

SHERIFFDOM OF TAYSIDE, CENTRAL AND FIFE AT KIRKCALDY

[2026] SC KDY 75

KKD-SG702-25

NOTE OF REASONS FOR DECISION

by

SHERIFF JOHN A MACRITCHIE SSC

in the claim by

SEAN BROWN PLUMBING AND HEATING LTD

Claimant

against

DR ANN FLYNN

Respondent

Claimant: Sean Brown, Director

Respondent: Party

KIRKCALDY, 18 May 2026

The sheriff, having resumed consideration of the claim,

makes the following findings-in-fact

Initial contract formation

(1) The claimant is Sean Brown Plumbing and Heating Ltd (“SBPH Ltd”). The respondent is Dr Ann Flynn.

(2) Sean Brown is the sole director of SBPH Ltd. Greig Schreiber is employed as a showroom manager whose remit includes bathroom design.

- (3) Between on or about 22 March and 28 April 2025, Dr Flynn consulted with Greig Schreiber, regarding the design, supply and installation of a new shower room (referred to generically as a “bathroom”).
- (4) On 14 April 2025, Mr Schreiber referred in an email to providing matching sanitaryware and proposed products from the “Roca” range, whilst advising that alternatives could be selected.
- (5) On or about 26 April 2025, Mr Schreiber provided a written quotation covering removal of existing fixtures and installation of new sanitaryware and finishes, for the bathroom which measured approximately 3m by 2.77m.
- (6) The quotation included installing a wet room tray former, but at Dr Flynn’s instruction this was changed to a “level access” shower tray due to cost.
- (7) In the absence of a definition otherwise in the parties’ contract, a “level access” shower objectively means a shower which is installed step free and with a flush transition to the floor.
- (8) On or about 28 April 2025, a revised design placed the toilet along the left wall as was positioned the by then shower tray. This configuration raised no issues with clearances between sanitaryware.
- (9) Dr Flynn instructed that the toilet remain in its existing position on the left of the far wall, resulting in it facing the proposed shower panel at the end of a 1600mm tray.
- (10) A revised quotation of £16,778.60 was issued.
- (11) A 1600mm tray was recommended to provide a greater showering area, improve water containment, and accommodate the 2-metre height end panel given there was a height limiting beam should a 1400mm tray have been selected.

(12) The design did not specify precise clearances between sanitaryware, and Dr Flynn was not advised of any potential issue with those clearances. The accompanying email confirmed a “level access” shower installation had been agreed.

(13) Trade guidance typically suggests at least 600mm clearance between sanitaryware, but this is not obligatory and reduced clearances are not uncommon where instructed.

(14) The quotation specified a 1600mm × 900mm tray, two glass shower panels, and sanitaryware from the Roca “Victoria plus” and “Naia” ranges.

(15) Dr Flynn accepted the quotation and paid a 10% deposit.

Works carried out

(16) Installation commenced on 30 June 2025 and lasted approximately 3 weeks.

(17) Additional recommended works were agreed, including repairs to the floor joists and insulation, and increased the contract price to £18,149.00.

(18) On 10 July 2025, Dr Flynn raised concerns regarding sanitaryware clearances based on floor markings. She tested the space using a crate as the toilet.

(19) A reduced 1400mm tray was discussed but raised issues due to the ceiling beam.

(20) Although Mr Schreiber suggested a potential delay of at least a week in obtaining a 1400mm tray, this could have been sourced for the next day.

(21) Dr Flynn instructed SBPH Ltd to proceed with the 1600mm tray as recommended and using the then current toilet location, but without the end panel which the toilet would have otherwise faced with a clearance of only 540mm. This instruction having been accepted by SBHP Ltd amended the contract.

(22) Dr Flynn instructed so in the understanding that a “level access” shower would result in a flush and unobstructed floor and tray in front of the toilet once the end panel was

removed from the design as Dr Flynn understood a level access shower to be step free and with a flush transition to the floor.

(23) Despite having paid extra sums to repair the same, the floor joists remained uneven, and the installed tray had a lip of 15 - 18mm and was not flush with the floor despite attempts to install it level with the floor. Dr Flynn was not advised of this limitation.

(24) The potential for not achieving level entry, which is a common issue with older houses as this was, should have been considered in the design, to avert the trip hazard that resulted from that raised lip where level access was not achieved as here.

(25) The elevated tray was installed with approximately 540mm clearance to the toilet. The toilet had 150mm side clearance to the wall.

