IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2016] SGCA 47

Civil Appeal No 112 of 2015

Between

RAMESH S/O KRISHNAN

… *Appellant*

And

AXA LIFE INSURANCE SINGAPORE PTE LTD

… *Respondent*

In the matter of Suit No 1022 of 2012

Between

RAMESH S/O KRISHNAN

… *Plaintiff*

And

AXA LIFE INSURANCE SINGAPORE PTE LTD

... *Defendant*

JUDGMENT

[Tort]—[Negligence]—[Breach of duty]

[Tort]—[Negligence]—[Causation]

Ramesh s/o Krishnan
v
AXA Life Insurance Singapore Pte Ltd

[2016] SGCA 47

Court of Appeal — Civil Appeal No 112 of 2015
Sundaresh Menon CJ, Chao Hick Tin JA and Steven Chong J
25 November 2015

27 July 2016 Judgment reserved.

Sundaresh Menon CJ (delivering the judgment of the court):

Introduction

1 Employers often require potential hirees to provide references from their former employers. Such references may serve as a basis for the prospective employer to assess the applicant's character and abilities, and will likely have at least some, if not significant, bearing on the applicant's chances of obtaining employment. For this and other reasons, which we will elaborate upon in the course of this judgment, it is important that employers prepare such references, when called upon to do so, in a fair and accurate manner to avoid unjustifiably prejudicing the former employee's prospects of obtaining fresh employment. Before us, it was accepted that an employer has a duty of care when preparing such a reference. The dispute turned on whether that duty had been breached, which in turn depended on the *standard* of care that must

be exercised by an employer in the preparation of such references. This issue has not hitherto been considered by this court.

2 The appellant, Mr Ramesh s/o Krishnan ("the Appellant"), argues that the respondent, his former principal, AXA Life Insurance Singapore Pte Ltd ("the Respondent"), breached the duty of care which it owed him in the preparation of references that had been requested by his prospective employers, Prudential Assurance Company Singapore Pte Ltd ("Prudential") and Tokio Marine Life Insurance Singapore Limited ("Tokio Marine"). He contends that as a result of this, he was not employed by either of them. In his decision reported as *Ramesh s/o Krishnan v AXA Life Insurance Singapore Pte Ltd* [2015] 4 SLR 1 ("the Judgment"), the High Court judge ("the Judge") dismissed the Appellant's claim on the basis that the Respondent had not breached its duty of care.

3 Two questions arise in this appeal: (a) whether the Respondent breached its duty of care to the Appellant in the preparation of the references; and (b) if the Respondent did indeed breach its duty, whether this breach *caused* the Appellant not to be employed by the two prospective employers. Having considered the matter, we answer both questions affirmatively in respect of the claim concerning the Appellant's application to join Prudential (but not the claim concerning his application to join Tokio Marine – see [108] below), and allow the appeal to that extent. We now explain our decision in detail, but preface our analysis with an overview of the regulatory framework of the financial advisory and insurance industry and a summary of the material facts.

Regulatory framework of the financial advisory and insurance industry

4 As the references in question were provided pursuant to regulations that are specific to the financial advisory and insurance industry, a brief understanding of the regulatory framework of the industry is necessary in order to understand what actually transpired.

5 The Monetary Authority of Singapore ("MAS") has in place a framework to ensure that financial advisers and other persons who carry out regulated activities under the Financial Advisers Act (Cap 110, 2007 Rev Ed) ("the FAA") and the Securities and Futures Act (Cap 289, 2006 Rev Ed) are fit and proper persons who will perform such activities ("Regulated Activities") efficiently, honestly, fairly and in the best interests of consumers. In this context, one of the measures taken by MAS was the establishment of the "Representative Notification Framework" ("RNF") in November 2010. Under the RNF, financial institutions that are regulated by MAS are required to notify and to obtain a licence ("RNF licence") from MAS before they may appoint a representative to carry out any Regulated Activities. They are also required to conduct due diligence checks into the background of the proposed representative. This includes conducting reference checks with the proposed representative's former employer or principal in order to establish that the proposed representative does meet the standards prescribed in the FAA as well as under a set of guidelines issued by MAS (namely, the Guidelines on Fit and Proper Criteria (Guideline No FSG-G01)). In particular, financial institutions are required to inquire from the proposed representative's former employer or principal whether he has any adverse record (such as warnings, reprimands or other disciplinary action for misconduct), or whether he has ever been dismissed or asked to resign.

6 Apart from requiring financial institutions to perform reference checks with the proposed representative's former employer or principal, MAS also requires them to obtain a declaration from the proposed representative that he does satisfy MAS's Guidelines on Fit and Proper Criteria. Where a proposed representative has indicated any adverse information in the self-declaration, the financial institution must obtain details from him and then assess whether he may nonetheless be considered fit and proper to be appointed, and if so, explain why.

7 The RNF is supplemented by a scheme known as the "Industry Reference Check System", which predates the RNF but was improved thereafter. The Industry Reference Check System is an industry-led initiative started in October 2006 by various trade and professional associations in Singapore, including the Life Insurance Association of Singapore ("LIA"), which is an association of life insurance providers based in Singapore and licensed by MAS. The Respondent, Tokio Marine and Prudential are all members of the LIA. The Industry Reference Check System serves as a standardised reference checking system across the different sectors of the financial advisory and insurance industry. It was launched to facilitate the efforts of financial institutions to comply with MAS's guidelines and to allow them to better assess persons applying for jobs that involve Regulated Activities. This initiative is endorsed by MAS. Financial institutions that are regulated by MAS and are members of the LIA have the following two obligations under the Industry Reference Check System:

(a) Before they appoint a representative, they are required to conduct reference checks with the applicant's former employer or

principal through the use of a standardised form known as the "Industry Reference Check Form" ("Reference Check Form").

(b) Correspondingly, when they are approached by another institution operating under the system for reference checks on their former employee or agent, they are required to respond in a timely and forthcoming manner. The usual timeline for the return of a Reference Check Form is seven working days.

8 The Reference Check Form plays an important role under both the RNF and the Industry Reference Check System, and is pertinent to the present appeal because it was the format in which the main references in question were provided. There is strong encouragement for financial institutions to use the Reference Check Form, even though they are not legally obliged to do so. The form, as revised by the LIA in August 2011, consists of two sections:

(a) Section A, titled "Minimum Information (compulsory)", in which the former employer or principal is *obliged* to furnish basic information such as the applicant's period of employment, the reason for his departure, whether he has ever been reported to MAS for any misconduct under the relevant legislation, the last position which he held with the former employer or principal and the contact details of a person in the former employer or principal who may be approached for further information or clarification; and

(b) Section B, titled "Optional Information", an open-ended section in which the former employer or principal *may* provide any other information that it deems relevant. The guidelines on the use of the Reference Check Form state that the prospective employer may request

> more information under Section B, such as information on the applicant's "Production in the last 12 months" and his "Persistency Ratio in the last calendar year".

9 It is apposite here to explain the concept of "persistency ratios" (also known as "persistency rates"), which, as will become apparent, feature significantly in the present appeal. Persistency ratios track the number of insurance policies sold by an adviser that are still in force over a period of time (for example, a financial institution may track a 13-month period, a 19-month period or a 24-month period). There are a number of different formulae for calculating persistency ratios, and these may take into account not only the number of policies that have lapsed over a given period, but also the amount of premiums lost on account of the lapsing of policies and the amount of premiums gained by the addition of new policies. Some of the possible differences between the various methods of calculation and between the ratios that are derived by using particular methods are discussed at [116] below. Persistency ratios are almost always sought and included in reference checks. These ratios help to shed light on the *quality* of an adviser's sales: a high ratio indicates that many of the adviser's clients have continued to maintain their policies during the relevant period of time and suggests that the adviser's sales are of a good quality.

10 For completeness, we should mention that the Reference Check Form has two other parts: (a) a part where the applicant is to give his written authority for his prospective employer to make inquiries into his previous employment; and (b) a set of guidelines on the use of the form.

11 Against that backdrop, we turn to the factual narrative.

The material facts

The Appellant's relationship with the Respondent

12 The Appellant was engaged by the Respondent as an adviser and financial services associate manager on 26 July 2005. Prior to that, he worked as an insurance agent at John Hancock Financial (which later merged with Manulife Financial) and thereafter at Philips Securities. In the course of the requisite reference checks that were conducted when the Appellant applied to join the Respondent, the Respondent discovered that his former principals had terminated his services because of his poor persistency rate and "extensive [c]ompliance record". The Respondent nevertheless decided to engage the Appellant, but placed him under strict supervision during the initial period. The Respondent was also required to respond to MAS's inquiries into the performance and conduct of the Appellant until September 2006.

13 The Appellant's performance must have been satisfactory because he was not only retained by the Respondent, but also promoted. On 1 January 2007, he was appointed a financial services director and started leading a group of advisers under his own "agency organisation", known as "the Ramesh Organisation", within the Respondent. In this capacity, the Appellant had to recruit, train and supervise advisers for the Respondent, and assess the sales figures and persistency ratios of the advisers under him. The Appellant was promoted again in 2009 to the position of a senior financial services director. He also won numerous awards in the course of the five-odd years that he was with the Respondent.

14 The Appellant was not an employee of the Respondent, even though the manner in which he was recruited and the promotions that he received

might suggest this. It was made clear in his appointment letter and promotion contracts that he was not an employee, but was instead an agent authorised to act for the Respondent for the purposes of soliciting and advising on life insurance applications and other products; he also received commissions from policies sold by advisers in the Ramesh Organisation (referred to hereafter as "Ramesh Organisation advisers" where appropriate to the context). As we explain at [59] below, the fact that the Appellant was an *agent*, and not an employee, of the Respondent does not make a difference in these proceedings. In particular, this does not make a difference in respect of the duty of care that the Respondent owed the Appellant in its preparation of the references.

Events leading to the Appellant's resignation

15 From late 2010, the parties' relationship started to deteriorate. This began when the Appellant realised that the advisers in the Ramesh Organisation might not be in the running to receive the awards and incentives which the Respondent gave out annually to its top performers. This was apparently the consequence of a change in the assessment criteria.

16 For various reasons, the Ramesh Organisation had focused predominantly on regular premium policies instead of single premium policies since the beginning of 2010. Regular premium policies are those for which the policyholder pays premiums throughout the life of the policy, while single premium policies are those where, as the name suggests, the policyholder pays one premium at the start of the period of cover. The Appellant describes single premium policies as being more akin to financial investments. According to the Appellant, because of this, the persistency ratio for single premium policies tends to be more volatile as policyholders will typically cash out these policies to realise the profit when market conditions are favourable. The

Appellant asserts that the Respondent's then chief executive officer ("CEO"), Mr Gilbert Pak ("Mr Pak"), had assured him in February 2010 that the Respondent was agreeable to taking into account only the persistency ratio in respect of *regular* premium policies when assessing the eligibility of Ramesh Organisation advisers for incentives and awards in the event that their persistency ratio in respect of *single* premium products dropped as a result of the organisation's shift in focus. On this assurance, the Ramesh Organisation had focused on regular premium products.

17 The Appellant claims that the Respondent's position changed in December 2010 when Mr Pak was replaced by Mr Glenn John Williams ("Mr Williams"), who decided that the persistency ratios for both types of policies were to be taken into account when assessing the Respondent's best performers. This caused unhappiness among the members of the Ramesh Organisation because their chances of garnering awards and incentives stood to be adversely affected. Relying on Mr Pak's previous assurance, the Appellant tried to negotiate with Mr Williams and the Respondent's senior management, but was not successful. This prompted the Appellant and a large number of advisers in the Ramesh Organisation to contemplate resigning in January 2011, but they were successfully persuaded otherwise by the Respondent's senior management, which, according to the Appellant, made many overtures to him, including promising a separate category of awards for his advisers and a generous remuneration package for him.

18 Matters then took an about-turn on 29 April 2011. After apparently hearing that the Appellant and many of his advisers were going to collectively resign at the annual dinner-and-dance function which was to be held that evening, Mr Williams cancelled all the tables that had been reserved for them

and barred them from attending the event. The Appellant was also served with a letter of termination. Despite the Appellant's pleas and assurances that the rumours were unfounded, Mr Williams refused to reconsider his decision. He agreed, however, to allow the Appellant to resign instead on the condition that he did so before 1.00pm on the same day. The Appellant complied.

The Appellant's application to join Prudential

19 Shortly after he resigned from the Respondent, the Appellant applied to join Prudential.

The Reference Check Form submitted to Prudential

20 On 21 May 2011, Prudential sent a reference check request to the Respondent using the Reference Check Form pursuant to the RNF and the Industry Reference Check System. The Respondent sent the completed Reference Check Form back to Prudential on 7 June 2011 (we will hereafter refer to this completed form as "the Prudential Reference Check Form").

21 In Section A of the Prudential Reference Check Form, the Respondent stated that the Appellant had left voluntarily. It also indicated, by the annotation "N/A", that he had never been reported to MAS for misconduct under any of the applicable regulations.

