OUTER HOUSE, COURT OF SESSION

[2026] CSOH 16

A42/24

OPINION OF LADY TAIT

In the cause

KAREN LAMB

Pursuer

against

THOMAS ROSS BENNETT, GEORGE EWAN MOFFAT and KENNETH JAMES HAWARD SOPER as the partners of the firm of Campbell Boath, Solicitors and as individuals

Defenders

Pursuer: Heaney Advocate; Gilson Gray LLP
Defender: McKenzie KC, Tyre Advocate; DAC Beachcroft Claims Scotland LLP

3 March 2026

Introduction

[1] This is an action in which the pursuer seeks damages from the defenders as her former solicitors for their alleged failure to carry out conveyancing services to the standard of a reasonably competent solicitor exercising ordinary care. The defenders are a partnership of solicitors.

[2] In 2012, the pursuer instructed Kenneth Soper, one of the partners, to assist her in the purchase of a ground floor shop at 108 Seagate, Dundee ("the subjects"). The purchase was

funded in part by bank borrowing. The defenders were also instructed to represent the Bank of Scotland/Lloyds TSB ("the bank") to obtain security for the sums borrowed.

[3] The property at 108 Seagate, Dundee was a single storey building. On 26 March 2012, Dundee City Council granted a building warrant in relation to 108 Seagate for removal of the roof and the addition of three floors to provide a new stairwell, nine flats and domestic storage ("the development"). The subjects were the ground floor of the new tenement and retained the front facade of the original single storey building. The remainder of the tenement was residential flats.

[4] The pursuer explained to Mr Soper that she intended to convert the subjects into a beautician's salon offering a variety of services; that work on the residential flats was being undertaken by V & S Ossman ("Ossman"); that the work affected the shop area; that the work was ongoing; and that the work would have to be completed before the subjects could be occupied.

[5] On 31 July 2012, Mr Soper on behalf of the pursuer made a formal offer to the seller's solicitors Thorntons to purchase the subjects at a price of £250,000. Thorntons issued a qualified acceptance dated 10 August 2012 in terms of which various conditions were deleted or qualified. On 31 August 2012, Mr Soper accepted the qualifications and concluded missives in terms of the offer and qualified acceptance. He did so in the knowledge that there would be no completion certificate issued for the subjects themselves; and that no completion certificate would be issued for the larger development prior to settlement of the pursuer's purchase.

[6] Prior to concluding missives, Mr Soper wrote to the bank on 28 August 2012 stating that while the completion certificate for the flats above would be outstanding at completion

of the purchase, they would "receive an undertaking from the sellers' agents to provide this within the timescale of 4 to 6 weeks after completion."

[7] On or about 31 August 2012, the purchase price of £250,000 was paid and the pursuer took entry to the subjects. Following completion of the purchase, it was ascertained that there were a series of problems with building works on both the development and the subjects.

[8] The architects for the development submitted a completion certificate to Dundee City Council on 28 January 2013. The Council accepted the completion certificate on or around 30 January 2013.

[9] In the event, the pursuer did not operate her beautician's business from the subjects. Structural engineers identified certain defects in the construction of the development which required extensive remedial works. The pursuer seeks damages of £1,537,000 for loss of profits and £60,000 for inconvenience together with interest as a result of the defenders' breach of contract.

[10] The key issues which arise are whether Mr Soper advised the pursuer of the terms of the qualified acceptance; of the absence of a completion certificate; of the associated risks; of alternative protections; and whether nonetheless the pursuer instructed Mr Soper to proceed to conclude missives.

The proof

[11] The pursuer gave evidence. She called the following witnesses: Donald Reid (solicitor as a skilled witness); Kenneth Soper (solicitor and partner of the defenders); Gordon Christie (chartered accountant as a skilled witness); Barrie Sinclair (chartered certified accountant); Tammy Hollis (company director in the cosmetic chemistry sector);

Jillian Sharp (permanent make-up artist and cosmetic tattooist); Paul Smith (self-employed hairdresser); John Feehan (company director in the beauty sector); Pauline Dempsey (beauty therapist); Bridgette Softley (former director of Nouveau Lashes Ltd) and Robert Wylde (yoga instructor).

[12] The defenders called Christine Rolland (chartered accountant as a skilled witness).

[13] The parties entered into an extensive joint minute agreeing a timeline in respect of the development and the purchase of the subjects.

Evidence on standard of care

[14] Donald Reid was instructed on behalf of the pursuer to provide an opinion on whether Mr Soper undertook the pursuer's instructions to the requisite standard of care. He produced two opinions dated 25 January 2024 and 27 October 2025 (6/21 and 6/26). Mr Reid spoke to these in his evidence. There was no question that Mr Reid had the requisite skill and experience to provide such evidence.

Background

[15] The general background is set out in the Introduction above. Having considered the defenders' file, Mr Reid identified the following factors which are not disputed:

(i) The pursuer was to obtain funding from the bank. The bank instructed a valuation report from D M Hall ("DMH") dated 6 July 2012 (6/27/134). It was prepared while the development works were in progress. It valued the premises at £285,000 on the assumption of vacant possession and satisfactory completion of works. It expressly presupposed: "that all outstanding conversion and building works are completed to the entire satisfaction of the

Local Authority and that the subjects are fully compliant in respect of all Planning and Building Control Matters." It was noted that the subjects were not yet capable of beneficial occupation with noticeable water ingress. It advised that any solicitor for the purchaser or lender should not rely on verbal enquiries of the local authority as to compliance but should deal with it on a formal basis. They advised that all relevant documentation should be sought to confirm that the construction is supervised by a civil engineer.

(ii) Mr Soper submitted a formal offer to Thorntons on 31 July 2012. This offer contained *inter alia* the following Preamble and clauses:

"Preamble E: The Date of Entry means the day when vacant possession of the Property will be given in exchange for the Price and will be such date as may be mutually agreed in writing.

Clause 1. This offer is suspensively conditional upon the Purchaser giving notice to ... the Vendor not later than 5.00 p.m. on 14th August, 2012, that there has been provided to the Purchaser specifications as to the work to be carried out by the Sellers in separating the Subjects from the larger unit registered ... under Title Number ANG56922 and detail as to the finishings to the walls and ceilings of the Subjects.

[…]

Clause 17. In relation to any change of use of the Subjects or to any erection or demolition of the Subjects or to any works which have been carried out to the Subjects, there shall be exhibited prior to the Date of Settlement:

17.1 all necessary planning permissions ...
17.2 all necessary building warrants;
17.3 all necessary certificates of completion under the Building (Scotland) Acts;
17.4 detailed plans and specifications in respect thereof; and
17.5 any necessary consents in terms of the title deeds of the Subjects."

(iii) Thorntons issued a qualified acceptance dated 10 August 2012. This deleted Clause 1 of the offer, that is the suspensive condition. Its clause 10 also deleted Clause 17 of the offer stating that: "the available planning and building

consents has [sic] been exhibited. No further Permissions, Warrants, Certificates or Consent will be delivered or exhibited."

(iv) Mr Soper accepted these and all other qualifications in a *de plano* concluding letter dated 31 August 2012. No specific date was included for the date of entry in amplification of Preamble E above.

(v) On the defenders' file there is a draft further missive letter dated 20 August 2012 which did specify 28 August 2012 as the date of entry and included the following clause:

"With reference to condition 10 of your said Qualified Acceptance, a temporary habitation certificate or some other form of letter of comfort from Dundee City Council will be provided at settlement to satisfy our client that the works carried out by your clients to separate the subjects from the remainder of the tenement meets with the approval of the local authority and relevant building regulations."

