

立法會
Legislative Council

LC Paper No. CB(4)1384/17-18(04)

Ref : CB4/PL/AJLS

Panel on Administration of Justice and Legal Services

Meeting on 18 July 2018

**Background brief on mechanism for handling complaints
against judicial conduct**

Purpose

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

Background

Mechanism for handling complaints against judicial conduct

2. Articles 89, 90 and 91 of the Basic Law (extracted in **Appendix I**) are relevant to the dealing of complaints against judges and judicial officers ("JJOs")¹. According to the Judiciary, the Basic Law draws a distinction between JJOs. The procedures in Article 89 of the Basic Law ("BL 89") refer only to judges. The disciplinary procedures (including their removal) of judicial officers are contained in the Judicial Officers (Tenure of Office) Ordinance (Cap. 433).

3. Under the existing mechanism, in accordance with the principle of judicial independence, complaints against judicial decisions cannot and will not be entertained. Anyone who feels aggrieved by a judge's decision can only appeal

¹ 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 paper, 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.

(where this is available) through the existing legal provisions. For complaints against judicial conduct, they are being handled by the Chief Justice ("CJ") and/or the respective Court Leaders as shown in **Appendix II**.

4. According to the Judiciary, the relevant Court Leader will investigate the complaints received. The Court Leader may refer to the relevant court files and audio recordings and may seek further information from the complainant as appropriate. After investigation, the Court Leader will send a reply to the complainant.

5. If a complaint against judicial conduct is found to be substantiated, the matter will be referred to CJ for consideration whether a tribunal should be appointed under BL 89 or Cap. 433. Under BL 89, a Judge at District Court level and above might only be removed for inability to discharge his or her duties, or for misbehaviour, by the Chief Executive ("CE") on the recommendation of a tribunal of at least three local judges appointed by CJ. Cap. 433 provides for a procedure for a tribunal to be appointed by CJ to investigate the matter and report findings. The Judicial Officers Recommendation Commission may also be informed of the matter at an appropriate time.

6. Complaints against the judicial conduct of CJ would be handled by more than one Permanent Judge of the Court of Final Appeal. BL89 also provides that CJ may be investigated only for inability to discharge his or her duties, or for misbehaviour, by a tribunal appointed by CE and consisting of not fewer than five local judges and may be removed by CE on the recommendation of the tribunal and in accordance with the procedures prescribed in the Basic Law.

Nature of complaints against judicial conduct

7. According to the Judiciary, the complaints related to judicial conduct can be broadly classified according to their nature, as follows –

- (a) Category 1 – allegations of poor or undesirable attitude or behaviour of JJOs in court, e.g. lack of punctuality, rudeness, etc;
- (b) Category 2 – 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 – 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.

Improvement measures introduced since April 2016

8. In response to members' request, the Judiciary discussed the mechanism for handling complaints against judicial conduct with the Panel at its meeting on 23 July 2013. CJ noted the comments and concerns expressed by members at the meeting and decided to review the mechanism for handling complaints against judicial conduct. The Judiciary introduced various improvement measures with effect from 1 April 2016.² In brief, the improvement measures included:

- (a) setting up of the Secretariat for Complaints against Judicial Conduct ("SCJC");³
- (b) introducing a standard complaint form to make it easier for complainants to provide the necessary information for complaints against the judicial conduct of JJOs;
- (c) providing in the mechanism for the Court Leaders to consult senior/expert judges in handling complaints as necessary; and
- (d) enhancing the transparency of the mechanism by releasing further statistics and details on justified and partially justified complaints against judicial conduct to the public, as appropriate, on annual basis in the website of the Judiciary.

The Judiciary advised that it would continue to provide appropriate training to JJOs in handling their daily work and enhancing their professional and communication skills.

Major views and concerns of members in past discussions

9. The Panel discussed the mechanism for handling complaints against judicial conduct at its meetings held on 23 July 2013, 25 February 2014 and 21 March 2016. Major concerns and views expressed by members are summarized in the ensuing paragraphs.

