

CONFIRMED MINUTES

89th BOARD MEETING

TUESDAY 02 MARCH 2010 AT HOLLY WALK, LEAMINGTON SPA

PRESENT: PHILIP SMITH (Chairman)
JOHN KING (JK)
WILL LIFFORD (WL)
LORRAINE CLINTON (LC)
CHRISTOPHER WELFORD (Chief Executive)

IN ATTENDANCE: LEONNE JACKSON (LJ) HMRC
MARK CROOK (Head of Finance)

COMMITTEE SECRETARY: VICTORIA RACE (VR)

1. INTRODUCTION

1.1 The Chairman welcomed everyone to the meeting.

2. APOLOGIES

2.1 Apologies of absence were received from Mary Hawkins, Head of Operations.

3. DECLARATIONS OF INTEREST

3.1 Board members were requested to formally complete a Declaration of Interest for the start of the 2010/2011, financial year.

4. MINUTES OF THE PREVIOUS MEETING

4.1 The minutes of the 88th Board meeting were tabled and approved for signature by the Chairman.

5. ACTIONS FROM PREVIOUS MEETINGS

5.1 HMRC welcomed ENTRUST's view to consider commissioning research into the future of the sector, but were unable to provide any direct financial support to fund the project but would make available appropriate information in their possession.

5.2 HMRC have contacted their legal advisors as to the legality and process involved in revoking EBs who no longer exist and they were still waiting for a response.

5.3 Having reviewed the governance framework, the Board considered it was too detailed and therefore directed it should be subject to a further review to streamline it down.

5.4 **ACTION:** The Head of Finance to review and update the governance framework.

5.5 The Chairman provided a summary of his meeting with HMRC. HMRC consider that the working relationship with ENTRUST has improved and was strengthened over the last couple of years. During the discussions, he had raised a number of issues relating to the regulation of the Fund and the application of the Regulations, for example, the Retention of Records. He had also raised the difficulty for ENTRUST in carrying out our role when we have limited enforcement powers. He therefore considered that it would be useful to hold another follow up meeting in the latter part of the year.

5.6 HMRC asked what arrangements had been put into place to provide a whistle blowing hotline for stakeholders. The Chief Executive confirmed that the Company did not

have any arrangements, but that the Senior Management Team (SMT) would consider this request.

- 5.7 ACTION:** The SMT to consider the extension of the whistle blowing hotline to cover external stakeholders.

6. OPERATIONAL REVIEW

6.1 Executive Summary

6.1.1 The Head of Finance provided an overview of the report. The Risk Register now included The Economy as a risk following the Board's request at its previous meeting. He then went on to set out the position on current relocation and reorganisation costs. Finally, he explained the slight increase in income during the period and the Board requested that he undertake some further analysis in this area to identify the trends over the last three years.

- 6.1.2 ACTION:** The Head of Finance to look at trend of take up of the fund and the impact it has had on ENTRUST income

6.2 ENTRUST Investments

6.2.1 The Board considered it was appropriate to review our investment portfolio to try to maximise the income that we receive from it, which is used to offset our operating costs. The Head of Finance explained that he had already reviewed the investment options available at the renewal time and the selection made maximised our income, but minimised our financial exposure. However, the Chairman considered that we should stagger the renewal dates as they currently end at the same time.

- 6.2.2 ACTION:** The Head of Finance to stagger our investment renewal dates.

6.3 Deferred Income

6.3.1 The Head of Finance explained the current position and its impact on our income. The Board requested a more detailed explanation as to how the model works. As we have also changed our External Auditors the Board considered it was appropriate that they review the methodology as part of their audit.

- 6.3.2 ACTION:** The Head of Finance to provide a detailed report to the Board on the methodology behind the deferred income model.

- 6.3.3 ACTION:** The Head of Finance to arrange for External Audit to also validate the methodology.

6.4 NECF Administration Costs

6.4.1 An offer has been made to the defendants relating to the level of awarded costs that we should pay following the case. Unless more detailed information on the level of costs to be incurred is made available before the completion of the year end process, the Head of Finance will use the best available figure which is likely to be based on awarded costs of £80k.

