



Compliance and Breach Management Update

April 2021 to March 2022

April 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 2021 to March 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 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 2021/2022 and is split into the following sections:
 - **Failure to comply with the Landfill Tax Regulations 1996 (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 Review of the Year

The following sections set out the main findings arising from our compliance reviews during 2021/2022

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 correctly apply 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 2021 to March 2022, 138 compliance reports were issued. A total of 130 recommendations were raised of which 40 (31%) were made to correct issues of non-compliance. The most common non-compliant issues identified during the year were:

- Incorrect reporting on the Statutory Annual Return;
- Failure to maintain adequate records of expenditure;
- Project expenditure outside of the prescribed period; and
- Failure to maintain adequate Contributing Third Party (CTP) records

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 all relate to the failure of an EB to hold accurate financial records:

Non-compliant issue	Number of recommendations					% of non-compliant recommendations
	Q1	Q2	Q3	Q4	Total	
Statutory reporting - Form 4		7	2		9	23%
Failure to maintain records of LCF expenditure	2	3	3		8	20%
Other - Non compliant	2	1	3		6	15%
Failure to maintain CTP records		2	3	1	6	15%
Project expenditure outside of the prescribed period	3	1			4	10%
Statutory reporting - Form 3		1	1		2	5%
Failure to maintain records of LCF income			2		2	5%
Project non-compliance			1		1	3%
CTP compliance		1			1	3%
Unapproved project expenditure				1	1	3%
Failure to maintain records of LCF income derived						
Failure to meet criteria for enrolment						
Statutory reporting - Form 7						
Totals	7	16	15	2	40	100%

2.2. Failure to comply with ENTRUST's Guidance

- 2.2.1. ENTRUST also makes guidance 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 2021 to March 2022, 90 guidance recommendations were raised, (69% of all findings). These are categorised and ranked in order of frequency as detailed in the table below.
- 2.2.3. The most frequently identified guidance issues (15 (17%)) raised with EBs were in relation to a wide range of EB procedures in areas of procurement, project delivery and CTP donations. A similar number of recommendations were also raised in relation to a lack of appropriate business continuity procedures where EBs are reliant on a single individual with knowledge of the LCF, who also has access to our reporting database, ENTRUST Online (EOL). Reliance on one 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. ENTRUST therefore recommends that EBs have safeguards in operation to mitigate this risk.
- 2.2.4. A number of Governance issues (13 (14%)) have also been raised, which also cover a number of areas with the most frequent issue being a lack of checks on excluded individuals being involved in the management of the EB.
- 2.2.5. We continue to identify a number of EBs (11 (12%)) who fail to maintain accurate records with ENTRUST, despite EBs receiving regular reminders to update their details. 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.
- 2.2.6. Guidance on the effective management of projects was also issued to 11 (12%) of EBs during the year:

Guidance issue	Number of recommendations					% of guidance recommendations
	Q1	Q2	Q3	Q4	Total	
Guidance required - EB procedures	6	4	5		15	17%
Business continuity	9	2		4	15	17%
Governance	7	4	1	1	13	14%
Failure to maintain EB records with ENTRUST	7	2	1	1	11	12%
Guidance required – Projects		5	4	2	11	12%
Unspent funds		1	6		7	8%
Project file documentation	1	1	2		4	4%
Project completion reporting - Form 9		2	1	1	4	4%
Administration costs	1	1		1	3	3%
Guidance required – Other		1	2		3	3%
Guidance required - Voluntary revocation		1	1		2	2%
Project completion reporting - Form 4		2			2	2%

Asset monitoring						
Guidance required - Funding Agreement						
Totals	31	26	23	10	90	100%

