Law Society of Singapore *v* K Jayakumar Naidu
[2012] SGHC 200

Case Number	: Originating Summons No 57 of 2012
Decision Date	: 03 October 2012
Tribunal/Court	: High Court
Coram	: Chan Sek Keong CJ; Andrew Phang Boon Leong JA; V K Rajah JA
Counsel Name(s)	: Abraham Vergis, Clive Myint Soe and Adam Daniel Giam (Drew & Napier LLC) for the applicant; R S Wijaya (R S Wijaya & Co), Zero Nalpon (Nalpon & Co) and Teresa Chan (C Teresa & Co) for the respondent.
Parties	: Law Society of Singapore — K Jayakumar Naidu

LEGAL PROFESSION – Duties – client

3 October 2012 Judgment reserved.

V K Rajah JA (delivering the judgment of the court):

Introduction

1 Solicitors have a duty to loyally advance their clients' interests with diligence and competence. Among its multiple facets, this duty requires clients to be advised fairly and in good faith of the issues peculiar to the matter at hand. A solicitor should also ensure that the client understands sufficiently any risks that may arise. This duty is elevated when a solicitor has reason to suspect that there are special risks or unusual pitfalls involved in the subject transaction. Naturally, the extent of this duty depends on the precise identity, sophistication and circumstances of the client: a vulnerable client, such as one who is mentally and/or physically disadvantaged, uneducated or impecunious, may require comprehensive and comprehensible advice for even the simplest of matters; in contrast, a client who is a seasoned businessman or a corporate entity with an in-house risk management team may be reasonably presumed to have greater situational awareness. In a similar vein, the extent of the duty will also vary with the client's apparent familiarity with a proposed transaction. All solicitors also owe their clients a fundamental duty of undivided loyalty to ethically advance their client's interests and not place themselves in a position of conflict. Advice to clients has to be prompt and commensurate with their needs, and not perfunctory. A grave failure to adequately discharge these duties of care and loyalty, whether resulting from ignorance or a lack of conscientiousness, may expose a solicitor to disciplinary action and invite sanctions by the court. It is all the more troubling if in the course of an engagement the solicitor repeatedly abdicates from these responsibilities to his client.

2 The Law Society of Singapore ("the Law Society") applied, pursuant to s 94(1) read with s 98 of the Legal Profession Act (Cap 161, 2009 Rev Ed) ("the Act"), for K Jayakumar Naidu ("the respondent") to be dealt with under ss 83(2)(*b*) and 83(2)(*h*) of the Act for failing to adequately protect his client's interests. We reserved judgment after hearing the submissions of the respective parties. Having considered these submissions, we have decided that due cause has been shown for the respondent to be sanctioned under s 83(1) of the Act and order that he be suspended for a period of three months (see [92] below). The reasons for our decision are set out below.

The factual background

3 The respondent was admitted to the roll in 2002 and was at the material time an advocate and solicitor of some seven years' standing and the sole proprietor of Messrs Jay Associates. Prior to that, he had been in the Singapore Police Force for around 30 years. These disciplinary proceedings stem from the manner in which the respondent discharged his professional obligations to his client, Hay Choo Soon ("HCS"), in the sale of HCS' Housing and Development Board ("HDB") flat at Telok Blangah Crescent ("the flat"), which the Law Society argues resulted in the proceeds of sale being misappropriated by HCS' brother, who has since absconded.

4 HCS has since childhood suffered from a chronic neurodegenerative disorder which causes weakness in his limbs. This has severely compromised the movement of his limbs. He is also disadvantaged educationally, having only received formal education up to Primary 3. HCS speaks mainly Hokkien and has a rudimentary knowledge of Mandarin. His grasp of English is even more limited. For most of his life, HCS has been unable to secure steady employment due to his physical disabilities and lack of education. The flat appears to have been his sole asset and was inherited from his mother after her death in 2008. In September 2009, HCS suffered a serious fall which required him to be admitted to Singapore General Hospital ("SGH"). The fall exacerbated his physical condition, leaving him bedridden and completely dependent on others for his physical needs. This condition persisted at the time of the respondent's involvement with his affairs. HCS undoubtedly falls squarely within the category of vulnerable clients referred to earlier in this judgment.

5 Due to HCS' physical infirmity, the respondent was neither directly approached nor engaged by HCS in the sale of the flat. Instead, he was approached by HCS' brother, Hay Boo Seng ("HBS"), sometime in late 2009 to prepare a power of attorney for the purpose of authorising HBS to act in the sale of the flat. On 23 November 2009, the respondent and HBS went to SGH for the purpose of getting HCS to execute the power of attorney. They were accompanied by the housing agent involved in the sale, Chan Chee Wei ("Chan"). The respondent claims to have spoken to HCS in private and explained the document to him in English. It is unclear how much of this HCS understood as the notes of evidence of his appearance before the Disciplinary Tribunal ("the DT") suggests that he has an impoverished understanding of the English language, if at all. [note: 1] We also note that, regrettably, the respondent did not record any notes of attendance to corroborate what transpired. Because HCS was unable to move his limbs, the respondent affixed HCS' right thumbprint to the power of attorney to evince his assent. The power of attorney for HDB sales is a standard document which gives the attorney unconditional power to sell the property, subject to HDB's approval, and to execute any documents relating to the sale and, significantly, to receive any monies due to the donor.

6 On 6 December 2009, an option to purchase the flat for $247,000.00 was granted by HBS, as attorney, to a purchaser with completion scheduled for 1 February 2010.

7 On 16 December 2009, HBS, Chan, and one Tan Leng Howe ("Tan") visited the respondent's office without prior appointment. Chan had arranged for a loan between HBS, as borrower, and Tan, as lender, purportedly to pay HCS' hospital bills, and brought with him a loan agreement ("the loan agreement"). This was signed by HBS and Tan and witnessed by the respondent's secretary, Nur Shahida Binte Mohtov ("Shahida"). The relevant terms of the loan agreement are as follows: [note: 2]

> WHEREBY IT IS AGREED AS FOLLOWS:
>
> The lender [Tan] will lend an amount of $46800/- to borrower [HBS], base on the selling of Blk 15 Telok Blangah Crescent #05-232 S(090015).

NOW IT IS HEREBY AGREED AND DECLARED AS FOLLOW:

(a) The Borrower will authorize Jay Associates ... to pay from sale proceeds an amount of $46,800/- to the lender.

(b) In event of sale collapse ... borrowers are to pay back the amount of $46800 plus interest (120% P.A.) ...

(c) In the event of sale collapse, Chan Chee Wei … will pay $500 monthly to the lender as a form of compensation or as such till the loan amount is repaid.

8 A letter of authority ("the first letter of authority") appointing the respondent's firm to act for HCS in the sale of the flat was also prepared. This was purportedly issued by HCS, but it was signed by HBS with no mention of his identity or the capacity in which he was signing. Reference was made to the loan agreement in the first letter of authority, and the following clauses are noteworthy: [note: 3]

I [HCS] further authorize and direct that you [the respondent's firm] shall pay from the balance of the sale proceeds received and held by you on my behalf as follows:

…

2) A sum of $46800/- loaned to [HCS] by [Tan] … and to issue a cheque for the said sum loaned to [Tan];

…

6) I will be forwarding a copy of this to [Tan] for his retention and acknowledgement with regards the instructions at paragraph 2.

The above authority and direction shall be irrevocable.

9 The documents were signed in the respondent's absence as he was not present at the time. It was Shahida who prepared the first letter of authority but it is not clear who instructed her to do so. In any event, the respondent acknowledges that he saw both documents and "ratified" the first letter of authority when he returned to the office. He also went through the documents with HBS and Tan.

10 On 29 December 2009, HBS arranged for HCS to be discharged from SGH and warded at Windsor Convalescent Home. This was done without the knowledge of the rest of HCS' family, who were consequently unable to contact him. By way of background, it is noted that HCS' eldest surviving brother, Hay Joo Song ("HJS"), had played a role in his care. Before his fall, HCS had been living in the flat together with tenants and the rental income was used for his living expenses or saved for his future use. HBS had initially been responsible for the management of this income, but HJS assumed responsibility after HCS complained that he had only been receiving paltry sums of money. It was also HJS who arranged for HCS to be admitted to SGH after the serious fall.

11 Sometime on or after 18 January 2010, a letter arrived at the flat from the Singapore Land Authority notifying the addressee that a caveat had been lodged against the flat. The letter was discovered by Hay Choon Teck ("HCT"), the son of HJS and the complainant in this case, on 23 January 2010. HCT was disturbed by this as the standing agreement within the family was that the flat would not be sold as long as HCS needed accommodation. Indeed, the partial rental of the flat

also was HCS' sole source of income. HCT showed the letter to his father, who recounted that HBS had called him on 29 December 2009 with a proposal to sell the flat and divide the sale proceeds between the brothers after HCS' medical bills were paid. HJS rejected the proposal. HBS also revealed that he had transferred HCS to a convalescent home in Pasir Panjang but refused to identify it.

