

Enforcement Policy

Effective from 5 April 2016

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1 About this guidance

- 1.1. The Electoral Commission (“the Commission”; “we”) is the independent elections watchdog for the United Kingdom. We are established by the UK Parliament.
- 1.2. The Political Parties, Elections and Referendums Act 2000 (PPERA) requires us to prepare and publish guidance as to the use of our powers to investigate and sanction potential offences and contraventions of PERA. This Enforcement Policy fulfils that requirement. We are then required to have regard to this published guidance when exercising our enforcement functions.
- 1.3. This guidance sets out our enforcement approach, and how we will normally use our supervisory, investigation and sanctioning powers. It also sets out how we assess and investigate potential offences or contraventions of PERA. It revises and replaces the following:
 - The Enforcement Policy (December 2010)
 - The factsheet: “Our process for dealing with applications”
 - The factsheet: “Interviews” (now Appendix A to this policy)
 - The Disclosure Policy (now Appendix B to this policy)
- 1.4. The content of this Policy (except Appendix B) is a statutory requirement and we are required to consult before making changes. A consultation was held from November 2015 to February 2016, prior to the issue of this revised Enforcement Policy.
- 1.5. This revised Enforcement Policy comes into effect on 5 April 2016. The revised decision-making process for sanctions set out in chapter 7 will apply to offences or contraventions that occur after 5 April 2016.

2 Our approach to enforcement

Our enforcement aim, objectives and approach

- 2.1. The aim of our enforcement activity is to ensure that the PPERA rules on party and election finance are complied with, and that people throughout the UK are confident in the integrity and transparency of party and election finance.
- 2.2. In order to meet that aim, we have the following enforcement objectives:
 - ensure that there is transparency about party and election finance
 - ensure that the rules on party and election finance are followed
 - eliminate any benefit those we regulate may obtain from failing to comply with the law
 - bring any organisation or individuals failing to adhere with the law into compliance
 - deter non-compliance
- 2.3. Our approach to our enforcement activity is that we will:
 - Regulate in a way that is effective, proportionate and fair.
 - Use advice and guidance proactively in order secure compliance and to give those we regulate a clear understanding of their regulatory requirements.
 - Undertake supervisory work to ensure that regulated organisations and individuals meet their legal requirements.
 - Take enforcement action, including using investigatory powers and sanctions, where it is necessary and proportionate to do so in order to meet our enforcement aim and objectives.
 - Take the facts of each situation into account.

Overview of our supervisory and investigatory powers

- 2.4. We have separate powers to support our supervisory and investigatory work. When and how we use these will depend on the situation at hand. A summary is given below and further details are given in Chapters 3 and 5.
 - Our supervisory powers apply to those who are regulated under PPERA. These powers support routine work monitoring compliance

by regulated organisations and individuals with the requirements set down in law.

- Our investigatory powers extend to any person – including individuals and organisations. We may use these powers when we have reasonable grounds to suspect that a person has failed to comply with the law on party and election finance, and we are investigating the matter. Our investigatory powers may be used and enforced in respect of that person or any other person who holds relevant documents or information.

3 Our supervisory powers

- 3.1. As part of our statutory role monitoring compliance with party and election finance law, we may need to obtain information from, or visit premises used by, those we regulate. Where appropriate this is done on a voluntary basis, with advance notice. However the law provides us with the power to ensure that information can be obtained where it is necessary for our functions. These are separate from the powers available to us to investigate potential breaches and offences under PPERA.

Disclosure notices

- 3.2. We may issue a disclosure notice requiring a regulated organisation or individual to provide us with specific documents and/or information. These documents or information must be related to the income and expenditure of the organisation or individual and must be reasonably required by us for the purpose of carrying out our functions.
- 3.3. A disclosure notice may be issued, for example, where we need to be certain of ascertaining compliance by a regulated organisation or individual within a particular timeframe, or where there are public interest issues. We may also use this power where a regulated organisation or individual has failed to comply with a request for voluntary cooperation.
- 3.4. Where the provision of documents or information is insufficient or impractical, we may require the documents or information to be made available to us on the premises of the regulated organisation or individual. This may be, for example, because we need to review information storage systems on site.
- 3.5. It is an offence for a person to fail to comply with a disclosure notice within the deadline set out in it. Any penalty sought for a failure to comply will depend on the circumstances and any mitigating factors. We may elect to issue a civil sanction or seek prosecution.

