

Executive Summary Direct Investigation Report

Operational Arrangements for Statutory Visits under Justices of the Peace Visit Programme

Introduction

Justices of the Peace (“JPs”) conduct statutory visits to designated institutions pursuant to the Justices of the Peace Ordinance (Cap 510) and other relevant legislation. The JP Visit Programme serves as one of the important independent channels for persons in custody, detained or hospitalised (“institutionalised persons”) to express their views and lodge complaints; and as a platform for JPs to make comments and suggestions on ways to improve facilities and service management of the institutions.

2. The JP Visit Programme is administered by the Administration Wing of the Chief Secretary for Administration’s Office. JP statutory visits now cover 38 institutions, including correctional institutions under the Correctional Services Department (“CSD”), detention centres of the Immigration Department (“ImmD”) and the Independent Commission Against Corruption, psychiatric hospitals of the Hospital Authority (“HA”), as well as remand homes, places of refuge, probation homes and reformatory schools of the Social Welfare Department (“SWD”). JPs visit these institutions on a fortnightly, monthly or quarterly basis so as to discharge their statutory visit functions.

3. In 1999, the Government conducted a review of the JP system, including the JP Visit Programme. In light of the importance of the Programme and its long years of operation, The Ombudsman launched this direct investigation to examine the operation of and arrangements for JP statutory visits, including the support provided by the relevant departments and organisations¹ before and during JP visits and the follow-up actions afterwards, with a view to making recommendations for improvement where necessary.

Our Findings

4. Overall, The Ombudsman considers the operation of the JP Visit Programme smooth in general and recognises the contribution of JPs in this regard. However, there is still room for improvement in the operational arrangements for the Programme.

¹ Under the Ombudsman Ordinance, the Independent Commission Against Corruption is not subject to our investigation (except for cases relating to the Code on Access to Information). Given the legal restriction, the Office has no power to investigate the Commission.

Operation of and Arrangements for Statutory Visits

5. The JP visit system operates on a roster basis. Two months prior to each visit, the Administration Wing uses a computer software to randomly select two JPs to conduct the visit. The Department then sends a letter to the JPs selected to appoint them as visiting JPs. The appointment letter sets out the institution to be visited and the JPs' tour of duty. Attached to the letter are reference materials such as an introduction to the institution, the checklist prepared by the department/organisation concerned, a summary of the report of the previous JP visit at the institution and relevant guidelines.

6. To ensure the "surprise" element of JP visits, and hence the effective monitoring of the institutions under the JP Visit Programme, the Administration Wing reminds JPs in the appointment letters, at the annual briefing for newly appointed JPs and in the guidelines for official JPs that they should not announce or make known the exact date and time of their visits to the institutions beforehand.

7. Having examined the work of the Administration Wing, CSD, ImmD, HA and SWD, this Office has the following comments and recommendations.

Key Areas on Checklists Prepared by Departments/Organisations May Go Unassessed

8. With respect to statutory JP visits, CSD, ImmD, HA and SWD have prepared their respective checklists highlighting the key areas that JPs may wish to heed when visiting their institutions (including such aspects as the facilities, services and management of institutions, as well as the condition and treatment of institutionalised persons). The checklists, which provide concise guidelines on how an institution should be assessed, are attached to the appointment letters issued to the JPs by the Administration Wing for their reference.

9. Nevertheless, our investigation found that in actual operation, some key areas on the checklists may go unassessed during JP visits. Currently, staff of institutions introduce their facilities, services and management to JPs in a briefing at the outset and during the inspection, and respond to questions raised by them. Hence, during the process, staff will provide JPs with certain information related to the key areas on the checklists. We understand that the scale of the institutions under the Programme varies, and that JPs may not have enough time to assess every aspect of those larger institutions during their visits. Besides, it is reasonable for JPs to decide the focus and scope of a visit having regard to their experience or expertise. That said, we are of the view that the key areas on the checklists prepared by the departments and organisations are by and large essential and fundamental. As the institution staff generally do not provide information about the key areas on the checklists in a systematic manner, in the event that JPs have not examined certain key areas and at the same time the staff have not proactively provided related information, those key areas may go unassessed during the visit.

