

For discussion
on 27 June 2016

**Legislative Council Panel on
Administration of Justice and Legal Services**

**Measures for handling sexual offences cases
and the provision of screens for complainants
in sexual offences cases during court proceedings**

Introduction

At the meeting of the Legislative Council (LegCo) Panel on Administration of Justice and Legal Services (AJLS Panel) held on 22 December 2014, members agreed to discuss the following measures for handling sexual offences cases proposed by Dr Hon Elizabeth Quat:

- (a) extending the definition of the term “witness in fear” under the Criminal Procedure Ordinance (Cap. 221) to allow a witness falling within the expanded definition to give evidence in court under the provision of a screen or by live television link, and enter/leave the court building through special passageways;
- (b) revising section 154(1) of the Crimes Ordinance (Cap. 200) to stipulate the criteria for granting of leave by the judge; and
- (c) enhancing training for the legal sector and the Police on the handling of sexual offences cases.

2. At the Panel meeting on 15 October 2015, Dr Hon QUAT urged the Panel to actively follow up with the Administration on changing the law to provide for automatic provision of screens for complainants in sexual offences cases during court proceedings upon the prosecution’s applications.

3. This paper sets out the information provided so far by the Government to the LegCo regarding the issues concerned, as well as the latest consideration of the Department of Justice (DoJ) regarding possible legislative amendments to enhance the protection for victims in sexual offences cases.

The handling of sexual offences cases by DoJ

4. As the department responsible for criminal prosecutions in Hong Kong, DoJ has been mindful of its duty to safeguard the fairness and equity of the criminal justice system. In prosecuting sexual offences, our prosecutors respect the rights of crime victims and witnesses at all times. On the one hand, we protect the fundamental right of defendants to a fair trial. On the other hand, we treat victims and witnesses with respect, compassion and understanding, encouraging and facilitating them to testify in court. To this end, the current *Prosecution Code*¹ specifically includes a chapter on crime victims and vulnerable witnesses to remind prosecutors that they should have regard to the “*The Victims of Crime Charter*” and the Prosecutions Division (PD)’s “*The Statement on the Treatment of Victims and the Witnesses*” while attending to and addressing the special needs of the parties concerned. The *Prosecution Code* also sets out the possible protection for victims and witnesses in details.

5. Under the existing practice of PD, where a victim or witness has expressed the need for special arrangements for testifying in court, the prosecution will apply to the court, as appropriate, immediately after the defendant pleads not guilty. If this is not possible, the application will be made at the pre-trial review².

Information provided by the Government to LegCo so far

6. Dr Hon Elizabeth Quat raised a question at the LegCo sitting of 2 December 2015 regarding the protection for victims in sexual offences cases, which touches on the issues set out in paragraphs 1 and 2 above. The Government prepared its reply with inputs from the Judiciary Administration. A summary of the responses given in respect of three issues in the reply, with additional supplementary information, is set out

¹ The current *Prosecution Code* which was released on 7 September 2013 has replaced *The Statement of Prosecution Policy and Practice – Code for Prosecutors* published in 2009. Press Release relating to the *Prosecution Code* is available at: <http://www.info.gov.hk/gia/general/201309/07/P201309070372.htm>.

² Pre-trial reviews are meetings ordered by the judge and attended by counsel for the prosecution and the defence to provide the judge with an opportunity to consider issues such as admissions, additional evidence, alibi and challenges to the admissibility of evidence at an early stage before the trial. The judge will give directions, as necessary, at such meetings to secure the proper and efficient trial of the case.

below :

(a) Provision of screens / live television (TV) link / special passageway

7. The provision of screens in the court room or special passageways for entering / leaving the court building / court room for victims of sexual violence in criminal proceedings is currently governed by common law and is a matter left to a judge's discretion. As for the arrangement for victims to give evidence by live television link, it is governed by section 79B of the Criminal Procedure Ordinance. The court will consider such an application by the prosecution, and the views of the defendant, with due regard to the facts of the case and the needs of the complainant, before deciding whether to adopt any special measure(s). Based on their need, the victims concerned can apply to the judge through the prosecution for the adoption of the above-mentioned special measures.

8. In her question, Dr Hon QUAT requested that the statute be amended so that the arrangement for the use of shield, live television link in giving evidence and the provision of special passageways be provided to victims of sexual crime automatically. Under section 79B of the Criminal Procedure Ordinance, where a witness in fear is to give evidence in proceedings in respect of any offence, the court may, on application or on its own motion, permit the person to give evidence by way of a live television link, subject to such conditions as the court considers appropriate in the circumstances.

