



**ORDER FOR RENEWAL AND VARIATION  
OF GUARDIANSHIP ORDER**

**Mental Health Ordinance (Cap. 136)<sup>1</sup>**

**(Section 59U)**

-----

**BETWEEN**

**Madam LC**

**Guardian<sup>2</sup>**

**and**

**Mr CK**

**Subject<sup>3</sup>**

**The Director of Social Welfare<sup>4</sup>**

---

**Members of Guardianship Board constituted**

Chairperson of the Board: Mr Charles CHIU Chung-ye

Member referred to in section 59J (3) (b): Ms YEUNG Mee-ling

Member referred to in section 59J (3) (c): Ms YUEN Yuen-yau

**Date of Reasons for Order:** 25<sup>th</sup> January 2011.

---

<sup>1</sup> Sections cited in this Order shall, unless otherwise stated, be under Mental Health Ordinance (Cap. 136) Laws of Hong Kong

<sup>2</sup> S2 of Mental Health Guardianship Board Rules and S59U(4)(b) of Mental Health Ordinance

<sup>3</sup> S2 of Mental Health Guardianship Board Rules and S59U(4)(a) of Mental Health Ordinance

<sup>4</sup> S2 of Mental Health Guardianship Board Rules and S59U(4)(c) of Mental Health Ordinance

**Background**

1. The subject, Mr CK, was a 59 year-old man suffering from vascular dementia since 2003. He got married in 1979 and has a son. They lived together in a private flat owned by the mother of subject till the subject's admission to a private old age home in April 2009. The wife filed an application to the Board. She would like to claim and mobilize the MPF entitlements of subject (around \$130,000) in order to settle the daily expenses and old age home fees. The Guardianship Order was granted and appointed the wife as guardian for a year with all powers (s.59R(3)(a) to (f)) on February 2010.
2. For the review period, the Board received the progress social enquiry report dated 9 December 2010 from the case social worker, Ms N. One of the paragraph stated that:

*“11. The wife sought the Reporting Social Worker’s approval to utilize part of the money in the guardian’s account for purchasing the golden bracelet of \$7,039 and preparing red packets of \$5,000 for the wedding of the son ..... on 3 October 2010. The wife claimed that she and the aged mother-in-law relied on the limited contribution of the son. She considered that the subject had the paternal role and obligation to render financial support for the son’s wedding. Thus the total sum of \$15,838 & \$14,031.2 had been spent from the guardian’s account in August & September 2010 respectively. As the expenses were used partly for the benefit of the subject’s son, thus the matter was brought up for the Board’s information.”*

3. After the Board issued a requisition form to enquire the monies of the subject spent on the son's wedding, the Board received the supplementary information dated 21 January 2011 and stated that:

*“2. Referring to paragraph 11:-*

*(a) On 15.10.2010 the guardian submitted the receipts for expenses and financial report for checking. It was found that the guardian had used part of the money in the guardian's account for purchasing the golden bracelet of \$7,039 (Aug 10) and wedding red packets of \$5,000 (Sept. 10) for the son's wedding on 3.10.2010. As the expenses had exceeded the amount that the guardian originally proposed to the Reporting Social Worker, the latter suggested putting up the issue for the Board's consideration during review after consultation with the Board Secretary of Guardianship Board. On 1.11.2010 the subject's son revealed that he had discussed this matter with the Guardianship Board, and stated that he had obtained the Board's approval for the expenses. However, as the expenses were used partly for the benefit of the subject's son wedding, the Reporting Social Worker thus put up the matter for the Board's consideration and approval.”*

4. After received the supplementary information from the case social worker, the Board further enquired on the allegation of *“the son had obtained the Board's approval for the expenses”*. A hand-written reply from the case tendered social worker, before the hearing started, stated that:

*“..... I support the expenses were used partly for the benefit of the subject's son wedding.....*

*As learnt from the subject's son that he had discussed the matter with Guardianship Board on 1.11.2010.....”*

**Hearings at the Board on 25 January 2011**

5. The Board explained that financial powers of a legal guardian do not extend to giving gifts to other person due to the limited application of section 59R(3)(f), Mental Health Ordinance (Cap. 136), which reads: -

*“the power to hold, receive or pay such monthly sum (within the meaning of section 44B(8)) specified in the order on behalf of the mentally incapacitated person for the **maintenance or other benefit** of that person as if the guardian were a trustee of that monthly sum.”*

6. The private guardian (and wife) of the subject, said, regarding the two questionable gifts (HK\$7,039 for gold ornaments for son's wedding in August and HK\$5,000 for red packets in September 2010), the subject had mentioned to make a gift to the future daughter-in-law before his onset. But it was not carried out by him before he fell sick. At the wedding, she would like to give out red packets to the tea offering by the new couple and to give out red packets to others for the occasion. It was a customary practice. Actually, before she started to buy the gold ornament, she did mention it to the case social worker Ms N. Ms N said she was not sure whether it is viable. At that time, no exact amount was mentioned by her to Ms N. She then bought the ornament at around HK\$7,000 instead of HK\$10,000 as originally thought of. The subject had attended the wedding banquet as well.

7. The son of subject said he intended to give the same information to the Board as given just now by her mother, the guardian. As the Board was keen to know whether any staff of the Board had on behalf of the Board given specific approval of the two questionable gifts (see in paragraph 2(a) of the Supplementary Information dated 21 January 2011), the son confirmed that he only enquired with Secretariat of the Board on the monthly financial limit as he himself knew because of the gifts, monthly limit would be exceeded somehow. He confirmed again that the Secretariat had not approved those gifts as such. The reply obtained by him was that for a particular month, financial limit may be exceeded.
  
