



## Contributing Third Parties - Next Steps



**REGULATING THE LANDFILL COMMUNITIES FUND  
BENEFITING PEOPLE AND THE ENVIRONMENT**

Consultation Paper

June 2010

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# 1. Introduction

- 1.1** In 2009/2010, ENTRUST undertook a consultation exercise to determine the current processes that are in place for finding Contributing Third Parties (CTPs). The exercise focused on the record keeping and reporting obligations of both Environmental Bodies (EBs) and Landfill Operators (LOs) throughout the process.
- 1.2** The full consultation can be found on the 'Closed Consultations' pages of the ENTRUST website.

# 2. Consultation Responses

- 2.1** The consultation ran for a period of twelve weeks and responses were received from:
- 26 EBs (representing 59% of total LCF monies held);
  - Four LOs; and
  - Nine CTPs.
- 2.2** A focus group was also held, which was attended by three EBs, which although small represented 30% of the value of the LCF.
- 2.3** The summary of responses can be found at Appendix A.

# 3. Next Steps

- 3.1** It has been agreed by HMRC and ENTRUST that the current Regulation which prevents a unique benefit to CTPs from any expenditure of the EB protects the integrity of the scheme and should therefore remain in place.
- 3.2** The CTP paper was undertaken with the primary aim to understand the current processes that EBs and LOs have in place for finding CTPs and reporting on the same.
- 3.3** We will recommend to the June Board that a further consultation is undertaken to consider the most appropriate timing for the reporting of CTP details.
- 3.4** In addition to a further consultation document, it has been agreed that ENTRUST should develop best practice guidance on how EBs should monitor compliance with any restriction on CTPs.

## CONTRIBUTING THIRD PARTIES - ANALYSIS OF CONSULTATION FEEDBACK

### 1. OVERVIEW

- 1.1 The first consultation exercise of 2009/2010 focused on Contributing Third Parties (CTP). ENTRUST engaged Environmental Bodies (EBs), Landfill Operators (LOs) and Contributing Third Parties (CTPs) in a 12 week consultation exercise.
- 1.2 In total, there were 39 responses to the CTP consultation, from 26 EBs, four LOs and nine CTPs.
- 1.3 The 26 EB respondents represent 59% of the fund and account for a total of 0.1% of all EBs currently enrolled with ENTRUST.
- 1.4 There were separate questions for LOs and CTPs which are set out with the responses below.

### 2. EB RESPONSES TO THE CONSULTATION QUESTIONS

#### 2.1 **Can you please confirm the process for CTP funding which is currently undertaken within your EB? Please provide us with a flow diagram to outline this.**

- 2.1.1 A large Distributive Environmental Body (DEB) answered this part of the consultation by outlining 3 methods by which CTP funding is undertaken, depending on the EBs level of involvement:
  - 1. Where the EB is managing the project – individual projects identify a CTP (usually at the application stage); the funding DEB or LO writes to the CTP to make the relevant checks; the CTP payment cheque is passed to the EB who then passes it onto the LO;
  - 2. Where the project is being managed by another DEB – individual projects identify a CTP (usually at the application stage); ENTRUST registration is obtained; after approving LCF funds for the project the officers of the EB write to the applicant with a draft Agreement for Grant and request for the CTP payment enclosing a proforma (which asks the CTP to confirm that they are not an EB and will not benefit from their contribution) for the CTP to complete and sign; the CTP is asked to make the CTP cheque payable to the LO; the CTP payment cheque moves from the CTP to the other DEB, who then passes it onto the EB who ultimately gives it to the LO; or
  - 3. Where the EB manages funds on behalf of another DEB(s), and where the project involves these funds – individual projects identify a CTP (usually at the application stage); ENTRUST registration is obtained; after approving LCF funds for the project the officers of the EB write to the applicant with a draft Agreement for Grant and request for the CTP payment enclosing a proforma (which asks the CTP to confirm that they are not an EB and will not benefit from their contribution) for the CTP to complete and sign; the CTP is asked to make the CTP cheque payable to the LO; the CTP payment cheque moves

from the CTP to the EB, who passes it onto the funding DEB who ultimately gives it to the LO.

- 2.1.2 Generally, most of the EBs that responded to the consultation adopt one of the above three CTP processes, with slight modifications in some cases. Two EBs largely follow process number three above.
- 2.1.3 Seven EBs (27%), including three large DEBs, outlined their CTP process as follows: the EB board receives a grant for a project; the approval letter is sent to the project and CTP details are requested (one of these EBs only request CTP details if the award amounts to £40,000 or more); any CTP details received are recorded on a database maintained by the EB; when the project is registered with ENTRUST, the EB sends two copies of the CTP agreement and instructions on how to pay the LO to the CTP; the CTP returns to the EB the signed agreements and a CTP payment cheque made payable to the LO; the EB will send the CTP agreements and the cheque to the LO and the LO will countersign both CTP agreements; the LO retains the payment and sends one fully signed copy of the CTP agreement to the EB; the EB retains a copy of the agreement and sends the original to the CTP; the Finance Agreement is sent to the EB project and the project can commence. This CTP process involves elements from all three of the CTP scenarios outlined at paragraph 2.1.1.
- 2.1.4 Another large EB stated that its' CTP process works in one of two ways:
- (1) CTP payment cheque (made payable to the LO) is directed to the EBs funding DEB who passes the cheque onto the LO; or
  - (2) CTP payment cheque (made payable to the LO) is directed to the EB who then passes it on to its' funding DEB who passes the cheque onto the LO.

The EB prefers to adopt the latter approach when possible in order for it to keep detailed records and attaching CTP payments to projects.

