IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2024] SGHC 121

Suit No 718 of 2021

Between

Center for Competency-Based
Learning and Development Pte Ltd
… *Plaintiff*

And

SkillsFuture Singapore Agency
… *Defendant*

And Between

SkillsFuture Singapore Agency
… *Plaintiff in counterclaim*

And

Center for Competency-Based
Learning and Development Pte Ltd
… *Defendant in counterclaim*

JUDGMENT

[Contract — Discharge — Stipulated event — Innocent party entitled to terminate in event of breach of warranty or term of contract]
[Contract — Discharge — Stipulated event — Innocent party entitled to terminate if in its opinion the other party is guilty of gross moral turpitude]

[Contract — Contractual terms — Implied term not to exercise contractual discretion dishonestly, for an improper purpose, irrationally, capriciously or arbitrarily]
[Contract — Contractual terms — Contractual term entitling innocent party to clawback full amount of funding or subsidy received under the contract upon termination of contract on fault-based grounds]
[Contract — Contractual terms — Exemption clause]
[Equity — Estoppel — Promissory estoppel]
[Evidence — Proof of evidence — Onus and standard of proof]
[Restitution — Unjust enrichment — At the expense of]

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Center for Competency-Based Learning and Development Pte Ltd
v
SkillsFuture Singapore Agency

[2024] SGHC 121

General Division of the High Court — Suit No 718 of 2021
Lee Seiu Kin SJ
27–28 July, 1–2, 4, 8, 10–11, 15, 17 August 2023, 22 April 2024

8 May 2024 Judgment reserved.

Lee Seiu Kin SJ:

1 This action arises out of a contract which the plaintiff entered into with the defendant – a statutory body tasked to implement the SkillsFuture initiative in Singapore – in or around May 2007, on what appeared to be the defendant's standard-form terms. The plaintiff is a training organisation which provided, *inter alia*, cleaning-related training courses to numerous trainees over the course of the years. Consequently, the plaintiff made claims on the defendant's SkillsConnect portal for disbursement of monetary support in respect of these training courses pursuant to the contract. Between April and July 2020 and in December 2020, 14 of the trainees that attended the plaintiff's courses were called up by the defendant as part of an audit of the plaintiff's processes. The 14 trainees' purported testimonies formed the crux of the factual dispute between the parties, being the evidential basis upon which the defendant formed the opinion that the plaintiff had been guilty of "gross moral turpitude" and

accordingly elected to terminate the contract on 25 March 2021. The defendant, naturally, claimed that it had the sole and absolute discretion to form such opinion; the plaintiff asserted in response that the discretion was not *unfettered*. Be that as it may, the evidential complexity before the court was augmented by the parties' decisions not to call *any* of the 14 trainees as witnesses for the trial. This was despite the concerns raised by the plaintiff as to the quality of the defendant's investigative process and the alleged memory impairment of the 14 trainees in question, who, according to the plaintiff, were elderly cleaners sent by their employers for skills upgrading. Far be it to burble in the tulgey wood of conjecture, the court must therefore decide the case based on the material before it.

2 The contractual arrangement between the parties also presented certain onerous clauses, not least upon the defendant's election to terminate the contract. On the defendant's part, it contended that such harsh terms were necessary to enable the defendant to discharge its statutory duty and safeguard the public funds constituting the Skills Development Fund. Be that as it may, it is trite that a contract entered into by the parties records the terms of the bargain they have struck and the contractual allocation of risks between them. In giving effect to the intentions of the parties as *expressed* in the contract, the courts seek to uphold the bargain of the parties and will undertake an *objective* interpretative exercise of the text of the contract and its surrounding context rather than refer to the parties' actual or subjective intentions.

Facts

The parties

3 The plaintiff and defendant in counterclaim ("CBLD") is a Singapore-incorporated company in the business of providing business and management

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consultancy services, corporate training services and motivational courses.[1] CBLD's sole shareholder is Ms Chan Lai Peng Elizabeth ("Ms Chan"), who is also a director of CBLD.[2] To conduct its training sessions, CBLD engaged resident trainers, who are employees of CBLD, and associate trainers, who are independent contractors.[3]

4 The defendant and plaintiff in counterclaim ("SSG") is a statutory body established pursuant to s 3 of the SkillsFuture Singapore Agency Act 2016 (No. 24 of 2016) (the "SSG Act"). SSG is tasked with implementing the SkillsFuture initiative, which seeks to provide opportunities for skills development to Singaporeans. As part of its responsibilities, SSG is statutorily designated to administer the Skills Development Fund in accordance with the Skills Development Levy Act 1979 (2020 Rev Ed), to defray and subsidise the costs incurred in conducting and attending eligible training courses.[4]

Background to the SkillsConnect portal and the Contract

5 SkillsConnect was the online portal through which SkillsConnect account holders (such as CBLD) could transact with SSG during the relevant period, to obtain funding from SSG. The SkillsConnect portal was closed on 30 October 2021 and replaced by a new portal introduced by SSG, which was known as the Training Partners Gateway ("TPGateway") portal.[5]

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1 Statement of Claim (Amendment No. 3) dated 21 September 2023 ("SOC") at para 1.

2 Affidavit of Evidence-in-Chief ("AEIC") of Chan Lai Peng Elizabeth dated 21 February 2023 ("AEIC Elizabeth Chan") at para 1.

3 AEIC Elizabeth Chan at para 19.

4 AEIC of Pang Tong Wee dated 21 February 2023 ("AEIC Pang Tong Wee") at para 5.

5 AEIC Pang Tong Wee at para 13.

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6 In or Around May 2007, CBLD applied for a SkillsConnect account (the "SkillsConnect Account") which was activated for the use of the SkillsConnect portal.[6] At the same time, CBLD and SSG entered into a standard form contract, which is defined at cl 1.2 of the SkillsConnect General Terms and Conditions to comprise of the following documents (collectively, the "Contract"):[7]

(a) the SkillsConnect General Terms and Conditions (the "SkillsConnect General T&C");

(b) the Terms of Use;

(c) the Privacy Statement;

(d) the applicable Specific Terms and Conditions, including the Funding – Specific Terms and Conditions ("Funding – Specific T&C") and the Terms and Conditions for Funded Courses; and

(e) the applicable Guidelines, including the Guidelines to Terms & Conditions – Funded Courses.

Clause 1.2 further provides that "[a]ny conflict among the provisions of these documents shall be resolved in the following order of priority: (a) these General Terms and Conditions; (b) the applicable Specific Terms and Conditions; (c) the applicable Guidelines; and (d) the Terms of Use and the Privacy Statement".

7 Clause 1.3 of the SkillsConnect General T&C reserves SSG's power to "amend the Contract from time to time", and provides that CBLD would be

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6 SOC at para 3; Defence & Counterclaim (Amendment No. 4) dated 12 October 2023 ("DCC") at para 4.

7 Agreed Bundle ("AB") at p 66.

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"bound by the latest version of the Contract found on SkillsConnect or on the web pages of the SSG web site (http://www.ssg-wsg.gov.sg/)".[8]

8 In order to obtain funding for courses from SSG, it was undisputed that a training organisation such as CBLD must take the following steps:[9]

(a) First, the training organisation submits an application for a training grant ("Training Grant Application") on the SkillsConnect portal for approval. Upon SSG's approval of the Training Grant Application (thereafter, the "Training Grant"), a Training Grant application number ("Training Grant Application Number") is generated;

(b) Subsequently, the training is to be conducted by the training organisation within 120 days.[10] After the training has been duly conducted, the next step consists of the training organisation submitting an *ad hoc* claim in respect of each trainee pursuant to the earlier approved Training Grant (the "*Ad hoc* Claim"). Submitting an *Ad hoc* Claim requires the training organisation to make certain supporting declarations on the portal, including:[11]

(i) a declaration as to the number of training hours for which each trainee indicated in the *Ad hoc* Claim had attended the course;

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8 AB at p 66.

9 AEIC Pang Tong Wee at paras 10(a)–(b).

10 Notes of Evidence ("NE") (1 August 2023) at p 59, lines 24–26.

11 Defendant's Bundle of Documents dated 9 November 2023 ("DBOD") at pp 5–12.

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(ii) a declaration as to whether the training was conducted during the relevant trainee's working hours;

(iii) a declaration as to the start date and the end date of the course;

(iv) a declaration as to course duration, comprising the number of classroom training hours and assessment hours; and

(v) a declaration that the information stated in the *Ad hoc* Claim and its accompanying information (*ie*, the submitted attendance sheets) are true and correct.

At time of submission, the training organisation is also required to provide SSG with a softcopy of the attendance sheet signed by the trainers and trainees of the course. According to SSG, the attendance sheet is "intended to serve as a contemporaneous record that the trainee(s) have attended the training course".[12]

(c) At the final step, the grant will only be disbursed after the *Ad hoc* Claim has been approved by SSG. Upon SSG's approval, an *ad hoc* reference number is generated ("*Ad hoc* Reference Number"), which also contains the Training Grant Application number.[13] An example of an *Ad hoc* Reference Number is "TG-2020-096219/AC00001".[14]

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12 Defendant's Closing Submissions dated 9 November 2023 ("DCS") at para 41.

13 NE (1 August 2023) at p 57, lines 4–13.

14 2nd Supplementary AEIC of Lim Yih Dar dated 11 August 2023 ("2nd Supp AEIC Lim Yih Dar") at para 15.

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Events leading up to the termination of the Contract

9 On 16 October 2020, CBLD received a notice of intent to terminate the Contract (the "Notice of Intent") from SSG's Mr Pang Tong Wee ("Mr Pang") on behalf of SSG's Chief Executive. Mr Pang was the Chief Investigator and Director of SSG's Fraud and Enforcement Division at all material times, which had carried out an investigation into CBLD's submitted claims.[15] In the Notice of Intent, SSG claimed that a group of trainees whose details were appended in its letter had not in fact fulfilled the 75% minimum attendance requirement for the respective *Ad hoc* Claims submitted by CBLD. The following breaches committed by CBLD were particularised:[16]

(a) In breach of cl 7.3 of the SkillsConnect General T&C, CBLD had "failed to ensure that all information it has provided about its claim submissions is true, accurate and complete. Among other things, training hours submitted for claims far exceeded what trainees had actually attended …".

(b) In breach of cl 7.5 of the SkillsConnect General T&C, CBLD had "failed to put in place adequate control measures to prevent the occurrences of the offences by the trainers".

(c) In breach of cll 4.6(a) and 4.6(b) of the SkillsConnect Funding T&C, "[c]laims have been submitted to SSG by CBLD even though the conduct of the funded courses was incomplete and even though the trainees did not attain a minimum of seventy-five percent (75%) attendance for the Funded Course".

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15 NE (8 August 2023) at p 22, lines 24–25.

16 AB at pp 105–106.

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10 SSG also sought a refund of $793,083.79 from CBLD for the affected claims mentioned at sub-paragraphs (a)–(c) above, and provided details of the said affected claims in an annexture to the Notice of Intent. Furthermore, in view of the above breaches, the Notice of Intent stated that CBLD "has failed an audit conducted by the SSG" and that the latter "intends to terminate the contract with CBLD pursuant to clause 12.1(c) of the SkillsConnect General Terms and Conditions". CBLD was thereafter given 14 days from the date of the Notice of Intent (*ie*, by 5pm on 29 October 2020) to show cause to SSG in writing as to why SSG should not, *inter alia*, terminate the Contract.[17]

11 On 16 October 2020, CBLD's Ms Chan wrote to Mr Lim Yih Dar ("Mr Yih Dar") (also known as Mr Gabriel Lim), a manager at SSG's Fraud and Enforcement Division, seeking further information "on what checks were conducted by SSG and what evidences were collected to determine that those classes listed did not meet 75% attendance" (the "16/10/2020 E-mail").[18] On 22 October 2020, Ms Chan again wrote to Mr Yih Dar to request an extension of 14 days in relation to the given deadline of 29 October 2020, citing the "time needed for [CBLD] to complete a thorough investigation, compile the relevant documents and prepare the report".[19]

12 In response to Ms Chan's request in the 16/10/2020 E-mail, Mr Yih Dar replied on 23 October 2020 stating that SSG had "amongst other things, conducted verification checks with a significant number of trainees before we came to our conclusion. However, we seek your understanding that we are unable to share beyond what has already been shared (please see attached) as

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17 AB at pp 105–107.

18 AB at p 116.

19 AB at pp 125, 131.

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the information you have requested is very specific and confidential".[20] Mr Yih Dar further stated:

> We have noted that CBLD has been conducting its own "*investigations*" and would like to urge CBLD to exercise caution and care when doing so, especially when obtaining information from trainees. [emphasis in original]

13 At the same time, Mr Yih Dar also conveyed SSG's approval of the request for an extension of time and notified CBLD that it may, by 5pm on 13 November 2020, show cause to SSG in writing as to why SSG should not, *inter alia*, terminate the Contract.

CBLD's show cause

14 On 13 November 2020, CBLD completed its internal investigations and provided an investigation report to SSG (the "CBLD Investigation Report").[21] CBLD Investigation Report raised certain concerns on SSG's manner of investigations (see below at [77]–[78]). Among other steps that CBLD took to show cause, it had interviewed a total of 184 trainees from Aras Development Pte Ltd ("ARAS") and Lifelong Cleaning Pte Ltd ("Lifelong"), and obtained the trainees' written declarations on their participation in the training courses (the "CBLD Declarations").[22] For convenience, I shall refer to this as the "Mass Declaration Exercise".

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20 AB at p 133.

21 AB at pp 157–170.

22 AB at p 162.

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15 The CBLD Investigation Report concluded that there was no breach of the Contract and that SSG's audit "may have been conducted in a manner that did not result in accurate information and results."[23]

Termination of the Contract

16 On 25 March 2021, CBLD received a notice for immediate termination of the Contract (the "Termination Letter") pursuant to cl 12.1(d) of the SkillsConnect General T&C, and that SSG had "formed the opinion that CBLD is guilty of gross moral turpitude".[24] The Termination Letter further stated:

> 5. Please also note that, by virtue of Clause 13.4 of the SkillsConnect General Terms and Conditions, no further funding will be disbursed by us to CBLD under the Contract, *notwithstanding that claims may previously have been submitted by CBLD for the same and approved by us*. [emphasis added]

Procedural history

17 CBLD commenced action against SSG *vide* HC/S 718/2021 ("Suit 718") on 26 August 2021.

Application to admit the 14 Trainee Statements and four trainees' statutory declarations

18 At the hearing on 8 May 2023, I granted SSG's application for the interview statements of 14 trainees (collectively, the "14 Trainee Statements") to be admitted pursuant to s 32(1)(*b*)(iv) of the Evidence Act 1893 (2020 Rev Ed) (the "EA"), which provides:

> **32**.—(1) Subject to subsections (2) and (3), statements of relevant facts made by a person (whether orally, in a document

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23 AB at p 170.

24 AB at p 1257.

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> or otherwise), are themselves relevant facts in the following cases:
>
> …
>
> **or is made in course of trade, business, profession or other occupation;**
>
> (*b*) when the statement was made by a person in the ordinary course of a trade, business, profession or other occupation and in particular when it consists of —
>
> …
>
> (iv) a document constituting, or forming part of, the records (whether past or present) of a trade, business, profession or other occupation that are recorded, owned or kept by any person, body or organisation carrying out the trade, business, profession or other occupation,
>
> and includes a statement made in a document that is, or forms part of, a record compiled by a person acting in the ordinary course of a trade, business, profession or other occupation based on information supplied by other persons;

19 The 14 Trainee Statements were the statements of 14 trainees from ARAS and Lifelong (collectively, the "14 Trainees") who had purportedly attended CBLD's training courses and in respect of whom *Ad hoc* Claims had been submitted by CBLD. The 14 Trainee Statements were recorded pursuant to SSG's conduct of in-person interviews with the 14 Trainees between 14 and 23 December 2020, and presumably in exercise of SSG's powers of inquiry under s 57(2)(*c*) of the SSG Act. The 14 Trainees had attended courses conducted by four of CBLD's trainers – namely, Mr Tan Kim Hwee Robin ("Robin"), Mr Lim Li Jian ("LLJ"), Mr Toh Kit Hong Kevin ("Kevin") and Mr Wilkins Chew ("Wilkins"). For convenience, I shall refer to these four trainers as the "Impugned Trainers".

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20 The rationale behind the hearsay exception in s 32(1)(*b*)(iv) of the EA is that a statement made in the ordinary course of a trade, business, profession or other occupation is a record of historical fact made from a disinterested standpoint and may therefore be *presumed* to be true: *Bumi Geo Engineering Pte Ltd v Civil Tech Pte Ltd* [2015] 5 SLR 1322 at [104], citing M C Sarkar *et al*, *Sarkar's Law of Evidence* vol I (LexisNexis, 17th Ed Reprint, 2011) at p 970. I was satisfied that the 14 Trainee Statements came within the ambit of s 32(1)(*b*)(iv) of the EA and admitted these documents for the purpose of proving that these statements were received, with the probative value of the statements to be decided *per* s 32(5) of the EA.[25]

21 At the same time, CBLD also applied for the statutory declarations made by four out of the 14 Trainees, pursuant to the Oaths and Declarations Act (Cap 211, 2001 Rev Ed) ("Oaths and Declarations Act"), to be admitted. On 8 May 2023, I granted this application and admitted the four statutory declarations pursuant to ss 32C(1)(*a*) and 32C(2) of the EA, which state as follows:

> **Admissibility of evidence as to credibility of maker, etc., of statement admitted under certain provisions**
>
> 32C.—(1) Where in any proceedings a statement made by a person who is not called as a witness in those proceedings is given in evidence by virtue of section 32(1) —
>
> (*a*) any evidence which, if that person had been so called, would be admissible for the purpose of undermining or supporting that person's credibility as a witness, is admissible for that purpose in those proceedings; and
>
> …
>
> (2) Where in any proceedings a statement made by a person who is not called as a witness in those proceedings is given in

[25] Minute Sheet of Hearing on 8 May 2023.

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> evidence by virtue of section 32(1), evidence tending to prove that, whether before or after he or she made that statement, he or she made another statement (orally, written or otherwise) inconsistent with the firstmentioned statement is admissible for the purpose of showing that the person has contradicted himself or herself.

The stood-down claims

22 At Annex A of the Statement of Claim (Amendment No. 3) dated 21 September 2023 ("SOC"), CBLD provided a breakdown of its claim sum under the Contract, where the claim entries have been categorised with the following descriptions:

(a) Category 1A: "Training grants approved for CBLD's environmental services programs under SkillsConnect System but remain unpaid".

(b) Category 1B: "Training grants approved for environmental services programs under TPGateway system but remain unpaid".

(c) Category 1C: "Training grants approved for HR programs under SkillsConnect system but remain unpaid".

(d) Category 1D: "Training grants approved for HR programs under TPGateway system but remain unpaid".

(e) Category 2: "SkillsFuture Credit Claims by Self-Sponsored Individuals. Approved for ready payout/release for disbursement by SSG but remain unpaid".

The parties adopted the above categorisation employed at Annex A of the SOC. For convenience, I shall also adopt the same.

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23 SSG pleaded that the entries under Categories 1B, 1D and 2 did not pertain to claims submitted under the Contract. On the first day of trial, counsel for CBLD rightly conceded that this was so and orally made an application for permission to amend their statement of claim in respect of the entries under Categories 1B, 1D and 2.[26]

24 In view of the trial dates which had already been fixed, I ordered that CBLD's application for permission to amend the pleadings be held in abeyance, pending the determination of the trial in respect of the claims under Categories 1A and 1C only. Counsel for CBLD agreed to this arrangement and for the court to consider the application for permission to amend after the present tranche of the trial.[27]

The parties' cases

CBLD's case

25 Suit 781 is CBLD's claim for a total sum of $1,439,157.72 submitted as *Ad hoc* Claims to SSG pursuant to cl 3 of the Funding – Specific T&C in relation to completed training courses conducted by CBLD during the period of April 2020 to March 2021. The precise construction of cl 3 of the Funding – Specific T&C is disputed by the parties. Since the entries under Categories 1B, 1D and 2 were stood down, CBLD's claim sum for this tranche is therefore the sum of $591,121.90 (the "Claim Sum"),[28] being the aggregate sum claimed in relation to the entries under Categories 1A and 1C. In this regard, CBLD contends that cl 3 of the Funding – Specific T&C requires SSG

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26 NE (27 July 2023) at p 1, lines 26–29.

27 NE (27 July 2023) at p 1, line 31 to p 2, line 4.

28 Plaintiff's Closing Submissions dated 9 November 2023 ("PCS") at para 18.

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to award monetary support by way of a grant to CBLD, in consideration of CBLD providing its services by conducting training course(s) (which are Funded Courses as defined in the Contract) to trainees.[29]

26 In addition, CBLD alleges that the Contract was wrongfully terminated and claims for damages to be assessed. In this regard, CBLD's pleaded case is as follows:

(a) first, CBLD was not guilty of gross moral turpitude and that SSG did not have any basis to form the opinion that CBLD was guilty of gross moral turpitude;[30]

(b) second, CBLD did not breach any of the terms or the representations and warranties relied upon by SSG;[31]

(c) third, and in any event, cl 3.3 of the Funding – Specific T&C and cll 12.1(a), 12.1(d), 12.2, 12.5, 13.4, 14.1(c) and 15.1 of the SkillsConnect General T&C (collectively, the "Impugned Clauses") are not operative and unenforceable, by reason of being unfair, unreasonable and/or unconscionable;[32]

(d) fourth, and in the alternative, the Impugned Clauses are subject to an implied term that SSG cannot exercise its discretion arbitrarily, capriciously and/or irrationally. In this case, CBLD asserts that despite the "very small sample size" and "insufficient, un-conclusive and

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29 SOC at para 4.

30 Reply & Defence to Counterclaim (Amendment No. 2) dated 1 August 2023 ("RDCC") at para 4.2.

31 RDCC at para 10.

32 RDCC at para 4.4.

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imprecise nature" of SSG's investigation process, SSG disregarded CBLD's Investigation Report, and thereby "wrongfully and/or unreasonably and/or arbitrarily and/or capriciously and/or irrationally" formed the opinion that CBLD was guilty of gross moral turpitude.[33]

27 In response to SSG's position that the Claim Sum is not owing, CBLD asserts that SSG is estopped or precluded from taking that position.[34] SSG represented and/or promised by conduct that it would pay approved claims such as the Claim Sum to CBLD.[35] In reliance on this, and despite not having being paid such approved claims, CBLD continued conducting courses for trainees in 2020 until shortly after the Termination Letter was issued, and in the process incurred substantial expenses.[36]

28 Further and/or in the alternative to the above, CBLD claims remuneration on a *quantum meruit* basis for provision of the training courses.[37]

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33 RDCC at paras 4.5, 4.5.9; Plaintiff's Reply Submissions dated 30 November 2023 ("PRS") at para 6.

34 PRS at para 7.

35 RDCC at paras 4.1–4.1.3.

36 RDCC at para 4.1.4.

37 SOC at paras 15–15.3 and p 9.

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29 In the light of the foregoing, CBLD claims:[38]

(a) the Claim Sum (*ie*, $591,121.90) and damages to be assessed for wrongful termination of the Contract; or

(b) in the alternative, damages to be assessed for breach of cl 3 of the Funding – Specific T&C, or remuneration on a *quantum meruit* basis.

30 Lastly, in relation to SSG's counterclaim which is advanced on the basis of cl 13.4 of the SkillsConnect General T&C (the "Clawback Clause"), CBLD repeats, as its primary case, that the Contract was unlawfully terminated; furthermore, that the Clawback Clause is unfair, unreasonable and/or unconscionable and therefore, not operative and unenforceable; and/or the Clawback Clause is subject to an implied term that SSG cannot exercise its discretion arbitrarily, capriciously and/or irrationally; and/or SSG is estopped from taking the position that the counterclaim sum is payable by CBLD.[39] For completeness, I note that whilst there is some indication on the face of CBLD's pleadings suggesting that the Clawback Clause may amount to a penalty,[40] CBLD has wholly abandoned this point in its closing submissions. I therefore do not propose to consider whether the penalty doctrine applies to the Clawback Clause.

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38 SOC at p 9.

39 RDCC at paras 14–17.

40 RDCC at para 4.4.4.

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SSG's case

31 Preliminarily, SSG contends that CBLD is not entitled to claim against SSG in this action as CBLD is contractually bound by the general exemption clause in cl 15.1 of the SkillsConnect General T&C.[41]

32 As to whether SSG is under any obligation pursuant to the Contract to disburse monetary support for completed training courses, SSG strenuously denies any obligation of the sort. SSG contends that cl 3 of the Funding – Specific T&C imposes no obligation on SSG to award monetary support by way of a grant to any party simply by reason of that party's eligibility to make a claim for a grant. Rather, that clause provides SSG with the sole discretion to exercise its power to accept or reject any claim for monetary support by way of a grant.[42] In connection with its denial of the Claim Sum, I note that while SSG also pleaded reliance on cl 12.2 of the SkillsConnect General T&C,[43] it appeared to have abandoned reliance on this clause by the time of closing submissions. I therefore shall make no finding concerning cl 12.2 of the SkillsConnect General T&C.

33 In any event, SSG takes issue with certain irregular, erroneous and/or irrelevant information in respect of certain claim entries (collectively, the "Defective Claim Entries").[44] According to SSG, these claims therefore do not

41 DCC at para 7.

42 DCC at para 5.1.

43 DCC at para 5.1.4.

44 DCC at paras 8.1–8.1.A, 8.2–8.5.3.

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satisfy cll 4 and 5 of the Funding – Specific T&C.[45] In total, the Inaccurate Claims Entries amount to $22,082.30.[46]

34 In respect of the other claim entries (*ie*, in respect of which an *Ad hoc* Reference Number has been properly furnished), SSG relies on the Clawback Clause,[47] which provides that "[u]pon the termination of the Contract or the termination or revocation of any right or benefit granted under the Contract by reason of any matter set out in Section 12.1(a) to (g), [CBLD] shall pay to SSG *the full amount of any funding or subsidy received from SSG under the Contract or in connection with the right or benefit so terminated or revoked*" [emphasis added].[48] SSG therefore denies that the sums in the claim entries are owing and payable to CBLD. In any event, SSG disputes that it is obligated to pay the Claim Sum as the Contract has been validly terminated.[49]

35 As to CBLD's claim for unlawful termination, SSG denies that the termination of the Contract was wrongful. In this regard, SSG's pleaded case relies on cl 12.1(d) of the SkillsConnect General T&C to terminate the Contract, on the basis that "in the opinion of SSG [CBLD was] guilty of gross moral turpitude".[50] SSG formed the opinion that CBLD "has deceived or attempted to deceive [SSG], which is a Singapore public sector agency".[51] Further, SSG

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45 DCC at para 10.