Inspection warrants

- 3.6. Where we are unreasonably refused access to documents following a request - including during a voluntary inspection of premises - we may ask a justice of the peace or, in Scotland, a sheriff, to issue an inspection warrant. To obtain a warrant we must be able to show all of the following:
 - There are reasonable grounds for believing that there are documents relating to the income and expenditure of the regulated organisation or individual on the premises in question.

- We need to inspect these documents for the purposes of carrying out our (non-investigatory) functions.
 - We have requested permission to inspect the documents on the premises and it has been unreasonably refused.
- 3.7. We may only ask for an inspection warrant when exercising our supervisory functions, as separate powers exist to seek information for our investigatory functions.
- 3.8. Failing to comply with the warrant, or otherwise obstructing it or providing false information under it, is a criminal offence.

4 Our investigatory powers

- 4.1 Where we have reasonable grounds to suspect that an offence or contravention under PPERA has occurred, we have a range of powers, separate to our supervisory powers, to obtain the information we need to investigate the matter. We will use these powers where it is appropriate and proportionate to do so, and not only as a last resort. One factor that may lead us to use our investigatory powers, for example, would be where a voluntary request for documents or information has been unreasonably refused or delayed. Another may be where the matter under investigation is sufficiently serious as to warrant the use of our investigatory powers.

Investigation notice

- 4.2 We may issue an investigation notice requiring a person to produce documents or provide information or explanation that is reasonably required for the purpose of our investigation into a suspected offence or contravention. The investigation notice will specify the documents, information or explanation that is required, and set out when and where it must be produced.
- 4.3 We can issue an investigation notice to any person – either an individual or an organisation – who we consider holds relevant documents or information. This includes the subject of an investigation or a potential witness or other third party.
- 4.4 It is a criminal offence to fail to comply with an investigation notice without reasonable excuse, or to intentionally obstruct us in carrying out our functions in issuing the notice. It is also a criminal offence to knowingly or recklessly provide false information in purported compliance with an investigation notice.
- 4.5 If the recipient of an investigation notice does not possess or have access to the documents or information specified in the investigation notice they must let us know as quickly as possible.

Disclosure order

- 4.6 Where an investigation notice is not complied with we will normally seek to enforce it by way of an application to the High Court or, in Scotland, the Court of Session for a disclosure order. To obtain a disclosure order we must demonstrate that:

- we have reasonable grounds to suspect a person (whether or not the recipient of the investigation notice) has committed an offence or contravention under PPERA
 - there are documents, information or explanations that have not been produced in compliance with an investigation notice
 - those documents, information or explanations are reasonably required by us for the purpose of investigating the suspected offence or contravention and those documents, information or explanations are in the custody or under the control of the respondent.
- 4.7 We may retain documents delivered in accordance with a disclosure order for three months, unless proceedings have commenced in relation to a criminal offence or the documents are relevant to our issuing an initial notice proposing a monetary penalty. In practice, documents will be returned more quickly if they are of no relevance to an investigation. Where documents are retained for the purpose of proceedings against a person, and there is an appeal against the outcome of the proceedings, we will endeavour to return the documents as soon as it is practical after the appeal process ending. We may make copies or records of the information contained in documents provided to us.
- 4.8 It is a criminal offence to fail to comply, without reasonable excuse, with a disclosure order. It is also an offence to obstruct us or knowingly or intentionally provide false information in purported compliance with a disclosure order. Where this occurs we may seek prosecution, or seek to have the disclosure order enforced as contempt of court.

Statutory interview

- 4.9 We may require an individual to attend a statutory interview. The individual – who may be the subject of the investigation or a potential witness or other third party holding relevant information – must attend the statutory interview at a specified time and place and must answer any question that we reasonably consider to be relevant to the investigation.
- 4.10 Statutory interviews will usually be recorded. The individual may bring another person to the interview, such as a legal representative. However we may refuse to allow a particular person to accompany the individual if the presence of that person is likely to compromise the integrity of the investigation.
- 4.11 It is a criminal offence to fail to comply, without reasonable excuse, with a requirement to attend a statutory interview or answer the questions asked during it. It is also a criminal offence to obstruct us in carrying out

our functions this way, or to knowingly or intentionally provide us with false information in purported compliance with the statutory interview.

