

立法會
Legislative Council

LC Paper No. CB(2)2189/00-01
(These minutes have been seen
by the Administration)

Ref : CB2/PS/1/00

LegCo Panel on Home Affairs

**Subcommittee to study
discrimination on the ground of sexual orientation**

**Minutes of meeting
held on Thursday, 5 July 2001 at 8:30 am
in Conference Room B of the Legislative Council Building**

- Members Present** : Hon Cyd HO Sau-lan (Chairman)
Hon Emily LAU Wai-hing, JP
Hon CHOY So-yuk
Hon Albert CHAN Wai-yip
- Member Attending** : Hon Michael MAK Kwok-fung
- Public Officers Attending** : Mr Charles CHAN
Principal Assistant Secretary for Home Affairs (3)
- Miss Linda LEUNG
Assistant Secretary for Home Affairs (3)2
- Miss Joey LAM
Principal Assistant Secretary for Housing (2)
- Mr C C HO
Chief Housing Manager (Application)
Housing Department

Dr Regina CHING
Assistant Director (Personal Health Services)
Department of Health

Mr Helios LAU Kar-cho
Chief Clinical Psychologist
Social Welfare Department

Dr W M KO
Deputy Director (Operations & Public Affairs)
Hospital Authority

Dr LIU Shao-haei
Senior Executive Manager (Professional Services)
Hospital Authority

Clerk in Attendance : Miss Flora TAI
Chief Assistant Secretary (2)2

Staff in Attendance : Mr Stanley MA
Senior Assistant Secretary (2)6

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I. Sexual orientation discrimination on the area of housing
[Paper Nos. CB(2)1604/00-01(01), CB(2)1762/00-01(01) and
CB(2)2003/00-01(01)]

Members noted the submissions of the Rainbow Action [Paper No. CB(2)1604/00-01(01)] and the Civil Rights for Sexual Diversities [Paper No. CB(2)1762/00-01(01)].

2. At the invitation of the Chairman, Principal Assistant Secretary for Housing (2) (PAS/H(2)) briefed members on the salient points of the Administration's paper on the subject [Paper No. CB(2)2003/00-01(01)].

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Application for public housing by homosexual couples

3. Ms Emily LAU asked whether a homosexual couple could apply for public housing on the basis of "de facto spouse" relationship or "de facto marriage".

4. PAS/H(2) explained that under existing policy, a person could apply for public housing schemes either on his own, or with his family members such as spouse, parents, children and siblings. However, family applicants for public housing were required to produce relevant documentary proofs on the family relationships among household members such as marriage certificate, birth certificate or other legal documents. Since a homosexual couple could not get married in accordance with the existing Marriage Ordinance, they would not be able to produce a marriage certificate to prove their marital relationship. The Housing Department would not be able to accord them with family status for provision of public housing. She stressed that such arrangement applied to all applicants including cohabitants who could not prove their marital status or claimed family relationship.

5. The Chairman enquired whether two individuals who could not prove their family relation with documentation could jointly apply for public housing. PAS/H(2) responded that the Housing Department currently would not allocate a public housing flat to two persons who did not have a registered family relationship.

6. The Chairman then asked whether marriage certificates issued by overseas countries for heterosexual or homosexual couples would be recognised for the purpose of public housing applications in Hong Kong. PAS/H(2) responded that there was no homosexual applicants producing such certificate to apply for public housing so far. Chief Housing Manager (Application) (CHM(A)) supplemented that the Housing Department would have to verify the authenticity of the certificate and examine whether the marriage relationship in the jurisdiction concerned was recognised in Hong Kong. The Chairman requested that the Administration should seek advice from the Department of Justice on the status of marriage certificate issued by overseas countries for homosexual couple in Hong Kong.

