

立法會
Legislative Council

LC Paper No. CB(2)26/14-15

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seen by the Administration)

Ref : CB2/PS/1/12

Panel on Welfare Services and Panel on Health Services

Joint Subcommittee on Long-term Care Policy

Minutes of the fifteenth meeting
held on Friday, 25 April 2014, at 2:30 pm
in Conference Room 1 of the Legislative Council Complex

Members Present : Dr Hon Fernando CHEUNG Chiu-hung (Chairman)
Hon TANG Ka-piu (Deputy Chairman)
Hon TAM Yiu-chung, GBS, JP
Prof Hon Joseph LEE Kok-long, SBS, JP, PhD, RN
Hon CHEUNG Kwok-che
Hon LEUNG Kwok-hung
Hon POON Siu-ping, BBS, MH

Members absent Hon LEUNG Yiu-chung
Hon Ronny TONG Ka-wah, SC

Public Officers Attending : Item I

Mr Stephen SUI, JP
Commissioner for Rehabilitation
Labour and Welfare Bureau

Mr FONG Kai-leung
Assistant Director of Social Welfare (Rehabilitation &
Medical Social Services)
Social Welfare Department

Mr Charles CHIU
Chairperson
Guardianship Board

**Attendance by
invitation**

Item I

The Association of Parents of the Severely
Mentally Handicapped

Mr LEE Chi-yung
Chairman

Chosen Parents' Network

Ms AU Yim-fong
Chair

Chosen Power (People First Hong Kong)

Mr CHAN Tsun-kit
Executive Committee Member

The Hong Kong Joint Council of Parents of the
Mentally Handicapped

Mrs Eva MOK
Chairperson

Ms Pauline TANG

Ms HUI Ching-yee

Ms Maggie YEUNG Ying-mui

Ms CHEUNG Lai-man

The Forthright Caucus

Miss LAM Ling

St. James Settlement

Ms WONG Ming-fung

Labour Party

Mr Steve LO Ho-yuen
Representative

Ms LUI Pui-yee

Ms HO Bo-ching

Ms Cindy LAU

Hong Kong Human Rights Monitor

Mr LAW Yuk-kai
Director

Clerk in Attendance : Mr Colin CHUI
Chief Council Secretary (2) 4

Staff in Attendance : Miss Karen LAI
Council Secretary (2) 6

Miss Kay CHU
Council Secretary (2) 4

Miss Maggie CHIU
Legislative Assistant (2) 4

Action

I. Guardianship system for mentally incapacitated persons
[LC Paper Nos. CB(2)1301/13-14(01), CB(2)1313/13-14(01),
CB(2)1356/13-14(01) to (02) and CB(2)1446/13-14(01) to (08)]

The Joint Subcommittee deliberated (index of proceedings attached at **Annex**).

II. Item(s) for discussion at the next meeting
[LC Paper No. CB(2)272/13-14]

2. The Chairman advised that the Joint Subcommittee would discuss the item "Quality and monitoring of private residential care homes for the elderly and for persons with disabilities" at its next meeting scheduled for 26 May 2014.

Action

III. Any other business

3. There being no other business, the meeting ended at 4:31 pm.

Council Business Division 2
Legislative Council Secretariat
9 October 2014

**Proceedings of the fifteenth meeting of the
Joint Subcommittee on Long-term Care Policy
on Friday, 25 April 2014, at 2:30 pm
in Conference Room 1 of the Legislative Council Complex**

