



## **Compliance and Breach Management Update**

**April 2022 to June 2022**

**July 2022**

## 1. Introduction

- 1.1. ENTRUST is required under the Landfill Tax Regulations 1996 (Regulations), Regulation 34 (1) (i) to satisfy ourselves, by reference to records, or other documents, or information held by Environmental Bodies (EBs), that the qualifying contributions received by an EB have been spent by it only in the course, or furtherance of the Regulations and the EB's approved objects. Fundamental to our approach in delivering this statutory requirement is inspecting and visiting EBs to review their governance arrangements, operating systems and project spend to ensure that they comply with the Regulations and best practice.
- 1.2. At the conclusion of each compliance review, ENTRUST issues a report which details our findings and where appropriate, makes recommendations to coach an EB to compliance. A summary of these findings for April to June 2022 is outlined in this paper.
- 1.3. Furthermore, breaches of the Regulations by EBs are managed in accordance with ENTRUST's [Breach Management Framework](#), which we have agreed with HMRC and which complies with best regulatory practice, for example, repeated breaches of the Regulations are escalated to a proportionate intervention stage.
- 1.4. If Stakeholders have any questions regarding anything contained in this report, please contact our Helpline on 01926 488 300, or by emailing [helpline@entrust.org.uk](mailto:helpline@entrust.org.uk) for more information on our compliance and breach management processes and further information is available on [our website](#).
- 1.5. The aim of this report is to highlight examples of the areas of non-compliance identified at our compliance inspections and to provide advice and guidance to EBs on how to improve their governance framework to mitigate risk within their own organisations. In raising these issues, ENTRUST believes that they will support EBs in meeting their LCF obligations.
- 1.6. The report covers all activity during April to June 2022 and is split into the following sections:
  - **Failure to comply with the Regulations** – which highlights instances of non-compliance;
  - **Failure to comply with ENTRUST's Guidance** – which outlines those areas where ENTRUST's guidance has not been followed;
  - **Analysis of issues** – provides a more in-depth analysis of the issues identified during ENTRUST's compliance work;
  - **ENTRUST's recommended corrective actions** – outlines the actions that EBs can implement to manage the most frequently identified compliance issues;
  - **Breach management** – provides details of EBs' late form submissions and spending outside of the prescribed period (SOPP);
  - **Breach management cases** – details ENTRUST's breach management case work and/or referrals to HMRC; and
  - **Non return of Statutory Annual Return (Form 4)** – details the submission of late Form 4s and frozen EBs.

## 2. Compliance Reviews

The following sections set out the main findings arising from our compliance reviews during April to June 2022

### 2.1. Failure to comply with the Landfill Tax Regulations 1996 (Regulations)

2.1.1. ENTRUST makes non-compliant recommendations where we identify that an EB has failed to comply with the Regulations. To address these issues, ENTRUST provides advice and guidance to an EB to enable them to take appropriate action to resolve the issue and mitigate any future breaches. If an EB fails to take action, then ENTRUST will manage the breach in accordance with our breach management framework.

2.1.2. During the period April to June 2022, 22 draft Compliance reports were issued. A total of 28 recommendations were raised of which 6 (21%) were made to correct issues of non-compliance. The non-compliant issues identified during the period were:

- Contributing Third Party (CTP) compliance
- Statutory reporting - Form 3
- Statutory reporting - Form 4
- Other - Non compliant

2.1.3. Non-compliant recommendations are categorised and ranked in order of frequency as detailed in the following table. The three issues raised under Other-Non-compliant findings relate to two instances where the EB failed to provide financial records and a failure to update Trustee records:

Non-compliant issue	Number of recommendations					% of non-compliant recommendations
	Q1	Q2	Q3	Q4	Total	
Project expenditure outside of the prescribed period						
Failure to maintain records of LCF expenditure						
Project non-compliance						
CTP compliance	1				1	17%
Statutory reporting - Form 4	1				1	17%
Failure to maintain records of LCF income						
Non-compliant use of LCF funds						
Failure to maintain records of LCF income derived						
Failure to meet criteria for enrolment						
Unapproved project expenditure						
Failure to maintain CTP records						
Statutory reporting - Form 3	1				1	17%
Statutory reporting - Form 7						

