

# Enforcement policy

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We are an independent body set up by the UK Parliament. Our aim is integrity and public confidence in the democratic process. We regulate party and election finance and set standards for well-run elections.

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# 1 About the Electoral Commission

1.1 The Electoral Commission ('the Commission') is an independent regulator established by the UK Parliament. One of its core objectives is ensuring the transparency of party and election finance, with high levels of compliance.

1.2 Political parties are a central part of democratic politics. They set out competing views and policies for voters to choose from at elections. Parties need money to campaign and develop their policies, and to communicate with voters. It is important that the public knows where money is coming from, and has confidence that it comes from permissible sources.

1.3 The Political Parties, Elections and Referendums Act 2000 (PPERA), as amended, establishes controls on donations and loans to, and spending by, political parties and some other regulated organisations and individuals. Regulated organisations and individuals include 'third party' organisations campaigning at elections, campaigners in referendums, and other 'regulated donees' (which include members of political parties, holders of elective office, and associations mainly consisting of party members).

1.4 The Commission is responsible for ensuring that these organisations and individuals comply with the requirements of PERA.

1.5 Under PERA, political parties and some other regulated organisations and individuals have to:

- report to the Commission on the donations and loans they receive and send it their accounts, so that the Commission can publish that information
- make sure that they only accept donations and loans from 'permissible' sources such as individuals on the electoral register, and
- stay within spending limits during election and referendum campaigns, and report to the Commission on what they have spent

1.6 The Commission's regulatory role is to ensure that the organisations and individuals that it regulates follow these rules.

## 2 About this guidance

2.1 The Political Parties, Elections and Referendums Act 2000 (PPERA) requires the Electoral Commission to prepare and publish guidance on the use of its powers to investigate and sanction possible breaches of the requirements of PERA.

2.2 This document meets that requirement. It sets out the principles that underlie the supervisory, investigatory and sanctioning aspects of the Commission's regulatory role. It provides details on the sanctions that apply to different offences and contraventions of PERA, the way in which financial penalties are calculated, the circumstances in which voluntary enforcement undertakings may be accepted, and other information relating to the Commission's regulatory activity.

2.3 PERA gives the Commission the role of monitoring compliance, and taking steps to secure compliance with the rules on election expenses and donations that other legislation, such as the Representation of the People Act 1983, applies to candidates and agents at elections (except local elections in Scotland). In carrying out that role, the Commission has access to the supervisory provisions described in this document, but not to the investigatory and sanctioning provisions. The Commission has no sanctioning powers in respect of breaches of the rules on candidate expenses and donations, but may refer a suspected breach for criminal investigation or seek prosecution, in the same way that any other interested organisation or individual may do.

2.4 Since this document has legal effect, it deals primarily with the legal provisions specified in PERA and is necessarily technical in nature. To help the organisations and individuals affected by PERA to understand what the law requires of them and what they should do to comply, the Commission has also produced a range of targeted guidance documents which are available on its website.<sup>1</sup> These include a simple introduction to the role of registered party and accounting unit treasurers, and guidance on how to manage donations and loans. The Commission has also published explanatory notes about particular aspects of its regulatory role, including how it deals with allegations and how it makes public information about its work. This guidance includes links to those explanatory notes.

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<sup>1</sup> Guidance is available at:  
[www.electoralcommission.org.uk/guidance/resources-for-those-we-regulate/parties#report](http://www.electoralcommission.org.uk/guidance/resources-for-those-we-regulate/parties#report).

# 3 The Electoral Commission's approach to enforcement

3.1 The objectives of the Commission's enforcement activity are to:

- ensure the transparency and integrity of party and election finance that voters expect
- eliminate any benefit that those it regulates may obtain by failing to comply with the law
- bring any individuals or organisations failing to meet their regulatory obligations into compliance
- deter non-compliance

3.2 In pursuit of these objectives, the Commission acts at all times to maintain public confidence in the integrity of the electoral system.

3.3 The key elements of the Commission's regulatory work to promote compliance are advice, risk assessment, supervisory work and enforcement casework including sanctioning.

3.4 The aim of the Commission's policy is to regulate in a way that is effective, proportionate and fair, in line with the principles of good regulation. Wherever possible, it will use advice and guidance proactively in order to secure compliance.

3.5 The Commission is committed to providing those it regulates with a clear understanding of their regulatory obligations. It produces guidance on a wide range of subjects, responds to requests for advice, and provides training where requested.

3.6 The Commission undertakes supervisory work to ensure that those who are regulated meet their legal requirements. Funding is checked to ensure it is derived from permissible sources. Formal processes ensure the Commission's advice is targeted and supervisory and auditing resources are optimised. More detailed information about the Commission's approach to targeting its regulatory activity may be found at [www.electoralcommission.org.uk](http://www.electoralcommission.org.uk).

