

立法會
Legislative Council

LC Paper No. CB(2)1009/09-10
(These minutes have been
seen by the Administration)

Ref : CB2/PL/WS

Panel on Welfare Services

Minutes of meeting
held on Monday, 8 February 2010, at 10:45 am
in Conference Room A of the Legislative Council Building

Members present : Hon WONG Sing-chi (Chairman)
Hon CHEUNG Kwok-che (Deputy Chairman)
Hon Albert HO Chun-yan
Hon LEE Cheuk-yan
Hon TAM Yiu-chung, GBS, JP
Hon LI Fung-ying, BBS, JP
Hon Frederick FUNG Kin-kee, SBS, JP
Hon Paul CHAN Mo-po, MH, JP
Dr Hon LEUNG Ka-lau
Hon WONG Kwok-kin, BBS
Hon IP Wai-ming, MH
Dr Hon PAN Pey-chyou

Members absent : Hon LEUNG Yiu-chung
Hon Ronny TONG Ka-wah, SC

Public Officers attending : Items IV and V
Mr Matthew CHEUNG Kin-chung, GBS, JP
Secretary for Labour and Welfare

Item IV

Mr Stephen SUI Wai-keung
Commissioner for Rehabilitation
Labour and Welfare Bureau

Mr Patrick NIP Tak-kuen, JP
Director of Social Welfare

Mrs Cecilia YUEN
Assistant Director of Social Welfare
(Rehabilitation & Med Social Services)

Item V

Miss Eliza LEE Man-ching, JP
Deputy Secretary for Labour & Welfare (Welfare) 1

Ms Karyn CHAN Ching-yuen
Principal Assistant Secretary for Labour & Welfare
(Welfare) 1

Mrs Anna MAK CHOW Suk-har
Assistant Director of Social Welfare
(Family & Child Welfare)

Miss LEE Sau-kong
Deputy Principal Government Counsel
(Mutual Legal Assistant) 2

Clerk in attendance : Miss Betty MA
Chief Council Secretary (2) 4

Staff in attendance : Mr YICK Wing-kin
Assistant Legal Adviser 8

Miss Florence WONG
Senior Council Secretary (2) 5

Ms Karen LAI
Council Secretary (2) 4

Miss Maggie CHIU
Legislative Assistant (2) 4

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I. Confirmation of minutes
[LC Paper No. CB(2)844/09-10]

The minutes of the meeting held on 11 January 2010 were confirmed.

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II. Information paper(s) issued since the last meeting

[LC Paper No. CB(2)758/09-10(01)]

2. Members noted that the Secretary for Labour and Welfare (SLW)'s reply to the Hong Kong Association of Gerontology which was copied to the Panel had been issued since the last meeting.

III. Items for discussion at the next meeting

[LC Paper Nos. CB(2)845/09-10(01) to (02)]

3. Members agreed to discuss the welfare initiatives in the 2010-2011 Budget, as proposed by the Administration, at the next meeting to be held on 8 March 2010 at 10:45 am.

4. Mr LEE Cheuk-yan suggested that the Panel should hold a joint meeting with the Panel on Transport to discuss the extension of fare concession for persons with disabilities (PWDs) from railway service to other modes of transport. Members agreed to discuss the issue at a future meeting.

IV. Pilot Bought Place Scheme for Private Residential Care Homes for Persons with Disabilities

[LC Paper Nos. CB(2)845/09-10(03) to (04), CB(2)890/09-10(01) and CB(2)908/09-10(01) to (02)]

5. The Chairman said that in the light of the widespread concern about the pilot Bought Place Scheme (BPS) for private residential care homes for PWDs (RCHDs), members might wish to receive views from deputations on the subject. Members agreed to hold a special meeting on 13 March 2010 to receive views from deputations on the pilot BPS for private RCHDs.

6. At the invitation of the Chairman, SLW briefed members on the pilot BPS for private RCHDs as detailed in the Administration's paper. SLW said that in accordance with the 2007 Rehabilitation Programme Plan, the Government had been adopting a three-pronged approach to encourage participation from different sectors in providing diversified residential care services for PWDs, viz regulating RCHDs through a statutory licensing scheme, supporting non-governmental organisations (NGOs) to develop self-financing homes, and continuing to steadily increase the number of subsidised RCHD places.

