

**For Information**

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

**The Mechanism for Handling Complaints  
Against Judicial Conduct**

**Review of the progress in  
implementing the improvement measures**

**Purpose**

This paper informs Members of the progress made in implementing the improvement measures following the review conducted by the Judiciary on the mechanism for handling complaints against judicial conduct in 2016 (“the Review”).

**Background**

2. The Judiciary attaches great importance to ensuring that the Judges and Judicial Officers (“JJOs”) maintain a high standard of professional competence and integrity. There is an established mechanism for dealing with complaints against judicial conduct by the Chief Justice and the Court Leaders at all levels of courts. The mechanism has been in place since 2003. Having regard to the fact that the mechanism had been in operation for more than 10 years and despite it had been operating smoothly, the Judiciary informed the Panel on Administration of Justice and Legal Services (“the Panel”) in February 2014 that the Chief Justice had set up and chaired a Working Group on Review on the Mechanism for Dealing with Complaints against Judicial Conduct, comprising the Court Leaders (i.e. the Chief Judge of the High Court, the Chief District Judge and the Chief Magistrate), to review the mechanism and to see what improvements could be made.

3. The Review was conducted having regard to the following principles:

- (a) 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. Hence complaints against judicial decisions or decisions made under statutes such as the Legal Aid Ordinance (Cap. 91) cannot be entertained. Anyone who feels aggrieved by the decisions of JJOs can only appeal (where available) through the existing legal procedures;

- (b) judicial independence in handling complaints against judicial conduct must be safeguarded and respected. The Judiciary must continue to be allowed to do this on its own without outside influences or interference;
- (c) there must be due regard to the separation of roles and responsibilities among the Government, the Legislative Council and the Judiciary in dealing with their respective internal affairs. In the area of dealing with complaints against judicial conduct, it is inappropriate for there to be any intervention from the others. Any suggestion of such involvement would run the high risk of politicizing the process, and this would be highly objectionable in principle;
- (d) the investigating mechanism for handling complaints against judicial conduct should be consistent with the provisions and spirit of the Basic Law, viz. the investigation should be conducted by judges and judges only; and
- (e) the mechanism is to deal with complaints against judicial conduct of minor and substantive (but not too serious) in nature and to dispose summarily those frivolous and vexatious in nature. For complaints which are substantive in nature and serious, it will be dealt with either under Article 89 of the Basic Law (concerning removal of judges) or the Judicial Officers (Tenure of Office) Ordinance (Cap. 433) (concerning disciplinary procedures concerning Judicial Officers) as appropriate. For complaints involving allegations which are criminal in nature, they will be dealt with by law enforcement agencies if the complaints appear to have any substance. The latter two types of complaints will not be dealt with under the complaints mechanism.

4. On 21 March 2016, the Panel was informed of the outcome of the Review and the improvement measures to be introduced (LC Paper No. CB(4)717/15-16(03)). The improvement measures implemented since

April 2016 and the relevant statistics for 2016 and 2017 are outlined in the ensuing paragraphs.

## **Improvement measures introduced**

### *Setting up of the Secretariat for Complaints against Judicial Conduct (“SCJC”)*

5. Before the Review, complaints against judicial conduct were directly addressed to the Chief Justice and the Court Leaders who would then handle the complaints one by one. There was no dedicated administrative support to the Chief Justice and the Court Leaders. Logistical support was absorbed by their existing staff. To safeguard the principle of judicial independence, the Review recommended to continue with the existing practice, viz. only the Chief Justice and the Court Leaders should deal with complaints against judicial conduct. Nevertheless, the Review considered the administrative support to the Chief Justice and the Court Leaders in handling complaints against judicial conduct should be enhanced with a view to improving the efficiency and effectiveness of the mechanism. To this end, the Review recommended to create a new secretariat (i.e. the SCJC) for the purpose of improving the complaint handling procedures and providing better support to the Chief Justice and the Court Leaders.

6. The SCJC has been established and in operation since April 2016. The staff of the SCJC will not be doing investigative work in the process. It serves as the central depository for receiving and screening cases, assisting the Chief Justice and the Court Leaders in dealing with frivolous and vexatious complaints summarily, maintaining filing records, seeking minor clarifications with complainants, and retrieving case files for the Chief Justice and the Court Leaders. On the instruction of the Chief Justice and the Court Leaders, the SCJC drafts reports and issues replies to complainants. The SCJC also answers enquiries, explains the procedures to the complainants and compiles statistics and information on complaints for release to the public.

