

**Submissions of the Progressive Lawyers Group
in relation to Quality and Monitoring of Private
Residential Care Homes for the Elderly**

For Legislative Council (Panel on Welfare Services) meeting on 23 July 2015

Introduction

1. The recent incident at Tai Po Cambridge Nursing Home shocked the Hong Kong public and highlighted the problems faced by many elderly people in Hong Kong. There have also numerous media reports about elderly abuse cases in private residential care homes for the elderly (“**RCHEs**”).
2. In this paper, the Progressive Lawyers Group briefly sets out some of the current problems and suggests a number of ways for the Government to improve the situation.

Inadequacies of the present legislative regime

Statutory requirements unchanged since 1996

3. The Residential Care Homes (Elderly Persons) Ordinance (Cap. 459) (“**RCHO**”) and its subsidiary legislation (the Residential Care Homes (Elderly Persons) Regulation (Cap. 459A), “**RCHR**”) came into force in 1996. However, since then, the statutory minimum requirements have never been revised. The standards set out in the legislation are fairly low and it is questionable whether they are still sufficient.

Insufficiency of inspections

4. According to the statistics of the Licensing Office of Residential Care Homes for the Elderly (“**LORCHE**”) for 2013-2014, there were 34 RCHEs which were assessed as having high risk of non-compliance with the regulations. However, only 10 of those cases had follow-up inspections which were conducted within the target timeframe. In the remaining 24 cases, follow-up inspections were not conducted within the target timeframe (with delays ranging from 1 to 3 months).
5. Moreover, there have been doubts from the public as to whether the inspections conducted by LORCHE are truly unannounced and random (and hence doubts as to whether the result of the inspections reflect the true situation in RCHEs).

Absence of legislation preventing elderly abuse

6. There is no specific legislation preventing elderly abuse in Hong Kong. In Canada, Japan, and England, specific protection mechanisms to prevent elderly abuse are embedded in legislation. Such legislation include measures to encourage public disclosure of cases and mechanisms for complaints to be made.

Suggestions

7. We put forward the following suggestions for the Government’s consideration.

(1) Enactment of Elderly Abuse Legislation

8. We suggest that new legislation be enacted for the specific purpose of preventing elderly abuse. Such legislation would reflect the determination of the Government and society to protect elderly people in Hong Kong.
9. Although the details of the proposed legislation require careful consideration, one possible scheme is as follows:

<i>Persons to be protected</i>	Any persons aged over 60. This includes not only elderly people in RCHEs, but also includes elderly people living elsewhere in the community.
<i>Definition of “abuse”</i>	“Abuse” can be defined as: (1) Mistreatment (whether physical, sexual, mental, emotional, financial or a combination of any of them) ¹ ; (2) Psychological and discriminatory abuse; ² (3) Neglect ³ , i.e. failure to provide

¹ cf. the definition s.1(1) of the Protection for Persons in Care Act in Manitoba, Canada

² see: “A Good Life in Old Age”, OECD Health Policy Studies, p.171

	<p>necessary care, assistance, guidance, or attention to an adult that causes or is reasonably likely to cause the adult serious physical, mental or emotional harm; and/or</p> <p>(4) Acts which are reasonably likely to cause⁴:</p> <p>(a) Death;</p> <p>(b) Serious physical or psychological harm; or</p> <p>(c) Significant loss to the person's property</p>
<i>Penalty</i>	<p>(1) Abuse by an individual: fine and/or imprisonment</p> <p>(2) Abuse by an institution: fine and/or imprisonment of responsible officer</p>

(2) Improving the standards in the RCHO, RCHR, and the Code of Practice

Enhancement of existing standards

10. We understand that, at its meeting on 8 June 2015, the Legislative Council's Panel on Welfare Services:⁵

- (1) took the view that some of the provisions in the RCHO and RCHR (e.g. staffing ratio, average per capita space, service needs based on impairment levels of the elderly persons, methods for regulating inspections and penalties) were outdated; and

³ cf. the Adult Protection and Decision Making Act in Yukon, Canada

⁴ cf. the definition in s.1(1) of the Protection for Persons in Care Act in Manitoba, Canada

⁵ As stated in para. 11 of the briefing paper dated 17 July 2015 (LC Paper No. CB(2)1906/14-15(03)).

- (2) passed a motion urging the Government to immediately review the relevant specific requirements.

11. We would respectfully agree with the view taken by the Panel.

Inclusion of requirements for “dignity” in the Code of Practice

12. The Code of Practice of Residential Care Homes (Elderly Persons) (“**Code of Practice**”) should be amended to include a new section on “dignity” rights. The Code should emphasise that RCHes must not only take care of elderly people’s physical health, but they should also take care of elderly people’s psychological health and right to dignity.
13. In the United Kingdom, the Care Quality Commission’s guidance to the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 includes a section expressly dealing with “dignity and respect”.⁶

(3) Establishment of a new independent authority

14. The Government should consider the establishment of a new independent authority (similar to the Care Quality Commission in the United Kingdom).
15. The new authority could be made responsible for:
 - (1) Inspecting the quality of elderly homes (e.g. through unannounced visits);
 - (2) Receiving and investigating complaints from the public;
 - (3) Conducting investigations to determine whether there has been any abuse or neglect by persons or institutions (and if so, making relevant applications to Court or referrals to relevant Government bodies).
16. It is suggested that the new authority should be composed of members of the public (including relevant NGOs), who are independent from the Social Welfare Department (“**SWD**”) and the Government.

⁶ www.cqc.org.uk/content/regulation-10-dignity-and-respect#guidance

(4) More transparent information for the public

17. There should be a more transparent record system to show the name of RCHEs which have received complaints or failed to comply with the regulations.
18. For instance, such information could be shown in a prominent location on the SWD website.

(5) Accreditation system

19. At present, there are three independent accreditation schemes for RCHEs (which are voluntary in nature):
 - (1) Residential Aged Care Accreditation Scheme launched by the Hong Kong Association of Gerontology⁷
 - (2) Quality Elderly Service Scheme launched by the Hong Kong Health Care Federation with the support of the Hong Kong Productivity Council⁸
 - (3) Service Quality Management Certification Scheme – Elderly Service launched by the Hong Kong Quality Assurance Agency.⁹
20. Since March 2012, the SWD website has included information on voluntary participation of accreditation schemes by RCHEs.
21. The Government should investigate measures to improve the functioning and efficacy of the accreditation schemes. For instance, in Australia, accreditation is a prerequisite to receiving government funding.¹⁰

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⁷ http://www.hkag.org/Eng/RACAS_committee_eng.htm

⁸ <http://www.healthcare.org.hk/eng/Content.aspx?t1=7&t2=100>

⁹ http://www.hkqaa.org/en_certservice.php?catid=12

¹⁰ <https://www.aacqa.gov.au/for-the-public>