7. SLW said that the pilot BPS aimed to encourage private RCHDs to upgrade their service standards, to increase the supply of subsidised RCHD places and to help the market develop more service options for PWDs. SLW further said that the Administration was fully aware of members' concern about

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the provision of additional RCHD places. Taking into account the availability of quality places in the prevailing market, the Social Welfare Department (SWD) would adopt a two-phase approach in purchasing BPS places over the 4-year pilot period, with an initial purchase of around 100 places in the first year, building up to a total of 250 or 300 from the second year onwards. Having regard to the response of service users, the number of new homes coming on stream, the quality of places to be provided by and the response of private RCHDs, SWD would consider suitable adjustment to the number of places to be purchased. SWD would further consult the private RCHDs on their operating costs in determining the appropriate level of the contract price. Mid-term reviews would be conducted to keep track of progress and refine the operational details as appropriate.

8. SLW stressed that the Administration spared no effort in providing additional subsidised RCHD places. Notably, the number of RCHD places had been increased from about 6 400 in 1997 to about 11 100 in 2009, representing an increase of 74% over the years. The Government had also planned to provide 671 additional places in the coming two years. This apart, it had earmarked sites in another six development projects for the construction of new RCHDs in the longer run.

9. SLW further said that SWD had consulted the private RCHD sector, relevant parent groups, self-help groups, the Hong Kong Council of Social Service as well as the Rehabilitation Advisory Committee on the framework of the pilot Scheme. SWD would further consult private RCHD sector and relevant stakeholders on the operational details of the pilot Scheme, with a view to seeking funding allocation from the Lotteries Fund in May 2010 for implementing the Scheme in 2010-2011.

Staffing requirement and staff training

10. Dr PAN Pey-chyau welcomed the pilot BPS as it was a good start to enhance the long-term care services for PWDs who could not live independently or be adequately taken care of by their families. Noting that the staffing requirement for a RCHD with 40 places under the pilot Scheme would be 19 staff, Dr PAN enquired about the basis for devising the staffing requirement as well as the qualifications and training requirements under the pilot Scheme.

11. SLW advised that for a RCHD with 40 places under the pilot BPS, the staffing requirement would be 19 staff, comprising a home manager, four health workers, eight care workers and six ancillary workers. Assistant Director of Social Welfare (Rehabilitation & Medical Social Services) (AD/SW(RMSS)) said that the minimum staffing requirement under BPS was modelled on the requirement under Category EA2 of the Enhanced Bought Place Scheme (EBPS) for private residential care homes for the elderly (RCHEs), and was comparable

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to that of subvented RCHDs serving residents of similar disability types. As regards the basic qualifications, health workers should have completed accredited training courses for registered health workers. Consideration was given to requiring health workers of RCHDs to attend bridging courses on specific skills for taking care of PWDs. There was no specific entry requirement for care workers and ancillary workers. Director for Social Welfare (DSW) added that to regulate the operation of RCHDs and ensure their service quality, the Administration would introduce the Residential Care Home (Person with Disabilities) Bill into the Legislative Council (LegCo) in the 2009-2010 session to implement a licensing scheme for RCHDs. The training requirements for RCHD staff under the new licensing regime would model on the licensing requirements for RCHEs.

12. To ensure the service quality standards of small RCHDs with less than 40 places, Mr CHEUNG Kwok-che was of the view that a minimum staffing requirement should be set.

13. Mr WONG Kwok-kin enquired whether the Administration would consider requiring all private RCHDs to comply with the staffing requirement under BPS, irrespective of whether they had joined the pilot Scheme, so as to enhance the service quality of private homes.

14. DSW advised that the legislative proposal for introducing a licensing scheme for RCHDs sought to regulate the operation of all RCHDs and ensure their service quality. As for BPS homes, they were required to comply with a set of service quality standards as stipulated in the relevant service agreements. The BPS standards would be higher than the licensing requirements under the proposed licensing regime in order to encourage participating homes to upgrade their service standards.

