



SHERIFF APPEAL COURT

**[2026] SAC (Civ) 13
GLW-CA74-24**

Sheriff Principal A Y Anwar KC
Sheriff Principal G A Wade KC
Appeal Sheriff P A Hughes

OPINION OF THE COURT

delivered by APPEAL SHERIFF PATRICK HUGHES

in appeal in the cause

4U2 LIMITED

Pursuer and Appellant

against

GLASGOW CITY COUNCIL

Defender and Respondent

**Pursuer and Appellant: Tosh; Mellicks
Defender and Respondent: G R Middleton; Harper Macleod LLP**

18 February 2026

Introduction

[1] This is the judgment of the court to which all members have contributed.

[2] During the Covid-19 pandemic, the Scottish Government introduced the Small Business Grant Fund, which was administered by local authorities including the defender and respondent Glasgow City Council (hereafter “the council”). The pursuer and appellant, 4U2 Limited (hereafter “4U2”) applied to the council for a grant from the fund. Its application was unsuccessful. 4U2 attributes its failure to receive a grant to a negligent

misrepresentation made to it by the council, in breach of a duty upon the council to take reasonable care to ensure the accuracy of any statement made by it. 4U2 raised an action against the council for damages in the amount of £39,062.50. In February 2025, that action was dismissed by the sheriff at Glasgow, on the basis that 4U2's pleadings were irrelevant and lacking in specification. His decision is now the subject of this appeal.

Background

[3] In March 2020, one of the measures introduced by the Scottish Government to assist small businesses during the Covid-19 pandemic was the Small Business Grant Fund.

Eligibility for a grant from the fund was linked to the non-domestic rates system, so that funding could be distributed as quickly as possible. Local authorities within Scotland processed applications for grants from the fund. Eligibility for a grant from the fund for a business which leased self-catering accommodation was determined by two criteria: (i) that the business the applicant (or ratepayer) undertook was the primary source of income for the applicant, being one-third or more; and (ii) that accommodation was let out by the applicant for 140 days or more in the financial year 2019 – 2020. The fund closed to new applicants in July 2020.

[4] One applicant was 4U2 Limited, a company which was incorporated on 11 April 2016. For its first 3 years of trading, namely up to 30 April 2019, it lodged dormant company accounts with the Register of Companies. 4U2 carries on business as a provider of serviced accommodation in Glasgow. It made an application to the council for a grant from the fund on 17 June 2020. The council began processing 4U2's application. As 4U2 leased self-

catering accommodation, the council applied the eligibility criteria. It responded to 4U2's application on 17 June 2020 as follows:

"...applicants must provide evidence that the self catering accommodation is the primary source of income for the applicant.

No such evidence has been submit [sic] with your application. We would suggest your annual tax return from HMRC. Once you have the pertinent information please copy and return..."

[5] Less than an hour later the director of 4U2, Mr McFadden, responded to the council:

"...I would appreciate if you could provide additional clarity with regards [sic] your request; 'annual Tax return from HMRC'?"

I may well be misunderstanding this request, however, can you confirm you are referring to Company Tax Return and 'proof' re primary source of income for Company? The supporting Documentation provided from Pillow Partners clarifies with respect to the sole purpose/use of each property and as such primary/sole income for each unit."

[6] The letter from Pillow Partners which had been provided confirmed that they managed five properties on behalf of 4U2, and that these were available "365 days a year solely as serviced accommodations with bookings in excess of 140 days during the financial year".

[7] On 19 June 2020, the council responded that 4U2 required to provide proof that self-catering accommodation was its primary source of income. The council was of the view that the evidence submitted to it to date by 4U2, namely, the letter from Pillow Partners, was insufficient to satisfy that criterion. For that reason, it suggested that the director of 4U2 provide his annual tax return from HMRC.

[8] Mr McFadden responded that he considered the letter from Pillow Partners was sufficient evidence to prove the primary income of 4U2. Subsequently, he sent a further email asking if the application had been submitted.

