IN THE COURT OF 3 SUPREME COURT JUDGES OF THE REPUBLIC OF SINGAPORE

[2024] SGHC 19

Originating Application No 1 of 2023

Between

The Law Society of Singapore

… *Applicant*

And

Seah Choon Huat Johnny

… *Respondent*

Originating Application No 6 of 2023

Between

The Law Society of Singapore

… *Applicant*

And

Seah Choon Huat Johnny

… *Respondent*

GROUNDS OF DECISION

[Legal Profession — Professional conduct — Breach]

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Law Society of Singapore
v
Seah Choon Huat Johnny and another matter

[2024] SGHC 19

Court of 3 Supreme Court Judges — Originating Application Nos 1 of 2023 and 6 of 2023
Sundaresh Menon CJ, Tay Yong Kwang JCA and Belinda Ang Saw Ean JCA
17 October 2023

25 January 2024

Belinda Ang Saw Ean JCA (delivering the grounds of decision of the court):

Introduction

1 C3J/OA 1/2023 ("OA 1") and C3J/OA 6/2023 ("OA 6") were two applications brought by the Law Society of Singapore (the "Law Society") against Mr Seah Choon Huat Johnny ("Mr Seah") following two unrelated complaints by Mr Seah's former clients for him to be sanctioned under s 83(1) of the Legal Profession Act 1966 (the "LPA"). Mr Seah was called to the bar in Singapore on 14 January 1981 and has been an advocate and solicitor of the Supreme Court of Singapore for more than 42 years. He was at all material times a partner of Seah & Co.

2 We heard the parties on 17 October 2023. We were satisfied that there was due cause for disciplinary sanctions to be imposed for both OA 1 and OA 6.

In relation to OA 1, we imposed a suspension for a term of six months which is to commence on 1 January 2024. In relation to OA 6, we imposed a suspension for a term of four years to commence immediately upon the expiry of the suspension in OA 1. We provide the full grounds of our decision below.

OA 1

Background facts

3 In or around September 2016, Mr Lim Kim Seng ("Mr LKS") engaged Mr Seah to represent him as the plaintiff in HC/S 960/2016 ("Suit 960"). Suit 960 pertained to Mr LKS's claim against his former father-in-law for the proceeds of sale of a certain property. The defendant in Suit 960 was represented by Mr Jason Lim ("Mr Lim") from De Souza Lim & Goh LLP ("DSLG"). On 8 September 2016, Seah & Co filed the Writ of Summons and the Statement of Claim for Mr LKS in Suit 960. On 6 October 2016, the defendant in Suit 960 filed the Defence.

4 On 17 November 2016, Seah & Co filed a Notice of Discontinuance (the "NOD") in Suit 960. The NOD was mistakenly filed by Mr Seah's administrative assistant, Ms Chan Cheng Yee ("Vellina"). At the material time, Vellina had been working with Mr Seah for approximately 28 years.

5 It was Mr Seah's usual practice to write down his instructions to Vellina on a piece of paper which would be tied to the top of the physical files of the relevant case. In this matter, a piece of paper with instructions slipped out from other files on Vellina's desk and created a mix-up, thus resulting in Vellina mistakenly filing for a NOD in respect of Suit 960.

6 Mr Seah discovered that the NOD had been erroneously filed later the same day on 17 November 2016 when he was preparing for the hearing of HC/SUM 5334/2016 ("SUM 5334") on 18 November 2016. SUM 5334 was DSLG's application for further and better particulars of the Statement of Claim. Mr Seah then requested Mr Lim to mention on his behalf at the hearing for SUM 5334.

7 On 18 November 2016, Mr Lim mentioned on Mr Seah's behalf for SUM 5334 and informed the court that a NOD had been filed and that Mr Seah had indicated that costs would be agreed between the parties. The court adjourned the hearing for two weeks for the parties to agree on costs.

8 After the hearing, Mr Lim wrote to update Mr Seah on the outcome of the hearing. In the same letter, Mr Lim also offered to mention on Mr Seah's behalf in respect of DSLG's striking out application in Suit 960, HC/SUM 5369/2016 ("SUM 5369"), which had been fixed on 21 November 2016. Specifically, DSLG proposed to "inform the Court [that] the action ha[d] been discontinued with consent with costs to the Defendant to be taxed unless agreed by parties". Mr Seah agreed.

9 All this time, Mr Seah did not notify Mr LKS of the NOD. He did not update Mr LKS on the outcome of SUM 5334 and take instructions on the same nor did he inform Mr LKS of his understanding with Mr Lim for the parties to come to an arrangement on costs following the filing of the NOD. Mr Seah had also not advised Mr LKS nor taken instructions from Mr LKS in respect of SUM 5369 following the filing of NOD. All in all, Mr Seah clearly had no instructions to discontinue Suit 960 and had no corresponding instructions to seek the consent of the defendant to the discontinuance and to pay costs. He also

did not have Mr LKS's instructions to consent to the withdrawal of these summonses.

10 On 21 November 2016, Mr Lim mentioned on Mr Seah's behalf for SUM 5369.

11 Mr Lim wrote to update Mr Seah on the outcome of the hearing. In that letter, Mr Lim informed Mr Seah that: (a) leave had been granted for the withdrawal of the SUM 5369 "with costs to the Defendant of the whole suit, including this application, to be taxed unless agreed"; (b) leave had also been granted to withdraw SUM 5334; and (c) the pre-trial conference on 8 December 2016 had been vacated.

12 Even after receiving DSLG's letter on 21 November 2016, Mr Seah did not notify Mr LKS on the status of Suit 960. Mr Seah explained that he felt responsible for his mistake and wanted to settle the costs payable to the defendant in Suit 960 personally before taking Mr LKS's instructions on re-instituting the action by filing a fresh writ. All this while, Mr Seah never contemplated undoing the mistake made by his staff and consequently failed to advise Mr LKS on the appropriate course of action to take.

13 On 7 December 2016, Mr Lim wrote to Mr Seah, proposing costs of $12,000 for Suit 960. Mr Seah took the view that the figure was excessive and requested a lower figure. However, there were no follow-ups or updates from DSLG on the matter for the rest of December 2016.

14 Sometime around the end of December 2016, Mr Seah called Mr LKS to inform him that he had made an error in Suit 960 and that he would formally write to him in this respect.

15 On 4 January 2017, Seah & Co sent a letter to Mr LKS stating that Suit 960 had been discontinued because his firm had mistakenly filed an NOD. Seah & Co indicated in the letter that they would be responsible for their error and for the costs payable to the defendant in Suit 960. Seah & Co also advised Mr LKS that his claim was not time-barred and that they could still file a fresh action upon Mr LKS's instructions.

16 In or around April 2019, Mr LKS appointed Mr Kertar Singh ("Mr Singh") of Kertar & Sandh LLC ("K&S") to take over Suit 960 from Seah & Co. Between 2019 and 2021, Mr Seah had several informal meetings with Mr Singh to discuss an agreed settlement sum to be paid to Mr LKS. A settlement sum of $50,000 was proposed by Mr Singh, but this was rejected by Mr Seah.

17 On 3 May 2021, Mr LKS lodged a complaint against Mr Seah to the Law Society. The particulars of the complaint were that Mr Seah had: (a) wrongly filed the NOD in the Suit; and (b) failed to co-operate with K&S in handing over the complete set of documents pertaining to Suit 960.

18 On 24 September 2021, an inquiry committee was constituted. On 24 February and 6 May 2022, the Inquiry Committee produced its report and further report respectively, recommending that formal investigations be instituted against Mr Seah only in respect of the first part of the complaint, *ie*, that Mr Seah had filed the NOD in Suit 960 without Mr LKS's instructions.

19 On 8 July 2022, a disciplinary tribunal comprising Mr Abraham Vergis SC and Ms Chiang Ju Hua Audrey (the "1st DT") were appointed under s 90(1) of the LPA to hear and investigate the complaint against Mr Seah.

20 On 23 September 2022, Mr Seah's solicitors, Wee Swee Teow LLP ("WST"), wrote to K&S to renegotiate the compensation sum to be paid by Mr Seah to Mr LKS. On 4 October 2022, K&S replied and insisted on a compensation sum of $50,000. The parties were unable to agree to a settlement sum until much later, on 6 February 2023.

21 On or around 10 October 2022, Mr Seah informed the 1st DT that he intended to admit to the charges that the Law Society had preferred against him. On 17 October 2022, Mr Seah admitted to the Agreed Statement of Facts dated 17 October 2022 and the charges therein. The parties appeared before the 1st DT for oral submissions on 27 October 2022. We elaborate on the charges, the details of the DT proceedings and the 1st DT's findings at [23]–[26] below.

22 On 6 February 2023, after several exchanges between WST and K&S, Mr Seah and Mr LKS agreed to a settlement sum of $38,888, with Mr Seah undertaking to indemnify Mr LKS should the defendant in Suit 960 decide to seek legal costs against Mr LKS. On the same day, Mr Seah issued to Mr LKS a cashier's order dated 3 February 2023 for $38,888. On 5 April 2023, Mr Seah provided Mr LKS an undertaking to indemnify Mr LKS against the legal costs payable by Mr LKS to the defendant in Suit 960. We note that the final settlement between Mr Seah and Mr LKS was a recent development that took place only after the hearing before the 1st DT. Consequently, the cashier's order dated 3 February 2023 and Mr Seah's undertaking dated 5 April 2023 were not placed before the 1st DT and were adduced for the first time in Mr Seah's affidavit in OA 1. Nevertheless, as these were undisputed facts, we admitted them into evidence.

