

**立法會**  
**Legislative Council**

Ref : CB4/PL/AJLS

LC Paper No. CB(4)1189/16-17  
(These minutes have been seen  
by the Administration)

**Panel on Administration of Justice and Legal Services**

**Minutes of policy briefing cum meeting  
held on Monday, 23 January 2017, at 4:30 pm  
in Conference Room 1 of the Legislative Council Complex**

- Members present** : Dr Hon Priscilla LEUNG Mei-fun, SBS, JP (Chairman)  
Hon Dennis KWOK Wing-hang (Deputy Chairman)  
Hon James TO Kun-sun  
Hon Paul TSE Wai-chun, JP  
Hon LEUNG Kwok-hung  
Hon Steven HO Chun-yin, BBS  
Hon Frankie YICK Chi-ming, JP  
Hon CHAN Chi-chuen  
Dr Hon Fernando CHEUNG Chiu-hung  
Dr Hon Elizabeth QUAT, JP  
Hon Martin LIAO Cheung-kong, SBS, JP  
Hon POON Siu-ping, BBS, MH  
Hon CHUNG Kwok-pan  
Hon Alvin YEUNG  
Hon Jimmy NG Wing-ka, JP  
Dr Hon Junius HO Kwan-yiu, JP  
Hon Holden CHOW Ho-ding  
Hon YUNG Hoi-yan  
Hon HUI Chi-fung
- Members absent** : Hon CHU Hoi-dick  
Hon CHEUNG Kwok-kwan, JP

**Public officers  
attending**

: Item III

Department of Justice

Mr Rimsky YUEN, SC, JP  
Secretary for Justice

Mr Wesley WONG, SC  
Solicitor General

Ms Christina CHEUNG, JP  
Law Officer (Civil Law)

Mr Paul TSANG  
Law Officer (International Law) (Ag)

Ms Thersea JOHNSON  
Law Draftsman

Mr Keith YEUNG, SC, JP  
Director of Public Prosecutions

Mr Alan SIU, JP  
Director of Administration & Development

Home Affairs Bureau

Ms Florence HUI Hiu-fai, SBS, JP  
Under Secretary for Home Affairs

Mr Laurie LO Chi-hong, JP  
Deputy Secretary for Home Affairs (1)

Ms Karyn CHAN Ching-yuen  
Principal Assistant Secretary (Civic Affairs) 2

Legal Aid Department

Mr Thomas Edward KWONG, JP  
Director of Legal Aid

Item IV

Administration Wing, Chief Secretary for  
Administration's Office

Ms Kitty CHOI, JP  
Director of Administration

Ms Christine WAI  
Assistant Director of Administration

Item V

Administration Wing, Chief Secretary for  
Administration's Office

Ms Kitty CHOI, JP  
Director of Administration

Ms Christine WAI  
Assistant Director of Administration

Judiciary Administration

Ms Emma LAU, JP  
Judiciary Administrator

Mrs Connie NGAN  
Assistant Judiciary Administrator (Corporate Services)

**Clerk in attendance** : Miss Mary SO  
Chief Council Secretary (4)2

**Staff in attendance** : Mr Stephen LAM  
Senior Assistant Legal Adviser 2

Miss Joyce CHING  
Senior Council Secretary (4)2

Ms Jacqueline LAW  
Council Secretary (4)2

Miss Vivian YUEN  
Legislative Assistant (4)2

---

Action

**I. Information paper(s) issued since the last meeting**

Members noted that the following information paper had been issued since the last meeting.

LC Paper No. CB(4)430/16-17(01) -- Information paper on "Launch of Hong Kong e-Legislation" provided by the Department of Justice

**II. Items for discussion at the next meeting**

LC Paper No. CB(4)426/16-17(01) -- List of outstanding items for discussion

LC Paper No. CB(4)426/16-17(02) -- List of follow-up actions

2. Members agreed to discuss the following items at the next regular meeting scheduled for 27 February 2017 at 4:30 pm:

- (a) Review of Solicitors' Hourly Rates - An Update;
- (b) Law Reform Commission ("LRC")'s Consultation Paper on Sexual Offences Involving Children and Persons with Mental Impairment; and
- (c) Conversion of the former French Mission Building for accommodation use by law-related organization(s) and related purposes.

**III. Briefing on the Chief Executive's 2017 Policy Address**

LC Paper No. CB(4)303/16-17(03) -- Paper provided by the Department of Justice

LC Paper No. CB(4)303/16-17(04) - Paper provided by the Home Affairs Bureau

Action

Other relevant documents

Address by the Chief Executive at the Legislative Council ("LegCo") meeting on 18 January 2017

The 2017 Policy Agenda booklet

Briefing by the Administration

3. At the invitation of the Chairman, Secretary for Justice ("SJ") briefed members on the policy initiatives of the Department of Justice ("DoJ") in 2017, details of which were set out in LC Paper No. CB(4)426/16-17(03); and Under Secretary for Home Affairs ("USHA") briefed members on the policy initiatives in respect of legal aid and legal advice services in the Chief Executive's 2017 Policy Address and Policy Agenda, details of which were set out in LC Paper No. CB(4)426/16-17(04).

Discussion

*Mediation facilities and services*

4. Referring to paragraphs 13-15 of the paper provided by DoJ, Mr POON Siu-ping said that he welcomed the Administration's plan to provide mediation facilities in the vicinity of the West Kowloon Law Court Buildings. Noting that the facilities were expected to be ready for use in around early 2018, Mr POON asked about the progress of the work and the infrastructural and operational arrangement, including the manpower resources, after service commencement. Mr POON also asked about the progress of the pilot scheme under which mediation services would be provided to litigants in Small Claims Tribunal ("SCT") cases as mentioned in paragraph 14 of the paper provided by DoJ.