5 Stop Notices

- 5.1 A stop notice requires a regulated organisation or individual not to begin or to cease an activity that the Commission reasonably believes either 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 political parties and others. We may only issue a stop notice where we reasonably believe that a person is undertaking or is likely to undertake an activity that causes such damage, and that the activity is likely to involve an offence or contravention under PPERA.
- 5.2 The stop notice will set out the steps the recipient must take to comply with it, as well as the grounds under which it has been made, the consequences for failing to comply and the rights of appeal.
- 5.3 The recipient of a stop notice may appeal to a county court or, in Scotland, the sheriff against the decision to serve the notice.
- 5.4 It is a criminal offence to fail to comply with a stop notice.
- 5.5 The recipient of a stop notice should apply to us for a completion certificate to verify their compliance with the notice. We will make a decision within 14 days of receipt of an application for a completion certificate as to whether to issue it. We will only issue a completion certificate if we are satisfied that the applicant has complied with the stop notice. The applicant may appeal a decision not to issue a completion certificate. The appeal must be made within 28 days of being notified of our decision.

6 Assessments and investigations

Assessments

The purpose of an assessment

- 6.1. Assessments are a consideration of the issues and evidence to determine whether to investigate, or whether an issue can be dealt with another way such as the provision of guidance.
- 6.2. We may investigate where we have reasonable grounds to suspect that a person has committed an offence or contravened a restriction or requirement under PPERA.

The assessment process

- 6.3. We monitor compliance with the rules in PPERA, and potential offences may be highlighted by that monitoring. We may also receive allegations that the law has been broken, or identify indications of an offence and/or contravention of the law through a press report or referral from another regulator.
- 6.4. We check all potential breaches of the PPERA rules to determine if they should be assessed. We will not assess potential issues if they are not within our regulatory remit. We may also decide not to assess an issue if:
 - it is not supported by any credible evidence
 - in the case of a complaint, the complainant refuses to provide details of the issue and supporting evidence in writing
 - we have already assessed it and no new evidence has come to light
 - we have already taken enforcement action in respect of the issue
- 6.5. Assessments may include:
 - reviewing documents provided to us
 - reviewing documents we already have
 - seeking further information or clarification from a complainant
 - making initial inquiries of the subject of the allegation or other persons
- 6.6. In the case of an assessment initiated by a complaint, we will notify the complainant of the outcome of the assessment as quickly as possible – and within 21 calendar days – of us acknowledging receipt of the complaint.

- 6.7. A complainant can ask us to review a decision not to open an investigation. The request must be made within 14 days of notification of the decision.

Investigations

Opening an investigation

- 6.8. If we are satisfied that there are reasonable grounds to suspect an offence or contravention has occurred, we will consider whether to investigate. We will only open an investigation where we consider that investigating the suspected offence or contravention is in the public interest and justifies the use of our resources in this way.
- 6.9. Whether or not a matter is in the public interest and justifies the use of our resources in this way will depend on a number of factors. These factors may be different and/or differently weighted depending on the circumstances. We will consider the relevant factors before deciding whether to open an investigation, and may review the continued relevance of the factors during an investigation. A non-exhaustive list is below:
- our enforcement aims, objectives and approach
 - effective and efficient prioritisation in the use of our resources,
 - the seriousness of the suspected offence or contravention, including the magnitude and potential harm caused by it
 - the strength of the evidence
 - the frequency or duration of the suspected offence or contravention
 - the impact, including the deterrence effect, of an investigation and/or any sanction that might be imposed
 - the compliance history of the person(s) who may have committed the suspected offence or contravention
 - any steps already taken to rectify the breach
 - any relevant circumstances of the individuals involved

Timescales for investigations

- 6.10. The time taken to complete an investigation varies on a case by case basis. Where there is a great deal of evidence to collect and assess, or where the issue relates to a particularly complex area of the law, the investigation may take longer.
- 6.11. We recognise that it is important to conclude investigations as quickly as possible. This is both in the public interest and in the interests of justice for those involved. However, our first priority is always to conduct a fair and thorough investigation, and this will take priority over speed where the two conflict.

Notifying subjects

6.12. We will normally inform the subject of an investigation as soon as possible after the investigation is opened, unless doing so would frustrate the investigation. We will provide details of the matters under investigation and ensure that the subject has the opportunity to respond to them.