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. The most frequently identified issues of non-compliance identified through ENTRUST's compliance reviews were concerned with errors and omissions on Statutory Annual returns. 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
- 3.1.2. 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 ensure that activity is accurately reported to ENTRUST. ENTRUST's guidance on reporting and record keeping can be accessed in [Section 3 of the EB Guidance Manual](#).
- 3.1.3. 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](#).
- 3.1.4. EBs incurring expenditure outside of the prescribed period is also a common issue. EBs must ensure that expenditure is only incurred between the ENTRUST approved project start and end dates. Where a project may overrun these dates, then an EB can apply to ENTRUST for a project extension, failure to do so, will be a breach of the Regulations and the project will be deemed as non-compliant. Guidance on the correct management of projects can be found in [Section 5 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 have been 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 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
<p>Non-compliant expenditure – spend outside of prescribed period (non-compliant)</p>	<ul style="list-style-type: none"> • EBs reminded to monitor the completion of projects and request extensions to projects approaching their completion date; • EBs reminded to obtain project approval before spending LCF monies; and • EBs to ensure LCF monies are only spent on the areas detailed in the project cost breakdown approved at registration of a project.
<p>Form 4 – inaccurate, non-reconciled or late (non-compliant)</p>	<ul style="list-style-type: none"> • EBs must review their financial records and re-submit an updated and accurate Form 4 if required; • EBs must provide start and end dates for projects; • EBs reminded they can make adjustments and corrections to their own Form 4 on EOL; and • Deadline for submitting the annual return should be recorded on EB management team calendars/agendas.

Failure to maintain records of expenditure (non-compliant)	<ul style="list-style-type: none"> EBs should retain documentary evidence or financial systems to evidence all financial transactions and expenditure of LCF monies; and 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.
Governance - lack of checks on excluded individuals (guidance)	<ul style="list-style-type: none"> EBs' governance procedures should include a declaration by new appointees that they are not an excluded individual; and EBs' recruitment processes to include a check for excluded individuals.
Director/Main Contact updates (guidance)	<ul style="list-style-type: none"> 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 Main Contacts to carry out regular review of EB and personal data held on EOL.

4. Breach Management

4.1. EBs which breach the Regulations are subject to ENTRUST's breach management framework. for example, the issuing of a Warning letter. It should also be noted that the level of intervention that we may implement 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 2021 to March 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	6	2	1	1	10	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
	Warning letter	1	1	2		4	
	Final Warning letter					0	

							activated when payments are received.
Late Statutory reporting – Form 7 (notification of transfer of monies between Environmental Bodies)	Advice and Guidance letter	2	1		1	4	EBs should ensure they have a process established to report all transfers in the appropriate timeframe. This must include identifying if an organisation they are funding is an EB or not.
	Warning letter	1				1	
	Final Warning letter					0	
Late levy payment	Advice and Guidance letter					0	EBs should have a process established to pay the levy in the appropriate timeframe on receipt of invoice.
	Warning letter					0	
	Final Warning letter					0	
Project expenditure outside of the prescribed period	Advice and Guidance letter		2		1	3	EBs should monitor the completion of projects and request extensions to projects approaching their completion date.
	Warning letter	1	1			2	
	Final Warning letter	1				1	
Total	All letters	12	7	3	3	25	

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 2021 to March 2022 there were 2 opened cases. One case was opened in May 2021, where an EB did not respond to requests for further financial information to allow a compliance review to be completed. The other was opened in August 2021, a different EB for the same reason. In both cases, it was not possible to assess the compliance of project spending without the requested financial information. Both cases were resolved and closed before the year end.

4.3.3. Based on the two 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
2021/2022	EBs not responding to ENTRUST regulatory requests for information	EBs are required to respond to our requests for information within the timescales provided
	Project expenditure not being supported by invoices or other appropriate evidence of expenditure	EBs must retain documentary evidence to evidence all LCF financial transactions

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

4.4.1. At the end of March 2022 there remained [7 EBs frozen](#) for not returning their Statutory Annual Return (Form 4) for 2020/2021. 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 revocation.

4.5. **Conclusion**

4.5.1. This year, four breach management cases were closed and two opened leaving just three at year end. The Regulations team were able to contact the majority of EBs who have not filed their annual return, with four fewer frozen EBs at year end than in 2020/2021. There has not been a noticeable rise in late form breaches or SOPPs, as any rise in figures for 2021/2022 are due to one EB's ongoing breach management case.

ENTRUST
April 2022