



WALES **AUDIT** OFFICE

SWYDDFA **ARCHWILIO** CYMRU

Audit of Accounts 2010-11

Caldicot and Wentlooge Levels Internal Drainage Board

Report in the Public Interest

Audit year: 2010-11

Issued: 8 October 2012

Status of report

This report in the public interest has been prepared in accordance with Section 22 of the Public Audit (Wales) Act 2004.

No responsibility is accepted in relation to any officer, member or any other person in their individual capacity or any third party

The Wales Audit Office team that assisted me in preparing this report comprised David Rees, Derwyn Owen, Deryck Evans, Katrina Febry, Jeremy Morgan, Jane Thomas, Lucy Evans, Ian Phillips and Ramim Khan.

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Summary report

Summary

1. This document is issued in the public interest under Section 22 of the Public Audit (Wales) Act 2004 (the Act) which requires me to consider whether, in the public interest, I should make a report on any matter which comes to my notice in the course of the audit, in order for it to be considered by the audited body or to be brought to the attention of the public. I have issued this report to draw the public's attention to a failure in governance arrangements and inadequacies in management and internal control at Caldicot and Wentlooge Levels Internal Drainage Board (the Drainage Board). As a result of such failures the Drainage Board has, in my view, acted unlawfully on occasions. I believe it is important that the public has a full and proper awareness of the events concerning the Board. I also consider it appropriate to give the Drainage Board an opportunity to demonstrate whether they have taken the important steps needed to improve arrangements and to ensure that the risk of such failures recurring is reduced to a minimum.
2. In 2011, a number of concerns relating to the operation of the Drainage Board were raised with me in my capacity as the statutory auditor of the Drainage Board by former officers and a former member of the Board. The concerns raised included matters of overall governance, probity and value for money. I determined that several of the issues raised were matters which fell within my statutory remit and should be investigated.
3. In the course of my audit investigation, I considered whether the Drainage Board has been governed and managed to the standards the public has a right to expect from a public body.
4. I have concluded that the Drainage Board has not been governed and managed effectively for a number of years. I found that its governance framework was inadequate and some elements I would have expected to find within a robust governance framework were absent. As a consequence, the Drainage Board operated in an ad hoc and inconsistent way and on a number of occasions this resulted in the Drainage Board acting unlawfully. Furthermore, the Drainage Board has been beset by personal conflict, the interests of individuals have been allowed to influence decision making and the Board is unable to demonstrate that it delivered value for money. In short, the Drainage Board has not operated to the standards that the public has a right to expect from a public body. I found that:
 - the Drainage Board's governance arrangements were inadequate and ineffective;
 - some members and officers acted in a way which is likely to undermine public confidence in the Drainage Board;
 - the Drainage Board did not exercise good financial management and control at a corporate level; and
 - the Drainage Board has failed to demonstrate that it has achieved value for money and acted lawfully in some key areas.

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5. In my view, the organisation lost sight of the fact that it was a public body. It failed to remember that it did not exist for its own sake but to serve those who work and live on the Gwent Levels.
 6. It has been apparent throughout the course of my review that the Drainage Board has been beset by personal conflict both at Board and officer level for a considerable period of time. This led to the breakdown of relationships, staffing disputes and infighting. This has severely impacted on the ability of the Drainage Board to conduct its business effectively. I have not sought, nor is it my role, to arbitrate in these matters. However, the Drainage Board will need to continue to address a number of cultural issues if it is to operate effectively in the future. In my view, these cultural issues were allowed to fester and grow in the absence of a robust and effective governance framework.
 7. Since 1 April 2005, the Auditor General has appointed auditors to undertake the annual audit of the accounts of the Drainage Board. These audits identified some matters of concern and made recommendations for improvement, particularly in respect of the financial management and budgetary control within the Drainage Board. The audit which led to this report has been far more extensive than would be the case in conducting an annual audit of the financial statements. I have therefore considered matters that the auditor would not routinely consider. However, the number of issues identified within the current audit and the scale and significance of some of these issues raises legitimate questions regarding the effectiveness of previous audits. I am currently considering what improvements need to be made to our methodology for the audit of small public bodies and for staff training to ensure that key audit issues are identified and reported on as early as possible.
 8. In September 2011, some of the issues emerging from the current audit were communicated to the Drainage Board's Interim General Manager (in March 2012 the Interim General Manager was appointed as Clerk and General Manager, and is referred to in this report as the General Manager). I am pleased to report that the Board has put in place a programme of organisational improvement. The improvement programme is well underway.

Recommendations

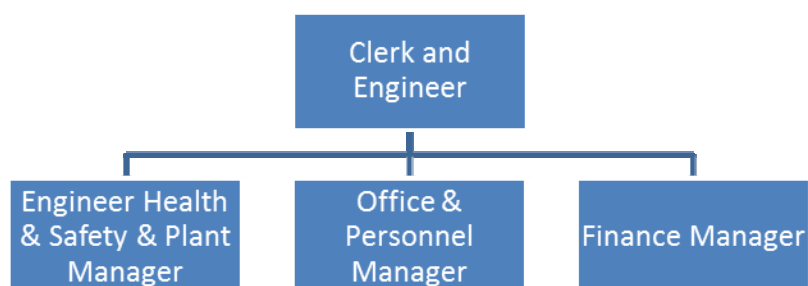
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| R1 | The Board should satisfy itself that the improvement programme it has put in place is effectively addressing the matters of concern raised within this report. |
| R2 | The Board should commission an independent review to commence in 12 months' time to assess the impact and effectiveness of its improvement programme. |
| R2 | The Board should regularly review its progress against the improvement programme and ensure that all actions are completed. |
| R4 | The Board should consider whether to seek recovery of salary overpayments made to the former Clerk and Engineer. |

Detailed report

Overview of the structure, financing and activities of Caldicot and Wentlooge Levels Internal Drainage Board

9. The Drainage Board is a public body which operates under statutory provisions; primarily the Land Drainage Act 1991. The Drainage Board is responsible for the day-to-day management of the drainage system on the Gwent Levels. This is an area of land between Chepstow and Cardiff, south of the M4 motorway and bordered by the Severn Estuary. This is an area where in the absence of a well-maintained drainage system valuable agricultural, commercial and residential land would otherwise be flooded on a periodic basis.
10. The operations of the Drainage Board are financed from the following sources:
 - levies raised upon Monmouthshire, Newport and Cardiff local authorities (72 per cent);
 - private drainage works undertaken on behalf of landowners or other organisations at their request (18 per cent);
 - other miscellaneous income (eight per cent); and
 - rates payable by landowners with property on the Gwent Levels (two per cent).
11. The operations of the Drainage Board are overseen by a Board. The Board, until elections in May 2012, comprised 37 members. Eighteen of the members were elected from amongst the ratepayers and 19 were appointed to the Board by the local authorities on whom levies are raised. In recent years, not all 19 seats on the Board for local authority appointed members were filled resulting in a majority of elected members on the Board. Following the elections in May 2012, Newport City Council has yet to appoint representatives to the Board.
12. At the time this audit work began, the Drainage Board employed 22 members of staff headed by the former Clerk and Engineer, Mr Jackson-Johns. The senior management team included Mr Jackson-Johns' wife who was employed in the capacity of Office and Personnel Manager. The senior management structure as at 1 June 2011 is set out in [Exhibit 1](#).

Exhibit 1: The Drainage Board senior management structure



13. The Drainage Board is an unusually small public body. It has a small workforce with very limited administrative and support capacity. Members of the Board receive no remuneration in respect of the functions they perform for the Board (other than the Chairman of the Board who receives a small monthly allowance). These members give up a considerable amount of their time on a voluntary basis to provide public service. This is important context in respect of my audit findings.
14. Since the audit commenced, several key personnel changes have been made within the Drainage Board. The Clerk and Engineer, the Office and Personnel Manager and the Engineer Health and Safety and Plant Manager have resigned and a General Manager has been appointed. The Drainage Board's management has now been restructured.
15. The events and issues referred to in this report predate the implementation of the new management structure. The Board has recently approved and implemented a revised structure for its field staff and a revised and modernised pay structure which the current General Manager has told us will result in an annual cost saving to the Drainage Board.
16. The following sections set out the conclusions of my audit of the Drainage Board.

The Drainage Board's governance arrangements were inadequate and ineffective

17. Public bodies must demonstrate that they are delivering the services for which they are responsible in accordance with principles of good governance. This means that public bodies must put in place robust arrangements to ensure that:
 - there is a clarity of purpose and strategic direction;
 - they are acting within their legal framework;
 - the roles of officers and Board members are documented and clearly understood;
 - decisions are made in an open and transparent way and clearly reported and communicated; and
 - Board members and officers conduct themselves in accordance with the highest standards of propriety required of those holding public office.
18. In my view, the governance arrangements at the Drainage Board, during the period to which this report relates, were deficient in a number of key areas. In particular:
 - the Drainage Board lacked clarity of purpose and strategic direction;
 - the Board lacked a properly constituted decision-making framework;
 - the Establishment Committee, one of the Board's key committees, lacked a clear membership and remit and failed to keep adequate records; and
 - the formal record of Board and committee proceedings was deficient in several respects.

The Drainage Board lacked clarity of purpose and strategic direction

19. Having a clear purpose is fundamental to good governance. It supports the delivery of good-quality services and helps ensure value for money. When this purpose is communicated effectively it can properly guide people's actions and decisions at all levels of the organisation.
20. The primary responsibility for determining the Drainage Board's strategy and corporate objectives rests with the Board, supported by its senior officers. I considered, during the course of my audit, whether there was evidence that the Board was providing strategic leadership and had a clear focus on the organisation's purpose and on outcomes for citizens and service users.
21. I consider that the Board was not providing strategic leadership. The minutes of the Board and its committees indicate that it was too involved in detailed operational matters and has not given sufficient attention to setting the organisation's purpose, strategic objectives and priorities.
22. The Drainage Board did not have key strategic documentation in place which I would have expected to be present, such as:
 - a strategic plan including corporate/strategic objectives and performance measures;
 - operational plan(s) clearly linked to the corporate/strategic objectives;
 - an organisational budget (capital and revenue) prior to 2010-11;
 - overall work programme for the Drainage Board;
 - private works policy which links to the overall agreed work programme; and
 - a workforce plan.
23. The Drainage Board's current General Manager has acknowledged the need for the Board to develop a coherent strategic approach and is currently working with the Board to develop the Board's approach to business planning. This work is well underway and the General Manager expects it to be completed by the end of 2012.
24. The development of a clearly articulated strategy requires significant investment but is crucial if the Drainage Board is to demonstrate that it is delivering value for money for those it serves.

The Drainage Board's decision-making framework was not properly constituted and, as a result, the Drainage Board has been operating contrary to law

25. The Drainage Board is a statutory body and must act in accordance with the legislation that governs its operations and proceedings. Schedule 2, paragraph 3(1) of the Land Drainage Act 1991, which governs the proceedings of internal drainage boards, empowers internal drainage boards, subject to ministerial approval, to make and implement rules regulating its proceedings:

'An internal drainage board may, with the approval of the relevant Minister, make rules:

- (a) for regulating the proceedings of the board, including quorum, place of meetings and notices to be given of meetings;
- (b) with respect to the appointment of a chairman and a vice-chairman;
- (c) for enabling the board to constitute committees; and
- (d) for authorising the delegation to committees of any of the powers of the board and for regulating the proceedings of committees, including quorum, place of meetings and notices to be given of meetings.'

26. In order to operate effectively, internal drainage boards need to adopt and obtain ministerial approval for a scheme of rules. I would expect these rules to constitute the Drainage Board's standing orders and include the elements referred to in [paragraph 25](#).
27. The minutes of a meeting of the Board's Governance/Establishment Committee on 30 June 2008 record that the former Clerk and Engineer told the committee 'the Regulations and Standing Orders for the Board date back to 1943. There is urgent need for these to be updated in line with best practice...' In June 2008 therefore, the Board had not adopted and received approval for rules of procedure in accordance with legislative requirements. This is despite the fact that in 2005 the Department of the Environment, Food and Rural Affairs (DEFRA) had issued model standing orders which were available for adoption and approval by internal drainage boards.
28. At a meeting of the Board on 9 February 2009 several documents, including draft *IDB Regulations and Standing Orders* and an *IDB Scheme of Delegation* were circulated to members of the Board. The minutes record that the Board resolved to formally adopt the documents from 1 April 2009. Officers of the Welsh Government, however, have confirmed that they have been unable to locate any request by the Drainage Board to the relevant Minister for approval of standing orders as required under the Land Drainage Act 1991. The documents adopted by the Board were based on the model documents issued by DEFRA.
29. Prior to the Board's decision in February 2009 to adopt standing orders, the Board had already purported to establish several committees of the Board including:
 - Establishment Committee
 - Governance Committee
 - Finance Committee
 - Works and General Purposes Committee
 - Remuneration and Expenses Committee
30. I have requested details of when each of these committees was established and a copy of their respective constitutions but the Drainage Board has not been able to provide me with this information.
31. Prior to 1 April 2009, the Board had not made rules approved by the relevant Minister under Schedule 2, paragraph 3(1) of the Land Drainage Act 1991 to enable it to constitute committees, decisions made by these committees would therefore, in my view, be contrary to law, unless such decisions were confirmed by the full Board.

32. On 9 February 2009, the Board agreed to adopt a scheme of delegation which sets out matters reserved for the Board, ie matters which only the Board could decide. However, the scheme of delegation does not set out the role, remit and powers of the Board's committees. Furthermore, I have not been able to locate any other documentation that established the terms of reference and/or constitution of the Board's committees. In the absence of such documentation and or Ministerial approval, I consider these committees have not been properly or lawfully constituted. Moreover, I have been unable to establish whether the committees operated within the remit intended by the Board on their establishment.
33. The Drainage Board is required under legislation to ensure that members appointed to the Board by local authorities outnumber elected members by at least one. This is to reflect the fact that the local authorities provide the majority of the Drainage Board's financing. Whilst the historic composition of the Board has technically reflected the statutory requirements, not all appointed member vacancies on the Board were filled, resulting in a majority of elected members on the Board. More significantly, many of the appointed members did not attend meetings of the Board or its committees. The failure of several appointed members to attend meetings contributed to an impression that the Drainage Board was being run by the elected members to the exclusion of appointed members.
34. Each of the Board's committees were constituted to provide for a majority of elected members over appointed members. This has led to a perception, by some Board members, that the committee structure was engineered to ensure that the elected members were able to exercise control of the Board, despite the fact that 72 per cent of the Board's financing was provided by local authorities who had appointed members to represent the interests of local authority taxpayers.
35. I consider that the perception that elected members had an undue influence over the Board's proceedings is accurate. However, I acknowledge that this was also due to the fact that many appointed members did not attend Board meetings.

The Drainage Board's Establishment Committee did not have a clear membership and remit, and inadequate records were kept of its proceedings prior to 2011

36. At an unspecified date (during or before 2007), a Board committee was purportedly set up which was known as the Establishment Committee. But in the absence of ministerial approval, the Establishment Committee had no powers to take decisions or make recommendations. The Drainage Board has been unable to produce any documentation that sets out the role and remit of the Establishment Committee or the scope of its decision-making powers.
37. The Establishment Committee met irregularly following its creation and until 2010 it appears to have been dealing primarily with pay and grading matters. It is not possible to conclude on the extent and scope of the committee's proceedings due to the inadequacy of the records maintained as set out in [paragraphs 42 to 48](#).