9. The proposals put forward by Dr Hon QUAT (in particular those that would prevent the defendant and his counsel from seeing the witness's response) not only touch on the fundamental right of a defendant to have a fair trial, but also bear upon the fundamental principle of open justice. They have the effects of fettering the trial judge's discretion, and depriving the complainants of their choice. They should be handled with great care. Any legislative measures to be introduced in this regard, even introduced with the well-intended aim of protecting complainants in sexual offences cases, must be rational and proportionate to the aims sought to be addressed thereby, or otherwise their validity may be susceptible to constitutional challenge. Our proposal in this regard is set out in paragraphs 16 to 21 below.

(b) Proposed revision to section 154(1) of Cap. 200 to stipulate the criteria for granting of leave by the judge

10. According to section 154(1) of Cap. 200, if at a trial before the Court of First Instance any person is for the time being charged with an offence of rape or indecent assault to which he pleads not guilty, then, except with the leave of the judge, no evidence and no question in cross-examination shall be adduced or asked at the trial, by or on behalf of any defendant at the trial, about any sexual experience of a complainant with a person other than that defendant. Section 154(2) continues to specify that the judge shall give leave only on an application made by or on behalf of a defendant, and only if he is satisfied that it would be unfair to that defendant to refuse to allow the evidence to be adduced or the question to be asked. Since such decisions are judicial decisions based on the actual evidence and defence in individual cases, the Judiciary considers it inappropriate to formulate detailed instructions lest they restrict judicial discretion or give rise to unfairness.

(c) Enhancing training for the legal sector and the Police

11. In respect of DoJ, PD organised a seminar on “Victims of Sex Crimes” in 2013, which aimed to raise care and concern in the legal sector and the community on issues relating to sex crime victims. The seminar was attended by members of the Judiciary, legal practitioners, and representatives of relevant government departments and non-governmental organisations (NGOs). DoJ will organise or participate in such events in future according to need. Moreover, PD has made arrangements for Police clinical psychologists, officers from the Family Conflict and Sexual Violence Policy Unit of the Police and social workers from the Social Welfare Department to deliver an in-house seminar to our prosecutors on the topic “Handling vulnerable witnesses in domestic violence and sexual abuse cases” as part of the continuing education programme for our in-house prosecutors later this year. Seminars and talks on such subjects will continue to be organised on a need basis from time to time. PD also provides to fiat counsel it engages the abovementioned *Prosecution Code* as well as other relevant guidelines, so that all counsel involved in prosecution work will understand clearly how to handle the needs of the individuals concerned.

12. Moreover, DoJ maintains close contact with relevant NGOs to collect their suggestions on how to provide better protection to victims of sex crimes when they give evidence in court. In this regard, apart from issuing guidelines to remind all prosecutors to make timely applications

for the provision of protective measures for victims / witnesses in need who are giving evidence in court, PD has especially assigned a prosecutor at directorate rank as the coordinator, to enhance communication with different departments and organisations concerned so that the interests of victims and vulnerable witnesses can be advanced.

13. According to the Security Bureau, the Police attach great importance to professionalism in handling sexual offences cases, and the provision of relevant training to frontline officers. To enhance their skills and professional sensitivity in handling sexual violence cases, the Police have introduced various measures, including requiring recruit police constables and probationary inspectors to take an additional training session on professional sensitivity in handling victims of sexual violence since March 2015. In addition, a Police Training Day Package for all frontline officers was launched in October 2015 on the subject of professional sensitivity to victims of sexual violence. Looking ahead, the Police will offer refresher training on sexual violence to relevant frontline officers in the second half of 2016. The training aims to enhance officers' professional skills in handling sexual offences cases, including professional sensitivity, knowledge on victim psychology and protective services available. In particular, the best practice in handling child, non-ethnic Chinese and sexual minority victims will be discussed, such that the front-line officers can be better equipped to handle these particularly vulnerable groups.

14. The Police also review from time to time the handling procedures and the use of resources for handling sexual violence cases. The cases are assigned to suitable criminal investigation teams for investigation, having regard to their complexity and seriousness, to ensure effective investigation and delivery of services that meet the needs of victims.

15. In terms of procedural arrangements, the Police will make every possible effort to provide reasonable protection to the privacy of complainants in sexual offences, and to avoid situations which may cause embarrassment to them and to reduce the stress that they need to shoulder. Upon receipt of a report, the Police will arrange for a same sex police officer with relevant training to interview the sexual violence victim, and will try their best to avoid requiring the victims to recount their traumatic experience during the investigation process. Moreover, the investigating officers will introduce to the victims crisis intervention services provided by NGOs and also provide case referrals service.

