Law Society of Singapore v Tan Phuay Khiang
[2007] SGHC 83

Case Number : OS 2354/2006, SUM 331/2007

Decision Date : 26 June 2007

Tribunal/Court : High Court

Coram : Chan Sek Keong CJ; Andrew Phang Boon Leong JA; V K Rajah JA

Counsel Name(s) : Samuel Chacko and Peter Wadeley (LegisPoint LLC) for the applicant; Chandra Mohan K Nair (Tan Rajah & Cheah) for the respondent

Parties : Law Society of Singapore — Tan Phuay Khiang

Legal Profession – Professional conduct – Breach – Lawyer advocate and solicitor acting for homeowners in transaction for sale of flat pursuant to referral for moneylender – Lawyer preparing power of attorney for homeowners for proposed sale of flat – Lawyer preparing statutory declaration for homeowners authorising distribution of sale proceeds to five enumerated parties – Lawyer acting for some enumerated parties previously and receiving referrals from them – Whether lawyer's conduct amounting to misconduct unbefitting advocate and solicitor – Section 83(2)(h) Legal Profession Act (Cap 161, 2001 Rev Ed)

Legal Profession – Professional conduct – Conflict of interest – Lawyer advocate and solicitor acting for homeowners in transaction for sale of flat pursuant to referral for moneylender – Lawyer preparing statutory declaration for homeowners authorising distribution of sale proceeds to five enumerated parties – Lawyer acting for some enumerated parties previously and receiving referrals from them – Whether lawyer owing overriding duty to homeowners in sale transaction

Legal Profession – Show cause action – Lawyer advocate and solicitor found guilty of misconduct unbefitting advocate and solicitor – Appropriate sentence for misconduct – Mitigation – Whether public service constituting mitigating factor – Section 83(2)(h) Legal Profession Act (Cap 161, 2001 Rev Ed)

26 June 2007

V K Rajah JA (delivering the grounds of decision of the court):

1 This is an application by the Law Society of Singapore ("the Law Society"), pursuant to s 94(1) read with s 98 of the Legal Profession Act (Cap 161, 2001 Rev Ed) ("the Act"), for an order calling upon Tan Phuay Khiang ("the respondent") to show cause as to why he should not be dealt with under s 83(2)(*h*) of the Act. The respondent is an advocate and solicitor of 13 years' standing. The facts of this case illustrate that it is plainly insufficient for an advocate and solicitor to claim that he may have literally complied with the codes of practice. In our view, an overly formalistic approach to the interpretation and application of professional conduct rules is to be eschewed. We consider the following observations made by the authors of *The Ethics and Conduct of Lawyers in England and Wales* (Hart Publishing, 1999) at p 7 entirely apposite and meriting reproduction:

> We share this broader perspective. … *[P]rofessional ethics are principally concerned with the moral dimensions of professional work and … these dimensions cannot be covered comprehensively by rules alone*. While, therefore, it might be argued that ethics described expectations of professional conduct at a time in history when ethics were lived, rather than written down, but, we argue, *professional ethics embrace a broader framework of values*, in education, in local communities and in new thinking about old problems. [emphasis added]

2 Having heard the submissions of the respective parties, we granted the application at the

conclusion of the hearing and ordered the respondent to be suspended from practice for a period of two years. We now set out our reasons for our decision.

The facts

3 The proceedings before us stem from the respondent's professional conduct while representing Mr Peer Mohammed s/o Shaik Abdul Koder ("Peer") and his wife, Mdm Zeenath Beagum d/o Malik Maihin ("Zeenath") (collectively referred to as "the complainants") in the sale of their flat at Block 514, Choa Chu Kang Street 51 #06-54, Singapore 680514 ("the Flat") sometime during 1999 and 2000.

4 The complainants have a rudimentary primary education. Peer is a warehouse supervisor while Zeenath is a homemaker.

5 In or about late 1999, the complainants employed Ali Hassan s/o Dawood Marican ("Ali") to sell the Flat. Ali informed them that they had to purchase a new Housing and Development Board ("HDB") flat before they would be permitted to sell the Flat. Ali then found the complainants a new flat and drew up a financial plan. The net outcome of purchasing this new flat using the complainants' Central Provident Funds and the sale proceeds of the Flat appeared to give the complainants an excess of some $90,000. Pleased with this, the complainants agreed to proceed.

6 Soon after, the complainants were informed of an appointment at the HDB Hub Resale Office for the purchase of the new flat. The only apparent wrinkle in this arrangement was that Ali remained unable to sell the Flat. The complainants became anxious as they were required to make an immediate cash payment of $45,000 for the new flat. Ali calmed their concerns by advising them to take a loan which he would arrange with a licensed moneylender, DK Credit Pte Ltd ("DK").

7 Ali then brought the complainants to DK's office at Parkway Parade on 3 January 2000. A male Chinese, after introducing himself as the owner, agreed to lend the complainants $45,000 on condition that they signed some legal documents at the office of DK's lawyer. He informed the complainants that they were required to repay the loan with a fixed interest of $7,000 on top of the principal amount (*ie*, making a total of $52,000). The complainants agreed and were promptly handed a number of documents that recorded the principal amount as $65,000. The complainants only signed the documents after receiving assurances from DK's owner and Ali that it was standard procedure for the principal amount to be recorded differently from the actual loan disbursed.

8 The complainants were subsequently informed to proceed to the respondent's office at Beach Road. They did so, accompanied by a property agent, one Poh Keng Ann ("Poh"), from Ecstasy Property Services ("Ecstasy"). There, the respondent prepared, and the complainants signed, a power of attorney appointing one Cheung Siew Cheong ("Cheung") as the complainants' attorney in the proposed sale and subletting of the Flat ("the first meeting"). The complainants did not know who Cheung was. Though the respondent did not procure a warrant to act authorising the preparation of the power of attorney, he confirmed the complainants' instructions on the following day through a letter. The complainants acknowledge that they received the respondent's letter, but claim not to have understood the contents of the letter. They had immediately passed the letter to Ali.

9 On leaving the respondent's office, the complainants were then taken by Ali to a bank branch at Parkway Parade, where a representative of DK met them and handed, in their presence, a cash cheque for $60,000 to the teller. From that sum, $15,000 was deducted, by the DK representative, while the remaining $45,000 was handed to Ali to be paid over to the HDB for the new flat.

10 On 24 April 2000, the complainants signed a warrant to act appointing the respondent's firm to act for them in the sale of the Flat ("the second meeting").

11 After Ali failed to sell the Flat, the complainants appointed another housing agent by the name of Leonard to market the Flat. The Flat was later sold for $258,000 on 7 July 2000, and the HDB eventually handed a cheque for $142,694.11 upon completion of the sale to the respondent's representative. This sum represented the surplus after all the incidental deductions had been made from the sale price.

12 While there is a minor controversy as to where the parties met on 8 July 2000, as well as the precise circumstances pertaining to the signing of a statutory declaration, it is common ground that a meeting took place between the complainants and the respondent on that date ("the third meeting"). The respondent handed Zeenath a cheque for $48.11. When queried about the paltry amount stated on the cheque, Ali (who was present, according to the complainants) promptly handed Zeenath a cheque for $86,461 made in their favour. The complainants were then requested by the respondent to execute a statutory declaration authorising the respondent's law firm to make the following payments ("the statutory declaration"):

(a) $10,800 to Ecstasy;

(b) $23,700 to Poh;

(c) $70,994 to DK;

(d) $750 to ML Mayeh & Co;

(e) $35,050 to Saudagar Moneylenders ("Saudagar"); and

(f) $1,352 to the respondent's law firm in payment of his professional fees.

13 The statutory declaration confirmed that the complainants had received a payment of $48.11 which represented the balance of the net proceeds of the sale of the Flat, and that this payment, together with the payments to the five other enumerated parties, constituted full and final settlement of the sale transaction pertaining to the Flat. Unknown to the complainants, an intricate web of relationships existed between almost all the payees named in the statutory declaration apropos each other, as well as with the respondent. Ecstasy and DK had engaged the respondent to act for them on previous occasions, and also referred potential clients to the respondent. Also, Ecstasy appeared to have some form of indirect interest in the execution of the statutory declaration, given that its agent (Poh) had brought the complainants to the respondent to prepare the power of attorney. Saudagar was taken over in April 2000 by Ng Boon Kiat ("NBK"), who managed Ecstasy.

14 Ali's cheque for $86,461 was dishonoured and although he gave repeated assurances that payment in full would be soon made, he eventually disappeared after making just a few payments amounting to $20,000. The complainants felt deeply aggrieved by this unhappy experience but initially thought that only Ali had taken them for a ride.

15 In or about 2002, the complainants learnt from a newspaper article about a similar transaction involving DK and another lawyer. Suspecting that there had been a well-orchestrated conspiracy to defraud them, the complainants, with the assistance of a friend, wrote a letter to the respondent requesting copies of documents relating to the loan. Only after a reminder dated 6 July 2002 did they receive a reply dated 10 July 2002 from another law firm, M/s Goodwins Law

Corporation ("Goodwins"), claiming that the respondent's firm, M/s Tan Loh & Wong, had merged with them. The complainants were requested to precisely identify the documents they required. On 17 July 2002, the complainants replied, identifying the documents they required. However, there was no acknowledgement or response from Goodwins despite a reminder sent on 16 September 2002. The complainants then sent a further reminder on 14 October 2002, to which Goodwins responded, stating that the respondent had only acted for the complainants in the sale of the Flat, and that the file was closed upon the completion of the sale on 7 July 2000. Dissatisfied, the complainants wrote again on 28 October 2002 insisting on having copies of the documents being sought. Finally, after Goodwins again failed to respond, the complainants engaged a law firm to make a written demand on their behalf. Only on 19 March 2003, some ten months after the initial request, did the complainants finally receive copies of the documents. All the letters from Goodwins were drafted and signed by the respondent.