[9] That led to an email response from the council on 30 June 2020. Its response forms one part of the foundation of 4U2's case of negligent misrepresentation. The email referred to the council's previous responses to 4U2 on 17 and 19 June 2020. It then stated:

"Please provide the most up to date information that you can with regard [to] the income of the applicant.

Statements from Pillow Partners with regard to property availability do not assist in determining if this is the primary source of income for the applicant.

To confirm, we have an application for a Covid Business Grant from you, we are unable to proceed as we do not have the pertinent and relevant information from yourself.

Once we have the pertinent and relevant information from yourself we will be able to make a determination with regard to the grant application..."

[10] There appears to have been no further correspondence between the parties until 2023, at which point a letter was sent from 4U2's solicitor to the council. In its response of 14 March 2023, the latter stated the following:

"Mr McFadden's application for grant funding was refused because it did not meet the grant eligibility criteria set out by the Scottish Government. One of the eligibility criteria was a requirement that a business should be actively trading. After having considered Mr McFadden's application and carried out due diligence, we concluded that 4U2 Ltd was not actively trading and therefore declined the application."

[11] This action was warranted on 23 October 2023. 4U2 aver that the email of 30 June 2020 amounted to a refusal of its application and that the reason given for the refusal in that email was a negligent misrepresentation. It does so based on the response the council provided in its letter of 14 March 2023. 4U2 allege that the email of 30 June 2020 stated that the reason given for the refusal was a failure to provide sufficient evidence of self-catering accommodation being the primary source of income. By contrast, it alleges that the letter of 14 March 2023 stated the true reason for the refusal: a failure to provide evidence that it had actively been trading. 4U2 contend that, had the true reason been provided on 30 June 2020,

it would have been able to provide the council with this information. That would then have led to the application being accepted and a payment being issued from the fund to 4U2, prior to its closure in July 2020.

[12] At debate the council challenged the relevancy and specification of 4U2's averments. In particular, the council argued that 4U2 did not offer to prove what, if anything, was factually incorrect in its correspondence of 17 June, 19 June and 30 June 2020. The content of those emails could not amount to a misrepresentation as to why 4U2's application was refused.

[13] Moreover, the council contended that 4U2 had not pled a relevant case of negligent misrepresentation. The council contended no duty of care arose. Even if it did, 4U2 had not averred that: (i) the council owed 4U2 a duty of care in respect of the loss which 4U2 claimed to have suffered as a result of the negligent misrepresentation; (ii) the council had breached that duty of care; and (iii) as a result of that breach, 4U2 had suffered loss and damage.

The sheriff's judgment

[14] The sheriff addressed the question of whether a duty of care was owed first, before considering whether the email of 30 June 2020 contained a false statement of the reason that 4U2's application had been refused.

[15] 4U2 averred at article 4 of condescendence that the following duty of care was owed by the council:

“...the defenders owed the pursuers a duty to ensure, or at least to take reasonable care to ensure, the accuracy of statements made by the defenders to the pursuers explaining the reasons given for the refusal of their application.”

[16] The sheriff considered that duty of care to be novel, under reference to *Robinson v Chief Constable of West Yorkshire Police* [2018] UKSC 4; [2018] AC 736 and *Commodity Solution Services Ltd v First Scottish Searching Services Ltd* [2019] SAC (Civ) 4; 2019 SC (SAC) 41. The sheriff next sought to determine whether there were any analogous duties of care to that which 4U2 had averred was owed. 4U2 placed reliance upon: *Ministry of Housing and Local Government v Sharp* [1970] 2 QB 223; *Davy v Spelthorne BC* [1984] AC 262; *Welton v North Cornwall DC* [1997] 1 WLR 570; and *Wokingham BC v Arshad* [2022] EWHC 2419 (KB); [2023] PIQR P5. However, the sheriff did not consider any of those authorities to be analogous to the case averred by 4U2. As such, the sheriff did not consider that the duty of care averred was an incremental development in the common law.

[17] The sheriff also considered that the fact that 4U2 had the ability to seek a judicial review of the council's determination in 2020 was a relevant factor in determining whether a duty of care ought to be owed by the council. The sheriff held that to impose a duty of care upon local authorities to avoid causing economic loss when issuing the reasons for their decisions would place an undue burden upon them.