Gathering evidence

6.13. In order to determine if an offence or contravention under PPERA has occurred, we may need to make enquiries of persons that we believe can provide relevant information. We will ask for documents, information and explanations on a voluntary basis or by using our investigatory powers, as appropriate. We may do this in writing or on the phone, or by arranging meetings or statutory or voluntary interviews, depending on the circumstances.

Working with the police and prosecutors

6.14. We have agreements in place with the police and prosecutors in England and Wales, Scotland and Northern Ireland. Where we become aware of a potential criminal offence within our regulatory remit for which we do not have civil sanctions, or which we consider to be so serious that our civil sanctions may not be an adequate measure, we will liaise and share information with the relevant authority so that it can consider investigating or prosecuting. We may also notify the relevant authority of potential offences we become aware of outside our regulatory remit where we consider it appropriate to do so.

6.15. We will liaise with relevant authorities at the earliest possible stage, in order to minimise duplication of investigative work. In Scotland only, we will liaise with the relevant authorities in all cases.

Working with others

6.16. We work with other regulatory bodies and organisations and share information with them where we are able to and it is appropriate to do.

Investigations outcomes

6.17. There are three possible investigations outcomes:

- we determine that there is no or insufficient evidence of an offence or contravention to take action
- we are satisfied beyond reasonable doubt that an offence or contravention has been committed
- we decide, having revisited the factors in paragraph 4.8 above, that it is no longer in the public interest to investigate a suspected offence or contravention

- 6.18. Where we are satisfied beyond reasonable doubt that an offence or contravention has been committed, we will consider what further action to take. In most cases this will involve deciding whether to impose a sanction. If appropriate we may decide to refer the matter to the police or relevant prosecuting authority at this stage.

7 The sanctions decision-making framework

When we can sanction

- 7.1. Following the conclusion of any investigation where we are satisfied that an offence or contravention has occurred we will consider whether to impose a sanction. Where an impermissible or unidentifiable donation or loan is involved, we are also able to apply to the court under civil law to seek forfeiture of an amount equivalent to the donation or restoration of the loan as well as or instead of using a sanction.
- 7.2. The standard of proof we must meet when determining whether sanctions are available to us varies depending on which provision of PPERA is being considered. In order to start civil court proceedings for forfeiture the standard of proof that applies is the balance of probabilities. Where we determine for ourselves whether an offence or contravention has occurred, we must be satisfied beyond reasonable doubt.

When we will or will not sanction

- 7.3. We will generally sanction where we consider it appropriate to do so to meet our enforcement aim and objectives, and when it is proportionate and in the public interest to do so. We may decide not to impose a sanction where we feel it is not proportionate or in the public interest to do so, and it is not necessary to do so to meet our enforcement aims and objectives.

The type and/or size of a sanction

- 7.4. Once we have decided that a sanction is appropriate, we will consider the sanction and, in the case of a monetary penalty, the level of that penalty. This will depend on what will best achieve our enforcement aim and objectives. To do this we will consider a number of factors. Which are relevant to a particular matter and the relative weight given to each of them will depend on the circumstances. In general however, we will attach greater weight to factors relating to the offence itself and how it occurred, and the nature and compliance history of the person or organisation, than to actions taken after the event.
- 7.5. These factors include, but are not limited to, the following (we refer to person in the legal sense, including organisations):

- the seriousness of the offence or contravention
- the harm caused by the offence or contravention
- the extent to which the offence or contravention was inadvertent, reckless, or deliberate
- any financial gain or other advantage to the person concerned as a result of the offence or contravention
- the frequency or duration of the offence or contravention
- the compliance history of the person concerned
- the level of cooperation with us shown by the person concerned during the investigation
- any previous written or documented oral advice from us to the person concerned on relevant statutory requirements
- any deliberateness, dishonesty, deception or misrepresentation by the person concerned when committing the offence or contravention
- the level of insight as to reasons for the offence or contravention or the consequences of it
- acceptance or otherwise of responsibility for the offence or contravention
- action taken to eliminate, reduce or rectify the harm resulting from the offence or contravention
- action taken to reduce the likelihood of a recurrence of the offence or contravention
- whether the matter was voluntarily reported by the person concerned
- adherence to any enforcement undertakings agreed with us
- substantiated evidence that the person's actions were affected by ill-health

Process for imposing a sanction

7.6. If we seek to impose a penalty or a compliance or restoration notice, we will follow this process:

- issue an initial notice
- allow a period of time for written representations or objections
- consider any representations or objections
- either close the matter or issue a final notice

7.7. The initial notice will always contain details of the proposed sanction and the reasons for it, as well as how written representations or objections can be made and the deadline for doing so. Certain types of initial notice may contain additional information, which is explained in the next section.

