IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2019] SGHC 150

Magistrate's Appeal No 10 of 2018/01

Between

Public Prosecutor

… *Appellant*

And

Jurong Country Club

… *Respondent*

Magistrate's Appeal No 10 of 2018/02

Between

Jurong Country Club

… *Appellant*

And

Public Prosecutor

… *Respondent*

JUDGMENT

[Criminal Law] — [Statutory offences] — [Central Provident Fund Act]

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1 These appeals arose from the District Judge's decision in [2018] SGDC 314. Jurong Country Club ("JCC") was convicted of four charges under s 7(1) read with s 58(*b*) of the Central Provident Fund Act (Cap 36, 2013 Rev Ed) ("CPFA") at the close of its trial. JCC has appealed against its conviction and the Prosecution has appealed against the District Judge's dismissal of its application for payment of arrears in contributions and interest under s 61B(1) CPFA.

2 I reserved judgment after the hearing on 3 April 2019. Having carefully considered the submissions of the parties as well as those of Mr Kevin Lee, the young *amicus curiae* ("YAC"), I conclude that the District Judge erred in finding that Mr Mohamed Yusoff Bin Hashim ("Yusoff") was an employee of JCC at the material times. As such, I allow JCC's appeal and acquit it of the four charges. I dismiss the Prosecution's appeal accordingly.

3 I now set out the reasons for my decision.

Facts

4 The District Judge outlined the background facts of this case at [6] to [15] of her Grounds of Decision ("GD"). I shall refer to the facts in more detail as they become relevant in the course of my judgment. It suffices to highlight the following facts at this juncture.

5 JCC was formerly a proprietary club owned by Jurong Country Club Pte Ltd ("JCCL"), a wholly-owned subsidiary of JTC Corporation. On 1 December 2003, JCC took over the business of JCCL. JCC operated primarily as a golf club and golfing services were its main source of revenue. JCC also provided ancillary sports, lifestyle and social services. JCC ceased operations on 31 December 2016 after it was notified by the Singapore Land Authority that its land would be acquired for redevelopment.

6 Yusoff was employed by JCCL on 1 February 1991 as its gym instructor. He then worked under a series of contracts until the club ceased operations. These contracts were negotiated on an annual or biennial basis. Until 31 October 1998, JCCL treated Yusoff as an employee and contributed to his CPF. On 1 November 1998, JCCL purportedly converted his status to that of an independent contractor and Yusoff stopped receiving Central Provident Fund ("CPF") contributions from this point on. This change resulted in the revocation of Yusoff's employee benefits such as paid annual leave, medical coverage, annual wage supplement and so on. Yusoff was also permitted to conduct personal training sessions for non-members at the JCC gym outside working hours.

7 Yusoff was the only gym instructor engaged at the club at least until

2014. Between August 2014 to December 2014, DW5 Wan Xueming Kenric ("DW5") was engaged as an assistant gym instructor. Yusoff testified that this was to cover the hours he was not at the gym, and DW5 agreed that their working hours seldom overlapped. Both parties accepted that DW5 had been an independent contractor. Yusoff testified that there was another gym instructor engaged by JCC for a few months, again to cover the hours he was not at the gym.

8 Investigations began in 2016 after Yusoff approached the CPF Board to enquire whether he was entitled to (employer's) CPF contributions as he found out that JCC would be closing down. The CPF Board found that he was so entitled. This eventually led to JCC's prosecution and trial before the District Judge on the four charges in question.

Decision below

9 The District Judge identified two main issues to be addressed. The first was whether Yusoff was in fact an employee of JCC from 2003 to 2016 within the meaning of the CPFA such that CPF contributions were payable. The second question was whether the s 58(*b*) CPFA offence was one of strict liability (GD at [19]).

10 The District Judge considered that the first question required her to determine whether Yusoff was engaged by JCC under a contract of service, having regard to s 2(1) CPFA which defines "employed" as being, *inter alia*, engaged under a contract of service in respect of which contributions are payable under the Central Provident Fund Regulations (Cap 36, R 15, 1998 Rev Ed) (GD at [21] and [23]). She then observed that a multi-faceted test must be applied. Under this test, the decisive factors in each case may differ, and would

depend on the specific facts of the case. The District Judge described this fact-based "adaptable approach" as logical since employment arrangements are increasingly varied and complex (GD at [26]).

11 The District Judge applied the approach adopted by the High Court in *Kureoka Enterprise Pte Ltd v Central Provident Fund Board* [1992] SGHC 113 ("*Kureoka*"). While the Prosecution had argued that the main focus of any test determining the existence of an employment relationship should be the degree or extent of control exercised and the manner of remuneration, the District Judge noted that the Court of Appeal had stated that control may not be the only, or decisive, factor in *BNM (administratrix of the estate of B, deceased) on her own behalf and on behalf of others v National University of Singapore and others and another appeal* [2014] 4 SLR 931 ("*BNM*") (GD at [24] and [27]). The District Judge took into account the following factors (GD at [29]):

(a) the degree or extent of control exercised by the Club over Yusoff;

(b) whether Yusoff was given any employment benefits;

(c) whether the contractual terms allowed the Club to terminate the relationship without notice;

(d) whether Yusoff was required to render the services personally;

(e) whether Yusoff was required to supply or use his own gym equipment;

(f) whether Yusoff took on any degree of financial risk or made any investment in the running of the gym for the opportunity to profit; and

(g) whether the gym services were an integral part of JCC's business or if they were an accessory to its main business.

12 The District Judge assessed these factors in light of all the evidence adduced, including the various employment contracts between Yusoff and JCC. Particular attention was paid to the contracts dated 1 December 2003, 1 January 2007, 30 November 2010 and 1 December 2015 as they directly related to the four charges before the court (GD at [30]).

13 The District Judge found that JCC exercised considerable control over Yusoff (GD at [34]). The District Judge referred to *Montgomery v Johnson Underwood Ltd* [2001] IRLR 269 at [19] ("*Montgomery*"), where Buckley J held that it suffices for the employer to have no more than a "very general idea" of how the work is done, although some sufficient framework of control must exist. The evidence clearly showed that JCC maintained a sufficient framework of control over Yusoff and this clearly pointed to an employment relationship (GD at [45]). The District Judge further found that the lack of employment benefits was not a reliable indicator that Yusoff was an independent contractor: the evidence showed a lack of clarity as to what benefits JCC was prepared to give him. There was "ambiguity" in the "mixed-up" contract that had been executed in 2007 – *eg*, the provision of 14 days' paid leave was at odds with his alleged status as an independent contractor. According to the District Judge, this ambiguity continued until 2016 (GD at [51]). While other differences existed in the manner JCC treated Yusoff compared to its other employees, such as the fact that Yusoff was not subject to the employee performance appraisal framework, these were the result of JCCL's decision to reclassify him as an independent contractor, ostensibly as part of a headcount reduction exercise (GD at [52] and [53]).

14 Further, the terms of termination in Yusoff's contracts did not change after 1998, and there was no evidence to show that these differed from those JCC's employees were subject to. The right to terminate at will and to discipline, which had been exercised, were strongly indicative of an employer-employee relationship. The contractual terms between Yusoff and JCC did not allow or require Yusoff to engage a replacement instructor when Yusoff was not able to work or on leave, and JCC had paid the replacement trainer directly when one was engaged. The fact that Yusoff was not allowed to delegate or sub-contract to another person meant that his position was "no different from that of an employee" (GD at [54] to [56]).

15 The following factors were at odds with the proposition that Yusoff was running a business on his own account. First, JCC provided and maintained all the gym equipment. There was no evidence Yusoff had been consulted on the gym equipment that was made available, as would have been expected if he had been conducting business on his own account as an independent contractor after 1998. Second, the personal training programmes and the rates for these programmes had to be approved by JCC's Sports and Recreation Committee ("SRC"). Third, Yusoff made no efforts to increase his opportunity to profit, such as by promoting the training programmes. Instead, he trained any member or guest who approached him because of their connection to JCC. Fourth, the overall management and operational costs of running the gym were dealt with by JCC. While the payment of commissions formed a significant proportion of Yusoff's remuneration package, this was "at best" a neutral factor as there were other staff members who had similar arrangements. The contracts and the conduct of the parties therefore did not support the propositions that Yusoff had been running a business on his own account as an independent contractor or that he had invested in the running of the gym (GD at [57] to [65]).

16 JCC had contended that Yusoff's contract was specifically amended in 1998 to allow him to train outsiders in the gym such that he had the opportunity to profit as an independent contractor. The District Judge did not place weight on this submission given that the evidence adduced to show that Yusoff had trained non-members was "rather nebulous". There was also no evidence that suggested Yusoff had publicised his training programmes to non-members outside the club (GD at [63]).

17 Finally, the District Judge found that the gym services were ancillary to JCC's core business. While persons who provide such services are more likely to be independent contractors, this was not true in every case. In any event, the gym services were a necessary part of JCC's business (GD at [67] and [68]).

18 Based on the above reasons, as well as the degree of "permanency" in the relationship between JCC and Yusoff, the District Judge found that Yusoff had been "misclassified" as an independent contractor when he was in fact an employee for the purposes of the CPFA (GD at [69]).

19 The District Judge also held that the s 58(*b*) CPFA offence was one of strict liability. This was because it pertained to an issue of social concern, and imposing strict liability would serve the objectives of the CPFA by encouraging employers to exercise greater care in ensuring compliance with their CPF payment obligations. The District Judge further held that employers could take steps to avoid committing the offence, but that JCC had not exercised "all reasonable care to ensure compliance" in the present case: GD at [76] to [79]. JCC had not sought any legal advice, nor advice from the Ministry of Manpower or the CPF Board. The District Judge thus convicted JCC of the four charges, and imposed fines totalling $3,600 accordingly.

