

立法會

Legislative Council

LC Paper No. CB(4)31/17-18(03)

Ref : CB4/PL/AJLS

Panel on Administration of Justice and Legal Services

Meeting on 30 October 2017

Updated background brief on judicial service pay adjustments

Purpose

This paper provides updated background information on the judicial service pay adjustments. It also summarizes the major views and concerns of Legislative Council ("LegCo") Members on the subject.

Background

Judicial remuneration review mechanism

2. In May 2002, the Judiciary Administration commissioned Sir Anthony Mason to undertake a consultancy study with a view to recommending the appropriate system for the determination of judicial remuneration in Hong Kong. The Consultancy Report on "System for the Determination of Judicial Remuneration" ("the Mason Report") was completed in February 2003.¹

3. Following completion of the Mason Report, the Chief Justice put forward to the Chief Executive ("CE") the Judiciary's proposal that the recommendations and views contained in the Mason Report should be adopted as the appropriate system for the determination of judicial remuneration in Hong Kong. Relevant recommendations made in the Mason Report include, inter alia, that judicial remuneration should be fixed by the Executive after considering recommendations by an independent body which should be established by statute; the members of the independent body should be appointed by the Executive; and the methodology, that is the factors to be considered, should be specified in the statute.

¹ Hyperlink of the report: http://www.judiciary.hk/en/publications/consultancy_report_e.pdf [Accessed October 2017].

4. In January 2004, CE asked the Standing Committee on Judicial Salaries and Conditions of Service ("the Judicial Committee")² to make recommendations to him on the appropriate institutional structure, mechanism and methodology for the determination of judicial remuneration and in particular, to make recommendations on whether the Judiciary's proposal based on the Mason Report should be accepted. The Judicial Committee submitted a report setting out its recommendations to CE in November 2005 ("the 2005 Report").³

5. In May 2008, CE-in-Council accepted all the major recommendations of the 2005 Report and agreed that judicial remuneration should be determined according to a mechanism separate from that of the civil service. Specifically, judicial remuneration is determined by CE-in-Council after considering the recommendations of the Judicial Committee. The new mechanism for judicial remuneration review ("JRR") comprises a benchmark study to be conducted on a regular basis⁴ which seeks to check whether judicial pay is kept broadly in line with the movements of legal sector earnings over time; and an annual review.

6. In coming up with the recommendations, the Judicial Committee would take into account the basket of factors approved by the CE-in-Council in May 2008, the principle of judicial independence and the position of the Judiciary.⁵ The basket of factors include responsibility, working conditions and workload of judges vis-à-vis those of lawyers in private practice; recruitment and retention in the Judiciary; retirement age and retirement benefits of the Judges and Judicial Officers ("JJOs");⁶ unique features of the judicial service;

² The Judicial Committee is an independent advisory body appointed by CE to advise and make recommendations on matters concerning the salary and conditions of service of Judges and Judicial Officers ("JJOs"). It was first established in December 1987 in recognition of the independent status of the Judiciary and the need for the pay and conditions of services of JJOs to be dealt with separately from those of the civil service.

³ Hyperlink of the report: http://www.jssc.gov.hk/reports/en/jscs_08/index.htm [Accessed October 2017].

⁴ The Judicial Committee has decided that a benchmark study should in principle be conducted every five years, with its frequency subject to periodic review. The most recent benchmark study was conducted in 2015.

⁵ The Judiciary considers that there should not be any reduction in judicial pay as a matter of principle.

⁶ Judges refer to officers in the grades of Chief Justice, Court of Final Appeal; Judge, Court of Final Appeal; Judge of the High Court; and Judge of the District Court. Judicial Officers refer to officers in the grades of Registrar, High Court; Registrar, District Court; Member, Lands Tribunal; Magistrate; Presiding Officer, Labour Tribunal; Adjudicator, Small Claims Tribunal; Coroner; and Special Magistrate.

prohibition against return to private practice in Hong Kong; benefits and allowances enjoyed by JJOs; cost of living adjustment; general economic situation in Hong Kong; budgetary situation of the Government; overseas remuneration arrangements; private sector pay levels and trends; and public sector pay as a reference.

