

Digital Markets, Competition and Consumers Act 2024 - Property transactions in Scotland

I understand that you are collating responses to the proposed guidance to be issued in respect of the above statute with regard to price transparency as they relate to legal and estate agency services for property transactions in Scotland.

[REDACTED] I would like to express some views and concerns as to the proposals.

As will be well known, property sales in Scotland are governed by a distinct legal system that differs significantly from England and Wales, particularly in relation to missives, completion, and consumer rights. The proposals, while drafted with UK-wide effect, appear to assume a uniform property law environment. This creates a risk that obligations on digital platforms or estate agents may be misaligned with existing Scottish conveyancing practices. Further, consumers in Scotland may face conflicting or duplicative requirements, creating confusion and potential legal disputes and the costs of compliance will increase disproportionately for Scottish property professionals who must reconcile UK-wide digital obligations with Scotland's separate legal framework.

Solicitor/ Estate agents in Scotland are already subject to stringent disclosure and transparency obligations in Scotland as a result of the regulations operated by the Law Society of Scotland and also the use, in Scotland, of the Home Report. I would be concerned that the proposed guidelines would risk layering additional, non-aligned requirements on top of these, which may, undermine the clarity of the Scottish Home Report by forcing parallel forms of disclosure or presentation, create inconsistent information being presented to buyers and sellers across different digital platforms and potentially reduce consumer confidence if the statutory documents are perceived as contradictory or duplicative.

There would also be a serious concern that additional requirements could lead to delays in marketing and/ or transaction property due to digital compliance checks, increased professional costs which would inevitably be passed on to the customer and may actually reduce competition and choice as smaller firms may not have the resources to engage with digital platforms due to the extra burden of compliance.

In my experience, properties in Scotland are currently being brought to the market within a few weeks of the initial instruction from the customer being received and then an average period of 8 to 10 weeks to completion once an offer received. I understand that is a significantly quicker process than that currently experienced elsewhere in the UK and these proposed guidelines would potentially slow the whole process down in Scotland, leading to increased customer frustration at what is already a stressful time for the customer.

The guidelines may also have a significant impact on the use of the well-established practice in Scotland, of marketing a property which seeks an “Offers Over” price. Again, with the use of the Home Report in Scotland there is openness as to the market value of the property being sold and it is for the marketing agent to negotiate with the solicitor acting for the prospective purchaser to negotiate a price that is acceptable to both parties. The missives process in Scotland then ensures that both parties are clear as to their obligations in completing the transaction.

Despite the introduction of Land Registration in Scotland, it is a sorry admission that not all titles are correct and reflect the physical position on the ground. It is still the case that in some titles, important rights of access may have been omitted and require to be corrected. For a conveyancing solicitor acting for a purchaser, these issues will not be known at the time a customer seeks to employ that solicitor’s services, thus making it extremely difficult for the solicitor to give a fee estimate that will account for all of the work that may subsequently require to be carried out.

The Law Society of Scotland regulations require solicitors acting for a purchaser to make clear in their terms of engagement that any fee estimate may require to be adjusted to reflect these types of situation, and that such additional costs are brought to the customer’s attention when they become apparent. As they stand, the proposed guidelines would require the solicitor to list, at the start of the relationship with the customer, fees to cover a myriad of situations which again could lead to confusion as to what the customer will actually expect to pay for those legal services.

Accordingly, I would suggest that any new guidelines only be introduced after consultation with the Law Society of Scotland, the Scottish Government and Registers of Scotland so as to ensure that the guidelines align with existing Scottish property law and consumer protection frameworks and that a separate set of guidelines should be put in place which take in to account the Scottish system and practice.