3.7 The Commission will take enforcement action where it is necessary and proportionate to do so. Many of the individuals responsible for complying with the law at the local level are volunteers. It is therefore particularly important that the Commission's objectives are pursued in a proportionate way, taking the facts of each case into account and only taking action when it is necessary in order to achieve its objectives.

# 4 The Electoral Commission's powers to monitor and secure compliance

4.1 The Commission has separate sets of powers to support its supervisory and investigatory work.

4.2 The supervisory powers available to the Commission only apply to those who are regulated under The Political Parties, Elections and Referendums Act 2000 (PPERA).<sup>2</sup> These powers support routine work monitoring compliance by regulated organisations and individuals with the requirements set down in law.

4.3 The investigatory powers available to the Commission extend to individuals and organisations beyond those who it regulates.<sup>3</sup> The Commission may use its investigatory powers (to require documents, information or to attend an interview) in respect of any person or organisation when it has reasonable grounds to consider that there has been a breach of the law on party and election finance. The Commission's powers to request information apply to and may be enforced against both the subject of any investigation and any other person or organisation that holds relevant information.

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<sup>2</sup> Paragraphs 1 and 2, Schedule 19B, Political Parties, Elections and Referendums Act 2000 (PPERA)

<sup>3</sup> Paragraphs 3-6, Schedule 19B, PPERA

## 5 Supervisory powers

5.1 As part of its statutory role monitoring compliance, the Commission may need to obtain information from, and visit premises used by, those it regulates. Where possible, this is done on a voluntary basis, and the Commission will give advance notice. However, the law provides the Commission with powers to ensure that information can be obtained where it is necessary.

5.2 The Commission's supervisory powers allow it to issue a disclosure notice requiring a supervised organisation or individual to provide it with specific documentation or information. A disclosure notice may be issued where the Commission needs to be certain of ascertaining compliance by a party within a particular timeframe or where information needs to be accessed rapidly to satisfy time critical or other public interest issues. It may also be used where a person or body has failed to comply with a request for voluntary co-operation.

5.3 It is an offence for a person to fail to comply within the specified timeframe set out in a disclosure notice. Any penalty sought for a failure of compliance will depend on the circumstances of the breach and any mitigating circumstances. The Commission may elect to issue a civil sanction or seek prosecution.

5.4 Where the examination of documents is insufficient for the Commission's regulatory purposes, it may seek to inspect documents on premises, for example where systems of information storage need to be inspected.

5.5 Where the Commission is refused access to documents on premises following a request, it may ask a Justice of the Peace or (in Scotland) a Sheriff to issue an inspection warrant to allow entry to the particular premises where the documents are held. The Commission may also seek an inspection warrant where access to premises has been voluntarily allowed but the Commission is then prevented from inspecting documents or other material. To obtain the warrant, the Commission must be able to show that:

- there are reasonable grounds for believing that there are documents relating to the income and expenditure of the organisation or individual on the premises
- the Commission needs to inspect the documents for the purposes of carrying out its functions other than investigatory functions, and
- the Commission has requested permission to inspect the documents on the premises and it has been unreasonably refused.

5.6 The Commission will only seek an inspection warrant where there is a continuing requirement to inspect documents to fulfil the Commission's functions and the refusal of the Commission's request does not give rise to reasonable grounds to suspect that the Political Parties, Elections and

Referendums Act 2000 (PPERA) has been contravened (in which case the Commission's investigatory powers will be used).

**5.7** A refusal of entry following the issue of an inspection warrant is an offence under PPERA. In such circumstances, the Commission is likely to seek to enforce the warrant by pursuing the matter as a contempt of court.

**5.8** The Commission can only seek an inspection warrant when exercising its supervisory powers, and not when it is investigating a suspected breach of PPERA. The Commission's powers to access documents and information when conducting an investigation into a suspected breach of the law are described in section 7 of this guidance.

# 6 Investigations by the Electoral Commission

6.1 The Commission may carry out investigations where it has reasonable grounds to suspect that a person has committed an offence under the Political Parties, Elections and Referendums Act 2000 (PPERA) or contravened any restriction or other requirement of PERA. The Commission will only use its investigatory powers where it is reasonable and proportionate to do so.

6.2 Investigatory activity may be instigated for a number of reasons, for example where a statutory report is not submitted, or where a submitted report indicates a potential breach of the law. Other circumstances which may lead to an investigation include where an allegation is made to the Commission that the law has been broken or where the Commission becomes aware of a potential problem through another route, such as a press report.

6.3 Details of how the Commission deals with allegations and decides when to use its investigatory powers may be found at [www.electoralcommission.org.uk/party-finance/enforcement](http://www.electoralcommission.org.uk/party-finance/enforcement).