20 However, the District Judge declined to grant the order for payment of arrears in CPF contributions and interest due under s 61B(1) CPFA sought by the Prosecution. She held that the court would have to consider additional and likely untested evidence before coming to a decision on the quantum of the order. This was notwithstanding that the relevant CPF Board certificate pursuant to s 66A CPFA specifying the outstanding sum had been tendered by the Prosecution. The order sought covered 81 additional months of alleged non-payment of CPF contribution sums which were not the subject-matter of the proceedings before her and JCC disputed both liability for and quantum of these sums. Further, the District Judge took into account "the fact that the CPFB has the power under [s 65 CPFA]" to recover the arrears. She declined to grant an order solely in respect of the four convicted charges as well, as it would be logical and practical for the CPF Board to pursue recovery of all arrears in one cause of action (GD at [95] to [97]).

The parties' cases on appeal

JCC's submissions

21 JCC and the Prosecution made submissions on three main issues relating to the convictions. These were: what the appropriate test for determining whether a person is an employee for the purposes of the CPFA is, whether the District Judge erred in finding that Yusoff was an employee, and whether s 58(*b*) CPFA is a strict liability offence.

22 JCC emphasised that the question as to whether a person is an employee under a contract of service was one of contractual interpretation. It submitted that where parties have made a *bona fide* declaration on the nature of the contracts between them, and acted in accordance with that declaration, the courts should have "great regard" to parties' express intentions in determining

the objective intention of the parties and their true relationship. This is distinct from cases where the label is used as a dishonest device or deception to conceal the true nature of their agreement, or where the express declaration does not reflect the true nature of the parties' relationship. In those cases, the court will look behind the label and not be misled by it.

23 JCC cited a number of English cases in support of this proposition. For example, in *Ready Mixed Concrete (South East) Ltd v Minister of Pensions and National Insurance* [1968] 2 QB 497 ("*Ready Mixed Concrete*") at 513, MacKenna J held that a declaration by the parties as to the nature of their relationship may be helpful where it is doubtful what rights and duties the parties wished to provide for. A similar sentiment was expressed in *Massey v Crown Life Insurance* [1978] 1 WLR 676 ("*Massey*") at 679. Lord Denning MR held that where the parties' relationship is ambiguous and capable of being one or the other, this ambiguity can be removed by the agreement they made, which becomes the best material from which to determine the true legal relationship between them.

24 JCC then argued that, on the facts of the present case, Yusoff was an independent contractor between December 2003 and December 2016. There was no suggestion that the clear declaration in Yusoff's contracts from 2004 that he was an independent contractor was intended to conceal a master-servant relationship. Rather, the contracts which stated that Yusoff was an independent contractor removed Yusoff's employee benefits and did not require him to attend staff training programmes unlike full-time employees. Further, Yusoff was expressly permitted to conduct personal training programmes for non-members of JCC, had a large degree of control over the manner in which he ran his operations and had to undertake a degree of financial risk. He also petitioned

a number of members to speak up on his behalf in December 2013 when JCC sought to replace him.

25 The parties' subsequent conduct was consistent with their understanding that Yusoff was an independent contractor. While subsequent conduct is only relevant where it provides cogent evidence of the parties' agreement at the time when the contract was concluded (*Centre for Laser and Aesthetic Medicine Pte Ltd v GPK Clinic (Orchard) Pte Ltd and others and another appeal* [2018] 1 SLR 180 at [51]), the parties' conduct in the present case provided cogent evidence that Yusoff was an independent contractor. Most significantly, Yusoff contributed to his CPF as a self-employed person and did not ask for a reversion to employee status. According to JCC, the relevant factors clearly showed that Yusoff was an independent contractor operating under a contract for service.

26 JCC further submitted that the District Judge had erred in holding that s 58(*b*) CPFA was a strict liability offence. Instead, JCC submitted that a reasonable interpretation of s 58(*b*) CPFA is that *mens rea* is required for this offence, which would involve at least negligence, if not knowledge. This interpretation is suggested by the statutory context of the provision, in particular, ss 58(*a*), 58(*c*) and 61(2)(*b*) CPFA, which also contain *mens rea* requirements. In its skeletal arguments, JCC stated that it agreed with the reasoning of the YAC and also submitted that the *mens rea* requirement was of knowledge or reason to believe (which JCC appeared to equate with negligence).

27 On the Prosecution's appeal against the District Judge's decision not to order the recovery of arrears under s 61B(1) CPFA, JCC submitted that the provision did not permit the court to order the payment of contributions not relating to the subject matter of any charge. In exercising its discretion under

s 61B(1) CPFA, the court ought to apply the principles set out in *Tay Wee Kiat and another v Public Prosecutor and another appeal* [2018] 5 SLR 438 ("*Tay Wee Kiat*") and *Soh Meiyun v Public Prosecutor* [2014] 3 SLR 299 on compensation orders. The s 61B(1) CPFA order should not have been made in the present case as the sums would not have been recoverable in a civil action: Yusoff would have been estopped and the claim was time-barred. Further, this was not a case where the fact and extent of damage is readily and easily ascertainable. The manner in which the sums certified by the CPF Board had been derived is unclear. It would be unjust for an order relating to all 85 months to be made when the evidence for 81 months remained untested, and JCC has not had the opportunity to examine or respond to such evidence.

The Prosecution's submissions

28 The Prosecution observed that the local courts have articulated a flexible multi-factorial approach to determine whether a person is an employee under a contract of service. However, it identified two main drawbacks to this approach. First, it can engender significant difficulties, particularly for vulnerable workers, in determining whether a particular worker is an employee or independent contractor. Second, there must be core, irreducible aspects to the employment relationship that render it distinct from other kinds of working arrangements. This would accord with common sense and be in line with the common law on employment contracts as interpreted by the English courts.

29 As such, the Prosecution submitted that the relevant local authorities can and should be interpreted consistently with a more structured approach. Under the Prosecution's proposed approach, the court should first consider "key factors" such as control, personal service and mutuality of obligations. If these "key factors", taken together, point in a single direction, it would take a strong

preponderance of other factors pointing the other way before a court should decide otherwise.

30 The Prosecution asserted that the structured approach has been consistently adopted by the English courts. It relied mainly on two cases in distilling this approach. First, in *Montgomery*, Buckley J held that it was desirable for a clear framework or principle to be identified and kept in mind (at [23]). The following passage from MacKenna J's judgment in *Ready Mixed Concrete* at 515 was said to be "the best guide and as containing the irreducible minimum by way of legal requirement for a contract of employment to exist" (at [18] and [23]):

> … A contract of service exists if these three conditions are fulfilled. (i) The servant agrees that, in consideration of a wage or other remuneration, he will provide his own work and skill in the performance of some service for his master. (ii) He agrees, expressly or impliedly, that in the performance of that service he will be subject to the other's control in a sufficient degree to make that other master. (iii) The other provisions of the contract are consistent with its being a contract of service.

31 The Prosecution also relied on *Market Investigations Ltd v Minister of Social Security* [1969] 2 QB 173 ("*Market Investigations*") at 183 and 185. According to the Prosecution, Cooke J, in *Market Investigations*, essentially adopted MacKenna J's approach.

32 The Prosecution then argued that its proposed structured approach is consistent with the multi-factorial test adopted in Singapore. Reference was made to *Kureoka*, where Chan Sek Keong J (as he then was) listed control and personal provision of services as the first two factors to be considered in determining whether the hostesses in that case were performing their services as persons in business for their own account. There was nothing in *Kureoka* that contradicted the approaches adopted in *Ready Mixed Concrete* or *Market*

Investigations. Chan J also found that, on the facts, there was mutuality. The Prosecution therefore submitted that *Kureoka* would have been decided in the same manner if the three-stage approach in *Ready Mixed Concrete* was explicitly applied. Similarly, it submitted that the approaches of the Court of Appeal in *BNM* and High Court in *Management Corporation Strata Title Plan No 3322 v Mer Vue Developments Pte Ltd and others (King Wan Construction Pte Ltd and others, third parties*) [2016] 2 SLR 793 were not inconsistent with the approach in *Ready Mixed Concrete.* Instead, the Prosecution argued that the multi-factorial approach was simply an elaboration of the last limb of its structured approach.

33 In the present case, the Prosecution submitted that JCC had "extensive control" over Yusoff, who was obliged to personally provide his services, and JCC was bound to pay him a "retainer fee" as well as to provide work for him. The other provisions of the contract also buttressed the conclusion that Yusoff was an employee. JCC had a right to terminate Yusoff's services (with or without notice) upon the occurrence of various conditions that did not pertain directly to the services he provided, Yusoff did not take on financial risks that suggested he was doing business on his own account, and Yusoff did not provide his own gym equipment or have input on the equipment used. The remaining factors were described as neutral factors which did not support JCC's contention that Yusoff was an independent contractor. The District Judge therefore correctly decided that Yusoff was an employee under the CPFA.

34 The Prosecution went on to submit that the s 58(*b*) CPFA offence is one of strict liability. The CPF scheme relates to an issue of social concern and is a key pillar in ensuring Singaporeans' social welfare. The imposition of strict liability for the s 58(*b*) CPFA offence would promote the objects of the CPFA by requiring employers to ensure that their systems for paying CPF

contributions are sound. Appropriate steps can be taken by employers to avoid committing the offence, and the defence of reasonable care remains available even if strict liability is imposed.

