

For information

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

**Mechanism for Handling Complaints
Against Judicial Conduct**

PURPOSE

This paper informs Members of the outcome of the review on the mechanism for handling complaints against judicial conduct and the improvement measures to be introduced.

BACKGROUND

2. The existing mechanism for handling complaints against judicial conduct has been in place since 2003. Having regard to the fact that the existing mechanism has been in operation for 10 years and despite it having operated smoothly, the Chief Justice nevertheless decided to set up and chair a Working Group on Review on the Mechanism for Dealing with Complaints against Judicial Conduct, comprising the Court Leaders (i.e. the Chief Judge of the High Court, the Chief District Judge and the Chief Magistrate), to review the mechanism and to see what improvements could be made. The review has now been completed and the review report is attached at the **Annex**.

WAY FORWARD

3. Members are invited to note the contents of the review report. The improvement measures will be implemented with effect from 1 April 2016.

The Judiciary

March 2016

**Review on the Mechanism for Dealing with
Complaints against Judicial Conduct¹**

Review Report

A. INTRODUCTION

A.1 Preface

The rule of law is widely acknowledged to be fundamental to society, indeed it is a cornerstone of it and of Hong Kong's success. Every person is equal before the law, and the rights and freedoms constitutionally guaranteed under the Basic Law are to be safeguarded. The Judiciary has the constitutional responsibility and duty to resolve disputes fairly and in accordance with the law. This is the exercise of judicial power.

¹ The review only covers the mechanism for dealing with complaints against judicial conduct raised by external stakeholders. For formal complaints made internally, that is complaints made by judges against other judges, these are extremely rare. If they occur, they would be handled by the Chief Justice personally together with relevant Court Leaders.

² All judges in Hong Kong are judicial officers as defined in the Judicial Officers Recommendation Commission Ordinance (Cap. 92). In the Judicial Officers (Tenure of Office) Ordinance (Cap. 433), the term "officer" is defined to mean a judicial officer but not including a judge of the Court of Final

2. Judicial power is to be exercised by an independent Judiciary. The principle of judicial independence is fundamental. It means that judges and judicial officers (“JJOs”)² at every level of courts must discharge their judicial duties independently and impartially. It also means that JJOs must be able to discharge their responsibilities without undue interference or influence.

3. The Basic Law mandates and emphasises in three separate articles the independence of the Judiciary –

- (a) Article 2 (contained in Chapter I: General Principles) states that Hong Kong is to enjoy “independent judicial power”;
- (b) Article 19 (also in Chapter I) provides that Hong Kong “shall be vested with independent legal power”; and
- (c) Article 85 (contained in Chapter IV Section 4: the Judiciary) provides that the courts in Hong Kong “shall exercise judicial power independently, free from any interference.”

4. The Judicial Oath taken by all JJOs requires them to discharge their judicial duties “honestly and with integrity.... without fear or favour, self-interest or deceit.”

² All judges in Hong Kong are judicial officers as defined in the Judicial Officers Recommendation Commission Ordinance (Cap. 92). In the Judicial Officers (Tenure of Office) Ordinance (Cap. 433), the term “officer” is defined to mean a judicial officer but not including a judge of the Court of Final Appeal, Justice of Appeal, a Judge of the Court of First Instance or a District Court Judge. In this Report, the term “judicial officer” is a reference to an officer as defined in Cap. 433; the term “judge” is a reference to judges of the Court of Final Appeal, the High Court and the District Court.

5. Accordingly, in order to maintain public confidence in the Judiciary and in all JJOs, it is of fundamental importance that the highest standard of conduct is observed. The consequence of this is that the administration of justice must include dealing properly and fairly with complaints regarding judicial conduct. The responsibility for ensuring that there is in place a proper system to deal properly and fairly with complaints rests with the Judiciary. In this context, it is important to be reminded of relevant provisions of the Basic Law and statutes.

A.2 Provisions of the Basic Law and statutes relevant to the dealing of complaints against JJOs

6. Articles 89, 90 and 91³ of the Basic Law state –

“89. A judge of court of the Hong Kong Special Administrative Region 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 appointed by the Chief Justice of the Court of Final Appeal and consisting of not fewer than three local judges.

³ These provisions are also contained in Chapter IV Section 4 dealing with the Judiciary.

The Chief Justice of the Court of Final Appeal of the Hong Kong Special Administrative Region may be investigated only for inability to discharge his or her duties, or for misbehaviour, by a tribunal appointed by the Chief Executive and consisting of not fewer than five local judges and may be removed by the Chief Executive on the recommendation of the tribunal and in accordance with the procedures prescribed in this Law.

90. The Chief Justice of the Court of Final Appeal and the Chief Judge of the High Court of the Hong Kong Special Administrative Region shall be Chinese citizens who are permanent residents of the Region with no right of abode in any foreign country.

In the case of the appointment or removal of judges of the Court of Final Appeal and the Chief Judge of the High Court of the Hong Kong Special Administrative Region, the Chief Executive shall, in addition to following the procedures prescribed in Articles 88 and 89 of this Law, obtain the endorsement of the Legislative Council and report such appointment or removal to the Standing Committee of the National People's Congress for the record.

91. The Hong Kong Special Administrative Region shall maintain the previous system of appointment and removal of members of the judiciary other than judges.”

7. From these provisions, two matters are of note. First, the Basic Law draws a distinction between judges and judicial officers. The procedures in Articles 89 and 90 refer only to judges. Secondly, the tribunal responsible for recommending the removal of judges consists only of judges. In other words, the matter is to be handled from within the Judiciary alone, albeit that the formal removal is effected by the Chief Executive.

8. For judicial officers, the disciplinary procedures (including their removal) are contained in the Judicial Officers (Tenure of Office) Ordinance (Cap. 433).⁴

9. Cap. 433 was enacted in 1993 to provide procedures for the discipline of judicial officers. By reason of Article 91 of the Basic Law, it remains applicable to such judicial officers after July 1997. As stated earlier, it is not applicable to Judges of the Court of Final Appeal, Judges of the High Court and District Judges.

⁴ Cap. 433, referred to earlier in paragraph 2 footnote 2 above.

10. Under Cap. 433 ,
- (a) if it is represented to the Chief Justice that a judicial officer is unable to discharge his duties or has misbehaved, the Chief Justice may notify the judicial officer of the particulars of the representations received and call on the officer to state in writing any grounds on which he relies to justify himself. If the judicial officer fails to justify himself to the satisfaction of the Chief Justice, the Chief Justice shall appoint a tribunal to investigate the matter (s.3);
 - (b) the tribunal appointed by the Chief Justice shall consist of two Judges of the High Court (one of whom the Chief Justice shall appoint as Chairman of the tribunal) and a public officer (s.6);
 - (c) on completion of its investigation the tribunal shall submit a report to the Judicial Officers Recommendation Commission⁵ (“JORC”) (s.7); and
 - (d) if, after considering the tribunal’s report, the JORC considers that the judicial officer is unable to discharge his duties or has misbehaved, the JORC shall recommend to the Chief Executive that no action be taken or that the judicial officer –

⁵ Established under the Judicial Officers Recommendation Commission Ordinance (Cap. 92), referred to earlier in paragraph 2 footnote 2 above.

