

**For discussion
on 24 July 2023**

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

Waiting Times for Court Proceedings

PURPOSE

This paper sets out the latest position of court waiting times and the key measures being implemented by the Judiciary to expedite civil and criminal proceedings.

COURT WAITING TIMES

Overall Position

2. The court waiting time is generally defined as the period from either the filing of indictment or setting down of each case to the date of hearing. For criminal proceedings, the court waiting time is counted mainly from the filing of indictment or first appearance in court to the date of trial. For civil proceedings, the court waiting time is defined by the number of days between either the date of listing the case for trial or the date of application to fix a date and the date of trial.

3. During the past three years, despite the impact of the fluctuating public health situation arising from the COVID-19 pandemic, the Judiciary managed to handle a persistently heavy overall caseload including an increasing number of complex cases requiring longer processing times. While the target average court waiting times for civil cases have generally been met in overall terms, the average waiting times for several types of court proceedings have been lengthened, particularly for certain types of criminal cases. The caseload and average waiting times for different levels of courts during the past five-year period between 2018 and 2022 are at **Annex A**.

4. The longer court waiting times in various case types can be attributed to the following challenges –

- (a) reductions in court capacity owing to the fluctuating public health situation since the outbreak of the COVID-19 pandemic in 2020. As a result, a number of hearings, including many of the jury trials in the Court of First Instance (“CFI”) needed to be re-fixed;
- (b) upsurge of cases relating to the 2019 anti-extradition amendment bill incidents (“anti-EAB cases”) and national security (“NS cases”) which required priority handling. Since 2020, over 2 260 anti-EAB cases and 180 NS cases¹ were brought to various levels of courts. Many of them were relatively complicated cases involving a large number of defendants and lengthy trials;
- (c) phenomenal increase in judicial review applications on non-refoulement claims and related appeals and other proceedings. The influx of a total of over 19 000 cases since 2017 (of which over 8 000 are still under processing) has continually been straining our judicial manpower; and
- (d) persistent shortage of judicial manpower. For the High Court (“HC”) in particular, apart from unfilled vacancies, the usual involvement of three judges in handling each NS case which invariably requires long trials at the CFI level has substantially constrained the deployment of judicial manpower from within the HC as well as other levels of courts for handling other cases. This has in turn inevitably affected the waiting times for the various levels of courts.

Factors Affecting Waiting Time for Civil Proceedings

5. In general, a civil case has to undergo a series of essential steps/stages before it could be listed for trial and then conclude. The waiting time of each civil case depends on the time required to complete these steps before commencement of trial. In gist, these steps/stages mainly include –

¹ The requirement of designated judges to hear NS cases and the priority accorded to such hearings has meant that cases already set down before those designated judges would have to be reassigned or re-fixed. The effect is particularly acute in the CFI where NS cases usually require three judges to hear.

- (a) **Commencement Stage:** Parties commence civil action after filing originating documents to the court and servicing the relevant documents.
- (b) **Preparation for Trial Stage:** Parties identify the real issues of the civil action and prepare, file and serve timetabling and listing questionnaire, and attend case management hearings. This also covers exchange of pleadings, discovery of documents, exchange of witness statements and expert evidence and appropriate interlocutory applications. Parties may also consider alternative disputes resolution (“ADR”) such as mediation to settle their disputes.
- (c) **Setting Down and Listing for Trial Stage:** When a case is ready for trial, the court will fix an earliest possible date having regard to the availability of the pool of judges and their diary position, complexity of the case and number of hearing days required, the availability of parties and/or counsel involved and the time required by parties for case preparation. The actual duration of trial would vary by case nature and complexity, amount of evidence, and number of witnesses involved, etc. In the period leading to the hearing date, there will be relevant hearings, such as case management conference and pre-trial review.
- (d) **Trial Stage**
- (e) **Judgment Preparation Stage:** Judges prepare and deliver judgments.

