

香港特別行政區政府  
保安局



The Government of the  
Hong Kong Special Administrative Region  
Security Bureau

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11 July 2019

Miss Betty MA  
Clerk to Panel on Security  
Legislative Council Secretariat  
Legislative Council Complex  
1 Legislative Council Road  
Central, Hong Kong

Dear Miss MA,

### **Panel on Security**

#### **Follow-up to meeting on 2 April 2019**

Thank you for your letter of 3 April 2019 requesting this Bureau to respond to the matters raised in the joint letter from Dr Hon Fernando CHEUNG and Hon SHIU Ka-chun of 19 March 2019 to the Chairman of the Panel on Security. Having consulted the Correctional Services Department (“CSD”), the Administration Wing and the Office of The Ombudsman (“OMB”), I am authorised to reply as follows:

#### **CSD’s approach to complaint-handling**

CSD takes complaints from any person very seriously. If a person-in-custody (“PIC”) or a discharged person felt aggrieved by the way he/she was being treated, he/she might choose to lodge complaint or express his/her discontent via various channels within or outside CSD.

Internally, PICs may lodge complaints to the institutional management, visiting directorate officers from the CSD headquarters or CSD's Complaints Investigation Unit ("CIU"). CIU carries out fair, impartial and thorough investigation into each and every complaint, or refers it to other law enforcement agencies for follow-up as appropriate. As for external channels, PICs may lodge their complaints in writing to Legislative Council ("LegCo") Members, The Ombudsman, Justices of the Peace ("JPs"), statutory bodies, other law enforcement agencies or government bureaux, etc.

CSD adopts a zero-tolerance policy on staff misconduct. As a disciplined force, CSD maintains a stringent discipline standard. Conduct of individual staff members is subject to monitoring by supervisors at multiple levels. Should a staff member be found to have committed a disciplinary offence, CSD will take disciplinary action against the staff concerned. Should there be any cases of suspected unlawful act, CSD will refer them to other law enforcement agencies for follow-up.

### **CSD's complaint mechanism, communication channels and visit arrangements**

The two LegCo Members mentioned in the above joint letter that they commissioned the Research Office of the LegCo Secretariat to conduct research into the prison monitoring and complaint-handling mechanism of Canada, Ireland, New Zealand, the Netherlands and Norway. The two Members also used the research report as a blueprint to put forward proposals on CSD's complaint and monitoring mechanism. In view of this, the Administration has reviewed the complaint/redress mechanisms, communication channels and visit arrangements.

#### ***Mechanism and arrangements within CSD***

##### Complaint mechanism

CSD's CIU is an investigation unit appointed by the Commissioner of Correctional Services. It is operationally independent from other sections of CSD and responsible for handling and investigating complaints.

CIU will complete investigation within 18 weeks from the day a complaint was received and submit its findings to the CSD Complaints Committee ("CSDCC") for examination and decision. CSDCC is chaired by the Civil Secretary (Administrative Officer Staff Grade C) of CSD, and its members include an Assistant Commissioner, 4 senior correctional officers and a chaplain. Upon CSDCC's endorsement of the findings, the complainant will

be notified of the outcome in writing.

If a PIC is dissatisfied with the investigation outcome, he can appeal to the CSD Complaints Appeal Board (“CSDCAB”) within 14 days. To expand the structure of CSDCAB and further enhance the complaint review mechanism, the number of CSDCAB members has been increased from 10 to 18 in April 2018 with the inclusion of various religious persons who are acquainted with correctional work, on top of JPs. The independence of CSDCAB ensures that the appeal cases are handled in an impartial manner.

### Communication channels and visit arrangements

According to Rule 47C of the Prison Rules (Cap. 234A), except under specified arrangements, CSD officers shall not open or search any letter by a PIC to a specified person (including the Chief Executive, an Executive Council Member, a LegCo Member, a District Council Member, a visiting JP, The Ombudsman and the Commissioner of the Independent Commission Against Corruption) or a letter from a specified person; and shall not read such letters under any circumstances to ensure the confidentiality of the correspondence between PICs and the above persons.

Moreover, PICs have the right to meet with lawyers and may request to meet with specified persons under the relevant laws, such as LegCo Members and District Council Members. CSD officers shall not be present at meetings between PICs and the abovementioned persons, thus they will not have any knowledge of the content of the meetings.

In addition to the above complaint channels, there are currently around 100 chaplains appointed by the Chief Executive who shall have access to PICs at all reasonable times in accordance with the Prison Rules. PICs may make their requests to these chaplains, who will relay their requests to CSD if necessary.

Should PICs have any views on the imprisonment conditions, they may also reflect their views to the staff on duty or the institution’s management of the concerned institutions.

### ***Complaint mechanism of OMB***

OMB is responsible for handling complaints from members of the public (including PICs) who have sustained injustice in consequence of alleged maladministration of government departments (including CSD) or public organisations. PICs may lodge complaints to OMB by writing letters or filling

in OMB's complaint forms (which are available at CSD institutions), which will be sent by post via the institutions.

Similar to the handling of complaints by the general public, upon receipt of complaints by PICs, OMB will first examine whether the matters under complaint come within the statutory purview of The Ombudsman and whether they have a prima facie case to warrant investigation. Cases "screened in" will go to the investigation teams of OMB for "inquiry". If in-depth investigation is considered necessary, the investigation teams will undertake "full investigation".