5. SJ advised that following a review of the work of the SCT, the Judiciary had initiated discussions with DoJ to explore the provision of mediation services to litigants in certain SCT cases which were considered suitable for mediation. DoJ agreed that there were merits in providing mediation services to parties involved in SCT cases that were considered suitable for mediation by the Adjudicators of SCT. Having consulted and obtained the support of the Steering Committee on Mediation, DoJ planned to implement the pilot scheme for a period not exceeding five years. DoJ had secured the Sham Shui Po District Council's support to construct the mediation facilities at a site in the vicinity of the West Kowloon Law Courts Building. Regarding the construction of the mediation facilities, SJ said that the

Action

Administration aimed at saving cost by adopting a simple infrastructural design, similar to the one adopted by "Energizing Kowloon East". Regarding the day to day operation of the pilot scheme, it was envisaged that an independent coordinator would be engaged to administer the mediation facilities. DoJ together with the Judiciary and the Steering Committee on Mediation would be responsible for the overall monitoring of the operation of the pilot scheme. Mediation services would be provided on a pro bono basis or at nominal fees to litigants in suitable SCT cases, such as disputes between neighbors in water seepage or leakage cases, to facilitate early settlement of such cases in a cost-effective manner.

6. Noting that many litigants were unaware of the use of mediation services to resolve their disputes, Ms YUNG Hoi-yan urged the Administration to enhance promotion and education on mediation, with the focus on encouraging the disputing parties to resolve their dispute by mediation first, before pursuing other dispute resolution process or court litigation. Ms YUNG further said that currently low cost or free mediation services were being provided by family and welfare organizations as well as woman's associations at district level, including in the West Kowloon. Ms YUNG thus queried the efficacy of the Administration's plan to provide mediation facilities in the vicinity of the West Kowloon Law Courts Building, and asked how the publicity launched by the Administration could tie in with the services provided at district level. Ms YUNG also ask for the participation rate of the programmes held under the Mediation Week and whether the programme had achieved its aims.

7. SJ responded that the Administration had been making dedicated efforts to enhance the public's awareness of the benefits or availability of mediation with a view to encouraging them to pursue mediation first before court proceedings. The Mediation Week mentioned by Ms YUNG Hoi-yan was one of the promotion initiatives and that its targeted participants included the users from different sectors including the medical field, ethnic minorities as well as schools. SJ further said that the Administration had also organized "Mediate First" Pledge receptions in the past and was planning another one within 2017. The aim of the reception was to encourage different types of enterprises, including multi-national corporations as well as small and medium enterprises (which were the current promotion targets) to use mediation first to resolve their disputes. As to Administration's current plan of provision of mediation facilities, SJ said that the aim was to encourage the wider use of mediation by members of the public to resolve suitable SCT cases through the mediation scheme. Choosing a location in the vicinity of the West Kowloon Law Courts Building had its geographical advantage and a site was currently available at the vicinity. Regarding publicity at district level, SJ assured that the Administration had been making dedicated efforts in this regard, including

Action

organizing activities at schools and local communities for ethnic minorities and liaison with non-profit making organizations.

8. Ms YUNG Hoi-yan suggested the Administration to explore the viability of provision of "duty mediator service" similar to the duty lawyer scheme. In response, SJ welcomed this suggestion and said that the Administration would give further consideration to it upon receiving more information from Ms YUNG.

9. Mr Paul TSE also welcomed the Administration's plan to provide mediation facilities in the vicinity of the West Kowloon Law Court Buildings. In particular, Mr TSE saw the need to ease the workload of the adjudicators of SCT by encouraging the use of mediation service to resolve suitable SCT cases through mediation.

*Belt and Road initiative*

10. The Chairman declared that she was a member of the International Academy of the Belt and Road, which was a community organization, and she had been working on a study with partners from over 40 countries along the Belt and Road in respect of model rules for dispute resolution.

11. The Chairman noted, from paragraph 24 of the paper provided by DoJ, the initiatives relating to the promotion of mediation facilities and services as well as the role that such services could play under the Belt and Road Initiative. In this regard, the Chairman asked whether the Administration would consider providing accommodation support, say providing space in the former French Mission Building ("FFMB"), for community organizations set up for the purposes relating to the Belt and Road Initiative or related new initiatives.

12. SJ responded that DoJ had set up the Committee on Provision of Space in the Legal Hub to consider the mechanism for providing space to law-related organizations in the West Wing of the former Central Government Offices and the FFMB. SJ said that notwithstanding that the past performance of the applicants would be one of the selection criteria, applications from newly set up organizations would also be favourably considered so long as the applicants' services were relevant to achieving the policy objective of enhancing Hong Kong's position as a hub for international legal and dispute resolution in the Asia-Pacific region.

Action

*Protection for vulnerable victims during court proceedings*

13. Members noted that DoJ would take forward legislative amendments to the Criminal Procedure Ordinance by way of the Statute Law (Miscellaneous Provisions) Bill 2017, so as to give the court a discretion, on its own motion or on application, to permit complainants of certain sexual offences to give evidence by way of a live television link. Mr Paul TSE, Dr Fernando CHEUNG and the Chairman welcomed the proposed legislative measure to offer greater protection for complainants of sexual offences.

14. Mr Dennis KWOK asked when the proposed bill to implement the LRC's recommendations made in the report on Hearsay in Criminal Proceedings (which was published in 2009) would be introduced into the LegCo. Director of Public Prosecutions ("DPP") responded that DoJ was in the course of preparing a working draft bill to implement the LRC's recommendations.

15. Referring to the DoJ's withdrawal of prosecution against the defendant in the "Bridge of Rehabilitation Company" incident, Dr Fernando CHEUNG said that he looked forward to seeing the introduction of the proposed bill which aimed at reforming the existing hearsay rule, so that hearsay evidence, under certain circumstances, could be admissible in court, avoiding the situation where prosecution could not be proceeded due to the inability of mentally incapacitated persons to testify in court.

*Law reform proposal: class action*

16. Referring to paragraph 55 of the paper provided by DoJ, Mr Dennis KWOK enquired on the work progress of the Working Group on Class Action as he noted that no details in this regard had been set out in the paper.

17. Solicitor General ("SG") responded that sensitive issues were involved in the introduction of a class action regime in Hong Kong. In view of the complexity of the issues involved, DoJ had set up a cross-sector working group ("the Working Group") to study the LRC's proposal under the report on "Class Actions" released in May 2012, and to make recommendations to the Government on how to take the matter forward. The Working Group had been holding four regular meetings annually. However, owing to the need to deal with the extensive and sophisticated issues involved in the study, a sub-committee to the Working Group had been formed since April 2014, meeting once every one or two months. SG advised, in order to give the meeting a flavour of the issues examined, that what had been under review included a scrutiny of relevant legislation of the United States, Canada and

Action

Australia as reference and the anticipated problems in relation to the procedural matters involved in any reform introducing a class action regime in Hong Kong as well as some very technical issues arising, such as whether the defendant could counter-claim the plaintiff under a class action. SG further said that the Administration was working on the legislative proposal and targeting to include the draft statutory provisions when launching the public consultation on any reform to introduce a class action regime. Responding to Mr Dennis KWOK's query of whether a timetable had been set, SG responded that there was no concrete timetable at the moment given the complexity of the issues and the legal resources required for the study.

