

**Administration's Response to Points raised by the
Hong Kong Human Rights Monitor (HRM)
on the Review of the Justices of the Peace System 1999**

Introduction

The current JP visiting system represents the government's commitments to, among other things, honouring Rule 55 of the Standard Minimum Rules for the Treatment of Prisoners. The Administration treasures the JP visiting system as a prison inspection system and an independent channel for prisoners to air their grievances. The Administration always takes comments and suggestions made by JPs as opportunities to improve the JP visiting system.

1. Appointment and dismissal of JP

1.1 Clarifying qualifications for appointment

Section 3 of the Justices of the Peace Ordinance (JP Ordinance) (Cap. 510) provides that the Chief Executive (CE) may appoint whom he considers to be fit and proper to be a JP. As such, in considering the nominations for appointments, the Administration takes into account a wide range of factors such as the candidates' community services, social standing and integrity. Only candidates who are capable and willing to carry out the duties of JPs on a regular basis are appointed.

Visits to prisons form only part of the duties of JPs. In addition to paying visits to prisons, JPs are required to perform other duties as directed by the CE, such as visiting other institutions (including reformatory schools, mental hospitals and general hospitals) and taking and receiving declarations under the Oaths and Declaration Ordinance (Cap. 11). Experience and knowledge in prison administration and counseling will only facilitate JPs in discharging their visiting duties to prisons, but not other aspects of their duties. The Administration considers that there is no need to expressly provide for in the JP Ordinance particular criteria for visits to one particular type of institutions.

1.2 Clarifying grounds for dismissal

Conditions for revocation of JP appointment are clearly laid down in section 6(1) of the JP Ordinance. According to that section of the JP Ordinance, the CE may revoke the appointment of a JP under the following circumstances :

- (i) upon his/her conviction of offences in respect of which he/she has been sentenced to imprisonment (re. section 6(1)(a) of the JP Ordinance); or
- (ii) that JP is suffering from mental disorder within the meaning of the Mental Health Ordinance (Cap. 136) (re. section 6 (1)(b) of the JP Ordinance); or
- (iii) that JP has departed Hong Kong and remained outside Hong Kong for any continuous period of 6 months unless his/her absence from Hong Kong was due to some reason approved by the CE (re. section 6 (1)(c) of the JP Ordinance); or
- (iv) that the CE, having regard to the public interest and all other circumstances of the case, considers that that JP is no longer fit and proper to remain appointed (re. section 6(1)(d) of the JP Ordinance).

The Administration considers that currently the grounds for revoking JP appointments are already clearly stipulated in the JP Ordinance and there is no need for any legislative amendments in this respect.

The HRM expressed concern regarding section 6(1)(d) of the JP Ordinance. In this regard, the Administration wishes to point out that that section is aimed at providing a general condition for revocation of JP appointment to cater for special situation not specified in sections 6(1) (a), (b) and (c) of the JP Ordinance.

Concerning section 6(1)(c) of the JP Ordinance, the Administration wishes to point out that JPs are required to carry out their visiting duties on a regular basis upon their appointments. The aim of section 6(1)(c) is to ensure that on the one hand, JPs should be ordinarily residents in Hong Kong and be able to carry out their visiting duties regularly, while on the other hand, the special circumstances of individual JPs could be taken into account so that the appointment of those JPs who departs from Hong Kong for an acceptable reason would not be revoked. The Administration considers that this is a reasonable arrangement and does not see the need for change.

1.3 Including additional grounds for disqualification or dismissal

As pointed out in section 1.1 above, visits to prisons form only part of the duties of JPs. In addition to paying visits to prisons, JPs are required to perform other duties as directed by the CE, such as visiting other institutions (including reformatory schools, mental hospitals and general hospitals) and taking and receiving declarations under the Oaths and Declaration Ordinance (Cap. 11). The Administration considers that while a particular JP may have a conflict of interest regarding one certain duty, he/she will still be in a position to perform his/her other duties. For this, the Administration has put in place administrative arrangements to cater for the possible conflict of interest arising from JP visits. Under our existing arrangement, the visit programme of all Official JPs have been arranged to exclude visits to institutions directly under the purview of the concerned Official JPs. Similarly, in arranging the JP visit programme of Non-official JPs, the Administration takes into account the background of the individual JPs (including the membership in Government boards and statutory bodies) when arranging JP visits.