# 7 Investigatory powers

7.1 In cases where the Commission has reasonable grounds to suspect that the law has been broken, it will usually seek documentation, information or an explanation from an individual or organisation on a voluntary basis. The timeframe allowed for production of the information will depend upon a number of factors including the quantity and complexity of the information being sought and the need to obtain information swiftly in order to fulfil the Commission's objectives as a regulator.

7.2 Where there is a refusal to co-operate with requests for information in a timely manner, the Commission may use its statutory powers and issue an investigatory notice requiring the production for inspection of documentation and/or the provision of information or an explanation, which may include attending for an interview.

7.3 On certain occasions, it may be in the public interest for the Commission to use its statutory powers without making a prior request for information to be volunteered. For instance, where there is a reason to believe that the information will not be forthcoming voluntarily or where there is a risk that important evidence will be destroyed or removed.

7.4 Where the Commission requires an individual to attend for interview, it will give notice that is reasonable in all the circumstances. The Commission will usually permit individuals to be accompanied to interviews, for example by a legal representative, but may refuse to allow a particular person to accompany an individual if the presence of that person is likely to compromise the integrity of the investigation. The interview may be recorded. If an individual is asked to travel to meet the Commission then reasonable travel expenses will be reimbursed. Further information about the process the Commission uses for interviews may be found at:

[www.electoralcommission.org.uk/party-finance/enforcement](http://www.electoralcommission.org.uk/party-finance/enforcement).

7.5 If a person does not possess or have access to documents or information sought in an investigatory notice, they must explain that this is the case. It is a criminal offence to fail to comply with an investigatory notice without reasonable excuse. Where an individual or organisation, in the absence of a reasonable excuse, fails to comply with an investigatory notice and it is necessary to take further action, the Commission will usually seek to enforce the notice with a court order.

7.6 The Commission may apply to the High Court (or Court of Session in Scotland) for a disclosure order to require compliance with the investigatory notice. The Court will only grant an order where it can be demonstrated that there are documents or information which:

- have not been produced in compliance with an earlier notice
- are in the custody or control of the respondent, and
- are reasonably required by the Commission for investigating the offence or contravention

7.7 It is a criminal offence to fail to comply without reasonable excuse with a disclosure order. It is also an offence to obstruct the Commission or provide false information. The Commission may seek prosecution but is more likely to seek to have the disclosure order enforced as contempt of court.

7.8 The Commission may only retain documents delivered in accordance with a court order for three months, unless proceedings have commenced in relation to a criminal offence. In practice, documents will be returned more quickly if they are of no relevance to an investigation. Where documents were retained for the purposes of proceedings against an individual or organisation, and there is an appeal against the outcome of the proceedings, the Commission will endeavour to return the documents within 28 days of any appeal process ending. The Commission may make copies or records of information contained in documents provided to it.

# 8 The sanctions available to the Electoral Commission

8.1 Table 1 below sets out the sanctions that may be imposed upon a person who commits an offence under the Political Parties, Elections and Referendums Act 2000 (PPERA) or contravenes one of the specified statutory provisions. It describes the sanction options given to the Commission by PERA and how they are likely to be used. The range of sanctions available to the Commission depends on the provision in PERA that has been breached. Some breaches may attract civil and/or criminal sanctions but other breaches may only be dealt with using either civil or criminal enforcement action.

8.2 The Commission has published [details of all the offences and contraventions in PERA where sanctions are available](#).

Table 1: Sanctions available to the Commission

Outcome	Description	Likely use
No sanction	No sanction. We may, however offer advice on good practice, where appropriate, to encourage future compliance	Where a breach is clearly trivial and unlikely to be repeated or there is a public interest reason to take no action, such as the ill health of an individual, or the effect of a sanction would be disproportionately detrimental on an individual or organisation.
<b>Fixed monetary penalty</b>	A £200 fine	Where a breach is a first instance of low level non-compliance where there is potential for a repeat breach, such as the late delivery of a statutory report.
Variable monetary penalty  (discretionary requirement)	A fine ranging between: <ul style="list-style-type: none"> <li>£250–£5,000 for prescribed contraventions and for offences triable in a magistrates’ court</li> <li>£250–£20,000 for offences triable in either a magistrates’ or crown court</li> </ul>	Where a breach is more serious than the kind giving rise to a fixed penalty, or is a repeat breach. The value of the fine will be set at a level that takes into account any aggravating and mitigating circumstances (see section 9.4 of this guidance).  <a href="#">A variable monetary penalty may be used on its own, or together with a compliance notice and/or a restoration notice.</a>