Proceedings before the 1st DT

23 In the 1st DT proceedings, the Law Society preferred two charges against Mr Seah. The charges concerned Mr Seah's failure to: (a) exercise proper supervision over his staff resulting in the erroneous filing of the NOD in Suit 960; and (b) provide Mr LKS with timely advice on the NOD that was mistakenly filed. The two charges are reproduced below:

> **FIRST CHARGE** [the "First Charge (OA 1)"]
>
> That you, Seah Choon Huat Johnny, in breach of Rule 32 of the Legal Profession (Professional Conduct) Rules 2015, are guilty of failing to exercise proper supervision over the staff working under you in your law practice, by wrongfully discontinuing HC/S 960/2016 without your client's instructions to do so, which amounts to improper conduct or practice as an advocate and solicitor in the discharge of his professional duty under Section 83(2)(*b*) of the Legal Profession Act 1966.
>
> **SECOND CHARGE** [the "Second Charge (OA 1)"]
>
> That you, Seah Choon Huat Johnny, in breach of Rules [*sic*] 5(2)(h) of the Legal Profession (Professional Conduct) Rules 2015, are guilty of failing to provide timely advice to the Complainant … [b]etween 17 November 2016 and end December 2016 or 4 January 2017, to wit you failed to advise the Complainant:
>
> i. on what was the effect of a NOD;
>
> ii. that a NOD had been filed in respect of … Suit [960] by Seah & Co on 17 November 2016, … and the consequences of the filing of the NOD in … Suit [960];
>
> iii. on the available options before your client to maintain his claim against the defendant in … Suit [960]; and
>
> iv. on the course of conduct undertaken by you on 17, 18 and 21 November 2016 in obtaining leave from the Court for the withdrawal of … Suit [960] and take instructions.
>
> which amounts to improper conduct or practice as an advocate and solicitor in the discharge of his professional duty under Section 83(2)(*b*) of the Legal Profession Act 1966.

24 Mr Seah admitted to the Agreed Statement of Facts and the two charges contained therein. Mr Seah's arguments before the 1st DT were therefore limited to mitigation.

25 The 1st DT recorded its findings in the Report of the Disciplinary Tribunal in DT/14/2022 dated 22 February 2023 ("DT's Report (OA 1)"). The 1st DT found that the First Charge (OA 1) was technically made out given Mr Seah's unconditional admission. Nevertheless, the 1st DT determined that there was no cause of sufficient gravity under s 83 of the LPA given that:

(a) Mr Seah and his staff had been routinely operating the same system for filing Court documents for many years without any material incidents or mishaps.

(b) Mr Seah was not familiar with the e-Litigation system and was not wrong in delegating this routine task to a member of his staff who was much more familiar, competent, and experienced in handling the routing filing tasks using the e-Litigation system.

(c) By all accounts, the mistake as to the filing of the NOD appeared to be an isolated, one-off incident, which Mr Seah could not have reasonably anticipated or prevented. This was not a case where Mr Seah was aware that his staff was repeatedly e-filing documents erroneously and had not taken steps to prevent her from perpetuating the error.

26 On the Second Charge (OA 1), pursuant to s 93(1)(*c*) of the LPA, the 1st DT found that there was cause of sufficient gravity for disciplinary action under s 83 of the LPA for referral to the Court of 3 Supreme Court Judges. This was for the following reasons:

(a) Mr Seah's conduct betrayed a lackadaisical attitude about keeping the client informed and giving timely advice to the client, especially when the unintended discontinuance of Mr LKS's Suit 960 and the consequential exposure to cost orders may have serious consequences on Mr LKS's interest.

(b) Mr Seah knew or ought to have known that, if no corrective action was taken, Suit 960 would come to an end and Mr LKS would incur additional costs and delay in filing a new suit, as well as potential complications.

(c) Mr Seah also knew or ought to have known that a NOD does not take effect immediately because a discontinuance requires leave of court. Despite having the opportunity to correct the error with a reasonably straightforward fix, he took no effort to: (i) inform Mr LKS of the mistake on 17 November 2016; (ii) advise the client on the consequence of the mistake and the options and remedies available to correct the mistake; and (iii) take instructions from the client on the course of action he wished to take.

(d) Mr Seah also allowed his opposing counsel to update the court that the NOD had been filed instead of attending the hearing in person to explain to the court the true circumstances that led to the erroneous filing. Despite committing a potentially serious error, Mr Seah saw fit not turn up for both hearings, having his opposing counsel mention on his behalf, and consent to the withdrawal of the summonses.

(e) The 1st DT rejected Mr Seah's explanation that he was in a state of panic and was not rational and reasonable at the material time. This was because Mr Seah had consciously decided to take matters into his

own hands by keeping Mr LKS in the dark over the course of seven weeks while he attempted to resolve the matters with DSLG on his own terms.

(f) It was also striking that Mr Seah did not inform or advise his client that the opposing counsel was proposing for cost orders to be made against the client himself, which would have been a matter of importance to any client. Instead, Mr Seah negotiated with DSLG on the quantum of costs that he was prepared to pay in respect of the costs that had been ordered against his client. It appeared that Mr Seah only decided to inform the client about what had happened when he was unable to resolve the costs issue with DSLG.

Our decision

27 We noted from the parties' submissions that neither Mr Seah nor the Law Society disputed the 1st DT's findings that the Second Charge (OA 1) was made out. It was also undisputed that Mr Seah's conduct in relation to the Second Charge (OA 1) constituted improper conduct within s 83(2)(*b*)(i) of the LPA for breaching r 5(2)(*h*) of the Legal Professional (Professional Conduct) Rules 2015 (the "PCR"). We accepted that on the "totality of the facts and circumstances of the case", Mr Seah's conduct as disclosed by the Second Charge (OA 1) was "sufficiently serious to warrant the imposition of sanctions under s 83(1) of the LPA" [emphasis in original omitted]: *Law Society of Singapore v Udeh Kumar s/o Sethuraju and another matter* [2017] 4 SLR 1369 at [30].

28 Mr Seah's misconduct plainly warranted the imposition of sanctions under s 83(1) of the LPA. He concealed from Mr LKS the critical fact that his firm had mistakenly filed an NOD in Suit 960, and for seven weeks, had acted

without Mr LKS's instructions in agreeing to discontinue Suit 960 with costs against Mr LKS. The true position was then misrepresented to the court when Mr Seah allowed SUM 5334 to be mentioned on the basis that Suit 960 had been discontinued by consent when that had simply not been the case. He ought instead to have attended before the assistant registrar on 18 November 2016 to obtain leave of court to withdraw the erroneous filing. In our view, Mr Seah's conduct in those seven weeks showed complete disregard of his client's interests. His misconduct was such as to engage the principal purpose of disciplinary proceedings, namely, to protect the public and uphold confidence in the integrity of the legal profession (*Seow Theng Beng Samuel v Law Society of Singapore* [2022] 3 SLR 830 at [16]; *Law Society of Singapore v Lun Yaodong Clarence* [2022] SGHC 269 ("*Clarence Lun*") at [44]). It was sufficiently serious as to warrant the imposition of sanctions under s 83(1) of the LPA.

29 On the appropriate sanction to be imposed, Mr Seah initially sought a six-month suspension for OA 1 in his written submissions. However, at the hearing before us, he submitted instead that a sanction of three months' suspension or less was appropriate. He referred us to the cases of *Law Society of Singapore v Chiong Chin May Selena* [2013] SGHC 5 ("*Selena Chiong*") and *Law Society of Singapore v Udeh Kumar s/o Sethuraju* [2013] 3 SLR 875 ("*Udeh*"). He sought to distinguish the present case from the facts of *Selena Chiong*, where the solicitor had been sentenced to six months' suspension, and align the facts here with *Udeh,* where the solicitor had been suspended for three months.

30 On the other hand, the Law Society submitted that Mr Seah should be suspended for a period of at least 12 months in relation to the Second Charge (OA 1). The Law Society argued that a deterrent sentence was necessary

because of the public interest in protecting the public from solicitors who attempt to conceal their mistakes and act behind their clients' backs, instead of being upfront with their clients and taking proper instructions.

31 Whilst we agreed that Mr Seah's misconduct was of a different nature from the misconduct in *Udeh* and *Selena Chiong*, a discernible common thread in all three instances was that the solicitor concerned had, in dereliction of duty, engaged in conduct that fell short of a solicitor's crucial role of protecting a client's lawful rights and interests. In *Udeh*, the respondent was suspended for three months for failing to personally attend to or communicate directly with the complainant and keep him reasonably informed of the progress of the matter throughout the course of a six-month retainer (at [65] and [74]). In *Selena Chiong*, the respondent was suspended for six months for, *inter alia*, repeatedly misleading the complainant and failing to properly advise and update the complainant of developments in her case throughout a six-month retainer (at [9], [24], [46] and [48]).

32 The facts of the present case stood on its own. The crux of Mr Seah's misconduct lay, not in his failure to provide timely updates to Mr LKS *per se*, but the concealment of his firm's mistake in filing an NOD in Suit 960 from his client. More egregiously, Mr Seah went on to take matters into his own hands, allowing DSLG to mention on his behalf on two occasions and convey to the court that the parties had *agreed* for Suit 960 to be withdrawn with costs to be agreed. This created a false impression to the court that the NOD had been filed with Mr LKS's instructions and that he had consented to be responsible for legal costs. Therefore, considering the elements of concealment and misrepresentation, we found the nature of Mr Seah's misconduct to be more egregious than that of the respondents in *Udeh* and *Selena Chiong*. We could

not agree with Mr Seah's counsel, Mr Giam Chin Toon SC ("Mr Giam SC"), that a three-month suspension was sufficient for OA 1.

33 The Law Society argued that Mr Seah should be suspended for a period of at least 12 months for OA 1, relying on the cases of *Clarence Lun*, *Law Society of Singapore v Ezekiel Peter Latimer* [2020] 4 SLR 1171 ("*Ezekiel Peter Latimer*"), and *Law Society of Singapore v Ooi Oon Tat* [2023] 3 SLR 966 ("*Ooi Oon Tat*"). However, we were of the view that the nature of Mr Seah's misconduct was materially different from the misconduct in *Clarence Lun*, *Ezekiel Peter Latimer*, and *Ooi Oon Tat* and any comparison thereof was ultimately unhelpful. Furthermore, the key mitigating factor in OA 1, namely, Mr Seah's full restitution to Mr LKS, was absent in *Clarence Lun*, *Ezekiel Peter Latimer*, and *Ooi Oon Tat*. Specifically, Mr Seah paid Mr LKS a sum of $38,888 as compensation and undertook to indemnify him against any legal costs which the defendant in Suit 960 may seek against Mr LKS. Furthermore, unlike the complainant in *Ooi Oon Tat*, there was no indication that Mr LKS's action in Suit 960 had been time-barred, and it was thus open to Mr LKS to refile a writ against the defendant in Suit 960 if he had wished to do so. Mr Seah's actions following the 1st DT proceedings would therefore have largely mitigated any harm he caused to Mr LKS.

