



REASONS FOR ORDER

Mental Health Ordinance (Cap. 136)¹

(Section 59O)

BETWEEN

Mr F

Guardian²

and

Madam KN

Subject³

The Director of Social Welfare⁴

Members of Guardianship Board constituted

Chairperson of the Board: Mr Charles CHIU Chung-ye

Member referred to in section 59J (3) (b): Dr CHENG Kin-wing

Member referred to in section 59J (3) (c): Ms Katherine SUNG

Date of Reasons for order for Renewal: the 18th day of October 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

Background to review

1. The subject is 81 years of age, woman, with cerebral vascular accident. The earlier renewed guardianship order had been made on 21 October 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.

Case background

3. This is a 2nd review hearing, the subject was under guardianship since 2013. The guardian-son was found out to have kept sizeable unused cash (\$120,000) away from the guardian account for exactly a year. The lurking act was that a year ago, after the subject's admission to a subvented care and attention home for a while, the guardian suddenly withdrew, in four consecutive days, a total of \$90,000 (almost all the unused cash) from the guardian account. The case social worker made no reports to the Board nor enquired about it. The guardian kept withdrawing unused cash from time to time since then at lumps of \$20,000. The case social worker claimed to have checked all bank account documents/statements monthly but she did not file full set of the guardian accounts. On being requisitioned, full set of the bank statements were filed.

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

Summary of evidence adduced at hearing

4. On entering the hearing room, the Board requests **Mr F**, the guardian and son of the subject, to take off his face mask. He does so.
5. On being probed on the cash issue of this case, he refuses to speak and finger-points at the case social worker. He indicates by his fingers and slurring words that the case social worker will speak for him. The Board is bewildered by such a reaction and insists that he should speak up. He then speaks.
6. Mr F says he took the money out from the guardian account [between 22nd to 27th April 2016 (\$94,500) and then intermittently withdrew lump sums at \$20,000 thereafter] because he was afraid of being robbed during hiking trips. He says he has even seen robberies. The money was huge and it was risky to keep in the bank account (i.e. guardian account) and carry along the ATM card during hiking. His other accounts hold no or little money. He was previously advised by case social worker not to bring the ATM card of the guardian account along to hiking. He always forgot this advice and brought the ATM card along. He says he kept the money (over \$124,000 as at early April 2017) at his home which he thought to be the safest. He says he was a filial son and the money in the subject's accounts were all his. When challenged on risks of burglary to his home, he turns to sneers and says he lived in a public housing unit and asked the Chairperson not to make jokes to him. When being warned of impoliteness, he says he was all along polite but he just laughed. On being rebuked, he then shook and swayed his head purposely, numerously and continuously and made giggling sounds until told to stop.
7. The Board stands the case down for him to cool down.

8. [Hearing resumed.]
9. The Board notices that Mr F takes out a piece of paper and grossly indicates by his writing postures he was writing down the names of each panel members and further exaggerated his body languages that he would be seen writing down whatever put to him by the Board during the rest of the hearing.
10. He denied of financial difficulties in the month of April 2016 when he withdrew the monies from the guardian account.
11. He agrees to case social worker's recommendation for extension of Guardianship Order for another 20 months to use up the majority of the credit balance of the guardian account. In future, he agrees to follow the requirement of not withdrawing the money from the guardian account or keep those money in other places at will.
12. The Board is concerned with Mr F's subtle claims of his physical discomfort today.
13. On repeated clarifications, being probed, he says he did not wish to adjourn the hearing today, though he felt sick.
14. Mr F repeatedly murmurs that he does not want to go over the whole story again and uttered repeatedly words like "never mind". He says he does not want to entangle further with the Board and even retorts that he dares not to argue due to the Chairperson's huge flare ("咁大官威"). During the course of the hearing at numerous times, when being confronted, he turns his head sideway towards the case social worker Ms C and both laughed together.

15. On his apparent or posed grievances or professing to have been misunderstood (on probably ownership of subject's money at subject's bank accounts), the Board felt very uncomfortable and thus repeatedly explains to him that it is his choice to continue the Guardianship Order or not, in the same way as he first voluntarily submitted this application four years ago. Guardianship Order has never meant to be forcibly imposed on him/the subject. Further, the Board makes it crystal clear to him that he was in blatant breach of Standard Condition e (ii) of the Guardianship Order and has behaved inordinately impolite to the Board throughout.
16. **Ms C**, case social worker and the maker of Progress Social Enquiry Report, on behalf of the Director of Social Welfare, says she apologises for overlooking the cash issue in this case, even though the bank statements of the guardian account were checked by her each month. She remarks the guardian as genuine and dutiful.
17. The Board makes it clear to Ms C that it is a matter of common sense to spot the cash issue, which is nothing to concern with her lack of experience in supervising guardianship case. She must take this case experience to heart. Ms C is hereby reprimanded for her various uninvited attempts to speak up and inappropriate responses towards the guardian to laugh together at the legal proceedings taken place today.

Issues and Reasoning

Reasoning for continuing to receive the subject into guardianship

18. The Board receives and adopts the progress social enquiry report and the views and reasoning for recommending Guardianship Order as contained therein (particularly paragraphs 23 to 25) and accordingly decides to

continue to receive the subject into guardianship in order to protect and promote the interests of welfare of subject.

Reasoning for continuing to appoint the legal guardian

19. The Board is in grave difficulty to accept the averred explanation of the guardian in the keeping the subject's substantial amount of the unused trust money (\$124,000) on hand for such a long period of time (about a year) because it lacks reasonableness. Yet, considering the case social worker's good comments on role performance of the guardian and the deposit back of all concerned monies by April 2017, the Board reluctantly accepts the recommendation to renew the Guardianship Order and the guardian's continual appointment for another 20 months, with (inter alia) the power to use the credit balance of the guardian account only.
20. Nonetheless, the Board would record that the Board is extremely displeased with the disrespectful, contemptuous and cynical words, facial expression, body language and overall demeanour of the guardian deliberately exhibited during and in the course of hearing today.
21. The Board equally finds it extremely distasteful, bewildered and repulsive to observe the passive-aggressive attitude blatantly shown by the guardian today. May it be known that the great patience, tolerance and accommodation afforded to the guardian today by the Board is based on the fulfilment of the professed Values of the Board, namely, to treat family afflicted with plights of life with Respect and Compassion.
22. Finally, the guardian must take it to heart that this is the very final warning given to him by Board. He should not commit any breach of order again or adopt similar unacceptable and disrespectful attitude to Board in future.

DECISION

23. The Board is satisfied and accordingly finds that the subject remains 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 needs a guardian to make substitute decisions, as the subject lacks capacity to make reasonable decisions on personal and welfare matters including decision on financial matters. For the same reasons as stated in the renewed Guardianship Order, the Board is satisfied that there remained no less restrictive or intrusive alternative to guardianship. The Board concludes that it is in the interests of the welfare of the subject to continue to be under guardianship and that the original guardianship order should be renewed.
24. The Guardianship Board applies the criteria in section 59S of the Mental Health Ordinance and, not without much reluctance, continues to appoint Mr F as the guardian of the subject. Due to his serious breach of the Standard Condition and his extremely poor attitude and reaction, the Board decides only to extend the order for a short period of 20 months and call for interim reports as the Board needs to closely monitor Mr F's performance.

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