15. Mr LEE Cheuk-yan asked about the assumption on the working hours per shift in determining the staffing requirement of 19 staff for a BPS home with 40 places. Mr LEE also noted with concern that private RCHD operators had expressed the view that they should be allowed to recruit staff through the Supplementary Labour Scheme (SLS) under BPS because of staff recruitment difficulties. Mr LEE was of the view that staff recruitment difficulties and high turnover rates of private RCHD staff were simply due to the long working hours and low wage levels. As a stable workforce was important in maintaining the service quality of RCHDs, he would not support the pilot Scheme if the staffing requirement was determined based on a two-shift basis, i.e. 12 hours per shift.

16. SLW responded that to be in line with the practice of EBPS for private RCHEs, importation of workers through SLS would not be allowed under the pilot BPS. AD/SW(RMSS) added that reference had been made to eight hours per shift in working out the staffing requirement for BPS homes. However,

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there would be no obligatory requirement on the working hours for RCHD staff under BPS. Mr LEE Cheuk-yan strongly requested the Administration to seriously consider stipulating the maximum number of working hours of RCHD staff under the pilot BPS.

17. To alleviate the staff recruitment difficulties faced by private RCHDs, Mr Frederick FUNG asked whether consideration would be given to allowing importing workers through SLS for non-BPS places in BPS homes.

18. DSW reiterated that as the pilot BPS sought to enhance the service quality of private RCHDs, the entire home would have to comply with the upgraded standards under the pilot Scheme irrespective of the number of BPS places to be bought in a private RCHD.

19. Given that persons with moderate mental illness/handicap could suffer from emotional and behavioural problems, Dr PAN Pey-chyou took the view that the Labour and Welfare Bureau (LWB) should collaborate with the Food and Health Bureau in the provision of psychiatric services to the residents of RCHDs, and provide adequate training to staff in taking care of their residents.

20. AD/SW(RMSS) said that the Hospital Authority (HA) had been providing psychiatric services to RCHDs, such as follow-up consultation services when necessary. SWD had been collaborating with HA on the provision of community support service to individual RCHDs. As for training programmes for RCHD staff, while SWD would consider providing additional training to health workers of RCHDs in taking care of PWDs in the light of their specific needs, training for care workers would be similar to those of RCHEs.

Level of contract price and number of BPS places to be bought

21. Expressing concern about the service quality of RCHDs, Ms LI Fung-ying wondered if the government subsidy of \$5,500 per resident per month under the pilot BPS was adequate for participating homes to provide quality service.

22. SLW stressed that the Administration attached importance to the service quality of RCHDs. The home fees to be paid by residents under the pilot Scheme would be comparable to the home fees payable by elders admitted to Category EA2 EBPS homes. As such, the government subsidy per resident per month would be in the region of \$5,500. As explained earlier, SWD would further consult the private RCHDs on their operation costs and staffing requirement in determining the appropriate level of contract price. SLW added that irrespective of the number of BPS places to be bought in a private RCHD, the entire home would have to comply with the upgraded standards relating to facilities, health care, fee charging, social activities, etc and for this purpose, a monitoring group would be set up to help monitor the service quality of these homes.

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23. Mr LEE Cheuk-yan and Mr CHEUNG Kwok-che enquired about the maximum and the minimum number of places to be bought under the pilot BPS. Taking into account that only six private RCHDs had joined the Voluntary Registration Scheme (VRS), Mr CHEUNG expressed concern about the availability of quality places in the prevailing market.

24. DSW responded that the Administration proposed to cap at 50% of the recognised capacity of each home but it had yet to determine the minimum number of the places to be bought. Irrespective of the number of places to be bought in a private RCHD, the entire home would have to comply with the upgraded standards under the pilot BPS. DSW further said that the enrolment rate of the private RCHDs known to SWD was around 70%. To his knowledge, some RCHD operators had indicated that they were considering joining VRS after learning about the launch of the pilot BPS. SWD would closely monitor the development and consider suitable adjustment to the number of places to be purchased.

25. Pointing out that the entire home was required to comply with the upgraded standards under the pilot BPS, Mr CHEUNG Kwok-che and the Chairman took the view that it would be financially viable for private RCHD operators to do so only if a reasonable percentage of the recognised capacity was to be bought. Mr LEE Cheuk-yan cautioned that private RCHDs would not join the Scheme if the number of places to be bought was on the low side.