Table 1 (continued): Sanctions available to the Commission

Outcome	Description	Likely use
Compliance notice (discretionary requirement)	A notice setting out action that must be taken by the person or organisation that has breached the law, so that the breach does not continue or recur.	Where we identify that a regulated organisation or individual needs to improve its capacity to comply, for example, by training staff or changing its systems.  <i>A compliance notice may be used on its own, or together with a variable monetary penalty and/or a restoration notice.</i>
Restoration notice (discretionary requirement)	A notice setting out actions that must be undertaken to restore the position, as far as possible, to what it would have been had no breach occurred.	Where we identify a need to ensure that a non-compliant organisation or individual makes good a breach, for example, by giving up benefits received as a result of the breach.  <i>A restoration notice may be used on its own, or together with a variable monetary penalty and/or a compliance notice.</i>
Stop notice	A notice which prohibits a person or organisation from carrying on or beginning a specified activity until the steps set out in the notice are met.	Where we consider a person is carrying out, or is likely to carry out, an activity which will breach the law and which is seriously damaging, or poses a significant risk of seriously damaging, public confidence in the effectiveness of the PPERA controls on the income and expenditure of registered parties and others.
Enforcement undertaking	An agreement proposed by a regulated organisation or individual to undertake specified actions which will bring it into compliance or restore the position, as far as possible, to what it would have been had no breach occurred.	Where a regulated organisation or individual is aware it is non-compliant and proposes an undertaking involving appropriate action, which the Commission agrees to accept. (The factors we will take into account when considering an enforcement undertaking are set out in section 15.3 of this guidance).

Table 1 (continued): Sanctions available to the Commission

Outcome	Description	Likely use
<p>Forfeiture (court ordered)</p>	<p>A civil process enabling the Commission to apply to a court for the forfeiture of an amount of money equal to the value of a donation a regulated organisation or individual has accepted from an impermissible or unidentifiable source, or the value of a donation that has been concealed in a statutory report.</p>	<ul style="list-style-type: none"> <li>• Where a regulated organisation or individual accepts a donation of more than £500 from an impermissible or unidentifiable source, or</li> <li>• a regulated organisation or individual seeks to conceal the existence or true amount of a donation in a statutory report.</li> </ul> <p>In these circumstances the Commission will seek forfeiture (court ordered) if (i) it is in the public interest to do so in all the circumstances, and (ii) it cannot agree voluntary settlement. The courts have discretion in some circumstances to order forfeiture of an amount less than the value of the donation concerned, and the Commission will take this into account.</p> <p>Where the action giving rise to forfeiture has given rise to a criminal offence, the Commission may also seek an appropriate criminal sanction, or a civil sanction arising from the criminal offence.</p>

Table 1 (continued): Sanctions available to the Commission

Outcome	Description	Likely use
Restoration (court ordered)	A civil process enabling the Commission to apply to a court for an order aimed at restoring the parties to a regulated financial transaction to the position they would have been in if the transaction had not been entered into.	<ul style="list-style-type: none"> <li>• Where a regulated organisation or individual enters into a regulated transaction with an unauthorised participant, and money it receives is not repaid, or</li> <li>• a regulated organisation or individual is seeking to conceal the existence or true value of a transaction in a statutory report.</li> </ul> <p>In these circumstances, the Commission will seek restoration (court ordered) if (i) it is in the public interest to do so in all circumstances, and (ii) voluntary settlement cannot be agreed. The courts have discretion to make such order as they see fit.</p> <p>Where the action giving rise to restoration has given rise to a criminal offence, the Commission may also seek an appropriate criminal sanction, or a civil sanction arising from the criminal offence.</p>

Table 1 (continued): Sanctions available to the Commission

Outcome	Description	Likely use
Criminal sanctions	<p>Summary offences – offences with a penalty under Schedule 20, PPERA on summary conviction of:</p> <ul style="list-style-type: none"> <li>• a level 5 fine (£5,000 maximum)</li> <li>• a level 5 fine, or 6 months imprisonment</li> <li>• a statutory maximum fine (£5,000)</li> <li>• a statutory maximum fine (£5,000) or 12 months imprisonment</li> </ul> <p>Indictable offences – offences with a penalty under Schedule 20, PPERA on indictment of either:</p> <ul style="list-style-type: none"> <li>• an (unlimited) fine</li> <li>• an (unlimited) fine or 12 months imprisonment.</li> </ul>	<p>The Commission does not have powers to impose criminal sanctions, but may refer a breach for criminal investigation or seek prosecution in cases which it judges to have a significant impact on confidence in the transparency and integrity of party and election finance, such as those involving large amounts of money, repeated material failures to comply, or deliberate intent.</p> <p>Where the Commission imposes a fixed monetary penalty or variable monetary penalty in respect of a criminal offence, a person cannot subsequently be convicted of that offence.</p> <p>The Commission may refer the case for criminal investigation or seek prosecution in cases where it has imposed a non-financial sanction (a compliance or restoration notice) in respect of a criminal offence without an associated monetary penalty, or where it accepts an enforcement undertaking in respect of a criminal offence and the person or organisation giving the undertaking has not complied with it.</p>