Moreover, for visits to prisons, apart from the above administrative procedures, it is also stipulated in Rule 224 of the Prison Rules (PRs) (Cap. 234) that visiting JPs shall not have any interest in any contract made in respect of any prisons or hostels.

On the basis of the above, it is not considered necessary to amend the JP Ordinance to include conflict of interest as an additional factor for consideration in JP appointment and dismissal.

1.4 Establishing judicial procedures for removing JPs

All decisions regarding dismissal of JP appointments are made after thoroughly considering all relevant factors. JPs will not be arbitrarily dismissed by the CE without sufficient grounds. As a matter of fact, in the past 10 years, only two JPs were dismissed upon their conviction of offences.

The Administration confirms that it has no intention to introduce provisions under the JP Ordinance to restrict the right of any JP to seek judicial review on CE's decision to dismiss him/her. Decisions made by the CE by virtue of the powers conferred on him under the JP Ordinance are subject to judicial review.

2. Training

There appears little basis for HRM to suggest that JPs are ill equipped for their prison visits duty, or that the prison staff are under the "capture" phenomenon that would compromise JPs' independence. Being mature and eminent persons with abundant experience in public affairs, JPs are well placed to form their independent judgement in prison inspections. Our correctional service is professional and well managed; their staff never seek to develop an overly-friendly relationship with JPs.

In addition, the Administration considers that annual briefings organized for newly-appointed JPs and seminars organized for existing JPs on a need basis have served the purpose of explaining to JPs their duties and updating them about new developments of the relevant legislations. JP Newsletters, issued quarterly, serve as another useful channel to keep the JPs informed about the latest development in the JP system. With the various channels for disseminating visit-related information to JPs currently in place, the

Administration does not see the need to organise additional special trainings for JPs.

3. Visits by JPs

3.1 Maintaining continuity of visits

Restricting JPs to visit particular institutions over a period of time will facilitate JPs in following-up on complaints and other issues. However, this might be against the wishes of those JPs who may like to visit a wide range of institutions in order to gain a broad perspective of their visiting duties. Moreover, to have different JPs to visit a particular institution will enable the institution to benefit from the advice from different perspectives. To strike a balance between maintaining continuity of visits and allowing more diversified and balanced views, the Administration has invited JPs to indicate the institution(s) or type(s) of institutions that they would wish to visit on a more regular basis, and the Administration will arrange visiting duties according to JPs' preference as far as possible.

The Administration does not see the need of following the UK model of establishing a "Board of visiting JPs", especially with new arrangements of arranging visits in accordance with the preference of JPs as mentioned above. The UK model of prison management and correctional service is not the same as in Hong Kong. Our current JP visiting system already provides independent and surprise visits to CSD institutions to monitor prison conditions and address complaints from prisoners. There are also other well established and statutory grievance redress systems, including, inter alia, The Ombudsman, the ICAC and Police to which prisoners have unrestricted access.

3.2 Conducting surprise visits

PR222 requires two JPs to visit each prison at least once every fortnight (one month in the case of hostels). Conducted at any reasonable time during any given fortnight, such JP visits are totally unannounced and contain a heavy surprise element. The only certainty is that (at least) one JP visit will take

place every fortnight. This is to ensure a minimum number of visits to a prison, and a reasonable spread of such visits over time.

If such a scheduled tour of duty is abolished and JPs are given unfettered discretion in their choice of date, time, place, and frequency of visits (which requires necessary legislative amendments), the Administration will run the clear risk of seeing prolonged neglect of a place and excessive interest in another over a period of time. This will be against the intent of the 'minimum visit' provision.

On the other hand, the Commissioner of Correctional Services is prepared to consider positively any request for visits to a prison, in addition to the mandatory JP visits every fortnight, under PR77(9). JPs are advised to contact Assistant Commissioner (Operations) of the Correctional Services Department at telephone number 2582 5204 beforehand, should they wish to make additional visits outside their given visit schedule.

To enhance the surprise element of visits to prisons, the Administration Wing, as the Secretariat for the JP system, has, since September 1999, issued guidelines to Official JPs reminding them of the following :

- (a) not to give advance notice to the prisons and institutions to be visited as far as practicable; and
- (b) while they can continue to use government transport for JP visits, they are free to use private or public transport to visit the prisons and institutions with the Non-official JPs.

Government Departments, including Government Land Transport Agency, Government Flying Service and Marine Departments have also been requested to keep the transport bookings for JP visits confidential.