10. To avoid the said omission, we recommend that departments and organisations should pay attention and in case any key areas on the checklists are yet to be mentioned during the briefing or the inspection of a JP visit, institution staff should proactively provide JPs with related information for assessment of those areas. This will help JPs make a comprehensive assessment of the institution during each visit and achieve the purpose of the JP Visit Programme more effectively.

11. At the end of a visit, JPs are required to complete a JP Visit Logbook (“Logbook”) and record the complaints, requests and enquiries received during the visit, their directives and recommendations made after meeting institutionalised persons, as well as their assessments, comments and suggestions on the facilities and services provided by the institution. The Logbook will be passed to the institution concerned for follow-up. We notice that the Logbook used by all the departments and organisations is not designed in such a way that the items therein correspond to the key areas on their respective checklists. It indeed does not facilitate JPs to record their assessment of various key areas on the checklists, thereby causing possible omissions of certain areas in the assessment.

12. We recommend that departments and organisations, in conjunction with the Administration Wing, review and revise their respective template of the Logbook to incorporate the key areas on the checklist accordingly, so as to facilitate comprehensive assessments and records by JPs.

Lack of Elaboration on Some Key Areas on the Checklist

13. Given the varying nature and functions of their institutions, the key areas on the respective checklists of the departments and organisations differ. We notice that the checklists prepared by CSD and ImmD not only list out the key areas that warrant JPs’ attention during their visits at correctional institutions and detention centres, but also include a brief description of each item. Meanwhile, HA and SWD provide a brief description of some key areas on their checklists.

14. We consider it a good practice to provide the above brief descriptions as they assist JPs in understanding the criteria or focus in assessing the key areas. While not every key area on the checklist warrants elaboration, some relatively abstract key areas, such as “policy, procedure and organisation pertaining to patient safety, risk management and patient data security” on HA’s checklist, are only given a general title without any explanation or suggestion on the assessment approach. They are of limited assistance to JPs.

15. We recommend that HA consider providing more elaboration on its checklist so that JPs can have a clearer idea about how to assess the facilities, services and management of an institution during a visit. We are glad that HA has accepted our recommendation and made improvement.

Some Institutions Do Not Notify All Institutionalised Persons Immediately that JPs Are Visiting

16. All JP visits are unannounced to ensure effective monitoring of institutions under the JP Visit Programme. Consequently, when JPs arrive at an institution for a surprise visit, institutionalised persons must be notified of the visit so that they can lodge requests, enquiries and complaints with the visiting JPs in person if they so wish.

17. At present, when the visiting JPs arrive at a certain location of an institution, the duty officer will notify the institutionalised persons at that location that JPs are inspecting and they can raise complaints, requests or enquiries with the JPs on the spot.

18. When JPs commence their visit at an institution under ImmD and SWD, the staff members receiving them will notify immediately other staff members at different locations of the institution, who will in turn notify immediately the persons in custody or hospitalised that JPs have come to visit. CSD's practice is different: staff members stationed at a certain location of an institution will not be notified of the JP visit until the JPs are close to that particular location.

19. On the other hand, HA indicated that due to time constraints, visiting JPs practically cannot visit all the wards of some larger hospitals. Patients in the wards not chosen by JPs will not be notified of their visit. Our investigation found that in some larger hospitals, the actual number of visits at each ward is much lower than that required by the relevant legislation (i.e. at least once a month). As a result of not being notified of the JP visit, patients in those wards not chosen by JPs will lose the chance to express their views, requests or complaints to the JPs in person. This is indeed inconsistent with the original intent of the JP Visit Programme. In our opinion, even if JPs cannot inspect the entire hospital because of time constraints, all hospitalised persons should have the right to know JPs are visiting and to meet them in person.

20. We recommend that CSD and HA favourably consider using the public address system or other means to notify early all inmates or hospitalised persons at different locations of an institution that JPs are about to start a visit. This will ensure that no persons will miss the opportunity to meet JPs as a result of not being notified of the visit, and allow persons wishing to meet JPs adequate time for preparation. We are pleased that HA has decided to implement improvement measures upon review.

