

# **Handling by Social Welfare Department of a complaint against a residential care home for the elderly**

## **Investigation Report**

On 19 March 2019, the complainant made a complaint to this Office against the Social Welfare Department (“SWD”). On 28 March, she provided us with supplementary information by telephone.

### **The Complaint**

2. According to the complainant, her mother-in-law, Ms X, was admitted to a residential care home for the elderly (“RCHE”, and the care home concerned is referred to as “RCHE A” hereafter) between 26 December 2018 and 30 January 2019. Between 28 January and 1 March 2019, the complainant made the following complaints to SWD’s Licensing Office of Residential Care Homes for the Elderly (“LORCHE”):

- (1) RCHE A unreasonably and suddenly increased Ms X’s home fees without giving reasonable notice (“Allegation I”).
- (2) A resident had been physically abused by the staff of RCHE A (“Allegation II”). (The complainant informed SWD that Ms X had witnessed the incident. The complainant also provided SWD with the assaulted resident’s name, and requested SWD to investigate.)
- (3) The English name of RCHE A was not registered on the directory of licensed RCHEs (“Allegation III”). (The complainant suspected RCHE A of operating without a licence.)

3. Regarding Allegation I, LORCHE replied that during an inspection by its staff, RCHE A could not produce the relevant admission agreement (“the Agreement”). LORCHE staff immediately admonished RCHE A. The complainant was dissatisfied that SWD did not sanction RCHE A for this.

4. Regarding Allegation II, LORCHE had recorded the incident, but it did not launch any investigation forthwith, nor did it inform the complainant how SWD would follow up the incident.

5. Regarding Allegation III, LORCHE insisted that RCHE A was licensed. It also stated that if the complainant suspected RCHE A of operating without a licence, she should institute litigation herself. The complainant criticised LORCHE for shirking its supervisory duty over RCHEs.

6. In sum, the complainant considered Allegations I, II and III indicative of RCHE A having breached the Code of Practice for Residential Care Homes (Elderly Persons) (“the CoP”), but LORCHE had not taken any proper follow-up action. Dissatisfied, the complainant requested this Office to follow up.

### **Subsequent Development**

7. Upon receiving the complaint, we initiated an inquiry on 29 March 2019 and required SWD to reply to the complainant and this Office in parallel. SWD replied on 24 May.

8. On 18 June 2019, in response to the complainant’s request for information, SWD provided her with LORCHE’s investigation reports regarding Allegations I, II and III, and the directions on remedial measures (“the Directions”) issued by SWD to RCHE A.

9. Between May and October 2019, the complainant wrote to this Office several times to submit her views and supplementary information, which can be summarised as follows:

- (1) Ms X was admitted to RCHE A on 26 December 2018. On behalf of Ms X, the complainant’s husband paid the first month’s home fees of \$7,500, together with a deposit of \$7,500, to RCHE A.
- (2) On 23 January 2019, the complainant informed RCHE A by telephone that Ms X would quit the care home on 22 February.
- (3) On 26 January, when the complainant and her husband visited RCHE A to pay the home fees for the period from 26 January to 25 February (“the Payable Fees”), the staff of RCHE A said that the Payable Fees should be \$8,000. They considered RCHE A to have unreasonably increased the home fees.