Legislative amendments to allow the provision of screens for complainants in sexual offences cases

16. While it is the view of DoJ (as set out in paragraph 9 above) that the suggestion on automatic provision of screen for complainant in sexual offences cases should be handled with great care having regard to issues regarding fundamental right of a defendant to a fair trial, the principle of open justice as well as the undesirability of undue fettering of judicial discretion, it is our view that there is room to consider appropriate alternative legislative measures that can achieve the same aim of protecting complainants in sexual offences cases and at the same time pass the tests of rationality and proportionality.

17. In this regard, we consider that there is room for the current legislation to be amended by empowering the court, either on its own motion or upon application, to permit victims of sexual offences to give evidence by way of a live television link.

18. Currently, under section 79B of Cap. 221, the court may, on its own motion or upon application, permit a person falling within any of the following three categories to give evidence by way of a live television link:

- (a) children (other than a defendant) giving evidence in proceedings in respect of an offence of sexual abuse or cruelty, or of an offence (other than one triable summarily only) which involves an assault on, or injury or a threat of injury to, a person; or
- (b) a mentally incapacitated person (including a defendant) giving evidence in proceedings in respect of an offence that is triable otherwise than summarily only; or
- (c) a “witness in fear” giving evidence in proceedings in respect of any offence.

19. A “witness in fear” is defined in section 79B(1) to mean a witness whom the court hearing the evidence is satisfied, on reasonable grounds, is apprehensive as to the safety of himself or any member of his family if he gives evidence. While it is possible that a victim of sexual offences can be a “witness in fear”, and hence be covered by the existing section 79B, it is not necessarily so. A victim or witness of a sexual offence, though not “in fear” as statutorily defined, ought nonetheless to be treated with respect, compassion and understanding. The court should have the requisite powers in appropriate cases to protect them

from the embarrassment of being exposed to public sight, any indignity of treatment, and the anxiety arising from the need to physically face the assailants during the trial.

20. In this regard, we are given to understand that Mr Eric Cheung, Principal Lecturer of the Department of Law of The University of Hong Kong, has prepared a draft bill to add a new provision to section 79B of Cap. 221, so that where a complainant within the meaning of section 156(8) of Cap. 200³ is to give evidence in proceedings in respect of a specified sexual offence within the meaning of section 117(1) of Cap. 200⁴, the court may, on application or on its own motion, permit the complainant (i.e. the victim) to give evidence by way of a live television link, subject to such conditions as the court considers appropriate in the circumstances. The effect of the proposed provision is to confer on the court with a discretion to permit a victim of sexual offences who is outside the three current categories to give evidence by way of live television link, so that the protection to such individuals when giving evidence in court can be enhanced.

21. We consider that the proposed legislative measure mentioned above can broadly achieve the aim of offering additional protection to complainants in sexual offences cases, and at the same time is likely to be able to pass the tests of rationality and proportionality, is consistent with the principle of open justice, and does not unduly fetter the court's discretion in the administration of criminal justice. We shall give further consideration to this legislative proposal and, if considered to be viable and desirable, will consult the stakeholders (including relevant NGOs, the Judiciary, the legal profession and relevant law enforcement agencies / government departments) thereon with a view to taking forward the necessary legislative amendments.

Interim measures

22. In the interim, after consultation with stakeholders, the Judiciary has recently promulgated amended / new Practice Directions, as a result

³ Under section 156(8) of Cap. 200, complainant, in relation to an allegation of a specified sexual offence, means the person against whom the offence is alleged to have been committed.

⁴ Under section 117(1) of Cap. 200, specified sexual offence means any of the following, namely, rape, non-consensual buggery, indecent assault, an attempt to commit any of those offences, aiding, abetting, counselling or procuring the commission or attempted commission of any of those offences, and incitement to commit any of those offences.

of which the consideration of the need for screens as shields has become a standing procedure in every sexual offences case that is brought before the court. The Judiciary Administration is separately issuing another paper relating to the Practice Directions for the same Panel meeting.

23. To complement the new standing procedure as required by the Practice Directions, the Police have looked into possible measures to improve the timeliness in providing information to victims of sex crimes regarding the availability of the protective measures by the appropriate party. In this regard, a copy of the draft leaflet is attached (**at Annex**). Through this leaflet, adult complainants of sex crimes will be informed of the following protection measure during court proceedings at a time as early as when they report the crime to the Police:

“If you wish to use witness protection facilities, such as a screen and/or a special passage, during the court proceedings, please let the Investigating Officer know as soon as possible.