6. While the target average court waiting times for civil cases have generally been achieved, the court waiting times for certain case types, mainly those special civil or commercial cases and complicated civil action cases, are comparatively longer, exceeding the relevant targets. This is because these cases usually require specialist Judges and involve relatively long trial of over 10 days for which a full slot may not be readily available. Though such cases account for only some 6% of the overall civil caseload in 2022, the constraints of judicial resources particularly the limited pool of specialist Judges, the longer trial period involved as well as the need to accord priority to the high profile cases (especially those relating to anti-EAB cases and NS cases), have inevitably lengthened the waiting times for various civil cases.

7. When a case is ready for hearing, the court will endeavour to fix an earliest possible date. There were however occasions where such earliest available date was not taken up by parties for reasons not under the control of the court, such as the availability and diary of counsel. As a result, the actual hearing date would turn out to be a later date lengthening the overall time required for completion of the proceedings. It should be noted that apart from the court diary, the court waiting time and actual hearing date are also contingent upon a number of factors, such as the availability of parties, overseas experts and witnesses, diary of counsel and time required by parties for case preparation (such as delivery of documents for trials, disclosure of documents and handling matters related to relevant experts and witnesses to attend proceedings etc.).

8. The phenomenal increase in judicial review applications, mainly for leave to apply for judicial review on non-refoulement claims and related appeals at the HC and the Court of Final Appeal (“CFA”) has added further pressure on the tight judicial manpower. The continued need to deploy additional and dedicated manpower resources with a view to expediting the processing of such cases at the HC and the CFA has to a certain extent affected the waiting times for other civil cases.

Factors Affecting Waiting Time for Criminal Proceedings

9. Each criminal case (including anti-EAB cases and NS cases) listed for trial at HC or District Court (“DC”) will have to go through the following two stages –

Stage 1: Magistrates’ Courts (MC) Stage – from date of first appearance of defendant at the MC to the date on which the case is transferred to the DC or committed to the CFI of the HC

Stage 2: DC/HC Stage – from date of first appearance at the DC/HC to date of conclusion at the DC/HC

10. Before a criminal case is ready for trial, parties in each case will invariably need to complete a series of necessary steps and procedures to ensure due administration of justice, including access to a fair trial and safeguarding the rights and interests of all parties. These include investigation, collection of evidence and seeking legal advice from the Department of Justice by law enforcement agencies, defendants’ application for legal aid or arrangement for private legal representatives, obtaining evidence from the prosecution, investigation of such evidence and seeking legal advice, as well as trial preparation by parties. Where necessary, the court may deal with issues on case management, such as the

consolidation or severance of cases to facilitate the conduct of trials. In the past few years, there were cases (mainly NS cases) in which pre-trial preparation work was ongoing, affecting the time that a case could be listed.

11. The processing time of each case depends on a range of factors such as complexity of case, number of defendants involved, time required by parties for investigation, seeking legal advice and preparation for trials etc., many of which are beyond the control of the Judiciary. When a case is largely ready for trial, the court will endeavour to fix an earliest possible date having regard to a number of factors including whether the defendant is being remanded pending trial, the diary of the presiding judge, complexity of the case and number of hearing days required, number of parties (particularly defendants) involved of parties, witnesses and/or counsel involved and time required by parties for case preparation.

12. The Judiciary has been according priority to handling the high profile anti-EAB cases and NS cases which were relatively complicated cases involving a larger number of defendants and lengthy trials. Operational experience indicates that the duration from commencement of proceedings to conclusion of trial for these cases is about 30% longer than other criminal cases.

13. The priority deployment of judges for handling anti-EAB cases which involve longer trials has unavoidably lengthened the waiting times for all other criminal cases, particularly at the DC and the MC (including summonses²) as some experienced Magistrates have been appointed as Deputy Judges for these cases. For NS cases which are mainly handled at the CFI, as three judges are usually involved in handling each case which invariably requires long trials, the listing of all other criminal cases (particularly jury trials) has been affected.

