

Dunn and Baker Family Team

A 19. UNDERTAKINGS

You have been asked to consider the giving of an Undertaking.

Clearly, you need fully to understand what this involves before you do so.

An Undertaking is a binding promise which you make either to the Court or to the other party in proceedings, promising either to do something, or not to do something.

It can be offered either in addition to a Court Order, or in lieu of a Court Order.

In domestic abuse proceedings, an Undertaking can be a promise to do or to avoid ALL the steps contemplated by the proposed Court Order. This means that you agree to observe these stipulations, but it is not a Court Order.

Enforcement of Undertakings

You will note however that although an Undertaking is not a Court Order, it is nonetheless enforceable.

If you fail to honour your promise, then the other party can seek to commit you to prison for Contempt of Court. This is done by lodging an application for your committal to prison, with an affidavit, listing all the ways in which you are said to have broken your promise.

You do have the opportunity to give evidence to dispute these allegations, save for exceptional cases where you can be imprisoned without notice.

If the court believes that you have breached your Undertaking, it can deal with you in a number of ways:

- a) Imprisonment for up to 2 years
- b) Suspended sentence of imprisonment
- c) An unlimited fine

This is why it is important not to agree to an Undertaking simply as a way of avoiding the case going to Trial. You should agree an Undertaking only in circumstances when your admitted misbehaviour might otherwise merit a Court Order being made against you.

Even if you are imprisoned, you do have the opportunity to apply to court to “purge your contempt”. This is a full and formal apology, made on summons or by application with an affidavit in support. This can result in one of three outcomes

- a) immediate release
- b) deferred release at a future date
- c) refusal, with you serving your original term.

Difference between Court Orders and Undertakings

The difference between an Undertaking and a Court Order is therefore quite small, especially with regard to enforcement.

The major differences between an Undertaking and a Court Order lie in enforcement of breach:

- a) Breach of a non-molestation Undertaking gives rise to Contempt of Court enforcement proceedings, as stated above. Breach of a non-molestation Court

Order, is a criminal offence, and if proved will result in a criminal penalty and criminal record.

- b) An Occupation Order can have attached to it a Power of Arrest, so that anyone breaching it can be arrested and brought to court in custody. An Occupation Undertaking cannot have a Power of Arrest attached – the other party will have to apply to court for a warrant for your committal in the usual way in you breach the Undertaking (above)

An Undertaking can only be made with consent.

An Undertaking should only be offered if you have genuinely behaved in a sufficiently threatening or unreasonable fashion. This does not mean that you have to accept ALL the matters alleged against you, you can offer an Undertaking on your own version of events.

The advantage of an Undertaking, is that

- an Undertaking is not a court order
- an Undertaking avoids the risk of criminal penalty for breach
- the need for a contested injunction hearing is avoided, and neither party has to give evidence at a Trial.

Please consider these issues carefully before you reach a final decision, and feel free to discuss matters further with me if you are unclear about any issue.

August 2009

Disclaimer: The material contained in this fact sheet is for general guidance only. It is specific to the law of England and Wales, and represents a brief outline of the law current as at the date of the fact sheet. It is not intended to constitute, or to be a substitute for, legal advice specific to your case. Dunn and Baker will be responsible only for advice specifically given to you.