



REASONS FOR ORDER

Mental Health Ordinance (Cap. 136)¹

BETWEEN

Madam H

Applicant²

and

Madam C

Subject³

The Director of Social Welfare⁴

Members of Guardianship Board constituted

Chairperson of the Board: Mr Charles CHIU Chung-yee

Member referred to in section 59J (3) (b): Dr Michael TSANG Hing-pui

Member referred to in section 59J (3) (c): Ms Rosina HON

Date of Reasons for order: the 21st day of January 2016.

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

⁴ S2 of Mental Health Guardianship Board Rules and S59N(3)(c) of Mental Health Ordinance

BOARD'S ORDER

1. These Reasons for Decision are for the Board's Order made on 21 January 2016 concerning Madam C ("the subject"). The Board appointed the Director of Social Welfare as the guardian of the subject, for a period of one year, with powers to make decisions on the subject's behalf, as set out in the Board's Order, and subject to the conditions referred to therein.

THE HEARING ON 21 JANUARY 2016

2. The following persons gave evidence to the Board: -
 - (a) Madam H, the applicant and proposed guardian;
 - (b) Madam B, 1st daughter of the subject;
 - (c) Madam P, 2nd daughter of the subject;
 - (d) Madam M, 3rd daughter of the subject;
 - (e) Mr W, 6th son of the subject;
 - (f) Madam K, daughter-in-law of the subject;
 - (g) Mrs J, 7th daughter of the subject;
 - (h) Ms Y, a public officer, on behalf of the Director of Social Welfare.
3. The subject did not attend the hearing, and was not interviewed in advance by a Board member, as due to the subject's health it was not practicable to interview the subject or to have the subject attending the hearing.

REASONING OF THE BOARD

Background

4. The application for the appointment of a guardian for the subject, under Part

IVB of the Ordinance, dated 8 April 2015, was registered as received by the Board on 8 April 2015. The applicant is Madam H, daughter. The evidence shows that the subject is 92 years of age, woman, with Alzheimer's disease. The subject was unable to handle finances and was incapable of consenting to treatment.

The Law

5. Section 59O (3) of the Ordinance provides that, in considering whether or not to make a guardianship order, the Guardianship Board must be satisfied that the person, the subject of the application, is in fact a mentally incapacitated person in need of a guardian, having considered the merits of the application and observed the principles and criteria set out in sections 59K (2) and 59O (3) (a) to (d) of the Ordinance respectively.

Summary of evidence adduced at hearing

6. **Madam B**, 1st daughter of the subject, admits that on 9 March 2015, the subject wrote down her name (i.e. Madam B's name) and the name of subject's 2nd daughter Madam P, son Mr W and subject's own name on a piece of paper. This was a draft paper on which the subject tried to write down the names of her children whom she would like to entrust with handling of her bank accounts. There was nothing else written on it. It was just an exercise. Those names were just written down after subject spoke those names out first. The subject could not write well. The paper was thrown away afterwards.
7. She agrees to a grant of Guardianship Order today. She would like Director of Social Welfare as guardian.

8. **Madam H**, the applicant, proposed guardian and 8th daughter of the subject, says it should be her eldest sister (Madam B) to manage the admission of the subject to old age home in February 2015, but no one took it up that day and it fell on her to do it. She finally took it up and signed as guarantor. She thought at that time the subject's money from the estate of the late father could pay for the home expenses. But subject soon found to be demented in March 2015 at a hospitalization and there was no way to handle her money. On 9 March 2015, she was told that the subject signed a blank paper. On this matter, she consulted a medical social worker who advised her to discuss with case medical officer to see if the subject would be certified (as mentally incapacitated). Assessment was done on 26 or 27 March 2015. By end of March 2015, she discussed with siblings on guardianship application without telling them of the signing of the blank paper. Focus was on using subject's finance. It still stays good today.

After recess

9. Madam H says the other purpose of Guardianship Order is to manage the subject's treatment. Before, she saw subject deprived of chances of adequate treatment. The most significant event happened on 13 March 2015 at orthopaedic ward at hospital when the son wanted to discharge subject for bone setting treatment. This was rejected by the hospital doctor outright.
10. The other purpose is to decide on further accommodation. Subject has now been admitted to an old age home. She needs financial support to continue the subject's stay there. She overheard in March or April 2015 from other siblings that her elder brother would like to restore the subject to his care. She has not heard anything like that since and now. That happened around the time when the subject suffered from bone fracture. She was concerned about this suggestion as there has been inadequate care before when the

subject stayed at the son's home. On these, she has expressed in details in her letters sent to the Board.

