

立法會
Legislative Council

LC Paper No. CB(4)415/13-14(04)

Ref : CB4/PL/AJLS

Panel on Administration of Justice and Legal Services

**Background brief prepared by the Legislative Council Secretariat
for the meeting on 25 February 2014**

Mechanism for handling complaints against judicial conduct

Purpose

This paper gives a brief account of the past discussions of the Panel on Administration of Justice and Legal Services ("the Panel") on the mechanism for handling complaints against judicial conduct.

Background

2. According to the Judiciary, all complaints against judges are handled by the Chief Justice ("CJ") and/or the Court Leader of the relevant level of court. In brief, complaints against (i) judges in the Court of Final Appeal and the Court Leaders are handled by the CJ; (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.
3. The relevant Court Leader will investigate the complaints received. The Court Leader may refer to the relevant court files and audio recordings and may seek further information from the complainant as appropriate. After investigation, the Court Leader will send a reply to the complainant.
4. If a complaint against judicial conduct is found to be substantiated, the matter will be referred to the CJ for consideration whether a tribunal should be appointed under Article 89 of the Basic Law ("BL") or the Judicial Officers (Tenure of Office) Ordinance (Cap. 433). Under Article 89 of the BL, a Judge at

District Court level and above might only be removed for inability to discharge his or her duties, or for misbehaviour, by the Chief Executive ("CE") on the recommendation of a tribunal of at least three local judges appointed by CJ. Cap. 433 provides for a procedure for a tribunal to be appointed by CJ to investigate the matter and report findings.

5. The Judicial Officers Recommendation Commission ("JORC") may also be informed of the matter at an appropriate time.

6. If a complaint is against judicial decision made by a judge, the complainant will be advised to pursue his/her case by appeal through the existing legal procedures.

Past discussions

7. The Panel discussed the mechanism for handling complaints against judicial conduct at its meeting held on 23 July 2013. Major concerns and views expressed by members are summarized in the ensuing paragraphs.

8. The Judiciary Administration ("JA") advised that a total of 126 complaints were received by the Judiciary in 2012. Of these complaints, 74 were related to judiciary decisions, 31 were related to judicial conduct, and 21 concerned both. The number of complaints was small when compared to the 524 905 court cases disposed of by Judges and Judicial Officers in 2012. Amongst the 31 complaints against judicial conduct received by the Judiciary in 2012, one complaint was found substantiated and one complaint was found partially substantiated. Apologies might be made by the Court Leader to the complainants if the complaints were found substantiated.

9. Mr Paul TSE expressed concern that that actual number of complaints received by the Judiciary in 2012 (i.e. 126 cases) was only a small proportion of all potential complaints that might be harboured by litigants or other parties, as some litigants were not legally represented.

10. Mr Ronny TONG considered that the transparency of the existing mechanism for handling complaints against judicial conduct should be enhanced. Measures should also be taken to make members of the public aware of how and where to lodge a complaint against judicial conduct and the channels, if any, to raise views or objection to the outcome of the investigation of the complaint.

11. The JA advised that information on the existing mechanism for handling complaints against judicial conduct was posted on the website of the Judiciary. Noting members' concern about the need to enhance transparency, the Judiciary would consider making available additional information, such as related statistics, in the Judiciary's website and annual reports.

12. Mr Dennis KWOK opined that the conduct and performance of some judges, especially those in the lower courts, such as Magistrate's Courts and Lands Tribunal, might not up to standard. Mr KWOK requested the Judiciary to provide the Panel with a breakdown of complaints cases against judicial conduct in the past three years by the level of courts involved and the rank of judges being complained against, as well as how the aforesaid complaints had been dealt with.

13. Dr CHIANG Lai-wan was concerned about the potential conflict of interest that might arise if all complaints against judicial conduct were handled in-house by CJ and/or the Court Leader. To enhance transparency and the accountability of the Judiciary, Dr CHIANG suggested that an independent body be set up to receive and investigate into complaints against judicial conduct, or to monitor and review the Judiciary's handling of complaints against judicial conduct. Mr Paul TSE also suggested establishing an independent body to handle complaints against judicial conduct, similar to the Travel Industry Authority expected to be established in 2014 to regulate the tourism sector.

14. In response to Dr CHIANG's and Mr TSE's suggestions, the JA informed members that CJ objected to any proposals that a body outside the Judiciary be set up to investigate complaints against judicial conduct as any such proposals would run the high risk of undermining the principle of judicial independence.

15. Ms Emily LAU cautioned that when members considered issues related to the handling of complaints against judicial conduct, it was necessary to strike a balance between upholding the integrity of the court and enhancing the transparency of the complaint-handling mechanism.

16. At the request of the Panel, the JA agreed to provide the following information after the meeting:

- (a) the number of magistrates who had not practiced law prior to their judicial appointments as magistrates;
- (b) the current mechanism for handling complaints against judicial conduct in other jurisdictions;

- (c) the number of complaint cases that had been brought to the attention of the JORC in the past three years and the subsequent actions taken on these cases;
- (d) what constituted "misbehaviour" of a judge as stated in Article 89 of the BL for which the judge might be removed by the CE in accordance with the relevant proceedings prescribed in the BL; and
- (e) the right, if any, of complainants to access the audio recording of the court proceeding in connection with their complaints against judges.

Follow-up action

17. In view of the various views and concerns raised by members on the matter, the Panel agreed to re-visit the mechanism for handling complaints against judicial conduct with the JA in the 2013-2014 legislative session.

Latest position

18. On 3 December 2013, Members paid a visit to the Judiciary. During the meeting with CJ, Members raised concern about the transparency of the mechanism for handling complaints against judicial conduct. CJ advised that an internal working group had been set up recently to review the mechanism to see what improvements could be made.

19. The Panel will discuss the mechanism for handling complaints against judicial conduct with the JA at its meeting scheduled for 25 February 2014.

Council Business Division 4
Legislative Council Secretariat
20 February 2014