## 6. Assets and Benefits

### 6.1 Assets

#### Protecting the Asset

All LCF monies spent by an EB to purchase or create an asset should be protected should the asset be disposed of. EBs must ensure that they can account for all LCF funds held or spent on a compliant project or activity. Any loss of capital would normally be deemed non-compliant expenditure, therefore in the unlikely event that LCF monies are not required for immediate use, they should be placed in a bank account or similar facility, so preserving the capital sum. However, this needs to be considered in light of section 3 which notes that EBs should not hold a level of total unspent funds at year end (31 March) that exceeds 1.5 times the LCF income it has received during that financial year. Any LCF monies should be ringfenced from an organisation's operational expenditure and we advise EBs that LCF monies should be held in a separate bank account so that they are kept apart from other monies that the EB may have. Any income/interest earned from such an account or facility constitutes income derived and therefore must be spent appropriately. LCF monies cannot be invested, held or accumulated in such a facility for the purpose of generating interest.

EBs should maintain an inventory of assets purchased with LCF funds. LCF assets remain at cost price for their lifetime until disposal at appropriate market price. EBs must ensure that every project budget is resourced to meet the costs associated with appropriate asset monitoring and management while the project's assets remain on the asset register.

### 6.2 Timescales for asset monitoring by EBs

#### Definition of an asset

Assets are fixed or tangible assets created or purchased using LCF funding. Land, plant, machinery and whole buildings must be recorded on an asset register by the EB that registered the project for approval.

If a project has improved an existing asset, for example through repairs and refurbishments, no asset has been created therefore this section of guidance does not apply but the project is still subject to the general post completion monitoring requirements as defined in section 5.

#### Timescales

The following timeframes apply retrospectively to prevent the administrative burden on EBs that may have arisen if assets purchased before this guidance came into effect were subject to previous monitoring requirements.

#### Land

Land should be kept on an asset register for 20 years.

#### Plant, machinery and whole buildings

Plant, machinery and whole buildings should be kept on an asset register for a period based on their value as below. We consider that LCF funded plant and machinery falls into four main categories:

1. Portable mechanical equipment, for example vehicles such as tractors and mowers;
2. Fixed mechanical equipment, for example central heating systems and church organs;
3. Other fixed equipment for example Multi Use Games Areas and BMX/Skate parks; and
4. Other portable equipment such as rowing boats and gym equipment.

| LCF Value | Asset monitoring period |
|---|---|
| Less than £10,000 | Confirmation at project completion |
| Between £10,000 and £100,000 | 3 years |
| Between £100,001 and £200,000 | 5 years |
| Between £200,001 and £300,000 | 7 years |
| Over £300,000 | 10 years |

### Other types of assets

For other types of assets EBs should record confirmation that the asset is delivering against the approved objective at project completion.

### Asset monitoring

EBs should inspect assets at an appropriate frequency to confirm the asset is in compliant use. The frequency of the inspection regime is at the discretion of the EB and should take into account the value of the asset using a risk-based approach. An inspection might entail a physical visit. If a visit isn't cost effective other evidence may be deemed appropriate if the EB is satisfied that other evidence provides the assurances needed that the asset is in compliant use. Other evidence could be photographic, for example. At the end of the asset monitoring period a final inspection should be made to confirm compliance and then the asset can be deleted from the register.

### Asset monitoring record retention

The record keeping period for assets commences at the end of the asset monitoring period as this is the last day a record is made relating to that asset. See our guidance on record keeping in Section 3 for further information.

### Form 9: Recording assets on the Project Completion form

EBs should record all land, buildings, plant and machinery purchased with LCF monies on the project's Form 9: Project Completion.

### Protection of land and buildings

The land or building should be protected though the Land Registry if necessary. This could be done by a restriction in favour of the funder (funding EB or LO). Restrictions or other such protections should be sought when the land or buildings aren't already suitably protected by the nature of the land ownership (e.g. held in trust) or by the funding contract. Please note that land law in Northern Ireland is slightly different to that in England and equivalent protections can be used instead of a restriction.

The asset monitoring periods detailed above are the minimum periods land and buildings should be protected. If EBs have restrictions in place for longer periods based on their funding policies or as result of historic agreements then there is no need to amend these. This may be relevant when there are costs associated with removing the protection and the EB wishes to avoid these costs.

### Sale or disposal of an asset

If an asset is sold by an EB within the asset's monitoring period then the proportion of the proceeds of sale (equal to the proportion of the LCF funding contribution) is considered income derived and must be used to fund further compliant activity. See our guidance on income derived for further information. Where an EB seeks to dispose of a LCF funded asset, it should consult its original funding agreement (with the LO) to ascertain whether that agreement contains any clauses about disposal of LCF funded assets or the use of derived income from such disposals.

If an EB provides LCF funds (in whole or in part) to the purchase, creation or improvement of an asset owned by a non-EB, it should make its LCF contribution conditional on repayment where the asset is sold or ceases to comply with the Regulations within the asset's monitoring period. The amount to be repaid is the proportion of the sale value equal to the proportion made towards the purchase, creation or improvement price. Funds returned to an EB are considered income derived and should be used to fund further compliant activity.

Where an asset is returned to an EB following the completion of a project, the asset may either be retained for use on other LCF projects or sold. If the LCF funded asset is sold then any proceeds of sale are income derived must be used to fund further compliant activity. Assets should be valued independently if the current value is likely to exceed £10,000.