Previous judicial service pay adjustments

7. Under the new mechanism for JRR as approved by CE-in-Council in 2008, the judicial salaries remained unchanged in 2009-2010 and 2010-2011 whereas the Judicial Committee recommended pay increases in subsequent annual reviews. Details are as follows:

| <u>Year</u> | <u>Adjustment rate</u> |
|-------------|------------------------|
| 2011-2012 | +4.22% |
| 2012-2013 | +5.66% |
| 2013-2014 | +3.15% |
| 2014-2015 | +6.77% |
| 2015-2016 | +4.41% |
| 2016-2017 | +4.85% |

8. The above proposed judicial service pay adjustments had been discussed at the meetings of the Panel on Administration of Justice and Legal Services ("the Panel"), which were then considered and approved by the Finance Committee ("FC").^{7, 8}

Major views and concerns of Members

9. The major views and concerns expressed by members of the Panel and FC in the past discussions on judicial service pay adjustments are summarized in the ensuing paragraphs.

⁷ The Panel had considered the proposed pay increases at its meetings on 20 October 2011, 30 October 2012, 26 November 2013, 24 November 2014, 23 November 2015 and 23 January 2017.

⁸ The six proposed judicial service pay adjustments were approved by FC at its meetings held on 18 November 2011, 7 December 2012, 20 December 2013, 20 March 2015, 19 March 2016 and 10 February 2017.

Judicial remuneration

Differences in pay adjustment for Judges and Judicial Officers at different levels

10. In the 2016 JRR, apart from recommending a 4.85% increase in the pay for JJOs with effect from 1 April 2016 for the 2016-2017 annual salary review, the Judicial Committee recommended a 4% pay increase for JJOs below the Court of First Instance of the High Court ("CFI") level and a 6% pay increase for Judges at the CFI level and above with effect from 1 September 2016. In response to the concern of members of the Panel and FC, the Administration advised that as revealed by the findings of the 2015 Benchmark Study on the Earnings of Legal Practitioners in Hong Kong, for Magistrate, the pay differentials between judicial pay and legal sector earnings for Junior Counsel and solicitors were at -16% and 20% respectively. On the other hand, the pay of the CFI Judge was consistently lower than the legal sector earnings over the years, at a substantial extent by -47%, -42% and -60% in 2005, 2010 and 2015 respectively. The findings showed that as compared with that of Magistrates, the pay differential between judicial pay and legal sector earnings at the CFI level was significant and widening. After considering all relevant factors, the Judicial Committee made the recommendation of pay increase for JJOs.

Private sector pay levels and trends

11. Some members considered that the salary and benefits of JJOs should be benchmarked with legal practitioners in the private sector in order to attract talents to join the bench, whereas some considered that making direct comparison between the judicial pay and the legal sector pay was not appropriate having regard to the uniqueness of judicial work, and that many legal practitioners who joined the Judiciary were indeed motivated by their aspirations to serve the public, and salary and benefits were not their primary consideration. In response, the Administration said that in determining the rate of salary adjustment for JJOs, the Judicial Committee would consider a basket of factors, which included benchmarking with private sector legal practitioners.

Inflation rate

12. In the 2015 JRR, some members expressed concern that the proposed pay increase of 4.41% for JJOs was below the headline inflation averaged at 4.5% for the 12-month period ended March 2015. The Administration responded that whilst judicial remuneration was determined under a mechanism which was separate from that of the civil service, similar to annual civil service pay adjustment, the aim of annual pay adjustment for JJOs was not to track inflation. In fact, there had been cases in the past whereby the annual pay adjustments for JJOs were lower than the headline inflation rates for the years concerned.

Other conditions of service of Judges and Judicial Officers

13. Some members expressed concern whether the package of fringe benefits and allowances, such as the provisions of pensions and housing benefits, could be enhanced to make it more attractive for recruiting JJOs. In this regard, the Administration explained that the Judiciary had tried to improve the conditions of service for JJOs by making enhancements to items such as cash housing allowances, medical benefits and local education allowances. In addition, the Judiciary Quarters Allowance was only available to Judges at the High Court level and above if they were not provided with Judiciary Quarters owing to their shortage in supply. Further, the reimbursement to serving JJOs (including new recruits) and their eligible dependents for the premium of taking out medical insurance which conferred medical coverage was a complementary medical benefit that supplemented the existing provision of medical and dental benefits provided by the Department of Health and the Hospital Authority. JJOs, after retirement, would be entitled to the same medical benefits as retired civil servants.