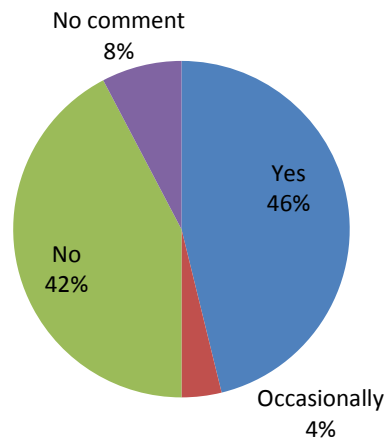
- 2.1.5 Another EB works in a similar way to the EB in the above paragraph, with the key difference being that that the EBs funding DEB handles all of the administration tasks of recording CTP details and sending confirmation letters and receiving return forms.
- 2.1.6 One EB outlined their CTP process as follows: the CTP is found at project level; the CTP notifies the EB that the CTP payment has been made or is to be made to the LO direct; the CTP makes the payment to the LO direct; the LO makes the contribution to the EB; the EB makes payment to the project on receipt of the invoices and notifies ENTRUST of the CTP; the EB keeps records of the details of the CTP payment.
- 2.1.7 One EB outlined their CTP process as follows: the EB administers funds on behalf of a secondary EB (EB2). EB2 receives LCF contributions from two LOs that have entered into an agreement with EB2 to provide the EB with the funds to distribute. When the LO makes a contribution, EB2 pays the 10% CTP to the LO. When a project applicant is approved funding they are required to pay the 10% CTP via a

cheque made payable to EB2 and sent to the EB. The EB records receipt of the cheque and forwards it to EB2 in order to reimburse the 10% that it has already paid to the LO.

- 2.1.8 One EB stated that they acquire funding from a DEB, and that the CTP payments come from a local authority that pays the payment directly to the DEB. The consequence of this is that individual recipient projects do not have to find the CTP payment funds themselves. Where the EB acquires funding from an LO, the project applicant provides the EB with the name, address and confirmation letter from the potential CTP when completing our application form. If the application is successful, the CTP makes payment to the LO and the grant money is then released.
- 2.1.9 One EB differed in that they have set up a dedicated bank account and they receive CTP cheque payments in the EBs name and deposit these in their bank account. When the EBs DEB advises them of their grant entitlement for the year, the EB draws the relevant sum from the bank account and makes payment to the LO and advises them of the CTP names on a first-in-first-out basis.
- 2.1.10 Another EB stated that it does not have any CTP involvement as all of their funding is received directly from a LO. Similarly, another EB stated that they do not, as a matter of policy, become involved in the CTP process. Instead, they inform project organisers that funds must be found for this purpose, and must be accounted for in calculating the cost of the project, and in the amount their organisation needs to provide. Therefore, the process of requesting the amount due is the responsibility of the LO or their agent, and the EB has no part to play.
- 2.1.11 One EB stated that in some cases the LO may opt to waive the CTP payment, and therefore a CTP payment will not be requested. Another EB stated that their contributing LO absorb the 10% and do not require CTP payments, and therefore this EB cannot participate in the rest of the consultation exercise.
- 2.1.12 One EB did not answer this part of the consultation.

**2.2 Does your EB currently pass on funds to the LO on behalf of the CTP?**

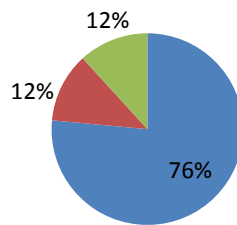
## Does your EB currently pass on funds to the LO on behalf of the CTP?



- 2.2.1 Almost half of the respondent EBs (46%) stated that they currently pass on funds to the LO on behalf of the CTP. In particular, six of these EBs do this by collecting cheques made payable to the LO and these are then passed on to the LO. One EB stated that it receives a cheque made payable to the LO, which it first passes onto the funding DEB, who then pass it onto the LO. Only one EB stated that they have set up a separate bank account which they use to deposit CTP cheques, and they then pay out block payments to the LO.
- 2.2.2 A single EB stated that it occasionally passes on funds to the LO on behalf of the CTP. It does not habitually do so, but does have the capability and procedures to do so where required.
- 2.2.3 Another large proportion of EBs (42%) stated that they do not currently pass on funds to the LO on behalf of the CTP. Three of these EBs stated that the reason for this is because the CTP payment is paid directly to the LO, and a further three EBs stated that under their procedures the CTP payment is sent directly to the funding DEB who then pass it onto the LO.
- 2.2.4 A further two EBs did not answer the question because they do not take part in the CTP process. One of these EBs stated that their contributing LO waives the 10% CTP payment and absorbs the cost internally.
- 2.3 **If your EB does pass on funds to the LO, do you keep a separate bank account for these monies and please can you outline how your EB does this?**

**If your EB does pass on funds to the LO, do you keep a separate bank account for these monies and please can you outline how your EB does this?**

- No - EB passes on cheques to LO
- No - EB banks money into bank account set up by LO
- Yes - EB has its own bank account to bank CTP monies



- 2.3.1 Half of the respondent EBs (50%) stated that they have no need to maintain a separate bank account for CTP payments as they merely receive cheques made payable to the LO and then pass them on to the LO.
- 2.3.2 In particular, four of the above EBs stated that if they receive the CTP payment cheque made payable to the EB, then they would as a matter of good practice send the cheque back and request that the cheque be made payable to the LO. However, two of the above thirteen EBs noted that although they usually receive and pass on cheques made payable to the LO, in some cases the cheque has mistakenly been made payable to the EB. In such cases it has proved convenient and more practical to issue a cheque to the LO and record receipt and payment accordingly on company bank audit sheets, project files and area spreadsheets.
- 2.3.3 One EB said that although it generally takes CTP payment by cheque made payable to the LO, it does also offer the CTP the option to make the CTP payment via BACS direct to the LOs bank account provided that it notifies the EB of having done so.
- 2.3.4 A further two EBs stated that their practice is to bank CTP monies directly into a specific bank account set up by the LO to receive CTP payments. However, these accounts are not separate EB bank accounts, but accounts of the LO.
- 2.3.5 Only two EBs stated that they maintain their own separate bank accounts, to which they bank CTP payments. CTP monies are kept in a deposit account and transferred to a current account when the EB needs to issue a cheque to the LO in respect of the CTP payments.