- (i) be dismissed;
 - (ii) be compulsorily retired with pension, gratuity or other allowances, or without such benefits or with reduced benefits;
 - (iii) be reduced in ranks;
 - (iv) have any future salary increments stopped or deferred; or
 - (v) be reprimanded or severely reprimanded
- (s.8).

11. It can thus be seen from the above that under Cap. 433, apart from criminal proceedings, it is the Chief Justice who has the responsibility of looking into any alleged inability or misbehavior of a judicial officer and of taking any appropriate action. Such action may include the setting up of a tribunal under s.6. This tribunal comprises two judges and a public officer. The investigation process under Cap. 433 is therefore almost exclusively handled by the Judiciary alone,⁶ although the consequences of the investigation may have to be dealt with by JORC, which may make recommendations to the Chief Executive under s.8.

A.3 This Report

12. With the above principles and matters in mind, it is proposed to deal with the question of the mechanism for dealing with complaints regarding judicial conduct. This Report deals first with the existing mechanism for handling complaints (Part B), then provides complaints

⁶ The only person not from the Judiciary is the public officer member of the s.6 tribunal.

statistics (Part C) and finally, articulates the Judiciary's views on a review of this mechanism (Part D). The way forward is contained in Part E.

13. It is important to stress that in dealing with complaints regarding judicial conduct, it is wholly inappropriate to use the complaints mechanism to deal with complaints against judicial decisions. Experience has shown that the vast majority of alleged complaints as to judicial conduct, fall within this category. The only appropriate way of dealing with adverse decisions of the courts is to use appropriate legal procedures such as appealing. This approach is required by and consistent with the principle of judicial independence.

B. EXISTING MECHANISM FOR HANDLING COMPLAINTS AGAINST JUDICIAL CONDUCT

B.1 Overview

14. The Judiciary recognises that it is important to have an appropriate mechanism to deal with proper complaints against judicial conduct. Such a mechanism, whilst respecting judicial independence, seeks to ensure that a complaint against judicial conduct to be fairly and properly dealt with. There is an established mechanism for dealing with complaints against judicial conduct by the Chief Justice and the Court Leaders at all levels of courts. The main features are as follows –

- (a) for complaints against judicial conduct other than those being in substance complaints against judicial decision, the Court

Leaders will fully investigate the complaints including obtaining the comments of the JJOs being complained against, listening to audio records of the relevant court proceedings and reviewing court files if applicable and making other inquiries as appropriate, before forming a view on whether the complaints are justified or not;

- (b) an acknowledgement of receipt will be given after the receipt of the complaint letters. Upon completion of all legal proceedings, including appeal, the Court Leader will give a written reply to the complainant on his findings on the outcome of the complaint. If the outcome is considered justified or partially justified, the Court Leader would also inform the complainant of the action which he has taken, e.g. he has given appropriate advice or counsel to the JJO concerned. In appropriate cases, the Court Leader may also send his apologies to the complainant; and
- (c) if the complainant is not satisfied with the findings of the Court Leader, he may complain to the Chief Justice, who will review the case, and consider whether the Court Leader has dealt with the complaint properly.

B.2 Who handles a complaint against the conduct of a JJO

15. All complaints against JJOs are handled by the Chief Justice and/or the Court Leader of the relevant level of courts as follows –

JJOs being complained against⁷	Court Leader to handle the complaint
<ul style="list-style-type: none"> • Judges of the Court of Final Appeal • Chief Judge of the High Court • Chief District Judge • Registrar of the Court of Final Appeal • Chief Magistrate 	Chief Justice
<ul style="list-style-type: none"> • Judges of the High Court • President of the Lands Tribunal • Registrar and Masters of the High Court 	Chief Judge of the High Court
<ul style="list-style-type: none"> • Judges of the District Court and the Family Court⁸ • Registrar and Masters of the District Court • Presiding Officers and Members of the Lands Tribunal 	Chief District Judge
<ul style="list-style-type: none"> • Principal Magistrates, Magistrates and Special Magistrates of the Magistrates' Courts • Principal Presiding Officer and Presiding Officers of the Labour Tribunal • Principal Adjudicator, Adjudicators and Registrar of the 	Chief Magistrate

⁷ “JJOs being complained against” include all deputy and temporary judges.

⁸ The Chief District Judge may seek the Principal Family Judge’s assistance in handling complaints relating to Judges of the Family Court, where necessary.

JJOs being complained against⁷	Court Leader to handle the complaint
Small Claims Tribunal <ul style="list-style-type: none"> • Coroners of the Coroner’s Court • Presiding Magistrates, Adjudicators and Lay Assessors of the Obscene Articles Tribunal 	

16. If a Court Leader considers it inappropriate for him to handle a complaint as this may lead to any real or perceived conflict of interest, he will ask another senior judge/judicial officer to handle the complaint.

B.3 How a complaint is lodged against the conduct of a JJO and points to note

17. At present, a complainant may lodge his complaint against the conduct of a JJO to the relevant Court Leader. In lodging a complaint, the following points should be noted –

- (a) any complaints should only be made in writing;
- (b) complaints should only be lodged by post or by fax;
- (c) the provision of (i) the complainant’s name and (ii) correspondence address or fax number is obligatory; and
- (d) the complaint should be set out clearly and succinctly. The relevant background and particulars should be provided.

18. In general, a complaint should include the following –
- (a) the name of the JJO, the court concerned, the date and case number (if applicable);
 - (b) a description of the JJO’s conduct the complainant wishes to complain of, giving all relevant particulars; and
 - (c) other information or copies of documents relevant to the complaint.

19. All complaints would be forwarded to the relevant Court Leaders. Complaints should not be made to different Court Leaders.

B.4 Complaints handling procedure

20. Upon receipt of a complaint, an acknowledgement will be sent to the complainant.

21. The relevant Court Leader will investigate the matter. The Court Leader may refer to the relevant case files and audio recordings. He may seek further information from the complainant as appropriate. In dealing with the complaint, he may seek comments from the JJO concerned on the complaint.

22. After investigation, the Court Leader will conclude his findings and send a reply to the complainant accordingly.

23. The Court Leader may take such further action as may be

appropriate. Such further action may include bringing the matter to the attention of the Chief Justice and/or at the appropriate time the attention of JORC. And it may include the Chief Justice and/or the Court Leader giving appropriate advice to the JJO concerned.

24. Where the Court Leader has instructed a JJO to handle a complaint (see paragraph 16 above), the designated JJO will handle the complaint in the same manner as the Court Leader (see paragraphs 20 to 23 above).

B.5 Response time

25. The Judiciary will usually acknowledge receipt of a complaint within seven days upon receipt of the complaint. A full reply will usually be given after the relevant Court Leader or designated JJO has completed his investigation. The response time will depend on the nature of the complaint, the complexity of the issues involved and the circumstances of the matter concerned. In this regard, it should be pointed out that the Court Leader will not conduct any investigation into the complaint if the relevant court proceedings are in progress to avoid any real and perceived interference with the court proceedings involved. The Court Leader will however conduct the investigation as soon as the concerned court proceedings are disposed of where this is appropriate.