(26) On 19 July 2025, Dr Flynn emailed that: "Sean [Jnr] and Jamie [the fitters employed by SBPH Ltd] finished up last night, and as you told me, their work is excellent". She was referring to tiling workmanship.

(27) On 20 July 2025, a leak was noted from the attic hatch in the bathroom. A trug which had been used by the installers of SBPH Ltd was later found in the attic beneath the leak.

(28) Water staining indicated the leak pre-dated the works.

(29) On 21 July 2025, Dr Flynn complained that the tray was not flush with the floor and created a trip hazard, as it obstructed the natural direct route to and from the toilet, as it in fact did on both counts.

(30) On 22 July 2025, Mr Schreiber met Dr Flynn and undertook to explore solutions.

(31) On 23 July 2025, Mr Schreiber stated the tray was installed as close to the floor as possible without further structural work.

(32) Dr Flynn responded that the bathroom could not remain as it was.

Attempts at resolution

(33) On 24 July 2025, Dr Flynn reiterated that the bathroom was “frankly dangerous”.

(34) Mr Schreiber indicated that any changes would require major works.

(35) Dr Flynn proposed removal of the floor and installation of a shorter tray or wet room tray former.

(36) Mr Shreiber advised that structural limitations prevented installation of a wet room tray former, despite having earlier quoted for the same, and that removal of the tray risked further damage.

(37) On 25 July 2025, Mr Brown stated that Dr Flynn should have checked measurements and he refused to bear the costs of further works. Mr Brown indicated that any works could not be done until the end of the year and suggested that Dr Flynn employ another contractor if she could find one.

(38) On 28 July 2025, JW Wishart, plumbers, were instructed by Dr Flynn.

(39) On 5 August 2025, Dr Flynn formally wrote and complained of inadequate sanitaryware clearance and the “dangerous lip”. She also raised concerns regarding mismatching fittings and the roof leak.

(40) On 11 August 2025, Mr Brown requested further information before responding.

Dr Flynn provided him with an outline of proposed remedial works to replace the tray.

(41) Mr Brown asserted that payment was due by Dr Flynn and referred to the Consumer Rights Act 2015.

(42) Dr Flynn stated that she considered that SBPH Ltd had relinquished its right to repair when they had refused to carry out repairs after being previously asked to do so.

(43) Dr Flynn made a further interim payment of £10,000 pending resolution.

(44) Mr Brown maintained that the works complied with the agreed specification and sought payment of the remaining £6,471.24.

(45) Dr Flynn applied a “notional 20% profit margin” reduction and calculated £3,446.39 as payable and paid this. She thereby withheld £3,024.75.

(46) SBPH Ltd is a member of The Scottish and Northern Ireland Plumbing Employers’ Federation (“SNIPEF”) who run a conciliation scheme for members. Dr Flynn referred the matter to SNIPEF.

(47) SNIPEF concluded the installation was acceptable and recommended payment but did not specifically address the contractual failure to achieve level access and the resulting trip hazard.

(48) A decorator doing works at Dr Flynn’s house later stumbled on the tray lip when using the toilet, exemplifying its being a trip hazard.

(49) In January 2026, JW Wishart, plumbers, removed the tray and installed a 1400mm tray with a reduced lip of only 3mm. This reduced the tray so that it no longer obstructed the natural direct route to and from the toilet and reduced the lip height to be at or about level access thereby providing safer entry to and exit from the shower as originally contracted for. An end panel on the 1400mm tray was not fitted as part of the remedial works.

(50) Dr Flynn paid £3,389.00 for these remedial works, which Mr Brown accepted was reasonable although Mr Brown denied liability therefor.

(51) A report from JW Wishart concluded that the original installation created a “significant trip hazard” as it did.

Findings in fact and law

Statutory framework and contractual terms

(52) There was no dispute that SBPH Ltd is a trader and that Dr Flynn is a consumer in terms of section 2(2) and (3) of the 2015 Act.

(53) There was no dispute that the 2015 Act applied to this consumer mixed contract between the parties for the supply of goods and the provision of design and installation services in terms of section 1(4), 3 and 48 of the 2015 Act.

(54) It was a specific term of the contract that the shower be installed “level access”.

(55) SBPH Ltd was in breach of that specific term of the contract by failing to install a level access shower and thereby creating a significant trip hazard.

(56) It was an implied term of the contract, in terms of section 49(1) of the 2015 Act, that SBPH Ltd perform the design and installation service with reasonable care and skill.