35 As for the s 61B(1) order, the Prosecution submitted that the court can impose an order for the payment of any CPF contributions, together with interest, so long as the contributions are due at the date of conviction, and are duly certified by the CPF Board officer. This interpretation is supported by the text and context of the provision, and would be the most consistent with the legislative purpose of the provision and the CPFA as a whole. Section 61B(1) CPFA was intended to enable the expeditious recovery of arrears without having to commence further civil action. Underlying this concern is the need to ensure that Singaporeans entitled to CPF are able to benefit from the scheme. The Prosecution then submitted that the District Judge erred in dismissing the application for a s 61(B)(1) order. This decision was made on demonstrably wrong principles as the District Judge did not consider that the Prosecution had a *prima facie* case on the basis of the CPF Board certificate that was tendered. Further, the District Judge had dismissed the Prosecution's application despite JCC not raising any real disputes which would have required a protracted enquiry.

The YAC's submissions

36 I had requested the assistance of the YAC with submissions on three main issues. First, what the applicable legal test is for determining whether an individual is employed under a contract of service. Second, whether there is a *mens rea* requirement for a s 58(*b*) CPFA offence. Lastly, whether a court can order payment of arrears in CPF contributions in respect of periods not covered

by the charges in a particular case, and the circumstances under which it should do so.

37 The YAC submitted that the applicable legal test for determining whether an individual is employed under a contract of service is the "multiple factors" test which has as its objective the examination of the true nature of the parties' agreement regarding their working relationship. The YAC also identified a non-exhaustive list of factors which might be relevant. This included factors such as control, the parties' understanding of their relationship, supply of tools and provisions, whether the alleged employee is entitled to take on other work, terms of termination, and whether the work is delegable.

38 On the question of *mens rea*, the YAC submitted that s 58(*b*) requires an offender to have knowledge that the CPF member in question is an employee This would include actual knowledge, wilful blindness, and situations where the employer had reasonable grounds for believing that the person in question was an employee. The offender must additionally have intentionally failed to pay the CPF contributions in respect of the employee. The YAC argued that the offence is premised on the employer's omission to act and an employer can only fulfil his statutory obligation to pay CPF if he is first aware that the CPF member in question is an employee. Moreover, imposing strict liability for the s 58(*b*) CPFA offence may not result in increased compliance. An unintentional offender would not think to consult the CPF Board or the Ministry of Manpower ("MOM") since he would have had an honest belief that a worker is not an employee.

39 The YAC further submitted that his proposed interpretation of s 58(*b*) CPFA is consistent with Parliamentary intention. Section 58(*b*) was intended to be a "truly criminal" offence as opposed to a "quasi-criminal strict liability

prohibition that [is] a gateway for recovery of arrears in CPF contributions under s 61B". Alternatively, the YAC submitted that the absence of *mens rea* would nevertheless be relevant by virtue of the general defences under the Penal Code.

40 Finally, the YAC submitted that under s 61B(1) CPFA, a court may order the payment of arrears in contributions arising from periods not covered by the charges preferred, where such charges have resulted in a conviction. The court should exercise its discretion to order payment of arrears where it is just and fair to do so in accordance with the object of the CPFA. In this regard, the YAC identified a list of factors the court should consider in exercising its discretion. These factors included whether the offender's liability to pay the arrears is controversial, whether the accused has any valid reason to contest the amount due, whether the accused is impecunious and whether the offender would be entitled to claim back the portion of arrears which would have had to be contributed by the employee, amongst others.

Issues to be determined

41 The main issues which were addressed at the hearing of this appeal substantially mirrored the conceptual questions posed to the YAC. These were as follows:

(a) whether Yusoff was an employee for the purposes of the CPFA at the material times;

(b) what the *mens rea* requirement for the s 58(*b*) CPFA offence is; and

(c) whether a s 61B(1) CPFA order can be made in respect of periods not covered by the charges preferred, and whether the District Judge should have made this order.

42 Given my conclusion that Yusoff was not an employee of JCC, there is no need, strictly speaking, for me to address the second and third issues. Nevertheless, the parties and the YAC made comprehensive submissions on these issues, which are of considerable importance and have not hitherto been considered by the High Court. Thus, I take this opportunity to put forth my views in relation to these issues *obiter* in this judgment.

Issue 1: whether Yusoff was an employee under the CPFA

43 Having regard to the parties' submissions as set out above, this issue requires consideration of two distinct questions: first, what the appropriate legal test for determining whether a person is an employee under the CPFA is, and second, whether, applying this test, Yusoff should be considered an employee under a contract of service.

The appropriate test

44 Section 2(1)(*a*) CPFA defines an "employee" to mean any person who is employed in Singapore by an employer otherwise than as a master, seaman or an apprentice in any vessel. The word "employed" is then defined as:

> … engaged under a *contract of service* or apprenticeship or in an employment in respect of which contributions are payable under regulations made under section 77 [emphasis added]

45 As identified by the District Judge and the parties, the relevant question is therefore whether Yusoff was engaged under a contract of service.

46 I accept that the question as to whether a *particular* person should be deemed an employee for the purposes of the CPFA is, to an extent, one of contractual interpretation, in which due regard should be had for parties' intentions. As was observed in *Massey* at 679, there may be situations in which the parties' relationship is ambiguous and the agreement is capable of being construed as either a contract for or of services. In such cases, parties can remove the ambiguity by the very agreement they make with each other. In my view, this is consistent with the general approach our courts take towards contractual interpretation.

47 It is clear and undisputed that the express intentions of parties are not conclusive. JCC rightly accepted that the court must consider whether such declarations reflected the reality of the arrangement. Where the parties have either inadvertently or deliberately used a label (*eg,* of an independent contractor) that does not match the reality of their working relationship, the court should not hesitate to depart from the express wording of the contract (*eg*, by finding that the worker was in fact an employee). In this regard, I note that the Prosecution cited the case of *Autoclenz Ltd v Belcher and others* [2011] 4 All ER 745 ("*Autoclenz*") for the propositions that where employment contracts are concerned, the relative bargaining powers of the parties must be taken into account in deciding whether the terms of any written agreement in truth represent what was agreed, and that the true agreement will often have to be gleaned from all the circumstances of the case (at [35]). Within the CPFA context, this would be consistent with the comments made by the Minister of State for Manpower in 2012, cited to me by the Prosecution (*Singapore Parliamentary Debates, Official Report* (17 February 2012) vol 88 at p 1200 (Tan Chuan-Jin, Minister of State for Manpower)):

> … in instances where employers attempt to disguise their employees as "freelancers", let me emphasise that they would not be absolved of their responsibilities under the law, including the Employment Act and the [CPFA]. …

48 This is essential to ensure that the statutory entitlements of employees are not easily removed through the mere insertion of express terms in the contract that are at odds with the parties' actual relationship.

49 It is therefore necessary to first identify the characteristics which would suggest an employer-employee relationship at law. The multi-factorial approach under which the court looks at the totality of the parties' working relationship with reference to a non-exhaustive list of factors should continue to apply. This assessment should be done holistically, and with due regard to all relevant factors.

50 I decline to affirm the Prosecution's structured approach. The consistent thread through the local authorities is that the applicable test is flexible and fact-sensitive. For example, in *National University Hospital (Singapore) Pte Ltd v Cicada Cube Pte Ltd* [2017] SGHC 53 ("*NUH*"), Aedit Abdullah JC (as he then was) held at [84] that there is no single, general test that is determinative of whether a person is an employee, or a mere contractor or supplier for services. Instead, Abdullah JC identified a number of expressly non-exhaustive factors which had been distilled from the authorities. I accept that the Prosecution's structured approach was not technically inconsistent with Abdullah JC's observations in *NUH*. That said, in my view, it is not possible to discern a clear reason why one set of factors should be given particular emphasis, or to set out a general rule which places significant weight on these factors in all cases.

51 Instead, it would be preferable to retain a flexible approach that is adaptable to different industries and working conditions. For example, the

parties accepted that the factor of control is of less significance where the employee has been retained on account of his special skills or expertise. I note that the Prosecution cited Cooke J's statement in *Market Investigations* at 183 to the effect that where the worker has particular skill and expertise, the employer cannot direct the worker as to how to carry out his work. In such circumstances, "the absence of control and direction in that sense can be of little, if any, use as a test." While the Prosecution also cited *Montgomery* at [19] for the proposition that "some sufficient framework of control must surely exist" even where direct control is absent, I do not see how placing significant weight on control would be useful in these situations. This is because an element of control would, in any event, generally not be inconsistent with an independent contractor relationship: see, *eg*, *BNM* at [25]. Therefore, to my mind, it is unhelpful to set out general rules as to which factors should carry greater weight. This must be a determination made by the relevant court, having regard to all relevant facts and circumstances before the court.

52 Further, the Prosecution suggests that courts should *first* consider the irreducible aspects of the employment relationship as they may otherwise overlook the factors that distinguish an employment relationship from other working arrangements. In my opinion, this step-wise approach is somewhat artificial. The factors of control, personal service and mutuality of obligations ought to be understood and evaluated in context, and with reference to other considerations, *eg*, industry practices and the parties' intentions. This is particularly since there may be a degree of overlap between these factors. For example, the District Judge considered the termination clauses Yusoff was subject to as relevant to control, but also as an independent factor pointing towards an employment relationship.

53 Finally, while the Prosecution observed that criticisms regarding the difficulty in applying the multi-factorial approach have been made, it is not clear to me those criticisms are necessarily cogent or weighty, or that the structured approach is more capable of consistent application. In so far as the Prosecution suggested in its submissions that "if [the three] factors are present, generally an employment relationship will be found", I do not think this can be correct. This is because all three factors of control, personal service and mutuality of obligations are, to an extent, assessed on a spectrum. The fact that all these three factors are present would not necessarily be conclusive. Ultimately, the court must engage in a qualitative balancing exercise that must be sensitive to the specific facts of the particular case. This would still be the case under the structured approach, where there would be considerable difficulty in assessing to what extent the three factors, taken together, are strongly suggestive of an employment relationship, or otherwise.