B.6 Investigation of complaints against JJOs

26. Under the established practice, Court Leaders are responsible for investigating the complaints relating to judicial conduct. Court Leaders usually take the following actions in investigating the complaints before reaching their findings –

- (a) case files are normally called for review;
- (b) relevant parts of the audio-recording or relevant parts of the transcript of the proceedings are listened to or considered as appropriate;
- (c) comments from the JJOs being complained against are sought; and
- (d) in appropriate cases, comments from relevant persons who are involved in the matters being considered under the complaint are also sought.

27. In cases where the complainants are dissatisfied with the Court Leaders' handling of their complaints and lodge a complaint against the Court Leaders' handling and/or findings to the Chief Justice –

- (a) the Chief Justice asks for comments from the respective Court Leaders;
- (b) upon receipt of the Court Leaders' comments, the Chief Justice then reviews the cases and decides whether any additional

action needed to be taken, e.g. seeking additional comments from concerned persons, etc.; and

- (c) the Chief Justice makes his findings on the complaints against the Court Leaders' handling and findings of the original complaints.

28. The investigations into the conduct of JJOs just outlined, are of course subject to the operation of the mechanism for investigating inability to discharge duties and misbehaviour under the Basic Law and Cap. 433.⁹

C. COMPLAINTS STATISTICS

C.1 Caseload and judicial manpower position

29. The statistics concerning complaints against judicial conduct should be viewed in the overall context of the number of cases handled by the Judiciary and the level of judicial manpower deployed to cope with the judicial work arising from those cases. The caseload and the judicial manpower positions (denote as C and JM respectively in Table 1 below) for the past five years from 2011 to 2015 are set out as follows –

⁹ See Section A.2 above.

Table 1: Caseload and Judicial Manpower Position (2011-2015)

Level of Court	2011		2012		2013		2014		2015	
	C ¹⁰	JM ¹¹	C ¹⁰	JM ¹¹	C ¹⁰	JM ¹¹	C ¹⁰	JM ¹¹	C ¹⁰	JM ¹¹
Court of Final Appeal	155	5	154	5	147	5	165	5	158	5
• No. of Judges ¹²		4		4		4		4		4
• Registrar, Court of Final Appeal		1		1		1		1		1
High Court	34,611	55	35,835	53	37,980	55	39,674	60	41,415	61
• No. of Judges		45		43		44		48		48
• No. of Registrar/ Deputy Registrars		10		10		11		12		13
District Court¹³	51,949	44	50,884	44	50,253	45	48,867	45	48,038	46
• No. of Judges		36		37		38		38		38
• Members, Lands Tribunal		2		2		2		2		2
• No. of Registrar/ Deputy Registrars		6		5		5		5		6
Magistrates' Court¹⁴	390,191	74	436,660	76	415,123	82	389,375	81	375,158	81
Total	476,906	178	523,533	178	503,503	187	478,081	191	464,769	193

¹⁰ Caseload of a year refers to the number of cases filed in the year.

¹¹ The level of judicial manpower included the number of both substantive and deputy JJOs (where appropriate) deployed to sit at the respective level of courts as at 31 December of the year. This figure might vary on different dates throughout the year. The numbers of deputy JJOs are also included as complaints could also be lodged against the deputy JJOs.

¹² There are at present also 14 Non-Permanent Judges in the Court of Final Appeal.

¹³ The caseload and judicial manpower deployed also included those regarding the Family Court and the Lands Tribunal.

¹⁴ The caseload and judicial manpower deployed also included those regarding the Coroner's Court, the Small Claims Tribunal, the Labour Tribunal and the Obscene Articles Tribunal.

C.2 Complaints against JJOs

30. Under the existing mechanism ,

- (a) as stated earlier, in accordance with the principle of judicial independence, complaints against judicial decisions cannot be entertained. Any party aggrieved by a JJO's decision can only appeal (where this is available) through the existing legal provisions; and
- (b) for proper complaints against judicial conduct, they are handled by the Chief Justice and the respective Court Leaders.

31. In practice ,

- (a) although it is clearly set out in the pamphlet regarding the mechanism that complaints against judicial decisions will not be entertained, a substantial proportion (slightly more than half) of the complaints received through the mechanism were related to judicial decisions. These complaints cannot and will not be dealt with under the mechanism; and
- (b) the remaining complaints were –
 - (i) complaints against judicial conduct;
 - (ii) complaints against both judicial conduct and judicial decisions; or

- (iii) complaints (may involve judicial conduct or both judicial conduct and judicial decision) lodged by complainants not satisfied with the Court Leader's handling and/or findings of the original complaints.

Under the mechanism, complaints under (i) above and the part of complaints against judicial conduct under (ii) and (iii) (but not against judicial decisions) will be dealt with under the mechanism.

32. A Court Leader may only investigate a complaint upon the completion of the judicial proceedings of the relevant case, where appropriate.

C.3 Disposal of complaints against JJOs

33. The numbers of complaints against JJOs disposed of by the Chief Justice and the respective Court Leaders in the past five years from 2011 to 2015 are set out as follows –

Table 2: Number of Complaints Disposed of by the Chief Justice and the Court Leaders (2011-2015)

Disposed of by	2011				2012				2013				2014				2015			
	JD ₁₅	JC ₁₆	JD + JC ₁₇	R ₁₈	JD ₁₅	JC ₁₆	JD + JC ₁₇	R ₁₈	JD ₁₅	JC ₁₆	JD + JC ₁₇	R ₁₈	JD ₁₅	JC ₁₆	JD + JC ₁₇	R ₁₈	JD ₁₅	JC ₁₆	JD + JC ₁₇	R ₁₈
Chief Justice	4	0	0	13	9	0	0	23	6	0	1	18	1	1	2	12	4	1	3	9
Chief Judge of the High Court	45	0	5	N/A	47	0	1	N/A	30	4	6	N/A	39	3	1	N/A	51	2	2	N/A
Chief District Judge	7	0	22	N/A	13	1	15	N/A	10	0	7	N/A	7	0	10	N/A	10	6	7	N/A
Chief Magistrate	3	8	5	N/A	4	7	6	N/A	28	15	17	N/A	33	24	26	N/A	42	5	17	N/A

¹⁵ “JD” denotes “Judicial Decisions”. These complaints cannot and will not be handled. The complainants were informed by the Chief Justice via his Administrative Assistant and the Court Leaders of the position as set out at paragraph 30(1) above.

¹⁶ “JC” denotes “Judicial Conduct”. These complaints will be dealt with.

¹⁷ “JD+JC” denotes both “Judicial Decisions and Judicial Conduct”. Only the part relating to JC will be dealt with.

¹⁸ “R” denotes complaints to the Chief Justice (may involve judicial conduct or both judicial conduct and judicial decision) lodged by complainants not satisfied with the Court Leader’s handling and/or findings of the original complaints. These complaints will be dealt with. Therefore, complaints on the same case may appear more than once in the statistics (e.g. one original complaint to the Court Leader and one to the Chief Justice for not satisfying with the Court Leader’s handling and/or findings of the original complaints.)