Other - Non compliant	3				3	50%
<b>Totals</b>	<b>6</b>				<b>6</b>	<b>100%</b>

## 2.2. Failure to comply with ENTRUST's Guidance

- 2.2.1. ENTRUST also makes recommendations when an EB has failed to follow ENTRUST's guidance. These issues do not breach the Regulations, however, as we expect EBs to fully comply with our guidance requirements, these issues are raised with EBs in our compliance reports.
- 2.2.2. During the period April to June 2022, 22 (79% of all findings) guidance recommendations were raised. The most frequently identified area for guidance (8 (36%)) identified weaknesses in various areas of EB governance. 4 (18%) guidance recommendations were also raised to improve various EB procedures.
- 2.2.3. Business continuity continues to be frequent issue, with 3 (14%) instances during the period. EBs which are reliant on single individuals with knowledge of the LCF obligations and for access to our reporting database, ENTRUST Online (EOL). Reliance on an individual is a risk to the EB that they may not be able to fulfil their statutory obligations should the individual be absent from, or leave the EB. EBs are advised to ensure they have procedures in place which ensure continuity of LCF knowledge.
- 2.2.4. A failure by EBs to maintain accurate records with ENTRUST was identified at 2 (9%) reviews, despite EBs receiving regular reminders to update their records. It is important that EBs advise ENTRUST when changes are made to EB Main Contacts, Trustees or office addresses, to ensure continued communication with ENTRUST.
- 2.2.5. Guidance recommendations raised during the period April to June 2022 are categorised and ranked in order of frequency as detailed in the following table:

Guidance issue	Number of recommendations					% of guidance recommendations
	Q1	Q2	Q3	Q4	Total	
Business continuity	3				3	14%
Failure to maintain EB records with ENTRUST	2				2	9%
Governance	8				8	36%
Guidance required - EB procedures	4				4	18%
Project file documentation						
Administration costs						
Guidance required - Projects	1				1	5%
Unspent funds	2				2	9%
Guidance required - Other	1				1	5%
Project completion reporting - Form 9	1				1	5%
Asset monitoring						

Project completion reporting - Form 4						
Guidance required - Funding Agreement						
Guidance required - Voluntary revocation						
<b>Totals</b>	<b>22</b>				<b>22</b>	<b>100%</b>

### 3. Analysis of Issues

The following sections provide more in-depth analysis of the issues identified during ENTRUST's compliance work.

#### 3.1. Non-compliant issues

- 3.1.1. There was no single area of non-compliance identified during April to June 2022 which was more frequent as each of the six recommendations were for separate issues.
- 3.1.2. The first issue was concerned with errors and omissions on the EB's Statutory Annual return. As an EB's Annual Return is a statutory reporting requirement, they must be accurate because the data is the main source of information on an EB's operation and they are therefore a key component in assessing the performance of the LCF by HMRC/HMT. To support EBs to comply with this requirement, ENTRUST has published guidance on statutory reporting which can be found in [Section 3 of the EB Guidance Manual](#). Further details on the ENTRUST reporting forms and how to complete them, can also be accessed on the 'How To' guides on our website, or by contacting ENTRUST directly through our [Helpline@entrust.org.uk](mailto:Helpline@entrust.org.uk)
- 3.1.3. Failure to maintain records of expenditure is also a frequent non-compliant issue. It is also a statutory requirement for EBs to maintain adequate audit trails of all LCF activity and to provide those records to the Regulator if requested. EBs should also ensure that activity is accurately reported to ENTRUST via timely submission of contribution receipts (Form 3 and transfers to other EBs (Form 7). ENTRUST's guidance on reporting and record keeping can be accessed in [Section 3 of the EB Guidance Manual](#).
- 3.1.4. Failure to correctly source CTP funds has become an issue identified at reviews during the year, with five (14%) instances of EBs using their own funds to make CTP donations, or raising funds without advising donors that their donations will be paid to a Landfill Operator (LO). Wherever possible, donors should make their payments directly to the LO. CTP monies should only be passed via an EB in exceptional circumstances. Guidance on the correct sourcing and payment of CTP monies can be found in [Section 3 of the EB Guidance Manual](#).