26. DSW stressed that to be in line with EBPS for private RCHEs, a participating RCHD should upgrade all its places to BPS standards irrespective of the number of BPS places purchased. The number of places to be bought under the pilot BPS in each home was proposed to be capped at 50% of its recognised capacity. The Administration would further consult the private RCHDs, such as the Hong Kong Private Hostel for Rehabilitation Association, in determining the number of places to be bought and level of contract price.

27. While welcoming the introduction of pilot BPS for private RCHDs, Mr Paul CHAN considered that the proposed number of BPS places to be bought was too small, which was not cost effective as compared to the administration cost so incurred. In anticipation of a surplus fiscal reserve in the 2009-2010 financial year, Mr CHAN was of the view that the Administration should expand the scope of the Scheme with a view to shortening the waiting time for subsidised residential services.

28. SLW responded that the pilot BPS aimed to encourage private RCHDs to upgrade their service standards. As a start, the Administration would be careful in identifying quality places in order to ensure the quality service standards of BPS homes. As mentioned earlier, mid-term reviews would be conducted to

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keep track of progress and adjust the number of places to be purchased where necessary. DSW added that the number of BPS places to be purchased would largely hinge on the availability of quality places provided by private RCHDs. SWD would closely monitor the Scheme and consider suitable adjustment to the number of places to be purchased having regard to the response of service users, the number of quality places to be provided by and response of private RCHDs, etc.

29. Mr WONG Kwok-kin enquired whether the Administration would consider adopting the concept of "money following users" such that PWDs could make their own choices of quality private RCHDs. DSW advised that the Administration had no intention to change the existing subvention arrangements having regard to the far-reaching implications of the proposal. Meanwhile, the Administration would continue to steadily increase the supply of subsidised RCHD places and help the market develop more choices of quality private RCHDs through the launch of the pilot BPS.

30. In view of the foreseeable difficulties for participating RCHDs to upgrade the services of the entire home to the BPS standards, Mr Frederick FUNG enquired if the Administration would consider requiring only the BPS places to meet the BPS standards. In response, DSW said that the pilot BPS sought to encourage participating RCHDs to upgrade the overall service standards of the homes. Apart from the BPS places, the remaining places of BPS homes would have to comply with the upgraded standards under the Scheme.

Alleviating the waitlisting situation

31. Pointing out that BPS placement would be limited to those being waitlisted for Long Stay Care Home (LSCH) or Hostel for Moderately Mentally Handicapped Persons (HMMH), Ms LI Fung-ying enquired about the Government's plan to alleviate the waitlisting situation of Hostel for Severely Mentally Handicapped Persons (HSMH) and Hostel for Severely Physically Handicapped Persons (HSPH).

32. SLW advised that BPS placement would be offered to those being waitlisted for LSCH or HMMH, having regard to the fact that existing private RCHDs already possessed the necessary experience, skills and knowledge in taking care of service users with mental illness and mental handicap of moderate grade. It was worth noting that 94% of private RCHD residents were persons with mental illness and/or mental handicap. SLW further said that it would be more appropriate for persons with severe mental/physical handicap to be taken care of by subvented RCHDs given that the latter were equipped with the necessary facilities to meet their specific needs. To this end, the Government had secured the former Ma Tau Wai Girls' Home and the South Kwai Chung Jockey Club Polyclinic for conversion into two Integrated Rehabilitation Service

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Centres (IRSCs) for PWDs providing a number of HSMH and HSPH places. The two IRSCs would come into operation in the coming year. This apart, the Administration had earmarked sites in another six development projects with a view to improving the waitlisting situation. SLW added that the Administration was open minded and did not rule out the possibility of expanding the scope of the pilot Scheme to cover other client groups.

33. Mr LEE Cheuk-yan was of the view that the Government should devise a long-term plan to shorten the waitlisting situation for subsidised RCHD places. Given that there were over 6 000 PWDs waiting for subsidised RCHD places, he cast doubt about the effectiveness of BPS in improving the waitlisting situation taking into account that only around 300 places were offered under BPS. Apart from the three-pronged approach adopted by the Government, Mr LEE suggested that the Administration should consider providing allowance for carers of PWDs and setting up a home environmental improvement scheme with a view to providing PWDs with an additional option, i.e. to stay at home.