Disposed of by	2011				2012				2013				2014				2015			
	JD ₁₅	JC ₁₆	JD + JC ₁₇	R ₁₈	JD ₁₅	JC ₁₆	JD + JC ₁₇	R ₁₈	JD ₁₅	JC ₁₆	JD + JC ₁₇	R ₁₈	JD ₁₅	JC ₁₆	JD + JC ₁₇	R ₁₈	JD ₁₅	JC ₁₆	JD + JC ₁₇	R ₁₈
Sub-total	59	8	32	13	73	8	22	23	74	19	31	18	80	28	39	12	107	14	29	9
Sub-total (relating to judicial conduct and review cases)	53				53				68				79				52			
Total	112				126				142				159				159			

34. From the figures at Tables 1 and 2, it is noted that –

- (a) in 2011, the total caseload of the Judiciary stood at 476,906. 53 complaints relating to judicial conduct¹⁹ were dealt with in that year;
- (b) in 2012, the total caseload of the Judiciary stood at 523,533. Again, 53 complaints relating to judicial conduct¹⁹ were dealt with in that year;
- (c) in 2013, the total caseload of the Judiciary stood at 503,503. 68 complaints relating to judicial conduct¹⁹ were dealt with in that year;

¹⁹ Complaints on Court Leader’s handling and/or findings of the original complaints are included.

- (d) in 2014, the total caseload of the Judiciary stood at 478,081. 79 complaints relating to judicial conduct¹⁹ were dealt with in that year; and
- (e) in 2015, the total caseload of the Judiciary stood at 464,769. 52 complaints relating to judicial conduct¹⁹ were dealt with in that year.

C.4 Nature of complaints against judicial conduct

35. The complaints related to judicial conduct can be broadly classified according to their nature, as follows –

- (a) Category 1 (“C1”) – allegations of poor or undesirable attitude or behaviour of JJOs in court e.g. lack of punctuality, rudeness etc.;
- (b) Category 2 (“C2”) – allegations of improper handling of the actual proceedings in court, e.g. bias, excessive intervention, inappropriate comments, lack of preparation, unilateral communication with parties etc.; and
- (c) Category 3 (“C3”) – those relating to alleged improper behaviour or conduct which is not directly related to court work; e.g. erecting illegal structures at premises owned by the JJO, using judicial stationery when writing in private capacity, etc.

C.5 Complaints against Court Leaders on Complaint handling

36. In view of their distinct nature, complaints against Court Leader's complaint handling and/or findings are categorized as "Review on Court Leader's Complaint Handling" (R).

37. On the basis of such classifications, a further breakdown on the nature of complaints relating to judicial conduct¹⁹ for the past five years from 2011 to 2015 is as follows –

Table 3: Breakdown of Complaints relating to Judicial Conduct and Reviews on Court Leader’s Complaint Handling by Major Categories

Year	No. of Complaints relating to Judicial Conduct and Review Cases	Preliminary Classification by Nature				
		C1 (Attitude and Behaviour in Court)	C2 (Conduct of Proceedings)	C3 (Conduct Outside Court)	R (Review on Court Leader’s Complaint Handling)	Mixed (Involving more than one Category)
2011	53	3	32	0	13	4 [C1 + C2] 1 [C3 + R]
2012	53	2	24	0	23	4 [C1 + C2]
2013	68	8	31	0	18	11 [C1 + C2]
2014	79	9	44	2	12	12 [C1 + C2]
2015	52	7	27	1	9	8 [C1 + C2]

C.6 Numbers of complaints found justified or partially justified and follow-up action taken

38. Of the complaints relating to judicial conduct¹⁹ dealt with in the past five years from 2011 to 2015, the numbers of complaints found justified or partially justified are set out as follows –

Table 4: Numbers of Justified (“J”)/Partially Justified (“PJ”) Complaints

JJOs being complained against		2011			2012			2013			2014			2015		
		JC	JD + JC	R	JC	JD + JC	R	JC	JD + JC	R	JC	JD + JC	R	JC	JD + JC	R
JJOs of Court of Final Appeal		–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
High Court	Judges	–	–	–	–	–	–	1 J + 1 PJ	–	–	–	–	–	–	–	–
	Registrars/ Masters	–	–	–	–	–	–	2 PJ	–	–	–	–	–	–	–	–
District Court		–	–	–	–	–	–	–	–	–	–	1 PJ	–	–	–	–
Magistrates’ Courts	Court Leader	–	–	1 PJ	–	–	–	–	–	–	–	–	–	–	–	–
	Magistrates	3 PJ	1 PJ	–	1 J + 1 PJ	1 PJ	–	1 PJ	1 PJ	–	–	–	–	1 PJ	–	–
Total		5 PJ			1 J + 2 PJ			1 J + 5 PJ			1 PJ			1 PJ		
Total no. of Complaints dealt with		53			53			68			79			52		

39. Further information on these justified/partially justified complaints is provided in the following paragraphs.

40. In 2011, of the 53 complaints relating to judicial conduct¹⁹, five were found to be partially justified –

- (a) one related to a complaint about the handling of an earlier complaint against a Magistrate by the Court Leader. Upon review of the case by the Chief Justice, the original complaint was found partially justified.²⁰ The Chief Justice interviewed the Magistrate in the presence of the Court Leader. At the Chief Justice’s instruction, a reply was sent to the complainant on the findings of the investigation and the follow-up action taken; and
- (b) the other four “Partially Justified” complaints were mainly related to the handling and conduct of court proceedings.²¹ Upon investigation by the Court Leader, he gave advice to the

²⁰ The complainant made three allegations and cast doubt on the integrity of a Magistrate. One of the three allegations was that the Magistrate had neglected the order from the Lands Department to remove the unauthorized structures of the house of the Magistrate, and the remaining allegations were disputes between the Magistrate and the neighbours. The complainant considered all these constituted misconduct on the part of the Magistrate concerned as a judicial officer. The complainant was not satisfied with the reply of the Court Leader and complained to the Chief Justice. In relation to the unauthorized structures, the Magistrate acknowledged the mistake and the Magistrate informed the Chief Justice that the Magistrate had been taking action to remove the unauthorized structures and assured the Chief Justice that such mistake would not recur. The unauthorized structures had been removed. As for the other matters raised, the Chief Justice had nothing further to add to the Court Leader’s findings that the allegations were not justified.

²¹ Details of the four cases are as follows –

- (a) The complainant complained about the prevalent practice adopted by two listing Magistrates who were alleged to always insist on the defence counsel to disclose their clients’ defence on the grounds of case management. The complainant provided a set of transcripts in a case heard by one Magistrate but did not give any particulars on the complainant’s allegation against the other Magistrate. The Court Leader found that the complaint against the Magistrate with details provided partially justified but could not reach conclusive findings in the other case. The Court Leader had provided advice to the Magistrate concerned, and issued general advice to all the Magistrates on the proper care to be taken in exploring the ambit of agreement that might be reached between the Prosecution and the Defence.
- (b) The complainant complained against the manner of a Magistrate in handling four cases concerning three different defendants. In the first three cases, the complainant was of the view that the

judicial officers concerned and replied to the complainants on the findings of investigation and the follow-up actions taken.

