by another company in the same group, this could result in tensions between the interests of the IDB and those of the group.
- Elected members may be prejudiced towards making decisions in the interests of their own land or business, even though this is contrary to requirements of the Act.
- Flood risk management is a specialist area. This means there are a limited number of organisations that undertake some aspects of this work. The IDBs therefore can often have a limited pool of potential contractors to select from. This may lead to original contracts being extended or limited invitations to tender to only 'known' operators or even single suppliers. It raises risks of not achieving good value for money through open competition.
- There are potential conflicts of interest within the districts between the various interested parties, particularly with regard to environmental protection measures and issues of downstream water quality, for instance a wetland restoration project may raise water levels in one area and redefine the water course and siltation characteristics.

Figure 6**Scenario of where a conflict of interest may arise**

An Internal Drainage Board (IDB) appointed 'Service Co' to act as its managing agent. Service Co is a member of a wider group of companies that includes consultancy and construction providers, Consult Co and Construct Co. Service Co defined the tender specifications on behalf of the IDB for an invitation to tender for construction works. It used its group standard format and in so doing gave an advantage to Construct Co in responding to the invitation. When Construct Co was appointed, the IDB expected Service Co to manage the contract in its best interests, but could not be certain that this was the case because of the relationship between the companies.

Source: National Audit Office analysis

2.31 Neither the Department nor the Environment Agency has a statutory role in addressing these possible conflicts of interest, but both support the work that ADA has done to draw attention to the potential for such conflicts to arise. There is no obligation for an IDB to maintain a register of board declarations of interest. ADA has encouraged all members to do so to assist the board's chair in managing potential conflicts of interest. According to IDBs' annual returns all but one IDB has now adopted a register of members' interests, and the remaining IDB intends to do so.

2.32 Most IDBs do not set up sub-committees such as audit committees or independent project boards to support the board in assuring good practice across their activities. However, the increasing use of public sector cooperation agreements between IDBs, the Environment Agency and local authorities is helping to improve transparency, open up the market to more suppliers and support more effective local working arrangements.⁹ By February 2016, the Environment Agency reported 59 such agreements with IDBs and a further five in development. These arrangements, although not universally adopted, should allow greater sharing of information. IDBs should therefore be able to get better assurance that they are achieving value for money from their expenditure.

⁹ A template for public sector cooperation agreements is available on ADA's website, available at: www.ada.org.uk/downloads/other/downloads_page/PSCA_March_2016.pdf

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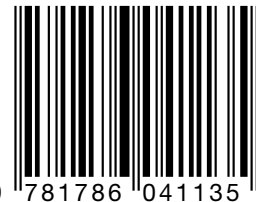


National Audit Office

Design and Production by NAO External Relations
DP Ref: 11448-001

£10.00

ISBN 978-1-78604-113-5



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