16 Upon reviewing the documents, the complainants learnt that they had signed documentation prepared by the respondent, authorising him to represent them in the sale of the Flat, to receive the sale proceeds and thereafter distribute it amongst various persons. They remained perplexed as to why the cheque for $86,461 was issued by Ali and not the respondent.

17 Convinced now that they had been defrauded, the complainants lodged a complaint with the Law Society in a letter dated 23 May 2003.

The disciplinary committee hearing and findings

18 Following an inquiry committee's finding that a formal investigation ought to be initiated, a disciplinary committee ("DC") was appointed pursuant to s 90 of the Act to hear and investigate the complaint against the respondent.

19 At the DC hearing, the Law Society preferred three charges against the respondent pursuant to s 83(2)(*h*) of the Act. The charges, as formulated by the Law Society, were as follows:

> **First Charge**
>
> That you, Tan Phuay Khiang, are charged with conduct unbefitting an advocate and solicitor in the discharge of your professional duties as an advocate and solicitor of the Supreme Court of Singapore as set out in section 83(2)(h) of the Legal Profession Act (Chapter 161) in that, whilst you acted for the Complainants in respect of the sale of the flat known as Block 514, Choa Chu Kang Street 51 #06-54, Singapore 680514, you failed to advance the Complainants' interests unaffected by the interest of any other person, by acting in or preferring the interests of DK Credit Pte Ltd, Ecstasy Properties Services, Cheung Siew Cheong and/or Ali Hassan s/o Dawood Marican.
>
> **Second Charge**
>
> That you, Tan Phuay Khiang, are charged with conduct unbefitting an advocate and solicitor in the discharge of your professional duties as an advocate and solicitor of the Supreme Court of Singapore as set out in section 83(2)(h) of the Legal Profession Act (Chapter 161) in that you prepared a Power of Attorney dated 3rd of January 2000 lodged with the Supreme Court as no. 108 of 2000 (the "Power of Attorney") with the Complainants as the donor and one Cheung Siew Cheong as the attorney in the absence of any instructions from the Complainants in respect of the same and that you further procured the execution of the Power of Attorney from the Complainants and failed to advise them on the purport and implication of the Power of Attorney.

Third Charge

That you, Tan Phuay Khiang, are charged with conduct unbefitting an advocate and solicitor in the discharge of your professional duties as an advocate and solicitor of the Supreme Court of Singapore as set out in section 83(2)(h) of the Legal Profession Act (Chapter 161) in that you prepared a Statutory Declaration dated 8th of July (the "Statutory Declaration") wherein the Complainants purportedly authorised M/s Tan Loh and Wong to distribute the net sale proceeds from the sale of the flat known as Block 514, Choa Chu Kang Street 51 #06-54, Singapore 680514 to various parties and in the manner prescribed therein in the absence of any instructions from the Complainants in respect of the same and that you further procured the execution of the Statutory Declaration from the Complainants and failed to advise them on the purport and implication of the Statutory Declaration and you further disbursed such net sale proceeds to third parties without any authorisation to do so.

20 Upon assessing the evidence, the DC found the respondent guilty with respect to the first charge on three counts. First, while the DC held that the complainants had directly instructed the respondent to prepare the power of attorney, the respondent had breached his obligations of confidentiality to the complainants, in permitting the complainants' interests to be subordinated to that of Ecstasy's. This was because the respondent had wrongfully released the power of attorney to NBK of Ecstasy without obtaining the complainants' authorisation. Second, the respondent had failed to show proper diligence in safeguarding the complainants' interests, despite knowing of a potential and/or actual conflict of interest between the complainants and the respondent's other clients. Third, the respondent had been guilty of an unpardonable and lengthy ten-month delay in procuring the documents which the complainants sought.

21 However, the DC dismissed the second and third charges. The DC determined that the complainants had indeed instructed the respondent to prepare the power of attorney and had signed the document as a result of their misplaced trust in Ali. The DC also concluded that the respondent was not privy to the loan transaction with DK and Ali's "machinations".

22 Given the gravity of the third charge, the DC was inclined to give the respondent the benefit of the doubt and accept his version of the events in relation to the third meeting, and that the meeting had taken place at the respondent's office. While the DC was perturbed and found the circumstances surrounding the preparation of the statutory declaration and the distribution of the sale proceeds to be "troubling", it determined that the facts had not been sufficiently established to ground an allegation of dishonesty against the respondent. The DC nevertheless went on to chastise the respondent for his indifferent attitude towards his clients in failing to adequately inquire into the complainants' purported intent to pay the sale proceeds to related parties such as Ecstasy and Saudagar. The fact that the respondent found the nature of the complainants' "request" unusual enough to have justified the preparation of the statutory declaration caused the DC considerable disquiet.

23 In the circumstances, even though the DC declined to hold the respondent liable on the second and third charges, it found that cause of sufficient gravity existed for disciplinary action to be taken against the respondent in relation to the first charge.

The show cause proceedings

24 The show cause proceedings before us were predicated upon ss 93 and 94(1), read with ss 83(1) and 83(2) of the Act.

25 The relevant portions of s 83 of the Act read as follows:

> **Power to strike off roll or suspend or censure**
>
> **83.**—(1) All advocates and solicitors shall be subject to the control of the Supreme Court and shall be liable on due cause shown to be struck off the roll or suspended from practice for any period not exceeding 5 years or censured.
>
> (2) Such due cause may be shown by proof that an advocate and solicitor —
>
> …
>
> (*h*) has been guilty of such misconduct unbefitting an advocate and solicitor as an officer of the Supreme Court or as a member of an honourable profession;
>
> …

26 In his written submissions, counsel for the Law Society, Mr Chacko, placed considerable emphasis on all three grounds relied on by the DC in finding the respondent liable under the first charge. However, in the course of his oral arguments, Mr Chacko quite correctly focused his arguments on the circumstances under which the statutory declaration had been prepared. In particular, Mr Chacko drew our attention to five particularly salient features of the respondent's conduct:

(a) most of the payees in the statutory declaration were related to DK and/or Ecstasy;

(b) the respondent had failed to disclose his prior relationship with DK and/or Ecstasy;

(c) the respondent had made no serious attempt to ascertain why payments were being made to the payees enumerated in the statutory declaration;

(d) the respondent had obviously drafted the statutory declaration in a hurry; and

(e) the statutory declaration had been prepared by the respondent, on his own admission, purely to protect himself.

27 Counsel for the respondent, Mr Mohan, on the other hand strenuously contended that the Law Society's application should be dismissed *in limine*. As a preliminary point, Mr Mohan contended that the DC had plainly strayed beyond its jurisdiction in inquiring into the respondent's conduct apropos the preparation of the power of attorney and the statutory declaration. However, the main thrust of his submissions was focused on assiduously undermining the three grounds on which the DC found the respondent liable under the first charge. First, he submitted that no prejudice had been caused to the complainants by the release of the power of attorney to NBK. As for the conflict of interest point, Mr Mohan submitted that this was a non-starter; no conflict arose because the respondent had only acted for the complainants in the transaction. Finally, Mr Mohan submitted that the delay in the production of documents should not be held against the respondent as the complainants were, in the final analysis, wholly responsible for the delay.

The issues

28 Three broad issues arose for our determination, namely:

(a) whether the DC lacked jurisdiction to hear and investigate the respondent's conduct *vis-à-vis* the preparation of the power of attorney and statutory declaration in determining the first charge ("the jurisdiction issue");

(b) whether the first charge had been established ("the merits issue"); and

(c) assuming that the DC had rightly found the respondent liable under the first charge, the appropriate penalty that should be imposed on the respondent ("the appropriate penalty").

29 We now turn to consider each of these issues *in seriatim*.

The jurisdiction issue

30 Mr Mohan advanced two principal arguments in support of his contention. First, the DC's decision to dismiss the second and third charges indicated that it had entertained reasonable doubts in relation to the issues raised therein (*viz*, the power of attorney and statutory declaration). The DC had thus patently erred in nevertheless taking these two matters into consideration when assessing the respondent's liability under the first charge; this was, in short, tantamount to conflating the second and third charges with the first charge. If the DC intended to rely on any matter embraced by the second and third charges, a fresh charge should have been brought against the respondent (in addition to the first charge). Second, Mr Mohan submitted that the respondent had not received any notice of the DC's intention to rely on the respondent's act of releasing the power of attorney to NBK as a basis for liability in respect of the first charge. Neither had the respondent received any notice that the ten-month period taken for the production of documents would be used by the DC as one of the grounds for liability under the first charge. As such, the first charge could not stand in the light of the inviolable requirement of adequate prior notice acknowledged in precedents such as *Re an Advocate and Solicitor* [1978-1979] SLR 240 and *Re Seah Pong Tshai* [1992] 1 SLR 399.

31 Unsurprisingly, Mr Chacko took a diametrically opposite position by contending that the DC was entitled to consider evidence in relation to the power of attorney and statutory declaration. Mr Chacko acknowledged that matters not referred to in the original complaint should not form part of the charge brought against the respondent. However, he pointed out that the issues in relation to the preparation of the statutory declaration were to be found in the complaint and were indeed relevant to the first charge. Where the release of the power of attorney was concerned, he submitted that this matter could not possibly have been raised by the complainants in the complaint as it was not then within their knowledge. However, he submitted that the DC could nevertheless take this matter into consideration as the matter had surfaced in the course of cross-examination and had been adequately brought to the respondent's attention.

32 In our considered view, Mr Mohan's contentions, in the ultimate analysis, cannot withstand careful scrutiny.

33 At the outset, we do acknowledge that the preparation of the power of attorney and the delay in the release of documents were indeed irrelevant in so far as the respondent's liability under the first charge was concerned. The DC should not have relied on these two matters to justify liability in relation to the first charge.