14. Furthermore, a substantial number of jury trials had to be re-fixed consequent to the reduction in court capacity in light of the fluctuating public health situation under the COVID-19 pandemic, causing serious disruption to the court diary. The adverse impact was particularly acute for criminal cases because jury trials in the HC could not be heard due to social distancing measures and many criminal trials at all levels of courts had to be re-fixed due to reasons such as defendants in custody could not be brought to court or unavailability of witness/ counsel/ jurors

² While the caseload of summonses at the MC is relatively substantial (over 174 000 cases in 2022), those plea-not-guilty cases would usually involve mention hearings before they are ready for trial.

because of infection and remote hearings are not possible for criminal cases.

MEASURES TO EXPEDITE PROCEEDINGS

15. The Judiciary has been making pro-active and dedicated efforts to implement a series of measures with a view to expediting court proceedings. Details are set out in the ensuing paragraphs.

Engagement of Additional Judicial Resources

16. As at 1 April 2023, 166 of the total establishment of 211 judicial posts were substantively filled. The Judiciary has been making on-going efforts to launch open recruitment exercises for appointing additional Judges and Judicial Officers (“JJOs”) at appropriate timing, having regard to the judicial manpower situation and operational needs at different levels of courts. Since January 2020, a total of 33 judicial appointments, including three Judges of Court of First Instance (“CFI Judges”), six District Judges and 24 Permanent Magistrates, have been made. Continual efforts are also being made to engage temporary judicial manpower including recorders and deputy JJOs from the legal profession at different levels of courts. On average, around 40 temporary/deputy JJOs (including recorders) sit in different levels of courts at any one time.

17. The Judiciary has been working closely with the legal profession to promote the judicial career through talks and focus group meetings on judicial career to provide legal practitioners with more details about the different types of judicial work, the career pathways and remuneration packages, etc. The Judiciary has launched a new round of open recruitment exercises for different levels of courts starting from July 2023. The recruitment exercise for District Judges was launched on 1 July 2023. This will be followed by one for the CFI Judges and Permanent Magistrates.

18. The Judiciary will continue to closely monitor the judicial manpower situation and engage temporary or deputy JJOs to meet operational needs as far as practicable. We will also implement suitable measures including the engagement of more judicial associates for supporting JJOs to provide relief to the constrained judicial resources.

Priority Handling of Anti-EAB and NS Cases

19. The Judiciary will continue to accord high priority to handling anti-EAB and NS cases. As at end May 2023, around 90% of anti-EAB cases and 82% of NS cases brought to various levels of courts were concluded. While fresh cases have continued to be brought to court in 2022 and 2023, the bulk of the outstanding criminal cases are the around 100 outstanding anti-EAB cases being handled by the DC which are generally more complicated ones requiring longer trials. The vast majority of these cases have been set down for trial in 2023 and 2024³. Their impact on court waiting times of all other cases is expected to be reduced by then.

Pro-active Case Management

20. More pro-active case management efforts have been made through the following means –

- (a) For civil proceedings, relevant Practice Directions (“PDs”) on case management and efficient preparation of trials have been issued upon regular review with a view to setting out clearer steps to be taken by parties after close of pleadings, serving timetabling questionnaire, attendance for case management conferences or pre-trial reviews, etc.
- (b) For criminal proceedings, cases have been managed more proactively by –
 - (i) fixing practicable timetables after taking into account the actual circumstances of the cases and keeping the progress under review;
 - (ii) encouraging parties to cooperate in ongoing legal proceedings. For example, directing parties to identify disputed issues and have discussions on case management issues during the time between hearings; and
 - (iii) dealing with case management issues as early as practicable, such as directing parties to submit written submissions on consolidation or severance of cases.

³ This has contributed to the exceptionally long waiting time for criminal cases in the DC.

Time Taken for Handing Down of Judgments

21. The Judiciary issued Practice Directions (“PDs”) 36 and 37 in May 2022 with the aim of ensuring that reserved judgments for the HC, DC, Family Court and Lands Tribunal are handed down as expeditiously as reasonably practicable having regard to the circumstances of the case, including its nature and complexity, and other commitments of the court. The new PDs also cover criminal appeal cases and bail applications. Relevant timeframes for handing down of judgments as set out in the two PDs are at **Annex B**.