38. In late 2010 and early 2011, the type of issue being dealt with by the Establishment Committee changed. The Establishment Committee started to consider a range of matters that were of corporate significance eg, redundancy/restructuring proposals, grievance and disciplinary matters.
39. The Establishment Committee met four times between 28 February 2011 and 14 July 2011. Most of the members of the Establishment Committee were elected Board members (as opposed to local authority appointed members). Between March 2009 and July 2011, the Establishment Committee had 7 to 10 members but, for most of this period, only two of the members were local authority appointed members. The balance of representation on the Establishment Committee was notably different from that required by law for the Board as a whole. In any event, as noted, in the absence of ministerial approval, the Establishment Committee has no powers to take decisions or make recommendations.

Appointments to and membership of the Board's Establishment Committee was unclear

40. It is unclear how some members of the Establishment Committee were appointed to that committee. Whilst Board minutes record that the appointment of some members of the Establishment Committee was approved by the Board, I have been unable to find a record of the appointment of other members of the Establishment Committee.
41. The minutes of a meeting of the Board dated 14 February 2011 record that the Board resolved that two new members of the Establishment Committee should be appointed. However, the two new members approved by the Board had already attended and participated in Establishment Committee meetings in November and December 2010. The attendance and participation of these individuals in these Establishment Committee meetings, without the Board's approval, was highly irregular and would have been sufficient to invalidate the proceedings. The absence of any formal minutes of the November and December 2010 meetings means that it is not possible to determine what was discussed at these meetings and what decisions were made.

The records of the proceedings of the Establishment Committee prior to 2011 were inadequate

42. No formal minutes were kept of meetings of the Establishment Committee prior to 2011. Before 2010 the only records retained were short, handwritten notes of the meetings. These notes, whilst recording resolutions of the committee, do not provide any record of the considerations of the committee or of the rationale for decisions reached. During 2010 very short, typed summaries of the meetings were kept. However, these records do not include the considerations of the committee nor is it clear whether these notes were approved by the members of the committee. I have not been able to locate any agendas for Establishment Committee meetings prior to 2011.
43. In 2011, full minutes of the Establishment Committee were produced which set out in more detail the deliberations of the Establishment Committee and the resolutions reached by the committee.

44. The Board minutes record that the Board received reports from the Establishment Committee. It is unclear whether these were written or oral reports. The Board has been unable to provide me with copies of Establishment Committee reports prior to 2011 and therefore it is not possible to conclude on their contents. Maintaining an effective audit trail within decision making is crucial, both to demonstrate transparency and to demonstrate that decisions have been made fairly and lawfully.
45. It is not possible to conclude whether business conducted in the Establishment Committee was fully and accurately reported to the Board and whether the Board received the information it required to take an informed decision on the Establishment Committee's recommendations.
46. I consider that the proceedings of the Establishment Committee prior to 2011 were highly irregular for the further reasons set out above.
47. It is not apparent why the scope of the Establishment Committee changed from late 2010 onwards or how the decision to change its responsibilities was reached.
48. Since the appointment of the current General Manager, no further Establishment or other committee meetings have taken place. There is now no committee structure and the Board discusses and makes all decisions.

The formal records of committee and Board proceedings contain inaccuracies, anomalies, breaches of information law and, in a number of cases, minutes appear to have been drafted to represent the views of the former Clerk and Engineer and former Office and Personnel Manager rather than those of the Board and its committees

49. The record of proceedings for meetings of a public body is extremely important in demonstrating that that body has operated in a lawful, fair and transparent way and made its decisions objectively. The record will usually include minutes of meetings, agendas, papers considered and a record of those who attended each meeting. The Land Drainage Act 1991 sets out that minutes which have been signed by the Chairman of the meeting will be 'evidence of the proceedings' of internal drainage boards.
50. As set out in paragraphs 42 to 48, I found that the records maintained for one of the Board's main committees prior to 2011 were particularly poor.
51. I have reviewed a sample of Board and committee meeting records from 2007 to date and this review has identified examples of inaccuracies, anomalies and breaches of information law. These include:
 - Board and committee minutes refer to reports received by the Board or committee but in some cases officers of the Drainage Board have been unable to locate a copy of the reports referred to (see paragraphs 44, 94, 100 and 118).

- The Board minutes of 9 February 2009 refer to a governance meeting held on 26 January 2009. The Drainage Board has been unable to locate any records for a meeting held on this date. It is not possible to determine whether the minutes of 9 February 2009 are inaccurate or whether a meeting was held on 26 January 2009 and no records were kept.
 - The Establishment Committee minutes of 18 January 2010 record that the former Vice-Chairman of the committee was not in attendance. However, the attendance sheet shows a signature against his name as being present at the meeting.
 - On a number of occasions minutes of the Board made reference to named individuals eg, ratepayers in arrears with their rates and comments relating to staff performance. These minutes were routinely distributed to staff and made publicly available. The disclosure of personal information is potentially a serious breach of the Data Protection Act 1998.
- 52.** On his appointment as Clerk and Engineer to the Board on 1 April 2001, Mr Jackson-Johns had responsibility for taking the minutes of the Board and its committees. He transferred this responsibility to his spouse, the former Office and Personnel Manager, in or around 2003.
- 53.** It is evident that some of the minutes of the Board and its committees during 2001 and 2002 were written not as an historic record of the meeting proceedings but to represent the personal opinions and interests of the former Clerk and Engineer. This is particularly the case for meetings during which Mr Jackson-Johns' remuneration was discussed. The minutes make use of underlining, capitalisation and adjectives to emphasise the opinions and feelings of Mr Jackson-Johns in respect of proposals relating to his pay. I am concerned that the Board did not make alternative arrangements for taking minutes when the minute-taker had a clear conflict of interest. I am also concerned that minutes in this form were accepted by members of the Board and signed by the former Chairman.
- 54.** I have also noted that during 2009, Mrs Jackson-Johns started to refer to her own role within the minutes as 'the Assistant Clerk'. Mrs Jackson-Johns was never appointed Assistant Clerk.
- 55.** Following the departure of Mr Jackson-Johns, the new General Manager has acknowledged deficiencies in respect of the record keeping of Board and committee meetings. He commissioned consultants to support the Board in this area and a number of significant improvements have been implemented.

The Board's failure to introduce key governance policies and procedures has contributed to major governance failings within the Drainage Board's operations

- 56.** Public bodies should establish robust and effective governance arrangements which set out the parameters within which the organisation operates and which help direct and guide the conduct and behaviour of members of staff and Board members.
- 57.** I expect all public bodies to have in place:
- standing orders which govern the proceedings of the Board at a corporate level, including ensuring that the Drainage Board complies with the legislative framework governing it (see [paragraphs 25 and 59](#));
 - constitutions setting out the roles, remits and delegations of each part of the governance structure, including Board committees (see [paragraphs 25 and 59](#));
 - financial regulations which detail the financial responsibilities that apply to everyone working in the organisation and regulations for financial matters such as contract procurement, investment of assets, banking, audit and staff remuneration (see [paragraph 60](#));
 - codes of conduct for officers and members which set out the values and principles of good conduct which public officials are required to adhere to (see [paragraph 61](#));
 - policies which provide guidance for staff and Board members on dealing with personal and/or pecuniary interests which arise in the course of their work, including requirements for declaration and recording of interests and participation in decision making (see [paragraphs 62 to 64](#)); and
 - gifts and hospitality policies which provide guidance for staff and Board members on accepting offers of hospitality and procedures for reporting and approving such matters (see [paragraph 65 and 66](#)).
- 58.** These need not be separate documents, for example a Code of Conduct for Board members may include a policy on Board member interests.
- 59.** I have concluded that the Drainage Board's governance policies and procedures were wholly inadequate and, in many instances, non-existent. Until April 2009 when the Board implemented new standing orders, the Drainage Board was operating under standing orders titled *Statutory Rules and Orders* and dated 1942. The Statutory Rules and Orders were made under legislation repealed in 1991. The Statutory Rules and Orders do not set out the Drainage Board's rules of procedure or set out a constitutional framework for the Drainage Board's operation. I have not been able to identify any documentation that sets out the remits, powers or rules of procedure for any of the Board's committees. As noted above, the Board only adopted a scheme of delegation with effect from 1 April 2009. Whilst this document identifies matters that are reserved for determination by the Board, it does not identify to which committee or officer non-reserved matters could be delegated. But in the absence of ministerial

approval, the delegation to committees was ineffective and there was in any event no power to delegate to officers.

60. Until April 2009, the Drainage Board did not have financial regulations in place. In the absence of such regulations, the Drainage Board was operating informally in accordance with custom and practice.
61. The Drainage Board did not adopt codes of conduct for either employees or Board members until 9 February 2009. Codes of conduct were adopted on 9 February 2009 and came into force with effect from 1 April 2009. Employees were required to sign and date a form acknowledging that they had received the code. A copy of the signed form was placed on each employee's employment file. The Code of Conduct for Board members which was adopted on 9 February 2009 is a one-page summary document in bullet point form. This document, due to its lack of detail, has very limited value. Board members were not required to sign to acknowledge receipt of this document or their acceptance of its provisions.
62. Until April 2009, the Board had not approved any policies relating to employee or Board members' personal or pecuniary interests which might conflict with the Drainage Board's interests. The Code of Conduct for Board members adopted with effect from 1 April 2009 does identify the need for Board members to declare their interests and, in certain circumstances, withdraw from decision making. As set out in [paragraph 61](#), the code is not comprehensive and Board members were not required to indicate acceptance of its provisions. The Drainage Board's standing orders introduced from 1 April 2009 include several provisions in respect of Board member interests. The standing orders emphasise the requirement for Board members to declare their interests and, where there is a conflict of interest, to withdraw from participation in the decision-making process. I have found, during the course of my audit, that some Board members did not comply with this requirement (as set out in [paragraphs 151](#) and [152](#)).
63. Board members were expected to complete on election or appointment a form – *Register of Members' Interests* – which recorded their interests, including interests in property, contract and any financial and/or business interests and memberships of other organisations. Members were also expected to complete updated forms if their interests changed. The requirement to disclose this information appears to have been introduced in 2008. However, a review of the file held by the Drainage Board indicates that not all members completed these forms and I have found no evidence that officers undertook any follow-up to ensure that the forms were submitted.
64. The Employee Code of Conduct adopted from April 2009 makes no explicit reference to employee interests and the Drainage Board did not have any policies or guidance for staff in respect of personal or pecuniary interests. The financial regulations adopted from April 2009 do make a brief reference to staff interests and states: 'employees must declare to an appropriate responsible officer any financial or other interest, which could conflict with the Board's interests'.

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- 65.** On occasions, public officials may be offered gifts or hospitality by suppliers, service users and members of the public. It is essential that public sector organisations have policies and guidance in place to guide staff and Board members on whether offers may be accepted and on the procedures for recording offers and authorising their acceptance. This is necessary to protect the organisation (and individuals) from allegations that decisions have been influenced by inappropriate considerations. The Drainage Board did not have adequate policies and procedures in place in respect of gifts and hospitality. There was no policy or procedures in place in respect of offers of gifts and hospitality to Board members.
- 66.** The Employee Code of Conduct does not refer to gifts and hospitality. The financial regulations which came into force on 1 April 2009 state that for employees ‘in terms of hospitality and gifts, only usable gifts of a small value may be accepted by individual staff or a section as a whole. Under no circumstances may cash be accepted as a gift.’ There were no guidelines or procedures implemented which set out the procedure for recording offers of gifts and hospitality or for authorising the acceptance of offers. The Drainage Board does not have any record of offers received and accepted. My audit found that hospitality was accepted from an equipment supplier in Italy as set out in [paragraphs 207 to 222](#). I have also been told in an interview by an officer of the Drainage Board that, on more than one other occasion, members of staff accepted hospitality at Chepstow Races from suppliers. In the absence of any record of the acceptance of hospitality, it is not possible to confirm the dates or the circumstances surrounding the acceptance of this hospitality.
- 67.** Since September 2012, the current General Manager has reviewed the Drainage Board’s governance arrangements and associated documentation and revised arrangements are being introduced.

Some members and officers acted in a way which is likely to undermine public confidence in the way in which the Drainage Board operated

- 68.** The standards expected of those holding public office are high. It is essential that such individuals conduct themselves in accordance with the seven principles of public life – the so-called ‘Nolan principles’ (see [Appendix 1](#)). Not only must public officials conduct themselves in accordance with these principles, they must also be seen to do so if public confidence is to be maintained.
- 69.** In the course of my audit I came across specific examples where I consider officers and members acted in a way which is likely to undermine public confidence in the operation of the Drainage Board. These matters relate to:
- proposals for the severance of the former Clerk and Engineer’s contract of employment;
 - proposals relating to the former Clerk and Engineer’s pay; and
 - the role and conduct of some Board members and the former Clerk and Engineer in relation to a legal case brought against the Drainage Board.

The former Clerk and Engineer had a conflict of interest when he drew up proposals for his own redundancy and presented those proposals to the Board's Establishment Committee

- 70.** At a meeting of the Board on 20 September 2010, the minutes record that the 'CEO [Mr Jackson-Johns] reported that as a Statutory Body and as a responsible employer, the Board is required to have a formal Redundancy Policy in place'. A draft policy was circulated for Members' information, which was approved by Members. The document sets out, albeit briefly, the process to be followed when considering potential redundancies and the selection criteria to be applied. This document was, in my view, a precursor to putting forward restructuring/redundancy proposals.
- 71.** The minutes of the Establishment Committee meeting dated 28 February 2011 record that the committee agreed unanimously to 'recommend to the full Board that they contemplate redundancies and commence the process of fair consultation with employees, in consultation with the Union'. The minutes do not record any reasons why this recommendation was made or what considerations the Establishment Committee had taken into account in making this recommendation. The former Chairman and Vice-Chairman of the Board have stated that the Establishment Committee did consider and discuss reasons why the Drainage Board might need to make redundancies. They are unclear why these discussions were not recorded in the minutes. They also told me that the former Clerk and Engineer was asked to consider a range of different scenarios and to propose plans for each of these scenarios. In the event the former Clerk and Engineer only produced one proposal, that related to his own redundancy.
- 72.** The minutes of a Board meeting dated 21 March 2011 record that 'the Members agreed that consultation would be commenced with its employees and the GMB Union in order to contemplate redundancies in due course'. The minutes do not record any reasons why this recommendation was made or what considerations the Board took into account in making this decision.
- 73.** The Establishment Committee reconvened on 20 April 2011. The minutes state that 'The Board must now progress with the process of redundancies as recommended by the Establishment Committee and resolved by the full Board previously. The CEO [Mr Jackson-Johns] confirmed that he would shortly be in a position in early May to outline a series of proposals for the Board's consideration which would demonstrate cost savings for the Board going forward. It was stated that any redundancies/ re-evaluation of positions would be open, fair and reasonable and undertaken with due consultation with all employees and the Union, and in accordance with the Board's Redundancy Policy. The minutes do not set out any of the considerations taken into account which underpinned the decision to progress a restructuring of the Drainage Board leading to staff redundancies.