22 In Section B, instead of replying directly to the questions posed by Prudential regarding the Appellant's "Production in the last 12 months", the "Termination Code" and his "Persistency Ratio in the last calendar year", the Respondent attached an annex containing the following information:

…

> **2. Ramesh s/o Krishnan Organisation Persistency (as of 30 April 2011)**
>
> 19mth Single Premium persistency = 43%
>
> 13mth Regular Premium persistency = 39.6%
>
> **3. Compliance Issues**
>
> Between 2008 to 2011, 14 Advisers under [the Ramesh Organisation] were investigated (including [the Appellant]).
>
> - Disciplinary actions were taken against 5 advisers
> - 3 cases were referred to the Police for further investigation

23 Two things in this reference are notable for the purposes of the Appellant's claim:

(a) the Respondent's decision to use the 13-month measure instead of the 19-month measure in respect of *regular* premium policies; and

(b) the mention of "[c]ompliance [i]ssues" in respect of the Appellant and a number of advisers in the Ramesh Organisation. Save for the assertions that these investigations and disciplinary measures had been carried out, no further details were provided.

Clarifications sought by Prudential from the Respondent and the Appellant

24 The information provided in the Prudential Reference Check Form prompted Prudential, as it was required to do under the RNF, to seek clarification and further information from the Respondent. Specifically, on 7 June 2011, the very day that it received the form, Prudential asked the Respondent for the names of the 14 Ramesh Organisation advisers who had been investigated and of the three advisers whose cases had been referred to the police for further investigation; it also asked for the details, reasons and

outcome of the investigations. Through its Compliance Manager at the material time, Mr Jack Ng ("Mr Ng"), the Respondent replied the next day (8 June 2011) stating that its usual practice was not to disclose information on advisers who were not the subject of a reference check request, and thus, it could only provide the details of the investigations on the Appellant. A day later, on 9 June 2011, the Respondent sent Prudential those details by email in the following terms:

> An investigation was conducted on [the Appellant] in August 2011 on unprofessional conduct – rude and aggressive in his approach. (Finding: Inconclusive evidence to substantiate the allegation, no action was taken)

25 On 16 June 2011, Prudential made the Appellant an offer of employment with a 24-month financial package, subject to several conditions, including the successful clearance of his reference check and his fulfilment of the "Fitness and Propriety" requirements under MAS's Guidelines on Fit and Proper Criteria. The conditional offer was valid for a month.

26 After making the conditional offer, Prudential continued to seek clarification from the Respondent on the information provided by the latter in the Prudential Reference Check Form. On 21 June 2011, Prudential sent the Respondent an email asking for three pieces of information: (a) the method by which it had calculated the persistency ratios that it furnished Prudential; (b) the outcome of the three cases that had been referred to the police for further investigation; and (c) updates on the Appellant.

27 When Prudential did not receive a reply from the Respondent after some time, it turned to the Appellant for clarification. He was invited to provide more information on the persistency ratios and the compliance issues that had been highlighted in the Prudential Reference Check Form. The

Appellant executed a statutory declaration on 11 July 2011, in which he made the following points:

(a) The persistency ratios of the Ramesh Organisation had always been good and had always been at least 80%.

(b) There had been no complaints against him while he was with the Respondent, save for a minor complaint by a client's brother. This unsubstantiated complaint was later dismissed by the Respondent.

(c) Out of the more than 150 advisers and personnel who were under him throughout his time with the Respondent, he was only aware that: (i) one of them had his services terminated; (ii) two others were refused their RNF licence due to "offences" that had been committed before they joined the industry; and (iii) four others were issued with letters of warning.

(d) He was never informed, and had no knowledge, that his advisers had ever been referred to the police for wrongdoing. He had previously advised the clients of two of his advisers to lodge a police report against those advisers for suspected wrongdoing, but neither the clients nor the Respondent had proceeded to take any action as far as he was aware.

It should be noted that while the Appellant might have wished, by furnishing this statutory declaration, to address the concerns that Prudential might have had arising from the information provided by the Respondent in the Prudential Reference Check Form, he had no knowledge of the exact contents of the form as it had not been shown to him.

28 After about a month without receiving a reply from the Respondent, Prudential sent the Respondent another email on 18 July 2011 explaining that it wished to know how the persistency ratios provided by the Respondent had been calculated because the ratios reported in the Prudential Reference Check Form differed greatly from those provided by the Appellant. Mr Ng again informed the representative from Prudential that the Respondent could not provide the details of advisers who were not the subject of Prudential's reference check request. It does not appear that Mr Ng responded to Prudential's query about the method used to compute the persistency ratios.

29 Approximately three months later, on 14 October 2011, Mr Williams sent a letter to Prudential's CEO with a copy to MAS. That letter ("the 14 October Letter") read as follows:

> …
>
> **High Number of Lapsed / Surrendered Policies**
>
> Our records show that your organisation had requested for [a] reference check on [the Appellant] … We would like to bring to your attention that [the] Ramesh Organisation showed a very poor 13th month persistency rate of **9.0%**.
>
> Based on our observations of notable trends [on] the lapsing and surrendering of policies, we have strong reason to believe that the ex-advisers in [the] Ramesh Organisation have been involved in [the] twisting of clients' policies. We are very concerned as to whether the clients have been provided with proper advice or [whether] any improper switching/replacement practices [have been] carried out by the ex-advisers which are detrimental to [the] clients' interests.
>
> [emphasis in bold in original]

"Twisting" is a term used to describe the situation where a policyholder is persuaded to allow an existing policy to lapse, only to enter into a new policy on similar terms.

30 According to Mr Williams, the 14 October Letter was sent because he had learnt sometime in September or October 2011 that the persistency ratios of the Ramesh Organisation had "dropped even further than what had been stated in [the Prudential Reference Check Form] in June 2011", and thus took the view that it was necessary to update Prudential "so that [Prudential] would not unwittingly be involved in [the] improper switching of policies".

31 A few things stand out in the 14 October Letter:

(a) Even though Prudential had twice asked the Respondent *how* it calculated persistency rates and had even noted that the figures which it reported were at odds with those reported by the Appellant, the Respondent did not address this issue at all in the letter.

(b) The letter reports an even lower persistency ratio for the Ramesh Organisation, but does not explain how this was derived, which period it pertained to, whether it was for single or regular premium policies and why it differed from the earlier ratios provided to Prudential in June 2011.

(c) The letter expresses opinions and suspicions adverse to the Appellant, and is suggestive of unethical practices that were detrimental to the interests of clients.

Correspondence between MAS and the Respondent

32 Even before receiving the 14 October Letter, Prudential had, on 12 August 2011, made an application for a RNF licence ("RNF Licence Application") for the Appellant from MAS. On submitting its application,

Prudential received an acknowledgement email stating that it "should hear from [MAS] within the next 7 to 14 days".

33 Pursuant to a subpoena by the Appellant, Mr Wong Bo Sheng ("Mr Wong"), who previously worked at MAS and was involved in handling Prudential's RNF Licence Application, testified at the trial below. His evidence was, however, limited because most of the relevant documents and details were protected by official communications privilege pursuant to s 126 of the Evidence Act (Cap 97, 1997 Rev Ed). It should therefore be noted that we are making reference to matters concerning MAS without the benefit of all the evidence on the totality of the events.

34 Prudential did not hear from MAS within the indicated timeframe. Instead, in October 2011, more than two months after Prudential's RNF Licence Application was submitted, MAS sought information from the Respondent about the Appellant's resignation. It seems, at least as a matter of inference, that its inquiries were prompted by the 14 October Letter, which had been copied to it (see [29] above).

35 In particular, MAS wanted to know why the Respondent had allowed the Appellant to resign rather than terminate his services. The Respondent explained that this was because it had no proof that the persistency ratio of the Ramesh Organisation would be as poor as it had suspected. MAS then inquired further on 7 November 2011 whether the Respondent had any other reasons for wanting to terminate the Appellant's services. The Respondent replied to MAS in an email on 9 November 2011 stating as follows:

> ...

> Persistency was the main concern although we were also worried about the general culture of [the Ramesh Organisation]. The culture seemed to be overly sales orientated e.g. [the Appellant] had a high number of managers who had faced disciplinary action over the previous years' [*sic*] the average productivity of his advisers seemed to be very much higher than we would expect, potentially indicating gaming of compensation. We felt that he "sailed very close to the wind" and ultimately crossed the line. We believe the fact that his persistency has fallen to ONLY 9% supports our view and intuition at the time.

In this email, a number of opinions adverse to the Appellant and suggestive of ethical violations were once again expressed. Moreover, the impression conveyed was that the Ramesh Organisation led by the Appellant, as a whole, had a poor understanding of, and lacked commitment to, proper industry practices. This email was not copied to the Appellant.

The outcome of Prudential's RNF Licence Application

36 Concerned that Prudential's RNF Licence Application had been pending for an exceptionally long time, the Appellant approached the chairman of MAS, Deputy Prime Minister Tharman Shanmugaratnam, and his Member of Parliament, Deputy Prime Minister Teo Chee Hean ("DPM Teo"), for assistance in October 2011. The Appellant was concerned because at around the same time that Prudential submitted its application, similar applications had been made on behalf of other advisers who had previously worked under him, and those applications had already been approved. (It is unclear from the evidence whether those applications were likewise made by Prudential or made by other firms.)

37 On 6 December 2011, MAS replied to the Appellant, but did not inform him of the outcome of Prudential's RNF Licence Application. In its letter, it: (a) emphasised that financial institutions were required to ensure that

the persons whom they recruited to conduct Regulated Activities were fit and proper; (b) stated that it understood that Prudential had explained to the Appellant the reasons for its delay in getting back to him; and (c) asked the Appellant to check directly with Prudential on matters relating to the RNF.

38 Eventually, on a date unknown to the parties but sometime between 9 November and 15 December 2011, MAS informed Prudential that it was prepared to issue a conditional RNF licence to the Appellant. MAS indicated that conditions had to be imposed because the information that had been brought to its attention in relation to the Appellant's working relationship with the Respondent had "raised several issues of concern", including: (a) the "low group persistency and high lapse rate" of the Ramesh Organisation; and (b) the fact that several Ramesh Organisation advisers had been "disciplined" by the Respondent for "issues such as improper sales practices and unprofessional conduct". The details of the conditions stipulated by MAS were not disclosed in these proceedings.

39 Prudential informed MAS on 15 December 2011 that it did not wish to proceed with its RNF Licence Application. It is unclear when the Appellant was made aware of this development. He was not officially informed by MAS of this until more than eight months later on 31 August 2012 after he again sought assistance from DPM Teo (see [48]–[49] below).

The Appellant's application to join Tokio Marine

40 On or around 18 January 2012, the Appellant applied to Tokio Marine for a job as a financial adviser as it was evident by then that his application to join Prudential was unlikely to succeed. His anticipated role at Tokio Marine was considerably less senior than his role with the Respondent.

41 The contents of the completed Reference Check Form that the Respondent sent to Tokio Marine on 20 January 2012 were materially similar to those of the Prudential Reference Check Form (see [21]–[22] above). As in the case of the latter form, the Appellant was not aware of the contents of the Reference Check Form which the Respondent sent to Tokio Marine as he was not extended a copy.

42 Towards the end of February 2012, Tokio Marine asked the Appellant for more information on why he had been investigated and why three of his advisers had been referred to the police. After asking Mr Williams for more information as he had no recollection of the investigations even though he said he was in the habit of keeping records, the Appellant replied to Tokio Marine on 10 April 2012.

43 Tokio Marine also approached the Respondent for more information on the compliance issues mentioned in the latter's reference check response. Mr Ng drafted the following reply and sent it to Mr Williams for approval:

> **... AXA's [proposed] response**
>
> [The Appellant] was investigated in June 2010 for unprofessional conduct (being rude and aggressive) based on a client's brother['s] complaint. In view of the inconclusive evidence to substantiate the allegation, no action was taken against [the Appellant].
>
> Between 2008 to 2011, there were disciplinary actions taken against 5 advisers under [the Ramesh Organisation]. During the same period, there were also 3 cases involving 3 advisers under [the Ramesh Organisation] that were referred to the Police for further investigation.

44 Mr Williams replied to Mr Ng as follows:

> *We need to be much stronger than this.*

> We need to mention [the Appellant's] very poor persistency. For the 5 disciplinary cases if any of these are bad we should highlight those [cases].
>
> I would also suggest that we add 'we recommend that [Tokio Marine's CEO] phone [the Respondent's CEO], Glenn Williams, for more details on this case.'
>
> [emphasis added]

45 After receiving Mr Williams' instructions, Mr Ng included in the Respondent's response to Tokio Marine the detail that the Ramesh Organisation's persistency ratio as at the end of 2012 was 11.22% and the suggestion that Tokio Marine's CEO telephone Mr Williams for further details. He did not, however, highlight any adverse details of the five cases involving disciplinary action against Ramesh Organisation advisers, evidently because the Respondent's usual practice, as indicated above, was not to provide details concerning advisers who were not the subject of the reference check request in question.

46 It is evident from the internal correspondence between Mr Ng and Mr Williams set out at [43]–[44] above that Mr Williams was bent on conveying an adverse impression of the Appellant and the Ramesh Organisation. To that end, he wanted the Ramesh Organisation's persistency rates to be highlighted together with any adverse details of the five disciplinary cases against Ramesh Organisation advisers, especially if any of those cases were "bad", *even though* Tokio Marine had not sought such information.