22. The relevant PDs came into effect in the HC in June 2022, the DC and the Lands Tribunal in September 2022 and the Family Court in January 2023. While such stepping up of efforts to ensure expeditious handing down of judgments may pose a challenge to the availability of judges for listing of new cases, since the implementation of the new PDs, almost all the judgments at various levels of courts were handed down within the stipulated timeframes.

Greater Use of Technology

23. The Judiciary is committed to making greater use of technology to enhance the efficiency of court business. These initiatives are conducive to reducing court waiting times in different ways. As far as court hearings are concerned, the key technology initiatives being pursued are summarized in the ensuing paragraphs.

Information Technology Strategy Plan (“ITSP”)

24. Over the past few years, we have been making pro-active efforts in implementing the ITSP, with focus on the development and launching of an integrated Court Case Management System (“iCMS”) by phases across various levels of courts for handling court-related documents and payments electronically. The iCMS has been implemented in the DC and the MC respectively from May 2022 and December 2022. We aim to roll out the iCMS for public use at other levels of courts incrementally from 2024. With a sufficiently high utilisation rate, iCMS should bring about substantial efficiency savings in terms of travelling, paper processing, copying and storage costs in court proceedings.

25. While the iCMS is being offered as an optional alternative to the conventional paper mode of transaction with the Court, it is the ultimate aim of the Judiciary to make the iCMS the primary litigation system for all legally represented litigants in Hong Kong. As at end-June

2023, a total of 157 court users (including 104 law firms) have registered for accounts under iCMS. About 37 000 new cases have been initiated under iCMS, representing about 19.5% over the total number of the relevant new cases during the period. We have been stepping up efforts in appealing to the legal profession to register with the iCMS early and make use of the electronic filing and related services where available before it becomes mandatory at a suitable time in future.

Remote Hearing

26. The Judiciary has been making greater use of alternate modes of disposal, including remote hearings and paper disposal, mainly for civil proceedings. This has proven to be effective in ensuring the continuous operation of the court under different circumstances such as when physical hearings were affected by fluctuating public health situations under the COVID-19 pandemic.

27. The Judiciary aims to introduce the Courts (Remote Hearing) Bill (“the Bill”) into the Legislative Council in the fourth quarter of 2023. The Bill will provide a clear legal basis for JJOs to order remote hearings at various levels of courts and tribunals where appropriate, having regard to all relevant factors, as well as the dual requirements of open justice and fair hearing.

E-bundle and e-lodgement

28. The Judiciary has started the use of e-bundles in the CFI and Court of Appeal in 2017 and extended the arrangement to hearings for suitable DC civil cases since December 2020. We are moving towards greater use of e-bundles, e-mails and e-lodgement platform for submission of documents electronically upon court directions to enhance the efficiency of court hearings at various court levels.

29. To further facilitate the conduct of e-hearings (that is paperless hearing using only e-bundles) at the HC, a new PD was issued to mandate the use of e-bundles for cases of the commercial list at the CFI with effect from 11 May 2022. Similar directions for the Companies and Bankruptcy List came into effect on 17 July 2023.

Other Court Hearing Facilitation

30. The Judiciary has been exploring or making greater use of the following facilitation measures to achieve more effective and efficient conduct of the hearings at court –

- (a) video-conferencing facilities to enable more witnesses to give testimony via video-link to the court from a place outside Hong Kong for suitable cases;
- (b) digital evidence and exhibit handling system to enable the broadcasting of digital evidence (videos or images) in a courtroom and annotation during witness testimony; and
- (c) testing various voice recognition software products in the market, particularly in respect of accuracy of voice recognition, with a view to making use of this technology in recording court proceedings and preparing transcripts where appropriate in the longer term.

