

立法會
Legislative Council

LC Paper No. CB(2)2749/02-03
(These minutes have been
seen by the Administration)

Ref : CB2/PL/WS

Panel on Welfare Services

Minutes of meeting
held on Monday, 9 June 2003 at 10:45 am
in Conference Room A of the Legislative Council Building

- Members Present** : Dr Hon LAW Chi-kwong, JP (Chairman)
Hon CHAN Yuen-han, JP (Deputy Chairman)
Dr Hon David CHU Yu-lin, JP
Hon Cyd HO Sau-lan
Hon LEE Cheuk-yan
Hon Fred LI Wah-ming, JP
Hon Bernard CHAN, JP
Hon LEUNG Yiu-chung
Dr Hon YEUNG Sum
Hon CHOY So-yuk
Hon LI Fung-ying, JP
Hon Henry WU King-cheong, BBS, JP
Hon Tommy CHEUNG Yu-yan, JP
Hon WONG Sing-chi
- Members Absent** : Hon Mrs Sophie LEUNG LAU Yau-fun, SBS, JP
Hon Michael MAK Kwok-fung
Hon Frederick FUNG Kin-kee
- Public Officers Attending** : All Items
Mrs Carrie LAM, JP
Director of Social Welfare

Mr Patrick NIP
Deputy Secretary for Health, Welfare and Food (Elderly Services)

Item V

Mrs Kathy NG
Assistant Director of Social Welfare (Elderly)

Mr K M MO
Assistant Director/New Buildings 1 - Buildings Department

Clerk in Attendance : Ms Doris CHAN
Chief Assistant Secretary (2) 4

Staff in Attendance : Miss Mary SO
Senior Assistant Secretary (2) 8

I. Confirmation of minutes
(LC Paper No. CB(2)2335/02-03)

The minutes of meeting held on 12 May 2003 were confirmed.

II. Information paper issued since the last meeting
(LC Paper No. CB(2)2336/02-03(01))

2. The Chairman said that if members so requested, the above paper entitled "Effectiveness of enhanced home and community care services in achieving ageing in place for elders living in the community" provided by the Administration could be discussed at a future meeting.

III. Items for discussion at the next meeting
(LC Paper No. CB(2)2336/02-03(02))

3. Members agreed to discuss the following items at the next regular meeting

scheduled for 14 July 2003 -

- (a) An update on support for vulnerable elders; and
- (b) Interim report on the implementation of family services review.

4. Mr WONG Sing-chi proposed to add another item on measures to prevent infection of Severe Acute Respiratory Syndrome (SARS) at residential care homes for the elderly (RCHEs).

5. In response, Director of Social Welfare (DSW) suggested to defer the item proposed by Mr WONG in paragraph 4 above until a review to be conducted by the Administration and the Hospital Authority (HA) on support to RCHEs in combating SARS had been completed. DSW further said that areas of concern of the review would include the disease notification mechanism, isolation facilities and outreach support groups, such as the HA's Community Geriatric Assessment Teams and private doctors participating in the Visiting Medical Officers Scheme.

6. The Chairman said that although the Administration would not be in a position to discuss measures to prevent infection of SARS at RCHEs in July, consideration could be given to first inviting operators of RCHEs to give their views on the matter.

7. Ms Cyd HO said that as the Panel on Health Services was still meeting on a weekly basis to continue discussion on SARS, consideration could be given to a joint meeting with the Panel on Health Services to discuss measures to prevent infection of SARS at RCHEs. The Chairman undertook to take this up with the Chairman of the Panel on Health Services.

Chairman

8. Ms Cyd HO proposed to hold a joint meeting with the Panel on Health Services and the Panel on Education to discuss the issue of teaching parents skills in managing their school-going children with behaviour problems. The Chairman undertook to take this up with the Panel Chairmen concerned.

Chairman

9. Responding to Ms Cyd HO's enquiry on the temporary financial aid for the needy, DSW undertook to provide information on the eligibility criteria for it after the meeting. DSW pointed out that the temporary financial aid was a new feature of the Intensive Employment Assistance Projects (IEAPs) to be undertaken by NGOs under the intensified Support for Self-reliance measures. These IEAPs were to be funded by the Lotteries Fund for employable Comprehensive Social Security Assistance (CSSA) recipients and "near CSSA" recipients.