11. The final purpose is relating to a recent event. On 8 November 2015 her 2nd elder sister Madam P wrote a letter and sent it to all siblings by Whatsapp in which she stated that if there were no Guardianship Order granted, she would stop paying contribution in future. She ran all the subject's errands since, including providing medical escorts. As the guarantor, she cannot back out her obligation. She thinks Guardianship Order is important to protect the subject and herself.
12. Also, on matters of buying items, like high back chair, would be beneficial to the subject, regarding which other siblings has also opposed.
13. Her 3rd elder sister Madam M and 4th elder sister Madam F (in Canada) supports her views often.
14. She likes to be appointed as legal guardian of the subject, but not Director of Social Welfare.
15. [Towards her appointment: -
Eldest daughter Madam B: not agreed;
3rd daughter Madam M: **agreed**;
7th daughter Mrs J: not agreed;
Daughter-in-law Madam K: not agreed;
Son Mr W: not agreed;
2nd Daughter Madam P: not agreed.]
16. **Madam P**, 2nd daughter of the subject, says she agrees to Guardianship Order and to appoint Director of Social Welfare as guardian. Her letter sent

by Whatsapp to others was to bring pressure on others not to dispute the guardianship application and dragged on it. She is a retiree and cannot afford subject's expenses in a long run. This is one example of the applicant in having distorted interpretation of an act of others.

17. **Madam M**, 3rd daughter of the subject, says she agrees to Guardianship Order but would like the applicant to become the guardian. Her second choice is the Director of Social Welfare as guardian though.
18. **Mr W**, 6th son of the subject, says he agrees to Guardianship Order and would like to have Director of Social Welfare appointed as legal guardian. He says he already mentioned his view on objecting the applicant as guardian.
19. On the treatment of subject's bone fracture (in March 2015), he was just thinking of and proposing an alternative treatment. Considering the past year's collaboration with the applicant and siblings, he thinks Director of Social Welfare is a more appropriate person to be appointed as guardian.
20. Regarding accommodation, subject has lived with him for over 20 years. Since the subject valued son more than daughters, he was thinking of restoring the subject to his care and as such it would respect the subject's wish and feelings. In his view by now, there will be many practical difficulties and it will not be easy at all due to physical limitations and lack of other supportive measures.
21. **Madam K**, daughter-in-law of the subject, says she agrees to Guardianship Order and Director of Social Welfare as the legal guardian. She has lived with the subject for over 20 years. Despite not being easy, she came along with the view of receiving back the subject at that time. It is always her

view that the benefits of the subject is paramount at all times. Director of Social Welfare will be better to act as guardian in order to balance out the difficult situations.

22. **Mrs J**, 7th daughter of the subject, says she agrees to Guardianship Order to be granted today and Director of Social Welfare to be appointed as legal guardian. On admission to the present old age home, it was at a late night. She withdrew money from bank and paid the deposits that night. On signing contract, it was the next day. She was present. There was not much discussion as to who to sign as guarantor. It was the applicant who was more active in her roles in all these similar situation. [Eldest daughter **Madam B** says there was no other motive as to whom should sign the contract as all will be contributing to expenses.]

23. **Ms Y**, medical social worker and the maker of social enquiry report, on behalf of the Director of Social Welfare, says she has nothing to add.

24. The Board would like to thank Ms Y for her reports in Chinese.

Issues and Reasoning

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

25. The Board dismisses the application for Emergency Guardianship Order as the decision on normal Guardianship Order is made today.

