

立法會
Legislative Council

LC Paper No. CB(4)446/18-19
(These minutes have been seen
by the Administration)

Ref : CB4/PL/AJLS

Panel on Administration of Justice and Legal Services

Minutes of meeting
held on Wednesday, 18 July 2018, at 4:30 pm
in Conference Room 2 of the Legislative Council Complex

Members present : Dr Hon Priscilla LEUNG Mei-fun, SBS, JP (Chairman)
Hon Dennis KWOK Wing-hang (Deputy Chairman)
Hon James TO Kun-sun
Hon CHAN Kin-por, GBS, JP
Hon Paul TSE Wai-chun, JP
Hon CHAN Chi-chuen
Dr Hon Fernando CHEUNG Chiu-hung
Hon Martin LIAO Cheung-kong, SBS, JP
Ir Dr Hon LO Wai-kwok, SBS, MH, JP
Hon CHUNG Kwok-pan
Hon Alvin YEUNG
Hon CHU Hoi-dick
Hon Jimmy NG Wing-ka, JP
Dr Hon Junius HO Kwan-yiu, JP
Hon Holden CHOW Ho-ding
Hon YUNG Hoi-yan
Hon CHEUNG Kwok-kwan, JP
Hon HUI Chi-fung
Hon Vincent CHENG Wing-shun, MH

Member attending : Dr Hon Elizabeth QUAT, JP

**Public officers
attending**

: Agenda item II

Administration Wing, Chief Secretary for
Administration's Office

Ms Kitty CHOI
Director of Administration

Ms Christine WAI
Assistant Director of Administration (3)

Judiciary Administration

Miss Emma LAU
Judiciary Administrator

Miss Patricia SO
Deputy Judiciary Administrator (Development)

Mrs Connie NGAN
Assistant Judiciary Administrator
(Corporate Services)

Agenda item III

Judiciary Administration

Miss Emma LAU
Judiciary Administrator

Miss Patricia SO
Deputy Judiciary Administrator (Development)

Mrs Connie NGAN
Assistant Judiciary Administrator
(Corporate Services)

Agenda item IV

Judiciary Administration

Miss Emma LAU
Judiciary Administrator

Miss Patricia SO
Deputy Judiciary Administrator (Development)

Agenda item V

The Law Reform Commission of Hong Kong

Mr Eric CHEUNG T M
Member
Review of Sexual Offences Sub-committee

Mr Peter WONG H H
Secretary
Law Reform Commission of Hong Kong

Miss Sally NG
Secretary
Review of Sexual Offences Sub-committee

**Attendance by
invitation : Agenda item II**

Hong Kong Bar Association

Ms Maggie P K WONG, SC

Agenda item V

Hong Kong Bar Association

Mr Eric KWOK T M, SC

Mr Tony LI C Y

Association Concerning Sexual Violence Against Women

Ms Linda WONG
Executive Director

Rainbow Action Hong Kong

Mr Tommy CHAN

Hong Kong Women's Coalition on Equal Opportunities

簡敏棋小姐

Association of Women with Disabilities Hong Kong

Miss YEUNG Mei-ki
Executive Secretary

Clerk in attendance : Mr Lemuel WOO
Chief Council Secretary (4)6

Staff in attendance : Mr Bonny LOO
Senior Assistant Legal Adviser 2 (Acting)

Ms Macy NG
Senior Council Secretary (4)6

Ms Emily LIU
Legislative Assistant (4)6

Action

I. Information paper(s) issued since the last meeting

There was no information paper issued since the last meeting.

II. Review on the statutory retirement ages of Judges and Judicial Officers

(LC Paper No. CB(4)1384/17-18(01) - Administration's paper on review on the statutory retirement ages for Judges and Judicial Officers

LC Paper No. CB(4)1384/17-18(02) - Paper on the review on the statutory retirement ages of Judges and Judicial Officers prepared by the Legislative Council Secretariat (background brief))

Briefing by the Administration

2. At the invitation of the Chairman, Director of Administration ("DoA") briefed members on the Judiciary's proposals to extend the statutory retirement ages for Judges and Judicial Officers ("JJOs") ("the Judiciary's Proposals") and related arrangements, including raising the statutory early retirement ages, discretionary extension arrangements, transitional arrangements and pension-related matters, the details of which were set out in LC Paper No. CB(4)1384/17-18(01).

3. DoA said that the Administration supported the Judiciary's Proposals, and had consulted the Standing Committee on Judicial Salaries and Conditions of Service ("the Judicial Committee") on the proposals. She relayed the views of the Judicial Committee that the Judiciary's Proposals were pragmatic and instrumental in attracting talents to join the Bench, and that the proposals would at the same time help retain experienced JJOs, thereby strengthening manpower support for the Judiciary. The Judicial Committee had expressed full support for the Judiciary's Proposals and its hope that the proposals could be implemented as soon as practicable. DoA further said that the Administration planned to complete the legislative process required for the implementation of the Judiciary's Proposals within the 2018-2019 session as far as possible.

Views of the Hong Kong Bar Association

4. At the invitation of the Chairman, Ms Maggie WONG, SC said that the Hong Kong Bar Association ("the Bar Association") had no objection in principle to the Judiciary's Proposals at the moment, and would consider the proposals in detail and submit any views that it might have to the Judiciary Administration ("Jud Adm").