46 DCS at p 130.

47 DCC at para 8.5.

48 AB at p 74.

49 DCS at para 174.

50 AB at p 73.

51 DCC at para 19.

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pleaded that an alternative ground for termination is cl 12.1(a) of the SkillsConnect General T&C, on the following basis:[52]

(a) CBLD's breach of the representations and warranties provided under cl 14.1(c) of the SkillsConnect General T&C; and

(b) CBLD's breaches of cl 7.3 of the SkillsConnect General T&C; cll 4.5 and 4.6(a)–4.6(c) of the Terms and Conditions for Funded Courses, and para 3(iv) of the Guidelines to Terms & Conditions – Funded Courses.

36 In essence, these breaches relate to CBLD's failure to (i) ensure that the information provided to SSG in its *Ad hoc* Claim submissions are true, accurate and complete, and (ii) to maintain a formal system to track the attendance of its trainees.[53]

37 As to CBLD's alternative claim for remuneration on a *quantum meruit* basis, SSG disputes this by reason of the fact that the Contract was not one for services. Furthermore, SSG had not requested CBLD to perform any services or to conduct any training courses.[54]

38 SSG's counterclaim for the sum of $793,083.79 (the "Counterclaim Sum") is advanced pursuant to the valid termination of the Contract and the Clawback Clause. The Counterclaim Sum relates to the funding received by CBLD under the Contract in relation to training sessions conducted by the Impugned Trainers (*ie*, Robin, LLJ, Kevin and Wilkins) for the employees of

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52 DCC at paras 10, 19; AB at p 73.

53 DCS at para 127.

54 DCC at para 17.

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ARAS and Lifeline.[55] This is a fraction of the total amount of funding and/or subsidies disbursed by SSG to CBLD under the Contract, which SSG says amounted to some $7,759,215.25 from 2010 to 2020.[56]

39 As to the question of costs, SSG contends that it is entitled to costs on an indemnity basis pursuant to cl 15.2 of the SkillsConnect General T&C.[57]

Issues to be determined

40 The issues which arise for my determination in the present tranche are:

(a) As a preliminary issue, whether CBLD is precluded from bringing Suit 781 by virtue of cl 15.1 of the SkillsConnect General T&C;

(b) Whether the Contract was validly terminated by SSG, in particular:

(i) Whether CBLD submitted false, inaccurate or incomplete information for the purpose of making *Ad hoc* Claim submissions;

(ii) Whether CBLD maintained a formal system to track the attendance of the trainees who attended their courses;

(iii) Whether CBLD maintained a formal feedback system;

(iv) Whether, in the opinion of SSG, CBLD was guilty of "gross moral turpitude";

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55 DCC at paras 20–21; DCS at para 248.

56 DCS at para 248.

57 DCC at para 18.A; DCS at para 252.

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(v) Whether SSG is precluded from relying on the ground of termination in cl 12.1(a) of the SkillsConnect General T&C;

(vi) Whether cll 12.1(a) and/or 12.1(d) are subject to an implied term that SSG cannot exercise its discretion arbitrarily, capriciously and/or irrationally; or are otherwise unfair, unreasonable and/or unconscionable;

(c) Whether the Claim Sum is owing and payable to CBLD; in particular:

(i) What is the proper construction of cl 3 of the Funding – Specific T&C? In particular, does cl 3 require SSG to disburse monetary support by way of a grant to CBLD for eligible claims, or does it confer on SSG the sole discretion to exercise its power to accept or reject any claim for monetary support by way of a grant?

(ii) Assuming the Contract was validly terminated, what is the effect of the termination on SSG's obligations under cl 3 of the Funding – Specific T&C in respect of the Claim Sum?

(iii) Whether SSG is estopped from relying on the Clawback Clause in respect of denying the Claim Sum;

(iv) Whether the Defective Claim Entries are recoverable;

(d) Whether CBLD's claim for *quantum meruit* is made out;

(e) Assuming the Contract was validly terminated, whether SSG is entitled to the Counterclaim Sum pursuant to the Clawback Clause, in particular:

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(i) Whether the Clawback Clause is subject to an implied term that it cannot be exercised arbitrarily, capriciously and/or irrationally;

(ii) Whether the Clawback Clause is unfair, unreasonable and/or unconscionable; and

(f) Whether SSG is entitled to indemnity costs.

The concept, standard and burden of proof

41 I shall start with addressing the question of the burden of proof. It cannot be disputed that in so far as CBLD's claim is premised on the wrongful termination of the Contract, the burden lies on CBLD to prove, on a balance of probabilities, that "[a]ll claims submitted to [SSG] by [CBLD] are in relation to trainees who have attended these training courses and who have attained a minimum of seventy-five percent (75%) attendance for these said training courses".[58] It goes without saying that the claimant bears the legal burden of establishing his case (see s 103 of the EA which encapsulates the same principle at common law): *Loo Chay Sit v Estate of Loo Chay Loo, deceased* [2010] 1 SLR 286 ("*Loo Chay Sit*") at [14]. In this regard, the Court of Appeal in *Loo Chay Sit* provided instructive guidance concerning the *three possibilities* as to the concept of proof under ss 3(3)–(5) of the EA. Whilst the legal principles are trite, in the light of the specific factual matrix in this case and the *nature* of the evidence adduced by the parties (see below at [47]–[86]), I find it helpful to reproduce the relevant passages from *Loo Chay Sit* at [18]–[22]:

> 18 In so far as the statutory definitions in s 3 of the Evidence Act are concerned, we would also add the following observations. First, where the party asserting a particular fact

[58] SOC at para 10.1 read with para 5.3.

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> has discharged his burden of proof on a balance of probabilities (in civil suits) to allow the court to make the finding that a particular fact *exists*, that fact is "proved". Secondly, where the party seeking to challenge a particular fact sought to be proved by the opposing party adduces sufficient evidence to allow the court to make the finding that the fact does not exist, the said fact is "disproved". Now, it is equally possible that the party seeking to challenge the particular fact sought to be proved by the opposing party has proven a fact *mutually exclusive* from the fact sought to be proved by the opposing party. In this case, the fact sought to be proved by the opposing party has also been disproved. …
>
> 19 ***Thirdly, a finding that a particular fact is "not proved" is not the same as a finding that the fact is "disproved".*** …
>
> …
>
> 21 The general position … is neatly summarised in a leading textbook as follows (see Ratanlal Ranchhoddas & Dhirajlal Keshavlal Thakore, *Ratanlal & Dhirajlal's The Law of Evidence* (Wadhwa and Company Nagpur, 22nd Ed, 2006) by the Honourable Justice Y V Chandrachud, Mr V R Manohar, Dr Avtar Singh, Dr Shakil Ahmad Khan and The Publishers' Editorial Board, at pp 147–148):
>
> > The word 'disproved' is akin to [the] word 'false'. What is 'disproved' is normally said to be [a] false thing. A fact is disproved normally by the person, who claims that an alleged fact is not true.
> >
> > This is merely the converse of the definition of 'proved'.
> >
> > …
> >
> > The definition of 'proved' is the embodiment of a sound rule of commonsense. It describes what degree of certainty must be arrived at before a fact can be said to be proved. Proof means anything which serves, either immediately or mediately, to convince the mind of the truth or falsehood of a fact or proposition. It is apparent from the definitions of the words 'proved', 'disproved' and 'not proved' in this section that the Act applies the same standard of proof in all civil cases. ***The term 'not proved' indicates a state of mind between two states of mind ('proved' and 'disproved') when one is unable to say precisely how the matter stands. A fact which is not proved does not necessarily mean that it is a false one. A fact not proved is not necessarily a fact disproved. A fact is said 'not***

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> ***proved' when it is neither proved nor disproved. A fact which is not proved may be true or may be false. A doubt lingers about its truth.***
>
> …
>
> The doubt referred to in both the preceding quotation as well as in *Naval Kishore Somani* ([19] *supra*), we might add, exists owing to the gap between the amount of evidence adduced in support of a party's assertion of the existence or non-existence of a particular fact and the standard of proof the party is required to meet to satisfy the court as to either its existence or non-existence. ***In other words, where there is an insufficiency in the evidence adduced to meet the standard of proof required for the proof of the existence or non-existence of a particular fact, the averred fact is said to be "not proved"*** (the requisite standard of proof, of course, being, in civil cases, on a balance of probabilities and, in criminal cases, beyond a reasonable doubt (see also above at [17])). The insufficiency in the evidence could be a result of the failure of a party to adduce sufficient supporting evidence in the first place to support his assertion. …
>
> ***The insufficiency of the evidence adduced to prove the fact asserted could also be a result of the adduction of evidence by the opposing party which undermines that assertion***. For instance, a party may be seeking to prove the existence of a particular fact and has adduced evidence in support of it. The opposing party, however, may be able to adduce some evidence as to the *non-existence* of that fact. Such evidence may not be sufficient on its own for the court to conclude that, on a balance of probabilities, the fact does not exist so as to be "disproved". Such evidence may, nevertheless, sufficiently undermine the case of the party asserting the fact so as to cause doubt as to its existence with the result that the party is unable to discharge his burden of proving the fact. As a result, the fact concerned is "*not proved*".
>
> 22 Where, however, the amount of evidence adduced is sufficient to satisfy the court as to the existence of a particular fact, then that fact will be held to have been "*proved*"; conversely, where the amount of evidence adduced is sufficient to satisfy the court as to the *non-existence* of a particular fact, then that fact will be held to have been "*disproved*". …
>
> [emphasis in original in italics; emphasis added in bold italics]

42 The Court of Appeal emphasized that "whether or not a particular fact is "proved" or "disproved" or "not proved" *will depend, in the final analysis,*

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on, the particular factual matrix concerned, and, in this connection, the evidence adduced by the parties" [emphasis in original] (*Loo Chay Sit* at [23]).

43 In addition to the aforementioned principles, I am also mindful that pursuant to SSG's counterclaim, SSG has, in its written submissions, made certain allegations of forgery, fraudulent conduct and dishonesty on the part of CBLD.[59] The parties also agree that "gross moral turpitude" requires *dishonesty*.[60]

44 Where fraud is alleged in civil proceedings, the standard of proof remains that of a balance of probabilities; but owing to the severity and potentially serious implications attaching to a fraud, *more* evidence is required to establish that allegation than would be the situation in an ordinary civil case: *Tang Yoke Kheng (trading as Niklex Supply Co) v Lek Benedict and others* [2005] 3 SLR(R) 263 ("*Tang Yoke Kheng*") at [14]; *Chua Kwee Chen and others (as Westlake Eating House) and another v Koh Choon Chin* [2006] 3 SLR(R) 469 at [39]. In *Tang Yoke Kheng*, the Court of Appeal explained (at [14]):

> … we would reiterate that the standard of proof in a civil case, including cases where fraud is alleged, is that based on a balance of probabilities; *but the more serious the allegation, the more the party, on whose shoulders the burden of proof falls, may have to do if he hopes to establish his case.* [emphasis added]

45 This principle in *Tang Yoke Kheng* was followed in *Alwie Handoyo v Tjong Very Sumito and another and another appeal* [2013] 4 SLR 308 ("*Alwie Handoyo*"), in the context of allegations of *forgery* or *fabrication* of a guarantee

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59 DCS at paras 82, 84, 95, 118, 166, 197(1); Defendant's Reply Submissions dated 30 November 2023 ("DRS") at para 85.

60 DCS at paras 156–158; PCS at paras 196–203.

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in a civil claim. The Court of Appeal in *Alwie Handoyo* at [160] further affirmed the observations of Lord Hoffmann in *Secretary of State for the Home Department v Rehman (Consolidated Appeals)* [2003] 1 AC 153 at [55], where he explained:

> … The civil standard of proof always means more likely than not. The only higher degree of probability required by the law is the criminal standard. But, as Lord Nicholls of Birkenhead explained in *In re H (Minors) (Sexual Abuse: Standard of Proof)* [1996] AC 563, 586, *some things are inherently more likely than others*. It would need more cogent evidence to satisfy one that the creature seen walking in Regent's Park was more likely than not to have been a lioness than to be satisfied to the same standard of probability that it was an Alsatian. *On this basis, cogent evidence is generally required to satisfy a civil tribunal that a person has been fraudulent or behaved in some other reprehensible manner. But the question is always whether the tribunal thinks it more probable than not.* [emphasis added]

Analysis of the evidence before the court

46 The people best placed to testify as to the truth of the statements in the 14 Trainee Statements would have been the 14 Trainees themselves. However, they were not called as witnesses.

SSG's evidence

47 I shall begin by setting out SSG's evidence at trial, before turning to CBLD's evidence.

48 According to the evidence of SSG's Mr Pang, the Fraud and Enforcement Division began investigations into CBLD's compliance with the Contract in around April 2020. Between April and July 2020, SSG made several telephone calls (the "Telephone Interviews") to 21 trainees who had attended

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training courses conducted by CBLD.[61] Questions relating to the course attendance, course duration and course venues were posed to these 21 trainees. The Telephone Interviews revealed certain discrepancies between on one hand, the information submitted by CBLD to SSG pursuant to which *Ad hoc* Claims had been made and approved, and on the other hand, what the trainees recollected of the actual training sessions conducted by CBLD. SSG identified these discrepancies through comparing the attendance sheets submitted by CBLD when making an *Ad hoc* Claim against the recounts allegedly provided by the 21 trainees during the Telephone Interviews.[62]

49 However, the contents of the Telephone Interviews were not disclosed at trial. The court could only refer to a summary of the alleged discrepancies revealed from the Telephone Interviews as set out in Mr Yih Dar's affidavit of evidence-in-chief ("AEIC")[63] (which gave a generalised account), as well as the brief particulars of each Telephone Interview in so far as the subsequent 14 Trainee Statements may have recorded the same.

50 According to Mr Pang, the discrepancies revealed from the Telephone Interviews could not be merely dismissed as administrative or minor inaccuracies. SSG took a serious view of the discrepancies revealed from the Telephone Interviews "because they suggested that [CBLD] had made Adhoc Claims in breach of the SkillsConnect Contract, including the eligibility requirements set out in the Funding T&C".[64]

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61 AEIC Pang Tong Wee at paras 40, 47; NE (2 August 2023) at p 51, lines 26–27.

62 AEIC Pang Tong Wee at para 41.

63 AEIC of Lim Yih Dar dated 21 February 2023 ("AEIC Lim Yih Dar") at para 15.

64 AEIC Pang Tong Wee at para 42.

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51 The CBLD Investigation Report was submitted to SSG on 13 November 2020, pursuant to the show cause process. Thereafter, between 14 and 23 December 2020, SSG furthered its investigations by conducting in-person interviews with and taking the statements of 14 out of the 21 trainees from the Telephone Interviews (*ie*, the 14 Trainees). Out of the 14 Trainee Statements, SSG's Mr Pang confirmed at trial that four statements (namely, the statements from Trainee 6, Trainee 8, Trainee 12 and Trainee 14) were in fact consistent with CBLD's submissions for *Ad hoc* Claims, and were *not* statements that led to SSG forming the opinion that CBLD was guilty of gross moral turpitude.[65]

52 I therefore confine the analysis below to the remaining ten trainees' interview statements. SSG asserted that these statements disclosed the following discrepancies, and supported its findings that CBLD had provided false information in its *Ad hoc* Claims and deceived SSG:[66]

(a) large discrepancies between the number of hours attended by the trainees and the number of hours recorded on the attendance sheets submitted by CBLD, and no reasons were stated on the attendance sheets regarding the trainees' absence from training;

(b) the training sessions were not conducted at the training venue(s) stated on the attendance sheets;

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65 NE (10 August 2023) at p 105, lines 2–20, p 146, lines 6–16, p 167, line 26 to p 168, line 4, p 174, lines 10–15.

66 DCC at paras 19.2.1–19.2.5.

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(c) the trainees were trained alone or with significantly fewer other trainees than as indicated in the attendance sheets, whereas the attendance sheets indicated that the trainees were trained in large groups;

(d) in respect of three trainees (namely, Trainee 4, Trainee 9 and Trainee 10),[67] their purported signatures on the attendance sheets were not theirs; and

(e) in respect of one trainee (namely, Trainee 9),[68] she had never attended any training or signed any of the attendance sheets, and she had felt pressured to sign the declaration that she attended the training courses conducted by CBLD.

53 As to the CBLD Investigation Report, SSG explained its view that the report did not sufficiently explain the discrepancies which were disclosed from the Telephone Interviews. Among other concerns, there was a lack of contemporaneous evidence supporting the statements in the CBLD Investigation Report.[69] SSG believed that ARAS or Lifeline would have kept the proof of their employees' attendance at the training courses including, for example, "the cleaners-trainees' work attendance log card showing they were absent from work on training days, … cleaning records and contemporaneous evidence of communication between … the trainee-cleaner's supervisors, the trainees themselves, and/or the trainers from [CBLD]".[70] Additionally, SSG took the view that communications must have been undertaken to coordinate the trainees' attendance for the training activities given the need to travel to

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67 DCS at paras 43(4), 77, 82, 84, 85.

68 DCS at paras 43(5), 77(4), 118.

69 AEIC Lim Yih Dar at para 23; NE (17 August 2023) at pp 27–41.

70 AEIC Lim Yih Dar at para 23(b)(i).

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training venues, yet no relevant messages via WhatsApp, SMS and/or e-mail were produced. CBLD's trainers also failed to provide contemporaneous proof of their training sessions "such as photographs, correspondence and/or records of their whereabout on the training dates".[71]

54 Furthermore, SSG harboured concerns over the manner in which the Mass Declaration Exercise was conducted and how the CBLD Declarations had been obtained. From SSG's conduct of the in-person interviews of the 14 Trainees between 14 and 23 December 2020, SSG claims to have been informed by the 14 Trainees that:[72]

(a) there was at least one instance where a trainee was asked to sign a written declaration about their participation in the training course(s) despite protesting that he/she did not attend the training;

(b) there were instances where the boxes to indicate full attendance of the trainees were pre-ticked before the trainees were asked to sign on the declarations; and

(c) the signing of CBLD Declarations was done in the presence of the trainee's employer or supervisor (for instance, one "Elaine" from Lifeline was present), who, according to SSG, might have exerted pressure on the trainees to comply with the request to sign the CBLD Declarations.

55 Furthermore, it was not disputed that CBLD's trainers were present during the signing of the CBLD Declarations. The CBLD Investigation Report

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71 AEIC Lim Yih Dar at para 23(b)(i) and (c)(i).

72 AEIC Lim Yih Dar at paras 23(d)(ii), 30(a)–(f).

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at para 3.13 claimed that for "a number of trainees", the trainers "had to refresh their memory by recapping what was taught and describing the activities that took place during the programmes".[73] CBLD's Ms Chan and Mr Leonard Lim Ming Sheng ("Mr Leonard"), a director of CBLD at the material time and the son of Ms Chan, explained that this was arranged so that the trainees could see the trainers in-person and be reminded that they had attended the training sessions.[74] Ms Chan further explained that, to the best of CBLD's ability, CBLD tried to ensure that at least two witnesses, one from a different department in CBLD and one of the trainee's site supervisors, were present at all times during interviews with the trainees and the signing of the CBLD Declarations.[75] Nonetheless, SSG took the view that this called into question the objectivity of the CBLD Declarations.[76] Pointing to the near perfect outcome of the CBLD Declarations (see below at [64]), SSG observes that no explanation was given by CBLD as to how the presence of the trainers and the two witnesses would not impact the objectivity of the CBLD Declarations.[77]

56 For these reasons, SSG did not accept the findings set out in the CBLD Investigation Report.

57 Lastly, SSG also pointed to at least one incident on 16 December 2020 which called into question the probity of CBLD's conduct in the investigation process.[78] Mr Yih Dar gave evidence that as he was completing the interview of

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73 AB at p 164.

74 AEIC of Leonard Lim Ming Sheng dated 21 February 2023 ("AEIC Leonard Lim") at para 17; AEIC Elizabeth Chan at paras 26, 28.

75 AEIC Elizabeth Chan at para 26.

76 AEIC Lim Yih Dar at para 30(f).

77 DCS at para 64.

78 DCS at para 65.

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the last of three trainees from Lifeline (*ie*, Trainee 8's interview) at around 9pm, he spotted a "young chap" standing outside the glass door of SSG's office. The individual went off and was later seen again by Mr Lim's colleague at around 10.30pm standing outside the building of SSG's office. Upon questioning, the individual identified himself as an employee of Lifeline named "Ah Li" who was tasked to bring Trainee 8 to the nearby MRT station.[79]

58 However, this "Ah Li" was later found out to be either LLJ or Wilkins. SSG reached out to Lifeline via e-mail on 16 December 2020 requesting the particulars of the purported employee who had accompanied Trainee 8. In response, the managing director of Lifeline, Mr John Tan, informed SSG that it had in fact been CBLD personnel who had escorted the Lifeline trainees to SSG's offices for the interview. Mr John Tan explained:[80]

> [Lifeline's] team was not able to escort the cleaners on the 16 December due to operational constraints, with *this CBLD team volunteered to assist* on the mentioned. [emphasis added]

59 SSG next followed up with CBLD's Ms Chan on the details of the CBLD personnel who had accompanied the Lifeline trainees to SSG's interviews on 16 December 2020. To this, Ms Chan replied via an e-mail on 19 January 2021 stating:[81]

> With regard to CBLD personnel accompanying Lifeline's cleaners to your office on 16 Dec 2020, *I had asked [Wilkins] and [LLJ], our associate trainers to take turns to assist Lifeline as per their request in accompanying their cleaners to your office* from and to the MRT station due to their manpower constraint. I had also instructed my director, [Mr Leonard] to visit the trainers and Lifeline's cleaners to check and ensure that SSG's interview request was met. The cleaners were not familiar and

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79 NE (15 August 2023) at p 34, line 17 to p 36, line 32.

80 AB at p 1182.

81 AB at p 1160.

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> comfortable going to your office from and to the MRT station, hence we did not mind helping out. Our personnel also had to calm Lifeline's cleaners to assure them that everything would be alright with the interview. Some of the cleaners fed back that the meeting with SSG was a stressful one and they were unhappy about it. There was absolutely no conflict of interest as we had conducted ourselves professionally.
>
> I would like to assure you that we are ready at all times to meet and co-operate with SSG in your investigation and *there is nothing for us to hide* as we have always conducted ourselves and our business ethically with integrity. …
>
> [emphasis added]

60 I observe that Ms Chan's statement that "there is nothing for [CBLD] to hide" appeared to be somewhat at odds with the duplicitous conduct of the trainer who initially identified himself to be "Ah Li" from Lifeline. If the reason for such arrangement was an innocuous one, as Ms Chan asserted, there was no reason for the trainer to have been less than forthright as to his identity.

61 Be that as it may, SSG took a stern view of the matter in its consideration of CBLD's show cause.[82]

CBLD's evidence

62 I shall turn to CBLD's evidence, which included: (i) the CBLD Investigation Report (and the CBLD Declarations therein); (ii) eight statutory declarations; and (iii) the evidence of CBLD's personnel and trainers at trial. As to (ii), CBLD had, on 28 June 2021, in anticipation of legal proceedings, arranged for the statutory declarations of Trainee 10, Trainee 11, Trainee 12, Trainee 14, LLJ, Robin, Kevin and Wilkins to be affirmed pursuant to the Oaths

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82 DCS at paras 65 and 71.

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and Declarations Act.[83] As noted at [21] above, the statutory declarations of the four trainees were admitted pursuant to ss 32C(1)(*a*) and 32C(2) of the EA.

63 As to (i), CBLD claimed to have interviewed the 184 trainees in the following manner:[84]

> 3.4 Between 20 Oct to 12 Nov 2020, CBLD painstakingly searched for and interviewed a total of 184 employees from the Clients at over 40 different work sites across Singapore. This accounted for approximately 39.3%, being 756 of the total 1,922 training places (each training place is also equivalent to a statement of attainment "SOAs") identified in Annex A of SSG Letter (the "SSG's List"). The remaining unaccounted trainees had resigned from the Clients or were uncontactable during the period. …
>
> …
>
> 3.6 The purpose of the interviews was to … have the trainees provide their written declaration on their participation. Personnel present at each meeting included the trainee, his site supervisor, his trainer, and an employee from CBLD.
>
> 3.7 A form was provided to the trainee with a yes or no reply to the question:-
>
> a) *Did you attend the program?*
>
> b) *If yes, what duration of the program were you present for?*
>
> Trainees may indicate their response to (b) as one of the following:-
>
> • Full duration;
>
> • Partial duration (and to specify hours) or;
>
> • I cannot remember.
>
> The trainees were required to sign the form, declaring that the information provided is true and accurate. …
>
> 3.8 Conscious effort was made to ensure that the results of the interviews remained authentic through the following measures:-

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83 AB at pp 1576–1741; AEIC Elizabeth Chan at para 31.

84 AB at p 162.

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> a) For all interviews, two (2) witnesses were present at all times (CBLD's staff from a different department and the trainee's site supervisor). The role of the witnesses was to ensure that the interviewees had full autonomy in the completion of the Form; and
>
> b) CBLD ensured that every interviewee was fully aware and comprehended the contents of the Form.
>
> [emphasis in original omitted]

64 CBLD reported that, of the 184 trainees who completed CBLD Declarations, 183 trainees declared that they had attended their respective programmes. Several of the 183 trainees declared that they had attended the programme but could not remember the duration present. Only one trainee declared that he could not remember attending the programme.[85] According to CBLD, these 184 trainees accounted for approximately 39.3% of the total number of training places, being 756 training places out of the total 1,922 training places identified by SSG.[86]

65 The CBLD Investigation Report further noted that during the Mass Declaration Exercise, "CBLD observed that a number of trainees were unable to remember the training initially as the training may have occurred some time ago. The trainer had to refresh their memory by recapping what was taught and describing the activities that took place during the programs. Only after recognising the trainer and the program details, were they able to recall that they had attended the training".[87]

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85 AB at p 163, paras 3.9–3.10.

86 RDCC at para 4.5.6(a).

87 AB at p 164, para 3.13.

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66 As to the eight statutory declarations and the evidence of CBLD's personnel and trainers at trial, I discuss the evidence in the analysis below, where relevant.

