

For Information

Legislative Council

Panel on Administration of Justice and Legal Services

Follow-up Actions to Meeting on 12 July 2005

Purpose

This note sets out the Judiciary Administration's response to the issues raised by Members at the Panel meeting on 12 July 2005, as recorded in the minutes of the meeting.

Withdrawal of the Planned Closure of Tsuen Wan Magistrates' Courts (paragraph 17 of minutes)

2. In deciding to withdraw the planned closure of the Tsuen Wan Magistrates' Courts, the Judiciary has taken into account the following factors -

(a) Waiting Time

As the Chief Justice stated at the Legal Year Opening 2005, even on the assumption of a stable caseload, it must be recognised by all concerned that the inevitable consequence of budgetary constraints over a period of time will be that the waiting times will be lengthened at all levels of court. If there comes a point of time when the waiting times are considered to be unacceptable, the question of providing additional resources to the Judiciary will have to be raised and addressed by the Administration and the Legislature. Having reviewed the waiting times at the various levels of courts, the Judiciary considers that this point has come particularly for the High Court and the Magistrates' Courts. It is therefore necessary to take measures to avoid any possible worsening of the waiting times.

(b) Caseload

In 2004, the caseload at Magistrates' Courts was 301,147, representing an increase of 6.7% compared to 282,331 in 2003.

(c) Flexibility for Future Deployment

After a review of the closure of two Magistrates' Courts (the Western Magistrates' Court and North Kowloon Magistrates' Court) and with the current plan to de-freeze the recruitment of Judges and Judicial Officers ("JJOs") and to appoint additional Deputy JJOs, the Judiciary considers that it would not be desirable to close more Magistrates' Courts in order to ensure that the Judiciary has the necessary flexibility and capacity to maintain a sufficient number of courts to deal with possible increase in caseload in future.

3 Taken into account the above factors, the Judiciary has decided that the Tsuen Wan Magistrates' Courts will not be closed in January 2006 as planned.

Number of Cases at Magistrates' Courts Re-fixed on the Trial Date (paragraph 18 of minutes)

4. As set out in our replies to the two questions raised by the Hon Albert Ho during the examination of the Estimates of Expenditure 2005-06 (copies at **Annex**), no statistics have been kept on cases that had to be re-fixed as a result of the Magistrates' Courts not being able to deal with them on the day fixed for the hearing. However, it is believed from experience that less than 5% of the cases listed for trial had to be re-fixed due to the court's lack of time to deal with them on the day listed for trial, and that it is not materially different from the position in the past years.

Mrs Scully-Hill's Views and Suggestions (paragraph 31 of minutes)

5. Regarding the suggestions in the letter dated 20 July 2005 from Mrs Anne Scully-Hill, Associate Professor of School of Law, City University of Hong Kong, the Judiciary's views are set out in paragraphs 6 – 10 below.

Allowing a Limited Class of Law Reporters for Chambers Hearings Not Open to the Public in the Family Court

6. Pursuant to Schedule 2 to Practice Direction 25.1, matters relating to children and financial provisions in matrimonial proceedings would usually not be open to the public, since by reason of their nature, the reasons laid down in Article 10 of the Hong Kong Bill of Rights

Ordinance (“Article 10”) for excluding the press and the public are considered to be usually satisfied. However, in some instances, the court may, applying Article 10, order the hearing to be open to the public. Accordingly, chambers hearings for these family cases will either be open to the public or not open to the public. It is therefore difficult to open these hearings to only a limited class of law reporters as suggested by Mrs Scully-Hill.

7. It is noted that the suggestion of allowing a limited class of reporters for chambers hearings in family cases has been put forward with a view to having a systematic and comprehensive system of law reporting for family cases. To this end, it would be relevant to note that –

- (a) As from May 2005, Family Judges have decided that written judgments in all chambers hearings of two days or more, where parties were represented, should be “sanitized” and “searchable”, after affording the parties an opportunity to make representations. This is in addition to any other judgments on legal issues or other interesting issues, irrespective of the length of hearing, which the judge may decide; and
- (b) A specialist family law reports series will soon be launched by a private commercial publisher. This may be of assistance to practitioners.

8. It is hoped that, with the above measures in place, there will gradually be more “searchable” judgments of family cases, and the area of family law reporting will be enhanced.