Delay in the production of documents

34 The gist of the complaint is actually premised on the respondent's failure to advance and/or protect the complainants' interests, despite the existence of a subsisting solicitor-client

relationship between them. While the complainants had alluded to the respondent's tardiness in the production of documents, a contextual examination of the complaint itself showed that the issue of delay was purely incidental to the complaint. The real complaint was not that the respondent had been tardy in the production of documents, but that the respondent had failed to discharge his duty of unflinching loyalty to the complainants. To our minds, the delay in the production of documents could not possibly have formed any basis for liability under the first charge. The delay in the production of documents had nothing to do with the respondent's failure to advance the complainants' interests, given that the sale transaction had been completed since then. The DC had plainly erred in relying on such delay as a basis for liability under the first charge. Nevertheless, for the purpose of giving some guidance to practitioners, we shall briefly state our views on this aspect of the respondent's conduct.

35 Admittedly, the Legal Profession (Professional Conduct) Rules (Cap 161, R 1, 2000 Rev Ed) ("the Rules") do not expressly require an advocate and solicitor to furnish copies of documents used inthe course of his dealings upon request by an existing or former client. Notwithstanding, the existence of such a duty is incontrovertibly supported by the general tenor of the Rules which codify several time-honoured and respected practices of the legal profession (see *Public Trustee v By Products Traders Pte Ltd* [2005] 3 SLR 449 at [33]). More particularly, rr 14 and 20 of the Rules require an advocate and solicitor to complete his work and deal with clients in a timely manner:

> **14.**—(1) An advocate and solicitor shall at all times use his best endeavours to complete any work on behalf of a client as soon as is reasonably possible.
>
> (2) If it becomes apparent to the advocate and solicitor that he cannot do the work within a reasonable time, he should so inform the client.
>
> **20.** An advocate and solicitor shall where possible —
>
> (*a*) promptly respond to the client's telephone calls; and
>
> (*b*) keep appointments made with the client,
>
> unless there are good and sufficient reasons why this cannot be done.

36 It is also helpful to bear in mind r 2(2) of the Rules, which identifies several guidelines in the interpretation of the Rules:

> In the interpretation of these Rules, regard shall be had to the principle that an advocate and solicitor shall not in the conduct of his practice do any act which would compromise or hinder the following obligations:
>
> (*a*) to maintain the Rule of Law and assist in the administration of justice;
>
> (*b*) to maintain the independence and integrity of the profession;
>
> (*c*) to act in the best interests of his client and to charge fairly for work done; and
>
> (*d*) to facilitate access to justice by members of the public.

37 The cases show that, generally speaking, inexcusable delays by an advocate and solicitor in discharging his professional obligations can amount to professional misconduct under the Act. In *Law Society of Singapore v Ng Chee Sing* [2000] 2 SLR 165 at [45], Yong Pung How CJ held that:

It was stated in *Re C, a solicitor (Law Society's Journal* Vol 1 No 1, May 1984) that delay in an isolated ordinary case may not necessarily constitute professional misconduct and may not warrant disciplinary action. However, gross or excessive delay in both contentious and non-contentious work is serious enough to constitute conduct unbefitting an advocate and solicitor.

38 The nature of the delay is pertinent in ascertaining if professional misconduct is made out. In our view, the facts of the present case speak for themselves. The respondent had sought to frustrate the complainants' request for the documents on several occasions over a lengthy period of time. This was certainly not a case of a solicitor declining to produce documents on a solitary occasion. On the contrary, the respondent had been recalcitrant in his refusal to produce the documents throughout a period of some ten months, during which the complainants had to write numerous reminder letters in their personal capacity, culminating in the engagement of a law firm to demand for the documents.

39 The respondent had contumaciously contravened his general obligation to respond promptly to the complainants' queries. He had sought to thwart the complainants' request for information at every turn. The respondent had employed a myriad of crude ploys to frustrate the complainants' request for documents. These ranged from simple omissions to provide a response despite repeated queries and reminders, to the wholly untenable contention that the documents need not be provided because the matter had been completed and the file closed. The respondent also placed numerous obstacles in the way of the complainants in a bid to delay disclosure, *inter alia*, by requiring the complainants to specifically identify the documents sought, and by requesting the complainants to verify that the documents had not been misplaced before new copies would be given. A review of the letters written by the respondent ineluctably confirmed that he had been conspicuously difficult in his nitpicking attempts to deflect the complainants' requests. For instance, in his letter dated 21 January 2003 to the complainants' lawyers, the respondent required the complainants to confirm if they had misplaced the documents before furnishing copies of the documents sought:

> As stated in our letter dated 10th July 2002 (a copy is enclosed) to your clients earlier, M/s Tan Loh & Wong had acted for your clients in the sale of the above flat only and which was completed on 7th July 2000. *Our record shows that all relevant correspondence and documents in relation to the sale of the above flat had been given to your clients during the process and upon completion of the sale.*
>
> *In this regard, please confirm whether your clients have misplaced the correspondence and documents and are unable to locate them before we furnish copies of the same to you.*
>
> [emphasis added]

40 In his subsequent letter dated 19 March 2003, the respondent stated as follows:

> In our letter dated 21st January 2003, we just wanted to find out if your clients had misplaced documents relating to the sale of the above flat that had been given to them previously. We think you will agree with us that it is no excuse for clients to request, as and when they like it without any valid basis, for documents relating to a matter which was already completed and closed, just because those documents are the property of the clients.

41 In our view, it was immaterial that the complainants had made the request in their

capacity as former, rather than current, clients of the respondent. The fact that the solicitor-client relationship may have ceased upon the completion of the sale did not detract from the respondent's duty to respond timeously to the queries of the complainants (see *eg*, *The Guide to the Professional Conduct of Solicitors* (Nicola Taylor gen ed) (The Law Society, 8th Ed, 1999) at para 12.10, especially sub-paras 1 and 2). In *Law Society of Singapore v Arjan Chotrani Bisham* [2001] 1 SLR 684 ("*Arjan Chotrani*"), the respondent's solicitor failed to provide copies of relevant documents to his former client's new solicitors notwithstanding numerous requests for copies of those documents and despite being told that those copies were necessary for the new solicitors to advise the client on his rights, if any, against the respondent. In holding that due cause had been shown under s 83(2)(*h*) of the Act, Yong Pung How CJ at [18] approved the DC's reference to a solicitor's obligation to release documents to a former client:

> The DC also referred to para 19(b) of the Law Society's Practice Directions and Rulings:
>
> > A solicitor retains documents that come to his possession in the course of his professional services in his capacity as his client's agent. *The property in respect of such documents remains with his client, as otherwise there cannot be a solicitor's lien. Once a solicitor's services are discharged and his fees paid, he cannot refuse a client's request for release of those documents that are the property of his client*. If he requires to retain a set of the documents in anticipation of future complications arising over that matter with his client, he may make copies but he must bear the copying expenses. Documents prepared by the solicitor for his own benefit that belong to him and not the client include his attendance notes, his notes on his work, his accounts sheet in the file and his file cover. *It is no excuse for the solicitor to refuse release to the client of documents that are the property of the client just because the client has previously been provided with copies and/or that the matter is completed*. [Emphasis by the DC.]
>
> [emphasis added in bold italics]

42 The enduring duty of an advocate and solicitor to supply available documentary records has also been acknowledged in several leading treatises on legal practice (see *eg*, *The Guide to the Professional Conduct of Solicitors* ([41] *supra*) at para 12.13, especially sub-para 5). For instance, Prof Tan Yock Lin in *The Law of Advocates and Solicitors in Singapore and West Malaysia* (Butterworths Asia, 2nd Ed, 1998), at p 952 notes that:

> Documents received or prepared by the advocate and solicitor as his client's agent belong to his client and these have to be handed over. The fact that the client has already been given photocopies of all such documents is no excuse not to hand over the original documents when the retainer is discharged and his fees have been paid. …
>
> Although the Law Society's rulings say no more than the foregoing, in the same spirit as what has been said, the client should, at any time, be given such documents or copies of such documents as he may request provided they are at hand and not wanted for a pressing matter.

43 It was plainly inappropriate and improper for the respondent to impose an additional condition on the complainants by requiring them to re-ascertain if they had misplaced the documents. It was immaterial that the complainants may have had copies of the documents in their possession, as they were entitled to obtain a copy of the documents upon paying a reasonable fee for such copies. On the facts, there was no indication that the complainants were unwilling to make such a payment.

Release of the power of attorney

44 Likewise, we were of the view that the respondent's wrongful release of the power of attorney to NBK was wholly irrelevant for the purposes of establishing liability under the first charge.

45 At the outset, we should point out that the basic premise on which the DC had found the respondent liable was, with due respect, rather puzzling. The DC took the view that the respondent's act of releasing the power of attorney to NBK amounted to a breach of the confidentiality rule between solicitor and client: DC Report at para 46. In our view, the focus ought not to have been on the respondent's purported act of *disclosure* to NBK, but rather, on the *nature* of information which was disclosed. This was the threshold question which ought to have been asked. It would then follow that the respondent would only be in breach of his confidentiality obligation if the information was indeed confidential in nature.

46 It is beyond dispute that powers of attorney which are deposited at the Supreme Court are open for inspection, subject to the payment of a prescribed fee. As such, the details in a power of attorney lack the necessary quality of confidence as they constitute "public property" and "public knowledge", and cannot be regarded as confidential (see Lord Greene MR in *Saltman Engineering Co Ltd v Campbell Engineering Co Ltd* [1963] 3 All ER 413 at 415).

47 Had the DC been minded to proceed against the respondent for the wrongful release of the power of attorney, it would have been preferable to proceed on the basis of an alternative charge instead. A case could be made out against the respondent on the basis that he had violated his fiduciary duties to safeguard the complainants' property (*ie*, the power of attorney). The extent of a solicitor's duties in this respect is succinctly set out in *The Law of Advocates and Solicitors in Singapore and West Malaysia* ([42] *supra*) at p 434:

> Where a solicitor is given control or possession of his client's property (other than money), he will have fiduciary duties (although he is not a trustee of the property) in relation to that property. He must keep that property separate from his own. So a solicitor who is given control of his client's title deeds may not deal with [them] as if they were his own but must stand ready to return or deliver [them] as directed by his client.

