

立法會
Legislative Council

LC Paper No. CB(2)1316/19-20(03)

Ref : CB2/PL/WS

Panel on Welfare Services

**Updated background brief prepared by the Legislative Council Secretariat
for the meeting on 13 July 2020**

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. The Chief Executive announced in her 2017 Policy Address that 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 parents/relatives ("the Settlers") of persons with special needs (the Beneficiaries). 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.

3. In December 2018, the Social Welfare Department ("SWD") set up a dedicated SNT office 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 the 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.

4. According to the Administration, Settlers are required to deposit a specified amount of fund into their SNT accounts, i.e. the First Payment.¹ The minimum amount of the First Payment should be no less than the financial limit of the monthly living expenses for a mentally incapacitated person set by the Guardianship Board for 12 months plus the prevailing trustee fee for the first year. After the SNT account is activated, the trustee will charge an annual fee at a flat rate. Currently, the annual fee for each SNT account is HK\$21,000, subject to annual adjustment according to the change in relevant expenses.

Deliberations of the Panel

5. The Panel discussed the preliminary framework, service scope and implementation arrangements of SNT at its meetings on 14 May 2018 and 11 March 2019 respectively. Members' major concerns and views, as well as the Administration's responses are summarized in the ensuing paragraphs.

Financial requirement for setting up trust accounts and target users of the Special Needs Trust

6. Expressing concern that some parents might not be able to afford the First Payment, some members urged the Administration to reduce the amount of the First Payment so that low-income families could also participate in SNT. The Administration advised that the First Payment was to ensure that the living expenses of the Beneficiaries could be catered for not less than 12 months in case some time was needed in liquidating the Settlers' assets after they had passed away. If the amount of the First Payment was small, the smooth execution of the care plan for the

¹ If the financial limit of monthly living expenses (\$17,000 as at March 2019) set by the Guardianship Board is used as an example, the First Payment shall be no less than \$204,000 (\$17,000 x 12) plus the prevailing trustee fee for the first year. If the estimated amount of monthly expenses is \$20,000, the First Payment shall be no less than \$240,000 (\$20,000 x 12) plus the prevailing trustee fee for the first year, and so on.

Beneficiaries would be adversely affected.

7. In response to some members' enquiry about whether mentally ill persons would be covered by SNT, the Administration advised that the Beneficiaries under SNT included persons with intellectual disability (including Down's syndrome), mental disorder or autism.

Annual fee of trust accounts

8. Some members took the view that the annual fee for each SNT account was too high and would deplete the trust fund over time. They called on the Administration to lower the annual fee so that the trust fund could cover the living expenses of the Beneficiaries for a longer period. According to the Administration, as no fee would be charged until a trust account was activated, the Administration would have to subsidize almost fully the total operating cost of SNT accounts in the first few years of implementing the SNT service. When the number of activated SNT accounts had reached 300, the amount of annual fee received should be able to cover the operating cost of administration and investment management of these accounts. Hence, it would be unlikely that the annual fee could be adjusted downward in the near future. Some members were of the view that a reduction in the annual fee might induce more parents of children with special needs to join SNT, thus boosting the numbers of SNT accounts and reaching the threshold for reducing the annual fee in a faster pace.

9. Some members suggested that instead of charging a flat rate, a lower annual fee should be charged for cases where the monthly living expenses incurred by the Beneficiaries were less than the level set by the Guardianship Board. They further suggested that the Administration should consider waiving the annual fee if the amount of funds in an SNT account was below a certain level. Some members also suggested that the Administration should consider subsidizing the annual fee. The Administration advised that the annual fee was charged to cover the management and administrative expenses of the trust fund incurred by the SNT Office. If the annual fee was not charged at a flat rate but at a percentage of the value of assets, the Settlers with higher value of assets would bear more of the cost of operating SNT, thus subsidizing those Settlers having lower value of assets.

Appointment of case managers for Beneficiaries

10. Some members suggested that case managers instead of trust account managers should be appointed for the Beneficiaries. These members also

called on the Administration to adopt a case-oriented approach rather than a financial management approach in providing services for the Beneficiaries.

11. 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. Trust account managers would manage the care plan of the Beneficiaries and the use of the trust fund. They would review the implementation of care plans and refer the Beneficiaries to welfare, care or health services, if necessary, having regard to the Beneficiaries' needs and health conditions. Under the existing social welfare system, if deemed necessary, case managers would be assigned to take care of the welfare needs of persons with special needs.

Eligibility of Beneficiaries for social security assistance

12. 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 would be regarded as an income of the Beneficiaries. Hence, the assets of the Settlers would be counted towards the assets of the Beneficiaries in assessing their eligibility for the Comprehensive Social Security Assistance. However, 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

13. According to the Administration, SWD started to accept applications for the SNT service on 25 March 2019. The Administration will brief the Panel on the implementation of SNT at the Panel meeting on 13 July 2020.

Relevant papers

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

Council Business Division 2
Legislative Council Secretariat
7 July 2020

Relevant papers on Special Needs Trust

Committee	Date of meeting	Paper
Panel on Welfare Services	14 May 2018 (Item III)	Agenda Minutes
	11 March 2019 (Item III)	Agenda Minutes

Council Business Division 2
Legislative Council Secretariat
7 July 2020