

## **Executive Summary**

# **Direct Investigation into Social Welfare Department's Monitoring of Services of Residential Care Homes for the Elderly**

### **Foreword**

With the continuously ageing population in Hong Kong, the demand for services of residential care homes for the elderly (“RCHEs”) has become more intense, and the service standard of RCHEs has attracted much public attention. The Social Welfare Department (“SWD”), being the authority responsible for monitoring RCHEs, has the duty to oversee the operations of all local RCHEs (including subvented RCHEs and private RCHEs<sup>1</sup>) to ensure that they provide up-to-standard service and care to their residents. However, there have been media reports from time to time alleging that some RCHEs treated residents with neglect or even uncovering incidences of elder abuse<sup>2</sup> in RCHEs. The society at large demands that the Government strengthen its monitoring of RCHEs and improve the existing legislation to prevent recurrence of the above problems. In this light, The Ombudsman initiated this direct investigation to probe any inadequacies regarding SWD’s monitoring of RCHEs, with a view to making recommendations for improvement.

### **Our Findings**

2. SWD monitors the operations of all RCHEs through a licensing scheme under the Residential Care Homes (Elderly Persons) Ordinance (“the Ordinance”) and the Residential Care Homes (Elderly Persons) Regulation (“the Regulation”). In addition, the Code of Practice for Residential Care Homes (Elderly Persons) (“the Code”), issued by the Director of Social Welfare (“the Director”) pursuant to the Ordinance, sets out the principles, procedures, guidelines and standards for operators’ compliance with regard to how they should operate, keep, manage or in any other way manage RCHEs.

3. The Licensing Office of Residential Care Homes for the Elderly

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<sup>1</sup> Subvented RCHEs are operated by non-Governmental organisations and subsidised by the Government. Private RCHEs are operated and funded by individuals or private organisations.

<sup>2</sup> SWD’s Procedural Guidelines for Handling Elder Abuse Cases defines elder abuse as: “Generally speaking, elder abuse refers to the commission or omission of any act that endangers the welfare or safety of an elder.”

(“LORCHE”) under SWD is responsible for processing all applications for and renewal of RCHE licences. The Ordinance provides that if an RCHE licence holder commits an offence under the Ordinance, LORCHE may cancel, suspend or refuse to renew the licence, or amend any condition of the licence. For the purpose of monitoring RCHEs, LORCHE has set up four professional inspectorate teams to conduct inspections at RCHEs with respect to the four aspects specified in the RCHE licence, namely, social work, health care and hygiene, building safety and fire safety. If irregularities are found during inspections, LORCHE would, depending on the gravity of the irregularities, take enforcement actions against the RCHE in question. The actions may include issuing an advice, a warning or “direction on remedial measures”<sup>3</sup> (“DRM”) pursuant to the Ordinance. Follow-up inspections would also be conducted to check if the RCHE in question has made improvements.

4. This Office finds the following inadequacies with regard to SWD’s monitoring of services provided by RCHEs.

***(I) Current Laws Antiquated, Incomprehensive and with Limited Effects***

5. Since the enactment on 1 June 1996 of the Ordinance and the Regulation, for over 22 years, no amendments have ever been made to the important requirements specified therein regarding staffing level and other operational matters of RCHEs. This Office notices that over the years there have been demands in society for amendments to the Ordinance and the Regulation. While SWD is already conducting a review on the legislative amendments and anticipates completion of the review and initiation of the legislative procedures in mid-2019, it is possible that the legislative amendments may still take years to complete. Meanwhile, the various serious breaches by some RCHEs (such as infringement of the residents’ privacy, wrong administration of drugs, improper use of restraints, etc.), which may result in physical and mental harm in residents, are not indictable offences under the Ordinance and the Regulation. Besides, the scope of monitoring under the current legal framework does not cover such regular services as escorting residents and accompanying them to attend medical consultations outside the RCHE premises. We consider that SWD should also review this issue with a view to ensuring that residents are properly taken care of by RCHE staff when they go out for medical consultations.

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<sup>3</sup> Section 19 of the Ordinance provides that the Director may, in respect of any residential care home, by notice in writing, give directions on remedial measures as appear to him to be required to secure that it is operated and managed satisfactorily. The Director shall indicate a period within which the directions shall be complied with.