74. The former Clerk and Engineer, Mr Jackson-Johns, had in fact already prepared a paper entitled *Work Proposal & Board Restructuring*, dated 20 April 2011. This paper was directed to the former Chairman and former Vice-Chairman of the Board, Mr Waters and Mr Attewell. The paper states 'I would like to speak to you both in confidence on a very important matter'.
75. The main thrust of the paper is a proposal that Mr Jackson-Johns be granted 'enhanced voluntary redundancy from the Board with the signing of the relevant compromise agreement with effect from the 30th June 2011'. The paper also suggests that Mr Jackson-Johns would be willing to be re-engaged as a consultant to the Drainage Board. Whilst the paper is primarily related to Mr Jackson-Johns' post, it also briefly sets out wider Board restructuring proposals, identifying posts which were 'safe' and others which were 'unsafe'. The paper provides no rationale to support the need for restructuring. Furthermore, it gives no basis for determining which posts were 'safe' and which posts 'unsafe'. I have also noted that whilst the paper designated Mr Jackson-Johns' wife's post as 'safe', Mr Jackson-Johns designated the posts of two other members of staff with whom he and his wife had an ongoing employment dispute as 'unsafe'.
76. The paper prepared by Mr Jackson-Johns makes no reference to the Drainage Board's Redundancy Policy which had been approved by the Board on 20 September 2010 and the proposals put forward by Mr Jackson-Johns are inconsistent with the policy itself.
77. The paper in support of his restructuring proposals is wholly inadequate and inappropriate for the reasons set out in [paragraph 75](#). I consider that Mr Jackson-Johns' primary objective was to end his employment by the Drainage Board having secured a significant financial payment.
78. On 9 May 2011, Mr Jackson-Johns wrote to the Drainage Board's solicitors to update them on progress on the restructuring proposals. In this correspondence, he referred to a meeting he had held with Mr Waters and Mr Attewell (the former Chairman and former Vice-Chairman of the Board respectively) regarding his proposals for restructuring the Drainage Board. In this correspondence, Mr Jackson-Johns records his account of the meeting which includes:
- 'These [Mr Jackson-Johns' proposals] have been accepted with respect to my position and the other Proposals will be actioned accordingly (may be modified as needed as these are an initial base to work from).'
 - 'They have also requested I provide some limited Consultancy Work (as detailed in my Proposals).'
 - 'This will now start the redundancy process and the restructuring taken forward accordingly.'
 - 'The Establishment Committee will therefore now be meeting on Tuesday 31 May at 7.00pm where the Chairman will be recommending I have Voluntary Redundancy (Enhanced/Compromise Agreement etc.) with effect from 30th June 2011.....'

- 79.** The former Chairman and former Vice-Chairman have both stated in interview that Mr Jackson-Johns' account of this meeting is inaccurate. They maintain that they did not agree to Mr Jackson-Johns' proposals or that any payment should be paid to him should he leave the employment of the Board. The former Chairman and former Vice-Chairman maintain that they urged Mr Jackson-Johns to remain in the employment of the Drainage Board. However, Mr Jackson-Johns was adamant he would be leaving his employment with the Drainage Board on 30 June 2011. The former Chairman and former Vice-Chairman have told me that they reluctantly agreed that the Establishment Committee would consider Mr Jackson-Johns' proposals. Mr Jackson-Johns has stated in interview that whilst the former Chairman and former Vice-Chairman had reluctantly agreed to his proposals, he understood that this agreement was subject to Board approval.
- 80.** On 20 May 2011, Mr Jackson-Johns sent an e-mail to an external consultant. He wrote: 'As advised – I am taking Voluntary Redundancy from the Board with effect from the 30th June 2011. The Chairman and Vice-Chairman have requested on behalf of the Board that they would like to use my services as a Consultant to the Board until a suitable replacement is recruited and the current 'difficulties/investigations etc. are resolved for the Board.'
- 81.** At the point of Mr Jackson-Johns sending this e-mail, neither the Establishment Committee nor the Board had met to consider Mr Jackson-Johns' proposals.
- 82.** On 31 May 2011, the Establishment Committee met. Mr Waters and Mr Attewell were present at the meeting as Chairman and Vice-Chairman of the committee respectively. Members were only provided with a copy of Mr Jackson-Johns' proposals and a letter from Mr Jackson-Johns commending his proposals to the Committee at the meeting itself. The report was a slightly updated version of the report referred to in [paragraphs 74 to 76](#). The revised draft was dated 1 May 2011. It is not clear why the paper was not provided to members in advance of the meeting. This was a breach of the Drainage Board's standing orders which require papers for meetings to be provided to members at least seven days in advance of the meeting.
- 83.** The minutes record that Mr and Mrs Jackson-Johns left the room whilst the proposals were considered. The minutes record that the Establishment Committee resolved 'to recommend to the full Board to accept the restructuring proposals of the CEO's report and to pursue a course of restructuring for the Board'.
- 84.** There was no business case to support the redundancy proposals or to justify the decision of the Establishment Committee to recommend the proposals to the Board. As a public body, the Drainage Board must act reasonably and failure to do so may render decisions contrary to law. In the absence of a proper business case, I consider the decision made by the Establishment Committee to be unreasonable and unlawful.
- 85.** I consider that Mr Jackson-Johns had a conflict of interest in respect of the proposals presented to the Establishment Committee. He should not have been involved in drawing up proposals relating to himself and his spouse when he had a disqualifying personal financial interest in the matter. As such, he could not lawfully participate in the process in any way. His involvement amounts to bias and would have been sufficient to invalidate any decision taken to approve his proposals.

- 86.** I am concerned that when members of the Establishment Committee received the proposals put forward by Mr Jackson-Johns, they appear not to have recognised that Mr Jackson-Johns had a personal and pecuniary interest in the matter. The Establishment Committee should not have considered these proposals. In order to ensure that any restructuring proposals were in the interests of the Drainage Board, I would have expected members of the Committee to have sought impartial, external support and advice.
- 87.** The Board met on 13 June 2011. The restructuring proposals were included on the agenda but Mr Jackson-Johns' paper was only provided to members at the meeting. This was a breach of the Drainage Board's standing orders which required papers for meetings to be provided to members at least seven days in advance of the meeting.
- 88.** Mrs Jackson-Johns was responsible for taking the minutes of the meeting. Unfortunately, there is no minute of the discussion which ensued regarding Mr Jackson-Johns' restructuring proposals. I understand that the Board rejected Mr Jackson-Johns' proposals despite the Establishment Committee's recommendation that they should be accepted. Mr Jackson-Johns orally tendered his resignation and left the meeting accompanied by Mrs Jackson-Johns. It is for this reason that no minutes are available. Mr Jackson-Johns subsequently sought to rescind his resignation and requested that the Board grant him a severance package. The Board refused this request and Mr Jackson-Johns' contract of employment terminated at the end of June 2011.
- 89.** The Board subsequently took legal advice on its obligations in respect of Mr Jackson-Johns' employment and determined not to rescind the resignation and not to make any severance payment to Mr Jackson-Johns.

The Board failed to put in place arrangements to ensure the independent review of the pay of the former Clerk and Engineer. The Clerk and Engineer was involved in submitting proposals relating to his pay to committees of the Board.

Between late 2001 and early 2002, the former Clerk and Engineer was involved in submitting proposals relating to his own pay to committees of the Board which, if accepted, would have resulted in a variation to his contract of employment. Board members failed to recognise that a conflict of interest existed and allowed the former Clerk and Engineer to participate in the decision-making process when disqualified from doing so.

- 90.** The former Clerk and Engineer of the Drainage Board, Mr Jackson-Johns, was appointed as Clerk and Engineer of the Drainage Board on 23 March 2001. He subsequently adopted the designation of 'Chief Executive'. I have not seen any resolution of the Board or other documentation appointing Mr Jackson-Johns as Chief Executive. The former Chairman of the Board, Mr Waters, stated in interview that Mr Jackson-Johns had orally requested the designation of Chief Executive. The former Chairman stated that he did not agree to this request but Mr Jackson-Johns nevertheless started to use the title on Board documentation. The former Chairman stated in interview that this was done

‘surreptitiously’. Mr Jackson-Johns told us that he found the title ‘ridiculous’. Mr Jackson-Johns acknowledged that the Board had not resolved that he should have the title Chief Executive. He stated that he had adopted the title due to pressure from his senior officers to do so. I do not accept this explanation.

91. Mr Jackson-Johns’ contract of employment states that his post would be subject to the Association of Drainage Authorities (ADA) Lincolnshire Branch Scheme of Conditions of Service (the so-called ‘Lincolnshire terms’). Whilst the Lincolnshire terms are nationally recognised terms and conditions of service for employees of internal drainage boards, no drainage board is obliged to adopt them. The Lincolnshire terms include national pay-scales and terms for overtime, expenses etc. The Lincolnshire terms were adopted by the Board of the Drainage Board (sometime prior to 1996) and all employees were subject to these terms.
92. On appointment as Clerk and Engineer of the Drainage Board in March 2001, Mr Jackson-Johns was graded at Grade 12 of the Lincolnshire terms and placed on Spinal Point 41. Grade 12 incorporates pay points 41 to 44. The highest-published grade within the Lincolnshire terms is Grade 13 (incorporating pay points 44 to 47). The Lincolnshire terms allow for employers to introduce, if required, further grades above Grade 13 by extending the salary spine. For example, a drainage board could resolve to introduce a Grade 14 which would incorporate pay points 47 to 50.
93. I do not consider that the Board put in place proper arrangements to review the remuneration of the Clerk and Engineer, during Mr Jackson-Johns’ period of employment as Clerk and Engineer. It was left to Mr Jackson-Johns to draw up proposals for his own pay and to present them to the Board. Mr Jackson-Johns was not impartial in matters relating to his own pay but the Board did not make any arrangements to obtain impartial, independent external advice on Mr Jackson-Johns’ pay proposals.
94. On 26 November 2001, only eight months after his appointment as Clerk and Engineer, Mr Jackson-Johns submitted a request to the Board’s Works and General Purposes Committee for his post to be re-graded. The minutes refer to a ‘very detailed report that [Mr Jackson-Johns] had prepared regarding proposals to review his grading to fairly reflect his position as Clerk and Engineer to the Board from 1st April 2001’. Whilst the minutes refer to the report as ‘Appendix VI on the yellow sheets’, the Board has been unable to locate a copy of this report.
95. The minutes of the Works and General Purposes Committee record that Mr Jackson-Johns, in presenting his own proposals for re-grading, made reference to pay grades EM1 and EM2 and the Hays Points system as used by the Environment Agency ie, a different pay and grading system than that adopted by the Drainage Board. It does not appear that the committee was informed that had they accepted Mr Jackson-Johns’ proposals it would have resulted in a fundamental contractual change; effectively taking Mr Jackson-Johns’ pay outside the Lincolnshire terms.
96. In the event, the committee rejected Mr Jackson-Johns’ proposals and instead proposed to re-grade the job to Lincolnshire terms Grade 13 on Spinal Point 45.

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- 97.** Mr Jackson-Johns made a counterproposal that he be re-graded to Lincolnshire terms Band 13 on Spinal Point 47 (the highest spinal point within the Lincolnshire terms) and that he receive incremental increases payable in four steps of 2.5 per cent per annum applicable from 1 April 2002 until 1 April 2005. Mr Jackson-Johns' proposal would have resulted in him being paid in excess of the highest-published spinal point under the Lincolnshire terms, in effect creating a new grade. The minutes do not show that the committee was informed of this.
- 98.** Mr Jackson-Johns' counterproposal was rejected by the committee. The minutes record that Mr Jackson-Johns reluctantly accepted the recommendation of the committee. I am concerned regarding these events for the following reasons:
- Mr Jackson-Johns was engaged in making proposals relating to his own pay and participated in the committee's deliberations, despite having a pecuniary interest in the matter;
 - Mr Jackson-Johns does not appear to have informed the committee of the implications of accepting his proposals ie, that it would result in a fundamental variation in his contract of employment; and
 - the report referred to in the minutes, which set out Mr Jackson-Johns' pay and grading proposals cannot be found by the Drainage Board.
- 99.** I am also concerned that the minutes of the Works and General Purposes Committee, which record these events, appear to have been drafted to represent the personal views and opinions of Mr Jackson-Johns rather than as a factual, historic account of the meeting. Mr Jackson-Johns was the minute-taker for the Board and its committees during this period as set out in [paragraph 52](#). The minutes of the Works and General Purposes Committee meeting of 26 November 2001 use underlining, punctuation and capitalisation to emphasise Mr Jackson-Johns' opinions and feelings. Minute-takers are required to maintain objectivity when taking minutes. This was not the case on this occasion.
- 100.** Mr Jackson-Johns' pay and grading was discussed further at meetings of the Board on 10 December 2001, 14 January 2002 and 28 January 2002. The minutes refer to Mr Jackson-Johns' report on his pay and grading. The report as described is not filed with the minutes. However, on the Board's minutes file, I found a paper prepared by Mr Jackson-Johns which compared the operations of the Drainage Board with another internal drainage board. The purpose of this paper appears to be to justify an increase in Mr Jackson-Johns' pay. I am not clear whether this paper was provided to, or considered by, Board members.
- 101.** On 28 January 2002, the Board resolved to increase Mr Jackson-Johns' salary to Spinal Point 45 of the Lincolnshire terms, effective from 1 January 2002. In addition, the Board resolved to provide Mr Jackson-Johns with a 'suitable 4x4 vehicle, thereby ending the payment of monthly travelling expenses'. Whilst the Lincolnshire terms do not refer to the provision of cars for employees, the agreement to provide the car was in lieu of Mr Jackson-Johns' entitlement to a car allowance and mileage expenses. The Board granted this change after Mr Jackson-Johns submitted a business case to the Board showing that the provision of a car was a more cost-effective option for the Board than paying a car allowance and mileage expenses.

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- 102.** I am concerned that the minutes of the Board dated 28 January 2002 record that at that meeting the then Chairman of the Board (prior to Mr Waters' appointment as Chairman) acted as Mr Jackson-Johns' 'advocate' in respect of Mr Jackson-Johns' pay. I consider this wholly inappropriate. The Chairman should not have sought to represent Mr Jackson-Johns' interests. He had a duty to represent the Drainage Board's interests. The Chairman of the Board remained as Chairman of the meeting despite having taken on the role of Mr Jackson-Johns' advocate.
- 103.** I have further concerns that the minutes of the meeting of the Board on 10 December 2001 appear to have been drafted based upon the views and opinions of Mr Jackson-Johns, and not to be a factual and historic record of these meetings. For example, the minutes include a statement that 'this confidential matter [Mr Jackson-Johns' pay] had not really been satisfactorily resolved in respect of either party'. In fact, the Board's Works and General Purposes Committee had resolved on 26 November 2001 to reject Mr Jackson-Johns' pay proposals. It was therefore Mr Jackson-Johns himself who did not consider this matter to have been resolved satisfactorily. Furthermore, Mr Jackson-Johns has chosen to underline elements of the text within the minutes of some meetings to place his own emphasis on the proceedings.
- 104.** At a meeting of the Board on 11 February 2002, the then Chairman of the Board raised concerns that matters related to Mr Jackson-Johns' pay and remuneration which had been discussed by the Board had become 'widescale public knowledge'. The minutes record that 'It was now apparent that a review of the Board's procedures dealing with regradings/reviews of its employees was necessary, and in future these be dealt with by a small sub-committee (in private and confidence) who would make their recommendations to the appropriate full Meeting of the Board'. From this time on, the full Board did not consider and scrutinise proposals relating to the former Clerk and Engineer's pay. Responsibility for this was delegated to a committee of the Board and the Board was only requested to accept any committee recommendation. But in the absence of ministerial approval, the Committee had no delegated authority to make recommendations.

In 2006, the former Clerk and Engineer was involved in submitting proposals relating to his own pay to the Board's Remuneration and Expenses Subcommittee. This resulted in Mr Jackson-Johns being paid significantly in excess of the highest published Lincolnshire terms salary scales. Mr Jackson-Johns had a personal and pecuniary interest in the matter and should not have been allowed to participate in the decision-making process in any capacity.