- (4) On 27 January, the complainant's husband informed Ms Y, the home manager of RCHE A, that he could arrange the discharge of Ms X on 10 February, and suggested offsetting the Payable Fees by the deposit. Ms Y rejected his request, and stated that Ms X had to quit the care home the following day unless they settled the Payable Fees of \$8,000 immediately. They considered RCHE A to have required its resident to quit without giving sufficient notice.
- (5) On 28 January, during a meeting with the complainant, Ms Y conceded that RCHE A had not required them to sign the Agreement when Ms X was admitted to RCHE A. The complainant considered that RCHE A had failed to enter into the Agreement with them in compliance with the CoP.
- (6) On 30 January, Ms X was discharged from the care home. RCHE A refused to partially refund the deposit at the complainant's request.
- (7) The complainant made a number of complaints to LORCHE against RCHE A for breaching the CoP (see sub-paragraphs (3), (4) and (5)). Nevertheless, during the course of its investigation, LORCHE had never asked her for further details, including obtaining from her the audio recording of her meeting with Ms Y on 28 January 2019.
- (8) In response to RCHE A quoted by SWD as saying that the original copy of the Agreement ("the original Agreement") was handed to her by the staff of RCHE A during her visit on 25 January 2019, the complainant refuted that she had not visited RCHE A that day, as she had to work in the daytime and attend the annual dinner of her company that evening.
- (9) RCHE A failed to submit a Special Incident Report to SWD within 3 days after the incident of Allegation II in compliance with the CoP, and failed to specify in the report the date of reporting the incident to the police. LORCHE turned a blind eye to the non-compliance of RCHE A.
- (10) A wrong English name was printed on the receipts of RCHE A and the business cards of its staff, which indicated LORCHE's ineffective supervision.

- (11) SWD often delayed in replying to the complainant's enquiry letters between June and October 2019.

## **Our Findings**

10. We made further inquiry with SWD with respect to the views of the complainant. On 30 October 2019, we requested SWD to provide information. SWD replied to us on 13 December 2019. Upon examining the information received, we decided to initiate a full investigation into this complaint, which was completed in April 2020. Our findings are as follows.

### ***Relevant Legislation and Guidelines***

11. The requirements under the Residential Care Homes (Elderly Persons) Ordinance ("the Ordinance") and the Residential Care Homes (Elderly Persons) Regulation ("the Regulation") are aimed at regulating RCHEs established for providing care service for elderly persons through a licensing scheme administered by the Director of Social Welfare. Such requirements also serve to ensure that residents of RCHEs are provided with service conforming to an acceptable standard beneficial to their physical, emotional and social well-being.

12. Section 6 of the Ordinance stipulates that any person who on any occasion operates, keeps, manages or otherwise has control of an RCHE shall hold a valid licence.

13. The CoP, issued by SWD under section 22 of the Ordinance, sets out the principles, procedures, guidelines and standards for operating, keeping, managing or otherwise having control of an RCHE for compliance by its operator.

14. Pursuant to section 35 of the Regulation, an operator may, by notice in writing served on any resident, discharge that resident and require him to quit the RCHE before the expiry of such period being not less than 30 days as shall be indicated in the notice.

15. The CoP stipulates that:

- (1) All RCHEs are regulated by the authority through a licensing scheme to ensure a high standard of residential care service, and to effectively safeguard the interests of residents.

- (2) RCHEs shall comply with the Procedural Guidelines for Handling Elder Abuse Cases issued by SWD, and seriously investigate and handle suspected elder abuse incidents as soon as possible. Those cases shall also be referred to social workers for further actions such as conducting professional assessment and formulating appropriate welfare plans and follow-up measures for the elderly persons, so as to ensure their safety and well-being.
- (3) In the event of a significant incident, including suspected case of abuse of residents by staff in the RCHE, and disputes occurring in the RCHE requiring police assistance, the RCHE shall submit a Special Incident Report to LORCHE within 3 days of the incident.

16. The CoP stipulates the following requirements for the admission procedures and payment arrangement:

- (1) RCHEs shall clearly state in the admission agreement the fee-charging regulations and home fees, and the precise amounts of all chargeable items.
- (2) RCHEs shall explain clearly the fee-charging regulations and home fees, and the precise amounts of all chargeable items to the residents and their relatives.
- (3) The admission agreement shall be signed by the RCHE and the residents/their guardians/guarantors/family members/relatives. A copy of the signed admission agreement shall be provided to the residents/their guardians/guarantors/family members/relatives for retention.
- (4) Any revision (including the formulation of new payable items) to the admission agreement shall be effective only after being signed by the RCHE and the residents/their guardians/guarantors/family members/relatives.
- (5) RCHEs shall inform the residents and their guardians/guarantors/family members/relatives in writing of any proposed increase in fees or charges for any services or goods at least 30 days prior to the effective date.

