

**For discussion
on 25 February 2014**

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

Mechanism for Handling Complaints against Judicial Conduct

PURPOSE

This paper briefs Members on the Judiciary's review of the mechanism for handling complaints against judicial conduct.

BACKGROUND

2. The mission of the Judiciary is to maintain an independent and effective judicial system which upholds the rule of law, safeguards the rights and freedoms of the individual, and commands confidence within and outside Hong Kong. To this end, the Judiciary attaches great importance to ensuring that Judges and Judicial Officers ("JJOs") maintain a high standard of professional competence and integrity. It deals in a fair and proper manner with legitimate complaints against judicial conduct.

3. The principle of judicial independence is fundamental in our judicial system. It involves the independence of each judge at any level of our courts to adjudicate according to law without any interference.

4. Judges have the duty to resolve disputes. One side is likely to be disappointed or dissatisfied by a judicial decision. Since a judicial decision is made by the judge in the course of independent adjudication, a complaint against the decision cannot be entertained. Anyone who feels aggrieved by a judge's decision can only appeal (where this is available) through the existing legal procedures.

**MECHANISM FOR HANDLING COMPLAINTS AGAINST
JUDGES' CONDUCT**

5. There has been an established mechanism for dealing with complaints against judicial conduct ("the mechanism") by the Chief

Justice and the Court Leaders at all levels of Court. The main features are as follows –

- (a) In accordance with the principle as set out in paragraphs 3 and 4 above, complaints against judicial decisions should not be dealt with under the mechanism. (Indeed, most or many of the complaints received are against judicial decisions rather than judicial conduct.) They should be handled in accordance with the legal procedures;
- (b) For complaints against judicial conduct, the Court Leaders will make careful investigations into the complaints including obtaining the comments of the JJOs being complained against, listening to audio records of the relevant court proceedings and making other enquires as appropriate, before forming a view on whether the complaints are substantiated or not;
- (c) 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 substantiated or partially substantiated, 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
- (d) If the complainant is not satisfied with the findings of the Court Leader, he may complain to the Chief Justice who would review the case, and consider whether the Court Leader has dealt with the complaint fairly and properly.

REVIEW

6. The above mechanism was promulgated in 2003 and has been operating smoothly in general since then.

7. The subject was discussed at the Panel meeting on 23 July 2013. The Chief Justice notes the comments and concerns expressed by Members. Having regard to the fact that the existing mechanism has been working for some time, the Chief Justice has set up an internal working group (involving the Court Leaders) to review the mechanism, to see what improvements could be made.

8. The Chief Justice considers it important to stress that the review must be conducted on the premise having regard to the following principles –

- (a) There should be due regard to the safeguard of judicial independence in handling complaints against judicial conduct. The Judiciary should be respected and trusted for doing this on its own, on the premise that sufficient openness and transparency of the mechanism would be made known to the public;
- (b) There should be due regard to the separation of roles and responsibilities among the executive, legislative and judicial arms of government 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 other arms of government. Any suggestion of such involvement would run the high risk of politicizing the process, and is objectionable in principle; and
- (c) In taking forward the review, it is important for the direction of the review to be consistent with the framework as enshrined in the Basic Law (ref. Article 89) under which 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, none of which so far have led to the invocation of a Basic Law Tribunal under Article 89, should comprise judges and judges only.

9. The Chief Justice has also instructed that in taking forward the review, the working group will take stock of our 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 will 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.

10. The working group has met and identified some broad areas to be addressed in the review –

- (a) Whether complaints against judicial conduct should continue to be dealt with by Court Leaders only or whether there could be improvement in dealing with the investigation of the complaints;
- (b) Whether there is room to enhance the transparency of the mechanism while without adversely affecting the proper administration of justice, including JJOs' work. This would also include giving consideration to publishing statistical information on complaints received and handled; and
- (c) Whether the administrative support to the Court Leaders in handling complaints against judicial conduct should be enhanced with a view to improving the efficiency and effectiveness of the mechanism.

11. The review is now in progress and is expected to take about a year to complete, i.e. by the end of 2014. In the process, the JJOs will be consulted. Upon completion of the review, the Chief Justice will publish a report. The report will be made available to the legal profession and the Panel.