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Panel on Welfare Services

Background paper prepared by Legislative Council Secretariat

Strategies and measures to prevent and tackle family violence

Purpose

This paper gives an account of the past discussions held by Members on the strategies and measures to prevent and tackle family violence in the last legislative term.

Background

2. In the wake of a number of family tragedies in early 2002, the Panel on Welfare Services (the Panel) discussed the strategies and measures to prevent and tackle family violence with the Administration and four family welfare organisations on 11 March 2002. The Panel further discussed the progress made and recent developments to prevent and tackle family violence on 10 February 2003. Following the occurrence of the Tin Shui Wai family tragedy on 11 April 2004, the Panel held three joint meetings with the Panel on Security on 26 and 30 April 2004 and 24 May 2004 to meet with deputations and the Administration respectively. A summary of the developments is given in the ensuing paragraphs.

Developments

Referring family violence cases for welfare services without the consent of the victims

3. Members pointed out that one of the main reasons why family violence could not be brought effectively under control was that the Police often treated family violence as an internal dispute within the family without making referral to

the Social Welfare Department (SWD) for timely intervention. They were of the view that the Police should not be constrained by the Personal Data (Privacy) Ordinance (Cap. 486), as section 59 of the Ordinance provided that disclosure of personal data could be exempted from the provisions of data protection principles, if the non-disclosure of such would cause serious harm to the physical or mental health of the data subject.

4. The Administration had informed the Panel that based on legal advice and the views of the Privacy Commissioner for Personal Data, the Police had started to refer family violence cases to SWD for follow-up support services even without the consent of the victim/alleged offender since 1 January 2003.

Improving the Police guidelines for handling family violence

5. As one of the victims of the Tin Shui Wai homicide, Madam JIN, had sought assistance from various welfare agencies and the Police prior to her death in the evening of 11 April 2004, Members asked the Police at the joint meeting on 24 May 2004 whether the officer at the Tin Shui Wai Police Station had checked the past records of Madam JIN before deciding it was not necessary to escort her home.

6. The Police confirmed that the Police officer concerned had checked the past records in the presence of Madam JIN when the latter sought assistance from the Tin Shui Wai Police Station on the day prior to her death. An internal inquiry had commenced to examine the ways the incidents relating to the victimised family had been handled. The Police agreed to disclose the outcome of the internal inquiry to the public when it was available. In the meantime, the Police had reminded its frontline staff to handle family violence cases with care. The Police would also examine the existing police guidelines for handling family violence cases in consultation with other related agencies with a view to identifying any areas that required improvement.

Amending the Domestic Violence Ordinance (Cap. 189) (DVO)

7. Members considered the existing provisions of the DVO fell far short of being effective in combating family violence. They shared the views of the deputations that the Ordinance should be amended in the following manner -

- (a) expanding the definition of family members (spouses, cohabitants and children under 18) to include former spouses, former cohabitants and other family members who resided together;
- (b) clearly defining family violence to include not only physical abuse, but also psychological abuse, abandonment, neglect, intramarital rape and other less obvious sexual acts;

- (c) conferring more power on the court by allowing the court to attach a power of arrest to injunction orders in cases of sexual and psychological abuses;
- (d) empowering the Director of Social Welfare or a person appointed by him to act as a temporary guardian of victims who were abandoned or neglected by abusers;
- (e) extending the maximum validity of injunction order up to 18 months to dovetail the corresponding matrimonial or guardianship proceedings;
- (f) introducing the element of "mandatory counselling" for the abusers;
- (g) requiring the court to take into account whether an abuser had participated in any counselling/educational course and their performance, when considering an application to extend the validity of an injunction order;
- (h) permitting a third party to apply for an ex parte injunction for a victim provided that the victim was aware of the application; and
- (i) studying the possibility of including provisions on prohibition against stalking behaviours in the DVO.

8. Members noted that the University of Hong Kong (HKU) had been commissioned to conduct a study on child abuse and spouse battering in April 2003. The Administration pointed out that the study, which was expected to take two years, would, inter alia, identify possible areas of improvement, including those related to legislative amendments. Part one of the study would be on the prevalence rate of child abuse and spouse battering in Hong Kong and elements contributing to effective prevention and intervention, including whether the provision of legislative measures, such as the DVO, could facilitate prevention and intervention. Part two of the study would be on the development and validation of the assessment tools and the training of frontline professionals who would use the tools. While waiting for the outcome of the study, the Administration was simultaneously examining the relevant legislation and would consider whether and how the existing legislative framework needed to be improved.

Expediting legislative proposal to criminalise the act of stalking

9. Under section 3 of the DVO, on an application by a party to a marriage, the District Court may grant an injunction if it is satisfied that the applicant or a child living with the applicant has been molested by the other party to the marriage. The

injunction may contain provisions restraining that other party from molesting the applicant or any child living with the applicant, or excluding that other party from the matrimonial home. In the context of domestic violence, the protection afforded by the DVO is limited since only a party to a marriage may apply for an injunction. In its Report on Stalking released in October 2000, the Law Reform Commission of Hong Kong (LRC) reviewed the limitations of the DVO in the context of stalking, and recommended that the Administration should give consideration to reforming the law relating to domestic violence.

10. Members considered it necessary to legislate against stalking. However, in recognition of the possible effect of the anti-stalking legislation in hampering legitimate journalist activities, Members suggested that instead of having a single piece of anti-stalking legislation, the Administration should consider introducing separate legislative measures to deal with specific problems, such as harassment by ex-spouses, harassment of debtors by debt collection agencies, etc.