- (6) RCHEs shall establish and maintain a comprehensive and regularly updated record system, and keep the records properly on their premises for inspection by LORCHE at any time. Such records shall include the admission agreements.

***Allegation I: Unreasonable and Sudden Increase of Home Fees***

SWD's explanation

17. Summing up the statements of the complainant and RCHE A, LORCHE's findings were as follows:

- (1) Ms X was admitted to the care home on 26 December 2018, with the Agreement signed by her son (i.e. the complainant's husband). The agreed home fees were \$7,500 at that time, to be increased to \$8,000 upon Ms X's successful application for the Comprehensive Social Security Assistance.
- (2) On 25 January 2019, a night-duty staff inadvertently handed the original Agreement to the complainant without making a copy for record keeping. As a result, during a surprise inspection by LORCHE on 2 February 2019, RCHE A could not produce the Agreement.
- (3) The Agreement, which applies to all of RCHE A's residents, stipulates that: residents discharged from the care home for any reason are required to give a written or verbal notice to RCHE A one month in advance; the deposit will be refunded upon termination of the agreement, but during the notice period residents are still required to pay the monthly fees, which cannot be offset by the deposit; if they fail to pay the monthly fees during the notice period, the deposit will not be refunded. Since Ms X was discharged earlier on 30 January 2019 before expiry of the one-month notice period, RCHE A did not refund the deposit for the period from 31 January to 25 February 2019 at the complainant's request. It was not in breach of the CoP in doing so.
- (4) RCHE A denied that on 27 January 2019 it had requested Ms X to quit the care home the following day without giving her sufficient notice. In

the absence of objective evidence, LORCHE found it unable to judge between the divergent accounts from the two sides.

18. On 20 June 2019, the complainant sent an email to SWD, attached with the transcript (“the Transcript”) of a conversation alleged by the complainant to have taken place between Ms Y and her on 28 January 2019. The following is a relevant extract from the Transcript:

Ms Y: *I know a deposit was paid...please take a look at the contract.*

Complainant: *Please search for the one signed by my husband. My husband said it exists.*

Ms Y: *This is exactly the one. In fact, at that time I kept asking him to sign. However, I have yet to meet your husband so far.*

19. SWD reckoned the Transcript showed that the complainant’s husband had signed the relevant contract. Summing up the information provided by RCHE A and the complainant, SWD disagreed with the complainant’s allegation that RCHE A was in breach of the requirements in having never signed any admission agreement with the resident. However, RCHE A had not properly kept the Agreement, and it must implement improvement measures.

20. In response to the complainant’s criticism that LORCHE had not obtained the audio recording from her, SWD explained as follows:

- (1) LORCHE had conducted a number of surprise inspections at RCHE A. It had also scrutinised and considered the information obtained, including speaking with the complainant over telephone time and again, referring to the information and transcript of conversation provided in her letters, meeting with relevant staff and residents of RCHE A, and contacting the Consumer Council and the police. Consequently, SWD had gathered sufficient information for reaching an impartial conclusion.
- (2) The audio recording produced by the complainant was made without the consent of relevant parties. Taking into consideration the authenticity of the audio recording and the integrity of the relevant extracts, LORCHE did not ask her for the audio recording.

21. Overall, SWD considered RCHE A to be in breach of the CoP in the following

aspects:

- (1) failing to properly keep and produce the Agreement for inspection; and
- (2) failing to give a written notice of not less than 30 days before increasing the home fees of Ms X.

22. In relation to the above non-compliant matters, LORCHE issued a letter on 20 May 2019 requiring RCHE A to implement improvement measures.

#### Our comments

23. Allegation I involves the following two critical issues:

- (I) whether RCHE A was in breach of the CoP in demanding the Payable Fees at \$8,000 on 26 January 2019; and
- (II) whether RCHE A had signed the Agreement with the relative of Ms X.