34 Moreover, Mr Seah demonstrated genuine remorse for his misconduct in OA 1. Notably, in Seah & Co's letter to Mr LKS on 4 January 2017, Mr Seah indicated that the firm would take responsibility for a staff's error and would bear the costs payable to the defendant in Suit 960 (see [15] above). Mr Seah's early offer of restitution, taken together with his timely admission to the charges before the 1st DT (see [24] above), demonstrated his remorse in relation to his misconduct in OA 1.

35 For completeness, we noted that Mr Seah also sought to rely on his record of *pro bono* work and testimonials from other legal practitioners and his past clients as a mitigating factor. We disagreed with this submission. In *Loh Der Ming Andrew v Koh Tien Hua* [2022] 3 SLR 1417 ("*Andrew Loh*"), this court reiterated at [123(b)] that "the paramount interests in sentencing solicitors are the protection of the public and the standing of the profession, and personal mitigating circumstances carry little weight". In our view, Mr Seah's past contributions to the legal sector did not mitigate the egregiousness of his present misconduct. Contrarily, his seniority would have caused greater damage to public confidence in the integrity of the legal profession. Consequently, we accorded little weight to Mr Seah's track record of *pro bono* work and testimonials.

36 On a balance, considering Mr Seah's early offer of restitution and his genuine remorse for his misconduct in OA 1, we were of the view that a six months' suspension would be an appropriate sanction for OA 1.

OA 6

37 OA 6 was the second application brought by the Law Society pursuant to s 98(1) of the LPA for Mr Seah to be sanctioned under s 83(1) of the LPA. This application concerned a second set of disciplinary proceedings in relation to separate instances of misconduct arising out of a complaint made in March 2021 by Mdm Tan Hong Kiang ("Mdm Tan"), a former client of Mr Seah. Mr Seah acted for Mdm Tan in her divorce proceedings and subsequent related matters concerning the disposal of her matrimonial home.

38 The Law Society brought three primary charges (the "Three Charges") against Mr Seah alleging that he was guilty of "grossly improper conduct or

improper conduct or practice as an advocate and solicitor under Section 83(2)(*b*) of the [LPA]". The Law Society also brought three corresponding alternative charges (the "Three Alternative Charges") framed in respect of the same alleged misconduct. These relied instead on s 83(2)(*h*) of the LPA and alleged that he was guilty of conduct unbefitting an advocate and solicitor as an officer of the Supreme Court or as a member of an honourable profession. The disciplinary tribunal (the "2nd DT") conducted a full-day evidential hearing on 30 November 2022 (the "2nd DT Hearing") to consider the primary and alternative charges against Mr Seah, the particulars of which are as follows:

(a) The first charge (the "First Charge (OA 6)") and the first alternative charge relate to Mr Seah's conduct of failing to: (i) act timeously on the instructions of Mdm Tan, his client at the time, to vary the ancillary matters order in FC/ORC 13/2015 ("ORC 13") made by the Family Justice Courts ("FJC") in Mdm Tan's divorce proceedings *vide* D 1079/2013 ("D 1079"); and (ii) keep Mdm Tan reasonably informed of the progress of her application to vary ORC 13. In so doing, Mr Seah allegedly breached rr 5(2)(*c*), 5(2)(*e*), 5(2)(*f*) and/or 5(2)(*h*) of the PCR.

(b) The second amended charge (the "Second Charge (OA 6)") and the second amended alternative charge concern Mr Seah's failure to attend the Case Conference for FC/SUM 4075/2016 ("SUM 4075") in D 1079 on 10 January 2017 without reasonable justification or notice to Mdm Tan. In so doing, Mr Seah allegedly breached r 5(2)(*c*) and/or r 5(2)(*e*) of the PCR. On 3 November 2022, the 2nd DT allowed, by consent, the Law Society to amend the Second Charge (OA 6) and the second alternative charge to correct the date of the Case Conference from 22 December 2016 to 10 January 2017.

(c) The third charge (the "Third Charge (OA 6)") and the third alternative charge pertain to Mr Seah's failure to respond to and/or comply with Tan, Oei & Oei LLC's ("TOO LLC") repeated requests to take over the conduct of D 1079. In so doing, Mr Seah allegedly breached rr 5(2)(*c*), 5(2)(*e*), 5(2)(*f*) and/or 7(2) of the PCR.

Background facts

The divorce proceedings in D 1079

39 The following matters regarding Mr Seah's engagement and the chronology of events in relation to Mdm Tan's divorce proceedings were undisputed.

40 Sometime in 2013, Mdm Tan engaged Mr Seah through his firm to act for her in D 1079 against her estranged husband Mr Sng Leong Chye ("Mr Sng"). On 23 July 2013, Mdm Tan obtained interim judgment (the "Interim Judgment") against Mr Sng and their marriage was dissolved.

41 On 28 November 2014, the FJC dealt with the ancillary matters arising out of the divorce by way of ORC 13, where orders were made concerning, *inter alia*, the division of the couple's matrimonial flat at Block 97 Geylang Bahru, #08-3178, Singapore 330097 (the "Flat"). Pertinently, Mdm Tan's complaint against Mr Seah arose in relation to the net proceeds of the subsequent sale of the Flat.

42 We reproduce the material portion of ORC 13 concerning the disposition of the Flat:

3. Orders Made:

The Court has made the following Orders: -

…

e. Division of Matrimonial Assets

[Mr Sng] shall, within 9 months of the date of the Certificate of Final Judgment, transfer (otherwise than by way of sale) all his rights, title and interest in the property at Block 97 Geylang Bahru #08-3178 Singapore 330097 ("matrimonial flat" or "flat") to [Mdm Tan] upon the payment to [Mr Sng] of a sum equivalent to 7% (seven per cent) of the net value of the matrimonial flat (the net value shall be the market valuation of the flat less any outstanding housing loan). [Mdm Tan] shall bear the cost of the valuation report by a HDB approved valuer and the costs and expenses of the transfer. From his share of the proceeds of the transfer, [Mr Sng] shall make a partial refund to his [Central Provident Fund ("CPF")] account of all the monies utilized for the purchase of the flat together with accrued interest.

f. In the event that [Mr Sng's] right, title and interest in the matrimonial flat … is not transferred to [Mdm Tan] within 9 months of the date of the Final Judgment, the said flat shall be sold in the open market to the highest bidder within the next 9 months. *Upon the sale of the matrimonial flat, the net sale proceeds, after repayment of the outstanding loan and after deducting the cost and expenses of the sale and agent's commission, shall be divided in the proportion of 93% (ninety-three per cent) to [Mdm Tan] and 7% (seven per cent) to [Mr Sng]. From their share of the net sale proceeds, the parties shall refund to his CPF account all the monies utilized for the purchase of the flat together with accrued interest.*

[Mdm Tan] shall have sole conduct of sale of the matrimonial flat.

…

[emphasis added]

43 On 13 January 2015, the Certificate of Final Judgment was issued, making the Interim Judgment final.

The sale of the Flat

44 Mr Seah acted for Mdm Tan in the sale of the Flat. The Flat was sold on the open market for $448,000. The net proceeds from the sale amounted to $436,162.80, after deductions for the agent's fee and associated legal costs. Based on the proportion of division stated in ORC 13 (see cl 3(f)), Mr Sng was entitled to $30,531.40 (being 7% of the net sales proceeds) and Mdm Tan was entitled to $405,631.40 (being 93% of the net sales proceeds). Further, in accordance with cl 3(f) of ORC 13, both Mr Sng and Mdm Tan were required to refund to their CPF accounts all moneys utilised for the purchase of the Flat together with the accrued interest. The sum due to be refunded to Mr Sng's CPF account amounted to $116,732.32. However, this posed a problem as a full refund to Mr Sng's CPF account would mean that he would receive an additional sum of $86,200.92 (the difference between the sum refunded and the sum he was entitled to under ORC 13) (the "Additional Sum"), which he could not repay in cash to Mdm Tan.

45 This issue was raised in the correspondence from August to December 2015 between Seah & Co, the Housing Development Board ("HDB") and the CPF Board ("CPFB"). Mr Seah proposed that Mdm Tan apply to the court to amend ORC 13 to provide for the Additional Sum to be credited to her CPF account from Mr Sng's CPF account. CPFB stated that it would not object to the transfer of the Additional Sum from Mr Sng's CPF account to Mdm Tan's CPF account upon a full refund being made, if the court made an order to that effect and subject to certain other conditions (which are not relevant for the present purposes). CPFB referred Seah & Co to their "Suggested Clauses in Order of Court for Transfer of Moneys in CPF Accounts" on FJC's website for the purpose of drafting the amendments to ORC 13. CPFB also sought from

Seah & Co a draft amended order before the parties filed it in court, so as to provide comments, if it had any.

46 Mdm Tan proceeded with the completion of the sale of the Flat on 4 December 2015 following Mr Seah's advice, *without any variation of ORC 13*. Mr Seah prepared the completion account for the sale, which recorded a full refund to Mr Sng's CPF account in the sum of $116,732.32. This amount included the Additional Sum to which Mdm Tan was entitled pursuant to ORC 13.