During the "inquiry" or "full investigation", OMB will request CSD to respond to the allegations made by the complainants. When necessary, OMB staff will request CSD to provide relevant videos, or even conduct site inspections and meet the complainants. OMB may also obtain evidence via other channels in addition to CSD/the institutions. Upon completion of "inquiry"/"full investigation", OMB will inform the complainants of the results, when it is considered necessary, OMB will suggest CSD to take remedial actions or improvement measures.

### ***JPs' visits to institutions and handling of complaints***

Regular JP visits to custodial institutions are conducted in accordance with provisions under the Prison Rules to ensure that the rights of PICs are protected. JPs can visit at all reasonable times during their tour of duty<sup>1</sup>, and the institutions concerned will not be notified in advance of the exact dates and times of the visits. JPs may request to pay additional visits to the institutions concerned outside their tour of duty to follow up on or look into specific complaints.

To help JPs focus on issues that require their attention during the visits, they will be provided, prior to their visits to correctional institutions, with relevant guidelines and a list of points to note which highlight the following key issues:

- JPs may choose to talk to any PIC individually, may also request private meetings with such persons out of hearing of CSD staff under safe conditions.
- JPs should pay particular attention to those PICs who are hospitalised, under punishment or in separate confinement.

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<sup>1</sup> JPs visit custodial institutions under CSD in accordance with legal requirements, generally on a fortnightly or monthly basis.

- JPs may request to examine the record of any PIC as well as other official documents held by the institutions.

In addition, the JP Secretariat will provide JPs with reports on outstanding complaints lodged by PICs of the institutions concerned so that JPs may follow up on these complaints or other issues during their visits.

CSD staff will present visiting JPs with the general information of the institutions, and shall report to them any request from PICs for meeting with them. JPs may also ask CSD staff for other information of an institution, such as the number of PICs in the institution, whether any PICs have been temporarily transferred to other institutions on the day of visit, etc. During their visits, JPs have the opportunity to see all PICs within an institution and are free to speak to any of them.

One of the important functions of JP visits to institutions is to ensure that complaints lodged by PICs are handled in a fair and transparent manner. To protect privacy, visiting JPs may choose to speak to PICs in private. In such cases, the institution management will make necessary arrangements and render assistance to JPs as required. Upon receipt of complaints, visiting JPs may either initiate investigative actions by making personal inquiries (such as seeking background information from the institutions' staff and examining relevant records and documents) into the complaints made by PICs in the institutions, or refer the cases to the institutions concerned, the management of CSD, CIU of CSD, OMB or the Police for their follow-up, having regard to the nature and seriousness of the complaints. Upon receipt of the referrals, the parties concerned will investigate into the complaints. JPs will be informed of the results on completion of the investigations. If a PIC complains to a JP that he has sustained bodily harm or psychological trauma as a result of disciplinary punishment or treatment received, the JP will request the Head of Institution to arrange medical examination for the PIC and take appropriate follow-up actions.

JPs are at liberty to conduct any further investigation personally or re-visit the institutions in question again if they consider necessary. The Government also encourages JPs to discuss with the management and staff members of the institutions, and to inspect the complaint registers as appropriate, to satisfy themselves that the management has handled previous complaints properly.

The JP visit system serves as an effective channel, in addition to other established mechanisms, for handling complaints. Apart from ensuring that complaints lodged by PICs are handled in a fair and transparent manner, the JP

visit system also provides a platform for JPs to make comments and suggestions with a view to improving the management of facilities and services provided by the institutions.

Moreover, the JP Secretariat publishes an Annual Report on JP Visits every year. The report gives an account of the institutions visited (including those under CSD) and complaints handled by JPs, and the suggestions and comments they made to the institutions in the past year. The report also sets out the follow-up actions taken by CSD and other departments concerned in response to the complaints, suggestions and comments.

To facilitate JPs to exercise their functions more effectively, the JP Secretariat reviewed and updated the relevant guidelines on JPs visits to correctional institutions last year, and added examples of handling different categories of complaints and a complaint-handling flowchart, so that visiting JPs can be fully conversant with various ways to handle the complaints received and CSD's complaint-handling mechanism. Moreover, the JP Secretariat has also revised the JP Visit Logbook for visiting JPs to record clearly the complaints, requests and opinions received, and the corresponding follow-up suggestions, as well as their assessments and comments on the institutions.

### **Prison monitoring and complaint-handling mechanism of individual countries**

According to the research report on international prison management prepared by LegCo's Research Office as quoted in the joint letter, there are dedicated government departments to handle complaints relating to prisons in most of the places covered in the research, and some of them authorise JPs to visit prisons or appoint The Ombudsman to directly handle complaints relating to prisons. The situations largely resemble the existing complaint channels adopted by CSD in Hong Kong. We notice that in terms of complaint-handling, the research report points out that PICs in most of the places covered in the research are advised to lodge their complaints via internal mechanism first before they are referred to external institutions. Under CSD's existing complaint mechanism, PICs can lodge their complaints via the internal or external channels, without having to go through the internal mechanism first.

As a matter of fact, different countries and regions have their unique judicial system, laws and regulations as well as social conditions, and the modus operandi of correctional institutions in different places and their complaint mechanism vary, which may not be suitable for direct comparison. The right to complain of PICs in Hong Kong is protected by various existing complaint channels and handling mechanisms of CSD, enabling their complaints to be

handled impartially. CSD will continue to review from time to time the complaint-handling mechanism to ensure that complaints are handled properly, so as to achieve openness, fairness and impartiality.

Yours sincerely,



( Alex Chan )  
for Secretary for Security

cc Commissioner of Correctional Services (Attn: Mr WONG Kwok-hing)