

Annual Breach Management Cases Report – 2023/2024

Introduction

The responsibility for managing breaches of the Landfill Tax Regulations 1996 (Regulations) is split between Entrust and HM Revenue & Customs (HMRC). Entrust manages all breaches of the Regulations or Conditions and attempts to resolve the issues by working with Environmental Bodies (EBs). Cases which cannot be satisfactorily resolved are referred to HMRC to consider clawback of contributions and/or enforced revocation of the EB.

This document lists breaches that have been managed during 2023/2024, with detail on how these types of cases can be or have been resolved.

In 2023/2024, nine breach management case files were opened, compared with seven in 2022/2023. This is mirrored by the rise in cases dealt with through compliance reviews without the need for referral to breach management as seen in the quarterly report, and other cases found from other areas of operation, which were resolved with the EB's before the case turning into a full breach case.

More breaches have been identified with the introduction of Project Site Visits from November 2021 which provide increased scrutiny of completed projects. We continue to work with EBs to improve the general levels of compliance with regulatory requirements in the delivery of projects and safeguarding of LCF funds. This advisory document seeks to achieve this by listing the types of breaches identified during 2023/2024 to inform and help EBs to develop quality processes that mitigates the risks of breaching the Regulations.

There are six case types listed below which detail the breaches we have managed, outside of the normal compliance review process in the past year. Details of findings of the compliance reviews can be found in the quarterly report found alongside this report on the [website](#).

More information on our breach framework can be found on our [website](#).

Appendix A below sets out the type of breach, number of instances and the Regulations that have been breached.

1. Case Type #01 – Not responding to Information Requests

- 1.1. One of the more common breaches is when an EB does not respond to a request for financial information.
- 1.2. There was one case where the EB failed to provide financial records after several requests. This EB also failed to respond to a late Form 3 (contribution query) letter and two over running projects information.
- 1.3. The case was resolved after officially raising the issue at a higher level within the EB.

2. Case Type #02 – Projects that had to close after completion.

- 2.1. There were three cases during 2023/2024 that were opened and closed. For these cases the projects were not available as public amenities because the groups that operated them had disbanded or did not have financial resources to continue. In one case the landlord repossessed the building.
- 2.2. The resolution to this type of case is challenging, due to mitigating circumstances being instrumental to the proportionate and appropriate actions. Action on cases such as these include attempts to bring the project back into a compliant use, or if this is not possible, recovery of the value of the project expenditure or assets depending on what is viable.
- 2.3. Such cases can also arise due to a lack of due-diligence checks resulting in offers of funding to unstable, or insecure organisations. It is suggested that good practice would include a framework that ensures recipients of LCF funds are financially secure (going concern) and well managed.

3. Case Type #03 – Administration fees for management of projects paid to another EB.

- 3.1. With effect from 2016, the regulations were amended, removing Object F, which allowed one EB to provide services to administer the funds of another EB. There was one case in 2023/2024 where this breach was identified.
- 3.2. Such cases can be complex, and involve several factors, however, resolution would usually involve the repayment of some or all fees or charges. We would stress that any transfer of funds between EBs that is not intended for direct project costs is unlikely to be a compliant transfer unless there are specific reasons to transfer funds, such as when one EB wishes to revoke and holds unspent funds.
- 3.3. In this instance a repayment of fees was negotiated with the EB.

4. Case Type #04 – Not reporting accurate expenditure, verification not possible and invoices were not project specific.

- 4.1 Three EBs incorrectly reported LCF expenditure on their Annual Return which could not then be verified to project expenditure invoices.
- 4.2 One EB assumed that the LCF reporting was based on an accrual basis and not an actual basis. This case highlights the need for EBs, especially those organisations with multiple non-LCF income streams to have clear LCF procedures and ensure staff involved in LCF reporting are sufficiently knowledgeable and trained in the LCF requirements.
- 4.3 Resolution of this case was achieved through a full reconciliation of LCF expenditure and re-submission of the Annual Returns, as appropriate.

5. Case Type #05 - Late forms for contributions and fund transfers

- 5.1. The Regulations specify that any transfer of funds between EBs, or any contribution received must be reported to Entrust within seven days of the date of transaction. Most breaches of this nature require an advice and guidance letter, or warning letter if a second occurrence of a breach in any 12-month period.
- 5.2. There are on occasion, instances of repeated breaches that have required further action, such as a meeting with the Chair of the EB. Due to there being no monetary value involved, this breach does not involve any potential for clawback of funds.
- 5.3. There were thirteen cases of this type in 2023/2024.

6. Case Type #06 - Spending outside the Prescribed Period (SOPP)

- 6.1. This breach arises when the EB spends funds outside of the project dates set by the project approval.
- 6.2. These breaches can vary in seriousness, both in material value and in scope. Small breaches of a few days are usually dealt with through guidance, but on occasion, the repayment of funds may be deemed appropriate due to the seriousness and materiality.
- 6.3. There were ten SOPP breaches in 2023/2024.

7. Further details

- 7.1. From the number of cases for each case type, as shown in the table below, the most common breach is filing late forms, as may be expected. However, there have been several Case #02 and Case #04 breaches. These are more serious, often have monetary value and contravene the Regulations. They are also both most commonly errors in EB administration and awareness of the requirements.

Case Type	Number of cases
Late forms for contributions and fund transfers	13
Spending outside the Prescribed Period (SOPP)	10
Projects that had to close after completion	3
Not reporting accurate expenditure, verification not possible and invoices were not project specific	3
Administration fees for management of projects paid to another EB	1
Not responding to Information Requests	1

- 7.2. We would, therefore, like to draw EBs attention particularly to case types #02 and #04, to look at your processes and procedures to ensure the risk of breaching the regulations in this way is low.
- 7.3. However, with over 1,600 enrolled EBs, and over 800 projects per year, the total count of 31 cases requiring breach management action is an indication that overall, the operation in the scheme is done within compliance of the Regulations and Conditions.
- 7.4. If you would like any further information on the way Entrust manage breaches, please contact us at helpline@Entrust.org.uk

Entrust

April 2024

Appendix A – Breaches of the Regulations

Case	Breach	Number of instances	Regulation/Guidance breach references
#1	Not responding to Information Requests	1	33A(1)(g)
#2	Projects that had to close after completion & not available	3	33.-(2)(d) 33A (1) (aa) & 34(1)(aa & ab) 34.-(1)(f) Guidance Manual 5.8
#3	Administration fees for management of projects paid to another EB	1	Object F removed in 2016 33-(2)(a-e)
#4	Project spend not covered by approval / not reporting accurate LCF expenditure	3	34(1)(aa) & 34(1)(aa & ab) 33A (1)(g) & 34 (1)(i) & 33A(1)h) 33A(1)(d)(iv & v) Breach of Condition 1 & guidance 5.3
#5	Late forms for contributions and fund transfers	13	33A.-(1)(e) Guidance Manual 3.8
#6	Spending outside the Prescribed Period	10	Condition 1) (1)(c) and (2)(a) Guidance Manual 5.4