47 It is unclear when or why Tokio Marine decided not to hire the Appellant. According to the Appellant, he was told by two representatives from Tokio Marine sometime in June or July 2012 that the company had decided not to proceed with his job application "because someone had written

something about [him]". It appears that Tokio Marine did not even embark on the process of applying to MAS for a RNF licence for the Appellant.

MAS's formal reply to the Appellant regarding Prudential's RNF Licence Application

48 After receiving news that his application to join Tokio Marine had also failed, the Appellant sought assistance from DPM Teo again in July 2012 as he was exasperated and worried that he would no longer be able to work in the financial advisory and insurance industry, given how his job applications to Prudential and Tokio Marine had turned out.

49 DPM Teo wrote to MAS on the Appellant's behalf to make further representations in respect of the RNF Licence Application that Prudential had submitted the year before in August 2011. As mentioned at [39] above, MAS wrote to the Appellant on 31 August 2012. The relevant part of the letter reads:

> …
>
> 3 … Based on information that had been brought to our attention in relation to your previous employment with [the Respondent], the information raised several issues of concern, including:
>
> (i) Your former agency unit, [the] Ramesh Organisation, had a low group persistency and high lapse rate; and
>
> (ii) Several of your agents were disciplined by [the Respondent] for issues such as improper sales practices and unprofessional conduct.
>
> *In view of these concerns*, MAS conveyed to Prudential that MAS was prepared to accept its application for you to be its representative subject to conditions to be imposed on Prudential with respect to your provision of financial advisory services as its representative. Subsequently on 15 December

> 2011, MAS was informed by Prudential of the withdrawal of its application for you to be notified as its representative.
>
> 4 We hope that clarifies MAS' position on the matter of your appointment as a representative. …
>
> …
>
> [emphasis added]

The Appellant asserts that he was not aware MAS had these concerns until he received this letter.

The Judge's decision

50 On 30 November 2012, the Appellant commenced a suit against the Respondent founded on three causes of action: defamation, malicious falsehood and negligence. The Judge dismissed all three claims. As the Appellant has appealed only against the Judge's decision in respect of the negligence claim, we will not address the other two claims in this judgment.

51 The Judge found that the Respondent owed a duty to the Appellant to take reasonable care in responding to Prudential, Tokio Marine and MAS, but held that the Respondent had not breached that duty. He found that the statements on persistency rates in the information provided by the Respondent were accurate and supported by evidence, and that contrary to the Appellant's assertion, the 13-month measure of persistency, which was the measure used in respect of regular premium policies handled by the Ramesh Organisation (see [22] above), had not been invented by the Respondent in order to prejudice the Appellant, but had in fact been introduced to its advisers, including the Appellant, at a workshop held on 8 March 2011. As for the statements pertaining to the compliance issues, the Judge found that those statements had not been carelessly made and were true. He also held that while

the information given by the Respondent might not have been complete in that the outcome of the investigations into the Appellant and the Ramesh Organisation advisers concerned had not been provided, the Respondent did subsequently inform Prudential and Tokio Marine that no further action had been taken against the Appellant because of insufficient evidence.

52 The Judge further observed that in any event, the Appellant's claim would likely have failed even if the Respondent had been found to have breached its duty of care because causation appeared not to have been established. In this regard, he observed that upon, and despite, receiving the reference check response from the Respondent, Prudential had gone ahead to apply for a RNF licence for the Appellant and had obtained a conditional licence from MAS. It was for reasons known only to Prudential, and which appeared to have nothing to do with the Respondent or the information that it had provided to Prudential, that Prudential later decided not to hire the Appellant. As for Tokio Marine, the Judge noted that the evidence suggested that the company took into account various factors in deciding not to hire the Appellant, of which the reference check response from the Respondent was only one. He was thus of the view that it was questionable whether the Respondent's conduct had *caused* the Appellant not to be employed by Tokio Marine.

The parties' respective cases on appeal

The Appellant's case

53 The Appellant argues that the Judge erred in: (a) finding that the Respondent had not breached its duty of care to him; and (b) thinking that there was no causal link between the Respondent's conduct and his failure to

secure a job with either Prudential or Tokio Marine. He raises the following arguments in respect of the finding that there was no breach of duty on the Respondent's part:

(a) The Judge erred in failing to define the applicable standard of care. The standard of care owed by the Respondent required it to provide information that was prepared carefully and judiciously.

(b) The information provided by the Respondent to Prudential, Tokio Marine and MAS was neither complete nor accurate. First, the Respondent omitted to mention the Appellant's achievements and emphasised only the allegedly negative aspects of his performance. Second, the persistency ratios that were provided gave an inaccurate and incomplete picture, and suggested that the Appellant was an incompetent senior financial services director. The Judge should not have focused only on the accuracy of the figures or on the fact that the Respondent had subsequently provided all the relevant information to Prudential and Tokio Marine.

(c) The Respondent had acted in bad faith in providing incomplete and inaccurate information to the Appellant's potential employers.

54 With regard to the Judge's observation that there did not appear to be any causal link between the Respondent's conduct and the Appellant's failure to secure a job with either Prudential or Tokio Marine, the Appellant contends that in respect of his application to join Prudential, the Respondent's breach had a material impact on MAS's decision to issue only a conditional RNF licence to him. Further, Prudential eventually decided not to hire him because the process of clearing his job application had become "too long-drawn", and

this was a consequence of the Respondent's negligence in preparing its reference check response to Prudential. As for his application to join Tokio Marine, the Appellant argues that the Respondent's reference check response caused Tokio Marine to have the impression that he had compliance issues, which eventually led to Tokio Marine's decision not to hire him.

The Respondent's case

55 The Respondent, on the other hand, relies on the following arguments to submit that the Judge correctly found that it had not breached its duty of care to the Appellant:

(a) The applicable standard of care must be determined in the light of the regulatory framework that financial institutions are subject to. In this case, the standard of care would have been met as long as the Respondent had exercised reasonable care and skill in providing information that was relevant for the Appellant's prospective employers to conduct the necessary probity checks pursuant to the Industry Reference Check System and the RNF.

(b) The Respondent was not required to provide a full and comprehensive report on all facts concerning the Appellant, including his positive aspects and achievements. Such a requirement was contrary to the objective of the regulatory framework and would unfairly burden those in the industry.

(c) The persistency ratios that were provided by the Respondent were factually true and accurate.

(d) Whether the Respondent had acted in bad faith was irrelevant to whether it had breached its duty of care to the Appellant. Negligence and bad faith were separate issues, and in any event, the Judge was correct in finding that the Respondent had not acted in bad faith.

56 The Respondent also submits that there was no causal link between its conduct and the eventual decisions of Prudential and Tokio Marine not to engage the Appellant. It further argues that the Appellant failed to prove that he suffered any loss because: (a) the 24-month financial package which the Appellant claims he was offered by Prudential had not been finalised; and (b) since 19 May 2011 (shortly after resigning from the Respondent), the Appellant has been involved in another business that he jointly owns with his wife (namely, a vegetarian restaurant), contrary to his assertion that he has not been able to find reasonable alternative employment.

The issues on appeal

57 Broadly, three issues fall to be determined in this appeal:

(a) What is the standard of care expected of a former employer or principal in its preparation of a reference for a former employee or agent?

(b) Has the Respondent breached its duty of care to the Appellant?

(c) If so, has causation been made out?

We address each issue in turn.

The applicable standard of care

58 Before we undertake an analysis of the applicable standard of care, we first endorse the Judge's finding, together with his detailed analysis (at [230]–[280] of the Judgment), that employers do owe a duty of care to their employees (be it former or present) in the preparation of references. In our judgment, the Judge correctly took into account the factors considered by the House of Lords in *Spring v Guardian Assurance plc and others* [1995] 2 AC 296 ("*Spring (HL)*") within the framework set out in *Spandeck Engineering (S) Pte Ltd v Defence Science & Technology Agency* [2007] 4 SLR(R) 100 in finding that such a duty of care exists.

59 We should add that it does not make a difference that the Appellant was an *agent* rather than an employee of the Respondent. As noted by the Judge at [250] of the Judgment, the factors that led to his finding that an employer owes its employee a duty of care in preparing a reference for him are also present in the context of the relationship between some principals and agents, such as that between the Respondent and the Appellant. This was also the view of the House of Lords in *Spring (HL)*: see Lord Goff's observations at 321 and Lord Woolf's observations at 340–341. We thus use the terms "employer" and "principal" interchangeably in this judgment. Further, we also agree with the Judge's finding (at [253]–[254] of the Judgment) that such a duty of care is owed not only by a current employer, but also by a *former* employer.

60 To determine whether the Respondent has breached its duty of care to the Appellant, it is necessary to first consider what the standard of care expected of the Respondent is. As this issue has not previously been

considered by this court, we start by reviewing the principles set out in the English cases.

The standard of care as analysed by the English courts

61 *Spring (HL)* is often regarded as the first case in which it was held that an employee has a cause of action in negligence against an employer who provides a reference that, although unfavourable and inaccurate, falls short of being defamatory. But in fact, about eight years before the House of Lords' judgment in *Spring (HL)*, the English High Court in *Lawton v BOC Transhield Ltd* [1987] IRLR 404 ("*Lawton*") had already held that an employer owes a duty of care to its employee to ensure that the opinions contained in an employment reference are based on accurate facts. The court in *Lawton* did not discuss whether the imposition of liability for negligence would subvert the protection which had hitherto been regarded as being within the province of the law of defamation (that issue was subsequently carefully analysed by the House of Lords in *Spring (HL)*). Notwithstanding this, the English High Court's observations in *Lawton* on the applicable standard of care remain helpful for our purposes.

The decision in Lawton

62 The plaintiff in *Lawton*, Mr John Arthur Lawton ("Mr Lawton"), worked for the defendant, BOC Transhield Ltd ("BOC"), for ten years, mostly as a driver, until he was retrenched because he did not wish to be transferred to another depot when the depot which he was working at closed permanently. After his retrenchment, Mr Lawton was employed by Cadbury Schweppes on a probationary basis. When Cadbury Schweppes considered him for a permanent position, it requested a reference from BOC.

63 BOC wrote a poor reference for Mr Lawton, in which it said that it would not re-employ him. It later explained in its further communications with Cadbury Schweppes that this was because Mr Lawton had been abusive and threatening to his superiors, was a poor timekeeper as compared to his peers, had a poor attendance record, had a poor health record, was unreliable and had poor driving ability. Cadbury Schweppes subsequently dismissed Mr Lawton, who thereafter remained unemployed for about two years. Mr Lawton sued BOC for causing him economic loss arising from its alleged negligence in providing the reference to Cadbury Schweppes.

64 Tudor Evans J dismissed Mr Lawton's claim as he found that the reference given to Cadbury Schweppes had been honest and accurate, and had not been negligently prepared (at [58]). His judgment is helpful because it articulates the standard of care that is expected of a reasonable employer when writing a reference. He held that there was no obligation for employers to give references, and that they were always entitled to refuse to give one. But, if they chose to provide references, they were obliged to take reasonable care to ensure that the opinions which they expressed were based on accurate facts. The test, he held, was whether a reasonably prudent employer, on the facts as found, would have expressed the opinions which were stated in the reference.

The decisions in Spring (HC) *and* Spring (HL)

65 Further observations on the applicable standard of care were subsequently made by both the English High Court and the House of Lords in the decisions that culminated in *Spring (HL)*. The English High Court's decision is reported as *Spring v Guardian Assurance plc and others* [1992] IRLR 173 ("*Spring (HC)*").

66 The facts in *Spring (HC)* are similar to those in the present case, in that both concern the financial services industry. By way of background, financial institutions in the United Kingdom are required to adhere to the rules of a statutory body, the Life Assurance and Unit Trust Regulatory Organisation (we hereafter refer to this organisation as "LAUTRO" and to its rules as "the LAUTRO Rules"). Similar to the position in Singapore, the LAUTRO Rules require financial institutions to first obtain references from a potential hiree's former employer in order to ensure that he is a "fit and proper" person to be employed in the financial services industry.

67 Mr Spring, the plaintiff, was employed by one of the defendants, a small estate and insurance agency known as "Corinium", to sell insurance policies. Corinium was in turn an agent of a British insurance company, Guardian Royal Exchange Assurance plc ("GRE"). Mr Spring was also a company representative of GRE. Eventually, GRE became the major shareholder of Corinium and appointed one Mr Siderfin to be Corinium's CEO. Mr Siderfin did not get along with Mr Spring, and dismissed him without explanation less than a month after assuming office. The decision to dismiss Mr Spring might also have been the consequence of rumours that he was intending to join a competitor. After he was dismissed, Mr Spring applied to join Scottish Amicable ("Scottish"), which sought a character reference from GRE. GRE stated as follows in the reference which it provided (see *Spring (HC)* at [25]):

> Mr Spring held the position of sales manager until he was asked to leave in August of this year. His former superior has stated in writing that he was seen by some of the sales staff as a person who consistently kept the best leads for himself with little regard for the sales team that he was supposedly to manage; and his former superior has further stated that he is a man *of little or no integrity and could not be regarded as honest.*

> … [W]e have found a serious case of mis-selling where the concept of "best advice" was ignored and the policies sold which yielded the highest commissions. GRE personnel had to visit the investor to rectify the situation. There have been other cases where there has been bad advice but there is no current evidence to indicate whether this was deliberate or through ignorance.
>
> [emphasis added]

As a result of this reference, Scottish declined to hire Mr Spring, who later also failed to be hired by two other insurance companies. Mr Spring sought damages from GRE and Corinium for economic loss.

