

LCQ15: Police officers giving evidence in court proceeding

Following is a question by Hon Jeremy Tam and a written reply by the Secretary for Security, Mr John Lee, in the Legislative Council today (July 8):

Question:

It has been reported that recently, during the trial of a case of assault on a police officer, a Magistrate stated that the police officer who gave evidence was not an honest and reliable witness, and thus acquitted the defendant of the charge. On the other hand, according to section 31 of the Crimes Ordinance (Cap. 200), any person lawfully sworn as a witness in a judicial proceeding who makes a false statement shall be guilty of perjury. In this connection, will the Government inform this Council:

(1) of the number of police officers in the past five years who were regarded by the courts as not being honest and reliable witnesses, together with the rationale of the courts;

(2) of the number of police officers referred to in (1) who were subject to disciplinary actions upon investigations, and set out one by one the misconduct involved and the disciplinary actions imposed on them;

(3) of the number of police officers who were prosecuted in the past five years for allegedly giving false evidence and, among them, the number of officers convicted and the punishments imposed on them;

(4) of the measures put in place to ensure that police officers collect evidence honestly during criminal investigations and give evidence honestly in court proceedings;

(5) of the number of police officers, who had been regarded by the courts as not being honest and reliable witnesses, giving evidence in the past five years in other cases;

(6) whether it will set up, for the reference of the courts, a database on cases involving police officers being regarded by the courts as not honest and reliable witnesses, and prohibit the police officers concerned from giving evidence in other cases; and

(7) given that during the recent trials of a number of criminal cases in relation to social incidents, the Department of Justice (DoJ) applied to the courts for the issue of anonymity orders in respect of those police officers who gave evidence, whether DoJ will adopt the following practice: in the event that a police officer who gave evidence has been regarded by the court as not being an honest and reliable witness, DoJ will, on account of public

interest, consider applying to the court for revoking the relevant anonymity order?

Reply:

President,

In the case of a criminal trial, the court's refusal to accept the evidence of a prosecution witness could be due to different reasons, for instance, the court is unable to be satisfied beyond reasonable doubt as to the truth or veracity of the witness' evidence. Hence, it does not necessarily follow that the witness is not honest and reliable, nor should the witness be considered as having made a false statement. This point must be clarified to avoid the public being misled.

Having consulted the Judiciary and the Department of Justice, the reply to the various parts of the question is as follows:

(1), (2), (3) and (5) Neither the Government nor the Judiciary keep records of the number of police officers being considered by the courts as not honest and reliable witnesses in the past five years (2015 to 2019). The Police also do not keep record of the number of police officers who have been considered by the courts as not an honest and reliable witness and testify for other cases during the same period.

In the past five years, no police officer has been prosecuted for perjury under section 31 of the Crimes Ordinance (Cap. 200). Over these five years, disciplinary actions were taken against two officers whose credibility of evidence was questioned by the court. The Police Force issued a minor offence report to one of the officers in 2016; whilst the other officer was given a punishment of "Reprimand" in 2019 subsequent to disciplinary proceedings.

(4) Section 10 of the Police Force Ordinance (Cap. 232) stipulates that the Police has a statutory responsibility to prevent and detect crimes and offences. During case investigations, and for the purpose of crime prevention and detection, the Police will request for information related to crime investigation from relevant persons or organisations if necessary. In accordance with relevant legal requirements, if needed, the Police will also apply for a search warrant from the court for entering premises and searching for, taking possession of or detaining relevant articles, such as seizing documents or information as evidence. Same as all other witnesses who testify during court hearings, a police officer shall give sworn evidence which he is satisfied to be true and accurate in court. In accordance with Chapter 45 of the Police General Orders, prosecution witnesses (including police officers) are allowed to refresh their memories of what occurred from records (for example, their own statements, etc.). However, they should not have a pre-trial discussion of the evidence. In particular, police officers should not hold a meeting before the trial to look at each other's notebooks or statements, or to discuss the evidence of the case. Nevertheless, police officers may follow the accepted practices of: (i) pooling their re-

collections of events when making their notebook entries, either at the time of or shortly after those events when facts are fresh in their minds; (ii) at the time of (i), signing each other's notebooks to indicate that these are true and that they agree with the records made; and (iii) later, before giving evidence, refreshing their memories individually from the records made.

In addition, a witness (including a police officer) must not speak to another witness who has not yet given evidence. Any communication or conversation on case-related or evidence-related topic amongst witnesses is strictly prohibited.

A witness wilfully committing perjury in court and a witness being considered by a judge as not giving credible testimonies can be two different situations. There are existing legal and administrative mechanisms to deal with these situations.

In respect of wilful perjury, under section 31 of the Crimes Ordinance (Cap. 200), if any person lawfully sworn as a witness, either generally or in a particular judicial proceeding, wilfully makes a statement in any judicial proceeding which is material in that proceeding and which he knows to be false or does not believe to be true, he shall be guilty of perjury and shall be liable on conviction upon indictment to imprisonment for seven years and to a fine.

If the court considers that there is prima facie evidence suggesting perjury by a witness (including a police officer), the court may refer the case to the Department of Justice for follow-up. The Police will co-operate and handle the matter seriously. Subject to the investigation results, the officer concerned may be liable to criminal responsibility and also subject to disciplinary actions.

If any person considers he or she is being affected by police misconduct and lodges a complaint, the Complaints Against Police Office shall handle it in a fair and impartial manner according to established procedures, and shall then report to the Independent Police Complaints Council (IPCC) and submit an investigation report to the IPCC in accordance with the Independent Police Complaints Council Ordinance (Cap. 604).

(6) and (7) As a matter of general principle, according to the Indictment Rules (Cap. 221C), the description or designation in an indictment of the accused person, or of any other person referred to therein, shall be such as is reasonably sufficient to identify him, without necessarily stating his correct name or his abode, style, degree or occupation. This principle applies to charge sheets used in the Magistrates' Courts and the District Court.

The Statement on the Treatment of Victims and the Witnesses released by the Department of Justice stipulates that victims and witnesses are entitled to have their rights to privacy and confidentiality respected. In this regard, the Department of Justice will take into account the circumstances of

the cases and consider on a case-by-case basis as to whether the names of victims and witnesses should be revealed. No generalisation should be made in this respect.

Article 87 of the Basic Law gives to any accused the right to a fair trial. The Prosecution Code (the Code) issued by the Department of Justice stipulates that one of the guarantees of fairness is the full and timely disclosure to the defence of all relevant or possibly relevant material (or material information – and not confined to admissible evidence) available or known to the prosecution, whether it assists in the proof of the prosecution case or not.

The Government has no plan to set up a database regarding the situation mentioned in Part (6) of the question.

As for prosecution, paragraph 12.3(c) of the Code stipulates that materials to be disclosed by the prosecution include known discreditable conduct of a prosecution witness (including disciplinary records) that may reasonably affect his or her credibility. The Department of Justice will comply with the duty of disclosure to ensure the protection of an accused's right to a fair trial. These information can assist the court in determining the reliability of the testimonies given by the witness.