The CBLD Declarations

67 As a starting point, the results of the CBLD Declarations were not as "near perfect" as SSG sought to characterise them to be (see above at [55]). For instance, trainees were given the option to indicate that they could not remember the duration that they were present in the training course. 57 training places (out of the 756 training places surveyed) were attended by trainees who selected this option in their declaration forms.[88] This suggested that the Mass Declaration Exercise was designed to be carried out impartially, as explained by CBLD's Ms Chan:[89]

> Q: …If a trainee say "I do not remember", should CBLD let them tick "I do not remember", seeing it's the question there?
>
> A: Of course, of course, of course, yah.
>
> Q: Yes. But you also say that paragraph 28 that if they are unable to remember the training, the trainer have to be there to refresh their memory by talking to them.
>
> A: Yah, so we're trying to help them to refresh. *If they cannot remember, you just put "cannot remember". In fact, there are 57 of them say they could not remember the duration*, in the report, you see.
>
> [emphasis added]

I would add that the "57 of them" stated by Ms Chan was referring to the 57 *training places*. Additionally, in respect of *one* of the training places (out of

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88 AB at p 163, para 3.11(b).

89 NE (2 August 2023) at p 4, lines 4–11.

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the 756 training places surveyed), a trainee selected the option which stated that he/she could not remember attending the programme.[90]

68 Be that as it may, I accept that several of the 14 Trainee Statements raised justifiable concerns that struck to the very heart of the integrity of the CBLD Declarations.

69 The first was Trainee 9's interview statement. When the CBLD Declaration signed by Trainee 9 was shown to her, she said that she had "[felt] pressured" into signing the CBLD Declaration despite asking "how I can sign if I have never attended training". She said the CBLD Declaration had already been pre-ticked to indicate that she had attended the courses in full before she was asked to sign it. Her response also contradicted CBLD's assertion that the role of the witness, in this case one "Elaine" from Lifeline, was to ensure that the interviewees had full autonomy in the completion of the CBLD Declaration (see above at [63]). For context, I set out Trainee 9's relevant responses:[91]

> **Q12: Who instructed you to sign [the CBLD Declaration]?**
>
> A12: Elaine from Lifeline, together with three men and 1 Malay lady. I think one of the man is called "Kelvin".
>
> **Q13: What was the reason explained to you, for you to sign this document?**
>
> A13: One of the three men told me it is to prove that I attended training … When I asked him how I can sign if I have never attended training, he told me its ok, no need to worry. I asked him is it illegal to anyhow sign, he told me it is nothing, don't worry. If anyone call, just say I did attend training and get the person to call and ask my company instead.
>
> **Q14: Referring to the date indicated at the top right [and] the handwritten words under the column "Program" … Are**

[90] AB at p 163, para 3.11(c).

[91] AB at pp 1060, 1063.

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> **those written by you? Also, did you tick/check the 4 boxes under the column "Declaration"?**
>
> A14: No, I did not. *Everything was written and ticked by the people who came to ask me.* They only asked me to sign, and if anyone call me to ask about this declaration, just refer them to Lifeline.
> …
>
> **Q15: Since you have confirmed that you have never been sponsored by Lifeline to attend any training, why did you agree to sign this document?**
>
> A15: *I feel pressured. Before they came, they kept calling me and chasing me.* So when they finally showed up, I don't know what to do, so I just signed. Anyway, I know if it is submitted to your agency, I can have a chance to explain what happened to you all.
>
> **Q16: Who was present when you signed this document?**
>
> A16: The three men, the malay lady and Elaine. They were all present. *Elaine was the witness, but she was quiet throughout.*
>
> **Q17: What do you understand by this document when you sign it?**
>
> A17: *It is to lie to your agency.*
>
> …
>
> **Q38: How long did you take to make the [CBLD Declaration]? …**
>
> A38: Around 10 to 15mins. They just asked me to sign even though I told them I never attend. Before they came, they kept calling me to ask me to sign. They even asked me to find a witness. I told them no. That's why they asked Elaine to come and be the witness.
>
> [emphasis added in italics]

For completeness, I note that Trainee 9 also stated at the end of her declaration that there were "other aunties telling [her] they faced the same thing as [she] did and have no choice but to just sign even though [they] never attend the training".[92] However, I decline to give any weight to this part of Trainee 9's

[92] AB at p 1063.

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statement for the simple reason that it constitutes hearsay upon hearsay and is not reliable.

70 Second, there was Trainee 7's interview statement. She stated that "the handwriting in S/n 01 and 02 doesn't belong to [her]. [She] did not tick the boxes on [the CBLD Declaration] as well".[93] She also stated that "[she] was told to sign to prove that [she] attended training. But [she] wasn't told that signing it means [she] agree[d] that [she had] attended the training to the full duration. The "ticks" were not made by [her]".[94]

71 Third, there was Trainee 13's interview statement, which also appeared to contradict CBLD's assertion of the procedural safeguards (namely, having a witness present) that had been put in place. Trainee 13 stated:[95]

> **Q19: Who was present when you signed this document?**
>
> A19: Only the trainer. Alvin Lai already signed as "Witness (1)" before I did. *When I was signing Alvin Lai wasn't there.*
>
> [emphasis added in italics]

72 CBLD's Ms Chan and Mr Leonard maintained that the presence of the trainers was necessary to give context to the trainees and help them remember the training sessions. They maintained that "clear instructions" were given to the trainers not to coerce or pressure the interviewees.[96] However, Mr Leonard admitted that he had only been present for one of the sessions of the Mass

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93 AB at p 938 (Q/A 17).

94 AB at p 939 (Q/A 20).

95 AB at p 1009 (Q/A 19).

96 NE (2 August 2023) at p 44, lines 2–5; NE (4 August 2023) at p 37, lines 21–27.

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Declaration Exercise.[97] Ms Chan herself was not present at any of these sessions.[98] Ms Chan candidly explained that the presence of CBLD's trainers went beyond simply being present at the signing of the declarations; it extended to having interactions with the trainees:[99]

> Employees of [CBLD] also informed me that they observed that a number of trainees were unable to remember the training initially as the training may have occurred some time ago. *The trainer had to refresh their memory by speaking to them, recapping what was taught and describing the activities that took place during the training program.* Only after recognizing the trainer and the program details, were the trainees able to recall that they had attended the training. … [emphasis added]

She maintained, however, that the purpose of these interactions was to help the trainees "refresh" their memories of the courses.[100]

73 Mr Leonard also testified that prior to conducting the Mass Declaration Exercise, CBLD had "informed SSG that [CBLD is] going to do this and, therefore, … also implying that if [SSG] like[d] to be there, to be able to see all 184 candidates who [SSG] can speak to, I welcome that".[101] In other words, Mr Leonard claimed that the Mass Declaration Exercise was conducted under the expectation that SSG would conduct audits and spot checks in relation to the declarations. I would observe, however, that this "expectation" was not communicated to SSG as clearly as Mr Leonard claimed. In CBLD's correspondence with SSG, the former merely stated that "[CBLD is] currently performing an internal investigation and will respond with a report which will

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97 NE (4 August 2023) at p 46, lines 2–3.

98 NE (2 August 2023) at p 64, line 31.

99 AEIC Elizabeth Chan at para 28; NE (2 August 2023) at p 44, lines 6–29.

100 NE (2 August 2023) at p 45, line 9.

101 NE (8 August 2023) at p 11, lines 25–28.

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contain, amongst other things … [a] declaration from the trainees involved on whether they have attended and completed the minimum amount of training hours".[102] At no point did CBLD expressly invite SSG to "audit" its Mass Declaration Exercise. Be that as it may and regardless of CBLD's motives in having the Impugned Trainers present at the Mass Declaration Exercise, the possibility that the trainees had been influenced could not be ruled out, especially in the light of what was recorded in the interview statements of Trainee 9, Trainee 7 and Trainee 13.

74 I accept that CBLD was operating under certain constraints in conducting their investigations for the purposes of showing cause. For one, there was the time constraint. The Notice of Intent was served on CBLD on 16 October 2020 and CBLD was required to show cause by 13 November 2020 (after accounting for the extension granted by SSG). The second and more troubling matter was that it was apparent that insufficient particulars of the alleged breaches had been provided. This is disappointing because it would make it difficult for CBLD to know the case that it had to meet. In this case, the Notice of Intent asserted breaches of three provisions of the Contract and provided the general statements of breach. No specific grievances raised in the 14 Trainee Statements were cited. For instance, in respect of the alleged contraventions of cll 4.6(a) and 4.6(b) of the SkillsConnect – Funding T&C, the Notice of Intent merely stated that "[c]laims have been submitted to SSG by CBLD … even though the trainees did not attain a minimum of seventy-five (75%) attendance for the Funded Course".[103] According to SSG's Mr Pang, CBLD ought to have known from the appended list of affected claims that the complaint related to the courses which had been conducted by the Impugned

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102 AB at p 131.

103 AB at p 106.

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Trainers. Based on this, CBLD would have sufficient information to show cause. While CBLD indeed figured out that this involved the Impugned Trainers, it could not have known, at the time the Notice of Intent was sent, that the basis of SSG's concerns was founded on the information provided by *only the 14 Trainees*. The identities of the 14 Trainees were not revealed. In fact, SSG never disclosed to CBLD the information which had been provided by the 14 Trainees over the Telephone Interviews, for the show cause process. CBLD was unable to identify most of the 14 Trainees, although several trainees "did sound out to [CBLD] that they [had been] interviewed by [SSG]" during the Mass Declaration Exercise.[104] This meant that CBLD could only ask the 184 trainees whether they had attended CBLD's training sessions in full. This perhaps also explains why CBLD's show cause process was directed toward, *inter alia*, obtaining declarations and generalised statements of whether a trainee had attended the training course in full or not, instead of seeking to address the *specific* grievances raised in respect of the *specific* trainees' Telephone Interview responses. Simply put, CBLD could not have known, and did not know, adequate particulars of the alleged breaches.

75 In the 16/10/2020 E-mail, Ms Chan requested SSG to "update [CBLD] on what checks were conducted by SSG and what evidences [*sic*] were collected to determine that those classes listed did not meet 75% attendance".[105] In a follow-up e-mail on 19 October 2020, Ms Chan stated that "[f]rom [CBLD's] preliminary investigation, [it] found that SSG had not interviewed any of [its] staff, trainers nor the 2 clients in question and [CBLD does] not know how SSG concluded the allegation that trainees did not meet 75% attendance".[106] To

104 AEIC Elizabeth Chan at para 41.

105 AB at p 116.

106 AB at p 121.

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Ms Chan's request, however, Mr Yih Dar simply replied in an e-mail on 23 October 2020 that "[SSG has], amongst other things, conducted verification checks with a significant number of trainees before [SSG] came to [its] conclusion. However, [SSG] seek[s] your understanding that *[SSG is] unable to share beyond what has already been shared* … as the information you have requested is very specific and confidential" [emphasis added].[107]

76 Nevertheless, I reiterate that the three trainees' interview statements raised justifiable concerns as to the integrity of the Mass Declaration Exercise and the CBLD Declarations, which CBLD could not rebut. In any event, *even if* the integrity of the Mass Declaration Exercise and the CBLD Declarations could be overcome, it is uncertain what the trainees had understood and intended to declare by the words "the full duration" in the CBLD Declarations. In my judgment, I do not ascribe any weight to the CBLD Declarations because they are insufficiently reliable.

The quality of SSG's investigations

77 CBLD submits that the 14 Trainee Statements are not credible, owing to the manner in which these statements were recorded. Among other matters, CBLD points out that before SSG's in-person interviews of the 14 Trainees took place, the CBLD Investigation Report had already expressly highlighted to SSG, under a section titled "SSG'S AUDIT MAY POTENTIALLY BEEN CONDUCTED IN AN UNSAFE OR INACCURATE MANNER", the following pertinent considerations:[108]

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107 AB at p 133.

108 PCS at paras 32, 35; AB at pp 166–167.

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(i) First, it was important to note the context that the trainees were mostly senior citizens with little to no formal education, poor language literacy and they do not have good memory. They had been sent by their respective employers for the cleaning-based courses conducted by CBLD. If asked whether the trainees remembered taking a course from a few months up to a year ago *without* providing further details, such as a photo of the trainer, description of what was taught and where the training took place, the trainees would not have been able to accurately recall the events.

(ii) Second, the training sessions were entirely arranged by the trainees' employers. The trainees were not required to fill in or submit any registration. All registration was conducted at their work sites during working hours.

(iii) Third, it was also important to note the context of how training was conducted for the trainees. The training sessions were mostly held in non-classroom settings including meeting rooms, storerooms and common corridors. The trainers intentionally tried to make the training feel informal to engage the trainees given their profile and learning needs. Thus, the trainers used simple words in different languages or dialects. The courses' official titles, such as "Demonstrate Understanding of the Local Cleaning Industry Environment" or "Horizontal Surface Maintenance – Perform Cleaning of Carpets", were rarely used.

(iv) At times, trainers wore the same uniforms as the trainee-cleaners in order to access the work sites. According to CBLD, the trainers might therefore have been viewed as one of the employer's supervisors or staff.

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To put trainees at ease, the trainees were told that they were being gathered for a company event to help brush up their skills.

I shall refer to these considerations collectively as the "Contextual Considerations".

78 In addition to the Contextual Considerations, the CBLD Investigation Report also highlighted the following matters:

(a) The trainers had at times released trainees half an hour early, and up to a maximum of two hours early. The prescribed duration of the program in the lesson plan was meant for a class size of 18–24 trainees as per its accreditation. However, most of the classes conducted by CBLD averaged about 10 trainees, and hence less time was required for group activities and skills practice. This allowed the trainers to shorten the duration of the training slightly.[109]

(b) There were advanced and weaker learners in every class. The trainers recognised the need to give more time and attention to weaker learners with special needs. To do this, the trainers would sometimes release the advanced learners early so that they could spend more time with the weaker learners who remained behind. The advanced learners would be released early only if they were able to demonstrate their competency through the quizzes and practices facilitated by the trainer.[110]

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109 AB at p 164, para 3.16(a).

110 AB at p 164, para 3.16(b).

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(c) In relation to the instances when the trainers had released their trainees early, the trainers always remained on-site for the program's full duration to recap the training material with the weaker learners, or to conduct make-up training for those trainees who had missed some parts of the programme.[111]

(d) The trainers would sometimes split up the trainees into smaller groups during the training sessions. During the practical training segments, the trainers would sometimes be with a small group of trainees at a different location that was away from the training room, for example, while conducting practical training on how to wash toilets. During this time, the trainees who were waiting in the training room for their turn to partake in the practical training might leave the room to attend to work without notifying the trainer, before eventually returning in time for their turn.[112]

(e) Trainees were sometimes called by their supervisor or service buyer to attend to work during the training sessions. At other times, the trainee felt restless or fatigued and needed short breaks. The trainers would conduct make-up training sessions for the said trainee, such that the trainees could all still meet the 75% attendance requirement.[113]

79 In my view, the nature of the investigations conducted by SSG ought to have been an inquisitorial process rather than an adversarial one. SSG was relying on the Telephone Interviews and/or the 14 Trainee Statements, without giving recourse to CBLD to question or cross-examine the 14 Trainees on the

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111 AB at p 165, para 3.17.

112 AB at p 165, para 3.18(a).

113 AB at p 165, para 3.18(b).

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specific content of the statements they had provided. As the statutory body tasked with disbursing funds under the SkillsFuture initiative and bearing the duty to identify any non-compliance with claims eligibility or fraudulent conduct by training providers,[114] SSG's interest was to get to the truth of the matter. SSG's Mr Pang agreed under cross-examination that SSG's investigative process was a quest for the truth, whichever way the truth came out.[115] However, despite receiving certain indications in the CBLD Investigation Report that the matter was not as straightforward as it appeared and that there could have been plausible alternative explanations for the responses by the 14 Trainees in the Telephone Interviews, SSG's officers did not explore these points in their subsequent interviews with the 14 Trainees. While the individual interviews were conducted by various SSG officers, it was confirmed that the questions for each interview had been prepared in advance.[116]

80 Ms Tan Wan San ("Ms Tan WS"), a manager of SSG's Fraud and Enforcement Division, recorded the interview statements of Trainee 1, Trainee 2 and Trainee 3.[117] Mr Lee Ming Khiang Colin ("Mr Colin Lee"), a senior manager of the Fraud and Enforcement Division, recorded the interview statements of Trainee 10, Trainee 11, Trainee 12 and Trainee 14.[118] As to the interview statements of the remaining seven trainees, these had been recorded and/or witnessed by Mr Yih Dar.[119]

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114 DCS at para 197(4).

115 NE (11 August 2023) at p 10, lines 18–23 and p 13, line 21 to p 14, line 6.

116 NE (15 August 2023) at p 7, lines 9–10.

117 AEIC of Tan Wan San dated 21 February 2023 at para 7(b).

118 AEIC of Lee Ming Khiang Colin dated 21 February 2023 at para 7(b).

119 AEIC Lim Yih Dar at paras 26(a)–(c).

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81 Mr Pang claimed that SSG had taken the CBLD Investigation Report into account when it had interviewed the trainees.[120] However, this primarily extended to asking the trainees about the CBLD Declarations that they had made.[121] Mr Pang testified that he was the director who had "[made] a recommendation" and submitted a detailed report "to [the] senior management" that CBLD was guilty of gross moral turpitude.[122] He accepted that the CBLD Investigation Report had made known to SSG that there were certain potential explanations for the trainees' responses, such as the possibility of make-up classes.[123] Nonetheless, despite having knowledge of the matters raised in the CBLD Investigation Report, SSG did not look into these matters.

82 Neither Ms Tan WS[124] nor Mr Colin Lee[125] had been briefed on the contents of the CBLD Investigation Report, or the concerns raised therein, prior to conducting the interviews with the trainees. Ms Tan WS testified that she had only been briefed that "the interviewees may have attended training but the training sessions may not have been attended in full".[126] She was not briefed on, and also did not explore with the interviewees, the potential explanations that the trainees may have had for not being able to recall the training courses in full.[127]

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120 NE (10 August 2023) at p 5, lines 2–8.

121 NE (10 August 2023) at p 5, lines 5–8.

122 NE (8 August 2023) at p 22, lines 17–20 and 30–31.

123 NE (10 August 2023) at p 3, line 18 to p 4, line 8.

124 NE (11 August 2023) at p 88, lines 22–26.

125 NE (15 August 2023) at p 7 ,lines 12–19.

126 NE (11 August 2023) at p 88, lines 23–24.

127 NE (11 August 2023) at p 92, lines 28–31.

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83 In the round, the trainees were not told or shown relevant course material to "refresh" their memories of the courses.[128] Ms Tan WS[129] and Mr Colin Lee[130] themselves did not know about the courses which the interviewees supposedly attended. I find some force in CBLD's concern that these trainees might be unable to recall the training simply from being shown the formal title of the courses, such as "Horizontal Surface Cleaning". The trainees were also not asked about whether they had attended make-up classes; or the possibility that they could only recall the make-up classes but not the entirety of the training courses.[131] The trainees were not asked about the possibility that they had mistaken CBLD's training courses for a "company event" or mistaken CBLD's trainers for their own supervisors, because CBLD's trainers sometimes wore the same uniform as the trainees.[132] For the trainees who responded that they could only remember training alone or in significantly smaller groups than was stated on the attendance sheets, these trainees were not asked about the possibility that they could only remember the practical segments of the training sessions during which the class had been broken up into smaller groups.[133]

84 I also observe that SSG's trainee interviews appeared to have been conducted rather mechanically. They did not take into consideration the profile of the interviewees whom CBLD described as mostly elderly, not entirely

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128 NE (11 August 2023) at p 91, lines 1–3; NE (15 August 2023) at p 7, lines 26–30 and p 46, lines 14–16.

129 NE (11 August 2023) at p 89, line 30) to p 90, line 1.

130 NE (15 August 2023) at p 9, lines 4–9.

131 NE (11 August 2023) at p 91, lines 22–29); NE (15 August 2023) at p 8, lines 13–18 and p 48, line 27 to p 49, line 1.

132 NE (11 August 2023) at p 91, lines 11–18); NE (15 August 2023) at p 7, line 31 to p 8, line 1 and p 47, lines 14–29.

133 NE (11 August 2023) at p 91, line 30) to p 92, line 8.

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familiar with the English language and sometimes having poor memory retention. Ms Chan described that based on her interactions with the usual profile of these trainees, "one moment, they tell me this. This moment, they tell me that, … so they are so confused. They are totally so confused".[134] The CBLD Investigation Report recounted one incident where a trainee was "confused and nervous" and had purportedly mistaken SSG's Telephone Interview for a scam call:[135]

> … one trainee said that the caller informed her that he was conducting an investigation and that his questions was unrelated to her company. The caller instructed her not to tell her employer about his phone call. The trainee shared that she was confused and nervous, hence replied that she had either not attended or could not remember attending any of the programs she was asked about. *She expressed that she did not want to give too many details as she was unsure if it was a scam call.* She later told the trainer that she did actually complete the program and also indicated the same in her completed Form. [emphasis added]

85 Additionally, the names of the training venues were asked in English without any clarification and this could have led to some misunderstanding by the interviewees, resulting in poor or incorrect recollection. For instance, Trainee 5 was asked if she recognised the venue, "East Group (80 Airport Boulevard S819642)", as stated in the attendance sheet. She did not recognise the training venue and replied, "I do not know, I have never been there before".[136] Trainee 5's interview statement was recorded by one "Sabina Tan Yushan" and witnessed by Mr Yih Dar. When cross-examined, Mr Yih Dar

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134 NE (2 August 2023) at p 113, lines 10–18.

135 AB at p 166, para 4.2.

136 AB at p 1122.

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confirmed that Trainee 5 had not been told that, in layman terms, the address referred to the Singapore airport:[137]

> Q: … Okay. Was [Trainee 5] told that this is actually our Singapore Airport?
>
> A: No. I don't think so.
>
> …
>
> Q: So no one will tell her for example, "Look, actually this is at the airport"?
>
> A: No.

He also accepted that it was "a possibility that [Trainee 5] may not have recognised the place, because it's presented to her as '80 Airport Boulevard'".[138]

86 However, despite these general misgivings which I have concerning the quality of SSG's investigations process, I am unable to agree with CBLD's submission that SSG's findings from the 14 Trainee Statements were thereby proven to be "inaccurate and/or untrue" or that the 14 Trainee Statements were thereby "not credible".[139] To say so would be an over-generalisation. For instance, CBLD claimed that SSG had not shown the 14 Trainees the relevant course material or photographs of the trainers to "refresh" their memories. However, there is some force in saying that, on CBLD's own case, the Mass Declaration Exercise was intended to and *had* "refreshed" the trainees' memories (see above at [72]). As SSG pointed out, this was only one or two months prior to the recording of the 14 Trainee Statements in December 2020.[140] Therefore, in my view, the precise weight to be given to the *specific*

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137 NE (15 August 2023) at p 67, lines 16–23.

138 NE (15 August 2023) at p 68, lines 4–5.

139 PCS at para 23.

140 DRS at para 75.

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discrepancies raised by a specific trainee's interview statement is a matter to be calibrated in the light of the evidence as a whole. This includes the potentially justifiable concerns raised by CBLD above.

87 Having set out my general considerations on the 14 Trainee Statements, I turn to the specific analysis of the material discrepancies raised.

Specific findings on the discrepancies raised by the 14 Trainee Statements

88 Notwithstanding my general concerns set out above, I am satisfied that several of the 14 Trainee Statements raised the following discrepancies.

Interview statements of Trainee 1, Trainee 2 and Trainee 3

89 I first deal with these three trainees' interview statements. According to the attendance sheets, Trainee 1, Trainee 2 and Trainee 3 were stated to have attended the *same* training course spanning 19–21 February 2020, titled "Customer Management – Providing Quality Services" and conducted by Robin. The training location was stated to be "Amos International Group" at the address 156 Gul Circle. The total training duration of the course was stated to be 14 hours across the first two days of the course, with an assessment held separately on the last day of the course.

90 On the face of it, these three trainees' interview statements appeared to reveal the following material discrepancies:

(a) Trainee 1: During the Telephone Interview on 17 June 2020, Trainee 1 shared with SSG's officer that she had only attended one training sponsored by Lifeline which was a two-hour training conducted at Trainee 1's place of work "at CWT Integrated Pte Ltd in Pioneer", that Trainee 1 had been the only trainee around and that the trainer had

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come to her place of work.[141] Subsequently, during the in-person interview on 15 December 2020, Trainee 1 confirmed that (i) "the training was *1 to 2 hours*" [emphasis added] for a course which was reflected on the attendance sheet as 14 hours long; (ii) she was the only person (other than the trainer) present at that training; and (iii) she had never been to the venue reflected on the attendance sheets.[142]

(b) Trainee 2: According to the attendance sheets, Trainee 2 was stated to have attended two courses; the one spanning 19–21 February 2020 (as detailed above at [89]), and the other spanning 25–26 February 2020 for a total training duration of seven hours. Yet, during the Telephone Interview on 17 June 2020, Trainee 2 informed SSG's officer that she had only attended one training sponsored by her employer for at most an hour, that she could not recall the exact location where that training was conducted, and that there had been about five trainees including herself at that training.[143] Subsequently, during Trainee 2's in-person interview on 16 December 2020, she *clarified* that she had in fact attended *two courses, each for about an hour*, and that the two training sessions had been "held within the same month but on different days".[144] Trainee 2 also claimed that she had been *the only trainee* at the training sessions,[145] and that she had not attended the training at the venue reflected on the attendance sheets.[146] Instead, one

141 AB at p 782.

142 AB at p 784.

143 AB at p 843.

144 AB at pp 843, 845–846.

145 AB at p 845.

146 AB at pp 845–846.

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training had been held at her worksite at "City Harvest" and the other training was conducted "at a void deck near City Harvest".[147]

(c) Trainee 3: During the Telephone Interview on 17 June 2020, Trainee 3 shared with SSG's officer that he had attended only two sessions of training, each lasting about 30 minutes and that he had been the only trainee on both occasions.[148] He confirmed that this was his statement during the in-person interview on 16 December 2020.[149] In contrast, there were three submitted attendance sheets for Trainee 3: the first was for the 19–21 February 2020 course (as detailed above at [89]), the second course was for 20 hours over three days and the third course was for 27 hours over four days. Trainee 3 also mentioned that he had never attended training at the stated venue on the attendance sheets but at his own worksite at "Tiong Seng Building".[150]

91 In summary, therefore, the material discrepancies appeared to be:

(a) that each of the three trainees recalled attending the training for only "one or two hours", or "about 30 minutes" for two training sessions, which was significantly less than the duration stated on the attendance sheets;

(b) that each of the three trainees recalled being the "only trainee" present at the aforesaid training; and

147 AB at p 843.

148 AB at p 867.

149 AB at pp 866–874.

150 AB at pp 867, 869, 872.

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(c) that each of the three trainees recalled that they had not been trained at the venue stated on the attendance sheets.