48 In a letter dated 4 January 2000, the respondent had stated that he would inform the complainants when the power of attorney and the certified true copy were ready for collection. It is not disputed that the complainants had not given express instructions for the respondent to liaise with NBK in this respect. In releasing the power of attorney to NBK, the respondent *prima facie* acted in breach of his fiduciary duties to preserve property which belonged to the complainants. We would mention at this juncture that the respondent had also acted in breach of his obligations under the Rules by relying on NBK as a medium of communication between himself and the complainants. It is lamentable that the terms of r 11A(2)(*f*) of the Rules, which are highly apposite, had not been brought to the attention of the DC. Rule 11A(2)(*f*) mandates direct communications between a solicitor and his client, in the following terms:

> Without prejudice to the generality of paragraph (1), where there is reason to believe that a client is referred to an advocate and solicitor or a law practice by a third party, the advocate and solicitor or law practice, as the case may be, *shall* —
>
> …
>
> (*f*) communicate *directly* with the client to obtain or confirm instructions in the process of

providing advice and at all appropriate stages of the transaction.

[emphasis added]

49 More importantly, the respondent's conduct *vis-à-vis* the power of attorney was another collateral issue which distracted the DC from the essence of the primary complaint, *viz*, that of the respondent's failure to advance the complainants' interests. The release of the power of attorney was only relevant in so far as it constituted cogent evidence of the respondent's partiality towards a third party (Ecstasy) and to that extent served to reinforce the thrust of the first charge against the respondent (see [77] below).

The requirement of notice

50 We do not however conclude from the DC's unfortunate foray into irrelevant terrain that the proceedings became fatally flawed for want or abuse of jurisdiction. Incontrovertibly, a solicitor must be given proper notice of all allegations against him, as illustrated by cases such as *Re An Advocate and Solicitor* ([30] *supra*) and *Re Seah Pong Tshai* ([30] *supra*). This will afford him a reasonable opportunity to deal with any complaint levelled against him. This is an essential facet of natural justice and, more crucially, is also now statutorily mandated by s 89(4) of the Act, which stipulates:

> Where, in the course of its investigation of any matter against an advocate and solicitor referred to it under subsection (1) or (3), a Disciplinary Committee receives information touching on or evidence of the conduct of the advocate and solicitor which may give rise to proceedings under this Part, the Disciplinary Committee may, on the application of the Council, prefer such additional charge against the advocate and solicitor as it thinks fit with respect to such misconduct and, *after giving notice to him*, hear and investigate such charge and section 93 shall apply to such charge accordingly. [emphasis added]

51 This requirement of notice should nevertheless not be assessed rigidly or mechanically. This becomes self-evident when one considers the underlying rationale for the provision of notice. Simply stated, the giving of notice serves to ensure that the solicitor concerned is not caught by surprise when defending himself against possible disciplinary sanction. As such, it accords with common sense that a lack of notice should not vitiate the proceedings where the lack of notice is more technical than real. The decision in *Law Society of Singapore v Wong Kai Kit* [1994] 1 SLR 294 ("*Wong Kai Kit*") is instructive in this respect.

52 In *Wong Kai Kit*, a solicitor acting in a property transaction was found guilty of a substantial delay in accounting to the client for the sale proceeds. The client made specific complaints in relation to the delay in payment, and the failure to pay interest. Five charges were preferred against the solicitor at the disciplinary stage, although the disciplinary committee rejected the fifth charge – the failure to deposit the money by way of fixed deposit in breach of the Solicitors' Account (Deposit Interest) Rules 1970 (Cap 161, 1990 Rev Ed) – on the basis that such charge was different in form and substance from the complaint. The Law Society contended that the disciplinary committee erred in rejecting the fifth charge.

53 The Law Society's contention was accepted by the court, which held that the failure to notify the solicitor of the matters referred to in the fifth charge was purely technical in nature. This was because such matters had been raised by the inquiry committee with the solicitor who had in fact been asked for an explanation and who had been given adequate time to respond. At 305–306, [38] and [40]–[41], Yong Pung How CJ explained the basis for the court's decision in the following

terms:

> We considered the fact that the Privy Council in *Isaac Paul Ratnam*'s case [*Ratnam v Law Society of Singapore* [1975-1977] SLR 39] had said that the statutory notice was an imperative obligation, regardless of whether justice was done in any particular case before the court. What must be included in the notice is prescribed in s 86(6), eg copies of any written application, complaint or information and of any statutory declarations or affidavits that have been made in support thereof. However in the present case, even if the inquiry committee had written to the respondent to give him notice of allegations in the second and fifth charges, no new materials would have had to be sent to him under s 86(6) – that subsection would only have required him to receive what he had already received, a copy of the original complaint by Kimly. All that was lacking was technical official 'notice' posted or delivered to the respondent.
>
> …
>
> … Clearly the matters set out in the second and fifth charges had been brought to the notice of the respondent and his counsel by the inquiry committee and opportunity had been given to provide explanations upon these matters to the inquiry committee. Moreover from the time the respondent became actively involved, the inquiry lasted almost two more months. This was quite sufficient time for at least the beginnings of a defence to those allegations to emerge.
>
> … In short, the lack of notice in *Isaac Paul Ratnam*'s case, although it led to no genuine injustice in that case, was a substantial enough omission to pose real danger of injustice in other cases. In the instant case the lack of notice was more technical than real: no injustice could arise in any case where issues not apparent from the face of the original complaint but which arose in the course of inquiry were presented by the inquiry committee to the advocate and solicitor concerned and he was asked for an explanation and given sufficient time to proffer one. On this basis we would distinguish the instant case from *Isaac Paul Ratnam*'s case, not because the obligation to give notice was any less imperative, but because it was effectively discharged.

54 It is our view that an analogy may be drawn with the approach articulated by the court in *Wong Kai Kit*, notwithstanding that the case dealt with the role of an inquiry committee. The matters relating to the wrongful release of the power of attorney were not, in the natural course of events, within the complainants' knowledge. Thus, the complainants could not reasonably have been expected to mention these matters in the complaint. However, on the present facts, the lack of notice has been more technical than real. The issue as to the power of attorney had arisen in the course of the DC proceedings, and the respondent had been given sufficient time to respond and did *in fact* do so. Further, no new materials had to be provided or obtained by the respondent to respond to this allegation. Similarly, the lengthy delay in the production of documents had been raised as a substantive issue in the DC proceedings and copies of the relevant correspondence had been placed before the respondent. In fact, the correspondence in question emanated from the respondent. The respondent had not been disadvantaged in any meaningful way in the lead-up to the present proceedings.

55 Furthermore, regard must be had to the fact that complaints are more often than not drawn up by a layman unschooled in the intricacies of the law and/or the requirements of due process. Indeed, this was the precise situation here, given that the complainants had received a rudimentary education and had to seek the assistance of a friend to draft the complaint.

56 There is yet another reason why the respondent's arguments on the jurisdiction point should be rejected. Mr Mohan had sought to persuade us that the DC was precluded from delving into the power

of attorney and the statutory declaration as well as the circumstances surrounding their preparation, because this effectively imported the substance of the second and third charges into the first charge. With respect, this contention is misconceived.

57 A distinction must be drawn between the ingredients of the charge preferred and the underlying facts or substratum on which the charge is contextualised. Contrary to Mr Mohan's submission, there had been no duplicity of charges here. The DC had merely been looking at the underlying facts and was fully entitled to have regard to the circumstances surrounding the preparation of the power of attorney and the statutory declaration. It was open to the DC to consider all pertinent facts which went to the substance of the first charge and which disclosed that the respondent had preferred the interests of third parties. The DC was therefore entitled to take into account the respondent's unauthorised release of the power of attorney to NBK.

58 In any case, even if the DC had initially acted outside its remit in hearing and investigating evidence pertaining to the power of attorney and the delay in the production of documents, this was not fatal to the present proceedings. The DC was plainly endowed with the statutory jurisdiction pursuant to s 89(4) of the Act to hear and investigate into fresh matters relating to the conflict of interests point and to even prefer fresh charges once adequate notice of its intention to do so was given to the respondent.

The merits issue

Conflict of interests

59 The DC found the respondent liable under the first charge, on the basis that the respondent had placed himself in a position of an actual or potential conflict of interest, by failing to inform the complainants of his prior dealings and existing relationships with Ecstasy and DK.

60 In our view, this was a sufficient basis to found the DC's jurisdiction to hear and investigate the matter and thereafter refer the matter to this court.

61 On behalf of the respondent, Mr Mohan contended that the respondent had not acted for any of the other parties enumerated in the first charge, *viz*, DK, Ecstasy, Cheung and/or Ali, while acting for the complainants in the sale of the Flat. The respondent was therefore under no duty to disclose his prior dealings with Ecstasy and DK, especially since such dealings were unrelated to the complainants' sale of the Flat. It was the respondent's submission that a potential conflict of interests would only arise in a situation where a solicitor acted for both the complainants and the other parties in the same transaction. We emphatically reject such a narrow definition of an actual or potential conflict of interest.

62 It is established law that an advocate and solicitor owes a duty of unflinching loyalty to his client. This is encapsulated, *inter alia*, in rr 2(2)(*c*) and 25(*b*) of the Rules, which require a solicitor to advance his client's interests unaffected by the interests of any other person during the course of a retainer. This obligation is derived from the fiduciary nature of the solicitor-client relationship, which requires a solicitor to place his client's interests above those of his own as well as those of third parties. In fact, the obligations of a fiduciary go beyond the avoidance of actual conflicts of interest, and extend to proscribe perceived or ostensible conflicts as well. While onerous in its requirements, the duty of unflinching loyalty is an essential cornerstone of the solicitor-client relationship as it ensures that a client may confidently expect to receive impartial and frank advice and in turn repose complete trust in a solicitor to safeguard his interests.

63 Indubitably, the respondent had on record merely represented one party (*ie*, the complainants) in relation to the transaction. While his relationship with the complainants was derived from a referral from DK, this had not culminated in his acting for multiple parties to the same transaction. However, this did not detract from his inherent professional obligations pertaining to conflict of interests and the overriding duties he owed at all times to the complainants.

