

立法會
Legislative Council

LC Paper No. CB(2)625/16-17
(These minutes have been seen
by the Administration)

Ref : CB2/PL/WS

Panel on Welfare Services

**Minutes of special meeting
held on Tuesday, 1 November 2016, at 9:30 am
in Conference Room 1 of the Legislative Council Complex**

Members present : Hon SHIU Ka-chun (Chairman)
Hon KWONG Chun-yu (Deputy Chairman)
Hon James TO Kun-sun
Hon LEUNG Yiu-chung
Hon CHAN Hak-kan, BBS, JP
Hon LEUNG Kwok-hung
Hon WU Chi-wai, MH
Hon MA Fung-kwok, SBS, JP
Hon Charles Peter MOK, JP
Hon CHAN Chi-chuen
Dr Hon KWOK Ka-ki
Hon KWOK Wai-keung
Hon Dennis KWOK Wing-hang
Dr Hon Fernando CHEUNG Chiu-hung
Hon POON Siu-ping, BBS, MH
Hon Alvin YEUNG
Hon Andrew WAN Siu-kin
Hon CHU Hoi-dick
Hon LAM Cheuk-ting
Hon YUNG Hoi-yan
Dr Hon Pierre CHAN
Hon Tanya CHAN
Hon HUI Chi-fung
Hon Jeremy TAM Man-ho
Dr Hon YIU Chung-yim

Members absent : Prof Hon Joseph LEE Kok-long, SBS, JP
Hon LEUNG Che-cheung, BBS, MH, JP
Dr Hon Helena WONG Pik-wan
Hon IP Kin-yuen
Dr Hon Junius HO Kwan-yiu, JP
Hon Nathan LAW Kwun-chung
Dr Hon LAU Siu-lai

Members attending : Hon Abraham SHEK Lai-him, GBS, JP
Hon Starry LEE Wai-king, SBS, JP
Hon Michael TIEN Puk-sun, BBS, JP
Dr Hon Elizabeth QUAT, JP
Dr Hon CHIANG Lai-wan, JP
Hon HO Kai-ming
Hon Holden CHOW Ho-ding
Hon LUK Chung-hung
Dr Hon CHENG Chung-tai

Public Officers attending : Item I

Mr Matthew CHEUNG, GBS, JP
Secretary for Labour and Welfare

Mr David LEUNG, JP
Commissioner for Rehabilitation
Labour and Welfare Bureau

Ms Carol YIP, JP
Director of Social Welfare
Social Welfare Department

Mr LAM Ka-tai, JP
Deputy Director of Social Welfare (Services)
Social Welfare Department

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

Mr Keith YEUNG, SC, JP
Director of Public Prosecutions
Department of Justice

Mrs Apollonia LIU, JP
Deputy Director (Special Duty)
Department of Justice

Mr Paul HO
Senior Assistant Director of Public Prosecutions
(Office of the Director of Public Prosecutions)
Department of Justice

**Attendance by
invitation** : Item I

Session One

The Association of Parents of The Severely Mentally
Handicapped

Mr LEE Chi-yung
Chairman

Hong Kong Social Workers' General Union

Ms CHEN Hung-sau
Executive

Concerning Home Care Service Alliance

Miss CHEUNG Nga-lam
Representative

SME Global Alliance Elderly and Special Needs
Services Association Limited

Mr Richard LEE Pak-ying
Chairman

Labour Party

Mr KWOK Wing-kin
Representative

周德雄先生

許偉民先生

Chosen Power (People First) Hong Kong

葉文菱小姐
助理

錢敏月女士

Heep Hong Parents' Association

Ms Amanda YU Chui-nam
Vice-Chairman

Hong Kong Federation of Women Centres

Mr LEUNG Shek-lun
Education officer

The Hong Kong Council of Social Service

Mr KUO Chun-chuen
Chief Officer (Rehabilitation Service)

輕度智障權益關注組

Mr TAM Wai-yip
Member

Grace Parent Association

Mr YIP Ki-chun
Chairman

Certificate of Exemption of Residential Care Home for
Rehabilitation Services Association (Hong Kong &
Kowloon)

Ms CHOI Hiu-ching
Convener

東區社福同行

Mr WONG Shan
Member

Certificate of Exemption of Residential Care Home
for Rehabilitation Services Association (New
Territories)

Miss CHEN Yuen-ling
Convener

Christian Blessed Charity Church Limited

Rev Dr Samuel LEUNG Mun-fai
Senior Pastor Dr / Chairman

The Social Workers Alliance of Private Homes

Mr TSANG Kim-kwong
Committee Member

The Association For the Rehabilitation of Private
Homes Limited

Mr Peter CHEUNG Ping-yuen
Founding President

林珍女士

前線員工關注組

Miss Rida CHEUNG
Member

Christian Social Workers

Mr NG Wai-chiu
Member

Association Concerning Sexual Violence Against
Women

Ms CHOI Suet-wah
Project Officer (Advocacy)

