

PRACTITIONERS' GUIDE

TO THE

SCOTTISH STANDARD OFFER

AND

SCOTTISH STANDARD CLAUSES (EDITION 1)

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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 would have acted 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.

We 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”. We 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 1

General

By way of general introduction, the format of the proposed Scottish Standard Clauses (“SSC”) has been based for the sake of utility on the current Combined Standard Clauses (“CSC”) but taking on board various observations, comments and additions suggested by the drafting team.

Whilst there have been various changes made by way of grammatical formatting and numbering the more substantive changes are as follows (and references made to the numbering in the draft SSC):-

Clause

Change

1.2 - Wheelie Bins

A new clause has been added to cover this particular item which seems to be of some specific local concern in a variety of local authority areas.

1.4 - Condition at Settlement

The majority view was to remove reference to the property being left in a clean and tidy condition and instead to state that the seller would undertake to remove all moveables not otherwise included in the

Clause	Change
	price. This reflects the wording in a variety of other standard clause offers.
2. Awareness of Circumstances	The majority view was for the insertion of a clause asking sellers to warrant as to their state of awareness on a variety of topics. This was absent from the CSC but the majority view again was that this was now appropriate.
5.2. Proposals by Neighbours	The development clause has been expanded with the addition of this new provision requiring the sellers to warrant that they have no knowledge or proposals by neighbours which might materially affect value or amenity.
7.1.3. Factoring	The CSS has been slightly expanded to provide not just for details of insurance but also full details of any factoring arrangement.
8.4. Alterations	A new clause has been added containing a warranty that there no planning conditions restricting current use.
9. Disputes	What were the separate CSC 9 and 11 have now just been combined into one clause
11. Utilities and Services	<p>11.1 has been changed simply to clarify seller's obligations to cooperate in the transfer of utilities to an incoming purchaser.</p> <p>The remainder of Clause 11 however has been substantially expanded and amended to now provide for the existence if relevant of private roads, water or drainage systems. The wording basically reflects the current Highland Standard Clause in this regard.</p>
13. Breach of Contract by Purchaser	A small change has been made to 13.3.1 and 13.4.1 to make clear that a claim of damages includes but is not limited to wasted expenditure as otherwise defined in the clause.
14. New Build Warranty	A slight change has been made to now provide that it covers conversion as well as construction within the preceding 10 year period. In addition, specific reference to CML has been deleted and reference made to purchaser's lenders. The CML pointed out that they themselves no longer approve warranty providers and is up to individual lenders to do so.

Clause	Change
16, 17 and 18 – 2012 Act	<p>These clauses have been substantially added or amended to now reflect the required provisions necessary for the Land Registration, etc. (Scotland) Act 2012. In essence, these cover the suggested style produced by the Property Standardisation Group (PSG) but altered to more properly reflect residential transactions.</p> <p>In particular, the time limit for provision of Advance Notices is stated to be no earlier than 10 working days rather 5 as suggested by PSG.</p> <p>Also reference was deleted from the PSG style stating that the seller ceased to be responsible for valid title after expiry of 14 days.</p> <p>A practical point worthy of mention is that after discussion, it was specifically stated that in relation to an application for first registration, the type of plan report to be produced is level 3 being the most detailed type available. From such soundings as we have taken, it seems clear that most solicitors would wish to obtain the level 3 report with a view to avoiding unnecessary debate. This is stipulated in the relevant Clause 18.</p>
27. Entire Agreement	<p>The last sentence in the CSC has been deleted which gave a warranty parties were not relying on verbal undertakings, etc. This was considered unnecessary on reflection.</p>
30. Crofting	<p>A new clause has been added to cover this topic for obvious reasons. If the Property is a Croft other provisions will be necessary.</p>

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 1)”.

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 guidance and opinions on a variety of Conveyancing / Property Law topics including

GCF Website www.glasgowconveyancersforum.wordpress.com/

- 1) Green Deal Plans
- 2) Some Past seminar Notes
- 3) Notices of Potential Liability for Costs (NPLCs).

The ECF and GCF jointly instructed an Opinion from Professor Robert Rennie on areas of concern re possible wrongful use of NPLCs. It is available on both websites.

ECF website www.edinburghconveyancersforum.com .

- [ECF submission to Edinburgh Council re Statutory Notice Review](#) (PDF)
- [A Note by Professor Rennie on Notices of Potential Liability for Costs](#) (PDF)
- [Professorial Opinion re: Statutory Notices](#) (PDF)
- [Window Report - December 2012](#) (PDF)
- [Initial Professorial Opinion regarding the Combined Standard Clauses v 1](#) (PDF)
- [Supplementary Professorial Opinion regarding Listed Building Consent and other matters](#) (PDF)
- [ECF Statutory Notices policy document - 3 March 2014](#) (PDF)
- [Clause to use re Stat Notices in Edinburgh - 16 September 2014](#) (PDF)

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