Proposals to extend the statutory retirement ages for Judges and Judicial Officers

5. The Deputy Chairman indicated full support for the Judiciary's Proposals and said that, in the past, he had repeatedly called for an extension of the statutory retirement ages for JJOs to encourage recruitment of the best legal talents to the Judiciary. Mr Holden CHOW was also supportive of the

Judiciary's Proposals. He said that, as retirement was a main source of JJOs' wastage, extending their statutory retirement ages should help alleviate the shortage of judicial manpower.

6. The Chairman indicated support for the Judiciary's Proposals as extension of statutory retirement ages for JJOs would help attract talents and retain experienced JJOs. In view of the Judiciary's proposal to retain a two-tier retirement age system, the Chairman enquired whether the problem of manpower shortage for Judges at or above the Court of First Instance ("CFI") of the High Court ("HC") level was more acute than that for JJOs below the CFI level.

7. Dr Junius HO considered the proposals to extend the statutory retirement ages for Judges at the CFI level and above to 70 and increase the maximum retirement age up to 75 or 76 appropriate. However, Dr HO said that as many JJOs at the lower levels of court approaching their retirement ages were still going strong, he suggested that a uniform retirement ages of 70 and maximum retirement age of 75 should be adopted for all JJOs.

8. In response to members' views, Judiciary Administrator ("JA") explained that in light of the persistent recruitment difficulties at the CFI level, there was a need to extend the statutory retirement ages for Judges at the CFI level and above from 65 to 70 which would enable the retention of experienced senior judges and attract experienced and quality private practitioners to join the Bench. On the other hand, the retirement age for JJOs below the CFI level being set at 65 would avoid creating promotion blockages for junior JJOs as well as facilitate the injection of new blood. In this connection, a two-tier retirement age system was considered more suitable to the circumstances of the Judiciary in Hong Kong and should accordingly be retained.

9. Mr CHEUNG Kwok-kwan expressed support for the Judiciary's Proposals to alleviate the judicial manpower shortage. He said that extending the statutory retirement ages for JJOs would help attract talents to join the Bench, in particular those experienced legal practitioners in private practice who were at later stage of their career, and retaining the benefit of the experience and skills of serving judges for as long as practicable.

10. In response to Mr CHEUNG Kwok-kwan's enquiry about the transitional arrangements for the smooth implementation of the Judiciary's Proposals, DoA said that the Judiciary had recommended that serving JJOs could choose whether to opt for the new retirement age arrangement or the existing retirement age arrangement. A serving JJO could choose to join the new retirement age arrangement during an option period of two years, or until the date of his/her

reaching the normal retirement age or expiry of extension of term of office, whichever was the earlier.

11. Mr Alvin YEUNG expressed support for the Judiciary's Proposals. He asked about the average ages of JJOs at all levels of court and said that this information should help the public to better understand how the Judiciary's Proposals could sustain the judicial manpower supply which was crucial to the efficient and effective operation of the Judiciary. JA replied that, based on the consultancy study for reviewing the statutory retirement ages of JJOs, the average ages of JJOs at HC, District Court and Magistrates' Courts were 58, 54 and 50 respectively.

Other measures to address manpower shortage in the Judiciary

12. Apart from the Judiciary's Proposals, the Chairman enquired about what other measures would be put in place to attract new blood and to groom and retain existing talents so as to address the shortage of JJOs. The Chairman also asked about the details of the established judicial recruitment process, and the difficulties encountered by the Judiciary and the Judicial Officers Recommendation Commission ("JORC") in the course of recruitment, in particular for Judges at the CFI level or above. She suggested enhancing the transparency and fairness of the judicial recruitment process.

13. The Deputy Chairman reflected the concerns of the legal profession and the general public about the long time taken by the courts to deliver judgments on many cases after the conclusion of their hearings. He considered that the judicial manpower shortage, in particular at the CFI level, should be addressed as soon as practicable. In this regard, the Deputy Chairman suggested increasing judicial manpower through the recruitment of judges from other common law jurisdictions.

14. In response to members' views, JA said that the Judiciary had launched an open recruitment exercise for the CFI Judges in June 2018 and would announce the judicial appointments to the public at an appropriate juncture. Furthermore, while there were seven vacancies of the CFI Judges, the Judiciary had engaged temporary judicial resources to help relieve the workload of CFI. As at 1 July 2018, there were seven internal Deputy Judges, one Recorder and four external Deputy Judges in CFI.

15. DoA further said that the Administration and the Judiciary would closely monitor whether judicial service pay adjustments, and the implementation of the enhanced conditions of service for JJOs (i.e. housing benefits, medical and dental benefits, Local Education Allowance, Judicial Dress Allowance and transport service for leave travel) which had taken effect from 1 April 2017,

would have a positive impact on recruiting and retaining the best possible talents to serve as JJOs.

16. As regards the judicial recruitment process, JA explained that job advertisements would be posted on the Judiciary's website and newspapers so that interested candidates might apply. A selection board for each recruitment exercise appointed by the Chief Justice would consider the potential candidates' curriculum vitae and conduct interviews with them, if necessary. The board would make recommendations on the appointment of suitable candidates for consideration by JORC, which comprised the Chief Justice as the Chairman, the Secretary for Justice and seven other members appointed by the Chief Executive. JORC would make recommendations on the suitable candidate(s) for appointment to the Chief Executive for approval.