Handwriting on the draft notes: "Draft. Not sent."

(vi) The transaction was settled on or about 31 August 2012 when the pursuer paid the price and was given entry.

(vii) Mr Soper had submitted his report on title to the bank on or about 20 August 2012. The bank reverted with certain queries to which Mr Soper replied by letter on 24 August 2012, stating:

"2. Current Building Warrant, Planning etc - the position is that for the current development going on, where the additional flats are being created on the floors above the shop, all paperwork is in order but the local authority will not grant a certificate of completion for the security subjects until the flats are finished, in about 4-6 weeks time. There is no document that Building Control can issue to us to vouch the position but I will receive a formal Undertaking, at settlement, from the Sellers' Solicitors providing for delivery of the necessary Certificate of Completion, within a six week period. I also have a copy of the supervising structural engineer's certificate."

(viii) On 28 August 2012, in response to another query, Mr Soper stated in a letter to the bank's COT team:

"The Certificate of Completion has not been granted for the nine flats above the security subjects and will not be granted until all the flats are completed, estimated to be in about 4 to 6 weeks time. Accordingly, the Certificate of Completion will be outstanding at completion of the purchase but we will receive an undertaking from the sellers' agents to provide this within the timescale of 4 to 6 weeks after completion."

(ix) A letter from Millard Consulting dated 14 March 2012 contained assuring statements regarding the structural layout.

(x) A letter from Peter Inglis Architect addressed to Thorntons dated 21 August 2012 states *inter alia:*

"The structure to assist supporting above has been placed within the shop unit and other services pass through - neither of these affect the use of the space for retail purposes in planning law.…There is no specific building warrant applicable to the structure only which has been placed in the shop unit - it is part of the residential building warrant, and that completion certificate will be issued next month when the flats are complete."

(xi) The bank also required a re-inspection report from DMH before releasing funds. This was obtained and dated 30 August 2012, stating:

"…. these premises are part of a larger development and no Local Authority Completion Certificates will be available at this stage. We are advised that the Solicitors acting on behalf of the customer have agreed with the vendor that it is a legal and enforceable condition of the purchase that all necessary documentation will be provided in due course, with any further works needed to obtain the certification remaining the vendor's responsibility."

(xii) An undertaking was neither sought nor granted.

Opinion

[16] Although Mr Reid gave evidence about two duties incumbent on Mr Soper, the pursuer does not rely upon any duty to ensure that in entering into the loan and security

arrangements with the bank she was complying with the bank's requirements and not proceeding in a manner which breached those requirements. The defenders had challenged Mr Reid on whether any such duty existed.

[17] Ultimately, it is not disputed that Mr Soper had a duty to (a) insist upon retention in the missives of clause 17.3 or else (b) if accepting its deletion to ensure protection of the pursuer against its deletion by some other means unless (c) he received clear and informed instructions from the pursuer not to insist upon any such protection. Mr Reid explained each of the lettered elements of the duty as follows:

(a) Clause 17.3 called for production of "all necessary certificates of completion". While it may well have been correct that Thorntons had produced all the required consents *etcetera* for the development, this could not have included necessary certificates of completion since at the time the works were not actually complete. Mr Soper accordingly should have noted that clause 17.3 was different in character from the other sub-clauses and thus clause 17.3 should not have been allowed to be lost in the blanket deletion. However, it seems clear that Mr Soper did appreciate this point by (i) his preparation of the draft missive letter dated 20 August 2012 which was not sent; and (ii) by his letters to the bank, all as set out above. By obtaining an undertaking personally from Thorntons to produce the completion certificate within 6 weeks of settlement, Mr Soper considered he would adequately be procuring the required protection for the pursuer. The problem was that he did not obtain the required undertaking from Thorntons and allowed the transaction to settle without it. In Mr Reid's opinion, subject to (b) and (c) below, this was not a sufficient standard of performance on the part of Mr Soper. Having correctly

alerted himself to the requirement for the completion certificate, the ordinary and normal course for a solicitor in his position would have been either to obtain the completion certificate at or before settlement, or to ensure an enforceable means of obtaining it within a short period such as the envisaged 4 to 6 weeks. The course actually followed was to settle the transaction without the completion certificate and without any binding undertaking to obtain it. Such a course, in Mr Reid's opinion, subject to (b) and (c), was one which no solicitor of ordinary skill acting with ordinary care would have followed.

(b) Mr Reid accepted that if Mr Soper had covered the deletion of clause 17.3 by obtaining other adequate protection, then that would be a sufficient alternative performance. Mr Soper had in mind to obtain an undertaking from Thorntons to produce the completion certificate (a shorthand phrase for the local authority's acceptance of the applicant's certificate of completion) within an agreed short timescale. It might be levelled against Mr Soper that he should not in any event have been contemplating accepting an undertaking but should have been insisting on deferring settlement until the completion certificate was actually issued and accepted. Mr Reid did not consider this a valid criticism. In many transactions an idealistic approach has to be tempered by pragmatism. The ideal would have been to defer any payment or taking of entry until the completion certificate or equivalent was available. As became clear, that would have meant deferring settlement for another 6 weeks. The pursuer wanted entry before then and the seller wanted payment of the price. The indications were that the premises themselves were complete but that a separate certificate or comfort from the local authority was not obtainable. The pressure to find a

solution was no doubt felt by Mr Soper. He therefore took the view that an undertaking from Thorntons to deliver the required certificate within 6 weeks would be a sufficient compulsitor on the seller and a sufficient protection to the pursuer to enable settlement to take place. In Mr Reid's opinion, Mr Soper's readiness to settle on that basis was sufficiently sound and not a failure against the *Hunter* v *Hanley* test (1955 SC 200). While taking up beneficial occupation of a property before a relevant completion certificate has been issued is statutorily prohibited, in Mr Reid's experience the "Nelson eye" is occasionally applied in such situations where there is a strong expectation of early delivery of the certificate. Mr Soper appeared to be fortified in his decision by DMH's acknowledgement and implied approval of it in their re-inspection report (6/2/8). Mr Reid anticipated that Thorntons would have declined to give any personal undertaking and might at best have produced the letter from the architect. However, there was always a faint chance that an undertaking might be given. Further, the very asking for such an undertaking would set up a dialogue and pave the way for a report to be given to the client in more informed terms. So, if an undertaking were not offered what might have transpired was either a "take it or leave it" stance by Thorntons, or a compromise offering some comfort or contractual redress (such as a retention) which Mr Soper and the pursuer could appraise, always ensuring that the bank agreed.

(c) Mr Reid noted the evidential dispute as to whether and to what extent the risks of concluding the missives *de plano* were explained to the pursuer. The risks might be:

(i) Ossman had sold the development to Valmarshi Properties on 31 March 2012 leaving Ossman as owner only of the subjects themselves. As such, Ossman was no longer in control of the development and would have no influence to wield in pressing for completion of the works and the issue of a completion certificate;

(ii) Ossman would have no contractual focus to bind or seek an undertaking from Valmarshi Properties to deliver a completion certificate;

(iii) In turn, this would mean that the obtaining of an undertaking from Thorntons as Ossman's solicitors to deliver a certificate within a stipulated period was impossible or at any rate highly unlikely;

(iv) Absent any such safeguards, the pursuer was vulnerable to the adverse effects which might ensue if a completion certificate were not issued quickly or at all or only if additional works and costs were undertaken in which costs the pursuer might be obliged to participate.