**2.4 Please highlight any areas of concern if it was made compulsory that all CTP monies are required to be paid direct from the CTP to the LO.**

- 2.4.1 Almost one-third of EBs (31%) stated that they would be concerned if they could no longer pass on cheques to the LO on behalf of the CTP. The main area of concern is that the EB would no longer be able to confirm that the correct amount has been transferred and establish the date of payment without having to request this information from the LO. This is crucial because the funding agreements between the EB and project applicants are not completed until the CTP payment has been made and any changes to the current process may delay projects and the release of funds if payment information had to be obtained from the LO.
- 2.4.2 Five EBs (19%) reported that they would be concerned by the fact that, in their experience, monies received directly by the LO are rarely correctly identified as CTP monies and are therefore not accounted for correctly. This then places an additional administrative burden by requiring the EB, the LOs finance staff and the CTP to identify the missing amounts, trace the receipt and re-analyse it. This creates the unnecessary need to divert resources.
- 2.4.3 Another EB stated that requiring CTPs to pay the LO direct may be difficult where there are multiple CTPs. Arranging for CTPs to individually send cheques when needed would be inconvenient and may affect the CTPs own financial planning.
- 2.4.4 Just one EB stated that it operates by accumulating CTP payments into a separate account and draws the money when needed. The EB likes to maintain a balance on this account which helps to instantly meet its' needs without unnecessary delay. A requirement for CTPs to pay directly to LOs would adversely affect this EBs ability to quickly and efficiently secure the release of funds from its LOs.
- 2.4.5 One EB has a unique concern. It uses a third party organisation to provide the initial CTP funding to the LO in order to release the contribution to the EB. The third party organisation is then reimbursed by the actual CTP funders found at project level. Therefore, requiring the CTP to pay the LO direct may affect this unique process and could slow down payments of project invoices, potentially jeopardise projects and add a layer of administration to the system for everyone concerned.

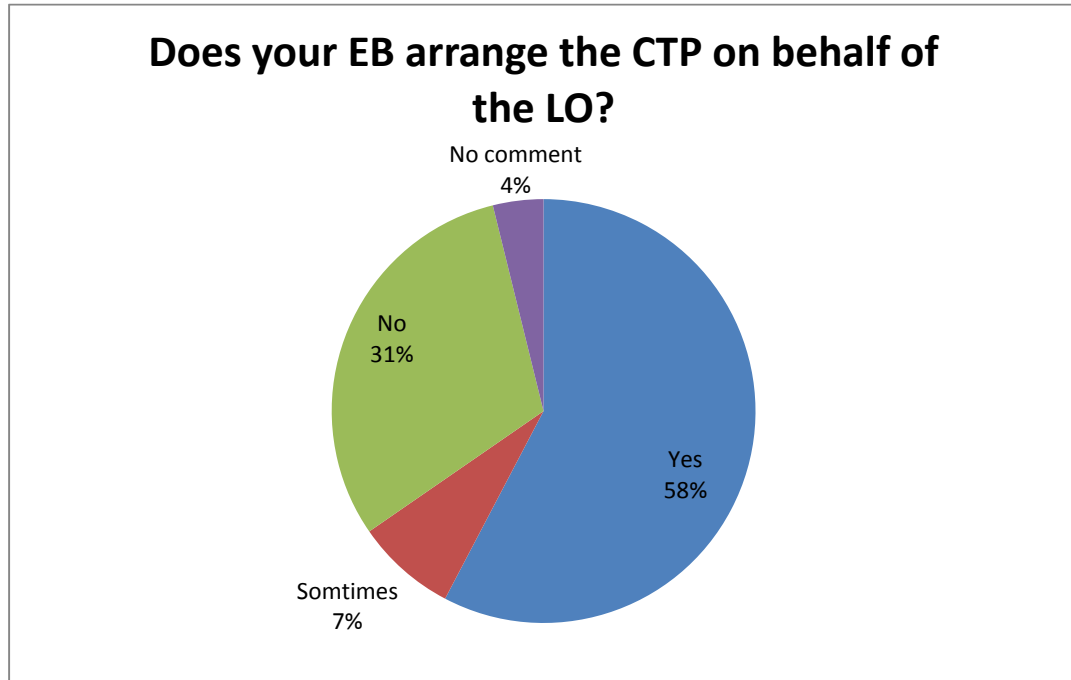
**2.5 Please highlight any areas of concern if it was made compulsory that EBs passing on funds to the LO on behalf of the CTP are required to do so by way of a separate bank account.**

- 2.5.1 Two EBs (8%) stated that they already operate a separate bank account and found no problems with this system.
- 2.5.2 A further two EBs stated that the proposal of requiring a separate bank account would add bureaucracy and administrative burdens. It would add an additional and unnecessary financial transaction which could introduce further delay to projects as well as resulting in higher banking and admin costs as these transactions would need to be logged and checked by the accountant, finance staff and other staff.

2.5.3 One EB stated that they would have no administrative concerns about having a separate bank account to collect CTP monies. However, it was concerned that the need for CTPs to clearly understand that their donation is making up for LOs loss might be forgotten and misconceptions about the nature of the CTP donation may arise.