17. Dr Junius HO observed that against the establishment of 200 judicial posts, only 158 were filled substantively as of 31 March 2017. With a view to alleviating judicial manpower shortage, Dr HO suggested relaxing or lifting the prohibition against JJOs' return to private practice, resulting in attracting more private practitioners to join the Bench.

18. Mr Alvin YEUNG considered that there was no room for discussion on relaxation or lifting of the prohibition against JJOs' return to private practice as a barrister or solicitor after judicial appointment, given that the prohibition was a long established arrangement conducive to upholding the principle of judicial independence and maintaining public confidence in the Judiciary.

19. The Deputy Chairman concurred with Mr Alvin YEUNG's view that prohibition against JJOs' return to private practice was a prominent feature to safeguard judicial independence. Besides, JJOs were entitled to a range of benefits and allowances in addition to salary. Subject to the implementation of the Judiciary's Proposals, the maximum retirement age for judges at the CFI level and above would be extended to 75 or above. Many retired judges would also make contributions in areas like arbitration and mediation. He therefore considered it unnecessary to remove the prohibition against JJOs' return to private practice.

20. JA also advised that Dr Junius HO's suggestion of allowing JJOs to return to private practice would have an important impact on a long established practice to maintain judicial independence and hence should not be taken lightly without careful and prudent consideration.

21. Noting that the general financial limit of the civil jurisdiction of the District Court would be increased from \$1 million to \$3 million, the Deputy Chairman and Mr Alvin YEUNG expressed concern whether the District Court

would have the necessary judicial manpower to cope with the projected increase in caseloads after the jurisdictional rise.

22. JA replied that the Judiciary had been well-prepared for the commencement of the aforesaid jurisdictional rise in late 2018. Financial resources had been approved for the Judiciary to create additional JJO posts and non-directorate civil service posts for coping with the increases in caseload at the District Court.

23. Mr Holden CHOW expressed concern about the abuse of judicial review and legal aid systems by some people in recent years. He was worried that it might not only pose challenges to the judicial manpower, but also discourage quality candidates and experienced private practitioners from joining the Bench. In this regard, Mr CHOW urged the Administration to reinforce public education against abuse of legal procedures or improper use of judicial process. DoA and JA took note of Mr CHOW's view.

III. Proposed creation of judicial posts and proposed creation and retention of directorate posts in the Judiciary

(LC Paper No. CB(4)1384/17-18(03) - Judiciary's paper on proposed creation of judicial posts and proposed creation and retention of directorate posts in the Judiciary)

24. At the invitation of the Chairman, JA briefed members on the Judiciary's staffing proposals, as follows:

- (a) creation of four permanent judicial posts of Deputy Registrar, HC ("DR/HC") (JSPS 13) to enhance the establishment of judicial manpower at the Masters' Office of HC. DR/HC would sit as Masters to deal with all aspects of a civil action from its issue until it was ready for trial by a HC Judge;
- (b) creation of one permanent Principal Executive Officer post (D1) to enhance support to the Deputy Judiciary Administrator (Operations)'s Office of the Operations Division of Jud Adm; and
- (c) retention of one supernumerary Administrative Officer Staff Grade C post (D2) for three years to continue providing support for the Development Office of the Development Division of the Jud Adm.

Proposed creation of four permanent judicial posts of Deputy Registrar, High Court

25. The Deputy Chairman declared that he had handled civil cases.

General views

26. Expressing grave concern about the prolonged waiting time for listing a civil case for trial in HC as well as undergoing the pre-trial procedures, such as fixing the date of case management conference or hearing of an interlocutory application, the Chairman, the Deputy Chairman and Mr CHEUNG Kwok-kwan indicated support for the staffing proposals, in particular the proposed addition of DR/HC posts which would hopefully relieve the above problem.

27. In response, JA explained that the four DR/HC posts proposed to be created in the Masters' Office of HC were to cope with the increasing workload and to cater for the expanded areas of work arising from the implementation of new Practice Directions. It was expected that the additional posts would not only increase the efficiency of the Masters' Office but also that of the operation of HC as a whole.

Work distribution

28. The Chairman asked about the work distribution of Masters in HC. JA advised that there was a clear division of work among Masters. Different Masters were assigned to handle different areas of work, such as handling cases in connection with probate applications and administration of estates; cases in connection with uncontested bankruptcy and winding up applications; general civil cases or personal injury cases; or undertaking case management work, in particular overseeing the implementation of new Practice Directions.

Recruitment

29. The Deputy Chairman asked whether the newly created DR/HC posts would be filled through internal promotion or external recruitment. JA replied that the DR/HC and District Judge posts were pitched at the same rank and subject to the cross-posting policy by which duties of DR/HC were mostly taken up by District Judges on cross-posting arrangements. She explained that the above policy had provided greater flexibility in the posting of JJOs between various courts to serve operational needs, and widened the job exposure of judges. The Judiciary had ceased to conduct open recruitment for DR/HCs after 2000.

