



REASONS FOR ORDER

Mental Health Ordinance (Cap. 136)¹

(Section 59O)

BETWEEN

The Director of Social Welfare

Guardian²

and

Mr TSH

Subject³

Members of Guardianship Board constituted

Chairperson of the Board: Mr Charles CHIU Chung-yee

Member referred to in section 59J (3) (b): Ms ONG Man-chi

Member referred to in section 59J (3) (c): Mr KO Ping-hang

Date of Reasons for order for Renewal: the 22nd day of August 2017.

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 and S59U(4)(b) of Mental Health Ordinance

³ S2 of Mental Health Guardianship Board Rules and S59U(4)(a) of Mental Health Ordinance

REASONING OF THE BOARD

Background to review

1. The subject is 69 years of age, woman, with vascular dementia. The earlier renewed guardianship order had been made on 5 September 2014 for a period of three years, with powers to make decisions on the subject's behalf as set out therein, and subject to the conditions referred to therein.

The Law

2. This Review was conducted under section 59U (2) (b) of the Mental Health Ordinance, which requires that a review must be conducted prior to the expiry of the original Guardianship Order.

Background

3. This is the second review of this case.

Extract from Reasons for Order on 9th day of September 2013 – the first hearing

Reasoning for receiving the subject into guardianship and appointing the Director of Social Welfare as legal guardian

4. The Board needs to thank Mr C for his strenuous efforts to preserve the integrity of his social enquiry report, thereby exposing, without fear of the reaction of the abusers, a case of financial abuse.

5. The applicant (younger brother, TK) and his wife are suspected abusers over the subject's sizeable assets, say the least, HK\$5.206 million.

6. The subject originally owned two properties in Shatin ("1st Properties") in sole ownership for a long time. Both the psychiatrist specialist and a doctor providing the supporting medical reports in March 2013 confirmed that the subject has poor MMSE scores, 11/30 in August 2011 and 4/30 in March 2013. Most importantly, the two doctors stated unequivocally that the subject suffered from Vascular Dementia for 4 years. Thus, it is established that the subject has mental incapacity since 2009.

7. Bearing in mind the time line of onset, the Board holds that: -
 - (i) the will made on 2 June 2010,

 - (ii) the change of the sole ownership of the 1st Properties into joint ownership with the applicant in June 2010,

 - (iii) the sale of the 1st Properties respectively in March and April 2011 at HK\$5.206 million,

 - (iv) the consequential purchase of the flat in Tuen Mun under the names of the applicant and his wife ("1st TM flat"),

 - (v) the adding of the applicant's name as a joint holder of the subject's bank account no. 833,

 - (vi) the withdrawal of the entire remaining credit balance of HK\$3.83 million from the aforesaid advance account in early October 2012,

- (vii) the deposit of the aforesaid sum of HK\$3.83 million into another bank account in the joint names of the applicant and his wife,
- (viii) the sale of the 1st TM flat and purchase of another flat in Tuen Mun (“2nd TM flat”) under joint ownership of the applicant and his wife in early 2013,

are all blatant acts of financial abuse over subject’s assets.

8. The Board cannot emphasize more on the timing of the complete depletion of the money of the joint bank account. That was taken place at the most vulnerable moment of the subject because it was in the same month of the subject’s admission to old age home, namely, early October 2012. The applicant’s explanation that the depletion was made in order to avoid the nuisance calls from the sales personnel of bank is plainly unacceptable.
9. Even in the applicant’s own version given at the hearing, the subject has at no stage stated, orally or in writing, whatsoever that her entire money or assets were or would be given to the applicant during her life time.
10. Lastly, the Board points out that during the course of hearing and with immense patience the Board attempted to persuade the applicant to make restitution of money but was outright rejected by the applicant who perceived the invitation to treat as an intimidation or bluffing to him. The Board deeply regrets the applicant’s naivety. The applicant’s ruthless response plainly and unreservedly revealed only one thing, that is, his first priority was to secure the eventual pecuniary interests of him and his wife over that of the subject.

11. This is a clear case of serious financial abuse by close, if not the closest, family members. The applicant has clear conflict of interests of a financial nature with the subject.
12. The Board receives 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 reasoning for recommending Guardianship Order as contained therein and accordingly decides to receive the subject into guardianship in order to protect and promote the interests of welfare of subject and the Director of Social Welfare to be appointed as the guardian of the subject in this case.

Background and development

13. Committee Order in favour of Official Solicitor was granted on 11 November 2015. The public guardian has taken up the elder abuse swiftly and in joint efforts with Department of Justice and Official Solicitor, has pursued the younger brother (the abuser) to return (which he did) half of the proceeds of the subject's two joint flats in a sum of \$ 2.5 million. The subject is now well settled down at a subvented care and attention home.

Summary of evidence adduced at hearing on 22 August 2017 - present hearing

14. **Mr L**, the delegated guardian and social worker, on behalf of the Director of Social Welfare, says the subject is deteriorating in her overall conditions.
15. The Board would like to thank Mr L for his clear reports and case work.

16. [Mr TK, younger brother of subject, says he is very satisfied with the service of the present care and attention home.]

Reasoning of the Guardianship Board

17. The Board accepts and adopts the views of Dr K as contained in the medical report dated 11 August 2017 and as well as the views and recommendations of the progress social enquiry report and accordingly decided not to renew the Guardianship Order.
18. Taking into account of the continual and satisfactory care provided to the subject by the old age home and the family, the Guardianship Board concludes that the subject's best interests and welfare needs can be met without the renewal of the guardianship order.

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