

**立法會**  
**Legislative Council**

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**Panel on Welfare Services and Panel on Health Services**

**Joint Subcommittee on Long-term Care Policy**

**Information note prepared by the Legislative Council Secretariat  
for the meeting on 25 April 2014**

**Guardianship system for mentally incapacitated persons**

The Mental Health Ordinance (Cap. 136) empowers an independent Guardianship Board to conduct hearings in order to make guardianship orders for persons aged 18 or above who are mentally incapable of making decisions about their personal affairs, financial matters or medical/dental treatments. The Board may decide to appoint a private guardian (a family member or friend) or the public guardian (Director of Social Welfare) to make important decisions relating to personal circumstances for such adults.

2. The guardianship system itself has not been discussed by the Panel on Welfare Services or the Panel on Health Services. Nevertheless, concerns have been raised by welfare organizations about the public awareness of the guardianship system and the purview of the Guardianship Board in relation to the protection of rights of demented elderly persons. The Administration has been urged to review the power of the Guardianship Board, invite persons with expertise on the needs of demented elderly persons as Board members, and enhance public education on various legal means (including guardianship orders, enduring powers of attorney and advance directives) to protect mentally incapacitated persons.

3. At the special meeting of the Finance Committee on 3 April 2014 to examine the estimates of expenditure for the financial year 2014-2015, Dr Fernando CHEUNG raised a question on the Guardianship Board. A copy of the question and the Administration's written reply are in the **Appendix**.

Examination of Estimates of Expenditure 2014-15

Reply Serial No.

**CONTROLLING OFFICER'S REPLY****LWB(WW)0005****(Question Serial No. 1794)**

**Head:** (141) Government Secretariat: Labour and Welfare Bureau

**Subhead (No. & title):** (-) Not Specified

**Programme:** (6) Subvention: Guardianship Board and Environmental Advisory Service

**Controlling Officer:** Permanent Secretary for Labour and Welfare (Miss Annie Tam)

**Director of Bureau:** Secretary for Labour and Welfare

**Question (Member Question No. 182):**

1. Please provide the number of cases handled by the Guardianship Board in the past 5 years, and a breakdown by type of case.
2. Please provide the number of cases in which the Guardianship Board refused to accept the guardianship applications, and the reasons for doing so.
3. Is there any plan to initiate a review on the purview of the Guardianship Board? If yes, what is the timetable?

**Asked by:** Hon. CHEUNG Chiu-hung, Fernando

**Reply:**

The information sought is provided as follows –

1. The number of cases handled by the Guardianship Board (GB) in the past 5 years, broken down by type of cases, is tabulated below –

Year	Year				
	2009	2010	2011	2012	2013
<b>Nature</b>					
Review	279	303	306	256	304
Finance	199	182	172	192	155
Financial Abuse	15	11	6	6	9
Conflict	5	11	7	13	9
Welfare / Protection	10	9	10	6	3
Consent to Treatment	29	12	13	23	11
Residence	7	5	20	12	12
Psy-rehabilitation	0	2	1	0	1
Discharge	3	6	4	8	11
Other Abuse	0	2	3	2	1
Adjourned Cases	9	10	17	19	8
Emergency Guardianship	3	12	9	10	14
Others / Unclassified	0	7	8	3	6
<b>Total Number of Cases</b>	<b>559</b>	<b>572</b>	<b>576</b>	<b>550</b>	<b>544</b>

2. The number of cases in which GB refused to accept the guardianship applications in the past 5 years is 11 in 2009, 12 in 2010, 18 in 2011, 13 in 2012 and 6 in 2013. Under Section 59O (3) of the Mental Health Ordinance (“the Ordinance”), in considering whether or not to make a guardianship order, GB must be satisfied that the subject of the application is in fact a mentally incapacitated person, and that the particular needs and welfare of the subject may only be met or attended by his/her being received into guardianship under the Ordinance with no other less restrictive or intrusive means. The reasons for refusing to accept the guardian applications included absence of evidence supporting allegations over neglect of care and treatment, availability of other avenues for meeting the financial, medical and welfare needs of the subject etc.
3. The Department of Justice will conduct a public consultation in 2014 on a draft Bill to implement the recommendations stated in the report "Enduring Powers of Attorney: Personal Care", published by the Law Reform Commission (LRC) in July 2011. One of the LRC's recommendations is to extend the powers of the GB in relation to enduring power of attorney (EPA), for example, to give directions to an EPA attorney and to remove a power from an EPA attorney. Subject to the result of the public consultation, it is planned that the Bill will be introduced into the Legislative Council in the 2014-15 legislative session.