92 I do not find Robin's purported justifications for the discrepancies raised by Trainee 1, Trainee 2 and Trainee 3 to be convincing. There is the fact that *each* of the three above-mentioned trainees had separately told SSG that they had trained alone. In the first place, Robin admitted under cross-examination that he "could not remember any one of [the three trainees] at all because it's a long process for [him] to do this".[151] Contrary to the impression conveyed by Robin's evidence in his Supplemental AEIC dated 7 June 2023, Robin was therefore unable to give evidence *specific* to any trainee's case at all. Yet, at trial, Robin maintained the possibility that each of these three trainees could only recall the individual make-up sessions that he could have conducted for them, and not the entirety of the training course. Under cross-examination, his response to the logical incredulity of being at three different make-up class locations at once was to assert that the make-up classes had been conducted at "different timing[s]":[152]

> Q: My question is that *three of them say that they had consistently separately told [SSG] that they were trained alone*.
>
> A: It could be all make-up lesson. They are all different period of time, because the thing is the training may be conducted one by---one at a time also because they are all hands-on training.
>
> Q: They trained at---three of them say separately that they were trained at their workplace. … in respect of [Trainee 1], he say that he was trained at CWT. In respect of [Trainee 2], she say that she was trained at City Harvest. In respect of [Trainee 3], he say that he was trained at Tiong Seng Building and not the location

151 NE (28 July 2023) at p 39, lines 8–9.

152 NE (28 July 2023) at p 40, line 24 to p 41, line 9.

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that is written on the attendance note. *So how could you possibly go to three places*?

A: Again, I go different timing.

Q: Okay.

…

Q: Did you record the timing?

A: I don't---no, no.

[emphasis added]

93 He also asserted that the make-up classes were held on "another day", without providing further details:[153]

Court: … if there's a make-up lesson for [Trainee 2], it would not be on any of those four sessions, right? 19th Feb morning, afternoon, 20th Feb morning, afternoon?

Witness: Definitely because I'll be with the other trainee.

…

Court: So the make-up session would be on another day?

Witness: Yes.

94 When cross-examined, Robin also conceded that he had not put a remark on the attendance sheet whenever a trainee left a training session early:[154]

Q: … So according to you, that maybe [Trainee 2] has gone out to work, so wouldn't this [Trainee 2], there's a remark which should say that she had gone off to work at what time? …

A: No, I---I---I know what your question is. What I didn't indicate on the last column as a remark that they gone off. For me, it's---if I can keep track that they are not enough and I do make-up lesson, I want to keep the attendance sheet---

153 NE (28 July 2023) at p 42, lines 9–16.

154 NE (28 July 2023) at p 45, lines 9–17.

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95 Notwithstanding this, Robin failed to produce *any* contemporaneous records to show that a trainee had left a training session early:[155]

> Court: So how do you keep track of their leaving early so that you need to conduct make-up lesson?
>
> Witness: No, at that---at that time, I would---I have a piece of paper to---if they go off, the number of hours don't ta---not enough, I will---I will look for them. *But that kind of record you ask me to give, I don't have it now.*

[emphasis added]

96 Robin also admitted that he did not even inform CBLD of the instances when a trainee had left the training session early:[156]

> A: No, for this case, *I did my own judgement, I didn't inform CBLD that*---
>
> …
>
> *the trainee one of the day had left early back to work.* I didn't---on that day, didn't fulfil that. Let's say I put 1 day, 7 hours, they may gone off for 2 hours, it may be short. *Yah, for that case, I---I didn't inform CBLD.* For me, as a adult trainer---as a trainer, trainee is my---my responsibility. I want them to be trained, be assessed and finish the course.

[emphasis added]

97 I do not find Robin's purported justification for the discrepancies raised by Trainee 1, Trainee 2 and Trainee 3's interview statements persuasive. I therefore reject this purported justification. In addition, I find that there are additional grounds to accept the discrepancies raised in Trainee 1's and Trainee 3's interview statements, which I set out below.

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155 NE (28 July 2023) at p 44, lines 19–24.

156 NE (28 July 2023) at p 48, lines 10–16.

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(1) Trainee 1

98 Trainee 1 affirmed in her interview statement that she was conversant in Mandarin and that her highest academic qualification was Primary 6 education.[157]

99 I pause to make one preliminary observation. From Trainee 1's statement, I accept that her answers *generally* lent some force to CBLD's claim that the trainees had poor memory retention and that it would be essential to note the context of how training was conducted for the trainees. For instance, when asked the basic question of "When did you start/end your employment with Lifeline Cleaning Pte Ltd?", Trainee 1 replied:[158]

> I am not sure if I had been employed by Lifeline Cleaning Pte Ltd.

Trainee 1 was in fact employed by Lifeline at the material time. Yet, when asked about her current employment, I also note that Trainee 1 was able to provide the following generalised description:[159]

> I do not know my company's name. It is *at Joo Koon area, I work at office area.* I know of this company through an agent, and I do cleaning. I joined this company in 7 Sep 2020. [emphasis added]

100 Therefore, although Trainee 1 was able to recall *some* details with specificity (*eg*, the exact date of commencement of her employment), she was unable to provide a precise answer for other pieces of information, including "basic" or fundamental information such as the name of her current employer.

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157 AB at p 781.

158 AB at p 782.

159 AB at p 781.

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101 While I have some concerns with the quality of Trainee 1's memory recollection in general, I am satisfied that, from the answers provided in her trainee statement which were *specific to* the training course, Trainee 1 was able to recall sufficient details of the course despite the passage of time and/or the manner in which SSG's questions were posed. For instance, Trainee 1 was able to recall that the trainer of the course was "male, Chinese, probably in his 30s".[160] Trainee 1 was also able to recall that she had been sent for training:[161]

> Trainer told me my company engaged him for my training and I know it is job-related training. My supervisor informed me that I need to attend training. I do not remember the same of the course.

Similarly, Trainee 1 was also able to recall that the trainer had mentioned the name of the training provider but did not understand "as [the trainer] mentioned the company name in English".[162]

102 In this regard, I also find relevant that Trainee 1 was also able to *elaborate with specificity on* her answer that she had attended "only one or two hours" of training:[163]

> I only remember attending one course, and the training was after my lunch and before I report off work. I finish work at 3pm, and I remember that the training was 1 to 2 hours before I finish work.

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160 AB at p 783.

161 AB at p 783.

162 AB at p 782.

163 AB at p 784.

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She was also able to recall that she had signed off on the attendance sheets "at the end of the one or two hour course" and that "[t]he trainer did tell me that I was signing off for but I cannot remember but [*sic*] I signed one shot".[164]

103 All these rendered unlikely the explanation that the discrepancies between Trainee 1's answers and the attendance sheet could be attributed to poor memory retention or insufficient contextual information provided in the course of the interview. It also rendered unlikely the possibility which had been asserted by Robin[165] – namely, that Trainee 1 could only recall the make-up session that had been conducted at her worksite, but not the entirety of the training course.

104 CBLD submitted that it was "possible" that Trainee 1 only remembered her assessment period "as that was the most memorable to her and not all of the training sessions that she had attended" because insufficient contextual information was provided "to help refresh her memory".[166] I note, however, Trainee 1's answer in reply to the question of what she had learnt from the course:[167]

> I remember *the course* was all cleaning-related. Actually *what he taught*, I already know, *ie*. I have the knowledge. [emphasis added]

This suggested to me that the possibility that Trainee 1 only remembered her assessment period *and not the actual training sessions* was more apparent than real.

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164 AB at p 785.

165 Supplemental AEIC of Tan Kim Hwee Robin dated 7 June 2023 ("Supp AEIC Tan Kim Hwee Robin") at para 6.1.3.

166 PCS at para 70.

167 AB at p 783.

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105 For the above reasons, I am affirmed in my conclusion that Trainee 1's recorded statement raised the discrepancies identified by SSG. In particular, Trainee 1's answers justifiably raised the concern that she had attended the training for "only one or two hours" for a course which was reflected on the attendance sheet as 14 hours long, and that she had been the only trainee present at that training.

(2) Trainee 3

106 Trainee 3 affirmed in his interview statement that he was conversant in Mandarin and his highest academic qualification was NTC 2 from the Institute of Technical Education.[168]

107 Robin's explanation for the discrepancies revealed from Trainee 3's interview statement was that he "recall[ed]" that Trainee 3 had to leave the training sessions for a certain period of time due to work commitments. Accordingly, Robin "[made] extra arrangements to conduct makeup training at [Trainee 3's] workplace [*ie*, at Tiong Seng Building]".[169] However, as observed (see above at [92]), Robin admitted under cross-examination that was unable to remember any of the three trainees and therefore could only testify as to his own *general practice*.

108 In any event, *even if* such make-up sessions had been conducted for Trainee 3 at his worksite, I am satisfied that the possibility that Trainee 3 had mistaken the makeup session for the entirety of the training course was at odds with the cogency of Trainee 3's responses as recorded in his interview statement. First, Trainee 3 displayed an ability to recall particular details of the

168 AB at p 866.

169 Supp AEIC Tan Kim Hwee Robin at paras 10.1.1–10.1.2.

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sessions he had attended. While he could not recall the name of the training provider or the name of the course,[170] he could recall that one of the training sessions "was conducted at one of the meetings rooms at Tiong Seng Building".[171] He could describe that "[t]he course taught [him] how to clean the toilets, windows and covered safety (*eg*, not to climb beyond a certain height)".[172] He also positively asserted that "there was no assessment" for the course (contrary to what was stated on the attendance sheet).[173] Second, and more crucially, I note Trainee 3's response when asked to provide more details about the trainer who had conducted the course:[174]

> On both occasions, the trainers were Chinese. *He said that he had taught me before but I have no recollection.* The trainer is a male, in his 30s and slightly big sized. [emphasis added]

109 If indeed Robin had provided certain make-up sessions for Trainee 3 *in addition to* conducting the training sessions on the stipulated days, I find it curious that Trainee 3 would state in his interview statement that he had "no recollection" of the trainer apart from the two occasions of 30 minutes each. Third, I reiterate that Trainee 3 had, by the time of his in-person interview on 16 December 2020, already attended CBLD's Mass Declaration Exercise that took place between 20 October and 12 November 2020, during which his memory was presumably "refreshed". It was therefore unlikely that Trainee 3 could have forgotten the actual training sessions on the stipulated days, if indeed he had attended those training sessions.

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170 AB at p 867.

171 AB at p 867.

172 AB at p 868.

173 AB at p 869.

174 AB at p 868.

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110 The above reasons buttress my decision to reject Robin's explanation that the discrepancies in Trainee 3's interview statement could be explained by the possibility that he could only recall the make-up sessions, and not the entirety of the training course.

(3) Conclusion: my findings on the three trainees under Robin's course

111 In conclusion, for both Trainee 1 and Trainee 3, the cogency of their recorded responses in relation to *specific* questions on the training course in question (see above at [101]–[102], [104] and [108]–[109]) is sufficient to rebut the general concerns raised by CBLD (see above at [83]–[85]). This satisfied me that the relevant statements in Trainee 1's and Trainee 3's interview statements could be relied upon. Therefore:

(a) In respect of Trainee 1, I find that she had attended less than 75% of the course duration submitted on the course attendance sheets, that she had been the only trainee present at that training, and that the training had not been conducted at the venue reflected on the attendance sheets.

(b) In respect of Trainee 3, I find that he had attended less than 75% of the course duration submitted on the course attendance sheets, that he had been the only trainee present at that training, and that the training had not been conducted at the venue reflected on the attendance sheets.

(c) Additionally, I reject Robin's explanation that Trainee 1, Trainee 2 and Trainee 3 *each* could only recall the individual make-up session(s) that he could have conducted for them, and not the entirety of the training course. Accordingly, in respect of Trainee 2, CBLD has not

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proved that Trainee 2 attended at least 75% of the course duration submitted on the course attendance sheets.

Discrepancies raised by Trainee 4, Trainee 9 and Trainee 10's signatures

112 Out of the 14 Trainees, three trainees, namely Trainee 4, Trainee 9 and Trainee 10, were identified to have discrepancies relating to their *signatures* on the submitted attendance sheets. The other shared characteristic is that these three trainees had all attended courses conducted by LLJ.

(1) Trainee 10

113 For Trainee 10, SSG's cause for concern was, *inter alia*, that there were certain pages on the attendance sheets containing signatures that purported to be in Trainee 10's name. However, she had claimed in her interview statement that those signatures had not been signed by her.[175]

114 In response, CBLD's case was that Trainee 10's hand had been injured at the material time and, hence, her signature "had been simplified due to her hand injury".[176] There are, however, a few problems with this purported justification, such that I am unable to accept CBLD's explanation. On the one hand, under cross-examination, LLJ claimed that Trainee 10 had thereby authorized *her supervisor* to sign the attendance sheets on her behalf:[177]

> A: … I remember during the SSG interview, I think [Trainee 10] didn't mention that the period of time she injured her hand. So that's why the signatures were done in front of us *but the supervisor helped to sign for her*. [emphasis added]

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175 AEIC Lim Yih Dar at para 28(i); AB at p 691.

176 PCS at para 90.

177 NE (27 July 2023) at p 37, lines 10–12.

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When further cross-examined, LLJ maintained that Trainee 10 had agreed and her supervisor had also agreed that the latter would sign on her behalf.[178] He also asserted that he had verbally informed an unknown "admin person" from CBLD that someone had signed on Trainee 10's behalf.[179]

115 Yet, on the other hand, in the statutory declaration made by Trainee 10 on 28 June 2021, she declared:[180]

> 11. With regard to my signatures on the attendance sheets from 20th January 2020 to 3rd February 2020 for the Hard Floor Surface Cleaning Course, *I had simplified my signature to make it easier to sign the attendance sheets as I had injured my hand* from sewing and there were many boxes to sign. In that sense, the information in the attendance sheets is accurate. [emphasis added]

I note that the statutory declaration was prepared *pursuant to* CBLD's instructions in anticipation of trial.[181] LLJ's explanation was therefore wholly at odds with Trainee 10's statement in her statutory declaration, such as to render CBLD's own case inconsistent.

116 Another controversy is that Trainee 10 identified in her interview statement, in relation to the attendance sheets for the course "Horizontal Surface Management – Perform Cleaning of Carpets" conducted by LLJ on 30–31 January, 1 and 3 February 2020, that the signatures therein were not her actual signatures.[182] Yet, for the course "Vertical Service Maintenance" conducted by LLJ *immediately* thereafter (from 4 to 7 February 2020),

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178 NE (27 July 2023) at p 39, line 12.

179 NE (27 July 2023) at p 39, lines 13–18 and at p 40, lines 6–10.

180 AB at p 1697.

181 AEIC Elizabeth Chan at para 31.

182 AB at pp 691, 711–715.

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Trainee 10 positively identified that the signatures therein were her actual signatures and "had been signed by [her]".[183] If indeed the reason for Trainee 10's different signatures is that she had injured her hand (as maintained by CBLD), it is altogether curious that Trainee 10 would have been able to sign her actual signature *just one day later*, on 4 February 2020, without needing to "simplify" the same or to get her supervisor to sign it on her behalf. When cross-examined as to this state of affairs, LLJ could only assert that "anything can happen within few days":[184]

> Q: Yes. BA-7848, another one. Her actual signature appear. And BA-7851--- … The different between the--- just now you say that the---she injured her hand, the supervisor had to sign for her. But the difference between the time of these two is just so short, just a few days only.
>
> A: I mean, anything can happen within few days, what? You won't know.

117 In the circumstances, I am unable to accept CBLD's explanation for the discrepancies raised concerning Trainee 10's signature on the submitted attendance sheets. In addition, I find that SSG's evidence (namely, Trainee 10's interview statement) is sufficient to prove that the signatures on the course attendance sheets did *not* belong to Trainee 10.

118 For completeness, I note that SSG also pointed to certain other discrepancies raised from Trainee 10's Telephone Interview with SSG, namely, that she had informed SSG that she did not remember attending any training in the year 2020 and had only attended training in the year 2019.[185] In my view, however, no weight should be placed on these statements, owing to the concerns

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183 AB at pp 691, 718–723.

184 NE (27 July 2023) at p 37, line 31 to p 38, line 4.

185 AB at p 689.

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raised at [83]–[85] above which apply with equal force to these specific portions of Trainee 10's statements. In particular, it was evident from Trainee 10's interview statement that she was simply unable to recall "when and how many hours" she had attended training courses.[186] In her interview statement, she also stated that "[t]his year before Covid, [she] went for courses. But [she] forgot the number of courses. [She] forgot the number of days. Training is during working hours".[187] When asked to confirm the number of courses her employer had sent her for in the last two years, Trainee 10 answered:[188]

> A: for 8 months not working, I cannot remember how many course(s) I have attended. since April we stopped work, I cannot remember what happened from Jan to Mar. Last year I attended courses, but I cannot remember where the place, becoz [*sic*] they sent transport to pick us …

119 I find that there is insufficient evidence adduced to meet the standard of proof required to prove the existence or non-existence of the fact of these *other* alleged discrepancies (*ie*, other than Trainee 10's signature). Hence, it is *not proved* that Trainee 10 attended at least 75% of the course duration submitted on the course attendance sheets.

(2) Trainee 9

120 In her interview statement, Trainee 9 claimed that she had never been sent for any training whatsoever. She also claimed that she did not sign any of the signatures which were purportedly signed by her in the course attendance sheets to indicate her attendance.[189] On the course attendance sheets, Trainee 9's

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186 AB at p 692.

187 AB at p 692.

188 AB at p 692.

189 AB at pp 1057–1063; AEIC Lim Yih Dar at para 28(a).

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signatures is reflected as a Mandarin character (“ ”).[190] However, Trainee 9 repeatedly told SSG that she “*never* signed in Chinese” [emphasis added] and instead signed with “[o]nly a simple ‘Tan’”.[191]

121 LLJ provided no explanation specific to the discrepancies raised by Trainee 9’s signature.[192]

122 CBLD’s explanation was to point to the “possibility” that “[b]ecause Trainee 9 had already been primed with a version of events that she allegedly recounted before and then warned about the potential punishments for providing a misleading or false answer, it was possible that she had therefore continued to answer SSG’s questions in a manner that was consistent to what had already been recounted to her at the start of the interview and would want to ensure that her answers during the interview were consistent with SSG’s summary”.[193] I reject this explanation as being one that is speculative and more apparent than real. If indeed Trainee 9 felt pressured or coerced to provide a consistent account to SSG, it was curious that she would have *additionally* informed SSG in great detail that the CBLD Declaration had been pre-ticked and that she felt pressured to sign the CBLD Declaration (see above at [69]).

123 CBLD has therefore failed to discharge the evidential burden to contradict, weaken or explain away the evidence on Trainee 9’s signature that has been led by SSG. In addition, I find that SSG’s evidence, namely Trainee 9’s

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190 See, for example, AB at p 1073.

191 AB at pp 1058 (Q/A 2), 1061, (Q/A 19 and Q/A 25) and 1062 (Q/A 33).

192 NE (27 July 2023) at p 31, line 4 to p 34, line 24.

193 PCS at para 87.

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interview statement, is sufficient to prove that the signatures on the course attendance sheets did *not* belong to Trainee 9.

124 I turn to the *other* attendance discrepancies raised by Trainee 9's interview statement, namely, that she had never attended any training conducted by CBLD before. In this regard, the following considerations are relevant. First, as I have found above, the signatures on the course attendance sheets did not belong to Trainee 9. Second, Trainee 9's evidence in her interview statement was to *strenuously maintain* that she felt "pressured" to sign the CBLD Declaration and that she understood that the purpose of that declaration form was "to lie to [SSG]" (see above at [69]). In conjunction with CBLD's case that it had "*refreshed*" the trainees' memories of the courses and course training sessions during the mass declaration exercises (see above at [72]), Trainee 9's above-cited responses therefore displace any possibility that, by the time of the in-person interview with SSG on 17 December 2020, she was merely confused or still could not remember attending the training courses conducted by CBLD. Rather, her response in the interview statement was to *positively assert* that she had "never" been sponsored by Lifeline to attend any training,[194] and that she had asked "one of the three men" present when she was asked to sign the CBLD Declaration "how [she] can sign *if [she] have never attended training*" [emphasis added].[195] In the round, I am satisfied that sufficient evidence has been adduced to prove, contrary to the course attendance sheets, that Trainee 9 did not attend *any* of the training sessions conducted by CBLD.

194 AB at p 1061.

195 AB at p 1060.

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(3) Trainee 4

125 Trainee 4 purportedly attended the same courses as Trainee 9, which spanned 2–5 and 17–21 September 2019 and were conducted by LLJ.

126 In his interview statement, Trainee 4 claimed that there was "no training" and that "only one guy came to the coffeeshop to brief" for two sessions lasting 30 minutes each. Trainee 4 claimed that he had never been to the venues stated in the course attendance sheets. Troublingly, Trainee 4 also claimed that he could not recognise the signatures purportedly used to indicate his attendance therein.[196]

127 CBLD's explanation was to point to the *possibility* that LLJ had met Trainee 4 at the coffeeshop in order to ask him to re-sign the attendance sheets, which would then "potentially explain why" Trainee 4 mentioned spending "for 30mins the most" with the trainer each time.[197] In this regard, LLJ testified that his general practice was that "as long as anyone of the candidates makes a mistake, like you signed wrong already, right, so that's why [LLJ] will get everyone to re-sign" on a *fresh* attendance sheet.[198] For instance, if any one of the trainees signed in the wrong cell in the attendance sheet, LLJ testified that he would "get a new [attendance sheet] within the next day", and ask *all* the trainees in that class to re-sign on the fresh attendance sheet.[199] CBLD also claimed the possibility that at this re-signing session, "Trainee 4 had re-signed

196 AEIC Lim Yih Dar at para 28(e); AB at pp 1040–1044.

197 PCS at para 73.

198 NE (27 July 2023) at p 17, lines 15–18.

199 NE (27 July 2023) at p 18, line 14 to p 20, line 11.

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quickly in a different manner and thereafter informed SSG that he could not remember his signature".[200]

128 I preliminarily observe that there is some incredulity in CBLD's implied assertion that Trainee 4 could only recall the *isolated* sessions at the coffeeshop, but not *the entirety* of the training course that was conducted. Yet, in the light of the various unknowns in the nature of the evidence in this case (for instance, the profile of the trainees, who were not called to testify in court), the possibility asserted by CBLD could not be conclusively ruled out.

129 I am not satisfied that Trainee 4's responses in his interview statement were sufficiently cogent such as to displace the cumulative effect of the general considerations expressed as to the *reliability* of the same (see above at [83]–[85]). Therefore, I find that it has neither been proved nor disproved, *ie*, it is not proved, that Trainee 4 attended at least 75% of the course duration submitted on the course attendance sheets, or that the signatures on the course attendance sheets did not belong to Trainee 4.

The remaining interview statements of Trainee 5, Trainee 7, Trainee 11 and Trainee 13

130 Trainee 5 and Trainee 7 purportedly attended the same courses as Trainee 4 and Trainee 9, which spanned 2–5 and 17–21 September 2019 and were conducted by LLJ.

(1) Trainee 5

131 SSG's cause for concern was that Trainee 5 claimed in her interview statement that she had attended "only for 30mins on one day" and "definitely

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200 PCS at para 73.

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… not over 4 days and 20 hours" for the course stated to be a 20-hour course conducted over four days from 2–5 September 2019.[201] For the other course stated to be a 27-hour course conducted over five days from 17–21 September 2019, Trainee 5 claimed that she had attended the course, "however, like the previous course, it was only 30 mins on one day" and "[t]here was no assessment either".[202] For both courses, Trainee 5 claimed that she had been "the only trainee with the trainer".[203] Trainee 5 did not recognise the training venue reflected in the course attendance sheets (namely, "East Group (80 Airport Boulevard S819642)").[204] In respect of the first course, Trainee 5 claimed that "[t]he trainer had asked [her] to sign all the attendance 7 times of this attendance sheet *in one shot*" [emphasis added] and that when she was passed the attendance sheet, "some names were already signed".[205] For the second course, Trainee 5 claimed that "some of the names on the attendance sheet were already signed when the trainer passed the attendance sheet to [her]", despite the fact that she was the only trainee present with the trainer at that point in time.[206]

132 In my judgment, Trainee 5's response to Q/A 22 of the interview statement indicates that she had signed the attendance for the course purportedly spanning 2–5 September 2019 "at one shot". However, beyond this specific finding, I repeat my considerations above at [83]–[85], in addition to the possibility that Trainee 5 could only remember the re-signing sessions or make-

201 AEIC Lim Yih Dar at para 28(f).

202 AB at p 1123 (Q/A 27).

203 AB at pp 1122 (Q/A 22) and p 1123 (Q/A 29).

204 AB at p 1122 (Q/A 21) and p 1123 (Q/A 28).

205 AB at p 1122 (Q/A 22).

206 AB at p 1123 (Q/A 29).

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up class. As to her inability to recognise the training venue, I repeat my consideration above at [85]. It is therefore not proved that Trainee 5 attended less than 75% of the course duration submitted on the course attendance sheets, that she was the only trainee present for the course or that she did not in fact train at the venue stated on the course attendance sheets.

(2) Trainee 7

133 SSG's cause for concern was that Trainee 7 claimed in her interview statement that she had attended the two courses for "only … one day for 4 hours only" each time.[207] This indicated that she did not attend the two training sessions for each course in full as reflected in the course attendance sheets. For both courses, Trainee 7 additionally claimed that she was trained with just "one more trainee … [her] colleague at Scoot, 'Chung Kum Sim'" and that she did not see the other trainees listed on the course attendance sheets.[208]

134 CBLD's explanation was to point to the possibility that "given the way training sessions were usually conducted at venues such as the airport, Trainee 7's training sessions were split into various smaller groups and she might not have met all her fellow trainees from the same course".[209] Coupled with the considerations expressed above at [83]–[85] on the *manner* in which SSG's investigation was conducted, I accept that the evidence does not rise to the sufficiency of proving that Trainee 7 attended less than 75% of the course duration submitted on the course attendance sheets, or that she and "Chung Kum Sim" had been the only trainees present at the training. It is, however, also not proved that Trainee 7 attended at least 75% of the course duration.

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207 AEIC Lim Yih Dar at para 28(h); AB at pp 940 (Q/A 33) and at p 942 (Q/A 48).