2.5.4 The remaining respondents reported no areas of concern.

**2.6 Does your EB arrange the CTP on behalf of the LO?**



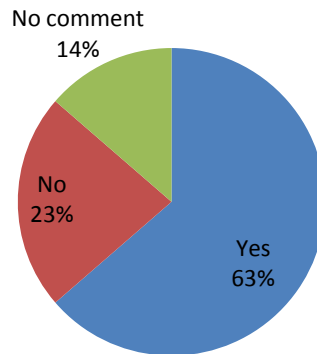
2.6.1 Over half of the respondent EBs (58%) EBs stated that they do arrange the CTP on behalf of the LO. A further two EBs stated that they sometimes arrange the CTP on behalf of the LO.

2.6.2 Almost one-third (31%) of the respondent EBs stated that they do not arrange the CTP on behalf of the LO.

2.6.3 One EB did not answer this part of the consultation.

**2.7 Does your EB know who the CTPs are for each of the qualifying contributions that they receive?**

## Does your EB know who the CTPs are for each of the qualifying contributions that they receive?



2.7.1 The majority (54%) of EBs stated that they know who the CTPs are for each qualifying contribution that they receive and a further four EBs stated that they sometimes know this information. One further EB noted that although they are usually aware of the CTP, they generally only become aware of the CTP when they award grants, not at the time that they receive the contribution.

2.7.2 Five (19%) EBs stated that they do not know who the CTPs are for each qualifying contribution that they receive.

2.7.3 Three (12%) EBs did not answer this part of the consultation.

## 2.8 What additional administrative burden would an amendment to Form 4 to capture CTP information place on your EB?

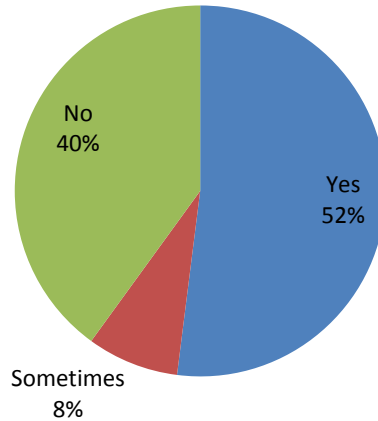
2.8.1 The minority of EBs (31%) stated that an amendment to Form 4 to capture CTP information would present a minor or minimal administrative burden.

2.8.2 All of the remaining EBs (69%) who commented on this part of the consultation stated that the level of administrative burden imposed would depend on how expansive the amendment to Form 4 would be and what level of detail would be required.

2.8.3 One EB stated that although it currently keeps detailed CTP information within the project files, a new procedure would need to be introduced within the organisation in order to capture the information in a central location throughout the year. It also expressed that if this requirement is introduced, that EBs should be given notice at the start of the financial year as opposed to when the Form 4 is issued for completion.

- 2.8.4 Three EBs stated that their internal databases clearly identify the CTP at project level but do not identify CTPs on a contribution by contribution basis as the EB receives aggregated monies from the LOs. Therefore, to identify all CTPs annually in relation to contributions would require relevant changes in the EBs procedure and practice.
- 2.8.5 Only one EB noted that it would be impossible to report on all CTP transactions, as the EB only receives CTP identification information where projects involve LCF funding of more than £40,000. Therefore, to identify all CTPs would require a change in the EBs procedure and practice.
- 2.8.6 Seven EBs (27%) stated that asking for CTP information on the Form 4 would place further pressure on their administrative teams, as the Form 4 is already considered to be labour intensive and time consuming.
- 2.8.7 One EB stated that administrative burden for them would be increased if they had to report CTP information on the Form 4 every year in the case of multi-year grants.
- 2.8.8 One EB stated that the administrative burden would be increased if ENTRUST required the dates of the CTP payments to be reported on the Form 4, as this would require more liaison between the EB, LO and the CTP(s). This could prove to be a long chain of contacts as the DEB would also need to be informed when the CTP has been processed.
- 2.8.9 One EB stated that it would be overly time-consuming and complex to report all of the CTP information annually. Instead, the EB suggested that this information be captured on the Project Registration forms where possible.
- 2.8.10 One EB highlighted that there may be a risk of double counting with the approach of asking EBs to report CTP information on the Form 4, which at the moment is a cash based document. Where EBs receive funding for individual projects from DEBs, it may be possible that both the EB and the DEB would report the same CTP information and would therefore be counted twice.
- 2.9 Do you currently keep a record of CTP for transfers that you have received?**

### Do you currently keep a record of CTP for transfers that you have received?



2.9.1 Half of EBs (50%) currently keep records of CTPs for transfers that they receive, and a further two EBs sometimes keep records.

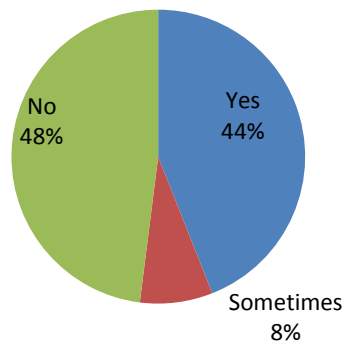
2.9.2 A minority of EBs (38%) either do not keep records of CTPs for transfers that they receive or do not receive transfers.