12 HCT eventually discovered that HCS was at Windsor Convalescent Home. He visited HCS and found him to be in poor health and only capable of giving monosyllabic replies. HCT also ascertained that the respondent was purportedly acting for HCS in the sale of the flat. He visited the respondent on 25 January 2010 and was shown the power of attorney, the option to purchase the flat and the first letter of authority. The latter document in particular aroused HCT's concerns. When questioned, the respondent explained the circumstances surrounding the loan and showed HCT a copy of the loan agreement. HCT claims to have warned the respondent that HBS had a gambling problem and that the loan was likely to be for HBS' gambling debts and not HCS' medical bills. HCT asked for and was given copies of the documents and said that he would seek legal advice and stop the sale if any illegality was involved.

13 The next day, HCT and HJS visited Wong Chee Mun ("Wong"), an advocate and solicitor with Messrs Alpha Law LLC ("Alpha Law"). The salient facts were related to Wong and the documents produced by the respondent shown to him. Wong suspected that something could be amiss and agreed to meet HCS.

14 On 27 January 2010, Wong visited HCS together with HCT and HJS. Because Wong's command of Hokkien was inadequate to communicate clearly with HCS, he had to do so with HCT's assistance. HCS told Wong that he did not know that his flat was being sold and that he did not want to do so. He did not understand the implications of the power of attorney but had not resisted when HBS affixed his thumbprint to the document as he was afraid of HBS. An Indian lawyer had also been present when this happened. HCS claimed that he did not know about the $46,800 loan and said that he did not owe anyone any money.

15 These statements are of limited value as HCS' ability to recollect events is suspect. This was made evident by his testimony before the DT, where he proved to be an unreliable witness and showed little understanding of the relevant events. However, they do help explain Wong's subsequent involvement in the matter. Indeed, Wong found HCS' replies barely coherent and could not be certain that HCS fully comprehended the questions asked of him or that he had given Wong clear instructions to act on his behalf. Nevertheless, as it appeared to Wong that HCS had to be protected, he agreed to act for him and to receive instructions through HJS.

16 An exchange of correspondence between Wong and the respondent ensued. The substance of these letters is important as they reveal the state of the respondent's knowledge and enable this Court to assess his actions against what a reasonably competent solicitor in his position would have done. Wong first wrote to the respondent on 28 January 2010. In the letter, he purported to act for HCS and explained that HCS did not want to sell the flat and had not realised what HBS' intentions were when he executed the power of attorney. The respondent was told that the loan agreement and the first letter of authority were outside the scope of the power of attorney and against HCS' instructions. He was asked not to release the sale proceeds to anyone, including HCS himself, as HCS' physical condition presented dangers of abuse. Instead, the respondent was requested to retain the sale proceeds pending an application to court for the management of the funds or the appointment of a committee.

17 Shortly after, Wong visited the respondent and explained his concern that HBS was trying to obtain HCS' money. The respondent claims that Wong's primary objective appeared to be to ensure

that payment of the sale proceeds were made to Alpha Law. He also claims to have made clear his position that he had no objections to Alpha Law taking over the sale of the flat.

18 The respondent replied to Wong's letter on 1 February 2010, stating that he was unwilling to hold the sale proceeds indefinitely on the basis of the warnings in the letter. The respondent asserted that he was obligated to release the sale proceeds to HCS if an order of court dictating otherwise was not received in five days.

19 In view of this reply, Wong, with HJS' concurrence, prepared a deed of revocation of the power of attorney as well as a letter of authority providing for the sale proceeds to be paid to Alpha Law for safekeeping ("the second letter of authority"). On 4 February 2010, Wong again visited HCS with HCT. He explained the respondent's position and advised that the power of attorney should be revoked and the proceeds of sale held by Alpha Law. As with the first visit, Wong was unable to be certain that HCS understood and agreed with his advice. In any event, HCS' right thumbprint was affixed to both documents, which were sent to the respondent the same day.

20 The respondent commented on the documents by letter on 8 February 2010. He expressed the opinion that the deed of revocation was ineffective as the flat had already been sold. He also asked for a medical report attesting to HCS' mental soundness or an order of court providing for the disposal of the sale proceeds to Alpha Law. Lastly, he expressed the intention to discharge his obligations to HCS by issuing a cheque or cashier's order to him at the nursing home.

21 Wong replied two days later and noted that with the revocation of the power of attorney all directions given under its authority were also revoked. Consequently, only HCS' directions were relevant. Wong explained that it was only because the respondent was reluctant to hold the sale proceeds that Alpha Law was suggesting that they hold the moneys pending a medical report or the appointment of a committee. Alpha Law remained amenable to the respondent holding the sale proceeds, provided a deadline by which they would be released was not imposed. It was also asserted in the letter that handing a cheque to HCS could be risky given his physical incapacity and that HCS had a joint/alternate account with HBS: [note: 4]

> Here we must state that to the best of our client's knowledge our client has a joint/alternate bank account with your client [HBS] and there is a possibility of an abuse if care is not taken particular where there is clear indication that [HBS] had earlier wanted part of the proceeds to clear his own debts.

The respondent was also informed he was released from his obligation to pay the sale proceeds to HCS, that a medical report attesting to HCS' mental soundness was being obtained, and that he would be held responsible for any losses resulting from the release of the sale proceeds.

22 The respondent did not respond to this letter. Wong sent a follow-up letter on 3 March 2010 inquiring about the respondent's intentions and informing him that HCS would soon be obtaining a psychiatric report and applying for the appointment of a committee. There was disagreement before the DT over whether the respondent received this letter. However, it appears likely that he did as it was acknowledged in his pleadings.

23 Just before this, on 1 March 2010, HBS approached the respondent regarding the release of the sale proceeds. In response, the respondent asked for a psychiatric opinion on HCS' mental state to be obtained. When giving evidence before the DT, the respondent explained that he did this to avoid HBS' "badgering" and because he desired more leeway to consider his next steps. The respondent initially claimed that he referred HBS to three psychiatrists with whom he had worked before.

However, it was established before the DT that he had in fact personally made an appointment with Dr Nelson Lee ("Dr Lee"), a consultant psychiatrist in private practice, for HCS to be examined.

24 HBS brought HCS for a consultation with Dr Lee on 3 March 2010. A private examination was conducted and an evaluation report dated the same day and addressed to the respondent was prepared. The report stated what HCS had told Dr Lee regarding the sale of the flat, *viz*, that he needed the money as he owed SGH over $10,000 and had to finance his stay in a nursing home. HCS also wanted the money to be banked into his account for regular transactions with the nursing home. The report stated that HCS was alert and conscious and able to understand how to handle his financial affairs. Dr Lee opined that a committee need not be appointed on HCS' behalf.

25 On 4 March 2010, HCS, HBS and Chan went to the respondent's office. HCS was transported to the office by ambulance and was then physically moved about on a gurney. Again, the respondent was not given prior notice that they would be coming and was in court. He only learnt of their visit when Shahida called him to seek instructions. It appears that the purpose of the visit was to have a letter of authority drafted ("the third letter of authority"). This directed that the sale proceeds, less the respondent's costs and agent fees, were to be paid into a specified OCBC account. The respondent had instructed Shahida to remove references to the loan agreement as it had been the subject of criticism. The respondent was not certain whom he had received instructions from; during the proceedings before the DT he said that his instructions could have been from any of the three men.

26 The respondent instructed Shahida to bring HCS to Tham Teck Leng ("Tham"), a Commissioner of Oaths whose office was just down the corridor from the respondent's own, to have the third letter of authority executed in order to "save any complications". According to Tham, she explained the terms of the third letter of authority to HCS in a mixture of Mandarin and Hokkien. She asked HCS about the OCBC account as she was puzzled by the reference to it. HCS explained that the account was his and confirmed that he was instructing his lawyer to pay the sale proceeds into the account. An account book corresponding to the OCBC account and appearing to be in HCS' sole name was also produced. The third letter of authority was executed by HCS and witnessed by Tham as a Commissioner of Oaths.

27 The respondent returned to his office while HCS was being attended to by Tham outside of her office. However, he did not go over to participate in the conversation and admits that he did not personally advise HCS on the third letter of authority. It was only after it was executed that the respondent received the OCBC account book and Dr Lee's medical report.