208 AB at pp 940–941 (Q/A 37–38) and at p 942 (Q/A 52–53).

209 PCS at para 83.

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(3) Trainee 11

135 Trainee 11's interview statement should *not* be considered as disclosing the discrepancies identified by SSG. SSG's concern appeared to be that Trainee 11 had mentioned *during her Telephone Interview* on 21 July 2020 that she had attended only one training course in 2020 which spanned four days. This appeared to be inconsistent with the attendance sheets showing that she had attended four courses.[210] However, I find that Trainee 11's statements did not actually reveal the discrepancies identified by SSG. This is because, in her subsequent interview statement with SSG recorded on 14 December 2020, Trainee 11 was shown the attendance sheets for the four courses and confirmed that she "remember[ed] attending all 4 courses and each time the course duration was about 2hrs to 3hrs each day on the dates stated on the training attendance".[211] This subsequent change in her position casts doubt on the reliability of Trainee 11's statements in the Telephone Interview, in so far as SSG appeared to ascribe certain discrepancies to those statements. Furthermore, I observe that when asked on 14 December 2020 whether she could remember any of the conversation that took place during the Telephone Interview, Trainee 11 responded that "[she was] not very clear as it [was] very long ago".[212] I therefore find Trainee 11's statements in her Telephone Interview with SSG to be unreliable and I place no weight on the statements.

(4) Trainee 13

136 The relevant course which Trainee 13 purportedly attended was a course for "Chemical Cleaning Handling" conducted over 29 hours from 15–

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210 AEIC Lim Yih Dar at para 16(k); *cf* at para 28.

211 AB at p 738.

212 AB at p 736.

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19 October 2019, by Wilkins. SSG's cause for concern was that Trainee 13 could not confirm that he attended all training sessions for this course but also said that he could not recall if he skipped any training sessions. He also maintained that he had "trained alone" and that "when [he] received the attendance sheet to sign, S/n 1 to 3 [in that attendance sheet] were already filled and signed completely".[213]

137 On one hand, CBLD's explanation was to point to the possibility that Trainee 13 had potentially attended a makeup class, or that he had been split up from the rest of the trainees during his training session.[214] I would add that there was also the *possibility* that Trainee 13 could only recall the re-signing session. In this regard, Wilkins testified that when he asked the trainees to return to re-sign their signatures on a fresh attendance sheet, this would usually take place the next day.[215]

138 On the other hand, however, there is also some indication that suggests otherwise. In the course of recording the interview statement, Trainee 13 was shown four other attendance sheets for courses conducted in January 2019 by one "William Ng", before being shown the attendance sheets in Annex H of the statement for the course conducted in October 2019 by Wilkins (see above at [136]). When expressly asked whether there was "a possibility that the duration indicated may be, for example, double the actual training hours, but [he] still signed [the attendance sheet in Annex H] unknowingly?", Trainee 13 responded that the attendance sheet in "Annex H was easy to remember because [he] was the only trainee. *[He] remember[ed] seeing the three names above*

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213 AEIC Lim Yih Dar at para 28(j); AB at pp 1014–1015 (Q/A 76).

214 PCS at para 93.

215 NE (1 August 2023) at p 5, lines 6–18 and p 6, lines 2–4.

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[his] already signed even before [he] sign …" [emphasis added]. Yet, Trainee 13 also admitted in the *same* response that "[he was] also unable to confirm if the training sessions [for Annex H] were conducted on the exact dates and time".[216]

139 In my judgment, insufficient evidence was adduced to satisfy the court on the reliability of Trainee 13's statements in the interview statement as to his attendance of the training course. It is therefore *not proved* that Trainee 13 attended at least 75% of the course duration submitted on the course attendance sheets, or that he was not trained alone. For the avoidance of doubt, it is also *not proved* that Trainee 13 attended less than 75% of the course duration.

Summary of my findings on the 14 Trainee Statements

140 In summary:

(a) For Trainee 6, Trainee 8, Trainee 12 and Trainee 14, their interview statements were consistent with CBLD's submissions for *Ad hoc* Claims and were not statements that led to SSG electing to terminate the Contract (see above at [51]).

(b) For Trainee 1, I found that she had attended less than 75% of the course duration submitted on the course attendance sheets, that she had been the only trainee present at that training and that the training had not been conducted at the venue reflected on the attendance sheets (see above at [111(a)]).

(c) For Trainee 3, I found that he had attended less than 75% of the course duration submitted on the course attendance sheets, that he had

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216 AB at pp 1015–1016 (Q/A 84).

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been the only trainee present at that training and that the training had not been conducted at the venue reflected on the attendance sheets (see above at [111(b)111(a)]).

(d) For Trainee 2, it is not proved that Trainee 2 attended at least 75% of the course duration submitted on the course attendance sheets (see above at [111(c)]).

(e) For Trainee 10, there were certain pages on the attendance sheets containing signatures that purported to be in Trainee 10's name. I found that these signatures on the course attendance sheets did *not* belong to Trainee 10 (see above at [117]). Furthermore, it is not proved that Trainee 10 attended at least 75% of the course duration submitted on the course attendance sheets (see above at [119]).

(f) For Trainee 9, I found that she did not sign any of the signatures which were purportedly signed to indicate her attendance in the course attendance sheets (see above at [123]). I also found that Trainee 9 did not attend *any* of the training sessions conducted by CBLD (see above at [124]).

(g) For Trainee 4, it is not proved that Trainee 4 attended at least 75% of the course duration submitted on the course attendance sheets, or that the signatures on the course attendance sheets did not belong to Trainee 4 (see above at [129]).

(h) For Trainee 5, I found that she had signed the attendance for the course purportedly spanning 2–5 September 2019 "at one shot". Nonetheless, it is not proved that Trainee 5 attended less than 75% of the course duration submitted on the course attendance sheets, that she

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was the only trainee present for the course or that she did not in fact train at the venue stated on the course attendance sheets (see above at [132]).

(i) For Trainee 7, I found that it is not proved that Trainee 7 attended at least 75% of the course duration submitted on the course attendance sheets, or that she and "Chung Kum Sim" had been the only trainees present at the training (see above at [134]).

(j) For Trainee 13, I found that it is not proved that he attended at least 75% of the course duration submitted on the course attendance sheets, or that he was not trained alone (see above at [139]).

(k) For Trainee 11, I found that her interview statement did not actually reveal the discrepancies identified by SSG (see above at [135]).

141 There was also evidence adduced as to the *general practices* of CBLD's management and individual trainers in attendance taking and feedback collection. Nonetheless, because the nature of this evidence raised far fewer complexities compared to those of the 14 Trainee Statements, I will deal with the relevant evidence at the appropriate junctures of the discussion below.

Whether the Contract was validly terminated by SSG

SSG validly terminated the Contract pursuant to cl 12.1(a) of the SkillsConnect General T&C

142 To recapitulate, SSG's case is that it was entitled to terminate the Contract pursuant to cl 12.1(a) of the SkillsConnect General T&C due to CBLD's breaches under cl 7.3 of the General T&C, cll 4.5 and 4.6(a)–(c) of the Terms and Conditions for Funded Courses, and para 3(iv) of the Guidelines to Terms & Conditions – Funded Courses. In addition, CBLD's representations

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and warranties provided under cl 14.1(c) of the SkillsConnect General T&C were found to be false. In essence, as set out below, these breaches relate to CBLD's failure, first, to ensure that the information provided to SSG in its *Ad hoc* Claim submissions is true, accurate and complete, and second, to maintain a formal system to track the attendance of its trainees.[217] In this regard:

(a) Clause 14.1(c) of the SkillsConnect General T&C requires, among other matters, that CBLD "represent[s], warrant[s] and undertake[s] to SSG that … [a]ll information and documents [CBLD] provide[s] to SSG are *true, accurate and complete to the best of [CBLD's] knowledge*, [and CBLD has] not wilfully suppressed any material facts" [emphasis added].[218]

(b) Clause 7.3 of the SkillsConnect General T&C requires that CBLD "shall ensure that all information [CBLD] provide[s] about [itself], [its] services, fees and accreditation/application/claim submissions is *true, accurate and complete to the best of [CBLD's] knowledge*, and promptly provide updates to such information as and when necessary" [emphasis added].[219]

(c) Clauses 4.6(a)–(c) of the Terms and Conditions for Funded Courses requires that CBLD "shall have a formal system to track the attendance of Trainees" and sets out certain stipulated requirements for the aforesaid attendance tracking system, including:[220]

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217 DCS at para 127.

218 AB at p 75.

219 AB at p 71.

220 AB at p 92.

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(i) Clause 4.6(a): The course title, course duration (total duration in hours), date (the start and end dates) and timing (including the start and end time) of the applicable training session, trainee name and NRIC, adult educator name, course headcount (for in-person training) and (if applicable) date of examination *shall be clearly stated* in the attendance list;

(ii) Clause 4.6(b): The *reason for absence of any trainee(s) must be recorded* and, for an employer-sponsored Trainee, the employer must additionally be informed of the trainee's absence;

(iii) Clause 4.6(c): Adult educators and trainees must sign an attendance list at every session attended of the funded course, and CBLD *shall ensure that the system allows the collection of such signatures only on the date of the session and on no other date*.

(d) Paragraph 3(iv) of the Guidelines to Terms & Conditions – Funded Courses provides further guidance on the attendance tracking system required pursuant to cl 4.6 of the Terms and Conditions for Funded Courses.[221] I reproduce the relevant paragraph concerning courses conducted in-person, below:

[221] AB at p 85.

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iv.	To implement a formal system to track Trainee attendance	**For courses conducted in-person:**
		• Ensure that the attendance records prepared for every session include the following details:
		  • Course title
		  • Course duration
		  • Time and date of training
		  • Number of training hours
		  • Total headcount
		  • Trainee's name, last 3 digits and letter of NRIC, employer's name and signature for every session
		  • Trainer's name and signature
		• In the event that the Trainee is absent from training, the reason for his absence should be recorded.
		• No correction fluid should be used. All errors should be cancelled out.

143 The parties do not dispute that these provisions cited by SSG were a "warranty" or "term" of the Contract within the meaning of cl 12.1(a) of the SkillsConnect General T&C. However, I would observe in passing that it cannot be the case that *each and every* statement within the Guidelines to Terms & Conditions – Funded Courses should be considered a "warranty" or "term" of the Contract. Although the word "warranty" in the law of contract has a myriad of meanings and would depend, among other matters, on the context in which it is used, a generally workable starting point is to consider that "[i]n essence warranty at its broadest simply means a promise. It may be a promise as to an existing fact or continuing state of affairs …, but it is also used in respect of the quality of the property or services to be rendered under a contract" (see Gerard McMeel, *The Construction of Contracts: Interpretation, Implication and Rectification* (Oxford University Press, 3rd Ed, 2017 at para 20.29)). For instance, consider the statement in para 3(iv) of the Guidelines to Terms & Conditions – Funded Courses that "[n]o correction fluid should be used. All errors should be cancelled out". I have difficulty seeing how this could be

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objectively construed as a "warranty" or "term" of the Contract, the breach of which would entitle SSG to terminate pursuant to cl 12.1(a) of the SkillsConnect General T&C. Nonetheless, the parties have not disputed, and I also accept, that the provisions relied upon by SSG (in essence, those relating to the provision of information that is true, accurate and complete, and to the integrity of the system for attendance tracking) are "warrant[ies]" or "term[s]" within the meaning of cl 12.1(a) of the SkillsConnect General T&C.

144 Lastly, cl 4.5 of Terms and Conditions for Funded Courses requires that CBLD "shall maintain a formal feedback system" and sets out certain stipulated requirements of this system, including:[222]

> (a) an evaluation questionnaire to be completed by trainees to assess the relevance of the funded course and effectiveness of the trainer after completion of the funded course; and
>
> (b) where appropriate, a post-course test to determine the trainees' understanding of the funded course.

CBLD provided information and documents to SSG that were not true, accurate and complete to the best of its knowledge

145 I find that CBLD provided information and documents to SSG in its *Ad hoc* Claim submissions that were not true, accurate and complete to the best of its knowledge. In respect of Trainee 1 and Trainee 3, CBLD failed to provide training up to 75% of the course duration indicated on the submitted attendance sheets and *Ad hoc* Claim submissions corresponding to the course allegedly attended by these trainees. They were also not trained at the venue reflected on

222 AB at p 91.

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the submitted attendance sheets (see above at [140(b)]–[140(c)]). In respect of Trainee 9, CBLD failed to provide *any* training course to this trainee, contrary to what was indicated in the *Ad hoc* Claim submissions (see above at [140(f)]). Troublingly, for Trainee 10 and Trainee 9, CBLD's submitted attendance sheets in the *Ad hoc* Claim submissions contained signatures purporting to be in the name of Trainee 10 and Trainee 9; yet, I found that Trainee 10 and Trainee 9 did not actually sign any of those signatures purporting to be in their respective names (see above at [140(e)]–[140(f)]). For the reasons set out below at [154]–[155], I also find that CBLD's attendance tracking system failed to ensure that the course duration and timings (including the start and end time of the training sessions) were *accurately* stated for each trainee in respect of which an *Ad hoc* Claim submission was made. As a result, CBLD submitted information and documents to SSG that may not have been true, accurate and complete.

146 The phrase "to the best of [its] knowledge" in cll 7.3 and 14.1(c) of the SkillsConnect General T&C necessarily refers to the actual knowledge of CBLD's management, and requires CBLD to exercise the proper oversight in ensuring that the information it submits to SSG is true, accurate and complete as far as possible. For the reasons set out below at [158]–[161], I find that CBLD did not ensure proper oversight.

147 CBLD has therefore breached cll 7.3 and 14.1(c) of the SkillsConnect General T&C.

CBLD failed to ensure that its attendance tracking system allowed the collection of the trainees' signatures only on the date of the session and on no other date

148 There were a few problems with CBLD's attendance tracking system.

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149 First, CBLD failed to ensure that its attendance tracking system allowed the collection of the trainees' signatures only on the date of the session and on no other date. I have found, in respect of Trainee 5, that she had signed all the attendance sheets for the course spanning 2–5 September 2019 "at one shot", *ie* at a single instance (see above at [132]). In addition, as I set out below, CBLD's own evidence established that their general practice in certain circumstances was to allow the trainees to re-sign a fresh attendance sheet (which duplicated the original attendance sheet) "at one shot". I accept the submission that, given that these training sessions were multiple-day sessions, permitting the trainees to sign "at one shot" meant that there was no adherence to the requirement that signatures were to be signed on the date of the session only.[223]

150 Amongst CBLD's trainers, there appeared to be *inconsistent* practices as to what was required whenever there was an error or irregularity raised by a trainee's signature in an attendance sheet. For instance, Mr Tan Lark Tee, one of CBLD's trainers who provided environmental cleaning-related training to trainees from other cleaning companies,[224] was called as a witness by CBLD. He testified under cross-examination that, should he identify an inconsistent signature by a trainee, he would either get the trainee to countersign next to his or her original signature, whether on the same day or on a separate day. He confirmed that he had never asked the trainees to sign on a fresh attendance sheet.[225]

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223 DCS at para 137(2), footnote 187.

224 AEIC of Tan Lark Tee dated 20 February 2023 ("AEIC Tan Lark Tee") at para 5.

225 NE (27 July 2023) at p 51, lines 4–31.

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151 In similar vein, Mr Goh Ling Siah, CBLD's assistant head of business development,[226] described that one of his roles was to "[make] sure the [claims submissions to SSG] were accurate and in order".[227] He described that CBLD deployed an internal system of "checkers" who would conduct at least two rounds of verification of the course attendance sheets and assessment records submitted by the trainers for claims submissions; this included verifying that the trainees had signed the required documents.[228] Under cross-examination, he testified that he was not personally aware of any requirement by CBLD to ask the trainees to sign on a *fresh* attendance sheet;[229] I must qualify, however, that this was caveated by the fact that Mr Goh Ling Siah was not personally involved in the process of rectifying any discrepancies raised in CBLD's internal verification process.[230]

152 In any event, Mr Leonard's evidence as to CBLD trainers' general practices was that "if there was insufficient space for the trainee(s) to re-sign, a fresh attendance sheet would be used".[231] The trainers were therefore "provided with spare attendance sheets so that they could rectify any signature issues on the same day", and were required to "show [the trainees] the attendance sheet that they previously signed so that the trainees could verify that they had

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226 AEIC of Goh Ling Siah (Wu Lingsheng) dated 20 February 2023 ("AEIC Goh Liang Siah") at para 4.

227 AEIC Goh Ling Siah at para 6.

228 Affidavit of Goh Ling Siah at paras 9.2–9.3; NE (28 July 2023) at p 58, lines 11–21.

229 NE (28 July 2023) at p 59, lines 23–25.

230 AEIC Goh Ling Siah at para 9.6.

231 Supplemental AEIC of Leonard Lim Ming Sheng dated 3 August 2023 ("Supp AEIC Leonard Lim") at para 8.3.1.

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previously already signed an attendance sheet and that the new attendance sheet is merely a duplicate".[232]

153 Mr Leonard maintained that the trainers were briefed that any rectification to the attendance sheet as mentioned above should "be done on the same day if possible".[233] However, it is evident from the trainers' testimonies at trial that the re-signing of a fresh attendance sheet was not always carried out on the same day of the training. For instance, Wilkins testified that when he asked the trainees to return to re-sign their signatures, this would usually take place the next day (see above at [137]).[234] Similarly, LLJ testified that he would "get a new [attendance sheet] within the next day", and then ask all the trainees in that class to re-sign on the fresh attendance sheet (see above at [127]).[235]

154 Second, CBLD's attendance tracking system as described above also failed to ensure that the course duration and timings (including the start and end time of the training sessions) were *accurately* stated for each trainee in respect of whom an *Ad hoc* Claim submission had been made. In this regard, CBLD claims that it "*did record the absence of the trainees* and [CBLD] did strikethrough the names of the absentees on the attendance sheets and also provided reasons such as medical leave or resignations *where possible*".[236] In support, however, CBLD only adduced certain past invoices to its clients where CBLD had informed those clients about the trainees who did not attend the

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232 Supp AEIC Leonard Lim at para 8.3.2.

233 Supp AEIC Leonard Lim at para 8.3.2.

234 NE (1 August 2023) at p 5, lines 6–18 and p 6, lines 2–4.

235 NE (27 July 2023) at p 18, line 14 to p 20, line 11.

236 PCS at para 141; Supp AEIC Leonard Lim at para 8.2.

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courses.[237] Several of these invoices did support CBLD's claim, in so far as they showed, for instance, that trainees were recorded as "absent" or "resigned" and their attendance struck through,[238] or that trainees were recorded as "change date" and their attendance struck through.[239] The problem, however, was that these sample invoices could not address the contradictory evidence provided by the Impugned Trainers at trial, or the fact that the impugned attendance sheets appended to the 14 Trainee Statements did not likewise record the reasons for absence, *even* in respect of the trainees where CBLD's purported explanation was that they had required make-up classes.

155 For one, the actual training hours were not recorded if a trainee had to step out of class for work and/or a make-up class was thereafter arranged. For instance, Robin was asked under cross-examination about his practice of conducting make-up training sessions for trainees to satisfy the 75% attendance requirement. He testified that he recorded each trainee's actual training hours on "a piece of paper" but he "[didn't] have it now" and it "probably is gone".[240] Likewise, the attendance sheets pertaining to his training sessions did not indicate any periods of absence or make-up training under the "remarks" column. Kevin likewise testified that he would use a "piece of paper" to record the time the trainees go off, but would "dispose of it" after the course was finished without passing it on to CBLD or otherwise documenting it.[241] Kevin

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237 *eg,* Supp AEIC Leonard Lim at pp 286–321 (exhibiting what is described by Mr Leonard as a "sample" invoice issued to a client).

238 *eg*. Supp AEIC Leonard Lim at p 315–316 (training course conducted by CBLD's trainer, one K Thurayraju, across January and February 2020).

239 *eg*. Supp AEIC Leonard Lim at pp 319–321 (training course conducted by CBLD's trainers, Yap Kian Hing and Ashari bin Ahmad, on 30 September 2018).

240 NE (28 July 2023) at p 43, line 26 to p 44, line 24.

241 NE (2 August 2023) at p 10, lines 13–17.

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also admitted that the start and end timings on the attendance sheets may not reflect the actual duration of the training provided to the trainee; they were the timings that had been "given" to him by CBLD.[242] When cross-examined as to this practice, Ms Chan's response was that CBLD's trainers were expected to conduct make-up classes and the trainers were "empowered to do the make-up classes on their own".[243] CBLD therefore did not ask or require its trainers to record the actual timings or details of any make-up class provided.

156 While Ms Chan was aware that the terms of the Contract *required* CBLD to ensure that the trainees' signatures were collected only on the day of the training and on no other day, she also accepted that CBLD's practice was technically speaking, a contravention of such requirement.[244] However, she sought to characterise that this was a defensive practice borne out of SSG's past actions. According to Ms Chan, sometime in 2016, SSG had rejected CBLD's submitted attendance sheets, required the trainees to sign a declaration form to confirm their signature and required the employers and CBLD's trainers to "validate" the submissions.[245]

157 However, I would observe that *even if* SSG had in the past rejected CBLD's attendance sheets on the basis of certain issues with the trainees' signatures, this did not thereby excuse CBLD's compliance with the requirements under the Contract to ensure that the signatures were only collected on the date of the session and no other that, or indeed that the information submitted to SSG was true, accurate and complete to the best of

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242 NE (2 August 2023) at p 17, lines 1–18.

243 NE (1 August 2023) at p 46, lines 16–25).

244 NE (2 August 2023) at p 91, lines 3–10.

245 NE (2 August 2023) at p 91, lines 14–29) and p 92, line 31 to p 93, line 18.

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CBLD's knowledge. On the contrary, by Ms Chan's own account, SSG had previously taken issue with those signatures on the basis that they wanted to see "the actual signature of the participants".[246] This ought to have reinforced to CBLD that it was absolutely *imperative* to keep true, accurate and complete records. Furthermore, according to Ms Chan, SSG had not outright rejected the *Ad hoc* Claims submitted in respect of those attendance sheets in 2016. Therefore, the mischief which CBLD's stated practice sought to avoid, if any, was more accurately described as the *inconvenience* of being put through SSG's rectification process of "asking [CBLD] to redo by getting the trainees to do declaration, to sign again on the declaration form and submit back to [SSG]".[247] I reiterate that even if CBLD was motivated to only submit attendance sheets that appeared cosmetically "clean", this could not excuse non-compliance with the terms of the Contract.

158 In any event, the practice of getting trainees to re-sign on fresh attendance sheets, while failing to ensure proper documentation when this happened, meant that CBLD's internal checks at the administrative level would not have been able to detect whether a signature for a purported timeslot was genuine or not. Under cross-examination, Ms Chan herself accepted that one consequence of such practice was that CBLD's internal checks would not be able to detect inaccurate information on the signed attendance sheets.[248] Mr Goh Ling Siah, who oversaw CBLD's internal system of "checkers", also admitted under cross-examination as to the limitations of this internal system of verification:[249]

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246 NE (2 August 2023) at p 93, lines 16–17.

247 NE (2 August 2023) at p 93, lines 10–12.

248 NE (2 August 2023) at p 87, lines 2–3.

249 NE (28 July 2023) at p 58, lines 19–32.

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> Q: So your check is really based on this attendance sheet and assessment record to see whether everything is accurate.
>
> A: Yes.
>
> …
>
> Q: Would you be able to know if, let's say, the trainer did not provide the training duration as written on the attendance note?
>
> A: *Not that I know of.*
>
> Q: Okay. Would you be able to know if the trainer signed the signature of the trainees?
>
> A: *Not that I know of.*
>
> Q: Right, thank you. And you will not---would you know that the, let's say, the trainer asked the trainee to sign a few signature at one go?
>
> A: *Not that I know of.*
>
> [emphasis added]

159 While CBLD claimed that the fresh attendance sheets were merely duplicates of the original attendance sheets, it provided no credible evidence at trial such that this claim could be independently verified. This was despite Mr Leonard's evidence that CBLD maintained a record of *all* attendance sheets, assessment records, survey forms and invoices in a warehouse.[250] CBLD also did not appear to require the trainees to countersign on the original attendance sheet *before* a fresh attendance sheet was signed.

160 For the reasons stated above, I find that CBLD had inadequate safeguards and oversight in ensuring the *accuracy* of its attendance sheets and *Ad hoc* Claims. Additionally, Ms Chan gave evidence on other safeguards, such as CBLD's practice of checking with its clients (*ie*, the employers such as

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[250] Supp AEIC Leonard Lim at para 8.4.

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ARAS and Lifeline) on their satisfaction with the training courses provided.[251] However, I would observe that such "checks" appear to be more accurately directed toward gauging the *effectiveness* of the training courses provided as a whole, and cannot provide sufficient guarantee that a particular trainee has satisfied the 75% attendance requirement for funding eligibility. A big part of Ms Chan's belief in the efficacy of CBLD's internal safeguards hinged on the trust and confidence that she reposed in her trainers. For instance, when cross-examined as to whether she "suspect[ed] that the trainer did not provide all this training", she responded:[252]

> Q: You see, the investigation by SSG, I think maybe you appreciate the thing is about the duration of the---there's discrepancy of the actual time of training and what was recorded on attendance sheet. So would you---as a boss of CBLD, would you suspect that the trainer did not provide all this training?
>
> A: No.
>
> …
>
> Q: 100% confident in them?
>
> A: Yah, yes.
>
> Q: You were not there at the training 24/7 every day?
>
> A: *I'm not there*---
>
> Q: Okay.
>
> A: *---but I trust my trainers. I trust my trainers, they have to carry out the full training.*
>
> Q: The only thing that you receive from the trainers are the attendance sheet---
>
> A: Yes.
>
> Q: ---and the assessment.
>
> A: Yes.

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251 NE (2 August 2023) at p 88, lines 1–13.