### *Measure to facilitate users*

7. Along with established practice, the complainant should lodge complaints in writing by post providing his / her name and correspondence address as well as relevant details of the complaints to the Chief Justice and Court Leaders. The Review considered whether the existing

procedures regarding handling of the complaints may be streamlined or improved. To this end, the Review recommended a standard complaint form be introduced to facilitate the lodging and processing of complaints.

8. The standard complaint form has been introduced since April 2016. The form facilitates the complainants to provide the necessary information easily and enables the SCJC to handle the complaints efficiently. Key details of complaints are requested to be provided in the standard form in the first place, thereby obviating the need to ask for further details and clarifications in the subsequent process. A revised pamphlet on the mechanism on handling complaints against a judge, with the standard complaint form incorporated therein, has been issued and is available at Judiciary's website and court premises.

*Court Leaders to consult senior/expert judges in handling complaints as necessary*

9. For complaints against judicial conduct, the Chief Justice and Court Leaders will fully investigate the complaints including obtaining the comments of the JJOs being complained against, listening to audio records of the relevant court proceedings and reviewing court files if applicable and making other inquiries as appropriate, before forming a view on whether the complaints are justified or not. Based on the past experience, most of the complaints received are frivolous and minor in nature, and that the number of more substantive complaints is few. To further improve the process, the Review recommended that for complaints which are substantive in nature (but not serious enough to trigger Article 89 of the Basic Law or Cap. 433), a refined mechanism could be instituted to deal with them.

10. Specifically, the Review considered it appropriate for the mechanism to provide for the Court Leaders to consult a senior member of the Judiciary when dealing with such substantive complaints, i.e. the Chief Judge of the High Court may consult the Chief Justice, a Permanent Judge of the Court of Final Appeal or a Vice-President of the Court of Appeal of the High Court; the Chief District Judge and the Chief Magistrate may consult the Chief Judge of the High Court. And for cases dealt with by the Chief Justice, he may consult a Permanent Judge of the Court of Final Appeal. The purpose of this refined system is to ensure that in dealing with such substantive complaints, the Chief Justice and the Court Leaders would have the benefit of assistance and advice from relevant senior judges as appropriate.

11. Besides, Court Leaders may seek input from the relevant principal JJOs of courts / tribunals when necessary. For example, the Chief Judge of the High Court may seek input from the Registrar of the High Court when the complaint is related to High Court Masters. The Chief District Judge may seek the Principal Family Judge's input on complaints against Family Court Judges. The Chief Magistrate may also seek input from the principal magistrates or specialized tribunals' principals when the complaint is related to his/her colleagues under the purview.

12. In 2016 and 2017, most of the complaints received were straight forward and so far there was only a few cases entailing the above refined mechanism.

### Enhancing the transparency of the mechanism

13. The Judiciary has been releasing annually, through the Annual Report available on its website, the number of complaints disposed of in the year. The Review recommended to enhance the transparency of the mechanism by releasing further statistics and details as appropriate on annual basis in its website.

14. Starting from 2016, apart from the number of complaints disposed of in the year, further information has been released in the Annual Report which include the number of complaints disposed of broadly classified according to their nature, the number of justified / partially justified complaints and the details (without naming the complainants nor JJOs involved), general observations on the complaints received and appropriate action taken as a result of dealing with the complaints. The relevant statistics are set out in Annex.

### Training for JJOs

15. In handling the various complaints, the Chief Justice and the Court Leaders would come to know about the problems and difficulties which may be encountered by the JJOs in their daily work. The Review supported the view that it would be advisable to take a positive attitude towards lessons learnt in dealing with complaints against judicial conduct and to continue provision of appropriate judicial training to JJOs.

16. Along with existing practice, the Judiciary has been and will continue to provide appropriate training to JJOs in handling their daily work and enhancing their professional and communication skills. For example, in 2016 and 2017, training on case management, judgement

writing and how to handle self-represented parties, and induction course for newly appointed permanent magistrates were conducted.

## **WAY FORWARD**

17. 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.