張麗梅女士

Parents Committee, The Hong Kong Down Syndrome
Association

Ms IM Fung-kiu
Vice-Chairman

將軍澳長者民生關注會

Mr KWONG Wing-tai
Representative

Session Two

The Association for the Advancement of Feminism

Mr WONG Tin-yau
Secretary

人手比例不符最低工資關注組

Mr WONG Kwai-sang
理委

The Civic Party

Mr Andy YU Tak-po
District Councillor

社工復興運動

Mr HAU Kwun-lam
團體成員

Mr LAU Yin-chiu

Mr LAU Mau-kai

The Parents' Association of Pre-school Handicapped
Children

Ms CHEUNG Kwok-chun

許兆豐先生

Concern Group of Right of People with Mental Illness

Mr WONG Chi-wah
Member

Society for Community Organization

Miss YUEN Shuk-yan
Community Organizer

The Hong Kong Down Syndrome Association

Ms Maggie YEUNG Pin-mui
Director

Miss Clarisse YEUNG Suet-ying, Member of Wan
Chai District Council

Democratic Alliance for the Betterment and Progress
of Hong Kong

Mr LAI Jee-shing
Deputy Spokesperson

The Hong Kong Joint Council of Parents of the
Mentally Handicapped

Ms Sindy Cat LEE Cheung-pui
Executive Member

楊家強先生

Concord Mutual-Aid Club Alliance

Miss LAM Sin-man
執委會委員

The Intellectually Disabled Education and
Advocacy League

楊袁志群博士
副主席

監護制度及財產管理關注組

高偉文先生
代表

The Mental Health Association of Hong Kong

Ms SHUM Mui-fong
Chief Officer (Service)

Rehabilitation Alliance Hong Kong

Mr LAU Kwok-lam
Acting General Secretary

社區及院舍照顧員總工會

Mr CHENG Ching-fat
Secretary

Alliance for Subvented Residential Care Service

林禮勝先生
召集人

何寶貞女士

Physio Action

Ms Sally WAN
代表

Po Leung Kuk

馮慧湘女士
助理社會服務總幹事(康復服務)

余潤成先生

Liberal Party

Mr LEE Chun-keung
Vice Party Chair

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

Staff in attendance : Ms Catherina YU
Senior Council Secretary (2) 4

Miss Kay CHU
Council Secretary (2) 4

Miss Alison HUI
Legislative Assistant (2) 4

Miss LEE Wai-yan
Clerical Assistant (2) 4

Action

I. Looking into the quality problem of private residential care homes for persons with disabilities in light of the "Bridge of Rehabilitation Company" incident

[LC Paper Nos. CB(2)55/16-17(01) to (18), CB(2)57/16-17(01), CB(2)76/16-17(01) to (08), CB(2)78/16-17(01), CB(2)88/16-17(01) to (16) and CB(2)100/16-17(01)]

At the invitation of the Chairman, Secretary for Labour and Welfare ("SLW") briefed members on the measures taken and being planned by the Administration to monitor the service quality of private residential care homes for persons with disabilities ("RCHDs"). He also gave an update on the residential care arrangements for the 79 residents of the Bridge of Rehabilitation Company who would be affected by the Social Welfare Department ("SWD")'s plan to revoke the certificate of exemption ("CoE") held by the Bridge of Rehabilitation Company. He said that the Labour and Welfare Bureau ("LWB") and SWD were very concerned about the Bridge of Rehabilitation Company incident ("the Incident"). LWB and SWD would endeavour to offer the 79 affected residents appropriate assistance in finding alternative residential care. As at 1 November 2016, 68 of them had left the Bridge of Rehabilitation Company and the remaining 11 residents had already found alternative residential care. SWD had assigned 32 social workers to follow up and provide these residents and their family members with the necessary support.

2. The Chairman invited deputations/individuals to present their views. A total of 54 deputations/individuals expressed their views which were summarized in **Appendix**.

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The Administration's response to deputations' views

3. SLW said that the provision of rehabilitation services was reviewed periodically. Upon completing the task of formulating the Elderly Services Programme Plan by the Elderly Commission, which was estimated to be completed in the second quarter of 2017, the Administration would commence work on reviewing the Rehabilitation Programme Plan ("RPP").

4. Regarding the view that residential care places for persons with disabilities should not be provided in high-rise blocks and the concern that the occupation density in many RCHDs was high, SLW said that the Administration planned to provide about 6 000 additional rehabilitation service places in the coming five years (i.e. from 2016-2017 to 2020-2021). The Integrated Rehabilitation Services Complex ("IRSC") to be constructed at the site of ex-Siu Lam Hospital in Tuen Mun ("the Project") would provide around 1 700 additional places for residential care, day training and vocational rehabilitation services. The site had a gross area of about 3.5 hectares and low-rise blocks would be built under the Project. The tranquil environment surrounding the IRSC of the Project was suitable for providing rehabilitation services. Construction of small RCHDs in new towns and new development areas would be considered in the development plans. An additional 2 427 subvented places would be provided in hostels for severely mentally handicapped persons and hostels for moderately mentally handicapped persons in the coming few years.

5. As regards manpower shortage problems in the welfare sector, SLW said that the Administration had adopted measures to increase manpower supply for the sector. These measures included launching the Navigation Scheme for Young Persons in Care Services ("the Navigation Scheme"), drawing up plans to attract women to join the sector and conducting health worker training courses. Since the launch of the Navigation Scheme in July 2015, a total of 555 trainees had been recruited. Among them, around 400 had joined the elderly or rehabilitation service sector. The Navigation Scheme would provide another 600-odd training places in the coming two years. The fund allocated to rehabilitation services by SWD had increased from \$4 billion when the current government term commenced in 2012 to \$5.75 billion in 2016-2017, representing an increase of over 40%.