Admin

IV. Residence requirements for social security benefits

(LegCo Brief - File Ref : HWF CR/3/4821/99(03) Pt. 7, IN27/02-03, LC Paper Nos. CB(2)2336/02-03(03) and (04))

10. At the invitation of the Chairman, DSW took members' through the Legislative Council Brief on residence requirements for social security benefits.

11. Mr WONG Sing-chi expressed concern that changing the residence requirement for the CSSA Scheme from one year to seven years would leave a CSSA family without sufficient means to meet its basic needs. For instance, under the current economic downturn, it was not unusual for a sponsoring spouse to lose his/her job, say, one year after his/her Mainland spouse had arrived in Hong Kong under the One Way Permit (OWP) Scheme. Mr WONG also expressed concern that the seven-year residence requirement would aggravate discrimination against new arrivals, and deter needy new arrivals from seeking financial assistance. Mr LEUNG Yiu-chung concurred with Mr WONG. Noting that in exceptional circumstances, assistance might be granted at the discretion of DSW to a person who did not meet the seven-year residence requirement, Mr WONG requested DSW to give some examples of the circumstances under which such discretion would be exercised.

12. DSW responded that staff of the Social Security Field Units (SSFUs) would not refuse to consider an application for CSSA from a Hong Kong resident who failed to meet the residency requirement. DSW, however, pointed out that a new arrival would not be automatically waived from the residency requirement if his/her spouse lost his/her job. Generally speaking, the residence requirement would be waived if the new arrivals had no income and no relatives in Hong Kong to whom they could turn for help, their assets were below two monthly CSSA payments applicable to their household size and they had genuine difficulty to return to their place of origin. For instance, new arrivals who became widowed or whose spouses had lost their earning capacity due to illnesses shortly after they came to Hong Kong and were left with little or no means to raise their young children, had been exempted from the residence requirement on compassionate grounds. Other examples included granting of exemption from the residence requirement for new arrivals who had serious marital conflict or were abused by their spouses and had to live at shelter homes. Similar approach would continue after the residence requirement for granting CSSA was changed from one year to seven years on 1 January 2004. Moreover, existing internal guidelines for waiving of residence requirement would be made clearer and more transparent in the light of the operational experience of the new requirement.

13. The Chairman asked whether staff of SSFUs would also help new arrivals to find jobs, if their spouses lost their jobs. The Chairman further asked whether the residency requirement for CSSA of these Mainland spouses would be waived if they failed to find jobs despite numerous efforts made.

14. DSW replied in the positive to the Chairman's first question, as new arrivals were Hong Kong residents. She said that the next round of Intensive Employment Assistance Projects would also be open to unemployed people not on CSSA. DSW pointed out that while CSSA had a residency requirement, other forms of support and assistance were available to new arrivals irrespective of their length of residence, such as employment support services, emergency relief, grants from charitable trust funds, medical waivers, assistance in kind, referrals to singleton hostels for accommodation and day relief centres for meals. As regards Dr LAW's second question, DSW said that staff of SSFUs would consider all relevant factors as mentioned in paragraph 12 above, before deciding on granting waiver of residency requirement for new arrivals on compassionate ground.

15. Mr LEE Cheuk-yan said that the new residency requirement for CSSA would give rise to a more divisive society, as this would reaffirm a wrong message to the community that poor people should not come to Hong Kong. Mr LEE further said that the applying of the residency rule for eligibility to apply CSSA was unreasonable, as new arrivals were not immigrants but were spouses and children of Hong Kong permanent residents who had contributed to the development of Hong Kong. Mr LEE urged the Administration to abort its plan to apply the new residency rule, as the money saved would in the end result in greater social costs. Mr LEE then asked whether the payment to a CSSA recipient would be reduced if his/her spouse, who was not eligible for CSSA benefits because he/she could not satisfy the residence requirement, had income from a job.