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7. Mr Albert CHAN agreed that the Administration's policy in allocation of public housing was not intended or designed to discriminate against anybody including homosexuals. However, in recognition of the fact that there were homosexuals living together as "de facto spouse", the Administration would in effect have discriminated against homosexuals if it did not provide them with an access to public housing. He urged the Administration to review its public

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housing policy with a view to addressing the needs of homosexual couples, despite the possible far-reaching implications of such a policy change.

8. PAS/H(2) pointed out that recognising "de facto marriage" might create loopholes for abuse and administration problems in ascertaining such claimed relationship. She explained that the requirement for legal documentation of family relationship was essential, in view of the possible difficulty in proving the relationship of "de facto spouses" which included homosexual couples and heterosexual cohabitants. She explained that partner of a homosexual couple allocated with a public housing flat might subsequently get married with an opposite sex and the new family unit could apply for another public housing flat if they met the eligibility criteria. PAS/H(2) stressed that the current public housing policies did not take into account the sexual orientation of an applicant and such information was not required throughout the application process but reliance on authentic documentation was essential to prevent unproven claims for additional housing resources.

9. Mr Albert CHAN considered that special consideration should be given to genuine homosexual couples for allocation of public housing. He pointed out that the Housing Department currently had a policy to arrange persons of different families to share a public housing flat on compassionate grounds.

10. CHM(A) responded that on the recommendation of the Social Welfare Department with relevant supporting documents, two families occupying two different public housing flats would be considered for sharing the use of a public housing flat of appropriate size under special circumstances such as the need to look after an elderly. However, the Housing Department would not consider such applications from two families which had not been allocated any public housing.

11. Responding to Mr Albert CHAN's further query, PAS/H(2) explained that if homosexual couples were allowed to apply and occupy public housing flats, any combination of two persons such as heterosexual couples could claim a relationship of de facto spouses and apply for allocation of public housing. She pointed out that the existing policy which required applicants for public housing applying with his spouse, parents, children and siblings to produce legal documentation for the verification of their claimed family relationship was designed for effective use of the limited public housing resources. She cautioned that extending the scope of the current policy to cover de facto spouse or marriage might create loopholes for undue claims for additional housing resources in the form of larger flats.

12. Referring to the submission of the Rainbow Action, Ms Emily LAU said that the group concerned considered that while homosexuals did not encounter

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discrimination in renting a flat in the private sector, they were being discriminated in applying for public housing. She asked whether application for public housing from a homosexual couple who had been living together for more than 10 years would be considered.

13. CHM(A) stressed that public housing was subsidised by public funds. The Administration would give priority to family applications in view of a stronger need for family members to live together. A homosexual could make his own application for public housing and his application would be considered with those from persons with different sexual orientations on an equal basis. He added that if homosexual couples living together for more than ten years were eligible for public housing, cohabitants and any pair of persons with a similar history would make the same claim.

14. The Chairman did not agree with the Administration, pointing out that heterosexual cohabitants had the option to get married for the purpose of getting a marriage certificate. Without a change in public housing policy or a major amendment to the Marriage Ordinance, "de facto spouse" relationship of a homosexual couple would remain excluded from public housing flats and Home Ownership Scheme. She considered that it was unfair to homosexual taxpayers who should have met the eligibility criteria if their "de facto spouse" relationship was not recognised for the purpose of public housing applications. The Chairman was of the view that administrative measures could be taken to avoid possible abuses of public housing resources envisaged by the Administration if "de facto spouse" relationship of a homosexual couple was recognised for the purpose of public housing applications.

15. PAS/H(2) acknowledged that homosexual couples were not eligible for public housing flats nor the Home Ownership Scheme. For the Home Purchase Scheme, whilst they could only apply as a one-person household, there was no restriction on the size of flats they could choose subject to availability.

16. Members noted that it was the Administration's view that the existing public housing policy was consistent with the Government's marriage policy which reflected the consensus of the community regarding monogamous marriage. Mr Michael MAK considered that the Administration should implement public housing policy with flexibility in order to accommodate the housing need of homosexual couples. CHM(A) responded that the Housing Department would follow the established policies in the allocation of public housing resources. He added that public housing policies were formulated having regard to the principles accepted by the community as a whole. The anticipated number of applications from homosexual couples should not be a factor of consideration.

