

Legislative Council
Panel on Administration of Justice and Legal Services

Mechanism for Handling
Complaints against Judges

Relevant matters

The mechanism for handling complaints against judges (which should be read as including judicial officers) takes into account the following matters:

- (a) The principle of judicial independence is fundamental. The safeguards for judicial independence include the security of tenure for judges. Under Article 89 of the Basis Law, a judge may only be removed for inability to discharge his or her duties or for misbehaviour by the Chief Executive on the recommendation of a tribunal of at least three local judges appointed by the Chief Justice. (In the case of the Chief Justice, the tribunal of at least five local judges is appointed by the Chief Executive.)
- (b) Under the Judicial Officers (Tenure of Office) Ordinance, Cap. 433, judicial officers (below District Court judges) may only be dismissed or disciplined (including reprimand) during their term by the Chief Executive on the recommendation of the Judicial Officers Recommendation Commission (JORC) which is made after considering the report of a tribunal appointed by the Chief Justice.
- (c) The principle of judicial independence also involves the independence of each judge at any level to adjudicate according to law without interference.
- (d) Judges have the duty of resolving disputes. One side is likely to be disappointed or dissatisfied by the judicial decision.

Handling of complaints

2. A complaint about a judge may be made to the Judiciary by any person directly or may be referred to the Judiciary by others (e.g. a member of LegCo or by the Administration).

3. To whoever in the Judiciary a complaint against a judge is sent, it is directed to the relevant Court Leaders. Complaints against (i) judges in the Court of Final Appeal are handled by the Chief Justice; (ii) those against High Court judges by the Chief Judge of the High Court; (iii) those against judges of the District Court, the Family Court and the Lands Tribunal by the Chief District Judge; and (iv) those against magistrates and judicial officers of the Labour Tribunal, Small Claims Tribunal, Coroner's Court and Obscene Articles Tribunal by the Chief Magistrate.

4. Complaints against judges are usually of two types : (i) Against the judge's judicial decision. Most complaints are of this type. (ii) Against the judge's conduct.

Complaints against judicial decision

5. If the complaint is a complaint against the judge's judicial decision, the Court Leader will explain to the complainant that the matter in question is within the judge's judicial decision and inform the complainant of the relevant appeal procedures.

Complaints against judges' conduct

6. As regards complaints against judges' conduct, after preliminary investigation by the Court Leader, if prima facie, it appears to be a sufficiently serious case, the matter will be referred to the Chief Justice for consideration. The Chief Justice will consider whether a tribunal should be appointed under Article 89 of the Basic Law or the Judicial Officers (Tenure of Office) Ordinance.

7. If, after preliminary inquiry, the case does not fall within paragraph 6 above, the Court Leader will deal with the matter, consulting the Chief Justice as appropriate. The Court Leader has access to court files and audio recordings of the relevant proceedings and can seek further information from the complainant and the judge's comments on the complaint. The Court Leader will send a reply to the complainant. In it, he can express a view whether he regards the judge's conduct as appropriate. However, he has no disciplinary power as such. Where the Court Leader has expressed an adverse view of the judge's conduct in his reply, he will inform the judge concerned of his view. The matter may be brought to the attention of the Chief Justice. And the Chief Justice or the Court Leader may discuss the matter with and counsel the judge concerned to seek to avoid recurrence of similar conduct. Further the matter will be brought to the attention of JORC at the appropriate time.

Conclusion

8. The present complaint mechanism is satisfactory. It respects judicial independence (including the independence of each judge to adjudicate without interference) and the constitutional and statutory guarantees for security of tenure to safeguard judicial independence. At the same time, it enables legitimate complaints against judges to be satisfactorily dealt with and responded to.

Judiciary Administration
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