### 2.10 Is your EB always able to inform ENTRUST of CTP when transferring monies?

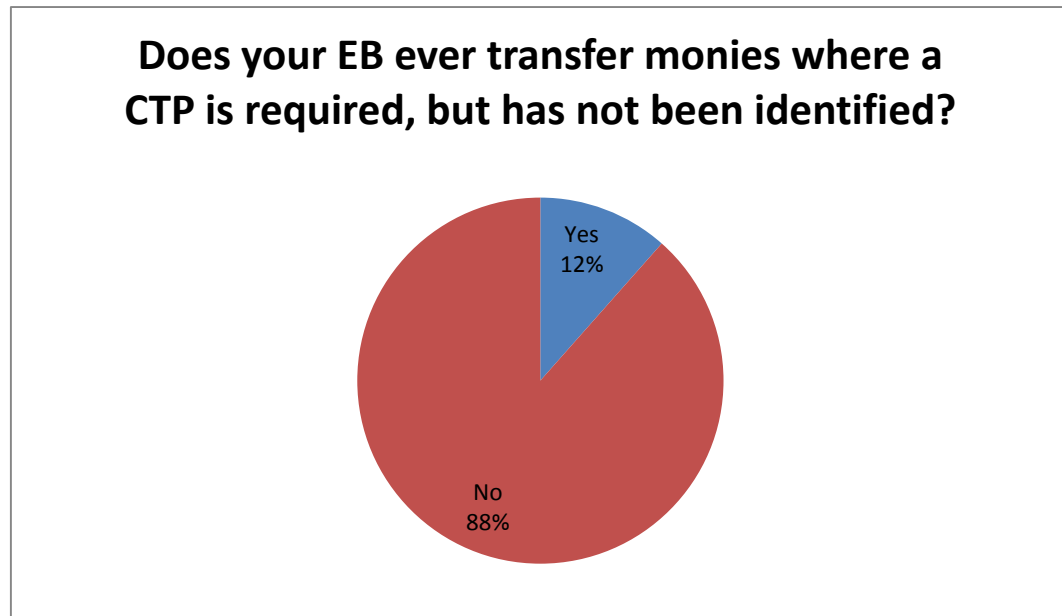
2.10.1 11 EBs (42%) stated that they are always able to inform ENTRUST of CTPs when transferring monies, and a further two can sometimes inform ENTRUST of the same.

2.10.2 12 (46%) EBs stated that either they are not always in a position to inform ENTRUST of CTPs or they do not transfer monies.

### Is your EB always able to inform ENTRUST of CTP when transferring monies?



**2.11 Does your EB ever transfer monies where a CTP is required, but has not been identified?**



2.11.1 Only three (12%) EBs stated that they would transfer monies where a CTP is required but has not been identified.

2.11.2 The majority of EBs (88%) stated that they would not transfer monies where a CTP has not been identified.

**2.12 In your experience, do you believe that the CTP would like to know when monies relating to their contribution are transferred to other EBs?**

2.12.1 Only one EB stated that in their experience, they believed that CTPs would like to know when monies relating to their contribution are transferred to other EBs, but did not provide further information with respect to this comment.

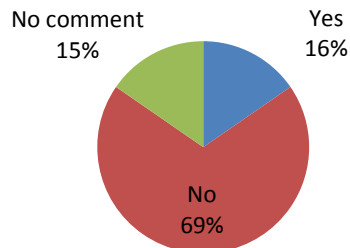
2.12.2 Half of the respondent EBs stated that in their collective experience, they believed that CTPs would not particularly like to know when monies relating to their contribution are transferred to other EBs.

2.12.3 One EB stated that, in its' experience, CTPs generally know what their CTP payment is for when they give the contribution and to further break it down by project would not be of interest, particularly because this EB uses a first-in-first-out system and amounts transferred could relate to any contribution.

2.12.4 Interestingly, one EB stated that corporate governance would require a CTP to be advised in such cases. Similarly, another EB stated that the CTP should be advised of the transfer in case the CTP has a connection with the receiving EB and thus making the CTP ineligible.

- 2.12.5 Three (12%) EBs stated that they either never or rarely make transfers to other EBs and so this scenario is not applicable to them.
- 2.12.6 Two EBs stated that this situation “never arises” for them.
- 2.12.7 Three EBs stated that they are unable to comment on whether a CTP would be interested in knowing which EB would provide the final funding.
- 2.13 In your experience, what percentage of transfers of monies between EBs usually have a CTP connected to them?**
- 2.13.1 Four (15%) EBs stated that, in their experience, 100% of transfers of monies between EBs have CTPs connected to them except in the case of Gift-Aid transfers or where the LO has waived the CTP.
- 2.13.2 Two other EBs stated that 100% of transfers between EBs usually have CTPs connected to them.
- 2.13.3 One EB stated that a ‘very high percentage’ of transfers between EBs have CTPs connected to them, and where no CTP is connected the payment will be waived. Similarly, another EB estimated that approximately 66% of transfers between EBs attracted CTP payments and the remainder is absorbed by the LO. Another EB commented that ‘the majority’ of transfers have CTPs connected to them except some older projects.
- 2.13.4 One EB stated that less than 5% of transfers between EBs have CTPs connected to them, and another stated that the number was minimal.
- 2.13.5 One EB stated that previously none of their EB transfers had CTPs connected for the simple fact that the LO waived the CTP payment and absorbed the cost themselves. However, this has since changed and now all transfers have CTPs connected to them.
- 2.13.6 Six (23%) EBs commented that they ‘had no experience’ of CTPs being connected to transfers.
- 2.13.7 Two EBs stated that they were not aware of the number or percentage of transfers with CTPs connected to them.
- 2.13.8 Three EBs did not answer this part of the consultation.
- 2.14 Does the funding agreement between your LOs and EB have a clause stating that there is to be no unique benefit to any CTPs that have ever made a contribution to a LO associated with your EB?**

**Does the funding agreement between your LOs and EB have a clause stating that there is to be no unique benefit to any CTPs that have ever made a contribution to a LO...**



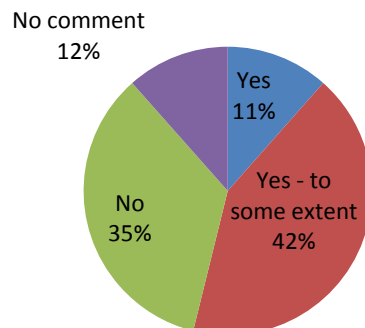
2.14.1 A small minority of EBs (15%) stated the funding agreement between them and their contributing LOs have clauses requiring that there is to be no unique benefit for the CTP.