- 105.** The minutes of a meeting of the Board's Remuneration and Expenses Subcommittee held on 22 May 2006, record that Mr Jackson-Johns advised the subcommittee that it 'was necessary for the Sub-Committee to confidentially review the Clerk and Engineer's remuneration (equipped with the necessary plenary power to implement the said review)'. The minutes record that Mr Jackson-Johns set out the responsibilities of his role and provided 'detailed examples of comparative salaries throughout the Land Drainage Industry'. The Drainage Board has not been able to produce a copy of the information provided to the subcommittee by Mr Jackson-Johns. The minutes also record that Mr Jackson-Johns 'also detailed what he believed was a fair and

reasonable 'remuneration package' for his senior post'. The Drainage Board has been unable to produce a copy of Mr Jackson-Johns' proposals and there are no details of the proposals recorded in the minutes.

- 106.** The minutes of the meeting of the Remuneration and Expenses Subcommittee on 22 May 2006 record that the committee asked Mr Jackson-Johns to leave the meeting whilst discussions on his pay took place. The minutes record that Mr Jackson-Johns was recalled to the meeting and 'the Chairman [Mr Waters] advised him of the Sub-Committee 'offer' with a further review in 3 years' time (May 2009)'.
- 107.** The minutes of the Remuneration and Expenses Subcommittee meeting of 22 May 2006 do not record the offer that was made to Mr Jackson-Johns. A meeting of the Board on 12 June 2006 records that 'it was resolved to accept and endorse the recommendations of the Remuneration & Expenses Sub-Committee'. The minutes of the Board do not record what the recommendation of the Remuneration and Expenses Subcommittee was in respect of Mr Jackson-Johns' pay.
- 108.** Mr Jackson-Johns' personnel file shows that Mr Jackson-Johns' pay was increased from £55,228 to £65,553 on 22 May 2006 (backdated to 1 April 2006). In the absence of an authorising minute, it is not clear whether this increase was agreed by the Board. However, this increase led to Mr Jackson-Johns being paid £8,268 per annum more than the highest published salary spinal point under the Lincolnshire terms.
- 109.** I consider that it was unacceptable for Mr Jackson-Johns to be involved in advising the Remuneration and Expenses Subcommittee in respect of his own pay. Mr Jackson-Johns had a personal and pecuniary interest in the matter and he should not have been involved in the decision-making process in any way.
- 110.** I am also concerned that members of the Board allowed this to happen. Members of the Board were aware that Mr Jackson-Johns was not impartial in respect of his own pay. The Board did not establish arrangements to review on a regular basis the remuneration of the former Clerk and Engineer. The Board allowed Mr Jackson-Johns to determine the timing of his own pay reviews and relied on the evidence that Mr Jackson-Johns provided to them in reaching their decisions. The Board did not take any external or independent advice on these matters; nor did it seek to obtain comparative information on how individuals doing similar jobs in other organisations were remunerated.

In late 2007, the former Clerk and Engineer was allowed to be involved in submitting proposals relating to his own pay to the Board's Establishment Committee. This resulted in Mr Jackson-Johns receiving large pay increases over three years. Before these increases, Mr Jackson-Johns was already being paid significantly in excess of the maximum payable under the highest published Lincolnshire terms. Mr Jackson-Johns had a personal and pecuniary interest in the matter and should not have participated in the decision-making process in any capacity.

- 111.** On 26 November 2007, Mr Jackson-Johns made a presentation to the Board's Establishment Committee. He proposed that he should receive an annual pay award of five per cent per annum each year for five years commencing 1 April 2008. These increases were to be in addition to the annual percentage increase payable to all Board employees under the Lincolnshire terms.
- 112.** At the time of making this proposal, Mr Jackson-Johns was already being paid £67,684 per annum. This was £8,536 more than the highest-published salary spinal point under the Lincolnshire terms. Furthermore, the Remuneration and Expenses Subcommittee meeting of 22 May 2006 had resolved that Mr Jackson-Johns' pay would be reviewed in May 2009.
- 113.** There are no formal minutes of the Establishment Committee of 26 November 2007. A handwritten note of the meeting has been retained which was signed by the former Chairman of the Board, Mr Waters, and the former Office and Personnel Manager, Mrs Jackson-Johns. The record of the meetings consists of the following text: 'April 2008, 5% increase p.a. from 1 April 2008 to be reviewed in three years'. The attendance sheet for this meeting indicates that both Mr and Mrs Jackson-Johns were present for the 'first part only'. However, in the absence of an agenda for the meeting or formal minutes, it is not clear to what extent Mr and Mrs Jackson-Johns participated in the deliberations over Mr Jackson-Johns' pay.
- 114.** The resolution of the Establishment Committee to approve the increase of Mr Jackson-Johns' pay by five per cent per annum for three years resulted in Mr Jackson-Johns being paid significantly in excess of the maximum payable to him under the Lincolnshire terms. By 1 April 2010, Mr Jackson-Johns' salary had risen to £83,122.28 per annum, whereas the maximum remuneration payable under the Lincolnshire terms was £63,660 per annum.
- 115.** The former Chairman of the Board has told us that he has a different recollection of what was agreed at the Establishment Committee meeting of 26 November 2007. He has stated that he recalls that Mr Jackson-Johns 'was to be offered a pay increase of 5% spread over the next three years, not that he would receive a 5% increase for a period of three years [per annum]'. He has told us that he has no recollection of seeing or signing the handwritten note referred to in [paragraph 113](#).

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- 116.** It does not appear that members of the Establishment Committee were informed that Mr Jackson-Johns was already being paid significantly more than the highest-published salary point under the Lincolnshire terms. The former Chairman and former Vice-Chairman of the Board have both stated in interview that they were unaware of this. I do not consider that the Establishment Committee had the authority to take such a decision without approval by the Board.
- 117.** Mr Jackson-Johns stated in interview that his pay proposals had been made on the basis that the Land Drainage Act 1991 states that 'An internal drainage board may pay to persons employed by them such reasonable remuneration as they think fit'. However, I consider that the Board, in adopting the Lincolnshire terms, had determined 'such reasonable remuneration' as they deemed fit. It does not appear that the Board resolved to dispense with the Lincolnshire terms, nor does it appear that Mr Jackson-Johns informed the Board or the Establishment Committee that his proposals were not within the Lincolnshire terms.
- 118.** The minutes of the following Board meeting on 10 December 2007 record that the report of the Establishment Committee 'was received by the Board, the contents of which were noted by the Members and which was also detailed under the Works and General Purposes Committee as appropriate'. The Establishment Committee report is not filed with the Board minutes. I have not been able to ascertain whether this report made reference to Mr Jackson-Johns' pay. Mr Jackson-Johns was present at the meeting and did not declare an interest. If the Board had considered Mr Jackson-Johns' pay, Mr Jackson-Johns would have had to declare his interest and withdraw from the meeting whilst that item was considered.
- 119.** On 11 December 2007, a letter was sent to Mr Jackson-Johns from the former Chairman of the Board, Mr Waters, advising him that 'the members [of the Board] had accepted with approval the recommendations of the Establishment committee relating to the re-grading of your position'. The letter confirmed a five per cent salary increase each year for the next three years (ie 2008, 2009 and 2010) 'with the usual annual increments'. I understand this letter to mean that Mr Jackson-Johns would receive five per cent increases each year for three years over and above any 'cost of living' increases awarded under the Lincolnshire terms. This letter is inconsistent with the minutes of the Board which do not record any such approval. Mr Waters told me that he has no recollection of signing this letter or sending it to Mr Jackson-Johns.

In 2010, the former Clerk and Engineer wrote to the former Chairman of the Board offering to accept temporary pay-cuts. The letter, which was considered by the Board, contained misleading content.

- 120.** On 4 August 2010, Mr Jackson-Johns wrote to Mr Waters in which he referred to concerns relating to the financial situation of the Drainage Board. Mr Jackson-Johns volunteered to take a temporary '5% reduction in my salary with effect from 1st September 2010 and a further 5% reduction (totalling 10% from the 1st March 2011 – if the Board's current financial difficulties have not improved by then'. Mr Jackson-Johns further wrote: 'The above coupled with no annual pay award this year, no annual bonus and taking into account inflation being +2%, essentially means in real

terms I will facing a 15% reduction (1/6th) in my salary'. This letter was at best misleading because as set out above, on 1 April 2008, 1 April 2009 and 1 April 2010, Mr Jackson-Johns had received five per cent increases in his salary over and above the annual pay awards received by other staff within the Drainage Board. Mr Jackson-Johns was in fact the only member of staff who had, as at 4 August 2010, received a pay award for the 2010-11 financial year.

- 121.** At a meeting of the Board on 20 September 2010, the Chairman of the meeting, Mr Attewell, read out Mr Jackson-Johns' letter offering to take temporary pay reductions. Mr Jackson-Johns was present at this meeting but it is not apparent from the minutes that the Board was informed that whilst the letter stated that he had not received a pay increase for 2010-11, he had in fact had a pay increase of five per cent with effect from 1 April 2010 and further increases of five per cent in each of the two previous financial years. This was over and above the annual pay award applicable to all Board staff. The Board accepted Mr Jackson-Johns' proposal and thanked him 'for his gesture'.
- 122.** In the course of my audit, I have found no evidence that the financial position of the Drainage Board was as precarious as was suggested by Mr Jackson-Johns. The Drainage Board's Finance Manager has told me that she did not accept Mr Jackson-Johns' analysis of the finances of the organisation. It is not apparent why Mr Jackson-Johns sought to persuade the Board that it faced serious financial difficulties and to emphasise this by volunteering for temporary pay-cuts.
- 123.** However, in view of subsequent events in which Mr Jackson-Johns sought to arrange his own voluntary severance from the Drainage Board based on the need to make financial savings, I consider that it is probable that Mr Jackson-Johns, in making his offer to take voluntary and temporary pay-cuts, was already attempting to engineer his exit from the Drainage Board.

Three members of the Board and the former Clerk and Engineer participated in proceedings of the Board relating to an ongoing court case when they had a conflict of interest in the matter

- 124.** The Gwent Levels is an area which is at risk from flooding. The sea wall was built to protect the area. It is entirely understandable that residents and workers in the Gwent Levels wish to ensure that the sea wall is maintained, strengthened and enhanced. Many members of the Board live and work in the area and desire to protect both their interests and those of the local area from flood risk. However, it is important that members of the Board understand that their interests as private individuals and the interests of the Drainage Board are not necessarily the same. Board members who have personal or pecuniary interests which conflict with the interests of the Drainage Board must declare these interests. Board members are disqualified from taking any part in any decision-making process relating to that matter unless such interest is too remote or insignificant to matter.

- 125.** On 6 April 2010, Mr Leonard Attewell, an elected member and then Vice-Chairman of the Board and a landowner on the Gwent Levels, acting in a personal capacity, brought a High Court claim against the Environment Agency seeking a declaration from the high court that the Environment Agency had a statutory responsibility for repairing and maintaining the sea wall protecting the Gwent Levels from flooding. He further argued that the duty of maintenance included enhancing the flood defences by extending the height of the sea wall along the Caldicot stretch of the Gwent Levels. The court case is referred to in this report as ‘the sea defences case’.
- 126.** Two other elected members of the Board of the Drainage Board and landowners on the Gwent Levels contributed to the costs of bringing this legal action. These were the former Chairman of the Board, Mr Neville Waters, and a further member, Mr David James. A number of other local landowners and farmers also contributed to the cost of the legal action. The Environment Agency disputed the claim on the basis that it considered it had no statutory responsibility for the maintenance and repair of the sea wall. The Environment Agency argued that the Drainage Board had statutory responsibility for the sea wall under the Caldicot and Wentlooge Levels Act 1884.
- 127.** In response, Mr Attewell extended his claim to name the Drainage Board as a co-defendant, ie he decided to take legal action against the Drainage Board. This meant that if Mr Attewell was successful in his claim, the Drainage Board could be found liable for maintaining and extending the height of the sea wall along the Caldicot stretch of the Gwent Levels. The application to add the Drainage Board to the claim was granted by the court and the Drainage Board became a co-defendant in the sea defences case. Mr Attewell was therefore in the position of bringing a legal claim in a personal capacity against his own Board, supported by two other members of the Board.
- 128.** Mr Attewell has told me that he recognised the difficulty of pursuing legal action against the Board whilst being Vice-Chairman of the Board. He has told me that he wrote a letter of resignation to the former Chairman of the Board and this letter was discussed at a meeting of the Board. Mr Attewell has told me that his resignation was not accepted and he therefore stayed on the Board. Whilst Board minutes do not record these events and the Board has not retained a copy of Mr Attewell’s resignation letter, Mr Attewell’s account is consistent with evidence provided by other Board members.
- 129.** Cardiff Council, Monmouthshire County Council and Newport City Council were subsequently joined to the claim due to their financial interest in the matter. The main funding for the Drainage Board was provided by the local authorities through annual levies and therefore if the Drainage Board was found to be liable for extending the height of the sea wall, it would have a significant financial impact on the local authorities which financed the Board.
- 130.** If the claim had been successful and the Drainage Board had been deemed liable for increasing the height of the sea wall, it has been estimated by the former Clerk and Engineer, Mr Jackson-Johns, in a statement to the high court, that the potential liability on the Drainage Board would have been in the region of £35 million to £40 million.

- 131.** I consider that Mr Attewell, Mr Waters and Mr James each had a personal and pecuniary interest in the sea defences case. This interest was due to their interest as owners of land located in an area which would gain increased protection from flooding should the claim be successful and due to their funding of the case.
- 132.** Members of the Drainage Board were required to comply with the Drainage Board's Summary Code of Conduct which came into force on 1 April 2009. The code of conduct states that the onus is on each member to make a judgment and declare an interest in a matter affecting the individual, their family or friends more than other people in the area.
- 133.** The code of conduct also states that where an interest is so significant that a reasonable person would regard it as likely to prejudice Board members' judgment of the public interest:
- the member must withdraw from the meeting room;
 - the member must not seek to improperly influence the decision on that matter;
 - each situation should be judged on its own merit; and
 - if in doubt, advice should be sought from the Chairman or the Clerk.

Three members of the Board participated in proceedings of the Board relating to the sea defences case when they had disqualifying personal interests

- 134.** I consider from 9 July 2010, the date on which the Drainage Board was joined to the claim, on each occasion the sea defences case was considered by the Board, those Board members with an interest in the case should have declared their interest and withdrawn from the meetings whilst the matter was discussed. They should have taken no part in the decision-making process. The three Board members with an interest in the case failed to declare their interest on one or more occasions and remained in the meeting whilst the case was discussed. Two of these Board members participated in a meeting of the Board in December 2010 when significant decisions were made by the Board in respect of the case. They participated in the decision-making process when disqualified from doing so.
- 135.** **Appendix 2** sets out a record of the meetings the three members attended, when their interests were and were not declared, and how they participated in Board meetings relating to the sea defences case.
- 136.** Mr Attewell and Mr Waters have told me they had not been informed and did not appreciate that they were required to leave the meeting room whilst the case was discussed. Nevertheless they should have been aware of the requirements of the Drainage Board's Summary Code of Conduct referred to in **paragraph 133**.