## 6.3 Benefit rules

**The Regulations prevent LCF funds being used for the benefit of either:**

- **a LO who has made a qualifying contribution to the EB; or**
- **any CTP who made a payment to release that qualifying contribution.**

**It is acceptable for a LO or CTP to benefit if they are in a class of person which would benefit generally, but there must not be a unique benefit to any person who has made a qualifying contribution or CTP payment.**

### Persons who have made qualifying contributions

LOs will have made qualifying contributions to an EB if they:

- contribute LCF monies directly to the EB; or

- contribute LCF monies to another EB (including a funding EB), which subsequently transfers LCF monies to the EB.

Once a LO has made a qualifying contribution to an EB, it will be regarded always as having made a qualifying contribution to that EB. Therefore, in relation to every new proposed project which an EB wishes to undertake, that EB must consider whether there is a benefit to any LO which has ever made a qualifying contribution to it, however long ago the qualifying contribution was made.

#### Persons who were a CTP in relation to a qualifying contribution

A person who is a CTP in relation to a qualifying contribution is any person who pays the LO an amount to secure the payment of the qualifying contribution from the LO to the EB.

### 6.4 What counts as a benefit to a LO or CTP?

A benefit is any advantage, asset, gain or benefit in kind.

#### The 'no benefit' rule

If an organisation wishes to enrol as an EB, its internal rules must preclude it from using its funds for the benefit of contributors. ENTRUST interprets the term 'funds' to mean any source for the EB's money, not just LCF monies. **Therefore, LO or CTP contributors cannot receive a benefit from ANY expenditure of the EB once the contribution has been made, not just LCF expenditure.**

#### Funds can be used to benefit 'a class of persons that benefits generally'

A class of persons is a group with a common function or classification, for example all users of a village hall or all users of a public park.

If a CTP or LO which made qualifying contributions derives benefit as part of a class, then that benefit must not be greater than any other member of the class. If the 'class of persons' is a small group then it could be considered that the benefits are specific to that group rather than of a general nature. If you are in any doubt, please contact us for further guidance.

#### Indirect Financial Benefit

An enrolled EB must not provide a market, commercial or other financial advantage to a LO which provides a qualifying contribution to the EB or a CTP. This includes relieving the LO or CTP of any contractual or statutory obligation, term of planning permission or other duty.

#### Intellectual Property

Where an EB supports a project that develops Intellectual Property Rights (IPR) or an innovative methodology, that IPR or methodology must not provide a unique benefit to a LO which made a qualifying contribution or a CTP.

#### Benefit from Assets

Assets acquired or created by an EB may only be used by a CTP or LO who makes a qualifying contribution if the CTP or LO pays the open market rate for use of those assets. Similarly, assets acquired or created by an EB may only pass into the ownership of a CTP or LO who makes a qualifying contribution if the CTP or LO pays the open market rate for them.

### Making Payments to Contributors (LO or CTP) at Prime Cost

Under certain circumstances, an EB may be able to make payments to its contributors without it being construed as a benefit. This is usually only acceptable in very straightforward and transparent cases.

Contributors may provide goods or services to EBs in return for payment only when: the goods or services are provided at 'prime cost' and there is no possible element of profit or other commercial benefit to the contributor.

Prime cost = direct material + direct labour + direct expenses

Prime cost excludes any element of profit. It also excludes any contribution to 'fixed costs' i.e. costs incurred whether or not the goods and services were provided to the EB, such as administration and overheads. Fixed costs may also include direct labour, unless the labour was employed exclusively to provide goods or services to the project and would not otherwise have been a cost to the contributor.

ENTRUST strongly recommends that the EB involved agrees a formula for establishing prime cost before funding any project that involves any payment to a contributor. This should be discussed with ENTRUST in advance of any payment being made.

### Transparent Accounting

Accounting arrangements when the contributor (LO or CTP) is involved in the project must be transparent. ENTRUST will need to see the budget and the quotations and invoices of the contributor to ensure they do not receive a benefit. In some cases, EBs may need to obtain agreements from contributors that they will disclose relevant management accounts to ENTRUST to demonstrate that no improper benefit has arisen.

ENTRUST recognises that arrangements for transparency can occasionally cause practical difficulties when small payments are involved. EBs who face genuine difficulties in meeting the obligations described here should contact ENTRUST's Compliance team as soon as such issues come to light.

### Awareness of the LCF and the funding LO/EB

Acknowledging the support of your contributors on plaques and in publications is not regarded as a benefit. We encourage the use of the LCF logo on all materials connected with the scheme. Further information can be found on the Brand Guidelines page of our website. Only reasonable and relevant promotional activities may be funded by LCF monies. If you are concerned whether a planned activity may be compliant, please contact us to discuss.

### Monitoring Unique Benefit to CTPs

As a benefit can have a very wide application, and an EB can have many CTPs which have contributed to it, assessing unique benefit may be difficult. With this in mind, the following measures can be undertaken by EBs to increase assurance that there is no unique benefit to CTPs:

- Maintaining a register of CTP donors;
- A signed declaration from the project applicant that there will be no unique benefit to any CTP;
- Internal EB checks to determine if there is a direct link between the project and the CTP which could result in a unique benefit;
- Internal EB checks to cross reference project to the register of CTPs;
- Checks of invoices and payment claims against listings of CTPs; and
- A signed declaration from the CTP stating that they will have no unique benefit.

This list is not exhaustive and there may be other measures which are suitable for the EB to undertake to ensure that a CTP does not receive a benefit from the projects which the EB registers.

EBs are required to keep records for 6 years (see Section 3 for more information on record keeping) therefore EBs may only be able to cross reference their list of CTP donors for this period. ENTRUST understands this limitation and we will only expect to see checks for CTPs for the period in which records are available.

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