2.14.2 The majority of EBs (69%) stated that their funding agreements with their contributing LOs do not have clauses specifying that there is to be no unique benefit for the CTP.

2.14.3 Four (15%) EBs did not answer this part of the consultation.

**2.15 Would a clause such as that mentioned in question eight place any additional administrative burden on the EB?**

**Would a clause such as that mentioned in question eight place any additional administrative burden on the EB?**





- 2.15.1 Three EBs (12%) stated a no-benefit clause would place an additional administrative burden on the EB, with a further eleven (42%) EBs stating that such a clause may do so depending on the extent of the clause.
- 2.15.2 Nine (35%) EBs stated that a no-benefit clause would not place any administrative burden on the EB.
- 2.15.3 Three EBs (12%) did not comment on this part of the consultation.
- 2.16 How does your EB monitor the guidance surrounding, ‘once a contributor, always a contributor’ that requires that a CTP will remain a CTP to the EB for all projects once it has become associated?**
- 2.16.1 Five (19%) EBs keep lists or registers recording all CTPs and contributing LOs and all claims for grants are checked against this to ensure no unique benefit can arise, and 1 of these EBs keeps this record in perpetuity. One of these EBs stated that the CTP payment cheque that it receives is accompanied by a list of contributors (unless the project is with a local authority) and a list of these is kept.
- 2.16.2 Three (12%) EBs use detailed no-benefit clauses that are inserted into every funding agreement requiring applicants to confirm that the CTP will not benefit uniquely from any LCF funds awarded. One of these EBs also uses their application guides to clearly set out the criteria for who can be a CTP and they consider the eligibility of an individual or organisation to be a CTP provider during the application assessment process.
- 2.16.3 A further three EBs stated that most of their CTPs are such that they never receive unique benefit as most are philanthropic organisations (e.g. charities, donors and trusts) who pay their own or parish/district councils (belonging to class of persons who benefit generally). Two of these EBs did state that they do keep records of CTPs.
- 2.16.4 One EB stated that its staff exercise ‘vigilance’ to guard the ‘once a contributor, always a contributor’ principle.
- 2.16.5 Another EB stated that it uses two types of CTP payment: external or internal funding. It said that when the EB internally funds the CTP payment, this does not pose a problem with regard to ‘once-a-contributor, always a contributor’, as it can be sure the benefit rules are not contravened. Similarly, one EB stated that where the LO provides the CTP payment, the situation is clear and there is therefore no need to monitor the ‘once a contributor, always a contributor’ principle.
- 2.16.6 A further EB stated that they follow the ENTRUST guidance as detailed in the Guidance Manual.
- 2.16.7 Six (23%) EBs stated that the ‘once a contributor, always a contributor’ principle is impossible to effectively monitor due to the administrative burden this places on EB resources. One of these EBs stated that considering they have circa 5,000

registered projects and around 10,000 CTPs there can be no comprehensive monitoring and there is reliance on local expertise and information. One EB further added that tracing the involvement of a CTP in any past or future projects would require the 'expertise and skills of a detective agency' given the number of projects and CTPs involved. One of these EBs further added that the change in interpretation (3.2.5 of section 9 of the EB Manual – version 1.0 released April 2008) now allows in many circumstances for applicants to provide their own CTP surely makes this an even more complex scenario to police.

2.16.8 Four EBs stated that they do not monitor the 'once a contributor, always a contributor' principle, as it would be too difficult to trace the beneficiaries of all projects and relate them back to all the CTPs who have contributed. These EBs only ensure that the CTP cannot benefit from the specific project that they are contributing to.

2.16.9 One EB stated it is not aware of how it monitors the guidance surrounding the 'once a contributor, always a contributor' principle.

**2.17 What methods do you have in place to ascertain if a CTP receives any unique benefit from a project and/or any other projects that you undertake?**

2.17.1 A strong minority of EBs (31%) said that their application form/process requires the applicant to confirm that no organisation or individual will derive a unique benefit from the project going ahead. Two of these EBs application forms are so expansive that they require applicants to identify: whether they own the project site or any land adjacent to it; whether there is any connection between them and the project; and whether they own any facilities intended to be used by the project.

2.17.2 One EB stated their letter acknowledging the application queries whether officers have any reason for suspecting that a unique benefit may arise.

2.17.3 Five (19%) EBs stated that an assessment is made by EB staff when confirming the CTP. One of these EBs stated that locally based staff scrutinise the proposed CTP and the project to determine if there might be any unique benefit. One of these EBs stated that their company secretary checks with the applicant.

2.17.4 One EB stated that they use a CTP return that CTPs are required to complete and confirm that they will not receive a unique benefit.

2.17.5 Six (23%) EBs stated that a combination of no-benefit clauses and signed declarations are used in the grant agreements process.

2.17.6 Two EBs said that invoices and payment claims are checked against listing of CTPs and contributing LOs.

2.17.7 One EB stated that they use project monitoring to ascertain whether a CTP receives a unique benefit.

2.17.8 A further EB stated that it has no methods in place to ascertain whether a CTP receives unique benefit.

**2.18 Are you aware of any of your CTPs having an agreement with the LO for repayment of their element in the event that HMRC exercise clawback in respect of the LO payment?**

2.18.1 A large majority of EBs (81%) were not aware of any of their CTPs having an agreement with the LO for repayment of their CTP payments in the event that HMRC exercise clawback.