16. DSW responded that applying residence requirements for social security benefits was not unique to Hong Kong, as evidenced by the information note (IN27/02-03) prepared by the Legislative Council Secretariat on the eligibility of immigrants for income support benefits in New York and Australia. DSW further said that if people made the decision to marry Mainlanders and had children, being responsible citizens, they should only sponsor their Mainland spouses and children to come to Hong Kong under the OWP Scheme if they could support their new arrival members without relying on public assistance. In fact, over 80% of the new arrivals were not on CSSA. DSW further said that in recognition of the efforts of those new arrivals to become self-supporting, staff of SSFUs would normally exercise discretion to waive the one-year residence rule and treat the new arrival family member engaged in paid job as an eligible member under CSSA. In other words, his/her needs would be recognised in the calculation of CSSA

benefits for the family, and his/her monthly income would be disregarded up to the prescribed level. Whether this would result in any increase or decrease in the CSSA payment to the family would depend on the recognised need of the new arrival member and his/her earnings. Such a practice would continue under the new seven-year residence rule.

17. Mr LEE Cheuk-yan hoped that DSW would refrain from making the comments that new arrivals on CSSA were lazy and irresponsible people, as this would aggravate discrimination against new arrivals. DSW refuted that she was exactly trying to dispel the common mis-perception that new arrivals were a particular burden on welfare by pointing out the fact that over 80% of new arrivals did not rely on public assistance. The new residence requirements for social security benefits would help to reaffirm this point.

18. The Chairman remarked that drawing an analogy between the residence requirements for social security benefits in Hong Kong and the eligibility of immigrants for income support benefits in New York and Australia was not entirely appropriate. He pointed out that information in respect of New York was focussed on the siblings of the sponsors, which was different from the situation in Hong Kong whereby the overwhelming number of new arrivals were spouses and children of Hong Kong permanent residents.

19. Mr Henry WU said that the direction of the new residence requirements for social security benefits was worthy of support. In particular, Mr WU welcomed the exemption of children under 18 years of age from the residence requirement for CSSA, which was in keeping with the spirit of the United Nations Convention on the Rights of the Child. Noting the introduction of measures by the Social Welfare Department (SWD) to address social issues arising from cases where some Mainland spouses might choose to send only their children for reunion in Hong Kong which would invariably involve additional costs, Mr WU wondered whether this would contradict one of the objectives of the new residence rule to help facilitate the long-term financial sustainability of Hong Kong's social security system.

20. DSW responded that the OWP Scheme was operated by the Mainland authorities, which governed the exit of people from other parts of China to Hong Kong for settlement in accordance with Article 22(4) of the Basic Law. Although Hong Kong had no say over the arrival of Mainlanders under the Scheme, the Task Force on Population Policy planned to discuss with the Mainland authorities on allowing children under 18 years of age and who had been given the green light to settle in Hong Kong to stay in the Mainland until their mothers had also been issued with OWPs. DSW, however, pointed out that new arrival children in future would increasingly be adults, as evidenced by the trend

that the percentage of new arrival children under 18 years of age over the total number of new arrivals had dropped steadily from its peak at 58% in 1998 to 28% in the first quarter of 2003.

21. Mr WU further asked whether the new residence rule would trigger more children under 18 years of age to apply for settlement in Hong Kong. DSW surmised that this would not be the case, as the availability of social security benefits was never the primary reason why new arrivals decided to settle in Hong Kong.

22. As several members had raised their hands to ask questions on this item, the Charmin sought members' view at this juncture as to whether they agreed to treat the discussion paper entitled "Update on measures to support young people" provided by the Administration under agenda item VI as an information paper. If members had any questions on the paper, they could seek clarification from the Administration in writing after the meeting. Members agreed.

23. Dr YEUNG Sum echoed similar views to those expressed by Mr WONG Sing-chi and Mr LEE Cheuk-yan. Dr YEUNG then asked whether consideration would be given to commissioning a study on the impact of the new residence rule for CSSA on new arrival families. He also asked whether consideration would be given to reviewing the new residence rule, if the findings of the study revealed that the new residence rule would have an adverse impact on new arrival families.

24. DSW responded that as the seven-year residence rule for heavily-subsidised public services was a policy made by the Task Force on Population Policy, it was thus not possible for SWD to deviate from it. DSW further said that numerous studies had been conducted by outside bodies on the integration of new arrivals in Hong Kong. SWD was currently also conducting studies on social issues, such as domestic violence and child abuse, to find out, inter alia, the profiles of victims and perpetrators. Findings of these studies should in turn help to shed light on how well new arrivals had adjusted to the new environment as well as the problems they faced. On the question as to how well new arrivals had integrated into the society of Hong Kong after the implementation of any new Government policy, DSW said that this was an area under the purview of the Home Affairs Bureau.