34. SLW stressed that the Administration endeavoured to improve the waitlisting situation for subsidised RCHD places. It would continue to steadily increase the number of subsidised places of RCHDs. As pointed out earlier, 671 additional places would be provided in the coming two years. To provide more comprehensive day care services to PWDs while they were waiting for subsidised RCHD places, SWD had set up 16 district support centres to provide one-stop service for strengthening the support for these PWDs, including vocational training for PWDs and counselling service for their carers. As regards the provision of allowance for carers of PWDs, SLW said that the various types of support services made available to PWDs and their carers could better address the needs of family carers as compared to the provision of subsidies.

35. Mr Albert HO considered it unacceptable that the waiting time for HSPH and HSMH places was as long as 106 months and 83 months respectively. Referring to the submission from the Association of Parents of the Severely Mentally Handicapped (LC Paper No. CB(2)908/09-10(01)), Mr HO said that persons with severe mental/physical handicap needed intensive care and timely support, and institutional care was no better than family support. In this respect, he urged the Government to actively consider providing allowance for carers of PWDs, especially carers of persons with severe physical handicap, and a home environmental improvement scheme to enable PWDs to live in the community. In his view, the provision of allowance for carers of PWDs would help relieve the waitlisting situation for subsidised RCHD places and the financial burden of these families. Expressing similar views, Mr Paul CHAN said that the Administration should draw up a timetable for improving the waitlisting situation, actively consider introducing an allowance scheme for carers of PWDs, and put in place interim measures to enhance relief support services for carers.

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36. SLW said that the Administration was mindful of the waitlisting situation for RCHD places. The waiting time might vary among individual PWDs due to various factors, such as their preferences for specific RCHDs or locations. Of around 6 000 PWDs waiting for subsidised RCHD places, 2 700 were severely mentally/physically handicapped and 375 were waiting for HSPH places. For some cases, the waiting time was about 13 months only. To alleviate the waitlisting situation, SLW said that the Administration would continue its efforts in providing additional RCHD places. He said that an additional 250 subsidised RCHD places for severely handicapped persons would be provided in the next two years. SLW further said that while he fully recognised the importance roles of family carers in taking care of PWDs, the provision of allowance to the carers to relieve the demand for residential care services would require thorough consideration in view of the fact that severely mentally/physically handicapped persons required different kinds of care, which involved professional knowledge and skills. The Administration considered that an integrated service mode with a range of one-stop day care services could better address the needs of these PWDs and their families. Nonetheless, the Administration would further strengthen home-based services and consider members' suggestions.

37. The Chairman said that as a motion on "Providing support for family carers" was passed by LegCo in November 2009, the Administration should consider seriously members' unanimous views on the subject.

38. Responding to Mr CHEUNG Kwok-che, DSW said that BPS places would be offered to those on the waiting lists for subsidised RCHD places. The PWDs concerned could decide whether they wished to be admitted to the BPS homes offered to them. If they decided not to be admitted to the BPS homes, their names would remain on the waiting lists for admission to subsidised places.

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39. Mr CHEUNG kwok-che requested the Administration to provide information on the waitlisting situation for each type of subsidised residential care services for PWDs, the number of additional places by types of services to be provided in the two new IRSCs in Kwai Chung and Ho Man Tin, and a breakdown of additional residential places coming on stream by service types, together with their district distribution.

Service monitoring of RCHDs

40. To strengthen the corporate governance and service monitoring of RCHDs, Mr Frederick FUNG suggested that SWD should make reference to the school-based management policy and require all RCHDs to include the relevant stakeholders, in particular parents of PWDs, in the boards or management committees of the respective homes.

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41. DSW responded that to ensure the service quality of RCHDs, the Government would introduce a licensing regime to regulate the operation of RCHDs, including private RCHDs. Besides, all subvented and BPS homes had to comply with a set of quality service standards as stipulated in the service agreements, including the collection of users' opinions and complaints handling. This apart, a monitoring group comprising PWDs, parents/carers of PWDs and other stakeholders would be set up to help monitor the service quality of BPS homes under the pilot Scheme.