Some Institutions Do Not Inform Institutionalised Persons that They Can Request to Meet JPs in Private

21. In the interest of privacy, visiting JPs may, after considering the risks involved, choose to meet persons in custody, detained or hospitalised in private. In

such circumstances, the institution management will make necessary arrangements to facilitate the interview in private and render necessary assistance to the JPs. All correctional institutions under CSD and the Castle Peak Bay Immigration Centre under ImmD have put up notices at conspicuous places to remind inmates or detainees that they can request to meet JPs individually.

22. In the past, the Ma Tau Kok Detention Centre under ImmD and institutions under SWD did not inform the persons in custody or hospitalised that they could ask to meet JPs in private. Fortunately, upon our intervention, these institutions have made improvements.

23. As for the five psychiatric hospitals under HA, hospitalised persons can request to meet JPs in private. Taking into account the risks involved and the staff's clinical assessment of the person concerned, JPs will decide whether to accede to the request. Nevertheless, considering the possible impact on the emotion and clinical treatment of the hospitalised person if a private meeting cannot be arranged ultimately, HA considers it not appropriate to specify that hospitalised persons can request to meet JPs in private.

24. To safeguard the privacy and right to know of hospitalised persons, we consider that institutions should inform them of their right to request a private meeting with JPs. If possible negative impact on hospitalised persons caused by expectation gap with actual arrangements is a concern, HA may specify in appropriate documents (such as Admission Notes) that hospitalised persons can ask to meet JPs in private, but whether such a meeting can be arranged depends on the JPs' decision. This should help to manage the expectation of the hospitalised persons. We are pleased that HA has accepted our recommendation.

Some Institutions Do Not Inform Persons Temporarily Away from an Institution that JPs Have Come to Visit

25. On the day of a JP visit, some institutionalised persons may not be in the institution for certain reasons (e.g. medical appointment at a hospital outside the institution or court attendance). CSD and ImmD will inform such persons of the JP visit upon their return to the institution. Arrangements will be made should those persons wish to file any request or complaint with the JPs. On the other hand, HA and SWD have not put in place similar arrangements.

26. We consider that the above practice of CSD and ImmD can help ensure that institutionalised persons temporarily away from the institution during a JP visit have knowledge of the visit and HA and SWD should learn from it. We are pleased that HA and SWD have accepted our recommendation.

Mere Verbal Information by Staff on Whether JPs Have Seen All Institutionalised Persons Not Objective or Complete

27. Under the current arrangement, JPs can ask the institution staff during a visit to confirm whether they have seen all institutionalised persons. If not, the staff should provide reasons; for instance, they should explain whether any institutionalised persons have been temporarily escorted to other locations on reasonable grounds (e.g. medical appointment at a hospital outside the institution or court attendance) on the day of visit. The visiting JPs have to confirm the above in the Logbook. This procedure is adopted by CSD, ImmD, HA and SWD alike.

28. The JP Visit Programme serves as an independent channel for institutionalised persons to express their views and lodge complaints. We consider that whether JPs have seen all institutionalised persons during their visits is crucial to the attainment of the objective of the Programme. Since each institution contains one or various buildings and houses hundreds of institutionalised persons, it is indeed more pragmatic for institution staff to provide information than for JPs to verify by themselves whether they have seen all institutionalised persons. Nevertheless, mere verbal confirmation of that fact by institution staff may not be seen to be objective or complete.

29. We recommend that institutions should, on the day of JP visit or within a week afterwards, provide JPs with a name list of persons temporarily away from the institution during their visit (including the reasons for absence if practicable) and attach it to the Logbook, so as to facilitate JPs to confirm whether they have seen all institutionalised persons during the visit, and to check whether any persons have been absent from two consecutive JP visits. On the name list, the institution should highlight those institutionalised persons who have been absent from two consecutive JP visits and provide the reasons for their absence for the respective visits. The JPs can, when necessary, enquire with the institution whether those persons have any special circumstances that warrant attention. At the same time, the Administration Wing should issue relevant guidelines to the executive departments and organisations, notify all JPs of the procedure and revise the template of the Logbook to facilitate records by JPs.