8. Ms N, the maker of Progress Social Enquiry Report, on behalf of the Director of Social Welfare, on challenge by the Board that her report was wrong and inaccurate, said she only heard from the guardian (and not the son) that the son obtained approval from Guardianship Board. [The Board regretted that Ms N adopted a carefree attitude in handling this piece of very important information and made misleading reports. What Ms N gave to the Board was a double-hearsay evidence bound for mistakes.]
  
9. The Board made it clear to all parties that the Board was not satisfied and gravely disappointed by the performance of the guardian in making gifts and the case social worker Ms N in the monitoring work.
  
10. Ms N poorly performed in the following areas:-
  - (a) Lack of proper knowledge that a guardian had no power to make a gift (see paragraph 11 of the progress social enquiry report dated 9 December 2010).

- (b) Lack of the decisiveness to find out the legal position when first approached by the guardian expressing her intention to buy gold ornaments. Even after consulting the Secretariat of Guardianship Board (by herself), no written enquiry was ever made to the Board for advice and the matter was just kept on flow.
- (c) Lack of sensitivity to guide the guardian in making correct decisions.
- (d) Lack of awareness that her first evasive (or even supportive) attitude had led the guardian to make two subsequent wrong decisions.
- (e) Lack of the necessary skill to make timely and clear-cut decision in this matter and always (and repeatedly - as seen in the progress report and two [out of three] supplementary information) asked the Board to decide the issue at a review hearing.
- (f) Lack of the adequate knowledge of her role as a case social worker which was to act and made a decision and duly communicate it to the guardian before the gifts were perfected. It was no useful point to wait for several months afterwards for a review hearing. What was the practical value of asking the Board to make a post ex-facto ruling?
- (g) Failure of duty to verify whether the Board had given prior approval from direct source. Obviously, as revealed at the hearing, only enquiring with the guardian on the son's obtaining approval was an unacceptable way in compiling an official report, i.e. paragraph 2(a) of

the supplementary information dated 21 January 2011 (see paragraph 8 hereinabove).

- (h) In paragraph 2(a) of the aforesaid supplementary information dated 21 January 2011, an utterly wrong and misleading impression was given to the Board that it was “the son” himself who has “revealed” on 1 November 2010 to the writer (i.e. Ms N) that Guardianship Board had given the approval for the expenses. In fact, it turned out to be not the case as confirmed by the son at the hearing (see paragraph 10 hereinabove).
- (i) Failure to properly and clearly answered questions 2 and 3 of the Board’s Requisition dated 19 January 2011.
- (j) Lacking the basic knowledge that as an independent quasi-judicial tribunal, the Board’s contact should not be kept as part of the report or supplementary information. For once that was done, the Board became part of the evidence itself and became partial.
- (k) Failure to answer all the three questions in the Board’s further and urgent requisition dated 24 January 2011, which was raised in consequence of the unsatisfactory earlier reply. Ms N had, upon receipt of this requisition directed by the Chairperson, immediately called up the Secretariat of the Board and said she had no time to reply. Deliberate failure to give replies to the Board’s repeated requisitions was tantamount to a contempt of a legal tribunal. The Board would

therefore seriously reprimand Ms N for her non-compliance. Also, giving a handwritten reply in the very morning of the hearing was an inordinate and gross disrespect to the Board. Further and worst of all, such a handwritten reply had not given proper answers to the questions raised. Particularly, answers 1 and 3 of Ms N's hand-written reply of today are evasive, wrong and misleading (see also (b), (g) and (h) immediately above as well as paragraph 8 hereinabove).

### **Issues and Reasoning**

#### Reasoning for continuing to receive the subject into guardianship

11.The Board declared that the two questionable gifts were outside the powers of a legal guardian and were wrongly made. The guardian, the subject's son and the case social worker were hereby seriously reprimanded. Once again, the Board was extremely disappointed with the entire matter. Nonetheless, the Board accepted and adopted the recommendations as contained in the progress social enquiry report and accordingly decides to continue to receive the subject into guardianship in order to protect and promote the interests of welfare of subject.

#### Reasoning for continuing to appoint the legal guardian

12.Although having committed two grave mistakes in the financial management of the subject, the guardian's overall performance during the guardianship period was acceptable. She agreed that she learnt a lesson from the



mistakes and promised not to commit the same again. Therefore, the Board exceptionally decided, not without reluctance, to continue to appoint her as the guardian for next renewed period. To avoid future confusion, the Board, on request, made it clear that it would not take issue with the guardian if she gave out red packets with subject's money during Chinese Lunar New Year to the son and daughter-in-law at \$100 each and close relatives at \$20 each, which were of nominal value. On passing, a competent case social worker should be able to give this guidance to private guardian without wasting the Board's hearing time to answer this type of trivial enquiry.

13. Lastly, the Board would send a reminder to the guardian that the amount of money to be spent on meals with the subject outside the aged home should be of reasonable sums.

## **DECISION**

14. The Board was satisfied and accordingly finds that the subject remained a mentally incapacitated person for whom a guardian should be appointed as the order has resulted in maintenance of the subject's welfare and health. The subject still needed a guardian to make substitute decisions, as the subject lacked capacity to make reasonable decisions on personal and welfare matters including decision on financial matters. For the same reasons as stated in the original Guardianship Order, the Board was satisfied that there remained no less restrictive or intrusive alternative to guardianship. The Board concluded that it was in the interests of the welfare of the subject to continue to be under guardianship and that the original guardianship order should be renewed.

15. The Guardianship Board applied the criteria in section 59S of the Mental Health Ordinance and was satisfied that Madam LC was the most appropriate person to continue to be appointed the guardian of the subject.

(Mr Charles CHIU Chung-ye)  
Chairperson of Guardianship Board