



**REASONS FOR ORDER**

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

**(Section 59O)**

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**BETWEEN**

**The Director of Social Welfare**

**Applicant<sup>2</sup>**

**and**

**Madam LSC**

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

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**Members of Guardianship Board constituted**

Chairperson of the Board: Mr Charles Chiu Chung-yee

Member referred to in section 59J (3) (b): Dr LO Chun-wai

Member referred to in section 59J (3) (c): Mrs Almond WONG LEE Sze-man

**Date of Reasons for Order:** 2<sup>nd</sup> January 2008.

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<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

<sup>3</sup> S2 of Mental Health Guardianship Board Rules and S59N(3)(a) of Mental Health Ordinance

**Background**

1. The subject, Madam LSC (“the subject”) was a 77 year old woman first suffering from dementia and delirium since 2003. Her husband had deserted her for more than 50 years and her only daughter passed away years ago. The subject has been residing in a care and attention home since 2001 and she counted on the CSSA (Comprehensive Social Security Assistance) for maintenance.
  
2. The subject, as described by home staff, has been suffering from further deteriorating mental condition since July 2007. She became more agitated, shouted loudly, verbally aggressive and had tendency of self-harm. She refused to co-operate with the home staff on the intake of medication and food. As a result, she was sent to hospitals (including mental hospital) for assessment and treatment. However, the dosage of medications for the subject was considered to be optimum and further increase was not recommended. Due to the subject’s active paranoid delusions towards the home staff, strong assertions to leave the old age home and to resume independent living and persistent refusal of treatment or medications, an application of Guardianship Order was filed by the case medical social worker of the hospital on 4 October 2007.
  
3. After discharged from hospital, the subject returned to the old age home. But she failed to settle down in the old age home. As first reported by the social enquiry report maker in her report dated 30 October 2007, the home social worker was taking steps to secure another aged home as a means to deal with subject’s adjustment problem. On this basis, the report maker recommended there was no need for a Guardianship Order because social workers (including the hospital’s medical social worker) would be involved

to work out a special caring arrangement. The social enquiry report maker filed a Supplemental Information four days before the hearing and informed the Board that the subject was arranged in-patient treatment at a mental hospital several times from 22 October 2007 to 19 November 2007. Then, the case medical social worker arranged the subject to a temporary placement at a different old age home since 14 November 2007. As reported by the social enquiry report maker, the subject has adjusted well in the new home environment. She could walk slowly unaided and did no longer require the oxygen machine during day time. She also enjoyed good appetite with normal meals plus snacks at tea time. Her health conditions have improved.

4. With the observations made on her visit on 22 December 2007, the social enquiry report maker remained of the view that no Guardianship Order was necessary.

#### **Mental health conditions**

5. According to the two supporting medical reports, Madam LSC had been diagnosed to be suffering from schizophrenia with persistent persecutory delusions and that she has no insight into her mental illness. She refused placement to residential home for elderly because she had paranoid delusions towards old age home and hospital staff. She also believed that she could live on her own with minimal nursing care and without medical treatment. She had history of refusing medications under influence of persecutory delusions. She also lacked the ability to manage finances. She insisted to rent a flat and hire a maid but she could not give details of how much assets she had and how she could afford such an arrangement. The doctors concluded Madam LSC was needed to be received into

guardianship.