Manpower shortage

Recruitment difficulties

14. Some members expressed concern about the problems of inadequate JJOs and the difficulties facing the Judiciary in recruiting Judges, particularly at the CFI level or above. To address the recruitment difficulties, the Judiciary should also recruit Judges from outside Hong Kong. The Administration in January 2017 advised the Panel that according to the information provided by the Judiciary, all the vacancies at the rank of Permanent Magistrate could be filled as a result of the last recruitment exercises. However, there were recruitment difficulties at the CFI level as the number of eligible candidates found suitable for appointment was much smaller than the available vacancies for the past three recruitment exercises conducted between 2012 and 2014. In view of the above, the Judicial Committee considered it appropriate to grant a further increase for judges at the CFI level and above on top of the across-the-board increase for all JJOs.

Retirement age

15. Some members considered that the Administration should extend the retirement age of JJOs beyond the age of 65 as retirement was the main source of wastage amongst JJOs. In February 2017, the Administration advised FC that the consultant commissioned by the Judiciary had already completed the study on the extension of retirement for JJOs, which had drawn reference to the retirement

situation of JJOs in other common law jurisdictions, including the United Kingdom, Australia, New Zealand and Singapore. The consultant would submit its study report to the Judiciary in the first half of 2017. According to the LegCo brief provided by the Administration in October 2017, the Judiciary would submit its recommendations to the Administration before the end of 2017.

Long court waiting time

16. Some members expressed concern that the manpower shortage in the Judiciary had given rise to long court waiting time and delays in delivery of judgments. The Administration advised the Panel in November 2013 that the respective court waiting time targets for the Court of Final Appeal, the District Court, the Family Court and the Magistrates' Courts and specialized courts and tribunals had generally been met. The waiting times for civil cases in the Court of Appeal and CFI had exceeded their targets in most of the cases. The Chief Judge of the High Court was giving top priority to deploying judicial resources for hearing criminal appeals.

Lack of support for Judges and Judicial Officers

17. Some members raised concern about the lack of support for JJOs in preparing judgments (especially judgments in the Chinese language), conducting researches and drafting documents. The Administration advised that the Judiciary had started the Scheme on Judicial Assistants ("the Scheme") in 2010 to provide enhanced support to appellate Judges in discharging their duties. The objectives of the Scheme were to provide assistance to appellate Judges in the Court of Final Appeal and the Court of Appeal of the High Court in conducting research on law points and assisting in other work of the court; and to enable fresh and bright law graduates who were about to embark upon careers in the legal profession to acquire an insight into the appellate process and to benefit from working with appellate Judges.

18. As regards the Scheme, there was a suggestion that apart from assigning Judicial Assistants to provide assistance to appellate Judges, the Administration should expand the scope of the Scheme to all levels of the court and engage more young solicitors and barristers as Judicial Assistants. It would therefore better help JJOs to cope with the increased workload.

Latest position

19. For the 2017 JRR, the Judicial Committee submitted its report to CE on 24 July 2017, recommending a 2.95% increase in the pay for JJOs for 2017-2018.

In coming up with this recommendation, the Judicial Committee has taken into account the basket of factors as approved by CE-in-Council in May 2008, the principle of judicial independence and the position of the Judiciary.⁹

20. On the recommendation of the Judicial Committee, CE-in-Council has decided at its meeting on 3 October 2017 that the pay for JJOs for 2017-2018 should be increased by 2.95%. The pay adjustment will take retrospective effect from 1 April 2017. As in the case of the past judicial service pay adjustments, the Administration intends to seek the views of the Panel prior to seeking funding support from FC.

21. The Administration plans to consult members on its proposal to increase the pay for JJOs at the Panel meeting to be held on 30 October 2017.

Relevant papers

22. A list of the relevant papers is in the **Appendix**.

Council Business Division 4
Legislative Council Secretariat
25 October 2017

⁹ Hyperlink of the report: http://www.jsscs.gov.hk/reports/en/jscs_17.pdf [Accessed October 2017].