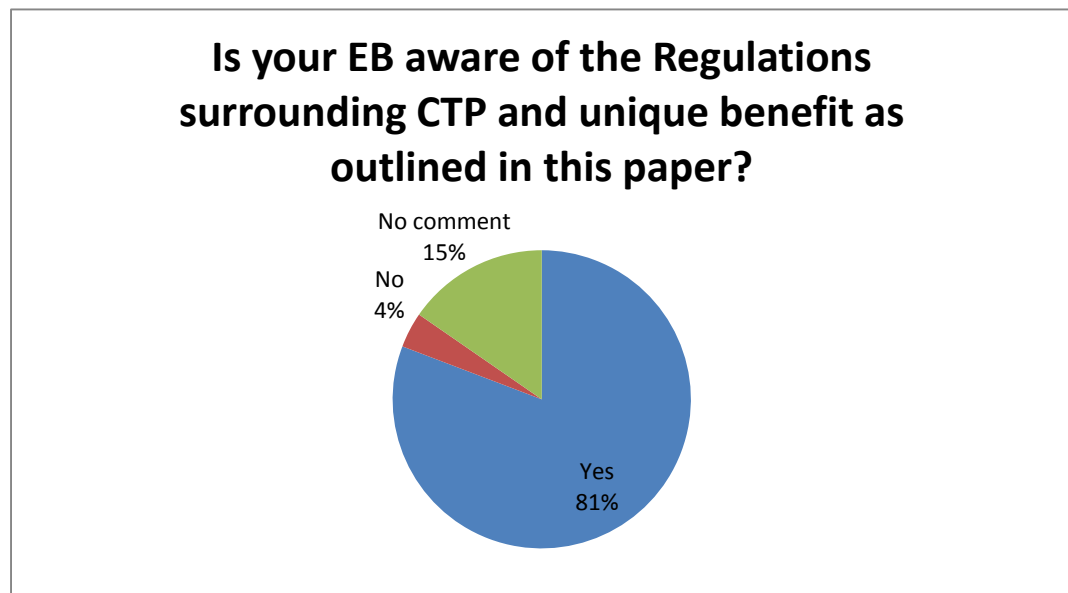
2.18.2 Five (19%) EBs did not comment on this part of the consultation.

**2.19 Is your EB aware of the Regulations surrounding CTP and Unique Benefit as outlined in this paper?**

2.19.1 A strong majority of EBs (81%) stated that they are aware of the Regulations surrounding CTP and unique benefit.

2.19.2 Only one EB was not aware of the Regulations surrounding CTP and unique benefit.

2.19.3 Four (15%) EBs did not comment on this part of the consultation.



**2.20 Please outline any further points that you wish to add regarding this consultation.**

2.20.1 One EB stated that if a grant is not claimed in full then it arranges for the funding LO to reimburse the relevant proportion of the CTP.

- 2.20.2 Two EBs stated that their CTP processes are clear, transparent, offer security and avoid any confusion.
- 2.20.3 One EB stated that they feel that ENTRUST need to be clear in their reasons for requiring CTP information, and indeed whether they themselves need to hold the data, or whether the monitoring can be achieved by EBs providing appropriate evidence as reports. If it is to monitor whether there is over-collection by LOs then data collection should continue to be linked to donations received, although not at the point of receipt as at present. If it is to monitor eligibility then it is unclear as to how ENTRUST could be any more effective in this than EBs who at least have contact with projects and the CTP, and can consider the opportunities for unique benefit as circumstances arise.
- 2.20.4 Another EB stated that good practice recommends reducing the amount of red tape and administrative burden. Therefore, as a volunteer scheme this EB needs to be as user friendly as possible so as not to put off EBs from becoming involved, otherwise this would reduce the number of truly valuable projects delivered annually by this scheme.
- 2.20.5 A further EB stated that the envisaged CTP process on page six of the consultation document (Figure One) is not and never has been operated by it or other major DEBs. Therefore, the diagram bears little or no resemblance to the actual process operated by the majority of distributors of qualifying contributions received directly from a LO. The EB suggested that one of the outcomes of this consultation should be that a more meaningful model, reflecting actual processes currently in operation, is developed with clear reporting guidance.
- 2.20.6 Three (12%) EBs stated that the consultation does not address the issue of refunds to CTPs, but this is clearly an area that needs exploration and clarity. As EBs usually collect the CTP payment once funds are committed, and before any LCF funds are released to a project, there is a possibility that a refund of all or part of the CTPs contribution may be due if the project subsequently does not take up all of the grant offered (e.g. due to an under spend) or the project does not proceed. These EBs would find it useful to ascertain how other EBs deal with refunds to CTPs, whether this causes an administrative burden to the EB and the LO, and whether this should be reported to ENTRUST. This ties in with the issue of over-recovery by LOs, as EBs would need ENTRUST to clarify the Regulations relating to over-recovery. One of the questions that arose was whether the amount paid to an LO is compared with 10% of each individual qualifying contribution or 10% of all of their qualifying contributions for ascertaining any potential over recovery.
- 2.20.7 One EB stated there may need to be further analysis of the composition of CTP funders before increasing regulatory control in this area. This EB stated that their CTP funding is comprised of: up to 70% from local authority; up to 22% coming from Non Governmental Organisations (NGOs), charities and parish council backed management councils; and 3% coming from Assembly and Aggregates Levy, and 5% from the private sector. This EB contended that increased scrutiny may be disproportionate to ensure that 5% of CTP funders do not potentially derive unique

benefit, which may be difficult to prove and almost impossible to monitor for an undefined future period.

2.20.8 Another EB stated the Regulations would be easier to implement if contributions from charitable bodies own funds was specifically permitted.

2.20.9 Three EBs stated the CTP concept is a relatively simple concept in practice and the consultation seems to over-complicate the issue and over-state the risks in this area.