(57) SBPH Ltd did not perform the design and installation service with reasonable care and skill by having failed to install a level access shower, thereby creating a significant trip hazard in its design. A design creating such a hazard where level access was not achieved, as is common in older houses such as this, is not one carried out with reasonable care and skill.

(58) It was an implied term of the contract, in terms of section 15(1) of the 2015 Act that the goods would not conform to the contract if -

- (a) installation of the goods forms part of the contract as it did,
- (b) the goods were installed by the trader as they were, and
- (c) the goods were installed incorrectly.

(59) The tray was not installed correctly and in accordance with the agreed specification of level access and thereby creating a trip hazard. Accordingly, in terms of section 15(1) of the 2015 Act, the goods also did not conform to the contract.

(60) In this mixed contract for goods and services, Dr Flynn has therefore established several breaches of contract and is entitled to a price reduction for breach of contract in respect of the resultant loss in terms of sections 15, 19(4)(b), 24, 49, 54(3)(b) or (7)(a) of the 2015 Act, and thereby to reduce from the sums claimed that loss.

(61) Dr Flynn having paid JW Wishart the reasonable sum of £3,389.00 for these remedial works, is entitled to withhold the claimed sum of £3,024.75 as a price reduction, as it is less than Dr Flynn's loss of £3,389.00.

Therefore

(62) Dismisses the claim and finds no expenses due to or by either party.

NOTE

Evidence

Background and formation of design instructions

[1] Mr Brown, Mr Shreiber and Dr Flynn gave evidence and referred to various productions including email correspondence, the JW Wishart plumber's report and photographs.

[2] Mr Brown is the sole director of SBPH Ltd. He explained that Mr Schreiber is employed as a showroom manager whose remit included bathroom design.

[3] Mr Schreiber gave evidence that he held initial consultations with Dr Flynn. They originally discussed a wet room of approximately 3 metres by 2.7 metres, which he considered a reasonable size.

[4] Mr Schreiber initially designed the bathroom with the toilet on a different wall from its eventual position. In that design there would have been no issue with frontal or side clearances.

[5] Dr Flynn wanted the toilet location changed so that it remained in the same location as the existing toilet, and so that the sink, bidet and toilet be “all in a row”. Mr Schreiber altered the design accordingly.

[6] Dr Flynn accepted that it was at her insistence that the original design was changed, stating “yes, I like them in a line”.

Choice of tray size and design rationale

[7] Mr Schreiber recommended a 1600mm tray as this would provide a larger showering area, better containment of water, and allow for installation of an end panel due to a structural beam being at 1400mm along that wall preventing an fixed height end panel at that location.

[8] A glass panel was to be fitted along part of the side and at the end of the 1600mm tray to prevent water escaping.

[9] Dr Flynn stated that she did not specifically request a 1600mm tray but accepted that it had been recommended and that she accepted that recommendation.

[10] Dr Flynn ultimately accepted that she had contracted for a 1600mm tray and received that.

Clearance issues (toilet position and spatial layout)

[11] Mr Brown explained that the revised layout resulted in toilet frontal clearance of approximately 540mm and side wall clearance of approximately 150mm.

[12] While 600mm was recommended in the trade this was not prescribed and often shorter distances are used in designs. Mr Schreiber considered this acceptable, stating that 500 - 600mm frontal clearance is normally acceptable.

[13] Mr Shreiber stated he had installed such layouts over many years without complaint. He also stated that a 150mm side clearance was normal and reflected the original toilet location.

[14] Dr Flynn considered these clearances to be inadequate and not normal practice, referring to guidance, without reference to any lodged productions, suggesting that greater frontal toilet clearances of at least 600mm were utilised by other bathroom companies.

[15] Both parties agreed that these clearances were physically demonstrated using floor markings and a crate for the toilet location prior to installation.

[16] Dr Flynn tested the clearances by pretending to sit on the crate reading a newspaper.

Discussion on 10 July 2025 - opportunity to change design

[17] Mr Brown stated that the issues with clearance were fully discussed with Dr Flynn on 10 July 2025, prior to installation.

[18] Mr Schreiber confirmed that alternative options, including a 1400mm tray, were discussed. It was discussed that a 1400mm tray could be installed, although concerns were raised by the fitters of SBPH Ltd regarding the beam preventing the fitting of an end panel at 1400mm without further works.

[19] Dr Flynn accepted that she instructed SBPH Ltd to proceed with the 1600mm tray and to remove the end panel from the design but stated that this was under pressure and based on what now appears to be inaccurate information that there would be a delay in supply of a 1400mm tray.