28 On 5 and 8 March 2010, the sale proceeds were deposited into the OCBC account via two cheques for $10,350.00 and $221,646.96. The respondent only wrote to Alpha Law on 10 March 2010 "[a]s a matter of courtesy", stating that the sale proceeds had been transferred to the OCBC account pursuant to the third letter of authority. [note: 5]

29 A bank statement later obtained showed that a series of withdrawals and fund transfers had taken place between 8 and 10 March 2010, leaving just $196.96 in the account. It also showed that the OCBC account was in fact in the joint names of HCS and HBS and could therefore be operated with either signature, rather than being in HCS' sole name as reflected in the account book. Subsequent enquiries showed that the withdrawals were made with a card issued to HBS and that the fund transfers were on HBS' instructions to an account in his own name. It is common ground that HBS has improperly misappropriated the sale proceeds.

The charges against the respondent and the findings of the Disciplinary Tribunal

30 Following an inquiry committee's finding that a formal investigation ought to be initiated, the DT was appointed pursuant to s 90 of the Act to hear and investigate the complaint against the respondent.

31 At the DT hearing, the Law Society preferred five charges and one alternative charge against the respondent pursuant to ss 83(2)(*b*) and 83(2)(*h*) of the Act. The charges, as formulated by the Law Society, were as follows:

First Charge

You, K Jayakumar Naidu, are charged that on or about 23 November 2009, you had advised one [HCS] to execute a Power of Attorney dated 23 November 2009 appointing one [HBS] to act as [HCS]'s Attorney, inter alia, to effect the sale of [HCS]'s HDB flat, and that in so doing, you failed to act in [HCS]'s best interest, *to wit*, You: (a) failed to clearly explain to [HCS] the true nature, purport and consequence of what he was signing; and/or (b) failed to take adequate steps to ensure that [HCS] reasonably understood the same; and/or (c) failed to obtain [HCS]'s informed consent to the same; and/or (d) preferred [HBS]'s interests to the interests of [HCS], and you are thereby in breach of your obligations to [HCS] under Rules 21 and/or 25(b) of the Legal Profession (Professional Conduct) Rules within the meaning of Section 83(2)(b), or, alternatively, you are guilty of misconduct within the meaning of Section 83(2)(h) of the Legal Profession Act (Chapter 161).

Second Charge

You, K Jayakumar Naidu, are charged that on or before 16 December 2009, while you were purporting to act for one [HCS] in respect of the sale of his HDB flat, you had drafted, at the behest of one [HBS], a Letter of Authority stating, inter alia, that you had been given irrevocable authority and directions to pay out a sum of $46,800 to one Tan Leng Howe from the proceeds from the sale of [HCS]'s HDB flat in repayment of a personal loan advanced by the said Tan Leng Howe to Hay Boon Seng, in circumstances where you knew or should have known that [HCS] had not authorized you to make such payment and/or that it would not be in [HCS]'s best interest for you to do so, and that in drafting such a letter, without obtaining [HCS]'s informed consent to the same, you were acting in breach of your obligations to [HCS] under Rules 21 and/or 23 and/or 25(b) and/or 28 and/or 30 of the Legal Profession (Professional Conduct) Rules within the meaning of Section 83(2)(b), or, alternatively, you are guilty of misconduct within the meaning of Section 83(2)(h) of the Legal Profession Act (Chapter 161).

Amended Third Charge

You, K Jayakumar Naidu, are charged that on or about 4 February 2010, when [Alpha Law] furnished you with a copy of [HCS]'s Letter of Authority dated 4 February 2010, which, *inter alia*, expressly directed you to hand over to [Alpha Law] to safeguard the net proceeds from the sale of [HCS]'s HDB flat which your firm was holding, you failed to comply with [HCS]'s express written instructions, or alternatively, if you had reason to honestly believe that you would not be acting in [HCS]'s best interest by complying with the directions set out in the said Letter of Authority dated 4 February 2010, to immediately refer the matter to the Honourable Court for determination, and that in failing to adopt either courses of action, you were acting in breach of your obligations to [HCS] under Rules 25(b) and/or 41(a) of the Legal Profession (Professional Conduct) Rules within the meaning of Section 83(2)(*b*), or, alternatively you are guilty of misconduct within the meaning of Section 83(2)(*h*) of the Legal Profession Act (Chapter 161).

Fourth Charge

You, K Jayakumar Naidu, are charged that in the period between 10 February 2010 to 10 March 2010, you had deliberately, negligently or otherwise refused or omitted to respond to [Alpha Law]'s letter dated 10 February 2010, the substance of which expressly directed you to either hold onto the sale proceeds or to hand over the sale proceeds from the sale of [HCS]'s HDB Flat to [Alpha Law], until 10 March 2010, only after the following actions were taken by you and/or [HBS]:

(i) Without informing [Alpha Law], arranged for [HCS] to urgently undergo a psychiatric assessment on 3 March 2010, resulting in a psychiatric report re [HCS] being issued on the same day;

(ii) Without informing [Alpha Law], arranged for [HCS] to urgently execute a Letter of Authority dated 4 March 2010 that had been drafted by you for no other apparent purpose than to cancel the effect of [HCS]'s earlier Letter of Authority dated 4 February 2010 and to have [HCS]'s authorization in writing for you to deposit the balance sale proceeds into OCBC Account No. [xxx] despite all the requests and warnings to the contrary previously issued by [Alpha Law];

(iii) Without informing [Alpha Law], deposited the sums of $10,350 and $221,646.96 from the sale proceeds into OCBC Account No. [xxx] on 5 March 2010 and 8 March 2010 respectively and waiting for both cheques to clear before replying to [Alpha Law]'s letters on 10 March 2010;

and you have thereby deliberately undermined [Alpha Law]'s authority and instructions to act for [HCS] and/or effectively prevented [Alpha Law] from carrying out [HCS]'s instructions to safeguard the sale proceeds from the sale of [HCS]'s HDB flat, and in doing the foregoing acts, you were in breach of your obligations to [HCS] under Rules 25(b) and/or 28 and/or 47 of the Legal Profession (Professional Conduct) Rules within the meaning of Section 83(2)(b), or, alternatively you are guilty of misconduct within the meaning of Section 83(2)(h) of the Legal Profession Act (Chapter 161).

Fifth Charge

You, K Jayakumar Naidu, are charged that on or before 4 March 2010, you had, on [HBS]'s instructions, drafted a Letter of Authority dated 4 March 2010 in the name of [HCS] and/or had requested and/or advised [HCS] to sign the said Letter of Authority, which purported to appoint you to deal with the proceeds of sale of [HCS]'s HDB flat and had purported to direct you to deposit the said sale proceeds into OCBC Account No. [xxx], and that in so doing, you failed to act in [HCS]'s best interest, *to wit*, You: (a) failed to clearly explain to [HCS] the true nature, purport and consequence of what he was signing; and/or (b) failed to take adequate steps to ensure that [HCS] reasonably understood the same; and/or (c) failed to obtain [HCS]'s informed consent to the same; and/or (d) preferred [HBS]'s interests to the interests of [HCS], and you are thereby in breach of your obligation to [HCS] under Rules 21 and/or 25(b) of the Legal Profession (Professional Conduct) Rules within the meaning of Section 83(2)(b) or alternatively, you are guilty of misconduct within the meaning of Section 83(2)(h) of the Legal Profession Act (Chapter 161).

Alternative Fifth Charge

> You, K Jayakumar Naidu, are charged that on or before 4 March 2010, you had, on [HBS]'s instructions, drafted a Letter of Authority dated 4 March 2010 in the name of [HCS] and/or had requested and/or advised the said [HCS] to sign the said Letter of Authority, which purportedly appointed you to deal with the proceeds of sale of [HCS]'s HDB flat and directed you to deposit the said sale proceeds into OCBC Account No. [xxx], and in so doing, you did advise a person whose interests are opposed to that of [HBS], whom you were representing in the same matter, and you had failed to inform [HCS] to obtain independent legal advice, and you are thereby in breach of Rule 30 of the Legal Profession (Professional Conduct) Rules within the meaning of Section 83(2)(b), or alternatively, you are guilty of misconduct within the meaning of Section 83(2)(h) of the Legal Profession Act (Chapter 161).
>
> [emphasis in italics in original]

32 In its closing submissions, the Law Society decided not to press for an adverse finding against the respondent in respect of the first charge as it concluded that there was insufficient evidence or cause of sufficient gravity to merit referring it to this Court. The DT agreed and accordingly found the first charge not proven. The respondent was found guilty of the remaining charges.

33 With respect to the second charge, the DT noted that the respondent did not take issue with HBS signing the first letter of authority even though it was prepared without HCS' instructions and was beyond the powers conferred on HBS by the power of attorney. The DT questioned the need for the first letter of authority to be irrevocable and for a copy to be given to Tan. It observed that the respondent's evidence that he understood the loan monies to be for HCS' medical bills was at best uncorroborated evidence and that he had not attempted to verify the quantum of these bills. Finally, the DT found that it was evident from the terms of the loan agreement that the sale proceeds of the flat were being used as security for the loan to HBS. The DT was of the view that the circumstances would have given rise to "some suspicion" that the first letter of authority could not have been prepared in the interests of HCS.