Updated background brief on judicial service pay adjustments

List of relevant papers

| Date of meeting | Meeting | Minutes/Paper | LC Paper No. |
|-----------------|---|--|---|
| 20.10.2011 | Panel on Administration of Justice and Legal Services | Legislative Council Brief on 2011-2012 judicial service pay adjustment | File Ref: CSO/ADM CR 6/3221/02 http://www.legco.gov.hk/yr11-12/english/panels/ajls/papers/aj1020-csoadmcr6322102-e.pdf |
| | | Minutes of meeting | CB(2)1356/11-12 http://www.legco.gov.hk/yr11-12/english/panels/ajls/minutes/aj20111020.pdf |
| 30.10.2012 | Panel on Administration of Justice and Legal Services | Legislative Council Brief on 2012-2013 judicial service pay adjustment | File Ref: CSO/ADM CR 6/3221/02 http://www.legco.gov.hk/yr12-13/english/panels/ajls/papers/aj1030-csoadmcr6322102-e.pdf |
| | | Letter dated 30 October 2012 from The Law Society of Hong Kong on the 2012-2013 judicial service pay adjustment and related issues | CB(4)79/12-13(01) http://www.legco.gov.hk/yr12-13/english/panels/ajls/papers/aj1030cb4-79-1-e.pdf |
| | | Minutes of meeting | CB(4)220/12-13 http://www.legco.gov.hk/yr12-13/english/panels/ajls/minutes/aj20121030.pdf |

| Date of meeting | Meeting | Minutes/Paper | LC Paper No. |
|-----------------|---|--|---|
| 26.11.2013 | Panel on Administration of Justice and Legal Services | Legislative Council Brief on 2013-2014 judicial service pay adjustment | File Ref: CSO/ADM CR 6/3221/02 http://www.legco.gov.hk/yr13-14/english/panels/ajls/papers/aj1126-csoadmcr6322102-e.pdf |
| | | Administration's follow-up paper | CB(4)223/13-14(01) http://www.legco.gov.hk/yr13-14/english/panels/ajls/papers/aj1126cb4-223-1-e.pdf |
| | | Minutes of meeting | CB(4)511/13-14 http://www.legco.gov.hk/yr13-14/english/panels/ajls/minutes/aj20131126.pdf |
| 24.11.2014 | Panel on Administration of Justice and Legal Services | Legislative Council Brief on 2014-2015 judicial service pay adjustment | File Ref: CSO/ADM CR 6/3221/02 http://www.legco.gov.hk/yr14-15/english/panels/ajls/papers/ajls20141124-csoadmcr6322102-e.pdf |
| | | Administration's follow-up paper | CB(4)992/14-15(01) http://www.legco.gov.hk/yr14-15/english/panels/ajls/papers/ajls20141124cb4-992-1-e.pdf |
| | | Minutes of meeting | CB(4)355/14-15 http://www.legco.gov.hk/yr14-15/english/panels/ajls/minutes/ajls20141124.pdf |

| Date of meeting | Meeting | Minutes/Paper | LC Paper No. |
|-----------------|---|--|---|
| 23.11.2015 | Panel on Administration of Justice and Legal Services | Legislative Council Brief on 2015-2016 judicial service pay adjustment | File Ref: CSO/ADM CR 6/3221/02 http://www.legco.gov.hk/yr15-16/english/panels/ajls/papers/ajls20151123-csoadmcr6322102-e.pdf |
| | | Administration's follow-up paper | CB(4)385/15-16(01) http://www.legco.gov.hk/yr15-16/english/panels/ajls/papers/ajls20151123cb4-385-1-e.pdf |
| | | Minutes of meeting | CB(4)422/15-16 http://www.legco.gov.hk/yr15-16/english/panels/ajls/minutes/ajls20151123.pdf |
| 23.1.2017 | Panel on Administration of Justice and Legal Services | Legislative Council Brief on 2016-2017 judicial service pay adjustment | File Ref: CSO/ADM CR 6/3221/02 http://www.legco.gov.hk/yr16-17/english/panels/ajls/papers/ajls20170123-csoadmcr6322102-e.pdf |
| | | Minutes of meeting | CB(4)1189/16-17 http://www.legco.gov.hk/yr16-17/english/panels/ajls/minutes/ajls20170123.pdf |