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17. Mr Albert CHAN considered that the existing public housing policy was discriminatory against homosexual couples given the existence of "de facto marriage" in Hong Kong. He urged the Administration to review the policy. CHM(A) responded that the Administration acknowledged the fact that there were homosexual couples living together. He maintained that the current policy did not discriminate against people with a different sexual orientation.

18. The Chairman considered it inappropriate to say that the current public housing policy was not discriminatory against homosexuals simply because the Administration did not take into account applicants' sexual orientation and that such information was not required during application. She asked about when the Housing Authority had reviewed the requirement for legal documentation of family relationship for public housing application.

19. CHM(A) responded that the Housing Authority had reviewed the requirement for legal documentation of family relationship for public housing application in early 2000. The Authority considered it necessary to stick with the current policy of not accepting "de facto spouses" who were unable to produce legal documentary proofs of their relationship. At the Chairman' request, CHM(A) undertook to provide the Subcommittee with relevant information on the review. Ms Emily LAU requested that the Administration should conduct an overall review of the existing policy of not accepting de facto marriage and cohabitation for public housing application purpose. CHM(A) also undertook to convey Ms LAU's request to the Housing Authority.

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II. Sexual orientation discrimination on the area of medical services

[Paper Nos. CB(2)1604/00-01(01), CB(2)1762/00-01(01) and CB(2)2003/00-01(02) to (03)]

Use of electro-convulsive treatment (ECT) to cure homosexuality

20. At the invitation of the Chairman, Deputy Director (Operations & Public Affairs) of the Hospital Authority (DD(O&PA)/HA) introduced the Administration's papers on provision of public health care [Paper No. CB(2)2003/00-01(02)] and responded to the written submission from the Rainbow Action and the Civil Rights for Sexual Diversities on issues relating to medical services [Paper Nos. CB(2)1604/00-01(01) and CB(2)1762/00-01(01)]. He stressed that medical practitioners would not consider homosexuality as a medical disorder which required medical treatment. It was the view of the HA that homosexuality was an orientation that could not be changed with treatment. All professional health carers in the Department of Health and the Hospital Authority were bound by the International Code of Medical Ethics and the professional

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codes of conduct promulgated by the relevant licensing authorities. Any health carer who practised or provided care in a discriminatory manner, whether or not on the ground of sexual orientation, was in violation of the International Code of Medical Ethics or the relevant professional code of conduct, and would be liable to sanction.

21. With reference to the submission of the Civil Rights for Sexual Diversities [Paper No. CB(2)1762/00-01(01)], Ms Emily LAU asked whether HA would use ECT or other aversive therapy to cure homosexuality. She further asked whether there was any mechanism to regulate the practice of medical practitioners working in non-governmental organisations in providing such treatment or therapies.

22. In response, DD(O&PA)/HA said that since homosexuality was not regarded as an illness, doctors would not be using ECT or any other method to "treat" homosexuality. However, individuals who were disturbed by their sexual orientation might still request counselling and require appropriate treatment.

23. Given the stance of HA that homosexuality by itself was not a medical disorder that required medical treatment, Ms Emily LAU asked whether a medical practitioner should apply ECT to change the sexual orientation of a homosexual client even if he sought the treatment on a voluntary basis.

24. DD(O&PA)/HA responded that in delivering clinical psychology service, the clinical psychologists might be called upon to help clients with emotional problems arising from, or associated with, particular sexual orientation through psychotherapy. The provision of such service was not intended to reverse the sexual orientation. The purpose was to deal with the psychological consequences of such orientation and the impact of social pressure on the psychological well-being of the client concerned. He reiterated that the client's choice was always respected. At Ms Emily LAU's request, he undertook to provide further information on the academic aspect of ECT for reference.