34 Turning to the third charge, the DT noted the warnings issued by Wong to the respondent and approved of Wong's decision to obtain the deed of revocation and second letter of authority in view of the respondent's apparent unwillingness to cooperate. The DT found that it would have been clear to the respondent that he was no longer acting for HCS once he received copies of these two documents. He therefore had no legal basis to insist on the production of a medical report or a court order before releasing the sale proceeds to Alpha Law and his insistence on issuing a cheque or cashier's order to HCS was irresponsible and not in the interests of HCS (see, however, [51] and [55] below).

35 With respect to the fourth charge, the DT observed that the issue was the fact that the respondent had ignored repeated warnings issued by a fellow solicitor of the possible risk that the sale proceeds might be misappropriated. It found that the conduct of the respondent was not the consequence of mere inadvertence but a deliberate course of conduct to undermine the efforts of Alpha Law to safeguard the sale proceeds.

36 With regard to the fifth charge, the DT noted that the respondent had failed to explain the nature and consequences of the third letter of authority to HCS. It found that he was content to follow HBS' instructions, as HCS could not have decided to execute the document on his own given his physical condition. The DT found that it must by this time have been clear to the respondent that HCS' interests were being compromised and that the respondent could not have been oblivious to the real danger that the sale proceeds might be misappropriated by HBS. The DT thought that "[b]y this time, it was not just alarm bells ringing, but sirens blaring." [note: 6] Thus, by acting on the

instructions of HBS, the respondent had compromised the interests of HCS in favour of HBS.

37 In the circumstances, the DT found that cause of sufficient gravity existed for disciplinary action to be taken against the respondent in relation to the second to fifth charges.

The show cause proceedings

38 The show cause proceedings before us were predicated upon ss 93(1) and 94(1), read with ss 83(1) and 83(2) of the Act. The relevant portions of s 83 of the Act read as follows:

> **83.** —(1) All advocates and solicitors shall be subject to the control of the Supreme Court and shall be liable on due cause shown —
>
> (*a*) to be struck off the roll;
>
> (*b*) to be suspended from practice for a period not exceeding 5 years;
>
> (*c*) to pay a penalty of not more than $100,000;
>
> (*d*) to be censured; or
>
> (*e*) to suffer the punishment referred to in paragraph (*c*) in addition to the punishment referred to in paragraph (*b*) or (*d*).
>
> (2) Such due cause may be shown by proof that an advocate and solicitor—
>
> ...
>
> (*b*) has been guilty of fraudulent or grossly improper conduct in the discharge of his professional duty or guilty of such a breach of any usage or rule of conduct made by the Council under the provisions of this Act as amounts to improper conduct or practice as an advocate and solicitor;
>
> ...
>
> (*h*) has been guilty of such misconduct unbefitting an advocate and solicitor as an officer of the Supreme Court or as a member of an honourable profession ...

It is noted that the respondent's alleged breaches of s 83(2)(*b*) in the charges against him are not based on fraudulent or grossly improper conduct in the discharge of his professional duty but on the breach of specified rules in the Legal Profession (Professional Conduct) Rules (Cap 161, R 1, 2010 Rev Ed) ("the Professional Conduct Rules").

39 Before us, counsel for the Law Society, Mr Abraham Vergis ("Mr Vergis"), explained that the charges were framed to reflect each of the many opportunities the respondent had to avert the misappropriation of the sale proceeds. Had the respondent acted as a reasonably competent solicitor on any of these occasions, Mr Vergis contended, the misappropriation would not have come to pass. However, Mr Vergis acknowledged that the essence of the complaint against the respondent centred on the release of the sale proceeds; that is, the subject of the fourth and fifth charges. In particular, the nub of the respondent's impropriety was failing to clarify precisely what HCS wanted and acting deliberately to prevent Wong from protecting HCS. While Mr Vergis confirmed that the respondent is not alleged to have been dishonest, he stated that it was being implied that the respondent always

had the intention to favour HBS as his behaviour could not otherwise be explained. The Law Society did not wish to assert that the respondent had actively assisted HBS because such an assertion would affect other matters elsewhere.

40 On the other hand, the respondent asserted in his written submissions that the Law Society had not made out any case to be answered. A central plank in his arguments was the contention that Wong was responsible for HCS' loss. However, we note that such criticism is quite irrelevant as it is the respondent's conduct that is at issue in these proceedings. The respondent also asserted that he had properly discharged his duties and that he could not be expected to have acted in any other way. His counsel, Mr Zero Nalpon ("Mr Nalpon"), maintained the same approach at the hearing before us. Mr Nalpon argued that Wong had approached the respondent in a suspicious manner and had failed to take positive steps to protect HCS. The respondent was therefore correct in disregarding Wong's warnings. It was also emphasised that the respondent had referred HCS to two independent professionals, Dr Lee and Tham, in order to ascertain his wishes. Finally, Mr Nalpon appeared to bring causation into issue by asking rhetorically what would have happened instead had the respondent spoken to HCS on 4 March 2010. We would note that these proceedings are primarily concerned with the respondent's conduct and not just their consequences. Thus, unlike a claim in negligence, the question of causation is not a central issue in the present case.

The issues

41 Two broad issues arose for our determination, namely:

(a) whether the charges had been established ("the merits issue"); and

(b) assuming that the DT had rightly found the respondent liable under the charges, what is the appropriate penalty that should be imposed on the respondent ("the appropriate penalty").

42 We now discuss each of these issues in turn.

The merits issue

43 The respondent's conduct in relation to each of the charges will be discussed in order to shed light on the duties of solicitors for the purposes of the disciplinary regime under the Act. It is well established that the standard of professionalism an advocate and solicitor ought to display is an objective one as determined by the court (see *Law Society of Singapore v Ahmad Khalis bin Abdul Ghani* [2006] 4 SLR(R) 308 at [2]). The central inquiry is thus whether the respondent deviated from what a reasonably competent solicitor would have done in the circumstances.

The first charge: the power of attorney

44 The gravamen of the first charge relates to the respondent's alleged failure to advise HCS on the nature, purport and consequence of the power of attorney.

45 As the Law Society eventually did not pursue this charge we need not dwell on this save to make the following observation. To require solicitors to hold their clients' family members to the same strict protocols appropriate in a business setting would place them in an untenable attitude of opposition with their clients' families and would not be in the interest of the client. Nor would it accord with the common experience that, by and large, family members do not take advantage of each other. The Law Society was therefore correct in eventually submitting that there was nothing remarkable or suspicious about the circumstances in which HBS approached the respondent to

prepare the power of attorney. At that stage, he need not have done anything more than confirm that HCS wanted to sell the flat and that he wanted HBS to act on his behalf.

The second charge: the first letter of authority

46 The second charge relates to the respondent's role in drafting the first letter of authority. The arguments here are more finely balanced. While the observations made in the respondent's favour in respect of the first charge also apply, there were irregularities in the first letter of authority and the loan agreement which should have aroused the respondent's suspicions.

47 Chief among these irregularities was the fact that both documents were clearly beyond HBS' authority. Under the power of attorney, HBS was authorised to receive the sale proceeds of the flat. However, he was not authorised to use the sale proceeds as security for a loan or to direct the same towards a third party for the repayment of a loan. The respondent therefore had ample reason to doubt that HBS was acting with HCS' knowledge and consent but, regrettably, failed to take any steps to clarify this. Nevertheless, it would have been reasonable to believe that HBS had a broad mandate to act for his brother. Given the state HCS was in (to the respondent's knowledge), it was unrealistic to expect that everything done on his behalf would have been the product of a considered decision of his and authorised by an express instruction.

48 The terms of the loan also attract careful scrutiny. The interest rate of 120% per annum applicable if the flat failed to be sold was clearly punitive and unlikely to be in HCS' interests. That Chan, a property agent and a stranger to HCS, stood as guarantor was also plainly irregular and should have raised in the respondent's mind the possibility that Chan stood to gain from the transaction. It might be observed on the respondent's behalf that it is an unfortunate fact of life that the more disadvantaged an individual is, the weaker his bargaining position would be. It would therefore not have been surprising that favourable terms from an established lender would not be forthcoming for a borrower who was in such dire straits that he had to sell his home to pay for his medical bills. The Law Society has noted that clauses 2 and 6 of the first letter of authority (see [8] above) appear to be solely for Tan's benefit. However, this observation is neither here nor there as it is unremarkable that clauses necessary to comfort the lender would be included in the letter of authority.