54 As such, when considering whether a particular person is an employee for the purposes of the CPFA, a court should have regard to the parties' intentions, either expressly stated or evinced through the terms of the engagement. This is particularly where there is no evidence of a lack of good faith and no indication that the parties have tried to conceal the true nature of their relationship to avoid payment of CPF contributions. Thereafter, it is necessary to consider the totality of the parties' working relationship, and to determine whether this was consistent with the parties' express intentions. At this stage, the court ought to consider all relevant factors, including those identified by Abdullah JC at [84] of *NUH*.

55 For completeness, I address two other points made by the Prosecution in its submissions. It appears to me that a key point of disagreement between the Prosecution and JCC was whether the reasons for an employer's exercise of

control over an alleged employee were relevant. There was some suggestion by the Prosecution that the operational or business reasons underlying the presence of control were unimportant, and that it was the *fact* that JCC maintained significant control over Yusoff that should be given weight. This was a somewhat puzzling contention. The Prosecution had rightly agreed that the extent of control exercised has to be considered in the context of the type of work being undertaken and the level of skill involved in performance of the work. This essentially amounted to a consideration of an underlying reason for the extent of control exercised. I do not see why the operational or business reasons for, *eg*, dictating Yusoff's working hours should be treated differently. In assessing whether a particular factor is suggestive of an employment relationship or not, the court should instead take a pragmatic and holistic view of the circumstances. This is especially since the existence of any given factor may not in itself point one way or the other: the mere presence of control, for example, is not inconsistent with either an employment or independent contractor relationship.

56 The Prosecution also argued that the "presence or absence of employment benefits would generally be a neutral factor when the question is whether a worker would be entitled to certain benefits". Allegedly, employers would otherwise be able to prevent workers from claiming employee benefits by taking away even more benefits. While the court should be aware of the relative bargaining powers of the employer and employee, this should not detract from their freedom to determine the terms of their working relationship. These terms would include the benefits provided under the contract. Further, I do not think that taking into account the provision of employee benefits as part of the multi-factorial approach results would lead to the consequence suggested by the Prosecution, since this factor would only be one facet of a wider,

composite analysis. There is also some authority to the effect that the provision of employee benefits is a relevant factor, which I agree with. For example, in *NUH*, Abdullah JC stated that a person who was contractually entitled to medical leave and related benefits was more likely to be an employee (at [84(g)]). Thus, under the multi-factorial approach, courts should consider whether the package of benefits provided to the worker as a whole suggested that that the relationship was one of employer and employee.

57 I turn next to assess the relevant indicia of employment where Yusoff was concerned.

Assessment of the relevant indicia of employment

58 I note at the outset that the contracts entered into by the parties expressly referred to Yusoff as an independent contractor, and also stated that they were "contract[s] for service". The contracts further stated that nothing in their terms should be construed as constituting or having the effect of creating an employer-employee relationship. It is pertinent to note that the Prosecution's case does not appear to have been that this was a deliberate or *mala fide* attempt to conceal an employer-employee relationship. Instead, the Prosecution appeared to concede that JCC had (at least at some point) a genuine and honest belief that Yusoff was not an employee.

59 The question is therefore whether the label of "independent contractor" utilised by the parties accurately represented their true relationship. This should be answered adopting the multi-factorial approach.

60 Taking the Prosecution's case at its highest, I begin my analysis by applying its structured approach and examining the three "key factors" first. Even then, it remains unclear to me that the factors of control, personal service,

and mutuality of obligations pointed incontrovertibly towards employment in this particular case.

Control

61 I broadly agree that JCC had some level of control over the manner in which Yusoff carried out his responsibilities. However, in context, I think this was a neutral factor that did not point towards a finding that Yusoff was either an employee or an independent contractor.

62 Specifically, the fact that Yusoff had to use a punch card system when he reported to and left work was unremarkable. The District Judge noted at [35] of the GD that Yusoff had been subject to the same system throughout the time he was at the club, including when he had been classified as an employee. A similar method was also used to track JCC's employees. I accept that this suggested JCC exercised control over Yusoff's working hours and attendance. However, I do not see how this would have clearly suggested an employment relationship. The fact that the same system had been used throughout the time Yusoff worked at the club was immaterial and could equally have been due to some administrative or operational reason, or simply pure convenience. Indeed, JCC argued that Yusoff had to use a punch card in order for it to track the number of days Yusoff worked, so that the appropriate deductions could be made from his salary. Yusoff had also agreed in his examination-in-chief that it would have been important for JCC to know when he would be at work, and that was the reason he had been asked to use to punch card system. The fact that Yusoff had to use this system was therefore equally consistent with an independent contractor relationship.

63 For similar reasons, the fact that Yusoff's working hours were fixed in each contract, and that JCC retained absolute discretion to alter them were also neutral factors. Yusoff's evidence was that JCC's members had requested for his presence at specific timings, and that this was taken into account when his working hours were fixed in the contracts. In this context, it was unsurprising that JCC retained control over the work hours of Yusoff, who was its sole gym instructor for many years. This would have given it the flexibility to make any necessary arrangements to cater to its members. To my mind, this factor again did not point clearly to either an independent contractor or employer-employee relationship.

64 I turn now to the fact that Yusoff had designed his personal training programmes with little or no input from JCC, and that he had carried out his work without supervision. These were also neutral factors. Yusoff had been employed as a trained expert in the field of fitness training, and the lack of direct and specific control over the manner in which Yusoff carried out his work was hardly surprising. As alluded to above, the absence of control and direction in such circumstances is generally of little significance: *Market Investigations* at 183.

65 I also considered the following facts. The personal training programmes developed by Yusoff were submitted to the SRC for their approval. JCC also determined the rates for training programmes and facilitated the collection of payment. Further, JCC was contractually entitled to give "lawful and reasonable instructions" and dictated the rules and bylaws Yusoff had to enforce. This included rules on what Yusoff had to do to maintain the cleanliness of the gym. Again, to my mind, these were neutral factors when seen in light of the fact that the training programmes were being carried out at a club, and catered primarily to JCC's members. In this context, the fact that JCC retained oversight of the

training programmes, the rates charged, and facilitated payment, could be consistent with either an independent contractor or an employer-employee relationship. I also accept JCC's submission that it had to ensure that certain standards were met at the gym, and that this did not detract from Yusoff's status as an independent contractor. As JCC submitted, it was reasonable for a club being run for the benefit of its members to subject its independent contractors to a certain degree of control.

66 I should also state that even if Yusoff considered himself bound to train any member who approached him, as contended by the Prosecution, this would not be at odds with his being engaged as an independent contractor. Again, it is relevant that Yusoff was engaged as the sole gym instructor at JCC at least until 2014, and that JCC's gym was intended to cater primarily to its members.

67 The Prosecution also argued that JCC had exercised scrutiny over Yusoff by disciplinary means. Yusoff testified that if he broke JCC's rules or bylaws, Mr Raymond Ong would administer a verbal warning followed by a warning letter. He further testified that he had been verbally warned by Mr Raymond Ong when a member complained that Yusoff had not given that member sufficient attention. I note that while Yusoff had agreed this was a "warning", his evidence was also that Mr Raymond Ong had not told him that there would be any consequences, but had merely informed him that JCC had received a complaint. In any event, I accept JCC's submission that it had to ensure certain standards were met given the context of its operations as a golf and country club, and its ability to do so did not detract from Yusoff's status as an independent contractor.

68 The District Judge also found that Yusoff was not permitted to take leave as and when he wanted. Instead, whenever Yusoff wanted to take leave, he had

to fill in a leave application form and to explain why he was applying to take leave. Where this was for a medical reason, he had to submit a medical certificate to support his application. Where Yusoff intended to take a long period of leave, he had to apply three days in advance. From 2010, the contracts stated that any application for leave would be subject to JCC's rules and regulations, as well as the approval of "Head Lifestyle". While there was some dispute as to whether approval was in fact necessary, I accept that, under the contracts, Yusoff's applications for leave (at least after 2010) were subject to JCC's approval. Again, seen in light of the fact that Yusoff was the sole gym instructor at least until 2014, this was a neutral factor. It was also eminently reasonable and practical. I could not see how else JCC would have been able to plan and arrange for its gym operations if Yusoff could simply come and go as he pleased, especially since he was not expected to arrange for a replacement to cover his duties. While the District Judge placed weight on the fact that DW5 was not subject to the same leave application process and merely had to inform the Lifestyle Manager over Whatsapp when he wanted to take leave (GD at [43]), this was, to my mind, also a neutral factor. This was especially since there was evidence that the process used by Yusoff was *also* different from that used by JCC's employees.

69 Finally, JCC had a right to terminate Yusoff's services (with or without notice) upon the occurrence of various conditions that did not pertain directly to the services he provided. In addition, JCC had the unilateral right to review and alter the terms of the contract. While I accept that these factors, on their own, would have been suggestive of a high level of control, they did not incontrovertibly point to an employment relationship in the present case. In coming to this conclusion, I took into account the fact that JCC's right to alter the contract was limited in that this could only be done in order to fulfil the

objectives of the contract. Further, in so far as termination without notice was concerned, JCC's right to do so was predicated upon the occurrence of a limited list of events. With the exception of bankruptcy and the commission of a criminal offence, the other prescribed events were related to Yusoff's job performance. In any event, in determining whether the factor of control was suggestive of an employment or independent contractor relationship, these were merely two facts to be considered along with the ones discussed above.