Time marker	Speaker(s)	Subject(s)	Action required
<i>Agenda item 1 – Guardianship system for mentally incapacitated persons</i>			
000058 - 000402	Chairman	Opening remarks	
000403 - 000610	The Association of Parents of the Severely Mentally Handicapped Chairman	Presentation of views [LC Paper No. CB(2)1446/13-14(01)]	
000611 - 001013	Chosen Parents' Network Chairman	Presentation of views [LC Paper No. CB(2)1446/13-14(02)]	
001014 - 001436	Chosen Power (People First Hong Kong) Chairman	Presentation of views [LC Paper No. CB(2)1356/13-14(01)]	
001437 - 001731	The Hong Kong Joint Council of Parents of the Mentally Handicapped Chairman	Presentation of views – [LC Paper No. CB(2)1446/13-14(03)]	
001732 - 002122	Ms Pauline TANG Chairman	Presentation of views – (a) the Administration should simplify the application procedures for guardianship order for mentally incapacitated persons so that family members/relatives/carers could be appointed promptly as their guardian to take care of their daily matters (e.g. access to electronic health record) and protect their interests; and (b) the role of doctors in respect of guardianship application for handling medical treatment should be reviewed.	
002123 - 002403	Ms HUI Ching-yee Chairman	Presentation of views – (a) the guardianship system should be reviewed to allow parents of mentally incapacitated persons to take care of daily matters of their children who reached 18 years old; and	

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		(b) the Administration could draw reference from overseas countries in developing a system under which a guardian would be appointed to take care of the matters of a mentally incapacitated person once he/she reached 18 years old, and the mentally incapacitated persons would be consulted in the decision making process.	
002404 - 002529	Ms Maggie YEUNG Ying-mui Chairman	Presentation of views and concerns that a proper system should be in place to take care of the decision making matters for the well-being of mentally incapacitated persons especially when their parents had passed away.	
002530 - 002840	Ms CHEUNG Lai-man Chairman	Presentation of views [LC Paper No. CB(2)1446/13-14(04)]	
002841 - 003211	The Forthright Caucus Chairman	Presentation of views that the Administration should – (a) enhance the awareness of public officers, including social workers and doctors, of the proper use of guardianship orders; (b) enhance the public understanding of the guardianship system for mentally incapacitated persons; (c) conduct a review of the system of adult guardianship with a view to meeting the challenges arising from the changing needs of society; and (d) perfect the case management system of the Social Welfare Department ("SWD") to cater for the best interests of mentally incapacitated persons.	
003212 - 003323	St. James Settlement Chairman	Presentation of views [LC Paper No. CB(2)1446/13-14(05)]	
003324 - 003643	Labour Party Chairman	Presentation of views – (a) a case management model should be introduced to complement the guardianship system; (b) a model of "informed decision making" should be developed to protect the rights of mentally incapacitated persons; and (c) the Administration should review the guardianship system as follows: (i) to	

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		streamline the application procedure; (ii) to extend the financial power of the guardian to cover other assets and property of the subject-person concerned; and (iii) to take forward the recommendation on the guardianship system put forward by the Law Reform Commission in its report published in July 2011.	
003644 - 003812	Ms LUI Pui-yee Chairman	Views and enquiries – (a) it was absurd that parents of mentally incapacitated persons, once their children reached 18 years old, were deprived of the right to know personal matters of their children including dosage of medicine; (b) in the case mentioned in (a), whether the parents could be informed that they should apply for guardianship order; and (c) a mechanism should be developed to safeguard parents' right to know personal matters about their mentally incapacitated children when they reached 18 years old.	
003813 - 004226	Ms HO Bo-ching Chairman	Presentation of views [LC Paper No. CB(2)1446/13-14(06)]	
004227 - 004701	Ms Cindy LAU Chairman	Presentation of views [LC Paper No. CB(2)1446/13-14(07)]	
004702 - 005040	Hong Kong Human Rights Monitor Chairman	Presentation of views on the need for setting up a public advocate and replacement of the existing model of "substitute decision making" by "supported decision making".	
005041 - 011921	Chairman Administration	Summing up of deputations' views by the Chairman that – (a) the guardian's powers were limited and should be reviewed; (b) as advocated by the United Nations Convention on the Rights of Persons with Disabilities ("the UN Convention") – "supported decision making" should be considered to enable mentally incapacitated persons to exercise their legal capacity to the greatest extent possible; and (c) concerns of parents of mentally incapacitated adults about the need for a public advocate should be addressed.	