64 The respondent repeatedly faltered in his indivisible duty to wholeheartedly advance the complainants' interests. Two aspects of the respondent's conduct warrant detailed examination. First, the respondent had clearly compromised the complainants' interests, and subordinated the complainants' interests to his personal interests, and perhaps to the other payees, when he foisted the statutory declaration on the complainants. The respondent acknowledged that he had previously acted for DK and Ecstasy, who were payees named in the statutory declaration. Further, Ecstasy on earlier occasions had also referred work to him. However, the respondent failed to disclose to the complainants the existence of an actual (or potential) conflict of interests between the complainants and these other parties (*ie*, DK and Ecstasy). The respondent inexplicably failed to enquire and/or advise the complainants about the basis and/or the reasons why payments of a rather peculiar nature were being made to his other standing clients. In failing to do so, the respondent appears to have allowed his personal interest in receiving future referrals from these parties, as well as the immediate interests of DK and Ecstasy, to take precedence over those of the complainants. To our minds, this constituted a patent breach of the respondent's obligations under the Rules, which required him to maintain his independence at all times, notwithstanding that the complainants were the subject of a referral. Rule 11A(2) is both unequivocal and uncompromising in its terms and mandates that:

> Without prejudice to the generality of paragraph (1), where there is reason to believe that a client is referred to an advocate and solicitor or a law practice by a third party, the advocate and solicitor or law practice, as the case may be, *shall* —
>
> (*a*) maintain the independence and integrity of the profession and not permit the referror to undermine the professional independence of the advocate and solicitor or law practice;
>
> …
>
> (*c*) not allow the referral in any way to affect the advice given to such client;
>
> (*d*) advise the clients impartially and independently and ensure that the wish to avoid offending the referror does not in any way affect the advice given to such clients;
>
> (*e*) ensure that the referror does not in any way influence any decision taken in relation to the nature, style or extent of the practice of the advocate and solicitor or law practice …

Reference may also be had to r 25 of the Rules, which reiterates the overriding duty of a solicitor to unfalteringly advance his client's interests, albeit from a different vantage point:

> During the course of a retainer, an advocate and solicitor *shall* advance the client's interest unaffected by —
>
> (*a*) any interest of the advocate and solicitor;
>
> …
>
> (*b*) any interest of any other person …

[emphasis added]

65 Second, it must have been obvious to the respondent at a very early stage that the power of attorney was completely superfluous. In the first place, an objective analysis of the facts would show that the power of attorney had become nugatory, given that the complainants had directly appointed the respondent to act in the sale of the Flat and intended to communicate directly with him on this. More significantly, the respondent's legal expertise was, bluntly put, quite irrelevant in this matter. This was conceded by the respondent himself under cross-examination when he admitted that there was little (if any) scope for him to provide professional advice in relation to the sale of the Flat. The standard HDB forms and practices were not modified in this matter. The respondent was well aware that the complainants need not have engaged a solicitor, and could have appointed the HDB itself to handle the sale of the Flat. There was no cogent reason for the complainants to have appointed the respondent, given that the transaction was straightforward in nature, and could have been handled by the HDB for a substantially lower fee. The respondent did not advise the complainants about the availability of such cost savings. Instead, in his letter dated 11 May 2000 (sent after the complainants had signed the warrant to act), the respondent cryptically informed the complainants that they were "at liberty to seek independent legal advice regarding the said sale and the appointment of Vendor's solicitors". The respondent claimed that this sufficed to inform the complainants that they were not obliged to appoint him in the sale of the Flat, and that he had routinely included this statement in letters to clients who had been referred to him by property agents and like parties. In our judgment, the respondent's claims were woefully untenable, as the respondent had not brought home to the complainants that they had another equally secure method of handling the transaction with the added advantage of substantial costs savings. We remain at a loss to understand what professional value or legal comfort the respondent brought or contributed to the subject sale transaction in the prevailing circumstances.

66 In fact, we would go further and conclude that the respondent had been indifferent to the complainants' interests and was blind to the real possibility that the transaction could have been tainted with impropriety. The circumstances in which the respondent prepared the statutory declaration is compelling evidence that the respondent had been actually (or reasonably) aware that the transaction was quite anomalous, to put it mildly.

67 In his affidavit, the respondent referred to a telephone call from the complainants in which the latter expressed their anxiety to complete the sale early and to sign the transfer instrument personally. The respondent was thus aware that the complainants were eager to complete the sale and receive the sale proceeds. In the light of this, it was incongruous for the complainants soon after this communication to have purportedly instructed the respondent to pay the sale proceeds to various other parties instead. It was surprising, to say the least, that the respondent had not queried the complainants why and how they owed, *inter alia*, Ecstasy and DK money, given that the respondent had meaningful dealings with both parties.

68 More significantly, we considered the preparation of the statutory declaration as casting a long shadow of dubiousness over the respondent's conduct. Indeed, the respondent himself had regarded the complainants' instructions to be so unusual that he insisted on their confirmation *via* a statutory declaration authorising him to disburse payments to the various parties.

69 The respondent failed miserably in his attempts to muster any persuasive reasons to explain or justify his conduct. He attempted to contend that he had chosen this course of action because he was concerned that the complainants would later lodge a complaint against him had he failed to comply with their instructions. He testified:

Q: Can I ask you this, Mr Tan? Why did you ask the complainants to sign the SD [statutory declaration]?

A: Now, the complainant in this case gave instructions to give – to pay to several parties so as a matter of judgement, it's either if I were to take – in this case, I took the instruction. It's either by way of letter of authorisation or another way is by SD but *my personal judgement is SD will protect me*. So now I am still in this struggle.

Q: So you were concerned to protect yourself?

A: Also protect the – the clients. They signed before a commissioner for oaths.

Q: How would that protect them?

A: They understand what they have signed. I just want to ensure that they understand what they were signing.

Q: But if you were so concerned, why did you refuse – why didn't you refuse to make payment as – as set out here? *Why didn't you just pay the entire amount to the complainants? Why did you have to go through this rigmarole?*

A: As I say, that is the matter of judgment. If the client never instruct me, how could I do, you know, issue money to any other people? I couldn't.

…

Q : *The question was very simply this: if you were concerned or disturbed about having to pay all these people, why didn't you just pay the complainant what was due to them?*

A : *I could have done so. I could do so but I may – I will – there will be a risk of, you know, complaint for not taking instruction.*

[emphasis added]

70 The respondent's purported reasons for preferring to "comply" with the complainants' instructions were facile and clearly a fig leaf to mask and mitigate his failings. The respondent's fear that he would be the subject of a complaint had he declined to proceed is, simply put, remarkable and unbelievable. The respondent was certainly, even on his own evidence, no conscientious solicitor seeking to protect his clients' interests through the execution of a statutory declaration in order to verify the unwavering nature of their instructions. Rather, the evidence ineluctably points to the fact that the respondent had been solely motivated by self-interest and preservation; the statutory declaration had been clumsily executed for the primary purpose of immunising the respondent (and perhaps the other payees) from the consequences of his serious professional lapse.

The respondent's credibility (or lack thereof)

71 In our view, the respondent's lack of credibility provides further support for our findings that due cause had been shown under s 83(2)(*h*) of the Act. The respondent appears to have been an extremely unreliable witness.

72 A brief examination of the evidence will demonstrate the patent unreliability and

inconsistencies which permeate the respondent's testimony.

The power of attorney

73 Before delving into the circumstances surrounding the respondent's preparation of the power of attorney, some brief observations on a worrying aspect of legal practice may be appropriate. It is fairly common for some law firms to receive substantial amounts of work via referrals made by property agents and/or licensed moneylenders. When loan transactions are involved, the transaction is typically structured in the following manner: a home-owner may borrow a sum of money from a licensed moneylender by offering his flat as security. The home-owner will typically be required to execute a power of attorney in favour of a servant or agent of the moneylender, who is then empowered to act in relation to the sale or the letting of the flat. The moneylender then later appoints or works with a related housing agent to sell the flat. Often, one of these parties may refer the home-owner to a law firm with an existing referral relationship (see [117] below).

74 The facts of the present case more than hint at an existing pattern of referrals and relationships between the respondent and some of the other identified parties.

75 An examination of the salient facts also shows that the circumstances under which the respondent had prepared the power of attorney were somewhat anomalous, and, one might even say, dubious.

76 First, the usual reasons for executing a power of attorney were absent on the facts. The complainants had no ostensible need for a power of attorney, given that they were both Singaporeans with no plans to travel. There was no apparent difficulty in requesting the complainants to sign the necessary documentation as and when required. However, the respondent did not make any inquiries with the complainants as to their reasons for executing a power of attorney. The respondent took the view that the decision to appoint a power of attorney was a strictly commercial one, and that it was unnecessary for him to query the complainants' reasons for doing so. Given the respondent's experience, it was highly probable that the respondent must have considered the complainants' instructions as odd, especially if he had been unaware of the existence of a concurrent loan transaction (as he claimed).

77 Second, the respondent had informed NBK to collect the power of attorney. This was despite the fact that the power of attorney had been prepared on the instructions of the complainants and in the absence of express instructions by the complainants for the respondent to liaise with NBK for its collection. Why had the respondent handed over the power of attorney directly to Ecstasy without further reference to or clarification from the complainants, who were his clients? Who were his real clients?

Inconsistency with objective evidence

78 The respondent's testimony was also in certain crucial areas inconsistent with the objective documentary evidence. In the course of his testimony before the DC, he was unable to furnish any satisfactory explanation for this.

