

**立法會**  
**Legislative Council**

LC Paper No. CB(2)924/18-19(04)

Ref : CB2/PL/WS

**Panel on Welfare Services**

**Background brief prepared by the Legislative Council Secretariat  
for the meeting on 11 March 2019**

**Special Needs Trust**

**Purpose**

This paper gives an account of past discussions of the Panel on Welfare Services ("the Panel") on the Special Needs Trust ("SNT").

**Background**

2. According to the Administration, the Labour and Welfare Bureau established a working group to examine the feasibility of setting up an SNT ("the Working Group") for parents/relatives ("the Settlers") of persons with special needs ("the Beneficiaries") in June 2016. The Working Group comprises parents of children with special needs, representatives of non-governmental organizations in the rehabilitation sector, professionals from the legal, financial and academic fields, a person with autistic characteristics and representatives of relevant government departments.

3. The Chief Executive announced in her 2017 Policy Address that, on the basis of the recommendations made by the Working Group, the Government had decided to take the lead in setting up an SNT, with the Director of Social Welfare Incorporated acting as the trustee to provide reliable and affordable trust services for managing the assets of the Settlers. Regular disbursement will be made to the carers of the Beneficiaries, who may be individuals or organizations, in accordance with the Settlers' wishes to ensure that their assets will be used in meeting the long-term financial needs of the Beneficiaries.

4. According to the Administration, a dedicated SNT office will be established under the Social Welfare Department ("SWD") to:

- (a) handle administrative issues directly related to SNT, including the setting up, management and termination of SNT accounts;
- (b) provide Settlers, Beneficiaries, carers and other relevant parties with information and advice on their care plans as required, including the review of the implementation of care plans on a regular basis;
- (c) pool funds from different SNT trust accounts for management and investment as well as disburse trust funds to carers for the welfare and benefit of Beneficiaries; and
- (d) refer cases where Beneficiaries have other welfare needs to relevant service units for follow-up.

### **Deliberations of the Panel**

5. At the Panel meeting on 14 May 2018, the Administration briefed members on the preliminary framework of the proposed SNT. Members' major concerns and views and the Administration's responses are summarized in the ensuing paragraphs.

#### Minimum asset threshold and target users of Special Needs Trust

6. Some members expressed concern that some parents/relatives might not be able to join SNT if the asset requirement was too stringent. They enquired about the minimum asset threshold for opening an SNT account. The Administration advised that if the minimum asset threshold was too low, the costs of managing SNT would be high and it would not be cost effective to run SNT. The Working Group would take into account relevant factors in working out the minimum asset threshold.

7. In response to some members' enquiry about whether mentally ill persons would be covered by SNT, the Administration advised that trust services for mentally incapacitated persons in some overseas places generally covered persons with intellectual disability, persons with mental illness, autistic persons, etc. The Working Group would further study the types of mentally incapacitated persons to be covered by SNT.

### Management fee of trust accounts

8. Some members were concerned that the trust fund earmarked for paying the Beneficiaries' living or care expenses would be significantly depleted if the fee for managing SNT was too high. These members enquired whether the management fee would be charged at a percentage of the value of the trust fund. The Administration advised that whether the management fee should be charged at a percentage of the value of Settlers' assets or at a flat fee would need to be studied. In the former case, Settlers with higher value of assets would bear more of the cost of operating SNT. In the latter case, the management fee would account for a very high proportion of the value of assets if the size of assets was small. The Working Group had proposed the establishment of a management committee comprising government representatives, professionals and service users to work out details of the management and investment of the trust fund. The Working Group would strive to ensure the affordability of the service when considering the detailed operational arrangements of SNT.

### Appointment of case managers for Beneficiaries

9. Some members suggested that case managers should be appointed to monitor the Beneficiaries' medical care needs and make recommendations on their medical care plans. The Administration advised that the objective of SNT was to manage the estate of the Settlers in accordance with the provisions in their wills and use the estate for implementing the care plans they had prepared for the Beneficiaries. The Director of Social Welfare Incorporated who would act as the trustee of SNT would have a conflict of role if it also acted as the carer of the Beneficiaries. For persons with special needs who were being taken care of by their relatives, these relatives might apply for guardianship orders for the person concerned. The Administration would provide assistance in this regard if necessary.

### Eligibility of Beneficiaries for social security assistance

10. Some members pointed out that in Canada, the assets of parents of children with special needs were managed in the form of a discretionary trust and were not counted towards the assets of their children, so that their children's eligibility for social security assistance would not be affected. These members enquired whether similar arrangement would be made under SNT. The Administration advised that as the assets of the Settlers would be used for paying the living expenses of the Beneficiaries, the assets could be regarded as an income of the Beneficiaries. Hence, whether the assets of the Settlers would be counted as the income of the Beneficiaries when the latter applied for the Comprehensive Social

Security Assistance would need to be carefully studied. Factors such as whether the Beneficiaries would have any influence on the use of the assets or on the investment gains generated by the trust fund would be taken into account. On the other hand, Beneficiaries' eligibility for the Disability Allowance under the Social Security Allowance Scheme, which was non-means-tested, would not be affected. If the assets in a trust account were used up, the Beneficiary concerned would be supported by the Government's social welfare system.

### **Latest development**

11. According to the Administration, SWD established an SNT office in December 2018 to provide self-financing trust service for those parents/relatives who have family members with special needs and wish to entrust the Director of Social Welfare Incorporated as the trustee. The Administration will brief the Panel on the service parameters and implementation arrangements of SNT at the Panel meeting on 11 March 2019.

### **Relevant papers**

12. A list of the relevant papers on the Legislative Council website is in the **Appendix**.

Council Business Division 2  
Legislative Council Secretariat  
5 March 2019

## Appendix

### Relevant papers on Special Needs Trust

<b>Committee</b>	<b>Date of meeting</b>	<b>Paper</b>
Panel on Welfare Services	14 May 2018 (Item III)	<a href="#">Agenda</a> <a href="#">Minutes</a>

Council Business Division 2  
Legislative Council Secretariat  
5 March 2019