41. In 2012, of the 53 complaints relating to judicial conduct¹⁹, one was found justified and two were found partially justified –

Magistrate should have acceded to the complainant's request to have the case adjourned before pleas were taken. In the fourth case, the complainant was of the view that the Magistrate should not have commented on the strength of the defence which had led the defendant to reverse his plea into a guilty one. While whether the request for adjournment should be acceded to or not is a matter of judicial discretion, the Court Leader found that the Magistrate could have done better in two areas in these cases: (i) As regards oral presentation, it would be advisable for the Magistrate to avoid over-reliance on tacit understanding. Explicit rulings should have been made with brief reasons for refusing the applications to have the cases adjourned; and (ii) Except where the law permits such as consideration of the strength of the prosecution case when considering bail, the Magistrate should have refrained from expressing views on the strength or weakness on the cases of the prosecution and the defence. The conclusion was that there was no injustice in handling the case but there could be room for improvement in the oral presentation and the style of case management.

- (c) The complainant was not happy with the queries made by an Adjudicator of the Small Claims Tribunal on the complainant's capacity to represent the two defendants. The complainant was also dissatisfied with the Adjudicator's refusal on the complainant's application to amend the name of the 2nd Defendant. Lastly, the complainant found it objectionable for the Adjudicator to interrupt the complainant's submission before the complainant got the chance to finish the same. The Court Leader found that the complaint was justified to the extent that the Adjudicator had interrupted speeches of parties at the proceedings unnecessarily.
- (d) The complainant said that a Presiding Officer of the Labour Tribunal had scolded the claimant, had been scornful on the claimant's approach on settlement by making very inappropriate comments and had expelled the complainant who accompanied the claimant from the court. The Court Leader found that whilst the Presiding Officer had not scolded the claimant, the Presiding Officer should not have used the inappropriate words as alleged. The Court Leader also found that the Presiding Officer had not expelled the complainant from the court. The Presiding Officer had asked the complainant to sit in the public gallery to enable the claimant to talk to the defendant direct so as to facilitate settlement. The Court Leader was of the view that the Presiding Officer should have explained the purpose of doing so as to reduce any misunderstanding.

- (a) the “Justified” complaint concerned delay in preparing the Statement of Findings by a Magistrate. Upon investigation by the Court Leader, he found the complaint justified and duly advised the Magistrate.²² He replied to the complainant, making an apology and explaining the circumstances leading to the delay; and

- (b) the other two “Partially Justified” complaints were mainly related to the handling and conduct of court proceedings.²³ Upon investigation by the Court Leader, he gave advice to the judicial officers concerned and replied to the complainants on the findings of investigation and the follow-up actions taken.

42. In 2013, of the 68 complaints relating to judicial conduct¹⁹, one

²² The Court Leader found that the delay in preparing the Statement of Findings by the Magistrate was inappropriate. He also noted that the delay on the part of the Magistrate was partly caused by the fact that the Magistrate had to prepare Statements of Findings regarding five appeal cases at the same time.

²³ Details of the two cases are as follows –

- (a) The complainant took notes for study purpose at a court proceeding but the Deputy Special Magistrate told the complainant that the complainant must obtain leave from the court before the complainant could do so. The complainant refused to apply for leave, left the court and made this complaint. The Court Leader subsequently advised the Deputy Special Magistrate that there was no need for persons observing the proceedings to obtain leave to take notes. However, if the court had suspicion that the notes would be used in some manner that might affect the integrity of the hearing, the court had an inherent jurisdiction to stop it. This complaint arose out of a misunderstanding on the part of the Deputy Special Magistrate.

- (b) The complainant made two allegations: (i) the Deputy Special Magistrate had prohibited the taking of notes during the proceedings (ii) the Deputy Special Magistrate had on more than one occasion told the complainant that the complainant has no valid defence in a summons case, and that if the complainant maintained a not guilty plea, the complainant would face a serious punishment. The Court Leader found that the Deputy Special Magistrate had not prohibited the taking of notes during the proceedings. Further, the Deputy Special Magistrate only reminded the note takers that they should not communicate with others on the contents of the evidence given during the proceedings. Regarding the second allegation, the Court Leader found that the Deputy Special Magistrate was merely explaining the usual 1/3 discount on a plea of guilty and lesser risk of disqualification of driving licence, but the Deputy Special Magistrate’s remarks should not be given at that late stage.

was found justified and five were found partially justified –

(a) the “Justified” complaint concerned a Judge of the High Court being late for a court hearing.²⁴ Upon investigation by the Court Leader, he gave advice to the judge. He also sent a reply to the complainant explaining the circumstances and reasons for the delay and giving apology for the inconvenience caused to the complainant; and

(b) of the other five “Partially Justified” complaints, three concerned a Judge and a Master of the High Court and two concerned two Magistrates. They were mainly related to the handling and conduct of court proceedings by the JJOs concerned.²⁵ Upon investigation by the Court Leaders of the respective Courts, the Court Leaders gave advice to the JJOs concerned. They also replied to the complainants on the findings of investigation and the follow-up actions taken, and gave apology, where appropriate.

²⁴ The complainant complained about a judge who appeared late for a hearing fixed for 9:30 am. The judge had in fact attended a formal Farewell Sitting of a retiring judge which was also fixed for 9:30 am on the same day, and the judge had tried but failed to contact the complainant (who acted in person) the day before to inform the complainant that the hearing would start late. The Court Leader was of the view that the judge ought to have contacted the complainant earlier and the daily cause list should have been amended to reflect the change of the hearing time. The Court Leader apologised to the complainant accordingly.

²⁵ Details of the five cases are as follows –

- (a) The complainant, a senior counsel, complained that in delivering a reserved judgment, the judge made some extremely strong and damaging comments about the complainant (who had not appeared before the judge at the relevant hearing) and the complainant’s junior counsel. Moreover, the comments were made without any prior notice given to the complainant and the junior barrister. The complainant further complained that the judge had departed from Practice Direction 25.2, paragraph 2 in that the judge should only make a direction to release publicly a judgment after a hearing which had been held in chambers (not open to the public), after hearing the parties. However, the judgment had been published before the complainant had an opportunity to make representations to the judge. The Court Leader was of the view that the judge ought, before issuing the judgment, to have afforded both counsel an opportunity of providing an answer to the judge’s

43. In 2014, of the 79 complaints relating to judicial conduct¹⁹, one related to a complaint about the handling of and conduct of court proceedings by a District Judge was found partially justified.²⁶

proposed criticisms. But the Court Leader also noted that the judge had since the delivery of judgment given both counsel an opportunity to respond to the criticisms but they chose not to do so. As for Practice Direction 25.2, paragraph 2, the Court Leader found that there was no departure from the Practice Direction as the judge had asked the parties' solicitors for their views on the proposed publication of the judgment before releasing it for publication.