24. On Critical Issue (I), LORCHE confirmed that RCHE A was in breach of the CoP by failing to give a written notice of not less than 30 days before suddenly increasing the home fees of Ms X.

25. On Critical Issue (II), and whether the complainant had visited RCHE A and received the original Agreement on 25 January 2019, RCHE A and the complainant gave divergent accounts (see paragraphs 9(8) and 17(2)). Nevertheless, SWD reckoned the Transcript showed that the complainant's husband had signed a contract (see paragraphs 18 and 19).

26. We note that RCHE A could not produce the Agreement signed by the parties all along, and the claim of RCHE A's staff that they had handed the Agreement to the complainant and never asked her to return it subsequently was implausible. Moreover, the Transcript shows that Ms Y had requested the complainant's husband to sign the document, but had yet to meet him so far. We are of the view that the conversation cannot clearly show that the complainant's husband had signed the Agreement. We, therefore, consider LORCHE's findings with respect to Critical Issue (II) to be unsound and unconvincing.

27. We must also point out that LORCHE is to monitor, via its inspection mechanism, whether RCHEs have provided residents with quality service and care facilities, and issues the Directions under the established enforcement procedures to ensure a high standard of residential care service, thereby effectively safeguarding the interests of care home residents.

28. While LORCHE's findings on Critical Issue (II) are arguable (see paragraph 26), it issued the Directions on 20 May 2019 requiring RCHE A to implement improvement measures regarding the failure to properly keep and produce admission agreements for inspection (see paragraphs 21 and 22), so as to avoid recurrence of disputes similar to Allegation I.

29. On the complainant's allegation that RCHE A requested its resident to quit the care home on 27 January 2019 without giving her sufficient notice, SWD considered it unable to judge between the divergent accounts from the two sides in the absence of objective evidence (see paragraph 17(4)). We believe that the conversation alleged by the complainant took place between RCHE A and her husband during the day of their dispute. As no audio recording was made for that conversation, nor was there any written record showing that RCHE A had requested Ms X to quit the care home the following day, it was understandable for SWD to have been uncertain about the actual circumstances and not taken any further action.

30. Overall, The Ombudsman considers that while LORCHE had deficiency in handling Allegation I (see paragraph 26), it had properly issued the Directions requiring RCHE A to implement improvement measures.

### ***Allegation II: Suspected Physical Abuse of Resident***

#### SWD's explanation

31. SWD explained that on 28 January 2019, the complainant called LORCHE, alleging that she learned from Ms X that a resident had been pushed to the floor during a dispute with RCHE A's staff. The complainant was unable to provide specific details (including the name of the resident and the date of the incident) over the telephone. Hence, LORCHE suggested that the complainant advise the resident or family members concerned to contact LORCHE direct for further action.

32. On 31 January 2019, the complainant called LORCHE again, stating that a

report had been made to the police on 30 January regarding the allegation. On 2 February, LORCHE conducted a surprise inspection at RCHE A, and made enquiry with each resident in the absence of RCHE A's staff. Subsequently, LORCHE contacted the police and learned that the police had visited RCHE A on 30 January to investigate the incident. The police also confirmed that the incident was purely caused by misunderstanding and no physical abuse of residents was discovered.

33. Urged by LORCHE, RCHE A submitted a Special Incident Report on 25 March 2019. SWD explained that although RCHE A was in breach of the CoP by failing to submit the Special Incident Report within 3 days, taking into account the nature and severity of the irregularity, LORCHE issued the Directions to RCHE A on 20 May requiring it to comply with the relevant provisions of the CoP. SWD considered its handling of the incident consistent with the established enforcement procedures.

34. In response to the complainant's allegation that RCHE A had not specified in the submitted Special Incident Report the date of reporting the incident to the police, SWD explained as follows:

- (1) The incident was not reported to the police by RCHE A. It was acceptable for RCHE A not to specify the date of making the report since it was not sure about it.
- (2) The Special Incident Report was revised only in October 2019. Before that, it did not have a field for filling in the date of making a report to the police.

