



Review of Sexual Offences Sub-Committee

This submission highlights our major concerns in relation to the recommendations contained in the consultation paper titled **Interim Proposals on a Sex Offender Register** and a report titled **Sexual Offences Records Checks for Child-related Work: Interim Proposals**.

Views on Setting Up a Sex Offender Register in Hong Kong

1. The proposal of setting up a sex offender register in Hong Kong to protect children and vulnerable adults including the mentally disabled is both timely and desirable. It is indeed alarming and sad to learn that there have been an increasing number of media reports on child sexual abuse which takes place in schools in the past few months. We believe that it is the responsibility of the Government to develop measures to stop people from abusing our children in the society. In this regard, a zero tolerance policy for child sexual abuse should be put in place as soon as possible.
2. We support the suggestion that this sex offender register is not to be open to the general public, but that checks can be made against it by prospective employers. We also propose the sex offender register to include those who are identified as persistent and high risk sex offenders only. The major reason for this recommendation is that the likelihood of re-offending amongst repeat and persistent offenders is much higher than those who are first offenders.
3. The nature of sexual offending, and the public view of sexual offending is ever-changing. Therefore, a review mechanism should be set up in order to examine the removal or inclusion of specific sexual offences on the register on a regular basis.

4. The report does not articulate the time periods of offender registration in an explicit way. The details regarding the duration of offender registration and whether names can be removed from the list are not given. We recommend that such details should be specified as far as possible.

Views on Specific Recommendations in the Report

Recommendation 5

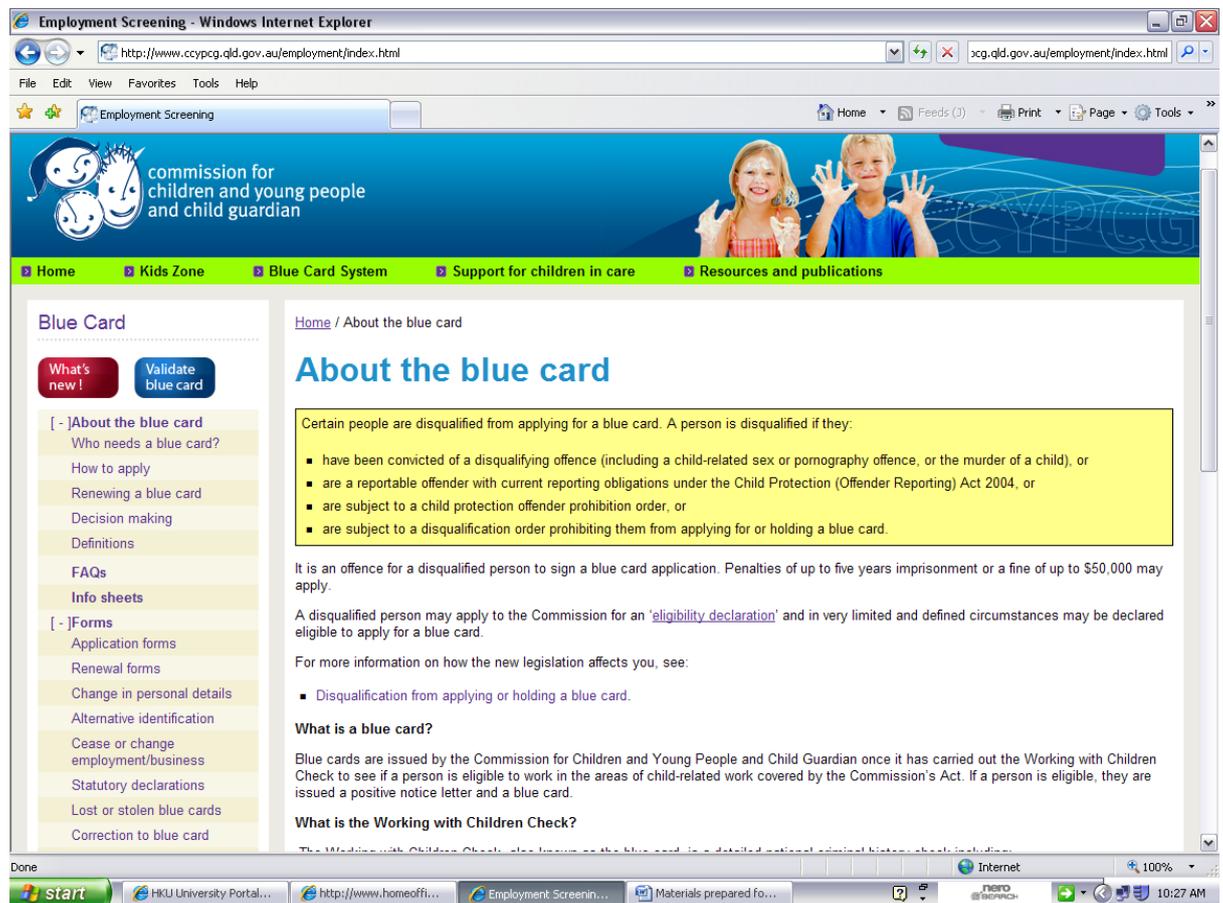
5. We support the current suggestion to enable prospective employers (individuals and organisations) to conduct checks against the criminal conviction records, as opposed to setting up a public register which allows access to the public to all information on the register. We would highly recommend though the checking should cover prospective and existing employees. While we recognise that there may be employment law issues involved, limiting the checking to prospective employees only achieves very limited protection for children. The proportion of new employees is miniscule comparing with the existing workforce serving the children community. It is also worth bearing in mind that if an existing employee is found to have a previous criminal record of child sexual abuse, at the very least he must have impliedly acted in breach of his condition of employment. Most employers would have asked before hiring the employee if he has previous criminal convictions and if he was untruthful at the time, his employer should be entitled to terminate his employment. It is also unfair to prospective/ newly hired employees that they are judged on a different standard than the existing employees. Moreover, an employer can only conduct the checking if this is consented to by the employee. Existing employees should not be deprived of the chance to authorise checking, as such clearance may assist in their career advancement.