- (b) The complainant was dissatisfied with a Master in handling the complainant's legal aid appeals. The complainant claimed that the Master proceeded to hear the appeals without disclosing to the complainant the Master's apparent association with a solicitors' firm which was the complainant's previous solicitors. The complainant had made in the complainant's written submissions accusations against the firm. The complainant therefore considered that the Master could not handle the case fairly. The Court Leader found that at the material time, the Master no longer had any connection with the solicitors' firm. However, to avoid any possible misunderstanding, the Master should have disclosed the previous involvement of the Master in the solicitors' firm to the complainant before the hearing, so that if the complainant had any views, they might be considered by the Master accordingly.
- (c) The complainant was dissatisfied that a Master failed to hand down a judgment at the time fixed, and the complainant had to wait in court for 1 hour 45 minutes for the judgment. The complainant also complained about some arithmetic errors in computing damages in the judgment, which had been corrected by the Master by way of a corrigendum issued 10 days later. The Court Leader found that there had been unjustified delay in handing down the judgment and apologised to the complainant accordingly. As for the arithmetic errors, the Court Leader found that the Master had simply made a slip in calculation; once realised, the mistakes had been rectified by the issue of the corrigendum. The Court Leader was of the view that this did not involve judicial conduct.
- (d) The complainant complained against a Presiding Officer of the Labour Tribunal for failing to allow the complainant to tender a witness statement at the call-over hearing. The complainant also alleged that the Presiding Officer asked the complainant irrelevant matters and wrongly speculated the reason why the complainant failed to inform the complainant's employer of the complainant's pregnancy before dismissal. The Court Leader found that it was not inappropriate for the Presiding Officer not to take the witness statement as that was a call-over hearing. The Court Leader was however of the view that the Presiding Officer should have refrained from making speculative comments at the hearing.
- (e) The complainant complained against an Adjudicator of the Small Claims Tribunal for insisting on the complainant to produce written legal advice on some matters before setting down the case. The Court Leader clarified that this was not a prerequisite. Whilst the Adjudicator might invite the complainant to obtain written legal advice in the case involving complicated land documents, the Adjudicator should have gone on to explain the advantages of having such legal advice. The Adjudicator should also have told the complainant that in the absence of such legal advice, the complainant could still continue the litigation.

²⁶ The complainant, who was acting in person, was dissatisfied with the decision of the District Judge and made wide-ranging complaints against the judge and also lodged an appeal. One of the complaints was that the judge had held secret conference with the counsel of the opposite side. Upon investigation, the Court Leader found that the judge had discussed with counsel some case management matters in the absence of the complainant during the course of the complainant's evidence. The Court Leader gave advice to the judge that it would be more appropriate to discuss the case in the presence of both parties, and wrote to the complainant explaining his findings and follow-up action. (The Court of Appeal

44. In 2015, of the 52 complaints relating to judicial conduct¹⁹, one complaint related to the delayed preparation of Statement of Findings by a Deputy Magistrate was found partially justified²⁷.

45. But, even where the Court Leader finds the complaint unjustified and/or the JJO's conduct was appropriate, the Court Leader may still consider whether appropriate follow up action in relation to the JJO and review and improvement to the existing system and procedure could be made. For example, the Court Leader may consider that the JJO could have handled the situation in a better way and that the JJO should be reminded of relevant principles.

C.7 Statistics on complaint cases referred to the JORC

46. The different situations under which complaints cases involving judicial officers may be brought before the JORC are set out below.

When a Judicial Officer's Further Employment is Considered

47. The first situation can be where a judicial officer's further employment is considered by the JORC, whether in the form of renewal of agreement or transfer from agreement terms to permanent and pensionable terms.

allowed the appeal on the ground of apparent bias by reasons of unilateral communication (but dismissed all other complaints) and ordered a retrial.)

²⁷ The complainant complained against, among other things, the delayed preparation of the Statement of Findings by a Deputy Magistrate. Upon investigation, the Court Leader found that there had been a delay in the preparation of the relevant Statement of Findings and expressed regret to the complainant accordingly.

48. In the past five years from 2011 to 2015, there has been one case of a partially justified complaint brought to the attention of the JORC in the context of considering the concerned judicial officer's further employment on renewal of agreement. All relevant information of the complaint case was brought before the JORC to facilitate it in considering the application. No subsequent follow-up action was required in this specific case.

When a Judicial Officer's Advancement is Considered

49. The second situation can be when a judicial officer is considered for elevation to a higher position. In the past five years from 2011 to 2015, there has not been any such case.

When a Tribunal Report is Submitted to the JORC under Section 7 of Cap. 433

50. Where there has been alleged misbehaviour by a judicial officer and the judicial officer fails to justify himself to the satisfaction of the Chief Justice, the Chief Justice will appoint a tribunal under section 3 of Cap. 433 to investigate the matter.

51. During the past five years from 2011 to 2015, there has been one case in which the Chief Justice exercised his powers under section 3 of Cap. 433 and appointed a tribunal to investigate the representations that had been made to him to the effect that a judicial officer had misbehaved. The

nature of the alleged misbehaviour was conduct not directly related to court work. In that case, after considering the tribunal's report, the JORC agreed to accept the tribunal's conclusions, i.e. the tribunal did not find the allegation that the judicial officer concerned had misbehaved proved; and, in its opinion, the judicial officer concerned was able to discharge his duties as a judicial officer properly. No further subsequent action was required to be taken by the JORC.

D. REVIEW

D.1 Basis of review

52. The mechanism for dealing with complaints against judicial conduct was instituted in 2003 and had been operating smoothly in general since then.

53. In July 2013, the subject was raised at a meeting of the Panel on Administration of Justice and Legal Services of the Legislative Council ("the LegCo AJLS Panel"). The Chief Justice noted the comments and concerns expressed by Members at the meeting. Having regard to the fact that the existing mechanism has been in operation for 10 years and despite it having operated smoothly during that time, the Chief Justice nevertheless decided to set up an internal working group²⁸ (involving the Court Leaders) to review the mechanism and to see whether improvements could be made.

²⁸ The Working Group is chaired by the Chief Justice. Its members are the Chief Judge of the High Court, the Chief District Judge and the Chief Magistrate. Its secretary is the Judiciary Administrator. The Working Group's terms of reference are (a) to review the existing mechanism for dealing with complaints against judicial conduct with a view to considering whether changes are required; and (b) if so, to recommend the changes to the mechanism.

54. The Chief Justice, however, considers it important to stress that the review must be conducted having regard to the principles and matters referred to in Sections A.1 and A.2 above and to the following in particular –

- (a) judicial independence in handling complaints against judicial conduct must be safeguarded and respected. The Judiciary must continue to be allowed to do this on its own without outside influences or interference;
- (b) there must be due regard to the separation of roles and responsibilities among the Government, the Legislative Council and the Judiciary in dealing with their respective internal affairs. In the area of dealing with complaints against judicial conduct, it is inappropriate for there to be any intervention from the others. Any suggestion of such involvement would run the high risk of politicizing the process, and this would be highly objectionable in principle; and
- (c) in taking forward the review, it is important for the direction of the review to be consistent with the provisions and spirit of the Basic Law. This is referred to in Section A.2 above. The Chief Justice reiterates the view that under such framework, a tribunal for investigation into the alleged misbehaviour of a judge comprises judges and judges only. The Chief Justice therefore takes the view that any investigating mechanism for handling complaints against judicial conduct should comprise judges and judges only.

55. The Chief Justice has also instructed that in taking forward the review, the Working Group should take stock of the experience in the past years, identify areas for improvements in the context of the Hong Kong Judiciary and make recommendations for improvements. In the process, the Working Group should make reference to overseas experience as appropriate, but it is important to note that not all practices in other overseas jurisdictions would be applicable to the Hong Kong Judiciary.

