Retention of LCF Monies - Next Steps

REGULATING THE LANDFILL COMMUNITIES FUND
BENEFITING PEOPLE AND THE ENVIRONMENT

Consultation Paper

June 2010

Contents

1. Introduction

1.1 In 2009/2010, ENTRUST undertook a consultation exercise which focussed on the retention of Landfill Communities Fund (LCF) monies and investigated the circumstances where this may be permitted.

1.2 The key areas of focus were:

- Reasonable time constraints for Environmental Bodies (EBs) to retain LCF monies after receipt;
- Under what circumstances EBs invest monies; and
- Investment strategies and vehicles adopted by EBs.

1.3 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 30 EBs (representing 61% of total LCF monies) and two Landfill Operators (LOs). A focus group was held which was attended by eight EBs representing 33% of the fund.

2.2 The summary of responses can be found at Appendix A.

3. Next Steps

3.1 The outcome of the consultation has evidenced the requirement that there should be guidance issued to EBs surrounding good practice when holding reserves for the purposes of winding up. This will be developed by ENTRUST and added into the guidance manual.

3.2 It is not appropriate for ENTRUST to develop guidance on investment practices, but we can direct EBs to guidance on investment practices elsewhere and make them aware that they need to adopt practices that are appropriate for their organisation. This can be developed through the guidance manual.

3.3 Placing time constraints on expenditure of LCF monies has not been identified as a priority for 2010/2011. However, there will be a further analysis of unspent LCF funds mid-year, once the Form 4 – Statutory Annual Returns have been received.

APPENDIX A

A SUMMARY OF THE CONSULTATION PAPER AND FOCUS GROUP RESPONSES

1. OVERVIEW

1.1 Further to the consultation agenda for 2009/2010, the second consultation exercise focused on Retention of LCF Monies. ENTRUST engaged Environmental Bodies (EBs) and Landfill Operators (LOs) in a 12 week consultation exercise.

1.2 In total, there were 32 responses to the Retention of LCF Monies Consultation. These respondents were accounted for as follows: 30 EBs and two LOs.

1.3 The 30 EB respondents represent 61% of the Fund and account for a total of 0.1% of all EBs currently enrolled with ENTRUST.

1.4 The feedback from EBs and LOs will be divided and considered in separate sections below.

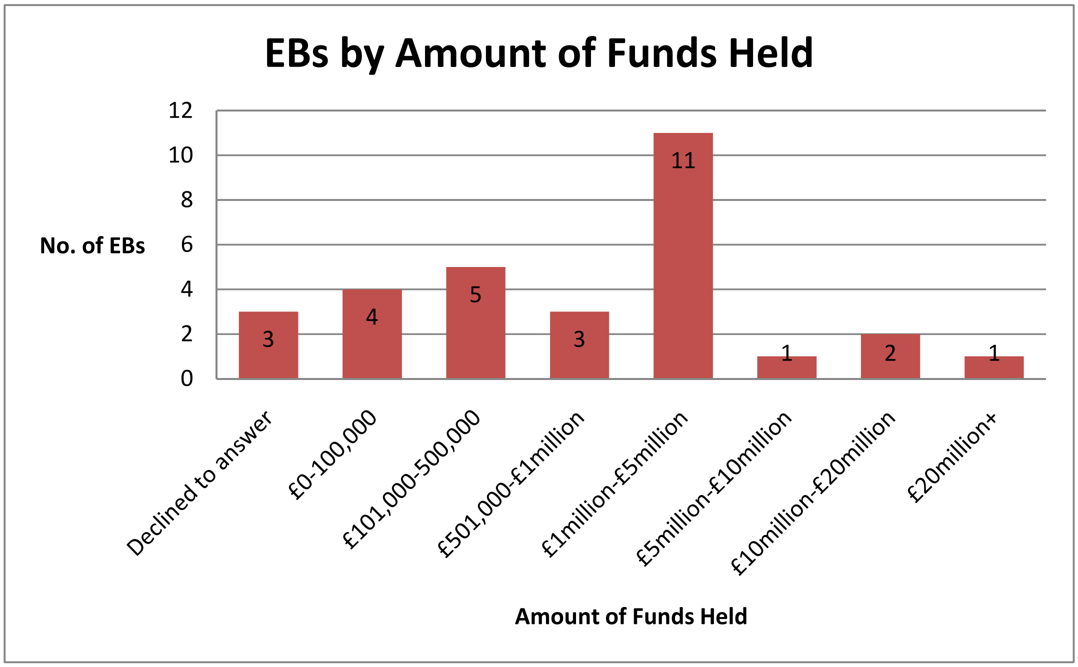
2. EB RESPONSES TO THE CONSULTAION QUESTIONS

2.1 Do you currently hold any LCF monies? If so, what is the total value of these funds?

2.1.1 28 EBs (93%) stated that they currently held LCF monies.

2.1.2 Only 2 EBs (7%) stated that they do not currently hold LCF monies.

2.1.3 The table below shows the range of LCF monies held by EBs. More than one third of EBs (37%) held between £1million - £5million of LCF monies as at 31 March 2009.