49 The Law Society emphasised that the respondent had not seen any evidence to verify HBS' assertion that the loan was for HCS' medical bills. The loan agreement made no mention of its purported purpose and only referred to a personal loan to HBS, who was therefore in a position of conflict as he stood to benefit from the loan. The Law Society further asserts that the sudden need for a loan, so shortly after the power of attorney was executed, raised the possibility that the whole sequence of events was a scheme to enable HBS to procure the loan in the first place. As the respondent did not know HBS previously, there was no basis for him to simply accept HBS' assertions.

50 These arguments of the Law Society have merit. Although the irregularities relating to the first letter of authority can to some extent be individually explained, it is more difficult to do so when they are considered together. However, notwithstanding the cumulative weight of the irregularities, we find that the second charge has not been proven beyond a reasonable doubt. At the material time, the respondent had some reason to believe that HBS was acting in HCS' interests. HBS was taking responsibility for HCS' affairs, and the latter appeared willing to entrust the sale of the flat to him. There was a coherent explanation for the loan agreement indicating that it was truly for HCS' benefit which the respondent may have relied on. A solicitor need not approach every aspect of a transaction with a suspicious mind.

The third charge: the respondent's response to the deed of revocation and the second letter of

The third charge: the respondent's response to the deed of revocation and the second letter of authority

51 The third charge relates to the respondent's failure to comply with the second letter of authority, which directed him to pay the sale proceeds over to Alpha Law, or to refer the matter to court for determination if there were reasonable doubts regarding the validity of the deed of revocation and the second letter of authority. While we are of the opinion that the respondent had not dealt with these documents as a reasonably competent solicitor would have, we do not agree that the respondent should have paid the sale proceeds to Alpha Law if he was to avoid sanction. Indeed, Alpha Law had also made it clear to the respondent that he could as an option keep the money so long as he did not pay it to HCS through HBS.

52 The Law Society's case is that the respondent should have been alerted to the danger posed by HBS and, as a corollary, the legitimacy of the second letter of authority should have been established in his mind. When HCT visited the respondent's office, he had warned the respondent that HBS had gambling problems and that the purpose of the loan was likely to be for the settlement of HBS' gambling debts. While the respondent denies that such a warning had been given, there is no reason to doubt HCT. The DT was of the view that HCT was a credible witness. More importantly, subsequent events have affirmed the validity of HCT's concerns.

53 These warnings were reinforced by Wong's letter of 28 January 2010 and his subsequent meeting with the respondent. The Law Society points out that the letter clearly and precisely identified the risk that the respondent faced in dealing with HBS. While in the witness box, the respondent was also challenged that there was no objective evidence to show that HCT or HJS would act against HCS' interests or that there was anything wrong with Wong's instructions. However, it must be asked why the respondent should be expected to take HCT and Wong at their word. If events had transpired differently, for example had HCT and/or Wong made off with the sale proceeds, the respondent could well be facing disciplinary proceedings for handing over the sale proceeds at their request.

54 The Law Society asserts that the respondent had received HCS' SGH bills in January 2010 and that these should have alerted him that something was amiss. The bills showed that the sum due to SGH was under $15,000, far less than the $46,800 loan, and remained unpaid long after the loan was received. However, this is not a decisive point. As the charges due before a government grant was subtracted were $63,124.81, the discrepancy may not have been obvious to the respondent. It seems to us, however, more likely than not that the respondent simply did not pay sufficient attention to the relevant details to process all this information: see below at [88]. He plainly did not approach his engagement conscientiously.

55 Given the circumstances the respondent was in, he was entitled to hold on to the sale proceeds and to demand that Alpha Law satisfy him of the legitimacy of their instructions. The respondent's threat to release a cheque to HCS at the nursing home was certainly irresponsible but he did not follow through with it. His ultimate release of the sale proceeds is the subject of the fourth and fifth charges and should not be interpolated to this charge.

56 However, we should not be understood as saying that the respondent was entitled to be completely passive or, worse still, inert. He had received two separate visits from HCT and Wong. Through these visits, notice of the possible risks of releasing the sale proceeds was received and serious allegations against HBS were made. He would also have been aware of the irregularities in the first letter of authority and the loan agreement. In these circumstances, a solicitor must seek to ascertain the truth in order to safeguard his client's interests. Referring the matter to court would certainly have been the most secure method of resolving the dispute. The circumstances had

changed since his original engagement, and it ought to have been clear to him that his client was both vulnerable and prone to changing his mind. If he had difficulty in contacting HCS or in ascertaining his true intentions, as was apparently the case, he ought to have referred the matter to court for determination. In failing to either contact HCS or refer the matter to court, we find the respondent guilty of misconduct within the meaning of s 83(2)(*h*) of the Act and that the third charge has been made out against him.

57 The respondent has also been charged with breaching s 83(2)(*b*) of the Act on the basis of a breach of rr 25(*b*) and 41(*a*) of the Professional Conduct Rules. These provide as follows:

> **Conflict of interest**
>
> **25**. During the course of a retainer, an advocate and solicitor shall advance the client's interest unaffected by –
>
> …
>
> (*b*) any interest of any other person …
>
> …
>
> …
>
> **Termination of retainer**
>
> **41**. An advocate and solicitor shall –
>
> (*a*) permit a client to change his legal adviser at any time ...

It will be seen from the discussion above that the respondent's error under the third charge is unrelated to any question of a conflict of interest or a change of representation. Accordingly, the respondent has not breached s 83(2)(*b*) of the Act on the third charge.

The fourth and fifth charges: the third letter of authority and the release of the sale proceeds

58 It is the respondent's actions from 1 to 8 March 2010 that give the most cause for concern. The gravamen of the fourth charge is that the respondent's actions during this period deliberately undermined Alpha Law's authority to act for HCS and to protect the sale proceeds. The fifth charge alleges that he had failed to advise HCS on the nature, purport and consequence of the third letter of authority. We find the respondent's actions in relation to the third letter of authority take centre stage in this case as it was pursuant to this document that the sale proceeds were disbursed and misappropriated. It is for this reason that the fifth charge will be discussed prior to the fourth charge. Not only is the fourth charge largely secondary, it loses much of its force if it can be shown that the respondent had satisfied his duty to HCS in properly advising him on the disbursement of the sale proceeds.

The respondent's continued dealings with HBS

59 Given the allegations that had been made against HBS, it would have been prudent for the respondent to have reassessed the position regarding HBS in the meantime. Just as it would have been inappropriate for the respondent to have assumed that HCT and Wong's allegations against HBS

were true, it would have been similarly inappropriate for him, in the prevailing circumstances (considering that the power of attorney had been given by a vulnerable client with whom he had only cursorily met), to assume that they were entirely without substance. The reasonable thing to do would have been to act on the supposition that there was a plausible risk that HBS might have ulterior motives at odds with the interests of HCS. Indeed, the respondent admitted that he had been given clear warning of the risk posed by HBS: [note: 7]

Q ... Finally, you accept that you were now being put on notice that there was a risk that [HCS] may have a joint bank account with [HBS], and this was a real risk because [HBS] had already indicated an intention to use a part of the sale proceeds to clear his own debt?

A Yes.

60 Having had notice of the risk of dealing with HBS, the respondent's efforts to satisfy himself that HBS was trustworthy are nothing short of bewildering: [note: 8]

Q When you had been informed that there's a possibility that [HCS] and [HBS] has a joint bank account, and this is a serious concern because [HBS] had already demonstrated an intention to take some of the sale proceeds for himself, what did you do in response to verify whether this was a real risk or not?

A I think I call him to check whether such a thing exist, but the answer is "No", I left it is---as it is.

Q So your response was to call [HBS] himself over the telephone to ask him whether there was ---he had a joint account with the victim?

A Yes.

Q And he said "No, we don't have a joint account", and you were content with that answer?

A Yes.

61 The inadequacy of the respondent's efforts is startling. HBS' assurances would be worthless if he did have ulterior motives. This problem was compounded by that fact that the respondent continued to act at HBS' behest. It is clear that the eventual release of the sale proceeds had been set in motion by HBS. As stated at [23] above, the respondent's evidence was that he had been approached by HBS around 1 March 2010 regarding the release of the sale proceeds. It appears that this did not take the form of an innocuous inquiry and that the respondent was under some pressure from HBS to release the sale proceeds urgently: [note: 9]

A See, around the 1st, I believe I received either a call or the---er, [HBS] approached me. So I told them to go and see a medical officer to get me a medical report on the soundness of [HCS's] mental capacity.

...

Q Did you still consider [HBS] to be your client at that time?

A He asked for the names of doctors, I gave it to him. ... I do not take him as a client then.

...

Q Whose idea was it to get a medical report?

A I really can't recall whose idea was it. *Probably it was [HBS] who was asking on the funds. I say I cannot release the funds.*

Q Why was [HBS] asking for the funds?

A Probably wanted the money.

