



Compliance and Breach Management Update **April 2023 to December 2023**

January 2024

1. Introduction

- 1.1. Entrust is required to ensure that qualifying contributions received by EBs are spent in accordance with the Regulations. Fundamental to our approach in delivering this statutory requirement is inspecting and visiting EBs to review their governance arrangements, operating systems, and project activity.
- 1.2. A report is issued at the conclusion of each compliance review, which details any findings and makes appropriate recommendations to coach an EB to compliance. A summary of the findings raised with EBs during April to December 2023 is outlined in this paper.
- 1.3. 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 the content of this report, or for more information on our compliance and breach management processes please contact our Helpline on 01926 488 300, or by emailing helpline@entrust.org.uk Further information is also available on [our website](#).
- 1.5. The aim of this report is to highlight examples of non-compliance or areas where our guidance has not been followed and to provide advice and guidance to EBs on how to improve their governance framework to mitigate risk of these issues occurring within their own organisations.
- 1.6. The report covers our activity during April to December 2023 and is split into the following sections:
 - **Failure to comply with the Regulations** –instances of non-compliance
 - **Failure to comply with Entrust's Guidance**
 - **Recommended corrective actions** –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

2. Failure to comply with the Regulations

- 2.1. Non-compliant recommendations are raised where we identify that an EB has failed to comply with the Regulations. Advice and guidance are provided to EBs to enable them to take appropriate action to resolve the issue and mitigate any future breaches. If an EB fails to take appropriate action, then we will take action to manage the breach in accordance with our breach management framework.
- 2.2. During the period April to December 2023, draft Compliance reports were issued. A total of 129 recommendations were raised of which 38 (29%) were made to correct issues of non-compliance. The non-compliant issues identified during the period are detailed in the table below and ranked in order of frequency:

Non-compliant issue	Number of recommendations					% of non-compliant recommendations	Value (£)
	Q1	Q2	Q3	Q4	Total		
Failure to maintain records of LCF expenditure	7	2	2		11	29%	£306,140
Statutory reporting - Form 4	2	3	3		8	21%	£34,297
CTP compliance	3	1	2		6	16%	£4,289
Non-compliant use of LCF funds	1	1			2	5%	£1,750
Statutory reporting - Form 3	2				2	5%	£4,704
Statutory reporting - Form 7	1		1		2	5%	£27,666
Failure to maintain records of LCF income		1			1	3%	£75,000
Project non-compliance			1		1	3%	£100,000
Project expenditure outside of the prescribed period		1			1	3%	£15,881
Failure to maintain CTP records			1		1	3%	
Failure to maintain records of LCF income derived					0	0%	
Failure to meet criteria for enrolment					0	0%	
Unapproved project expenditure					0	0%	
Other – Non-compliant			3		3	8%	
Totals	16	9	13		38	100%	£339,228

- 2.3. The cumulative value attributed to each non-compliant issue is the indicative value raised within the draft compliance report. Some of these issues will have been resolved during the management response process. Other non-compliant issues arising from a lack of, or weaknesses in key EB procedures are not quantified.

3. Failure to comply with Entrust guidance

- 3.1. Entrust also makes recommendations when an EB has failed to follow our 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.
- 3.2. During April to December 2023, 91 (71% of all findings) guidance recommendations were raised. The most frequently identified area for guidance (17 (27%)) identified weaknesses in areas of EB project management.
- 3.3. Business continuity continues to be frequent issue, with 13 (20%) 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.
- 3.4. A lack of validation of project completion data submitted to Entrust via the Form 9 has been raised in 10 (16%) of recommendations. Failure by EBs to validate the accuracy of completion data will result in inaccurate reporting to HMRC on the performance and benefits of the LCF scheme.
- 3.5. Guidance recommendations raised during the period April to September 2023 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	
Guidance required - Projects	8	9	3		20	22%
Business continuity	9	4	5		18	20%
Project completion reporting - Form 9	3	7	1		11	16%
Governance	6				6	9%
Project file documentation	2	2			4	6%
Guidance required - Other	3		2		5	5%
Asset monitoring	2	1	6		9	5%
Failure to maintain EB records with Entrust	2		1		3	3%
Unspent funds	1	1			2	3%
Guidance required - EB procedures	1		4		5	2%
Project completion reporting - Form 4	1	1			1	2%
Guidance required - Funding Agreement	2	1	2		3	2%
Guidance required - Voluntary revocation	1	1	1		2	2%
Administration costs					0	0%
Totals	37	27	25		89	100%