Written Replies to JPs Do Not Mention What and How Investigation Findings Are Related to Complainants

30. Upon completion of the processing of a complaint lodged with JPs by an institutionalised person, CSD, ImmD, HA and SWD will inform the JPs in writing of their follow-up action and the investigation result. In its written replies to JPs, ImmD will mention how the Department has related the investigation result (in writing or verbally) to the complainants in detention. Our examination of randomly selected cases found that CSD similarly mentions in its written replies to JPs what and how investigation findings were related to the complainants. On the other hand, HA and SWD have not formulated similar procedures.

31. In our view, what and how investigation findings are related to the complainants are essential parts of complaint handling. JPs should be provided with this information in order to understand whether the complaint handling process of the institution is fair and proper, thereby ensuring effective monitoring. At the same time, consistent adoption of such better practice among the executive departments and organisations of the JP Visit Programme can enhance the overall management of the Programme. We are glad that HA and SWD have accepted our recommendation.

Some Institutions Have Not Formulated Procedures to Issue Written Replies to Complainants upon Request

32. Regarding complaints lodged with JPs by institutionalised persons, institutions under CSD, ImmD and HA normally inform the complainants verbally of the result upon completion of investigation. If a complaint is handled by the Complaints Investigation Unit of CSD, the Unit is required to inform the complainant of the investigation result in writing. Both ImmD and HA stated that if the complainant requests a written reply, the institution concerned will make arrangements accordingly. Meanwhile, all institutions under SWD issue written replies to complainants as a standing practice.

33. We find it understandable that an institution decides how to reply to complainants taking into account its operational needs, manpower resource and nature of the complaints. Undoubtedly, verbal replies can alleviate administrative work and enhance mutual communication. In this light, we agree that institutions can issue either verbal or written replies to complainants, unless otherwise specified by the complainants.

34. That said, we understand that for certain reasons (such as for facilitating appeals in the future or even lodging complaints with other departments), some complainants may want a written reply from the department or institution. If a complainant specifically asks for a written reply, the department or institution concerned should accept the request as far as possible having regard to good administrative principles.

35. If a department or organisation, upon assessing the actual circumstances of a case and operation of the institution in question, considers it inappropriate to issue a written reply pursuant to the complainant's request, it should make a record of the request and mention in its written reply to JPs such a request together with the department or organisation's specific reason for not acceding to the request. The JPs can then make further recommendations where necessary.

Departments and Organisations Are Not Required to Issue Interim Replies to JPs for Cases that Take Time to Process

36. The Administration Wing indicated that given the varied nature and complexity of cases, it is hard to tell how long it will take the departments and

organisations to handle the complaints, enquiries or requests received by the visiting JPs, and their suggestions or comments. As such, the Administration Wing has not set any timeframe with respect to case handling and issuance of substantive replies to JPs by the departments and organisations. Statistics between 2019 and 2021 provided by the Administration Wing and our case studies show that departments and organisations in general could process cases and issue replies to JPs in a timely manner.

37. Nevertheless, for cases requiring a longer processing time, the Administration Wing currently does not require departments and organisations to issue interim replies regularly to JPs to report on the progress. This calls for improvement, as we consider it necessary to keep JPs informed of the case progress regularly for effective monitoring purposes.

Inconsistent Time of Publishing Annual Reports on Justices of the Peace Visits and Failure to Inform the Public

38. Every year, the Administration Wing publishes an Annual Report on Justices of the Peace Visits (“Annual Report”), giving a detailed account of JP visits and the follow-up actions of departments and organisations in the past year. The Administration Wing has not set any specific timeframe for publishing the Annual Report. In general, it takes the Department five to 12 months every year to compile the Annual Report.

39. As the primary source of information for the public to understand the JP Visit Programme, the importance of the Annual Report speaks of itself. The public naturally has legitimate expectation as to the time of its publication. In certain years in the past, it took the Administration Wing 12 months to publish the Annual Report of the previous year, which is undoubtedly undesirable. We recommend that the Administration Wing devise a timetable for publishing the Annual Report to ensure its publication within a specified period every year.

40. On the other hand, currently, upon publishing an Annual Report on its website and the JP website, the Administration Wing does not issue any press release to inform the public that the latest Report is available online for viewing. We consider issuing a press release useful in raising public awareness of the JP Visit Programme, and enhancing public understanding of the work of JPs and the departments and organisations and their effectiveness in the past year, thereby boosting public confidence in the Programme. We recommend that the Administration Wing issue a press release in tandem with the publication of an Annual Report in the future. We are pleased that the Administration Wing has accepted our two recommendations above.