2.1.4 The respondent EBs each had an average unspent balance of £3,458,844.90 of LCF monies.

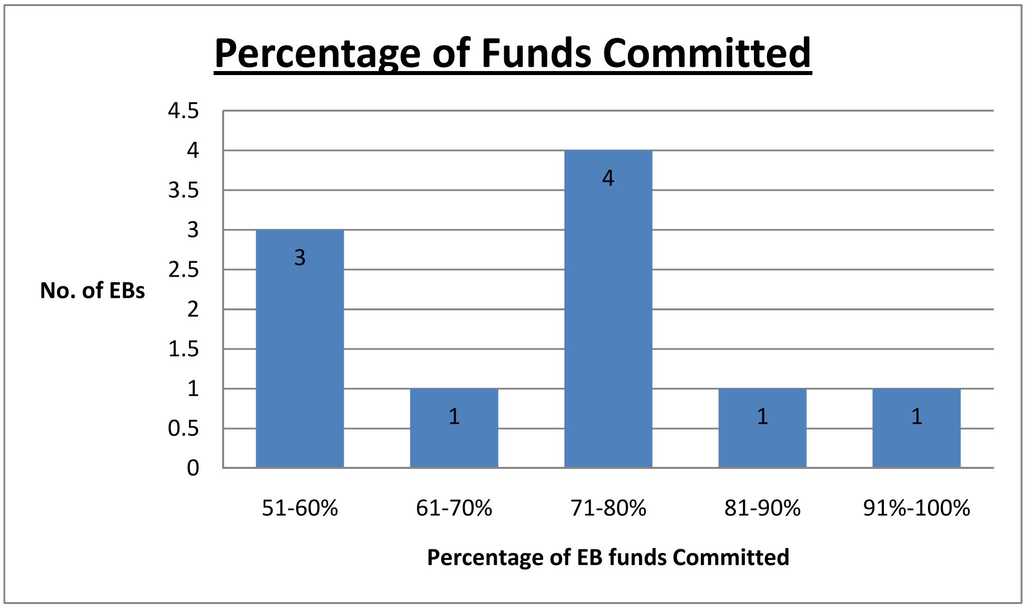
2.2 If your EB currently holds LCF monies, for what Reason are these Funds Retained?

2.2.1 Generally, EBs retain funds for some or all of the following reasons:

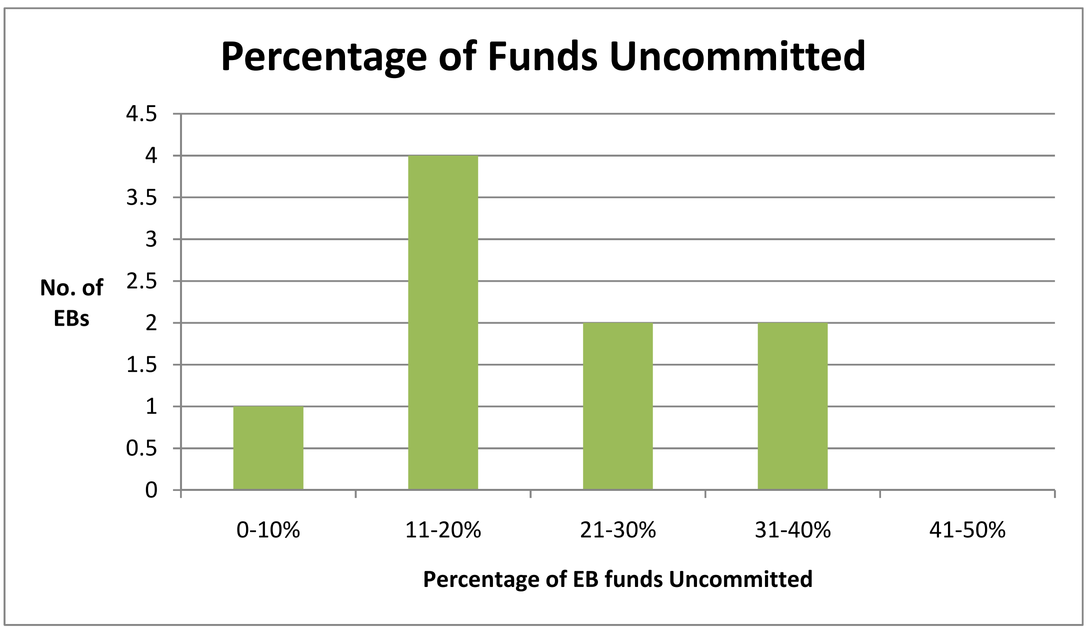
1) Allocated for projects which have been registered with ENTRUST but where expenditure has yet to begin, these are committed funds;
2) Allocated for projects which have not yet been registered with ENTRUST but those that have been formally agreed by the EB subject to registration, these are committed funds;
3) To accumulate funds to finance large projects which will take place at some future date, the EBs concerned treat these as committed funds;
4) To allocate to projects in the future, subject to approval by the EB where the EB is having a meeting in the near future which will commit the funds, these are uncommitted funds;
5) To allocate to projects in the future but for project proposals that are not currently in consideration by the EB, these funds are uncommitted;
6) To pay the EBs administration/project management costs which are incurred throughout the year, whereas for some EBs the qualifying contributions are given in block grants at intervals during the year; and
7) For administration and project management costs in the event of winding up of the EB at some time in the future.