As a matter of fact, visits conducted under PR222 carry a very heavy surprise element, especially after implementation of the review recommendations. During these visits, JPs are never denied access to any part of the prisons, or otherwise hindered. There are also flexible arrangements for those JPs who would like to conduct visits in addition to the minimum requirements. PR222(2) is meant to let the penal administration know *who* would perform the visits for obvious security reasons; but the timing of the visit remains unknown to the penal administration and the surprise visit element is hence preserved.

The Administration is of the view that with the current provisions under the law, together with the new measures taken by the Administration to enhance the surprise element of JP visits, legislative amendments to include JPs' power to conduct surprise visits are not necessary.

3.3 Conducting seminars to raise awareness about international norms on detention

At present, the operation of all correctional institutions and treatment of prisoners are strictly governed by the Prison Rules which were formulated with full regard to the United Nations Standard Minimum Rules for Treatment of Prisoners. Prisoners are informed of their rights and privileges on admission to prisons. Besides, prison staff always stand ready to answer queries that prisoners may have. There are abundant channels for prisoners to gain access to information they would like to know. The available complaint channels are also well publicized and prisoners do find them useful. The current arrangements are working well and there does not appear the need for major alterations.

3.4 Inspecting prison libraries

Many parts of a prison are related to the day-to-day living and welfare of the prisoners. CSD staff do not restrict JPs from inspecting the prison libraries, and indeed any parts of the prison for that matter. The Administration

does not see the need to single out prison libraries for inclusion in the law, which would only add confusion to 'the unrestricted access' principle. Rather, consideration would be given to including prison libraries in a checklist for JP visits to penal institutions as proposed by HRM (please see para 3.6 below).

3.5 Monitoring the punitive implementation of administrative segregation and transfer

Apart from the safeguards provided in PR68B(8), PR228(2) also provides that JPs "shall pay special attention to prisoners, or residents of hostels, in hospital and prisoners in separate confinement". As a standard arrangement, prison staff are required to take JPs to inspect prisoners removed from normal association and hear their complaints if any, including grievances about their segregation. The Administration would consider including in the checklist the inspection of prisoners removed from normal association (as referred to in para 3.6 below).

There are many reasons for transferring a prisoner from one facility to another, including good control and management in the institutions in terms of sentencing planning, flexibility in the best use of resources, security and discipline control, programmes enforcement and development. The transfer of a prisoner to the Behaviour Adjustment Unit (BAU) in Siu Lam Psychiatric Centre is subject to an assessment of a Medical Officer and a Clinical Psychologist. The BAU is also overseen by a Review Committee which includes professional medical staff including a Medical Officer and a Clinical Psychologist as members, and meets monthly to monitor the progress of the prisoners. Many of the segregation or transfer cases are part and parcel of the day-to-day prison administration work. In exercising their discretion under PR68B, penal officers are subject to administrative law safeguards to ensure due process and procedural fairness.

HRM's suggestion to make it a mandatory arrangement for visiting JPs to inquire (and for prison management to explain) each and every segregation or transfer case would not be practicable in view of the number of cases involved and the insurmountable workload generated. In practice, any prisoner aggrieved by segregation or transfer is at liberty to lodge their complaints with visiting JPs or other channels for grievance redress. CSD takes any allegation and evidence of malicious intent behind transfer or segregation cases seriously. CSD is always prepared to address complaints made by prisoners concerned to JPs about segregation and transfer, as any other complaints. Rather than introducing another cumbersome and perhaps tedious duty for visiting JPs, the Administration considers it a more effective and efficient arrangement by ensuring that each of the segregation or transfer cases would be given unrestricted access to the JPs during their visit to the institutions.

3.6 Formulating a standardized questionnaire for use during prison visits

Instead of a standardized questionnaire, the Administration is happy to formulate a checklist to highlight the important areas that JPs should cover in their inspections to prisons. Such a practice is to be adopted for other institutions to be visited by JPs as well. The Administration will work on such checklists and such lists will be provided to JPs before their visits to the institutions concerned.

4. Receiving and investigating Complaints

4.1 Submitting written complaints to the JPs

It has already been stipulated under section 5 of the JP Ordinance that one of JPs' functions is to visit any custodial institution or detained person, and there isn't any provision in the JP Ordinance or the Prison Rules that debars prisoners from writing to JPs to lodge their complaints. Prisoners who wish to file complaints can contact the JPs through the Correctional Services Department, and as a matter of fact, the Department has been passing such written complaints from prisoners to JPs upon requests. PR47C also requires that prisoners can have unrestricted correspondence with various entities,

including visiting JPs, and such letters will not be vetted by prison staff.