The variation application in SUM 4075

47 On 25 November 2016, almost one year after the completion of the sale of the Flat, Seah & Co filed, on behalf of Mdm Tan, a summons in D 1079 to vary ORC 13, *vide* SUM 4075. Enclosed within SUM 4075 was a draft amendment of ORC 13 (with the amendments underlined), which provided as follows:

> f. In the event that [Mr Sng's] right, title and interest in the matrimonial flat known as Block 97 Geylang Bahru #08-3178 Singapore 330097 is not transferred to [Mdm Tan] within 9 months of the date of the Final Judgment, the said flat shall be sold in the open market to the highest bidder within the next 9 months. Upon the sale of the matrimonial flat, the net sale proceeds, after repayment of the outstanding loan and after deducting the cost and expenses of the sale and agent's commission, shall be divided in the proportion of 93% (ninety-three per cent) to [Mdm Tan] and 7% (seven per cent) to [Mr Sng]. From their share of the net sale proceeds, the parties shall refund to his CPF account. <u>As parties are required to refund to their CPF accounts</u> all the monies utilized for the purchase of the flat together with accrued interest, <u>the CPF Board shall transfer the ordered amount from the monies standing to the credit of [Mr Sng's] CPF account into [Mdm Tan's] (Spouse) CPF account pursuant to s. 112 of the Women's Charter (Cap. 353) and subject to the provisions of the CPF Act.</u> [Mdm Tan] shall have sole conduct of sale of the matrimonial flat.

48 In support of SUM 4075, Seah & Co filed Mdm Tan's affidavit, which had been affirmed three months earlier, on 18 August 2016. The affidavit contained a brief account of the events that transpired in relation to the sale of the Flat, specifically, that a sum of $116,732.32 was refunded to Mr Sng's CPF account despite that he was only entitled to $30,531.40 (as per ORC 13), and therefore, "the sum of $86,200.92 awarded to [Mdm Tan]" pursuant to ORC 13 had been refunded into Mr Sng's CPF account.

49 The first Case Conference for SUM 4075 was fixed on 22 December 2016 at 10.00am. Mr Seah attended this Case Conference on behalf of Mdm Tan. Mr Sng was not in attendance as SUM 4075 was not served on him. The Case Conference was adjourned to 10 January 2017 at 10.30am ("10 January 2017 Case Conference"). However, on 10 January 2017, no one attended the Case Conference. The FJC Registry wrote a letter of even date to Seah & Co and Mr Sng seeking an explanation in writing for the parties' failure to attend the Case Conference. The FJC directed that no court date would be fixed for SUM 4075 should an explanation not be forthcoming within seven days. It is undisputed that Mr Seah did not attend the Case Conference on 10 January 2017 and did not furnish any explanation to the FJC for his absence. Therefore, SUM 4075 did not proceed with any further hearing and consequently, ORC 13 was never varied.

The events leading to Mdm Tan's complaint against Mr Seah

50 On 16 April 2019, Mr Sng passed away. On or around 12 October 2020, Mdm Tan's two sons received letters from the Public Trustee stating that they would be receiving moneys from Mr Sng's CPF account. They subsequently received their share of the moneys on or around 19 January 2021. It also appeared that Mr Sng's wife and child from his subsequent marriage also

received their share of Mr Sng's CPF moneys. Following this, all of Mr Sng's CPF moneys was distributed, without Mdm Tan receiving a single cent.

51 Between 15 and 25 January 2021, Mdm Tan sent a series of anxious WhatsApp messages to Mr Seah inquiring about the Additional Sum due to her from Mr Sng's CPF account and requesting that Mr Seah take urgent action to resolve the issue. To illustrate, we cite a few examples of these messages:

(a) On 15 January 2021, Mdm Tan messaged Mr Seah saying, "Hi hi .. Mr Seah , is there any news about the CPF?" Mr Seah responded saying that he would call her next week.

(b) On 20 January 2021, Mdm Tan sent three messages to Mr Seah:

(i) At 1.12pm: "Hihi …I have been trying to call your office but no one pick up…please don't forget my case.. TOP URGENT …"

(ii) At 2.34pm: "Mr Seah , can please reply me whether have you attended to my matter? Any action taken ? Thanks . I am really worried".

(iii) At 6.59pm: "Hi Mr Seah , how's the case? What is the status ? …"

Mr Seah replied at 8.02pm, informing Mdm Tan that he would send her a letter that night as he was still working on it.

(c) On 21 January 2021, Mdm Tan once again sought an update from Mr Seah. He replied that he would be "[s]ending out letters around 10am". When Mdm Tan inquired whether that was the only mode of

communication available and whether it would be in time, Mr Seah replied, "Notice [is] sufficient".

(d) On 22 January 2021, Mdm Tan chased Mr Seah for updates again. Mr Seah responded that the "[o]perator has sent message to officer to call [him]." Mdm Tan expressed her shock and replied, "You mean you haven't get in touch with them at all? I thought you had previously sent copies of court orders to CPF , how come can this happen ?" followed by "Why CPF went to release funds to [Ministry of Law] public trustee to handle…"

(e) On 25 January 2021, Mdm Tan messaged Mr Seah again saying, "Good morning mr Seah don't forget to treat my case with top urgency n priority .. please… thanks".

52 Sometime in late January 2021, Mdm Tan engaged TOO LLC to take over conduct from Seah & Co to recover the Additional Sum. Between 28 January and 12 March 2021, TOO LLC sent four letters to Mr Seah requesting a handover of all the documents in Seah & Co's possession. The brief particulars of these letters are as follows:

(a) On 28 January 2021, TOO LLC wrote to Seah & Co seeking an urgent handover of the documents in D 1079 in the latter's possession ("1st Letter").

(b) On 8 February 2021, TOO LLC wrote a second time to Seah & Co, referring to the 1st Letter and a telephone conversation between Mr Seah and TOO LLC's Ms Anna Oei. In this letter, TOO LLC once again sought a handover of the files pertaining to D 1079 and noted that

Mr Seah had agreed to respond to the letter in two days' time ("2nd Letter").

(c) On 3 March 2021, TOO LLC wrote a third time to Seah & Co noting that they had yet to hear from the firm or receive the relevant files in D 1079. It was highlighted that further steps may be taken by Mdm Tan to ensure that the files were handed over, including "filing a complaint with the Law Society of Singapore" ("3rd Letter").

(d) On 12 March 2021, TOO LLC wrote a fourth time to Seah & Co repeating the contents of the 3rd Letter ("4th Letter").

53 On 25 March 2021, Mdm Tan filed a complaint to the Law Society regarding Mr Seah (the "Complaint"). At this time, Mr Seah had still not handed over any documents to TOO LLC.

Proceedings brought against Mr Seah

54 On 9 December 2021, TOO LLC filed on behalf of Mdm Tan, a writ of summons *vide* DC/DC 2582/2021 ("Suit 2582") against Mr Seah in the State Courts. The writ contained an Endorsement of Claim, which particularised a claim against Mr Seah for: (a) breaching an implied term of Mr Seah's retainer that he would exercise all due care and skill and diligence in relation to, *inter alia*, the divorce proceedings in D 1079 (including SUM 4075), the transfer of the Flat and transfer of CPF funds from Mr Sng's CPF account to Mdm Tan's CPF account; and (b) breaching a duty to exercise all due professional care, skill and diligence as a solicitor in relation to the same matters outlined above. Mdm Tan sought damages, costs and interest in respect of the claims.

55 On the same day, TOO LLC filed on behalf of Mdm Tan, an originating summons *vide* HC/OS 1258/2021 ("OS 1258") in the General Division of the High Court for an order that Mr Seah deliver up to Mdm Tan all information and documents relating to all matters upon which Mr Seah managed and/or received instructions to act, including, but not limited to, the same matters outlined above in Suit 2582.

56 On 15 February 2022, Mr Seah filed a reply affidavit in OS 1258. In this affidavit, he alleged that Mdm Tan's application was "frivolous, vexatio[us] and otherwise an abuse of the process of the Court as she [had] the documents in her possession now". Mr Seah claimed that during his retainer, he had given Mdm Tan documents or copies of letters from time to time when she had attended at his office to give instructions or sign affidavits or documents.

57 On or about 15 March 2022, Mr Seah handed over some documents in his possession relating to the sale of the Flat to TOO LLC. There were about 53 documents spanning 113 pages.

58 On 21 April 2022, Mr Seah filed a second reply affidavit in OS 1258. In this affidavit, he confirmed that all documents in relation to D 1079 had been destroyed as the matter concluded following the ancillary orders and the extraction of the Certificate of Final Judgment in January 2015, save for copies of the Interim Judgment, ORC 13, Certificate of Final Judgment and Mdm Tan's acknowledgment of all three documents, which he had kept for reference. He also confirmed that he had handed over all documents relating to the sale of the Flat and the subsequent application in SUM 4075 to vary ORC 13 to TOO LLC on or about 15 March 2022.

59 On 29 April 2022, TOO LLC sent a letter to Mr Seah (which was also filed to the court) challenging certain points raised and requesting further clarifications on the content of Mr Seah's second reply affidavit. Amongst other things, TOO LLC highlighted that Mr Seah had not disclosed any documents in relation to SUM 4075.

60 On 8 August 2022, the court heard OS 1258 and no orders were made. The court was of the view that Mr Seah's second reply affidavit had dealt with all documents sought by Mdm Tan.

61 On 15 August 2022, Mdm Tan filed her Statement of Claim in Suit 2582. On 12 September 2022, default judgment for liability was entered against Mr Seah, with damages to be assessed, as he had not served his defence. At the 2nd DT Hearing, Mr Seah updated the 2nd DT that a settlement agreement had been reached that morning in respect of Suit 2582, pursuant to which he would make payment of about $86,000 to Mdm Tan.

Proceedings before the 2nd DT

62 On 24 September 2021, an inquiry committee was constituted to inquire into Mdm Tan's Complaint.

63 On 25 February 2022, the Inquiry Committee reported its findings to the Council of the Law Society of Singapore (the "Council") in a report, in which it concluded that there should be a formal investigation by a disciplinary tribunal. After considering the Inquiry Committee's report, on 7 April 2022, the Council referred the complaint back to the Inquiry Committee for the reconsideration of their findings or for the issuance of a further report. On 6 May 2022, the Inquiry Committee submitted its further report to the Council in which it provided clarifications to the conclusions reached in its initial report.

64 On 22 July 2022, Mr Jimmy Yim Wing Kuen SC and Mr G Radakrishnan were appointed as President and Member of the 2nd DT respectively, to hear and investigate the complaint considered by the Inquiry Committee (*ie*, Mdm Tan's Complaint).