## **(II) Lax Enforcement**

6. SWD's enforcement against under-performing RCHEs or those RCHEs committing the offences under the Ordinance has been lax. The enforcement measures it implemented not only lacked deterrent effects, but also failed to induce timely and effective improvements by those RCHEs with irregularities. The Department must promptly address the following inadequacies in its enforcement actions.

- (1) **Cancellation of Licence:** During the four years between 2014/15 and 2017/18, SWD had not cancelled any RCHE licence. Nevertheless, there was a case where the RCHE concerned had repeatedly committed serious breaches. SWD should have considered cancelling its licence. Although strict enforcement of cancellation of RCHE licences may cause some RCHEs to close down, making it even more difficult for the elderly to find accommodation, the ultimate victims will still be the elderly if RCHEs repeatedly commit serious breaches. Rigorous enforcement actions can generate deterrent effects to RCHEs, alerting them to ensure their service quality, which, in turn, benefits the elderly.
- (2) **Institution of prosecution:** Where the breaches committed by an RCHE are of a serious nature or magnitude, LORCHE will issue a warning or, pursuant to the Ordinance, a DRM to the RCHE. During the three years between 2014/15 and 2016/17, SWD had issued some 300 to 400 warnings and DRMs to RCHEs each year. The conviction rate was, however, rather low, with only 16 cases in three years. In 2017/18, the offenders in 23 prosecutions were convicted, representing an increase in the number of conviction cases. We expect SWD to continue to strengthen its rigorous enforcement actions.
- (3) **Setting deadline for improvement measures and timetable for follow-up inspections after issuing warnings:** When SWD issues a DRM, it normally requires the RCHE committing breaches to rectify the problem within 14 to 30 days. Upon expiry of the deadline, SWD will conduct follow-up inspections. Nevertheless, SWD has not set any deadline for implementing improvement measures, nor a timetable for conducting follow-up inspections after issuing a warning. Where an RCHE is issued a warning for a serious breach, the breach

represents violation of the Ordinance/Regulation (such as failing to meet staffing requirement). The gravity of the breach is no less than that of acts which would justify the issuance of a DRM (such as improper use of restraints). In our view, SWD should set a deadline for implementing improvement measures and a timetable for conducting follow-up inspections after issuing a warning against any irregularities.

- (4) **Delay in taking or taking no enforcement action:** Another case revealed that SWD had failed to follow established procedures to issue a warning within 7 working days to an RCHE for failure to meet statutory staffing requirement. Instead, SWD issued a warning to the RCHE in question some five months later, and it had not conducted any timely follow-up inspection to check whether the problem was rectified. Furthermore, SWD had not conducted an in-depth investigation into the suspected falsified staff duty roster submitted by the RCHE in question, while provision of false information is an indictable offence that SWD can prosecute under the Ordinance.
- (5) **Following-up elder abuse cases:** Currently, elder abuse is not an offence under the Ordinance/Regulation and hence SWD is not empowered to institute prosecution directly in this regard. However, SWD can issue a DRM to the RCHE in question, requiring the latter to improve or rectify the situation. Should SWD find that the RCHE has not complied with the DRM, SWD can institute prosecution pursuant to the Ordinance. Moreover, under the Ordinance, the Director may cancel, suspend or refuse to renew the licence of an RCHE, or amend any condition of the licence on the ground that the licence holder has been convicted of an offence under the Ordinance or any indictable offence. In one suspected elder abuse case where an RCHE resident died, there was no record showing that SWD had actively enquired of the Police and the coroner's court of their findings so as to decide what enforcement action should be taken against the RCHE in question.