As regards HRM's proposal to establish a permanent secretariat for the JPs, as a matter of fact, a JP Secretariat is already in place within the Administration Wing of the Chief Secretary for Administration's Office (Administration Wing) to provide administrative support for administering the JP visit programme. Moreover, to ensure better follow-ups to JP visit, as proposed in the Review of the JP System, the Administration Wing will implement measures to strengthen its role in following-up on suggestions made by visiting JPs and in monitoring follow-up actions on complaints to JPs. Having regard to the present arrangements and the improvement measures to be implemented, the Administration does not see a need for amendments in legislation to statutorily provide for the establishment of a JP Secretariat.

Currently CSD does not observe a problem of inmates from the mainland or from foreign countries having difficulties in understanding and making use of the available complaint channels. The welfare officers of institutions will continue to render assistance as necessary. The Administration will also keep under review the situation and consider taking appropriate actions as necessary.

4.2 Protecting privacy of interviews between the JPs and the prisoner

It is already an established practice that JPs may speak to prisoners in private if they so wish. Venues suitable for the purpose, that is, rooms in sight but not in the hearing of prison staff, are already made available in all CSD institutions.

The arrangement that a CSD officer not below the rank of Chief Officer shall accompany the visiting JPs in their visits of inspection and bring before the JPs any prisoner who wishes to see them is the duty of the CSD officer concerned as stipulated under PR117. Besides courtesy, the arrangement is to brief JPs, answer their questions, and ensure security and safety to the prison,

the prisoners and the JPs themselves.

4.3 Preventing retaliation against prisoners who request interviews with JPs

HRM's accusation that the right of prisoners to communicate their complaints to visiting JPs is often undermined by CSD is unfair and not borne out by facts. There are, in fact, abundant channels available to prisoners to air their grievances and CSD has put in a concentrated effort in publicizing the channels. For example, a number of measures have been implemented to enhance prisoners' awareness of The Ombudsman's service. It is not possible for the Department to stop prisoners from making known their complaints, nor has the Department ever attempted to do so. Requests made by prisoners to see visiting JPs are properly recorded and followed up. As mentioned above, PR47C also requires that prisoners can have unrestricted correspondence with The Ombudsman, visiting JPs, Members of the ExCo and LegCo, Police and ICAC and such letters will not be vetted by prison staff.

There is no evidence to support HRM's concern about retaliation against prisoners who file complaints. The existing provisions are effective in protecting prisoners who file complaints and proposal to amend PR239(1) is not necessary. First, prison staff must abide by the Prison Rules in the treatment of prisoners and operation of penal institutions. Officers contravening the Prison Rules or otherwise in breach of their duties are subject to disciplinary action. Second, if prisoners are aggrieved by any action, including disciplinary action taken against him, there are abundant channels for them to appeal. Third, under PR229, visiting JPs shall attend to all reports received by them as to the mind or body of any prisoner or resident of a hostel being likely to be injured by discipline or treatment to which the prisoner is subjected, and shall communicate their opinion to the CE. Therefore, the Administration does not see any practical need to require JPs to monitor closely the treatment of the prisoners who have requested for interviews with JPs over the next 6 to 12 months from the date of requests for interviews.

4.4 Establishing the right of the public to communicate and file complaints with JPs

Without the consent of the JPs, the Administration Wing cannot disclose the personal data regarding the contact addresses/telephones of the JPs under the Personal Data (Privacy) Ordinance (Cap. 486). Nevertheless, to facilitate communications between non-government organisations and JPs, the Administration Wing have consulted JPs on whether they wish to receive letters and other publications from non-government organisations and universities. The Administration Wing can assist the non-government organisations and universities in distributing their printed materials to JPs who wish to receive their publications.

Regarding the suggestion to revise the Prison Rules and JP Ordinance to establish the right of the general public, including academics, prison chaplains, non-government organisations, and friends and family of prisoners, to file complaints with the JPs and for JPs to investigate such complaints, the Administration considers that there are, at present, various channels (e.g. CE, The Ombudsman, Legislative Councillors) for various parties to lodge their complaints regarding the running of prisons or treatment to inmates, and it does not see the need to create yet another channel for the public to lodge such complaints.