# 9 Determination of a sanction: the decision-making framework

9.1 Following the conclusion of any investigation, the Commission will review the evidence it has obtained to determine if a breach has occurred. The standard of proof which the Commission is required to utilise will vary depending on which provision of the Political Parties, Elections and Referendums Act 2000 (PPERA) is being considered. Certain provisions of PERA entitle the Commission to apply to a court to seek forfeiture of an amount equivalent to a donation or a restoration order in respect of a loan.<sup>4</sup> Where the Commission instigates court proceedings using these provisions, the standard of proof applicable to civil proceedings, namely the balance of probabilities, applies.

9.2 For all other breaches where the Commission itself will be responsible for determining if a breach has occurred, it must be satisfied beyond reasonable doubt that a regulated organisation or individual has breached the law. If this evidential test is met, the Commission will proceed with the sanctioning process.

9.3 The sanctioning process allows for all relevant factors to be taken into account, including the need for the Commission to act proportionately and in the public interest. When considering the choice or level of a sanction to impose, the Commission will take into account the cost to the public purse of imposing the sanction, including the cost of ensuring compliance with any requirements imposed by the sanction.

9.4 The Commission may also take into account aggravating or mitigating features of the breach which may affect the choice or level of sanction. The factors that may be taken into account during the sanctioning process include the following.

## Aggravating features

Aggravating features include:

- magnitude of the breach, for example the likely harm caused to public confidence in the effectiveness of the PERA controls on the income and expenditure of registered parties and others, or the duration of the non-compliance

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<sup>4</sup> Sections 58(1), 65(6), 71(4);71S(7), Schedule 7 paragraph 12(4), Schedule 7A paragraph 12(4), Political Parties, Elections and Referendums Act 2000 (PPERA)

- a history of non-compliance by the regulated organisation or individual
- financial gain or other advantage to the regulated organisation or individual or others as a result of non-compliance with regulations
- uncooperative conduct of the regulated organisation or individual after the non-compliance has been identified
- where previous action to help the regulated organisation or individual into compliance, has not been adhered to
- dishonesty
- lack of insight as to the consequences of the seriousness of the breach
- failure to accept responsibility for the breach

## Mitigating features

Mitigating features include:

- a previously good compliance record
- action taken to eliminate or reduce the risk of damage resulting from regulatory non-compliance
- voluntary reporting of regulatory non-compliance
- actions taken to repair the harm done by regulatory non-compliance
- co-operation with the Commission in responding to the non-compliance
- an honestly held (although mistaken) view that the action concerned did not constitute a failure to follow the statutory requirements, particularly where such a view has been formed after taking appropriate advice
- substantiated evidence that the organisation's actions have been affected by ill-health of an individual
- recognition that there has been failure to follow the statutory requirements

9.5 In deciding the type and level of sanction to impose, the Commission may take into account the recipient's ability to pay a financial penalty and/or the cost to the recipient of non-financial requirements that may be imposed. As a result, the Commission may reduce the value of a financial penalty, alter requirements, allow a longer or phased period for payment, or waive the penalty or requirements altogether.

# 10 Sanctioning processes

10.1 Sections 11 to 14 of this guidance explain the procedures that the Commission will follow when seeking to use the civil sanctions available to it. These sanctions are:

- fixed monetary penalties
- discretionary requirements (variable monetary penalties, compliance notices and restoration notices)
- stop notices

Discretionary requirements can be used either on their own or in combination. A fixed monetary penalty cannot be used in combination with a discretionary requirement.

10.2 Discretionary requirements can be used either on their own or in combination. A fixed monetary penalty cannot be used in combination with a discretionary requirement.

10.3 More information about the Commission's processes for issuing civil sanctions may be found at [www.electoralcommission.org.uk](http://www.electoralcommission.org.uk).

# 11 Fixed monetary penalties

11.1 A fixed monetary penalty is a fixed fine of £200, which is usually imposed in isolated cases of low level non-compliance.

11.2 Where the Commission has decided to issue a fixed monetary penalty, it will send an initial notice to the regulated organisation or individual in question. The initial notice will explain the grounds for imposing the sanction, and will set out how the recipient may discharge liability and how to make written representations about the decision to impose the sanction.

11.3 The recipient may discharge their liability for the fixed monetary penalty by making payment of £200 to the Commission within 14 days of receipt of the notice. Alternatively, they may await the final notice, or make representations to the Commission within 14 days of receipt of the initial notice.

