

Undertakings Guidance

(Version 1.0 - effective from 1 January 2025)

Information

1. Neither the CLC nor its disciplinary committees have power to direct the specific performance of an undertaking or to direct the payment of compensation to a third party but the breach of an undertaking may lead to disciplinary proceedings.
2. The CLC will treat a promise to give an undertaking as an undertaking provided the promise sufficiently identifies the terms of the undertaking and provided any prior conditions have been satisfied.
3. Should you incur loss arising directly from a claim based on an undertaking made in the course of practice you may be entitled to an indemnity under your CLC-approved professional indemnity insurance.

Example Approach

You are not obliged to adopt the approach below. The following are provided only as good practice indicators for those seeking guidance on how to deliver the positive Client Outcomes which the Code of Conduct seeks:

1. To ensure that an undertaking is given only by an Authorised Person or other member of staff with authority expressly given on a Durable Medium by the body.
2. To ensure that all staff are aware of the terms of undertakings incorporated by the use of the Law Society's formulae for exchanging contracts by telephone and its code for completion by post.
3. To note on the file and confirm in writing to the other party any agreed variation to undertakings in the Law Society's formulae for exchanging contracts by telephone or its code for completion by post.
4. To note separately the terms of undertakings on file.
5. To give an undertaking only if the Authorised Person or duly authorised member of staff can be absolutely certain that it will be fulfilled.
6. Where making or accepting an undertaking "to pay costs" specify the amount of costs since if no sum is agreed the undertaking may be interpreted as meaning "to pay reasonable costs".
7. To ensure the wording of an undertaking is unambiguous, since only in exceptional circumstances will extraneous evidence be admitted to clarify an ambiguity;
8. Where an undertaking is dependent on the happening of a future event to notify the recipient immediately if it becomes clear that the event will not occur.
9. To specify both the identity of the lender and the date of each charge it is intended to discharge in reply to any requisitions on title or otherwise.
10. To give an oral undertaking only as a last resort and ensure that it is confirmed in writing as soon as is practicable.
11. To avoid either giving or accepting an undertaking using terms such as "best endeavours" or "reasonable endeavours": be specific.