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		<p>Response of the Administration to deputations' views that –</p> <p>(a) the guardianship system aimed to strike a balance between the needs to appoint guardians for mentally incapacitated people aged 18 or above who were unable to make decision themselves and the human rights concerns about protecting their rights of being informed or supported for making decision for their best interests. Under such a guiding principle, application for guardianship would only proceed where effective informal arrangements could not be made. The period of the order should not be long and the application be processed by an independent guardianship board;</p> <p>(b) to apply for guardianship order, medical reports by two doctors should be provided to prove that the subject-person was mentally incapacitated. The doctors writing reports should not be the applicant for the guardianship order. Upon receiving a valid application, the Guardianship Board ("GB") would convene a hearing to decide on the application. A review mechanism was in place to ensure that the interests of subject-persons were protected;</p> <p>(c) persons with intellectual disabilities represented only about 4% of the subject-persons of guardianship orders, while more than 80% were elderly persons suffering from dementia or stroke and 5% were mentally ill persons. It would be highly recommendable that persons with intellectual disabilities could seek other alternative support services or administrative arrangement, instead of applying for guardianship orders;</p> <p>(d) SWD assumed different roles in various stages of guardianship applications and enforcement thereof, and provided advice and assistance on less intrusive alternative arrangement covering welfare services for the elderly, persons with intellectual disabilities, and mentally ill persons, etc;</p> <p>(e) regarding concerns about abuse of guardianship order as a means to discharge patients, persons in need of assistance could approach social workers of Medical Social</p>	

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		<p>Services Units or Integrated Family Service Centres to facilitate effective communication with doctors on the welfare of the patients;</p> <p>(f) for the sake of providing better arrangement, a case management model had been introduced in, among others, the Home Care Service for Persons with Severe Disabilities, to provide services according to specific needs of individuals, including assistance relating to guardianship matters;</p> <p>(g) SWD had provided regular training for front-line social workers on guardianship system for mentally incapacitated persons;</p> <p>(h) "supported decision making" was a rather new model in adult guardianship. The model was on study or trial in Australia and Canada. Only Taiwan had introduced the model; and</p> <p>(i) SWD kept an open mind in exploring new services to support families with persons with disabilities such as providing training for young people in the community to offer support to families with people with intellectual disabilities and guidance to people with intellectual disabilities when necessary in regard to decision making for their best interests, etc.</p> <p>Response of GB to deputations' views and concerns that –</p> <p><i>Public awareness of the guardianship system</i></p> <p>(a) GB had made efforts in public education on the guardianship system including organizing talks and seminars for doctors, social workers, lawyers, the Police, tertiary institutions, non-governmental organizations ("NGOs"), and parents/carers of mentally handicapped persons;</p> <p><i>Processing procedures for guardianship applications</i></p> <p>(b) there had been only a few applications for emergency guardianship order for medical treatments, and most applications were withdrawn before the relevant hearings were held;</p>	

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		<p>(c) in processing guardianship applications, apart from the medical reports, GB should obtain a social enquiry report from SWD on the subject-person and his/her family or friends, which took four weeks to prepare. GB had been working closely with SWD and had developed protocols in handling urgent applications;</p> <p>(d) a guardianship order was required for changing the address of a mentally incapacitated person. GB had been exploring ways to streamline the related procedures for the convenience of parents/carers of mentally incapacitated persons;</p> <p>(e) GB had made efforts in educating doctors about the proper exercise of their powers as stipulated in Part IVC of the Mental Health Ordinance (Cap. 136) and the number of cases in regard to guardianship application for medical consent power was dropping;</p> <p><i>The way forward</i></p> <p>(f) GB had set out key elements to enhance its work in the Fourth Report of GB, namely reviewing the powers of a legal guardian; reviewing the financial powers of a legal guardian; establishing an independent Public Guardian and Public Trustee (Advocate); and studying the definitions of mentally incapacitated persons and criteria of guardianship; and</p> <p>(g) GB had been maintaining connection with overseas counterparts for exchanging experience. It had kept in view the development of the "supported decision making" model, which was a rather new concept; and hitherto no common law jurisdictions had introduced the model for guardianship system for mentally incapacitated persons.</p>	
011922 - 012730	Mr CHEUNG Kwok-che Administration Chairman	<p>Enquiries of Mr CHEUNG Kwok-che –</p> <p>(a) whether parents of mentally handicapped adults would be granted exemption for guardianship application for handling some simple daily matters of their children; and</p> <p>(b) what factors GB would consider in the appointment of a guardian if the relevant</p>	

