

PRACTITIONERS' GUIDE

TO THE

SCOTTISH STANDARD OFFER

AND

SCOTTISH STANDARD CLAUSES (EDITION 2)

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THE SCOTTISH STANDARD CLAUSES WORKING PARTY

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**Issued by the Edinburgh Conveyancers Forum and the Glasgow Conveyancers Forum on
behalf of the Scottish Standard Clauses Working Party**

1. METHOD

The Scottish Standard Missives is a new creation and can be used throughout Scotland and replaces the various regional area missives. The Working Party had representatives from the regional areas that had Standard Missives. As with some earlier versions if agreement on practice or wording could not be reached by the Scottish Standard Clauses Working Party (SSCWP) the 4 Professors of Conveyancing were available to act as arbiters to decide which was the best approach or wording. In the event the SSCWP reached consensus without that being required. That involved some genuine and good spirited give and take.

They have worked from the premise that most individual firm offers are based on a "wish list" of best possible outcomes but the reality is that qualified acceptances cut these down to size and there then emerges a wording that most people "settle for". They have generally looked at the "settled for" position of what practitioners will usually accept thus avoiding the previous painful process of offer and numerous qualified acceptances.

2. CHANGES IN THE SCOTTISH STANDARD CLAUSES – Edition 2

"This Section highlights the relatively few and on the whole non-substantive changes to Edition 1.

I refer you to the following clauses therefore where changes have taken place (ignoring those which are simply typographical or grammatical):-

- 1.1.4 We have added the word "fixed" with reference to the inclusion of mirrors. The view was expressed that the former wording might extend to free hanging mirrors and clarification was therefore sought. In addition, reference to "solar panels" has been deleted and I would refer you to later comments in relation to the new Clause 29.3. Lastly the word "fixed" has also been added to the word "shelving" for the purposes of clarity.
- 5.2 We have added the adjective "development" to the word "proposal". It was felt important to make clear that this clause relates in effect to a substantive planning application to expand on the context of Clause 5.1.
- 6.2 We have added a phrase to make clear that the warranty in relation to the Scheme of Common Repairs is in respect of one instigated or administered by any Local Authority or other public body. It was felt appropriate to make this clear in the context of this clause dealing with other local authority repair or similar notices.
- 7.1.2 The use of the verb "proposed" has caused concern in the past. For clarity, therefore, the words "currently" has been added and it is also made clear

that the proposal has to have been by the factors, managing agents, or another co-owner in writing to the Seller. It is hoped that this makes clear, for the avoidance of doubt, the nature of any such "proposal" in question.

- 17.6 We have proposed reform to current practice in relation to how agents deal with discharges of securities. We suggest that, as an alternative to the current practice of issuing a Letter of Undertaking, it would be appropriate to give alternative undertaking to exhibit an updated title sheet within 35 days of settlement showing that any securities disclosed in the Legal Report have been discharged. It was felt that the current practice of delivery of deeds from the seller's agent to the buyer's agent to the Land Register and perhaps back again was unduly cumbersome and matters could easily be dealt with by simple exhibition of an updated title sheet by the Seller's agents to the Purchaser's agent, post settlement.

This particular practice has also been discussed by the Law Society of Scotland Property Law Committee who have approved this arrangement.

Indeed, it is suggested that rather than providing a separate Letter of Undertaking that the obligation could be written into what might otherwise be a standard settlement letter being issued by a selling agent to a purchasing agent at completion. It is recommended by the drafting team that this practice now be adopted to minimise unnecessary correspondence in this specific area.

- 18.1.1 After discussion, it was suggested that clarify be sought to make clear that a Legal Report should be brought down not only to a date not more than 3 working days prior to entry, but subsequent to the commencement of the protected period. Concern had been expressed that in certain cases, a gap period could inadvertently arise where a Legal Report could not cover the full period up to the date of registration of an Advance Notice. This same provision is also written into Clause 18.1.2.1.
- 18.1.1.2 This clause has been expanded to make clear that the information being provided is to "disclose the Purchaser as the registered owner of the Property".
- 18.1.2 In addition to the amendment above, we have also deleted reference to the Seller being required to provide a Level 1 Plans Report in relation to a registered title. It is believed that it is now quite clear that this is not appropriate or necessary practice and indeed reference in the current standard clause to this provision has caused some uncertainty, if not confusion.
- 18.1.6 This is a new clause simply providing that a purchasing agent shall, on request, provide to the Seller, the application number and the title number allocated by Registers of Scotland to any application. It is felt that whilst this would probably not be contentious for the vast majority of agents, the view was expressed that it would be helpful having a contractual obligation providing for this in the context of any post settlement query.

- 21.2 & 22.1 We have deleted in these clauses dealing with the exhibition of property enquiry certificates and mining reports, the simple phrase "may be" and stipulated the use of the verb "is". The view has been expressed that the former phrase lends an element of uncertainty and in particular an element of subjectivity on the part possibly of a purchaser. It was agreed by the drafting team that any standard here should be objective and factual thus the reason for this minor in terms of wording but important in practical terms change.
- 29.3 This is another new clause, being a simple warranty (statement??) by the Seller that the property does not benefit from solar panels or similar. The view was expressed that whilst solar panels do exist there are still relatively few in practice. A number of important issues may arise however requiring investigation such as local authority consents, contractual rights and obligations and so forth if they do exist. Accordingly, a negative warranty (statement??) was preferred thus allowing parties to look into such an issue in more detail should a selling agent make clear that this undertaking (statement??) could not be given. A very helpful article on this topic can be found in the Scottish Law Gazette 2013 at page 41 (Perils of Solar Panels by Ken Swinton).