70 Having considered the factors above, I agree that they indicate that JCC exercised a degree of control over the manner in which Yusoff did his work. For the reasons I have already alluded to above, considered in context, the degree of control was nevertheless a neutral factor overall that did not clearly point to either an employment or independent contractor relationship. I conclude thus primarily because the level of control and supervision in the present case would not have been inconsistent with either a finding that Yusoff was an independent contractor or that he was an employee. I therefore do not agree with the District Judge's finding at [45] that the fact that JCC "maintained a sufficient framework of control over [Yusoff] from 2003 to 2016 … clearly pointed towards an employment relationship".

Personal service

71 I shall examine the factor of personal service next. The District Judge held that the fact that Yusoff's contract did not allow him to delegate or sub-contract his responsibilities to another person meant that his "position was no different from that of an employee". The District Judge also noted that it was JCC who arranged for a replacement instructor when one was necessary, save for one occasion when Yusoff had introduced an instructor to JCC. Even then, JCC paid the replacement trainer directly (GD at [55] and [56]). The Prosecution

observed that Mr Raymond Ong had characterised this as a favour on Yusoff's part. On the other hand, JCC argued that Yusoff "indirectly" paid the part-time gym instructor: since Yusoff had no paid leave benefits (with the exception of the "mixed-up" 2007 contract), a portion of his remuneration was deducted whenever he went on leave.

72 In my opinion, the fact that Yusoff was not contractually entitled to delegate his responsibilities and had to perform them personally was another neutral factor. As the Prosecution acknowledged, this inability to delegate was "unsurprising" given that a core part of his work involved the personal training of clients. Further, the fact that the replacement instructor was generally arranged for by JCC should be understood in light of the fact that JCC had on occasion deployed one of its full-time staff to the gym to ensure safety there in Yusoff's absence instead of engaging another instructor. Yusoff also testified that he had been told by the members that the staff member deployed there would not stay in the gym full-time, but instead would only be there for five to ten minutes. Considered as a whole, while there was an obligation for Yusoff to personally fulfil his responsibilities towards the club, this did not clearly point to either an employment or an independent contractor relationship.

Mutuality of obligations

73 In relation to mutuality of obligations, the Prosecution rightly noted that personal training of members was only one aspect of Yusoff's duties as the gym instructor. The contracts entered into between the parties over the years consistently indicated that Yusoff was to supervise all gym activities and to ensure the safety of gym users. The contracts further stated that the provision of structured gym lessons were not to interfere with his overall duties and responsibilities. Therefore, I agree there was mutuality in the sense that Yusoff

was obliged to provide his services as a gym instructor and JCC was obliged to pay the "retainer fee" and to provide work for Yusoff. There was some suggestion by JCC that there was no contractual limit on the number of days of unpaid leave Yusoff was allowed to take, at least before 2010. The contracts from before 2010 in evidence did not place a limit on the number of days of unpaid leave. Yusoff confirmed this in his examination-in-chief. A limit was only specified in the contracts from 2010 to 2015 which stated that Yusoff would be allowed to take 14 days of unpaid leave, subject to the approval of JCC. However, Yusoff's evidence had been that there were one or two years in which he exceeded the 14-day limit during this period. JCC had allowed it on the condition that he found a replacement. Considered in totality, while I agree that there was mutuality, I do not think once again that this was inconsistent with an independent contractor relationship. Indeed, it appears to me that an element of mutuality will usually be present in contracts for service as well.

74 As such, I do not think the Prosecution's three "key factors" of control, personal service and mutuality of obligations, taken together, can be said to point unequivocally towards a single conclusion. I turn now to consider the other relevant factors.

Financial risks, earnings and ownership of assets

75 The Prosecution contended that Yusoff did not take on any independent financial risks separate from those undertaken by JCC. In this connection, the Prosecution relied on the fact that the rates set for the personal training programmes were ultimately decided upon by the SRC. Yusoff's pay structure was also not inconsistent with employee status. The fact that Yusoff's commission of 70% to 80% was higher than the usual fees in commercial gyms was not indicative of an independent contractor relationship or of independent

financial risks borne by Yusoff. The training of non-member clients also did not amount to Yusoff running his own business. At best, this was an additional benefit provided to Yusoff that did not alter his relationship with JCC. Finally, the fact that Yusoff was not required to supply or use his own gym equipment was indicative of an employment relationship.

76 I am conscious of the relevance of these factors highlighted by the Prosecution. In *BNM*, the Court of Appeal had placed weight on the fact that the independent contractor undertook the risks of running its business, had its own assets and personnel, retained its own profits, took out its own public liability insurance and so on in finding that the company was carrying on a business on its own account (at [32]).

77 However, these factors are by no means determinative. As the YAC argued, the extent to which the supply of tools and provisions is relevant would depend on the industry in question. The YAC suggested that where these tools are large, immobile or costly, the fact that the tools were provided by the alleged employer may not be indicative of a contract of service. This appears eminently sensible and applicable to the present case, where gym equipment was involved. It is quite unimaginable that Yusoff (or any personal trainer or gym instructor for that matter, perhaps with the exception of a gym owner-instructor) might have to purchase and provide his own treadmills, weights machines or elliptical cross-trainers, just to name a few common items of equipment one might expect to find in any reasonably well-equipped gym. The fact that JCC had provided the equipment without input from Yusoff should equally be viewed in this context.

78 Further, to my mind, it is relevant here that Mr Farrock Ebrahim testified that the gym was a "must-have" for JCC: understood in context, the fact that

JCC provided the equipment, subsidised the cost of running the gym and controlled the rates charged for the personal training programmes was unsurprising. I accept that the financial risks adopted by Yusoff were in line with those accepted by JCC: if Yusoff earned more through commission payments, JCC would similarly earn more as well. However, while Yusoff was not at liberty to decide the rates charged for his programmes, he did have an element of control over how much he earned. For example, he designed the programmes with limited input from JCC (even though the latter had to approve them). To this extent, he did have an "opportunity of profiting from sound management in the performance of his task": *Market Investigations* at 185, cited in *Kureoka*. I therefore did not think that this factor strongly pointed to an employment relationship.

79 I note also that, to the extent that it is relevant to consider whether the gym services were an ancillary or core portion of JCC's business (see [84(a)] of *NUS*), the fact that JCC had considered to engaging the services of an independent contractor (*ie,* Fitness Motion) to replace Yusoff would be relevant as well.

Renegotiation and renewal of the contracts

80 Of potential relevance was the fact that Yusoff's contract was renewed on an annual or biennial basis. The District Judge stated that she "could not ignore the fact that there was a certain degree of permanency" in Yusoff's relationship with JCC, and that she had taken into account the fact that Yusoff worked at the club for about 25 years when assessing the other relevant factors. According to the District Judge, the evidence showed that there was some expectation on the part of both parties for the relationship to continue

indefinitely. This was qualified by her acknowledgment that this did not necessarily mean that Yusoff was an employee (GD at [69]).

81 I disagree with the District Judge's characterisation of the evidence. The fact that the contracts were renegotiated on a near yearly basis suggested that the parties understood that Yusoff's employment was not intended to be permanent or for an indefinite duration. The contracts entered into specified the length of the engagement to be between one to two years each. Further, evidence to the effect that JCC had intended to replace Yusoff's services with those of an independent contractor named Fitness Motion was also adduced. In so far as the "permanency" of employment is relevant, therefore, this would have been a factor pointing towards an independent contractor relationship. Moreover, despite the 25-odd years that Yusoff had spent working at JCC, the purported change in his employment status from employee to independent contractor was made after only seven years or so.

82 That said, I have not placed considerable weight on this factor. This is because I agree that the length of the relationship or any expectations the parties may have of this is not in itself strongly indicative of either an employment or independent contractor relationship. This is illustrated by the fact that Chan J in *Kureoka* had, in the alternative, described the arrangement as comprising successive short contracts of service each time a hostess reported for work. However, this factor may, in certain circumstances, take on more significance. For example, in *Montgomery* at [40], Buckley J stated that "[i]t may … be more difficult to find that necessary mutuality in a very short assignment as opposed to one which was or had become more permanent."

Remuneration and commission

83 The fact that Yusoff's remuneration package was weighted towards commission may be characterised as suggestive of an independent contractor relationship. I note that in *NUH*, Abdullah JC held that a person who was remunerated through a regular salary rather than commission was more likely to be considered an employee (at [84(b)]; see also Ravi Chandran, *Employment Law in Singapore* (LexisNexis, 5th Ed, 2017) at paras 1.35 and 1.36). In context, however, this fact, taken alone, does not point strongly towards an independent contractor relationship. This is especially since JCC apparently had a number of employees who also had a remuneration package with a variable component.

Comparative working arrangements and benefits

84 Both parties attempted to compare Yusoff's working arrangements with those that applied to JCC's other employees. To my mind, the evidence on this was cogent and clearly indicated that the parties intended for Yusoff to be an independent contractor. The District Judge identified a number of differences between JCC's treatment of Yusoff and its employees at [52] of her GD. The Prosecution did not dispute that these differences existed.

85 These differences were pertinent and merit some elaboration. Yusoff was not on JCC's list of employees which was used for budgeting purposes, and was not invited to staff functions such as JCC's "Dinner and Dance". The HR manager Ms Teo Peh Yen ("Ms Teo") testified that the "Dinner and Dance" was compulsory for *all* employees, and that the failure to attend would have resulted in a deduction of one day's leave. Yusoff had only been invited to this dinner while he was classified as an employee, and never when he was employed by JCC. Further, Yusoff did not report to the HR department, was not issued the HR manual, was not subject to JCC's employee performance appraisal

framework and had no key performance indicators to meet. The latter two factors were particularly significant in view of Ms Teo's evidence that employees would usually get a yearly increment depending on their performance, as indicated on their appraisal forms. In contrast, Yusoff was not subject to this appraisal process and was not eligible for annual increments. Any increment to Yusoff's pay instead resulted from the re-negotiation of his contract.