- 7.8. When making representations or objections recipients can put forward any information they consider relevant. In particular, if they have not already done so, the recipient may want to put forward any defence to the offence or contravention. They may wish to comment on the reasons for our proposing a sanction, including the facts on which the decision is based. Representations may be made on the application of the factors we have taken into account when determining the type and size of a sanction. Finally, the recipient may want to comment on their ability of the person concerned to pay a financial penalty and/or the cost to the person concerned of any non-financial requirement that might be imposed.
- 7.9. Where possible representations or objections should be accompanied by supporting evidence. We may consider extending the deadline for making representations or objections in exceptional circumstances.
- 7.10. Any representations or objections will be considered by a senior officer of the Commission who was not involved in the decision to issue the initial notice. Whether representations are made or not, the officer will apply the same decision-making framework as set out in section 7. This includes determining if we remain satisfied that an offence took place and, if so, that the proposed sanction is reasonable and appropriate. Any representations will be considered as part of this process.
- 7.11. If, as a result, we are no longer satisfied that an offence or contravention occurred, the matter will be closed. Otherwise, the senior officer will decide whether to issue a final notice, either reflecting the initial decision or changing it.

8 The available sanctions

Fixed monetary penalties

8.1. A fixed monetary penalty is a fixed fine of £200.

Initial notice

8.2. Where we propose to issue a fixed monetary penalty we will send the person(s) concerned an initial notice. In addition to the information about the reasons for the penalty and how to make representations, the initial notice will explain that the recipient may discharge their liability for the penalty by making a payment of £200 to us within 14 days of service of the initial notice. It will also set out the circumstances in which we may not impose the penalty.

8.3. If the recipient does not discharge liability, then once the deadline for making representations has passed and any representations have been considered, we will decide whether to issue a final notice.

Final notice

8.4. The final notice will contain the following information:

- the grounds for imposing the penalty
- how to make payment
- how to appeal the decision to issue the Final Notice
- the deadline for any appeal
- the deadline for making payment (28 days from the date of the Final Notice)
- the deadline and size of late payment charges
- the circumstances when we may instigate civil debt recovery proceedings if the penalty is not paid

8.5. If a fixed monetary penalty has not been paid within 28 days of service of the final notice, a late payment charge of £50 will be added. If the penalty and late payment charge has not been paid within 56 days of the date of the final notice, the late payment charge will increase to £100.

8.6. The recipient may appeal to a county court or, in Scotland, the sheriff against the decision to impose a fixed monetary penalty. Any appeal must be made within 28 days of the date the final notice was served.

Convictions

8.7. Where we have issued an initial notice of a fixed monetary penalty to a person, criminal proceedings for the offence may not be instituted until the 14 day period for discharging liability has expired. If liability has been discharged, the person cannot be convicted of that offence. Once we

have issued a final notice imposing the penalty, the person cannot at any time be convicted of the offence that gave rise to the penalty.

Variable monetary penalties (discretionary requirement)

- 8.8. A variable monetary penalty is a variable fine that is calculated according to the nature of the offence. It may be used on its own or in combination with a compliance notice and/or a restoration notice.
- 8.9. When determining the level of a variable monetary penalty we will take into account the factors set out in paragraph 6.4, as well as the resources of the recipient of the penalty. The penalty will be between £250 and £20,000.

Initial notice

- 8.10. Where we propose to issue a variable monetary penalty we will send the person(s) concerned an initial notice.
- 8.11. Once the deadline for making representations has passed and any representations have been considered, we will decide whether to issue a final notice.