6.5 Key Performance Indicators (KPI)

6.5.1 The Head of Finance updated the Board on the status on delivering the KPIs. There were a small number of KPI's that would not be delivered by the year end and these had been discussed with HMRC and they fully understood and recognised why these would not be achieved. The Board asked for confirmation that from the 01 April 2010, all compliance reports would be completed within the 20 working days. The Chief

Executive advised he would discuss this issue with the Head of Operations and report back to the Board.

6.5.2 ACTION: The Head of Operations is to confirm that from the 01 April 2010, all compliance reports will be completed within 20 working days.

6.6 Landfill Communities Fund (LCF)

6.6.1 The level of EBs that we are regulating appears to have now plateaued. Looking forward the Board were interested to understand how the sector would change in the next five years and sought HMRC's views on this issue. LJ advised she was unable to provide any definitive information on this subject. The Board therefore considered it appropriate that the Company commission research into this area.

6.6.2 ACTION: The Chief Executive to commission research into the short and long term future of the sector.

6.6.3 The Chairman also raised concerns regarding the increase in administration costs charged by EBs over the last three years, which has increased by £ 10m and the impact this had on the Fund. LJ advised that as part of the review of administrative costs, that this issue would be subject to a more detailed consideration.

6.7 Chief Executives Update

6.7.1 The Chief Executive provided an update to the Board of his assessment of the current status of the landfill sector and the potential issues that may impact upon it.

6.8 ENTRUST Finances

6.8.1 The Head of Finance explained that the forecast deficit was being carefully managed. He also went on to explain the current position regarding our reserves and our contingent liabilities, which potentially expose the Company to a high level of risk. The Board were concerned with this issue and sought confirmation as to what could be done to mitigate this risk. The Head of Finance confirmed that as long as we are given the funding that we requested in our 2010 Corporate Plan, then this would cover our requirements. LJ confirmed that HMRC recognise the difficult position and financial exposure the Company face and they are therefore carefully scrutinising our future resource requirements. Finally, the Board requested a breakdown of the calculation of the costs involved in winding up the business.

6.8.3 ACTION: Head of Finance to provide the Board with a breakdown of winding up costs.

6.8.4 The Chief Executive advised that in setting the levy, HMRC consult their economists to ensure that they can accurately forecast future contribution levels. The Board stressed to HMRC the importance of setting the levy at an appropriate level and providing a mechanism to adjust it, should actual income not match the forecast level. The Head of Finance was requested to review this issue and agree the way forward with HMRC.

6.8.5 ACTION: The Head of Finance to develop a mechanism, which ensures that actual income, matches the budgeted level.

7. COMPLIANCE

7.1 The Chief Executive introduced the paper. He updated the Board on the NECF case and the issues in sorting out the proceeds from the sale of the assets. The Board was concerned that this issue is going to run on and as a matter of urgency these matters should be resolved and whether this is now an issue for ENTRUST to deal with, or HMRC.