65 After a full evidential hearing on 30 November 2022, the 2nd DT delivered its decision on 27 April 2023. The 2nd DT found that the following Three Charges were made out:

> First Charge
>
> You, Seah Choon Huat Johnny, an Advocate and Solicitor of the Supreme Court of Singapore, are charged that you did act in breach of Rule 5(2)(c), Rule 5(2)(e), Rule 5(2)(f) and/or Rule 5(2)(h) of the Legal Profession (Professional Conduct) Rules 2015, in that you had failed to act timeously on the instructions of your client, one Mdm Tan Hong Kiang (the "**Complainant**") to vary the Order of Court in FC/ORC 13/2015 ("**ORC 13**"), and to keep the Complainant reasonably informed of the progress of her application to vary ORC 13, and you are thereby guilty of grossly improper conduct or improper conduct or practice as an advocate and solicitor under Section 83(2)(b) of the Legal Profession Act 1966.
>
> Second Charge (Amendment No. 1)
>
> You, Seah Choon Huat Johnny, an Advocate and Solicitor of the Supreme Court of Singapore, are charged that you did act in breach of Rule 5(2)(c) and/or Rule 5(2)(e) of the Legal Profession (Professional Conduct) Rules 2015, in that you had failed to attend the Case Conference for FC/SUM 4075/2016 in D 1079/2013 on ~~22 December 2016~~ 10 January 2017 without reasonable justification or notice to the Complainant, and you are thereby guilty of grossly improper conduct or improper conduct or practice as an advocate and solicitor under Section 83(2)(b) of the Legal Profession Act 1966.
>
> Third Charge
>
> You, Seah Choon Huat Johnny, an Advocate and Solicitor of the Supreme Court of Singapore, are charged that you did act in breach of Rule 5(2)(c), Rule 5(2)(e), Rule 5(2)(f) and/or Rule 7(2) of the Legal Profession (Professional Conduct) Rules 2015, in that you had failed to respond to and/or comply with Tan, Oei & Oei LLC's repeated requests to take over conduct of D 1079/2013, and you are thereby guilty of grossly improper

> conduct or improper conduct or practice as an advocate and solicitor under Section 83(2)(b) of the Legal Profession Act 1966.
>
> [emphasis in original]

66 For ease of reference, we set out the relevant rules in the PCR which the Law Society argued that Mr Seah breached, and which formed the backbone of the Three Charges brought against him.

> **Honesty, competence and diligence**
>
> **5.** …
>
> (2) A legal practitioner must —
>
> …
>
> (*c*) act with reasonable diligence and competence in the provision of services to the client;
>
> …
>
> (*e*) keep the client reasonably informed of the progress of the client's matter;
>
> (*f*) where practicable, promptly respond to the client's communications;
>
> …
>
> (*h*) provide timely advice to the client;
>
> …
>
> **Responsibilities of legal practitioners to each other**
>
> **7.** …
>
> (2) A legal practitioner must treat other legal practitioners with courtesy and fairness.
>
> …

67 We briefly set out the 2nd DT's findings in respect of the Three Charges.

First Charge (OA 6)

68 To recapitulate, the First Charge (OA 6) concerned Mr Seah's conduct of failing to: (a) act timeously on the instructions of his client, namely,

Mdm Tan, to vary the ancillary matters order in ORC 13; and (b) keep Mdm Tan reasonably informed of the progress of her application to vary ORC 13.

69 Mr Seah's main defences were that: (a) he had no instructions to act for Mdm Tan to apply for a variation of ORC 13 and his filing of SUM 4075 had simply been intended to help Mdm Tan gratuitously; and (b) the delay in filing SUM 4075 and managing its progress thereafter arose from the fact that Mr Sng had been out of jurisdiction and his whereabouts unknown, and Mdm Tan had not been "prepared to give formal instructions to pursue the matter and incur the costs of substituted service".

70 The 2nd DT found that there was "compelling evidence" that Mr Seah was, for all intents and purposes, acting for Mdm Tan to vary ORC 13 in order to secure the transfer of $86,200 from Mr Sng's CPF account to Mdm Tan's CPF account. Accordingly, there was an implied retainer between them for this purpose. The 2nd DT's finding was based on: (a) the prior retainer relationship between Mr Seah and Mdm Tan in relation to D 1079 and the sale of the Flat, which was "directly connected" to the issue of the full refund to Mr Sng's CPF account and the variation of ORC 13; and (b) the fact that Seah & Co had filed SUM 4075 for variation of ORC 13 in D 1079.

71 The 2nd DT observed that there was a *prima facie* case against Mr Seah for failing to act timeously on Mdm Tan's instructions, considering the almost one-year delay in filing the application in SUM 4075 to vary ORC 13. It was also troubling that Mdm Tan's supporting affidavit in SUM 4075 had been affirmed more than three months before SUM 4075 was filed. Mr Seah could not provide any explanation for the delay. There was no evidence to show that Mr Seah had taken any steps during this period to assist Mdm Tan in obtaining a transfer of the CPF moneys from Mr Sng's CPF account to her account. In

addition, Mr Seah candidly admitted that Mdm Tan had, in fact, sent various chasers and reminders to follow up with him. She contacted him through WhatsApp, phone calls to his office, and even occasionally appeared at his office. The 2nd DT also rejected Mr Seah's defence that the delay had been due to Mdm Tan's unwillingness to bear the advertising costs for substituted service, which he had advised her on, and he had thus been waiting for her to obtain Mr Sng's address. Instead, the 2nd DT accepted Mdm Tan's evidence that she had never been advised about the possibility of substituted service or its associated costs, as there had been no evidence in the form of correspondence between Mr Seah and Mdm Tan proving that such advice had been provided. Further, the cost of an advertisement in an overseas newspaper was, according to Mr Seah, around US$2,000, which would not have been prohibitively expensive for Mdm Tan, especially when juxtaposed against the sum of $86,000 in CPF moneys she would benefit from if ORC 13 was varied.

72 Lastly, the 2nd DT noted that Mr Seah had admitted that he had not attended the Case Conference in the FJC on 10 January 2017 and had not replied to the FJC Registry's request for an explanation for his absence. Mr Seah also gave evidence that: (a) he never gave Mdm Tan a copy of the FJC Registry's letter; (b) he did not inform her that he was required to respond to the letter to explain his absence, failing which SUM 4075 would lapse; and (c) he never informed Mdm Tan that SUM 4075 had lapsed and that a new application would be required. With reference to the WhatsApp messages between Mr Seah and Mdm Tan, Mr Seah's evidence was that "he simply grew tired of the matter and did not want to do anything on it". The 2nd DT remarked that Mr Seah's conduct in January 2021 "showed his patent disregard for his client, Mdm Tan's interest and plight". Further, in these messages, Mr Seah also misled Mdm Tan into thinking that he had taken some action to obtain the transfer of her CPF moneys.

73 Thus, in respect of the First Charge (OA 6), the 2nd DT concluded that Mr Seah's delay in filing SUM 4075 was "egregious" and "showed a patent lack of diligence and competence" on his part. He also failed to advise Mdm Tan on the possibility of substituted service of SUM 4075 on Mr Sng and its costs. When SUM 4075 was filed, he left Mdm Tan "in the dark about the fact that he had intentionally failed to attend the Case Conference on 10 January 2017", ignored the FJC Registry's letter calling for him to explain his absence, and allowed SUM 4075 to lapse. The pattern of keeping Mdm Tan in the dark over the progress of SUM 4075 continued for a "pronounced period of some four years". As such, the 2nd DT found that the First Charge (OA 6) was made out in that Mr Seah's conduct was in breach of rr 5(2)(*c*), 5(2)(*e*), 5(2)(*f*) and/or 5(2)(*h*) of the PCR, amounting to grossly improper conduct or improper conduct or practice as an advocate and solicitor under s 83(2)(*b*) of the LPA.

Second Charge (OA 6)

74 On the Second Charge (OA 6), the 2nd DT found that it was "alarming" that Mr Seah, being an officer of the court, showed such an utter disregard for the court and its processes. In particular, he absented himself from the Case Conference and failed to respond to the FJC Registry's letter seeking an explanation for his absence despite being directed to provide an explanation. By choosing not to inform Mdm Tan of neither his non-attendance, nor the FJC Registry's letter, nor the possibility that SUM 4075 would lapse, he fell short of the standards of diligence and competence expected of a solicitor.

75 At the 2nd DT Hearing, Mr Seah raised a belated defence that he had not seen the purpose of attending the Case Conference on 10 January 2017 as Mdm Tan had indicated that she did not wish to incur the costs of substituted service, and he knew that SUM 4075 would not succeed. The 2nd DT rejected

this defence, reasoning that, even if Mr Seah could not obtain the order he sought because SUM 4075 could not be served on Mr Sng, this did not excuse him from attending the Case Conference. Further, there was an obvious risk that SUM 4075 would lapse by reason of his non-attendance, but Mr Seah appeared ready to take this risk, to the prejudice of Mdm Tan.

76 As such, the 2nd DT found that the Second Charge (OA 6) was made out in that Mr Seah's conduct was in breach of rr 5(2)(*c*) and 5(2)(*e*) of the PCR, amounting to grossly improper conduct or improper conduct or practice as an advocate and solicitor under s 83(2)(*b*) of the LPA.

Third Charge (OA 6)

77 The Third Charge (OA 6) concerned Mr Seah's failure to respond to and/or comply with TOO LLC's repeated requests to take over the conduct of D 1079. Mr Seah sought to excuse his conduct on the basis that: (a) he had been undergoing chemotherapy and could not attend to TOO LLC's request; (b) Mdm Tan had in her possession some documents while the rest had been disposed of by Mr Seah; and (c) it was Vellina who had failed to look for the files for handover.