*Law reform proposal: gender recognition*

18. Mr CHAN Chi-chuen enquired about the work progress of the high level Inter-departmental Working Group on Gender Recognition ("IWG") chaired by SJ. Mr CHAN asked for the reason for the delay in launching the public consultation in this regard, and further asked about the details of the public consultation, including policy direction of the reform, duration of the consultation, whether the consultation would include proposed legislative amendments and who would take the lead in the consultation and reform. Dr Fernando CHEUNG also asked about the timetable of the work of the IWG and urged for the early completion of the study.

19. SJ responded that the issues under review were more complex than expected and that the scope of the review had been widened during the course of the IWG's work. SJ further said that the IWG was currently finalizing the English version of the consultation paper and the translation of the Chinese version was also in progress. SJ supplemented that the working draft of the consultation paper consisted of over 200 pages with 600 paragraphs and that in preparing the draft, relevant legislation in 116 jurisdictions had been reviewed. In light of the complexity and extensive scope of the study, the launching of the consultation had been delayed. The Administration would try its best to complete the work with a view to launching the public consultation on the first part of the study on gender recognition issues by the first quarter of 2017 and complete the consultation within this Government term. Making reference to a similar study on gender issues conducted in the United Kingdom which was led by the Attorney General, the consultation and reform in relation to gender recognition would be led by the SJ and with support service to be provided by DoJ. Regarding the policy direction of the reform, particularly about whether legislative amendment would be proposed, SJ responded that in view of the diverted views on this subject, this question would be left open during the consultation. The Administration had been considering various options, including legislative amendment and administrative measures. In considering

Action

possible legislative amendment, consideration would be given to whether to follow the practice in the United Kingdom or to adopt other models.

20. The Chairman opined that the legislative reform in relation to gender recognition might not be a right policy direction as she considered that legislative reform in this regard would create more problems than what it could solve. However, she was open to exploring any possible means to resolve the disputes arising from gender related issues.

*Rule of law and Judicial Independence*

21. Quoting from paragraph 268 of the 2017 policy address which said that "the rule of law is the cornerstone of Hong Kong's success and has for many years earned us international acclaim. We must work together to preserve it.", Dr Elizabeth QUAT considered that "equality before the law" was an important foundation for preserving rule of law and that judges at all levels of courts in Hong Kong, in making their decisions, should ensure that the law was equally applied. In this regard, Dr QUAT was concerned about the progress of prosecutions against the participants of the Occupy Central Movement in 2014. Dr QUAT also enquired whether the DoJ would review the sentences handed down by the court of the recent violent public disturbance cases, including the sentences for the rioters who attacked the police with bricks, which were seen to be light or inadequate punishments.

22. With regard to the court decisions at different levels of courts, SJ responded that (as pointed out in his speech, the Chief Justice's speech and the Chairman of the Hong Kong Bar Association's speech at Ceremonial Opening of the Legal Year 2017) one should not simply judge the outcome of a judicial decision against one's political belief. It was also not appropriate to criticize a judge's ruling merely based on the magnitudes of penalties. Instead, the focus should be on the reasons as set out in the judgments, such as the supporting evidence and the precedents. SJ said that judges would only consider the legal questions before them, and the court had made it clear that any attempt to advance one's political cause through violence or any other illegal means would not be tolerated. Regarding the prosecutorial issues relating to Occupy Central Movement in 2014, SJ responded that DoJ had provided legal advice (for which the document contained 500 pages) on the related cases to the Police. To illustrate the heavy workload of the DoJ in this case, SJ said that the data, information or documents that had been processed included 335 investigation reports received from the Police, 300 witness statements, 130-hour video recording and about 80 items of non-video exhibits.

Action

23. Notwithstanding that the cases were complex and huge amount of information had to be processed, Dr Junius HO still considered the progress of prosecutions work in relation to the Occupy Central Movement 2014 was too slow when he saw the small number of prosecutions processed in over two years' time out of the large number of persons arrested. Dr HO was particularly concerned about the prosecutions against the Occupy Central Trio, and considered that the Administration should have got sufficient evidence to take necessary prosecution action. Dr HO said that among others, there were media reports, books and the "self-declaration" made by the organizers themselves as materials for the DoJ to substantiate the charges.

24. SJ responded that due consideration to a number of factors had to be given when making prosecution decisions, in particular, on issues relating to the admissibility of evidence. For instance, there were strict rules governing the admissibility of "hearsay evidence" such as media report under criminal proceedings. SJ further said that there was no correlation between the number of prosecutions and the number of persons arrested in an incident. SJ supplemented that one of the purposes of arresting an individual during the Occupy Central Movement was to deter the arrested individual from further creating chaos at the scene for maintenance of public order. SJ reiterated that DoJ had already provided legal advice on related cases involved in the Occupy Central Movement to the Police and further said that given the scale and uniqueness of the Occupy Central Movement, the Administration had to be very cautious in making prosecution decisions and thus the time taken for the related process had been longer than that taken for a normal case.

25. DPP supplemented when deciding on prosecutorial matters of public order events, especially, those involving a large number of persons and evidence from various sources/aspects, it would be difficult and impractical, if not impossible, to single out the charges against some particular individuals. Instead, the prosecution had to review the cases in respect of all the suspects in a holistic manner to assess the types and nature of any possible charges, the relationship between/impact of charging one/some offender(s) and/on the other(s) and/or the incident as a whole.

26. Dr Junius HO urged for a timetable for closing all the cases relating to Occupy Central Movement and sought confirmation as to whether external advice had been sought on handling of the cases. SJ responded that the cases were not yet closed.

27. Mr Dennis KWOK said that he had every confidence in the judges and judicial officers of the courts in Hong Kong as well as the public officers of DoJ that they had all along acted independently and professionally in delivering

Action

judgments and/or performing their duties. Mr KWOK expressed that a respect for the rule of law included concern for the issues discussed by this Panel, including law reform proposals, legal aid and duty lawyer services as well as judicial manpower as these issues were the pillars of the rule of law.