[20] Dr Flynn stated that she was told that a 1400mm tray was unavailable for at least a week, which influenced her decision. Mr Brown produced confirmation that in fact a 1400mm tray was likely to have been available on the next day from the suppliers of SBPH Ltd.

Meaning and expectation of “level access”

[21] Mr Brown stated that, in his opinion, a low-profile tray with a lip of up to 40mm could still be considered “level access”.

[22] Mr Schreiber gave similar evidence, stating that a tray lip of 18mm was consistent with a level access installation.

[23] Dr Flynn, as a medical doctor, understood “level access” to mean a step free shower with a flush transition to the floor as is provided for the elderly or less physically able.

Installation and physical constraints (joists/tray height)

[24] The installers attempted to achieve a level installation but due to uneven joists the tray lip remained between 15 - 18mm above the floor.

[25] Mr Schreiber stated that such issues and there being a raised lip were normal in older properties and reflected the need to keep the tray level. He did not accept that this “normal” possibility should have been considered in his design to avert a trip hazard being created should level access not be achieved.

[26] Dr Flynn believed this should have been thought of by Mr Shreiber in the design if it was so normal an occurrence.

[27] Mr Brown opined that achieving a fully recessed tray would have required substantial further structural work.

[28] Mr Schreiber later attributed the inability to achieve level access to a deformity of the floor joists, stating that the tray was “as close to the floor as they could get”.

Awareness and emergence of the trip hazard

[29] Dr Flynn first became aware of the trip hazard issue after using the toilet and discovering the tray was not step free and flush with the floor. She described the raised lip as being in the natural direct route to and from the toilet and creating a trip hazard.

[30] A painter later stumbled after stepping back from the toilet, catching his foot on the raised lip which was immediately behind him.

[31] Mr Schreiber accepted that a raised lip could present a risk if a person was not paying attention.

[32] Mr Brown accepted that a person could trip if not looking where they were going.

Remedial discussions and refusal to undertake works

[33] Mr Brown stated that options such as cutting the tray or raising floor levels with tiles were considered but, as the same would not look correct and the floor was so uneven respectively, rejected.

[34] Mr Brown indicated to Dr Flynn that remedial works would be major, would not be carried out at the expense of SBPH Ltd, and could not be prioritised. Mr Brown confirmed that he had not been prepared to carry out remedial works without further cost to Dr Flynn.

[35] Dr Flynn stated that the response of SBPH Ltd was not accommodating and that she was told to seek another contractor if she could find one, which she did.

Remedial works by JW Wishart

[36] Dr Flynn instructed plumbers JW Wishart to carry out remedial works to replace the tray with a shorter one of 1400mm and to reduce the height of the tray lip.

[37] These remedial works reduced the tray length to 1400mm and lowered the lip to only 3mm. This increased the toilet frontal clearance to 740mm and left the same obstacle free, essentially removing the trip hazard for persons using the natural direct route to the toilet. It also reduced the lip height to be at or about level access thereby providing safer entry to and exit from the shower.

[38] Mr Brown accepted that the cost of £3,389.00 was reasonable for the works done, but disputed liability for such costs.

Other issues

(a) Fittings

[39] The fittings installed were those selected by Dr Flynn, although from different product ranges of the same manufacturer.

[40] Dr Flynn indicated she had assumed matching fittings would be supplied but ultimately accepted she had agreed to them.

(b) *Roof leak*

[41] Mr Brown accepted that pipework had been removed in the attic but denied causing the leak. He attributed the water staining to a pre-existing issue as in his professional opinion the staining was historic.

[42] Dr Flynn inferred the leak was caused by the works carried out simply from the presence of the trug used by SBPH Ltd and not having been told about it.

Discussion

[43] All witnesses appeared credible and sought to give their evidence to the best of their recollection. Where there were differences in reliability, these have been resolved by reference to inherent probability, consistency with contemporaneous documents, and the surrounding circumstances.

[44] The central issue in the claim is the proper interpretation of “level access” within the parties’ contract, and whether the design provided by Mr Schreiber and the subsequent installation met the standard of reasonable care and skill.

Factual disputes

Structural beam at 1400mm

[45] There was a factual dispute as to whether there was in fact a structural beam at 1400mm along the left wall which prevented the installation of an end panel at that location.

[46] It is inherently improbable that such a feature was mistakenly identified by SBPH Ltd. There was no supporting evidence from any tradesperson that there was no beam there. The decision not to fit an end panel at 1400mm as part of the remedial works

provides some corroboration for the presence of a beam. In any event, the presence or absence of any beam is immaterial given that the parties agreed to proceed without an end panel.