68 The "serious case of mis-selling" stated in the reference provided by GRE referred to a transaction that had been executed by Mr Spring while he was working for Corinium. That transaction was the largest which Mr Spring had ever executed and involved the investment of £170,000 on behalf of a client, Mr Fennell. Mr Spring proposed that most of the money be invested in policies with GRE. However, those policies were inappropriate for Mr Fennell and would have caused him significant financial losses. At the same time, Mr Spring would have benefitted from large commission payments. Other staff discovered the matter before Mr Spring's proposal was accepted by GRE, and steps were taken to rectify the situation. It was disputed whether Mr Spring had made the recommendation out of incompetence or with the motive of generating the highest possible commission for himself.

69 Mr Lever QC, sitting as a deputy judge of the English High Court, allowed Mr Spring's claim in negligence and agreed with his counsel that the reference provided by GRE had been so "strikingly bad" that it could aptly be described as a "kiss of death" to Mr Spring's career in insurance (at [2]). He found that in the case concerning Mr Fennell, Mr Spring had acted

incompetently, but not dishonestly with the object of securing a substantial commission for himself, and that this would have been clear to GRE if it had carried out a proper inquiry into the case instead of simply concluding that Mr Spring must have been dishonest because no one could have been so incompetent as to make such a mistake (at [147]). Mr Lever held that GRE should have been careful and judicious in its preparation of the reference. He held that Mr Siderfin, whose input was relied on for the preparation of the reference, had been prejudiced against Mr Spring, and this had caused him to "play fast and loose" with the facts (at [158]). He found GRE to be in breach of its duty of care to Mr Spring because even if it believed the statement which it made in the reference about Mr Spring's lack of honesty and integrity, it had made that statement without first undertaking a careful assessment of Mr Spring's qualities, and that statement was, in the final analysis, careless of the true facts (at [158]). Mr Lever's decision was overruled by the English Court of Appeal, but it was later reinstated by the House of Lords in *Spring (HL)*.

70 When the matter eventually went before the House of Lords, the focus of the court was not on the standard of care that should be applied, but on whether finding a duty of care under the law of negligence would undermine, and be incompatible with, the policy underlying the defence of qualified privilege in the law of defamation. Lord Goff did, however, make some observations in relation to what the applicable standard of care might be. He placed great emphasis on the importance of an employer ensuring that the facts stated or relied on as the basis for an opinion expressed in a reference were accurate, as is clear from the following observations which he made at 320:

> … [T]he central requirement [of the duty of care] is that reasonable care and skill should be exercised by the employer in ensuring the accuracy of any facts which either (1) are communicated to the recipient of the reference from which he may form an adverse opinion of the employee, or (2) are the basis of an adverse opinion expressed by the employer himself about the employee.

71 It can be gleaned from these earlier English cases that the courts held a reasonable employer to the standard of: (a) stating *facts* which were true and accurate; and (b) stating adverse *opinions* about an employee only to the extent that these could be supported by facts which were true and accurate. The courts also made it clear that employers must not provide references which were affected by, or laden with, prejudice, and that taking liberties with the facts would breach the duty of care.

72 Subsequent cases have gone further to hold that a reasonable employer should ensure that a reference is not only factually accurate, but also *not unfair* when taken as a whole: see the decisions of the English Court of Appeal in *Bartholomew v London Borough of Hackney* [1999] IRLR 246 ("*Bartholomew*") and *Cox v Sun Alliance Life Ltd* [2001] IRLR 448 ("*Cox*"); the decision of the English High Court in *Kidd v AXA Equity & Law Life Assurance Society plc and another* [2000] IRLR 301 ("*Kidd*"); and the decision of the Employment Appeal Tribunal in *TSB Bank plc v Harris* [2000] IRLR 157 ("*TSB Bank*").

The decision in Bartholomew

73 In *Bartholomew*, the plaintiff, Mr Dennis Bartholomew ("Mr Bartholomew"), was previously employed by the defendant, the London Borough Council of Hackney ("the London Council"), as the head of its race equality unit. He was suspended pending investigations into alleged financial

irregularities, for which disciplinary proceedings were later commenced. While the disciplinary proceedings were going on, Mr Bartholomew filed a complaint with an employment tribunal alleging racial discrimination on the part of the London Council. Before his complaint was disposed of, the parties reached a settlement under which the London Council agreed to allow Mr Bartholomew to opt for voluntary severance and to pay him nine weeks' salary in lieu of notice; on his part, Mr Bartholomew agreed to withdraw his complaint. It was recorded in the settlement that the disciplinary action against Mr Bartholomew would "automatically come to an end" upon the termination of his employment.

74 Mr Bartholomew was later offered a job as a resident social worker by Richmond-upon-Thames Social Services ("Richmond"), which asked the London Council for a reference. The London Council responded as follows (at [5]):

> …
>
> Mr Bartholomew commenced employment with this authority in 1984 as a project officer. In January 1992 he was appointed as head of the race equality unit.
>
> In February 1994, Mr Bartholomew took voluntary severance from the authority's service following the deletion of his post.
>
> At the time of his departure Mr Bartholomew was suspended from work due to a charge of gross misconduct, and disciplinary action had commenced. This disciplinary action lapsed automatically on his departure from the authority.

As a consequence of this reference, Richmond withdrew its offer of employment to Mr Bartholomew. Mr Bartholomew sued the London Council, arguing that while the reference was factually true, taken as a whole, it was unfair and the London Council had breached its duty of care to him.

75 The English Court of Appeal held that a reference must be true, accurate and fair, and must not give an unfair or misleading overall impression even if its discrete components were factually correct (at [22]). Its holding at [17]–[18] bears noting:

> 17 … [A] number of discrete statements may be factually accurate, but nevertheless may in the round give an unfair or potentially unfair impression to the reader. …
>
> 18 Mr Bartholomew's claim against [the London Council] was of course a claim in negligence, not libel. Nevertheless the libel cases seem to me to serve as a salutary reminder that *the fairness or unfairness, the accuracy or inaccuracy, and, indeed, [the] truth or falsity of a statement have to be taken in the round and in context and cannot be in every case dissected into a number of discrete parts.*
>
> [emphasis added]

The court did not accept Mr Bartholomew's submission that a reference must in every case be full and comprehensive (at [22]). On the facts of the case, it found that the reference was not unfair or inaccurate, and that the London Council had not breached its duty of care to Mr Bartholomew.

The decision in Kidd

76 The English High Court in *Kidd* followed *Bartholomew* in holding that the provider of a reference did not have a duty to give a full and comprehensive reference or to include in the reference *all* material facts, even though it had a duty not to give false or misleading information.

77 The plaintiff, Mr Richard Kidd ("Mr Kidd"), was a former representative of the defendant, AXA Equity & Law Life Assurance Society plc ("AXA Equity"). He wished to join another financial institution, Allied Dunbar, which sought a reference from AXA Equity in accordance with the

LAUTRO Rules. As part of the reference, AXA Equity completed an industry questionnaire supplied by Allied Dunbar, but left some questions unanswered. AXA Equity stated as follows in the covering letter accompanying the completed questionnaire (at [8]):

> …
>
> As you are aware, Richard Kidd's business … is currently the subject of an investigation, which is unlikely to be concluded for some time. We have not completed certain sections of your form which I intended to cover in the remainder of this letter.
>
> Our current concerns regarding Mr Kidd's activities arise as a result of certain complaints we have received from clients. These clients believe that they did not receive good advice from Mr Kidd. We have interviewed four clients, the results of which are not conclusive but which have led us to determine that we must carry out a customer care exercise and interview a number of other clients who have to date not complained. Since taking that decision we have received a request from [LAUTRO] following a visit they made to [check on Mr Kidd's business] as part of [a] Periodic Inspection Visit. [LAUTRO]'s request requires us to carry out a review of all the business Mr Kidd has conducted while appointed to [AXA Equity] in order to assess whether the clients' needs have been adequately served. Clearly there is a good deal of work to be done here.
>
> …

78 Almost two months later, AXA Equity followed up with a supplementary letter enclosing, among other things, a handwritten letter of complaint by one of Mr Kidd's former clients, which Allied Dunbar had asked for in a previous telephone conversation. As a result of the reference and the letters sent by AXA Equity, Allied Dunbar declined to hire Mr Kidd. Mr Kidd subsequently sued AXA Equity for negligence, but his claim was dismissed by the English High Court.

79 The judge, Burton J, observed that a former employer could possibly be subject to the following duties (at [14]):

(a) a "stage one" duty to take reasonable care not to provide *false* information;

(b) a "stage two" duty to take reasonable care not to provide *misleading* information; and

(c) a "stage three" duty to take reasonable care to give a full and comprehensive reference.

After a detailed analysis, Burton J held that a former employer owed its employee a "stage one" duty and a "stage two" duty in the preparation of a reference, but not a "stage three" duty, which would require it to exercise reasonable care to give a reference that was full and comprehensive or one that included all material facts. He observed that it would be extremely difficult to formulate and define such a "stage three" duty, and more importantly, it might be overly burdensome and it might also not be in the public interest or the interest of the employee himself to impose such an obligation on employers (at [17]).

80 Burton J held that employers had a duty towards employees to take reasonable care not to give false information, or information that was misleading either because the information provided had gone through an unfair process of selection or because facts and opinions had been included in such a manner as to give rise to a false or mistaken inference in the mind of a reasonable recipient (at [15]). It is evident from the approach taken by Burton J that there are two distinct aspects of the inquiry in determining whether an employer has breached its duty of care to its employee in providing a reference:

(a) the *nature* of the information provided, and whether this was tainted by reason of the way in which it was selected or presented; and

(b) the likely *effect* of the reference on a reasonable recipient, and specifically, whether such a recipient would be left with a false or mistaken impression.

81 Burton J held that there was no breach of the applicable duty of care on the facts. Upon looking at the reference provided by AXA Equity in totality, Burton J found that AXA Equity had communicated that there were several unresolved complaints relating to Mr Kidd's selling practices as well as an outstanding customer care exercise and review of his business. There was no hostile provisional view expressed, and thus, the reference was not misleading or negligently provided, even though it would inevitably be regarded as a "bad reference" (at [34]). Burton J also held that the supplementary letter which had been sent by AXA Equity to Allied Dunbar was not misleading as all that could be said about that letter was that it inadequately described the nature of the complaints against Mr Kidd (at [40]).

The decision in Cox

82 *Cox* was a case where the employer was found to have failed to take reasonable care both to ensure that the facts stated in the reference which it provided were true and to ensure that the reference as a whole was fair.

83 The case concerned a reference given by the defendant, Sun Alliance Life Ltd ("Sun Alliance"), to Hambro Guardian Consultancy Ltd ("Hambro Guardian"), the new employer of the plaintiff, Mr Cox. Mr Cox had been employed by Sun Alliance for some 17 years. He was unable to get along with

his colleagues at a new office, where he had been promoted as the branch manager. As a result of a serious rift that developed between Mr Cox and the other staff of that branch, Mr Cox was suspended on full pay while he was on a period of absence due to illness. There was no suggestion that the suspension was due to any financial impropriety or dishonesty on his part.

84 While negotiations for a settlement were going on, Sun Alliance received information that Mr Cox had received improper payments. Mr Cox was informed of the allegations, but Sun Alliance neither carried out any full investigation nor discussed the matter in detail with him. Sun Alliance did carry out a special audit of Mr Cox's files, but this did not reveal any evidence of fraudulent activity. At no point did Sun Alliance accuse Mr Cox of dishonesty.

85 Eventually, the parties reached a settlement on the terms that Mr Cox would receive a lump sum of £15,000 and three months' salary in lieu of notice in return for his amicable departure from Sun Alliance. Sun Alliance additionally agreed to provide Mr Cox with a reference, which would be worded in a manner that was agreed between the parties, should Mr Cox ever require one.

86 In the meantime, Mr Cox successfully obtained fresh employment with Hambro Guardian, which shortly after requested a reference from Sun Alliance. The reference provided by Sun Alliance stated that Mr Cox, while loyal and capable of working without supervision, was not suited to the position of a branch manager as there were concerns as to his honesty and his ability to get along with others. Although Sun Alliance did mention that Mr Cox was a successful salesman who had regularly been among the

company's "top ten salesmen", it also stated that it would not hire Mr Cox in the same capacity (presumably as a branch manager) again. In addition to this reference, Mr Jones, Sun Alliance's personnel services manager, also spoke to two representatives from Hambro Guardian, including a Mr Brian Cosgrave ("Mr Cosgrave"), over the telephone, during which he provided a reference to the effect that Mr Cox had been suspended pending investigation into allegations of dishonesty, and that Mr Cox would have been dismissed but had been allowed to resign instead. As a result, Hambro Guardian terminated Mr Cox's employment.