86 The evidence further suggested that Yusoff was given biometric access only to the gym, unlike employees who could access all areas of JCC's office. JCC also did not require Yusoff to sign personal data protection forms even though it required this of all employees. The identification number given to him was also distinct from that given to staff members. In my opinion, these differences were deliberate; they demonstrated that the parties' express intention for Yusoff to be treated as an independent contractor was not deceptive or at odds with reality. Instead, the conduct of the parties provided cogent evidence of their agreement for Yusoff to be an independent contractor, in form and substance, throughout the entire period of engagement.

87 The benefits Yusoff received under the contracts were also indicative of an independent contractor relationship. The District Judge found that the fact that JCCL continued to provide the insurance required under the Workmen's Compensation Act from 1998 to 2002 called into question JCC's claim that Yusoff's position had changed to that of an independent contractor from 1998 (GD at [48]). This insurance had been provided despite the fact that there was some indication JCCL had not intended to do so when converting Yusoff to an independent contractor. However, as the Prosecution rightly acknowledged, the entitlement to insurance was withdrawn from the 2003 contract onwards. The 2003 contract was dated 1 December 2003, the same date JCC took over

ownership and management of the club. In so far as the arrangement with JCC is concerned, it appears to me that no weight should be placed on the provision of insurance to Yusoff by JCCL. If at all, the removal of the contractual entitlement to insurance in the 2003 contract was entirely consistent with Yusoff's alleged status as an independent contractor.

88 In addition, Yusoff was not given medical benefits, hospitalisation leave, or medical leave under the contracts he entered into with JCC. As indicated above at [56], this may be indicative of an independent contractor relationship. This is particularly since the removal of these benefits in 1998 coincided with the purported formal change in Yusoff's status from employee to independent contractor. While I note that Yusoff was given paid leave in 2007 upon his request, this was an anomaly in the otherwise consistent position taken on employee benefits in his contracts with JCC spanning 2003 to 2016. Taken at its highest, this was a neutral factor that did not point clearly to either an employment or independent contractor relationship.

89 Another significant factor was the fact that Yusoff had been permitted to conduct public programmes in the JCC gym after his stipulated working hours in the contract dated 29 October 1998. This was the first written contract following JCCL's decision to retain him as an independent contractor. By 1 December 2003, the contract expressly stated that these public programmes could be conducted for non-members as well. This was in contrast to the general position that employees were not allowed to engage in personal work at JCC's premises without permission from the Management, as illustrated by the HR Policy Manual ("the Manual") JCC referred me to. The Manual also suggested that engaging in any employment or business without written approval from the General Manager would result in dismissal of the employee. Whether or not Yusoff had in fact exercised this right was not material. As was held in

Consistent Group Ltd v Kalwak [2007] IRLR 560 at [58], cited in *Autoclenz* at [25], the mere fact that a right conferred has not been exercised does not render the right meaningless where the clause reflects what might realistically be expected to occur. In any event, there was undisputed evidence that Yusoff had trained non-members of the club, as is indicated by the deduction of guest fees from his payslip (exhibit D5). To my mind, the fact that the 29 October 1998 contract provided for this right signalled a substantive shift in Yusoff's rights under the contract that was consistent with the formal shift from his status as an employee to independent contractor. In so far as the Prosecution characterised the permission given to Yusoff to conduct these programmes as an "additional benefit", it appears that this was a benefit conferred on Yusoff because of the desired change in his status to that of an independent contractor.

Evaluation and conclusion on Issue 1

90 Having assessed the factors above, I conclude that the reality of the parties' working relationship was not at odds with the express intention for Yusoff to be an independent contractor. This was mutually understood and accepted between the parties. There was no subterfuge on JCC's part. Neither was there any indication that the label utilised was fraudulent, dishonest or deceptive. This was underscored by the fact that Mr Raymond Ong testified that there had been an agreement with Yusoff for the latter to be engaged as an employee upon the expiration of his 2015 contract. This did not materialise as the land on which JCC operated was later acquired by the Singapore Land Authority.

91 In its written submissions, the Prosecution had suggested that this case "has wide implications on whether employers can, through contractual machinations, deprive employees of CPF contributions". The Prosecution had

not, however, argued that JCC engaged in any such "contractual machinations" as JCC had not deliberately acted to avoid its obligations under the CPFA. This was also the District Judge's finding at [83] of the GD. The totality of the evidence showed consistency in conduct, and indicated that both JCC and Yusoff did not consider the latter to be an employee. It was clear that Yusoff entered into the contracts each time knowing that the result was that JCC would not make CPF contributions, but that he would have to do so as a self-employed person. Yusoff's evidence had been that he had been told by JCCL in 1998 that it intended to convert his status to a full-time contractor, which meant that he would have to pay his own CPF. He testified that he had been shocked, but had accepted the arrangement. This took place after some discussion and consultation with JCCL. This was also clearly illustrated by his letter dated 15 March 2000.

92 While Yusoff initially testified that he had asked for his CPF contributions to be reinstated, he later agreed that he had not done so, and instead had simply asked for his salary to be increased. In any event, the contracts he entered into excluded the benefits he had been entitled to as an employee before 1998, including the payment of CPF contributions. It is curious that Yusoff claimed only in 2016 that the clear terms of the contracts did not in fact reflect the true nature of their agreement, particularly in light of the substantive changes that had followed from the formal change in his status. The key terms of the contracts were not so vague or unclear that they could not be understood or discerned by Yusoff. Moreover, as I had noted above at [47], the court should take into account the relative bargaining powers of the parties in deciding whether the terms of the written agreement represent what was agreed. The facts suggest that Yusoff did have some bargaining power and it was not the Prosecution's case that he was a victim of exploitative conduct. For the

reasons above, I conclude that the parties did in fact intend for and understand Yusoff to be an independent contractor.

93 Even disregarding the express intentions of the parties as stated in the contracts, the fact that a particular factor was not indicative of Yusoff being an independent contractor need not have suggested that he was an employee. The pertinent inquiry in the present case was whether there were *clear indicia* of an employer-employee relationship such that this was proven beyond reasonable doubt. In assessing the factors, the District Judge appeared to have been predisposed towards inferring the existence of an employment relationship. As I have indicated above, many of the factors the District Judge relied on in coming to her conclusion should have been properly contextualised and considered neutral factors instead.

94 The District Judge observed at [51] of the GD that a "mixed-up contract" was executed in 2007 as there was ambiguity as to the actual status of the relationship that continued until 2016. In my view, the ambiguity did not necessarily permeate the relationship from 1998 right through to 2016. As I have emphasised, the evidence was that the parties did have a common understanding of their working relationship. Even if it could be said that this ambiguity remained unresolved and gave rise to lingering doubt over the years after 2007 as Yusoff continued working for JCC, such doubt should have been more fairly resolved in favour of finding an independent contractor relationship. It remained incumbent on the Prosecution to prove beyond reasonable doubt that Yusoff was an employee. I find that it had not discharged this burden on the facts of the present case.

95 With respect, the District Judge's finding that Yusoff was an employee was plainly wrong and against the weight of the evidence. The totality of the

objective evidence showed that neither JCC nor Yusoff had considered the latter an employee, and had not arranged their affairs as such. Accordingly, I allow JCC's appeal and acquit it of all four charges.

Issue 2: the *mens rea* requirement under s 58(*b*) CPFA

96 The second issue identified at [41] is whether s 58(*b*) CPFA is a strict liability offence. This is fundamentally a question of statutory interpretation.

97 Section 58(*b*) CPFA reads:

> **58.** If any person —
>
> …
>
> (*b*) fails to pay to the Fund within such period as may be prescribed any amount which he is liable under this Act to pay in respect of or on behalf of any employee in any month;
>
> …
>
> he shall be guilty of an offence.

The presumption of mens rea

98 The relevant law in this area is well-established. There is a presumption that *mens rea* is a necessary ingredient of any statutory provision that creates an offence. This presumption can be rebutted by the clear language of the statute or by necessary implication. Where the language of the provision is unhelpful, the court will have to look at all relevant circumstances to determine the legislative intent. Relevant considerations include the nature of the crime, the punishment prescribed, the absence of social obloquy, the particular mischief and the field of activity in which the crime occurred: *Tan Cheng Kwee v Public Prosecutor* [2002] 2 SLR(R) 122 at [13].

99 The presumption of *mens rea* is often displaced in situations where the offence pertains to issues of social concern (*Tan Cheng Kwee* at [14]). In such situations, the presumption of *mens rea* may be rebutted and displaced where strict liability will be effective in promoting the objects of the statute by encouraging greater vigilance to prevent the commission of the prohibited act: *Gammon (Hong Kong) Ltd v Attorney-General of Hong Kong* [1985] 1 AC 1 ("*Gammon*") at 14; *Tan Cheng Kwee* at [15]. It must be shown that accused persons can do something to avoid committing the offence: *Chua Hock Soon James v Public Prosecutor and other appeals* [2017] 5 SLR 997 ("*Chua Hock Soon James*") at [165].

Section 58(b) CPFA involves strict liability

100 Having considered the submissions, I am of the view that the s 58(*b*) CPFA offence is one of strict liability. It is clear that the CPFA pertains to an issue of social concern. JCC accepted this at the proceedings below. This is underscored by Acting Minister for Manpower Mr Tan Chuan-Jin's statement on 14 November 2012 that CPF helps Singaporeans save for their retirement and pay for housing and health care expenses. The CPF scheme is a "key conduit" through which the Government channels financial assistance to more economically vulnerable Singaporeans (*Singapore Parliamentary Debates, Official Report* (14 November 2012) vol 89, "Written Answers to Questions for Oral Answer Not Answered by 3.00 pm – Breach of CPF Employers' Contribution Rules" (Tan Chuan-Jin, Acting Minister for Manpower)).