Timing for replacement 1400mm tray

[47] While it was likely that a 1400mm tray could have been sourced promptly, I accept Dr Flynn's evidence that she was told by Mr Shreiber, having checked his phone, that there would be at least a week's delay. That account is consistent with the subsequent discussion regarding the removal of the end panel and the beam issue at 1400mm. Had immediate availability been made clear, those discussions would likely not have taken place.

Moving the toilet

[48] The denied suggestion by Dr Flynn that she was told that moving the toilet "couldn't be done" is properly understood as meaning that it could not be done without additional cost. On the evidence of Mr Brown, relocation was plainly possible but would have required further work. This issue is of limited relevance to the core issue of the contractual requirement, and factual requirement for safety if utilising the proposed design, for the shower to be installed level access.

Post-action defects

[49] Some issues identified in the report from JW Wishart (which it was suggested by me at the case management discussion Dr Flynn may want to obtain) such as a missing shower trap, a tiling issue, and a kinked bidet pipe were not part of the formal response by Dr Flynn

as the report came later. They had only relatively recently been intimated in that report and were not the subject of any amendment to the response form.

[50] Also, no evidence of any loss to Dr Flynn was provided in respect of these matters.

They are at best collateral to the central issues to be determined and are accordingly not relevant to the issues properly before the court.

Breach of contract

Legal standard - reasonable care and skill

[51] Section 49(1) of the 2015 Act provides that “Every contract to supply a service is to be treated as including a term that the trader must perform the service with reasonable care and skill”.

[52] While *Hunter v Hanley* 1955 SC 200, at 205 provides the leading formulation in professional contexts, the same underlying standard can be applied here. The question is whether SBPH Ltd departed from normal practice in a way no reasonably competent tradesperson would have.

[53] No formal industry standards or guidance were produced. I had expressed some concern as to the absence of this. However, as simple procedure is designed to encourage access to justice without substantial costs, I am satisfied that the matter can properly be determined on the evidence led from the parties including the report from JW Wishart, even if only hearsay being spoken to only by Dr Flynn, and by the application of a modicum of ordinary common sense, namely whether in the circumstances the service supplied had been supplied with reasonable care and skill.

No matching fittings

[54] This was a comparatively minor issue. Dr Flynn agreed to the fittings supplied.

There was no evidence that the combination chosen was inappropriate or such that a reasonably competent designer required to intervene with contrary advice. Again, there was no evidence of loss. Accordingly, no breach of contract is proved in this respect.

Leaking roof

[55] Dr Flynn inferred that SBPH Ltd having caused the roof leak based on the presence of their installer's trug and their presumed failure to advise her.

[56] However, the photographic evidence of water staining and Mr Brown's evidence as an experienced plumber supports a conclusion that the leak pre-dated the works.

[57] Dr Flynn's inference is speculative. In any event, again, no vouching or quantification of loss was provided in this respect. Accordingly, no breach of contract is established in this respect.

Frontal and side toilet clearances

[58] On amendment of the design at Dr Flynn's request, SBPH Ltd ought, in the exercise of reasonable care and skill, to have explained that the revised layout would result in reduced clearances below that normally suggested in trade guidance.

[59] However, that omission became immaterial. Prior to installation, Dr Flynn identified the issue, tested the proposed layout, and agreed to proceed on a revised basis.

[60] There was no persuasive evidence that installations with such reduced clearances fall below the standard of reasonable care and skill if knowingly instructed, as here. The unchallenged evidence of Mr Brown and Mr Schreiber was that such configurations are not

uncommon although below guidance figures available. In these circumstances, no breach of contract is established in respect of the amended contract in this respect. Even where Dr Flynn was told that the sourcing of a 1400mm tray would delay matters for a week, she had the choice to do so and did not.

Level access

[61] It was not in dispute that it was a term of the contract that the shower be installed with “level access”.

[62] The parties differed as to the meaning of that term. SBPH Ltd treated this as including a low-profile tray with a lip of up to 40mm, whereas Dr Flynn understood it to mean a shower which is step free and with a flush transition to the floor.

[63] In construing the contractual term “level access” in the absence of any definition in the parties’ contract, I have proceeded in accordance with the well-established principles of contractual interpretation in Scots law. The meaning of contractual language falls to be determined objectively (*Wood v Capita Insurance Services Ltd* [2017] UKSC 24 at [10] - [13]).