78 The 2nd DT noted that Mr Seah did not dispute that he had ignored the four letters requesting for a handover. Instead, he sought to justify his conduct on the basis that he had been undergoing chemotherapy at that point and could not attend to the request. However, Mr Seah's evidence that he had an emergency operation in October 2021, and thereafter underwent chemotherapy from November 2021 to June 2022, did not sit well with the time period during which TOO LLC's requests were made (*ie*, between January and March 2021). When confronted with this, Mr Seah accepted that, at the time, he had not known

of his cancer but had simply been trying to "cut down [his] practice" and "wanted to shift office". Neither excuse justified his failure to hand over the documents relating to D 1079 and/or respond to TOO LLC. It was only after Mdm Tan filed OS 1258 on 9 December 2021 to compel Mr Seah to deliver up the said documents that he finally delivered the documents on or around 15 March 2022. This was more than a full year after TOO LLC's initial request in January 2021. In addition, the 2nd DT also remarked that Mr Seah's initial approach to OS 1258 "raise[d] a separate cause for concern". In his first reply affidavit on 15 February 2022, Mr Seah contested the application on the basis that Mdm Tan had already been given copies of all the documents and the application was therefore "frivolous, vexatio[us] and otherwise an abuse of the process of the Court". In addition, during cross-examination, Mr Seah also sought to excuse his conduct in the Third Charge (OA 6) by explaining that when he received TOO LLC's letters, he had instructed Vellina to look for the files to hand them over, but she had failed to do so, and he had not followed up with her. The 2nd DT rejected this excuse, which was not pleaded or stated in his affidavit of evidence-in-chief ("AEIC"). The 2nd DT, however, declined to make a finding that Mr Seah had deliberately failed to hand over critical documents and/or attempted to conceal evidence, conduct which would have been dishonest and fraudulent.

79 The 2nd DT nonetheless concluded that Mr Seah's conduct in failing to respond to and comply with TOO LLC's request for a handover of documents relating to D 1079 was egregious. In this case, "rather than assisting, [Mr Seah] took the opposite course by becoming an obstacle, challenging the request for documents as being frivolous and vexatious". His conduct displayed a lack of courtesy and fairness to TOO LLC who had been trying to help Mdm Tan urgently with a problem that Mr Seah himself could have averted had he acted

properly for his client in the first place. Therefore, the Third Charge (OA 6) was made out in that Mr Seah's conduct was in breach of rr 5(2)(*e*), 5(2)(*f*) and/or 7(2) of the PCR, amounting to grossly improper conduct or improper conduct or practice as an advocate and solicitor under s 83(2)(*b*) of the LPA.

Whether due cause was shown

80 The 2nd DT concluded that the Three Charges of misconduct against Mr Seah amounting to grossly improper conduct or improper conduct as an advocate and solicitor within the meaning of s 83(2)(*b*) of the LPA were proven. Further, the Alternative Charges were also proven. The 2nd DT also found that due cause was shown under s 83(2) of the LPA and that in respect of the Three Charges, pursuant to s 93(1) of the LPA, there was cause of sufficient gravity for disciplinary action under s 83 of the LPA.

The parties' submissions

Mr Seah's submissions

81 In his affidavit, Mr Seah categorically stated that he "unreservedly admit[ted] the facts and accept[ed] the criticism of [his] conduct" in relation to the Three Charges "for which [he had] no excuse". He also accepted the 2nd DT's finding that there was cause of sufficient gravity for the Three Charges to be referred to this court and did not challenge the present application. He reaffirmed this at the hearing before us.

82 However, Mr Seah sought to adduce fresh evidence in this application *without permission* from the court. The fresh evidence took the form of documents annexed to his affidavit, which included the following:

(a) Seah & Co's letter to CPFB dated 30 November 2015, enclosing a draft variation of ORC 13.

(b) Mr Seah's medical documents in respect of his colon cancer diagnosis in October 2021.

(c) Mr Seah's cashier's order for $86,200.92 dated 12 December 2022 issued in favour of Mdm Tan, as part of their settlement agreement.

83 In relation to the sanctions that should be imposed for the Three Charges, Mr Seah did not dispute that a term of suspension was warranted. Therefore, the only question for our consideration was the appropriate duration of such a suspension.

84 In respect of the First (OA 6) and Second (OA 6) Charges, Mr Seah relied on the cases of *Ezekiel Peter Latimer*, *Ooi Oon Tat* and *Andrew Loh*. In this regard, he submitted that the misconduct in the present case was similar to that in *Ezekiel Peter Latimer* and less severe than the misconduct in *Ooi Oon Tat* and *Andrew Loh*. In his written submissions, he sought a sanction of two years' suspension for the First (OA 6) and Second (OA 6) Charges. However, at the hearing, he submitted that a sanction of less than two years' suspension was appropriate.

85 In respect of the Third Charge (OA 6), Mr Seah submitted that the case of *Law Society of Singapore v Arjan Chotrani Bisham* [2001] 1 SLR(R) 231 ("*Arjan*") was a useful reference point. Therefore, a similar period of six months' suspension should be imposed for this charge.

86 In all, Mr Seah submitted that an aggregate suspension of two years was appropriate for the Three Charges in OA 6.

The Law Society's submissions

87 The Law Society submitted that the 2nd DT's decision should be upheld, and that due cause was made out pursuant to s 83(1) of the LPA. Mr Seah's attempt to make new assertions and refer to new documents in this application should be disregarded entirely. Thus, the only issue that remained to be determined was the appropriate sanction to be imposed on Mr Seah. The Law Society did not pursue a sanction of striking-off in the present application.

88 The Law Society submitted that a period of suspension was warranted for the Three Charges in OA 6, for the following reasons:

(a) First, the 2nd DT's findings made clear that Mr Seah's misconduct was "egregious, reprehensible, and showed a blatant disregard for his client and a patent lack of diligence and competence that is expected of a solicitor". His misconduct also spanned a prolonged period of approximately five years.

(b) Second, Mr Seah's misconduct resulted in very real and serious prejudice to Mdm Tan. She was deprived of the significant sum of more than $86,000 since 2016. Further, due to Mr Seah keeping her in the dark and misleading her about the reality of SUM 4075, she only discovered her loss in January 2021, after Mr Sng's CPF moneys had already been fully disbursed to other parties.

(c) Third, Mr Seah was a very senior lawyer of over 42 years' standing (and between 32 and 40 years' standing at the time of the retainer). It was trite that the more senior the practitioner, the more damage he does to the standing of the legal profession by virtue of his misconduct, which warrants a more onerous penalty.

(d) Fourth, Mr Seah displayed a persistent and troubling lack of contrition for his wrongdoing. Before the 2nd DT, he chose not to plead guilty and instead chose to raise multiple meritless defences and unjustified assertions which were unsupported by evidence. Mr Seah's belated claims of remorse in his affidavit cannot be believed. Further, no weight should be placed on the fact that Mr Seah had entered into an agreement to compensate Mdm Tan for the Additional Sum or that he had personally borne such costs.

(e) Fifth, Mr Seah was dilatory in his conduct in the disciplinary proceedings, by repeatedly failing to comply with the 2nd DT's directions to file of certain documents, showing an utter disregard for the disciplinary process.

(f) Sixth, no weight should be given to: (i) Mr Seah's ill health; or (ii) his pro-bono work and testimonials written in his favour.

(g) Seventh, this was not an isolated instance of misconduct as Mr Seah also faced OA 1.

(h) Eighth, imposing a sanction of suspension would also be in line with *Ezekiel Peter Latimer*, *Ooi Oon Tat*, *Udeh* and *Arjan*.

89 In the round, the Law Society urged us to impose a four-year suspension for OA 6. They submitted that it would reflect the gravity of Mr Seah's misconduct, which was far more severe than the respondent's in *Ezekiel Peter Latimer* (where a two-year suspension was ordered), but of a lesser degree of severity as compared to the misconduct of the respondent in *Ooi Oon Tat* (where a five-year suspension was ordered).

Our decision

Fresh evidence

90 As foreshadowed earlier, Mr Seah sought to adduce fresh evidence that was not placed before the 2nd DT in order to clarify certain points made in the 2nd DT's Report. He claimed that he had "not manage[d] to locate certain documents relating to Mdm Tan's matter and her complaint against him in time for the Disciplinary Tribunal's evidential hearing". However, Mr Seah did not take out a proper application *via* filing a summons, as required under r 7(1) of the Legal Profession (Proceedings before Court of 3 Supreme Court Judges) Rules 2022, to seek permission to adduce this further evidence.

91 Nevertheless, given that the documents pertained to uncontroversial factual matters (see [82] above), we saw no issue with admitting them into evidence.

Due cause was shown under s 83(1) of the LPA

92 Mr Seah did not dispute the 2nd DT's findings that the First Charge (OA 6) was made out. We agreed with the 2nd DT's findings set out above at [70]–[73]. Mr Seah did not offer any good explanation for his delay in acting on Mdm Tan's instructions to vary ORC 13 between the completion of the sale of the Flat on 4 December 2015 and the filing of SUM 4075 almost one year later on 25 November 2016. At the 2nd DT Hearing, he attributed the delay solely to Mdm Tan (see [71] above). However, he should have informed Mdm Tan that without Mr Sng's address, he would be unable to file an application to vary ORC 13. Even after SUM 4075 had been filed, Mr Seah failed to keep Mdm Tan reasonably informed of the progress of her application to vary ORC 13 for about four years. It was especially shocking that, even up

till January 2021, Mdm Tan still had the impression that her variation application had succeeded. In response to Mdm Tan's anxious messages seeking an update on her matter, Mr Seah deliberately chose to *mislead* her into thinking that he was taking action, when the reality was that he was simply doing nothing at all, because he "got too tired". Ultimately, Mr Seah's conduct of the matter lead to Mdm Tan losing a relatively significant sum of $86,200.92. This loss was entirely preventable had Mr Seah acted with reasonable diligence and competence in his management of the matter. Mr Seah's callous disregard of Mdm Tan's interests in relation to the First Charge (OA 6) was in clear breach of rr 5(2)(*c*), 5(2)(*e*), 5(2)(*f*) and/or 5(2)(*h*) of the PCR, amounting to grossly improper conduct or improper conduct or practice as an advocate and solicitor under s 83(2)(*b*) of the LPA, and we agreed with the 2nd DT that due cause was shown which was sufficiently serious to warrant the imposition of sanctions under s 83(1) of the LPA.