252 NE (2 August 2023) at p 40, line 28 to p 41, line 13.

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[emphasis added]

161 Ms Chan and Mr Leonard also deposed that spot checks and internal audits were periodically carried out on the trainers by CBLD's staff, and adduced a copy of certain audit and appraisal forms that had been conducted in the past.[253] It was, however, not clear how frequently CBLD conducted its internal audits. Although Ms Chan alluded to such audits taking place "a few, actually, every month" in her evidence in court,[254] I note that CBLD's Investigation Report in fact only stated that this took place "at least once a year".[255] It was also not clear whether advance notice was provided to the trainers whenever these internal audits took place. In any event, the inadequacy of CBLD's safeguards, as a whole, was evident, most glaringly in relation to its inability to account for the discrepancies raised by the 14 Trainee Statements. For instance, I reiterate again the matter of Trainee 10's signature (see above at [113]–[115]). During trial, LLJ testified that he had informed CBLD of the purported arrangement where Trainee 10's supervisor had signed on her behalf.[256] Yet, Ms Chan was unable to confirm or deny the arrangement:[257]

> Q: … So my question is that: If … [LLJ] really told CBLD that the signature was signed by the supervisor, and CBLD still submit the attendance sheet to SSG, would it be giving false information to SSG?
>
> A: … *if I had known*, I would have asked---I would have taken further action---…---you know, like going down to interview her---…---and then get her to sign again and declare that she's attended the attendance. *But the thing is, I wasn't aware.* But … I met her personally while we

253 Supp AEIC Leonard Lim at para 11 and pp 353–379; AEIC Elizabeth Chan at para 19.

254 NE (2 August 2023) at p 88, lines 2–7.

255 AB at p 168, para 5.1(e).

256 NE (27 July 2023) at p 39, lines 13–18 and at p 40, lines 6–10.

257 NE (2 August 2023) at p 82, lines 1–29.

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> were going on this case, and she did tell me that she injured her hand and she couldn't sign, yah.
>
> …
>
> A: *I---I don't know who [LLJ] asked to sign*, but [Trainee 10] said she couldn't sign. But she didn't tell me who actually signed for her, yah.
>
> [emphasis added]

By Ms Chan's own admission, this confirmed that CBLD had insufficient oversight over the actual practices of its trainers, who were conducting the training courses.

162 The fact that CBLD failed to keep proper documentation of the *reason for absence* of any trainee could not be seriously disputed and was also a breach of cl 4.6(b) of the Terms and Conditions for Funded Courses.

163 However, I caveat that there is insufficient evidence to make the finding sought by SSG that CBLD's practices were dishonest in nature. For instance, SSG alleged that CBLD's trainers would ask the trainees to sign for multiple days of attendance in "one shot" because they "never intended" to conduct the training courses for the training durations stipulated in the attendance sheets or the *Ad hoc* Claim submissions.[258] In addition, SSG submitted that the trainees' signatures had been deliberately *forged* by the trainers, and that CBLD "has forged or acquiesced in the forging of the signatures to submit more [*Ad hoc*] Claims to SSG than it is entitled to".[259] CBLD may have been negligent in its oversight of the Impugned Trainers' practices, but that is a different thing from saying that it has been dishonest. The evidence does not rise to the sufficiency of proving forgery of the trainees' signatures or other dishonesty, and I repeat

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258 DRS at para 23(3).

259 See, *eg*, DCS at paras 84, 95.

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the principles stated above at [44] and [45]. Therefore, for the avoidance of doubt, I make no finding that CBLD's practices were dishonest in any way.

164 For the foregoing reasons, I find that CBLD also breached cl 4.6(a)–(c) of the Terms and Conditions for Funded Courses and para 3(iv) of the Guidelines to Terms & Conditions – Funded Courses.

CBLD maintained a formal feedback system in compliance with the Contract

165 SSG appears to have abandoned, in its written submissions, the allegation that CBLD did not maintain a formal feedback system as required by the terms of the Contract. In any event, I am satisfied that CBLD did maintain a formal feedback system in compliance with the Contract.

166 According to Mr Leonard, CBLD initially had a feedback system in place in which it provided a survey form to the trainees to be filled up using pen and paper and then submitted to CBLD. Subsequently, CBLD also implemented a digital feedback survey system whereby trainees could scan a QR code to access an end of course feedback survey, end of assessment feedback survey and trainer survey.[260]

167 CBLD has therefore not breached cl 4.5 of Terms and Conditions for Funded Courses.

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[260] Supp AEIC Leonard Lim at paras 6.4–6.5 and pp 169–284.

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SSG is not precluded from relying on the ground of termination in cl 12.1(a) of the SkillsConnect General T&C

168 In the Notice of Intent, SSG indicated its intention to terminate the Contract pursuant to cl 12.1(c) of the SkillsConnect General T&C.[261] Subsequently, by way of the Termination Letter, SSG gave notice for immediate termination of the Contract pursuant to cl 12.1(d) of the SkillsConnect General T&C. In both instances, cl 12.1(a) of the SkillsConnect General T&C was not specifically cited as a ground for termination of the Contract. CBLD contends that SSG is therefore not entitled to terminate the Contract pursuant to cl 12.1(a) of the SkillsConnect General T&C.[262]

169 The authorities clearly establish that an innocent party is entitled to rely on a ground for terminating the contract even if it did not rely on that ground at the time of election: *Alliance Concrete Singapore Pte Ltd v Comfort Resources Pte Ltd* [2009] 4 SLR(R) 602 ("*Alliance Concrete*") at [63]. This entitlement is not, however, unqualified. For one, it does not apply *if* the party in breach could have rectified the situation had it been afforded the opportunity to do so (the "rectification exception"): *Alliance Concrete* at [67]. In this regard, CBLD relies on the rectification exception and submits that it was "never given the chance to rectify the situation".[263]

170 I have earlier found that cll 7.3 and 14.1(c) of the SkillsConnect General T&C, cl 4.6(a)–(c) of the Terms and Conditions for Funded Courses and para 3(iv) of the Guidelines to Terms & Conditions – Funded Courses were breached (see above at [147] and [164]). The question therefore turns on

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261 AB at p 106, para 3.

262 PRS at para 61.1.

263 PRS at paras 59, 61.2.

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whether CBLD *could have* fulfilled its obligations under the said provisions of the Contract if it was given an opportunity to do so. SSG argues, *inter alia*, that CBLD's failure to ensure that the information in its *Ad hoc* Claims submissions is true, accurate and complete, is "not capable of rectification" in the manner contemplated in *Alliance Concrete* at [67].[264] I agree. Although CBLD appeared willing and ready to rectify the relevant breaches at the time of termination, the fact of the matter was that it was simply unable to do so. Even by the time the matter proceeded to trial, CBLD was unable to satisfy the court *on an objective basis* that it had ensured that all information in its *Ad hoc* Claim submissions was true, accurate and complete, or that it had implemented a formal attendance system in compliance with the Contract.

171 For completeness, I am also satisfied that although SSG's primary case in its defence to the wrongful termination claim is based on cl 12.1(d) of the SkillsConnect General T&C, it has adequately pleaded its alternative argument that it was also entitled to terminate the Contract pursuant to cl 12.1(a) of the SkillsConnect General T&C. Accordingly, I hold that SSG is entitled to terminate the Contract pursuant to cl 12.1(a) of the SkillsConnect General T&C, notwithstanding the lack of specific reference to this ground of termination in the Notice of Intent or the Termination Letter.

An alternative ground for termination is cl 12.1(d) of the SkillsConnect General T&C

Observations on the operation of cl 12.1(d) of the SkillsConnect General T&C

172 As I observed to counsel during the trial, there is a difference between a failure to properly audit or set up an adequate system of safeguards and, as

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264 DCS at para 153.

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cl 12.1(d) of the SkillsConnect General T&C alludes to, gross moral turpitude. The parties agree that "gross moral turpitude" requires *dishonesty*.[265] The evidence that was before SSG did not seem to indicate that there was intentional breach on the part of CBLD. In CBLD's Investigation Report, several explanations were given as to why the discrepancies between the information in the *Ad hoc* Claim submissions and the 14 Trainee Statements could have occurred. However, in its subsequent interviews of the 14 Trainees, SSG did not explore these points with the latter (see above at [77]–[85]).

173 Be that as it may, the case authorities lead me to conclude that the *qualifying event* for termination pursuant to cl 12.1(d) of the SkillsConnect General T&C is not whether CBLD has indeed been guilty of gross moral turpitude, but that "*in the opinion of SSG*" CBLD has been guilty of gross moral turpitude. In other words, the operation of cl 12.1(d) of the SkillsConnect General T&C is two-fold: it vests the sole discretion in SSG to determine that there has been gross moral turpitude, in addition to conferring SSG with the power to terminate the Contract should the qualifying event be fulfilled.

174 In support of its case, SSG cited *Loke Hong Kee (S) Pte Ltd v United Overseas Land Ltd* [1982] 2 MLJ 83 ("*Loke Hong Kee (PC)*"), a decision of the Privy Council on appeal from the Court of Appeal in Singapore. There, the parties had entered into a written agreement under which the appellant contractor agreed to carry out and complete building works for the respondent employer to the satisfaction of the respondent's architect. The parties had, by article V cl 3 of a supplemental agreement between them, agreed, *inter alia*, that "in the event of the progress of the [works] *being in the opinion of the architect unsatisfactory*" [emphasis added] then upon the recommendation of the

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[265] DCS at paras 156–158; PCS at paras 196–203.

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architect in writing and in addition to the employer's rights under the main contract the employer should be at liberty to determine the employment of the contractor under the main contract forthwith. Subsequent to the supplemental agreement, the architect, by a letter to the employer, stated he was of the opinion that progress of the works was unsatisfactory and recommended that the employer ought to determine the contractor`s employment. The respondent, acting on the architect's recommendation, determined the contractor`s employment. The main dispute between the parties was whether the contractor`s employment had been lawfully determined. This dispute was then referred to arbitration.

175 The question posed for the decision of the court was whether the arbitrator was entitled to open up, review or revise an opinion of the architect under art V cl 3 of the supplemental agreement pursuant to the arbitration clause in the main contract. The Court of Appeal in *United Overseas Land Ltd v Loke Hong Kee (S) Pte Ltd* [1978-1979] SLR 168 ("*Loke Hong Kee (CA)*") answered the question in the negative. It took the view that, on the true construction of the supplemental agreement and the main contract, the only meaning of art V cl 3 was that the employer had a right to determine the contractor`s employment if the architect was of the opinion, arrived *bona fide*, that progress of the works was unsatisfactory. In the same vein, the arbitration clause did not confer jurisdiction on the arbitrator to review the opinion of the architect. However stringent such a term may be, when it came to be enforced, the courts had declared that *their duty was in such cases to ascertain and give effect to the intention of the parties as evidenced by the agreement* and if a term was clear and unambiguous, the court was bound to give effect to it without stopping to consider how far it was oppressive or not.

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176 On appeal, the Privy Council affirmed the decision of the Court of Appeal and held that the function of the arbitrator was limited to deciding whether as a matter of fact the opinion was given and was *bona fide*. The Privy Council further observed:

> The phrase `in the opinion of the architect unsatisfactory` which appears in art V(3) carries the kind of *subjective connotation* which is necessarily associated with words expressive of satisfaction or dissatisfaction. It is the view of the particular architect as to what is or is not satisfactory which is to be the criterion, *not any objective standard*.
>
> …
>
> If it were intended that the right to terminate should depend on establishing objectively that such progress was unsatisfactory, and that if necessary this would have to be done to the satisfaction of the arbitrator, the reference to the opinion of the architect would be quite futile. *The architect`s opinion would be of no consequence whatsoever, if it were liable to be opened up and reviewed by the arbitrator, as if it had never been given, in the course of the latter deciding for himself whether or not progress had been unsatisfactory*.
>
> [emphasis added]

177 The Court of Appeal in *Central Provident Fund Board v Ho Bock Kee* [1981] 2 MLJ 162, commenting on the decision in *Loke Hong Kee (CA)*, pointed out in the latter case, "the *opinion* of the architect was *the qualifying event* for determination of the contract" [emphasis added], and not the factual situation which was in dispute.

178 SSG further cited *The "Chem Orchid"* [2015] 2 SLR 1020 (*The "Chem Orchid"*). In that case, the clause in question provided as follows (*The "Chem Orchid"* at [45]):

> *In the event [HKC] is of the opinion that* [Sejin] is facing difficulties in continuing its normal business activities due to any reason whatsoever, including but not limited to reasons of application for bankruptcy, compulsory composition or company rehabilitation procedure or work-out, giving rise to

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> concerns about [Sejin's] ability to perform its obligations to [HKC] or to maintain or manage the Vessel, *[HKC] may terminate this Contract with notification specifying the cause towards [Sejin].* [emphasis in original]

On the proper construction of this clause, Steven Chong J (as he then was) considered, referring to the approach in *Loke Hong Kee (PC)*, that "whether or not Sejin's circumstances were serious enough to warrant termination in HKC's opinion is irrelevant. The pertinent question is whether *HKC* did, *in fact, form such an opinion*" [emphasis in original] (*The "Chem Orchid"* at [49]). These statements were, however, expressed in the context of Chong J's holding that *there was no evidence* on which the court was able to conclude that HKC had formed the requisite opinion (*The "Chem Orchid"* at [50]). In particular, Chong J sought to explain why it was *insufficient* that the HKC's expert, one Prof Kim, gave *his* own opinion at trial as to what would constitute circumstances serious enough for *HKC* to form an opinion that the Lease Agreement should be terminated (*The "Chem Orchid"* at [49]). This aspect of Chong J's decision was not engaged on appeal to the Court of Appeal in *The "Chem Orchid" and other appeals and another matter* [2016] 2 SLR 50.

179 Be that as it may, the decision in *Loke Hong Kee (PC)* is binding on me, and I know of no other decision that has departed from the approach set out in that case. I therefore hold that the qualifying event in cl 12.1(d) of the SkillsConnect General T&C is for SSG to hold the requisite *opinion* that CBLD was guilty of gross moral turpitude. It is not open for the court to substitute its own opinion for that of SSG's, and therefore, *irrelevant* whether the objective facts established that CBLD was guilty of gross moral turpitude.

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The implied term not to arbitrarily, capriciously and/or irrationally come to the opinion that CBLD is guilty of gross moral turpitude

180 As alluded to above, CBLD submits that there is an implied term that SSG cannot exercise its discretion pursuant to cl 12.1(d) of the SkillsConnect General T&C arbitrarily, capriciously and/or irrationally. CBLD further submits, *inter alia*, that SSG disregarded the CBLD Investigation Report and wrongfully, unreasonably, arbitrarily, capriciously and/or irrationally formed the opinion that CBLD was guilty of gross moral turpitude.

181 At this juncture, I pause to observe that CBLD invokes this purported implied term in relation to SSG's *exercise of discretion* under cl 12.1(d) of the SkillsConnect General T&C. In other words, based on CBLD's own pleaded case, it does *not* rely on the breach of the putative implied term as a *free-standing duty* which sounds in damages. Rather, it relies on this implied term as a contractual pre-condition to the valid exercise of power under cl 12.1(d) of the SkillsConnect General T&C. This distinction is significant as it influences the relief to be granted in the event of a breach: see, the debate alluded to in *IBM United Kingdom Holdings Ltd and another v Dalgleish and others* [2014] EWHC 980 (Ch) at [372] and [1469] and *IBM United Kingdom Holdings Ltd and another v Dalgleish and others* [2017] EWCA Civ 1212 at [29]; see also David Foxton QC, "Controlling Contractual Discretions," a presentation given at the Attorney-General's Chambers, Singapore (9 January 2018) at para 6.

182 It is trite that the common law does not, as a general rule, control the *substance* of a contractual clause; it does not impose any further requirement that contracts must be reasonable or that contractual rights must be exercised reasonably: see *Treital on the Law of Contract* (Sweet & Maxwell,

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15th Ed, 2020) at para 7-033. In recent times, nonetheless, the courts have occasionally held that the discretion conferred by contract is subject to an implied term that it will not be exercised "dishonestly, for an improper purpose, capriciously or arbitrarily". The origins of this development can be traced to the judgment of Leggatt LJ in *Abu Dhabi National Tanker Co v Product Star Shipping Ltd (No 2)* [1993] 1 Lloyd's Rep 397 (CA) at 404 and the subsequent decision of the English Court of Appeal in *Socimer International Bank Ltd (in liquidation) v Standard Bank London Ltd* [2008] EWCA Civ 116 ("*Socimer*") and of the UK Supreme Court in *Braganza v BP Shipping Ltd and another* [2015] 1 WLR 1661 ("*Braganza*"). This development extends to instances where the contract gives one party the power to form an opinion as to the relevant facts, as was the case in *Braganza*, which concerned an employment contract.

183 In *Brogden and another v Investec Bank plc* [2014] EWHC 2785 (Comm), a case concerning the award of bonuses under a contract of employment, Leggatt J (as he then was) expressed the principle in the following manner (at [100]):

> Both on the authorities and as a matter of principle, it seems to me that where a contract gives responsibility to one party for making an assessment or exercising a judgment *on a matter which materially affects the other party's interests and about which there is ample scope for reasonable differences of view*, the decision is properly regarded as a discretion which is subject to the implied constraints that it must be taken in good faith, for proper purposes and not in an arbitrary, capricious or irrational manner. *Those limits apply in circumstances where the decision is final and binding on the other party in the sense that a court will not substitute its own judgment for that of the party who makes the decision.* There is therefore also a discretion in the second sense distinguished earlier. The concern as Rix LJ observed in *Socimer* is that the decision-maker's power should not be abused. The implication is justified as a matter of construction to give effect to the presumed intention of the parties. … [emphasis added]

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184 Likewise in *Braganza*, Lady Hale expressed the principle in similar terms (at [18]):

> Contractual terms in which one party to the contract is given the power to exercise a discretion, or to form an opinion as to relevant facts, are extremely common. It is not for the courts to re-write the parties' bargain for them, still less to substitute themselves for the contractually agreed decision-maker. Nevertheless, the party who is charged with making decisions *which affect the rights of both parties to the contract* has a clear conflict of interest. That conflict is *heightened where there is a significant imbalance of power* between the contracting parties as there often will be in an employment contract. *The courts have therefore sought to ensure that such contractual powers are not abused.* They have done so by implying a term as to the manner in which such powers may be exercised, a term which may vary according to the terms of the contract and the context in which the decision-making power is given. [emphasis added]

185 In *AL Shams Global Ltd v BNP Paribas* [2019] 3 SLR 1189 ("*AL Shams*"), the clause in question (cl 3.5(D)) listed, without limiting the generality of the defendant bank's ("Bank") discretion, certain grounds upon which the Bank might refuse to accept any incoming payment, including, *inter alia*, that any documentation requested relating to the origin of such payment was insufficient or unsatisfactory *in the opinion of* the Bank. Kannan Ramesh J (as he then was) considered that "[o]n any reading therefore, I found it difficult not to conclude that cl 3.5(D) conferred upon the Bank the sole discretion to refuse to accept any incoming payment, including of course the [payment in dispute]" (*AL Shams* at [42]). However, he accepted that this contractual discretion "was only subject to the Bank exercising such discretion in good faith and not in an arbitrary, capricious or perverse manner" (*AL Shams* at [42]).

186 SSG contends that the implied term sought by CBLD is inapplicable because the case authorities establish that such term will *not* be implied to limit a party's contractual power to *terminate* a contract. Primacy is given to the

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parties' freedom to determine or exit their contracts.[266] In support, SSG cites the recent decision of the Appellate Division of the High Court in *Dong Wei v Shell Eastern Trading (Pte) Ltd and another* [2022] 1 SLR 1318 ("*Dong Wei*").

187 In *Dong Wei*, the respondent employer terminated the appellant's employment and paid him for three months' salary in lieu of giving him notice. The appellant sued the employer for, *inter alia*, wrongful termination and argued that the law ought to impose a prohibition against arbitrariness, capriciousness and bad faith, so as to restrict an employer's discretion in deciding to exercise its right to terminate employees pursuant to an express contractual clause. In *obiter*, the Appellate Division observed that the case cited by the appellant was *Leiman, Ricardo and another v Noble Resources Ltd and another* [2018] SGHC 166 ("*Leiman*"), which in turn relied on *Braganza*. The Appellate Division considered that it was a "crucial distinction" that the restrictions in those cases "served to ensure that a party's contractual discretion was not exercised in a manner which deprived its counterparty of its contractual rights, or which warped their contractual bargain. The courts there certainly did not limit the right to bring their respective contracts *to an end*" [emphasis in original] (*Dong Wei* at [91]). In other words, this line of cases applied to restrict contractual discretions relating to rights subsisting *within* the performance of the contract.

188 I do not, however, find the Appellate Division's remarks in *Dong Wei* to stand for the broad proposition advanced by SSG, namely, that restrictions can never be imposed to limit a party's contractual power to terminate the contract. In my judgment, it is important to appreciate the context that was before the Appellate Division in that case. Specifically, the court there was

266 DRS at para 101.

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concerned with an express clause permitting termination by way of notice (*Dong Wei* at [92]). It was in this context that the Appellate Division expressed its concerns that "[w]here the termination of a contract is concerned … considerations of the parties' freedom of contract (and conversely, to exit contracts) come into play" (*Dong Wei* at [92]). That this is so, is buttressed by the court's consideration that, since the right to terminate with notice or pay in lieu of notice in employment contracts tends to cut both ways, extending such restriction to the situation at hand would also lead to a "particularly unpalatable proposition" in enabling employers, conversely, to refuse to accept an employee's resignation and compel them to work (*Dong Wei* at [92]).

189 In contrast, such considerations do not necessarily arise with as much force in the case of an express clause permitting termination in the event of a default and which permits the non-defaulting party to exercise its sole discretion as to the *occurrence* of that qualifying event. For instance, the parties may have agreed that there must be *in the opinion of* the non-defaulting party a certain qualifying event which is fulfilled *before* the power to terminate arises. In such circumstances such power cannot be unfettered. Clause 12.1(d) of the SkillsConnect General T&C requires SSG to hold the opinion that CBLD has been guilty of gross moral turpitude. Quite plainly, the parties could not have intended that the requisite opinion can be formed without any basis whatsoever, or capriciously or arbitrarily. I add that this makes no inroads on the principle that where parties have expressly contracted for termination for convenience, then there should be no fetter on the contractual power to terminate because of the fundamental principle of "freedom of contract (and conversely, to exit contracts)", as observed above at [188].

190 As I have alluded previously, the operation of cl 12.1(d) of the SkillsConnect General T&C is two-fold: it vests in SSG the sole discretion to

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determine that there has been gross moral turpitude, in addition to conferring on SSG the power to terminate the Contract should the qualifying event be fulfilled. In respect of the first aspect, the exercise of SSG's discretion is final and binding on CBLD in the sense that the court will not substitute its own judgment for that of CBLD's as to whether there is gross moral turpitude. I therefore hold, in respect of the first aspect, that SSG's contractual discretion *to form the opinion* that there has been gross moral turpitude on the part of CBLD, is subject to the implied term that the discretion will not be exercised dishonestly, for an improper purpose, irrationally, capriciously or arbitrarily.

SSG did not form its opinion dishonestly, for an improper purpose, irrationally, capriciously or arbitrarily

191 The issue is whether, on the basis of the evidence before SSG and in view of all the circumstances at the time including the state of its knowledge and the extent of its investigation, SSG could be said to have dishonestly, for an improper purpose, irrationally, arbitrarily or capriciously concluded that CBLD was guilty of gross moral turpitude.

192 In view of the matters set out at above [48]–[61] which were before SSG at the time, it cannot be said that SSG dishonestly, for an improper purpose, irrationally, arbitrarily or capriciously came to the opinion that CBLD was guilty of gross moral turpitude. The actions and conduct of the Impugned Trainers, who were independent contractors of CBLD, were attributable to CBLD. This was not disputed by the parties. The 14 Trainee Statements *appeared* to raise, on their face, troubling discrepancies which could not be characterised as mere administrative errors. For instance, I point to Trainee 9's interview statement (see above at [120]) which, taking her recorded responses at face value, indicated that she had never been sent for *any* training whatsoever

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and that she did not sign any of the signatures purportedly signed by her in the course attendance sheets. It is also relevant to recall CBLD's conduct *during* the investigations process. From SSG's perspective, there was the duplicitous conduct of the unknown CBLD trainer who had escorted Trainee 8 to SSG's premises on 16 December 2020 (see above at [57]–[61]). In addition, the manner in which the CBLD Declarations had been arranged (*ie*, with CBLD's trainers present) and that at least one trainee subsequently informed SSG that she was asked to sign the CBLD Declaration despite protesting that she did not attend the training (see above at [54]–[55] and [69]) are matters that also appeared to raise troubling discrepancies.

193 In this regard, I am mindful it has been said that the standard of the implied term should be equated to the test of "*Wednesbury*" unreasonableness applied to the review of executive power: *Braganza* at [30] and [103]; *Socimer* at [66]. The courts will not generally intervene unless the contracting party's exercise of discretion can be said to be "so outrageous in its defiance of reason that it can be properly characterised as perverse": *Dong Wei* at [90].

194 CBLD says that the Claim Sum was made for about 1,922 training places; in contrast, it appears that SSG formed the opinion that CBLD was guilty of gross moral turpitude on the sole basis of ten of the 14 Trainee Statements.[267] Nonetheless, in my view, it is relevant to note that *out of the 21 trainees* originally interviewed over telephone calls, SSG found that 14 trainees' Telephone Interviews raised sufficient cause for concern through the discrepancies identified. It may have been a different story, for example, if SSG's evidence was that it had interviewed 184 trainees over the telephone, but only 14 of them raised cause for concern. This was not the case. Of the

[267] PCS at para 235.1.

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14 Trainees, four trainees' interview statements were in fact consistent with CBLD's submissions for *Ad hoc Claim*s (see above at [51]).

195 CBLD also argues that SSG conducted its trainee interviews between 14 and 23 December 2020 without exploring the Contextual Considerations and the other possible explanations raised by the CBLD Investigation Report (see above at [77]–[78]). However, I do not think that the mere fact of this omission is sufficient to render SSG's opinion "so outrageous in its defiance of reason that it can be properly characterised as perverse", in the light of all the evidence that was before SSG at that time. To this, I add the observation of Lady Hale in *Braganza* at [31], citing Mocatta J in *The Vainqueur José* [1979] 1 Lloyd's Rep 557 at 577, that "'it would be a mistake to expect [of a lay body] the same expert, professional and almost microscopic investigation of the problems, both factual and legal, that is demanded of a suit in a court of law".

196 Therefore, the facts do not disclose that SSG dishonestly, for an improper purpose, irrationally, arbitrarily or capriciously formed the opinion that CBLD was guilty of gross moral turpitude.

Conclusion on cl 12.1(d) of the SkillsConnect General T&C

197 For the above reasons, I am satisfied that an alternative ground for termination of the Contract under cl 12.1(d) of the SkillsConnect General T&C is made out. It cannot be disputed that, by 25 March 2021, SSG had formed the requisite opinion that CBLD was guilty of gross moral turpitude for the purposes of cl 12.1(d) of the SkillsConnect General T&C.[268]

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268 AB at p 1257.

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Conclusion on the claim for wrongful termination

198 In conclusion, I hold that SSG was entitled to terminate the Contract pursuant to cl 12.1(a) of the SkillsConnect General T&C. I also hold that an alternative ground for termination of the Contract is cl 12.1(d) of the SkillsConnect General T&C. It follows that the Contract was validly terminated, and CBLD's claim for unlawful termination must fail.