- 7.2 **ACTION:** The Head of Operations to provide HMRC with a formal assessment of the ongoing issues related to the NECF case.
- 7.3 A number of EBs continue to fail to notify change to the Directors. The Board are unclear as to why we would need this information unless a director was an Officer bearer. They therefore requested that this area is reviewed.
- 7.4 **ACTION:** The Head of Operations to clarify the reason why changes in Directors who are not office holders have to be reported to ENTRUST.
- 7.5 The Chief Executive provided update on Name & Shaming policy and the request from HMRC that they formally approve the policy. The Chairman was disappointed that HMRC did not highlight this matter, when the Board approved the policy last year. LJ commented that she had highlighted the matter with ENTRUST. To ensure that a similar issue does not arise in the future, the Board requested a procedure been put into operation to ensure all recommendations were checked against the requirements of the Terms of Approval (TOA).
- 7.6 **ACTION:** The Head of Operations to put into operation a process in place to ensure all proposals should be checked against the TOA prior to being put to the Board.
- 8. REGULATIONS**
- 8.1 The Chief Executive introduced the paper. He advised the Board that we were still waiting for legal advice from HMRC on the process for revoking EBs who did not respond to our correspondence. He also flagged up the process that had been agreed with HMRC, that they would provide policy direction, once ENTRUST had sought legal advice on an issue and the advice we received stated that the Regulations were unclear on that issue.
- 9. ENROLMENTS & REVOCATIONS**
- 9.1 The Board noted the list of enrolments and approved the list of revocations. They requested that future papers include a summarisation of the current and previous year's figures for comparison purposes.
- 9.2 **ACTION:** The Head of Operations to include a summarisation of the current and previous year's figures in future papers.
- 10. RETENTION OF LCF MONIES CONSULTATION REPORT**
- 10.1 The Chief Executive introduced the report and explained how this consultation exercise had been carried out. Historically the guidelines in this area have been very broad and the report reviews and quantifies these issues to provide greater clarity and direction.
- 10.2 The Chairman enquired as to where the responsibility lay to clarify this issue, should it not be for HMRC to instigate rather than ENTRUST. On balance the Board considered that the information contained in the report, should be presented to HMRC and they should then be asked to consider the matter.
- 10.3 **ACTION:** The Head of Operations should redraft the paper to taken into consideration the Board's recommendations and submit the report to HMRC.
- 11. CONTRIBUTING THIRD PARTY CONSULTATION REPORT**
- 11.1 The Chief Executive introduced the paper stated that HMRC find it difficult as we do in managing this issue. It was therefore appropriate that this issue was subject to a detailed review. Furthermore, he went on to explain that ENTRUST has a requirement

under the TOA to collect and report this information to HMRC. However, we are not complying with this requirement because of the difficulties EBs have in capturing this information. Although this is a requirement under the Regulations for EBs to provide this information, the Board considered it was appropriate for this information to be provided. They therefore directed that:

- The current reporting regime is updated to ensure information can be reported to ENTRUST; and
- The report is updated to take into consideration the Board's comments.

11.2 ACTION: The Head of Operations to ensure that EBs are able to report details of CTP to ENTRUST.

11.3 ACTION: The Head of Operations should redraft the paper to taken into consideration the Board's recommendations and submit the report to HMRC.

12. UNFUNDED ENVIRONMENTAL BODY REPORT

12.1 The Chief Executive introduced the paper and drew the Board's attention to the reasons why EBs enrolled without securing any funding and the action plan that we were putting in operation to minimise the administrative burden on newly enrolling organisations. The Board approved the action plan.

12.2 ACTION: The Head of Operations to implement the action plan, which will help minimise the administrative burden on EBs.

13. RETENTION OF RECORDS

13.1 The Chief Executive presented the paper and explained the chronology and history of this issue. The Chairman was unclear why HMRC could not agree to impose a statutory timeline for this issue. In response, LJ explained that HMRC considered it appropriate that this issue could be addressed through guidance as opposed to changes in the Regulations. She went on to further explain, that the Regulations prescribe there is a requirement for EBs to keep records and therefore a proportionate timeframe needs to be kept in place to ensure that ENTRUST can carry out its full range of duties.

13.2 EBs had approached ENTRUST to ascertain the length of time they are required to retain records. In turn ENTRUST had referred the matter to HMRC to seek clarification on the matter. LJ advised that HMRC considered that 3 years was appropriate time frame, however we recommended 6 years. In summary, the Board were disappointed that HMRC are not willing to change to the Regulations and therefore we will have no option but to issue guidance to EBs.

13.3 ACTION: The Head of Operations to issue revised guidance to EBs on the retention of LCF records.

14. OBJECT D

14.1 The Chief Executive provided an overview of the current position. Having recommended to HMRC that they change the Object D Regulations and HMRC having considered our request they believed it was inappropriate to change them. Furthermore they also considered that our existing guidance was misleading and indicated what our guidance should state. We have revised our guidance and will shortly be issuing it to EBs. To ensure that the guidance fully reflects the Regulations and stakeholders expectations, we intend to carry out a consultation exercise on this area. The Board agreed that the revised guidance should reflect HMRC's policy direction and that a consultation exercise on this area should be carried out.