[18] In any event, the sheriff also considered that there was insufficient proximity for a duty of care to be established, under reference to *Playboy Club London Ltd v Banca Nazionale del Lavoro SpA* [2018] UKSC 43; [2018] 1 WLR 4041.

[19] Even if the duty of care averred by 4U2 was owed by the council, the sheriff held that 4U2 had failed to plead a relevant claim. To plead a relevant claim for negligent misrepresentation, a pursuer is required to aver that there has been a misrepresentation by the defender to the pursuer. The misrepresentation relied upon by 4U2 was the email of 30 June 2020; however, the sheriff did not consider that that email could be read as being a refusal of their application. In plain terms, the email was a request for further information

to be provided from 4U2. As such, the sheriff considered that 4U2 would not be able to establish breach of a duty of care, even if one were owed, because there had been no refusal of 4U2's application on 30 June 2020 and, in turn, no reasoning given for any such refusal. As a result, the sheriff dismissed the action.

The grounds of appeal

[20] Two grounds of appeal were advanced. Put shortly, the first was that the sheriff had erred in his approach to the question of whether a duty of care was owed by the council to 4U2. The second was that the sheriff erred in law in holding that 4U2 had failed to make relevant averments of breach of a duty of care owed by the council.

Submissions for the appellant

[21] The duty of care owed by the council was not a novel duty of care; a duty of care to avoid causing economic loss by negligent misrepresentation would arise where there had been an assumption of responsibility and reliance thereon: *Commodity* [33]. More specifically, a duty of care will be owed where four elements are present in the relationship between the representor and representee: *Hedley Byrne & Co Ltd v Heller & Partners Ltd* [1964] AC 465; *James McNaughton Paper Group Ltd v Hicks Anderson & Co* [1991] 2 QB 113, 122B-127B; and *Royal Bank of Scotland v Bannerman Johnstone Maclay* [2005] CSIH 39; 2005 1 SC 437

[22] Those four elements were:

- i. the representation is required for a purpose, whether particularly specified or generally described, which is made known, actually or inferentially, to the representor at the time that the representation is made.

- ii. the representor knows, actually or inferentially, that the representation will be communicated to the representee, specifically or as a member of an ascertainable class, for use by the representee for that purpose.
- iii. the representor knows, either actually or inferentially, that the representation so communicated is likely to be acted upon by the representee for that purpose without independent inquiry; and
- iv. the representee has relied upon the representation to his detriment.

4U2 submitted all four conditions had been averred within its pleadings and that its case was relevant for enquiry at proof.

[23] Alternatively, if 4U2's averred duty of care was novel, it was submitted that it was appropriate for that duty of care to be recognised by the court. Reference was made to *Sharp, Davy, Welton* and *Arshad*. The fact that the duty of care was said to be owed by a public authority made no difference on the facts of this case. A public authority could owe a common law duty of care in circumstances where the principles applicable to private individuals or bodies would impose such a duty, unless such a duty of care would be inconsistent with, and therefore excluded by, the legislation from which the public authority's powers or duties were derived: *N v Poole BC* [2019] UKSC 25; [2020] AC 780 [64] – [65].

[24] As to the suggestion that 4U2 would have had a remedy in judicial review in 2020, while it would have been possible to lodge a judicial review, it would not have been successful. The decision-maker, in this instance the council, had identified the correct test to be applied and had determined that it had not been met. No judicial review would have been able to investigate the merits of that decision. The failure to lodge a judicial review was not a bar to an action of negligent misrepresentation.

[25] It would be fair, just and reasonable to impose the duty of care averred upon the council. To impose a duty of care upon a local authority to avoid causing a party economic loss when issuing reasons for their decisions would not create an undue burden. Local authorities ought to owe a duty of care to explain their reasons accurately. Further, imposing such a duty of care would provide suitable protection for the public.