6. Some deputations enquired about the reasons why the staffing ratio of RCHDs had become lower after the commencement of the Residential Care Homes (Persons with Disabilities) Ordinance (Cap. 613) ("the RCHD Ordinance") and the Residential Care Homes (Persons with Disabilities)

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Regulation under the RCHD Ordinance. Director of Social Welfare ("DSW") responded that before the RCHD Ordinance came into operation, SWD had set up a working group to review the non-statutory code of practice issued in 2002, taking into account the practical situations of RCHDs and the views of the sector and stakeholders. The Bought Place Scheme ("BPS") was also launched to encourage private RCHDs to upgrade their service quality by enhancing the staffing ratio and per capita space standards. The 16 Service Quality Standards applied to all the RCHDs under BPS.

7. As regards some deputations' concerns about whether and how the Administration would enhance the monitoring of service quality of RCHDs, DSW explained the measures to be implemented for stepping up monitoring and strict law enforcement, increasing transparency of the monitoring mechanism and enhancing the quality of home managers which were set out in paragraphs 13 to 17 of the Administration's paper (LC Paper No. CB(2)55/16-17(01)). She stressed that there was absolutely no question of SWD condoning or tolerating any RCHDs found to have irregularities. The Licensing Office of Residential Care Homes for Persons with Disabilities ("LORCHD") would enforce the law strictly. SLW said that the Administration would seriously consider the suggestion of enhancing records of employees of RCHDs including requesting them to provide proof of no record of sexual offences for the well-being of residents of RCHDs.

8. Regarding some deputations' concern that residential care services for persons with disabilities were mainly provided by private RCHDs, SLW advised that of the 310 RCHDs in Hong Kong, only 69 of them were private RCHDs. These RCHDs together provided some 17 000 residential places and 13 000 of them were subsidized places. Residential care places for persons with disabilities were therefore provided predominately by subvented RCHDs.

Discussion

Improving service quality of residential care homes for persons with disabilities

9. Dr Fernando CHEUNG said that the Incident had reflected that the Administration had been neglecting the service quality problems of RCHDs and residential care homes for the elderly ("RCHEs"). He said that the statutory staffing ratio of RCHDs was much lower than that under the non-statutory code of practice issued in 2002 and was five times lower than that under the 1998 RPP. The substantial reduction in staffing ratio and

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the lax monitoring of RCHDs by the Administration had an adverse effect on the well-being of RCHD residents. In light of the recent sexual assaults and death cases involving RCHD residents, he asked whether SLW considered that a breach of duty on his part. Mr LEUNG Yiu-chung took the view that the Administration should be held accountable for those incidents.

10. Mr LAM Cheuk-ting said that apart from those sexual assaults and death cases, elderly abuse cases had occurred at Taipo Cambridge Nursing Home in May 2015 and the Incident was only the tip of an iceberg. While the conduct of the persons concerned might be one of the causes of some of the aforesaid serious cases, he opined that the Administration should be responsible for its negligence in monitoring of residential care homes and for the degeneration of the monitoring system. He further said that under the Accountability System for Principal Officials, principal officials would have to step down for serious failures relating to their respective portfolios. He asked SLW whether he considered the aforesaid incidents serious failures and whether he should be held politically accountable. He further said that according to a media report, six residents of the Bridge of Rehabilitation Company had died of non-natural causes. He enquired about the actions SWD had taken since the occurrence of these unusual death cases.

11. Mr Michael TIEN said that the staffing ratio of subvented RCHEs was 1:1.4 and that of RCHDs was 1:6.7 and the staffing ratio of RCHDs had not been improved since the commencement of the RCHD Ordinance. Taking the view that the Administration was not giving parity treatment to persons with disabilities, he called on the Administration to make strenuous efforts to address the problem. Opining that private RCHDs did not have the capacity to give care to persons with severe disabilities, he considered that the Administration should increase places in subvented RCHDs for admitting some 2 200 persons with severe disabilities who were on the waiting list for residential care services. To cater for the residential care needs of persons with mild or moderate disabilities, the number of bought places in private RCHDs should be increased and subsidy should be provided for private RCHDs to improve their staffing ratio. Closed circuit televisions should be installed in all RCHD premises as a deterrent to abuse of RCHD residents.

12. Mr LEUNG Kwok-hung said that although additional funds had been allocated for the provision of rehabilitation services, such services could not be delivered if resources complementing the provision had not been increased. There should be zero-tolerance to abuses of elderly persons and persons with disabilities. The Administration should set up an

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independent commission to oversee the provision and the management of RCHDs.

13. Mr Holden CHOW sought information on the number of retired disciplined service officers SWD had hired so far for carrying out inspections to RCHDs and the number of prosecution cases against RCHDs. Mr POON Siu-ping also asked how the engagement of retired discipline staff would help in taking prosecution actions against non-compliant RCHDs. SLW responded that the Administration hoped to recruit more retired disciplined service officers to assist inspection teams in conducting surprise inspections at RCHDs and enforcing laws strictly.