### **(III) *Inspection Mechanism***

7. The current inspection mechanism of SWD has the following inadequacies:

- (1) **Effectiveness of comprehensive inspections questionable:** LORCHE conducts regular comprehensive inspections of RCHEs to examine all the specified items under regulation in the aspects of social work and health care and hygiene. Apart from examining the environmental safety and hygiene, facilities and manpower of an RCHE, LORCHE inspectors also have to check the employment records of staff, and personal records of residents of the RCHE. Moreover, the inspectors have to interview residents and their family members, and observe whether the RCHE has made due arrangements for administration of drugs, meals and baths for residents. As each item of the inspections has to be checked and observed carefully, and details of inspection have to be recorded against a checklist, the workload is quite heavy. Nevertheless, such duty is usually carried out by one or two inspectors and completed within half a day or one day. It is questionable whether the inspectors can conduct a comprehensive, in-depth, and effective inspection of an RCHE's operation within such a short period of time. The saving grace is that, in recent years, additional resources have been earmarked and retired officers from disciplined forces have been recruited to strengthen SWD's inspection work. We expect that SWD will continue with their efforts to further enhance the effectiveness of their inspections.
  
- (2) **Inspections of subvented RCHEs:** For private RCHEs, LORCHE conducts at least three inspections each year in the aspects of social work and health care and hygiene. However, for subvented RCHEs, the frequency of inspection used to be only at least once every three years in those aspects, which was obviously less than that with private RCHEs. After we commenced our direct investigation, LORCHE has since April 2017 increased its inspections of subvented RCHEs to at least once annually, but it is still less frequent than the inspections of private RCHEs. LORCHE should consider further increasing the frequency of inspections of subvented RCHEs.

#### ***(IV) Provision of Information on Non-compliance by RCHEs***

8. In the past, SWD only posted on its website the conviction records of RCHEs in breach of the Ordinance/Regulation, but did not publish any other irregularities identified by it. Since 1 April 2018, SWD has started to upload on its website the records of warnings and DRMs issued to RCHEs with irregularities for public viewing.

9. Nevertheless, apart from issuing warnings and DRMs, SWD can also take licence enforcement actions against RCHEs with irregularities, including suspension of RCHE licence, refusal to renew the licence, or decision to amend any licensing conditions. SWD should also disclose such information to the public.

#### **Recommendations**

10. In the light of the above, The Ombudsman makes the following recommendations to SWD:

##### ***Reviewing and Amending the Ordinance***

- (1) It brooks no delay to review and amend the relevant legislation. SWD, jointly with the policy bureaux concerned, should initiate amendments to the Ordinance as soon as possible, including considering extension of the legislative scope to cover offences currently not within the purview of the Ordinance and the Regulation (such as infringement of the privacy of residents, wrong administration of drugs, improper application of restraints, and elder abuse, etc.). SWD should also explore the viability of bringing under its supervision the services of escorting residents and accompanying them to attend medical consultations provided by RCHE staff.

##### ***Strengthening Enforcement Actions***

- (2) SWD should strengthen its enforcement actions, including taking enforcement actions in a timely and rigorous manner against RCHEs with irregularities. It should also step up prosecution and/or licence enforcement actions, such as cancellation of licence, against those

RCHEs which have repeatedly and seriously violated the relevant legislation/licensing requirements.

- (3) All suspected elder abuse cases should be followed up diligently. For serious incidents (such as death of residents), SWD should actively and regularly follow up such cases with the Police and/or the court, so as to take timely and corresponding action against the RCHEs in question once the Police or the court has reached a conclusion. For instance, regarding confirmed cases of elder abuse, SWD should issue a DRM in a resolute manner. If the RCHEs in question fail to comply, SWD should institute prosecution pursuant to the Ordinance.

### *Stepping up Inspections*

- (4) The operation and effectiveness of comprehensive inspections should be reviewed. Where necessary, SWD should augment and/or deploy manpower resources to conduct comprehensive inspections to ensure that its inspections of RCHEs are truly comprehensive, in-depth, and effective.
- (5) SWD should continue to strengthen its follow-up inspections after issuing warnings and DRMs, and set a deadline for RCHEs with warnings issued to rectify the relevant irregularities and a timetable for LORCHE to conduct follow-up inspections at those RCHEs.
- (6) The inspections of subvented RCHEs should be further strengthened.

### *Enhancing Information Transparency*

- (7) Apart from publishing its records of warnings and DRMs issued and convictions of RCHEs, SWD should also post on its website information about other enforcement actions (such as suspension of RCHE licence, refusal to renew the licence, or decision to amend any licensing conditions), both for public reference and to urge the RCHEs concerned to improve their services.