

DRAFT LIST OF KEY ISSUES

The plaintiffs consider the following to be the key issues for determination. It is a condensed statement of the issues and is without prejudice to the plaintiffs' pleadings.

Duty and the engagements

1. On what terms did Mr Innes-Jones provide professional advisory services to the plaintiffs during 2020, in particular whether that engagement was ongoing and whether it was governed by any of BDO's written standard terms of engagement.
2. What professional services was Mr McKay instructed to provide, and by whom, in relation to the independent assessment.

Breach

3. On what authority did Mr McKay instruct Mr Innes-Jones to cease providing advisory services to the plaintiffs, and did the acceptance and performance of the McKay engagement give rise to a conflict of interest, alternatively a material threat to independence or objective judgement, at firm level?
4. Did the IA Report answer the instructions given, in particular as to the commercial viability of the plaintiffs' business, and was it prepared with reasonable skill and care?

Causation

5. Had BDO declined or ceased the second retainer, would the plaintiffs have obtained an independent report from another provider, and what would that report have concluded?
6. Did the plaintiffs have a real and substantial chance of obtaining finance from BNZ and, if so, on what terms and at what level of facility?
7. To what extent, if at all, was the curtailment or collapse of the plaintiffs' business caused by matters unconnected with the defendants' conduct, including the matters pleaded at paragraph 96 of the statement of defence?

Loss

8. What was the value of the business, earnings and commercial opportunity lost, and on what basis is that loss to be assessed?

Affirmative defences

9. Do the terms of either of the written engagements entered into between the plaintiffs and BDO provide a partial or complete defence to the claims?

Contributory conduct

10. Did the plaintiffs cause or contribute to their own loss and, if so, by what conduct?
11. If so, by what proportion should any award be reduced under s 3 of the Contributory Negligence Act 1947?
12. Is a reduction for contributory conduct available in answer to the claim for breach of fiduciary duty and, if so, on what basis?