Final notice

- 8.12. The final notice will contain the following information:
- the grounds for imposing the penalty
 - how to make payment
 - how to appeal the decision to issue the Final Notice
 - the deadline for any appeal
 - the deadline for making payment (28 days from the date of the Final Notice, after which the penalty will increase)
 - the circumstances when we may instigate civil debt recovery proceedings or other action if the penalty is not paid
- 8.13. If a variable monetary penalty has not been paid within 28 days of service of the Final Notice, a late payment charge of 25% of the penalty will be added. If the penalty and late payment charge has not been paid within 56 days of the date of the final notice, the late payment charge will increase to 50% of the original penalty.
- 8.14. The recipient may appeal to a county court or, in Scotland, the sheriff against the decision to impose the variable monetary penalty. Any appeal must be made within 28 days from the date of service of the final notice.

Convictions

- 8.15. Once we have issued a final notice imposing a variable monetary penalty, the recipient cannot at any time be convicted of the offence that gave rise to the penalty.

Compliance notices and restoration notices (discretionary requirements)

- 8.16. A compliance notice sets out action that must be taken by a regulated organisation or individual who has breached the law, so that the breach does not continue or recur. A restoration notice sets out action that must be taken by a regulated organisation or individual who has breached the law to restore the position, as far as possible, to what it would have been had no breach occurred. These notices may be used on their own, in combination with each other or in combination with a variable monetary penalty.

Initial notice

- 8.17. Where we propose to issue a compliance and/or restoration notice we will send the person concerned an initial notice. This will explain the grounds for imposing the sanction, and set out the action we propose to require the person to take. It will also set out how the recipient may make written representations about the decision to impose the sanction.
- 8.18. Once the deadline for making representations has passed and any representations have been considered, we will decide whether to issue a final notice.

Final notice

- 8.19. The final notice will contain the following information:

- the actions and timeframe for their completion
- the consequences of non-compliance
- how to appeal the decision to issue the Final Notice
- the deadline for any appeal

- 8.20. The recipient may appeal to a county court or, in Scotland, the sheriff against the decision to impose a compliance and/or restoration notice. Any appeal must be made within 28 days of the date of service of the notice.

- 8.21. The sanction for failing to comply with a compliance and/or restoration notice varies according to whether it was used in conjunction with a variable monetary penalty.

- If a compliance and/or restoration notice is used in conjunction with a variable monetary penalty, non-compliance will usually result in a penalty. Taking the circumstances into account, the penalty will be between £500 and £20,000 and, subject to those limits, no less than our estimate of the cost of undertaking the activities set out in the notice. Details of this potential penalty will be set out in the initial notice and confirmed in the final notice.
 - If a compliance and/or restoration notice is used without a variable monetary penalty, non-compliance will usually result in a monetary penalty as above. Alternatively, we may seek prosecution.
- 8.22. We will impose any penalty for non-compliance by issuing a non-compliance penalty notice. This will set out the grounds for imposing the penalty, the amount, the deadline for payment and the consequences of non-payment. It will also explain how to appeal the decision and the deadline for any appeal (28 days from the date of the Notice).

Completion certificate

- 8.23. Once the recipient considers they have complied with the terms of the final notice, they should notify us in writing and apply for a completion certificate. They will need to provide information demonstrating compliance with the terms of the notice.
- 8.24. We will consider an application for a completion certificate within 28 days, provided we have all the information we need to assess whether the terms of the final notice have been met. We will confirm our decision in writing and, if appropriate, issue a completion certificate.
- 8.25. We may revoke a completion certificate if it was granted on the basis of inaccurate, incomplete or misleading information. If this happens, the compliance or restoration notice continues to have effect as if the completion certificate had not been issued.

Convictions

- 8.26. Where a compliance or restoration notice is imposed and a person fails to comply with it, they could be convicted of an offence in respect of the act or omission that led to the notice. Once we have issued a final notice imposing a variable monetary penalty, the person cannot at any time be convicted of the offence that gave rise to the penalty.

Enforcement undertakings

- 8.27. A regulated organisation or individual may offer to enter into enforcement undertakings. This involves them undertaking to take action to ensure that an offence and/or contravention does not continue or recur, or that a

position is restored so as far is possible to what it would have been had the offence and/or contravention not occurred.