14. Mr Andrew WAN said that as RCHD operators were sometimes informed in advance of the inspections, inspection teams of LORCHD would not be able to find out the problems in the RCHDs concerned. He suggested that the number of surprise inspections should account for a larger proportion and stakeholders should be invited to participate in the inspections to RCHDs. More consultation programmes for stakeholders should be conducted to facilitate improvements to services provided by RCHDs. DSW responded that while the Service Quality Group Scheme which comprised community personalities would pay regular unannounced visits to RCHDs, these visits were not inspection per se. Inspections to RCHDs could only be conducted by the inspection teams of LORCHD and RCHDs would not be notified of surprise inspections.

15. Mr Alvin YEUNG was of view that the Administration should, in the near term, provide service users with information regarding complaints about services and management staff of RCHDs (without disclosing the names of the staff concerned) as well as prosecution records of RCHDs to facilitate them the making of an informed choice.

16. Mr LEUNG Yiu-chung said that the RCHD Ordinance as well as the quality and monitoring of RCHDs did not keep up with the needs of the community. While the Administration had been urged to amend the RCHD Ordinance, strengthen monitoring of RCHDs and step up inspections for improving the service quality of RCHDs, little had been done so far. Taking the view that the Administration had only set broad directions for its enhancement measures, he called on the Administration to set specific targets for improving provision and service quality of RCHDs. Targets for provision of additional rehabilitation service places and manpower supply for these places should be set. Mr WU Chi-wai said that to address the manpower shortage problem faced by private RCHDs, the Administration should draw up a new plan for providing subsidy for private RCHDs to facilitate improvement to their remuneration, thereby

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attracting care workers to work in private RCHDs. A target waiting time for RCHDs should also be set.

17. Dr Elizabeth QUAT said that the Administration lacked a holistic plan to address the inadequate supply of RCHDs, manpower shortage for and poor management of some RCHDs. She called on the Administration to draw up a comprehensive plan to resolve these problems. The Administration should also endeavour to protect RCHD residents, particular those with intellectual disabilities, from sexual assaults. In this connection, the Administration should carefully consider some deputations' recommendations such as including in the licensing regime a mechanism for prevention of sexual assaults and issuing a register of sex offenders.

Provision of professional rehabilitation services for residents of residential care homes of persons with disabilities

18. Dr Fernando CHEUNG said that according to the non-statutory code of practice for RCHDs issued in 2002, at least one registered social worker should be included in the staffing provision and a nurse should be present unless there was a health worker on the premises. However, these establishments had been removed since the enactment of the RCHD Ordinance. While residential care services for persons with disabilities were classified as rehabilitation services by the welfare sector, residents of RCHDs were not provided with professional services by nurses, social workers, physiologists, occupational therapists and speech therapists. He doubted whether there were any rehabilitation elements in RCHDs and queried what rehabilitation services the Administration had provided in the past 10 to 20 years.

Residential care homes for persons with disabilities operating on certificates of exemption

19. Mr Alvin YEUNG said that as the Bridge of Rehabilitation Company was operated with a CoE, the Incident reflected that there were loopholes and deficiencies in the exemption mechanism. Given that many RCHDs were operating with CoEs, the Administration should let members of the public know the criteria for issuing CoEs and the measures the Administration would take to avoid recurrence of similar incidents to ease their worries about service quality of RCHDs operating on CoEs.

20. Given that RCHDs which were issued with CoEs did not comply fully with the licensing requirements, Mr Andrew WAN considered it undesirable to allow these RCHDs to continue with their operation. To resolve the service quality problems of private RCHDs, the Administration

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should provide quality residential care places through subvented non-governmental organizations swiftly. Referring to the 13 000 places mentioned in paragraph 8 above, he asked whether these places included those provided by subvented RCHDs. SLW responded that all these places were subsidized places which included 450 subsidized places provided under BPS.

21. DSW responded that CoEs might be issued to allow reasonable time for RCHDs which were unable to comply fully with the licensing requirements to carry out improvement works for meeting the licensing requirements and standards. Operators of RCHDs issued with CoEs must still comply with the licensing requirements relating to health care and home management for the protection of residents' interests.

22. Noting that 251 RCHDs were issued with CoEs, Mr POON Siu-ping asked whether these RCHDs would be able to meet the licensing requirements within the coming three years as expected by the Administration. SLW responded that SWD had put in place a host of facilitating measures to assist RCHDs currently operating on CoEs to speed up the necessary improvement works. The Administration would streamline the process of application and approval for improvement works, and provide RCHDs with additional technical support. Grants under the Lotteries Fund would be provided for RCHDs to carry out improvement works and each private RCHD could receive a maximum grant of up to 90% of the recognized cost of the improvement works. All RCHDs would be expected to meet the licensing requirements within the coming three years.