42. SLW added that unlike aided schools which merely provided education services, the scope of services run by many NGOs went beyond residential care services. It was therefore inappropriate to require the NGOs concerned to include the parents/carers of PWDs in their boards or management committees. It would be more pragmatic to encourage the RCHD operators to communicate with their users on the provision of services.

43. Given that individual RCHDs were not required to be incorporated as an independent legal entity if they were operated by NGOs or corporate bodies, Mr Frederick FUNG held the view that the Government should consider requiring individual homes to be incorporated under their own names with a view to strengthening the service monitoring of RCHDs. DSW responded that under the Lump Sum Grant Subvention System, NGOs were providing a wide range of services and were required to comply with the requirements in accordance with the Funding and Service Agreements. This apart, SWD had implemented a comprehensive service performance monitoring system to ensure the service quality of subvented services. The existing monitoring system was considered effective.

Other views

44. The Chairman expressed concern about the effectiveness of the pilot BPS in achieving its objectives. Since mid-term reviews would only be conducted after two years, he wondered if the Administration could keep track of the progress and refine the operational details in a timely manner. Besides, given that the quality of private RCHDs varied, the Administration should provide incentives for these homes to enhance their service quality, thereby enabling more private homes to meet the BPS standards. For instance, consideration might be given to setting up a fund for application by private RCHDs to carry out improvement works.

45. SLW advised that in tandem with the legislative proposal for the implementation of the licensing scheme for RCHDs, the Government would formulate suitable complementary measures to help operators meet the licensing requirements and help the market develop quality residential care services for PWDs. Apart from the pilot BPS, the Government was considering a Financial

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Assistance Scheme to provide subsidy for private RCHDs to carry out improvement works.

46. DSW said that during the consultation on the pilot BPS, the response from private RCHD operators was positive, and some of them had indicated that they would consider setting up new homes. It was envisaged that more quality residential places would be made available in the market. As mentioned earlier, in addition to the mid-term reviews, SWD would closely monitor the Scheme and consider suitable adjustment having regard to the availability of quality places in the market.

Motion moved by Mr LEE Cheuk-yan and Mr Albert HO

47. The Chairman invited members to refer to the motion intended to be moved by Mr LEE Cheuk-yan and Mr Albert HO. The wording of the motion was tabled at the meeting, as follows -

"That this Panel urges the Administration to launch immediately an "allowance for home carers of persons with disabilities" so as to provide an additional option to persons with disabilities waiting for residential care home places." (Translation)

48. The Chairman put the motion to vote. All members present voted for the motion and no member voted against it. The Chairman declared that the motion was carried. The Chairman said that as the Panel had just appointed a new Subcommittee on Residential and Community Care Services for Persons with Disabilities and the Elderly, further discussion on the matter could be followed up by the Subcommittee. Members agreed.

V. The Reports of the Law Reform Commission of Hong Kong on Guardianship of Children and on International Parental Child Abduction

[LC Paper Nos. CB(2)845/09-10(05) to (06)]

49. SLW briefed members on the Administration's position on the recommendations made by the Law Reform Commission of Hong Kong (LRC) in its Report on Guardianship of Children, and its Report on International Parental Child Abduction. SLW advised that in considering the recommendations of the reports, the Administration's primary concern was the well-being of the child. The Administration accepted in principle all the recommendations of the two reports, and was prepared to take them forward, either in full or in a modified form. SLW further advised that apart from these two reports, the examination of the Report on the Family Dispute Resolution Process was led by the Home Affairs Bureau. While LWB was also responsible

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for following up the Report on Child Custody and Access, it would have to examine LRC's recommendations carefully and consult more stakeholders having regard to overseas experiences and local developments in deciding whether and how to adopt the recommendations of the report.