The pursuer's position is that she was not advised of these risks. Mr Soper's position is that she was advised.

Conclusion

[18] (i) In the event that the pursuer was not advised of the risks involved in proceeding without a completion certificate or without an enforceable obligation to procure one within a short period, then the defenders were in breach of their duty not to accept deletion of Clause 17.3 of the offer or, if accepting deletion, to procure satisfactory protection by some other means.

(ii) In the event that the pursuer was fully warned of the risks and gave informed instructions nevertheless to proceed, the defenders were not in breach of their duty.

(iii) The defenders were in breach of their duty to the bank by drawing down the loan funds without advising the bank that the promised undertaking would not be forthcoming.

[19] During cross-examination, Mr Reid agreed that acceptance of a completion certificate by a local authority was not confirmation that there were no defects in the works under the building warrant. It was a certificate to the effect that the requirements of the building warrant had been complied with and that was not necessarily that the property was without defect.

Pursuer's case

(i) Evidence of the pursuer

[20] The pursuer is aged 61. After leaving school, she studied beauty therapy and worked in the beauty industry until recently. In her early career, she worked at Gleneagles Hotel, The Old Course in St Andrews, in London, in Greece and on cruise ships. From 2002, she operated as a beautician from Perth Road in Dundee. The pursuer became an approved SQA centre for delivery of training. She was a trainer and distributor for Scotland for Nail Systems International ("NSI") and for Nouveau Lashes.

[21] In around 2010, the pursuer converted premises on Constitution Street, Dundee into an academy of beauty. She was assisted in applying for a building warrant and with architectural services by Graeme McNab. She traded from Constitution Street. In around 2011, she became aware of the availability for sale of the subjects at 108 Seagate, Dundee. The pursuer wanted larger premises to expand her business. Seagate was a more prestigious address than Constitution Street. Both the eyelash and nail businesses were

booming. Other professionals (specialising in Botox, teeth whitening and semi-permanent make up) wanted to affiliate with her business. The pursuer described herself as falling in love with the subjects. The subjects were amazing, ideal and had so much history.

[22] The pursuer required a bank loan to finance the purchase in the sum of £250,000. She had a £100,000 deposit and borrowed £190,000 (£150,000 as the balance of the price and £40,000 for refurbishment). The pursuer prepared her business plan which she submitted to the bank in July 2012. The bank required a lease to be in place between the pursuer and her limited company.

[23] The pursuer wanted to purchase and convert the subjects. She again engaged Graeme McNab to assist. She wanted to fit out the subjects as a health and beauty salon as soon as possible and while the larger development was ongoing. That did not occur as Mr McNab told her that she needed a building warrant before starting work on the subjects.

[24] The pursuer instructed Kenneth Soper to act in the purchase of the subjects and made him aware of her business plans and the circumstances of the larger development. There was not much communication with Mr Soper. He telephoned a few times, two or perhaps three times. She met him twice throughout the whole process but there could have been a third meeting.

[25] The pursuer purchased the subjects on or about 31 August 2012. Mr McNab had the keys and telephoned her to come to the subjects. There were big pools of water everywhere. The pursuer telephoned the developer who reassured her that all would be fixed.

[26] When put to her that Mr Soper had met with her to discuss the missives, the pursuer stated that she had two appointments in August and that she had run in to sign papers. Perhaps they had met after 10 August 2012. Mr McNab had told her that she could not commence works on the subjects without a building warrant. Nothing alerted the pursuer

to rethink what she planned to do. Mr Soper did tell her that they could not get a "partial habitation" certificate. She did not recall whether Mr Soper told her that she would have to satisfy herself in relation to the condition of the subjects. Asked whether she was told that no completion certificate was available, the pursuer did not recall but did recall discussing temporary occupancy. The pursuer stated that she knew her trade; she visited a solicitor for his profession; she assumed that Mr Soper was of the same calibre as her previous solicitor who had guided her correctly. She first saw the letter from Peter Inglis architect in 2014. When asked whether she was content to proceed, the pursuer said that Mr Soper had not explained that there was no building warrant for the subjects. Had Mr Soper explained that they could not obtain a certificate, the pursuer would have asked Mr McNab what to do and she had not told Mr McNab. She now knew about a building warrant and what Mr McNab said she could not do. She did not know what she would have done. Her position now was that she would run from the property. If Mr Soper had explained there was a huge risk (as she was trained in risk assessments), there is no way she would have purchased the property. The bank loan would not have gone through and the £100,000 deposit would have made "a massive change". Instead, the deposit was gone and she had additional bills. The pursuer did not move into the subjects. She did obtain planning consent for change of use of the subjects.

[27] In her evidence in chief, the pursuer concluded that had she not bought the subjects, she would not have been in trouble with the bank. She bought the subjects and had created a vision. Instead, she had found out about unusual title deeds, forged signatures, building certificates which did not exist and she had to shut the door on the subjects.

[28] During cross-examination, the pursuer reiterated her love for the property and that she would have liked to start work on the property straight away but for Mr McNab's advice to follow building regulations.

[29] The pursuer did not recall discussing the letter drafted by Mr Soper in response to the qualified acceptance (6/27/4). It was put to the pursuer that the annotations on the qualified acceptance (6/27/17) were made by Mr Soper during a meeting with her; he had gone through the qualified acceptance and had ticked off points where she was content with what was discussed or had used an asterisk or question mark for discussion. The pursuer agreed that there was a meeting but remained firm that she had no recollection of going through the qualified acceptance. Her father was in hospital and her full focus was on him. She had run into the defenders' office to sign something and had run out. She did not recall saying that she was very keen to proceed with the purchase but confirmed that she was keen. She did not recall being worried that if missives were not concluded quickly the sale would fall through. Ultimately when asked about (i) being told that there would be no completion certificate for the development at settlement because it was not finished; (ii) being told that she would need to satisfy herself in relation to the works; and (iii) her instructions being not to send the draft letter, the pursuer responded that she did not recall the meeting, what was said and did not know what she signed. She said that there was no building warrant and so she did not know why Mr Soper would talk about a completion certificate. Her evidence was that the seller was the developer. When it was put to her that Mr Soper had told her it would have been impossible for the seller Ossman to bind a third party (as the seller was not the developer), she agreed that "no one would have been able to".

[30] The pursuer was not aware of the letter from Peter Inglis architect dated 21 August 2012 (6/27/50). DMH's report dated 30 August 2012 (6/2/8) would have been sent to her, she said, and by 31 August 2012 she understood that the water ingress had been fixed and the property was in shell condition. She thought that the report was accurate but it was not.

[31] In January 2013, the pursuer instructed Fairhurst structural engineers to inspect the subjects and to report (6/27/53). She accepted their advice about remedial works and a building warrant and completion certificate were obtained for those remedial works. The completion certificate was dated 8 May 2015. The remedial works were necessary because the original work was defective. The pursuer then decided to sell the subjects.

[32] When shown a lease drawn up by Mr Soper (6/27/291) bearing to be between the pursuer and Dundee Academy of Beauty Limited and signed by her, the pursuer stated that she had never seen the lease, did not know who had drafted it, and questioned her signature.

[33] The pursuer produced a business plan (6/5/38) in July 2012 with the assistance of accountants, ACCEL Business Services. She spoke to the components of her business plan and individual income streams. A significant income stream would be distribution and training in connection with eyelash products although the eyelash sector might have tailed off in 2017. The pursuer was also an effective salesperson and distributor of lasers with expertise in their use. She provided training in their use. She had not taken the laser business forward in 2015 when she got going again at Constitution Street. She was a distributor and retailer of Puramed products from which she had made substantial profits. If Puramed were no longer available, she could move to other products. The markup on Puramed products was "brilliant", better even than that on Nouveau Lashes.