79 First, the respondent has consistently denied knowing Cheung as well as having his contact particulars. This appeared to be in direct contradiction to the documentary evidence. In his letter dated 23 May 2000, the respondent stated that:

> We enclose herewith a copy of HDB's letter dated 19 May 2000 for your attention. Your Attorney,

Mr Cheung Siew Cheong (NRIC No. S6932293/Z) who act for you in the sale, *will* sign the Transfer on your behalf and *will* make a Statutory Declaration that the Power of Attorney made by you has not been revoked. [emphasis added]

80 The respondent thus appeared to have knowledge that Cheung would act for the complainants in completing the sale. The respondent also seemed to assume that the power of attorney would be employed, without the complainants having any further personal involvement in the transaction. Why? The letter leads to a cogent inference that the respondent knew Cheung and his contact details. However, under cross-examination, the respondent claimed that he did not have any contact with Cheung at all. The respondent also assumed that the complainants would want to use the power of attorney mechanism despite admitting that he did not have first-hand information of the complainants' intentions in this respect. It bears mention that the respondent did not have any further conversation with the complainants between the time he had received the warrant to act and his letter dated 23 May 2000.

81 The respondent has also been unable to offer a coherent explanation for the discrepancies between the documentary evidence and his testimony in relation to a further issue. In his letter of 8 July 2000 the respondent suggested that the various deductions would be made directly from the sale proceeds and paid to the various parties, and that only a single cheque (for $48.11) would be forwarded to the complainants. This letter was in line with the phraseology of the statutory declaration. However, this was contrary to the respondent's testimony to the DC where the respondent maintained that he had handed over *all* the cheques (made in favour of the various parties) to the complainants.

The conspicuous lack of attendance notes and contemporaneous written records

82 The Act as well as the Rules do not expressly require solicitors to invariably maintain attendance notes which contemporaneously record all their dealings with clients. Thus, the respondent's failure to maintain attendance notes did not *per se* render him in breach of his professional duties to the complainants (see *Lie Hendri Rusli v Wong Tan & Molly Lim* [2004] 4 SLR 594 ("*Lie Hendri Rusli*") at [63]). However, such failure in the prevailing circumstances lends some support to the inference that the respondent had been, at the very least, indifferent in the discharge of his professional duties towards the complainants. More importantly, the absence of credible contemporaneous written records provides the context in which we came to the view that an adverse inference could be safely drawn against the respondent.

83 Admittedly, the absence of attendance notes did not *ipso facto* deprive the respondent's testimony of all credibility. However, as observed in *Lie Hendri Rusli*, attendance notes may often assist a solicitor in persuading the court on the veracity of his testimony (at [63]–[64]):

> 63 The plaintiff's counsel has submitted that "no weight should be placed on [the solicitor's] evidence" as he was "not able to refresh his memory from looking at his attendance note because he has not kept such a note". Reliance is placed on the following extract from a leading treatise, *Jackson & Powell on Profession[al] Negligence* (5th Ed, 2002) at para 10-174:
>
> > However admirable and comprehensive the advice which a solicitor gives, it is of no benefit to his defence unless it can be proved what advice was given. The solicitor is unlikely to recall after a period of several years what advice he gave to his client on a routine matter. *The best he can do is to describe his usual advice in the particular circumstances or to speculate as to what he "must" have said, which is unlikely to carry as much weight as the recollection of the plaintiff*. There is no substitute for a proper attendance note, recording

the gist of the advice that was given. The lack of attendance notes has materially increased the number of successful claims that are brought against solicitors. It is prudent to confirm advice and instructions in writing. The Law Society recommends that "Solicitors should consider whether it is appropriate to confirm in writing the advice given and the instructions received."

This extract is, in my view, no more than a sound exhortation and salutary reminder to the legal profession to maintain attendance notes. It is quite another matter altogether to assert that the absence of an attendance note is either tantamount to negligence or robs a solicitor's testimony of all significance. Such a contention is *per se* incorrect. There is much to be said in favour of the practice of maintaining accurate attendance notes. They will undoubtedly be of real assistance in clarifying matters and corroborating a solicitor's testimony in the event of a dispute over what has transpired. *However, all that can fairly be said of the absence of contemporaneous notes is that the solicitor may find himself handicapped when the credibility of his evidence is assessed. The solicitor will have to satisfy the court that his recollection of events is case specific and not a convenient reconstruction of events. Given the constant stream of matters that solicitors handle, the solicitor will have to convincingly persuade the court that he is rendering an accurate recollection of a particular discussion in a particular transaction, as opposed to giving testimony reiterating his general practice*.

64 It should also be pointed out that even if such notes were produced, the court will not automatically accept them as conclusive evidence of what has been said or unsaid.

[emphasis added in bold italics]

84 In *Lie Hendri Rusli*, the defendants' solicitor failed to keep attendance notes of a meeting where he had explained certain documents to the plaintiff. The case is somewhat unusual, however, to the extent that the plaintiff himself was found to be an unreliable witness. The solicitor's failure to keep attendance notes was thus not a crucial consideration on the facts. The court went on to underscore the importance of maintaining accurate attendance notes at [71]:

This case should serve as both an invaluable and a practical reminder to the legal profession to:

(a) document the nature and scope of retainers with clients;

(b) maintain reliable minutes of discussions with clients; and

(c) carefully consider whether to document through correspondence significant advice rendered.

Unlike some other jurisdictions, there are currently no mandatory legal provisions specifically prescribing such practices; however, observing such practices, even for routine matters, would be an exercise in precaution and prudence. The defendant has been exonerated in this case simply by dint of the plaintiff's lack of credibility. Nonetheless, it has been unpleasantly subjected to and sorely tested by a montage of variegated claims, not to mention the embarrassment of adverse publicity. With the benefit of *hindsight* it is now apparent that these proceedings could perhaps have been thwarted *in limine* if reliable written records of what had transpired had been maintained. Would it be too much to expect members of the legal profession to take this case as a cue to exercise *foresight* in future by maintaining satisfactory written records of dealings with and for their clients?

[emphasis in the original]

85 The respondent vigorously contended that he could not reasonably have been expected to retain and file the scraps of paper containing the details of the payees and the power of attorney which the complainants had handed to him. We find this assertion odd. One would think that any reasonable solicitor would take pains to retain all relevant documents emanating from a client regardless of how informally these had been received. These documents would be the most cogent contemporaneous evidence of authorisation in the event of a subsequent dispute. Even if we are inclined to give the respondent the benefit of the doubt on this point, the conspicuous lack of attendance notes persuades us that the drawing of an adverse inference would be appropriate. In the course of cross-examination, the respondent acknowledged having kept attendance notes for "long-term matters" such as those concerning probate and family law. However, such notes were conspicuously absent in relation to both the complainants' sale transaction as well as the preparation of the power of attorney. Why? The sale of the Flat involved solicitor-client interaction over a period of time and was most certainly not a one-off event.

86 To sum up, having perused the notes of evidence and after assessing the testimony of the respondent in relation to that given by the complainants, we determine that the respondent's version of events on all material points should be rejected. The respondent appears to have been an unreliable witness and we would therefore view his testimony with serious misgivings.

87 We also contemplate with considerable reservations the respondent's claim that he had not known of NBK's relation to Saudagar (which received $35,050 from the sale proceeds). The respondent alleges that he had only been informed that NBK owned Saudagar just before he drafted his affidavit for the purposes of the DC proceedings. The respondent's awkward and belated attempt to distance himself from Saudagar ought to be taken with a pinch of salt. It was more likely than not that the respondent knew that Saudagar was also related to NBK. In our judgment, this knowledge on the respondent's part was entirely consistent with the established facts. The respondent's knowledge of the ownership of Saudagar by NBK, as well as the unusual nature of the complainants' request to pay out the sale proceeds to various related parties, in all likelihood accounted for the respondent's decision to procure the statutory declaration from the complainants, solely to protect himself and not the complainants.

General observations

88 A brief digression would be appropriate before we move on to consider the appropriate penalty. We have been somewhat handicapped in our deliberations by a rather sketchy DC report and the imprecise factual determinations made therein. It appears that insufficient consideration has been given to several salient features in this matter. This is unfortunate. The DC performs an essential role in the disciplinary process, by assessing standards of professional behaviour, adjudicating on evidential and professional controversies, and thereafter clearly explaining and justifying its findings in relation to the conduct of the solicitor in question. DC members, and in particular chairmen, must carefully sift through all the material facts and not shy away from directly but fairly communicating their findings and views.

89 It was axiomatic that the complainants' and respondent's respective versions of the events were markedly different and inevitably contradicted each other in several material respects. They could not be reasonably reconciled. In the circumstances, given that the DC had the opportunity to observe the parties, its failure to make an express finding on the parties' credibility is, in the circumstances of this matter, regrettable.

90 The DC omitted to make an express finding vindicating the complainants notwithstanding that they had shown themselves to be credible witnesses. This was surprising since the complainants' version of events had been entirely consistent with the facts. According to the complainants, the respondent had handed Zeenath a cheque for $48.11 at the third meeting on 8 July 2000. When the respondent was queried on the amount reflected on the cheque, Ali then passed Zeenath a cheque for $86,461 made in the complainants' favour. The complainants alleged that they had signed the statutory declaration only because they believed that it was necessary for the settlement of the loan transaction. It appears to us that the complainants' explanation was entirely credible on the established facts. They had signed the statutory declaration in the belief (albeit misguided) that they had received the sale proceeds, thereby concluding the entire transaction. It was indisputable that the complainants had received the cheque for $86,411 from Ali. Indeed, the cheque was produced to the DC.

91 A second aspect of the DC's report which left much to be desired stemmed from its failure to adequately examine and appreciate a solicitor's role in the preparation of a power of attorney.

92 Before us, Mr Mohan sought to argue that the respondent was merely required to perform a ministerial role in relation to the execution of the power of attorney and the statutory declaration. The respondent was thus not obliged to inquire into why the complainants wished to appoint an attorney or why they wished to pay the sale proceeds to a third party. This contention was plainly misconceived.