Whether the Claim Sum is owing and payable to CBLD

199 At this juncture, I set out that there are two relevant portions to the Claim Sum:

(a) first, there is the part of the Claim Sum that relates to training sessions which had been conducted *prior to* the Notice of Intent on 16 October 2020 ("Pre-16/10/2020 Claim Sum"); and

(b) second, there is the part of the Claim Sum that relates to training sessions which had been conducted on or after 16 October 2020 to March 2021 ("Post-16/10/2020 Claim Sum").

Clause 15.1 of the SkillsConnect General T&C

200 Clause 15.1 of the SkillsConnect General T&C is a general exemption clause and provides as follows:[269]

> You hereby waive, release and forever discharge SSG and its agents, directors, officers, employees, successors, assigns and representatives thereof (collectively the "Releasees") *from any and all claims*, actions, causes of action, proceedings, liabilities, losses, damages, expenses *arising out of or otherwise in connection with the breach of any of your warranties or obligations under the Contract* and/or any act, neglect or

269 AB at p 57.

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> omission by you or your agents, directors, officers, employees, successors, assigns and representatives. [emphasis added]

201 This clause clearly states that the waiver, release and discharge is applicable if CBLD's claim "aris[es] out of or otherwise in connection with" its breaches under the Contract. I am satisfied that there is no ambiguity as to the meaning of cl 15.1 of the SkillsConnect General T&C. Even assuming there is ambiguity, I am satisfied that the *contra proferentum* principle is applicable such that the clause should be construed strictly against the party seeking to rely on it: see *Zurich Insurance (Singapore) Ptd Ltd v B-Gold Interior Design & Construction Pte Ltd* [2008] 3 SLR(R) 1029 at [131]; *LTT Global Consultants v BMC Academy Pte Ltd* [2011] 3 SLR 903 at [56]–[57].

202 In this regard, CBLD's claim for the *Ad hoc* Claim submissions comprising the Claim Sum does not concern any of the breaches alleged by SSG. It is advanced pursuant to cl 3 of the Funding – Specific T&C (see above at [25]) and therefore does not "aris[e] out of or otherwise in connection with" CBLD's breaches under the Contract. Therefore, I hold that CBLD's claim for the Claim Sum would not be precluded by operation of cl 15.1 of the SkillsConnect General T&C.

Construction of cl 3 of the Funding – Specific T&C

203 Clause 3 of the Funding – Specific T&C provides as follows:[270]

> **3. Grants**
>
> 3.1 SSG shall award Grants only for Funded Courses, subject to the terms of this Contract. The Grants administered by SSG include without limitation the following:
>
> (a) Training Grant: A Grant on a per Trainee basis to defray the cost of a Funded Course; and

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270 AB at p 79.

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> (b) Absentee Payroll: A Grant on a per Trainee basis:-
>
> i. to defray the manpower costs incurred by the Trainee's employer due to the Trainee's attendance at a Funded Course or
>
> ii. awarded on account of a Trainee's attendance at a Funded Course during non-working hours, the amount of such Grant to be calculated based on such formula as SSG (in its sole discretion) deems fit and reflected in SkillsConnect.
>
> 3.2 The costs and expenses that qualify for funding and the funding limits of the Grants are specified in the Guidelines including those set out in the SSG website(s) or SkillsConnect.
>
> 3.3 Notwithstanding Section 4 (Eligibility Criteria) or anything else in the Contract, *the power to accept or reject any claim for a Grant or to revoke, suspend or vary any award of a Grant shall vest solely in SSG and SSG shall be entitled to exercise its rights under this Section in its sole discretion without advance notice or liability to any person and without assigning any reasons for its decision.*
>
> [emphasis added]

204 "Grant" is defined under cl 2.1 of the Funding – Specific T&C as meaning "monetary support awarded by SSG under a Funded Scheme",[271] and covers monetary grants made pursuant to Training Grant Applications and *Ad hoc* Claims submitted by CBLD.[272] In turn, cl 4 of the Funding – Specific T&C sets out certain eligibility criteria that a training organisation must fulfil in order to make a valid claim for a grant.

205 As set out above at [32], SSG's position on cl 3 of the Funding – Specific T&C is that, rather than providing any obligation on SSG's part to award monetary support by way of a grant, cl 3 of the Funding – Specific T&C

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271 AB at p 78.

272 DCS at para 23.

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sets out the conditions on which SSG may, *in the exercise of its discretion, award* a grant.[273]

206 I am, however, unable to accept the submission that cl 3 of the Funding – Specific T&C imposes *no obligation at all* on SSG to award monetary support. In my judgment, cl 3 of the Funding – Specific T&C requires SSG to award monetary support by way of a grant where the eligibility criteria set out in the Contract have been satisfied, including that a *valid* claim for a grant has been submitted by the training organisation. Nonetheless, this obligation is, by the operation of cl 3.3 of the Funding – Specific T&C, subject to SSG retaining the sole and overriding contractual discretion to reject any claim for a grant "without advance notice … and without assigning any reasons for its decision".

207 My conclusion in this regard is buttressed by cl 5.3 of the Funding – Specific T&C,[274] which provides that "Grants *shall be disbursed subject to* your compliance with the terms of the Contract to SSG's satisfaction" [emphasis added], and by cl 5.4 of the Funding – Specific T&C,[275] which provides that "[y]ou acknowledge that SSG is required to verify the claim before any part of the Grant may be disbursed". These provisions undercut SSG's contended construction of cl 3 of the Funding – Specific T&C.

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273 DCS at para 34.

274 AB at p 81.

275 AB at p 81.

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Effect of termination of the Contract

208 SSG contends that having validly terminated the Contract, it is, in any event, not obligated to pay any part of the Claim Sum to CBLD by virtue of cl 12.5 of the SkillsConnect General T&C and the Clawback Clause.[276]

209 It is trite that election operates to terminate a contract as regards future rights and obligations; the rights and obligations which have accrued prior to termination remain alive: see *Lim Lay Bee and another v Allgreen Properties Ltd* [1998] 3 SLR(R) 1028 at [17]. I find that SSG's obligation under cl 3 of the Funding – Specific T&C in respect of the Claim Sum had accrued prior to termination of the Contract on 25 March 2021. In this regard, CBLD's evidence was that the *Ad hoc* Claims which were the subject of the Claim Sum had been submitted in respect of training courses provided during the period of April 2020 to March 2021, before the termination of the Contract on 25 March 2021.[277] I note that the Contract is silent as to the time for performance of SSG's obligations under cl 3 of the Funding – Specific T&C. In the absence of a stipulation as to time for performance of an obligation, the law implies an obligation that it should be performed within a reasonable time: see *Max Master Holdings Ltd and others v Taufik Surya Dharma and others and another suit* [2016] SGHC 147 at [98], citing *Chitty on Contracts* vol 1 (Sweet & Maxwell, 32nd Ed, 2015) at para 21-021; *Naughty G Pte Ltd v Fortune Marketing Pte Ltd* [2018] 5 SLR 1208 at [148]; see also, *Lee Kai Corp (Pte) Ltd v Chong Gay Theatres Ltd* [1992] 2 SLR(R) 710 at [23]. The implication of this term as to time is not one of fact and is thus not subject to the framework laid down in

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276 DCS at para 174.

277 AEIC Elizabeth Chan at para 20 and at Tab 5, pp 95–169 and 170–2910 (exhibiting a copy of CBLD's submissions and SSG's approval of the Training Grant Applications respectively, in respect of the Claim Sum).

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Sembcorp Marine Ltd v PPL Holdings Pte Ltd and another and another appeal [2013] 4 SLR 193 ("*Sembcorp Marine*").

210 As to SSG's reliance on cl 12.5 of the SkillsConnect General T&C, this clause vests with SSG the "sole and absolute discretion" to determine whether CBLD has shown sufficient cause. It does not in any way affect the operation of rights and obligations already accrued prior to termination.

SSG is estopped from relying on the Clawback Clause to deny the Post-16/10/2020 Claim Sum

211 Clause 13.4 of the SkillsConnect General T&C, which I have referred to as the "Clawback Clause", provides the following:[278]

> Upon the termination of the Contract or the termination or revocation of any right or benefit granted under the Contract by reason of any matter set out in Section 12.1(a) to (g), you shall pay to SSG *the full amount of any funding or subsidy received from SSG under the Contract or in connection with the right or benefit so terminated or revoked.* [emphasis added]

212 SSG relies on the Clawback Clause to deny the Claim Sum. I am satisfied that the Clawback Clause covers both monies already received and monies entitled to be paid under the Contract which have not yet been received. This accords with the object or purpose of the Contract, which includes ensuring the proper safeguards and protection of the public funds in the Skills Development Fund which have been entrusted to SSG.[279]

213 CBLD submits that SSG is estopped from relying on the Clawback Clause or otherwise withholding the Claim Sum, because SSG's statements and

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278 AB at p 74.

279 DCS at paras 212–214, 256.

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conduct were equivalent to a representation that "the Claim Sum would be paid out once investigation has been completed and that the Contract will not be terminated, provided that there was no breach of the Contract".[280]

214 In order to successfully make out a case of promissory estoppel, CBLD must prove three elements: (a) a clear and unequivocal promise by the promisor, whether by words or conduct; (b) reliance on the promise by the promisee; and (c) detriment suffered by the promisee as a result of the reliance (see *Aero-Gate Pte Ltd v Engen Marine Engineering Pte Ltd* [2013] SGHC 148 ("*Aero-Gate*") at [37]; *Tractors Singapore Ltd v Pacific Ocean Engineering & Trading Pte Ltd* [2021] 4 SLR 44 at [97]). It must be inequitable for the promisor to resile from his promise (*Aero-Gate* at [38]). As to the first element, some cases describe this alternatively as a "representation", although what is meant by "representation" here is not a representation of present fact. What is meant is a representation as to future conduct: the party making the representation represents that he will hold in abeyance the enforcement of his strict legal rights (*Aero-Gate* at [37]).

Clear and unequivocal representation

215 For convenience, I refer to the approximately five-month period between the issuance of the Notice of Intent on 16 October 2020 and the Termination Letter on 25 March 2021 as the "Intervening Period".

216 CBLD submits that, by virtue of SSG *approving* the *Ad hoc* Claims submitted by the former during the Intervening Period, SSG represented and/or

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280 PCS at para 276.5.

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promised by conduct that it would pay to CBLD the approved claims such as the claims corresponding to the Claim Sum.[281]

217 CBLD's evidence was that during the Intervening Period, it continued to receive close to 200 e-mails from SSG stating that its *Ad hoc* Claim submissions were approved ("*Ad hoc* Claim E-mails").[282] Copies of the *Ad hoc* Claim E-mails sent by SSG were exhibited at Tab 18 of Mr Leonard's AEIC dated 21 February 2023.[283] These e-mails uniformly stated:

> We refer to your claim submitted on … via the SkillsConnect for the Nett Fee course, …
>
> 2. *This claim has been approved* and will be disbursed if you meet disbursement conditions [*footnote 1 omitted*]. You will be notified once the training grant has been disbursed to you via Interbank GIRO. A separate notification will be sent to inform the company about the disbursement of their absentee payroll (if applicable). Please refer to Annex 1 for more details.
>
> [emphasis in original omitted; emphasis added in italics]

Footnote 1 to the *Ad hoc* Claim E-mails in turn stated:

> Disbursement conditions include, but are not limited to, satisfaction of SSG audit enquiries (where applicable), and payment of outstanding arrears to SSG (where applicable).

218 By way of context, the trainees for funded courses approved by SSG were generally either (a) self-sponsored trainees; or (b) employer-sponsored trainees. For an employer-sponsored trainee, the nett course fees (*ie*, the full course fee less any funding provided by SSG) ("Nett Fees") were generally paid by the employer of the trainee directly to the training provider.[284] This explains

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281 RDCC at paras 4.1–4.1.3.

282 AEIC Leonard Lim at para 30.

283 AEIC Leonard Lim at Tab 18, pp 1054–2565.

284 2nd Supp AEIC Lim Yih Dar at paras 33–34.

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the reference to "Nett Fees" in the *Ad hoc* Claim E-mails which is reproduced above. Additionally, CBLD was required to have collected the Nett Fees prior to submitting an *Ad hoc* Claim, and was also required to declare the quantum of Nett Fees collected in respect of each trainee at the time they submit the *Ad hoc* Claim.[285]

219 SSG says that the *Ad hoc* Claim E-mails were computer-generated e-mails which had been sent automatically by SSG "for the purpose of acknowledging receipt of [*Ad hoc* Claim] applications by its training providers".[286] It further contends that this would have been known to CBLD because "the vast majority of the [*Ad hoc* Claim E-mails] were *issued immediately, or on the following working day*, after the submission of the relevant [*Ad hoc* Claim] application by CBLD".[287] On this basis, SSG submits that the *Ad hoc* Claim E-mails were incapable of constituting any promise or representation to the effect pleaded by CBLD.[288]

220 I observe, however, that SSG mischaracterises that Ms Chan had, under cross-examination, admitted that the e-mails were in the nature of an "[i]mmediate acknowledgement".[289] At this point in the cross-examination, Ms Chan was not referring to the *Ad hoc* Claim E-mails;[290] rather, the question had been posed to her whether she recalled any immediate acknowledgement *at the time an Ad hoc Claim is submitted on the SkillsConnect portal*. It was in this

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285 2nd Supp AEIC Lim Yih Dar at para 35.

286 DCS at para 224.

287 DCS at para 224.

288 DCS at para 224.

289 DCS at para 224.

290 NE (2 August 2023) at p 25, line 3 to p 26, line 1.

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context that Ms Chan stated "I believe there is" such "[i]mmediate acknowledgement", although she also clarified that she could not recall this with certainty.[291] The fact that Ms Chan was not referring to the *Ad hoc* Claim E-mails in the extract relied upon by SSG is also evident from her *subsequent* reference to the *Ad hoc* Claim E-mails.[292]

221 In order to sustain an estoppel based on the acknowledgment of documents, the following must be satisfied (*Fook Gee Finance v Liu Cho Chit* [1998] 1 SLR(R) 385 at [28]; *Halsbury's Laws of Singapore* vol 9 (LexisNexis, 2023 Reissue) at para 110.978:

(a) the acknowledgment must be clear and unambiguous;

(b) the party must have conducted himself such that *a reasonable man in the other party's position would take it to be true and believe that it was meant that he should act on it*; and

(c) the party relying on the acknowledgment made by the other party must in fact have believed it to be true and be induced by such belief to act on it.

222 In my judgment, the three elements above are satisfied in the present case. First, the acknowledgment of the receipt of CBLD's *Ad hoc* Claim submissions was clear and unambiguous. Second, I am satisfied that SSG's issuance of the *Ad hoc* Claim E-mails was such that a reasonable man in CBLD's position would take it to be true and believe that it was meant that he should act on it. This much was clear from a plain and literal reading of the

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291 NE (2 August 2023) at p 25, line 8 to p 26, line 3.

292 NE (2 August 2023) at p 26, lines 6–27.

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statement, "*[t]his claim has been approved* and will be disbursed if you meet disbursement conditions" [emphasis added], which, in my judgment, is a representation of conditional approval. It is also relevant that after each trainee's successful completion of the training courses corresponding to the Claim Sum, SSG subsequently issued a Statement of Attainment and full qualification certificates *to the trainees* who completed the training courses.[293] Objectively construed, this indicates that SSG continued to treat CBLD's provision of training courses as valid and eligible for funding *during* the Intervening Period. Third, I am satisfied that CBLD in fact believed the acknowledgements in the *Ad hoc* Claim E-mails to be true and was induced by such belief to act on it during the Intervening Period.[294]

223 It is also relevant to note the *context* in which the *Ad hoc* Claim E-mails were sent as well as certain additional observations of SSG's conduct during the Intervening Period. At no point in time during the Intervening Period did SSG *suspend* CBLD's account on the SkillsConnect portal[295] or restrict CBLD from offering funded courses on the portal.[296] Ms Chan testified that this was unlike "what [SSG] did after the termination", when they "stopped [CBLD] from [accessing] the portal … so that people cannot apply" for funded courses conducted by CBLD.[297] The lack of suspension is relevant because, at the time CBLD received the Notice of Intent on 16 October 2020, there were ongoing

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293 AB at pp 2708–9642; AEIC Leonard Lim at para 31.

294 AEIC Leonard Lim at paras 30–31.

295 NE (2 August 2023) at p 126, line 13–17.

296 NE (2 August 2023) at p 117, lines 10–22.

297 NE (2 August 2023) at p 124, lines 1–6.

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training classes for funded courses conducted by CBLD which CBLD was expected to fulfil. As Ms Chan testified under cross-examination:[298]

> Q: You received this notice of intention on 16th October 2020, okay? So at that point, were there any commitments which CBLD had to either the, you know, clients or the trainees and whatnot?
>
> A: Commitment, yah, I mean, there---there---there are---there are classes that they have to complete five courses for full qualification, so---so we try to honour that. …
>
> …
>
> Q: … When you received the notice, and then you said the trainee still need to complete something. What is it they need to complete?
>
> …
>
> A: … some trainees were---were---we have scheduled some classes for---for trainees, and then of course, there are also some other trainees that are sai---have signed up for full qualification.
>
> Q: Okay. What do you mean by full qualification?
>
> A: Qualification means consist of five modules, yah, five courses … when they finish one, they get one SOA, two, and then five SOA, then they can get the full certificate from SSG.
>
> Q: Okay, I see. And what happens if you were to just stop your training there and then? … if at 16th of November 2020, you were to just stop all your operations, what will happen to the trainee?
>
> A: What happen to the trainee? Of course they will get angry … Because they pay money for the course. The company also pay for their---sponsor them for the course. And then they are supposed---and then disrupt them, you see, disrupt them, because they're---you see, what happened is when, especially for the full qualification, they have to take the---the module from the---the training provider, and then the trei---not all training providers for cleaning have got full qualification, not all. So if they---they---if we stop the training, if they cannot find another training provider

[298] NE (2 August 2023) at p 135, line 7 to p 136, line 18.

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> that offer the full qualification, they get so upset. Their investment is gone.

224 I would, however, clarify what I did not place weight on. CBLD tendered an exhibit at trial, marked 3PE.[299] According to Mr Leonard, 3PE was an e-mail correspondence between CBLD and SSG showing that "during this period, as shown by the set of this document, [CBLD was] still working with SSG to upload documents of [CBLD's] classes. So [CBLD was] working with [SSG] to upload training records, and [CBLD was] also working with [SSG] on rectifying some of the [records with discrepancies]".[300] According to him, even after termination in March 2021, SSG never indicated that it would not release any funding to CBLD but was guiding CBLD on how to upload the training records properly, thereby giving CBLD the impression that so long as it could make good the records they would release funding to CBLD.[301]

225 I am, however, unable to find that 3PE disclosed the matters asserted by Mr Leonard Lim. As Mr Yih Dar explained, 3PE was CBLD's correspondence with SSG's officers who were tasked with providing the administrative and technical support for the TPGateway portal. The e-mail correspondence in 3PE was initiated by *CBLD's* request *on or about 15 April 2021*, *ie*, *after the Contract was terminated on 25 March 2021*, for technical assistance to void a particular course run as CBLD had erroneously created a single course run for two different classes that took place on the same days on the TPGateway

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299 NE (4 August 2023) at p 8. A copy of 3PE is exhibited at 2nd Supp AIEC Lim Yih Dar at Tab 4, pp 154–168.

300 NE (4 August 2023) at p 10, lines 14–24.

301 NE (4 August 2023) at p 10, lines 24–32.

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portal.[302] The fact that 3PE related to SSG's actions *after* the Intervening Period was likewise admitted by Mr Leonard under cross-examination.[303]

226 At trial, Ms Chan asserted under cross-examination that SSG, on 10 March 2021, had even sent CBLD a spreadsheet of 2,000-over data entries and requested it to make the appropriate rectification of the claim entries submitted.[304] Evidence of this was, however, not adduced before the court, other than what 3PE purported to be. Since CBLD has not adduced any evidence that supports its assertion that SSG had, during the Intervening Period, requested CBLD to make the appropriate *rectifications* to its *Ad hoc* Claim submissions, I am thus unable to find that SSG had so requested.

227 Lastly, I deal with the effect of the issuance of the Notice of Intent on 16 October 2020. SSG says that this "put [CBLD] on notice that … SSG 'intends to terminate the [Contract] with CBLD'".[305] I make three observations in this regard. First, the Notice of Intent cannot be viewed in isolation and must necessarily be viewed in the context of SSG's conduct *as a whole* during the Intervening Period as set out above at [217]–[223]. Second, para 6 of the Notice of Intent conveyed:[306]

> In addition, please note that all claims submitted by CBLD, which have previously been approved by SSG but are yet to be paid, will be rejected. *You are required to review the accuracy of these claims before resubmitting them* **by 15 Nov 2020** for SSG's consideration. Any claim resubmitted after 15 Nov 2020 will not be considered. [emphasis in original in bold and underline; emphasis added in italics]

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302 2nd Supp AEIC Lim Yih Dar at paras 39–40.

303 NE (4 August 2023) at p 10, lines 15–16.

304 NE (1 August 2023) at p 83, lines 20–27.

305 DCS at para 226.

306 AB at p 107.

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In other words, rather than an outright rejection of CBLD's *Ad hoc* Claim submissions, the Notice of Intent gave CBLD the opportunity to "review the accuracy of these claims before resubmitting them." It was therefore entirely consistent with CBLD's representation by its conduct as set out above.

228 In conclusion, therefore, I find that there has been a clear and unequivocal representation by SSG's conduct during the Intervening Period that *if* all was found to be in order with CBLD's *Ad hoc* Claim submissions, funding would be disbursed for those claims under the Contract. It follows, however, that this representation only extends to the particular claims submitted for training sessions conducted *during* the Intervening Period itself (*ie*, relating to the Post-16/10/2020 Claim Sum), and not to the claims for training sessions conducted *prior* to the Intervening Period (*ie*, relating to the Pre-16/10/2020 Claim Sum). The representation by SSG's conduct *during* the Intervening Period, is incapable of extending to the claims for training sessions conducted *prior* to the Intervening Period.

229 For the avoidance of doubt, I do not find that there has been representation by SSG's conduct that it would not elect to *terminate* the Contract. The evidence does not support this assertion and such finding would be clearly contradicted by the plain language of the Notice of Intent.

Reliance and detriment

230 I accept that CBLD relied on SSG's representation of funding under the Contract and continued to provide training courses to the trainees up until 25 March 2021. CBLD has also suffered detriment as a result of the reliance as it had expended time and financial resources in running the training courses. Under cross-examination, Mr Leonard confirmed that if SSG had informed

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CBLD of the former's intention not to disburse any fundings at the time the Notice of Intent was issued on 16 October 2020, CBLD would have ceased its operations.[307] As Mr Leonard explained, it made little business sense for CBLD to continue its operations *if* it had known that there would be no funding.[308]

Conclusion on promissory estoppel

231 In the circumstances, it is inequitable for SSG to resile from its representation that *if* all was in order with CBLD's *Ad hoc* Claim submissions, funding would be disbursed under the Contract for those claims relating to training sessions conducted during the Intervening Period. I therefore find that SSG is estopped from relying on the Clawback Clause as a defence to the Post-16/10/2020 Claim Sum. I would add that the root of the problem was the failure of SSG, when it served the Notice of Intent on 16 October 2020, to direct CBLD to suspend all training sessions pending the show cause action. CBLD owed obligations to companies it had contracted with to conduct training sessions and unless SSG had instructed CBLD to suspend the training sessions, CBLD would have been in breach of those obligations. In future cases, it would be wise and eminently fair for SSG to direct that the relevant training provider suspend all training sessions pending the show cause action.

232 As I have found above at [228] that the representation by SSG's conduct *during* the Intervening Period is incapable of extending to the claims for training sessions conducted *prior* to the Intervening Period, it follows that the promissory estoppel does not extend to SSG's reliance on the Clawback Clause

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307 NE (4 August 2023) at p 75, line 10–13.

308 NE (4 August 2023) at p 76, lines 26–28.

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to deny the Pre-16/10/2020 Claim Sum. I therefore find that the Pre-16/10/2020 Claim Sum is *not* recoverable.

The Defective Claim Entries

233 I turn to deal with the matter of the Defective Claim Entries. To recapitulate, SSG alleges that these claim entries contain irregular, erroneous and/or irrelevant information, and therefore do not satisfy cll 4 and 5 of the Funding – Specific T&C (see above at [33]).

234 The Defective Claim Entries are pleaded in the Defence and Counterclaim (Amendment No. 4) dated 12 October 2023 ("DCC"). They are classified into five categories based on the nature of the claim defects (see, Annexes A–E of the DCC). For ease of reference, I instead adopt the particularisation of the alleged defective claims set out in the Defendant's Closing Submissions dated 9 November 2023 ("SSG's closing submissions"), because Annexes A–E of the DCC also relates to claim entries which have been stood down by CBLD and/or moved to Category 2 pursuant to the SOC (see above at [22]).[309] The classification used in Annexes A–E of SSG's closing submissions (*ie*, classification based on the nature of the claim defects) corresponds to that of Annexes A–E of the DCC.

Annex A and Annex B claim entries

235 Broadly speaking, there are two sets of problematic claim entries.[310] The first broad category relates to *Ad hoc* Claim submissions which were allegedly *never received by* SSG. These claim entries are particularised in Annex A and

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309 DCS at para 240.

310 NE (1 August 2023) at p 77, line 20 to p 78, line 22.

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Annex B of SSG's closing submissions ("Annex A" and "Annex B", respectively):

> (a) Annex A: These are claim entries which have a *missing Ad Hoc* Reference Number (*ie*, no *Ad Hoc* Reference Number was provided by CBLD).[311]
>
> (b) Annex B: These are claim entries where a Training Grant Application Number and *Ad Hoc* Reference Number was provided, but *no such claim* could be identified by SSG from its records of the SkillsConnect system.[312]

236 SSG submits that the necessary implication to be drawn is that the claim entries in Annex A and Annex B were never submitted to begin with.[313] Since no *Ad hoc* Claim had been made in respect of those claim entries, they ought to be disallowed.

237 CBLD adduced exhibit "1PE" at trial, which it says is a list of the *Ad hoc* Claims set out in Annex A of the Defence and Counterclaim (Amendment No. 3) dated 26 July 2023 ("DCC (Amd No. 3)") with cross-references[314] to (a) letters allegedly issued by SSG in relation to those listed *Ad Hoc* Claims; and (b) statements of attainment allegedly issued by SSG in relation to courses corresponding to those listed *Ad hoc* Claims.

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311 See also, AEIC Pang Tong Wee at para 39(a).