#### 3.2. Guidance issues

- 3.2.1. During our review work, ENTRUST identified a wide range of guidance issues, which were raised with EBs. In raising these issues, ENTRUST believes that they will support EBs in meeting their LCF obligations. These obligations apply to EBs once they are enrolled and these obligations are detailed within [Section 3 of the EB Guidance Manual](#).
- 3.2.2. One of the main issues of guidance that ENTRUST requires EBs to demonstrate relates to the level of governance arrangements in operation within their organisations. ENTRUST has

made a number of recommendations to strengthen EBs' business models in this area. The most frequently identified issues included a failure to maintain accurate records with ENTRUST by not reporting changes to the organisations' Management Team, or Main Contact and a lack of adequate business continuity procedures due to a reliance on a single individual.

3.2.3. The value of administration costs incurred each year and level of unspent funds held by EBs at the year-end by EBs are two of HMRC's strategic priorities for the operation of the LCF. ENTRUST has therefore developed separate frameworks to monitor and support EBs in complying with HMRC's guidance in these areas, which are set out in the [administration costs and unspent funds framework](#). However, ENTRUST also continue to raise issues with individual EBs as and when they are identified through our compliance reviews and this would include EBs which, although are operating within guidance levels, may still be using LCF funds inappropriately, for example for unrelated LCF administration activities.

3.2.4. Finally, we would also recommend that EBs ensure they are familiar with the [EB Guidance](#) published on the ENTRUST website and refer to the guidance as part of their day-to-day LCF operations. We have recently made some further clarifications to our guidance which can be accessed [here](#).

### 3.3. **ENTRUST's recommended corrective actions**

3.3.1. The following table sets out ENTRUST's recommended corrective actions that EBs can implement to manage the most frequently identified compliance issues:

Recommendation type	ENTRUST recommended action
<b>Non-compliant expenditure – spend outside of prescribed period (non-compliant)</b>	<ul style="list-style-type: none"> <li>• EBs reminded to monitor the completion of projects and request extensions to projects approaching their completion date;</li> <li>• EBs reminded to obtain project approval before spending LCF monies; and</li> <li>• EBs to ensure LCF monies are only spent on the areas detailed in the project cost breakdown approved at registration of a project.</li> </ul>
<b>Form 4 – inaccurate, non-reconciled or late (non-compliant)</b>	<ul style="list-style-type: none"> <li>• EBs must review their financial records and re-submit an updated and accurate Form 4 if required;</li> <li>• EBs must provide start and end dates for projects;</li> <li>• EBs reminded they can make adjustments and corrections to their own Form 4 on EOL; and</li> <li>• Deadline for submitting the annual return should be recorded on EB management team calendars/agendas.</li> </ul>
<b>Failure to maintain records of expenditure (non-compliant)</b>	<ul style="list-style-type: none"> <li>• EBs should retain documentary evidence or financial systems to evidence all</li> </ul>

	<p>financial transactions and expenditure of LCF monies; and</p> <ul style="list-style-type: none"> <li>EBs must be able to provide documentary evidence that LCF balances are held securely and are available on an 'instant access' basis, for example, not committed to long-term investments or savings.</li> </ul>
<b>Governance – lack of checks on excluded individuals (guidance)</b>	<ul style="list-style-type: none"> <li>EBs' governance procedures should include a declaration by new appointees that they are not an excluded individual; and</li> <li>EBs' recruitment processes to include a check for excluded individuals.</li> </ul>
<b>Director/Main Contact updates (guidance)</b>	<ul style="list-style-type: none"> <li>EBs' governance procedures should note the requirement to notify ENTRUST of retiring Trustees and new appointments at the same time as Companies House and/or Charities Commission are notified (where applicable); and</li> <li>Main Contacts to carry out regular review of EB and personal data held on EOL.</li> </ul>