I trust this note is of some assistance interpreting the relatively few changes to Edition 2 but as always, myself and the drafting team would be delighted with any comments or observations on the content of the clauses for future reference. It is no doubt a cliché but it is intended to be a living document to continually reflect ongoing developments in both law and practice. Whilst the drafting team continue to reflect a wide range of practitioners covering the whole country from the Highlands to Dumfries and Galloway they are well aware that developments can take place rapidly, particularly in certain localities and accordingly any information about suggested changes would always be gratefully received.

With best wishes to all

Ross Mackay

Convener

Scottish Standard Clauses Working Party"

3. GUIDELINES

The system is a voluntary one and is a facility not a straightjacket. It is for each Firm to decide whether it wants to use the system or needs to make changes to the standard wording to cover a special case. We recommend the following Guidelines to make the system work properly.

The 10 Guidelines are not rules leading to disciplinary action if not adhered to. They are:-

3.1 The offering Solicitor should endeavour to submit the offer in the Standard Offer style referring to the Standard Clauses with as few changes as is possible.

Changes should be for a valid reason e.g. making the offer subject to survey and not for an invalid one i.e. "pet" qualifications or amendments of style, rather than substance.

3.2 The selling Solicitor should attempt if possible to issue a de plano acceptance.

Your new perspective is not how many changes you can make but how few. De Plano acceptance should be possible if there are no unusual or onerous title conditions or some problem with the description or with the documentation held being incomplete.

3.3 The aim is to conclude missives with either a de plano acceptance or at most with one qualified acceptance before an acceptance.

3.4 Goodwill is required from both the purchaser and seller to keep the missives adjustment period to as short a time as possible. Ideally missives should be concluded within one week.

That is an aim but we hope as Solicitors become more aware of how the system works it will be achievable and in some cases missives may be concluded by return (if not loan or sale dependent).

Given the possibility of a de plano acceptance purchasing Solicitors and their clients have to be completely “up front” with their colleagues and the seller if the offer is subject to (1) survey, (2) loan or (3) conclusion of missives for the sale of the purchaser’s existing property. If so this should be disclosed in the offer. The purchaser has to be aware of this. Complete frankness is required as a purchaser may find that he will be bound into a contract sooner than the old method giving him more time. That will not now be possible. There should now be greater transparency re the purchaser’s position.

3.5 Purchasers should be warned that if their offer is subject to survey etc then their offer is less likely to be accepted than one which is not so qualified.

Your clients will require education in this regard. However, to assist with this we have prepared a Client Guide which you may send out to both purchasers and sellers advising that it is likely that the offer that will be sent or received will be in that style.

3.6 On receipt of a non-Scottish Standard Offer, the selling Solicitor should consider requesting an offer in the new style.

Please be prepared to direct your colleagues to where the styles are e.g.

(1) The GCF website www.glasgowconveyancersforum.wordpress.com

(2) the ECF website www.edinburghconveyancersforum.com and

(3) the Law Society’s website www.lawscot.org.uk

3.7 We recommend that where your firm is a member of an SPC that the Property Schedules contain the wording “Offers are invited in the style of the Scottish Standard Offer and incorporating the Scottish Standard Clauses (Edition 2)”.

3.8 If the offering solicitor does not use the Scottish Standard Offer.

We suggest it is met with a qualified acceptance accepting the offer but only to the extent of the price, entry and extras (if these are so agreed) but delete all the other clauses and incorporate by reference the Scottish Standard Clauses (Edition 1).

3.9 Please do not send the title deeds at the offer and acceptance stage. Send these immediately on conclusion of missives.

It is of course acceptable to send the titles if there is a title problem or send the documentation if there is a documentation problem requesting the purchasing solicitors to examine and satisfy themselves. However, please restrict the titles or documentation sent to those in question and do not be tempted to send all the titles and all the documentation simply because you are wishing to qualify on one point.

3.10 Conflict of Standard Offers

Previously where there was a regional area missive for the area within which the property was situated we suggested that as a courtesy you discuss with the selling solicitors which was to be used and agree use of your or their regional style. That is not now a concern with this new all Scotland style. The Scottish Standard Clauses are easily accessible on the Law Society of Scotland website. This Guide and the Client Guide are also available on that website.

4. Use

SSC and the two Guides are freely available to any solicitor in private practice who wishes to use them subject to the condition that the Guides are not to be sold or hired out but distributed free of charge. You are entitled to “badge” the Client Guide to make it your firm’s own. If you feel the wording could be better explained than we have done in our version then of course you are free to do that too.

5. GUIDANCE ON NEW OR TOPICAL CONVEYANCING MATTERS

The websites of the Glasgow Conveyancers Forum and the Edinburgh Conveyancers Forum contain opinions and information on a variety of Conveyancing / Property Law topics.

GCF Website www.glasgowconveyancersforum.wordpress.com/

Opinions

- Note By Professor Robert Rennie on Notice for Potential Liability for Costs
- Professorial Opinion regarding Statutory Notices

Previous Regional Standard Clauses

Previous versions of the various Regional Standard Clauses and also Edition 1 of the Scottish Standard Clauses are contained there.

ECF website www.edinburghconveyancersforum.com

Opinions

- A Memorial to Professor Brymer on the matter of Historic Rateable Values.
- The Opinion of Prof Brymer on the matter of Historic Rateable Values.
- Supplementary Professional Opinion regarding Listed Building Consent and other matters.
- Professional Opinion re Statutory Notice deposits 11 March 2006.

Styles

Styles of letters including a Factors letter agreed with the Property Managers Association Scotland are now here or linked to the PSG website www.psglegal.co.uk/

**Written by Ian C. Ferguson of Mitchells Robertson
on behalf of the Edinburgh Conveyancers Forum and Glasgow Conveyancers Forum and
Scottish Standard Clauses Working Party**