

# **PRACTITIONERS' GUIDE**

**TO THE**

**SCOTTISH STANDARD OFFER**

**AND**

**SCOTTISH STANDARD CLAUSES (EDITION 4)**

## **CONTENTS**

1. METHOD
2. CHANGES IN THE OFFER AND CLAUSES
3. GUIDELINES
4. USE
5. GUIDANCE ON NEW OR TOPICAL CONVEYANCING MATTERS

**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 can be used throughout Scotland and replaced the previous regional area missives. The Scottish Standard Clauses Working Party ("the Working Party") had representatives from the regional areas that previously had Standard Missives. In some earlier versions if agreement on practice or wording could not be reached by the Working Party, the Professors of Conveyancing were available to act as arbiters to decide which was the best approach or wording. In the event the Working Party 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 4**

### **NOTE ON SSC4 CHANGES**

by Ross McKay, Convener of Scottish Standard Clauses Working Party:-

"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.
- 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.

Clause	Explanation of Change/Addition
General	The style/content of the SSC has been amended throughout so as to be gender neutral to reflect current thinking and drafting on such matters
1.1.4	(First) the format has been altered to break down what was an increasingly lengthy list of “normal” fittings into a more easily understood list and (Second) 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.
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. 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.
7.3	A new clause attempting to cover the Upper Tribunal decision in <i>Lynas &amp; Ferri v James Gibb Property Management (23/11/18)</i> 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.
11.1	We have deleted the right of a seller to retain an existing telephone number on the basis that such a provision is felt to be historic now.
14.	The warranty against no claims has been removed from 14.1.1 and is now a standalone clause 14.2.
18.1.7	A new but simple warranty by the seller that they are not aware of any current

Clause	Explanation of Change/Addition
	application to the Keeper for rectification or realignment.
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 style offer to sell to ensure uniformity in that respect.
34	A new clause dealing specifically with various council tax issues. 34.1 repeats what was 28.3 but we have added provisions 34.2 makes clear that a seller has the primary obligation to intimate a sale to the relevant tax authority and 34.3 contains a warranty by the seller that there have been no alterations by them that could result in an alteration of the tax banding.
35	A new Clause dealing with the grant or existence of title indemnity policies which are an increasingly large part of current practice and cover such practical issues as confirmation of full disclosure, payment of premiums and ability to rely on same.

As always we have sought 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. 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).

I hope that practitioners will agree that SSC4 reflect a fair and reasonable balance between the interests of purchaser and seller within the Standard Clauses.

Ross Mackay  
Convener  
Scottish Standard Clauses Working Party"

### **3. GUIDELINES**

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

The Guidelines have been updated. They 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.**

Your new perspective is not how many changes you can make but how few.

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.

It is of course acceptable to send the titles if there is a title problem or question-mark or send 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.

**3.2 The Selling Solicitor should endeavour to qualify with as few Qualifications as is possible.** The same reasons as in 3.1

**3.3 The selling Solicitor should attempt to conclude missives with either a de plano acceptance or at most with one qualified acceptance before an acceptance.**

De Plano acceptance should be possible if there are no unusual or onerous title conditions and no problem with the description or with the documentation being incomplete.

- A draft QA issued after receipt of the Offer will assist
- Ideally missives should be concluded within 1 week of suspensive conditions being purified

**3.4 Goodwill is required from both parties solicitors to keep the missives adjustment period to as short a time as possible. Ideally missives should be concluded within one week of suspensive conditions being purified. A draft Qualified Acceptance will assist.**

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, loan or sale 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 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 4)”.**

**3.7 If the offering solicitor does not use the Scottish Standard Clauses.**

We suggest it is met with a qualified acceptance

- a) accepting the offer but only to the extent of the price, entry and extras (if these are so agreed) but
- b) deleting all the other clauses and
- c) incorporating by reference the Scottish Standard Clauses (Edition 4).

### 3.8 Conflict of Standard Clauses

That is not now a concern with an all Scotland style in place of regional area styles.

The Scottish Standard Clauses are easily accessible on the websites of

- 1) The Law Society of Scotland
- 2) The Royal Faculty of Procurators in Glasgow
- 3) the Glasgow Conveyancers Forum and
- 4) the Edinburgh Conveyancers Forum.

This Guide and the Client Guide are also available on the websites.

### 4. USE OF CLAUSES and CLIENT GUIDE

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 OTHER 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/](http://www.glasgowconveyancersforum.wordpress.com/)

- [Memorial for Opinion of Professor Robert Rennie on Prescription and Local Authority Consents](#)
- [Opinion of Professor Robert Rennie on Prescription and Local Authority Consents](#)

The Opinion appears to settle the arguments as to “Historic Alterations” not requiring investigation. Professor Rennie also clarified a point raised re Listed Building Consent stating “My original answer was meant to cover listed building consent as well as the obtaining of building warrant and completion certificate. It would be illogical if the twenty year prescription was to apply to one but not the other.”

- [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](http://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.

- A Note by Professor Rennie on Notices of Potential Liability for Costs
- Professorial Opinion re: Statutory Notices
- Initial Professorial Opinion regarding the Combined Standard Clauses v 1
- Supplementary Professional Opinion regarding Listed Building Consent and other matters.
- Professional Opinion re Statutory Notice deposits 11 March 2006.
- Memorial For Opinion Of Professor Robert Rennie On The Subject Of Prescription And Local Authority Consents For Construction And Alteration
- Opinion by Professor Robert Rennie for Glasgow Conveyancers Forum relative to Prescription Act and Local Authority Consents. The Opinion appears to settle the arguments as to "Historic Alterations" not requiring investigation. Professor Rennie has since clarified a point raised re Listed Building Consent stating "My original answer was meant to cover listed building consent as well as the obtaining of building warrant and completion certificate. It would be illogical if the twenty year prescription was to apply to one but not the other."

Resources and Styles are also available.

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