## 4. Breach Management

- 4.1. EBs which breach the Regulations are subject to ENTRUST's breach management action, for example, they may be subject to the issuing of a Warning letter. The level of intervention that may be applied are set out in our [Breach Management Framework](#) with repeated breaches escalated to a higher intervention stage.
- 4.2. The following table provides a summary of the number of breach management letters issued during April to June 2022. If an EB has had multiple breaches in one month, then they receive one letter covering all of their breaches to minimise any additional administrative burden. For clarity purposes, the table also sets out some actions that EBs should take to avoid and mitigate these issues arising. For more detailed information as to the obligations of EBs please see our [Guidance Manual](#):

Regulatory breach	Breach management stage	No. of letters					Action EBs should take
		Q1	Q2	Q3	Q4	Total	
Late Statutory reporting – Form 3 (notification of contribution from Landfill Operator)	Advice and Guidance letter	1				1	EBs should monitor bank accounts to ensure that they are aware of when money has been received from a LO. Mobile banking is recommended as best practice so alerts can be activated when payments are received.
	Warning letter	1				1	
	Final Warning letter						
Late Statutory reporting – Form 7 (notification of	Advice and Guidance letter	3				3	EBs should ensure they have a process established to report all transfers in the appropriate
	Warning letter	3				3	

transfer of monies between Environmental Bodies)	Final Warning letter						timeframe. This must include identifying if an organisation they are funding is an EB or not.
Late levy payment	Advice and Guidance letter						EBs should have a process established to pay the levy in the appropriate timeframe on receipt of invoice.
	Warning letter						
	Final Warning letter						
Project expenditure outside of the prescribed period	Advice and Guidance letter	1				1	EBs should monitor the completion of projects and request extensions to projects approaching their completion date.
	Warning letter						
	Final Warning letter						
<b>Total</b>	<b>All letters</b>	<b>9</b>				<b>9</b>	

### 4.3. Breach management cases

4.3.1. If ENTRUST identified that there has been a material breach of the Regulations, we will open a breach management case file. Cases will either be closed where the issue has been resolved to our satisfaction, or the case is referred to ENTRUST's Board for their consideration. After receiving a case file, the Board may consider that the breach is so serious it should be referred to HMRC for their consideration, or no further action is required.

4.3.2. During April to June 2022 there were five opened cases; two were for failing to submit information requested, one for unreported administration costs and two for providing information that was later found to be incorrect. One long running case was closed.

4.3.3. Based on the five cases, the following table includes the actions that EBs should take to avoid these issues arising. For more detailed information as to the obligations of EBs please see our [Guidance Manual](#):

Period	Regulatory breaches	Action EBs should take
2022/2023 Q1	Non-compliant spend of LCF funds including spending on administration costs not registered with ENTRUST	EBs must ensure LCF monies are ring-fenced, administration costs reported to ENTRUST correctly, and only spent on LCF objects and approved projects
	EBs submitting incorrect information provided by applicants on project application and then found to be in breach of the Regulations	Funding EBs must ensure that all information provided to them by applicants is correct and validated before submitting to the regulator.
	Project expenditure not being supported by invoices or other appropriate evidence of expenditure	EBs must retain documentary evidence to evidence all LCF financial transactions
	EBs not responding to ENTRUST regulatory requests for information	EBs are required to respond to our requests for information within the timescales provided



#### 4.4. **Non return of Statutory Annual Return (Form 4)**

- 4.4.1. At the end of June 2022 [55 EBs remained frozen](#) for not submitting their 2021/2022 Statutory Annual Return (Form 4) to ENTRUST. The completion of the Statutory Annual Return provides key information to ENTRUST as the regulator of the scheme to ensure ENTRUST can provide HMRC with independent assurance that LCF funds are being spent compliantly. Without this information, it is not possible to assess compliance, therefore, EBs are set to frozen status and cannot participate in the scheme until this information is provided. If an EB fails to do this for two consecutive years, despite several attempts by ENTRUST Staff to contact the EB, they are referred to HMRC for forcible revocation.

#### 4.5. **Conclusion**

- 4.5.1. This quarter, five breach management cases were opened and one closed, leaving six open cases at the end of the quarter, due to findings from updated compliance processes. The Regulations team have twice contacted all EBs who have not filed their annual return, reducing the number from 80 to 55. There has not been a noticeable rise in late form breaches or SOPPs.

**ENTRUST**  
**July 2022**