- 137.** The first reference to the sea defences case occurs in the minutes of a Board meeting on 12 July 2010. The minutes state that Mr Jackson-Johns briefed the Board on the case and advised the Board that an extraordinary meeting of the Board would be held on 3 August 2010 and that 'Members would be called upon to decide the way forward for the Board in this landmark case'. Mr Jackson-Johns informed the Board that the meeting would be attended by the solicitors acting for Mr Attewell. It is not clear why Mr Jackson-Johns thought it appropriate to ask the solicitor, representing Mr Attewell who was acting against the Drainage Board, to address the Board.
- 138.** An extraordinary meeting of the Board was held on 3 August 2010. The minutes record that Mr Attewell's solicitor was present and addressed the meeting. The solicitor briefed the Board members on the sea defences case. The minutes of the meeting record that the solicitor told the Board that 'A group of land owners on the Caldicot Level represented by [Mr Attewell] was currently bringing a case against the Environment Agency with regard to maintenance of the Sea Defences'. The minutes do not record how the Drainage Board had become involved in the case and appear to suggest that this was in some way due to the actions of the Environment Agency. The minutes do not record that Mr Attewell had joined (included) the Drainage Board in his legal action. The minutes record that Mr Attewell's solicitor 'advised the Board to fight the case using the direct briefing approach'. I do not understand how the legal representative of Mr Attewell came to be advising the Board on how it should respond to the claim brought against it by Mr Attewell on 9 July 2010.
- 139.** The minutes of the Board meeting of 3 August 2010 record that after Mr Attewell's solicitor left the meeting, the Board resolved to instruct Mr Jackson-Johns to:
- 'engage a Barrister;
 - take advice and report back to the Board;
 - acknowledge service; and
 - produce a statement in response.'
- 140.** The minutes of the Board meeting of 3 August 2010 also record 'that the Chairman and CEO be given plenary powers to engage the services of a suitable Barrister as soon as possible'. I am of the view that both Mr Jackson-Johns and the former Chairman, Mr Waters, should have refused these instructions. It would have been wholly inappropriate for Mr Waters to be involved in gaining legal representation for the defendant whilst he was financially supporting the claimant, Mr Attewell, and had a personal and pecuniary interest in the outcome of the case. Mr Waters was therefore disqualified from involvement in the Board's decision-making process and from involvement in instructing the Board's legal representatives. Mr Waters has told me that in the event he had no involvement in engaging a barrister on behalf of the Drainage Board and the Clerk and Engineer, Mr Jackson-Johns contacted and instructed the Drainage Board's legal representatives. I consider that Mr Jackson-Johns also had a conflict of interest in this matter as set out in [paragraphs 153 to 159](#).

- 141.** The Board met again on 20 September 2010. The case summary notes were circulated to all members and a copy placed with the minutes. Mr Jackson-Johns advised that the three councils funding the Drainage Board had been written to and invited to join the proceedings as a co-defendant or agree to be bound by the decision in the litigation. 'In view of the enormity and possible repercussions of this case' the Board resolved to appoint two Board members 'to represent the views of the Board', and councillor members were urged to approach their respective chief executive officers, in order to chase up a response to a letter sent from the Drainage Board's solicitor regarding the invitation to be joined to the proceedings.
- 142.** The Board met again on 8 November 2010. The Drainage Board's solicitor who had been appointed in August 2010 was present at the meeting whilst the sea defences case was considered. The Board resolved at the meeting of 8 November 2010 to continue to defend the case.
- 143.** The Board met on 13 December 2010. The minutes record that the sea defences case was considered and that Mr Jackson-Johns briefed the Board on the case. The minutes record that 'following a protracted and very lengthy discussion, the following was resolved by vote:
- Board accepted liability incumbent under the 1884 Act; and
 - Board agreed the requirement that the definition of 'maintain' was to be decided first by the judge.'
- 144.** These decisions were highly significant as they determined the Drainage Board's legal stance in relation to the sea defences case.
- 145.** Mr Waters attended and acted as Chairman of the meeting. Mr Attewell also attended. Mr James who had provided funding for the case was not present. The minutes of the meeting record that Mr Waters and Mr Attewell did not declare their personal and pecuniary interest in this matter and they participated in the decision-making process whilst disqualified from doing so. This included voting on Board resolutions on which they had a conflict of interest.
- 146.** On 14 December 2010, an appointed member of the Board wrote to Mr Jackson-Johns raising his concern regarding the participation of Mr Waters and Mr Attewell in the meeting of 13 December 2010. Mr Jackson-Johns responded: 'To be honest upon reflection I do agree with you – Chair and Vice Chair should have excused themselves from the Meeting – as they have done in the past. To move matters forwards can you get MCC [Monmouthshire County Council] to formally write to the Board detailing the issues ASAP. I would assume the Board will then re-convene to discuss the resolution ASAP in the New-Year – with Chair and Vice Chair not taking part.'
- 147.** On 10 January 2011, Mr Jackson-Johns sent an e-mail to a consultant used by the Drainage Board. The e-mail states 'NB – Finance Meeting scheduled for Monday 14th Jan – will now be a short full Board Meeting – to sort out the 'BIG' oversight of Members with a Conflict of Interests not leaving Decembers Boards meeting when Sea Defences issues were voted on!!'

- 148.** Mr Waters and Mr Attewell accept they were present during the Board's consideration of the sea defences case at the Board meeting of 13 December 2010. They have acknowledged that they should have declared their interest at the meeting and withdrawn from the meeting. Mr Waters informed me that he had declared his interest at previous meetings but overlooked to do so at the meeting of 13 December 2010. He expressed regret regarding this oversight. Mr Attewell and Mr Waters maintain that they did not comment on or take part in any discussions about the case and did not vote on the proposed resolutions. They maintain that they both abstained during the vote. The minutes of the meeting of 13 December 2010 do not record what contributions individual Board members made to the proceedings or whether individual members voted in favour or against the resolutions, or whether they abstained. However, their very presence in the meeting means that they participated in the decision-making process when disqualified from doing so.
- 149.** The Board met on 24 January 2011. The minutes of the meeting record that Mr Jackson-Johns informed the Board that members needed to reconsider the resolutions it had made on 13 December 2010 regarding the sea defences case. The Board rescinded the Board resolutions of 14 December 2010 and instead resolved 'i) That the Board accepted liability incumbent under the 1884 Act, subject to the Board having the necessary resources ii) That the Board agreed the requirement that the definition of 'maintain' was to be decided first by the Judge'.
- 150.** The judge determined that the definition of 'maintain' did not include increasing the height of the sea wall and ordered that Mr Attewell pay the Drainage Board's costs in defending the claim.
- 151.** In my view, Mr Waters, Mr Attewell and Mr James failed to differentiate their roles as members of the Board from their roles and interests as private individuals in taking legal action against the Drainage Board. I accept that these individuals did not act with ill intent and when they initially became involved in the legal claim they did not anticipate that the Drainage Board would be a defendant to the claim. Nevertheless, by participating in the decision-making process when disqualified from doing so, Mr Waters, Mr Attewell and Mr James undermined the integrity of the decision-making process and breached the Drainage Board's Summary Code of Conduct.
- 152.** The code of conduct is clear that it is for a member with a prejudicial interest to declare their interest and to withdraw from the meeting while the matter is considered. Nevertheless, I recognise that the former Clerk and Engineer and several other members of the Board were aware of the interests of Mr Attewell, Mr Waters and Mr James. It is disappointing that on those occasions when Mr Attewell, Mr Waters and Mr James did not declare their interests and/or withdraw from the meeting, they were not reminded to do so by those who knew of those interests.

On several occasions the former Clerk and Engineer of the Drainage Board participated in proceedings of the Board relating to the sea defences case when he had a disqualifying personal interest

- 153.** Mr Jackson-Johns was present at each meeting of the Board between August 2010 and April 2011 in which the sea defences case was discussed and he participated in the deliberations of the Board and in the decision-making process. During the course of my audit work, I reviewed a number of electronic documents held by the Drainage Board. Review of these documents has led me to conclude that Mr Jackson-Johns had an interest in the sea defences case which he should have declared at meetings of the Board in which the sea defences case was considered. Mr Jackson-Johns should have withdrawn from these meetings and taken no part in the proceedings. He was also disqualified from providing advice and/or having any involvement in the conduct of the case due to his involvement in supporting the Claimants' case against the Environment Agency.
- 154.** Mr Attewell lodged his claim against the Environment Agency on 6 April 2010. Mr Jackson-Johns was actively and closely involved in supporting the claim. Mr Jackson-Johns undertook research on behalf of Mr Attewell, advised Mr Attewell's solicitor on the Environment Agency's defence, met Mr Attewell's legal representatives to discuss the case and suggested amendments to Mr Attewell's legal statements at the request of Mr Attewell's solicitor. In an e-mail dated 2 July 2010, Mr Attewell's solicitor wrote to Mr Jackson-Johns stating 'Thank you for your continuing input and assistance in this case'. It does not appear that Mr Jackson-Johns informed the Board of his close involvement with Mr Attewell's claim, nor have I found any evidence that the Board authorised and approved Mr Jackson-Johns' actions in supporting a claim against another public body. Mr Jackson-Johns stated in interview that all Board members were fully aware of his work in support of the claim.
- 155.** Regardless of this, when the Drainage Board was joined to the claim on 9 July 2010, Mr Jackson-Johns should have declared his interest to the Board and withdrawn from any further involvement in the Board's consideration of the matter. Mr Jackson-Johns failed to do this and participated in Board meetings from August 2010 when he was disqualified from doing so.
- 156.** Following the decision of the High Court on 9 July 2010 to grant Mr Attewell's request to join the Drainage Board to the claim as a co-defendant, Mr Attewell's solicitor wrote to the Board on 19 July 2010. The letter informs the Board of the court's decision and enclosed a number of legal documents. The solicitor stated that: 'You will appreciate that whilst we have discussed this matter with you previously, it is a case in respect of which the Drainage Board will need independent advice. The writer will come to the board meeting on 3rd August 2010, at your request to discuss the issues in the case, but it must be noted that in doing so, we cannot give you any advice as to the board's position in the litigation.'

- 157.** Mr Jackson-Johns responded in writing to Mr Attewell's solicitor on 20 July 2010, 'on behalf of the Board and its Chairman'. It does not appear that Mr Jackson-Johns shared the letter dated 19 July 2010 or the response which he had sent on the Board's behalf with the Board. The former Chairman of the Board has told me that he had not seen and had no input to the letter of 20 July 2010. The content of this letter indicates that Mr Jackson-Johns wanted Mr Attewell's solicitor to provide legal services to the Drainage Board in respect of the sea defences case. This would have been entirely inappropriate in view of the fact that the solicitor was representing Mr Attewell's action against the Drainage Board. In the event, as noted above, Mr Attewell's solicitor advised Mr Jackson-Johns that the Drainage Board would need to procure independent legal advice.
- 158.** Mr Jackson-Johns has told me that in supporting Mr Attewell's claim he was working for the Board and he was acting under the personal instructions of the Board's former Chairman and former Vice-Chairman. I do not accept this explanation. The Board did not authorise Mr Jackson-Johns' activities in respect of the claim. Furthermore, Mr Jackson-Johns was fully aware that both the former Chairman and former Vice-Chairman had personal and pecuniary interests in the sea defences case. The former Chairman and former Vice-Chairman have told me that they refute Mr Jackson-Johns' claim that he was acting in accordance with their instructions.

The Drainage Board did not exercise good financial management and control at a corporate level

The Drainage Board's budget setting process for 2010-11 was not robust and Board minutes do not record that the Board formally approved the budget or amendments to it

- 159.** The Board is responsible for strategic decision making. This includes considering the Drainage Board's financial requirements, approving the annual budget and setting the rate to be levied on agricultural landowners within the Gwent Levels.
- 160.** At a meeting on 18 January 2010, the Board's Finance and Administration Subcommittee was presented with 'an indicative budget analysis for the next 7 years'. This budget analysis was a spreadsheet showing estimated annual income and expenditure for the period 2010-11 to 2016-17. The majority of the figures had simply been increased by three per cent each year (if increased at all) and no analysis or reasons were given for the year-on-year movements. I do not consider this a robust methodology.

- 161.** The minutes of the Finance and Administration Subcommittee meeting held on Monday 18 January 2010 record that only the annual drainage rate was recommended by the subcommittee to the full Board for approval. The minutes of the subsequent Board meeting held on Monday 8 February do not record that the 2010-11 budget was presented to or formally approved by the Board, nor have I been able to find any record of approval of the annual drainage rate by the Board. I have been told by officers of the Board that the Board did approve these matters but that the approval was not recorded in the Board minutes.
- 162.** During the course of the year, the annual budget was revised on several occasions. I have not been able to find any evidence that the Board approved these budget variations.
- 163.** In failing to review and approve the 2010-11 budget and subsequent variations, I consider that members of the Board collectively failed to exercise their responsibility as Board members in respect of the Drainage Board's finances.

The Drainage Board did not have a formal budgetary control system in place for financial years prior to 2011-12 and had no documented financial control procedures

- 164.** Budgetary control is a fundamental aspect of good financial management for all organisations. Where budgetary control is not strong, it exposes the organisation to financial risk, overspending and can threaten the ability of the organisation to meet its objectives. I consider that the Drainage Board did not have adequate budgetary control arrangements in place in respect of financial years prior to 2011-12.
- 165.** The Drainage Board did not have a formal budgetary control system in place for financial years prior to 2011-12 and there were no documented financial control procedures.
- 166.** There was some limited evidence of budget monitoring. During 2010-11, the Board received reports on expenditure incurred for the first and second quarter of the year. These 'budget reports' consisted of a comparison of expenditure to date with the full year annual budget figures rather than the predicted profile for the period. This did not provide a meaningful comparison to assess the financial performance of the Drainage Board on an ongoing basis. No similar comparison of expenditure to the budget for the third quarter was reported to the Board. I am also concerned that the 'budget reports' for Quarter 1 were subsequently revised after being presented to the Board. I have seen no evidence that the revised position was disclosed to either the Finance and Administration Subcommittee or the Board.
- 167.** The Board has acknowledged that its budget management and monitoring procedures have needed improvement. It has already sought to improve its budget preparation processes. A documented financial control procedure has been implemented and there are plans to review this following an assessment of the Board's arrangements by Internal Audit. In addition, work is under way to produce a detailed programme of works which will be used as the basis to set budgets for 2013-14 onwards.

The way in which the Board has set the annual rate has resulted in a potential inequity between the respective financial burdens placed on the council taxpayer and the local ratepayer. Furthermore, the Drainage Board is unable to demonstrate that it has been setting a lawful rate for several years.

- 168.** The Land Drainage Act 1991 empowers internal drainage boards to set a drainage rate on the occupiers of all agricultural land within its area and to set special levies on local authorities. The legislation includes a complex formula which drainage boards must use when determining the rate payable by the landowners. In summary, the rate is calculated by taking the number of hectares of land within the Drainage Board's boundary and its total potential annual rent. This provides an annual value figure which is then multiplied by a rate set each year by the Board. The legislative formula requires that the financial amount to be raised by rates and levies shall be determined using the same ratio between agricultural and non-agricultural land values respectively.
- 169.** The Drainage Board currently has approximately 21,000 acres of land within its drainage district. Special levies are set against the local authorities within this catchment area, namely: Newport City Council, Cardiff Council and Monmouthshire County Council. Of the total Board income from rates and levies, only three per cent is raised from landowner rates. The drainage rate is set annually by the Board members in January each year.
- 170.** I have reviewed the way in which the rate has been set by the Drainage Board. Whilst I am satisfied that the Board has sought to apply the statutory formula, I have serious concerns in the way in which this has been done.
- 171.** Officers of the Drainage Board have provided me with the annual rental values that have been used to set the rate and determine the levies charged to the local authorities. I understand that the annual rental values were determined in 1991-92. The valuations for non-agricultural properties were provided by Newport City Council, Cardiff Council and Monmouthshire County Council. The values for agricultural properties were provided by a valuer appointed by the Drainage Board. I sought to reconcile the valuations obtained in 1991-92 with the values used to set the drainage rate in recent years but have been unable to do so. This is because the records kept by the Drainage Board for 1991-92 are incomplete.
- 172.** The Drainage Board is unable to demonstrate that the rate set is lawful and that the financing burden has been equitably divided between the ratepayer landowners and the local authorities who pay levies to the Drainage Board.
- 173.** The Land Drainage Act 1991 includes provision for making adjustments of annual rental values to reflect increases or decreases in the annual value of chargeable properties in the area. This may become necessary where, for example, part of a chargeable property is no longer used for its former purpose or where land is reclaimed for use. Internal drainage boards may need to make these adjustments to ensure that there is a fair and equitable distribution of the financing burden.