93 Admittedly, no conflict arises from the mere fact that a solicitor may act for both parties involved in the same transaction. This is particularly true for cases where the scope of duties owed by the solicitor to his clients is extremely limited in scope. For instance, a solicitor may merely be required to witness the execution of certain documents. Such duties are more accurately regarded as ministerial duties which do not inherently give rise to situations involving a conflict of interests. The court in *Lie Hendri Rusli* ([82] *supra*) noted at [51]–[53]

> It is not uncommon for a solicitor to act for more than one party in a conveyancing transaction. Indeed, this is the norm in Singapore. In such a situation, the solicitor is not invariably in a position of conflict. The parties share a communality of interests in completing the transaction. … The conflict arises if and when a solicitor cannot fairly and objectively discharge his responsibility to protect each client's interest with the same competence and skill that a solicitor acting for a single party would demonstrate.
>
> In dealing with *standard* banking documentation in straightforward loan arrangements, there will usually be no potential or actual conflict of interests *provided* that the solicitor clearly and adequately explains to the parties the ambit and purport of the documentation generating their responsibilities and liabilities. It must be recognised that in instances of personal facilities the borrower and/or the mortgagor are almost invariably in *no* position to have the lender's standard terms re-negotiated or altered. There is very little scope for a conflict of interests in these types of transactions. An obvious example would be the documentation involved in Central Provident Fund charges. The solicitor's primary responsibility in such cases is to ensure that the multiple clients to loan transactions understand the responsibilities, liabilities and obligations that they are assenting to and/or undertaking. It would be wholly inappropriate to stigmatise the conduct of solicitors who can properly discharge their obligations in such situations as being either unethical or improper. In this context I have found the *dicta* of Sir John Donaldson MR in *Wills v Wood* (1984) 3 Tr L 93 of some assistance:
>
> > *If the terms of the loans are agreed by the clients without their advice and the solicitors*

are merely being asked to give legal effect to the parties' common intention, there may well be no problem. But if either party is seeking advice or the solicitors are involved in the negotiations of terms or either party may thereafter seek to say that sufficient was known to the solicitor to create a duty to advise, the solicitors are clearly exposing themselves to risk of criticism. This may be thought not to be in the interests of the profession as a whole.

It is also sometimes forgotten that there is a public interest element in allowing multiple representations in certain matters; where the conflict often exists more in principle than in fact. Such a practice assists in lowering transactional legal costs in standard matters.

[emphasis in original]

94 Leeway is rightly allowed for multiple representations by a solicitor in certain transactions. This is especially pertinent in conveyancing and loan transactions, where it is not unusual for law firms to receive a substantial amount of work through referrals made by estate agents and/or financial institutions. Thus, the respondent would not necessarily have been in breach of the conflict rules, even if the complainants had been referred to him by DK or Ecstasy for the purposes of effecting the loan, the power of attorney or the conveyancing transaction.

95 However, the respondent erred in taking the view that it was not incumbent on him to query and advise the complainants on why they were executing a power of attorney. This is clearly not a situation where the respondent's duties were wholly ministerial in nature. The respondent's duties in this case went beyond the essentially perfunctory role of preparing a power of attorney and witnessing its execution. The respondent was obliged to take reasonable care to advise and ensure that the complainants understood the implications of executing a power of attorney in the prevailing circumstances. The respondent ought to have asked the complainants for their reasons in effecting a power of attorney given that the usual reasons for executing a power of attorney were absent on the facts (see [76] above). More significantly, the proposed attorney (Cheung) appeared to be a complete stranger to the complainants. The power of attorney prepared by the respondent was extremely broad and far-reaching both in its scope and application. It endowed Cheung with an almost unfettered discretion and power to dispose of the Flat as he saw fit, at any price and to any party. This effectively exposed the complainants to the risk that Cheung could sell the Flat at an undervalue to a related party, and potentially leave the complainants without any form of meaningful recourse.

96 Notwithstanding all this, the respondent had not seen it fit to adequately highlight the grave risks that the complainants took in executing the power of attorney. This was despite the patent fact that the complainants were far from being sophisticated consumers and in all probability lacked an adequate understanding about the nature of the power of attorney as well as its attendant risks.

97 On the facts, there was a real possibility that the execution of a power of attorney had not been initiated by the complainants themselves, but at a third party's behest instead, given that a property agent had accompanied the complainants to the respondent's office. In the circumstances, it was imperative for the respondent to have privately met with the complainants and ensured that the complainants were not acting under any misrepresentation or improper influence and could communicate with him freely. The respondent should have then and there advised on the ramifications of executing a power of attorney and its attendant risks.

98 The respondent compromised the interests of the complainants in the course of acting for them. He did not adequately explain to the complainants their potential legal predicament and failed

to enquire into the context in which the power of attorney was required. Instead, the respondent took the view that he had been obliged to only provide a very limited ministerial role in so far as the preparation of the power of attorney was concerned. Put another way, the respondent merely perceived his role as that of "rubber-stamping" the power of attorney and to ensure that the technical details stated therein were accurate. He mistakenly saw his role as being purely that of a facilitator rather than that of a professional adviser.

99 Admittedly, the respondent had written letters confirming the complainants' instructions to prepare the power of attorney and also to inform the complainants that they were "at liberty to seek independent legal advice" regarding the sale of the Flat and the appointment of solicitors to act for them in the sale. However, this could not exonerate the respondent from his overriding duty to adequately and competently explain the complainants' legal position and the attendant risks. The complainants in this case were paradigm examples of vulnerable clients, given their obvious lack of sophistication and worldliness. The respondent had a duty to take positive steps to explain the nature and consequences of the documents which the complainants had signed. The observations of this court in *Law Society of Singapore v Ahmad Khalis bin Abdul Ghani* [2006] 4 SLR 308 at [68] bear reiteration in this context:

> A more general – and extremely significant – point arises from this. It is that the public rely upon lawyers for wise and effective counsel. This is especially the case when clients are particularly vulnerable. This could be due to a number or variety of reasons – or, indeed, a combination thereof. These include impecuniousness, a lack of schooling and/or language and (invariably, with the exception of legally-trained persons) a lack of legal knowledge. … Lawyers must convey what the precise legal situation is with limpid clarity, taking into consideration the fact that their clients may not always share the same language, intellectual or legal facility as them. The legitimacy of the law in general and of legal personnel in particular depends on this. Still less must laypersons be lulled into a false sense of security and/or into a situation of misinformation. Whenever in doubt, lawyers should clarify. They must begin from the assumption that laypersons are more likely to rely upon them than not – if only because they are professionals schooled in the law and whose calling is therefore to advise on the law in all its various aspects.

100 It is also axiomatic that it is the spirit and intent, rather than just the plain letter, of the professional ethical rules that breathe life and legitimacy into the standards that are relevant in assessing whether a lawyer has discharged his professional obligations. Thus, a lawyer who merely takes cursory steps to explain the nature of the documents may be held liable for breach of his professional duties: *Law Society of Singapore v Vardan Vasantha Lakshmi* [2007] 1 SLR 240 ("*Vardan Vasantha*"). The respondent did not discharge his professional duties by merely sending letters *ex post facto*. In the first place, the letters made no mention of the respondent's invidious position and his dealings with DK and Ecstasy. No disclosure whatsoever was made of the fact that a situation of potential conflict of interests prevailed. More significantly, however, even if the respondent was given the benefit of the doubt and found to have explained the various documents to the complainants, it was undisputed that the respondent had failed to inform the complainants of the risks prevailing in the precise context in which those documents were prepared.

101 Likewise, we took the view that the respondent owed similar, if not even more compelling, duties to advise the complainants in relation to the execution of the statutory declaration. It is particularly disquieting that the respondent failed to explain the intent and purport of the statutory declaration, and had in fact sought to "bind" the complainants by confirming their instructions in the form of a statutory declaration. The respondent's conduct was especially reprehensible and deplorable, given that the statutory declaration had been motivated by the respondent's self-serving conduct and was procured in flagrant disregard of his clients' interests.

The appropriate penalty

102 We now explain the sanction we imposed.

General principles

103 It would be helpful to revisit the underlying principles for disciplinary action and penalisation under the Act.

104 The starting point is found in the seminal judgment of Sir Thomas Bingham MR in *Bolton v Law Society* [1994] 1 WLR 512 at 518:

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

These principles have been endorsed by our courts on numerous occasions: *eg*, *Law Society of Singapore v Heng Guan Hong Geoffrey* [2000] 1 SLR 361 at [28], *Arjan Chotrani* ([41] *supra*) at [38].

105 In *Law Society of Singapore v Ravindra Samuel* [1999] 1 SLR 696, the court held at [11]–[13] that three factors were relevant in a determination as to the appropriate penalty: (a) protection of the public; (b) the need to safeguard the collective interests and reputation of the legal profession as an honourable one; and (c) punishment of the offender. The court also held that a solicitor who had not been shown to have acted dishonestly, but who was shown to have fallen below the required standards of integrity, probity and trustworthiness, would nevertheless be struck off if his lapse was such as to indicate that he lacked the qualities of character and trustworthiness which were the necessary attributes of a person entrusted with the responsibilities of a legal practitioner (at [15]).

106 While the respondent's conduct had fallen far short of the requisite benchmarks of probity, trustworthiness and conscientiousness, the adduced evidence also fell short of proving that he was privy to any fraud perpetrated on the complainants. In short, while the evidence was unsettling, it did not irrefutably establish such a serious defect of character such as to warrant a striking-off order. We also felt, in particular, constrained by the specific findings of fact made by the DC which exonerated the respondent from direct complicity in this unhappy transaction. As such, we determined that a period of suspension would be the more appropriate penalty.

The relevance of mitigating factors

107 Where sentencing was concerned, Mr Mohan pleaded with the court to give weight to the respondent's contributions in the realm of public service, *viz*:

(a) assisting the Law Society by contributing articles for publication in the Chinese newspapers during the SARS period in 2003;

(b) serving the Singapore Armed Forces Reservist Association (SAFRA) as a volunteer lawyer providing members with free legal advice for around ten years until 2005/2006; and

(c) serving in the Citizens' Consultative Committee and as a volunteer lawyer in grassroots organisations for around five years until 2002.

108 Mr Mohan also sought to highlight the fact that this was the first instance when the respondent had been hauled up for disciplinary action. Further, the complainants' loss had not been caused by the power of attorney in any way, as it had not been used.