50. In respect of the Report on Guardianship of Children, Deputy Secretary for Labour and Welfare (Welfare)1 (DS(W)1) said that the LRC's recommendations mainly aimed to simplify and enhance the existing procedures for appointing guardians so as to encourage more parents to take the positive steps of making guardianship arrangements for their children. The Administration considered the recommendations generally agreeable, and intended to take them all forward. They include –

- (a) simplifying the procedures for appointing guardians and obviating the need to make formal wills and deeds by requiring only a document in writing with signature of the appointed parent attested by two witnesses; and producing a standard form for appointing guardians;
- (b) enshrining in law the principle that parents should take into account the views of the child in appointing guardians;
- (c) requiring the appointing parent to seek the consent of the appointed guardian before the appointment could take effect;
- (d) allowing a guardian to withdraw from acting as a guardian after taking office;
- (e) removing the power of the surviving parent to veto the taking office of a guardian appointed by the deceased parent;
- (f) altering the existing arrangement to cater for situations where it was not preferable for a guardian appointment to take effect automatically upon the death of the appointing parent;
- (g) relaxing the restriction on application to be a guardian of a child; and
- (h) empowering a guardian to make guardianship appointment for the child.

51. As regards the Report on International Parental Child Abduction, DS(W)1 said that the problem of international parental child abduction occurred when a child was taken out of Hong Kong by his/her own parent(s) without the consent or lawful authority from a person or institution that had the right to care for him.

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At the international level, the problem was dealt with by the Hague Convention on the Civil Aspect of International Child Abduction (the Convention) which provided an effective international mechanism for the swift return of children wrongfully removed from their place of habitual residence to another contracting state in violation of custodial rights. Hong Kong had maintained well-established cooperative relationships with the Hague Authority and other signing parties to the Convention. As reflected by the actual number of cases, the problem of international parental abduction was not serious in Hong Kong. The Report on International Parental Child Abduction also noted Hong Kong's positive performance under the Convention in ensuring the speedy return of children abducted into Hong Kong. Taking into account the recommendations made in the report, the Administration proposed to enhance the preventive measures and remedies in respect of parental child abduction in the following ways -

- (a) to extend the scope of eligible parents who could apply for the injunction pursuant to the law to cover all parents, regardless of whether they were involved in any divorce/matrimonial proceedings;
- (b) to expressly empower the court to order the disclosure of the whereabouts or location of the child and the recovery of the child;
- (c) to empower the Immigration Department (ImmD) and the Police to hold a child where there was a stop order issued by the court prohibiting the child in question from leaving Hong Kong; or where an application for stop order had been made to the court and the application was pending; and
- (d) to advise parents of their obligations to notify ImmD and the other parents of the court order prohibiting the removal of their child from Hong Kong without their consent.

52. DS(W)1 added that subject to members' views on the proposed measures, the Administration would work out the detailed amendment proposals in consultation with relevant bureaux/departments and proceed with the legislative exercise to implement the recommendations. SLW advised that the Administration aimed to introduce the legislative proposals into LegCo in the 2011-2012 session.

The Report on Guardianship of Children

53. Noting that the Administration proposed to remove the power of the surviving parent to veto the taking office of a guardian appointed by the deceased parent, Mr Albert HO asked whether the surviving parent would be allowed to

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raise objection to the guardianship appointment. DS(W)1 said that the guardian appointment made by a deceased parent could be nullified by the surviving parent as the current law allowed the latter to veto the taking office of a guardian appointed by the former. Under the proposed arrangement, in the event that either or both the surviving parent(s) and the appointed guardian made a petition to the court in respect of the guardianship appointment, the court would make a ruling having regard to the well-being and interests of the child .

54. While welcoming the suggestion of enshrining in law the principle that parents should take into account the views of the child in appointing guardians, Mr HO asked about the implementation details. Mr HO further asked whether an official solicitor could be appointed to represent the child's views in the event that the child strongly objected to the guardianship appointment. DS(W)1 said that under the proposed arrangement, the appointing parent would be required to take into account the views of the child when appointing a guardian for him/her and to declare whether they had done so in the standard form for appointing guardians. DS(W)1 added that the responsibilities of both the appointing parents and guardians would also be spelt out clearly in the standard form for appointing guardian. The Administration would step up public education and publicity in this respect.

55. Ms LI Fung-ying considered that the child should be allowed to indicate his/her preference for an appointed guardian when he/she had attained a prescribed age limit. Ms LI was concerned that should guardians be allowed to withdraw from acting as a guardian after taking office without the need to give an account for the decision, this would be detrimental to the healthy development of the child. She asked whether the Administration would set out the incidental conditions for withdrawal of guardianship appointment.