Q So you told him you couldn't release it?

A Yes.

...

Q Why did you ask him to give you a psychiatric report?

A Come on lah, ***somebody is badgering me over the phone and asking me, so only way says, "Give me the psychiatric report, then I'll consider."***

[emphasis in italics and bold italics added]

62 It must be asked of what relevance HBS' "badgering" was to the respondent by this time. It is not the respondent's evidence that he had been shown that HCS had a pressing need for the money at that time. Why had he not contacted HCS directly? Indeed, the respondent eventually acknowledged when pressed during cross-examination that continuing to be in exclusive contact with HBS might not have been quite appropriate: [note: 10]

Q Do you now, at least---

...

Q ---accept that it was not appropriate for you ---

...

Q ---to still be speaking to [HBS] and taking instructions from him?

A See, the other point is, [HBS] is no longer the attorney after the completion. So would it be appropriate for me to talk to him thereafter?

...

Q And how---and what is your answer---

...

---to your own question?

A I'll leave it that way.

63 This was a situation in which the respondent should have stood firm and refrained from complying with any of HBS' instructions while the truth was unequivocally ascertained. Instead, he inexplicably caved in to the pressure exerted on him and, in arranging for the examination by Dr Lee, facilitated the eventual release of the sale proceeds.

The respondent's failure to advise HCS

64 It is undisputed that the respondent had not advised HCS regarding the third letter of authority and the instructions to transfer the sale proceeds to the OCBC account contained therein. However, the key issue is this: Was it reasonable for the respondent to have accepted that those directions were the result of HCS' own fully informed decision and in his interests? Three points were made in the respondent's favour by his counsel, but it will be seen that none of them are satisfactory.

65 First, the respondent had arranged for HCS to be examined by Dr Lee. Dr Lee's report disclosed that HCS was mentally sound and capable of managing his own affairs. It also showed that the intentions that HCS had conveyed to Dr Lee conformed to the directions that were to be drafted into the third letter of authority. Thus, the respondent had the benefit of the opinion of an independent professional that there was nothing untoward about the release of the sale proceeds. However, in arranging for this examination, the respondent had surprisingly failed to apprise Dr Lee of the relevant facts and, even more significantly, why he required HCS to undergo a psychiatric evaluation. Dr Lee had not been informed of the background behind the need for a medical report. He had not been told that allegations had been made against HBS and that there were doubts about the safety of releasing the sale proceeds. Nor had he been warned that HCS had apparently expressed diametrically opposed views previously, resulting in the execution of the deed of revocation and the second letter of authority.

66 At the hearing before the DT, Dr Lee had noted that in one sense his report would not have been affected even if he had been fully informed: the fact that HCS had clearly expressed reasons for wanting the sale proceeds to be deposited into his own account would remain. However, Dr Lee also stated that he would have had a different impression of the circumstances had he seen the loan agreement as he would then have been aware that part of the sale proceeds was to be directed towards repaying Tan's loan to HBS. Further, had Dr Lee known of HCS' instructions to Alpha Law, he would have wanted to know why HCS had changed his mind about selling the flat. Dr Lee also noted that the fact that HCS had previously changed his mind would have been "an important consideration" and agreed with the characterisation of HCS as "flip-flopping".

67 In short, Dr Lee was denied the opportunity to make the thorough inquiry into HCS' wishes he otherwise would have made and was instead confined to making an assessment of HCS' apparent mental competence and the immediate need to form a committee on his behalf. This is plain from Dr Lee's report, where the focus was on HCS' medical history as well as his ability to comprehend his circumstances and the proposed course of releasing the sale proceeds. But HCS' mental competence or even the cogency of his reasons for seeking the release of the sale proceeds should not have been the respondent's main concern in light of the allegations that had been made against HBS. Instead, it was the allegations, HCS' "flip-flopping", and whether he was acting under duress from HBS that needed to be squarely confronted. This the report did not even begin to address and consequently it was not satisfactory for the respondent to rely on it to fulfil his professional responsibilities.

68 Most crucially, a prudent solicitor would have readily appreciated the impropriety of having HBS, the very person against whom accusations of acting against HCS' interests had been levelled,

accompany HCS for the examination with Dr Lee. At the very least, this would have raised plausible concerns about HCS' willingness or ability to be candid during the examination. Given also that the respondent was aware of the possibility that HBS was manipulating HCS, it appears that the respondent was inappropriately attempting to delegate his responsibility to make further inquiries to Dr Lee. That Dr Lee's report was being inappropriately used as a substitute for a proper inquiry is suggested by the fact that the respondent had not even read the report until after the third letter of authority had been executed. In these circumstances, it is reasonable to conclude that the respondent's main purpose in obtaining the report was to shield himself from possible further criticism from Wong.

69 Similar observations can be made about Tham's involvement in the execution of the power of attorney. On the one hand, another independent professional had translated and explained the third letter of authority to HCS. On the other hand, like Dr Lee, she was plainly not privy to the questionable background permeating every aspect of the subject transaction. She was therefore obviously not in a position to advise HCS. In any event, unlike the case of the medical examination where a report had been produced, the respondent had no knowledge of Tham's conversation with HCS as he was not present when she was attending to him. He could not have been certain that Tham had adequately briefed HCS, or that HCS had understood what she was saying. It bears noting that it was again HBS who was involved in procuring the execution of the third letter of authority by bringing HCS to the respondent's office. Thus, the respondent should not have relied on Tham's involvement at all. *Indeed, that the respondent attempted to outsource his professional responsibilities to Tham and Dr Lee at all is troubling. It suggests that he was attempting to follow the path of least resistance in bending to HBS' will and involved two other professionals to absolve him from his personal professional responsibilities. He failed to do all that was within his power to attend to the matter in a manner that was most advantageous to his client's interests.*

70 Finally, the respondent asserts that the OCBC account was to the best of his knowledge in HCS' sole name. However, it is highly pertinent that the respondent had already been informed that HCS and HBS had a joint account, see [21] above. Yet, he made no effort to clarify this matter with HCS. The respondent's counsel had attempted to gloss over this and instead suggested that the respondent had verified that HCS' bank account was a single account by checking the account book and that there was therefore little risk of the money being misappropriated. We cannot agree. Even if it was assumed that the account book had only one name, this did not mean that HBS could not misappropriate the sale proceeds. Any prudent lawyer would have realised that HBS could not because of his physical infirmity operate the bank account on his own. HCS would have to rely on others to operate any bank account, whether joint or solely in his name. Wong had already warned the respondent of the high likelihood of this happening. HBS might also have had possession of a power of attorney to operate this account. Further, given HCS' physical condition, HBS could have simply used threats or pressure to obtain the documents and information necessary to withdraw the money. We have difficulty in understanding why the respondent was apparently oblivious to all these risks.

71 Even if the three preceding points in favour of the respondent did not suffer from these serious weaknesses, we find it astonishing that the respondent had made no effort, at any point of time, to discuss the matter alone with HCS. In *Law Society of Singapore v Tan Phuay Khiang* [2007] 3 SLR(R) 477 ("*Tan Phuay Khiang*"), this Court rejected the contention that solicitors perform only a ministerial role in relation to the execution of a power of attorney for the sale of a flat. It was held that a solicitor's responsibility went beyond the essentially perfunctory role of preparing a power of attorney and witnessing its execution to taking reasonable care to advise and ensure that his clients understood the implications of their actions. Plainly, a solicitor may be under a duty to make further inquiries and give appropriate advice even in the most commonplace and pedestrian matters. These

principles are fully applicable in the present case, particularly because the respondent had been put on notice that there were risks involved in the seemingly innocuous transaction. In fact, the respondent's duty to advise HCS with diligence and competence would have been easily satisfied: he need only have directly asked HCS about the truth of the contentions made by HCT and Wong and for an explanation for the deed of revocation and the second letter of authority. The following observations made by this Court in *Law Society of Singapore v Uthayasurian Sidambaram* [2009] 4 SLR(R) 674 ("*Uthayasurian Sidambaram*") at [57]–[60] are apposite in this context:

> 57 ... [T]he solicitor ought to tailor his advice to suit the needs of his client and not be afraid to ask probing questions. …
>
> …
>
> 59 … A solicitor should be diligent in the course of his retainer and raise any matter of significance to his client but this does not mean that a solicitor should blindly execute the instructions of the client. …
>
> 60 … Solicitors ... cannot be content with simply following the instructions of their clients blindly, whether it is for fear of reproach or rebuke, but must exercise practical wisdom in advising their clients. …
>
> [original emphasis omitted]

72 These observations have particular relevance to the present case. In light of the allegations that had been made, it was incumbent upon the respondent to ascertain his client's true state of mind and intentions. However, the respondent had made no effort to directly confront the allegations against HBS by asking HCS about them. It is indisputable that these allegations were a matter of grave significance that should have been raised with HCS. In choosing to comply with the third letter of authority without first questioning his client about these matters, the respondent was merely blindly executing instructions. Indeed, he should not even have acted in relation to the third letter of authority, given the facts known to him then. Questioning HCS about the allegations alone and away from the influence of HBS would have at one stroke enabled the respondent to determine their legitimacy and the reasons HCS had for his divergent instructions. It would have brought to HCS' attention the risks of depositing the money in the OCBC account and satisfied the respondent that HCS was fully informed about the potential consequences of his proposed course of conduct. It is what any reasonably competent lawyer would have done in the circumstances to satisfy himself that there was no risk of misappropriation of the sale proceeds.