312 AEIC Pang Tong Wee at para 39(b).

313 DCS at para 242; NE (1 August 2023) at p 64, line 28 top 65, line 6) and p 67, lines 5–9.

314 These are cross-references to the Agreed Bundle filed on 26 July 2023.

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238 In response, however, SSG's Mr Yih Dar gave evidence that:[315]

(a) There is no reference to any supporting document for 38 of the *Ad hoc* Claims (*ie*, those listed at S/N 3–25, 27–35 and 65–70 of 1PE).

(b) Most of the cross-references in the fifth column of 1PE (titled "Corresponding reference in AB") refer to letters issued by SSG in respect of the relevant *Training Grant* Applications, rather than the *Ad hoc* Claims. This applies to all the *Ad hoc* Claims listed in 1PE, save for those listed at S/N 50 and 181–182, which contain references to letters in respect of *Ad hoc* Claims. However, even in those cases, the *Ad hoc* Claims mentioned in the letters *do not match* the NRIC numbers of the trainees provided (*ie*, the *Ad hoc* Claims mentioned in the letters were not made in respect of those trainees).

(c) SSG issues the statements of attainment solely based on the assessment records submitted by CBLD. The issuance of such statements of attainment does not mean that SSG agrees that any course conducted by CBLD is compliant with the terms of the Contract.

239 SSG further elaborated on its evidence that the claim entries listed in Annex A could not be located in SSG's records. Mr Yih Dar deposed that he compared the *Ad hoc* Claims listed in Annex A of the DCC (Amd No. 3) (assuming that the *Ad hoc* Claims bore the "AC00001" suffix) against the data extracted from the SkillsConnect portal. Mr Yih Dar exhibited his findings at Tab 2 of his second supplementary AEIC dated 11 August 2023 ("2nd Supp AEIC Lim Yih Dar"). The findings may be summarised as follows:[316]

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315 2nd Supp AEIC Lim Yih Dar at para 16.

316 2nd Supp AEIC Lim Yih Dar at paras 19–24.

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(a) SSG was not able to locate 142 out of the 189 alleged *Ad hoc* Claims submitted by CBLD, which suggests that these *Ad hoc* Claims were never submitted by CBLD.

(b) The remaining 47 out of the 189 alleged *Ad hoc* Claims were submitted via the SkillsConnect portal. Of these, 43 claims were marked "Approved" and four claims were marked "Processing".

(c) The *Ad hoc* Claims listed at S/N 65–70 of 1PE relate to training grant applications for training sessions which were conducted by *another* training organisation instead and not CBLD (see below at [245(c)]).

240 CBLD also adduced exhibit "2PE" at trial, which is a list of the *Ad hoc* Claims set out in Annex B of the DCC (Amd No. 3) with cross-references[317] to letters allegedly issued by SSG in relation to those listed *Ad hoc* Claims.

241 SSG accepts that the cross-references in 2PE refer to letters acknowledging the relevant *Ad hoc* Claim Submissions. However, Mr Yih Dar deposed that the NRIC numbers of the trainees provided by CBLD in relation to those *Ad hoc* Claims *do not correspond* with any of the NRIC numbers included with the *Ad hoc* Claim Submissions.[318] Additionally, Mr Yih Dar deposed that he compared the *Ad hoc* Claims listed in 2PE against the data extracted by SSG from its SkillsConnect portal. His findings are exhibited at Tab 3 of 2nd Supp AEIC Lim Yih Dar, namely, that SSG was not able to locate the NRIC numbers provided by CBLD in support of the claim entries in 2PE.

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317 These are cross-references to the Agreed Bundle filed on 26 July 2023.

318 2nd Supp AEIC Lim Yih Dar at para 25.

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In other words, although the *Ad hoc* Claims set out in 2PE were submitted, the trainees set out in 2PE *are not part* of the *Ad hoc* Claims submitted by CBLD.[319]

242 CBLD has not, in its reply submissions, responded to SSG's submissions on the Defective Claim Entries.

243 In respect of the 47 claim entries (see above at [239(b)]), I find that Mr Yih Dar's evidence as described previously establishes that the 47 claim entries *were received by SSG* based on its records of the SkillsConnect system. Mr Yih Dar's evidence in respect of these claim entries was to repeat that the disbursement of any claim sum is at all times subject to SSG's disbursement conditions, which include the satisfaction of SSG's audit enquiries. This in turn must be taken as a reference to the Clawback Clause which allows SSG to *withhold monies* otherwise entitled to be disbursed under the Contract if CBLD is found to be in breach. While I have found above at [231] that SSG is estopped from relying on the Clawback Clause to deny the Post-16/10/2020 Claim Sum, CBLD has clarified that the 47 claim entries fall within the Pre-16/10/2020 Claim Sum.[320] It follows from my reasons expressed above at [228] and [232] that the promissory estoppel does not extend to SSG's reliance on the Clawback Clause to deny the Pre-16/10/2020 Claim Sum, which *includes* the 47 claim entries. The 47 claim entries are therefore *not* recoverable.

244 In respect of all the other claim entries listed in Annex A and Annex B, I find that CBLD has not proved that *Ad hoc* Claims were submitted in respect of these claim entries, and therefore, is not entitled to recovery of the same.

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319 2nd Supp AEIC Lim Yih Dar at para 26.

320 Plaintiff's Letter to Court dated 4 April 2024 ("Plaintiff's Letter") at paras 3.3 and 3.4; Defendant's Letter to Court dated 22 April 2024 ("Defendant's Letter") at paras 3.3 and 3.4.

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Annex C, Annex D and Annex E claim entries

245 The second broad category of claim entries relates to those in which there is no dispute as to the *validity* of the *Ad hoc* Reference Numbers provided by SSG, but the claim entries otherwise contain inaccurate, erroneous or irrelevant information. These claim entries are particularised in Annex C, Annex D and Annex E of SSG's closing submissions ("Annex C", "Annex D" and "Annex E", respectively):

(a) Annex C: These are claim entries where the pleaded claim amount does not match the claim amount reflected in SSG's records in the SkillsConnect system.[321]

(b) Annex D: These are claim entries with erroneous NRIC numbers and/or names of the trainees.[322]

(c) Annex E: These are six claim entries where the Training Grant Applications were made by *another* training organisation,[323] and are therefore *irrelevant to* CBLD's cause of action.

246 In my judgment, the satisfaction of cl 7.3 of the SkillsConnect General T&C to provide "true, accurate and complete" information and documents "to the best of [CBLD's] knowledge"[324] in respect of each *Ad hoc* Claim submission constitutes the *condition precedent* to the disbursement of a monetary grant under the Contract in respect of that *Ad hoc* Claim. This accords with the

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321 AEIC Pang Tong Wee at para 39(c)(i).

322 AEIC Pang Tong Wee at para 39(c)(ii).

323 AEIC Pang Tong Wee at para 39(c)(iii). See also, 2nd Supp AEIC Lim Yih Dar at para 22.

324 AB at p 52.

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business purpose of the Contract, which is to facilitate SSG's disbursement of public funds for the subsidy of the provision of adult education or further education courses by training organisations in Singapore. My conclusion in this regard is buttressed by the fact that submitting an *Ad hoc* Claim on the SkillsConnect portal requires the training organisation to make certain supporting declarations on the portal, essentially representing and/or warranting that the information stated in that *Ad hoc* Claim and its accompanying documents are true and correct (see above at [8(b)(v)]).[325]

247 For the reasons set out above at [245(a)]–[245(b)], I agree that the information provided in the claim entries listed in Annex C and Annex D are erroneous and/or inaccurate. CBLD is therefore not entitled to claim for the claim entries listed in Annex C and Annex D.

248 For the claim entries listed in Annex E, they are irrelevant to CBLD's pleaded claim. The claim entries also do not satisfy cl 4.3(d) of the Funding – Specific T&C, which provides that a party making a claim for grant disbursement from SSG must be "for the full duration of the Funded Course up to and including the date of the claim … [t]he Training Organisation providing a Funded Course attended by [the trainee in question]".[326] CBLD is therefore not entitled to claim for the claim entries listed in Annex E.

Conclusion on the Defective Claim Entries

249 In conclusion, in relation to the claim entries listed in Annex A and Annex B, save the 47 claim entries described above at [239(b)], CBLD has not proved that *Ad hoc* Claims were submitted in respect of the listed claim entries

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325 See, *eg*, DBOD at p 12.

326 AB at p 79.

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and is not entitled to recovery of the same. For the 47 claim entries described above at [239(b)], while the evidence establishes that the 47 claim entries were received by SSG, the claim entries fall within the Pre-16/10/2020 Claim Sum and therefore SSG is entitled to rely on the Clawback Clause to deny the same. For the claim entries listed in Annex C, Annex D and Annex E, these contain erroneous, inaccurate and/or irrelevant information and CBLD is therefore not entitled to claim for the claim entries listed therein. In total, the sum of the Defective Claim Entries set out in Annexes A–E for which CBLD is not entitled to recover amount to $22,082.30.[327]

Conclusion on the quantum of the recoverable Claim Sum

250 In the light of the above, I find that CBLD is entitled to payment of the Post-16/10/2020 Claim Sum. As to the precise quantum of the Post-16/10/2020 Claim Sum, this is disputed between the parties. CBLD says that this figure should be $13,575.40,[328] whereas SSG says that there is a discrepancy of $668.90 and therefore the correct figure must be taken to be $14,244.30.[329] SSG explains that this discrepancy relates to three claim entries, two of which essentially fall within the Defective Claim Entries,[330] and the remaining claim entry has a discrepancy of $0.10.[331] I accept SSG's explanation for the quantum of the Post-16/10/2020 Claim Sum. CBLD is therefore entitled to the sum of $14,244.30 under the Contract.

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327 DCS at p 130.

328 Plaintiff's Letter at paras 3.1 and 3.2.

329 Defendant's Letter at paras 3.1 and 3.2.

330 Defendant's Letter at Schedule 1.

331 Defendant's Letter at Schedule 1.

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Whether the claim for *quantum meruit* is made out

251 As I have found above that CBLD is entitled to payment of $14,244.30 in respect of the Claim Sum under the Contract, it is not necessary for me to consider whether CBLD's alternative claim for *quantum meruit* is made out.

252 In any event, I am not satisfied that CBLD's claim for remuneration on a *quantum meruit* basis for provision of the training courses can be sustained.

253 A claim for remuneration on a *quantum meruit* basis may be founded upon a contractual or restitutonary basis: see *Eng Chiet Shoong and others v Cheong Soh Chin and others and another appeal* [2016] 4 SLR 728 at [41]; *Foo Song Mee v Ho Kiau Seng* [2011] SGCA 45 at [18]. CBLD's pleadings are unclear as to whether its claim for *quantum meruit* is advanced on the contractual or restitutionary basis. That said, CBLD's written submissions appear to advance the claim for *quantum meruit* solely on the restitutionary basis.[332]

254 In order to successfully maintain a claim in unjust enrichment, the following general elements must all be satisfied (*Wee Chiaw Sek Anna v Ng Li-Ann Genevieve (sole executrix of the estate of Ng Hock Seng, deceased) and another* [2013] 3 SLR 801 ("*Anna Wee*") at [98]–[99]; *Skandinaviska Enskilda Banken AB (Publ), Singapore Branch v Asia Pacific Breweries (Singapore) Pte Ltd and another and another appeal* [2011] 3 SLR 540 at [110]):

(a) the defendant has received a benefit (*ie*, he has been enriched);

(b) the enrichment is at the plaintiff's expense;

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332 PCS at paras 268–270; PRS at para 68.

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(c) it is unjust to allow the defendant to retain the enrichment (the "Unjust Factor"); and

(d) there are no defences available to the defendant.

255 I first consider the applicable principles in relation to elements (a) and (b) above. To establish a claim in unjust enrichment, the claimant must demonstrate that the defendant had received a *benefit* at *the expense of* the claimant (*Anna Wee* at [112]). As the Court of Appeal observed in *Anna Wee* at [112], the rule that the benefit must have been at the expense of the claimant "is less straightforward in a situation involving multiple parties, *especially where the defendant is not the immediate recipient of the benefit from the claimant*" [emphasis added]. The Court of Appeal in *Anna Wee* at [113] continued:

> … It has been said that unjust enrichment can only take place in the context of "direct transfers", although the meaning of "direct transfer" has been extended to three-party cases where the transfer of the benefit from the claimant to the defendant is not immediate and exceptions are recognised in the form of "indirect transfers" (see *Goff & Jones* at para 6-18). In particular, the courts have generally allowed recovery in a three-party "indirect transfer" situation where the claimant transferor can trace his money into the pocket of the eventual defendant transferee although the money has passed through the hands of intermediate recipients. …

256 The element of "at the expense of" thus generally requires that the transfer of value from the claimant to the defendant must be direct: see *Colonial Bank v. Exchange Bank of Yarmouth, Nova Scotia* (1885) 11 App Cas 84; *MacDonald, Dickens & Macklin (a firm) v. Costello and others* [2011] 3 WLR 1341. In other words, there should not be a third party interposed between the claimant and the defendant, and the enrichment should move directly from the claimant to the defendant (Rachel Leow and Timothy Liau, "Unjust Enrichment and Restitution in Singapore: Where Now and Where

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Next?" [2013] Sing JLS 331 at 341). A slightly wider approach was suggested by Henderson J in *Investment Trust Companies (In liquidation) v. Revenue and Customs Commissioners* [2012] EWHC 458 (Ch) at [67]–[68] as follows:

> 67 I must now draw the threads together, and state my conclusions on this difficult question. In the first place, I agree with Mr Rabinowitz that there can be no room for a bright line requirement which would automatically rule out all restitutionary claims against indirect recipients. Indeed, Mr Swift accepted as much in his closing submissions. In my judgment the infinite variety of possible factual circumstances is such that an absolute rule of this nature would be unsustainable. Secondly, however, the limited guidance to be found in the English authorities, and above all the clear statements by all three members of the Court of Appeal in *Kleinwort Benson Ltd v Birmingham City Council*, suggest to me that it is ***preferable to think in terms of a general requirement of direct enrichment, to which there are limited exceptions,*** rather than to adopt Professor Birks' view that the rule and the exceptions should in effect swap places (see, "At the expense of the claimant": direct and indirect enrichment in English law, loc.cit., at page 494). In my judgment the obiter dicta of May LJ in *Filby*, and the line of subrogation cases relied on by Professor Birks, provide too flimsy a foundation for such a reformulation, whatever its theoretical attractions may be, quite apart from the difficulty in framing the general rule in acceptable terms if it is *not* confined to direct recipients.
>
> 68 The real question, therefore, is whether claims of the present type should be treated as exceptions to the general rule. So far as I am aware, no exhaustive list of criteria for the recognition of exceptions has yet been put forward by proponents of the general rule, and I think it is safe to assume that the usual preference of English law for development in a pragmatic and step by step fashion will prevail. Nevertheless, in the search for principle a number of relevant considerations have been identified, including (in no particular order):
>
> > a) the need for a close causal connection between the payment by the claimant and the enrichment of the indirect recipient;
> >
> > b) the need to avoid any risk of double recovery, often coupled with a suggested requirement that the claimant should first be required to exhaust his remedies against the direct recipient;

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> c) the need to avoid any conflict with contracts between the parties, and in particular to prevent "leapfrogging" over an immediate contractual counterparty in a way which would undermine the contract; and
>
> d) the need to confine the remedy to disgorgement of undue enrichment, and not to allow it to encroach into the territory of compensation or damages.
>
> [emphasis in original omitted; emphasis added in italics and bold italics]

257 The dicta of Henderson J was subsequently endorsed by Lords Neuberger and Clarke in the UK Supreme Court case of *Bank of Cyprus UK Limited v Menelaou* [2016] AC 176 at [31] and [77] as containing a "thoughtful and valuable" approach, while rightly not laying down rigid principles.

258 In the present case, CBLD submits that "by providing training courses, CBLD had assisted SSG in achieving its objectives to upskill and train the adult population to Singapore".[333] Beyond this assertion, however, CBLD's submissions are unpersuasive in explaining why the concept of "at the expense of" should be extended in the present case. It cannot be disputed that an objective benefit of CBLD's training courses was received by the trainees or the *employers of* the trainees who attended training. Applying the principles enumerated above at [256], to permit the restitutionary claim against SSG would in effect "leapfrog" over the network of contracts entered into between CBLD, on the one hand, and the employers of the trainees, on the other. This is confirmed, in my view, by the inclusion of the following term in CBLD's invoices issued to its trainees' employers (in the case of employer-sponsored training):[334]

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333 PCS at para 268.

334 AB at p 99; AEIC Pang Tong Wee at paras 26–27.

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> 2. As per the clauses in our confirmation notice (aligned to SSG's policy), please note the following:
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> …
>
> d) *If for any reason SSG rejects or reduces funding, the sponsoring company shall bear the difference in amount due.* The company shall make payment for the amount due to CBLD immediately while submitting an appeal to SSG, if chosen to. CBLD will reimburse the company accordingly if the appeal to SSG is successful.
>
> [emphasis added]

This being the manner in which CBLD and the employers have chosen to define and allocate their mutual obligations, I see no basis for permitting the restitutionary claim against SSG. It goes without saying that doing so would also raise the concern of double recovery.

259 While the concept of nexus or "close causal connection" alluded to by Henderson J is admittedly not clear in case law, the learned authors of Charles Mitchell, Paul Mitchell & Stephen Watterson, *Goff & Jones: The Law of Unjust Enrichment* (Sweet & Maxwell, 9th Ed, 2016) at paras 6-18–6-19 identify that some of the generally-accepted exceptions under English common law to the so-called direct transfer rule include, for instance, where the defendant immediately receives a benefit from an *agent* acting for the claimant who discharges the defendant's debt *by paying his creditor*, and where the claimant can establish a "proprietary connection" to the defendant's receipt, for example by showing that the defendant obtains an asset to which the claimant has title from a third party (see, in respect of the last-mentioned exception, *obiter* statements in *Anna Wee* at [113]–[116] appearing to recognise a "title and tracing" exception). These may helpfully be regarded as illustrations where sufficient nexus was found so as to justify the *reversal of transfers of value* between the claimant and the defendant. Even assuming that there is a benefit, CBLD has not explained how there exists a sufficient nexus similar to the

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described exceptions, between the provision of training courses on one hand, and the purported enrichment of "assist[ing] SSG in achieving its objectives" on the other hand (see above at [258]).

260 In any event, *even if* it could be said that SSG has received a benefit at the expense of CBLD (which I do not find), there is a conspicuous lack of submissions on the relevant unjust factor which would be applicable.

261 For the above reasons, I find that CBLD's claim for remuneration on a *quantum meruit* basis for provision of the training courses cannot be sustained.

Whether SSG is entitled to the Counterclaim Sum

262 To recapitulate, SSG's counterclaim for the sum of $793,083.79 is advanced pursuant to the Clawback Clause. According to SSG, the Counterclaim Sum relates to the funding received by CBLD in relation to the training sessions conducted by the Impugned Trainers for the employees of ARAS and Lifeline.[335] SSG further provided a breakdown of the Counterclaim Sum with respect to the respective trainers.[336] The Counterclaim Sum is a fraction of the *total* amount of funding disbursed by SSG to CBLD from 2010 to 2020 under the Contract, which amounted to some $7,759,215.25.[337]

No promissory estoppel in relation to the Counterclaim Sum

263 I have earlier found that the representation by SSG's conduct during the Intervening Period (including, among other matters, its acknowledgement of the *Ad hoc* Claims *via* the *Ad hoc* Claim E-mails) must necessarily be related to the

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335 DCS at paras 247–248; 2nd Supp AEIC Lim Yih Dar at para 10.

336 DBOD at pp 34–155.

337 2nd Supp Lim Yih Dar at para 13.

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claims submitted for training sessions conducted during the Intervening Period itself, and not those claims for training sessions conducted prior to the Intervening Period (see above at [228] and [231]–[232]). Likewise, the detriment incurred by CBLD in reliance on such representation was necessarily related to the training sessions conducted *during* the Intervening Period. In contrast, in respect of the Counterclaim Sum, SSG relies on the Clawback Clause to clawback the grants *already disbursed to CBLD* in respect of the training sessions conducted by the Impugned Trainers which pre-dated the Notice of Intent. For completeness, I also did not find that there has been representation by SSG's conduct that it would not elect to *terminate* the Contract. There is therefore no basis to sustain a promissory estoppel against SSG's counterclaim.

The Clawback Clause is not "unconscionable"

264 It suffices to state that in CBLD's closing written submissions dated 9 November 2023 spanning a total of 245 pages, its *sole* and fleeting advancement of CBLD's pleaded defence of unconscionability is contained in this singular paragraph, which I set out for reference:[338]

> … CBLD also argues that Clauses 3.3 of the SkillsConnect Funding Specific Terms and Conditions, and Clauses 12.1(a), 12.1(d), 12.2, 12.5, 13.4, 14.1(c) and 15.1 of the SkillsConnect General Terms and Conditions *are either collectively or individually, unfair and/or unreasonable and/or unconscionable* and therefore, not operative and unenforceable. [emphasis added]

265 Needless to say, this submission (which was not further developed) is unpersuasive. In any event, I am not satisfied that the doctrine of unconscionability is applicable in the present case. In so far as CBLD's

338 PCS at para 14.

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submission – that the Impugned Clauses are "unfair and/or unreasonable and/or unconscionable" – may be taken as a reference to the *broad* doctrine of unconscionability, I note that such a doctrine is presently still in a state of flux in Singapore: see *BOM v BOK and another appeal* [2019] 1 SLR 349 at [133]–[138] ("*BOM*").

266 In so far as CBLD relies, instead, on the *narrow* doctrine of unconscionability, its argument likewise cannot be sustained as CBLD has not even begun to show "that [CBLD] was suffering from an infirmity that the other party had exploited in procuring the transaction", regardless of whether such infirmity was physical, mental and/or emotional in nature (*BOM* at [141]–[142]). The Court of Appeal in *BOM* also cautioned that "not every infirmity would *ipso facto* be sufficient to invoke the narrow doctrine of unconscionability", and "[i]t must have been *of sufficient gravity* as to have acutely affected the plaintiff's ability to conserve his interests, … [and] *must also have been, or ought to have been, evident to the other party procuring the transaction*" [emphasis in original omitted; emphasis added in italics] (*BOM* at [141]).

267 I therefore find that there is entirely no basis for CBLD to contend that the Clawback Clause is "unconscionable".

No implied term that SSG cannot exercise its discretion pursuant to the Clawback Clause arbitrarily and/or capriciously and/or irrationally

268 CBLD broadly advances the argument that there is an implied term that SSG must exercise its discretion pursuant to, *inter alia*, the Clawback Clause in a manner that is "(i) objectively reasonably or (ii) the contractual discretion will not be exercised arbitrarily and/or capriciously and/or or irrationally to ensure

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good governance and accountability."[339] Rather puzzlingly, however, CBLD further submits:[340]

> 242. Therefore, SSG's discretionary power to accept or reject any claim for grant must not be exercised arbitrarily and/or capriciously and/or or irrationally.
>
> 243. *It is submitted that SSG therefore, can only reject any claim for grants if there is a breach of the Contract.*
>
> [emphasis added]

A perusal of CBLD's written submissions confirms that it has not, therefore, advanced any submissions on the applicable position in relation to the Clawback Clause *if* SSG was entitled to terminate the Contract (as I have found above).

269 In any event, notwithstanding the paucity of the legal submissions, I am not satisfied that there is such an implied term as contended by CBLD.

270 First, I agree with SSG's submission that there is no room for the implication of the term in fact because it contradicts the express language of the Clawback Clause and necessarily fails the officious bystander test: *Sembcorp Marine* ([209] *supra*) at [98].

271 Second, there is neither a principled reason nor authority for the implication of such term in law. CBLD cites the case of *MGA International Pte Ltd v Wajilam Exports (Singapore) Pte Ltd* [2010] SGHC 319 ("*MGA*"), *Braganza* ([182] *supra*) and *Leiman* ([187] *supra*).[341] However, as observed by the Appellate Division in *Dong Wei* ([186] *supra*) at [91], in *all* these cases, the contractual discretion in question "relate[d] to rights subsisting *within* the

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339 PCS at paras 226–227 and 241.

340 PCS at paras 242–243.

341 PCS at para 241.

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contours of their respective contracts" [emphasis in original]. The Appellate Division in *Dong Wei* at [87]–[90] observed:

> (a) In *Leiman*, George Wei J held that an employer's contractual discretion to determine whether an employee was entitled to receive severance payments and benefits under his severance agreement, was subject to the requirements of rationality, good faith, and consistency with the contractual purpose of the discretion (*Leiman* at [112]–[114]).
>
> (b) In *MGA*, the alleged discretion pertained to one contracting party's ability to decide its own remuneration or commission for providing trade finance services (*MGA* at [9], [88] and [102]).
>
> (c) In *Braganza*, the employment contract conferred on the employer a power to determine the facts surrounding the death of its employee while serving on the former's vessel. The employer decided that he had committed suicide, with the result that no death-in-service payments were payable to his widow under the contract.

272 The implied term recognised in *Braganza* clearly makes no inroads on the contractual provision for *secondary* obligations arising on termination of the relevant contract, as the Clawback Clause does in the present context (see, in this regard, the distinction between primary and secondary obligations expressed by Lord Diplock in *Photo Production Ltd v Securicor Transport Ltd* [1980] AC 827 at 849). The extension of this principle would also be at odds with the rationale expressed in the case authorities cited above at [183]–[184].

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Conclusion on the Counterclaim Sum

273 For the above reasons, I find that SSG is entitled to the Counterclaim Sum of $793,083.79.

Conclusion

274 To summarise, I find that the Contract was lawfully terminated pursuant to cl 12.1(a) of the SkillsConnect General T&C. On this basis, CBLD's claim for damages arising from wrongful termination fails (see above at [198]). As to CBLD's claim for the Claim Sum under the Contract, I find that CBLD is entitled to $14,244.30 under the Contract (see above at [250]). I also find that SSG is entitled to the Counterclaim Sum comprising $793,083.79 (see above at [273]), which should be set off against the sum of $14,244.30.

275 In conclusion, therefore, CBLD is ordered to pay SSG the sum of $793,083.79 – $14,244.30 = $778,839.49, plus pre- and post-judgment interest at 5.33% *per annum* from the date of the Writ.

276 I will hear parties in relation to the stood-down claims and on costs, including SSG's claim for indemnity costs.

Lee Seiu Kin
Senior Judge

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Hsu Sheng Wei Keith and Nico Lee Yin Hao (Emerald Law LLC) for the plaintiff and defendant in counterclaim;
Cheong Chee Min, Yan Chongshuo and Chee Kai Hao (Lee & Lee) for the defendant and plaintiff in counterclaim.

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