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		<p>guardianship application was not made by family members, e.g. by doctors.</p> <p>Response of the Administration/GB that –</p> <p>(a) regarding decision on daily matters, exemption could be granted for parents of mentally handicapped adults; and</p> <p>(b) GB would consider the background of the applicant, the social enquiry report of the subject-person as well as views of relatives/family members of the patient for making the decision. Both the applicant and family members of the subject-person would be invited to give views during the hearing.</p> <p>Enquiry of the Chairman about the channel for filing a complaint by family members in respect of the eligibility of doctors for making a guardianship application.</p> <p>Reply of the Administration that in reality many guardianship applications in relation to medical treatments could be better handled through other alternatives than applying for guardianship order. Medical social workers would explain to the persons concerned about other options of assistance and services available.</p>	
012731 - 013339	Mr POON Siu-ping Administration Chairman	<p>Mr POON Siu-ping considered that the guardianship system should keep pace with the changing needs of the society and echo with the principles advocated by the UN Convention. His enquiries about –</p> <p>(a) the profile of applicants for guardianship orders;</p> <p>(b) the number of applications processed and hearings convened by GB per year;</p> <p>(c) the profile of subject-persons and the evaluation on the growth of guardianship applications in view of the ageing population; and</p> <p>(d) the mechanism for adjusting the maximum amount of monthly sum under the care of the guardian.</p> <p>Response of the Administration/GB that –</p>	

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		<p>(a) the profile of applicants for guardianship orders in December 2013 was: family members of subject-persons (58%), public officers including doctors and social workers of the Hospital Authority, SWD and NGOs (40%), and social workers of SWD (15.4%);</p> <p>(b) all guardianship applications should be considered in a hearing in which GB members would examine all the information and evidence collected and interview the subject-person and relevant witnesses to reach a decision. GB convened a total of 544 hearings in 2013, involving 304 review hearings, 226 hearings for normal guardianship order and 14 hearings for emergency guardianship order; and 96% of the hearings had been completed;</p> <p>(c) around 80% of subject-persons were mentally incapacitated persons aged 61 to 90, which was similar to corresponding figures of overseas countries;</p> <p>(d) the maximum monthly sum under the care of the guardian, which was currently \$12,500, was adjusted according to the changes of the Median Monthly Domestic Household Income compiled by the Census and Statistics Department; and</p> <p>(e) the Administration would conduct a public consultation exercise in 2014 on a draft bill to implement the recommendations in the report "Enduring Powers of Attorney: Personal Care" published by the Law Reform Commission in July 2011. One of the recommendations was to extend the powers of GB in relation to Enduring Powers of Attorney. Subject to the result of the consultation exercise, the Administration planned to introduce the relevant bill into LegCo in the 2014-2015 legislative session.</p>	
013340 - 014320	Deputy Chairman Administration Chairman	<p>Views/concerns of the Deputy Chairman that –</p> <p>(a) to protect the best interests of mentally incapacitated persons, the Administration should review the eligibility of doctors in exercising their powers to apply for guardianship orders for their patients;</p> <p>(b) whether parents or spouse of the subject-patients, for example, patients who</p>	