### **3. LO RESPONSES TO THE CONSULTATION QUESTIONS**

#### **3.1 Can you please confirm how a CTP is identified for your qualifying contributions?**

3.1.1 All four LOs stated that the CTP payment is co-ordinated by the EB to which it contributes the LCF monies. This is done at the stage when funds are allocated to a specific project. It is the responsibility of the grant applicant to identify a willing CTP who then makes a cheque payable to the LO for the required amount.

#### **3.2 Do you receive a CTP payment direct from the CTP or through an EB?**

3.2.1 One LO stated that it receives the CTP payment direct from the CTP.

3.2.2 Three LOs stated that they receive the CTP payment via a cheque made payable to the LO but sent via an EB. One of these LOs did say that on occasion they do receive payments direct from the CTP which causes them a huge administrative problem.

#### **3.3 Do you know who the CTPs are for each of the payments made to EBs?**

3.3.1 One LO stated that at the time of the contribution being made to the EB, they do not know who the CTPs will be for each contribution. However, the LO becomes aware of the identity of the CTP at the time the funds are allocated by the EB to the applicant.

3.3.2 Another LO stated that at the time of making the contribution to the EB it does not know the name of the CTP. However, after the EB allocates funds to projects, attempts are made to allocate CTPs to contributions on a first in first out basis, but complications in matching can arise where refunds have to be made.

3.3.3 Two LOs stated that they are never aware of identities of the CTPs for each payment made to EBs. One of these LOs commented that it receives cheques from the EB and the CTP payments are accounted for against its' overall qualifying contribution and not on a project basis. This LO relies on the EB to manage and administer the process as the scheme requires the LO to be very much at "arms length" and not in overall control of the EB.

**3.4 Do you confirm CTP details to ENTRUST? If so, when and how?**

3.4.1 Three LOs stated that they confirm CTP details to ENTRUST on receipt of the cheque using the ENTRUST form for each CTP payment received.

3.4.2 One LO stated that it does not confirm CTP details to ENTRUST, as this is done by the DEB.

**3.5 In your experience, do you think a CTP would like to know when monies relating to their contribution are transferred to another EB?**

3.5.1 Two LOs stated that they do not have experience of this, and one of them further stated that it would seem logical for CTPs to be told.

3.5.2 One LO stated that it does not think that the CTP is concerned as long as the project is funded and delivered.

3.5.3 One LO stated that this is left to the DEB to decide.

**3.6 Do any CTPs have an agreement with you for repayment in the event that HMRC exercise clawback?**

3.6.1 All four LOs stated that they do not have agreements with CTPs for the repayment of CTPs in the event that HMRC exercise clawback.

**3.7 Other Comments**

3.7.1 One LO noted that, in regards to the flow chart at paragraph 4.2 of the consultation document, this may have been the process that was originally envisaged, it is virtually impossible for procedures to be followed in that order. In the LOs view, the CTP 'box' is rarely the first step in the process, and is more appropriately placed between the EB and the project. In practice the CTP is normally identified by the EB in the process of allocating funding. The CTP is not known until the funding is offered for a particular project. The LOs' first knowledge of the CTP is normally the receipt of a cheque, forwarded via the EB.

3.7.2 One LO noted that, with regard to the collection and processing of CTP payments, it would greatly ease their administration if the EB were allowed to collect and bank the monies on their behalf. At present, the LO is having to record and bank a large number of relatively small cheques. Details of these cheques have to be separately recorded by the EB and LO. This seems an unnecessary administrative burden and duplication of work. Perhaps the EB could then pass back total monthly, or quarterly, CTPs to the LO, with controls to ensure the LO never receives CTPs in excess of 10% of the LCF funding it has provided.

3.7.3 One LO noted that the deadlines imposed on the EB by Regulation 33A(e)(iv) would appear impossible to comply with, as the name of the CTP is not known within 7 days of receipt by the EB of the qualifying contribution. LOs are also unable to

make notification of the CTP until some time after the credit has been claimed for the contribution to the LCF, as the CTP is not known until funds have been allocated by the EB. This can be many months after the original contribution has been made to the EB.

#### **4. CTP RESPONSES TO THE CONSULTATION QUESTIONS**

##### **4.1 How did you become a CTP?**

4.1.1 Eight (89%) CTPs stated that they became CTPs after applying to grants from DEBs and being asked to provide a CTP payment.

4.1.2 One CTP stated that it agreed to act as a CTP for an organisation who had previously acted as a CTP for the former.

##### **4.2 Do you work with either LO or EB?**

4.2.1 Two (22%) CTPs stated that they do work with EBs. One of these CTPs stated that their level of involvement was simply obtaining grants from the EB.

4.2.2 Five (56%) CTPs stated that they do not work with either LOs or EBs.

4.2.3 Two (22%) CTPs declined to comment on this part of the consultation.

##### **4.3 Do you place any conditions on the contributions that you make? If so, could you please provide a sample?**

4.3.1 Seven (78%) CTPs stated that they do not place conditions on the contributions that they make.

4.3.2 Two (22%) CTPs declined to comment on this part of the consultation.

##### **4.4 As EBs are able to transfer LCF to other EBs are you interested to know when monies that you have made a contribution against are transferred between bodies?**

4.4.1 Three (33%) CTPs stated that they are interested in knowing when monies against which they have contributed are transferred between EBs.

4.4.2 Three (33%) CTPs stated that they do not need to be informed when monies relating to their contributions have been transferred.

4.4.3 Three (33%) CTPs declined to comment on this part of the consultation.

##### **4.5 Are you aware of the term 'unique benefit' and the implications of this on you being a CTP?**

- 4.5.1 Two (22%) CTPs stated that they were aware of the term 'unique benefit' and the implications of them being CTPs.
- 4.5.2 Five (56%) CTPs stated they were either not aware of the term 'unique benefit', the implications of being a CTP or both.
- 4.5.3 Two (22%) CTPs declined to comment on this part of the consultation.





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