Content and Function of “Justices of the Peace Zone” on JP website Limited

41. The JP website operated by the Administration Wing includes a “Justices of

the Peace Zone” (“JP Zone”) accessible only to JPs. They can find all the previous issues of “JP Newsletter” and detailed information about all the institutions covered by the JP Visit Programme. As we see it, the JP Zone only provides reference materials to JPs and its content is rather limited and repetitive, with the majority of the information therein having already been provided by the Administration Wing to JPs separately. In this light, the JP Zone is of limited function and reference value.

42. The Chief Executive’s 2022 Policy Address puts forward a vision of building a “smart government” and an aim to turn all government services online in two years. In this light, we recommend that the Administration Wing consider seeking JPs’ views on strengthening digital support for the Programme; for example, whether it is necessary to optimise the JP Zone via information technology in order to provide useful information to JPs more conveniently, to collect their views through more diversified channels and to facilitate the exchange and sharing of visiting experience among them. We believe that the aforementioned digitalisation measures can bolster the support for JP visits and in the long run alleviate the administrative work of the Administration Wing and the executive departments and organisations.

Our Recommendations

43. We have made the following recommendations to the Administration Wing, CSD, ImmD, HA and SWD:

Administration Wing

- (1) issue guidelines to the departments and organisations requiring institutions to provide visiting JPs with a name list of the persons temporarily away from the institution (including the reasons for their absence if practicable), notify all JPs of the procedure and revise the template of the Logbook to facilitate records by JPs;
- (2) in respect of complaints, requests, enquiries, suggestions or comments requiring a longer processing time, set a timeframe within which the departments and organisations should issue interim replies and report on the progress to JPs to facilitate their monitoring;
- (3) devise a timetable for publishing the Annual Report to ensure its publication within a specified period every year;
- (4) issue a press release in tandem with the publication of an Annual Report to inform the public that the latest Report is available online for viewing;
- (5) consider seeking JPs’ views on strengthening digital support for the Programme; for example, whether it is necessary to optimise the JP

Zone on the JP website via information technology in order to provide useful information to JPs more conveniently, to collect their views through more diversified channels and to facilitate the exchange and sharing of visiting experience among them;

CSD, ImmD, HA and SWD

- (6) in conjunction with the Administration Wing, review and revise their respective templates of the Logbook to incorporate the key areas on the checklist accordingly; in case any key areas are yet to be mentioned during the briefing or the inspection, institution staff should proactively provide JPs with related information for assessment of those areas, so that they can make comprehensive assessments and records of the institution;
- (7) on the day of visit or within one week afterwards, provide visiting JPs with a name list of the persons temporarily away from an institution (including the reasons for their absence if practicable) and attach it to the Logbook, so as to help the JPs assess whether they have seen all institutionalised persons during their visit and check whether any persons have been absent from two consecutive JP visits. The institution should highlight on the name list those who were absent from two consecutive JP visits and provide the reasons for their absence for the respective visits;
- (8) if, upon assessment of the actual circumstances of a case and operation of the institution in question, it is conceivably inappropriate to issue a written reply pursuant to the complainant's request, make a record of the request and mention in their written reply to JPs such a request together with the department or organisation's specific reason for not acceding to the request;
- (9) **CSD** and **HA** favourably consider using the public address system or other means to notify early all inmates or hospitalised persons at different locations of an institution that JPs are about to start a visit;
- (10) **HA** and **SWD** inform institutionalised persons returning to a ward or an institution after temporary absence that JPs have made a visit so as to safeguard their right to know;
- (11) **HA** and **SWD** mention in their written replies to JPs what and how investigation findings were related to the complainants, so as to facilitate JPs' understanding of whether the complaint handling process of the institution is fair and proper;

- (12) **HA** and **SWD** inform institutionalised persons through appropriate documents that they can ask to meet JPs in private; **HA** may specify in the documents whether a private meeting can be arranged depends on the JPs' decision; and
- (13) **HA** provide more elaboration on how JPs should assess the key areas on the checklist.

Office of The Ombudsman
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