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		<p>were in a vegetative state, would be given priority as the guardian under the existing guardianship system; and</p> <p>(c) whether the Administration would consider putting the "supported decision making" model on trial for adult guardianship in Hong Kong.</p> <p>Response of the Administration/GB that –</p> <p>(a) GB had made efforts in enhancing the awareness of doctors about the proper use of guardianship orders. Doctors abusing their powers in making guardianship application in respect of hospital discharge was not common;</p> <p>(b) no priority was given to any parties in respect of the appointment of guardian according to the law. In any case, GB would invite family members of the subject-persons to attend hearings and give views in regard to the granting of guardianship order; and</p> <p>(c) "supported decision making" was a new guardianship model. Taiwan had introduced the model but not many applications were approved. Other places having implemented the model were Alberta and Yukon, Canada. The legal system of the two places were not the same as the common law system of Hong Kong and their population were small.</p>	
014321 - 014749	Ms HO Bo-ching Administration Chairman	<p>Views of Ms HO Bo-ching about the concerns of parents of mentally incapacitated adults regarding medical treatment for their children without their prior consent. She urged GB to review the role and power of guardians and put the recommendations on enhancing the work of GB into practice.</p> <p>Reply of GB that –</p> <p>(a) GB currently processed about 270 to 290 guardianship applications a year, marking a growth as compared to about 100 applications 10 years ago. In other places of similar demographic profile of Hong Kong, the number of applications per year was about 6 000; and</p> <p>(b) GB needed to work with the Administration to review its role and enhancement of its work.</p>	

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		<p>Overall speaking, it needed to strike a balance between the service demand and the scope and pace of reform for amending the laws relating to adult guardianship.</p>	
014750 - 015302	Ms Cindy LAU Administration Chairman	<p>Ms Cindy LAU said that her husband was a vegetative patient but was required to be discharged from public hospital. The process of hearing (normally lasted for three months) would be a torture to family members. She also cast doubt about the role of medical social workers regarding support to patients concerned and their family members.</p> <p>Response of GB that it would go through all necessary procedures and decide whether the appointment of a guardian was appropriate after conducting the hearing. Parties to the hearing including the applicant and family members of the subject-person could furnish any information to GB during the hearing, and officers of GB would provide assistance on guardianship matters for family members of the subject-persons when necessary.</p> <p>Response of the Administration that medical social workers were responsible for formulating a care plan for patients' well-being after discharge and would provide assistance to family members/ carers of patients.</p> <p>In response to the Chairman's enquiry, the Administration replied that the SWD's social worker concerned would explain to family members of the patients concerned about the guardianship system, facilitate communication with medical officers and provide assistance in making guardianship application if necessary.</p>	
015303 - 020126	Chairman Administration Chairman	<p>The Chairman enquired about circumstances where doctors should make an application for guardianship order for their patients in relation to medical treatment.</p> <p>Reply of the Administration that –</p> <p>(a) doctors, normally in consultation with family members of the patients, would make decision for proceeding to medical treatment; and</p> <p>(b) if there were different views concerning the medical treatment, a guardianship application might be resulted. In such cases, medical</p>	

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		<p>social workers would assist patients' family members in communicating with the doctor on the issues of consent to treatment and assist them in handling matters relating to guardianship.</p> <p>Views of the Chairman that regarding the way forward, the Administration should –</p> <ul style="list-style-type: none"> (a) explore whether the guardian's financial power could be expanded to cover management of property and other financial affairs of a mentally incapacitated person, with a view to better protecting his/her rights; (b) strengthen SWD's support for mentally incapacitated persons through a case management system under which advice was given on the procedures of making guardianship applications and the work of different parties for matters relating to medical treatments was coordinated; (c) in the longer term, the Administration and GB should appoint an independent public trustee (or public advocate) to protect the interest of mentally incapacitated persons; and (d) the Administration should also consider replacing the existing model of "substitute decision making" (where decisions were made on behalf of a mentally incapacitated person by someone else) by "supported decision making" (where a mentally incapacitated person was provided with whatever support was required in order to exercise his or her legal capacity to the greatest extent possible). 	
<i>Agenda item II – Item(s) for discussion at the next meeting</i>			
020127 - 020200	Chairman	<p>Agenda item for the next meeting</p> <p>Closing remarks</p>	