11.4 A senior officer of the Commission who was not involved in making the initial decision on whether or not to impose the sanction will consider carefully any written representations received by the Commission in response to the initial notice. That officer will then apply the same decision-making criteria as in the initial decision to establish whether a breach has occurred beyond reasonable doubt and that the proposed sanction is reasonable. As a result, the Commission may decide to take no further action or, if it decides that a sanction is still appropriate, it will then issue a final notice

11.5 If no representations or requests for an extension are received within 14 days following receipt of the initial notice, and the recipient has not discharged liability by making payment of £200 to the Commission, a senior officer of the Commission who did not make the initial decision will take a final decision as to whether a breach has occurred beyond reasonable doubt and the proposed sanction is reasonable, before issuing a final notice.

11.6 The final notice will contain the following information:

- how to make payment
- that the organisation or individual has 28 days from receipt to make payment
- that if payment is not made within 28 days from receipt then late payment charges will be imposed, and the level of these charges (see 11.7 below)
- that the organisation or person in question may appeal the Commission's decision to impose the sanction to the County Court (or in Scotland to the Sheriff) within 28 days of receipt of the final notice, and
- that the Commission may instigate civil debt recovery proceedings if no payment has been received after 84 days from the receipt of a final notice and no appeal has been commenced.

11.7 If a fixed monetary penalty has not been paid 28 days after receipt of the final notice, a late payment charge of £50 will be added to the fixed monetary

penalty. If a fixed monetary penalty and late payment charge have not been paid 56 days after receipt of the final notice, the late payment charge will increase to £100.

**11.8** Where the Commission has issued an initial notice of a fixed monetary penalty to a person, criminal proceedings for an offence may not be instituted until the 14 day period for discharging liability has expired. If liability has been discharged, a person cannot be convicted of that offence. Once the Commission has imposed a fixed monetary penalty by way of a final notice, a person cannot at any time be convicted of the offence that gave rise to the fixed monetary penalty.

# 12 Variable monetary penalties: discretionary requirement

**12.1** A variable monetary penalty is a variable fine that is calculated according to the nature of the offence. When determining the level of a variable monetary penalty, the Commission will take into account which provision has been breached. Where the offence is triable in a magistrates' court (a summary offence) or is a prescribed contravention, the limits of the variable monetary penalty are set between £250–£5,000. If the offence is triable either in a magistrates' court or a Crown Court, the upper limit of the variable monetary penalty will increase to £20,000. The level of a variable monetary penalty will be calculated with reference to the value of the transaction, the resources of the organisation or individual and any aggravating and mitigating factors. A variable monetary penalty may be used on its own or in combination with a compliance notice and/or a restoration notice.

**12.2** Where the Commission has decided to issue a variable monetary penalty, it will send an initial notice to the regulated organisation or individual in question. The initial notice will explain the grounds for imposing the sanction, and will set out the level of the variable monetary penalty and how to make written representations about the decision to impose the sanction.

**12.3** On receipt of the initial notice, an individual or organisation may make representations to the Commission within 28 days of receipt of the initial notice.

**12.4** A senior officer of the Commission who was not involved in making the initial decision on whether or not to impose the sanction will consider carefully any written representations received by the Commission in response to the initial notice. That officer will then apply the same decision-making criteria as in the initial decision to establish whether a breach has occurred beyond reasonable doubt and that the proposed sanction is reasonable. As a result, the Commission may decide to take no further action or, if it decides that a sanction is still appropriate, it will then issue a final notice.

**12.5** If no representations or requests for an extension are received within 28 days following receipt of the initial notice, a senior officer of the Commission who did not make the initial decision will take a final decision as to whether a breach has occurred beyond reasonable doubt and the proposed sanction is reasonable, before issuing a final notice.

12.6 The final notice will contain the following information:

- how to make payment
- that the organisation or individual has 28 days from receipt to make payment
- that if payment is not made within 28 days from receipt then late payment charges will be imposed, and the level of those charges (see 12.7 below)
- that the organisation or person in question may appeal the Commission's decision to impose the sanction to the County Court (or in Scotland to the Sheriff) within 28 days of receipt of the final notice, and
- that the Commission may instigate civil debt recovery proceedings if no payment has been received after 84 days from the receipt of a final notice and no appeal has been commenced

12.7 If a variable monetary penalty has not been paid 28 days after receipt of the final notice, a late payment charge of 25% of the value of the variable monetary penalty will be added to the variable monetary penalty. If the variable monetary penalty and late payment charge have not been paid 56 days after receipt of the final notice, the late payment charge will increase to 50% of the value of the variable monetary penalty.

12.8 Once the Commission has imposed a variable monetary penalty by way of a final notice, a person cannot at any time be convicted of the offence that gave rise to the variable monetary penalty.