11. The Administration responded that given that the Report touched upon a wide range of issues dealt with by various policy bureaux, the Home Affairs Bureau (HAB) had taken on a co-ordinating role. HAB appreciated that stalking was a problem that needed to be tackled. The Bureau intended to follow up the proposed legislation, and would go through the necessary process.

Providing housing assistance to victims of family violence

12. Members pointed out that many family tragedies could be avoided if timely housing assistance was provided to victims of family violence.

13. The Administration responded that, with effect from November 2001, apart from extending the Conditional Tenancy Scheme under the Compassionate Rehousing Scheme to cover battered spouses who on divorce had no offspring or dependent children, SWD had also revised the guidelines for processing applications for Compassionate Rehousing in 2002 to allow more flexibility in helping the needy. The referral mechanism between SWD and the Housing Department in handling applications for splitting of household and house transfer for needy public housing rental housing tenants, including those who suffered from family problems or domestic violence, had also been streamlined to speed up the application process.

Stepping up resources to combat family violence through allocation of additional resources to welfare services

14. Members urged the Administration to enhance family services to areas where problems of battered spouses and child abuse were serious.

15. The Administration advised that on the one hand, through the

re-engineering of family services, an overall territory-wide re-distribution of resources was made based on a combination of factors, including the population to be served, complexity of social problems and district needs, etc. Some resources would also be pooled to strengthen the SWD's five regional-based Family and Child Protective Services Units (FCPSUs). On the other hand, through the re-engineering of community support services for elders, District Elderly Community Centres had strengthened their services to vulnerable elders including elder abuse cases.

Reviewing the appropriateness of the philosophy of "family integrity" adopted by SWD in handling family violence cases

16. A number of deputations pointed out that the fact that SWD treated family violence as a family problem instead of a public health problem had put the victims' personal safety on the line. In the light of this comment, Members urged SWD to review the appropriateness of adopting the philosophy of "family integrity" in handling family violence cases which was no longer adopted by many developed countries.

17. The Administration responded that SWD did not adopt any single philosophy, such as "family integrity", in handling domestic violence cases. Neither was there any policy requiring staff of SWD to provide counselling to couples together. Personal safety of victims and children involved was always the prime concern. The principle was objective assessment and formulation of treatment strategies in line with the professional practice as advocated by different schools of counselling and psychotherapy.

Reviewing and strengthening the skills and gender awareness of all frontline staff in handling family violence cases

18. In response to Members' request to review and strengthen the skills and gender awareness of all frontline staff in handling family violence cases, the Administration advised that SWD would continue to organise various training programmes on family violence for workers of different disciplines. The Hospital Authority, Home Affairs Department and other departments such as the Police, had also organised/would organise various training for their staff and District Council members.

Subcommittee to study issues relating to the strategies and measures to prevent and tackle family violence

19. In order to avoid the recurrence of the Tin Shui Wai family tragedy, Members decided at the joint meeting on 24 May 2004 that a subcommittee should be formed under the Panel to consider the more pressing issues relating to the

strategies and measures to prevent and tackle family violence prior to the expiry of the 2003-04 legislative session.

20. The Subcommittee held two meetings on 24 June 2004 and 6 July 2004. Members recommended that SWD should, as a matter of priority, -

- (a) set up its own 24-hour hotline, preferably in each SWD district, to help people facing family violence;
- (b) enlist experienced practitioners to provide up-to-date training to workers handling family violence;
- (c) relax the eligibility criteria for providing housing assistance to battered spouse and family members in conflict;
- (d) review the workload of FCPSUs, including setting down the maximum number of cases which each unit should handle; and
- (e) review the appropriateness of having one social worker handling family violence taking up both the investigative and counselling functions.

21. Members further recommended that the Panel should follow up with the Administration the implementation of the recommendations set out in paragraph 20 above and other issues raised such as the establishment of post-event multi-disciplinary review committees to identify improvements in the light of the recent events.

Questions and motion debates raised/held at Council meetings

22. Questions relating to family violence were raised by Members at Council meetings in the second term. Details are as follows -

- (a) Hon YEUNG Yiu-chung asked a written question at the Council meeting on 7 February 2001 about the measures to help children being orphaned from family violence and the measures that would be adopted to reduce the occurrence of family violence;
- (b) Hon Cyd HO asked a written question at the Council meeting on 6 March 2002 on the proposed setting up of a working group by the Health and Welfare Bureau to lead a number of government departments, social service agencies and non-governmental organisations to formulate a multi-pronged policy, with a view to helping families in distress to resolve their problems;

- (c) Dr Hon LAW Chi-kwong asked a written question at the Council meeting on 9 April 2003 on whether the Administration would adopt the recommendations of the LRC to amend the DVO; if so, the details and timetable for doing so; and
 - (d) Dr Hon LAW Chi-kwong asked a written question at the Council meeting on 18 February 2004 on the Government departments' handling of family violence cases.
23. Two motion debates with no legislative effect relating to family violence were also held at Council meetings in the second term. They included the motion on "Family problems" moved Dr Hon David CHU on 15 May 2002, and the motion on "Curbing domestic violence" moved by Hon Cyd HO on 5 May 2004.

Relevant papers

24. Members may wish to access the website of the Legislative Council (<http://www.legco.gov.hk>) for details of the minutes of meetings and the relevant papers and the proceedings of the questions and motion debates raised/held at Council meetings mentioned in the foregoing paragraphs.

Council Business Division 2
Legislative Council Secretariat
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