26. Upon perusing the voluminous written submissions prepared by the applicant, the social enquiry reports and hearing the parties and family members today, the Board is satisfied that there have been serious conflicts

of opinions between primarily the applicant of the one side (supported by the 3rd daughter Madam M) and the rest of the children of the subject of the other side, including predominantly the eldest daughter Madam B and the son Mr W (whilst the 4th daughter Madam F and the 5th daughter Madam W are less involved). These cleavages were over subject's accommodation after her bone fracture in March 2015, purchase of equipment, treatment options (e.g. use of feeding tube, use of various medications and even treatment plans towards end of life time) and the future choice of manager of subject's money at bank. From the index incident, as recorded above in the summary of evidence, of the alleged coaxing the subject into signing names on a blank paper on 9 March 2015, it is clearly seen that the applicant has harboured much mistrust against the eldest daughter and the son of the subject, doubting much of them in taking financial advantages of the subject. There is, in the observation of the Board, no signs of any possibility of compromise between the two sides up till this moment at all. The Board has elicited clearly that both sides have found it much needed to have a guardian appointed to mobilize the savings of the subject at bank in order that her daily expenses can be met in future, as they are no longer affordable to contribute any more or in the long run. Since the subject is certified by two medical practitioners, one being a psychiatrist, as mentally incapacitated to handle her affairs, including finances, the Board has no hesitation at all to receive her into guardianship. The parties have no dispute to the grant of Guardianship Order.

27. What they actually disputed today is as to whom should be appointed as the legal guardian.

28. The Board carefully considers s.59S of Mental Health Ordinance (Cap. 136):

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“(1) A person (other than the Director of Social Welfare) shall not be appointed by the Guardianship Board as a guardian of a mentally incapacitated person received into guardianship under this Part unless the Board is satisfied that-

(a) the proposed guardian has attained the age of 18 years;
(b) the proposed guardian is willing and able to act as a guardian;

(c) the proposed guardian is capable of taking care of the mentally incapacitated person;

(d) the personality of the proposed guardian is generally compatible with the mentally incapacitated person;

(e) there is no undue conflict of interest, especially of a financial nature, between the proposed guardian and the mentally incapacitated person;

(f) the interests of the mentally incapacitated person will be promoted by the proposed guardian, including overriding the views and wishes of that person where the proposed guardian (once appointed) considers such action is in the interests of that person;

(g) despite paragraph (f), the views and wishes of the mentally incapacitated person are, in so far as they may be ascertained, respected;

(h) the proposed guardian has consented in writing to the appointment as a guardian.

(2) Where it appears to the Guardianship Board that there is no appropriate person available to be appointed the guardian of a mentally incapacitated person the subject of a guardianship application, the Guardianship Board shall make a guardianship

order appointing the Director of Social Welfare as the guardian of the mentally incapacitated person.

(3)”

29. The applicant would like very much to be appointed but the other side clearly are united to opt for the appointment of Director of Social Welfare as the public guardian. As discussed above, there is deep mistrust between the two sides. The conflicts of opinion over all domains of life of the subject is deeply entrenched. It is impossible to appoint either side to the private guardian. The circumstances of this case plainly call for the appointment of the public guardian, being a neutral, yet professional, third party to act as the subject's legal guardian. On the record, the applicant's proposal to be appointed was not agreed upon by the other side i.e. a predominant majority of the children. The Board observes the inability of the applicant to act as guardian as follows: -

- (a) The applicant and siblings have been in serious mistrusts and conflicts over the welfare and finance matters of the subject and such antagonistic relationship lasts up till now (see paragraphs 9 to 17 and 19 of supplementary information dated 20 January 2016). Most of her siblings categorically and in fact oppose to the appointment of the applicant as the guardian of the subject. Being so, it is impossible for the applicant to obtain the full co-operation of the siblings in future over the implementation of her decisions in the welfare matters of the subject if appointed as the legal guardian.
- (b) Due to the live and strong disagreements and mistrust between the two sides, it is impossible to appoint the applicant as the private guardian especially where herself is a key party to the family conflicts. One of

the reasons is that a decision made by a private guardian in such circumstances will unlikely get support from the other side. Further, when challenged, the private guardian will not be perceived or seen by the other side to be properly, fairly and impartially dealing with the complaints or investigating the same.

30. Therefore, the Board accepts and adopts the view of the social enquiry report maker who recommended, as contained in the report, the Director of Social Welfare, being a neutral public officer, to be appointed as the guardian of the subject in this case.

DECISION

31. The Guardianship Board is satisfied on the evidence and accordingly finds: -

- (a) That the subject, as a result of Alzheimer's disease, 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, treatment plan and finances, which has caused conflict between family members in making decisions for subject's welfare or finance;

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, future treatment plan and finance;

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

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

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