- 174.** I would expect the Board to have made a number of adjustments to annual rental values over recent years to reflect changes in circumstances within the Gwent Levels. I have reviewed the annual rental values used by the Drainage Board since 1992 to determine the annual rate.
- 175.** Between 1992 and 2002-03, all of these changes related to the transfer of land from agricultural to non-agricultural use.
- 176.** No adjustments have been made to recognise the major downscaling of industrial premises, such as the Llanwern Steel Works. These changes could have had a significant impact on annual rental values. Not implementing these changes may have led to an inequitable and unlawful distribution of the financing burden, ie the agricultural ratepayers may have been under-billed and the levies made on the local authorities set too high, resulting in an unlawful subsidy being given to the agricultural ratepayers.
- 177.** I have not reached a conclusion on the financial impact which has arisen due to the failure to implement the necessary adjustments. However, my provisional assessment is that the accounts of the Drainage Board are likely to have been misstated for a number of years.
- 178.** No adjustments at all have been made to the annual rental values since the 2002-03 financial year. Mr Jackson-Johns has stated in interview that he considered all changes made to land use after 2002-03 and is satisfied that no significant developments had taken place since 2002-03. The Drainage Board will need to consider whether it concurs with this assessment.

The Drainage Board has failed to demonstrate that it has achieved value for money and acted lawfully in some key areas

- 179.** Public bodies are funded by taxpayers. It is therefore imperative that they use the resources that they have at their disposal in an economic, efficient and effective way. They should be able to demonstrate value for money.
- 180.** As has been set out in this report, the Drainage Board lacked a clear strategy and operated without an effective governance framework. Without these things, it is not possible to demonstrate that the Drainage Board was achieving value for money. However, during the course of my audit, I have identified specific areas and issues where, in my view, the Drainage Board has:
- failed to achieve value for money; and/or
 - is unable to demonstrate that it has achieved value for money; and/or
 - has expended public resources when it had no legal power to do so.

The Drainage Board spent taxpayers' money funding 'inspection' visits by Board members and officers without having any business case to justify these visits or any effective means of assessing the benefits realised from these visits. I consider that the expenditure did not represent value for money and that the expenditure was contrary to law.

- 181.** It is common and reasonable for public bodies to seek to learn from each other and to identify where good practice exists that can be adopted. However, before public money is expended, particularly where overseas visits are being considered, it is essential that the public body considers:
- the legality of any proposed visit;
 - the likely benefits which will be accrued from the visit;
 - the cost of the visit and whether the cost is outweighed by the potential benefits;
 - which public officials (Board members or officers) have the knowledge, experience and expertise to make informed judgments and decisions relating to the subject of the visits;
 - public perception; and
 - how any benefits will be secured and measured to demonstrate value for money.
- 182.** The Drainage Board has organised several visits that the Board's documentation refers to as 'inspections'. These include 'inspections' to the Netherlands, Italy and Northern Ireland.
- 183.** I have considered the visits undertaken to Italy in 2005 and Northern Ireland in 2008. Owing to the length of time that has elapsed since the 'inspection' visit to the Netherlands in 2000, the Board no longer holds detailed records of this visit. I have not therefore been able to conclude on whether this visit represented value for public money.

The Drainage Board failed to demonstrate that it achieved value for money in respect of its inspection trip to Italy

- 184.** On 21 September 2004, the former Office and Personnel Manager, Mrs Jackson-Johns, wrote to all members of the Board asking for their interest in participating in a 'Proposed Inspection to Venetian area of Italy – Autumn 2005'. This correspondence did not detail any purpose for the visit, what would be inspected or what benefit the Drainage Board would realise from the visit. Board members were not asked to identify any specific interest, knowledge or expertise they possessed which would make their attendance on the visit beneficial for the Drainage Board.

- 185.** The visit to Italy was organised and the inspection party comprising 37 people arrived on 12 October 2005 and returned to the UK on 15 October 2005. The Drainage Board delegation spent the morning of 13 October 2005 visiting local drainage works. The afternoon was spent visiting wetlands. These visits were hosted by an Italian drainage organisation. The following day was spent on a guided sightseeing tour of Venice.
- 186.** The Drainage Board delegation comprised 13 members and three officers of the Board and 21 'guests'. The 'guests' were mainly the spouses or parents of Board members and officers.
- 187.** The Drainage Board spent £12,233 on the visit. However, Board members and officers were asked to pay £100 each towards the visit and guests £300 each. The payment from guests was calculated to cover the full cost of their attendance. The Drainage Board received the contributions due from Board members and their guests. The net cost to the Drainage Board after contributions was £4,333.
- 188.** I have several concerns regarding the visit which include the following:
- the absence of a business case setting out the objectives or potential benefits of the visit;
 - the lack of any documented, reasonable justification for 13 Board members and three officers to undertake this visit at the public's expense; and
 - no analysis of specific benefits accrued as a result of this visit.
- 189.** I do not consider that the primary purpose of the visit to Italy was to further the objectives of the Drainage Board. The Office and Personnel Manager, Mrs Jackson-Johns, who went on the visit as the event organiser, wrote an account of the visit stating that it was intended as an 'interesting inspection for the Board members of the Caldicot and Wentlooge IDB to mark the end of our Chairman's term of office in October 2005'.
- 190.** The visit was primarily designed as a celebratory event and its primary purpose was not to further the work of the Drainage Board. I consider that such expenditure does not represent value for public money and is contrary to law.

The Drainage Board failed to demonstrate that it achieved value for money in respect of its inspection trip to Northern Ireland

- 191.** A further Board 'inspection' visit was organised to Northern Ireland between 25 September 2008 and 28 September 2008. The itinerary included one day with the Rivers Agency Northern Ireland (RANI). The second day consisted of a tour of the Old Bushmills Distillery, a trip to the Giants Causeway, Dunlace Castle and Carrick-a-Rede.
- 192.** All members of the Board were invited to attend the visit and 28 individuals made up the delegation: 11 board members, three members of staff (Mr and Mrs Jackson-Johns and the Drainage Board's Works Foreman) and 14 guests. The guests were mainly spouses of the attendees.

- 193.** The Drainage Board spent £11,172.65 on the visit. However, Board members and officers were asked to pay £115 each towards the visit and guests £345 each. The payment from guests was calculated to cover the full cost of their attendance. The net cost to the Drainage Board after contributions was £4,732.65.
- 194.** As was the case for the Italy visit, I have several concerns regarding the visit to Northern Ireland which include the following:
- Lack of a business case setting out the objectives or potential benefits of the visit.
 - Absence of any documented, reasonable justification for 11 Board members and three officers to undertake this visit at the public's expense.
 - I have seen no analysis of specific benefits accrued as a result of this visit.
 - The visit was undertaken shortly before a scheduled Board election. It was therefore likely that some Board members who made the visit would soon no longer be Board members. Any knowledge gained by the Drainage Board in relation to these members would then be of no benefit to the Drainage Board.
- 195.** Furthermore, I do not consider that the primary purpose of the visit to Northern Ireland was to further the objectives of the Drainage Board. The Office and Personnel Manager, who organised the inspection and accompanied her husband, the former Clerk and Engineer, wrote a report on the visit stating 'as the current Board goes out of office at the end of October, it seemed timely to organise an Inspection for the Board Members, Officers and Guests'. This indicates that the visit was primarily designed to mark the end of Board members' term in office and not an inspection designed to further the work of the Drainage Board.
- 196.** The minutes of a monthly Drainage Board office staff meeting on 26 February 2008 state regarding the visit to Northern Ireland: 'Event is really organised for the benefit of the Board Members'. The Drainage Board cannot spend public money in order to benefit Board members. I consider that such expenditure does not represent value for public money and is contrary to law.

The Drainage Board is unable to demonstrate that it achieved value for money in respect of its inspection trip to the Netherlands

- 197.** Whilst I have not been able to obtain detailed records for the 'inspection' visit to the Netherlands, I have concerns that this visit may not have represented value for money. The purpose of the 'inspection' visit to the Netherlands in 2000 as set out by the Office and Personnel Manager was 'to mark the Millennium'.
- 198.** The General Manager has stated that no inspection visits have taken place since his appointment and no further visits will take place unless there is good reason and value for money can be demonstrated.

The Drainage Board did not have adequate procedures in place for the procurement of goods and services, and did not always comply with its own procedures. As a result, the Drainage Board is unable to demonstrate that it has achieved value for money from these purchases.

- 199.** When purchasing equipment, public bodies must ensure that they can demonstrate that procurement complies with proper procedure and that value for money has been secured.
- 200.** I would expect any public body to have in place comprehensive procedures which set out how procurements should be conducted for all significant purchases. Furthermore, before embarking on a procurement, I would expect any public body to have prepared a business case which includes:
- Business need (linked to strategy)
 - Option appraisal
 - Costs and benefits

The Drainage Board did not have adequate procedures in place to demonstrate that it was achieving value for money in respect of procurements prior to 2009

- 201.** Prior to April 2009, the Drainage Board had not adopted any financial regulations setting out the procedures which must be followed when procuring goods and services and/or entering into contracts. In the absence of such regulations, It appears that the Drainage Board's approach to procurement was at best ad hoc. The Drainage Board has failed to retain an effective audit trail of its procurements prior to April 2009. For example, the Drainage Board has not kept procurement files holding documentation such as the rationale for the procurement, quotations/tenders received and the basis for decisions reached. However, I consider that the Drainage Board cannot now demonstrate that it has achieved value for money in these procurements.
- 202.** With effect from 1 April 2009, the Board adopted financial regulations. These regulations specify that the Drainage Board should obtain three competitive quotations for all purchases with a financial value in excess of £2,501. If the requirement to obtain three quotations cannot be complied with for legitimate reasons, or a decision is reached to accept a quotation which is not the lowest, the regulations require the Board's approval to be obtained.
- 203.** The financial regulations also specify that the Clerk and Engineer, Office and Personnel Manager and Finance Manager may approve procurements under £10,000 but must obtain the approval of the Chairman of the Board for procurements between £10,000 and £20,000. All procurements over £20,000 require approval of the Board prior to the purchase, unless the purchase is urgent, in which case the Chairman of the Board has delegated authority to proceed with the procurement but must seek approval from the Board retrospectively.

- 204.** In 2009, following recommendations made by the external auditor regarding the need to improve recording of decision making regarding capital purchases, the Drainage Board's Finance Manager introduced new procedures *FP3 Purchasing – Quotations*. These procedures emphasised the need to retain quotations and all paperwork relating to the purchase of goods or services. It also required a *Capital Expenditure Request Form* to be completed and retained for all purchases over £2,500. This form requires a justification for the planned procurement to be provided.
- 205.** These additional procedures are helpful and have been incorporated into the Drainage Board's financial regulations. I am, however, concerned that the procedures do not set any financial thresholds above which potential contracts should be tendered and business cases and contract specifications prepared.
- 206.** Following the introduction of the new regulations and procedures, the Drainage Board has procured goods and services with a value in excess of £2,501. I have specifically considered two specific procurements:
- purchase of an Energreen vegetation control machine; and
 - purchase of a car for use by the Drainage Board's former Clerk and Engineer, Mr Jackson-Johns.

The Drainage Board spent over £175,000 on the purchase of an Energreen vegetation control machine without having first set out a clear business need for the procurement. The procurement which involved acceptance of hospitality from the supplier has exposed the Drainage Board to allegations that the process was flawed

- 207.** In September 2009, the Drainage Board's former Engineer Health and Safety and Plant Manager wrote to an Italian company, Energreen, expressing interest in an Energreen vegetation control machine. This interest appears to have arisen following the attendance of an employee of the Drainage Board at a trade show in Paris.
- 208.** Energreen supplied the Drainage Board with information about the equipment and invited the former Engineer Health and Safety and Plant Manager to visit the company's factory in Verona. It was made clear by Energreen that 'we take care of everything you just have to reach Stansted airport and then you are in our capable hands'.
- 209.** The former Engineer Health and Safety and Plant Manager responded to the Energreen representative stating that he would speak to the Clerk and Engineer, Mr Jackson-Johns, and the Vice-Chairman, Mr Attewell, regarding the possible visit. He also informed Energreen that any potential purchase would have to be in the following financial year for budgetary reasons.
- 210.** On 23 September 2009, the former Engineer Health and Safety and Plant Manager informed Energreen that he was unavailable on the proposed dates of the trip (12 to 14 October 2009) but that the former Vice-Chairman of the Board and another elected member of the Board were 'keen to take up your offer'. He also indicated that a third elected member of the Board was also keen to attend. The Energreen representative confirmed that the company would accommodate all three Board members.

- 211.** The proposed visit was rescheduled to 3 to 4 November 2009 at the company's request. In the event, the former Engineer Health and Safety and Plant Manager accompanied the three Board members on the visit. The planned visit was reported to the Board on 12 October 2009.
- 212.** I consider that it was not necessary to conduct a visit to the Energreen factory at this stage as the equipment was available for inspection within the UK and the Drainage Board had been made aware of this fact by Energreen. The former Vice-Chairman of the Board has told me that the Drainage Board had had a bad experience in the past whilst procuring equipment, and that in view of this, it was considered prudent and proper to inspect Energreen's factory to 'see how the machines were made and to check the number of machines produced and the support provided by Energreen in the event of a problem'. I consider that the Board could have obtained assurances in writing from Energreen. Furthermore, the Board could have sought feedback on some of these matters from Energreen's UK-based customers. Moreover, even if a visit to the Energreen factory was warranted, I consider sending four Board representatives was excessive.
- 213.** It is evident from correspondence between Energreen and the Drainage Board's former Engineer Health and Safety and Plant Manager, that whilst in Italy, a proposed purchase was discussed and the Energreen representative indicated that a 'special bonus' would be applied if a purchase was made in 2009. The bonus referred to was a discount on the purchase price.
- 214.** In an e-mail from Mr Jackson-Johns to the Drainage Board's former Engineer Health and Safety and Plant Manager on 2 December 2009, Mr Jackson-Johns expressed reservations regarding any potential purchase and expressed concerns over budgets and that the Drainage Board already had surplus equipment. Mr Jackson-Johns did, however, authorise obtaining a quote from Energreen.
- 215.** I have seen no evidence that any consideration was given to the operational needs of the Drainage Board, including how the potential purchase would benefit the Drainage Board, how the equipment would be used or how the functionality of the equipment would overlap with the Drainage Board's existing plant and equipment. The Drainage Board purchased two other pieces of equipment in September and November 2009 which in part would fulfil the same role as the Energreen equipment.
- 216.** A quotation was obtained from Energreen and this quotation was considered at the Board meeting of 14 December 2009. The Board deferred making any decision until budgets had been set for 2010-11. Following the Board meeting, alternative quotations were sought for similar equipment from other suppliers. This technically fulfilled the requirements of the financial regulations to obtain three quotations. However, each item of equipment had a different specification and as the Drainage Board had not defined its own business need, it is difficult to see how the Board compared the quotations; other than on the basis of price. There was no business case for the purchase and I am concerned that some individuals involved in the decision to purchase the equipment had received hospitality from the supplier of the equipment. This has given rise to the possibility that the objectivity of these individuals may have been impaired by the hospitality they received.

