



## ***Undertakings Code & Guidance***

### ***Undertakings Code***

In this Code 'you' refers to individuals and bodies regulated by the **CLC**; all individuals and bodies regulated by the **CLC** must comply with this Code. You must not permit anyone else to act or fail to act in such a way as to amount to a breach of this Code.

#### ***Outcomes-Focused***

The ***Code of Conduct*** requires you to deliver the following ***Outcome***:

- ***Client matters are dealt with using care, skill and diligence. (Outcome 2.2)***

Transparency and probity in ***undertakings*** helps you deliver these ***Outcomes*** and requires you to act in a principled way:

1. **Maintain high standards of work. (Overriding Principle 2)**
2. You comply fully with any ***undertaking*** given by you. (CoC P2e)
3. You only accept instructions and act in relation to matters which are within your professional competence. (CoC P3a)
4. You keep the interests of the ***Client*** paramount (except as required by the law or the **CLC's regulatory arrangements**). (CoC P3b)

You must also comply with the following ***specific requirements***:

5. You deliver services in accordance with timetables reasonably agreed with the ***Client***. (CoC P2k)
6. You consult ***Clients*** on key decisions in a timely way. (CoC P3l)

7. You **promptly** advise **Clients** of any significant changes to projected **costs**, timelines and strategies. (**CoC P3m**)
8. All **Managers** are equally responsible for the performance of **undertakings** given in a body's name and remain responsible for their performance even after they have left the body or it has been dissolved.
9. You do not breach an **undertaking**. Only the person entitled to the benefit of the **undertaking** or the Court may release you/the body from an **undertaking**.
10. You do not avoid liability on an **undertaking** by asserting that to comply with it would be a breach of duty owed to the **Client**.
11. Where you have given an **undertaking** to redeem a mortgage or charge you redeem it immediately following completion of the transaction occasioning the redemption.
12. In an **undertaking** to pay money out of the proceeds of sale of a property it is not implied that the **undertaking** is intended to take effect only if you receive the proceeds of sale.

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### **Information**

1. Neither the **CLC** nor its disciplinary committees has 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 the **CLC Master Policy** or other **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 Principle of Maintain High Standards of Work 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.