93 Mr Seah also admitted unreservedly to the facts comprising the Second Charge (OA 6), namely, that he had failed to attend the 10 January 2017 Case Conference for SUM 4075 without reasonable justification or notice to Mdm Tan. These were clear breaches of rr 5(2)(*c*) and 5(2)(*e*) of the PCR. Further, these breaches amounted to grossly improper conduct under s 83(2)(*b*) of the LPA. We agreed with the 2nd DT that due cause sufficiently serious to warrant the imposition of sanctions under s 83(1) of the LPA was shown (see [74]–[75] above). Mr Seah admitted that he had deliberately chosen not to attend the Case Conference as he "believed that there was no purpose for [him] to attend". When he received the FJC Registry's letter requesting an explanation for his absence, he "similarly believed that [he] should just allow SUM 4075 to lapse as it would not cause prejudice to [Mdm Tan]". Mr Seah's justification for his actions betrayed a signal lack of respect for the court and its processes. An

advocate cannot unilaterally decide not to attend a scheduled Case Conference, at the expense of the court's time and his client's interests. Moreover, his failure to inform Mdm Tan of his non-attendance, the FJC Registry's letter, and the possibility that SUM 4075 might lapse, demonstrated a reckless disregard for his client's interest and the prejudice that she might suffer.

94 Lastly, in respect of the Third Charge (OA 6), Mr Seah did not dispute that he had failed to respond to and/or comply with TOO LLC's repeated requests to take over conduct of D 1079 from January 2021 onwards. In particular, he not only ignored the four letters sent by TOO LLC requesting a hand over of the matter, his intransigent behaviour left Mdm Tan with no choice but to sue for the documents. These were undoubtedly breaches of rr 5(2)(*c*), 5(2)(*e*), 5(2)(*f*) and/or 7(2) of the PCR, amounting to grossly improper conduct or improper conduct or practice as an advocate and solicitor under s 83(2)(*b*) of the LPA. As the 2nd DT accurately observed, instead of assisting TOO LLC to take over the matter promptly and effectively, Mr Seah had taken "the opposite course by becoming an obstacle, challenging [Mdm Tan's application] for documents as being frivolous and vexatious". It took Mr Seah about a year to deliver up the requested documents. This was despite his awareness of Mdm Tan's anxiety regarding recovering her share of Mr Sng's CPF moneys and the urgency of setting things right. There was simply no explanation for Mr Seah's conduct. We therefore concluded that due cause sufficiently serious to warrant the imposition of sanctions under s 83(1) of the LPA was shown.

The appropriate sanction to impose for the Three Charges

95 In determining the appropriate sanction to impose for the Three Charges, counsel for the Law Society, Ms Jill Ann Koh ("Ms Koh"), urged us to consider the first two charges together and the final charge on its own. We found this to

be a reasonable approach given that the First and Second Charges (OA 6) concerned Mr Seah's management of Mdm Tan's matter, while the Third Charge (OA 6) related to Mr Seah's failure to hand over documents to Mdm Tan's new solicitors.

First Charge (OA 6) and Second Charge (OA 6)

96 There was no doubt that a period of suspension was warranted for the first two charges. Before us, the Law Society and Mr Seah's counsel, Mr Giam SC, relied on three decisions in support of their respective sentencing positions, namely, *Ezekiel Peter Latimer*, *Ooi Oon Tat* and *Andrew Loh*. The Law Society submitted that the severity of Mr Seah's misconduct fell between the severity of the misconduct of the solicitors in *Ezekiel Peter Latimer*, where a two-year suspension had been imposed, and *Ooi Oon Tat*, where a five-year suspension had been imposed. On the other hand, Mr Giam SC contended that the present case could be distinguished from all three precedents, which involved more egregious conduct.

97 In *Ezekiel Peter Latimer*, the Law Society brought three charges against the respondent alleging grossly improper or improper conduct and/or misconduct unbefitting an advocate and solicitor, arising from the following acts:

(a) failing to account in respect of the client's $300 deposit payment;

(b) failing to attend court on 11 April 2017 for a hearing, resulting in the client's claim for the sum of $170,140.56 being dismissed and forever barred, and an adverse costs order of $850 being entered against him; and

(c) failing to follow up and make contact with the client after the hearing, taking no steps to remedy the consequences of his absence at the hearing despite two signed undertakings that he would do so.

98 While this court observed that there was no proven dishonesty, it held that "it [was] plain that the respondent held little regard for his client's interests, illustrated by his total inaction over a period of 14 months" (*Ezekiel Peter Latimer* at [1]). The court noted that the "prolonged duration and blatant nature of the respondent's wrongdoing warrant[ed] a period of suspension", the duration of which "should be substantial". In addition, the court also considered that: (a) the respondent was a practitioner of more than 20 years' standing; and (b) he had recently been involved in a separate incident of misconduct by placing himself in a position of conflict of interest by preferring the interest of one client to another in the course of his concurrent representation of them in criminal proceedings, for which he received a three-year suspension (*Ezekiel Peter Latimer* at [4]–[5]). In the premises, a two-year suspension was imposed on the respondent.

99 While the respondent in *Peter Ezekiel Latimer* had been involved in a prior incident of misconduct, we were of the view that there were aggravating factors in the present case which warranted a suspension exceeding two years:

(a) First, Mr Seah's misconduct was far more prolonged, spanning a period of about five years, as compared to 14 months in *Peter Ezekiel Latimer*. Indeed, this was far from a one-off lapse of judgment or a single instance of error on Mr Seah's part. There was a clear pattern of irresponsibility and a cavalier disregard for his client's interests.

(b) Second, Mr Seah was a more senior and experienced advocate (between 32 to 40 years' standing at the time of his retainer with Mdm Tan) than the respondent in *Peter Ezekiel Latimer,* who had more than 22 years' standing.

(c) Third, Mr Seah actively misled Mdm Tan into thinking that he was working on her matter when, in fact, he was doing nothing of the sort. This was clearly demonstrated in the series of January 2021 WhatsApp messages between them, where he had reassured her that he had been working on drafting a letter which would be "[s]en[t] out … around 10am" (see [51(c)] above).

100 We next considered the case of *Ooi Oon Tat*. In that case, the respondent's client obtained an interlocutory judgment against the defendant in a personal injury suit ("DC 2679") with liability fixed at 100% and damages to be assessed. The respondent was engaged at the assessment of damages stage. The Law Society brought four charges in relation to the respondent's misconduct, for having failed to: (a) keep the client reasonably informed of the progress of DC 2679; (b) act with reasonable diligence; (c) provide timely advice in relation to DC 2679; and (d) follow instructions given by the client. Due to the respondent's failure to respond to discovery requests and court orders for discovery, DC 2679 was struck out and it was no longer possible to commence a fresh action because it was time-barred. The respondent's misconduct took place over a period of six months. As the court described, "what appeared to be a complete victory in favour of the complainant was transformed into a complete defeat as a result of the respondent's gross mismanagement" (at [2]). The client filed a claim against the respondent in the District Court in respect of the latter's negligence in his handling of DC 2679. The court entered interlocutory judgment against the respondent and assessed

damages of $72,879.03, which was not satisfied at the time of the hearing before the Court of Three Judges. Having considered the circumstances in the round, the court found that a five-year suspension was appropriate for the following reasons:

(a) First, "the respondent's dereliction of his duties was inexcusable and wholly unmitigated". He failed to inform his client of the court orders made against the client, and completely failed to advise him on the appropriate course of action to take. He had "overlooked" disclosing the required documents notwithstanding that he had most, if not all, of them, which fell far short of the standards expected of a reasonably diligent and competent lawyer. The respondent must have appreciated that DC 2679 might well be struck out (at [41]–[43]).

(b) Second, the respondent's misconduct resulted in "very real prejudice to the complainant", since DC 2679 was struck out and the client lost his right of action because of a time bar (at [44]).

(c) Third, the respondent "displayed a troubling lack of remorse throughout the proceedings against him". He chose not to plead guilty before the disciplinary tribunal, the defence he mounted was ill-conceived in principle and unsupported by objective evidence, and he advanced several baseless assertions (at [45]–[47]). He also made various contentions before the court which seemed to "detract from the suggestion that he was remorseful for what had happened or understood the gravity of his misconduct" (at [48]). He displayed an "utter disregard for the disciplinary process" by failing to file his defence, affidavits and written submissions, in disregard of the procedural timelines (at [49]).

(d) Fourth, the respondent was previously sanctioned for having failed to deposit client moneys into the appropriate account, which was a "significant aggravating factor" (at [50]). He was also a senior practitioner of 27 years' standing at the material time.

101 We found *Ooi Oon Tat* instructive. While there was no judgment in favour of Mdm Tan, ORC 13 expressly recorded her entitlement to the Additional Sum which had been credited to Mr Sng's CPF account. There was no doubt that the Additional Sum was hers. However, Mr Seah's inaction and lack of competence led to her losing that entitlement entirely following Mr Sng's passing and the consequent disbursement of moneys (part of which was due to her) to other parties. Mdm Tan thus suffered the same grave prejudice as the client in *Ooi Oon Tat*, although, as we explain below at [104], the harm caused was largely mitigated.

102 Other similarities between *Ooi Oon Tat* and the present case included that: (a) Mr Seah similarly displayed a troubling lack of remorse before the 2nd DT and even in his submissions before this court; (b) Mr Seah is also a senior practitioner (of even greater seniority); and (c) there was no valid reason for Mr Seah's dereliction of his duties.