[26] As to the contention that 4U2 had failed to aver a relevant case of negligent misrepresentation, the email of 30 June 2020 amounted to a refusal of 4U2's application. The council had, itself, stated it had refused 4U2's application in its letter of 14 March 2023. Whether that was characterised as a refusal of the application or a refusal to proceed was irrelevant; what mattered was the reason underlying the refusal, as that was the negligent misrepresentation. A relevant case of negligent misrepresentation had been averred.

Submissions for the respondent

[27] The correct approach in determining whether a duty of care exists was stated in *Robinson and Commodity*. The sheriff had correctly applied the principles in those authorities.

[28] The duty of care averred by 4U2 did not fall within the scope of *Hedley Byrne*. In *Hedley Byrne* a representation was given by Heller to Hedley Byrne about the creditworthiness of a third party which Hedley Byrne relied upon. The position was different here. As such, the sheriff was correct to identify a novel duty of care was being proposed.

[29] The sheriff was correct to hold that it was not appropriate to impose a duty of care in the novel circumstances of this case. Firstly, if a court proposes to extend the duty of care it must do so incrementally and by analogy with existing cases. Secondly, if a court does

extend the duty of care it is necessary that the coherence of the law remains unaffected.

Thirdly, the court ought to be satisfied that it is fair, just and reasonable to do so: *Robinson* [29].

[30] With respect to incremental development, none of the four cases cited by 4U2 were analogous to the proposed duty of care it submitted was owed by the council. *Sharp* was not a case concerning negligent misrepresentation. *Davy* was primarily an authority concerning English civil procedure. Moreover, care had to be taken given *Davy* pre-dated the decision of the House of Lords in *Murphy v Brentwood DC* [1991] 1 AC 398. As for *Welton* and *Arshad*, in both of those cases advice had been tendered by the defender which the pursuer had then relied upon to enter a transaction. In this action, 4U2 had taken no action following receipt of the email of 30 June 2020. The sheriff was correct to conclude that none of those authorities were analogous to the duty of care 4U2 was proposing.

[31] The proposed duty of care would also undermine the coherence of the law. At the time when a misrepresentation is made, a pursuer ought to have a transaction in contemplation. In *Hedley Byrne*, it was the granting of a loan; in *Caparo v Dickman* [1990] 2 AC 605 it was a decision to invest; in *McNaughton* a decision to invest in a company; and in *Bannerman* a decision on whether to extend credit to a company.

[32] In considering whether it was fair, just and reasonable to impose a duty of care, one factor to consider was whether a pursuer, such as 4U2, had an alternative remedy. In *Sharp* and *Commodity* it was notable that, had the court not imposed a duty of care in either of those cases, there would have been no other recourse available to the pursuer. In this action, both parties accept that judicial review would have been available to 4U2. If the court was to impose a duty of care here, counsel submitted that any right to judicial review by a party in the position of 4U2 would be lost. It is not competent to seek a common law remedy

where either an alternative statutory or non-statutory remedy was available and had not been resorted to: *McCue v Glasgow City Council* [2014] CSOH 124; 2014 SLT 891 [60].

[33] Even if a duty of care was owed, the action remained irrelevant, as there were no averments to establish a breach of any such duty. 4U2 offered to prove that the council had made a negligent misrepresentation. For a pursuer to succeed with a case of negligent misrepresentation, the pursuer had to show that a defender had made a false statement. In the context of this action, 4U2 had to aver and prove that the council gave reasons for the refusal of the grant and that those reasons were false. The difficulty for 4U2, however, was that the email of 30 June 2020 did not contain a false statement. There was no refusal of 4U2's application; the email requested further information. Even if the email of 30 June 2020 and the letter of 14 March 2023 were both true, there was no basis for 4U2 to allege that a false statement had been made on 30 June 2020. It was entirely possible that the statements made by the council on 30 June 2020 and 14 March 2023 were both true; a decision on the application could have been taken after 30 June 2020. However, 4U2 had imperilled its entire case on the basis that a false statement was made to it on 30 June 2020. It could not prove that a false statement was made on that date; the action fell to be dismissed as a result.