*Interpretation and promotion of the Basic Law*

28. Mr HUI Chi-fung said that whether a decision or an act of the Government was contrary to the rule of law should not be judged or criticized from a political point of view. Nevertheless, Mr HUI considered that the recent interpretation of the Basic Law by the Standing Committee of the National People's Congress ("NPCSC") was contrary to the rule of law and that this act had a negative impact on judicial independence of the Hong Kong Special Administration Region ("HKSAR"). Despite acknowledging that the NPCSC was vested with the power to interpret the provisions of Basic Law, Mr HUI considered the motives for the previous occasions of interpretation of the Basic Law by NPCSC was based on political causes, in particular the latest occasion when the interpretation relating to the judicial review case concerning the "disqualification of LegCo members".

29. Referring to the above discussion relating to Occupy Central Movement and judicial review cases, Dr Fernando CHEUNG said that DoJ should be playing a very pivotal role in safeguarding law and order as well as judicial independence of HKSAR and thus it was crucial that prosecutors and public officers concerned should act fairly and in an apolitical manner. Echoing Mr HUI Chi-fung's view, Dr CHEUNG also opined that the recent case, involving the examination of the LegCo President's decision, was unprecedented and had intervened the "internal business" of LegCo according to the doctrine of separation of power.

30. In response, SJ stressed that under the Basic Law, the NPCSC was vested with power to interpret legislation, including the provisions of Basic Law. SJ assured that prosecutors and public officers had all along acted in an apolitical manner, and in providing legal advice on the judicial review case which involved LegCo members, DoJ had already sought advice from independent external barristers, who had assessed the cases without political consideration. SJ further said that the "non-intervention principle" which originated in common law and premised on the doctrine of separation of powers was stated clearly under the judgments of the above mentioned judicial review cases. In gist, under the constitutional framework of Hong Kong, the Basic Law was supreme and the principle of non-intervention as applied in Hong Kong was necessarily subject to the constitutional requirements of the Basic Law. In performing their duties, LegCo members and officers of law-making

Action

bodies had to act in accordance with the requirements of the Basic Law and related legislation. SJ supplemented that public interest was one of the important considerations for putting up a judicial review proceeding.

31. Noting members' concerns on the interpretation of the Basic Law and the controversy of the issues in this area, the Chairman stressed that NPCSC 's power to interpret the Basic Law originated from the Constitution and was contained in the Basic Law. In this connection, the Chairman suggested DoJ to organize programmes and/or join hand with the Education Bureau to enhance the promotion of Basic Law, with a focus on more in-depth legal issues, including the interpretation of the Basic Law.

32. SJ responded that various Government departments, including, DoJ, had been organizing promotional programmes on the Basic Law. In particular, many promotional initiatives were co-ordinated by the Basic Law Promotion Steering Committee under the Chief Secretary for the Administration's Office. SJ assured that the Administration would continue to dedicate its effort in this regard.

*Prosecution*

33. Mr LEUNG Kwok-hung was concerned about the progress of the assault case involving the then Superintendent of the Police, Franklin CHU King-wai. He enquired whether the Police had already submitted a report to DoJ and DoJ's advice on the prosecution decision in this case. SJ responded that DoJ had already provided the Police with its legal advice, including that on the prosecution decision.

34. Mr LEUNG further said that he was given to understand that DoJ would not take action with regard to evidence collection and prosecution. Mr LEUNG then sought clarification as to whether he could assume that no legal advice as to initiating prosecution against Mr CHU had been given since no action had been taken by the Police so far. SJ responded that Mr LEUNG's assumption with regard to the prosecution charge was not correct. SJ explained that that notwithstanding investigation work and evidence collection were under the purview of the Police, DoJ would give legal advice, among others, on matters relating to investigation and further evidence to be collected for a case and that DoJ would take follow up action on these matters as appropriate.

35. Mr LEUNG also opined that delay in making prosecution decision would amount to injustice according to the legal maxim "justice delayed is justice denied". SJ explained that, more often than not, there would be factors

Action

out of the control of the Administration, for instance, availability of witness and evidence, and thus the time taken for investigation would vary given the merit of each case. SJ further said that "time" was not the sole factor in assessing whether there was "access to justice". In this regard, the courts would take a holistic approach to see if unfairness had been done on any parties concerned.

*The administration of the Estate of the late Mrs Nina WANG*

36. Mr Paul TSE enquired about the progress of the administration of the Estate of the late Mrs Nina WANG and urged the Administration to provide information as requested by members during the Panel meeting held on 20 July 2015.

37. SJ responded that progress had been made in this case since the Administration last reported to the Panel. Nevertheless, since the draft scheme would be subject to the court's sanction and in order not to prejudice the parties' position, it was considered not appropriate to disclose any information at this stage. SJ assured that the Administration would report to the Panel when appropriate.

38. The Chairman also urged the Administration to update the Panel to provide information insofar as it could be disclosed as soon as practicable since the Estate concerned was a matter of public interest.

*Outsourcing of cases by DoJ*

39. The Chairman raised concern about the issues relating to outsourcing of "controversial" cases by DoJ, the reasons why those cases could not be handled by in-house government counsels and the high litigation cost incurred owing to outsourcing of cases to senior counsels in the private practice. The Chairman enquired about the considerations for outsourcing of cases by DoJ.

40. In response, SJ said that it was important to distinguish between civil and criminal cases. SJ advised that for criminal cases, the majority of the prosecutions were conducted by public prosecutors (i.e. in-house staff of DoJ). He considered that issues arising from "controversial" cases, as mentioned by the Chairman, had caught much public attention due to the fact that they had been widely reported by the media. DPP supplemented that the caseload of criminal prosecutions for last year was around 150,000 cases while there were only around 70-80 public prosecutors working in the Magistrate Courts. Owing to the manpower situation in DoJ, DPP said that counsels from the private bar had been employed to conduct prosecutions for a considerable number of cases in the Magistrates and the District Courts on a regular basis.

Action

There were also situations where cases were outsourced on need basis or under special circumstances, depending on various factors like the complexity and sensitivity of the cases.

