

PRACTITIONERS' GUIDE
TO THE
GLASGOW STANDARD OFFER
AND
GLASGOW STANDARD CLAUSES (2005 EDITION)

**Issued by the Standard Missives Working Party of
The Royal Faculty of Procurators in Glasgow**

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1. Imagine

Imagine a new way of practising conveyancing.

Imagine submitting an offer and receiving a de plano acceptance.

Imagine that the worst you are likely to expect is to put in an offer, receive a short qualified acceptance and issue a straight acceptance.

Well that moment has arrived for Glasgow practitioners if they wish it to be so.

It has arrived in the shape of the Glasgow Standard Offer and Glasgow Standard Clauses (2005 Edition). These will be unveiled and informally launched by The Royal Faculty of Procurators in Glasgow on Thursday 17 November 2005 at a Seminar to introduce them and explain them to Solicitors.

The Glasgow Standard Offer and Glasgow Standard Clauses (2005 Edition) will be formally launched on Wednesday 4 January 2006, the first working day of 2006.

In the interim period the Glasgow Standard Offer and Glasgow Standard Clauses (2005 Edition) will be available for immediate use. The intention is to "sign up" as many Glasgow and other Firms as possible to ensure that the benefits of the new system can be enjoyed as quickly as possible because of its widespread use and availability. You can do this by emailing your details to icff@mitchells-robertson.co.uk. In exchange, you will receive a pdf version of the Declaration by Marie Elizabeth Brown and others dated 8th and registered in the Books of Concil and Session on 9th both days of November 2005 to which is attached Schedules with the Glasgow Standard Offer and Glasgow Standard Clauses (2005 Edition).

It is intended to build up use of the Standard Offer and Clauses by publicity but also by word of mouth and recommendation. In effect it is you who need to encourage other Solicitors to join as well if this project is to be a success.

The success of this project is not up to the working party; it is up to you, the Glasgow Practitioners.

2. STARTING POINT

The Standard Missives Working Party of The Royal Faculty of Procurators in Glasgow was formed in June 2005 following a seminar by The Conveyancing Committee of the Law Society of Scotland on the benefits of standard missives encouraging local areas to develop and use their own standard missives.

The Working Party comprises willing volunteers who responded to a request sent to all RFPG solicitors. They are :-

Marie Brown of Biggart Baillie

Paul Carnan of Blaney Carnan Solicitors

Ian Ferguson of Mitchells Robertson

George Perry of Kerr & Co

Kirstien Roxburgh of R & J M Hill Brown and

Michael Samuel of Miller Samuel LLP and Dean of The Royal Faculty of Procurators in Glasgow.

We looked at the various standard missives currently in use, and decided to use the Edinburgh offer as our basic style. Not only is the Edinburgh Standard Offer fairly recent, but we felt it would be helpful if there was similarity between Glasgow and Edinburgh.

However we then looked at each clause and worked out what would be a typical Glasgow approach to the missives and so there are departures between the Edinburgh style and our own. This is not a criticism of Edinburgh. We have attempted to make the missives suit Glasgow practitioners and not alienate them by introducing unfamiliar language or approach. We have worked from the premise that most individual firm offers are based on a "wish list" of 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 having been through the existing painful process of offer and numerous qualified acceptances.

3. THE NEW GUIDELINES

First of all, let us be clear. The system is a voluntary one. This system is a facility, not a straitjacket. It is for each Firm to decide whether it wants to be part of the system or chooses to remain outwith it. We recommend the following Guidelines to make the system work properly.

The Guidelines are not rules leading to disciplinary action if not adhered to. However, having said that, it will be increasingly difficult for Solicitors who remain outwith the system, to remain outwith it if more and more Solicitors in Glasgow start to use it. More on this later. Here are the 10 Guidelines:-

- 1. The offering Solicitors should endeavour to submit the offer in the Standard Offer style referring to the Standard Clauses with as few changes as is possible.**

If a change is required you should ensure that this is for a valid reason eg. making the offer subject to survey and not for an invalid one i.e. "pet" qualifications or amendments which differ only in style, rather than in substance.