87 Mr Cox sued Sun Alliance for damages on the basis that it had acted negligently or in breach of the settlement agreement when providing Hambro Guardian with the reference. At first instance, it was held that there was no breach of the settlement agreement, but that Sun Alliance had been negligent. On appeal, the English Court of Appeal upheld the trial judge's decision and found that Sun Alliance had breached its duty of care to Mr Cox because Mr Jones had not taken reasonable care to be either accurate or fair. The court held as follows at [82]:

> (a) Unlike the London Council in the case of *Bartholomew*, Mr Jones did not confine himself to a small number of factually indisputable statements. He inaccurately suggested that: (i) Mr Cox had been suspended for serious matters involving dishonesty, among other things; (ii) charges had been properly brought against Mr Cox and thoroughly investigated; and (iii) it was only after thorough investigations, which had satisfied Sun Alliance that it was entitled to dismiss Mr Cox, that it was prepared to allow him to resign under a negotiated settlement because of the difficulty of proof. Almost all of

the assertions made by Mr Jones were inaccurate to a greater or lesser degree.

(b) In totality, the reference was wholly unfair. The reference suggested, at the very least, that Sun Alliance had a reasonable basis, after a reasonable investigation, for dismissing Mr Cox on the ground of dishonesty amounting to corruption, when in truth, the charges of dishonesty that had been suggested to Hambro Guardian had never been put to Mr Cox and had never been the subject of any proper investigation or formal disciplinary proceedings, save for a special audit, which was inconclusive and later shelved pending the settlement.

88 In coming to its decision, the English Court of Appeal also placed weight on Mr Jones' lack of objectivity in making the statements about Mr Cox's suspension from work and his subsequent departure from Sun Alliance, as well as the evidence of Mr Cosgrave (the representative from Hambro Guardian) that Mr Jones had been almost overly enthusiastic and gleeful when he provided the information about Mr Cox over the telephone (at [83]).

89 It is evident that the English Court of Appeal took into account the gravity of the effect which the reference had on the employee in assessing the standard of care required of the employer. In our judgment, this is sensible. Where a reference contains adverse suggestions touching on matters such as the honesty or integrity of the employee concerned, the employer will be expected to take particular care to consider how the suggestions would likely be understood by a reasonable recipient of the reference, and to ensure that the

suggestions are: (a) fairly and reasonably made; and (b) founded on a sound factual basis.

The decision in TSB Bank

90 Finally, we turn to *TSB Bank*. That case did not involve a claim in negligence, but instead concerned an allegation of a breach of an implied term of contract so as to give rise to constructive dismissal. The issue was whether the employer had breached the implied term of trust and confidence in an employment contract by revealing complaints against the employee, of which she was unaware, in a reference that it gave to her prospective employer, thereby causing her to lose her chance of obtaining new employment. Although the employee's claim against the employer was not based on negligence, the observations made by the Employment Appeal Tribunal in that case are nonetheless relevant and useful for our purposes.

91 The plaintiff, Ms Harris, was a savings and investment adviser at TSB Bank plc ("TSB"). In the course of Ms Harris's employment with TSB, TSB received complaints from customers about her giving misleading or inadequate information to them. Except for two of the complaints, Ms Harris was not informed of these complaints and so was never given an opportunity to furnish an explanation in relation to them. It was also undisputed that she had previously been given a final warning for forgery when she changed an entry on a form and initialled it on behalf of her customer so as to save time.

92 In 1996, Ms Harris looked for another job following the arrival of a new manager whom she considered was hostile towards her. She applied to Prudential Assurance Company ("PAC") for a position. During her interview, she explained the forgery incident to PAC, and this was accepted (at [35]). In

keeping with the LAUTRO Rules, PAC approached TSB for a reference. The reference provided by TSB contained no assessment of Ms Harris's character and was confined to factual statements. It stated that 17 complaints had been made against Ms Harris, out of which four had been upheld and eight were outstanding. As a result of this reference, PAC declined to hire Ms Harris, who was shocked to discover that there had been so many undisclosed complaints against her. She resigned from TSB and presented a complaint before an employment tribunal for unfair and constructive dismissal.

93 The employment tribunal at first instance found that TSB had breached an implied term of trust and confidence in referring to the complaints, which Ms Harris had not previously been informed of and against which she had not had an opportunity to defend herself. This presented a misleading picture of Ms Harris. It also found that this breach had caused her to leave her employment. TSB's appeal against this decision was dismissed by the Employment Appeal Tribunal, whose observations at [46] are pertinent:

> … [T]he law does not oblige an employer to help an employee obtain other work and … a reference does not have to be complete but only reasonable and fair. … [I]n assessing whether [TSB] were in breach of contract, the tribunal were entitled to, and we find, did, consider not only the quality of the act of sticking to the regulations in isolation, but also in relation to its effect on the employee. They found that [TSB's] approach, because of its misleading effect, was damaging. In a similar way the phrase 'being economical with the truth' has become part of our language. *Referring to unrevealed complaints may be nothing more than the truth, and completely accurate, but simply to be accurate in what is said may not lead to a 'reasonable and fair' reference.* The tribunal found that to give half the story is to take a positive step, the result of which risks creating a misleading impression that is liable to damage an employee permanently. … [emphasis added]

The Employment Appeal Tribunal noted that steps such as informing the employee of complaints at the stage when the complaints were made or when

the reference was being prepared, or the provision of a fuller reference could be taken in order to ensure that the employee was not unfairly prejudiced (at [71]).

94 The Employment Appeal Tribunal stated as a caveat that the situation might be different where the subject of the reference was a *former* employee as opposed to a current employee, and left open the question as to whether a similar obligation would be present in the former situation as it was not engaged on the facts (at [68]). The hesitancy of the Employment Appeal Tribunal to hold that the obligation also applied to a *former* employee may be due to the fact that *TSB Bank* concerned the implied term of trust and confidence in a contract of employment. In *Wee Kim San Lawrence Bernard v Robinson & Co (Singapore) Pte Ltd* [2014] 4 SLR 357 at [24], we observed that this implied term entailed that a party "shall not, without reasonable and proper cause, conduct itself in a manner calculated and likely to destroy or seriously damage the relationship of mutual trust and confidence between employer and employee". An argument might thus be made that such an obligation does not extend to a *former* employee as the relationship of mutual trust and confidence no longer subsists after the termination of the employment relationship. We leave this question open for it to be decided in a case with a factual matrix that engages it. The present case involves not the implied term of trust and confidence in an employment contract, but a duty of care in negligence to avoid giving an unfair or misleading impression of an employee in an employment reference. As we have stated at [59] above, there is no distinction between the duty of care expected of a former and a current employer in this regard (see also [253]–[254] of the Judgment).

95 Subject to these observations, we largely agree with the views expressed by the Employment Appeal Tribunal in *TSB Bank*, although we think it would perhaps be more precise to replace the word "accurate" in the passage quoted at [93] above (from [46] of *TSB Bank*) with the word "true". As we explain at [98] below, the two words bear slightly different meanings. The accuracy of a statement entails not only that what is said is *true*, but also that what is *not* said would not result in the recipient having a wrong impression.

96 Two other observations of the Employment Appeal Tribunal in *TSB Bank* bear highlighting:

(a) First, the appeal tribunal agreed with the tribunal below that an employer could not rely on the fact that it was only doing what was required of it under the regulations governing the financial services industry to contend that the reference which it had given was fair and reasonable, not least because its obligations to its regulator were not the measure of its obligations to its employee (at [44]).

(b) Second, the appeal tribunal also held that an employer could not rely on the standard practice of the industry in the way in which complaints were handled and references were given to contend that it was not in breach of its implied obligation to its employee. This was because the fact that a practice was widespread did not change the fact that to disclose in a reference complaints which had not previously been made known to the employee and which could potentially destroy the employee's career was a breach of the implied term of trust and confidence (at [58]).

We agree with both of these observations, which, in our view, apply equally in the context of negligence.

The applicable standard of care in Singapore

97 In broad terms, we find ourselves in agreement with the approach that has been developed in the English cases. In particular, we consider that an employer who writes a reference for an employee is obliged to exercise due care to ensure that the facts contained in the reference are true, and that any opinions expressed in the reference are based on, and supported by, facts which are true.

98 Beyond exercising due care to ensure that the facts stated in a reference are true, the employer is also required to exercise due care to ensure that the facts are *accurate*. This follows from the requirement that the reference, as a whole, must not be unfair or misleading, but it is worth drawing out this point for emphasis. As alluded to at [95] above, accuracy depends not only on what is said, but also on what is *not* said (*ie*, what has been withheld). An assertion consisting of facts that are true may not be accurate if it conveys a misleading impression because it fails to present the full picture. This was the case in *TSB Bank*. Therefore, although there is no requirement that a reasonable employer must disclose everything which it knows about the employee who is the subject of the reference (see [75] and [79] above as well as [100] below), it is expected to disclose whatever is relevant and relates to information that has already been disclosed, where withholding such information would render the disclosed information incomplete, inaccurate or unfair. This may assume particular significance where a recipient of a reference asks for further information or clarification pertaining to what has been disclosed. The

employer would continue to owe the employee the same duty of care when responding to such requests.

99 We do not go so far as to say that an employer is required to *guarantee* the accuracy or truth of a reference. What is required is the exercise of *reasonable care* in the preparation of the reference so as to meet the foregoing requirements of truth, accuracy and fairness (see Lord Lowry's observations in *Spring (HL)* at 327).

100 In this regard, as we have indicated earlier (at [98] above), a reference need not be full and comprehensive. A reference will not be faulted on the ground that it did not contain each and every material fact about the employee concerned as long as the omission to include any fact does not thereby render the reference either unfair or inaccurate. Save to this extent, to require an employer to include all information (both positive and negative) in a reference would be unrealistic and unduly onerous. In any event, it is reasonable to expect the employee himself, and not his employer, to present his own best case for employment. Further, some references may specifically require the inclusion of adverse information.

101 An adverse reference will not automatically be regarded as being unfair or misleading. Some references, such as the Reference Check Form in the present case, are meant to elicit primarily adverse information. In such cases, an employer clearly cannot be faulted for not including *positive* attributes about the employee in the reference, save and except where such information relates to other disclosed information and its non-disclosure renders the disclosed information incomplete, inaccurate or unfair.

102 Drawing these principles together, we formulate and summarise the applicable standard of care expected of a reasonable employer (including a former employer) when writing a reference for its employee (including a former employee) as follows:

(a) The employer must exercise reasonable care to ensure that: (i) the facts stated in the reference are true; and (ii) any opinions expressed there are based on, and supported by, facts which are true (see [64], [69]–[71], [75], [79]–[80], [87] and [97]–[98] above).

(b) The employer must also exercise reasonable care to ensure that the reference does not give an unfair or misleading overall impression of the employee, even if the discrete pieces of information which it contains are factually correct. In other words, due care must be taken to ensure that the reference is not only *true*, but also *accurate* in the sense of not being misleading or unfair. The information that is provided may be considered misleading or unfair where: (i) the information provided has gone through an unfair process of selection; or (ii) the manner in which the facts and opinions have been included gives rise to a false or mistaken impression in the mind of a reasonable recipient of the reference (see [75], [79]–[80], [87], [93], [95] and [98] above).

(c) The employer is required to exercise reasonable care to disclose any information that relates to information which has already been provided, where to withhold such further information would render the information that has been disclosed incomplete, inaccurate or unfair. This continues to be the case when the recipient of the reference seeks further information or clarification pertaining to what has been disclosed (see [98] above).

(d) Subject to the foregoing qualifications, the employer is *not* required to give a full and comprehensive reference or to include *all* material facts about the employee in the reference (see [75], [79], [98] and [100] above).

(e) In general, the employer should not include in the reference, whether explicitly or implicitly, complaints or other allegations against the employee that the latter had no knowledge of and had not been given an opportunity to explain or defend himself against. In particular, complaints that were not conveyed to the employee because they were found to be baseless should not be disclosed unless the employer is, for some reason, obliged to do so. In such a case, the employer should make it explicit that: (i) the complaint was dismissed as baseless; and (ii) the employee was not informed of it at that time. The employer should also inform the employee concurrently (see [93] above).

(f) In assessing what constitutes reasonable care, regard will be had to the gravity of any adverse suggestion or inference contained in the reference (see [89] above). The greater the gravity of any adverse suggestion or inference, the more closely will the employer's conduct be scrutinised to ascertain whether it has taken reasonable care to ensure that the suggestion or inference in question: (i) is based on facts which are true and accurate; and (ii) is, in view of those facts, fair and reasonable.

103 In our judgment, it is just to impose such a standard of care upon an employer because of the combination of three factors:

(a) the potential harm that may be inflicted on an employee through a negligently prepared reference;

(b) the often inevitable inclination that an employer may have to damage the prospects of an employee who might be about to join a competitor or who has already done so; and

(c) the inability of an employee to safeguard his own position adequately.

104 These three factors can be illustrated using the context and the facts of the present case. We start with the first factor – the ability to cause harm. It is uncontroversial that negligently prepared references can have serious potential consequences. Such a reference may paint the employee concerned in an unfair and inaccurate light, which might in turn cost him the opportunity to obtain fresh employment. In the context of the financial advisory and insurance industry, references given by employers such as the Respondent would be relied on by an employee's prospective new employers in deciding whether to hire the employee as well as by the industry regulator, MAS, in deciding whether to grant him a RNF licence.