56. In taking forward the review, it is relevant to note that there can be the following six types of complaints against JJOs –

- (a) complaints against judicial decisions;
- (b) complaints against judicial conduct which are frivolous and vexatious;
- (c) complaints against judicial conduct that are minor in nature;
- (d) complaints against judicial conduct which are substantial in nature, but not serious enough to trigger Article 89 of the Basic Law or Cap. 433;
- (e) complaints against judicial conduct which are substantial in nature and serious enough to trigger Article 89 of the Basic Law or Cap. 433; and
- (f) complaints against judicial conduct involving allegations which are criminal in nature.

57. Complaints of the type mentioned in paragraph 56(a) above will not and should not be dealt with under the mechanism as they relate to judicial decisions.

58. Complaints of the type mentioned in paragraph 56(b) above, given their frivolous and vexatious nature, will be and should be dealt with expeditiously and summarily under the mechanism.

59. Complaints of the type mentioned in paragraph 56(e) above will be and should be dealt with either under Article 89 of the Basic Law²⁹ or Cap. 433 if the complaints appear to have any substance. Such cases would be dealt with outside the complaints mechanism.

60. Complaints of the type mentioned in paragraph 56(f) above, as they involve allegations which are criminal in nature, will be and should be dealt with by the law enforcement agencies concerned if the complaints appear to have any substance. Such cases will also not be dealt with under the complaints mechanism.

61. Hence, as far as the Judiciary is concerned, the focus of the review should be accorded to complaints of the types mentioned in paragraphs 56(c) and (d) (and also (b) to a lesser extent) above, i.e. minor and substantive (but not too serious) complaints against judicial conduct.

²⁹ It is worth noting that Article 89 of the Basic Law prima facie prescribes that the tribunal to be set up under the article should consist of judges and judges only (although this point has not been adjudicated by the courts). What constitutes “misbehaviour” of a judge as stated in the article for which the judge might be removed by the Chief Executive in accordance with the relevant procedures prescribed in the Basic Law involves the interpretation of the Basic Law, which may come before the Judiciary in a court case. It is sufficient to say that misbehaviour is of that degree of seriousness which affects the function and office of a judge.

D.2 Review Area 1 – Whether complaints against judicial conduct should continue to be dealt with by the Chief Justice and Court Leaders only or whether there could be improvement in dealing with the complaints

62. Having regard to the experience in the past years, the Judiciary takes the view that the existing mechanism for dealing with complaints against judicial conduct by the Chief Justice and the Court Leaders has been working well generally and such complaints should continue to be dealt with by the Chief Justice and the Court Leaders. The Judiciary, however, considers that refinements may be introduced to the mechanism –

- (a) for frivolous and vexatious complaints, they should be disposed of by the Chief Justice and the Court Leaders (with the assistance of the secretariat to be set up) (see paragraphs 74 to 77 below) summarily;
- (b) for complaints which are minor in nature, they should continue to be dealt with by the Chief Justice and the Court Leader under the existing mechanism; but
- (c) for complaints which are substantial in nature (but not serious enough to trigger Article 89 of the Basic Law or Cap. 433), a refined mechanism would be instituted to deal with them.

63. Specifically, for complaints at paragraph 62(c) above, the Judiciary considers it appropriate for the mechanism to provide for the Court Leaders to consult a senior member of the Judiciary when dealing with such substantial complaints, i.e. the Chief Judge of the High Court may consult the Chief Justice or a Permanent Judge of the Court of Final Appeal; the Chief District Judge and the Chief Magistrate may consult the Chief Judge of the High Court. And for cases dealt with by the Chief Justice, he may consult a Permanent Judge of the Court of Final Appeal.

64. The Chief Judge of the High Court may seek input from the Registrar of the High Court when the complaint is related to High Court Masters. The Chief District Judge may seek the Principal Family Judge's input on complaints against Family Court Judges. The Chief Magistrate may also seek input from the principal magistrates or specialized tribunals' principals when the complaint is related to his/her colleagues under their purview.

65. The purpose of this refined system is to ensure that such substantial complaints are handled by senior judges and the relevant principal JJOs of courts/tribunals, and that the investigations and findings are not made by the Chief Justice and the Court Leaders themselves alone.

66. Based on the past experience, it is expected that most of the complaints received are frivolous and minor in nature, and that the number of more substantial complaints would be few. Having regard to this and with the proposed refinement at paragraphs 63 to 65 above, the Judiciary does not

consider it necessary nor appropriate to set up an independent body to investigate complaints against judicial conduct, or to monitor and review the handling of complaints by the Judiciary.

D.3 Review Area 2 – Whether the existing procedures regarding the handling of the complaints may be streamlined or improved

67. As far as dealing with the complaints is concerned, the existing procedures have been working well generally, but there are a few areas that can be improved.

68. First, to facilitate the processing of complaints, the Judiciary considers it appropriate to introduce a standard form for complaints. This will make it easier for the complainants to provide the necessary information for the complaints to be dealt with efficiently as the standard form invites complainants to provide the key details of their complaints in the first place, thereby obviating the need to ask for further details and clarifications in the subsequent process.

69. At present, complaints against judicial conduct should only be lodged by post or by fax. Given that such complaints concern serious matters and personal data are involved, the Judiciary does not encourage the complainants to lodge their complaints by email. That said, should they do so, the Judiciary will process them so long as the complainants' names and correspondence addresses are provided. The Judiciary will continue to reply to the complainants by letters, as personal data are involved in the reply.

70. At present, complaints against judicial conduct are directly addressed to the Chief Justice and the Court Leaders who would then handle the complaints one by one. Amongst other things, the Judiciary proposes to create a new Secretariat for Complaints against Judicial Conduct (SCJC) for coordinating the handling of complaints against judicial conduct. The SCJC will serve as the central point to which complaints can be lodged to. The setting up of the SCJC is detailed in paragraphs 74 to 77 below.

D.4 Review Area 3 – Whether there is room to enhance the transparency of the mechanism while without adversely affecting the proper administration of justice, including JJOs’ work

71. The Judiciary considers it appropriate to enhance the transparency of the mechanism by compiling statistics and details on justified and partially justified complaints against judicial conduct for release to the public, as appropriate. The information to be released includes

–

- (a) the number of complaints disposed of by the Chief Justice and the Court Leaders, including the numbers of complaints handled in consultation with senior judges and the relevant principal JJOs of courts/tribunals;
- (b) the number of the Chief Justice’s review on those complaints lodged by complainants not satisfied with the Court Leaders’ handling and findings of the original complaints;

- (c) the number of complaints broadly classified according to their nature, as follows –
 - (i) Category 1 (“C1”) – allegations of poor or undesirable attitude or behaviour of JJOs in court e.g. lack of punctuality, rudeness etc.;
 - (ii) Category 2 (“C2”) – allegations of improper handling of the actual proceedings in court, e.g. bias, excessive intervention, inappropriate comments, lack of preparation, unilateral communication with parties etc.; and
 - (iii) Category 3 (“C3”) – those relating to alleged improper behaviour or conduct which is not directly related to court work; e.g. erecting illegal structures at premises owned by the JJO, using judicial stationery when writing in private capacity, etc.
- (d) the number of justified/partially justified complaints;
- (e) details of justified/partially justified complaints (without naming the complainants nor JJOs involved); and
- (f) general observations on the complaints received and appropriate action taken as a result of dealing with the complaints.