² For details, please refer to LC Paper No. CB(4)717/15-16(03).

³ The staff of SCJC will not be doing investigative work in the process. It serves as the central depository for receiving and screening cases, assisting CJ 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 CJ and the Court Leaders. On the instruction of CJ and the Court Leaders, SCJC drafts reports and issues replies to complainants. SCJC also answers enquiries, explains the procedures to the complainants and compiles statistics and information on complaints for release to the public.

Confining the handling of complaints against the conduct of judges to judges only

10. While some members expressed support that the handling of complaints against judicial conduct should comprise judges and judges only to ensure judicial independence, some members expressed concern that restricting the handling of complaints against the conduct of judges to judges only would lead to potential conflict of interest and give rise to the criticism about judges investigating their own peer. There was also a concern about the handling of complaints against the judicial conduct of CJ by Permanent Judges of the Court of Final Appeal who were subordinates of CJ.

11. Some members pointed out that it was the practice of professional bodies to engage persons who had no connection with the practice of their professions to take part in the handling of complaints against the professional conduct of their members to ensure that the investigations would be seen/perceived by the public to have been conducted in a fair and proper manner. Some members suggested that an independent body be set up to receive and investigate into complaints against judicial conduct, or to monitor and review the Judiciary's handling of complaints against judicial conduct.

12. There was also a suggestion that the Judiciary should at least consider inviting retired senior judges to give advice or take part in the handling of complaints against judicial conduct so as to enhance the transparency and impartiality of the complaint handling mechanism.

13. The Judiciary explained that the justifications for confining the handling of complaints against the conduct of judges to judges only were: (i) the constitutional responsibility of JJOs to discharge their responsibilities independently and impartially; (ii) the separation of roles and responsibilities amongst the Government, Legislative Council and the Judiciary in dealing with their respective internal affairs; (iii) the potential high risk that the processing of complaints would be politicized if outside parties were involved in the process; (iv) all JJOs had to take the Judicial Oath requiring them to discharge their duties "honestly and with integrity..... without fear or favour, self-interest or deceit"; and (v) BL 89 and 91 and relevant provisions of Cap. 433 all stipulated that the Judiciary should continue to be allowed to handle complaints against judicial conduct without outside influences or interference.

Follow-up actions taken for justified or partially justified complaints

14. Members noted that the follow-up actions taken for justified or partially justified complaints were making apologies to the complainants and giving advice or counsel to the JJOs concerned. Some members raised queries as to

whether such follow-up actions were too lenient. Some enquired whether consideration will be 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.

15. The Judiciary pointed out that the complaints processed under the complaint handling mechanism would be minor in nature, or substantial in nature but not serious enough to trigger BL89 or Cap. 433. Also, there were complaints which were frivolous and vexatious. Hence, the Judiciary considered that the action to be taken following from 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.

16. The Judiciary further advised that if a complaint against the conduct of a JJO appeared to have any substance and was serious, it would be dealt with either under BL89 or Cap. 433. Under BL89, a judge might be removed for misbehaviour proved, whereas a JJO might be subject to one of the sanctions under section 8 of Cap. 433 for misbehaviour proved.

17. The Judiciary also took 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, CJ and the Court Leaders would come to know about the problems and difficulties which might be encountered by 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.

Complaints relating to judicial decisions

18. Noting that a substantial proportion (slightly more than half) of the complaints received through the mechanism for dealing with complaints regarding judicial conduct from 2011 to 2015 were related to judicial decisions, members urged the Judiciary to step up efforts in making clear to the public that complaints against judicial decisions could only be dealt with through appropriate legal procedures such as lodging an appeal.

19. On the question as to how the Judiciary handled those complaints which involved both judicial conduct and judicial decisions, the Judiciary advised that the Court Leader would, in accordance with the principle of judicial independence, only investigate the part of the complaint against judicial conduct upon completion of the judicial proceedings of the relevant case. The complainant would also be informed that the part of his complaint involving judicial decision could not and would not be handled through the complaint handling mechanism and should be pursued through the appropriate legal procedures such as lodging an appeal.