105 Second, in cases where an employee is leaving, or has left, his employer to seek employment with a competitor, the employer may have the inclination, if not the motive, to act in its self-interest and write a reference that would adversely affect the employee's chances of getting the job. Ironically, the better the employee, the greater the employer's incentive to thwart his prospects of working for a rival. Further, it is also not inconceivable that an employer might be motivated to paint an employee in a negative light if the circumstances that led to his departure were not amicable. We are not

suggesting that financial institutions are bound to be motivated by the wrong considerations when they write references, but as long as the possibility exists, it is appropriate to impose a standard of care that would minimise the prospects of this happening.

106 Third, the information that an employer provides in a reference is commonly not disclosed to the employee. Thus, even if the employee has an opportunity of self-disclosure, he might not know the contents of the reference and might therefore not be able to defend himself or correct any mistake or misrepresentation in the reference. This in fact was what transpired in the present case. The Respondent sent its reference check responses to Prudential and Tokio Marine without the Appellant having a chance to see their contents until he filed his suit against the Respondent and obtained these documents through discovery. As a result, even though the RNF includes a segment for self-disclosure, and even though Prudential and Tokio Marine had given the Appellant the opportunity to respond to some of their queries, the Appellant was unable to do so with sufficient appreciation of what had been said about him. It is appropriate, in such circumstances, to expect the person providing the reference to take reasonable care to do so in terms that are accurate and fair.

107 Against the backdrop of these principles, we turn to consider the facts of this case. We first address two preliminary issues.

Preliminary issues

108 First, we note that the Appellant has brought two claims based on negligence in these proceedings – one in respect of the reference check response which was provided to Prudential and one in respect of that provided

to Tokio Marine. As acknowledged by counsel for the Appellant, Mr Eugene Thuraisingam ("Mr Thuraisingam"), at the hearing before us, the Appellant would not be able to obtain damages for both claims even if he succeeds on both as he could only have been employed by *either* Prudential *or* Tokio Marine, but not by both firms. Thus, if we find in the Appellant's favour in respect of his claim concerning his application to join Prudential, there would be no need for us to consider his claim concerning his application to join Tokio Marine. Conversely, if we rule against the Appellant on his claim relating to his application to join Prudential, then given the overlapping facts of his two claims in negligence, including the fact that the references provided in both instances were materially similar, it is likely that his claim in respect of his application to join Tokio Marine will fail as well. For these reasons, we will not address the claim pertaining to the Appellant's application to join Tokio Marine in the analysis that follows.

109 Second, the Respondent objects that the Appellant has "strayed very far" from his pleaded case. Specifically, counsel for the Respondent, Mr Pillai K Muralidharan ("Mr Pillai"), argues that the Appellant cannot be allowed to now rely on the subsequent correspondence that took place between the Respondent, Prudential and MAS when all that he had pleaded for the purposes of his negligence claim in respect of his application to join Prudential was that the statements on persistency ratios and compliance issues in the Prudential Reference Check Form were "false" and, furthermore, were "not full, frank and truthful". In this regard, Mr Pillai points us to paras 41 and 42 of the Appellant's Statement of Claim (Amendment No 2) dated 25 April 2013 ("the Amended Statement of Claim").

110 With respect, we do not accept Mr Pillai's submission and are satisfied that the Appellant has sufficiently pleaded his case. While it is true that the Appellant did not make any specific reference to the Respondent's subsequent correspondence with Prudential and MAS in that part of his pleadings which detailed how the Respondent breached its duty of care, he did refer to the relevant correspondence in the part which detailed the scope of the Respondent's duty of care. In respect of the latter, para 37 of the Amended Statement of Claim states that "the [Respondent] was under a duty to the [Appellant] to take reasonable care in the preparation of … the [Respondent's] Reply when responding to Prudential's Reference Check Request *and the [Respondent's] Subsequent Correspondence with Prudential*; … [and] *the [Respondent's] Correspondence with the MAS in 2011 and the [Respondent's] Subsequent Statements to the MAS*" [emphasis added]. The italicised words encompass all the relevant correspondence which the Appellant seeks to rely on in support of his argument that the Respondent was negligent in providing the information which it furnished to Prudential and MAS. This, in our view, suffices to give adequate notice to the Respondent that the negligence claim extends to its subsequent correspondence with Prudential and MAS. We also note that all the correspondence in fact originated from the Respondent and featured at the trial below. In the circumstances, we cannot see that the Respondent will suffer any prejudice or unfairness if the Appellant is allowed to go beyond the statements on persistency ratios and compliance issues in the Prudential Reference Check Form and rely on the Respondent's subsequent correspondence with Prudential and MAS in support of his contention that the Respondent breached the duty of care which it owed him.

Did the Respondent breach its duty of care to the Appellant?

111 We turn now to consider whether the Respondent breached its duty of care to the Appellant in its provision of the information set out in the Prudential Reference Check Form and in its subsequent correspondence with Prudential and MAS. The information furnished to Prudential and MAS can be classified for the purposes of analysis into three broad categories:

(a) information in respect of the persistency ratios of the Ramesh Organisation;

(b) information in respect of the compliance issues involving the Appellant and some of the advisers in the Ramesh Organisation; and

(c) information on, and allusions to, possible ethical violations by the Appellant and the Ramesh Organisation advisers in general.

112 In our judgment, the Respondent did not meet the requisite standard of care in providing the information in each of the categories listed above. This becomes even more apparent when the information provided is taken as a whole.

Information on persistency ratios

The provision of the persistency ratio for single premium policies was not unfair or misleading

113 We begin with the Respondent's provision of a 19-month persistency ratio in respect of *single* premium policies in the Prudential Reference Check Form (see [22] above). Unlike the position in relation to *regular* premium policies, where the dispute centres on the method that was used to calculate

the persistency ratio, the Appellant does not take issue with the use of the 19-month measure in respect of *single* premium policies. The 19-month persistency ratio calculates the rate at which policyholders choose to retain their funds in respect of their single premium policies over the preceding 18-month period. What the Appellant takes issue with is the Respondent's decision to include the persistency ratio for single premium policies *at all* in the Prudential Reference Check Form. He argues that the Respondent should not have included this information as it knew that since the beginning of 2010, the Ramesh Organisation had predominantly focused on regular premium products instead (see [16] above); alternatively, the Respondent should have included an explanation as to why the persistency ratio for single premium policies was so low in the circumstances.

114 We do not accept this argument. The Appellant has not shown why it was unfair or misleading for the Respondent to include the persistency ratio for single premium policies in the Prudential Reference Check Form. The Ramesh Organisation might have chosen to adopt a particular sales approach and focus only on regular premium policies, but this did not, without more, impose an obligation on the Respondent to withhold disclosure of the persistency ratio for single premium policies. In this regard, we note that Mr Tay Teck Leong ("Mr Tay") from Prudential did give evidence at the trial which suggested that Prudential usually expects to receive a *general* persistency ratio which does not distinguish between single and regular premium policies in the references that it is provided with. But, this by itself does not provide a sufficient basis for us to conclude that it was improper or unfair for the Respondent to include the information on the persistency ratio for single premium policies.

The use of the 13-month measure in respect of regular premium policies was misleading and unfair

115 However, the same cannot be said of the use of the 13-month measure, as opposed to the 19-month measure, for the persistency ratio of *regular* premium policies in the Prudential Reference Check Form. In our judgment, the use of the 13-month measure was misleading and unfair to the Appellant, even though the resultant persistency ratio of 39.6% might have been factually true and mathematically correct.

116 It is necessary to first explain the differences between the 13-month and the 19-month measures of persistency ratios. As we have noted at [9] above, persistency ratios track the number of insurance policies sold by advisers that are still in force over a period of time. There are various methods by which persistency ratios can be measured, and it appears that there is no standard industry practice. In the context of regular premium policies, the 13-month ratio calculates the percentage of customers who renew their policies and pay the renewal premiums when these fall due at the end of a 12-month period, while the 19-month ratio measures the number of policies that are still in force over an 18-month period. The reported persistency ratio can differ greatly depending on which measure is employed, as can be seen from the fact that the Ramesh Organisation's 13-month persistency ratio for regular premium policies was a disappointing 39.6%, while its 19-month persistency ratio for the same type of policies was 89.5%. This is principally because:

(a) Until January 2012, the 19-month measure used by the Respondent incorporated a "premium cap". We have stated above at [9] that in calculating persistency ratios, regard may be had not only to

the number of policies that have lapsed over a given period, but also to (among other factors) the amount of premiums lost on account of the policies that have lapsed. The "premium cap" in the 19-month measure used by the Respondent meant that when an adviser's 19-month persistency ratio was calculated, those of his lapsed policies which had premiums higher than a certain amount specified by the Respondent would be treated as having premiums of only that specified amount. Hence, the total amount of premiums lost due to his lapsed policies would be treated as being lower than the actual figure. The 13-month measure did not incorporate such a "premium cap". In effect, this meant that if an adviser had many lapsed policies with large premiums, his 13-month persistency ratio would be significantly poorer than his 19-month persistency ratio due to the absence of a "premium cap" in respect of the former.

(b) Second, prior to April 2011, policies that were on "premium holidays" (where the policyholder invokes a provision in the policy which permits him to cease making premium payments for a particular period and instead draw on the accumulated cash value of the policy to keep the premiums current during that period) were regarded as policies that had lapsed for the purposes of the 13-month measure, but not the 19-month measure. It would follow that an adviser who had many policies on "premium holidays" under him would have a far lower 13-month persistency ratio compared to his 19-month persistency ratio.

117 We accept that a financial institution may legitimately employ various possible methods to calculate persistency ratios because there is no standard

industry practice. There is nothing wrong, in and of itself, if a financial institution chooses to use the 13-month measure when providing a reference. What we find objectionable in the present case is that the choice of the 13-month measure: (a) was the result of an unfair process of selection because it had never been a measure used by the Respondent to assess the Appellant during his time there; and (b) had the effect of giving rise to a false or mistaken inference in the mind of a reasonable recipient of the reference as the Ramesh Organisation's persistency ratio based on the 13-month measure was much lower than that based on the 19-month measure, which was the measure that the Respondent had used to evaluate the Appellant and the advisers under him while he was working there. In other words, both limbs which would usually lead to a finding that the information provided is misleading (see [102(b)] above) are made out in this case. For the avoidance of doubt, we emphasise that the present situation must be differentiated from one where a financial institution which has always used or has for a time been using – with notice to its agents or employees – a given measure uses *that* measure in its reference check responses.

118 We accept the Appellant's submission that the 13-month measure had been unfairly selected by the Respondent in place of the 19-month measure in respect of regular premium policies. It is evident that at the material time, the Respondent assessed its advisers, including the Appellant and the advisers in the Ramesh Organisation, using the 19-month measure. Although there was some evidence to suggest that the Respondent was thinking of moving towards the use of the 13-month measure and might genuinely have thought that this would provide a more accurate reflection of the quality of an adviser's sales, this essentially took place *after* the Appellant left the company. Throughout the period that the Appellant was with the Respondent, the method of

calculation adopted for assessing his performance and for reference check responses was the 19-month measure. In fact, it was undisputed that the Prudential Reference Check Form was the first occasion on which the Respondent had used the 13-month measure in a reference check response. As a result of the Respondent's decision to use a different measure in that Reference Check Form, the Appellant's impression of his own performance was at odds with what was reflected in that form.

119 The Judge placed considerable emphasis on the fact that the Respondent had introduced the idea of using the 13-month measure of persistency to its advisers, including the Appellant, at the "Agency Persistency Workshop for FSDs" held on 8 March 2011 (approximately six weeks before the Appellant's resignation), and concluded on this basis that the Respondent had not invented the 13-month measure solely for the purpose of responding to Prudential's reference check request on the Appellant (see [282] of the Judgment; see also [51] above). With respect, we do not think much turns on this. Even if we accept that the Respondent had introduced the 13-month measure to its advisers, including the Appellant, at that workshop, there was no evidence to suggest that the Respondent had announced that that measure would thenceforth be used. In fact, one of the presentation slides suggests the *reverse*, *ie*, that the Respondent would continue using the 19-month measure, but would refine the method by which the 19-month persistency ratio was calculated.

120 Further, there was nothing to show that the Appellant had ever been given any information on his 13-month persistency ratio before he left the Respondent. Although Mr Williams asserted in cross-examination that this information had been available to the Appellant because it could be found on

the Respondent's intranet system and database called "AXA Reach", this unsubstantiated assertion, which emerged only at a very late stage of the trial, was not persuasive. The Respondent was unable to provide *any* documentary evidence to support its assertion that the Appellant had ever been informed that he was, or would be, assessed based on the 13-month measure, or even that his 13-month persistency ratio was available to him on the Respondent's intranet. In these circumstances, we are satisfied that the Appellant had no knowledge of the use of the 13-month assessment methodology. It follows, in our judgment, that the 13-month measure should not have been used in the Prudential Reference Check Form in respect of regular premium policies handled by the Ramesh Organisation. As we have observed at [102(e)] above, an employer should refrain from including in a reference any allegations against an employee which the latter had no knowledge of and therefore had no opportunity to explain or defend himself against. This applies equally to *implicit* allegations which may be inferred from the information contained in the reference.

