



REASONS FOR ORDER

Mental Health Ordinance (Cap. 136)¹

(Section 59O)

BETWEEN

The Director of Social Welfare

Applicant²

and

Mr CCH

Subject³

Members of Guardianship Board constituted

Chairperson of the Board: Mr Charles CHIU Chung-yee

Member referred to in section 59J (3) (b): Ms Kitty CHAU Shuk-king

Member referred to in section 59J (3) (c): Mr Stephen HO Kam-yu

Date of Reasons for Order: 16th May 2008.

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

² S2 of Mental Health Guardianship Board Rules

³ S2 of Mental Health Guardianship Board Rules and S59N(3)(a) of Mental Health Ordinance

Background

1. The subject was a 18-year-old man suffering from mild grade mental retardation with autistic. He used to live with family members before the admission into the mental hospital. Subject had once been arranged to reside in small group home when his mother was involved in the marital discord and later the separation by the husband. The subject also received respite service in children's hospital, sheltered workshop and hostel. After he completed the primary and secondary study, the subject was arranged to receive sheltered workshop training and home-based training and was waitlisted for a sheltered workshop placement.
2. The mother felt strongly guilty for the son and used to blame herself for brining the subject to the earth. Despite the subject's behavioural problems of hitting family members since childhood, the mother still took a lenient way to handle which drew the dissatisfaction from the three daughters. The daughters understood the mother was living up to her parental role in taking care of subject, but they still considered the mother as somehow over-protective. To avoid repeated violent acts, the daughters applied for compassionate rehousing.

Mental and health conditions

3. The subject is suffering from mild grade mental handicap with autism which limited his capacity to make decisions. He did not take medication regularly and was repeatedly seriously aggressive towards family members. The subject could only respond with very simple words. Eye contacts were limited and his attention span is short. Other than the mental disability, the subject has generally sound health condition.

Circumstances leading to application

4. Due to the subject's mental disability and the mother taking a protective attitude as compensation, the subject used to exert violence when his request was being turned down by family members. The subject tore the mother and elder sisters' hair when he felt unhappy. After he grew up, he became even more out of control. The subject had been sent to different rehabilitation centre, sheltered workshop cum hostel and hospital. The subject manifested behavioural problems by repeating urging to phone his mother at home, hitting the window at the rehabilitation centre and banging the door with his body at the staff room. Due to the subject's unfavourable adjustment, the mother fetched the subject home, and thus the vicious cycle continued. The medical social worker of mental hospital suggested that if the subject continued making use of the violent act to flag up his requests, he would be sent to the hospital directly with an attempt to break his pattern. However, the mother held an indifferent view. She preferred to fetch the subject home to avoid travelling to-and-fro the mental hospital.

5. In June 2007, during the home leave of subject, one of the elder sisters was attacked by the subject when his request to phone the mother was declined. The elder sister was sent to the Accidents and Emergency Department ("A&E") and stitches were required. In-patient treatment for the subject at mental hospital was arranged but the mother discharged the subject to home against medical Advice. After discharge, the mother brought the subject for treatments in Mainland's hospitals and other supernatural treatments without prior discussion with medical social worker and the case medical officer of the mental hospital.

6. In November 2007, another violent act took place as the subject lost his temper by tearing his mother's hair. The subject was subsequently sent to the Accident and Emergency Department of a general hospital and then to mental hospital for continuous clinical management. Due to the repeatedly violent acts against family members, no home leave or discharge was allowed by the case medical officer before a long-term rehabilitation placement could be secured for the ultimate interest of subject. However, the mother strongly resisted and hoped to fetch the subject home first before placing him to a rehabilitation placement.
7. Finally, the medical social worker of the mental hospital filed a guardianship application to the Board in order to protect the subject's ultimate interests and proposed the Director of Social Welfare as the guardian.

Recommendation of the Director of Social Welfare

8. The social enquiry report maker recommended for a Guardianship Order to ensure proper rehabilitation training for the subject.

Hearings at the Board on 16 May 2008

9. The applicant and medical social worker of mental hospital said there was no date of intake assessment for admission of the subject to subvented hostel yet. She talked to the subject yesterday and understood from him that he was willing to live at the hostel. She had already sent the information to the concerned waitlisting office for further process.

10. The mother of subject said she was worried that by living in a hostel, the subject would have less chance to see his relatives in Mainland. The Board explained to her that the subject will need structured training in a hostel setting and it is in the subject's best interested to be admitted to the subvented hostel.

11. The maker of social enquiry report, on behalf of the Director of Social Welfare, said she had nothing to add.

Issues and Reasoning

Reasoning for receiving the subject into guardianship

12. The Board accepts and adopts the views of the two medical doctors as contained in the two supporting medical reports as well as the social enquiry report and the views and recommendations as contained therein and accordingly decided to receive the subject into guardianship in order to protect and promote the interests of welfare of subject. Upon considering the evidence, the Board observed that the subject went through a tortuous course of his life due to inadequate training caused by the over-protection of his mother. In his best interests, the subject must be given rehabilitative training to deal with his physical aggression in a hostel setting without the interruption of his mother. In the circumstances, a Guardianship Order must be granted to ensure the subject's admission to the hostel.

Reasoning for choosing the legal guardian

13. The Board accepts and adopts the view of the social enquiry report maker who recommended, as contained in the report, the proposed guardian, the Director of Social Welfare, to be appointed as the guardian of the subject in this case. Upon hearing from the mother of the subject, the Board came to a view that the mother still lacked insight into her own limited capacity and resources to train the subject. Equally, she does not have adequate insight into the problem on a whole as she still mentioned to the Board that she would like to take the subject back to Mainland. There are worries that the mother will attempt other undesirable treatments in Mainland as reported in paragraph 15 of the social enquiry report. In view of these inadequacies of the mother, the Board therefore decided to appoint Director of Social Welfare as the guardian of the subject.

DECISION

14. The Guardianship Board is satisfied on the evidence and accordingly finds:-
- (a) That the subject who has a mental handicap within the meaning of section 2 of the Ordinance which warrants the subject's reception into guardianship;
 - (b) The mental handicap 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, his 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-yee)
Chairperson of Guardianship Board