*Review of the financial jurisdictional limits of the SCT*

41. In view of his concern over the heavy caseload of SCT and taking into account the effect of inflation over the past years, Mr Paul TSE urged the Administration to raise the financial jurisdictional limits of the SCT and to improve the execution process relating to the enforcement of judgments of SCT cases. Further, Mr TSE suggested the Administration to make reference to the "People's Court" in the United States of America ("US"), where small claims cases were handled by retired the judges/lawyers upon agreement by the disputing parties to expedite the processing of SCT cases.

42. Regarding the reference to the "People's Court" in the US, SJ considered it an "innovative idea" and said that further thoughts could be given to this idea. Nevertheless, in taking forward any initiative along this line, SJ said that it would be important to bear in mind the cultural difference between Hong Kong and the U.S., the possible implications on the judicial procedures in Hong Kong and the other issues arising from having the "small-claims court hearings" to be shown on television or/and other media.

43. Regarding the review of the financial jurisdictional limits of the SCT and matters relating to its execution process, SJ responded that it was under the purview of the Judiciary. As far as he understood, the Judiciary had been conducting reviews as to the financial jurisdictional limits of District Courts and SCT. As to the issues relating to enforcement of judgment, SJ highlighted that the cost associated with cases settled by mediation could usually be kept to the minimum if the disputing parties both consented to the settlement method, the cases could usually be settled smoothly. The Chairman supplemented that a few Panel members had already expressed concern over matters in this regard and that the Panel could raise this issue during the visit to the Judiciary scheduled for April this year.

*Legal aid services*

44. Mr Dennis KWOK urged for the updated progress of the review of Supplementary Legal Aid Scheme ("SLAS"). Mr KWOK hoped that the Administration would be able to come up with concrete recommendations in its report to be provided to the Panel. Director of Legal Aid ("DLA") responded that the Legal Aid Services Council ("LASC") had already completed the review on SLAS and submitted its recommendations to the Administration.

Action

DLA further said that the Administration was studying LASC's recommendations and planned to brief the Panel in April 2017.

45. Mr Holden CHOW considered the proposed upward adjustment for criminal legal fees, which was in accordance with the change in the Consumer Price Index, reasonable. Mr CHOW then raised concern as to the possible misuse of the legal aid system and asked whether the Administration had conducted any study to review this situation.

46. DLA advised that LASC was responsible for supervising the provision of legal aid services and had been working with the Legal Aid Department in adopting measures to avoid misuse of the legal aid system. DLA further advised that, to be eligible for legal aid, an applicant had to satisfy the statutory criteria as to financial eligibility and whether he or she has reasonable ground for taking or defending the legal proceedings (i.e. merits). Moreover, the scope of a legal aid certificate would be granted by phase (i.e. approval would be required before the legal proceedings could move to the next stage subject to continued merits of the applicant's case). Further, there was a Departmental Monitoring Committee to oversee the performance of the assigned counsel and solicitors. The Departmental Monitoring Committee could remove the assigned lawyers concerned from the Legal Aid Panel in case of their unsatisfactory performance. In 2016, three lawyers were removed from the Legal Aid Panel. Last but not least, there was regular monitoring of the case progress and continued merit of the legal aid cases. DLA added that the Administration would brief the Panel on the "Measures to prevent the misuse of the legal aid system in Hong Kong and assignment of lawyers in legal aid cases" in May 2017 upon completion of the current review of the issues.

[Post-meeting note: The discussion of the issue on "Measures to prevent the misuse of the legal aid system in Hong Kong and assignment of lawyers in legal aid cases" was subsequently rescheduled from May to July 2017.]

*Duty lawyer fees*

47. Mr Dennis KWOK said that members had called on the Administration to conduct a review of duty lawyer fees at the Panel meeting held on 19 December 2016, having regard to the fact that criminal legal aid fees were increased substantially in 2016. Mr KWOK was gravely concerned that this issue was not mentioned in the paper provided by the HAB, despite that the Administration had promised to consider the need of such a review at the above-mentioned Panel meeting. He added that the Law Society of Hong Kong ("Law Society") had recently issued a letter to Duty Lawyer Service ("DLS") requesting for a comprehensive review of duty lawyer fees.

Action

The Chairman echoed similar views and commented that the duty lawyer fees were far below reasonable level. She said that the Panel would continue to follow up with the Administration on this issue.

48. Deputy Secretary for Home Affairs (1) ("DSHA(1)") responded that HAB had also received the Law Society's letter mentioned by Mr Dennis KWOK and noted members' views expressed at the Panel meeting held in December 2016. HAB had been communicating with DLS to gather relevant information on the operation of the Duty Lawyer Scheme and would engage the two legal professional bodies in due course. DSHA(1) said that in considering whether a review on duty lawyer fees should be conducted and the direction of such a review, the Government had to take into account, among other things, the financial implications. After careful consideration of all relevant issues and the views of different stakeholders, HAB would brief the Panel on the review of duty lawyer fees in due course.

49. While expressing support for the review of duty lawyer fees, Dr Fernando CHEUNG asked whether the Government would consider to extend the Duty Lawyer Scheme for detainees at Police stations. Citing an incident in which a mentally disabled and autistic person was wrongly arrested by the Police and no proper legal advice was provided to that person, Dr CHEUNG expressed that similar incident could be avoided if legal aid services were provided to persons detained in Police stations.

50. DSHA(1) replied that the LASC had completed a study entitled "Legal Assistance to Detainees at Police Stations" in 2016. Since the recommendations made by LASC in the study report entailed substantial financial implications and would affect the operations of law enforcement agencies, HAB was studying the recommendations in consultation with relevant bureaux and departments. HAB planned to brief the Panel on the subject in around mid-2017. In response to Dr Fernando CHEUNG's enquiry, DSHA(1) said that the study report could be made public at a later stage.