Decision

[34] Before there can be any question of a negligent misrepresentation having been made, there must have been a misrepresentation in the first place. The terms of that misrepresentation and the reasons why it is said to be false must be averred with sufficient specification. Unless there has been a false statement the court need not concern itself with whether the statement was made negligently and whether any duty of care arose between

the parties. It is convenient to deal with the second ground of appeal first. The gravamen of 4U2's complaint is that in its email of 30 June 2020, the council "refused" its application for grant assistance for different reasons than those intimated by the council in its correspondence of 14 March 2023. Specifically, 4U2 avers that:

"In the June 2020 representations, [the council] represented that [4U2's] application had been refused for want of evidence that self-catering accommodation was the primary source of income for [4U2]. In the March 2023 representations, [the council] represented that [4U2's] application had, in fact, been refused for want of evidence that [4U2] were actively trading."

It is further averred that:

"on the hypothesis that the true reason that [4U2's] application was refused was that given in March 2023, the reason given in June 2020 was false."

[35] 4U2 has imperilled its case upon there having been a refusal of its application in June 2020. The breach of duty which it offers to prove is averred in the following terms:

"...[the council] owed [4U2] a duty to ensure, or at least to take reasonable care to ensure, the accuracy of statements made by [it] to [4U2] explaining the *reasons given for the refusal* of their application" (emphasis added).

4U2's averments of reliance upon the alleged misrepresentation are similarly founded upon an interpretation of the June 2020 email as a refusal of its application. It is averred that:

"...[the council], as the decision-makers, knew or ought to have known that the reasons given by them for the refusal of [4U2's] application would be relied upon by [4U2]. In particular, [the council] knew or ought to have known that the reasons given by them for the refusal of [4U2's] application would be relied upon by [4U2] to determine whether to provide further evidence in support of their application or a further or renewed application or, alternatively, to decide whether to challenge [the council's] decision by complaint, judicial review or otherwise."

[36] The difficulty for 4U2, as the sheriff correctly identified, is that these averments are not supported by relevant factual averments; the email of 30 June 2020 cannot on any ordinary or reasonable reading, be construed as a refusal of 4U2's application. The council expressly stated that at that time, no decision had been made on the application: "Once we

have the pertinent and relevant information from yourself we will be able to make a determination with regard to the grant application.”

[37] The email of 30 June 2020 was a request for further information. In the event, 4U2 elected not to provide any further information; nor did it challenge the request for further information on the basis that it understood it to be a refusal of the application, at the time. The sheriff correctly rejected the submissions made on behalf of 4U2 that there was no difference between a refusal of an application and a failure to progress it. 4U2 offers to prove the former and not the latter. It has failed to relevantly aver a breach of the averred duty. The sheriff was correct to dismiss the action as irrelevant.

[38] Furthermore, 4U2 do not specifically aver that the content of the email of 30 June 2020 was false or was a misrepresentation of the factual situation as it existed. At the highest the court is asked to draw an inference that if the content of the email of 14 March 2023 was correct what was said in June 2020 must have been false. In our opinion that does not follow. As the council submitted both statements could be true. 4U2 must aver that what was said in June 2020 was false and why that was so. For these reasons we refuse the second ground of appeal.

[39] Accordingly, the appeal falls to be refused. It is not strictly necessary for us to address the first ground of appeal; however, we heard extensive submissions on it and thus we shall address those submissions.

[40] There is no single test which can be applied to all cases to determine whether a duty of care exists. Instead, the court must first determine whether it is dealing with a novel type of case where established principles do not provide an answer. If the case at hand is not of a novel type, the court should decide it according to established principles and follow existing precedents. If, on the other hand, the case is novel – a situation where the question of

whether a duty of care arises has not previously been decided – the court should consider the closest analogy in any existing law, as well as the reasons for and against imposing liability: *Robinson* [26] – [29], under reference to *Caparo*.

[41] The sheriff was satisfied that this was a novel case, since the appellant was unable to cite any case in which a duty of care had been imposed on a public body to avoid causing economic loss when issuing its decisions for an administrative decision.