# 13 Compliance notices and restoration notices: discretionary requirement

**13.1** A compliance notice is a sanction in the form of a notice setting out action that must be taken by a regulated organisation or individual that has breached the law, so that the breach does not continue or recur. A restoration notice is a sanction in the form of a notice setting out action that must be taken to restore the position, as far as possible, to what it would have been had no breach occurred. Compliance notices and restoration notices may be used on their own, in combination with each other and/or in combination with a variable monetary penalty.

**13.2** Where the Commission has decided to issue a compliance notice or restoration notice, it will send an initial notice to the regulated organisation or individual in question. The initial notice will explain the grounds for imposing the sanction, and will set out the action that the Commission proposes to require the recipient to take, the consequences of non-compliance with the requirements (see sections 13.10 to 13.12 below) and how to make written representations about the decision to impose the sanction.

**13.3** On receipt of the initial notice, an individual or organisation may make representations to the Commission within 28 days of receipt of the initial notice. A senior officer of the Commission who was not involved in making the initial decision on whether or not to impose the sanction will consider any written representations received by the Commission in response to the initial notice. That officer will then apply the same decision-making criteria as in the initial decision to establish whether a breach has occurred beyond reasonable doubt and that the proposed sanction is reasonable. As a result, the Commission may decide to take no further action or, if it decides that a sanction is still appropriate, it will then issue a final notice.

**13.4** If no representations or requests for an extension are received within 28 days following receipt of the initial notice, a senior officer of the Commission who did not make the initial decision will take a final decision as to whether a breach has occurred beyond reasonable doubt and the proposed sanction is reasonable, before issuing a final notice.

**13.5** The final notice will set out the actions and timeframe for the activities to be completed and the consequences of non-compliance.

**13.6** The organisation or person in question may appeal the Commission's decision to the County Court (or in Scotland to the Sheriff) within 28 days of receipt of the final notice.

13.7 Once an organisation or individual to whom a final notice is given considers they have complied with the terms of the notice, they should notify the Commission in writing and apply for a completion certificate, providing information to show how they have complied with the requirements set out in the final notice.

13.8 The Commission must consider an application for a completion certificate within 28 days of receipt of an application, provided it has all the information it requires to assess whether the requirements have been met. The Commission will write to an applicant to indicate whether the required actions have been completed and if so, will confirm that the matter is closed by providing a completion certificate.

13.9 The Commission may revoke a completion certificate if it was granted on the basis of inaccurate, incomplete or misleading information. If the Commission revokes a certificate, the compliance or restoration notice will continue to have effect as if the certificate had not been issued.

13.10 If a compliance notice or restoration notice is used in conjunction with a variable monetary penalty, and the actions required by the final compliance notice or restoration notice are not completed within the specified time period, the Commission will usually impose a penalty for non-compliance, taking the circumstances into account. The penalty will be a minimum of £500 and a maximum of £20,000. The value of the penalty will be no less than the Commission's estimate of the cost of undertaking the activities specified in the compliance notice or restoration notice. Details of the potential penalty will be set out in the initial compliance notice or restoration notice and confirmed in the final compliance notice or restoration notice.

13.11 If a compliance notice and/or a restoration notice is used without an associated variable monetary penalty, and the actions required by the final compliance notice or restoration notice are not completed within the specified time period, the Political Parties, Elections and Referendums Act 2000 (PPERA) enables the Commission either to issue a penalty for non-compliance as set out in section 13.9 above or alternatively seek prosecution.

13.12 The Commission will impose any penalty for non-compliance by issuing a non-compliance penalty notice. The non-compliance penalty notice will contain information about the grounds for imposing the penalty, the amount of the penalty, the period within which payment must be made, the consequences of failure to make payment and the rights of the recipient of the notice to appeal the Commission's decision to impose the penalty to the County Court (or in Scotland to the Sheriff) within 28 days of receipt of the notice.

# 14 Stop notices

14.1 A stop notice enables the Commission to require a regulated organisation or individual not to begin or to cease an activity that is seriously damaging or poses a significant risk of seriously damaging public confidence in the effectiveness of the Political Parties, Elections and Referendums Act 2000 (PPERA) controls on the income and expenditure of registered parties and others. The Commission may not use a stop notice unless it reasonably believes a person is undertaking or is likely to undertake an activity that poses such a risk.

14.2 This is the only sanction that the Commission may use pre-emptively, to prevent a breach being committed. The stop notice will set out: the steps the organisation or individual must take; the grounds under which the notice is served; the rights of appeal and the consequences of not complying with the notice.

14.3 The organisation or individual who is the subject of a stop notice should apply to the Commission for a completion certificate to verify their compliance with the notice. The Commission will make a decision within 14 days of receipt of an application for a completion certificate. Where the Commission is satisfied that the applicant has complied with the notice, it will issue a completion certificate.