Enhancing Court Facilities

31. The Judiciary has been taking forward a series of measures to enhance and make better use of court facilities to handle court business. They include –

- (a) arranging longer court sitting hours and Saturday sittings as appropriate, in particular for criminal cases relating to anti-EAB and NS;
- (b) re-commissioning the Tsuen Wan Law Courts Building since October 2021;
- (c) making the best use of existing courtrooms suitable for criminal cases in 11 law court buildings; enlarging the capacity of existing courtrooms to handle cases with a large number of defendants through renovation and/or broadcasting of hearings; and
- (d) constructing (i) a mega courtroom at Wan Chai Tower targeted for commissioning in the third quarter of 2023; (ii) new court facilities at LG4 of the HC Building to be commissioned in the fourth quarter of 2023; and (iii) additional courtrooms and associated facilities in the Revenue Tower to be commissioned in 2024.

WAY FORWARD

32. The Judiciary will continue to closely monitor the court waiting times and make on-going efforts for improvement as far as practicable.

33. Separately, the Judiciary will continue to encourage parties to attempt ADR including mediation for suitable civil cases. This will not only save the time and cost of litigants, but also benefit the court in reducing the number of trials.

ADVICE SOUGHT

34. Members are invited to note the content of this paper.

Judiciary Administration
July 2023

Caseload Statistics for All Levels of Courts (2018 to 2022)

	2018	2019	2020	2021	2022
Court of Final Appeal					
application for leave to appeal	194	493	342	599	728
appeals	40	16	13	16	18
miscellaneous proceedings	0	0	1	0	0
Court of Appeal					
criminal appeals	388	376	241	316	249
civil appeals	611	597	653	599	501
miscellaneous proceedings	204	321	263	602	556
Court of First Instance					
criminal jurisdiction					
criminal cases	421	424	366	256	223
confidential miscellaneous proceedings	402	340	440	545	883
miscellaneous proceedings (criminal)	789	684	772	724	637
appeals from Magistrates' Courts	620	603	428	608	460
civil jurisdiction	18 605	19 050	17 984	15 080	14 412
probate applications	20 797	21 005	16 521	21 978	23 006
Competition Tribunal	3	1	3	2	3
District Court					
criminal cases	1 188	961	1 119	1 171	1 193
civil cases	21 453	25 942	24 153	22 827	21 377
family court cases	23 345	22 386	17 585	18 132	16 802
lands tribunal cases	4 299	5 721	4 432	4 358	3 998
Magistrates' Courts	340 612	332 746	317 104	372 456	383 512
Coroner's Court	167	117	98	154	131
Labour Tribunal	3 955	4 323	3 533	4 278	3 378
Small Claims Tribunal	55 007	55 879	39 821	45 649	41 514
Obscene Articles Tribunal	9 240	21 163	14 131	38	34
Total	502 340	513 148	460 003	510 388	513 615

Average Court Waiting Times for All Levels of Courts (2018 – 2022)

Court Level and List Type	Definition	Target (days)	2018 (days)	2019 (days)	2020 (days)	2021 (days)	2022 (days)
Court of Final Appeal							
Application for leave to appeal (criminal)	from notice of hearing to hearing	45	43	44	42	34	37
Application for leave to appeal (civil)	from notice of hearing to hearing	35	35	34	31	34	30
Substantive appeal (criminal)	from notice of hearing to hearing	100	98	98	98	82	99
Substantive appeal (civil)	from notice of hearing to hearing	120	111	113	93	88	95
Court of Appeal							
Criminal	from setting down of a case to hearing	50	49	49	55	48	48
Civil	from application to fix date to hearing	90	88	89	85	86	81
Court of First Instance (CFI)							
Criminal fixture List	from filing of indictment to hearing	-	167	167	349	383	323
Civil fixture List	from application to fix date to hearing	180	168	173	166	176	178
Civil running List	from not-to-be warned date to hearing	30	38	29	28	16	15
Appeals from Magistrates' Courts	from lodging of Notice of Appeal to hearing	90	103	105	128	168	160
District Court							
Criminal	from first appearance of defendants in District Court to hearing	100	187	191	210	287	350
Civil fixture List	from date of listing to hearing	120	95	95	105	108	116
Civil running List	from not-to-be warned date to hearing	30	16	21	28	20	18
Family Court							
Special procedure list	from setting down of a case to hearing	35	35	35	35	35	35
Defended list (all hearings)	from setting down of a case to hearing	110	111	89	69	59	58
Financial applications	from setting down of a case to hearing	110-140	90	81	85	74	49
Lands Tribunal							
Appeal cases	from setting down of a case to hearing	90	20	35	39	N.A. #	N.A. #
Compensation cases	from setting down of a case to hearing	90	38	38	29	64	45
Building management cases	from setting down of a case to hearing	90	29	21	31	25	20
Tenancy cases	from setting down of a case to hearing	50	19	17	24	16	16
Magistrates' Courts							
Summonses	from plea to date of trial	50	76	67	75	79	101
Charge cases except for Juvenile Court - for defendants in custody - for defendants on bail	from plea to date of trial	30-45 45-60	47 57	41 51	45 67	48 70	62 82