- 217.** I have reviewed the three quotes obtained. All of the quotes provided include both the base machine plus optional extras. I do not consider that it is possible to compare the cost of the three options on a like-for-like basis. Nevertheless, at the Plant and Works Subcommittee meeting held on Monday 15 March 2010, the purchase of the Energreen was recommended as the lowest-cost quotation at a price of £175,662.50 (inclusive of VAT). The committee was chaired by the former Vice-Chairman of the Board, who was one of those who had visited Energreen in Italy. A second member of the committee had also attended the visit to Energreen. The former Engineer Health and Safety and Plant Manager was also in attendance both at the committee and on the visit..
- 218.** A *Capital Expenditure Request Form* submitted to the Finance Manager sets out the rationale for the purchase as 'to give greater productivity in the maintenance of watercourses in a short window of time'. I do not consider that this is an adequate justification for a major capital purchase.
- 219.** At the Plant and Works Subcommittee meeting of 15 March 2010, it was also noted that as a result of the purchase of the Energreen, another major item of equipment which had been purchased as recently as September 2009 'would for all intents and purposes become mothballed'.
- 220.** On 26 April 2010, the Drainage Board's former Engineer Health and Safety and Plant Manager wrote by e-mail to Energreen accepting their 'final quotation sent 22 March 2010'.
- 221.** Between 22 June and 24 June 2010, two employees of the Drainage Board went as guests of Energreen to Italy to undertake a final approval check on the equipment which had been procured.
- 222.** I have a number of concerns regarding the purchase of the Energreen equipment which are as follows:
- No record that the Board approved the purchase of the Energreen, despite this being required by the Drainage Board's financial regulations. The Board's former Chairman and the former Vice-Chairman of the Board have told us that the Board did discuss and approve the purchase at a Board meeting on 12 April 2010 but the minutes of the meeting were inaccurate.
 - The Drainage Board has not demonstrated that there was a business need for the purchase and failed to specify its needs throughout the procurement process.
 - The Drainage Board has failed to demonstrate that the purchase represents value for money.
 - The acceptance of hospitality from a single supplier gives rise to the perception that said supplier has been inappropriately favoured.
 - As referred to in [paragraphs 65 and 66](#), the Drainage Board did not have a policy for the registering, recording and authorisation of hospitality. As a consequence, this has led to a lack of transparency in the decision-making process and has resulted in those individuals who received hospitality being engaged in the decision-making process when they were potentially conflicted.

The purchase of a vehicle for use by the former Clerk and Engineer was in breach of the Drainage Board's financial regulations and the Drainage Board is unable to demonstrate that it achieved value for the money spent

- 223.** The minutes of a meeting of the Board's Plant and Works Subcommittee dated 10 August 2009 record that 'The CEO [Mr Jackson-Johns] advised that, in line with the board's policy of replacing [the Clerk and Engineer's vehicle] every three years – this period was now coming to expiration towards the end of 2009. It was therefore now necessary to commence appropriate investigations for the purchase of a suitable replacement vehicle. He therefore requested of the Committee that he be authorised to commence these works – to be assisted by the Chairman and the Vice-Chairman as necessary.'
- 224.** The minutes of a meeting of the Board's Plant and Works Subcommittee dated 16 November 2009 record that the meeting resolved that 'the Chairman and Vice-Chairman to be given plenary powers to work to a budget in the region of £27,000 (quoted for a second-hand Freelander.) Quotations to be obtained from [two motor dealers]. Current CEO vehicle to be either advertised or used in part-exchange, whichever was most cost effective.'
- 225.** On 9 February 2010, the Drainage Board purchased a used Land Rover Freelander for £24,349 (plus road tax and boot liner) from a Land Rover dealer. The CEO's existing vehicle was part exchanged for £8,000.
- 226.** It was the Drainage Board's usual practice for the former Engineer Health and Safety and Plant Manager to seek quotes for vehicles, equipment and machinery. It is unclear why this was not done in this case:
- It is not apparent on what basis a budget of £27,000 was set or who suggested this amount as being an appropriate budget.
 - Whilst the Plant and Works Subcommittee authorised Mr Jackson-Johns to seek quotations, It is not apparent from the Board's records that any alternative quotations were sought. This represents a breach of the Drainage Board's financial regulations which require three quotations for a purchase of this value.
 - There is no reference in the minutes of the Board that the purchase of the new vehicle was approved. This represents a breach of the financial regulations which require all purchases in excess of £20,000 to be approved by the Board. It would appear that when the Board approved the minutes of the Plant and Works Subcommittee meeting of 16 November 2009, members of the Board incorrectly assumed that the Board had de facto approved the purchase.

- 227.** In interview, the former Vice-Chairman of the Board told me that the former Clerk and Engineer identified the car in one of the specified garages and requested the vehicle be purchased. Neither the former Chairman nor the former Vice-Chairman therefore played a role in identifying the car for purchase.
- 228.** The Drainage Board is not able to demonstrate that it has achieved value for money for this purchase.

On some occasions, the Drainage Board used public resources in supporting external organisations when it had no statutory powers to do so

- 229.** The Drainage Board is a statutory body. It is only able to act in accordance with the statutory powers granted to it. It cannot use public resources to undertake any activities which are outside its legal remit.
- 230.** Some members of the Board were actively involved in the activities of a local pressure group, the Gwent Levels Flood Defence Alliance (GLFDA). The aim of the group is to ensure that the sea wall defences protecting the Gwent Levels are maintained and improved. This is a laudable aim and many of the members of the Board will understandably have considerable sympathy with this aim. However, the Drainage Board cannot lawfully provide financial support for lobbying groups.
- 231.** Several members of the Board and the former Clerk and Engineer of the Drainage Board, Mr Jackson-Johns, have been members of the GLFDA. Whilst the Board has not authorised the provision of support for the group, this has been provided in several ways nonetheless. This includes:
- Providing secretariat support to the group.
 - Allowing meetings to take place at the Drainage Board's offices free of charge. Other groups meeting at the Drainage Board's offices are required to pay for the use of the facilities.
 - Designing the group's headed stationery.
 - Distributing publicity materials with the Drainage Board's mailings.
- 232.** Mr Jackson-Johns' timesheets indicate that he claimed time off in lieu from the Drainage Board for the time he spent supporting the GLFDA. The Drainage Board was therefore paying Mr Jackson-Johns for his work with the GLFDA. I consider that this support was unlawful. I have seen no evidence that the Board determined that providing support for the GLFDA was one of Mr Jackson-Johns' duties nor that the Board authorised Mr Jackson-Johns to take time off in lieu for these activities.
- 233.** I consider the support provided to the GLFDA was unlawful. I am concerned that Board members who were also members of the GLFDA did not consider it necessary to declare their membership of the GLFDA, even though the *Register of Members' Interests* required them to disclose their membership of any 'body whose principal purpose include the influence of public opinion or policy'. I consider that the GLFDA falls within this definition.

234. The Drainage Board makes payments or subscribes to a number of other organisations. In most cases these payments are designed to support the activities and operations of the Drainage Board and, as such, in my view are within the Drainage Board's legal powers, eg the Drainage Board's membership of the Association of Drainage Authorities. However, I consider that the legal basis for some payments is questionable, eg the Drainage Board's membership of the National Farmers Union. The General Manager has reviewed the organisations the Drainage Board supported or subscribed to in order to ensure that the Drainage Board had the requisite legal powers and any expenditure represented value for money. As a result of this review, several subscriptions were discontinued.

The Drainage Board did not have HR policies and procedures in place. This has led to a lack of transparency over the grading and remuneration of staff. Furthermore, the former Clerk and Engineer recommended to the Board that the Office and Personnel Manager's post be re-graded even though he had a personal and pecuniary interest.

- 235.** Internal drainage boards may remunerate their staff as they see fit as long as this is within reasonable limits.
- 236.** In making decisions regarding staff remuneration, it is essential that boards ensure that they have robust and transparent processes in place to ensure that employment and equalities legislation is complied with. Boards must ensure that members of staff are treated fairly and that their remuneration reflects their responsibilities relative to other members of the drainage board's staff.
- 237.** In adopting the Lincolnshire terms as set out in [paragraph 91](#), the Drainage Board accepted a framework within which decisions relating to staff remuneration were to be made. The Lincolnshire terms specify 13 staff grades with 47 spinal points across these grades. As set out in [paragraphs 111 to 119](#), the remuneration set in 2007 for the former Clerk and Engineer, Mr Jackson-Johns, exceeded the highest-published pay point under the Lincolnshire terms.
- 238.** The Lincolnshire terms provide for members of staff to receive automatic annual increments (ie, to move onto a higher spinal point within the same grade). The Lincolnshire terms do not set out a procedure to be followed when considering re-grading a post (which could lead to the promotion of the existing post-holder). It is incumbent on each board to develop effective HR policies and procedures to:
- evaluate each job within the organisation in accordance with clear and objective criteria and to grade jobs accordingly;
 - establish criteria against which eligibility for staff increments will be determined;
 - establish procedures for re-grading posts; and
 - develop recruitment and promotion policies, including whether competition is required, when jobs are re-graded.

- 239.** During the course of my work, I found an absence of formal HR policies within the Drainage Board. Decisions over HR matters appear to have been delegated to the Board's Establishment Committee. In the absence of formal policies, procedures or criteria for decision making, decisions were not made transparently. I have found no evidence that proper consideration was given by the Board to the grading of posts or to the relative responsibilities of the post-holders. Decisions on the award of incremental points appear to have been taken on the basis of staff presentations to the Establishment Committee. This practice was contrary to the Lincolnshire terms, (see paragraph 238) and therefore represented a breach of staff contractual employment rights. Even if incremental points had been linked to performance, I do not consider that requiring staff to present to the Establishment Committee would have facilitated an objective assessment of annual performance. The Drainage Board has acknowledged that staff contractual rights were breached. The General Manager has told me that retrospective adjustments have now been applied to staff pay to recognise employees' contractual entitlements.
- 240.** I have a particular concern regarding the way in which the Office and Personnel Manager's post was re-graded from Lincolnshire terms Grade 5 to Grade 6 with effect from 1 October 2004. This decision was taken by a meeting of the Board on 14 October 2004. The minutes of the meeting do not show that the Board considered the responsibilities of the post in reaching its decision. This decision increased the maximum which Mrs Jackson-Johns could be paid under her terms of employment from £22,869 to £25,326 (at 2004-05 rates).
- 241.** I am further concerned that Mr Jackson-Johns recommended to the Board that his wife's post be re-graded. I consider that Mr Jackson-Johns had a personal and pecuniary interest in the matter and should not have been involved in any way in the decision-making process.
- 242.** The current General Manager has told me that the Board has now introduced robust HR policies and procedures and has retained both external HR and employment law consultants to assist the Board's management to ensure that all staffing matters are managed in line with best HR practice. He considers that there are now appropriate and transparent processes in place to ensure that employment and equalities legislation is complied with. I will be reviewing the progress made by the Board in this area as part of my ongoing audit.

The decisions taken to allow senior staff time off in lieu of extra-contractual hours worked were not taken properly. These decisions, which were based on recommendations made by the former Clerk and Engineer, benefited only three members of staff including the former Clerk and Engineer and the former Office and Personnel Manager.

- 243.** On 30 June 2008, the Board's Governance/Establishment Committee met. The minutes of the meeting refer to a PowerPoint presentation made by Mr Jackson-Johns relating to overtime worked by 'senior officers'. The minutes record that 'Best practice in the industry was outlined'. The PowerPoint presentation referred to in the minutes has not been filed with the minutes and the Drainage Board has been unable to locate a copy of this presentation.
- 244.** The former Chairman of the Board, Mr Waters, wrote to Mr Jackson-Johns and to the Drainage Board's former Engineer Health and Safety and Plant Manager on 14 July 2008 stating that the Governance/Establishment Committee had put in place time off in lieu arrangements for personnel paid in excess of the overtime payment limit. The overtime limit being referred to related to a provision within the Lincolnshire terms which states that 'payment for overtime shall be limited to employees of salary points no higher than the top of Grade 6 (spine point 26)'. In fact, Mr Jackson-Johns and the Drainage Board's former Engineer Health and Safety and Plant Manager were the only members of staff who were being paid above the overtime limit. The proposal put forward by Mr Jackson-Johns to the Governance/Establishment Committee stood to benefit only himself and one other member of staff.
- 245.** On 7 June 2010, Mr Waters wrote to both the Finance Manager and the former Office and Personnel Manager, Mrs Jackson-Johns, stating that 'following on from recent discussions between myself and the Vice Chairman and similar arrangements already agreed and in place for senior management', these members of staff would be entitled to claim time off in lieu of extra-contractual hours worked.
- 246.** I have several concerns regarding this action:
- The decision to allow these members of staff time off in lieu does not appear to have been approved by either the Board or a Board committee. I consider that Mr Waters did not have the delegated authority to make changes unilaterally to staff terms and conditions of employment.
 - The decision was not 'similar' to the arrangements already agreed for the former Clerk and Engineer and the former Engineer Health and Safety and Plant Manager in 2008, as stated in Mr Waters' letter. Both the former Clerk and Engineer and the former Engineer Health and Safety and Plant Manager were paid above the overtime limit set out in the Lincolnshire terms, whereas the former Office and Personnel Manager, Mrs Jackson-Johns, and the Finance Manager were paid below the overtime limit.

- The Finance Manager was already entitled to be paid overtime for excess hours worked as her pay was below Spinal Point 26 of the Lincolnshire terms. Mrs Jackson-Johns was also below the overtime limit but was employed on a part-time contract. The Lincolnshire terms state that part-time staff must work the equivalent of full-time hours before they receive any entitlement to overtime. Mrs Jackson-Johns had no entitlement to claim overtime unless she had already worked an extra 11 hours in a week. The only officer who therefore benefited from the change introduced by the Chairman, Mr Waters, in his letter of 7 June 2010 was the former Office and Personnel Manager. Mrs Jackson-Johns had, prior to this date, claimed overtime payments although she was not entitled to do so under her contract of employment. The letter appears to be an attempt to regularise and/or justify the situation. However, as the Board did not authorise the change, I consider that Mrs Jackson-Johns was not entitled under her contract to claim overtime payments or time off in lieu of extra-contractual hours worked (unless hours worked exceeded full-time hours).

The Drainage Board provided services to other drainage boards without having considered the strategic implications, costs and risks of doing so

- 247.** Under the provisions of the Land Drainage Act 1991, internal drainage boards are able to undertake work on behalf of other internal drainage boards. This may include providing administrative or specialist engineering services.
- 248.** In recent years, the Drainage Board has agreed to provide services at negotiated prices to other internal drainage boards including: Powysland, Lower Wye, River Lugg and West Mendip internal drainage boards.
- 249.** When carrying out work on behalf of another drainage board, I would expect the Drainage Board to have considered:
- the relative risks and rewards of undertaking this work;
 - what impact the out-of-district work would have on delivering the Drainage Board's statutory responsibilities;
 - the financial cost of undertaking this work, derived from a detailed assessment of the resources required and the expenses which would necessarily be incurred; and
 - the need to legally contract with the other drainage board to clarify issues such as the scope of the services to be delivered, required performance levels and the extent of each board's liability.
- 250.** I have concluded that none of the above factors were adequately considered by the Drainage Board. I have not found any detailed costings which establish the basis on which prices agreed with the other drainage boards were set, nor have I found any evidence that the strategic implications and risks of taking on the additional work were considered. The agreements between the internal drainage boards are largely informal which has led to the Drainage Board being exposed to risk.

251. I understand that the former Clerk and Engineer, Mr Jackson-Johns, was personally responsible for costing the agreements and for negotiating with each of the other drainage boards. I find it surprising that he chose not to involve the Drainage Board's Finance Manager in the costing process.