30. Mr CHEUNG Kwok-kwan enquired when the new DR/HC posts would be filled. JA advised that to meet the heavy workload of the Masters' Office of HC, additional District Judges had been deployed under the cross-posting policy to sit as temporary DR/HCs. The proposed additional DR/HC posts, if approved, would rationalize the manpower situation of the HC Masters' Office, as additional District Judges could be recruited. JA added that the Judiciary might still deploy temporary judicial resources to meet the workload in the future where necessary.

Court room for conducting hearings by Masters

31. The Deputy Chairman was concerned about whether there were enough court rooms on 2/F of the HC Building for conducting hearings by all Masters. He asked whether consideration would be made to relocating the HC Library to vacate spaces for more court rooms.

32. JA acknowledged that the court rooms on 2/F of the HC Building were not sufficient for use by all Masters and, therefore, some hearings might need to be conducted on other floors subject to availability of courtrooms there. She advised that, as a longer term measure, the Judiciary would relocate the HC Library to the Queensway Government Offices and to make use of the space vacated by the HC Library to construct additional court rooms.

Measures to relieve workload of judges

33. The Chairman expressed concern whether there would be additional manpower resources to relieve the heavy workload of judges, such as deploying manpower to assist judges to conduct legal research. She also suggested the Judiciary making reference to the measures adopted by other common law jurisdictions on relieving the workload of judges.

34. In response, JA informed members that qualified assistants had been engaged by the Judiciary under two separate schemes, namely, the Scheme on Judicial Assistants ("JDAs") for the Court of Final Appeal ("CFA") and the Scheme on Judicial Associates for HC. The two positions were to enhance the legal and professional support to JJOs at HC level and above.

35. JA further explained that the respective entry requirements and the duties of JDAs and Judicial Associates were set according to the operational needs of CFA and HC. JDAs were normally young and newly qualified legal professionals engaged for a single one-year term; whereas Judicial Associates for HC should have relevant post-qualification experience, and would be engaged for a longer term which might be renewable.

36. The Chairman was concerned whether there were enough Judicial Associates to assist the judges in HC. In reply, JA advised that the Scheme on Judicial Associates had been implemented for several years and was considered effective in relieving the workload of judges, particularly those in the Court of Appeal. As such, the Judiciary had planned to expand the Scheme and recruit more Judicial Associates. She further explained that there were two streams of Judicial Associates. The Judicial Associates (General) provided assistance in civil appeal cases and general work in CFI, whereas the Judicial Associates (Criminal Appeals) provided assistance in the Criminal Appeals Registry of the Court of Appeal.

37. The Chairman enquired whether, in recruiting judges, priority would be given to candidates who had previous experience of working as Judicial Associates. JA replied that during an open recruitment exercise of judges, any interested candidates who met the qualification and experience requirements could apply. The applications would be considered by the Selection Board and JORC based on the merits of each candidate in a fair manner.

Manpower in the District Court

38. Mr CHEUNG Kwok-kwan noted that subsequent to the increase in the civil jurisdictional limits of the District Court, some civil cases would be diverted from HC to the District Court. He was concerned about whether there were sufficient Masters in the District Court to handle additional cases. JA said that with the approval of the Legislative Council in 2017, additional judicial posts were created in the District Court to handle the additional cases arising from the increase in its civil jurisdictional limits.

Conclusion

39. The Chairman concluded that the Panel on Administration of Justice and Legal Services ("the Panel") supported the Judiciary's submission of the staffing proposals to the Establishment Subcommittee for further consideration.

IV. Mechanism for handling complaints against judicial conduct — Review of the progress in implementing the improvement measures (LC Paper No. CB(4)843/17-18(01) - Information paper on the Mechanism for Handling Complaints Against Judicial Conduct Review of the progress in implementing the improvement measures provided by the Judiciary

LC Paper No. CB(4)1384/17-18(04) - Background brief on mechanism for handling complaints against judicial conduct prepared by the Legislative Council Secretariat)

40. At the invitation of the Chairman, JA briefed members on the progress made in implementing the measures to improve the mechanism for handling complaints against judicial conduct following the review conducted in 2016 by the Working Group on Review on the Mechanism for Dealing with Complaints against Judicial Conduct, which was set up and chaired by the Chief Justice ("the Review").

Setting up of the Secretariat for Complaints against Judicial Conduct

Purpose and operation

41. In reply to the Deputy Chairman's enquiry about the purpose of setting up the Secretariat for Complaints against Judicial Conduct ("SCJC"), JA said that with the establishment of SCJC, which served as the central depository for receiving and screening cases, retrieving case files for the Chief Justice and Court Leaders and assisting them in seeking clarifications with complainants, etc, the Chief Justice and the Court Leaders could deploy their resources more efficiently and could concentrate on the investigative work relating to the complaints.

42. JA further said that, besides the above services, SCJC also answered enquiries, explained the procedures to the complainants and compiled statistics and information for release to the public.

43. The Deputy Chairman indicated support for the setting up of SCJC as it would relieve the workload of Court Leaders, in particular that of the Chief Magistrate who in his view had handled more complaints than other Court Leaders. He asked whether SCJC would provide central support for all courts or one SCJC was set up at each court level.

44. JA replied that since the number of complaints against JJOs was small, a central SCJC was set up to handle all complaints at all levels of court at the moment.