The EBs have different practices on the proportion of total funds held, that they allocate to each of these areas.

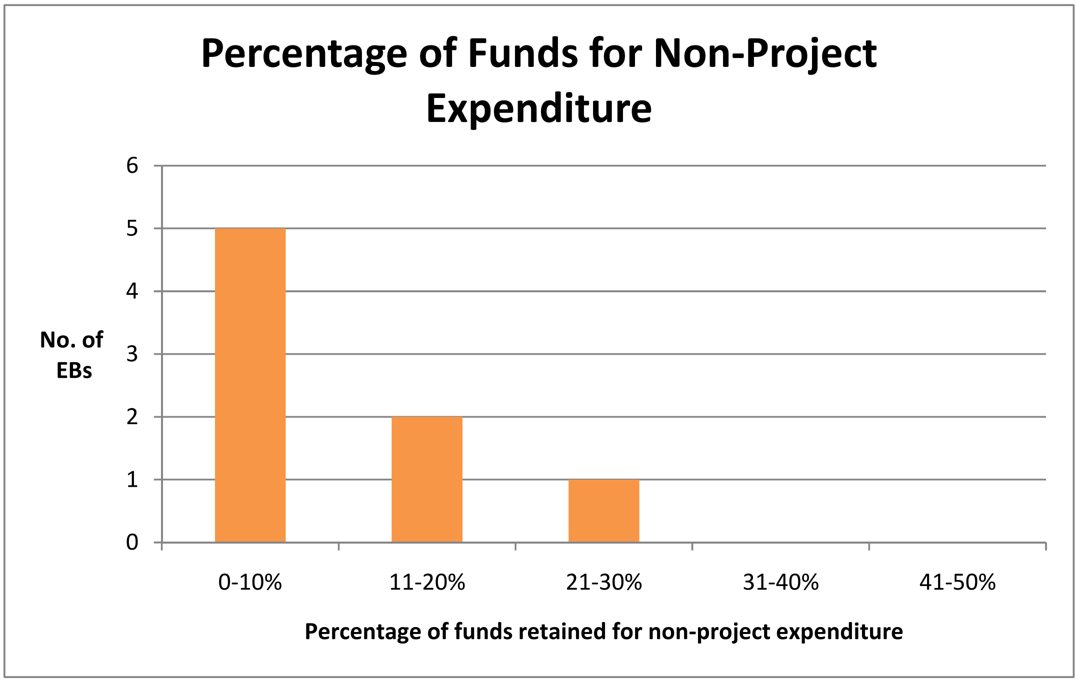
2.2.2 The table below shows the proportion of EBs funds that are committed to projects (reasons 1 to 3 from paragraph 2.2.1).



2.2.3 The table below shows the proportion of EBs funds that are not committed to projects (reasons 4 to 5 from paragraph 2.2.1).



2.2.4 The table below shows the proportion of EBs funds that are retained for non-project expenditure (e.g. for administration costs, costs of winding up or sums invested - reasons 6 to 7 from paragraph 2.2.1). The figures can be distorted by EBs retaining large sums to either allocate to future administration costs or to keep a reserve to meet any unexpected costs.



2.2.5 One EB stated that it holds a third of its current LCF monies in a one year fixed investment and another third in a six month fixed investment account, in order to receive the best rate of interest which is then returned to the LCF. The bulk of the remainder is held in a 30-day reserve account, with approximately 33% of this amount kept in a cheque account to meet existing project commitments and running costs.

2.2.6 One EB stated that when it was created in 1997, the Board resolved to set up an endowment fund with the primary objective of income generation. This was to ensure financial stability in order to deliver benefits over the longer term. The EB funds some (but not all) new projects from the income generated from the endowment fund.

2.2.7 Two EBs declined to answer this part of the consultation.

2.3 How do you Calculate the Amount of Funds that should be Retained for the Reasons you gave to the previous question?

2.3.1 12 EBs stated that they simply forecast cash flow and retain enough monies to allocate to registered projects, for which detailed budgets are held. Usually, a decision is taken at Board or Trust level to decide how much should be retained, and this is usually done quarterly.

2.3.2 Six EBs said that they:

- Calculate the amount retained as committed funds for project payment by looking at a whole range of factors (e.g. tender prices, project timetables, delays in project and/or fundraising among other issues) and using funding spreadsheets;

- Calculate the amount retained as uncommitted funds by looking at the level of funding received from LOs and also on the quantity and quality of applications received, and using previous funding spreadsheets;
- Estimate the amount of EB administration and running costs (usually estimated on an annual basis) and also the amount of the ENTRUST levy; and
- Estimate the amount retained to cover winding up of the EB in the event of the cessation of the LCF.

2.3.3 Interestingly, the EBs calculated their winding up costs using different criteria. One EB uses the amount of one year's running costs (on an average basis) to provide for winding up costs. Three EBs stated that they retain a reserve amount to cover 18-24 months of admin costs in the case of winding up. Conversely, another EB noted that it does not retain funds for the winding up of the EB as it believes that in the event of the LCF scheme ceasing to exist, there would be sufficient notice of the ending of the scheme to allow for this to be funded within the usual yearly budget.

2.3.4 One EB stated that it asks project applicants to give notice when their projects are nearing completion so that they can be aware of and calculate the kinds of sums they need to retain.