73 In failing to do as indicated, we find the respondent guilty of misconduct within the meaning of s 83(2)(*h*) of the Act and that the fifth charge has been made out against the respondent. However, we note that the respondent cannot be said to have breached either r 21 or r 25(*b*) of the Professional Conduct Rules. The former provides (see [57] above for the latter):

> **Explanation to client**
>
> **21.** —(1) An advocate and solicitor shall explain in a clear manner, proposals of settlement, other offers or positions taken by other parties which affect the client.

Rule 21 applies to communications from other parties, which the third letter of authority is not. Rule 25(*b*) concerns solicitors who have allowed their protection of their client's interest to be affected by the interest of a third party. In contrast, the respondent has not so much been affected

by the interest of another person as he has failed to safeguard his client's own. Accordingly, the respondent has not breached s 83(2)(*b*) of the Act on the charge as framed.

Deliberately undermining Alpha Law's authority to act for HCS

74 While Mr Vergis took the position that the fourth charge was central in the case against the respondent, it appears to us, however, to be of only peripheral importance in as much as the focus of this case must be the respondent's duties to his client. That said, there is no doubt that the respondent's conduct under this charge does raise serious concerns. For one, rather than simply taking a guarded approach to Alpha Law as the respondent was entitled to, he had instead engaged in a course of conduct that was positively uncooperative and disruptive by acting as he did between 1 and 8 March 2010 without keeping Wong informed. Indeed, the respondent now readily admits this: [note: 11]

> Q You had on numerous occasions during your oral testimony criticise [Wong] for going behind your back and talking to [HCS] and getting him to sign off on documents. Weren't you doing the exact same thing?
>
> A Yes.
>
> Q Didn't it occur to you that you should accord some professional courtesy to [Wong] to tell him?
>
> A Was I accorded the courtesy?
>
> Q We've already shown you that he went to see [HCS], he was under the impression that you were merely acting for [HBS]. You on the other hand, Sir, were clearly aware that he had a written letter of authority appointing him to act for [HCS].
>
> A I was---I did not call him because I believe that he went behind my back, indeed so I reciprocated and so---
>
> Q So you're saying you intentionally didn't inform [Wong]?
>
> A You can take it that way.
>
> ...
>
> Q But the point is you intentionally wanted to keep him in the dark?
>
> A I intentionally did not inform him that [HCS] came to my office, not keep in the dark.

75 The respondent was plainly taking a bloody-minded approach in relation to his dealings with Wong. It is clear from the exchange reproduced above that this was a result of the respondent feeling slighted by Wong having gone behind his back to contact his client, HCS. However, it was unreasonable for the respondent to prefer assuaging his "hurt" over his duty to advance his client's interests. We also think that such an attitude should not be encouraged even where solicitors are representing different parties in a matter, let alone where they purport to act for the same client. As fellow members of an honourable profession, solicitors must treat each other with respect and courtesy even as they pursue their clients' interests to the utmost.

76 However, the respondent's conduct takes on an altogether more troubling complexion when the circumstances in which he acted are considered. Given that he appeared to be bending to HBS' will and taking a defensive approach to justify his actions, his failure to respond to Alpha Law until after the sale proceeds had been released raises the inference that he sought to present Alpha Law and Wong with a *fait accompli*. The respondent appears to have intentionally deprived Alpha Law of an opportunity to object to his course of action or to take steps to stop him. He had been put on notice that Alpha Law was also seeking to have HCS examined (see [21] and [22] above). The suggestion by the Law Society was that the respondent intended to release the money without prior notice to Alpha Law to prevent Wong from taking preventive action. On the basis of the established facts, this certainly appears to be the position. A prudent solicitor would not have acted as the respondent did without first verifying with HCS why he had signed the second letter of authority. The respondent inexplicably never did so.

77 Accordingly, we find the respondent guilty of misconduct within the meaning of s 83(2)(*h*) of the Act and that the fourth charge has been made out against the respondent. However, as with the fifth charge, the respondent cannot be said to be in breach of r 25(*b*) of the Professional Conduct Rules as he did not engage in this disruptive course of conduct with the aim of advancing HBS' interests. The respondent was also charged with breaching rr 28 and 47 of the Professional Conduct Rules, which provide as follows:

> **Potential conflict of interests**
>
> **28**. When accepting instructions to act for more than one party in any commercial or conveyancing transaction where a diversity of interests exists between the parties, an advocate and solicitor shall advise each party of the potential conflict of interests and of the advocate and solicitor's duty if such conflict arises.
>
> **...**
>
> **Relationship with other advocates and solicitors**
>
> **47**. An advocate and solicitor shall treat his professional colleagues with courtesy and fairness.

Rule 28 is not applicable to the present case as the respondent has not been instructed by more than one client. His client has at all times been HCS alone. We also do not think that the respondent's conduct attracts sanction under r 47. This is a case of abdication from responsibility and patent disregard of a client's interests rather than professional discourtesy.

Due cause

78 On the facts, and on the basis of the third, fourth and fifth charges against the respondent being made out, we find that there is due cause for the respondent to be sanctioned pursuant to s 83(1) of the Act. The respondent's breaches constituted serious breaches of duty to his client and have had grave consequences. In these circumstances, it would not be sufficient to remit the matter to the DT for a reprimand or penalty to be meted out pursuant to s 93(1)(*b*) of the Act.

79 It will be noted that the respondent has been measured against the standard of the reasonably competent solicitor in the analysis above. Such language invites comparison with professional negligence. However, it should not be assumed that every case of negligence by a solicitor will result in a finding of due cause for sanction under the Act. In assessing whether a given instance of negligence supports a finding of due cause, the factual backdrop and the precise actions and state of

mind of the solicitor are of paramount importance. In other words, no single factor is determinative. An episode of innocent bungling to the client's detriment may call for compensation but not censure. The professional lapse must be grave if it is to attract disciplinary sanction: see [1] above. Plainly, several serious lapses in the course of a professional engagement would invite serious consequences, including disciplinary sanction(s).

80 In the present case, the finding of due cause is supported by HCS' obvious vulnerability and the fact that the risks he faced had been plainly and repeatedly brought home to the respondent. As the DT graphically put it, this is a case of "not just alarm bells ringing, but sirens blaring": see [36] above. The respondent utterly failed to advise HCS on these risks and instead attempted to outsource his responsibilities to other professionals in an attempt to justify a questionable course of conduct in wilful disregard of HCS' interests. This serious and repeated abdication of duty by the respondent is compounded by his unjustified attitude of antagonism towards Wong which he apparently continues to mistakenly harbour, even today. While the respondent might have been justified in treating Wong guardedly initially, it is clear that he was by March 2010 simply attempting to prevent Wong from questioning his actions. That his counsel even in their submissions to us continued to relentlessly criticise Wong is regrettable.

The appropriate penalty

81 During the hearing before us, Mr Vergis submitted that the gravity of the present matter warranted that the respondent be struck off the roll. In this regard, the oft-cited words of Sir Thomas Bingham MR in *Bolton v Law Society* [1994] 1 WLR 512 at 518 warrant repeating:

> Any solicitor who is shown to have discharged his professional duties with anything less than complete integrity, probity and trustworthiness must expect severe sanctions to be imposed upon him ... Lapses from the required high standard may, of course, take different forms and be of varying degrees. The *most serious involves proven dishonesty*, whether or not leading to criminal proceedings and criminal penalties. In such cases the tribunal has *almost invariably*, no matter how strong the mitigation advanced for the solicitor, *ordered that he be struck off the Roll of Solicitors*. ... *If a solicitor is not shown to have acted dishonestly, but is shown to have fallen below the required standards of integrity, probity and trustworthiness, his lapse is less serious but it remains very serious indeed in a member of a profession whose reputation depends upon trust. A striking off order will not necessarily follow in such a case, but it may well. The decision whether to strike off or to suspend will often involve a fine and difficult exercise of judgment, to be made by the tribunal as an informed and expert body on all the facts of the case.* Only in a very unusual and venial case of this kind would the tribunal be likely to regard as appropriate any order less severe than one of suspension. [emphasis added]

82 As can be seen, a striking off is generally warranted only in cases of proven dishonesty or where a respondent is shown to have fallen below the required standards of integrity, probity and trustworthiness. While we are troubled by the respondent's conduct, we are unable to agree with the Law Society that a striking off is the appropriate penalty in the present case. Central to the two categories of lapses enunciated by the learned Master of the Rolls are the qualities of honour, morality and uprightness. Whatever failings the respondent is guilty of, he cannot be said to have manifested a deficit of these qualities or a defect of character. Rather, he has failed to act as a reasonably competent solicitor would have done in the circumstances. In short, he has failed to act (during several episodes in the course of his professional representation of HCS) with diligence and competence and merits punishment, but should not be sanctioned with the same severity as those who have shown themselves to be dishonest.