Staffing arrangement

45. Noting that the complaints against judicial conduct were sensitive in nature, the Chairman was concerned about the staff composition of SCJC, their qualifications, and whether legal background was required, and if there was any need for enhancing the manpower.

46. Deputy Judiciary Administrator (Development) said that SCJC was headed by a Chief Executive Officer and supported by two Executive Officers and one Clerical Officer. She explained that while the complaints were investigated by the Chief Justice and Court Leaders, SCJC mainly provided administrative support to them and prepared replies on their instruction. She also said that the existing staffing arrangement of SCJC was adequate to discharge its duties.

47. JA supplemented that although legal qualification was not required for the SCJC staff, internal guidelines had been provided to familiarize them with the justice system and court operations.

Classification of complaints

48. The Chairman enquired about the number of complaints against judicial conduct and the way in which the complaints were classified. In reply, JA referred members to Table 2 of Annex of the Judiciary's paper and advised that in 2017, there were 128 complaints disposed of by the Chief Justice and Court Leaders.

49. JA said that complaints against judicial conduct could broadly be classified into four categories. 97 out of 128 complaints were related to judicial decisions or statutory decisions which could not and would not be handled under the mechanism. The remaining 31 complaints were either solely relating to judicial conduct; partially relating to judicial conduct; or complaints to the Chief Justice lodged by complainants who were not satisfied with the Court Leader's handling and/or findings of their original complaints. She added that while complaints would be initially classified by SCJC, respective Court Leaders would make the final decision on the classification.

Complaints against judicial conduct in respective court levels

50. The Chairman asked who would handle complaints against judicial conduct in respective court levels. In reply, JA said that complaints against judges in CFA and Court Leaders were handled by the Chief Justice; those against JJOs of HC by the Chief Judge of HC; those against JJOs of the District Court, the Family Court and the Lands Tribunal by the Chief District Judge; and

those against magistrates and judicial officers of the Magistrates' Court, Labour Tribunal, Small Claims Tribunal, Coroner's Court and Obscene Articles Tribunal by the Chief Magistrate.

51. In response to the Chairman's further enquiry on whether the Chief Justice or judges of CFA could handle complaints against Judges of HC, JA advised that while complaints against JJOs of HC were handled by the Chief Judge of HC, the refined mechanism provided for Court Leaders to consult senior judges in handling substantive and complicated complaints, subject to the circumstances of each case. Where necessary, Court Leaders might also seek input from the principal JJOs of the relevant courts.

Training provided to Judges and Judicial Officers for handling their daily work and enhancing their professional and communication skills

52. The Deputy Chairman asked about the operation and supervision of the Judicial Institute. He noted that in the course of handling various complaints against judicial conduct, Court Leaders would come to know about the problems and difficulties encountered by JJOs in their daily work, and hence he considered that any room for improvement should be suitably addressed by the provision of training under the Judicial Institute. The Chairman also asked whether the number of complaints against judicial conduct had decreased with enhanced training provided to JJOs.

53. JA advised that the Judicial Institute was overseen by a governing body and an executive committee chaired by the Chief Justice and the Chief Judge of HC respectively, whereas the daily operation of the Institute was overseen by a deputy judge of HC designated by the Chief Justice. She added that some of the staff recruited to work in the Institute had legal qualifications.

54. JA also advised that the Court Leaders took a positive attitude towards lessons learnt in dealing with complaints against judicial conduct and would continue to provide appropriate training to JJOs. For example, the Judicial Institute had strengthened the training on how to handle self-represented parties.

55. In response to the Deputy Chairman's further enquiry about the training hours provided to JJOs annually, JA replied that there was no fixed training hour set for each year. Nevertheless, with a view to providing good training support to JJOs, more and more seminars, workshops, etc. were held during working hours where practicable without affecting the listing of court hearings. If necessary, judicial training activities would be extended a bit after working hours.

Follow-up actions to justified complaints

56. The Chairman asked about the number of justified complaints among the 128 complaints disposed of by the Chief Justice and Court Leaders in 2017, and the follow-up actions that had been taken for those complaints. In reply, JA referred members to Table 4 of the Annex of the Judiciary's paper for the number of justified/partially justified complaints in 2016 and 2017, and the investigation results and follow-up actions that had been taken by Court Leaders.

57. JA further explained that the follow-up actions to be taken on justified complaints would be commensurate with the seriousness and nature of complaints and would be determined by the respective Court Leader as well as recorded by SCJC. As the justified complaints in 2016 and 2017 were small in number and relatively minor in nature, the Court Leader had followed up by giving advice to the relevant JJOs for improvement. JA added that for written complaints, written replies cleared by respective Court Leaders would be issued to respective complainants.

Enhancing the transparency of the complaint handling mechanism

58. JA informed members that one of the improvement measures arising from the Review was to enhance the transparency of complaint handling mechanism by releasing statistics and details about the complaints against judicial conduct. The above-mentioned information regarding the justified/partially justified complaints and follow-up actions taken was available on the Judiciary's website.

(At 6:05 pm, the Chairman ordered a break for five minutes.)