2.3.5 An EB set up its' endowment account by calculating that, at the time, the sum of around £3million would be retained and invested in order to provide a capital sum that would be capable of financially self-sustaining and generating sufficient income. However, this EB still receives qualifying contributions from LOs.

2.3.6 One EB stated that it does not currently have in place a policy that specifies how it retains funds.

2.3.7 Two EBs did not answer this part of the consultation.

2.4 Do you agree with the timescales set about in the schedule below? If the answer is no, can you please outline where you disagree, referring to the steps in Figure one if possible?

Element of Project	Max time (months) for non-biodiversity projects where no new building works are undertaken	Max time (months) for project where new building works are undertaken
1. Funds allocated to project	6	6
2. Project Registration	3	3
3. Contractual Commitment	3	6
4. Commencement of project and spend of LCF monies	12	24
5. Retention of monies	0	9
TOTAL TIME ELAPSED	**24 months**	**48 months**

2.4.1 One fifth of EBs (20%) agreed with the timescales set out in paragraph 6.1.1 of the consultation document, but the majority (80%) did not agree and said the timescales were arbitrary.

2.4.2 Two EBs said that in general they are able to meet the timescales as set out above. However, there are a small number of projects that are subject to longer agreements (e.g. three-year agreements) that are beneficial to both parties. These EBs feel that the 2-year timescale should merely be a guideline and flexibility should be afforded in exceptional circumstances, subject to the agreement of ENTRUST.

2.4.3 A large majority of EBs (47%) said that the creation of arbitrary deadlines may lead to a loss in value for money by encouraging the movement of funds away from relatively more worthwhile projects to less worthwhile projects if EBs are forced to spend the money quickly. This is due to the fact that the current proposals do not take into account poor funding applications being received by the EB. These timescales may also, inadvertently, create a preference for shorter and simpler projects at the expense of larger and more complex projects, which would force EBs to change the types of projects that they focus on.

2.4.4 A sizeable proportion of EBs (37%) raised the fact that LCF funding often constitutes the first block of funding for projects (acting as a "pump primer"), and that this initial funding is used to attract funding from other sources. For example, the Heritage Lottery Fund requires match funding to be in place before they will release their funds. Therefore, to impose expenditure timescales with regards to LCF monies may affect the ability of projects to attract funding from other sources. This additional funding can often take more than one year to secure.

2.4.5 Ten EBs (33%) noted that the proposed timescales do not appear to recognise project delays that may arise as a result of third parties (such as local authorities, contractors, match funders or contributing third parties) or legal matters, such as those that may arise in land purchase cases. In such circumstances, they said there should be provision for extension to the timescales to prevent the loss of otherwise valuable community projects.

2.4.6 Over one quarter of EBs (27%) commented that the period for contractual commitment is excessively restrictive (three months for non biodiversity projects where no new building is required and six months for new building works) as many project funding applications are submitted before any design work has been undertaken and if this is the case the period for holding consultations, investigating consents, preparing design specifications, seeking competitive quotations, assessing applications and contract preparation would almost certainly exceed the proposed six months. For other projects the three month timescale would in many cases be difficult. Furthermore, the type of people and organisations involved in many of these projects needs to be considered.

2.4.7 Four EBs (13%) noted that the proposed timescales do not take into account projects that are carried out in phases and involve maintenance (including annual maintenance obligations). In relation to the latter, there is a 12 month maintenance period on building contracts in Scotland and this equates to a year-long retention period.

2.4.8 It was mentioned by two EBs that the 24 month timescale to complete projects would not give EBs the full 24 months to spend or commit each contribution. Most EBs do not allocate funds in advance of receipt of LO funds, and therefore there is a time lag before an EBs meetings.

2.4.9 Two EBs who only receive LCF funds annually take decisions throughout the year on committing these funds, so the initial commitment following receipt of funds could take almost a year.

2.4.10 Five EBs (17%) commented that monitoring the adherence of EBs to the stated deadlines and timescales would prove too difficult without significantly increasing the administrative burdens, a step which would seem disproportionate given that only 8.6% of projects that completed during 2007/2008 and 2008/2009 took more than 2 years to complete.

2.4.11 One EB commented that the proposals do not allow for building up funds to finance large projects. For example, where EBs are managing bespoke grant programmes for small LOs, it may take longer than six months from the date of their initial receipt for funds to be allocated simply because several quarters' contributions may be necessary to provide a grant programme of sufficient size to be viable.

2.4.12 Another EB pointed out that no timescales were given separately for biodiversity projects. They pointed out that certain types of work for a biodiversity project might only be possible once a year, so if this was missed there would be a long delay.

2.4.13 Four EBs (13%) commented that the period for retentions should be lengthened, e.g. 12 months as opposed to nine months.

2.4.14 Two EBs pointed out that the consultation document does not specify the consequences of EBs failing to meet the timescales outlined. They wanted to know whether EBs would be expected to return the funds to the LO/EB and whether the LO would be required to repay the credit.

2.4.15 One EB said that firm timescales should not be set in relation to the retention of monies after receipt, as long as the EB is not dormant and is working to ensure that LCF monies are being used to fund projects.