83 In its written submissions, the Law Society referred us to a number of cases in which the respondent solicitor had been suspended for two or three years and argued that the respondent's behaviour in the present case was more blameworthy. However, a perusal of these cases reveals the converse to be true. Each of these cases concerned respondent solicitors who acted for multiple parties in the same transaction and favoured the interests of one client over the others. The Law Society's reliance on these cases appears founded on the case theory that the respondent had deliberately favoured the interests of HBS over HCS, a theory which is not borne out by the evidence. There is no evidence of a suspicious relationship between the respondent and HBS. To reiterate, the conduct for which the respondent is being sanctioned is his failure to advise HCS and to query him on the allegations made against HBS.

84 In any event, the search for appropriate sentence is constrained by the paucity of precedents where a solicitor and advocate was sanctioned purely for a failure to adequately safeguard his client's interests, as opposed to failing to do so in a situation of clearly conflicting interests. Yet, there can be no doubt that such a failure will in the appropriate case call for the imposition of a sanction pursuant to s 83(1) of the Act. Rule 12 of the Professional Conduct Rules provides:

> **Diligence and competence**
>
> **12**. An advocate and solicitor shall use all reasonably available legal means consistent with the agreement pursuant to which he is retained to advance his client's interest.

85 The case of *Uthayasurian Sidambaram* (see [71] above), in which the solicitor received a suspension of one year, is also instructive. While not directly analogous to the present case insofar as an obvious conflict of interests arising from a multi-party transaction featured in that case, significant attention was directed by this court to the solicitor's failure to adequately advise his client, an investor in the potential development of real estate. In particular, he had failed to advise his client of the risks of granting unfettered authority to an undischarged bankrupt to direct the disbursement of $1m that the client had invested in the development. Once such authority was granted, the solicitor was content to blindly follow the instructions of the bankrupt, resulting in $650,000 of the funds being wrongfully paid out. This Court found that the evidence fell short of proving that the solicitor had been privy to any dishonesty and that its highest the case was one of utter incompetence. The two cases are thus similar as each respondent blindly complied with his client's instructions even though it was apparent that there was a risk such instructions were not in the client's best interests. *This is not, we reiterate, a matter involving just a single episode of oversight in the course of a professional engagement. Here, the respondent had not only gravely but repeatedly failed to properly discharge his professional responsibilities and had fallen far short of the standards expected of a competent solicitor*. For ease of reference, we now summarise our findings.

Summary of findings

86 The evidence does not disclose any dishonesty on the part of the respondent. It is recognised that the respondent had some reason to question the veracity of the warnings: see [51] and [53] above. He had taken some steps to protect HCS, though those steps were on any objective standard wholly inadequate and perhaps partially calculated to defend the respondent's actions from criticism: see [68]–[69] above. Further, self-interest has not played a role in this unfortunate episode. The respondent's only prospect of gain throughout was his fees, and these have proven to be poor compensation for the trouble he has been put through.

87 However, the respondent failed to act appropriately even after receiving comprehensible and apparently credible warnings of the risks facing his client: see [56], [63] and [72] above. This failure

is achingly compounded by the fact that an element of ill-considered stubbornness seems to have significantly contributed to his unwillingness to cooperate with Wong to safeguard his client's interests: see [74]–[76] above. As a result, a vulnerable client who was already in dire need of funds has lost his home and only asset of substance. The respondent failed to maintain direct and clear channels of communication with his client. He ought not to have meekly caved in after HBS's "badgering" and should have clarified his concerns directly with HCS: see [61], [71] and [72] above. Instead, he puzzlingly relied on third parties such as Dr Lee and Tham (as well as HBS) to ascertain his client's true intentions and objectives in the subject transaction. He must have known that they were not privy to all the material circumstances and that HBS was present when they communicated with HCS. This abdication of his obligation of client loyalty is altogether unacceptable. *Such a grave responsibility owed to an obviously vulnerable client should have been personally undertaken rather than delegated*.

88 In the respondent's submissions before the DT, his counsel submitted that: [note: 12]

> The demeanour of the [respondent] during the hearings especially his Examination and Cross examination are important for they *show him to be a man who is weighed down with the practices of a one man show and who wishes to get things moving and not paying attention at times to details*. *A man who is unable to properly grasp things and not one who is dishonest or conniving.* [emphasis added]

89 We agree that the evidence does not suggest that the respondent is dishonest or conniving. This is nevertheless a deeply disturbing concession that underlines a basic lack of understanding by the respondent of his professional responsibilities. *First*, it is entirely unsatisfactory for any solicitor to state that he has not paid attention to material details or failed to have grasped obvious matters that could gravely prejudice a client. That is precisely what he has been professionally engaged to do. *Second*, the pressures of practice can never be a justification for a solicitor's failure to meet his professional responsibilities to his clients. Rule 15 of the Professional Conduct Rules states:

> **Inadequate time**
>
> **15**. An advocate and solicitor shall not accept instructions if, having regard to his other professional commitments, he will not be able to discharge or carry out such instructions diligently and expeditiously.

Serious risks facing one's client should never be casually brushed off as mere details. In regard to the respondent's supposed inability to properly grasp issues, it need only be repeated that the standard of professionalism an advocate and solicitor ought to display is an objective one: see [43] above. The test is what a reasonably competent solicitor would do having regard to the normal standards adopted in practice. A solicitor should not accept a retainer unless he can conscientiously and promptly discharge his responsibilities to his client.

90 In *Law Society of Singapore v Ravindra Samuel* [1999] 1 SLR(R) 266 ("*Ravindra Samuel*"), the court held at [11]–[13] that three factors were relevant in a determination of the appropriate penalty: (a) protection of the public, (b) the need to safeguard the collective interests and reputation of the legal profession as an honourable one, and (c) punishment of the offender.

91 Client care is a paramount consideration in every matter entrusted to a solicitor. We are of the view that a manifest absence of professional conscientiousness may suffice to invite sanction under s 83(1) of the Act: see [1], [79] and [80] above. This meets the objectives of the first two considerations noted in *Ravindra Samuel*. Such an approach will remind the profession at large of its

grave professional responsibilities to its clients and thereby serve to protect the public through quality assurance. The standing of the profession and public confidence in the administration of justice will also be upheld by qualitatively assessing the discharge of professional responsibilities against standards of reasonable competence and diligence in addition to trustworthiness. However, there is no necessity for the sentence meted out to the respondent to be specially augmented to reflect these considerations.

Conclusion

92 For the reasons set out above, we have determined that it is appropriate to direct that the respondent be suspended from practice for a period of three months commencing one month after the date hereof. In relation to costs, it must be noted that the Law Society has not succeeded in establishing all the charges it has preferred against the respondent. In the circumstances, we think it is appropriate to limit the Law Society's costs to half of the ordinarily assessed costs on a standard basis. Parties are to write in within seven days from the date hereof with their submissions on what ought to be the appropriate costs due to the Law Society as regards the proceedings here and for the DT proceedings.

[note: 1] Record of Proceedings Volume IIIA Tab B at pp 127–128.

[note: 2] Record of Proceedings Volume IV Tab B at p 39.

[note: 3] Record of Proceedings Volume IV Tab B at p 40.

[note: 4] Record of Proceedings Volume IV Tab B at pp 70–71.

[note: 5] Record of Proceedings Volume IV Tab B at p 92.

[note: 6] Record of Proceedings Volume I Tab I at p 231, para 76.

[note: 7] Record of Proceedings Volume IIIB Tab C at p 160, lines 5–9

[note: 8] Record of Proceedings Volume IIIB Tab C at p 160, lines 17–29

[note: 9] Record of Proceedings Volume IIIB Tab C at p 165, line 31 to p 167, line 11

[note: 10] Record of Proceedings Volume IIIB Tab C at p 161, lines 19–32

[note: 11] Record of Proceedings Volume IIIB Tab C at p 175, line 28 to p 176, line 17

[note: 12] Record of Proceedings Volume I Tab G at p 87, para 23.