[42] We consider that in doing so the sheriff has fallen into error. The court's task, when considering whether it is faced with a novel situation, or one which is capable of being decided simply by following established principles, is first to identify the legally significant features of the case before it, and of previous cases: *Commodity* [30] – [31]. As in that case, the claim here is for pure economic loss arising from a negligent misrepresentation; however, the present case lacks the elements which rendered the situation in *Commodity* novel, namely an argument for a duty of care absent both reliance on a misrepresentation and a relationship between the parties. Without these, the duty of care which the appellant seeks to establish falls within an established category of liability, notwithstanding the fact that no direct precedent can be identified.

[43] That being so, we conclude that the sheriff erred in considering whether it was fair, just and reasonable to impose a duty in the circumstances; however, we agree with his analysis at paras [71] to [87] of his decision and his conclusion that 4U2's averments did not demonstrate a sufficiently proximate relationship between the parties so as to give rise to a duty of care to avoid economic loss for a negligent misstatement.

[44] Generally speaking, pure economic loss cannot be recovered through the law of negligence; however, exceptions to that general rule have been established by the courts through development of a duty of care in particular situations. The appellant here relies

upon the oft-quoted dicta in *Hedley Byrne* which involved reliance by Hedley Byrne & Co upon a statement from Heller & Partner's bankers as to the latter's financial position.

[45] As Lord Oliver of Aylmerton in *Caparo* noted at p 638:

"What can be deduced from the *Hedley Byrne* case... is that the necessary relationship between the maker of a statement or giver of advice ('the adviser') and the recipient who acts in reliance upon it ('the advisee') may typically be held to exist where (1) the advice is required for a purpose, whether particularly specified or generally described, which is made known, either actually or inferentially, to the adviser at the time when the advice is given; (2) the adviser knows, either actually or inferentially, that his advice will be communicated to the advisee, either specifically or as a member of an ascertainable class, in order that it should be used by the advisee for that purpose; (3) it is known either actually or inferentially, that the advice so communicated is likely to be acted upon by the advisee for that purpose without independent inquiry; and (4) it is so acted upon by the advisee to his detriment."

[46] However, Lord Oliver went on to note: "That is not, of course, to suggest that these conditions are either conclusive or exclusive, but merely that the actual decision in the case does not warrant any broader propositions."

[47] 4U2 does not contend that the council assumed any responsibility towards it simply through its administration of the grant scheme, but rather did so in its communication of 30 June 2020. The sheriff characterised this communication, along with others from the council, as "administrative decisions", which he distinguished from "statutory functions" of the kind performed in *Sharp*. During the hearing of the appeal we sought to clarify with parties whether and how they would distinguish a "statutory" function from an "administrative" one. Counsel for 4U2 submitted that when considering whether a duty of care arose, the significance of the distinction was that, following the decision in *N v Poole BC* at paras [64] – [65], a public authority may owe a duty of care where principles would require that of a private individual, unless such a duty were inconsistent with the legislation from which statutory powers and duties were derived. However, when dealing with an administrative decision, there was no legislation to operate as such a bar.

[48] We accept that the grant scheme operated by the council was not a statutory one (albeit paragraph (5) of the Local Government Finance Circular 08/2020 indicates that the grant funding was “made available through powers conferred by sections 126 and 127 of the Housing Grants Construction and Regeneration Act 1996”). We therefore agree with 4U2’s analysis that there is no legislative provision to operate against inferring a duty of care. However, we do consider that the nature of the scheme bears on the question of voluntary assumption of responsibility; similarly to the exercise of a statutory function, the respondent has not assumed any responsibility simply by operating the scheme. As explained by Lord Reed in *N v Poole BC* at para [65]:

“public authorities do not owe a duty of care at common law merely because they have statutory powers or duties, even if, by exercising their statutory functions, they could prevent a person from suffering harm; [...] public authorities can come under a common law duty to protect from harm in circumstances where the principles applicable to private individuals or bodies would impose such a duty, as for example where the authority has created the source of danger or has assumed a responsibility to protect the claimant from harm, unless the imposition of such a duty would be inconsistent with the relevant legislation.”