Reviewing the service modes of residential care homes for persons with disabilities

23. Mr WU Chi-wai said that while there were different types of subvented hostels for mentally handicapped persons (i.e. hostels for persons with mildly mentally handicapped persons, for moderately mentally handicapped persons and for severely mentally handicapped persons), private RCHDs had no such categorizations and a private RCHD would admit persons with different levels of intellectual disabilities. In deploying manpower and assigning duties to care workers, operators of private RCHDs would not take account of the fact that the levels of care required by their residents varied with their levels of intellectual disabilities. As a care worker was required to take care of residents with different care needs, care workers were facing great pressure and residents were not provided with suitable care. It also rendered the management of RCHDs difficult. SWD should review the existing mixed service mode of private

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RCHDs and require operators of private RCHDs to assign duties and deploy manpower according to residents' care needs.

Taking over private residential care homes for persons with disabilities with poor performance by the Administration

24. Mr CHAN Chi-chuen said that increasing the number of inspections did not necessarily result in improvements to the quality of RCHDs. It was the quality of rather than the number of inspections that mattered. He expressed concern that the Administration had reservation about taking stringent actions against those RCHDs the quality of which was even worse than that of the Bridge of Rehabilitation Company. This was because it might be difficult for the Administration to make alternative arrangements for affected residents if those RCHDs were required to cease operation. He enquired whether a mechanism was in place for the Administration to take over the management of RCHDs with poor performance. Mr LEUNG Kwok-hung took the view that the Administration should buy out private RCHDs with poor performance.

25. SLW responded that DSW had not been conferred with the power to take over the management of a RCHD with poor performance under the RCHD Ordinance. Having regard to deputations' views, the Administration would seriously consider the proposal in the future review of the RCHD Ordinance.

26. Noting that the maximum penalty provided for in the RCHD Ordinance was imprisonment for two years, Mr Holden CHOW took the view the Administration should consider amending the relevant provisions so as to impose a higher level of penalty for a stronger deterrent effect.

Motion

27. Dr Fernando CHEUNG moved the following motion which was seconded by Mr LEUNG Yiu-chung:

"'康橋之家'近年發生多宗性侵犯事件及一連串院友離奇死亡事件，揭露私營殘疾人士院舍質素惡劣的問題，本委員會促請政府立即成立包括用家的跨部門委員會，全面改革整個安老及殘疾人士院舍制度，並在3年內修訂相關條例、增加人手比例、提升環境及照顧質素、加強罰則、提高對營運者的要求，並賦予社會福利署接管院舍的權力。此外，政府應加強監察，取締劣質私營院舍，並以《殘疾人權利公約》為基礎，重新規劃長期照顧服務，發展多元化家舍，

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以及大幅增加社區及家居服務，盡力讓殘疾人士及體弱長者在社區獨立及有尊嚴地生活。"

(Translation)

"That, the occurrence of a number of sexual assaults and a chain of suspicious deaths of residents involving the Bridge of Rehabilitation Company in recent years has revealed the problem of poor quality of private residential care homes for persons with disabilities, this Panel urges the Government to immediately set up an inter-departmental committee which includes users, so as to comprehensively revamp the entire system of residential care homes for the elderly and persons with disabilities, and within three years, amend the relevant ordinances, increase the staffing ratio of care homes, improve their quality of environment and care, impose heavier penalties, strengthen the requirements on operators, and empower the Social Welfare Department to take over the management of care homes. Moreover, the Government should enhance its monitoring, eradicate private care homes of poor quality, and on the basis of the Convention on the Rights of Persons with Disabilities, make afresh planning on long-term care services, develop diversified home-liked care homes and substantially increase community and home-based services, make every endeavour to enable persons with disabilities and frail elderly to live independently in the community with dignity."

28. Expressing support for the motion, Mr Alvin YEUNG said that the setting up of an inter-departmental committee would help responding to the strong call of the public for improving service quality of RCHDs. The Chairman put the motion to vote. All members present voted for the motion. The Chairman declared that the motion was carried.

(At 1:42 pm, with no dissenting voice, the Chairman extended the meeting which had been extended for 15 minutes for another 15 minutes.)

Instigating prosecution against the person(s) responsible for the Incident

29. Miss YUNG Hoi-yan said that arising from the termination of a criminal case in 1993 relating to a sex abuse case involving a female complainant with intellectual disabilities, a working group chaired by a judge had been formed to study measures to facilitate mentally handicapped persons to give evidence in court proceedings ("the Working Group"). In 1994, the Working Group had published 17 measures for assisting vulnerable witnesses to give evidence in court proceedings to ensure fair trial. She asked whether the Department of Justice ("DoJ")

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had taken account of those 17 measures in deciding to withdraw the prosecution against the former head of the Bridge of Rehabilitation Company ("the Defendant") who was accused of sexually assaulting a female resident ("the Complainant") with mental disabilities ("the Case"). She took the view that in deciding whether to continue with the prosecution, DoJ should consider treating the Case in the same manner as other cases involving ordinary witnesses. She sought information on the number of prosecutions which were withdrawn on the ground that mentally incapacitated witnesses were unable to give evidence, and whether DoJ had any specific code, similar to the Prosecution Code, in respect of prosecution standard applicable to cases involving mentally incapacitated persons ("the Code"). She said that DoJ should review the existing Code (if any) and study the formulation of the Code if it had not yet been drawn up. DoJ should provide a report on its study on the formulation of the Code.