25. Dr YEUNG urged DSW to re-consider his requests, so as to avoid the creation of more social problems. Ms LI Fung-ying and Mr LEUNG Yiu-chung echoed similar view. Ms LI added that Government polices appeared to be contradicting each other. For instance, within the Health, Welfare and Food Bureau, the Department of Health was pressing ahead with the implementation of the parenting programme to teach parents how to bring up well-adjusted children, whereas the new residence rule for CSSA under SWD would result in the creation

of more single parent families.

26. DSW disagreed that the new residence rule would heighten the existing social problems for the reasons already given earlier at the meeting. She further said that in order to better assist new arrival mothers to bring up their children in the new environment, actions had been taken to strengthen the parenting programme targetted at new arrivals. DSW further said that the fact why some new arrival families were single parent families was not a result of Hong Kong's welfare policy, as the exit of Mainlanders to Hong Kong for settlement was determined by the Mainland authorities.

27. Mr Tommy CHEUNG said that the Liberal Party supported the seven-year residence requirement for the CSSA, as given the fiscal constraint, there was a need to strike a proper balance between the interests of various sectors of the community and ensuring the long-term financial sustainability of Hong Kong's social security system. Mr CHEUNG further said that he could not see how the new residence rule would deter Mainland mothers from joining their families in Hong Kong. Moreover, the residence rule for social security benefits was not unique to Hong Kong. Mr CHEUNG pointed out that each state in the United States of America had different rules and in some states, residents from another state were not entitled to social benefits, such as free university education.

28. Miss CHAN Yuen-han hoped that the Administration would not apply the seven-year residence rule for CSSA across the board. Miss CHAN further said that the Administration should discuss with the Mainland authorities on the possibility of allowing children under 18 years of age and their mothers to come to Hong Kong for settlement simultaneously.

29. DSW responded that there was no question of applying the seven-year residence rule for CSSA across the board. For instance, children under 18 years of age would be exempted from the residence rule, all new arrivals already in Hong Kong before the implementation of the new residence rule would not be affected, and in genuine cases of hardship, DSW had the discretion to waive the residence requirement. As regards the suggestion made by Miss CHAN on the entry of new arrivals to Hong Kong under the OWP Scheme, DSW undertook to convey it to the Task Force on Population Policy.

30. On closing, the Chairman urged the Administration, prior to implementing the new residence rule for CSSA, to emphasise that it would help new arrivals to find jobs. In response, DSW pointed out that this had been made abundantly clear in the relevant Legislative Council Brief and by herself earlier at the meeting that employment support services would also be available to new arrivals.

V. Operation of residential care homes for the elderly in premises subject to deed of mutual covenant

(LC Paper No. CB(2)2336/02-03(05))

31. DSW took members' through the Administration's paper on the regulation of RCHEs operating in premises subject to Deed of Mutual Covenant (DMC), with particular reference to a recent High Court judgment in which the Incorporated Owners (IOs) of the building were granted an injunction restraining the operator from using the premises in the building as RCHE on the basis of a provision in its DMC.

32. Referring to the court case of the Old Chi Oi Home for the Elderly (the Home) mentioned in paragraphs 13 to 17 of the Administration's paper, Dr YEUNG Sum expressed concern that residents of many private RCHEs located in buildings under co-ownership governed by DMC would be made homeless if the IOs of the buildings concerned also followed suit to bring legal action against the operators of private RCHEs. In the light of this, Dr YEUNG asked about the contingency arrangements to decant the elderly residents in the eventuality that more private RCHEs were forced to close down on the ground of breach of DMC.

33. DSW responded that she could not see that the above court case would trigger any wide scale legal action by IOs against operators of RCHEs on alleged breaches of the relevant DMC provisions, as the majority of private RCHEs set up in private developments maintained good communication and co-operation with other owners/residents and co-existed harmoniously with the IOs concerned, if any. DSW pointed out that in the course of processing licensing requirements for RCHEs in private buildings over the past seven years, SWD had only received 31 complaints by IOs, individual owners/residents or owners/residents groups on alleged breaches of the relevant DMC provisions to date. Most of these complaints were eventually resolved without resorting to legal action. In a handful of complaints which could not be satisfactorily resolved, the operators concerned finally decided to seek other premises for operation of their business. In response to these concerns related to DMCs, SWD had repeatedly sought legal advice. According to the advice sought, it was not proper for the Licensing Authority to use licensing power to enforce any provisions in a DMC which was a private agreement that defined and regulated the rights, interests, entitlements, responsibilities and obligations amongst co-owners of the building, to which the Government was not a party. It was outside the Licensing Office's power to require proof of compliance with the DMC before it would accept application for or issuance of licence under the provisions of the Residential Care Homes (Elderly Persons) Ordinance (the Ordinance). DSW also pointed out that the existence of RCHEs in private buildings was commonplace prior to the enactment of the