#### **IV. Judicial Service Pay Adjustments**

CSO/ADM CR 6/3221/02 -- LegCo Brief

LC Paper No. CB(4)426/16-17(05) -- Updated background brief on "Judicial Service Pay Adjustments" prepared by LegCo Secretariat

Action

Briefing by the Administration

51. At the invitation of the Chairman, Director of Administration ("D of Admin") briefed members on the judicial service pay adjustments for 2016-2017 as detailed in the LegCo Brief (CSO/ADM CR 6/3221/02). D of Admin highlighted that the findings of the 2015 Benchmark Study on the Earnings of Legal Practitioners in Hong Kong ("2015 Benchmark Study") showed that, for the first time since 2005, judicial pay at all the three judicial entry ranks lagged behind legal sector earnings, and the Judiciary had been facing persistent recruitment difficulties at the Court of First Instance of the High Court ("CFI") level. In this connection, apart from recommending a 4.85% increase in the pay for Judges and Judicial Officers ("JJOs") with effect from 1 April 2016 for the 2016-2017 annual salary review, the Standing Committee on Judicial Salaries and Conditions of Service ("the Judicial Committee") recommended a 4% pay increase for JJOs below the CFI level and a 6% pay increase for Judges at the CFI level and above with effect from 1 September 2016.

Discussion

*Judicial manpower*

52. Mr Dennis KWOK supported the 2016-2017 proposed judicial service pay adjustments. Notwithstanding this, Mr KWOK expressed concern about the judicial manpower situation. He was of the view that the manpower shortage problem in the Judiciary had given rise to long court waiting time and delays in delivery of judgments. In response to Mr KWOK's enquiry about the progress of the review on retirement ages of JJOs, D of Admin said that according to the Judiciary, the consultant engaged by the Judicial Committee to carry out the review had collected views from stakeholders, including judges (both serving and retired), solicitors, barristers, Government counsel, etc. through questionnaire and focus group interview. The consultant also made reference to practices in four overseas common law jurisdictions, i.e. the United Kingdom, Australia, New Zealand and Singapore. According to the Judiciary, the review would be completed in around the first half of 2017.

*Judicial remuneration*

53. Ms YUNG Hoi-yan expressed support to the proposed judicial service pay adjustments. Noting that the Judicial Committee recommended a 4% pay increase for JJOs below the CFI level and a 6% pay increase for Judges at the CFI level and above with reference to the findings of the 2015 Benchmark Study, Ms YUNG sought explanation on the difference in the proposed pay

Action

increase. She opined that the remuneration package for JJOs at the Magistrate level should be made more attractive to address the recruitment difficulties encountered and attract outside talents to join the bench. Ms YUNG considered it unfair to offer a lower pay increase for JJOs below the CFI level.

54. The Chairman echoed a similar view. She noted the persistent recruitment difficulties faced by the Judiciary at the CFI level as mentioned in the LegCo Brief, which explained the reason for a further increase to the judicial pay for JJOs at the CFI level and above. That said, the Chairman was concerned that the lower pay increase offered to JJOs below the CFI level might give the public a wrong impression that their workload was less heavy than those of the Judges at the CFI level and above, which was not the case to her understanding.

55. D of Admin responded that as revealed by the findings of the 2015 Benchmark Study, for Magistrate, the pay differentials between judicial pay and legal sector earnings for Junior Counsel and solicitors were at -16% and 20% respectively. On the other hand, the pay of CFI Judge was consistently lower than the legal sector earnings over the years, at a substantial extent by -47%, -42% and -60% in 2005, 2010 and 2015 respectively. The findings showed that as compared with that of Magistrates, the pay differential between judicial pay and legal sector earnings at the CFI level was significant and widening.

56. As regards recruitment of JJOs, D of Admin advised that according to the information provided by the Judiciary, all the vacancies at the rank of Permanent Magistrate could be filled as a result of the last recruitment exercises. However, there were recruitment difficulties at the CFI level as the number of eligible candidates found suitable for appointment was much smaller than the available vacancies for the past three recruitment exercises conducted between 2012 to 2014. D of Admin said that in view of the above, the Judicial Committee considered it appropriate to grant a further increase for JJOs at the CFI level and above on top of the across-the-board increase for all JJOs.

57. Ms YUNG Hoi-yan further enquired whether the recruitment difficulties for the rank of CFI Judge was due to the conditions of service for JJOs, such as provisions of pensions and housing benefits, apart from remuneration and prohibition against return to private practice.

58. D of Admin advised that according to the findings of the 2015 Benchmark Study, most of the barrister and solicitor respondents considered that judicial pay was not a deciding factor for considering judicial appointment. Apart from judicial pay, the conditions of service for JJOs also constituted an important factor in attracting quality candidates to join the bench.

Action

D of Admin added that whether the vacancies of judges could be filled also depended on the availability of suitable candidates as the Judiciary Administration set very stringent entry requirements in the recruitment of JJOs. D of Admin remarked that the Chief Justice had advised that he would rather leave judicial positions vacant than to appoint persons not of the requisite standards.

59. Mr Holden CHOW supported the 2016-2017 judicial service pay adjustments. He was of the view that it was essential to ensure the attractiveness of the judicial pay in order to maintain an independent judicial system of the highest integrity. Noting from the LegCo Brief that the pay differentials between judicial pay and legal sector earnings at all the three entry levels were widening, in particular the pay of CFI Judge was significantly lower than legal sector earnings by -60% in 2015, Mr CHOW was concerned whether the proposed pay adjustments for JJOs ranged from 4% to 6% were sufficient to recruit and retain the best possible talents to serve as JJOs, and whether the current package of fringe benefits and allowances for JJOs would be further enhanced.

60. D of Admin advised that the Judicial Committee had adopted general guidelines for the application of the findings of the 2015 Benchmark Study. First, the Judicial Committee emphasized that the data collected from the 2015 Benchmark Study should not be translated into precise figures for determining the levels of judicial salaries. It was never the policy intention to align judicial pay with legal sector earnings. Second, there would be strong arguments for proposing adjustments to judicial pay if (a) the findings demonstrated a clear trend of widening differential between judicial pay and earnings of legal practitioners; or (b) the Judiciary encountered recruitment and retention difficulties. Furthermore, the Judicial Committee was mindful that in considering whether and by how much judicial pay should be adjusted as a result of the 2015 Benchmark Study, the proposed package to enhance some of the conditions of service for JJOs and the resultant effect to the total remuneration package of JJOs should also be borne in mind. D of Admin said that after considering all relevant factors, the Judicial Committee recommended that the salaries of JJOs should be adjusted upward by 4% for JJOs below the CFI level and 6% for Judges at the CFI level and above in the light of the findings of the 2015 Benchmark Study.