30. Director of Public Prosecutions ("DPP") responded that the crux of the Case was whether the evidence given by the Complainant (who was a mentally incapacitated person and was under post-traumatic stress) could be admissible in court. According to the existing law, if a witness was unable to personally appear in court to give evidence, what the witness had seen or said could not be admitted as evidence to prove the truth of what was said. Hoping that the Complainant would be able to recover from post-traumatic stress disorder and would be fit to give evidence in court proceedings so that the prosecution of the Case could be taken forward, the prosecution had, from March 2015 to April 2016, on six occasions obtained specialist medical reports on the Complainant and on a total of four occasions applied to the court to adjourn the trial of the Case. Unfortunately, the Complainant had remained unfit to be called as a witness. The Prosecutions Division had in fact made its best efforts to proceed with the prosecution.

31. DPP further said that in accordance with the law and established practice, procedures were in place, which DoJ had followed, to mitigate pressure faced by victims and witnesses in giving evidence, e.g. arranging victims or witnesses to be video interviewed. For the Complainant of the Case, the prosecution had in fact arranged for her to be video interviewed in accordance with the Criminal Procedure Ordinance (Cap. 221). However, as the Complainant was unfit to give evidence in court proceedings, the said procedures to mitigate pressure in giving evidence were simply not applicable nor could they help make the recording admissible as evidence under Cap. 221. Hence, the prosecution had to consider whether the remaining evidence would be sufficient for convicting the Defendant. After detailed assessment, DoJ formed the view that there

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was no reasonable prospect of proving any relevant charge against the Defendant with the remaining evidence and hence decided to withdraw the prosecution. In view of the community's concerns over the Case, DoJ issued a detailed statement on 27 October 2016 to help the public appreciate the reasons for DoJ's withdrawal of the prosecution concerned and to clarify certain misunderstandings. He said that copies of DoJ's statement were available and would be provided for members and deputations upon request.

32. As regards some deputations' view that DoJ should re-instigate prosecution action against the Defendant, DPP said that as from the perspective of public interest, the more serious an offence, the higher chance of the prosecution. While the Defendant should be prosecuted in view of the seriousness of the charges pressed against him, the prosecution had no alternative but to withdraw the charges against the Defendant as there was no legally sufficient evidence to prove the commission of any offence. He stressed that DoJ took prosecution against cases involving mentally incapacitated persons seriously.

33. On the concern expressed by certain deputations regarding the cessation of operation of the Vulnerable Witnesses Team of the Prosecutions Division, DPP explained that the Team was set up in the 1990s with the aim of having in place a team of counsel who were familiar with the law and practice in relation to the treatment of vulnerable witnesses, taking into account the implementation of the amendments to the Criminal Procedure Ordinance and the introduction of the Special Procedures for Vulnerable Witnesses by the Judiciary in 1995. The actual handling of vulnerable witnesses cases evolved over the years, with an increasing number of DoJ counsel generally having accumulated valuable experience in handling cases involving vulnerable witnesses. Although the need for the Team had fallen away, it did not mean that DoJ placed less importance to the handling of cases involving vulnerable witnesses. In fact, DoJ had strengthened training for their counsel in respect of handling cases involving vulnerable witnesses. For example, under the Continuing Legal Education Programme provided for prosecutors, a training module on handling domestic violence cases and sex offences involving vulnerable witnesses was conducted on 23 September and 7 October 2016 (i.e. before reports of the Case came up) which covered the topics of "Understanding the characteristics and nature of mentally handicapped minor witnesses" and "Procedures for handling vulnerable witnesses", with professional officers of relevant departments as speakers.

34. In respect of the law reform relating to hearsay evidence, DPP said that a working draft bill was being prepared by DoJ. The consultation

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exercise to seek stakeholders' views on the working draft bill was expected to commence in end 2016 or early 2017.

35. Mr HUI Chi-fung said that the Administration should critically consider reforming prosecution against cases involving mentally incapacitated victims and amending relevant legislation to better safeguard rights of mentally incapacitated persons. Section 65 of the Mental Health Ordinance (Cap. 136) should also be amended to include employees of RCHDs in order to achieve a greater deterrent effect. In this connection, he urged the Administration to draw up a timetable for amending the relevant legislation.

36. Given that the Administration did not have sufficient time to respond to the views and concerns expressed at the meeting, Dr Fernando CHEUNG suggested that the Panel should discuss the subject matter with the Administration again at the regular meeting of the Panel scheduled for 12 December 2016. Members agreed.

II. Any other business

37. There being no other business, the meeting ended at 2:02 pm.

Council Business Division 2
Legislative Council Secretariat
17 January 2017

Panel on Welfare Services

Special meeting on Tuesday, 1 November 2016, at 9:30 am

Looking into the quality problem of private residential care homes for persons with disabilities in light of the "Bridge of Rehabilitation Company" incident