Recommendation 6

6. As we understand, the current proposal is to set up an automated telephone system to enable prospective employers to call in. It is uncertain if such a system is sufficiently secure to guard against foul play. Our research has shown that in Queensland, Australia, the government has put in place a "Blue Card" system, whereby prospective employees who wish to apply for child-related work will apply to the government for a Blue Card to prove that he has no relevant previous criminal convictions. The Blue

Card is to be renewed every 2 years. As such, employers will be able to monitor on a continuous basis whether any existing employees have violated against the relevant laws. We would highly recommend that the government consider setting up a similar system.

By way of illustration, in Queensland, Australia, the blue card is issued by the Commission for Children and Young People and Child Guardian after a complete national criminal history check (including both charges and convictions). The renewal of the blue card is on a two-year basis, subject to a small application fee.



(For details, please refer to the homepage of the Commission concerned: <http://www.ccypcg.qld.gov.au/employment/index.html>)

Recommendation 7

7. The current proposal suggests a list of offences under specified sections of the legislations to be made the basis of the criminal records against which checking is to be conducted. We would suggest that there should be some flexibility in determining

what offences should go on record. For instance, if a young person is found guilty of indecent assault which he only committed out of peer pressure rather than ill intention, should he be included in the record and would it be fair to include such a person in the record? Research has shown that there are other existing systems in North America and Europe where only persistent and high risk offenders would be put on the record. We would highly recommend that there should be sufficient flexibility in our system.

As indicated in the report, the inclusion of sexual offenders on the register is based upon the designated offences. However, this criterion does not take the frequency and seriousness of the sex crime into account. In this regard, additional criteria to be considered are the frequency and seriousness of the designated sexual offence when considering the inclusion. Very often the seriousness of crime can be measured by the harm done to the victim and society, and can be reflected by the level of punishment or type of sentencing they are imposed. In sum, it is our view that only those first-time sex offenders who committed a serious crime, and all repeat sex offenders should be included on the register.

In addition to the professional assessment of risk, risk/needs assessment tools to measure the risk sex offenders pose or will pose to the society upon discharge have been used in North America and Europe. Based upon the risk/needs assessment, follow-up supervision will be provided to those who are assessed as high risk of re-offending upon their discharge from prison.