[64] Applying that approach, and giving the words their ordinary and natural meaning, “level access” connotes a shower that is installed step free and with a flush transition to the floor. As a matter of simple logic, a step of up to, in this instance, 18mm between the level of the shower tray and the floor is not level.

[65] That conclusion is reinforced, in the present consumer context, by section 69(1) of the 2015 Act, which requires any ambiguity to be resolved in favour of the consumer.

Dr Flynn’s interpretation is therefore to be preferred.

[66] The installed tray had a lip of between 15 - 18mm. On the evidence, this created a significant trip hazard in the natural direct route to and from the toilet. This only became apparent upon use by Dr Flynn, which explains the timing of the complaint.

[67] SBPH Ltd accepted that full level access had not been achieved and in email correspondence attributed this to structural limitations. That does not alter their contractual obligation to provide level access or, at least, to have anticipated this “normal” issue in old houses and advise of a design in this ample sized bathroom where there would not be the patent trip hazard in the natural direct route to and from the toilet. It appears that to all intents level access and a safe design could be achieved as JW Wishart essentially achieved this by the remedial works.

[68] While there was evidence that low-profile trays are not uncommon, I do not consider that such commonality excuses the creation of a foreseeable and significant trip hazard in the natural direct route of use, particularly where the contract expressly required “level access”. Even in the absence of formal standards, that conclusion follows from the evidence led and from ordinary common sense.

[69] Accordingly, SBPH Ltd failed both to meet the express contractual requirements of level access and to perform the design service with reasonable care and skill.

[70] Section 15(1) of the 2015 Act also provides in a mixed contract such as this that:

“Goods do not conform to a contract to supply goods if -

- (a) installation of the goods forms part of the contract,
- (b) the goods are installed by the trader or under the trader's responsibility, and
- (c) the goods are installed incorrectly.”

[71] Installation formed part of the contract, was carried out by SBPH Ltd, and was not carried out correctly in accordance with the agreed specification of “level access”.

Accordingly, in terms of section 15(1) of the 2015 Act, the goods also did not conform to the contract.

[72] In this mixed contract, Dr Flynn has therefore established several breaches of contract and is entitled to a price reduction for these breaches of contract to reflect the resultant loss in terms of sections 15, 19(4)(b), 24, 49, 54(3)(b) or (7)(a) of the 2015 Act, and thereby to reduce from the sums claimed that loss.

Quantum

[73] As regards remedy, it is well established that where works are defective, the appropriate measure of loss is ordinarily the reasonable “cost of cure”, that is rectifying the defect, provided that such works are proportionate and reasonable (*Ruxley Electronics and Construction Ltd v Forsyth* [1996] AC 344).

[74] Mr Brown asserted, as set out in correspondence, that Dr Flynn’s had no right to a price reduction from the sum claimed by SBPH Ltd. However, in these circumstances Dr Flynn was entitled to a price reduction from the contract price representing the reasonable cost of remedying contractual defects, even where the claim was initially illiquid or unascertained.

[75] This is because the claim arises out of the same contract as the debt which is claimed, as:

“the enforcement of immediate payment would result in enabling the pursuer to obtain satisfaction of [their] claim under the contract when [they have] not implemented the obligation of which that claim is the counterpart” (*Bank of East Asia Ltd v Scottish Enterprise* 1997 SLT 1213 at 1215).

[76] In the present case, the cost of remedial works carried out by JW Wishart (£3,389.00) was accepted by Mr Brown as reasonable and arose directly from the defender's breaches of contract.

[77] In circumstances where the SBPH Ltd declined to undertake remedial work within a reasonable time and without cost, as here, Dr Flynn was entitled to instruct an alternative contractor and recover that expense as a price reduction, once ascertained. SBPH Ltd was initially afforded an opportunity to remedy the defects but declined to do so within a reasonable time and without cost to Dr Flynn.

[78] SBPH Ltd was therefore in breach of the requirements of section 55(2)(a) of the 2015 Act to perform the remedial works carried out by JW Wishart within a reasonable time and without cost to Dr Flynn.

[79] Dr Flynn's earlier notional deduction of 20% was arbitrary and unsupported by evidence or legal principle. The appropriate measure of a price reduction is the reasonable cost of rectification of the breaches of the parties' contract, namely £3,389.00. This exceeds the sum claimed and accordingly essentially extinguishes the claim.

Expenses and disposal

[80] Dr Flynn indicated that she does not seek expenses. Accordingly, no award of expenses is made.