The Drainage Board's recording and pricing of private works has not been sufficiently robust and the operation of its 'profit incentivisation' scheme was contrary to law

- 252.** Under the provisions of the Land Drainage Act 1991, internal drainage boards are empowered to undertake drainage works on behalf of other organisations or private individuals with their consent. This work is commonly referred to as 'private' or 'rechargeable' work. (This is distinct from the work that an internal drainage board may undertake for other drainage boards as set out in [paragraphs 247 to 251](#).)
- 253.** Internal drainage boards may charge the cost of undertaking private works to the organisations and individuals for whom they undertake these works. The legislation does not empower internal drainage boards to price the cost of the work it undertakes to generate profit.
- 254.** Private work can be beneficial to internal drainage boards when undertaken within the context of an overall work programme. If private work is scheduled for periods when there is less demand for the Drainage Board's statutory activities, it can help to ensure that vehicle, plant and staffing resource is more fully utilised.
- 255.** The Drainage Board undertakes private work on behalf of other organisations and individuals. In 2009-10, the Drainage Board received income of £284,262 in respect of this work. I have several concerns regarding this activity:
- The Drainage Board did not have an organisational work programme. The Drainage Board appears to have agreed to undertake private works on an ad hoc basis without proper consideration of the impact such works would have on the statutory works the Drainage Board was required to undertake. This was symptomatic of wider strategic failings of the Drainage Board as highlighted in [paragraphs 19 to 24](#).

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- The standard of record keeping for private works was often very poor. The documentation setting out the work to be completed often only stated 'private works as requested'. Under legislation, internal drainage boards are only empowered to undertake 'drainage works' for other organisations and individuals. In the absence of robust records, I have not been able to satisfy myself that all the private works undertaken were drainage works. Any private work undertaken which was not drainage work would be unlawful. The Drainage Board has now reviewed the private works it has undertaken since 2006-07. I have been told by the current General Manager that he is satisfied that all private works undertaken during this period were drainage works except for works undertaken for the former Clerk and Engineer and a minor job undertaken for the former Engineer Health and Safety and Plant Manager. In the latter case, the General Manager is uncertain of the nature of the work undertaken.
 - The costing of private works was not sufficiently robust. Private works were in theory priced to break-even. An assessment was made of the staffing, material and vehicle and plant cost required to undertake the work. A further 10 per cent was added to the cost of each job in order to recover an element of the Drainage Board's corporate overheads. Whilst the application of an overhead rate is reasonable, the Drainage Board has been unable to demonstrate that it had a robust methodology for determining that the overhead rate of 10 per cent was calculated to recover the Drainage Board's full costs. It appears that some jobs were in fact being priced to generate profit and not just to cover cost (alternatively the overhead rate of 10 per cent was set much too low). The jobs which appear to have been overpriced were primarily those undertaken for other organisations as opposed to private individuals. From 2005-06 to 2009-10, the Drainage Board made profits on private works of 26.4 per cent, 25.6 per cent, 27.6 per cent, 16.6 per cent and 9.64 per cent respectively. The legislation only allows internal drainage boards to recover the cost of undertaking private works.
- 256.** The Works and General Purposes Committee held on 14 August 2006, the former Clerk and Engineer advised the committee that it needed to consider the introduction of a Board 'incentive' scheme. The proposal was that Board staff would be eligible for bonus payments if the Drainage Board made a profit of at least 15 per cent on 'rechargeable/private works'. The total amount to be distributed to staff would be 10 per cent of the profit made. Each member of staff (including office-based staff) would receive a flat amount which would not exceed one week's gross pay for that employee. The scheme was to be retrospectively implemented for the 2005-06 financial year. The committee resolved to recommend these proposals to the Board.
- 257.** From 2005-06 to 2009-10, the following payments were made to staff under the scheme as set out in [Exhibit 2](#).

Exhibit 2: Payments made to staff under the Drainage Board's profit incentivisation scheme

| Financial year | Total bonus paid | Amount per employee (pro-rated for part-time and new starters) |
|----------------|-------------------|--|
| 2005-06 | £3,116.65 | £250 |
| 2006-07 | £7,186.00 | £450 |
| 2007-08 | £7,758.32 | £500 |
| 2008-09 | £5,700.00 | £300 |
| 2009-10 | £2,850.00 | £150 |
| Total | £26,610.97 | |

- 258.** In 2009-10, the Drainage Board did not make the profit margin of 15 per cent required on private/rechargeable work before bonuses became payable. The percentage achieved was 9.64 per cent. The Board resolved to make bonus payments nonetheless.
- 259.** I consider the bonus scheme introduced by the Drainage Board is contrary to law. The Drainage Board is not able to budget to generate profit on private works. The existence of a Board scheme which provides bonuses for generating profits on private works must, necessarily, be contrary to law as were all payments made under this scheme.
- 260.** The Drainage Board's current General Manager determined shortly after his appointment that no bonuses should be paid under the profit incentive scheme for 2010-11.

Next steps

- 261.** The Drainage Board is now required by Section 25 of the Public Audit (Wales) Act 2004 to consider this report at a full meeting of the Board within one month of the date of this report. At the meeting, the Board must decide:
- whether the report requires it to take any action;
 - whether the recommendations in the report are to be accepted; and
 - what action (if any) to take in response to the report and recommendations.

Acknowledgements

262. I wish to express my appreciation to current and former officers and Board members of the Board for their co-operation during the audit. I would particularly like to thank those members of staff who have sought to respond quickly to my requests for information, whilst continuing to deliver their own work programmes.



Anthony Barrett
Appointed Auditor

8 October 2012

Appendix 1

The Nolan seven principles of public life

Selflessness

Holders of public office should act solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family, or their friends.

Integrity

Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might seek to influence them in the performance of their official duties.

Objectivity

In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.

Accountability

Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.

Openness

Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.

Honesty

Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.

Leadership

Holders of public office should promote and support these principles by leadership and example.

Appendix 2

Declarations of interest in the sea defences case

| Date of Board meeting | Matter discussed | Mr Leonard Attewell | | | Mr Neville Waters | | | Mr Tom James | | |
|-----------------------|--|---------------------|-------------------|-----------------------|-------------------|-------------------|-----------------------|--------------|-------------------|-----------------------|
| | | Present | Declared interest | Withdrew from meeting | Present | Declared interest | Withdrew from meeting | Present | Declared interest | Withdrew from meeting |
| 12/07/2010 | The Clerk and Engineer of the Board 'gave a brief synopsis of the situation to date' and advised the Board that an extraordinary meeting of the Board would be held on 3 August 2010 at 14:30 hours. He informed the Board that the meeting would be attended by the solicitors acting for the claimant (Mr Attewell). The Clerk and Engineer informed the Board at the meeting on 12 July 2010 that 'Members would be called upon to decide the way forward for the Board in this landmark case.' | Yes | No | No | Yes | No | No | No | Not applicable | Not applicable |
| 03/08/2010 | Mr Attewell's solicitor was present and addressed the meeting. He briefed the Board members on the court case. The solicitor told the Board that | No | Not applicable | Not applicable | Yes | No | No | Yes | No | No |

| Date of Board meeting | Matter discussed | Mr Leonard Attewell | | | Mr Neville Waters | | | Mr Tom James | | |
|-----------------------|---|---------------------|-------------------|-----------------------|-------------------|-------------------|-----------------------|--------------|-------------------|-----------------------|
| | | Present | Declared interest | Withdrew from meeting | Present | Declared interest | Withdrew from meeting | Present | Declared interest | Withdrew from meeting |
| | <p>'A group of landowners on the Caldicot Level represented by Mr Attewell was currently bringing a case against the Environment Agency with regard to maintenance of the sea defences'. The solicitor 'advised the Board to fight the case using the direct briefing approach'. The claimant's solicitor left the meeting and the Board resolved to instruct the Chief Executive to: 1) engage a barrister, 2) take advice and report back to the Board, 3) acknowledge service 4) produce a statement in response. The Board resolved 'that the Chairman and CEO be given plenary powers to engage the services of a suitable Barrister as soon as possible'.</p> | | | | | | | | | |

| Date of Board meeting | Matter discussed | Mr Leonard Attewell | | | Mr Neville Waters | | | Mr Tom James | | |
|-----------------------|--|---------------------|-------------------|--|-------------------|-------------------|-----------------------|--------------|-------------------|--|
| | | Present | Declared interest | Withdrew from meeting | Present | Declared interest | Withdrew from meeting | Present | Declared interest | Withdrew from meeting |
| 20/09/2010 | Case summary notes were circulated to all members and a copy placed with the minutes. Mr Jackson-Johns advised that the three councils funding the Drainage Board had been written to, and invited to join, the proceedings as a co-defendant or agree to be bound by the decision in the litigation. 'In view of the enormity and possible repercussions of this case', the Board resolved to appoint two Board members to represent its views and councillor members were urged to approach their respective chief executive officers, in order to chase up a response to the letter sent from the Board's solicitor regarding the invitation to be joined to the proceedings. | Yes | Yes | This is not clear from the minutes. The minutes record that he withdrew from any discussions but do not state that he withdrew from the meeting. Mr Attewell has stated that he does not think he left the meeting room. Mr Attewell was the Chairman of the meeting. There is no minute of an | No | Not applicable | Not applicable | Yes | Yes | This is not clear from the minutes. The minutes record that he withdrew from any discussions but do not state that he withdrew from the meeting. The Board member maintains that he left the room. The case summary notes prepared by the Board's solicitors appear to have been circulated to |

| Date of Board meeting | Matter discussed | Mr Leonard Attewell | | | Mr Neville Waters | | | Mr Tom James | | |
|-----------------------|------------------|---------------------|-------------------|---|-------------------|-------------------|-----------------------|--------------|-------------------|--|
| | | Present | Declared interest | Withdrew from meeting | Present | Declared interest | Withdrew from meeting | Present | Declared interest | Withdrew from meeting |
| | | | | alternative chairman being appointed. The case summary notes prepared by the Board's solicitors appear to have been circulated to all members of the Board including Mr Attewell. | | | | | | all members of the Board including Mr James. |

| Date of Board meeting | Matter discussed | Mr Leonard Attewell | | | Mr Neville Waters | | | Mr Tom James | | |
|-----------------------|--|--|-------------------|-----------------------|-------------------|-------------------|---|--------------|-------------------|--|
| | | Present | Declared interest | Withdrew from meeting | Present | Declared interest | Withdrew from meeting | Present | Declared interest | Withdrew from meeting |
| 08/11/2010 | The Board's solicitor circulated the case summary notes to members, and outlined and summarised the main aspects of the case. The Board resolved to: 1) continue to defend the case 2) request that the question of maintenance of the sea wall to be addressed first and the question of liability to be addressed second 3) to write formally to the three funding local authorities and other interested bodies to join informal talks 4) to provide Queen's Counsel with a brief summary of the Board meeting. | Yes, but after sea defences case had been discussed. | Not applicable | Not applicable | Yes | Yes | Yes – the case summary notes prepared by the Board's solicitors appear to have been circulated to all members of the Board including Mr Waters. | Yes | Yes | Yes – the case summary notes prepared by the Board's solicitors appear to have been circulated to all members of the Board including Mr James. |

| Date of Board meeting | Matter discussed | Mr Leonard Attewell | | | Mr Neville Waters | | | Mr Tom James | | |
|-----------------------|--|---------------------|-------------------|-----------------------|-------------------|-------------------|-----------------------|--------------|-------------------|-----------------------|
| | | Present | Declared interest | Withdrew from meeting | Present | Declared interest | Withdrew from meeting | Present | Declared interest | Withdrew from meeting |
| 13/12/2010 | The sea defences case was considered and that the Clerk and Engineer briefed the Board on the case. The minutes record that 'following a protracted and very lengthy discussion, the following was resolved: 1) the Board accepted liability incumbent under the 1884 Act and 2) the Board agreed the requirement that the definition of 'maintain' was to be decided first by the judge.' | Yes | No | No | Yes | No | No | No | Not applicable | Not applicable |

| Date of Board meeting | Matter discussed | Mr Leonard Attewell | | | Mr Neville Waters | | | Mr Tom James | | |
|-----------------------|--|---------------------|-------------------|---|-------------------|-------------------|-----------------------|--------------|-------------------|--|
| | | Present | Declared interest | Withdrew from meeting | Present | Declared interest | Withdrew from meeting | Present | Declared interest | Withdrew from meeting |
| 24/01/2011 | The Clerk and Engineer informed the Board that members needed to reconsider the resolutions it had made on 13 December 2010 regarding the sea defences case. The Board resolved to rescind the resolutions of 13 December 2010 and resolved: 1) 'That the Board accepted liability incumbent under the 1884 Act, subject to the Board having the necessary resources' 2) 'That the Board agreed the requirement that the definition of 'maintain' was to be decided first by the judge'. | Yes | Yes | No – minutes record that Mr Attewell withdrew from the meeting after the case had been discussed but before the vote. | No | Not applicable | Not applicable | Yes | Yes | No – minutes record that Mr James withdrew from the meeting after the case had been discussed but before the vote. |

| Date of Board meeting | Matter discussed | Mr Leonard Attewell | | | Mr Neville Waters | | | Mr Tom James | | |
|-----------------------|--|---------------------|-------------------|--|-------------------|-------------------|--|--------------|-------------------|-----------------------|
| | | Present | Declared interest | Withdrew from meeting | Present | Declared interest | Withdrew from meeting | Present | Declared interest | Withdrew from meeting |
| 14/02/2011 | The Clerk and Engineer updated members in relation to the case including informing members that 'the judge declined to make any order for costs so that each party must bear its own costs'. | Yes | Yes | This is not clear from the minutes. The minutes record that he did not take part in any further discussion but do not state that he left the room. | Yes | Yes | This is not clear from the minutes. The minutes record that he did not take part in any further discussion but do not state that he left the room. Mr Waters was the Chairman of the meeting. There is no minute of an alternative chairman being appointed. | No | Not applicable | Not applicable |

| Date of Board meeting | Matter discussed | Mr Leonard Attewell | | | Mr Neville Waters | | | Mr Tom James | | |
|-----------------------|--|---------------------|-------------------|--|-------------------|-------------------|--|--------------|-------------------|--|
| | | Present | Declared interest | Withdrew from meeting | Present | Declared interest | Withdrew from meeting | Present | Declared interest | Withdrew from meeting |
| 21/03/2011 | The minutes of the meeting do not record detail on the nature of the discussion. | Yes | Yes | This is not clear from the minutes. The minutes record that he did not take part in any discussion but do not state that he left the room. | Yes | Yes | This is not clear from the minutes. The minutes record that he did not take part in any discussion but do not state that he left the room. Mr Waters was the Chairman of the meeting. There is no minute of an alternative chairman being appointed. | Yes | Yes | This is not clear from the minutes. The minutes record that he did not take part in any discussion but do not state that he left the room. |

| Date of Board meeting | Matter discussed | Mr Leonard Attewell | | | Mr Neville Waters | | | Mr Tom James | | |
|-----------------------|--|---------------------|-------------------|--|-------------------|-------------------|--|--------------|-------------------|-----------------------|
| | | Present | Declared interest | Withdrew from meeting | Present | Declared interest | Withdrew from meeting | Present | Declared interest | Withdrew from meeting |
| 11/04/2011 | The Clerk and Engineer updated members on the case which had been heard in the High Court of Justice on 1 April 2011. The Clerk and Engineer informed Board members that the judge had advised that he would make his determination within three months. | Yes | Yes | This is not clear from the minutes. The minutes record that he did not take part in any discussion but do not state that he left the room. | Yes | Yes | This is not clear from the minutes. The minutes record that he did not take part in any discussion but do not state that he left the room. Mr Waters was the Chairman of the meeting. There is no minute of an alternative chairman being appointed. | No | Not applicable | Not applicable |



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