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25. The Chairman said that she was told that ECT had been used in the Queen Elizabeth Hospital to cure homosexuality. DD(O&PA)/HA said that as there were no substantial information on any concrete case, he could only try his best to ascertain the story. DD(O&PA) stressed that the provision of competent and non-discriminatory professional services had been the value and culture of health care providers. In fact, medical profession as a whole had all along advocated protection of the rights of minority groups including people with a different sexual orientation.

26. Mr Micheal MAK declared interest as the Department Operations Manager in a public hospital. He pointed out that ECT was a dangerous treatment which

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should be used for patients with certain severe psychiatric illnesses. It should only be administered with the patient's consent, or in case the patient was not mentally fit to give consent to treatment, a second expert opinion must be sought to justify the use of ECT. He also considered that it was unlikely that public hospitals would apply ECT to cure homosexuals.

Educational work to prevent any discriminatory attitudes

27. Mr Michael MAK asked how HA could ensure that all health care services were provided to the public equitably and without discrimination given the huge number of its staff. He pointed out that there were individual health carers using unfriendly languages to address homosexual or non-Chinese patients. Ms Emily LAU shared Mr MAK's view, saying that HA should raise the awareness of the need to respect patients' rights and feeling among its staff.

28. DD(O&PA)/HA acknowledged that individual health carers might not be sensitive enough to avoid using loose languages to communicate with patients. Apart from an established complaints mechanism, HA would continue to reinforce through education and its patient's feedback system to enhance communication and interpersonal skills of frontline medical staff. At Ms Emily LAU's request, DD(O&PA)/HA undertook to provide information on the HA's work in enhancing the awareness of the need to respect patient's rights and feeling among its staff.

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Consent to carry out surgery

29. Mr Albert CHAN expressed appreciation of the positive attitude of the medical sector towards discrimination issues on the ground of sexual orientation. He enquired whether HA would recognise prior consent by a homosexual couple authorising their partner to give consent on his behalf for undergoing emergency treatment when either one of them was unconscious.

30. In response, DD(O&PA)/HA said that as a general rule, medical treatment should not proceed without a patient's consent. However, emergency treatment without a patient's consent (for example, when the patient was unconscious) was justified if such treatment was in the best interests of the patients. On the other hand, if the patient had given clear advance refusal, be it in the form of power of attorney or a declaration, such indication should always be respected. He suggested that homosexual couples should produce evidence of any such prior indication of the patient to the medical staff on duty in case where urgent medical treatment was required. If samples of such documents were available, he would seek legal advice and inform HA hospitals so that in case of emergencies, such documents could be recognised by duty staff.

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31. Ms Emily LAU asked whether a homosexual partner would be regarded as a person close to the patient and be consulted in case it was not possible to seek consent from the patient. DD(O&PA)/HA responded that the responsible medical staff would seek support for the treatment from the patient's family or persons close to the patient as appropriate. He acknowledged that it would be difficult for the medical staff to determine the relative closeness of different persons to the patient. In practice hospitals would usually ask the patient to register the closest person as next of kin upon admission.

Medical benefits of civil service staff

32. The Chairman said that the Rainbow Action had expressed concern in its submission [Paper No. CB(2)1604/00-01(01)] that de facto spouse of a homosexual civil servant was not entitled to civil service medical benefits. Ms Emily LAU added that the issue also applied to heterosexuals i.e. cohabitation. She asked whether de facto spouses could enjoy medical benefits applicable to direct dependants of civil service staff. The Administration undertook to relay the issue to the Civil Services Bureau for a written response.

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III. Any other business

Date of next meeting

33. At the Chairman's invitation, members agreed to receive representation from the Equal Opportunities Commission and concern groups at the next meeting of the Subcommittee to be scheduled for Monday, 20 August 2001 at 2:30 pm. Members also instructed that the Clerk should post a notice at the Council's website to invite submissions on discrimination on the ground of sexual orientation from the public.

34. There being no further business, the meeting ended at 10:20 am.

Legislative Council Secretariat

1 August 2001