[34] The pursuer was qualified to train beauticians for national qualifications. She and her staff would have trained and assessed more people in the new premises. Training made money for her business because it built contacts and led to sales. It increased product sales. She had Pauline Dempsey lined up to come into the new premises and carry out assessments.

[35] A further income stream was a Turkish Bath. The pursuer had worked at spas and knew how they operated. She had spoken to clients who would have been interested in using the Turkish Bath. She obtained quotes for the installation of a bath. She intended to put the work out to tender. A contact in Turkey had quoted £30,000 for installation. Under cross-examination, the pursuer maintained that the projected income for the bath was realistic. She had not projected it to be working at full capacity; the energy and other variable costs were understated; and the income figure was conservative as it was based on one person attending per session per day. A Turkish Bath would have been unique in Dundee. Of competitors, the Olympia swimming baths had shut and the Apex Hotel spa was full.

[36] The business plan included specialist fees whereby room rental would be paid by specialists in cosmetic injection, semi-permanent make-up and hair extensions. As with each income stream, she would have had to cope with changes. The pursuer included third-party rental income, such as from hairdressers. There was provision for a high-end juice bar. She had considered the local competition. There would be a relatively low risk as the idea was to let the space to an operator.

[37] The pursuer was referred to the report prepared on her behalf by Gordon Christie chartered accountant (6/24/1) and asked to explain why she had not lodged accounts at Companies House for various years. Her explanation was that the bank had refused to

supply a Certificate of Loan Interest Paid. She had had a number of companies struck off and "go bankrupt". There had been forged signatures. The bank kept putting up the payments so she had stopped paying. She admitted that "it does look really awful". Mr Christie put the pursuer's achievable earnings into his calculations at £54,000 per annum. The pursuer accepted that the figure of £54,000 should go into the calculation for the years 2014, 2015 and 2016.

[38] The pursuer was referred to the bank statements for her business account and was asked about various credit and debit entries from 6/31/1. The pursuer's evidence was that £50,000 came from her friend Yvonne. She had "maxed out" her credit cards. She had a lot of credit cards. When asked what had happened to the bank loan, she was unclear. It was transferred over somewhere. The bank released the security. She did not have £72,000 in October 2023 so she believed that the bank had finished with her.

[39] The pursuer continued working but could not expand as she might have if she had not used up her credit buying the subjects. She had to adapt her business to operate out of smaller premises, and for instance, by going to clients rather than clients coming to her. She did what she could to keep going. She borrowed money on credit cards. The problem was a lack of capital and distraction caused by the difficulties at the subjects. It had been a good time for the beauty industry from 2013 until the COVID-19 pandemic in 2020. The trend between 2012 and 2018 was steady or better. While some aspects of the beauty business had declined since 2012, some salons were "chocabloc". Any decline was not universal.

[40] In relation to inconvenience, the pursuer was distracted from business, trying to sort the situation that resulted from the breach of contract. It was difficult to give a precise account of the hours spent in dealing with the consequences of the transaction. She spent

time in contact with the local authority; she complained about Peter Inglis architect; and she complained about the structural engineers.

[41] The pursuer now works in quality control for a food production business. Following upon her troubles with the subjects, she no longer wanted to work in the beauty sector.

[42] Under cross-examination, the pursuer accepted that timescales for bringing various elements of the business plan into operation might have varied. The business would not necessarily work out exactly as projected. She was resilient and would have adapted to changing circumstances. She could change the business' focus. A business person, she said, had to think on her feet. There were things which could be done to bring in income that had not been accounted for in the projection such as spray tanning and henna tattoos. The pursuer disagreed that the business plan contained projections in a best-case scenario. Rather, all projections were reasonable and some were conservative.

[43] It was put to the pursuer that she had budgeted for £70,000 for fees in relation to the property together with refurbishment costs. Those costs were not broken down in the plan. She was referred to various quotes obtained by her: (i) email from Dan Daman dated 7 August 2012 (6/5/6) with a quotation from Distributor Ltd in the amount of £23,838.59 plus VAT (for materials only, not labour costs); (ii) message from Dan Daman attaching quote dated 7 August 2012 (6/5/9-11) from Magnet Trade in the amount of £10,203 plus VAT (not including labour); (iii) quote from SpaVision regarding a bespoke communal hammam room with associated items (6/5/15-16) in the amount of £150,525 plus VAT (including installation); and (iv) quote from Strathmore Glazing dated 26 October 2012 (6/5/37) in the amount of £9,933 plus VAT. It was put to the pursuer that in total these quotes would amount to a refurbishment cost in the sum of £194,499 plus VAT. In addition, it was put to her, that she would have labour costs for the walls, doors and skirting, together with

materials and labour for all necessary plumbing and electricity. The pursuer did not accept this, suggesting that she would have been able to have the work done for less.

[44] It was put to the pursuer that she would not have been able to afford to do everything set out in the plan. She conceded that she did not plan to do it all at the outset. However, had she obtained the building warrant she would have been able to make a start. She would have borrowed money from friends. When it was put to the pursuer that the costs contained within the quotes were far in excess of the sums budgeted for, she responded that she was very resilient and had proved it would have been possible for her to acquire financial assistance. The pursuer appeared reluctantly to accept that if she were unable to fund the Turkish bath for some time, that would have a material effect on both profit after tax and cash flow. In respect of the absence of running costs for the bath, her evidence was that you could never be 100% accurate in a business plan.

[45] When asked about staffing, the pursuer could not recall clearly whom she had employed in her previous business at Constitution Street. However, she was sure that the number of proposed staff at the subjects would be sufficient to maintain an ambitious number of programmes.

[46] In relation to proposed product sales, the pursuer ultimately conceded that if the business plan assumed that nail and eyelash sales would stay constant, there would be no proper basis to apply a 25% increase for the whole turnover from April 2011 onwards. She accepted that her proposed 3 month fit out period was wrong.

(ii) Other evidence for the pursuer

Kenneth Soper

[47] Kenneth Soper is a conveyancing solicitor and partner of the defenders' firm of Campbell Boath. His evidence was led by the pursuer. Mr Soper accepted that he failed to obtain an undertaking from the seller's solicitors and had failed to advise the bank of the correct position. That was an error.

[48] His evidence was that he met the pursuer on two occasions. He knew that her father was not well. He could not recall but thought that he telephoned the pursuer to come in on receipt of the qualified acceptance. He was taken to the qualified acceptance (6/27/17). He had made the handwritten annotations. He had been looking for a letter of comfort or undertaking by completion. He went through the options with the pursuer. He deduced that the letter was the subject of discussion. He did not remember. The annotations were consistent with going through the qualified acceptance with the pursuer. He accepted that he was not very good at file notes for which he apologised. He had not written to the pursuer following upon their meeting. It was his handwriting on the draft letter dated 20 August 2012 which said "draft not sent". His intention was to try to obtain a letter of comfort or temporary habitation certificate: something to provide assurance that the council would certify the work. Specifically asked what he had explained to the pursuer about deletion of clause 17 and her position if there were no undertaking, he responded that they would not know that the upstairs floors and pillars were constructed in accordance with building regulations. It was not his intention to accept a position of not obtaining something. Mr Soper's evidence was that the pursuer was warned about the risk of concluding missives. He told her that there was no completion certificate; no certification

from the local authority that the property met the terms and conditions of the building warrant; and that the local authority could potentially take enforcement action.