4.5 Strengthening the duty to investigate complaints

JPs are empowered under PR228 to investigate any complaints they received from prisoners and they do initiate active investigation actions on about one-third of the complaints during the period from 1 April 1998 to 31 March 1999 instead of referring the complaints received to the institutions for follow-up. The Administration is not aware of any provisions in the Prison Rules which restrict the exercise of JPs' power under PR228. In fact, PR231 specifically empowers visiting JPs to inspect any of the books of the prison or hostel. The Administration therefore does not see the need to amend the PR to specifically provide for the procedures for the timely investigation of complaints

by JPs, nor does it consider it appropriate for the JP Secretariat to be involved in the direct investigation of complaints by JPs. The Secretariat should maintain its current impartial role to follow-up on suggestions made by visiting JPs and to monitor follow-up actions on complaints to JPs.

As regards HRM's suggestion to amend The Ombudsman Ordinance to allow JPs to be informed of the outcome of an Ombudsman Investigation, the Administration is of the view that the aim of the requirement for The Ombudsman and its staff to maintain secrecy in respect of all matters arising from any investigations or complaints made to The Ombudsman (as provided for in section 15 of The Ombudsman Ordinance) is to protect the personal information of the complainants concerned. We feel that it is an important element of The Ombudsman system on which the complainants' trust is built. While The Ombudsman does not inform JPs of the outcome of her investigations, she publishes reports on her investigations (without disclosing the identity of the complainants) from time to time. This has ensured transparency of The Ombudsman's investigations.

5. Establishing a duty to provide periodic reports

The Administration does not agree to HRM's suggestion that there is little incentive for the Commissioner of Correctional Services to take action on the complaints referred by JPs. CSD follows up on each and every comment/suggestion/complaint raised by visiting JPs seriously and reports the full findings to JPs accordingly.

Under PR226, visiting JPs shall ensure that all abuses in connexion with the prison or hostel which come to their knowledge are brought to the notice of the Commissioner of Correctional Services immediately. In addition, visiting JPs shall enter in a book provided for the purpose any statement in respect of abuses brought to their notice with any suggestions or remarks which they may wish to bring to the notice of the CE as to the state and discipline of the prison or hostel. The proposal for further periodic reports to the Commissioner appears as an unnecessary duplication.

Nevertheless, to improve the transparency of the JP visits system and to ensure better follow-ups for the visits, the Administration has decided to compile an annual composite report on JP visits. We plan to include in the reports statistics regarding the number of visits, the number of complaints, follow-up actions concerning those complaints, and suggestions/comments made by JPs.

6. Establishing a duty to inspect other detention facilities

Under the present arrangement, JPs are already required to visit a wide variety of institutions on statutory and non-statutory basis. Such institutions include not only prisons, but also institutes such as children homes of the Social Welfare Department, detention centres of the ICAC and Immigration Departments, drug treatment centres, mental hospitals, general and specialized hospitals of the Hospital Authority. Moreover, the Administration Wing is also currently inviting Bureaux for suggestions in expanding the JP visit programme to cover other institutions on non-statutory basis.

Summary

We have well-established, effective monitoring systems for our penal system. Apart from internal complaint channels, prisoners can lodge complaints with visiting JPs and through other independent and statutory complaint avenues which are open to prisoners. For example, they can express their views through writing to the CE, Legislative Councillors, The Ombudsman, the ICAC, Police, etc. There is no limit on the number of letters they can write and send, and such letters cannot and will not be vetted by prison staff. As far as The Ombudsman is concerned, apart from carrying out independent investigation into prisoner complaints, she may also conduct direct investigations into cases as she thinks fit even in the absence of a complaint.

The number of complaints made through the various complaint channels - more than 200 complaints a year to visiting JPs and over 400 in 1998/99 to The Ombudsman - clearly reflects prisoners' free access to the

channels and their confidence in the systems. Moreover, the Administration Wing is also assuming a more active role in monitoring the follow-up actions taken by CSD on suggestions/complaints referred by visiting JPs, thus making CSD even more accountable and transparent in handling the prisoners' complaints. While the Administration would continue to work on improvements to the existing systems, we see little need to duplicate them by a separate prison inspectorate as suggested in HRM's report. Nevertheless, the Administration welcome any comments/suggestions regarding the JP visiting system, including visit arrangements to prisons and other penal institutions.

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