- 2. The selling Solicitor should attempt if possible to issue a de plano acceptance.**

This 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. However again "pet" qualifications should be avoided.

- 3. The aim is to conclude missives with either a de plano acceptance or at most with one qualified acceptance before an acceptance.**
- 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 many cases missives may be concluded by return.

Given the possibility of a de plano acceptance purchasing Solicitors and their clients will 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 client has to be aware of this and that complete frankness is required as the client may find that he will be bound into a contract thinking that the old method would buy him time. That will not now be possible. There should now be greater transparency re the purchaser's position

- 5. Clients 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.

- 6. On receipt of a non-Glasgow standard offer, the selling solicitors should consider requesting an offer in the new style.**

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

In the period between the informal launch and the formal launch on 4th January 2006 you can do this by emailing to icf@mitchells-robertson.co.uk and these styles will be e-mailed back to you so that we can get initial feedback on numbers joining.

The styles will be readily available on the Law Society's website as well as styles of all the other standard offers in Scotland but only from 4th January 2006. The website is www.lawscot.org.uk.

- 7. We recommend that where your firm is a member of the GSPC that the Property Schedules contain the wording "Offers are invited in the style of the Glasgow Standard Offer and incorporating the Glasgow Standard Clauses (2005 edition)".**
- 8. If the offering solicitor does not use the Glasgow Standard Offer we suggest it is met with a qualified acceptance which will accept the offer but only to the extent of the price, entry and extras (if these are so agreed) but then will delete all the other clauses and incorporate by reference the Glasgow Standard Clauses (2005 Edition).**

- 9. It is accepted that on some occasions clients may ask for the wording of the offer to be changed.**

Perhaps they remember your pet wording and prefer it. It is suggested that solicitors who are using the Glasgow Standard Offer will explain to their client that there are enormous benefits in using a standard wording which is standard throughout the Glasgow area. You could explain for example that if your client insists on changes then they are likely to face resistance from your colleagues who are also using the Glasgow style and are unlikely to accept the changes. You could also explain that solicitors are being urged to use discipline to ensure that any changes are material ones and not simply because they would like the wording to be slightly different from the standard.

- 10. Please do not send the title deeds at the offer and acceptance stage. These should be sent immediately on conclusion of missives.**

It would be acceptable to send the titles if there is a title problem or send the documentation if there is a documentation problem asking the purchasing solicitors to examine this and satisfy themselves. However, please do 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 only one point.

4. ENFORCEMENT

As has been explained this is an entirely voluntary system with solicitors being encouraged to use the standard offer for the benefit of themselves and their clients. There is no sanction other than disapproval and "peer pressure" to conform.

5. CONFLICT OF STANDARD OFFERS

What happens when you are buying a property in Inverness? Should you use the Glasgow offer? We suggest you do not. We suggest that courtesy will dictate that when buying in the Inverness area you use the Inverness Standard Offer and similarly in other areas the Standard Offer applicable in each different geographical area.

This is simple courtesy to the solicitors who have spent the time and effort on agreeing a standard style for their area and will ensure that there will be a harmonious relationship between you as a Glasgow solicitor and solicitors in other areas of the Country.

All of the Standard Missives styles are available on the Law Society's website.

The Practitioner's Guide and the Client Guide will also be available on the website.

Their use is freely available by any solicitor 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.

6. CONCLUSION

The rules have now changed forever and from now on conclusion of missives should become a more straightforward process with few of the inherent delays that were involved when each solicitors firm had their own style and stuck steadfastly to it.

Speed of conclusion of missives, ease of conclusion of missives and clauses with which the practitioner and the client can become familiar are enormous benefits. Glasgow now has the tools to make this a reality. Please use them and attempt to stick to the spirit of the Guidelines.

Written by Ian C. Ferguson of Mitchells Robertson as a Member of the Standard Missives Working Party of The Royal Faculty of Procurators in Glasgow.