[49] At the meeting, the pursuer was very keen to settle. She accepted that there would be no completion certificate in place. They would be relying upon the architect's and structural engineer's letters and the fact that the council had been out to inspect the development on numerous occasions. They took the architect at his word that all works in the unit were complete. The surveyor for the bank had confirmed that the work was complete. It was a matter for the pursuer whether she wanted to take the risk. He would have shown the architect's letter to the pursuer as it was the "most crucial thing". She and the seller had agreed to draw a line in the sand and to settle the transaction by 31 August 2012. She was worried that she would lose the subjects and the money invested in them. He acknowledged that the pursuer was under extreme pressure. He had not given the impression to the pursuer that he would obtain an undertaking. He did not recall telling the pursuer about the bank's position. He took the view that if the pursuer was willing to proceed, to take the risk, he would go with it for the bank. The pursuer had made an informed decision and proceeded on the basis of the architect's letter, the structural engineer's letter, DMH's report that the unit was complete and of the local authority inspections. The pursuer was desperate. Asked whether he told the pursuer that it was not in her interests to conclude, Mr Soper said he did but that the pursuer did not listen. She was determined to settle. The ground floor was complete. It was in the developer's interests to finish and sell. The supervising architect stated that it would take 4 to 6 weeks to finalise. Challenged on his recollection, Mr Soper accepted that he had acted in many transactions in the intervening 13 years since 2012 but stated that not many had the same issues as the present transaction.

Tammy Hollis

[50] Tammy Hollis is a company director in the cosmetic chemistry sector. She adopted her letter (6/18/1) in which she confirmed that the pursuer had the sole distribution and training rights for Puramed Professional skin care range in Scotland. They also had a relationship in relation to Lypofirm laser sales through EV Lasers in Italy. Commission for the sale of Lypofirm was £3,000 for beauty exhibition shows and £4,500 for direct sales. Ms Hollis considered that the pursuer's projected sales for Puramed products and for direct laser unit sales were realistic and achievable. She described the pursuer as a very good salesman who had a lot of accounts with Nouveau Lashes and had contacts with a lot of clinics in Scotland. The witness could not speak to the actual amounts of commission which the pursuer would receive as she did not know about the pursuer's particular arrangement with EV Lasers.

Jillian Sharp

[51] Jillian Sharp is a semi-permanent make-up artist. She adopted her letter (6/15). She worked at the pursuer's business at Constitution Street between 2010 and 2017 on a self-employed basis. She paid a fee of £50 per full procedure undertaken for use of the treatment room. She spoke about how the pursuer promoted her business and that she would have wanted to continue her business relationship with her.

Robert Wylde

[52] Robert Wylde was a yoga instructor. He retired in 2020. He was going to provide public yoga classes at the subjects, running two or three classes per week.

Paul Smith

[53] Paul Smith is a self-employed hairdresser. He adopted his letter (6/17/1) in which he set out the various arrangements to rent a chair which he had operated at Dundee salons over several years. The pursuer had sought advice from Mr Smith about hairdressing at the subjects. He advised her to rent out chairs which would earn an easy £55 per day in the city centre.

Bridgette Softley

[54] Bridgette Softley was a director of Nouveau Lashes between 2003 and 2018. The pursuer had been the Scottish distributor for Nouveau Lashes. She bought the products from Nouveau Lashes then provided training and sold the products. The pursuer was very successful in the early days but as Nouveau Lashes grew, the Scottish business did not grow as much. The eyelash business was still doing very well in 2018 when Ms Softley retired.

Pauline Dempsey

[55] Pauline Dempsey is a beauty therapist who has her own salon in St Andrews. She had been the pursuer's independent assessor when the pursuer delivered SVQ training in beauty at Constitution Street. She worked part-time. They were very busy. The pursuer asked the witness to teach full-time at the new subjects. The witness did not take up the position as the new premises did not open. She continued to work with the pursuer at Constitution Street. There would probably have been a lot more students at the new premises because they were larger and designed for purpose.

John Feehan

[56] John Feehan is a chartered accountant. He has been a director in the beauty sector in Northern Ireland for the last 20 years. He has been involved in training and distribution for Nouveau Lashes throughout Ireland. The pursuer had a similar contract for Scotland. He understood her business model to be different. He and the pursuer met at distributors' conferences. They discussed the merits of different product lines. The witness continues to be the sole distributor for Ireland and remains profitable.

[57] I heard Mr Feehan's evidence under reservation. The defenders' objection to its admissibility is maintained only in respect that it was based on his experience of business in Ireland, as opposed to Scotland. In so far as the evidence relates to the general model employed by Nouveau Lashes' distributors, the interplay between training and product sales and the pursuer being part of the beauty sector, it is admissible.

Barrie Sinclair

[58] Barrie Sinclair is a chartered certified accountant with ACCEL Business Services. He assisted the pursuer in preparation of the business plan. The information came from the pursuer's existing accounts, which his firm had prepared, and from the pursuer. The pursuer knew her business whereas Mr Sinclair did not. She had many years' experience but the witness could not comment on her expertise. He cautioned that he is not an expert in the beauty industry. His standard advice to someone preparing a business plan was to make it "realistic and achievable". The pursuer was asked to assess her achievable business objectives.

Gordon Christie

[59] Gordon Christie is a chartered accountant. He was instructed as a skilled witness on behalf of the pursuer to report on the losses suffered by the pursuer resulting from her being contractually bound to purchase the subjects which were unfit for purpose. The pursuer claims loss of profits to the date when she sold the subjects, which was 21 September 2024. Mr Christie's report is dated 2 October 2023 (6/24). He updated his report by letter dated 27 October 2025 (6/25). His qualifications to give expert evidence were not challenged.

[60] Mr Christie assessed the pursuer's expected income had the purchase and refurbishment of the subjects, the business expansion and utilisation progressed as planned:

Year	Potential profit after tax (£000)
2014	103
2015	230
2016	230
2017	230
2018	230
2019	230
2020	230
2021	-
2022	-
2023	230
Total for 10 years	1,713

Separately he assessed the income which the pursuer generated in the absence of the subjects being available for occupation and use. Based on the limited information available, he estimated that the pursuer had or could have earned the following sums in the period from 2014 to 2023:

Period	Comment	Estimated "Actual" Profit before tax (£000)
2014	Last full year profit before transaction	54
2015	Last full year profit before transaction	54
2016	Last full year profit before transaction	54
2017	Last full year profit before transaction	54
2018	Last full year profit before transaction	54
2019	Last full year profit before transaction	54
2020	Last full year profit before transaction	54
2021	Assume nil due to Covid	-
2022	Assume nil due to Covid	-
2023	Last full year profit before transaction	54
	Total	432

He considered the loss of income to be the difference between the expected income and the actual income. The loss suffered for the 10 years to 2023 was calculated at £1,281,000. Updating the figures to 21 September 2024 (the date of sale of the subjects), he estimated the loss suffered at £1,537,000.

[61] Mr Christie based the expected income on the financial projections within the pursuer's business plan. He observed that:

(i) the year 1 projection assumed that a number of the new income streams would take time to start and therefore the year 2 projection was a normalised "full-year" expectation;

(ii) the profits projected were significantly higher than those generated for the business as a sole trader for the period prior to the new premises being acquired;

(iii) a significant element of the improved income was attributable to new income streams and therefore a direct comparison between the previous period's trading and the projected revenue and cost base was not appropriate;

(iv) a more appropriate comparison was to analyse the projections more clearly between the pre-existing activities and new activities to avoid a distortion of the comparison. He also considered a revised presentation of the information to highlight the expected contribution to fixed costs.