**The Judiciary**  
**March 2018**

### Complaints Statistics

Table 1: Caseload and Judicial Manpower Position (2016-2017)

Level of Court	2016		2017	
	C <sup>1</sup>	JM <sup>2</sup>	C <sup>1</sup>	JM <sup>2</sup>
<b>Court of Final Appeal</b>	<b>161</b>	<b>5</b>	<b>138</b>	<b>5</b>
• No. of Judges		4		4
• Registrar, Court of Final Appeal		1		1
<b>High Court</b> <sup>3</sup>	<b>40,085</b>	<b>60</b>	<b>40,863</b>	<b>61</b>
• No. of Judges		46		46
• No. of Registrar/ Deputy Registrars		14		15
<b>District Court</b> <sup>4</sup>	<b>50,043</b>	<b>40</b>	<b>49,993</b>	<b>46</b>
• No. of Judges		32		38
• Members, Lands Tribunal		2		2
• No. of Registrar/ Deputy Registrars		6		6
<b>Magistrates' Court</b> <sup>5</sup>	<b>387,852</b>	<b>79</b>	<b>394,309</b>	<b>70</b>
<b>Total</b>	<b>478,141</b>	<b>184</b>	<b>485,303</b>	<b>182</b>

<sup>1</sup> Caseload of a year refers to the number of cases filed in the year.

<sup>2</sup> The level of judicial manpower included the number of both substantive and deputy JJOs (where appropriate) deployed to sit at the respective level of courts as at 31 December of the year. This figure might vary on different dates throughout the year. The numbers of deputy JJOs are also included as complaints could also be lodged against the deputy JJOs. There are at present also 15 Non-Permanent Judges in the Court of Final Appeal.

<sup>3</sup> The caseload and judicial manpower deployed also included those regarding the Competition Tribunal.

<sup>4</sup> The caseload and judicial manpower deployed also included those regarding the Family Court and the Lands Tribunal.

<sup>5</sup> The caseload and judicial manpower deployed also included those regarding the Coroner's Court, the Small Claims Tribunal, the Labour Tribunal and the Obscene Articles Tribunal.

Table 2: Number of Complaints Disposed of by the Chief Justice and the Court Leaders (2016 - 2017)

Disposed of by	2016				2017			
	JD/ SD <sup>6</sup>	JC <sup>7</sup>	JD/SD + JC <sup>8</sup>	R <sup>9</sup>	JD/ SD <sup>6</sup>	JC <sup>7</sup>	JD/SD + JC <sup>8</sup>	R <sup>9</sup>
Chief Justice	4	0	0	5	5	0	0	10
Chief Judge of the High Court	21	2	0	N/A	29	0	0	N/A
Chief District Judge	10	1	6	N/A	20	2	5	N/A
Chief Magistrate	21	3	4	N/A	43	4	10	N/A
Sub-total	56	6	10	5	97	6	15	10
Sub-total (relating to judicial conduct and review cases)		21				31		
Total	77				128			

<sup>6</sup> “JD” denotes “Judicial Decisions”. “SD” denotes “Statutory Decisions”. These complaints cannot and will not be handled.

<sup>7</sup> “JC” denotes “Judicial Conduct”. These complaints will be dealt with.

<sup>8</sup> Only the part relating to JC will be dealt with.

<sup>9</sup> “R” denotes complaints to the Chief Justice (may involve judicial conduct or both judicial conduct and judicial decision) lodged by complainants not satisfied with the Court Leader’s handling and/or findings of the original complaints. These complaints will be dealt with. Therefore, complaints on the same case may appear more than once in the statistics (e.g. one original complaint to the Court Leader and one to the Chief Justice for not satisfying with the Court Leader’s handling and/or findings of the original complaints.)



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

Year	No. of Complaints relating to Judicial Conduct and Review Cases	Preliminary Classification by Nature				
		C1 <sup>10</sup> (Attitude and Behaviour in Court)	C2 <sup>11</sup> (Conduct of Proceedings)	C3 <sup>12</sup> (Conduct Outside Court)	R (Review on Court Leader's Complaint Handling)	Mixed (Involving more than one Category)
2016	21	5	5	1	5	5 [C1 + C2]
2017	31	5	7	0	10	9 [C1 + C2]

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<sup>10</sup> Category 1 ("C1") – allegations of poor or undesirable attitude or behaviour of JJOs in court e.g. lack of punctuality, rudeness etc.

<sup>11</sup> Category 2 ("C2") – allegations of improper handling of the actual proceedings in court, e.g. bias, excessive intervention, inappropriate comments, lack of preparation, unilateral communication with parties etc.