14.2 ACTION: The Head of Operations to issue revised guidance to stakeholders and take appropriate action to carry out a further consultation exercise on this area in 2010/2011.

15. CONSULTATION PROGRAMME

15.1 The Chief Executive presented the proposed programme for the Board's review. The Board approved two of the four areas for review and sought further information on the other two areas, before they considered them further.

15.2 The Board also requested a review to be carried out of our approach to carrying out consultative exercises to ensure that we can enhance our partnership working with HMRC. This review should help to identify areas of joint concern, which can be reviewed and further and more detailed information gathered, which will enhance and strengthen the regulation of the Fund.

15.3 ACTION: The Head of Operations to provide the Board with recommendation as to how the current consultative approach and process from the company's perspective can be enhanced.

16. TRAINING STRATEGY

16.1 The Chief Executive introduced the paper. Overall, attendance numbers and the feedback scores are slightly down compared to the previous year. However, the Board recognised that in the current economic climate organisations would be less likely to invest resources in training staff. The Board are keen to ensure that the training evolves and develops, and this should be delivered on a cost effective basis. They therefore requested that a minimum attendance level should be set for training courses and if this is not achieved the training event should be at least deferred. The Chief Executive also updated the Board on the progress made in developing our on line training facilities which would become a key means of delivery. He also sought the Board's approval to issue a training report to stakeholders and delegated authority to approve the future training strategy.

16.2 ACTION: The Board approved the training programme for the year.

16.3 ACTION: The Board authorised the Chief Executive to issue a training report and approve future training arrangements.

17. BUDGET

17.1 The Head of Finance introduced the paper and highlighted in real terms the reduction in operating costs compared to the previous year's submission. The Board noted the variances of costs compared to the previous budget. The Head of Finance explained that this was due to the Company operating from Leamington Spa for over a year and therefore more accurate information was available to calculate the budget. The Board were asked to pass any final comments to the Head of Finance by 26 March 2010, after which time the budget would be approved.

17.2 ACTION: The Board to provide any final comments to the Head of Finance by 26 March 2010.

18. CORPORATE PLAN

18.1 The Chief Executive provided an update on the current negotiations with HMRC and presented a mock up of the final Corporate Plan that will be issued to stakeholders. The Board were asked to provide any comments to him by the 19 March 2010, to allow the final document to be sent to the printers after confirmation of level of levy by HMRC.

18.2 ACTION: The Board to submit any comments to the Chief Executive by 19 March 2010.

19. NECF ADMINISTRATION COSTS

19.1 The Chief Executive updated the Board on the negotiations with our lawyers on this matter and advised that an offer had been made to the defendants for their review. He has also asked our legal advisors to review their costs in this matter

19.2 ACTION: The Chief Executive to continue to work with our legal advisors to reduce our costs in this case.

20. AUDIT

20.1 WL, Chairman of the Audit Committee, provided an overview of the points covered at the Audit Committee meeting held earlier in the day including:

- 2009/2010 IA Audit progress report;
- Reveiw of a number of IA Reports;
- Relocation of servers;
- Risk management;
- IT Strategy;
- ENTRUST On-Line Replacement programme; and
- 2010/2011 IA Audit programme.

21. HR COMMITTEE

21.1 JK, Chairman of the Human Resources (HR) Committee reported on the issues discussed at the HR and Remuneration Committee meeting earlier in the day:

- HR update;
- H&S update;
- 2011 staff pay rises;
- Criminal Records Bureau checks;
- IIP accreditation; and
- Relocation Policy.

22. HMRC

22.1 LJ provided an update on the current developments in HMRC, which primarily related to the budget, which she advised would be announced shortly and the Calman Report in Scotland.

23. ANY OTHER BUSINESS

23.1 There was none.

23. DATE & VENUE OF NEXT MEETING

23.1 The next meeting will be held at 12:30 hours on 29 June 2010, at 60 Holly Walk, Leamington Spa.

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CHAIRMAN SIGNATURE