56. DS(W)1 said that the appointment of a guardian was the decision of the appointing parent. Should the appointing parent be required to seek the consent of the child before making the guardianship arrangements, such requirement might dissuade the parent from making such arrangements for the child. This would also depart from the objective of the LRC report to encourage parents to make guardianship arrangements for their children. DS(W)1 further said that there was no provision in the law for a guardian to withdraw from acting as a guardian after taking office, regardless of whether the appointed guardian was willing to accept or capable of assuming the responsibilities. The Administration noted that the guardian's withdrawal of his/her appointment might have negative impact on the child. Yet, it would also be against the interests of a child if the guardian was required to continue holding his/her title while he/she was indeed not willing/able to perform his/her duty properly. The proposal of allowing a guardian to withdraw from a guardian appointment would ensure that the interests of the child would be well protected if the guardian was incapable of performing his/her role properly. In the circumstances, other persons could

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apply to the court to be the guardian of the child or the court could appoint guardianship if so warranted. The Administration considered that the proposed arrangement had struck a proper balance in protecting the well-being and interests of the child.

57. The Chairman asked what measures were currently in place to safeguard the interests of the child in the event that a guardian failed to exercise proper daily care and upbringing of the child after taking office. DS(W)1 said that appointing a guardian was a private arrangement between the appointing parent and the appointed guardian. Under the existing law, the appointed guardian could decline the appointment only when he/she was notified of the arrangement. Nevertheless, DSW could apply to the court to be the guardian of the child for safeguarding the well-being of the child when such needs arose.

58. In response to Mr Albert HO, DS(W)1 said that the mechanism for guardianship arrangements for minors upon the death of his/her parents and that for the mentally incapacitated persons were governed under separate legislative frameworks and were fundamentally different.

The Report on International Parental Child Abduction

59. Mr Albert HO asked about the number of cases concerning parental abduction in which the child was removed out of Hong Kong to the Mainland; whether the Mainland was a contracting state to the Hague Convention; and the cooperation between the HKSAR Government and the Mainland authorities in international parental child abduction.

60. DS(W)1 said that the Mainland was not a contracting member of the Hague Convention. There was no evidence showing that there was a large number of parental abduction cases between Hong Kong and the Mainland. In the past three years, only one criminal case involving parental abduction to the Mainland was recorded. While there were some 700 cases concerning the removal of the child from Hong Kong in breach of a court order prohibiting the child in question from leaving Hong Kong every year, most of them were reported during the festive seasons. It was believed that the parents involved might not be aware of the court order until arriving at the departure area and being stopped by immigration officers. These cases could be stopped and handled effectively by the existing arrangements for enforcing the court orders. DS(W)1 added that international parental child abduction cases would be tackled in accordance with the domestic legislation if a child was removed from Hong Kong to a place which was not a contracting state to the Hague Convention.

Action

The Report on Child Custody and Access

61. The Chairman and Mr Albert HO enquired about the progress of implementing the recommendations in the Report on Child Custody and Access. SLW said that as the proposed new model of joint parental responsibility put forward by the Report on Child Custody and Access would fundamentally change the concept of "custody" underpinning the existing Family Law, which would have far-reaching implications on children and family on various fronts, the Administration would need to examine the recommendations carefully and continue to consult relevant stakeholders. In the meantime, the Administration would first proceed with the drafting of legislation to implement the recommendations in the Reports on Guardianship on Children and International Parental Child Abduction.

62. Responding to Mr Albert HO, DS(W)1 said that the Administration had consulted some women's groups and social workers involved in the handling of family dispute cases and would meet with, children under the care of custody and access and men's groups later. The Administration would take a cautious approach on the matter and carefully consider the views of relevant stakeholders before deciding on whether and how to adopt the recommendations of the report. At the request of Mr Albert HO, the Administration would provide a list of stakeholders consulted so far after obtaining their consent together with a summary of their comments. Hyperlinks to information on overseas experiences in the implementation of the model of joint parental responsibility would also be provided after the meeting.

Admin

VI. Any other business

63. There being no other business, the meeting ended at 12:47 pm.

Council Business Division 2
Legislative Council Secretariat
5 March 2010