[62] Mr Christie acknowledged the difficulty of finding comparable businesses to assist in verifying the losses. In the relevant sector, businesses were small and not required to publish accounts. A further distinguishing factor of the pursuer's proposed business model was the presence of multiple activities under one roof. He made the following qualifications to his report:

(i) the figures should be regarded as preliminary estimates in the absence of detailed underlying information and supporting documentation on which to base more accurate calculations and/or validate the projection assumptions;

(ii) the information on which the loss has been estimated was un-audited and accepted in good faith although certain costs may have been under-estimated such as the provision for heat and light and cost of sales in respect of the planned Turkish bath operation;

(iii) his report should therefore be treated as an initial estimate and subject to further consideration once additional information was available;

(iv) he was not an expert in the beauty market and could not confirm the achievability of the income streams and associated costs; no third party evidence was available to confirm the likely sales volumes or commission which were projected;

(v) it was beyond his expertise to confirm the reasonableness of the projected turnover from the new income streams included in the projections but he accepted the figures in good faith;

(vi) in respect of his updated report, Mr Christie noted that he had not been provided with further information to allow him better to refine his calculations. The letters provided by the witnesses Jillian Sharp, Paul Smith and Tammy Hollis as referred to above did not advance matters.

[63] Mr Christie accepted that where a business has never traded he looks at the projections to try to make "some kind of assessment to see if there is some kind of support for projected income". He acknowledged that he had not reviewed all of the evidence lodged in the case. He had not been provided with the pursuer's tax returns. He based his report on the costs estimated by the pursuer and her accountants. There was no support for the level of commission the pursuer could expect to receive. He had not read the defenders' expert report by Christine Rolland. He had not had an opportunity to consider Ms Rolland's opinions and to either agree or disagree with those. There were obstacles in that there were years in which no accounts had been prepared for the pursuer's companies. Mr Christie accepted that, due to the gaps in the information, he had had to use £54,000 as an overall achievable annual income figure but that that might have been more or less than what was achievable.

[64] On a hypothetical basis, it was put to Mr Christie that, if the pursuer had been unable to fit out her property in 2012, the business plan would essentially be undermined. He acknowledged that it would have had to have been adapted. Business owners would respond to market conditions; projections could be revised upwards or downwards. He

conceded that had the pursuer not been able to operate her business as planned, then the business plan would become a less useful tool with which to assess loss of income.

[65] Mr Christie acknowledged that the plan assumed income from the Turkish bath immediately when the subjects opened for trading. Further, it was put to him that the quotes relied upon the by the pursuer for the fit-out of the subjects were much higher than the sums allowed for in the plan. Mr Christie said that would potentially impact on the estimated budget but that it would depend on whether there were other quotes available. If the fit-out would cost more than £70,000 or so, the pursuer would likely have had to find other ways to fund the project. Further, Mr Christie acknowledged that were there any departure from the plan, there were any number of permutations which would provide a different analysis in terms of viability and a different bottom line in terms of profitability.

Defender's case

[66] Christine Rolland is a chartered accountant. She was instructed as a skilled witness on behalf of the defenders to consider Gordon Christie's opinion on losses incurred as a result of the alleged professional negligence. Ms Rolland's report is dated 27 October 2025 (7/12). Her qualifications to give expert evidence were not challenged.

[67] Ms Rolland concluded that the amounts included in Mr Christie's report were based entirely on the pursuer's business plan. It was not clear the extent of the market research or due diligence, if any, that was undertaken in preparing the plan to support or confirm the assumptions contained therein. The plan did not provide any basis or support for the majority of the figures contained therein. In particular, the plan did not provide a basis for:

(i) the level of commission to be received on laser equipment sales and the number of laser machines to be sold;

(ii) the numbers of expected customers overall and specifically in relation to training and the Turkish Bath;

(iii) the margins applied to retail sales, Puramed sales, vending machines sales and the juice bar;

(iv) the costs included particularly in relation to the Turkish Bath (both capital expenditure and running costs);

(v) the assumptions regarding the number of therapists / hairdressers/ specialists to be operating at any one time; and

(vi) the number of employees required given the number of income streams and the proposed opening hours.

[68] Ms Rolland was provided with some quotes for refurbishment / fit out costs (as detailed at [43]) which totalled £194,499 plus VAT but which did not include labour, electrical or plumbing costs. The plan made provision of £70,000 for the fit out. Ms Rolland questioned how the fit out would have been funded if the costs were expected to exceed the available £70,000. Further, if the Turkish bath were not going to be installed until a later date then the plan did not reflect this as it included income (but no running costs) from Month 1 Year 1.

[69] Ms Rolland produced illustrative calculations (7/29) to show the impact of single and combined changes to the intended business plan on profitability and cash-flow.

[70] Ms Rolland highlighted an inconsistency in the business plan between existing income and income from new business streams. Although Mr Christie rejected the suggestion that this would involve an element of double-counting, Ms Rolland explained in her evidence that it meant that the plan was even more ambitious than it appeared. By way of illustration, if laser machines were already being sold by the pursuer at Constitution

Street and included in the "existing business" then the plan anticipated that the business would make the level of sales which had been made previously plus six Lipofirm plus six Epsilon / YAG lasers in year 1 and plus 12 of each laser in year 2. There was evidence that the pursuer had sold six laser machines by 29 January 2013 (6/6/44) but at £2,500 commission per machine and not the £4,500 (Lipofirm) or £6,000 (Epsilon) stated in the plan. In these circumstances, Ms Rolland suggested that there was no reliable evidence that sales of 18 machines in year 1 or 30 machines per year thereafter was realistic. Mr Christie disagreed that there was double counting because he had approached those sources on the basis that they still formed part of the income in the continuing business for which he gave the defender credit of £54,000.

[71] Ms Rolland acknowledged that the spreadsheet could be adjusted to account for changes. She acknowledged that larger premises might allow more people to be trained, resulting in higher revenue. The quality of the businessperson may make a difference albeit certain economic factors may be beyond the businessperson's control.

Discussion

Breach of duty

[72] It is not disputed that Kenneth Soper had a duty to (a) insist upon retention in the missives of clause 17.3 or else (b) if accepting deletion of the clause to ensure protection of the pursuer against its deletion by some other means unless (c) he received clear and informed instructions from the pursuer not to insist upon any such protection. The principal dispute relates to what advice, if any, Mr Soper gave to the pursuer following receipt of the qualified acceptance dated 10 August 2012 and what instructions, if any, he received from the pursuer.

[73] While I do not think that the pursuer sought to mislead the court, I did not find her to be a reliable witness. I have made due allowance for the considerable passage of time since 2012 and for the fact that the pursuer was preoccupied as her father was unwell and in hospital. However, the pursuer had little recollection of her interactions with Mr Soper throughout the purchase transaction. She was uncertain about when she met with Mr Soper. In particular, she had little recollection of what took place when they met in August 2012. She spoke of running into the defenders' offices, signing something and running out. Ultimately, the pursuer did not assert that Mr Soper had not taken her instructions on the qualified acceptance and draft letter dated 20 August 2012 nor that he had not explained the implications of there being no completion certificate at settlement. Rather, when Mr Soper's position was put to her, the pursuer variously retreated to having no recollection; referred to there being no building warrant; and deferred to what Mr McNab, the architectural technician, might advise. I agree with the defenders' submission that it is not the case that the pursuer positively advanced a competing account of what Mr Soper said to her. Nor did she assert that Mr Soper's account of the meeting was untrue or materially inaccurate. She simply could not remember. On her behalf it is conceded that the pursuer did not claim any clear recollection of what was said at the meeting or meetings. Perhaps surprisingly, the pursuer queried an email to Mr Soper notwithstanding that it was in her name and from her business email address and also queried a lease apparently signed by her. However, she remained firm that she did not see the letter dated 21 August 2012 from Peter Inglis architect until after the transaction settled.