121 The Respondent's decision to use the 13-month measure in the Prudential Reference Check Form in respect of regular premium policies handled by the Ramesh Organisation was also objectionable because it would have caused a reasonable recipient of the form to have a mistaken impression that the Appellant was not competent. This does not square with the evidence, which instead suggests that he was one of the Respondent's best financial services directors, had been awarded incentives (such as a free trip to Bangkok and a free Apple iPad) and was one of the best compensated advisers as at February 2011, just two months before his departure from the Respondent. The impression of the Appellant that was created by the use of the 13-month measure in the Prudential Reference Check Form was simply incongruous

with the profile of a senior financial services director who had won numerous accolades and was clearly valued by the Respondent, so much so that it had persuaded the Appellant not to resign when he wanted to do so in January 2011 (see [17] above).

Relevant information was withheld in subsequent correspondence

122 The Respondent likewise failed to meet the requisite standard of care in withholding relevant information and failing to respond adequately in its subsequent communications with Prudential. As stated at [102(c)] above, an employer's duty of care to its employee extends to providing further information or clarification to the employee's prospective employer when the latter requests this, where the withholding of such information would render the disclosed information incomplete, inaccurate or unfair.

123 The Respondent failed to adequately respond to Prudential's *repeated* attempts over the course of almost a month to seek further information on the method by which the Respondent had calculated the persistency ratios that it provided (see [26]–[28] above). Indeed, the Respondent *never* provided this information to Prudential. This was despite Prudential's clear indication in its second request for further information on 18 July 2011 that it needed the information in order to understand why the persistency ratios provided in the Prudential Reference Check Form differed so greatly from those provided by the Appellant (see [28] above). The Respondent was therefore aware that the Appellant had attempted to respond to Prudential's queries, and that this had resulted in disparate information being provided. For the Respondent not to respond to Prudential's request for clarification in these circumstances was plainly and manifestly unfair. In our judgment, this rendered the information

that the Respondent provided to Prudential incomplete, inaccurate and unfair to the Appellant.

Subsequent information on the Ramesh Organisation's "very poor" 13-month persistency ratio was also unfair and misleading

124 In fact, the Respondent not only did not provide further information or clarification to Prudential, but also made further misleading statements to the effect that the Ramesh Organisation had a "very poor" 13-month persistency ratio of only 9% in the 14 October Letter to Prudential, which was copied to MAS (see [29] above), and in its email to MAS dated 9 November 2011 (see [35] above).

125 Even if we accept that those statements were factually true, in our judgment, they were incomplete, misleading and unfair. As we pointed out at [31(b)] above, the Respondent did not explain how the 13-month persistency ratio stated in the 14 October Letter was derived, which period it covered, whether it was for single or regular premium policies and why it differed from the earlier ratios provided in the Prudential Reference Check Form. In particular, the Respondent did not explain that the persistency ratio might have dropped so drastically because of the departure of the Appellant and the bulk of the advisers under him, which resulted in many of the policies previously handled by them becoming "orphan" policies with no adviser to take over these policies properly, thus causing a corresponding increase in the number of lapsed policies. In our judgment, the withholding of these details had the effect of making the disclosed information misleading, incomplete and unfair to the Appellant.

Information on compliance issues

126 We turn next to the information that the Respondent provided in respect of the compliance issues involving the Appellant and some of the advisers in the Ramesh Organisation.

127 In our judgment, the Respondent breached its duty of care to the Appellant in:

(a) providing, in respect of the compliance issues, information that was incomplete and, thus, misleading and inaccurate; and

(b) failing to disclose information that was relevant and that related to information which had already been disclosed, when further information was sought by Prudential on 7 and 21 June 2011.

We address each of these findings in turn below.

Incomplete, misleading and inaccurate information was given

128 Apart from making three bare statements in the Prudential Reference Check Form that: (a) 14 of the advisers in the Ramesh Organisation, including the Appellant, had been investigated; (b) disciplinary action had been taken against five advisers; and (c) three advisers' cases had been referred to the police for further investigation (see [22] above), the Respondent did not provide any further details of the compliance issues which it mentioned in that Reference Check Form. This would have left a reasonable recipient of the form unclear as to: (a) the gravity of the misconduct that had been alleged against the various parties; (b) the outcome of the investigations and the

disciplinary measures taken; and in particular, (c) what the investigation against the Appellant pertained to.

129 The impression conveyed by the disclosed information was that a substantial number of advisers working under the Appellant's supervision, as well as the Appellant himself, had been investigated for compliance issues; five of the advisers had then faced disciplinary action, out of which three advisers' cases had been serious enough to be referred to the police for further investigation. This unfairly gives rise to the inference on the part of a reasonable recipient of the information that the Appellant had been involved in some serious misconduct and had been investigated for that reason. Apart from casting doubt on the Appellant's character, the information disclosed also impugned his managerial and leadership abilities. From a plain reading of the statements on compliance issues in the Prudential Reference Check Form, a reasonable recipient of the form would likely have formed the view that the Appellant was not a dependable or effective manager, and might even have questioned his integrity in the light of the number of advisers under him who had been investigated or disciplined.

130 Again, the impression created by the sparse information that was provided and the manner in which the information was provided does not cohere with the actual state of affairs. The so-called investigation against the Appellant in fact stemmed from a mere complaint by a client's brother that the Appellant had "behaved rudely and aggressively" towards him at a meeting, and no further action was taken because there was no evidence to substantiate the complaint. None of the three cases referred to the police were serious enough to warrant prosecution. Moreover, contrary to the impression created by the information which the Respondent disclosed, the various incidents did

not appear to be related to each other. Mr Pillai contended that it should have been clear from the annotation "N/A" in Section A of the Prudential Reference Check Form that the Appellant had never been reported to MAS for misconduct (see [21] above), and thus, the Respondent could not be said to have misled the recipient of the form. We do not agree. Notwithstanding the fact that the Respondent had indicated "N/A" in Section A, a reasonable recipient of the form would likely have entertained doubts about the integrity and character of the Appellant, given the manner in which the information on compliance issues was disclosed. A transgression may be serious even if it does not warrant a report being lodged with MAS. More importantly, we do not think it is reasonable for the Respondent to contend that the annotation "N/A" in Section A meant that the Appellant had never misconducted himself, given what it had stated in the annex to Section B. Indeed, Mr Tay from Prudential testified during cross-examination that Prudential had read the annotation "N/A" *in conjunction* with the annex to Section B, and had concluded that "N/A" had been written to signify that there was no other misconduct aside from what had been disclosed in the annex.

131 Although we accept that the responses set out in a Reference Check Form are meant to be brief, and that the prospective employer can seek elaboration or clarification of the information provided should that be required, we do not think this assists the Respondent. The information provided in a Reference Check Form must, by itself, be fair and accurate. The Respondent cannot seek to evade this obligation by arguing that the employer would have an opportunity to supplement the information which it has provided and correct any misleading impression arising from that information with more information in the future *if* such information is *later* requested by the prospective employer. Given that the Respondent had thought it fit to

mention the Appellant's compliance issues in the Prudential Reference Check Form, it: (a) should have made it clear in the same document that no further action had been taken against the Appellant; (b) should have provided brief details of the complaint against the Appellant; and (c) should not have presented the information in the way that it did by juxtaposing it with the information on disciplinary measures and police investigations that had been carried out against other advisers in the Ramesh Organisation and suggesting that these were all somehow connected. Further, and in any event, as we discuss at [133]–[135] below, the Respondent never responded to Prudential's requests for further information on the investigations pertaining to the other Ramesh Organisation advisers.

132 We also note that the Appellant was not involved in either the disciplinary process or the investigations against the other Ramesh Organisation advisers, even though he was informed of the eventual findings made by the Respondent. Further, he was not held responsible for those advisers' misconduct in any way. In these circumstances, we find it unsatisfactory that the Respondent chose to include in the Prudential Reference Check Form statements concerning the investigations and disciplinary measures against those advisers.

Relevant information was largely withheld in subsequent correspondence

133 Just as it did in relation to the information on persistency ratios, the Respondent also failed to meet the standard of care in largely *withholding* relevant information on the compliance issues mentioned in the Prudential Reference Check Form in its subsequent communications with Prudential. In this regard, we disagree with the Judge's finding at [283] of the Judgment that

the Respondent did provide Prudential with the relevant information in its subsequent responses to the latter's queries.

134 Prudential made at least two attempts to obtain further information on the compliance issues mentioned in the Prudential Reference Check Form, in particular, on the investigations concerning the Appellant and the three cases that had been referred to the police for further investigation (see [24] and [26] above). The Respondent only provided further information about the complaint that had been made against the Appellant, but not about the investigations pertaining to the other Ramesh Organisation advisers. Mr Tay from Prudential testified that Prudential was unable to obtain the necessary information from the Respondent and had to turn instead to the Appellant for information:

> A: After subsequently when w*e couldn't get an answer [from the Respondent]* -- I think for these cases, *I think we have tried many rounds of requests, but the answer was not quite forthcoming*, so subsequently, when we can't get any result, we have to get it from [the Appellant] himself on a one-sided basis.
>
> …
>
> Q: Did you manage to get details of the agents who were allegedly investigated and allegedly disciplined and details of the three police cases from [the Appellant]?
>
> A: Yes, it's all from [the Appellant].
>
> …
>
> [emphasis added]

135 The Respondent argues that it should not be faulted for not having provided further information about the investigations pertaining to the other Ramesh Organisation advisers as they were not the subject of Prudential's reference check request. We do not agree. The Respondent's omission is not

only inexplicable but also unjustifiable, given that it had thought it fit to include mention of those advisers in the Prudential Reference Check Form in the first place. Since the Respondent had thought it necessary to disclose that information, the least it could then do was to provide brief details of what the investigations against those Ramesh Organisation advisers pertained to. In our judgment, there was nothing to stop the Respondent from giving brief details or at least the outcome of the investigations, and making it clear that they had nothing to do with the Appellant. All this could have been done without disclosing the identities of the Ramesh Organisation advisers concerned. In short, the Respondent could have indicated the nature and gravity of the alleged misconduct that led to the investigations and/or disciplinary measures against those Ramesh Organisation advisers, as well as whether or not their conduct reflected on the Appellant. However, none of this was done.

136 In our judgment, it was unfair of the Respondent to first include the information on compliance issues in the Prudential Reference Check Form in such an incomplete, vague and misleading manner, and then refuse to disclose more information when this was asked for, given that such further information would have been relevant to clarify the misimpression conveyed by the information disclosed in the form.

Information on, and allusions to, possible ethical violations

137 We turn to the last category of information provided by the Respondent – the information on, and allusions to, possible ethical violations by the Appellant and the Ramesh Organisation advisers generally. The relevant information and allusions were contained in the Respondent's subsequent correspondence with Prudential and MAS, specifically, in the following two documents:

(a) the 14 October Letter sent directly by Mr Williams to Prudential's CEO and copied to MAS, which stated not only that the Ramesh Organisation's 13-month persistency ratio was only 9%, but also that there was "strong reason to believe that the ex-advisers in [the] Ramesh Organisation have been involved in [the] twisting of clients' policies", and that the Respondent was "very concerned as to whether the clients have been provided with proper advice or [whether] any improper switching/replacement practices [have been] carried out … which are detrimental to [the] clients' interests" (see [29] above); and

(b) the Respondent's email to MAS on 9 November 2011, which stated, among other things, that the Appellant's conduct "potentially indicat[ed] gaming of compensation", and that it appeared that he had "'sailed very close to the wind' and [had] ultimately crossed the line" (see [35] above).

138 It is evident that the Respondent used very strong words to describe the conduct of the Appellant and the Ramesh Organisation advisers in these two documents. As we have stated at [89] and [102(f)] above, the greater the gravity of any adverse remark contained in a reference, the more closely will the employer's acts be scrutinised to ensure that reasonable care was taken to ascertain: (a) the truth as well as the accuracy of the facts which are said to support that remark; and (b) the fairness and reasonableness of any expressed opinion based on those facts. In the present case, the Respondent made very serious allegations of, and allusions to, potential ethical violations by the Appellant and the advisers under him. Yet, there does not appear to be any basis for, or any attempt to substantiate, those views. It was unclear even

before us whether the opinions and suggestions conveyed in these documents were based on, or supported by, facts which are true and accurate.

139 It is immaterial whether the Respondent or Mr Williams personally believed that the Appellant might have been guilty of the ethical violations mentioned in the 14 October Letter and the email to MAS of 9 November 2011. On this particular issue, a parallel can be drawn with the situation in *Spring (HC)*, where Mr Lever held that Mr Siderfin had acted in breach of his duty of care to Mr Spring in making the statement that Mr Spring was lacking in dishonesty and integrity because even if he genuinely believed that to be the case, the statement had been made without careful and accurate assessment, and was, in the final analysis, careless of the true facts (see [69] above). On the evidence before us, the same can be said of the information provided by the Respondent in these two documents, which suggested ethical failures on the part of the Appellant and the advisers under him.