72. Indeed, the Judiciary provided such information covering the three years from 2011 to 2013 to the LegCo AJLS Panel in a paper in June 2014. This Report provides updated statistics of 2014 and 2015.

73. It is intended that the above information would be released by uploading the information on the Judiciary website on an annual basis, starting from the statistics of 2016.

D.5 Review Area 4 - Whether the administrative support to the Chief Justice and the Court Leaders in handling complaints against judicial conduct should be enhanced with a view to improving the efficiency and effectiveness of the mechanism

74. At present, there is no dedicated administrative support to the Chief Justice and the Court Leaders in handling complaints against judicial conduct. Logistical support is now absorbed by their existing staff. The Judiciary considers it necessary to enhance the administrative support to the Chief Justice and the Court Leaders in handling complaints against judicial conduct. To this end, the Judiciary plans to create a new secretariat (i.e. the SCJC) for the purpose of improving the complaint handling procedures and providing better support to the Chief Justice and the Court Leaders in dealing with complaints against JJOs.

75. To safeguard the principle of judicial independence, it is only the Chief Justice and the Court Leaders who should deal with complaints against judicial conduct. The setting up of the SCJC aims to improve the

complaints handling procedures and provide better administrative and logistical support to the Chief Justice and the Court Leaders. The staff of the Secretariat will not be doing investigative work in the process.

76. Complaints are currently received by the Chief Justice and the Court Leaders directly and handled by them separately. The proposed SCJC will receive complaints against judicial conduct centrally. It will be responsible for receiving and screening cases, assisting the Chief Justice and the Court Leaders in dealing with frivolous and vexatious complaints summarily, maintaining filing records, seeking minor clarifications with complainants, and retrieving case files for the Chief Justice and the Court Leaders. The complaints should then be referred to the Chief Justice and the Court Leaders for action when details are ready. It will also provide the necessary executive support to the Chief Justice and the Court Leaders in processing the complaints, e.g. drafting letters to seek comments and clarifications, drafting reports on the instruction of the Chief Justice and the Court Leaders, and issuing replies on the instruction of the Chief Justice and the Court Leaders.

77. Serving as the first stop to receive all complaints, the proposed SCJC can spend more time explaining the complaint procedures to the complainants and answering their general enquiries. The proposed SCJC will also be responsible for compiling statistics and details on complaints for release to the public, as appropriate.

D.6 Review Area 5 – Whether consideration is given to providing different levels of sanctions, short of removal from office, against judges who were found to have misbehaved after investigation into complaints against them

78. The possible follow-up action which may be taken upon the completion of the investigation of complaints against judicial conduct depends on the merits of individual cases. It is not appropriate to generalize.

79. The Judiciary however notes that as the investigation of complaints is not a disciplinary procedure, the action to be taken following the findings of a justified or partially justified complaint should not be more serious than those sanctions as laid down in the formal disciplinary procedures as a matter of principle. Based on the past experience, it is noted that the follow-up action taken by the Chief Justice and the Court Leaders usually takes the form of giving counsel and advice to the JJO concerned, and in some cases, such advice may also be reduced to writing and put on record. In some rare cases, the Chief Justice may choose to rebuke the JJO concerned, and warn the JJO of not repeating the same misconduct in the future.

80. The Judiciary also takes the view that it would be more appropriate to take a positive attitude towards lessons learnt in dealing with complaints against judicial conduct. In handling the various complaints, the Chief Justice and the Court Leaders would come to know about the problems and difficulties which may be encountered by the JJOs in their

daily work, and hence, any room for improvements could be suitably addressed by the provision of judicial training under the Judicial Institute. This is indeed being done. For example, intensive training on court craft has been held and further courses are being planned such as case management skills, judgment writing skills, and workshops on how to handle self-represented parties have been held once for judicial officers at the magisterial level with senior judges' participation, knowledge database on skills in handling self-represented parties has been created for easy access by JJOs etc. Individual induction course is regularly held for the newly appointed deputy magistrates covering professional skills and communication skills.

D.7 Practices in Overseas Jurisdictions

81. The Judiciary is only able to locate materials relating to the complaint mechanisms in some other overseas jurisdictions through the Internet. Such materials are set out as follows (the information has also been provided to the LegCo AJLS Panel on request in June 2014) –

The UK: Information extracted from the UK Supreme Court's official website (see link: <https://www.supremecourt.uk/about/judicial-conduct-and-complaints.html>)

Australia: Information extracted from the Judicial Commission of New South Wales' official website (see link: <http://www.judcom.nsw.gov.au/>)

A discussion paper entitled "Complaints Against Judiciary" issued by the Law Reform Commission of

Western Australia in September 2012 (see link: http://www.lrc.justice.wa.gov.au/_files/P102-DP.pdf)

New Zealand: Information extracted from the New Zealand’s Office of the Judicial Conduct Commissioner’s official website (see link: <http://www.jcc.govt.nz/>)

Canada: Information extracted from the Canadian Judicial Council’s official website (see link: <http://www.cjc-ccm.gc.ca/>)

State of California: Information extracted from the State of California Commission on Judicial Performance’s official website (see link: <http://cjp.ca.gov/>)

82. In this regard, the Judiciary notes that a summary of the various mechanisms in various jurisdictions has been provided in a discussion paper entitled “Complaints Against Judiciary” issued by the Law Reform Commission of Western Australia in September 2012 (see link: http://www.lrc.justice.wa.gov.au/_files/P102-DP.pdf). That paper covers Australia, England and Wales, Scotland, New Zealand, the United States of America and Canada (see Chapters 3 of the discussion paper). The Judiciary does not consider it appropriate to write on the workings of another jurisdiction’s system just based on the materials posted on the Internet. The relevant websites may not necessarily contain all relevant information on the subject to enable a full picture to emerge, particularly when policy and other considerations may be involved and the constitutional framework may well be different.

83. In the course of the review, the Working Group noted that in the case of Hong Kong, the mechanism for dealing with complaints against

judicial conduct is an integral part of the independent and effective judicial system which the Judiciary is committed to maintaining and for which the Basic Law provides. The Judiciary reiterates that the principle of judicial independence, which is a core value of Hong Kong, is fundamental.

84. The Judiciary notes the measures in other jurisdictions to make more transparent available information about the handling of complaints against judicial conduct, the administrative support in those jurisdictions and the use of a standard form for complaints. In this regard, as part of its review, the Judiciary has devised measures to enhance the transparency of the mechanism (see paragraphs 71 to 73 above), to create the SCJC (see paragraph 74 above) and to adopt a standard form for complaints (see paragraph 68 above).

E. WAY FORWARD

85. The Judiciary has decided to implement the improvement measures with effect from 1 April 2016.

**Working Group on Review on the Mechanism for Dealing with
Complaints against Judicial Conduct
March 2016**