2.4.16 Two EBs declined to answer this part of the consultation.

2.5 What Problems would a Condition that LCF Funds received should be spent within a certain period of time cause your EB?

2.5.1 Six EBs (20%) stated that this condition must be subject to some sort of mechanism that allows for extensions to be granted in some cases where delays are caused by extenuating circumstances, such as those mentioned above i.e. in paragraphs 2.4.5, 2.4.7, 2.4.9, 2.4.11, and 2.4.12.

2.5.2 Three EBs (10%) were concerned with the potential implications (i.e. sanctions) in cases where EBs do not adhere to any condition. For example, if EBs would be expected to transfer the LCF monies back to the original funder, this would involve administrative burdens in handing the money back to the funding LO/EB and then re-receiving it. Another EB pointed out that if expenditure outside of the timescale were to be classed as non-compliant, and then EBs may be forced to abandon incomplete projects, and face disputes (possibly litigation) with proposers and contributing third parties of projects which are abandoned.

2.5.3 A large proportion of EBs (23%) stated that the requirement to spend LCF monies within a certain time period would cause them to change the type of projects it works with. One of these EBs stated that that it tends to work with projects that are longer than two years in duration and have timescales that are difficult to establish, but would have to alter this strategy. Another EB stated that it would be unable to undertake any large or complex projects because it could not accumulate funds, and that a by-product of this condition would be that large-scale projects would become the preserve of only the larger EBs.

2.5.4 six EBs (20%) commented that the suggested condition may cause scheduling problems. As some EBs do not consider project applications until funds are available, the timescale would lead to problems at Board meetings in that some meetings may have far too many projects to consider while others may have relatively few to consider. One of these EBs noted they may potentially have to remove the Boards' discretion in deciding what projects are to be supported. There would be similar problems in registering projects, drawing up formal agreements and monitoring projects. Also, it would cause the EB to effectively chase project deliverers/contractors to request payment.

2.5.5 One EB noted that such a condition may pose significant accounting and reporting burdens, for example the EB would have to adopt procedures to be able to attach individual funding amounts to each project and track the payments by date order, effectively creating separate cash flow accounts for each project. Furthermore, the EB would also need to account for how LCF monies are attributed to each element of non-project expenditure (e.g. EB admin costs). Depending on how ENTRUST would monitor compliance with this condition, the EB may experience increased reporting requirements.

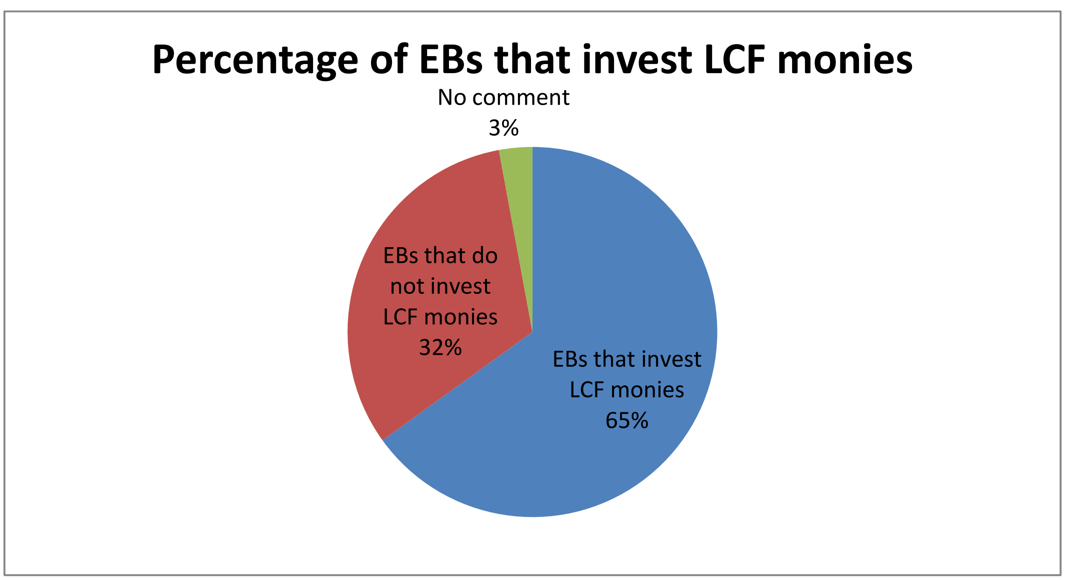
2.5.6 Six EBs (20%) stated there could be a danger that EBs would be forced to restrict their funding support to "final brick funding" (as opposed to initial or "first brick funding") in order to beat the timescale limitation and thereby make it more difficult for projects to obtain important first funding commitments from LCF.

2.5.7 Three EBs stated that the condition would cause the EB to effectively rush project planning and delivery and adopt less prudent retention/maintenance provisions.

2.5.8 One EB stated that a condition on the timescale of funding could impact on the amount of interest that it earns from its investments, as LCF monies will be released quicker, leaving less available for longer term investments. The EB said that this would then have a negative impact on their cost to income ratio and result in a greater proportion of their LO contributions being spent on operating costs.