140 The tone and the contents of these two documents also suggest that the Respondent, and in particular, Mr Williams, was attempting to paint the Appellant in as bad a light as possible. In particular, these two documents show the Respondent's efforts to highlight as much negative information about the Appellant as possible, even when such information was not asked for by the recipient. This can also be seen from the internal correspondence between Mr Williams and Mr Ng when the Respondent was preparing its reply to Tokio Marine's request for more information on the compliance issues mentioned in the Respondent's reference check response (see [43]–[45] above). Mr Williams told Mr Ng that the Respondent "need[ed] to be much stronger", and directed him to add more adverse details about the Appellant, which Tokio Marine had not requested, as well as a "recommend[ation] that

[Tokio Marine's CEO] phone [Mr Williams] … for more details on this case". Although this correspondence pertains to the Appellant's application to join Tokio Marine as opposed to Prudential, it is nonetheless relevant in helping us to understand the Respondent's overall state of mind when it prepared its reference check responses to Prudential and Tokio Marine in respect of the Appellant. For the purposes of the Appellant's negligence claim, there is no need for us to come to a finding on whether the Respondent acted in bad faith in this regard. But, the contents and the tone of the correspondence from the Respondent suggest, at the very least, that it did not provide the information set out in its reference check responses in an objective manner (*cf Spring (HC)* and *Spring (HL)* at, respectively, [69] and [71] above; see also *Cox* at [88] above).

Our decision on the question of breach of duty

141 In the circumstances, we are satisfied that the Respondent did breach its duty of care to the Appellant in its provision of the information set out in the Prudential Reference Check Form as well as in its subsequent correspondence with Prudential and MAS.

Whether causation has been made out

142 This leaves us with the third issue: whether the Respondent's breach of its duty to the Appellant caused Prudential not to hire him.

143 We begin with the observation that the exercise of establishing causation should not be unduly technical or pedantic, and is largely a matter of common sense (see *The Cherry and others* [2003] 1 SLR(R) 471 at [68] and *Management Corporation Strata Title Plan No 2688 v Rott George Hugo*

[2013] 3 SLR 787 at [38]). We also note Lord Lowry's observations at 327 of *Spring (HL)* that in the context of a claim of negligence on the part of a former employer in preparing a reference for an employee, "the plaintiff only has to show that by reason of that negligence he has lost a reasonable chance of employment (which would have to be evaluated) and has thereby sustained loss … he does not have to prove that, but for the negligent reference, [the prospective employer] *would* have employed him" [emphasis in original].

144 In the court below, the Judge expressed the tentative view that causation had not been made out because Prudential had in fact made a conditional offer of employment to the Appellant on 16 June 2011, and had thereafter applied for a RNF licence for the Appellant from MAS on 12 August 2011. The Judge was of the view that this showed that Prudential had not been affected by the contents of the Respondent's reference check response.

145 The Respondent argues that the Judge was correct. It asserts that it is clear from the chronology of events that Prudential had: (a) considered the Respondent's reference check response and their subsequent correspondence; (b) conducted its own internal review and checks on the Appellant; (c) considered the explanation and input from the Appellant, including what was stated in his statutory declaration; and (d) then made the assessment that the Appellant satisfied MAS's Guidelines on Fit and Proper Criteria, before deciding to make him a conditional job offer and thereafter apply for a RNF licence for him. The Respondent argues that Prudential's decision to eventually withdraw its RNF Licence Application and not employ the Appellant was a business decision which it made in view of the conditions that MAS intended to impose before it would grant the Appellant a RNF licence.

The Respondent contends that this was a *novus actus interveniens* which broke the chain of causation between: (a) its making of the various statements in the Prudential Reference Check Form as well as in the subsequent correspondence with Prudential and MAS; and (b) Prudential's eventual decision not to employ the Appellant.

146 The Respondent's submission ignores and overlooks Mr Tay's evidence that Prudential ultimately decided not to hire the Appellant not because of the conditions that MAS intended to impose on the Appellant's RNF licence or for any other reasons, but because of the delays and the lengthy process of clearing the Appellant's job application and applying for a RNF licence for him. Mr Tay said as follows when he was examined by Mr Thuraisingam:

> Q. Could you explain to the court why Prudential withdrew the application?
>
> A. I was called upon by my senior boss.
>
> Q. Senior boss meaning?
>
> A. The chief distribution officer.
>
> …
>
> A. Together with my immediate boss, which is the chief agency officer and he conveyed a message, *the process is too long-drawn, the process has been hanging there for quite some time so Prudential decided to withdraw the application.*
>
> Q. What caused the process to be so long-drawn?
>
> A. I think basically, first and foremost, I think in my own opinion, I think it's the reference check and all those things, searching for information, things like that, and also because [the Ramesh Organisation] is quite a big group. I think we wanted to make sure we go through a very robust screening process. So I think – because I understand that [the Appellant] made contact with my colleague, Sean Ang, prior to me joining Prudential on 28 May 2011 … *So I believe the negotiation has started*

> *way in advance, probably early 2011 and all the way until end of the year.*
>
> [emphasis added]

147 In the light of Mr Tay's evidence, it is evident that Prudential's eventual decision not to hire the Appellant arose from the delay in getting the Appellant approved, and causation would be made out if the Appellant can establish that the time which was taken to process his application to join Prudential was as extended as it became because of the information provided by the Respondent, in breach of its duty of care, in its reference check response to Prudential as well as in its subsequent correspondence with Prudential and MAS.

148 In our judgment, the causal link is amply made out. The entire process that Prudential went through in its attempt to hire the Appellant before it withdrew its RNF Licence Application on 15 December 2011 spanned a period of almost seven months. It cannot be disputed that the process took a far longer time than a normal application for a RNF licence would have taken. The issue that the parties dispute is whether this delay was *caused* by the Respondent's reference check response to Prudential and the information which it subsequently provided to Prudential and MAS.

149 The delay in question can be analysed in two parts:

(a) The first is the delay of almost three months between mid-May 2011, when the Appellant applied to be Prudential's representative, and 12 August 2011, when Prudential applied for a RNF licence for the Appellant.

(b) The second is the delay of between three and four months from 12 August 2011, when Prudential submitted its RNF Licence Application, until the date, sometime between 9 November and 15 December 2011, when MAS informed Prudential that it would issue only a conditional RNF licence to the Appellant.

150 Looking at the evidence and the chronology of events, we are satisfied that both periods of delay can be attributed to either the Respondent's reference check response to Prudential or the further information conveyed by the Respondent in its subsequent correspondence with Prudential and MAS. We begin with the first delay of three months from mid-May to 12 August 2011.

151 It is clear from Prudential's repeated requests, on 7 June, 21 June and 18 July 2011 (see [24], [26] and [28] above), for further information on the persistency ratios and the compliance issues mentioned in the Prudential Reference Check Form that it was concerned about those two issues. Yet, the Respondent was not forthcoming with the information that was necessary to enable Prudential to properly assess the Appellant's fitness and propriety and decide whether it was willing to apply for a RNF licence for him. The Respondent either gave limited information in response (specifically, in its replies on 8 and 9 June 2011), or worse, left Prudential and the Appellant hanging for almost a month between 21 June and 18 July 2011, replying only when Prudential sent a chaser. Even then, it did not provide most of the specific information that Prudential had sought (see [28] above). As a result, the internal processing of the Appellant's application to join Prudential stalled from mid-June to mid-July 2011, and only proceeded when Prudential eventually decided to apply for a RNF licence for the Appellant on 12 August

2011. We accept that in the normal course of events, Prudential would have required some time to conduct its due diligence checks on the Appellant, and it is thus not reasonable to attribute the *entire* three-month delay to the information which the Respondent provided in its reference check response to, and subsequent correspondence with, Prudential. But, we are satisfied from the sequence of events, Mr Tay's evidence at the trial that information from the Respondent was not forthcoming (see [134] above) and the correspondence between the parties that *a large part* of this delay of three months can be attributed to the Respondent.

152 We are also satisfied that the delay of three to four months, from 12 August 2011 to sometime between 9 November and 15 December 2011, on the part of MAS before deciding to grant the Appellant only a conditional RNF licence was the result of the information that had been provided by the Respondent. In this regard, we note that based on the evidence, MAS normally takes between seven and 14 days to process a RNF Licence Application. This was the timeframe that had been conveyed in MAS's acknowledgment email to Prudential when the latter submitted its RNF Licence Application on 12 August 2011 (see [32] above). It was also the evidence of Mr Wong from MAS when he was cross-examined by *Mr Pillai*, who sought to *confirm* that the normal processing time for such an application was seven to 14 days. In addition, this was the position taken by the Respondent in its closing submissions below, as well as in its skeletal submissions on appeal. In these circumstances, we are unable to accept the Respondent's subsequent submission by way of a letter tendered post-hearing on 4 December 2015, which *contradicted* its previous assertions, that MAS's acknowledgement email to Prudential was only an automated reply and was not indicative of the actual processing time.

153 MAS clearly took far longer than its usual processing time in this case. In our judgment, a reasonable inference can be drawn from the evidence that this was because of the information that had been provided by the Respondent. It is significant that the Respondent had successfully applied for and obtained a RNF licence from MAS for the Appellant – without any conditions imposed and without any delay – less than a year earlier on 26 November 2010 following MAS's introduction of the RNF. There is nothing to show that anything had changed in the intervening period that would have resulted in MAS developing sudden concerns that the Appellant might not be a fit and proper person to carry out Regulated Activities. On the contrary, and as we noted at [121] above, the evidence shows that the Appellant had performed to the Respondent's satisfaction from the time he joined the company on 26 July 2005 until sometime in late 2010, when the relationship between the two started to deteriorate.

154 Further, the 14 October Letter, which was copied to MAS (see [29] above), and the Respondent's email to MAS of 9 November 2011 (see [35] above), which contained strong words and allegations as to the Appellant's integrity and business ethics, would likely have caused MAS to have serious concerns about the Appellant's fitness and propriety. It is likely that this, in turn, caused MAS to take even longer before it decided, sometime between 9 November and 15 December 2011, that it would issue only a conditional RNF licence to the Appellant.

155 Although we accept that there is a possibility that MAS might have been assessing, or might have assessed, the Appellant based on other sources of information apart from the Respondent, there is no evidence before us to establish that this was indeed the case. Mr Wong from MAS asserted privilege

over any other sources of information relied on by MAS and even over whether any other sources existed. He also candidly admitted that he could not recall whether there was any other source. We are satisfied that it is more probable than not that MAS's concerns were the result of the information that had been provided by the Respondent. In this regard, we find it significant that the "issues of concern" listed by MAS in its letter to the Appellant on 31 August 2012 (see [49] above) were the precise issues that had been raised in the information provided, namely: (a) the "low group persistency and high lapse rate" of the Ramesh Organisation; and (b) the fact that several of the advisers under the Appellant had been disciplined by the Respondent for issues such as "improper sales practices and unprofessional conduct".

156 In the circumstances, we are satisfied that the delay in the entire process – both in respect of the internal decision-making by Prudential between mid-May and 12 August 2011, and in respect of MAS's decision-making from 12 August 2011 to sometime between 9 November and 15 December 2011 – has been sufficiently shown to be the result of the information provided by the Respondent. It is also clear from Mr Tay's evidence that Prudential eventually decided to withdraw its RNF Licence Application for the Appellant *because* of this delay. In these circumstances, we find that causation has been made out.

The Respondent's submissions on proof of loss and damages

157 Finally, we turn to address the Respondent's submissions that: (a) the Appellant has failed to prove loss and damage as he started running a vegetarian restaurant with his wife soon after resigning from the Respondent and is currently still running that restaurant successfully, and has thus not suffered any loss; and (b) the Appellant cannot rely on the 24-month financial

package which was set out in Prudential's conditional job offer of 16 June 2011 because that was merely a draft and had not been finalised. These two submissions are matters for the assessment of damages stage, when the loss and damage sustained by the Appellant as a result of the Respondent's negligence, as well as any sums that should be set off against this on account of any earnings of the Appellant since leaving the Respondent, will be determined.

Conclusion

158 For these reasons, we allow this appeal in so far as the Appellant's claim in negligence against the Respondent in relation to his application to join Prudential is concerned. We find, on the facts, that the Respondent breached the duty of care which it owed the Appellant in providing the information set out in the Prudential Reference Check Form as well as in its subsequent correspondence with Prudential and MAS, and this caused Prudential not to employ the Appellant.

159 We further order that this matter is to be remitted to the Judge for damages to be assessed. The Appellant is to have the costs of the appeal and of the trial in respect of only the negligence claim pertaining to his application to join Prudential, but not the negligence claim pertaining to his application to join Tokio Marine nor the defamation and the malicious falsehood claims.

These costs are to be taxed if not agreed, and the usual consequential orders are to apply.

Sundaresh Menon	Chao Hick Tin	Steven Chong
Chief Justice	Judge of Appeal	Judge

Eugene Singarajah Thuraisingam, Cheong Jun Ming Mervyn and Suang Wijaya (Eugene Thuraisingam LLP) for the appellant;
Pillai K Muralidharan, Luo Qinghui, Mark Foo and Andrea Tan (Rajah & Tann Singapore LLP) for the respondent.