[49] In the present case 4U2 claims, first of all, that the requisite proximity of relationship between the council and 4U2 arose from their respective positions as grant fund administrator and grant applicant respectively; and that there was an assumption of responsibility by the council, constituted by a representation being made directly from it to 4U2, (i.e. the e-mail of 30 June 2020) for a known purpose, with the express invitation that 4U2 should rely upon it, which it did.

[50] We consider that the sheriff was entirely correct in concluding that for the necessary proximity to arise, the negligent misrepresentation had to be relied upon in connection with a specific transaction: *Hedley Byrne* at p 529; and *Caparo* at p.621D – F.

[51] Lord Sumption, giving the opinion of the Supreme Court in *Playboy Club London Ltd* at para [10], explained that a defendant's knowledge of the transaction in respect of which the statement is made:

“...is potentially relevant for three purposes: (i) to identify some specific person or group of persons to whom he can be said to assume responsibility; (ii) to demonstrate that the claimant's reliance on the statement will be financially significant; and (iii) to limit the degree of responsibility which the defendant is taken to assume if no financial limit is expressly mentioned.”

[52] In our view, the general relationship between those who administer grant schemes and those who apply to benefit from them is very different from relationships such as solicitor and client; and cannot, of itself, give rise to a duty of care by the former towards the latter. We agree with the sheriff that for a duty of care to arise in a case of negligent misrepresentation, a specific transaction must be in contemplation.

[53] Nor are we persuaded that insofar as a transaction was required, it was constituted either by 4U2's instruction of its solicitor (as argued before the sheriff at first instance) or by the application for a grant itself (as was argued at the hearing before us). The authorities cited show a common theme, where pursuers have been faced with a discretionary transaction, involving significant expenditure or risk of economic loss, and claimed to have acted upon the representations of defenders to their detriment. This has included situations such as seeking advice on a company's financial status before contracting with it (*Hedley Byrne*); relying on advice as to whether to appeal an enforcement notice (*Davy*); relying on an audit when deciding whether to take over a company (*Caparo*; and *McNaughton*); relying on audited accounts when deciding whether to extend financial support to a company (*RBS v Bannerman Johnstone Maclay*); relying on directions to carry out alterations purporting to secure compliance with regulations (*Welton*); and relying on advice in deciding whether to spend money on a vehicle to bring into compliance with taxi standards

(*Wokingham*). *Sharp* and *Commodity* are in a distinct category of cases, involving searches of registries which were conducted so negligently as to destroy protective measures to the detriment of creditors. The searchers could be deemed to have assumed a responsibility to these creditors – as member of a class of creditors, rather than as individuals – to correctly note the existence of their interest on the register. Instructing a solicitor or applying for a grant are not transactions of this kind; no significant expense or risk of loss could arise from either “transaction”.

[54] More generally, we do not accept 4U2’s proposition that there has been an assumption of responsibility by the council by virtue of its e-mail of 30 June 2020. As we have explained, the email of 30 June 2020 was simply a request for further information. It could not, on any ordinary or reasonable reading, be construed as a refusal of 4U2’s application.

[55] Furthermore, the information requested by the council – evidence that self-catering accommodation was the primary source of income for 4U2 – was one of two criteria which required to be satisfied in relation to the first core qualification for eligibility for a grant, as described at para [3] above. The “representation” was therefore no more than a reiteration of one of the scheme’s requirements. 4U2 does not aver that it did in fact satisfy that requirement, nor that it could have vouched that to be the case. Even on 4U2’s own averments the council could not award the grant in the absence of evidence of that requirement. Two criteria had to be met; if they were, the grant would be made, otherwise it would not. The criteria were straightforward; whether they were satisfied, and how that satisfaction could be evidenced, were matters wholly within the knowledge of the applicants. The absence of pleadings on this issue is noteworthy.

[56] Accordingly, had we required to do so, we would also have refused the first ground of appeal.

Disposal

[57] We refuse the appeal and adhere to the sheriff's interlocutors of 14 and 26 February 2025. It was a matter of agreement that expenses should follow success; consequently, we find the appellant liable to the respondent in the expenses of the appeal and sanction the employment of junior counsel for the purposes of the appeal.