**Hearing at the Board on 2 January 2008**

6. The applicant, on behalf of the Director of Social Welfare, said she wished to press on with her application today. The reason for applying Guardianship Order, despite a change to the new aged home, was because the subject, during this month, still in numerous occasions asked to leave and actually follow other people to leave the institution. She sought legal power to keep the subject at the aged home. She hoped to observe the subject for a longer period. She heard from the home staff that there were about two occasions when the subject stood up from her chair, with an intention to leave, but was pacified soon. She learnt from the home staff that subject used to voice out her wish to leave about once every week. At the beginning two weeks of stay, subject even said Mr Z, a business tycoon, was waiting for her downstairs. She visited the subject twice, respectively on 15 November 2007 and 21 December 2007, during which time she did not raise the question to the subject if the latter liked to leave, as she was identified by the latter as a persecutory figure. She asked the home staff to relate her questions to the subject and kept a distance away from the subject. She did not see anything unusual of the subject during two of her visits.
7. The Board granted the applicant a recess to enquire the latest status of adjustment of the subject since her last visit on 21 December 2007.
8. After recess, the applicant said she just enquired with the assistant superintendent of the aged home who told her that since 21 December 2007, the subject did ask to get down to the street for two further occasions. The subject was also remarked as always staying at the main entrance of the

aged home.

9. Regarding the chance of returning to previous care and attention home, the applicant said it was slim as she believed the subject would not like to live there due to persecutory beliefs and delusions against the staff there. So far, due to absence of direct dialogue with the subject, she did not hear anything on subject's holding on any persecutory beliefs against the staff of the new aged home. Subject used less oxygen therapy now.
  
10. The social enquiry report maker, on behalf of the Director of Social Welfare, said subject could understand Cantonese but used to speak in Chiuchow dialect. She considered the chronic persecutory delusions aspect but she thought there were no latest similar complaints at the new aged home. The subject's behaviour problems were well managed there as well. Above all, a Guardianship Order was too restrictive. Nevertheless, she agreed that time factor, i.e. the chronic schizophrenic history of the subject, could be a factor to be taken into account.

### **Issues and Reasoning**

11. Both the applicant and the social enquiry report maker were social workers of the Social Welfare Department, but in this case, they had different views.
  
12. The Board accepted the evidence of the applicant, as it contained more details and was more updated and current, regarding subject's incessant requests to leave the aged home, which were all disallowed. The social enquiry report maker did not dispute the facts as narrated by the applicant. The social enquiry report maker only asserted that subject's various attempts and requests for leaving the aged home were well managed by the home

staff and thus there was no need for a Guardianship Order. Whilst fully understanding her standpoint, the Board could not agree with her in the instant case. Hence, the Board did not follow her recommendation to refuse this application as contained in the social enquiry report. The reason was a legal one. The Board took due notice of the respective judgments in *H.L. v United Kingdom* delivered on 5 October 2004 (40 EHRR) and in *JE v DE* [2006] EWHC (Fam). In both judgments, deprivation of liberty resulted from detention must be lawful which means such deprivation must be in accordance with a procedure prescribed by law in order to avoid contravening Article 5(1) of *European Convention on Human Rights*, and correspondingly, as in the present case, Article 5(1) of *Hong Kong Bill of Rights* (c.f. ICCPR Art.9). Finally, the Board would register that it was not in issue that the subject's continuation of institutional care would be in her best interests.

13. As the subject did not have any traceable relatives or friends in Hong Kong, the Board accepted the applicant's wish to appoint the Director of Social Welfare as the legal guardian of the subject.

## **DECISION**

14. The Guardianship Board is satisfied on the evidence and accordingly finds:-
  - (a) That the subject, as a result of schizophrenia, is suffering from a mental disorder within the meaning of section 2 of the Ordinance which warrants the subject's reception into guardianship;

- (b) The mental disorder limits the subject's capacity to make reasonable decisions in respect of a substantial proportion of the matters which relate to the subject's personal circumstances;
- (c) The subject's particular needs may only be met or attended to by guardianship, and no other less restrictive or intrusive means are available as the subject lacks capacity to make decisions on accommodation, her own welfare plan and treatment plan,

In this case, the predominant needs of the subject remained to be satisfied are, namely, decision to be made on future welfare plan, future accommodation and future treatment plan;

- (d) The Board concluded that it is in the interests of the welfare of the subject that the subject should be received into guardianship.

15. The Guardianship Board applied the criteria in section 59S of the Ordinance and was satisfied that the Director of Social Welfare was the only appropriate person to be appointed as guardian of the subject.

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