4. Non-compliant issues

- 4.1. Failure to maintain records of LCF expenditure was the most frequent issue of non-compliance identified during April to December 2023 with 11 (29%) occurrences. In most cases this was due to EBs not retaining adequate evidence of expenditure on projects, such as purchase receipts and invoices. It is 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.
- 4.2. Failure to meet statutory reporting requirements, have been frequently raised for either contributions (2 (5%)), transfers (2 (5%)), or completion of the Statutory Annual Return (8 (21%)). 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
- 4.3. Failure to correctly source CTP funds was a common issue with 6 (16%) cases identified. The most frequent reason for this breach was 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). EBs cannot provide a CTP payment for their own project from their own non-LCF funds. Also, 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.

5. Guidance Issues

- 5.1. A wide range of guidance issues were raised with EBs. In raising these issues, we believe that they will support EBs in meeting their LCF obligations which apply once they are enrolled; these are detailed within Section 3 of the EB Guidance Manual.
- 5.2. 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 several 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.
- 5.3. General guidance on running projects was also a frequent issue and issues identified included failure to advise Entrust of material changes to projects, both in terms of financial spend and the nature of works carried out. Other issues covered lack of evidence of adequate procurement or VfM procedures. Guidance on running a project is published in Section 5 of the EB Guidance Manual.

6. Entrust's recommended corrective actions

6.1. 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
Non-compliant expenditure – spend outside of prescribed period (non-compliant)	<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.
Form 4 – inaccurate, non-reconciled or late (non-compliant)	<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.

7. Breach Management

7.1. If an EB breaches the regulations, there is a Breach Management Framework which sets out what actions we may take in any given scenario. More often than not, cases

involve a short advice and guidance letter to understand why a breach happened, and to look at mitigating the risk of a repeat. Minor breaches, such as late forms are set out below. There are cases on occasion which are more serious and require a case file and investigation. This framework is currently under review after a successful and informative consultation.

- 7.2. The following table provides a summary of the number of breach management letters, for minor breaches, issued during April to December 2023. If an EB has had multiple breaches in one month, then they receive one letter covering all 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 (LO))	Advice and Guidance letter	1		1		2	EBs should monitor bank accounts to ensure that they are aware of when money has been received from an LO. Mobile banking is recommended as best practice so alerts can be activated when payments are received.
	Warning letter					0	
	Final Warning letter					0	
Late Statutory reporting – Form 7 (notification of transfer of monies between Environmental Bodies)	Advice and Guidance letter	2		1		3	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	1	1	1		3	EBs should monitor the completion of projects and request extensions to projects approaching their completion date.
	Warning letter					0	
	Final Warning letter					0	
Total	All letters	5	1	3		9	

- 7.3. If Entrust identified that there has been a more serious 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.

- 7.4. There were no cases opened for the period of this report. Three cases were closed over the period. One case regarded a project closing to the public; however, satisfactory amounts of assets were sold to return funds to the scheme which was deemed acceptable, and the case was closed. Another case involved an EB who appeared to have ineligible directors; this case was found not to be a breach of the regulations. The third case was regarding an EB who was not able to be contacted and had missed several key deadlines. After a satisfactory meeting with Entrust and a resolution on each issue, the case was closed.
- 7.5. There are still three cases ongoing, all in the latter stages close to a resolution.
- 7.6. At the end of December 2023 35 EBs remained frozen for not submitting their 2022/2023 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.

Entrust

January 2024