- 8.28. We will consider carefully all reasonable offers. But we are not obliged to accept an enforcement undertaking, and we will not agree to any until we have a full understanding of the nature and severity of the offence or contravention.
- 8.29. When considering whether to accept an enforcement undertaking we will take into account the following, non-exhaustive, list of factors:
- the seriousness of the offence or contravention
 - whether the matter was voluntarily reported
 - whether there was any dishonesty, deception or misrepresentation in the offence or contravention
 - the cost of a full investigation
 - the need to deter non-compliance
 - any advice given to the regulated organisation or individual on the relevant statutory requirements
 - the compliance history of the regulated organisation or individual, including whether enforcement undertakings have been given in the past
 - the likelihood of the proposed enforcement undertakings to prevent further offences or contraventions
 - the likelihood of the proposed enforcement undertakings to restore the position of those involved to what it would have been had the offence or contravention not taken place
 - the level of insight shown by the regulated organisation or individual as to why the offence or contravention occurred
 - whether any apology or contrition has been expressed for the offence or contravention
- 8.30. Where enforcement undertakings are agreed but not carried out we may impose a penalty or consider prosecution in respect of the original offence and/or contravention. Depending on the reasons for the failure to carry out the enforcement undertakings, this may be an aggravating factor in any decision as to the level of a penalty.

Appendix A Guidance for those invited to voluntary interview

Reason for the interview

- A.1. We believe you may have evidence or information which will assist an investigation we are conducting. For this reason we wish to interview you.
- A.2. The purpose of the investigation is to establish whether an offence and/or contravention under the Political Parties, Elections and Referendums Act 2000 has occurred, and what action, if any, is appropriate as a result.
- A.3. The information you give in the interview may be used as evidence that any person – including you – has committed an offence under PPERA.
- A.4. You are invited to attend the interview voluntarily and you are not compelled to attend. We do however have the power to require individuals to attend an interview in certain circumstances.

Regulatory caution

- A.5. This interview forms part of an investigation into a possible offence and/or contravention under PPERA. This may result in a sanction being imposed, such as a monetary penalty. As the information you provide in the interview may form part of the evidence on which that sanction is imposed, the interview will be carried out under a regulatory caution.
- A.6. The caution will warn you that you do not have to say anything but it may harm your defence if you do not mention when questioned something which you later rely on in proceedings. Anything you do say may be given in evidence.

Prior to the interview

- A.7. At least 14 days before the interview, we will send you and your legal representative (if you have appointed one) details of the issues we are investigating. We will also confirm the date, time and venue for the interview and let you know the names and job titles of those who will be conducting the interview. At least two members of staff of the Party and Election Finance Directorate will conduct the interview.

- A.8. We will also disclose any appropriate documents to you that we may refer to in the interview. We do not expect you to bring any documents to the interview that you have not already provided to us prior to the interview. However, if you feel you have documents that would assist us with our enquiries, please provide us with copies at least seven working days before the interview.
- A.9. You may bring another person with you to the interview, such as a legal representative. However, we may refuse to allow a particular person to accompany the individual if the presence of that person is likely to compromise the integrity of the investigation. Please let us know at least seven days prior to the interview if you intend to be accompanied, and supply the name and contact details of that person.
- A.10. If you or the person accompanying you has any special requirements for the interview, such as access requirements, please let us know as soon as possible in advance.
- A.11. If we require you to attend for interview at a venue some distance from your home, we will meet reasonable expenses incurred in attending the interview.

At the interview

- A.12. Interviews are conducted in confidence as part of the investigation process. We ask that this confidence is respected by you and your independent person. However, you may disclose details to your appointed legal representative if they were unable to attend the interview.
- A.13. We will normally audio-record the interview so that we have a complete and accurate account of your answers.
- A.14. At the start of the interview, we will set out how the interview will be conducted and give you an opportunity to ask any questions about the procedure to be followed.
- A.15. The length of the interview will depend on the questions we have and the answers you give. If at any point during the interview you, your legal representative or other person accompanying you wish to take a break, please let the interviewers know and this can be arranged. We may also call a break during the interview. A short break will normally be offered after each hour, unless the interview is at that point very close to completion.
- A.16. We will ask you questions to enable us to gain a full and comprehensive understanding of the circumstances under investigation. While we encourage you to answer our questions, whether or not you choose to do

so is a matter for you to decide in light of your own legal advice. If you choose not to answer our questions, that may mean we are not able to fully understand your account of the circumstances under investigation. You should be aware that adverse inference can be drawn if you fail to mention something during the interview which you later rely on in proceedings. It may also impact on the timely progress of the investigation.