V. Law Reform Commission of Hong Kong's consultation paper on miscellaneous sexual offences

Meeting with deputations and the Law Reform Commission of Hong Kong

(LC Paper No. CB(4)1109/17-18(01) - Consultation paper on miscellaneous sexual offences

LC Paper No. CB(4)1109/17-18(02) - Executive summary of consultation paper on miscellaneous sexual offences)

59. Members noted the following submissions from deputations not attending the meeting:

LC Paper No. CB(4)1394/17-18(01) - Against Child Abuse

LC Paper No. CB(4)1425/17-18(04) - Chosen Power (People First Hong Kong)

Briefing by the Law Reform Commission of Hong Kong

60. Mr Eric CHEUNG, member of the Review of Sexual Offences Sub-committee of the Law Reform Commission of Hong Kong ("the Review Sub-committee"), briefed members on the consultation paper on miscellaneous sexual offences ("the Consultation Paper"), the details of which were set out in LC Paper No. CB(4)1109/17-18(01) and had been introduced to members of the Panel at its meeting on 25 June 2018. Mr CHEUNG said that, while the Review Sub-committee had made specific recommendations regarding the sexual offences covered in the paper, there were certain issues on which the Sub-committee considered it necessary to seek public views before making its recommendations. Mr CHEUNG further said that the Consultation Paper represented the third and final of the three consultation papers issued by the Review Sub-committee on the overall review of substantive sexual offences. This consultation would last for three months from 16 May till 15 August 2018.

Views of the Hong Kong Bar Association

61. As invited by the Chairman, Mr Eric KWOK, SC said that the Bar Association was studying the recommendations of the Consultation Paper and had yet to come up with its stance on the matter. After it had studied the paper in detail, the Bar Association would submit its views to the Review Sub-committee for consideration in due course.

Presentation of views by deputations

62. The Chairman invited deputations to present their views. She reminded them that, when addressing the Panel at the meeting, they were not covered by the protection and immunity under the Legislative Council (Powers and Privileges) Ordinance (Cap. 382), and their written submissions were also not covered by Cap. 382. In total, four deputations presented their views, a summary of which was in the **Appendix**.

Discussion

General views

63. Dr Fernando CHEUNG appreciated the Review Sub-committee's efforts in making preliminary proposals for the reform of law concerning miscellaneous sexual offences and he welcomed the recommendations set out in the Consultation Paper. He said that it had been six years since the Sub-committee issued the first of the three consultation papers on overall review of substantive sexual offences, and he hoped that the timetable for implementing the relevant law reform would be available soon.

Incest

64. The Chairman invited Mr Tommy CHAN of the Rainbow Action Hong Kong to elaborate on his view regarding whether the offence of incest should be retained. In reply, Mr Tommy CHAN said that in general, sexual activities between two consenting adults should not be criminalized. He pointed out that the arguments to justify retaining incest as a specific crime, such as helping to maintain the family solidarity and strengthen its fabric and protection of family members, had also been used to justify the criminalization of homosexual behaviours previously and were not valid.

65. In response to the Chairman's further enquiry, Mr Tommy CHAN stressed that those sexual offences involving non-consensual sexual activities such as rapes and sexual assaults, as well as sexual activities involving children, should be retained. As these offences could apply to direct blood relatives within a family, he considered that a specific offence of incest was not necessary.

66. The Chairman said that it was her firm belief that a significant number of the community members were opposed to the idea of sexual intercourse between persons who were direct blood relatives. As such, she took the view that specific offence of incest should be retained.

67. Mr CHAN Chi-chuen noted that Ms Linda WONG of the Association Concerning Sexual Violence Against Women had expressed support for retaining the specific offence of incest on the ground of protection of members of the family. As there was other existing legislation to protect family members, especially the children, from the sexual assaults of other members of the family, he asked Ms WONG for her view on why the offence of incest should be retained.

68. In reply, Ms Linda WONG said that there was a case in which a daughter was raped by her father but, instead of being charged with rape, the charge was substituted with the offence of incest as the daughter did not want to give evidence in court and the father pleaded guilty. Ms WONG said that the case showed that there was a risk of coercion in the case of familial sexual activity and the offence of incest had been used on many occasions to prosecute offenders, she therefore supported retaining the offence.

69. Notwithstanding this, Ms Linda WONG said that the daughter in the above-quoted case was also charged with the offence of incest, which was highly undesirable although the court could decide on her sentencing having regard to the element of consent in the offence. In view of this, Ms WONG suggested that the Review Sub-committee should make reference to England's experience of providing sentencing guidance on incest offences, making distinction between consensual and non-consensual cases of incest so that an appropriate penalty could be imposed in the interests of justice.

70. In response, Mr Eric CHEUNG said that his understanding was that legislation in Hong Kong did not normally prescribe any sentencing guidelines and would leave it for the judicial authority to exercise discretion according to the facts of the case and established principles. The Law Reform Commission of Hong Kong generally would also not propose guidance on sentencing under its various law reform proposals. However, the Review Sub-committee would continue to listen to different views made by deputations during the consultation period.

71. As regards the case quoted by Ms Linda WONG above, Mr Eric CHEUNG opined that if the prosecution considered that there was sufficient evidence showing that rape was committed, a charge of rape (rather than incest) would be instigated. However, if the court found that there was insufficient evidence on the trial of any indictment for rape to prove the lack of consent, then the defendant might be found guilty of incest (which was an alternative offence under Part VI of the Crimes Ordinance (Cap. 200)) instead under section 50 of Cap. 200.