101 Imposing strict liability for the s 58(*b*) CPFA offence would also promote the objects of the CPFA and increase compliance with it. I do not agree with the YAC's submission that an unintentional offender "would not think" to consult the CPF Board or MOM, and therefore the displacement of a *mens rea*

requirement under s 58(*b*) CPFA may not result in greater compliance. The imposition of strict liability would signal to employers that their honest belief is insufficient to avoid liability under s 58(*b*) CPFA. Rather, what is necessary is the exercise of reasonable care. The CPFA places the responsibility for ensuring that contributions are made on employers (s 7(1) CPFA), and employers are best placed to ensure that they comply with the law: see *Chua Hock Soon James* at [166]. As in *Chua Hock Soon James*, employers can do so by seeking legal advice and by utilising sound guidelines in classifying its employees. In my view, these are not unduly onerous expectations.

102 I am mindful that only the court's determination of whether a person is an "employee" under the CPFA would be conclusive. The question as to whether accused persons can do something to avoid committing the offence is relevant. However, as the Prosecution rightly notes, the test as identified in *Sweet v Parsley* [1970] AC 132 at 163 and affirmed in *Gammon* at 13 to 14 as well as *Chua Hock Soon James* at [165] was whether steps could be taken to promote the observance of the obligation. This is distinct from a requirement that it be possible to ensure the obligation will be met.

103 In any event, any steps taken by an employer evincing reasonable care would nevertheless be relevant. As parties acknowledged, strict liability is distinguishable from absolute liability in so far as there is a defence of reasonable care. Steps taken such as the seeking of legal advice and/or guidance from a lawyer, MOM or the CPF Board would certainly go some way towards showing reasonable care. Amongst others, these are proactive steps employers can take in exercising reasonable care in relation to their obligations to pay CPF contributions in respect of their employees. This would not be difficult for employers to appreciate. While the question as to whether reasonable care had been exercised must remain a fact-specific one, courts should also have regard

to the totality of the circumstances, including whether the relationship was obviously one of employment.

104 Moreover, I do not agree with the YAC's argument that the s 58(*b*) offence is one that is "truly criminal" in nature. I fully accept that s 58(*b*) CPFA was not primarily intended for the recovery of arrears in CPF contributions. However, this was not material in determining whether the offence was a "truly criminal" one. Yong Pung How CJ in *Chng Wei Meng v Public Prosecutor* [2002] 2 SLR(R) 566, contrasted a "truly criminal" offence with one that is regulatory in nature (at [18]). In *Comfort Management Pte Ltd v Public Prosecutor* [2003] 2 SLR(R) 67, Yong CJ suggested at [32] that whether the offence carries social stigma is relevant in determining whether it is "truly criminal" in nature. In the present case, the offence is largely regulatory in nature, carries little to no social stigma, and cannot be described as "truly criminal" in character.

105 Finally, the severity of the maximum penalties is relevant as it may indicate that Parliament could not have intended to afflict such harsh punishments without *mens rea* being proven beyond a reasonable doubt. However, this is not determinative as it may be consistent with Parliament's intent to deter such conduct (*Comfort Management* at [30], referring to *Gammon* at 17). The punishment prescribed under s 61 CPFA is a fine of up to $5,000 or an imprisonment term not exceeding six months or both for a first time offender. This cannot be said to be particularly severe or harsh, particularly when seen in light of the centrality of the CPF scheme to social security.

106 I turn now to briefly explain my disagreement with the main submissions put forth by JCC and the YAC. It was argued that it would be inappropriate to impose strict liability given the complexity involved in determining whether a

particular contract is one of or for service. I do not agree: as I have already stated above, the imposition of strict liability does not render an employer who genuinely believed a worker was not an employee under the CPFA liable unless the employer has also failed to exercise reasonable diligence.

107 JCC also argued that the offences under s 58(*a*)(i), s 58(*a*)(ii) and s 58(*c*) CPFA have a *mens rea* requirement, and used this to argue that "there should be no reason why *mens rea* is not required for the [s 58(*b*) CPFA offence]", particularly since these offences attract the same penalty. I am not convinced by this argument. As the court in *Gammon* held at 17, the fact that a provision appears in a section which creates many other offences, some of which clearly require full *mens rea*, proves nothing given that one would expect a wide range of very different offences within the statute. It can equally be said that if *mens rea* were required, it would have been expressly stated.

108 I also do not agree with JCC's argument on s 61(2) CPFA. Under this provision, an officer of a body corporate which commits a s 58(*b*) CPFA offence with the consent or connivance of the officer, or which can be attributable to any act or default of the officer, can be liable under s 60 CPFA. According to JCC, there is no reason why the requirement of *mens rea* under the primary charge in s 58(*b*) CPFA for the body corporate should be dispensed with if there is a clear requirement for *mens rea* where the offender is an officer of the body corporate. I am not persuaded by this argument. The requirement of consent or connivance limits the scope of ss 60 and 61(2)(*b*) CPFA by narrowing the situations in which an officer of the body corporate can be held liable for the latter's commission of the s 58(*b*) offence. The same consideration does not arise under s 58(*b*), and the comparison was unhelpful.

109 The YAC also referred me to passages of Hansard and suggested that Parliamentary intent could be inferred from the statements therein. Read in context, I do not find these statements helpful. At best, they were equivocal as to whether Parliament intended for s 58(*b*) to be a strict liability offence. I illustrate this point with one example.

110 One passage from Hansard relied on by the YAC was from the Parliamentary debates on the 2007 CPF (Amendment No. 2) Bill, where the Minister for Manpower Dr Ng Eng Hen said (*Singapore Parliamentary Debates, Official Report* (12 November 2007) vol 83 at col 2612) (Ng Eng Hen, Minister for Manpower):

> Mdm Halimah also brought up a very important point – that the CPF is such an integral part of our structure that we ought to make sure that people make contributions … *But the way to do this also has to be customised.* There will be groups that we want to take a very hard line. And these are employers who systematically or basically cheat and do not pay their employees CPF. Even those who say that they are the contract workers, but if it is proved in practice that they are the employees, we will take action. So there will be a group that we will use the law and we will send a very strong signal and, from time to time, we will do that to make sure that the employers know that they are liable to pay their employees CPF.
>
> [emphasis from the YAC's submissions]

111 The YAC argued that Dr Ng was drawing a distinction between employers who cheat their employees (where a "very hard line" is taken), and employers who say that their employees are in fact contract workers (where action is taken). With respect, having regard to the context of this paragraph, I do not think that Dr Ng's remarks support the YAC's submissions. Dr Ng in fact goes on to say that there is:

> … a group, on the other hand, which we do not want to use the stick but carrot, and this is where the Medisave Contributions Draw comes in. And this is where we need persuasion by unions

> to get these self-employed to put in money so they can benefit from Workfare.

112 It thus appears that the true distinction being drawn is between employers who do not pay their employees CPF (where legal action will be taken), and self-employed people (where persuasion will be used). Dr Ng's statement indicates that legal action will be taken against employers who mischaracterise their employees, even without a dishonest intention to cheat. At the very least, Dr Ng's remarks are inconclusive as to whether there is a *mens rea* requirement for the s 58(*b*) CPFA offence.

113 I should also state that I did not find the YAC's submissions on what he described to be "similarly worded criminal statutes" entirely helpful. Ultimately, the question as to whether the s 58(*b*) CPFA offence is one of strict liability must be determined with regard to the factors identified at [98] above.

114 I conclude that the s 58(*b*) CPFA offence is one of strict liability for the reasons above. The imposition of strict liability also does not render s 65 CPFA obsolete as suggested by the YAC. Not every offender will be prosecuted. Even where the offender has been convicted, a s 61B(1) CPFA order may not be made in every case.

Issue 3: the scope of s 61B CPFA

115 The Prosecution appealed against the District Judge's decision not to order the payment of contributions and interest due under s 61B(1) CPFA. As I have allowed JCC's appeal against conviction, it follows that the Prosecution's appeal in connection with s 61B(1) CPFA must accordingly be dismissed. For completeness, I similarly set out my views on the scope of this provision, since I have had the benefit of full submissions from the parties and the YAC.

Interpretation of s 61B(1) CPFA

116 Section 61B(1) CPFA reads:

> **61B.**—(1) The court before which any conviction under section 7(3) or 61 is had may in addition to the penalty prescribed in those sections order the person convicted to pay the amount of any contributions together with any interest due thereon certified by an officer appointed by the Board in that behalf to be due from that person at the date of the conviction.

117 Section 58(*b*) is punishable under s 61 CPFA. The Prosecution sought an order for the payment of arrears in CPF contributions plus interest from December 2003 to the date of conviction, which amounted to $416,924. The primary question here was whether s 61B(1) allows the court to order the payment of *any* contributions due to the CPF Board, including sums arising from periods not covered by the charges which have been preferred by the Prosecution. JCC argued that the proper construction of s 61B(1) CPFA does not permit an order for recovery of arrears to be made where these do not relate to the subject matter of the charges preferred. On the other hand, the Prosecution argued that a s 61B(1) order can be made in relation to all the arrears and interest thereon certified to be due from JCC at the time of conviction. The YAC agreed that the court may order the payment of arrears arising from periods not covered by the charges preferred by the Prosecution.

118 I agree with the Prosecution's interpretation of s 61B(1) CPFA. The ordinary meaning of the provision would allow the court to order the payment of *any* contributions due at the date of conviction, together with the interest payable, as certified by the CPF Board officer. There is no qualifier in the provision suggesting that "any contributions" should be limited to those arising from the subject matter of the conviction or the charges preferred. A useful comparison may be made with compensation orders under s 359 of the Criminal

Procedure Code (Cap 68, 2012 Rev Ed) ("CPC"). In s 359 CPC, there is an express requirement that the compensation should relate to the offence or offences for which sentence is passed or which are being taken into consideration for sentencing purposes. No such requirement is contained in s 61B(1) CPFA.