- A.17. Your legal representative or other person accompanying you may not answer questions on your behalf. Please let us know if you wish to speak to your legal representative in private during the interview.
- A.18. At the end of the interview, you will be given an opportunity to provide any evidence or information that you have not already provided and which you wish to place on record. We will also explain what happens next.

After the interview

- A.19. We will usually send you a copy of the recording or a transcript after the interview and we may also ask you for further information within a reasonable period of time. If, upon review of the recording or transcript, you want to clarify any of the statements made during the interview, you can provide this to us in writing.
- A.20. If at any time after the interview you think of anything that may be relevant to our investigation, please contact us.

Appendix B Disclosure of information

- B.1. This appendix does not form part of the statutory guidance, and may be amended without consultation.
- B.2. We recognise that both the public and those we regulate have an interest in how we carry out our statutory monitoring and investigatory role. They also have an interest in knowing that regulated organisations and individuals are complying with the law on party and election finance. And that non-compliance will be dealt with appropriately.
- B.3. While we are conducting assessments and investigations or imposing sanctions, we must make sure that our processes are fair. We must ensure that we do not disclose any information that might frustrate or undermine this fairness.

Freedom of information

- B.4. As a UK public body we are subject to the Freedom of Information Act 2000 (FOIA). We will consider requests for information about assessments, investigations and sanctions made under the FOIA in accordance with that legislation. For further information see our Publication Scheme on our website.

Assessments

- B.5. We will not comment on any matter being considered for assessment or under assessment as to whether a full investigation should be carried out. Disclosure of this information at this stage could be unfair to the persons who may be the subject of the assessment.
- B.6. However, upon specific request we may confirm the name of the person (organisation or individual) being considered for or under assessment, and the potential offence or contravention being assessed. We will only do this where:
- the person under assessment has previously publicised the matter to the requester or more widely, such as in the media or
 - not releasing this information would risk public misconceptions about the scope of the issues being considered or the stage that our enquiries are at
- B.7. In these instances we will notify the person under assessment before confirming their identity to anyone else. We may also contact them again once the assessment is complete to let them know the outcome. We will

also not let others know the outcome of the assessment until after we have notified its subject.

- B.8. If we take no further action following an assessment we may contact the organisation or individual concerned to let them know.

Investigations and sanctions

- B.9. As explained above, we will normally tell the persons under investigation that one has been opened.
- B.10. Where the matter under investigation is already the subject of public and/or media interest, we may issue a media statement about the commencement of the investigation and/or any change to its scope.
- B.11. We do not normally comment on ongoing investigations, as to do so may hinder the conduct of the investigation. If asked about a matter we may, however, confirm whether the matter is under investigation. This may include confirming the relevant suspected offence or contravention, and explaining our normal timescales for investigations.
- B.12. Where we issue an initial notice of sanction we have not yet imposed the sanction, and the person involved still has the opportunity to make representations against our finding of an offence. We will therefore treat the matter in the same way as if it were still under investigation, and will not comment on it.
- B.13. An investigation is therefore treated as concluded when we either:
- make a finding of no offence
 - find an offence but impose no sanction, or
 - issue a notice imposing a sanction
- B.14. Once an investigation is concluded we will publish the outcome on our website. The information will include:
- the subject of the investigation and the offence or contravention
 - whether the offence or contravention was established
 - whether a sanction was issued and the nature of the sanction
 - a brief summary of the reasons for the imposition of any sanction or the decision not to impose a sanction
 - the level of any penalty imposed
 - whether the sanction is the subject of any appeal
 - for monetary penalties, when they were paid
 - for compliance notices, whether and when a completion certificate was issued

- B.15. Where the sanction is subject to an appeal we will update the information on our website to include the outcome of the appeal. We will also update the information to show when monetary penalties are paid.
- B.16. We may also produce a more detailed investigation report and/or issue a media statement where this will further our enforcement objectives and it is in the public interest to do so. We will always issue a media statement where one was issued at the commencement of the investigation. We will notify the subject of the investigation and may notify any other persons named in the investigation report or media statement prior to issuing it.

Annual report on the use of powers and sanctions

- B.17. Under Schedules 19B and 19C of PPERA we are required to report to Parliament annually on the use of our supervisory and investigatory powers, and civil sanctions.