103 While we acknowledged that during the hearing, Mr Seah admitted unreservedly to the facts underlying the Three Charges and conceded that the reasons offered for his misconduct did not *excuse* his past behaviour, this demonstration of remorse came a little too late. During the proceedings before the 2nd DT and even in his written submissions before this court, Mr Seah demonstrated a patent lack of remorse for his shortcomings. He claimed for the first time in his affidavit in OA 6 that he had chosen not to file a defence in Suit 2582 "out of remorse because [he] had always intended to compensate

[Mdm Tan] for any loss she may have suffered". We found this hard to believe. It was plainly inconsistent with his conduct in the parallel proceeding in OS 1258 filed by Mdm Tan on the same day. As stated above at [56]–[57], Mr Seah challenged Mdm Tan's application for documents and yet ironically, delivered up an entire file of documents relating to the sale of the Flat to TOO LLC subsequently. He further asserted that, once he had learned of Mr Sng's passing in January 2021, he "was ready from the outset to accept [his] responsibility for [Mdm Tan's] predicament". This could not be further from the truth. As we alluded to above at [99(c)], in his WhatsApp conversation with Mdm Tan in January 2021, he deliberately misled her into thinking that he was taking action to resolve her quandary, although in reality he was doing nothing of the sort. In fact, to justify his dilatory conduct in the disciplinary proceedings before the 2nd DT, he once again claimed that he "was remorseful for putting [Mdm Tan] in a difficult situation and believed that [he] had no good explanation for [his] actions under the Charges" and so he believed that "[i]n the absence of any substantial reasons to dispute the complaint against [himself]" he "had no grounds to prepare some of the documents supporting [his] case". If Mr Seah had truly been as remorseful as he said he was, he would have pleaded guilty to the charges at the outset. Instead, he chose to raise meritless defences and offer poor excuses for his misconduct. In particular, the 2nd DT correctly observed that his defence that there had been no retainer between him and Mdm Tan was "patently unmeritorious" and "disingenuously raised". Mr Seah not only wasted the 2nd DT's time but also, crucially, contributed further to Mdm Tan's suffering, by putting her through gruelling cross-examination, despite his apparent recognition of his own fault in causing her predicament.

104 Nevertheless, while the duration of the misconduct in the present case occurred over a far longer period, two key differentiating factors called for a shorter period of suspension than in *Ooi Oon Tat*. First, unlike the respondent in *Ooi Oon Tat*, Mr Seah had no similar antecedents. To avoid double-counting, we did not consider OA 1 as a relevant antecedent. Second, and most importantly, Mr Seah made full compensation for the loss suffered by Mdm Tan (*ie*, equivalent to the shortfall of Mr Sng's CPF moneys owed to her). This significantly mitigated the actual harm suffered by Mdm Tan as a result of Mr Seah's misconduct and we gave due credit for this. To the contrary, the respondent in *Ooi Oon Tat* failed to satisfy the judgment against him, leaving his client out-of-pocket. We therefore agreed with the Law Society that a period of suspension of less than five years was appropriate.

105 Finally, we considered the case of *Andrew Loh*. In *Andrew Loh*, the respondent faced four charges for misconduct that took place during his slightly more than one month retainer with his client, these were: (a) two charges for misrepresenting his client's instructions to the court; (b) one charge for entering consent orders without his client's instructions; and (c) one charge for deliberately concealing the fact that the consent orders had been entered into. The respondent was of some 21 years' standing at the material time. The court found that the respondent had been dishonest in dealing with his client. However, the court concluded that this did not indicate a character defect which rendered him unfit to remain a member of the profession, and also did not undermine the administration of justice (at [111]). The respondent also did not benefit from his dishonesty (at [114]). It was also observed that the real nature of his misconduct was his "woefully inadequate management of Loh as his client". Nonetheless, the respondent in *Andrew Loh* did not cause real harm or prejudice to his client, albeit some potential harm could have been suffered (at [115]). The court

considered that, while striking-off was not warranted, a substantial period of suspension was necessary. Accordingly, a three-year suspension was imposed.

106 Unlike in *Andrew Loh*, the 2nd DT did not make any express finding of dishonesty on Mr Seah's part. However, the gravamen of the respondent's conduct in *Andrew Loh* centred on his "woefully inadequate management of … his client" (*Andrew Loh* at [112]). He was motivated by his own idea of what was legally sound and attempted to avoid taking positions that were untenable before the court. This was materially different from the facts of the present case, which involved misconduct for which there was absolutely no plausible or sensible explanation. Indeed, during the 2nd DT Hearing, Mr Seah admitted that he did not keep Mdm Tan updated on her matter because "he simply grew tired of the matter and did not want to do anything on it". Such an admission reflected poorly on Mr Seah's standing as an experienced senior solicitor having the legal capacity to provide professional representation to assist his clients in seeking judicial remedies.

107 Therefore, based on all the circumstances of this case, we found that a three-year suspension (in aggregate) was appropriate for the First Charge (OA 6) and the Second Charge (OA 6).

Third Charge (OA 6)

108 In respect of the Third Charge (OA 6), both the Law Society and Mr Seah referred us to the case of *Arjan*. In that case, the respondent failed to deliver documents pertaining to his client's aborted purchases of 25 properties to the said client's new solicitors despite repeated requests and even after promising to do so. In ordering a suspension of six months, this court held that while the respondent in *Arjan* had not acted dishonestly, he had shown himself

to be less than trustworthy, and the minimum appropriate punishment was a term of suspension (at [39]).

109 Comparing the facts in *Arjan* to the present case, we were of the view that Mr Seah's conduct was more egregious and warranted a longer period of suspension. In *Arjan*, the Disciplinary Committee accepted the respondent's testimony that he was ready and willing to hand over the original documents, but that this offer was refused, and photocopies of documents were insisted upon instead. In this regard, it was remarked that the client's difficulty in that case was "to a large extent self-created" (at [23]). In the present case, no fault lay with Mdm Tan. There was no reasonable explanation for Mr Seah's delay in handing over the documents to her and TOO LLC. It was unacceptable that Mdm Tan had to institute legal proceedings just to obtain the relevant documents from Mr Seah. To make matters worse, even after Mdm Tan had taken out OS 1258, Mr Seah resisted the application (see [56]–[57] above). Furthermore, Mdm Tan's request for the documents came at the end of a 5-year ordeal during the course of which Mr Seah's misconduct had led her to lose a relatively significant sum of money. However, instead of expressing his remorse and assisting her in rectifying the situation when she engaged new solicitors, Mr Seah refused to co-operate, leaving her no choice but to sue for the documents. We found Mr Seah's behaviour nothing short of appalling. Considering all the facts in the round, we imposed a one-year suspension for the Third Charge (OA 6).

The mitigating factors

110 Mr Seah also urged us to give weight to several personal mitigating factors in determining the appropriate duration of suspension to impose. We

found that they were of little significance and therefore accorded little weight to them in our decision.

111 First, Mr Seah reiterated that he had been in ill health throughout 2021 and 2022, which culminated in his emergency total colectomy procedure on 10 October 2021. Further, he stated that he had "fe[lt] depressed" throughout his ongoing medical treatment, which included chemotherapy and the consumption of many medications. It should be recalled that Mr Seah had relied on his ill health as a defence to his conduct in respect of the Third Charge (OA 6). While we sympathised with his personal circumstances, this was neither an excuse for his misconduct, nor a relevant factor in mitigation. In *Arjan*, while the court was sympathetic to the solicitor's personal circumstances at the material time, including the fact that: (a) his sister had been diagnosed with cancer and she passed away; and (b) the solicitor himself had also been so stricken and had underwent chemotherapy. The court held that these personal difficulties were not valid reasons to excuse his misconduct (at [37]):

> … To be able to uphold a high standard of behaviour, even in the face of personal adversity and crisis, is one of the characteristics that makes a man a professional. In any event, what was expected of him was not unduly onerous…

Similarly, Mr Seah's ill health, while unfortunate, was not a valid excuse for his failure to respond to and/or comply with TOO LLC's repeated requests to take over conduct of D 1079, especially given that his illness only afflicted him in October 2021 (long after TOO LLC's first initiation of contact) and the fact that what was expected of him was hardly onerous.

112 Second, just as in OA 1, Mr Seah sought to rely on his record of *pro bono* work and testimonials from other legal practitioners and his past clients as a mitigating factor for OA 6. For the same reasons given above at [35], we were

of the view that Mr Seah's track record in *pro bono* and his conduct of past cases were of little relevance in light of the serious misconduct apparent in the Three Charges. In *Ang Peng Tiam v Singapore Medical Council and another matter* [2017] 5 SLR 356, this court held that a record of public service would have limited weight where other sentencing considerations were at play. Here, the sentencing principle of *specific deterrence* was of particular importance. Despite professing his remorse for Mdm Tan's predicament, Mr Seah's actions continued to display little insight into his wrongdoing.

113 Therefore, we imposed a four-year suspension in respect of the Three Charges in OA 6.

Total period of suspension for OA 1 and OA 6

114 The Law Society submitted that the two periods of suspension in respect of OA 1 and OA 6 should run consecutively. Conversely, Mr Seah argued that the two terms of suspension should run concurrently.

115 We agreed with the Law Society that it was patently justified for the two terms of suspension imposed in respect of OA 1 and OA 6 to run consecutively given that they related to two distinct sets of misconduct involving two different clients. As a general rule, a multiple offender who has committed unrelated offences should be separately punished for each offence, and this should be achieved by an order that the individual sentences run consecutively: *Public Prosecutor v Raveen Balakrishnan* [2018] 5 SLR 799 at [41]. As stated by this court in *Ezekiel Peter Latimer* at [6], "there is no justification for two terms of suspension to run concurrently where the respondent's earlier convictions relate to an entirely different set of offences that occurred at a different time".

116 In the circumstances, we held that a global term of four years and six months' suspension was appropriate for OA 1 and OA 6.

Conclusion

117 In summary, we found that there was due cause for Mr Seah to be sanctioned under s 83(1) of the LPA in respect of both OA 1 and OA 6. In respect of OA 1, we imposed a six-month suspension commencing on 1 January 2024. In respect of OA 6, we imposed a four-year suspension commencing immediately upon expiry of the period of suspension imposed for OA 1. In relation to costs, we ordered that the Law Society be awarded costs in the aggregate sum of $15,716.24 for OA 1 and $20,500 for OA 6.

Sundaresh Menon
Chief Justice

Tay Yong Kwang
Justice of the Court of Appeal

Belinda Ang Saw Ean
Justice of the Court of the Appeal

Cheong Mun Wai Stephen (Sharpe & Jagger LLC) for the applicant in C3J/OA 1/2023;
Jill Ann Koh Ying (Xu Ying) and Nicole Seah (WongPartnership LLP) for the applicant in C3J/OA 6/2023;
Giam Chin Toon SC and Luke Calvin Chew Chun Wei (Wee Swee Teow LLP) for the respondent in C3J/OA 1/2023 and C3J/OA 6/2023.