#### Our comments

35. As detailed in paragraphs 31 and 32 above, LORCHE had followed up Allegation II, such as conducting a surprise inspection, making enquiries with residents and staff, and contacting the police over the incident.

36. LORCHE had confirmed that RCHE A was in breach of the CoP by failing to submit the Special Incident Report within 3 days, and had issued the Directions to RCHE A.

37. We have scrutinised the Special Incident Report submitted by RCHE A. The standard form it used at the time indeed did not have a field for filling in the date of

making a report to the police.

38. The Ombudsman considers SWD to have properly followed up Allegation II. Nevertheless, SWD should step up monitoring RCHE A to ensure its compliance with the Directions and timely submission of reports in the event of special incidents.

### ***Allegation III: Operating without Licence***

#### SWD's explanation

39. SWD explained that the complainant called LORCHE on 1 March 2019, alleging that the trademark on the receipt issued by RCHE A bore an English name inconsistent with its licensing information. She suspected RCHE A of operating without a licence, and requested LORCHE to instigate prosecution.

40. LORCHE immediately confirmed to the complainant that RCHE A was a licensed care-and-attention home, and the relevant licensing information was available on SWD's website.

41. As for the English name on RCHE A's receipt being inconsistent with its licensing information, SWD explained that in general circumstances, LORCHE, when performing its duties of regulating RCHEs, would not collect the receipts issued by RCHEs in the course of daily ordinary operation, and so it had not discovered the error earlier. RCHE A explained that it was a printing error, and LORCHE had required it to rectify.

42. In June 2019, the complainant alleged that the same error was found on the business cards of RCHE A's staff. Notified of the error, LORCHE immediately reminded RCHE A that it must ensure the accuracy of its records and document information. Subsequently, LORCHE confirmed that the English name had been rectified during an inspection on RCHE A.

43. LORCHE denied that it had told the complainant to find a lawyer herself to instigate prosecution against an unlicensed RCHE. SWD has provided information about the licensing scheme of RCHEs on its website, which specifies that any persons may contact LORCHE for any enquiry, suggestion or complaint about the service of RCHEs.

### Our comments

44. As detailed in paragraphs 40 to 42 above, LORCHE had confirmed that RCHE A was not operating without a licence. LORCHE had also required RCHE A to rectify the error on its receipts and staff business cards upon the complaint made by the complainant.

45. The Ombudsman considers SWD to have properly followed up Allegation III.

### ***Other Allegations: Delayed Replies***

#### Response from SWD

46. SWD stated that it had received more than ten emails from the complainant, in which she complained against RCHE A and expressed her dissatisfaction about SWD's handling of her complaint. After sorting out the various enquiries and concerns raised by her, and collating the relevant facts and information, SWD gave her a series of consolidated replies on 24 May, 23 August, 18 September and 16 December 2019.

47. Moreover, the Chief Social Work Officer (Licensing & Regulation) contacted the complainant by telephone several times to address her enquiries.

### Our comments

48. We note that after SWD replied to the complainant on 24 May 2019, she wrote to SWD more than ten times between June and October. SWD issued a series of consolidated replies to her between August and December. Given the many enquiries raised by the complainant, SWD needed time to search for information to give her replies. SWD's replies might not be considered as quick enough, but were not excessively delayed.

### **Conclusion**

49. In light of the above, The Ombudsman considers the complainant's complaint against SWD **partially substantiated**.

## **Recommendations**

50. The Ombudsman recommends that SWD:

- (1) instruct staff to learn a lesson from this case and avoid making unsound conclusions by carefully investigating disputes involving a disagreement over facts between the two disputing parties; and
- (2) step up inspecting RCHE A to ensure that it will comply with the Directions issued by SWD on 20 May 2019 and stringently adhere to the CoP, thereby safeguarding the interests of residents.

51. We are pleased to learn that LORCHE has stepped up inspection and rigorously monitored the performance of RCHE A, with improvement already made by RCHE A in the submission of Special Incident Reports.

**Office of The Ombudsman**

**April 2020**