Summary of views and concerns expressed by deputations/individuals

No.	Name of deputation / individual	Views
<u>Session One</u>		
1.	The Association of Parents of The Severely Mentally Handicapped	[LC Paper No. CB(2)88/16-17(01)]
2.	Hong Kong Social Workers' General Union	[LC Paper No. CB(2)55/16-17(06)]
3.	Concerning Home Care Service Alliance	[LC Paper No. CB(2)88/16-17(02)]
4.	SME Global Alliance Elderly and Special Needs Services Association Limited	<ul style="list-style-type: none"> • Provision of service by private residential care homes for persons with disabilities ("RCHDs") was necessary to complement inadequate supply of subvented RCHDs. • The deputation appealed to members of the public to give views on and have more confidence in the operation of private RCHDs with a view to facilitating private RCHDs to improve their quality of service.
5.	Labour Party	<ul style="list-style-type: none"> • The Social Welfare Department ("SWD") should take over the Bridge of Rehabilitation Company. • The Administration should: <ol style="list-style-type: none"> (a) substantially increase the provision of subvented RCHDs; (b) conduct a comprehensive review of the Residential Care Homes (Persons with Disabilities) Ordinance (Cap. 613) ("the RCHD Ordinance") and add to the RCHD Ordinance provisions relating to the code of conduct and quality of service of RCHD staff; and (c) improve the manpower ratio of RCHD according to the categories of RCHDs, and require RCHDs to include nurses and social workers in their manpower establishment. • All RCHD staff must have a "certificate of no sexual conviction". • All criminal cases and accidents involving RCHDs should not only be reported to SWD, but also be disclosed on the internet in order to enhance the transparency in this regard.
6.	周德雄先生	[LC Paper No. CB(2)78/16-17(01)]

No.	Name of deputation / individual	Views
7.	許偉民先生	[LC Paper No. CB(2)76/16-17(02)]
8.	Chosen Power (People First) Hong Kong	[LC Paper No. CB(2)55/16-17(10)]
9.	錢敏月女士	[LC Paper No. CB(2)55/16-17(02)]
10.	Heep Hong Parents' Association	[LC Paper Nos. CB(2)55/16-17(11) to (12)]
11.	Hong Kong Federation of Women's Centres	[LC Paper No. CB(2)88/16-17(04)]
12.	The Hong Kong Council of Social Service	[LC Paper No. CB(2)76/16-17(08)]
13.	輕度智障權益關注組	[LC Paper Nos. CB(2)55/16-17(03) to (04)]
14.	Grace Parent Association	[LC Paper No. CB(2)55/16-17(14)]
15.	Certificate of Exemption of Residential Care Home for Rehabilitation Services Association (Hong Kong & Kowloon)	[LC Paper No. CB(2)88/16-17(03)]
16.	東區社福同行	<ul style="list-style-type: none"> • The Administration should address the severe problem of manpower shortage in residential care homes ("RCHs"), and involve service users and their family members in the monitoring of private RCHs. • The Administration and Members of the Legislative Council should strengthen their communication with RCHs' service users and other stakeholders.
17.	Certificate of Exemption of Residential Care Home for Rehabilitation Services Association (New Territories)	[LC Paper No. CB(2)88/16-17(07)]
18.	Christian Blessed Charity Church Limited	[LC Paper No. CB(2)55/16-17(05)]
19.	The Social Workers Alliance of Private Homes	[LC Paper No. CB(2)88/16-17(06)]
20.	The Association For the Rehabilitation of Private Homes Limited	[LC Paper No. CB(2)88/16-17(05)]
21.	林珍女士	<ul style="list-style-type: none"> • Expressed dissatisfaction about deficiency in the monitoring of private RCHDs by the Administration.

No.	Name of deputation / individual	Views
		<ul style="list-style-type: none"> • The Administration should set up an inter-departmental working group to review the RCHD Ordinance and examine the problems of private RCHDs. • SWD should take over the Bridge of Rehabilitation Company, take good care of the residents therein and make an apology to persons with intellectual disabilities.
22.	前線員工關注組	<ul style="list-style-type: none"> • Expressed dissatisfaction about the ineffective monitoring and inspection of private RCHs by the Administration. • The implementation of Lump Sum Grant Subvention System and introduction of competitive bidding to select operators for the delivery of residential care services ("RCS") had adversely affected the quality of service of RCHs.
23.	Christian Social Workers	[LC Paper No. CB(2)55/16-17(13)]
24.	Association Concerning Sexual Violence Against Women	[LC Paper No. CB(2)88/16-17(08)]
25.	張麗梅女士	[LC Paper No. CB(2)76/16-17(05)]
26.	Parents Committee, The Hong Kong Down Syndrome Association	<ul style="list-style-type: none"> • Expressed appreciation for the recent proactive responses given by SWD and the government bureaux/departments concerned to the "Bridge of Rehabilitation Company" incident ("the Incident"). • The Administration was strongly urged to institute prosecution against the person(s) responsible for the Incident. It was not acceptable for SWD to renew the Certifications of Exemption ("CoEs") without implementing an effective monitoring mechanism for private RCHs as this would allow the recurrence of similar incident. • The Administration should examine the feasibility of setting up RCHs for elderly doubletons, small homes, and RCHs providing diverse services, with a view to catering for different needs of service users.
27.	將軍澳長者民生關注會	<ul style="list-style-type: none"> • The Administration should: <ol style="list-style-type: none"> (a) allocate more resources to address inadequate provision of RCS and community care services given its strong fiscal reserves; (b) suspend the implementation of the Pilot Scheme on RCS Voucher for the Elderly, which was objected by many stakeholders; (c) expeditiously review the Residential Care Homes (Elderly Persons) Ordinance (Cap. 459), the Code of Practice for Residential Care Homes (Elderly Persons) as well as the Code of Practice for Residential Care Homes (Persons with Disabilities); (d) strengthen the monitoring of RCHs and RCHDs; and (e) construct small homes instead of large-scale RCHs.