Access by Researchers to Court Files of Cases Heard in Chambers Not Open to the Public

9. The general legal position relevant to access to court files is set out in (i) Order 63, rule 4(1)(c) of the Rules of the High Court (Cap. 4A); (ii) Order 63, rule 4(1)(c) of the Rules of the District Court (Cap. 336H); and (iii) Rule 121(2) of the Matrimonial Causes Rules (Cap. 179A). Any person may apply to the court for leave to gain access to court files of cases heard in chambers not open to the public. Whether the Court would grant leave, and if so what appropriate conditions (if any) to impose, including whether the parties’ consent is necessary, is a matter for the Court’s discretion.

10. The suggestion of compiling an anonymised synopsis as a separate appendix or addendum to the case file to facilitate researchers would have considerable resource implications for the Court Registries, particularly in respect of family cases, where parties often amend their petitions from time to time. The Judiciary is of the view that the use of such resources is not justified and does not intend to take forward this suggestion at this stage. It should be noted that the existing arrangements in paragraph 9 above would enable a bona fide researcher to apply for the Court's leave to gain access to court files to collect raw data for empirical research.

Impact of Practice Directions (“PDs”) 25.1 and 25.2 on Reporting of Applications for Writ of Habeas Corpus (paragraph 33 of minutes)

11. All habeas corpus proceedings commence in open court (to which PDs 25.1 and 25.2 do not apply), although for good reasons, the Court may order them to be closed to the public. However, as the liberty of the subject is at issue, orders made at the end of the proceedings will be made in open court. Obviously, if the proceedings have been in camera, then the orders made at the end of the proceedings in open court may have to be edited to ensure continued confidentiality.

Annex

Examination of Estimates of Expenditure 2005-06

**CONTROLLING OFFICER'S REPLY TO
INITIAL WRITTEN QUESTION**

Reply Serial No.

JA014

Question Serial No.

1849

Head: 80 Judiciary

Subhead (No. & title):

Programme: (1) Courts and Tribunals

Controlling Officer: Judiciary Administrator

Director of Bureau: Judiciary Administrator

Question: Please give the average waiting time for trial in 2004 with regard to cases heard in the Magistrates' Courts. How many cases that were waiting to be heard had to be re-fixed on the trial day as a result of the court's lack of time to conduct the hearing? How much longer did the litigants have to wait due to re-listing?

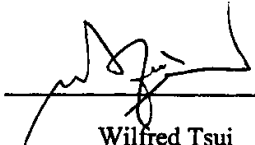
Asked by: Hon. HO Chun-yan, Albert

Reply:

The average waiting time for trial in 2004 at magistrates' courts was about 10 weeks.

No statistics have been kept on cases that had to be re-fixed as a result of the court not being able to deal with them on the day fixed for the hearing. However, it is believed from experience that less than 5% of the cases listed for trial had to be re-fixed because they could not be dealt with on the listed day due to the court's lack of time. Such cases will be re-fixed to a date as soon as possible usually between 1 to 3 months.

Signature



Name in block letters

Wilfred Tsui

Post Title

Judiciary Administrator

Date

8.4.2005

Examination of Estimates of Expenditure 2005-06

**CONTROLLING OFFICER'S REPLY TO
SUPPLEMENTARY QUESTION**

Reply Serial No.

S-JA 02

Question Serial No.

S023

Head: 80 Judiciary

Subhead (No. & title):

Programme: (1) Courts and Tribunals

Controlling Officer: Judiciary Administrator

Director of Bureau: Judiciary Administrator

Question: Follow-up question to JA014

Please give the number of cases of Magistrates' courts that have to be refixed due to the court's lack of time to deal with them on the day listed for trial for each of the past three years

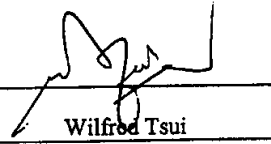
Asked by: Hon. HO Chun-yan, Albert

Reply:

The Judiciary has not kept statistics on the information requested.

It is believed from experience that less than 5% of the cases listed for trial had to be refixed due to the court's lack of time to deal with them on the day listed for trial, and that it is not materially different from the position in the past years.

Signature



Name in block letters

Wilfred Tsui

Post Title

Judiciary Administrator

Date

16.4.2005