2.5.9 Four EBs did not take part in this section of the consultation.

2.6 Does or has your EB ever invested LCF monies? If so, why?



2.6.1 A large majority of EBs (67%) commented that they do invest (or have in the past invested) LCF monies.

2.6.2 A strong minority of EBs (30%) commented that they do not invest LCF monies.

2.6.3 One EB declined to comment.

2.6.4 Ten EBs (33%) stated that they only ever placed LCF monies in interest bearing bank accounts, and they described their mode of investment as non-speculative. Two EBs invest monies in guaranteed fixed term investment accounts. One EB invests in fixed rate savings with Local Authorities (in the form of cash, certificates of deposits or gilts) and fixed rate Treasury Bonds purchased through the EBs bankers. One EB believes it is prudent to invest LCF monies on the money market, using a risk based treasury management strategy. 1 EB said that it had invested LCF monies into an endowment account when it was created although the details of this fund are not known. The primary aim of this was capital growth, but in later years the focus switched to income generation.

2.6.5 12 EBs (40%) commented that they invest LCF monies in order to maximise LCF funds available for funding projects.

2.6.6 Six EBs (20%) stated that they invest LCF monies to apply the generated income towards the EB running costs.

2.7 If you have invested LCF monies, was this upon condition of the LO? If so, could you please provide an example of such a condition?

2.7.1 The majority of EBs (73%) confirmed that their contributing LOs do not place conditions on them regarding the investment of LCF monies.

2.7.2 Six EBs (20%) commented that this did not apply to them as they do not invest LCF monies.

2.7.3 Two EBs (7%) did not comment on this part of the consultation.

2.8 Do you invest monies with a view to spend any income on approved objects? If yes, what arrangements do you intend to make regarding the principle sum?

2.8.1 20 EBs (66%) confirmed that they do, or have, invested LCF monies with a view to spend any income on approved objects.

2.8.2 Three of the above EBs stated that all interest accruing is first set against EB administration costs then set aside as an EB contingency fund for meeting any over-run on project expenditure and finally as a winding-up allowance.

2.8.3 Two EBs stated that they protect the principal sum by adopting a risk averse approach to investments, for example, by avoiding endowment type investments.

2.8.4 Two EBs stated that they do spend interest on approved projects but that this is not the primary purpose of the investment. One of these EBs further stated that it does not invest monies with a view to spend any income on approved objects. It said that the driver of the process is not to generate income for the EBs, but to make prudent use of the surplus cash available. Any intent with the interest earnings is a by-product of its core business objective – i.e. to provide grant funding through the LCF. This EB has historically achieved interest earnings levels higher than its overheads.

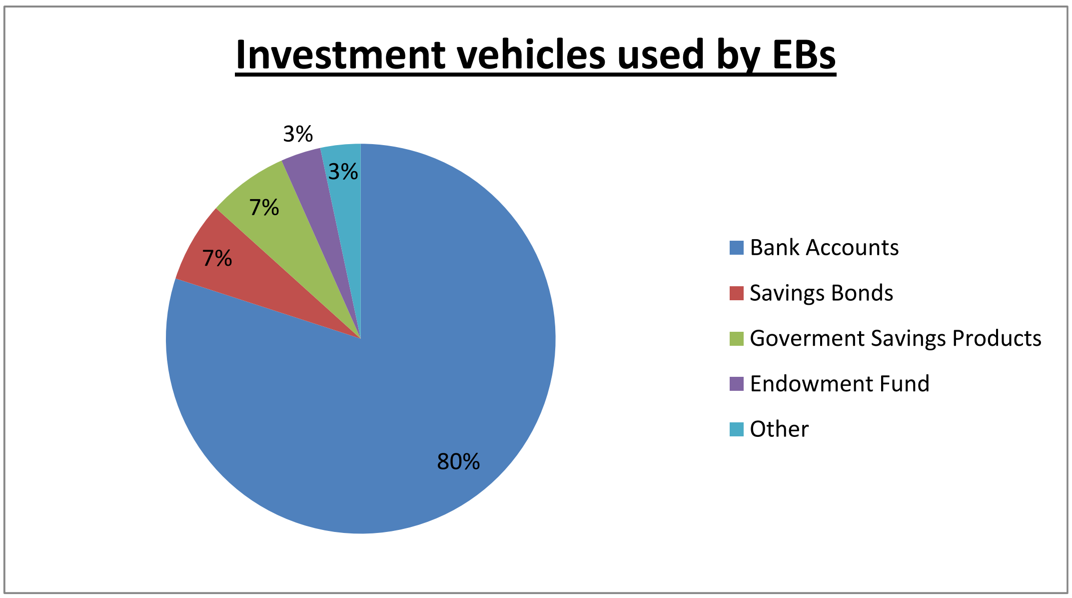
2.9 Does your EB have an Investment Strategy?

2.9.1 The majority of EBs (63%) confirmed that they do have an investment strategy.

2.9.2 A third of EBs (33%) stated that they do not have an investment strategy.

2.9.3 One EB declined to comment on this part of the consultation.

2.10 What Investment Vehicles have you used (eg bank accounts, cash funds)?



2.10.1 The most popular investment vehicle was the use of bank accounts, as the majority of EBs (80%) use bank accounts. Nine EBs stated that they use current accounts, with twelve using deposit accounts and ten using fixed term accounts.

2.10.2 Two EBs reportedly use fixed rate savings bonds.

2.10.3 Two EBs confirmed that they use government savings products. One EB stated that its monies are invested on deposit, via the local authority.