61. The Chairman said that she had no objection to the proposed pay increase for JJOs for 2016-2017. She pointed out that to her understanding, the reason for many legal practitioners in private practice choosing to join the bench was due to individuals' commitment to serve the public rather than

Action

judicial remuneration, and that it was inappropriate to make direct comparison between the judicial pay and the legal sector pay.

Conclusion

62. The Chairman concluded that members generally supported the proposed judicial service pay adjustments.

**V. Review of Conditions of Service for Judges and Judicial Officers**

CSO/ADM CR 2/3222/88

-- LegCo Brief

Briefing by the Administration

63. At the invitation of the Chairman, D of Admin briefed members on the review of the conditions of service for JJOs as detailed in the LegCo Brief (File Ref.: CSO/ADM CR 2/3222/88). D of Admin said that the current review of conditions of service for JJOs was the first comprehensive review in this regard since the establishment of the mechanism for determining judicial remuneration in 2008. D of Admin further said that in considering the need for a review, the Judiciary had taken into account the recruitment situation, uniqueness of judicial service and the adequacy of existing housing benefits, and medical and dental benefits in attracting talents from the private sector. D of Admin then briefed members on the proposed enhancements to five items, namely housing benefits, medical and dental benefits, Local Education Allowance, Judicial Dress Allowance and provision of transport services for leave travel. D of Admin remarked that the Judicial Committee supported the proposals to enhance the conditions of services for JJOs and that the Executive Council had advised and the Chief Executive had ordered that the above said enhancements should be approved.

Discussion

*Shortage of judicial manpower*

64. Mr Dennis KWOK expressed support of the proposed enhancements under the comprehensive review of the conditions of service for JJOs. Noting that currently about one-fourth of the vacancies of the CFI remained unfilled, Mr KWOK then expressed concern about shortage of judicial manpower and asked for the statistics with regard to the recent recruitment exercises of JJOs.

Action

65. Judiciary Administration ("JA") acknowledged that there were recruitment difficulties for CFI Judges in the past years. JA said that open recruitment exercises for CFI Judges used to be conducted about once every three years in the past. Prior to 2012, there were some recruitment difficulties but it was not clear then whether such difficulties were of a persistent nature. At that time, the Judiciary observed that some senior legal practitioners might be interested in joining the Bench but the intended timing of their joining might not match the recruitment exercises when they took place. To address this, the Judiciary decided to conduct recruitment exercises for CFI Judges on a more regular basis since 2012. Hence, three open recruitment exercises were conducted in 2012, 2013 and 2014, and a total of 17 CFI Judge appointments had been made. Of the 17 CFI Judges appointed, only five were private practitioners and among the remaining 12 Judges, one was from the Department of Justice and the other 11 were promoted from the District Court. The current recruitment exercise which commenced in 2016 was still in progress. JA supplemented that, in January 2017, two CFI Judges were appointed and that currently there were still seven vacancies in the CFI.

*Retirement age of judges*

66. Mr Dennis KWOK urged for the results of the review on retirement age of judges, i.e. the review of raising the current retirement age from 65 to 70; and from the current retirement age for Judges of the Court of Final Appeal to 75.

67. JA said that an external consultant was appointed to conduct the review on retirement age of judges. JA further said the external consultant had also conducted relevant surveys and met with the stakeholders to collect information and views on the related issues. The work in relation to the research of the practices of overseas jurisdictions relating to retirement age of judges and the analysis had almost been completed. It was expected that the first interim report to be prepared by the consultant would be ready for submission to the Judiciary in due course. Upon receiving the first interim report, the Judiciary would study, among others, the feasibility of the recommendations proposed by the consultant. If the Judiciary considered the recommendations viable, the consultant would proceed to conduct detailed assessment on the implementation of the recommendations. It was expected that the entire study conducted by the consultant would be completed around 2017.

Action

*Recruitment of judges from overseas jurisdictions*

68. Dennis KWOK noted that the judges from overseas jurisdictions (including the United Kingdom) might also be appointed. Mr KWOK opined that recruiting judges from outside was an effective and essential means to enlarge the pool of quality candidates. Mr KWOK said that, with the proposed enhancements, the remuneration package of a CFI Judge would amount to around \$400,000 per month (which would include the monthly salary of around \$260,000 plus other benefits and allowances). With this enhanced remuneration package for a CFI Judge which would be much better than that for an experienced legal practitioner in overseas jurisdictions, Mr KWOK considered that the Judiciary should be able to attract quality candidates from outside and urged the Judiciary to do so.

69. The Chairman considered the enhanced housing benefit, i.e. the Judiciary Quarters Allowance ("JQA"), was on the high side. The Chairman considered that the Judiciary should work hard to attract local quality candidates, in particular, by opening up more chances to graduates from the three local law schools. The Chairman further said that many graduates from the local law schools were high potential candidates, however, it had come to her attention that many of them found it very difficult to join the Judiciary. In view of this, the Chairman considered that the Judiciary had to enhance the transparency of the recruitment process of judges. The Chairman then asked whether the Judiciary had taken any steps in reaching local graduates with a view to attracting quality local candidates to join the Judiciary.

70. Mr Dennis KWOK concurred with the Chairman's view that the Judiciary should open up chances to local graduates, and noted that quite a number of recent judicial appointments were made through internal promotion. Mr KWOK further said that in view of the persistent recruitment difficulties for the rank of CFI Judges, he considered that recruitment of judges from overseas jurisdictions was necessary.

71. JA responded that appointments of Magistrates', District judges and CFI Judges were made through open recruitments. For CFI judges, candidates outside (including eligible overseas candidates) and within the Judiciary may apply in response to the job advertisements and that all applications would be considered in the same selection process in a fair manner. JA stressed that, under the Basic Law, judges of the Hong Kong Special Administrative Region should be chosen on the basis of their judicial and professional qualities and that there were statutory requirements, among others, as to the minimum years of professional practice experience for different position. JA further said that it was worthy to note that senior and successful legal practitioners from private

Action

practice usually joined the Judiciary at the pinnacle of their career and they were prohibited from returning to private practice (for judges at the District Court level and above) and thus the decision to join the Judiciary would only be made after very careful consideration. JA supplemented that currently Chief Justice of the Court of Final Appeal would also make temporary appointments of Deputy Judges, as appropriate, and that many of the senior legal practitioners, before joining the Judiciary, had already served as Deputy Judges. Suitable candidates for Deputy Judges included experienced private legal practitioners from local and overseas jurisdictions as well as retired judges.