Ordinance in October 1994.

34. DSW further said that to her understanding, the operator of the Home was still considering an appeal against the court decision on the closure of the Home. The Home operator had also indicated contingency arrangements to decant the elderly residents either by re-provisioning the Home to nearby suitable premises or by transferring them to branch homes under mutual consent. In the eventuality that the welfare of any elderly residents in the Home was likely to be affected by subsequent developments, SWD would provide the necessary support to ensure alternative welfare arrangement for the affected elderly residents. As at 30 April 2003, there were 45 000 places in 575 private RCHEs with an average occupancy of about 70%. There was thus sufficient supply to meet the care needs of affected elders.

35. Dr YEUNG cautioned the Administration against treating the implications of the court case of the Home on the present and future operations of private RCHEs lightly. This was because some owners/residents or IOs, who or which had hitherto not sought legal recourse to prohibit the operators of RCHEs from using premises of their buildings on alleged breaches of the relevant DMC provisions, might do so now in the light of the court ruling on the Home. Mr LEUNG Yiu-chung echoed similar concern.

36. DSW responded that SWD did not treat the court ruling lightly. On the contrary, in view of the fact that private buildings would remain an important source of premises for RCHEs and as these homes were operating with upgraded standards, SWD was of the view that their operation should not be discriminated against. On the advice of the Elderly Commission (EC), the Lands Department had since February 2001 expressly disallowed prohibition of RCHE in DMCs for new residential developments where commercial uses were normally permitted on the lowest three floors. Similar arrangements had also been made by the Housing Authority for its Tenants Purchase Scheme. As a long term objective, SWD was of the view that RCHEs should preferably operate in purpose-built premises. Thus, in consultation with EC, the Government had launched various initiatives to increase the supply of quality RCHE premises, details of which were set out in paragraph 20 of the Administration's paper. DSW, however, pointed out that due to the current depressed property market, these initiatives had not been implemented as well as hoped.

37. DSW also said that the court ruling on the Home did not necessarily mean that all private RCHEs set up in private buildings governed by DMC were in breach of the relevant provisions of the DMC, as whether this was the case would depend on the provisions of the DMC concerned. Moreover, the court decision was based on its interpretation of the meaning of "boarding house", which was an

area which the Hong Kong Association of the Private Homes for the Elderly (the Association) was considering contesting. DSW then conveyed a message from the Association which called upon the Legislative Council to be supportive of their operations, given their efforts made to upgrade the service quality under the present economic condition and operating constraints.

38. The Chairman expressed concerned about the supply of private RCHEs in the coming years, if the court ruling on the Home was upheld after appeal by the Home operator. In the light of this, the Chairman asked whether any assessment in this regard had been made by SWD.

39. DSW responded that she did not envisage any significant shortfall in the supply of private RCHEs in the coming years. Apart from the fact that there were 45 000 places in 575 private RCHEs with an average occupancy of about 70% as at 30 April 2003, emphasis had been placed on developing community and home-based care to meet the long term care needs of elders in order to assist elders to age at home. Concurrently, various initiatives to increase the supply of quality RCHE premises had been launched with a view to upgrading the quality of private elderly homes, improving the cost-efficiency of subsidised RCHE services and providing better accessibility to quality service by those who could afford. These included the ceasing of admission of elders into the waiting list for Self Care Hostels and Homes for the Aged from 1 January 2003 so that in time to come, subsidised residential services would be aiming at those with care needs.

40. On closing, the Chairman hoped that the Administration would closely monitor how the court ruling on the Home would impact on the present and future operations of private RCHEs to avoid any shortfall in the supply of private RCHEs.

41. There being no other business, the meeting ended at 12:25 pm.