<sup>12</sup> Category 3 ("C3") – those relating to alleged improper behaviour or conduct which is not directly related to court work; e.g. erecting illegal structures at premises owned by the JJO, using judicial stationery when writing in private capacity, etc.

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

JJOs being complained against		2016			2017		
		JC	JD+JC	R	JC	JD+JC	R
<b>JJOs of Court of Final Appeal</b>		—	—	—	—	—	—
<b>High Court</b>	<b>Judges</b>	—	—	—	—	—	—
	<b>Registrars/ Masters</b>	—	—	—	—	—	—
<b>District Court</b>		—	—	—	—	—	—
<b>Magistrates’ Courts</b>	<b>Court Leader</b>	—	—	—	—	—	—
	<b>Magistrates</b>	1 PJ	—	—	1 PJ	3 PJ	—
<b>Total</b>		<b>1 PJ<sup>13</sup></b>			<b>4 PJ<sup>14</sup></b>		
<b>Total no. of Complaints dealt with</b>		<b>21</b>			<b>31</b>		

<sup>13</sup> The complainant made four allegations against a Magistrate: (i) The Magistrate allowed the private painting teacher for prolonged free parking at a court building. (ii) The Magistrate allowed the private painting teacher to give lessons at the chamber of court, which involved the usage of government resources (water and electricity). (iii) The Magistrate occupied all the washrooms at a floor of the court building and did not allow other staffs to use them. (iv) The Magistrate bought a number of shredders with public funds and the reasons for which were unknown. The Court Leader found that the Magistrate did arrange the painting teacher parked a car at the courts building once every week for a short period when the teacher came to give private lessons during lunch hour. On the use of car parking facilities, although the Magistrate has notified the venue manager of the above arrangement, the Court Leader advised the Magistrate that that was inappropriate, and that all JJOs should display propriety in all matters of conduct, both in and out of court. The Magistrate accepted the advice. The car parking by the painting teacher has ceased. As regards the allegations concerning the use of toilet facilities, this was not justified and untrue. As regards paper shredders, it was noted that two additional shredders were ordered and placed at different locations of the court building for use by other Magistrates and staffs.

<sup>14</sup> Details of the four cases are as follows-

(a) The complainant complained that a Magistrate maintained poor attitude in the court and towards defendants, as well as using inappropriate wording in the proceedings. The Court Leader found that there was room for improvement on the part of the Magistrate in handling unrepresented defendant. The Court Leader also found that some of the wording used by the Magistrate in the proceedings were inappropriate. The Court Leader had given advice to the Magistrate accordingly.

- (b) The complainant complained that a Magistrate maintained poor attitude towards the representative of the complainant's company, refused the representative of the complainant's company to give evidence and adjourned the hearing and claimed that costs would be ordered against the complainant's company. The Court Leader had given advice to the Magistrate to pay more attention to his manner and wording in explaining the legal proceedings. The Court Leader also found that the Magistrate adjourned the hearing so that the complainant's company could arrange another representative who could understand their document or evidence. In addition, the decision of adjourned hearing and order of costs were judicial decisions. If the complainant's company was aggrieved by the judicial decision, it could only be appealed through existing legal procedures.
- (c) The complainant complained that a Magistrate failed to conduct the hearing in a fair manner and was biased against the complainant, failed to analyze the case and the evidence, threatened the complainant to plead guilty by citing most serious punishment, and questioned the complainant four to five times and was playing the role as the prosecutor during the proceedings. Well before the receipt of the complaint, the Court Leader had received the judgment of High Court related to the appeal from this case. After reviewing the relevant materials and the full judgment, the Court Leader found that the Magistrate's wording and conduct was inappropriate and may undermine the perception of impartiality. The Court Leader had given advice to the Magistrate accordingly. Regarding the complainant's view about the Magistrate's analysis of evidence, it was a matter of judicial decision and was dealt with in the High Court judgment.
- (d) The complainant complained that a Magistrate maintained poor attitude to the complainant, witness and prosecutor, led the prosecutor to use suggestive interrogation when examining the parties, examined the witness with leading questions and failed to give the complainant a fair trial. The Court Leader found that there was room for improvement in respect of the Magistrate's attitude. The Court Leader had given advice to the Magistrate accordingly. Other allegations raised against the Magistrate were related to the judicial decisions. If the complainant was aggrieved by the judicial decision, it could only be appealed through existing legal procedures. The complainant did exercise his right to appeal to the High Court, which was subsequently dismissed.