72. The Chairman reiterated her views that more chances should be opened up for local graduates and stressed the importance of judges to be bilingual. Article 9 of the Basic Law stipulated that in addition to the Chinese language, English may also be used as an official language by the executive authorities, legislature and judiciary of the Hong Kong Special Administrative Region. The Chairman further said that the lack of bilingual legal practitioners had been a problem, especially at higher level courts where most court proceedings were conducted in English. The Chairman expressed that the above mentioned problem highlighted the need to attract quality bilingual local graduates who were familiar with local context to join the Judiciary.

73. JA said that while the minimum years of experience required of judicial officers of the Magistrates' Courts was five, the actual number of years of experience of most of the appointed Magistrates was 10 years or above; and that the actual number of years of experience of most of the District judges appointed were 15 years or above and most of the Judges who joined the CFI in the past 10 years were Senior Counsels. JA also assured that the percentage of bilingual Judges at the District Court level or below was very high, being over 90%, and that the proportion of bilingual Judges at High Court had been increasing in the past years. JA stressed that, as stipulated in the Basic Law, judges should be chosen on the basis of judicial and professional qualities. JA further said that in deciding whether to conduct court proceedings in Chinese or English, judges would take into account a basket of factors and the prime concern was effective and efficient administration of justice. In some cases, a bilingual judge might even choose to conduct part of a proceeding in English and part of it in Chinese, as the case so required.

*Housing benefit for Judges at the High Court level and above*

74. Mr Holden CHOW said that he supported the proposed enhancements under the review of the conditions of service for JJOs. Mr CHOW then raised questions with regard to the provision of housing benefits to JJOs. Noting that the Administration had proposed to introduce the JQA, at an initial rate of

Action

around \$160,000 per month, to replace the current Non-accountable Cash Allowance ("NCA") of around \$50,000 per month, Mr CHOW asked when the amount of NCA was last revised. Mr CHOW also asked for considerations for providing non-accountable cash allowance instead of accountable cash allowance to eligible officers.

75. JA said that NCA for judges had all along tied in with the allowance payable to eligible civil servants. JA explained that the proposed JQA, an enhanced non-accountable cash allowance, was meant to serve as an alternative housing benefit that was comparable to Judiciary Quarters ("JQs") when JQs were not yet available for eligible judges at the High Court and above. JA further said that JQA would cease to be provided to the judges concerned once JQs were made available. D of Admin supplemented that the existing NCA arrangement had been in place for quite a long period of time.

76. Mr Holden CHOW sought further clarification on the main difference between non-accountable cash allowance and accountable cash allowance. Mr CHOW said that, as far as he understood, NCA would be payable to eligible officers on a fixed sum while the amount of accountable cash allowance would vary, depending on the rental cost / situation of property market. Mr CHOW also sought clarification as to whether the reason for proposing the NCA (instead of accountable allowance) was mainly because the civil service had been providing housing benefits in the form of non-accountable allowance for a long time and thus the Administration did not seek to change the policy in this regard.

77. D of Admin said that the housing allowance as mentioned by Mr Holden CHOW, i.e. the NCA of around \$50,000, had all along been paid to eligible officers in the form of non-accountable cash allowance. D of Admin said that the provision of housing benefit in the form of non-accountable cash allowance conferred flexibility on the eligible judges to choose their own accommodation while they were waiting for available JQs.

78. In response to the Chairman's enquiry as to whether the JQA could be utilized for the purpose of purchasing residential property, D of Admin responded in the affirmative.

79. Mr Holden CHOW was also concerned about the safety and security of the accommodation of judges. Mr CHOW asked, when granting housing allowance for rental purpose, whether the Administration/ Judiciary Administration would assess the location and environment of the rental premises from the security point of view. D of Admin responded in the negative and supplemented that by granting of NCA/ JQA, the Administration

Action

gave judges the liberty to choose their own premises and that no additional security services would be provided for them.

*Housing benefits for JJOs at the District Court level and below*

80. The Chairman asked about the proposed enhancement to the provision of housing benefits to JJOs of the Magistrates' Courts and District Court under the current review of conditions of service for JJOs.

81. D of Admin responded that the provision of housing benefits to JJOs below the District Court level (i.e. including JJOs at the Magistrates' Courts level) were eligible for Home Financing Allowance ("HFA") under the Home Financing Scheme ("HFS") which was administered by the Government, details of which were set out in paragraph 9(a) of the LegCo Brief mentioned in paragraph 63 above.

82. The Chairman further enquired on the current amount of monthly allowance under HFS and whether the allowance could be utilized for the purpose of purchasing residential property. D of Admin responded that the current monthly allowance ranged from around \$21,000 to \$38,000, depending on the pay point of the eligible officer, and that allowance could be used to purchase residential property. In response to the Chairman's enquiry on whether a maximum period had been set for payment of HFA to an eligible officer, D of Admin said that the monthly payment was payable for a maximum period of 10 years.

83. The Chairman expressed that the housing benefits for the JJOs of the Magistrates' Courts and District Court were on the low side. Moreover, the Chairman noted that most of the judges were at the pinnacle of their career and they were prohibited from returning to private practice. In light of the situation, the Chairman considered that it was necessary to further enhance the housing benefits to make it more attractive to quality candidates and suggested the Judiciary to be more open to all possible options when considering further enhancements in this regard.

84. JA said that the current review of the conditions of service had already covered the remuneration packages of JJOs at all levels. JA supplemented that the requirement as to the prohibition from returning to private practice did not apply to judicial officers of the Magistrates' Courts.

Action

Conclusion

85. In summing up, the Chairman hoped that the Judiciary would take measures to enhance the transparency of the recruitment process of JJOs and take a more proactive approach to attract quality candidates to join the Judiciary. The Chairman remarked that accountability of public officers in the judiciary, legislative and executive branches and the issues relating to shortage of judicial manpower were of public interests. In conclusion, the Chairman said that this Panel would continue to keep in view issues relating to the review of the conditions of service for JJOs and recruitment of JJOs.

**VI. Any other business**

86. There being no other business, the meeting ended at 7:25 pm.

Council Business Division 4  
Legislative Council Secretariat  
8 June 2017