2.10.4 One EB confirmed that it has a deposit account with the Church of England Deposit Fund.

2.10.5 The EB which has an endowment fund stated it used this fund to invest it monies, in addition to using bank accounts.

2.11 Do you take Special Measures to Protect the Principal Sum, if so what?

2.11.1 A majority of EBs (43%) stated that their principal sums are protected by only investing in low-risk, interest-bearing bank accounts.

2.11.2 A sizeable minority of EBs (27%) stated that they only deposit money with reputable UK banks and building societies. One of these EBs stated that it only invests with UK banks in onshore accounts. Furthermore, two of these EBs stated that they only invest with banks that have a high credit-rating from rating agencies.

2.11.3 Five EBs (17%) stated that they exercise due diligence and regular or periodical reviews of their banking arrangements and investments, and generally keep abreast of market developments on a daily basis. This would involve vigilance by finance staff and independent accountants.

2.11.4 Three EBs (10%) stated that they seek to protect the principal sum by dividing their money between multiple banking institutions.

2.11.5 Three EBs (10%) stated that they protect the principal sum by only using non-speculative investments, i.e. avoiding stock market products. One of these EBs stated it only invests in term deposits or bonds which carry the same risk rating as conventional bank accounts.

2.11.6 Two EBs stated that they seek to run their business and banking procedures in line with practices defined by Local Government operating principles. One of the latter reported that it takes advice from the County Council's investment staff to ensure that LCF monies are protected as far as possible from any losses.

2.11.7 One EB confirmed that its funds are invested in an endowment fund at 'medium risk' with advice from investment managers to deliver capital growth and more recently a balance of capital growth and income generation. This is considered to be an acceptable level of risk while still achieving the objectives of the fund.

2.11.8 Another EB commented that other than taking care to review the security of the counterparty, both at the time of making the investment and throughout the life of the investment, it does not take any further special measures to protect the capital.

2.11.9 One EB stated that it seeks to protect the principal sum by only investing its money on the money markets for a maximum of six to nine months.

2.12 Do you agree that the reduction of the principal sum through investment should be deemed non compliant spend?

2.12.1 The majority of EBs (53%) generally agreed that a reduction of the principal sum through investment should be deemed as non-compliant spend. 33% of EBs disagreed and believe that a reduction of the principal sum should not be deemed as non-compliant spend. However, the EBs did make qualifications to their general positions. Four EBs declined to comment.

2.12.2 Over one quarter of EBs (27%) believe that a loss in the principal sum should only be deemed non-complaint spend if the investment was speculative, but not if the loss is as a result of bank failures, which are beyond EB control.

2.12.3 One fifth of EBs (20%) commented that a reduction in the principal sum should only be deemed as non-compliant spend if the investment was high-risk and sufficient safeguards were not in place or where negligent, reckless or otherwise unreasonable behaviour had taken place.

2.12.4 Almost one quarter of EBs (23%) stated that where a loss in the principal sum has occurred, EBs should not be penalised where they believed their funds to be managed responsibly and receive sound financial advice and exercise due diligence. A further 3 EBs stated that EBs should not be penalised for a loss in the principal sum where they expect over the longer-term the investment returned will exceed the original funding, despite fluctuations in the short to medium term.

2.12.5 Two EBs stated that EBs which are incorporated as limited companies are regulated by the Companies Act through well-established and widely used processes, and they do not believe that investment losses are matters falling within ENTRUSTs' remit or competence.

2.12.6 One EB stated that it was unfair of the Regulations (and ENTRUST) to subsume funds back into the scheme where profits are made, but losses are penalised.

2.12.7 One EB stated that this should be judged on a case by case basis and should be looked at in light of what the intent was - even a Government Bond has a perceived risk attached to it.

2.12.8 During the forum meeting, one EB referred to the guidelines given by the Charities Commission on investments and reserves and suggested that the points raised in this guidance should be adopted for the LCF.

2.13 If yes, do you agree that the Measurement of Return should be taken 1 year at a time annually at 31 March? If not, how would you propose this is Measured?

2.13.1 A slim majority of EBs (40%) believe that the measurement of return should be taken one year at time annually at 31 March.

2.13.2 Conversely, 37% of EBs stated that the measurement of return should not be taken annually on an arbitrary date.

2.13.3 In total, 33% of EBs believe that as investments can fluctuate on a day to day basis, it would be unfair to measure them annually as at 31 March. Two of these EBs added that an investment only becomes non-compliant when it is realised. These EBs advocated that the investment should be looked at overall, i.e. to determine the return when the investments are cashed in. This would entail a calculation to determine whether the income over the period plus the capital sum is more or less than the original invested sum.

2.13.4 Three of the latter EBs added that they were not aware that ENTRUST, as a regulator, has any authority or mandate to measure investment returns.