Court Level and List Type	Definition	Target (days)	2018 (days)	2019 (days)	2020 (days)	2021 (days)	2022 (days)
Charge cases for Juvenile Court - for defendants in custody - for defendants on bail	from plea to date of trial	30-45 45-60	N.A. # 58	30 58	13 60	56 74	94 89
	Coroner's Court	from date of listing to hearing	42	65	61	70	64
Labour Tribunal	from appointment to filing of a case	30	25	29	61	25	28
	from filing of a case to first hearing	30	25	25	23	22	24
Small Claims Tribunal	from filing of a case to first hearing	60	33	36	41	39	37
Obscene Articles Tribunal	from receipt of application to classification	5	3	2	3	2	2
	from referral by a magistrate to determination	21	22	15	10	N.A. #	N.A. #

Remarks:

1. Figures in bold green fonts denote average court waiting time exceeding target
2. Figures in bold blue italic fonts represent the court waiting times for Criminal Fixture List in the CFI with target pending for determination

Not applicable as there was no relevant application filed / trial listed

**Timeframes for Handing down Judgment
under Practice Directions 36 and 37**

Practice Direction 36 – timeframe applicable to the High Court :

High Court	Judgment to be handed down
1. Bail application for criminal case to the Court of First Instance and the Court of Appeal	Within 14 days
1. Applications for leave to appeal to the Court of Final Appeal or other miscellaneous applications 2. Oral hearings before a single judge 3. Court of First Instance civil cases – interlocutory applications and paper applications 4. Court of First Instance criminal cases – magistracy appeals and all other applications (other than bail) 5. Conclusion of the hearing for a contested matter by the masters	Within 3 months
1. Court of Appeal civil cases – oral hearings or paper applications 2. Court of Appeal criminal cases – oral hearings before the full bench 3. Court of First Instance civil cases – trials and substantive applications which last for less than 15 days 4. Assessment of damages by masters	Within 6 months
1. Court of First Instance civil cases – trials and substantive applications which last for 15 days or more	Within 9 months

Practice Direction 37 – timeframe applicable to the District Court / the Lands Tribunal :

District Court / Lands Tribunal	Judgment to be handed down
1. Bail application for criminal case to the District Court	Within 14 days
1. District Court civil cases – interlocutory applications and paper applications 2. Conclusion of the hearing for a contested matter by the District Court masters 3. Lands Tribunal cases – interlocutory applications and paper applications	Within 3 months
1. District Court – trials and substantive applications which last for less than 15 days 2. Assessment of damages by District Court masters 3. Lands Tribunal – trials and substantive applications which last for less than 15 days	Within 6 months
1. District Court – trials and substantive applications which last for 15 days or more 2. Lands Tribunal – trials and substantive applications which last for 15 days or more	Within 9 months

Practice Direction 37 – timeframe applicable to the Family Court :

Family Court	Judgment to be handed down
1. Paper applications to the Family Court cases 2. Conclusion of the hearing for a contested matter by Family Court masters	Within 3 months
1. Trials and substantive applications in relation to children matters	Within 6 months
1. Trials and substantive applications in relation to other proceedings	Within 9 months