



REASONS FOR ORDER

Mental Health Ordinance (Cap. 136)¹

(Section 59O)

BETWEEN

Mr ML

Guardian²

and

Madam KP

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): Ms Alice LAU Shuk-yee

Member referred to in section 59J (3) (c): Ms Lana TSANG Chung-man

Date of Reasons for Order: 7 November 2014.

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

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

Background

1. The subject, Madam KP, aged 70 and suffered from vascular dementia. The Board ordered the subject be received into guardianship since 7 November 2013. The original guardianship application was filed by the elder son of subject with the reason for mobilizing the savings at bank of subject for maintenance. In fact, there was a different view (though not salient in November 2013) on handling the home care arrangement of the subject between the subject's husband (now deceased) with the younger son of the one side and the applicant of the other side. Finally, the Board appointed the applicant (i.e. the elder son of subject) to be the guardian. The Board also advised the younger son to closely liaise with the case social worker in case of difficult situation.
2. During the review period, the Board noted that the subject's application for subvented care and attention home placement was changed to "inactive" due to the subject was admitted to a day care centre. The guardian Mr ML insisted to reactive the placement application in late September 2014 as the subject's health condition was deteriorating and he would like the subject to receive professional care in the long run. At the meantime, the younger son thought that the subject's health condition was stable currently and would like to keep the subject at community-based living at home with support from a domestic maid. The case social worker had already discussed with the two son but they could not reach any consensus over the issue.
3. The case was now brought up for review.

Summary of evidence adduced at hearing on 7 November 2014

4. **Mr ML**, the current guardian and son of the subject, said he liked to have the Guardianship Order to be renewed and he also liked to continue to act as guardian of the subject. The main reason for renewing the Guardianship Order was for the guardian to decide on a future placement at a subvented facility, due to deteriorating conditions of the subject. In this respect, he held unfortunately different opinions from his younger brother (“MM”) who might not like the subject to be admitted to a placement at a particular point in time. He had no objection to have Director of Social Welfare appointed as new guardian. He had no plan to immediately send subject to an old age home. He was largely satisfied with the service of the present Indonesian maid.

5. **Mr MM**, younger son of the subject, said he agreed to an extension of Guardianship Order and he liked himself to be appointed as guardian. He would reluctantly not object to an eventual appointment of Director of Social Welfare as the new guardian if the Board thought fit. He liked any decisions for the subject were made for her interests and be openly discussed. Originally, he thought there was no need for renewal of Guardianship Order up till 28 September 2014. On that day, the guardian called him up and hastily mentioned about a subvented placement which could be made available quickly, say, in about a month, provided the original waitlisting could be re-activated. While discussing, the guardian suddenly cut the line. [The guardian Mr ML said afterwards he did submit an application through a friend’s introduction to a subvented care and attention home in Kwun Tong in October 2014, but it was turned down due

to unmet admission criteria.] He thought residential care was not in subject's best interests because the subject has been well cared for at a close-by day centre while staying at home with the maid. He was doubtful if a subvented placement was suitable for the subject for now. Subject has been on Ryles' tube and the maid could render more time to give care to subject as she did not need to cook. The maid received good remarks from day centre workers and neighbors. He saw, through a web-camera, the maid sometimes danced to entertain the subject.

6. Case social worker of Integrated Family Services Centre and the maker of Progress Social Enquiry Report, on behalf of the Director of Social Welfare, said she has nothing to add.
7. The Board suggested that in the event of an offer of subvented placement coming up during the next renewed period, the public guardian will need to draw up a Best Interest Balance Sheet in order to arrive at a decision. Such a Balance Sheet must be enclosed with the next progress social enquiry report.

Issues and Reasoning

Reasoning for continuing to receive the subject into guardianship

8. The Board received and adopted the progress social enquiry report and the views and reasoning for recommending Guardianship Order as contained therein and accordingly decided to continue to receive the subject into guardianship in order to protect and promote the interests of welfare of

subject.

Reasoning for changing the legal guardian

9. Upon hearing the parties and the subject's younger son Mr MM at the hearing, the Board found that there were indeed unresolved conflicts of opinions between the two sons over the timing of sending the subject to a care facility. The Board therefore adopted the view of the Director of Social Welfare in recommending for public guardianship in this case. In the judgment of the Board, appointing one of the sons as the guardian would likely escalate the conflicts between them. Further, a decision made by the private guardian (if appointed) would most likely be challenged by the other son and the matter will then be further and unnecessarily complicated. Given the conflictual context, a complaint made by the other side against the private guardian could never be perceived as fairly, openly and adequately dealt with or investigated into. The state of affairs would then be unsatisfactory to the extent that the decisions and actions of the private guardian could not be executed and supported by the other family member. The Board therefore ordered the Director of Social Welfare as the new guardian of the subject.

DECISION

10. The Board was satisfied and accordingly found 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 consent to medical treatment. 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.

11. The Guardianship Board applied the criteria in section 59S of the Mental Health Ordinance and was satisfied that the Director of Social Welfare was the most appropriate person to be appointed the new guardian of the subject.

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