

## SCHEDULE 3

### Civil sanctions

## PART 3

### Enforcement undertakings

#### **Enforcement undertakings**

**24.** Where the regulator has reasonable grounds to suspect that a person has committed an offence under Part 2 of this Order, the regulator may accept a written undertaking (an “enforcement undertaking”) given by that person to take such action as may be specified in the undertaking within such period as may be specified.

#### **Contents of an enforcement undertaking**

**25.—**(1) An enforcement undertaking must specify—

- (a) action to be taken by the person to secure that the offence does not continue or recur;
- (b) action to secure that the position is, so far as possible, restored to what it would have been if the offence had not been committed; or
- (c) action (including the payment of a sum of money) to be taken by the person to benefit any person affected by the offence.

(2) It must specify the period within which the action must be completed.

(3) It must include—

- (a) a statement that the undertaking is made in accordance with this Schedule;
- (b) the terms of the undertaking; and
- (c) information as to how and when the person is to be considered to have discharged the undertaking.

(4) The enforcement undertaking may be varied, or the period within which the action must be completed may be extended, if both the regulator and the person who gave the undertaking agree in writing.

#### **Acceptance of an enforcement undertaking**

**26.—**(1) If the regulator has accepted an enforcement undertaking from a person—

- (a) that person may not at any time be convicted of the offence in respect of the act or omission to which the undertaking relates; and
- (b) the regulator may not serve on that person a compliance notice, restoration notice or stop notice, or impose a fixed or variable monetary penalty on that person, in respect of that act or omission.

(2) Paragraph (1) does not apply if the person who gave the undertaking has failed to comply with it or any part of it.

#### **Discharge of an enforcement undertaking**

**27.—**(1) If the regulator is satisfied that an enforcement undertaking has been complied with, it must issue a certificate (“a discharge certificate”) to that effect.

*Status: This is the original version (as it was originally made).*

- (2) An enforcement undertaking ceases to have effect on the issue of a discharge certificate.
- (3) The regulator may require the person who has given the undertaking to provide sufficient information to determine that the undertaking has been complied with.
- (4) The person who gave the undertaking may at any time apply for a discharge certificate.
- (5) The regulator must decide whether to issue a discharge certificate, and give written notice of the decision to the applicant (including information as to the right of appeal), within 14 days of such an application.
- (6) The applicant may appeal against a decision not to issue a discharge certificate on the grounds that the decision—
  - (a) was based on an error of fact;
  - (b) was wrong in law;
  - (c) was unfair or unreasonable;
  - (d) was wrong for any other reason.

#### **Inaccurate, incomplete or misleading information**

**28.**—(1) A person who has given inaccurate, misleading or incomplete information in relation to an enforcement undertaking is to be regarded as not having complied with it.

(2) The regulator may by notice in writing revoke a discharge certificate issued under paragraph 27 if it was issued on the basis of inaccurate, incomplete or misleading information.

#### **Non-compliance with an enforcement undertaking**

**29.**—(1) If a person does not comply with an enforcement undertaking, the regulator may, in the case of an offence committed under Part 2 of this Order —

- (a) serve a compliance notice, restoration notice, variable monetary penalty, stop notice or non-compliance penalty; or
- (b) bring criminal proceedings.

(2) If a person has complied partly but not fully with an undertaking, that partial compliance must be taken into account in the imposition of any criminal or other sanction on the person.

(3) Criminal proceedings for offences to which an enforcement undertaking relates may be instituted at any time up to 6 months from the date on which the regulator notifies the person that the person has failed to comply with that undertaking.