[74] In contrast, Mr Soper was clear that he had arranged to meet the pursuer to discuss the qualified acceptance. He readily accepted that there was no file note of their meeting and that he had not written to the pursuer following upon the meeting to record what took

place and advice given. His recollection was that they had gone through the qualified acceptance and that his annotations were in response to the pursuer's instructions. Mindful of the fact that a completion certificate for the development would not be available at settlement, he had prepared the draft letter dated 20 August 2012 seeking to obtain a letter of comfort or temporary habitation certificate. He could not say in precise terms what advice he had given but he had told the pursuer that there was no completion certificate; no certification from the local authority that the property met the terms and conditions of the building warrant; they would not know that the upstairs floors and pillars were constructed in accordance with building regulations; and the local authority could potentially take enforcement action. It had not been his intention to accept a position of not obtaining some protection. The pursuer was warned about the risk of concluding missives without a completion certificate. She was content to proceed to settle the transaction in reliance on the architect's letter, the structural engineer's report, DMH's re-inspection report and the local authority inspections.

[75] Notwithstanding the absence of a file note and correspondence, I find that Mr Soper was credible and reliable. I accept his evidence. When describing the process of taking the pursuer's instructions in late August 2012, he recalled and conveyed the pursuer's anxiety not to lose the property were there to be any delay in settlement beyond 31 August 2012, her emotion and his impression that she was not listening to his advice. In this respect Mr Soper's evidence chimed with the manner in which the pursuer gave evidence about the transaction. Mr Soper's evidence is further supported by his annotations to the qualified acceptance; by his preparation of the draft letter to address the anticipated difficulty; and by his noting that the draft was not sent. The pursuer's recollection is that there was discussion about a partial or temporary habitation certificate which is consistent with

Mr Soper's evidence. I prefer Mr Soper's evidence that he advised the pursuer of the terms of the architect's letter. His spontaneous response that the architect's letter was the "most important thing" impressed me as genuine. I reject the pursuer's evidence that she did not see the architect's letter until some time later in 2014.

[76] I am satisfied then that Mr Soper met with the pursuer to obtain her instructions on the qualified acceptance and draft letter; that he advised her that there would be no completion certificate for the development at settlement of her purchase; that he advised the pursuer of the implications of there being no such certificate and did so in light of the architect's letter, structural engineer's report, DMH's reinspection report and local authority inspections; and that he was instructed to conclude the missives without sending the further missive which he had drafted. I am satisfied that he received clear and informed instructions from the pursuer not to insist upon any such protection. The evidence does not allow me to conclude that Mr Soper failed to discharge his duty of care to the pursuer.

[77] On behalf of the pursuer it was submitted that the pursuer could succeed on the basis of a finding either that (i) Mr Soper told the pursuer that there was an undertaking for a completion certificate to be delivered or (ii) that Mr Soper did not adequately explain the risk of proceeding on the missives as concluded. I have dealt with scenario (ii). There is no proper evidential basis for scenario (i). The pursuer's evidence was not that Mr Soper told her that there was an undertaking. The pursuer's submission is that it can be inferred that Mr Soper told the pursuer there was an undertaking: "There is no way of knowing what he told Ms Lamb. Maybe he told her that there was a solicitor's undertaking. If so, that would explain why she believed she should proceed." I reject any such submission. I am persuaded that the pursuer was intent upon proceeding with the transaction notwithstanding Mr Soper's advice. She was impatient to make progress; both excited and

ambitious about the project; and anxious not to lose the subjects were the sale not to be concluded by end August 2012.

[78] It follows that the defenders did not breach the duty owed to the pursuer. However, in the event that I am incorrect I address the parties' respective submissions on causation and quantum of loss.

Causation

[79] The defenders invite me to reject as unreliable the pursuer's evidence that if Mr Soper had explained the risk she would not have proceeded to purchase the subjects. On that basis the pursuer should be held to have failed to prove that, had Mr Soper fulfilled his duty of care, she would not have continued with the purchase of the subjects. Specifically asked what she would have done, the pursuer's immediate and subsequent response was that she would have deferred to Mr McNab, her architectural technician, for advice. She then asserted that she did not know what she would have done. She would say now that she would run from the property. She is trained in risk assessment and there is no way she would purchase the property. On the basis of the foregoing, the pursuer was entirely unclear as to what she would have done at the time. When consideration is given to her evident and expressed enthusiasm for the subjects and fear of losing them, the evidence does not support a finding that the pursuer would not have proceeded with the transaction. As submitted by the defenders, the pursuer seeks to refract matters through the lens of hindsight.

[80] In any event, the defenders are submitted not to be responsible in law for all of the consequences flowing from the fact that the pursuer entered into the transaction. The

damages sought by the pursuer do not fall within the scope of the duty owed by the defenders to the pursuer.

[81] The parties addressed the scope of the defenders' duty under reference to the following authorities: *Hughes-Holland* v *BPE Solicitors & Anr* [2018] AC 599 ("*Hughes-Holland*"); *Manchester Building Society* v *Grant Thornton UK LLP* [2022] AC 783 ("*MBS*"); and *Meadows* v *Khan* [2022] AC 852 ("*Meadows*"). The question is: what are the risks of harm to the pursuer against which the law imposes on the defenders a duty to take care? (*MBS* at para [6] and *Meadows* at paras [28] and [38]). The scope of the duty of care assumed by a professional adviser is governed by the purpose of the duty, judged on an objective basis by reference to the purpose for which the advice is being given. One looks to see what risk the duty was supposed to guard against and then looks to see whether the loss suffered represented the fruition of that risk (*MBS* at paras [4], [13], [17] and [22] and *Meadows* at para [67]).

[82] The pursuer submitted that the purpose for which the defenders were engaged was to advise about the consequences of the seller deleting Clause 17 from the missives and concluding missives on that basis. The pursuer's counsel posed two questions: (i) what risk was the duty to advise supposed to guard against?; and (ii) why must Mr Soper advise about proceeding without an undertaking to deliver a completion certificate and being subject to the risk that the building will not be completed? It must be to allow the pursuer to make an informed decision about whether to proceed. If she were to proceed with Clause 17 deleted and no undertaking, then she takes the risk which Clause 17 tries to address. Accordingly, the losses that she incurred fall squarely within the scope of the duty. The type of loss (losses associated with not being able to trade due to the physical state of the

premises) was one for which Mr Soper ought fairly to have accepted responsibility. Clause 17 was, amongst other things, about the physical state of the premises.

[83] In contrast, the defenders submitted that they were not liable in damages in respect of losses of a kind which fell outside the scope of their duty of care. On the evidence, the delay in the availability of a completion certificate for the development caused no loss to the pursuer. The losses suffered by the pursuer arose from the fact that the building work which was being done to develop the flats above the subjects was not done properly and required remedial works to be undertaken. This prevented the pursuer from occupying the subjects and fitting them out for her business. There was no evidence before the court that it was any part of the defenders' duty to protect the pursuer from the risk that such building work would not be done properly, and that this might prevent the pursuer from occupying the subjects and fitting them out for her business.