2.13.5 One EB commented that it had no view, and a further six EBs did not answer this part of the consultation.

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

2.14.1 A key concern of EBs is that they believe the imposition of public sector style constraints and limitations would severely compromise the LCFs' ability to deliver the level of benefits it does at present. 30% of EBs subscribed to this view. 1 of these EBs stated that ENTRUST has a reputation for being a 'light-touch' regulator and this helps many EBs provide a service to charitable groups, and frequently EBs are run by volunteer directors with no staff, and projects are assessed and considered by members of the Board in their spare time. However, an increasing burden of 'red tape' could become too overbearing for volunteers to deal with and consequently this may cause all work currently carried out at no cost to move to the larger EBs, who have the staff to deal with additional administration. However, the net result of this will be that higher proportion of LCF monies are used up in administrations costs as opposed to direct project works.

2.14.2 Another primary concern of EBs (20%) is that they are consulted further on any potential changes to the Regulations or the Guidance.

2.14.3 Four EBs stated that ENTRUST needs to establish the intent of EBs in retaining LCF monies and distinguish between two types of unspent or retained LCF monies: those held by EBs that are managed or invested through professional advisers and using the proceeds to deliver compliant projects; and those that are held by EBs that do not have active or registered projects.

2.14.4 Four EBs were concerned about the penalties or remedies that may be instituted for non-compliance with the proposed timetable. This issue is not addressed in the consultation document and this matter would need to be clarified before there are any changes within the Regulations.

2.14.5 Two EBs could not understand why ENTRUST wishes to set time limits given that the amount of funds unspent only represents approximately 15% of the LCFs' value to date, which is reasonable in their opinion.

2.14.6 One EB pointed out that Regulation 30(2)(a) unambiguously allows EBs to invest contributions and spend the income on approved projects. In line with this the EB believes that generally EBs have demonstrated prudent management systems for LCF money which are considered to be private funds.

2.14.7 One EB, that has invested LCF monies in an endowment fund with the express approval of ENTRUST, believes that any changes within the Regulations with regard to investments should not be applied retrospectively. The EB feels this way because it has based its' business model on this endowment fund, and would not want this altered by a change in the Regulations.

2.14.8 Two EBs stated that the consultation document sets out no adverse consequences of the current legislative position or of EBs retaining LCF monies, and the Regulations explicitly allow EBs to hold funds indefinitely. NB: the Regulations are silent on the matter.

2.14.9 Two EBs highlighted that the consultation document uses a range of terminology, e.g. committed, spent, invested, allocated, ear-marked, unspent. These EBs believe that it would be extremely beneficial if common terminology is agreed, communicated and applied consistently in all documentation and communication.

2.14.10 Another EB raised the issue of EBs that have charitable status also having to abide by a host of other regulatory requirements, and it should be ensured that changes to the current Guidance or Regulations do not conflict with the aforementioned.

2.14.11 One EB stated that since ENTRUST currently recognises accredited EBs, it should make reference to their treasury/investment policies as model examples.

2.14.12 Another EB pointed out that although it has never needed to set up an endowment fund, in some cases this may be necessary in order to manage a project. For example, for large scale projects (such as new open spaces and wildlife areas) that require future maintenance, endowment funds will be necessary to provide ongoing maintenance. Thus, the flexibility of the LCF is an important factor in enabling projects to progress.

3. LO RESPONSES TO THE CONSULTAION QUESTIONS

3.1 Have you ever made a Qualifying Contribution to an EB with the Condition that it was to be invested and the Interest Spent on furtherance of the EBs Approved Objects?

3.1.1 Both LOs commented that they do not engage in the process of making qualifying contributions to EBs with the condition that the monies are to be invested and the interest spent on the furtherance of EBs approved objects.

3.2 If so, was there any timescales in place with respect to the length of the investment?

3.2.1 This scenario does not apply as both LOs do not place conditions on EBs requiring qualifying contributions to be invested.

3.3 Did you place any further Condition on the Contribution about how it should be invested?

3.3.1 This scenario does not apply as both LOs do not place conditions on EBs requiring qualifying contributions to be invested.

3.4 Under what Circumstances would you make a Qualifying Contribution to an EB with the Condition that it was to be invested and the Interest Spent on furtherance of the EBs Approved Objects?

3.4.1 One LO commented that it has been involved in the LCF scheme since its introduction in 1996 and cannot envisage any circumstances where it would stipulate such a condition. However, it went on to state that given the changes to the "assets" requirement for land and property interest being in perpetuity, the LO would perhaps consider such a qualifying contribution to fund the EB to fulfil this onerous task.

3.4.2 Another LO commented that it expects its unspent qualifying contributions to be managed in an effective way which maximises income to the scheme.

3.5 In your opinion, when Qualifying Contributions are invested, should the Principle Sum be returned to you (for you to repay the tax credit to HMRC), or should the Principle Sum be Spent on furtherance of the Approved Objects?

3.5.1 One LO commented that LCF funds are not public monies and as the current Regulations permit there is no question that the investment income should be spent on approved projects within the scheme.

3.5.2 Another LO commented that qualifying contributions are donated to their DEB on the understanding that they are allocated to enable compliant projects to be delivered. The LO would not expect donations to be returned unless the DEB was unable to allocate donations in this way.

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

3.6.1 One LO commented that it would expect income to be generated by the careful deposit of funds to maximise income to the scheme and it would prefer to see funds being allocated to projects of significant and lasting benefit rather than to any specific timetable.

3.6.2 One LO commented that it is unclear as to the overall objective of this consultation and believes that the LCF scheme has been and still is a great success and it would not be wise to 'tinker with it'.

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