

NOTE ON SSC4 CHANGES

Dear Colleagues

It is now over 2 years since Edition 3 of the Scottish Standard Clauses (SSC) was published. In late 2019/early 2020 the drafting team reviewed and agreed some changes to this with a view to having an edition 4 available earlier last year. Then the world turned upside down...

It was agreed that promulgating a new Edition in Spring 2020 as proposed was unlikely to be welcomed by the profession but as time has moved on and a degree of normality returning to our working lives, it would now be appropriate to roll this out with a view to its use as of March 2021.

Accordingly, the new Edition is in course of being signed and will be disseminated via the usual channels in early course.

It may assist if I can comment initially on some of the suggested changes which it was thought not appropriate to take on board?

- a. we had feedback about re-numbering Clause 7 due to the deletion of clauses wrongly by other agents. It was agreed that this was minor and did not warrant re-numbering at this time due to familiarity with what is now the long standing format of the SSC
- b. It was suggested we change the period for a provision of a PEC from not earlier than 3 months to a shorter period. It was pointed out and accepted however that the time limit here was simply to reflect the UK Finance Handbook.
- c. Regarding Clause 4 there was suggestion that reference to appliances be removed. This was discussed at length and the consensus is that we continue to ask for a warranty in relation to appliances in the first instance as to change same would result in expected adverse feedback from clients specifically and the consumer lobby generally. It was recognised however that sellers may be increasingly reluctant to give the usual warranty but at that point client instructions could be obtained from buyers specifically on that.
- d. There was a suggestion that provision of the "Factors Letter " should be given not later than 10 working days prior to settlement. Whilst understandable in principle it is believed there is a wide spread practice not to apply for Factors Letters until conclusion of missives and of course if that happens late in the day achieving that time limit may simply not be practical.
- e. There was a suggestion in relation to 18.1.4 that there should be an undertaking that a selling agent would not withdraw their clients application for first registration without consent. This clause does appear in relation to security transactions in particular but it was not felt appropriate in relation to missives when there is already an obligation generally on

the part of the seller to provide a valid title etc. In addition in many cases the selling agent will not have acted in the purchase in any event

- g. Regarding Clause 34 a request was made to refer to the clients state of knowledge. It was agreed however the wording here is to simply reflect the statutory wording applicable to the provision of questionnaires and there is no necessity therefore for any deletion of this.

Turning now to the primary changes to SSC3 (ignoring as always minor grammatical or typographical amendments which were appropriate) :

- 1 the style/content of the SSC has been amended throughout so as to be gender neutral to reflect current thinking on such matters.
- 2 SC 1.1.4 – firstly the format has been altered to break down what was an increasingly lengthy list of “normal” fittings into a more easily understood list but secondly and of much greater practical import we have expanded the list to cover several “fixtures” which have recently started to cause some issues (the intent being that this expanded clause will give clear direction to both buying and selling clients). The clause now seeks to cover such innovations as TV wall brackets, smart thermostats, sound systems, and car charging points all of which are now stated to be included in the price as set out in the clause.
- 3 SC 2.1.1 - the reference to Notices of Potential Liability in this clause was felt to be in hindsight illogical. SC2 is a statement that so far as aware inter alia no NPLs exist. However SC 6.7 covers provision of details for any repairs scheme where an NPL is or is to be registered and further 18.1.3 provides for delivery of a “clear” title specifically excluding any NPL. Accordingly it was agreed SC 2.1.1 can safely be deleted.
- 4 SC 7.3 – this is a new clause attempting to cover the Upper Tribunal decision in *Lynas and Ferri v James Gibb Property Management (23/11/18)* which ruled that in a normal case a purchaser had no claim against a factor for incorrect information in a standard letter issued to a seller. The clause suggests an assignation of rights by the seller to the purchaser that the former may have in relation to such information.
- 5 SC 11.1 – we have deleted the right of a seller to retain an existing telephone number on basis that quite simply such a provision is felt to be historic in current times.
- 6 SC 14 – the warranty against no claims has been removed from 14.1.1 and is now a standalone clause 14.2.
- 7 SC 18.1.7 this is a new but simple warranty by the seller that they are not aware of any current application to the Keeper for rectification or realignment.
- 8 SC 27.1 you may recall that what was clause 27 dealing with the “entire agreement” was subject to analysis in the case of *Anwar v Britton*. Whilst upheld it was indicated that the clause could benefit from greater clarity. Accordingly, we have simply adopted the wording within the PSG syle offer to sell to ensure uniformity in that respect.
- 9 SC 34 – this is a new clause dealing specifically with various council tax issues. 34.1 repeats what was 28.3 but we have added provision 34.2 making clear that a seller has the primary

obligation to intimate a sale to the relevant tax authority and 34.3 containing a warranty by the seller that there have been no alterations by them that could result in an alteration of the tax banding.

- 10 SC 35 this is a new provision dealing with the grant or existence of title indemnity policies which are an increasingly large part of current practice and covers such practical issues as confirmation of full disclosure, payment of premiums and ability to rely on same.

As always we seek to reflect changing practice in relation to the house sale/purchase process. As has been mentioned many times, we are always open to queries or suggestions as to how the content of the SSC can be improved, clarified or expanded and colleagues are free to get in touch at any time either direct via their local faculty or by way of the Law Society (and it should be remembered that whilst we have the support of the Society the SSC project is independent of them).