No.	Name of deputation / individual	Views
<u>Session Two</u>		
28.	The Association for the Advancement of Feminism	[LC Paper No. CB(2)217/16-17(01)]
29.	人手比例不符最低工資關注組	<ul style="list-style-type: none"> • The Administration should require private RCHDs operating with CoE to include registered nurses in their manpower establishment upon expiry of their CoEs. • Future public rental housing developments should include welfare blocks, which had appropriate equipment and facilities to protect occupational health of staff members therein.
30.	The Civic Party	[LC Paper No. CB(2)88/16-17(09)]
31.	社工復興運動	[LC Paper No. CB(2)217/16-17(02)]
32.	Mr LAU Yin-chiu	[LC Paper No. CB(2)55/16-17(07)]
33.	Mr LAU Mau-kai	[LC Paper No. CB(2)217/16-17(03)]
34.	The Parents' Association of Pre-school Handicapped Children	[LC Paper No. CB(2)55/16-17(08)]
35.	許兆豐先生	[LC Paper No. CB(2)55/16-17(08)]
36.	Concern Group of Right of People with Mental Illness	[LC Paper No. CB(2)76/16-17(06)]
37.	Society for Community Organization	[LC Paper No. CB(2)76/16-17(06)]
38.	The Hong Kong Down Syndrome Association	[LC Paper Nos. CB(2)55/16-17(15) and CB(2)88/16-17(10)]
39.	Miss Clarisse YEUNG Suet-ying, Member of Wan Chai District Council	[LC Paper No. CB(2)88/16-17(12)]
40.	Democratic Alliance for the Betterment and Progress of Hong Kong	<ul style="list-style-type: none"> • The Administration should: <ol style="list-style-type: none"> (a) allocate more resources to enhance the provision of RCHDs, and provide a long-term planning in this respect; (b) enhance the Navigation Scheme for Young Persons in Care Services, and make reference to Japan and other countries to set up an elderly services vocational training school in the long run; (c) strengthen SWD's manpower to conduct inspection on RCHs which had contravened the legislation and follow up complaint cases against RCHDs;

No.	Name of deputation / individual	Views
		<p>(d) introduce a demerit points system for RCHs and revoke a home's licence for repeated contraventions of the legislation; and</p> <p>(e) consider requiring all employers and employees undertaking children-related and mentally incapacitated persons-related work to apply for the Sexual Conviction Record Check.</p>
41.	The Hong Kong Joint Council of Parents of the Mentally Handicapped	[LC Paper No. CB(2)55/16-17(16)]
42.	Mr YEUNG Ka-keung	[LC Paper No. CB(2)55/16-17(17)]
43.	Concord Mutual-Aid Club Alliance	[LC Paper No. CB(2)57/16-17(01)] (Restricted to members only)
44.	The Intellectually Disabled Education and Advocacy League	[LC Paper No. CB(2)55/16-17(09) (Revised)]
45.	監護制度及財產管理關注組	[LC Paper No. CB(2)55/16-17(18)]
46.	The Mental Health Association of Hong Kong	[LC Paper No. CB(2)217/16-17(04)]
47.	Rehabilitation Alliance Hong Kong	[LC Paper No. CB(2)88/16-17(14)]
48.	社區及院舍照顧員總工會	<ul style="list-style-type: none"> • The Administration should: <ul style="list-style-type: none"> (a) consider formulating a monitoring mechanism for the working performance of personnel in private RCHDs; (b) take over private RCHDs when their licenses were revoked; (c) provide more subvented RCHDs to address the increasing demand in this regard; and (d) advise on the handling of those private RCHDs which were not able to obtain a licence before expiry of their CoEs.
49.	Alliance for Subvented Residential Care Service	[LC Paper No. CB(2)100/16-17(01)]
50.	何寶貞女士	[LC Paper No. CB(2)88/16-17(15)]
51.	Physio Action	[LC Paper No. CB(2)217/16-17(05)]
52.	Po Leung Kuk	<ul style="list-style-type: none"> • Manpower shortage was a common problem faced by private and subvented RCHDs, in particular, those RCHDs located in remote areas. • The deputation encouraged young people to take up the

No.	Name of deputation / individual	Views
		meaningful work in the rehabilitation service of the welfare sector.
53.	余潤成先生	<ul style="list-style-type: none">• Stakeholders should ascertain the liability of the Administration arising from the Incident.• Mr YU said that the Administration did not respect life as it advised earlier that it was difficult to make a decision to revoke the licence of a RCHD providing sub-standard services, and non-compliance issues could also happen in private and subvented RCHDs.• The Administration should take into account public views on the quality problem of private RCHDs, and take measures to make improvement in this regard.
54.	Liberal Party	<ul style="list-style-type: none">• The Administration should consider requiring RCHDs to install surveillance cameras to help monitor their operation.• The Liberal Party urged the Administration to seriously consider revising the proportion of local labour to imported labour of RCHEs and RCHDs to 1:1, with an aim to address the manpower shortage problem in RCHs.