72. Dr Fernando CHEUNG concurred with the Review Sub-committee's view that some children who were adopted at a very young age might not know that their adoptive parents were not their natural parents, and that adoptive parents undertook lifelong trust and responsibility to their adopted children, so there was no justification to draw a distinction between adoptive parents and natural parents.

73. The Chairman also said that, to better protect children adopted at a very young age from being sexually abused by the adoptive parents, the Review

Sub-committee should explore extending the offence of incest to cover adoptive parents. Dr Elizabeth QUAT concurred with her view.

74. Mr CHAN Chi-chuen expressed reservation about the recommendations on extending the new offence of incest to cover adoptive parents. He considered that, if the adoptive parent and child were consenting adults, sexual acts between them should not constitute an offence.

75. In response, Mr Eric CHEUNG explained that in Hong Kong, it was unlawful for a person to have sexual activity with another person who was under 16, which meant that it was legally permissible in general for anyone aged 16 or over to have sexual activity with each other, provided that it was consensual. However, the long-standing offence of incest did impose restrictions on sexual activity (albeit consensual) between parties who were over the age of consent if they were within certain specified familial relationships. The Review Sub-committee noted that adoptive parents had the same rights and obligations as natural parents, but it would welcome views from the public as to whether incest should cover adoptive parents.

76. The Chairman invited Ms Linda WONG to clarify her view about whether the offence of incest should be extended to cover step-parents/foster-parents. In reply, Ms Linda WONG pointed out that by virtue of section 27(1) of and Schedule 5 to the Marriage Ordinance (Cap. 181), marriage between an adoptive parent and an adoptive child was null and void on the ground of kindred or affinity, while that between step-parents and step-children was lawful if both parties to the marriage had attained the age of 21 at the time of the marriage. In this connection, she considered that the specific offence of incest should be extended to adoptive parents but not to cover step-parents/foster-parents, so as not to contradict Cap. 181.

77. Regarding the issue of what sexual activity should be covered by the offence of incest, Dr Fernando CHEUNG expressed his view that the offence should not just apply to vaginal intercourse, but to all forms of penile penetration and other forms of penetration or sexual activity which might also represent serious sexual interferences with the victims.

78. In response to members' views, Mr Eric CHEUNG added that the Review Sub-committee would carefully consider the Panel's views on incest when preparing its recommendations, like whether to retain incest as a specific offence; and whether to extend such offence to adoptive parents and other close family members.

Voyeurism

79. Mr CHAN Chi-chuen observed that, as there was at present no specific legislation in Hong Kong to deal with an act of voyeurism involving observation or visual recording for a sexual purpose, those engaging in such an act might only be prosecuted for loitering or access to computer with criminal or dishonest intent under section 160 or 161 of Cap. 200, or for an offence under the Public Order Ordinance (Cap. 245). He considered this undesirable because the offenders' conviction for such offences, which were not sexual offences, would not appear on the records of the Sexual Conviction Record Check ("SCRC") Scheme so that the public would not be aware of the conviction.

80. Dr Elizabeth QUAT relayed the grave concern of the Women Affairs Committee of the Democratic Alliance for the Betterment and Progress of Hong Kong over the acts of "under-the-skirt" photography taking place in public areas such as MTR stations. Noting that "under-the-skirt" photography was not covered in the Consultation Paper, she urged the Review Sub-committee to review the relevant recommendations to address the wide public concern about such acts.

81. Mr CHAN Chi-chuen noted the concerns of members and deputations regarding "under-the-skirt" photography. He reminded the Review Sub-committee that it should adhere to the principle of gender neutrality when making relevant law reform proposals. In that regard, Ms Linda WONG drew members' attention to the Voyeurism (Offences) (No. 2) Bill ("V(O)2 Bill") recently introduced into the United Kingdom Parliament. She said that the Bill was to create new offences to capture instances where a person operated equipment or recorded an image beneath another person's clothing with the intention of viewing their genitals or buttocks, with or without underwear, without that other person's consent. As such, V(O)2 Bill was gender-neutral.

82. In response to members' concerns, Mr Eric CHEUNG advised that while the Review Sub-committee was aware of the latest development regarding V(O)2 Bill, the Consultation Paper was issued in May 2018 prior to the introduction of the Bill. In this connection, the specific offence of voyeurism recommended in the Consultation Paper was proposed along the lines of the Sexual Offences Act 2003 of the United Kingdom, under which voyeurism covered situations where the victim was in a place with a reasonable expectation of privacy, such as when using the lavatory.

83. Mr Eric CHEUNG undertook that the Review Sub-committee would keep abreast of the development in respect of V(O)2 Bill and continue to listen to the views and comments on the Consultation Paper, including the public

views on "under-the-skirt" photography. As regards Mr CHAN Chi-chuen's concern about SCRC, Mr CHEUNG said that the Review Sub-committee had not yet considered whether the proposed new sexual offences covered by the Consultation Paper would be included in the records of the SCRC Scheme. However, the Review Sub-committee might revisit the issue when finalizing the overall review on substantive sexual offences.

