

**LEGISLATIVE COUNCIL
PANEL ON WELFARE SERVICES
PANEL ON HEALTH SERVICES
JOINT SUBCOMMITTEE ON LONG-TERM CARE POLICY**

Guardianship System for Mentally Incapacitated Persons

Purpose

This paper sets out the guardianship system put in place by the Administration for mentally incapacitated adults.

The Work of the Guardianship Board

2. The Guardianship Board (the Board) is an independent statutory body which performs the functions provided and exercises the powers conferred under Part IVB of the Mental Health Ordinance (Cap. 136). It aims to protect mentally incapacitated adults and promote their welfare and interests through making of guardianship orders. Members of the Board are appointed by the Chief Executive. The chairperson of the Board should have suitable legal experience, while other members comprise non-officials from three sectors, including barristers or solicitors; persons who have had experience in assessing or treating mentally incapacitated persons, such as registered medical practitioners, clinical psychologists or social workers; and persons who have had personal experience with persons suffering from mental disorder or persons with intellectual disabilities, e.g. their parents or relatives. The major statutory role of the Board is to conduct hearings in order to appoint guardians for people aged 18 years and over who are mentally incapacitated in making decision for themselves.

3. A relative of the mentally incapacitated person, a registered social worker, a registered medical practitioner or a public officer in the Social Welfare Department (SWD) may make a guardianship application to the Board. Upon receipt of an application, the Board will arrange for a hearing in which

Board members will examine all the information and evidence collected, and interview the mentally incapacitated person and relevant witnesses to reach a decision.

4. In normal circumstances, application for guardianship will be processed only where there are no effective informal arrangements already in place or such an arrangement cannot be made. In such circumstances, the Board may appoint a private guardian (a family member or a friend) or the public guardian (Director of Social Welfare) and grant the following powers to the guardian so appointed:

- (i) to require the person concerned to reside at a specific place;
- (ii) to bring the person concerned to a specific place and use reasonable force for the purpose;
- (iii) to require the person concerned to attend at a place and time for medical or dental treatment, special treatment, occupation, education or training;
- (iv) to consent to medical or dental treatment if the person concerned is incapable of understanding the general nature and effect of the treatment;
- (v) to require access to the person concerned to be given to any registered medical practitioner, approved social worker or other person specified in the guardianship order; and
- (vi) to hold, receive or pay a specified monthly sum for the maintenance or other benefit of the person concerned (currently the maximum amount is HK\$12,500 per month).

5. If an application is beyond the Board's jurisdiction, e.g. the financial needs exceed the limit mentioned in paragraph 4(vi) above, the Board will suggest that the relevant party applies to the Court of First Instance of High Court for the appointment of a person as "committee of the estate" to manage the property and financial affairs of the mentally incapacitated person under Part II of the Mental Health Ordinance.

6. In 2013, the Board convened a total of 544 hearings, involving 304 review¹ hearings, 226 hearings for normal guardianship order and 14 hearings for emergency guardianship order. Regarding the above hearings for normal guardianship order, the reasons for application included finance, residence, consent to medical treatment and hospital discharge etc. (see **Annex** for details).

7. Furthermore, the Board has also made active efforts in public education to enhance public awareness of the guardianship system established for mentally incapacitated adults and the work of the Board. In this regard, the Board conducted 17 related talks in 2013 for family members/carers of the mentally incapacitated persons, the Hong Kong Council of Social Service, voluntary organisations, representatives of SWD and the Hong Kong Police Force, social workers, students, members of the Board and lawyers, etc. At the international level, the Board also maintains connection with overseas counterparts for exchanging experience.

Roles of SWD

8. SWD assumes different roles in various stages of guardianship application and enforcement of guardianship orders according to the statutory functions stipulated under Part IVB of the Mental Health Ordinance (Cap. 136) and having regard to the needs and circumstances of individual cases. These include:

During the application process for guardianship

- (i) explaining the guardianship application procedures and relevant legislation to members of the public (including family members or relatives of mentally incapacitated persons) and advising on the need for guardianship application;

¹ The Board will automatically review each guardianship order just before its expiry, and may, in accordance with the relevant procedures, initiate a review of a guardianship order prior to its expiry as deemed appropriate. Besides, other persons (the mentally incapacitated person who is the subject of the guardianship order, the guardian, the Director of Social Welfare and any other person who, in the opinion of the Board, has a genuine interest in the mentally incapacitated person's welfare) may request to review a guardianship order at any time prior to its expiry.

- (ii) acting as the applicant for guardianship on behalf of a mentally incapacitated person who requires guardianship where there is no other suitable person to act as a guardianship applicant;
- (iii) applying for an emergency guardianship order under the Mental Health Ordinance if there is a suspected case of misappropriating the properties of a mentally incapacitated person, or maltreating, abusing or exploiting such a person;
- (iv) preparing a social enquiry report for the guardianship application. The report should contain an assessment of the mentally incapacitated person's social and financial situation, and his/her views and wishes. The report will be submitted to the Board for consideration;
- (v) attending hearings as a witness as required by the Board to provide necessary information about a mentally incapacitated person, his/her social situation or guardianship application;
- (vi) attending Board hearings as a party, putting up questions and providing information as necessary;

During enforcement of a guardianship order

- (vii) providing support and assistance for a private guardian in discharging his/her guardian duties;
- (viii) enforcing a guardianship order on behalf of a private guardian when he/she is unable to discharge his/her guardian duties due to personal reasons until the private guardian concerned can resume his/her duties or the order is reviewed by the Board;
- (ix) acting as the public guardian when no other suitable person is capable of acting or willing to act as a private guardian; and making decisions for the mentally incapacitated person concerned in accordance with the power(s) conferred under the guardianship order; and
- (x) submitting progress reports or applications for review of the guardianship order to the Board when necessary.

9. SWD will follow up each case of guardianship order as appropriate. The case social worker will regularly pay visit to the person concerned and maintain close liaison with his/her family members/carers as well as relevant stakeholders. In formulating welfare plans for the person concerned or making important decisions relating to his/her personal matters such as residence or consent to medical treatment, the social worker will take into account various factors, including the views of the person concerned and his/her family members/carers, professional advice of healthcare professionals and risk assessment. Decisions will be made in the interest of the person concerned. If the person concerned owns a property and/or has a substantial amount of assets, or is involved in such issues as applying for a grant of probate or claiming work injury or accident compensation, the case social worker will seek legal advice where appropriate to assist him/her in making the necessary applications to the Court of First Instance of High Court under relevant sections of the Mental Health Ordinance, so that the property, estate and/or affairs could be handled properly to protect the best interest of the person concerned.

Advice sought

10. Members are invited to note the content of this paper.

**Labour and Welfare Bureau
Social Welfare Department
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Number of Hearings held by the Guardianship Board for Normal Guardianship Applications and Reasons for Application (2013)

Reasons for application	Number of hearings
Finance	155
Financial abuse	9
Conflict	9
Welfare/Protection	3
Consent to treatment	11
Residence	12
Psy-rehabilitation	1
Hospital discharge	11
Other abuse	1
Adjourned cases	8
Others/Unclassified	6
Total	218 <u>Note</u>

Note: There are 8 other adjourned cases where the reasons for application have yet been confirmed.