109 It has now been established that contributions to public service may be taken into account as a mitigating factor in appropriate cases. This is, however, by no means an inexorable rule of thumb but rather a discretionary consideration: see *eg*, *Law Society of Singapore v Chung Ting Fai* [2006] 4 SLR 587 and *Law Society of Singapore v Seah Li Ming Edwin* [2007] SGHC 35 ("*Edwin Seah*") at [31].

110 Nevertheless, it must be noted that public service is often a nebulous concept and not every act of purported "public service" may warrant a lesser sentence. One could quite readily take a less charitable view of the respondent's acts of "public service" and conclude that these acts had not been cloaked with altruism but rather were primarily designed to promote his legal practice. Further, mitigating factors are usually a less persuasive consideration in disciplinary proceedings in contrast to criminal cases, as show cause proceedings are primarily civil rather than punitive in nature: *Law Society of Singapore v Tham Yu Xian Rick* [1999] 4 SLR 168 at [22] and *Law Society of Singapore v Wee Wei Fen* [2000] 1 SLR 234 at [39].

111 Additionally, the respondent's breach of his professional duties, despite Mr Mohan's untiring efforts, cannot be lightly papered over. First, the respondent had been indifferent in the discharge of his professional duties towards the complainants. While somewhat lengthy, the following excerpts from the respondent's testimony invariably reveal the respondent's utter disregard and indifference towards the adoption of an organised system in relation to instructions and documents received in connection with the sale transaction:

Q: So, for example, on the 3rd of January 2000, when you attended to the complainants for the purposes of preparing this power of attorney, did you maintain any attendance notes?

A: I didn't.

…

Q: Have you prepared previous power of attorneys for clients referred to you by Ecstasy Properties?

A: I couldn't recall, may not have been – may not have, previous cases.

Q: So weren't you concerned to find out details about this gentleman who brought these two complainants to your office on the 3rd of January 2000?

A: My concern will be whether the two clients are genuinely, you know, wanting me to act in

the power of attorney.

…

Q: What did the gentleman tell you?

A: The gentleman told me that he was from Ecstasy Properties Services and that the owners are here to do a power of attorney.

Q: Did he say why?

A: I never ask. He didn't say also. It's for me to enquire, to find out whether they genuinely wanted to do a power of attorney, that means the two clients.

Q: So, apart from telling you, what you've just said, did he say anything else?

A: He didn't.

Q: And after that, did you speak to the two complainants?

A: Yes, definitely.

Q: And what did you tell them?

A: I asked them whether they are appointing – they wanted to do a power of attorney for the sale of their flat.

Q: And what was their response?

A: You see, the power of attorney, I also explained. The power of attorney, not only in this case, in all cases. Power of attorney is to appoint somebody to act in their behalf to sign documents for the sale on their behalf and the answer is yes, then I'll ask for their particulars, attorney's particulars, the HDB flat particulars involved.

Q: And how did they give you all these particulars?

A: As for the IC, I ask for. But when come to attorney, they passed me a piece of – just a piece of handwritten scribblednote with name, IC and address on it.

Q: And you do not have his –

A: Of course, I – definitely, I asked "How come no IC?"

Q: Yes, and you do not have this piece of paper with you now?

A: I don't have.

Q: You did not file this piece of paper in your file?

A: It's a very small one, I can't, I don't know. It's not a A4 size. I remember it's –

Q: Sure, but the question is, did you file it?

A: I didn't. Yah, I didn't.

Q: So you didn't retain it?

A: It has been made for – we used it to type it and then later on, I don't know where it has gone to.

112 The respondent further testified about the circumstances in which the statutory declaration had been recorded:

Q: And of course this piece of paper which sets out all these parties and the amounts payable to them, is not in your file?

A: Also, as I said in the – they scribbled in a small piece of paper. And I used it to verify with them.

Q: Now –

Chairperson: Did you just say that because it was in a small piece of paper, you didn't keep it in your file?

Witness: Sorry? I was talking to her.

Chairperson: No, no, no. You just answered that, you know, the details of all these creditors and amounts, you say it was given on a small piece of paper to you and that was the reason why you did not put it in a file.

Witness: No, that was not the reason why I put it in the file – why I didn't put it in the file. I used it – I have to use it to type – to get it typed and then use it back to verify. But later on where it has gone to, I really don't know. Because it may be on the table, someone took it.

113 Secondly, the respondent had failed to diligently apply his mind to the actual and potential conflicts posed by his self-interest and the interests of DK and Ecstasy, in tending to the interests of the complainants. Although there is no rule against lawyers acting for multiple parties in a transaction, it is imperative that clients are apprised of this fact and give their informed consent to the multiple representations. The complainants, however, were deprived of such an option by the respondent's indifferent attitude. The respondent's disorganised manner of dealing with the complainants' matter, as well as his failure to make due disclosure, led inexorably to the conclusion that he had fallen far short of the minimum standards of professionalism that can be legitimately expected from a reasonably competent solicitor.

114 Thirdly, the respondent remained, on his own evidence, blissfully oblivious to the suspicious nature of the entire transaction. In fact, it could even be said that the respondent was "blind" to the potentially prejudicial course of action which the complainants were embarking on. Nowhere was this more apparent than in the respondent's testimony in relation to the circumstances under which the statutory declaration had been executed. As the DC rightly noted in its report, the fact that the respondent felt it necessary to prepare a statutory declaration confirming the complainants' instructions to pay the sales proceeds to the five parties enumerated therein strongly suggests that the respondent himself had found the complainants' instructions to be "unusual". However, instead of querying the complainants as to the reason for their instructions, the respondent "chose" to merely confirm the complainants' instructions by way of a statutory declaration so as to protect himself from

suit: DC report at paras 74–78.

115 Fourthly, it was disconcerting to note that the respondent persisted in his attempts to justify his patent failings. Instead of acknowledging his lapses at the first available opportunity, the respondent opted to challenge the charges levelled against him by casting serious and unfounded aspersions on the complainants' credibility. The respondent contended that the complaint was "frivolous" and "vexatious", and that the complainants had feigned ignorance of the English language. The respondent's conduct was in stark contrast to that of the respondents in *Edwin Seah* ([109] *supra*). There the respondents had not attempted to mask or qualify their wrongdoing in acting in a conflict situation and had instead expressed remorse for the errors of their ways.

Conclusion

116 For the reasons set out above we determined it was appropriate to direct that the respondent be suspended from practice for a period of two years and that he bear the costs of the proceedings.

117 We pause here to make further observations on certain troubling patterns of legal practice that have recently been brought to our attention. It appears that a practice now prevails among certain firms where substantial work is procured through referrals made by estate agents and/or credit companies. It is pertinent to note that such a *modus operandi* can land solicitors who sometimes decide to act for two or more of the parties to the transaction (*ie*, the homeowner, moneylender, and housing agent) into an ethical quagmire. This is amply illustrated by two recent cases where the solicitors concerned faced disciplinary proceedings as a result of their inability to discharge their duties adequately: *Vardan Vasantha* ([100] *supra*) and *Law Society of Singapore v Ganesan Krishnan* [2003] 2 SLR 251 ("*Ganesan Krishnan*"). Even though the facts of the present case differ from those in *Vardan Vasantha* and *Ganesan Krishnan*, it serves as a timely reminder to the legal profession that the onus invariably rests on solicitors to ensure that they conscientiously and assiduously discharge their professional duties. The legal profession plays an integral and crucial part in upholding law and order in society. Solicitors, in addition to facilitating access to justice, are expected to competently advise their clients, unhindered by any actual or potential conflict of interests. While there is nothing wrong in accepting and acting on referrals from other clients or friendly parties, it is impermissible for such practices to threaten or result in the compromise or subordination of the interest of the referred party/client, so as to enhance the interest or advantage of the referring party. We are prepared to affirm that any similar conduct brought to our attention in future may warrant an order for striking off from the solicitors' rolls.

118 It is manifestly clear that public confidence in the legal profession has been diminished by other unfortunate cases involving errant lawyers. Left unchecked, such misconduct will inexorably undermine the dignity of the legal profession and erode the very essence of the solicitor-client relationship, which mandates that a solicitor advance a client's interests wholeheartedly and unstintingly, unfettered by any other competing and/or conflicting considerations.

119 In summary, these proceedings serve as a clarion call, and emphasise that the paramount duty of a solicitor is to conscientiously advance his clients' interests and to unwaveringly avoid all manner of conflicts of interest, whether potential or actual. Solicitors would also be well advised to be tirelessly proactive in ensuring that clients understand all the attendant legal risks of every transaction they enter into. One might even be tempted to articulate as a rule of thumb that the less familiar a client appears to be with the nature of a particular transaction, the more compelling the need for the solicitor to ensure that his client has an adequate grasp of all the legal ramifications and attendant risks.

120 Ethical codes, practices and standards must be religiously observed and adhered to, as an unequivocal affirmation of and testament to the legal profession's undivided commitment to probity, competence and diligence in the practice of the law. However, it must also be stressed that a rigid and formalistic adherence to the codes of practice without a proper appreciation of their spirit, purport and intent may from time to time lead to ethical blindness. The legal profession must constantly and vigilantly guard itself against such lapses if it is to inspire and sustain public confidence. Ultimately, it would be in the enlightened collective interests of the profession to behave ethically, for as pointed out by Jerome R Ravetz in "Ethics in Scientific Activity" in *Professional Ideals* (Albert Flores ed) (Wadsworth Publishing Co, 1988) at p 152:

> The client is dependent for his welfare on the accomplishment of the task; but he is not competent to assess the adequacy of the work done; recognised competence in the set of tasks is legally restricted to those certified to have completed a training of scientific character; and in exchange for the monopoly of practice the group accepts responsibility for the achievement of the purposes of clients. The situation of the professional thus involves an essential fiduciary element; incompetence or malfeasance constitutes a betrayal of the clients' trust. Should this occur, there is a risk of scandal, and the erosion of or loss of the legally enforced monopoly enjoyed by the professional group … It is thus in the long term collective interests of the profession to maintain standards of work and to protect the interests of clients.