119 The Prosecution submitted that its interpretation is also suggested by the context of the provision. I agree. Section 61B(1) CPFA refers to "any conviction under section 7(3) or 61" and therefore captures a wide range of offences. This includes offences such as the making of false statements or obstruction of CPF Board officers, for which there is no requirement of any failure to pay CPF contributions. Consequently, in these situations, there may be no contribution arrears relating to the convicted charges, even if there are otherwise contributions due. The fact that these convictions would nevertheless be sufficient to empower the court to make an order under s 61B(1) does, in my view, suggest that the court has wide powers under s 61B(1) CPFA to make an order pertaining to any contributions due as at the date of conviction.

120 This interpretation appears to be in line with Parliamentary intent, as indicated by the Parliamentary debates. As the District Judge noted at [89] of the GD, the Minister for Manpower had said that (*Singapore Parliamentary Debates, Official Report* (22 November 2000) vol 72 at col 1224 (Lee Boon Yang, Minister for Manpower)):

> … Clause 18 [providing for the earlier version of s 61B] will allow the court to order the recovery of CPF arrears … in the same manner as a judgement in civil proceedings. This will enable the CPF Board to help members to recover the arrears more expeditiously …

121 Interpreting s 61B(1) CPFA to cover all due contributions would be in line with the legislative intent to enable the CPF Board to recover the

contributions due and payable in a more expeditious manner. In contrast, interpreting s 61B(1) CPFA to mean that the court can only make an order pertaining to periods covered by the charges preferred would not be in line with legislative intent. Where the charge preferred does not concern CPF arrears arising as a result of the offence, the CPF Board would still have to commence civil proceedings separately. Further proceedings would also be necessary to recover arrears which have accrued since the time the charges were preferred. This would not promote the expeditious recovery of contributions suggested by the Parliamentary debates.

122 I note also the YAC's reference to s 63(1) of the Employees Provident Fund Act 1991 (No 452 of 1991) (M'sia), which fulfils a similar function and refers to "any amount of contributions". The YAC referred me to *Public Prosecutor v KATS Cleaning Services (S) Sdn Bhd* [1995] 1 MLJ 371, in which it was held that the provision unambiguously refers to "any contributions", and is not restricted to the offences for which there has been a finding of guilt.

123 JCC argued that s 61B(1) CPFA refers to s 66A(1) CPFA, which provides that the certification of a CPF Board officer provides *prima facie* evidence that the amounts certified are due and payable as at the date of certification. JCC submitted that the certificate under s 66A CPFA cannot be considered *prima facie* evidence without a conviction, because "the evidence relating to the quantum to be paid out would have been led in the course of the proceedings leading to the conviction". To my mind, this argument has no merit. While JCC also argued that unfairness arose from the fact that it did not have the opportunity to lead or examine evidence on the contributions due, this has no bearing on the effect of the s 66A CPFA certificate. Section 66A merely refers to "any proceedings relating to the recovery or non-payment of contributions under section 7". I therefore do not see why the s 66A certificate

cannot be considered *prima facie* evidence notwithstanding that the contributions due do not relate specifically to the charges preferred.

124 I am not persuaded that any unfairness results from this interpretation. JCC contended that it had not known the certificate was going to be placed before the District Judge, and that the application under s 61B(1) would be made, until after the evidence had been heard. It further submitted that s 61B does not allow for the hearing of any inquiry, whether protracted or otherwise. As I indicate below, no unfairness results from this as a court should not exercise its discretion to order payment in situations where the offender can show that that there is a dispute of law or fact that would require evidence to be led, or a protracted hearing to determine.

125 I conclude, therefore, that s 61B(1) CPFA allows the court to order the payment of any contributions due at the date of conviction, whether or not these were the subject of the charges preferred. As the District Judge noted, however, the power under s 61B(1) CPFA is discretionary in nature, as is indicated by the text of the provision. The next question is, therefore, what principles ought to guide the exercise of this discretion.

Principles guiding the court's exercise of discretion

126 The District Judge applied the approach set out in *Tay Wee Kiat* on compensation orders. This was on the basis that both ancillary orders were intended to be shortcuts to remedies that the "victim" could obtain in a civil suit against the offender. The parties were essentially agreed that this was correct.

127 At the outset, I note three differences between orders made under s 359 CPC and s 61B(1) CPFA. First, s 359 CPC imposes an *obligation* on the court to consider, upon conviction, whether to make an order and further states that

the court *must* do so if it deems it appropriate: ss 359(1) and 359(2) CPC. There are no equivalent provisions under s 61B(1) CPFA; the court is not obligated to consider making such an order unless it is applied for by the parties. Second, in setting out the guiding principles in *Tay Wee Kiat*, I was conscious of the pending amendments to s 359 CPC, which require the court to "have regard to the offender's means so far as those means appear or are known to the court": *Tay Wee Kiat* at [4] and [10]. Again, no such requirement is imposed under s 61B(1). Finally, under s 66A CPFA, the certificate of the CPF Board certifying the amount of contributions and interest due is *prima facie* evidence that the amount stated is due and payable; no equivalent provision exists for compensation orders.

128 In *Tay Wee Kiat* at [10], I stated that since criminal compensation is essentially a proxy for civil damages, the amount of compensation ordered should not exceed what would be reasonably obtainable in civil proceedings. One key issue in the s 61B(1) CPFA context is the relevance of the time-bar that would apply to civil actions but not to an ancillary order made under s 61B(1) CPFA. The parties appeared to disagree on this. The Prosecution noted in its submissions that the CPF Board is empowered under s 65 CPFA to sue for and recover monies due as if they were debts owed to the Government under the Government Proceedings Act (Cap 121, 1985 Rev Ed). Under s 6(1)(*d*) of the Limitation Act (Cap 163, 1996 Rev Ed), an action cannot be brought after the expiration of six years from the date on which it accrued: in the context of s 65 CPFA, time would run from the date the sum became due. This time-bar applies to the CPF Board by virtue of s 33(1) Limitation Act.

129 JCC essentially argued in the appeal that, *inter alia*, a civil action to recover the arrears would have been time-barred, and therefore, applying the principles in *Tay Wee Kiat*, the court should not exercise its discretion to order

payment under s 61B(1) CPFA. While JCC's submission was specifically that *Yusoff's* civil claim would have been time-barred, the fact that it is the CPF Board that would have commenced a civil suit under s 65 CPFA does not detract from the intuitive appeal of JCC's submission. This would be especially so if the legislative intent behind s 61B(1) CPFA is merely for the order to provide a more expeditious route to recovery.

130 On the other hand, the Prosecution suggested that the time-bar is one reason the court should be slow to dismiss an application under s 61B(1) CPFA. It suggested that it would be highly undesirable if the court fails to grant an order under s 61B(1) CPFA in circumstances where the CPF Board is unable to recover the CPF contributions because a civil claim would have been time-barred. This is because of the centrality of CPF to social security, as well as the fact that non-payment of CPF contributions may span long periods of time. Further, the time-bar was a procedural bar that did not extinguish liability, and s 61B(1) CPFA did not contain any suggestion that the court's powers thereunder were circumscribed by any limitation period.

131 This issue should be resolved with reference to Parliamentary intent. The court in *Tan Cheng Bock v Attorney-General* [2017] 2 SLR 850 distinguished between the specific purpose underlying a particular provision and the general purpose (or purposes) underlying the statute as a whole or the relevant part of the statute (at [40]). The Court of Appeal then stated that the courts should begin by presuming that any specific purpose does not go against the grain of the relevant general purpose, but rather is subsumed under, related or complementary to it (at [41]).

132 The Prosecution submitted that the underlying concern is the need to ensure that Singaporeans who are entitled to CPF would be able to benefit from

the scheme as CPF savings are used for a number of essential payments. Having reviewed the relevant Parliamentary debates on this, I agree with the Prosecution's submission. It appears to me that the desire for expeditiousness was driven by a need to "safeguard CPF members' interests", and to deal "effectively and promptly with employers who have failed to pay CPF contributions for their employees within the prescribed time" (*Singapore Parliamentary Debates, Official Report* (20 June 1998) vol 69 at cols 289–291 (Lee Boon Yang, Minister for Manpower)). Having regard to the fact that text of s 61B(1) does *not* suggest that any time-bar would be applicable, and to the underlying concern identified by the Prosecution, I do not think that the time-bar applicable to a s 65 CPFA suit should be relevant to the determination as to whether a s 61B(1) CPFA order ought to be made.

133 As such, a court before which a s 61B(1) CPFA application is made should consider whether the offender has raised any real dispute of law or fact, which either requires evidence to be led, or a protracted hearing for its determination. A mere assertion that it is unclear how the certified amounts have been derived would be insufficient, particularly since the rates of contribution and interest payable are statutorily prescribed and therefore capable of being ascertained by an offender.

134 For completeness, I should state that I am not persuaded by JCC's arguments on estoppel. JCC had argued that the s 61B(1) CPFA order should not be made on the ground that Yusoff would have been estopped from claiming any employee benefits under a civil action. Any estoppel would not have bound the CPF Board. It would thus have been irrelevant to the question of whether the arrears were recoverable in a civil suit.

Conclusion

135 For the above reasons, I allow JCC's appeal on conviction and dismiss the Prosecution's appeal in relation to the District Judge's dismissal of the s 61B(1) CPFA application. As the conviction is set aside, I order that the fines paid by JCC be refunded. I am grateful to the parties and the YAC for their detailed and helpful submissions.

See Kee Oon
Judge

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