[84] It becomes then important to focus on precisely what occurred in relation to the completion certificate for the development and separately the pursuer's application for a building warrant to develop the subjects. The purchase of the subjects settled on or about 31 August 2012. It is agreed in the joint minute that on 30 January 2013 Dundee City Council accepted the completion certificate (submitted by Peter Inglis architect on 28 January 2013) for the development. Separately, it is agreed that on 26 October 2012 Dundee City Council granted planning permission (submitted on 30 August 2012) for "Change of Use and Alteration from Retail Unit to form Beauty Salon including Treatment Rooms, Hairdressing, Turkish Baths, Retail and Training Academy Services". The pursuer accepted that she did not obtain the relevant building warrant until 17 December 2012. On Mr McNab's advice, the pursuer could not start the refurbishment until the building warrant had been granted. The pursuer's business plan anticipated that refurbishment of the

subjects would take approximately 3 months. To allow 3 months from when the building warrant was granted on 17 December 2012 would mean that the earliest the pursuer could have commenced trading from the subjects would be mid-March 2013.

[85] Further, it is the pursuer's case that following upon purchase of the subjects it was ascertained that there was a series of problems with the building works on both the development and the subjects; the development stalled; the pursuer could not occupy the subjects; she could not fit them out for her business; and they fell into disrepair. In January 2013, the pursuer instructed structural engineers Fairhurst to inspect and report on the subjects. Fairhurst's report is dated April 2013 and is 6/27/53. The pursuer accepted Fairhurst's recommendation as to the required remedial works arising from the original defective work on the development. On 3 June 2014 Dundee City Council granted a building warrant for the remedial works and a completion certificate was accepted on 8 May 2015. The pursuer almost immediately instructed DMH chartered surveyors to market the subjects for sale. DMH advised that significant works were outstanding to restore the subjects to "shell" condition.

[86] In these circumstances, it is apparent that any loss suffered by the pursuer arose from the fact that the building work on the development was defective and required to be remedied. The necessity for remedial works prevented the pursuer occupying the subjects and refurbishing them. In the event, the completion certificate- the absence of which at settlement is the focus of these proceedings- was available by 30 January 2013. The actual delay in the completion certificate becoming available did not itself prevent the pursuer commencing trading. Had there been an undertaking for delivery of a completion certificate within 6 weeks of completion of the transaction as envisaged by Donald Reid, the pursuer would have been in no different position. I accept the defenders' submission that the

difficulties encountered stemmed not from the temporary absence of a completion certificate but from the defective building work. It forms no part of the pursuer's case on record that the defenders ought to be taken to have accepted responsibility for the physical state of the development and subjects. The pursuer's case relates to the absence of a completion certificate at settlement and absence of alternative contractual protection.

[87] On the evidence of Mr Reid, the risk which the defenders ought to have guarded against was the risk of there being a delay in the local authority accepting a completion certificate in respect of that work, or not doing so at all, with the result that the statutory prohibition on using or occupying premises which do not have the benefit of a notice of acceptance of completion certificate would apply (albeit this was subject to Mr Reid's "Nelson eye" point). On the evidence, no part of the pursuer's loss arose from that risk. Further, Mr Reid's evidence was that a notice of acceptance of completion certificate is not a guarantee of the quality of workmanship, as is reflected in the wording of the warning printed on the notice.

[88] There was no evidence that the pursuer incurred any costs during the period 31 August 2012 to 30 January 2013 or subsequently which were attributable to the lack of a completion certificate. Any losses suffered by the pursuer as a result of completing the purchase arose from risks which, objectively, it was no part of the defenders' duty to protect the pursuer against. Therefore the losses claimed by the pursuer do not fall within the scope of the defenders' duties. There is not a sufficient nexus between any breach of duty on the part of the defenders and the losses claimed by the pursuer.

Quantum of loss

[89] The following discussion presupposes that I am in error as to the questions of breach of duty and causation/scope of duty.

[90] The pursuer seeks damages of £1,537,000 for loss of profits and a reasonable sum for inconvenience suggested at £60,000 together with interest as a result of the defenders' breach of contract. The sum claimed for loss of profits relies upon the report of Gordon Christie, the pursuer's quantum skilled witness. In turn, Mr Christie's calculations rely upon the pursuer's business plan as formulated by Barrie Sinclair, chartered certified accountant with ACCEL Business Services. Mr Christie highlighted that his summary of estimated loss should be regarded as a preliminary estimate in the absence of detailed underlying information and supporting documentation on which to base more accurate calculations or to validate the projected assumptions. Importantly, Mr Sinclair proceeded on the basis of accounts for the pursuer's existing business and her assessment of her achievable business objectives. While I have set out fully the limitations encountered by Mr Christie in preparing his report, the most fundamental is the quality and reliability of the pursuer's income projections.

[91] I accept the premises for increased income arising from larger, bespoke subjects and from new income streams. There was little challenge to the evidence of the pursuer's witnesses who spoke to her success at Constitution Street (as a retailer and distributor for various products and in training); to their willingness to join in her new venture at the subjects; and to certain indicative market rates. However, Mr Christie stated that he was not assisted in better refining his calculations by the letters from Jillian Sharp, Paul Smith and Tammy Hollis. I do not question the pursuer's success at Constitution Street although a consistent pattern of profitability was not demonstrated in the years preceding the purchase

of the subjects (6/24/20). Nor do I question her energy and expertise in the beauty industry. However, it seems to me that the projections in the business plan are speculative and overly ambitious in terms of the claimed increase in sales and claimed immediate profitability of untested new business streams. The projections are unreliable in terms of running costs, notably in respect of energy costs but also in terms of required staffing. The pursuer has failed to demonstrate how she would have funded the costs of refurbishment required to support the projections in the plan. While Mr Christie gave his evidence in a reasoned manner and his expertise was not challenged, his responses that the costs of refurbishment may be lower than the pursuer's quotes and that a businessperson would adapt and be flexible to encountered challenges were general and inadequate to give sufficient confidence in the projections which underpinned his loss calculations. I accept the defenders' submission that the pursuer has failed on the balance of probabilities to prove that she would have been able to derive earnings by running her business from the subjects in excess of the profit she would have been able to earn as a sole trader without having the subjects.

[92] The second head of the pursuer's claim relates to inconvenience. A reasonable sum for inconvenience is suggested to be £60,000. The pursuer's evidence is that she was distracted from business for around 12 years in dealing with the consequences of her inability to occupy and so trade from the subjects. She had to operate out of smaller premises (that is Constitution Street) and became peripatetic in offering certain services. She expended time in engaging professionals to assist in remedying the defective work, including the local authority, structural engineers and surveyors. She made formal complaints about the supervising architect and structural engineers engaged on the development. She required to engage with the bank to meet her obligations. Ultimately the pursuer left the beauty sector and found alternative employment.

[93] Unfortunately again the pursuer's evidence in respect of inconvenience was vague and not specific as to time expended and tasks undertaken. I accept that there would be a level of inconvenience. On the basis of the available evidence, I assess any award for inconvenience not to exceed £5,000.

Disposal

[94] In light of the conclusions I have reached, I sustain the defenders' fourth and fifth pleas-in-law and repel the pursuer's pleas-in-law. I grant decree of absolvitor in favour of the defenders.

[95] I reserve meantime all questions of expenses.