

For information on
8 July 2008

LEGCO PANEL ON WELFARE SERVICES

Subcommittee on Strategy and Measures to Tackle Family Violence

Supplementary information on Pilot Project on Child Fatality Review

Purpose

At the meeting held on 12 June 2008, we updated Members on the implementation of the Pilot Project on Child Fatality Review (the Pilot Project) including its scope, focus and procedures of review. As requested by Members, this paper provides supplementary information on the rationale for conducting the review after completion of all criminal and judicial processes.

Considerations

2. When deciding the appropriate time to conduct the review, the Administration has taken into account the scope of review, the legal issues raised by the Department of Justice (DoJ) and the Police, and the concerns raised by relevant stakeholders and professionals. Details are set out in the ensuing paragraphs –

(a) Scope of Review

3. The scope of review under the Pilot Project covers all fatal cases of children under the age of 18 who died of unnatural causes occurring on or after 1 January 2006, i.e. those cases whose causes of death are not defined by the Coroner as “natural” causes. In identifying cases to be reviewed under the Pilot Project, operationally and procedurally speaking, there is a need to wait until after the Police have finished

investigation into the cases and the Coroner's Court has defined the causes of death, before commencement of the review.

(b) Legal issues concerned

4. Although the purposes of the review and the Police investigation are quite different, it is anticipated that overlapping between the work of the Review Panel and the Police is inevitable. Our legal advice is that if the Review Panel were to conduct the review in parallel to the Police investigation, there could be concerns from the prosecution's perspective, including –

- (i) whether the information gathered by the Review Panel is consistent with the evidence collected by the Police thus affecting, one way or the other, the prosecution case; and
- (ii) the duty to disclose to the defence all relevant evidence including any evidence which may adversely affect the prosecution case or assist the defence case.

5. The legal advice also points out that the duty of disclosure is continuous, i.e. the prosecution has to continue to disclose relevant evidence to the defence even during the trial and any material non-disclosure would render a conviction quashed. As such, the Review Panel must disclose all information gathered to the police officer-in-charge of the investigation so that the matter of disclosure could be properly considered. If the trial is on-going, this passing on of information has to be done on at least a daily basis so that the prosecutor can discharge its duty of disclosure in time.

6. As the information obtained by the Review Panel might not be relevant to the criminal investigation or judicial proceedings, conducting the review in parallel might lead to wastage in the Court time and resources, and those of the prosecution's as well as the Police's, and might cause undue delay to the prosecution procedures.

7. The Police has also pointed out that records of Review Panel members' discussions and views on specific case(s) could also be subject to disclosure as there is no legal privilege or public interest immunity. Members of the Review Panel might be summoned/subpoenaed to the judicial proceedings to give evidence before the court, whether it was a prosecution case on homicide offences or death inquest. This might inhibit information collection and free discussion amongst members of the

Review Panel.

8. The Police also advised that under the rule of sub-judice, it would not be able to provide the Review Panel with the investigation details of cases where the suspects concerned have been identified and put through the criminal justice system, and cases pending death inquest by the Coroner's Court. This would mean that a significant part of the case, i.e. the investigation details, could not be made available to the Review Panel before conclusion of criminal proceedings.

9. In view of the above considerations, the more appropriate timing for conducting the review would be either after conclusion of the trial, or in cases where no prosecution has been instituted, after the Police has finished investigation.

(c) Comments by stakeholders and professionals concerned

10. In developing the review mechanism, the Social Welfare Department had widely consulted with various stakeholders, including medical professionals, social workers and teaching professionals on the proposed timing of conducting the review. Parties consulted had expressed grave concerns on the following issues –

- (i) the confidentiality of the review information and access to information by interested parties;
- (ii) their possible involvement in the litigation process, such as being summoned to give evidence or serve as witness in court;
- (iii) their professional liability concerned in case the information of the review was made public or accessible to interested parties.

Parties consulted had also commented that if the review were to be conducted in parallel to Police investigation, criminal proceedings and death inquest, the duty of the Review Panel members or parties concerned in the child death cases to disclose information about the cases under review and to participate in the judicial proceedings might jeopardize the principle of confidentiality, neutrality and independence of the review. There were also concerns as to whether some parties involved in the case might choose not to provide information, or withhold information for the review, thus defeating the purpose of the review in identifying areas of improvements in multi-disciplinary collaboration.

Conclusion

11. Taken into account the above considerations, in particular the potential adverse impact on the prosecution procedures and on the effective conduct of the review, the Administration decided that the review should be conducted after completion of all criminal proceedings and death inquiry procedures.

Social Welfare Department
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