14.4 The recipient of a stop notice may appeal a decision by the Commission not to issue a completion certificate within 28 days of being notified. It is a criminal offence not to comply with a stop notice.

14.5 Further information about stop notices, completion certificates and rights of appeal may be found at [www.electoralcommission.org.uk](http://www.electoralcommission.org.uk).

# 15 Enforcement undertakings

15.1 A regulated organisation or individual may offer to enter into an enforcement undertaking in order to take action to ensure that a breach does not continue or recur, or to ensure that a position is restored so far as is possible, to what it would have been if the offence or contravention had not happened.

15.2 The Commission is not obliged to accept an enforcement undertaking, however, it will consider seriously all reasonable offers. It will not agree to any enforcement undertaking until it has a full understanding of the nature and severity of the breach.

15.3 When considering whether or not to accept an enforcement undertaking the Commission will take into account, but is not limited to, the following factors:

- whether or not the matter was voluntarily reported
- the seriousness of the non-compliance
- the involvement of any dishonesty, deception or wilful misrepresentation, or conversely a genuine misunderstanding of the statutory requirements
- the cost of a full investigation
- the need to provide deterrence to those regulated by the Commission
- any advice given directly to the organisation or individual on the relevant statutory requirement(s)
- the organisation or individual's compliance record, including whether or not they have entered into previous enforcement undertakings for the same or a similar type of non-compliance, and the likelihood of the undertaking preventing similar non-compliance in the future
- the likelihood of restoring the position of those involved to what it would have been if the non-compliance had not occurred
- the level of insight shown by the organisation or individual including any apology or contrition expressed

15.4 Where a regulated organisation or individual agrees an enforcement undertaking with the Commission but then fails to undertake the agreed activities within the timeframe, the Commission will have the option of imposing a sanction or referring for criminal investigation in respect of the original offence. Further information about the process used to consider enforcement undertakings may be found at [www.electoralcommission.org.uk](http://www.electoralcommission.org.uk).

# 16 Public information about the Electoral Commission's enforcement and sanctioning work

15.5 The Commission's approach to the disclosure and publication of information about enforcement activity from the point of receipt of an allegation through to the issue of sanctions is set out in the Commission's disclosure policy, which may be found at [www.electoralcommission.org.uk](http://www.electoralcommission.org.uk).

# Appendix A – Glossary of terms used in this guidance

Term	Explanation
<b>Completion certificate</b>	A certificate issued by the Commission to record that a regulated organisation or individual has completed all the actions required by a compliance notice, restoration notice or stop notice
<b>Compliance notice</b>	A notice setting out actions that must be undertaken so that the breach does not continue or recur
<b>Contravention</b>	Breach of a prescribed requirement or restriction in the Political Parties, Elections and Referendums Act 2000 which is not a criminal offence
<b>Disclosure notice</b>	A notice issued by the Commission to a regulated organisation requesting documents, information or an explanation in pursuit of the Commission's supervisory or monitoring role
<b>Disclosure order</b>	Court order requiring compliance with a request by the Commission for the delivery of documents or the provision of information or explanation
<b>Discretionary requirement</b>	A range of civil sanctions, comprising variable monetary penalties, compliance requirements and restoration requirements. These sanctions may be used either on their own or combined
<b>Enforcement undertaking</b>	An agreement proposed by a regulated organisation or individual to undertake specified actions to make amends for a breach of the law
<b>Final notice</b>	A notice imposing the final sanction. Issued after consideration of representations or on the expiry of a

	specified time limit
<b>Fixed monetary penalty</b>	A fixed fine of £200 imposed by the Commission as a sanction for a breach of the law
<b>Initial notice</b>	A notice issued by the Commission setting out the reasons for the imposition of a civil sanction and the proposed penalty
<b>Investigatory notice</b>	A notice issued by the Commission to any person requesting documents, information or an explanation in pursuit of the Commission's investigatory role
<b>Non-compliance penalty notice</b>	A notice issued by the Commission imposing a monetary penalty (the level will be set between £500 and £20,000) on a person or organisation, as a consequence of non-compliance with a compliance notice or restoration notice
<b>Representations</b>	Reasons provided by the recipient of an initial notice setting out why a sanction should be modified or not imposed
<b>Restoration notice</b>	A notice setting out actions that must be undertaken to restore the position, as far as possible, to what it would have been had no breach occurred
<b>Stop notice</b>	A notice to a regulated organisation or individual requiring an activity to cease
<b>Supervised organisation or individual</b>	A regulated organisation or individual, or any person who is currently an officer of a regulated organisation or has held that post within the previous five years
<b>Variable monetary penalty</b>	A fine set at an appropriate level to reflect the gravity of the breach