20. Responding to members' enquiry as to what assistance could be rendered by the Judiciary to unrepresented litigants who had difficulties in determining whether to lodge a complaint against the judges' conduct or to appeal against the judges' decisions if these litigants felt aggrieved by judicial decisions, the Judiciary Administration stated that the Judiciary's Resource Centre for Unrepresented Litigants had been set up to provide assistance to unrepresented litigants for procedural matters. Information leaflets on how to lodge a complaint against a judge's conduct were also available at the Resource Centre.

Latest position

21. In March 2018, the Judiciary provided a paper to the Panel (LC Paper No. CB(4)843/17-18(01)) informing members of the progress made in implementing the improvement measures since April 2016 following the review of the mechanism for handling complaints against judicial conduct conducted by the Judiciary. According to the Judiciary, the enhanced mechanism with the improvement measures put in place has been operating smoothly. The Judiciary will continue to monitor the situation with a view to handling complaints against judicial conduct in an efficient and effective manner.

22. At the Panel meeting on 25 June 2018, members agreed to invite the Judiciary Administration to the Panel meeting to be held on 18 July 2018 to brief members on the subject.

Relevant papers

23. A list of relevant papers is in **Appendix III**.

Council Business Division 4
Legislative Council Secretariat
12 July 2018

**Provisions of the Basic Law relevant to the dealing of complaints
against judges and judicial officers**

Article 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.

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.

Article 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.

Article 91

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

**Court Leader to handle the complaint against
Judges and judicial officers**

Judges and judicial officers ("JJOs")¹ being complained against	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 Court • 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 Small Claims Tribunal • Coroners of the Coroner's Court • Presiding Magistrates, Adjudicators and Lay Assessors of the Obscene Articles Tribunal 	Chief Magistrate

¹ "JJOs being complained against" include all deputy and temporary judges.

Mechanism for Handling Complaints against Judicial Conduct

List of relevant papers

Date of Meeting of Administration of Justice and Legal Services Panel	Minutes / Paper	LC Paper No.
-	Letter from Hon LEUNG Kwok-hung and Hon WONG Yuk-man dated 22 May 2013 requesting to discuss the issue of "Handling of cases by Court Masters" (Chinese version only)	CB(4)670/12-13(01)
23.7.2013	Judiciary Administration's paper on "Mechanism for Handling Complaints against Judicial Conduct" Minutes of meeting	CB(4)871/12-13(02) CB(4)206/13-14
25.2.2014	Judiciary Administration's paper on "Mechanism for Handling Complaints against Judicial Conduct" Background brief on "Mechanism for handling complaints against judicial conduct" prepared by the Secretariat Speaking note of Mr Derry WONG Hak-ming, Founder of a deputation (司法事務關注運動) (Chinese version only)	CB(4)415/13-14(03) CB(4)415/13-14(04) CB(4)419/13-14(01)

Date of Meeting of Administration of Justice and Legal Services Panel	Minutes / Paper	LC Paper No.
	<p>Submission on "Mechanism for handling complaints against judicial conduct" from CAHK Legal Exchange Foundation (English version only)</p> <p>Minutes of meeting</p>	<p>CB(4)437/13-14(01)</p> <p>CB(4)552/13-14</p>
23.7.2013 & 25.2.2014	Judiciary Administration's paper on "Mechanism for handling complaints against judicial conduct: Information requested by Members"	CB(4)840/13-14(01)
21.3.2016	<p>Judiciary Administration's paper on "Mechanism for Handling Complaints Against Judicial Conduct"</p> <p>Updated background brief on "Mechanism for handling complaints against judicial conduct" prepared by the Legislative Council Secretariat</p> <p>Minutes of meeting</p>	<p>CB(4)717/15-16(03)</p> <p>CB(4)717/15-16(04)</p> <p>CB(4)976/15-16</p>
-	Information paper on the Mechanism for Handling Complaints Against Judicial Conduct – Review of the progress in implementing the improvement measures	CB(4)843/17-18(01)