
Enforcement undertakings

Our job is to make sure people and organisations follow the rules on party and election finance.

We have a range of proportionate sanctions to use when these rules are broken. If as a regulated person or organisation you have breached the rules, you can propose an enforcement undertaking. This involves proposing steps to rectify the situation.

What is an enforcement undertaking?

If you have breached certain requirements or restrictions of the Political Parties, Elections and Referendums Act 2000, one option you have is to voluntarily propose an 'enforcement undertaking'. The enforcement undertaking involves proposing the actions you intend to take to come back into compliance or to restore the situation, as far as possible, to what it would have been had no breach occurred.

You can propose an enforcement undertaking during an investigation or case review or pre-emptively in situations where we have not previously been aware of the breach. We will consider carefully all constructive proposals to remedy non-compliance but we are not obliged to accept an enforcement undertaking. Before we accept an enforcement undertaking, we must have reasonable grounds to suspect that a regulated person or organisation has breached the law. We must also have a full understanding of the nature and brevity of severity of the breach.

How does an enforcement undertaking work?

An enforcement undertaking can be submitted by any person who has breached certain requirements or restrictions of PPERA. There are two scenarios in which a person may offer an enforcement undertaking for the Commission's consideration. These are:

- If a person or organisation becomes aware that they have breached the law and the Commission is unaware of the breach, that person or organisation may submit an enforcement undertaking to the Commission, providing details of the nature of the breach and the actions that they propose to take to either become compliant with the law or to restore the situation to what it would have been had the breach not occurred.
- If the Commission has reason to believe that the law has been breached and is in the process of conducting a case review or an investigation, the person or organisation subject to the investigation may submit an enforcement

undertaking to the Commission for consideration.

Once the Commission has received an enforcement undertaking we will consider whether to accept it. Depending on the circumstances of the breach we may:

- agree to accept the enforcement undertaking
- discuss with the proposer any potential changes to the enforcement undertaking that would enable us to accept it
- notify the proposer that we do not accept the enforcement undertaking, give reasons for our decision, and explain how we intend to respond to the breach of the law that has given rise to the proposed undertaking.

We will publish the details of the enforcement undertakings that we accept on our website at www.electoralcommission.org.uk.

What details should I include in my enforcement undertaking?

An enforcement undertaking must be submitted in writing and include the following:

- a statement that the undertaking is an enforcement undertaking regulated by the Political Parties Elections and Referendums Act 2000
- the proposed terms of the enforcement undertaking
- the action the organisation / individual will take to ensure the offence or contravention does not continue or recur, or
- the action the organisation / individual will take to secure

that the position is restored, so far as possible, to what it would have been if the offence or contravention had not been committed, and

- the timescale for compliance (with the above actions).
- Information about what happens if the proposer fails to comply with the undertaking
- Information about what happens when the proposer completes the undertaking

How do you decide whether to accept an enforcement undertaking?

We will take into account, but are 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 person or organisation'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 a similar non-compliance in the future

- the likelihood of restoring the position 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

I have sent you an enforcement undertaking, what happens now?

One of the following will happen. We may:

- accept your enforcement undertaking with no amendment, or we may negotiate with you over minor or major details
- reject an enforcement undertaking. We will write to you informing you of our decision

My enforcement undertaking has been accepted by the Commission, what happens now?

If we accept your enforcement undertaking, we will write to you confirming our decision and explaining what criteria we will use to assess how you should demonstrate that you have complied with the proposals made in the enforcement undertaking.

What will happen if I do not comply with the actions set out in the enforcement undertaking?

Once an enforcement undertaking has been agreed, we will monitor compliance with the terms of the enforcement undertaking. If you do not comply with the actions in the agreed timeframe, we may impose alternative civil or refer you for criminal prosecution. Once we have agreed an enforcement undertaking, we cannot take any other enforcement action against you in respect that that breach unless you fail to fulfil the terms of the undertaking before the deadline for completion with the terms has expired.

You haven't accepted my enforcement undertaking, can I appeal your decision to refuse it?

There is no specific appeal provision, however as with any public body, a decision or action taken by the Commission may be judicially reviewed following an application from an individual concerned. If you have submitted an enforcement undertaking and we reject your proposals we will explain the reasons for our decision.

I have complied with the requirements of the enforcement undertaking, what do I do now?

When you think that you have

complied with all the terms of the enforcement undertaking you should apply to the Commission for a completion certificate to verify your compliance with the notice. We have 28 days from receipt of your application to decide whether you have complied satisfactorily with the terms of the notice. If we agree that you have complied we will issue a completion certificate. This means that you have discharged liability for the breach and we cannot take any further enforcement action against you for the breach. If we do not consider that you have complied satisfactorily with the terms of the enforcement undertaking then we will write to you informing you of this.

You haven't accepted my enforcement undertaking, can I appeal your decision to refuse it?

You can appeal the Commission's decision not to issue a completion certificate by applying to the County Court (or in Scotland to the Sheriff). You can appeal on the basis that the decision:

- was based on an error of fact
- is wrong in law or
- unfair or unreasonable

An appeal must be made within 28 days of receiving notification

of our decision.

Please be aware that we may revoke a completion certificate if any information you provide in your application is subsequently found to be inaccurate or misleading and the requirements of the original compliance notice will still stand.

The same appeals process can be invoked in circumstances where we refuse to issue a completion certificate. You must instigate this within 28 days of being notified of our decision not to issue a completion certificate.

Where can I get more information on enforcement undertakings?

You can read our enforcement policy and other information about our enforcement work at www.electoralcommission.org.uk/party-finance/enforcement.

Further information

Please contact:
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Email: info@electoralcommission.org.uk
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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. For more information see: www.electoralcommission.org.uk

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