Recommendation 9

8. We do not agree with the suggestion that previous records should be "spent" after 3 years. We note that spent convictions only relate to cases where imprisonment does not exceed 3 months or the fine does not exceed HK\$10,000. However, even in such cases, there is a reasonable probability that the individual may re-offend and 3 years is not a sufficient period to safeguard against this probability.

Views on Rehabilitation for Sex Offenders in Hong Kong

9. While it is appropriate to set up a sex offender register in order to end cruelty to children, the sex offender register should not be used as a means of imposing harsher punishment or posing obstacles or barriers to the rehabilitation of sex offenders. In

this respect, we are against treating this sex offender registry as an additional penalty for sex offenders.

Rather we encourage the Government to initiate measures to provide sex offenders on community sentences and in custody with more support and counselling services in order to facilitate their re-integration into society. Indeed rarely do we know how sex offenders are being treated differently from non-sex offenders in the Hong Kong probation and prison system. In fact, it is unclear to what extent, if at all, sex offenders are encouraged to participate in the therapeutic programmes while they are put on probation or detained in prisons. There is evidence to show that intensive social work or psychological interventions are much needed to address the dynamic risk and criminogenic needs of sex offenders. One example of the Probation intervention programme in the UK is as follows:

An outline of the Sex Offender Programme

The West Midlands Sex Offender Programme is an intensive group programme of varying length depending on assessed risk level. All participating offenders attend an induction module of 50 hours which is a 'closed' group. It starts with a one-week block followed by weekly sessions of two and a half hours. Offenders (all male) are then allocated to one of two groups. Low risk/low deviance offenders attend a relapse prevention programme lasting 50 hours. Others attend the full programme of 200 hours. The full programme following the induction module contains six other modules which address cognitive distortions, self-esteem, intimacy and emotional loneliness, social and problem-solving skills, fantasy modification, victim awareness and empathy, relapse prevention and lifestyle change.

The evaluation information was collected principally from interviews with 17 members of staff including a member of the senior management; the line manager and practitioners directly involved in delivery of the programme to participating offenders. Documents relating to the programme, such as, theory manuals, session manuals, staff training materials, and evaluation reports, were examined.

There is a theory manual for the programme though, at the time of the present study, it contained a number of gaps and was not yet completed. Nevertheless it is sufficiently developed for the basis of the programme to be clear. The manual relies primarily on a cognitive-behavioural approach and intervention methods. A model of sexual offending is presented, based on recognition of a series of risk factors, including deviant sexual interests;

cognitive distortions; low empathy; impoverished social interaction skills and impulsive antisocial lifestyle. In addition, attention is focused on the phenomena of denial and minimisation observed in some sex offender populations; on aspects of motivational enhancement and engagement; and also on poor levels of sexual knowledge and the maintenance of sexual 'myths'. Thus, while the version of the manual seen was incomplete, the review of relevant literature was wide-ranging and well balanced, and a reasonable coverage of the key aspects for programme design purposes was provided. Both direct and indirect treatment targets are identified and a rationale given for each.

(Source: Home Office (2002) Introducing Pathfinder programmes into the Probation Service: an interim report, available at:

<http://www.homeoffice.gov.uk/rds/pdfs2/hors247.pdf>)

Comprehensive Assessment of Public Attitudes towards Sex Offenders and their Reintegration into the Community

10. The Government's policy response to sex offender should be based on evidence rather than the 'populist' punitivism or the media response to atypical and high profile sex offences against children. There should be a systematic study of the public attitude towards sex offenders, and towards the management of sex offenders in the community. According to a large survey conducted in England and Wales in 2006, the research participants are not as punitive towards sex offenders as is assumed, and they are concerned with the way the community reintegration of sex offenders should take place.
11. It is our view that the proposed law should be evidence-based legislation. The effectiveness or actual impact of this public policy or legislation should be examined. On-going research is needed to examine the results of having set up a sex offender registry: does it have a positive impact on offender reconviction rates, and are there fewer sex offences against children and the mentally disabled. It is equally important to investigate the impact of this register on sex offenders in terms of their employability, and cases of vigilantism against offenders.