84. Dr Elizabeth QUAT indicated that the proposed new offence of voyeurism, even with the proposed "under-the-skirt" photography included, would not be able to address the blatant sexual harassment acts such as taking the photos of women openly without seeking their consent in public places such as restaurants or bars. Dr QUAT enquired whether the Review Sub-committee would further review its proposed offence of voyeurism to address the problem.

85. Mr Eric CHEUNG replied that the Review Sub-committee was commissioned to review the law relating to sexual offences in Hong Kong. It welcomed views and suggestions on any issues discussed in the Consultation Paper. However, as certain acts such as that raised by Dr Elizabeth QUAT were closer in nature to public order offences or intrusion of privacy, he considered that they were outside the Review Sub-committee's scope of study.

Review of some existing homosexual or homosexual-related buggery and gross indecency offences

86. Members noted the Review Sub-committee's proposed abolition of some of the existing homosexual or homosexual-related offences, namely, assault with intent to commit buggery (section 118B of Cap. 200), procuring others to commit homosexual buggery (section 118G of Cap. 200), gross indecency by man with man otherwise than in private (section 118J of Cap. 200) and procuring gross indecency by man with man (section 118K of Cap. 200).

87. The Deputy Chairman enquired about the rationale behind the recommendation. In reply, Mr Eric CHEUNG said that the Review Sub-committee had adopted gender neutrality and avoidance of distinctions based on sexual orientation in conducting its work, and these principles should lead to the removal of the above homosexual or homosexual-related offences from the statute books.

88. While indicating support for the recommendation, the Deputy Chairman and Dr Fernando CHEUNG considered that the Review Sub-committee should explain in more detail to the public its relevant work as they envisaged that the issue would generate much controversy. The Chairman said that she in principle supported the Review Sub-committee's proposal so long as the institution of marriage would not be undermined in anyway.

Acts done with intention to commit a sexual offence

89. Dr Elizabeth QUAT expressed support for the Review Sub-committee's proposed creation of a new offence of administering a substance for sexual purposes to replace the existing offence of administering drugs to obtain or facilitate an unlawful sexual act. She considered that it would better protect people against sexual abuse and give recognition to their sexual autonomy.

Other views

90. Mr CHAN Chi-chuen asked Mr Tommy CHAN to elaborate on his views that the proposed sexual offences might be abused. In reply, Mr Tommy CHAN said that it was quite common for naked persons to fraternize with each other in places like homosexual public baths and sauna houses. He was worried that the person approached might abuse the new offence and accused the one approaching him/her of committing the sexual offence of exposure.

91. Dr Elizabeth QUAT expressed concern about a judgment handed down by CFA to overturn the conviction of a man for engaging in sexual conduct with a 13-year-old girl because he "honestly and reasonably" believed the child to be aged 17. She was worried that the judgment would set a bad precedent, making it easier for defendants in similar cases to get away with indecent assault charges. As a result, children aged under 16 might not be well-protected against sexual abuses under the present law.

92. In response, Mr Eric CHEUNG gave his view on the case mentioned by Dr Elizabeth QUAT. He said that, to his understanding, HC found the man guilty even though the girl had given her consent to the sexual act. HC was of the view that indecent assault was an offence of absolute liability, i.e. a mistake of fact, and that genuinely believing that the girl was over 16 years old was not a defence. Nonetheless, CFA was of the view that HC was wrong in its interpretation of the legislative intent. Mr Eric CHEUNG said that the Review Sub-committee was aware of CFA's judgment in this case and would consider it in the light of the public views and comments received in deciding whether absolute liability should be imposed on sexual offences, in particular those relating to children.

93. Mr Eric CHEUNG expressed his appreciation for the comments and views expressed by members and deputations at the meeting. He said that the recommendations in the Consultation Paper were intended to facilitate discussion and did not necessarily represent the Review Sub-committee's final conclusions, and the Review Sub-committee would continue to listen to public views and comments on the Consultation Paper.

VI. Any other business

94. There being no other business, the meeting ended at 7:17 pm.

Council Business Division 4
Legislative Council Secretariat
21 January 2019

Panel on Administration of Justice and Legal Services

Meeting on Wednesday, 18 July 2018, at 4:30 pm

Receiving public views on "Law Reform Commission of Hong Kong's consultation paper on miscellaneous sexual offences"

Summary of views and concerns expressed by deputations

No.	Name of deputation	Submission
1.	Ms Linda WONG Association Concerning Sexual Violence Against Women	<ul style="list-style-type: none"> presentation of views as set out in submission (LC Paper No. CB(4)1433/17-18(01) (Chinese version only)
2.	Mr Tommy CHAN Rainbow Action Hong Kong	<ul style="list-style-type: none"> presentation of views as set out in submission (LC Paper No. CB(4)1425/17-18(01) (Chinese version only)
3.	簡敏棋小姐 Hong Kong Women's Coalition on Equal Opportunities	<ul style="list-style-type: none"> presentation of views as set out in submission (LC Paper No. CB(4)1425/17-18(02) (Chinese version only)
4.	Miss YEUNG Mei-ki Association of Women with Disabilities Hong Kong	<ul style="list-style-type: none"> presentation of views as set out in submission (LC Paper No. CB(4)1425/17-18(03) (Chinese version only)