The Investigating Officer will relate your request to the lawyer for the Prosecution who may make the relevant application to the court for and on your behalf. The provision of witness protection facilities such as screen or special passage in court proceedings is governed by common law and subject to the court’s discretion. The court will carefully consider such application made by the Prosecution, and the view and argument of the Defence, with due regard to the facts of the case and your needs, before deciding whether to adopt any such measures.”

Department of Justice
Security Bureau
Hong Kong Police Force
June 2016

Information to Adult Sexual Violence Victims

You have made a complaint of sexual assault to the Police.

This brochure provides you with some brief information as to what you may undergo and your rights while assisting the Police investigation.



What to Expect in a Sexual Violence Investigation

Statement Taking

You will be invited to recount what had happened to you in detail and what you say will be put down in writing. Thereafter, you will be invited to read, amend (if necessary) and sign on the statement to verify that the contents of the statement truly reflect what you say. The statement taking process may take a few hours.

You are entitled to obtain a copy of your statement without cost.

If there are any new developments in the Police investigation, you may be invited to give supplementary statement(s).

Physical Evidence

Your clothing may be seized as evidence. If possible, take spare clothing with you or ask family members or friends to bring you a spare set of clothes for you to change into.

Samples of your clothing may be required for forensic examination by the Government Laboratory, during which time damage may be caused.

You may be requested to provide the Police with other items that will be of evidential value to the Police investigation. Examples are your mobile phone and / or computer. They will be returned to you as soon as reasonably practicable.



Crime Scene Investigation

The Police have to establish the exact location of the offence and collect evidence from the scene.

For the purpose of investigation, you may be invited to return to the scene with the Police and describe how the assault took place.

Forensic Examination

Forensic evidence is crucial in identifying the assailant(s) and enhances the possibility of securing a successful prosecution.

You may be invited to participate in a forensic examination. During forensic examination, a forensic pathologist may take samples and swabs from you, examine your wounds and intimate parts if necessary, and inquire about the possible cause of the wounds and your medical history.

Identification Parade

If the Police locate any suspect(s) but the identity of that person(s) is / are in dispute, an identification parade may be arranged.

If an identification parade is arranged, you will be invited to identify the person(s) from a line-up comprising the suspect(s) and actors through a one-way viewer identification parade room. The suspect(s) will not be able to see you during the parade.



Your Rights As A Victim of Sexual Violence

Medical Service

If you require medical attention, the Police will immediately arrange for an ambulance to take you to the nearest public hospital.

Accompanying Support

You may be accompanied by any person(s) of your choice throughout the Police investigation, provided that no unnecessary hindrance is caused to the administration of justice.

One-Stop Service Model

If you have received medical services at a public hospital after making a Police report and the situation allows, you may choose to give your witness statement and undergo forensic examination at the same hospital.

Break and Refreshment

At any stage during Police investigation, feel free to ask for a break or water. Refreshments and meals can also be obtained at your own cost.



Translation and Interpretation

If your mother tongue is not Chinese (Cantonese) or English or you prefer to speak in a language other than Chinese (Cantonese) or English, an interpreter from the Judiciary of Hong Kong Special Administrative Region will be arranged for you.

Contact Information

After the preliminary investigation is completed, you will be provided with the case number as well as the name, rank and contact information of the officer-in-charge of your case.

Protection during Court Proceedings

If you wish to use witness protection facilities, such as the use of screen and / or special passage, during the court proceedings, please let the Investigation Officer know as soon as possible.

The Investigating Officer will relate your request to the lawyer for the Prosecution who may make the relevant application to the court for and on your behalf. The provision of witness protection facilities such as screen or special passage in court proceeding is governed by common law and subject to the court's discretion. The court will carefully consider such application made by the Prosecution, and the view and argument of the Defence, with due regard to the facts of the case and your needs, before deciding whether to adopt any such measures.



Support Services

The following non-government organizations offer specialized support services to sexual violence victims –

Tung Wah Group of Hospitals – CEASE Crisis Centre

Hotline : 18281

Email : ceasecrisis@tungwah.org.hk

RainLily

Hotline : 2375 5322

Email : safechat@rainlily.org.hk

The Family Planning Association of Hong Kong

Hotline : 2572 2222

Email : fpahk@famplan.org.hk

You may request their services by calling their hotline or the Investigating Officer may refer your case to the organization of your choice for you should you so wish.

