

**立法會**  
**Legislative Council**

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**Panel on Administration of Justice and Legal Services**  
**Meeting on 29 October 2018**

**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 an 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.<sup>1</sup>

3. Following completion of the Mason Report, the Chief Justice of the Court of Final Appeal ("CFA") 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.

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<sup>1</sup> Hyperlink of the report:  
[http://www.judiciary.hk/en/publications/consultancy\\_report\\_e.pdf](http://www.judiciary.hk/en/publications/consultancy_report_e.pdf) [Accessed October 2018].

4. In January 2004, CE asked the Standing Committee on Judicial Salaries and Conditions of Service ("the Judicial Committee")<sup>2</sup> 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").<sup>3</sup>

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 basis<sup>4</sup> 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 CE-in-Council in May 2008, the principle of judicial independence and the position of the Judiciary.<sup>5</sup> 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");<sup>6</sup> benefits and allowances enjoyed by JJOs; unique features of the judicial service; prohibition against return to private practice in Hong Kong;

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<sup>2</sup> 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.

<sup>3</sup> Hyperlink of the report: [http://www.jssc.gov.hk/reports/en/jscs\\_08/index.htm](http://www.jssc.gov.hk/reports/en/jscs_08/index.htm) [Accessed October 2018].

<sup>4</sup> 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.

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

<sup>6</sup> "Judges" refer to officers in the grades of Chief Justice, CFA; Judge, CFA; 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.

overseas remuneration arrangements; cost of living adjustment; general economic situation in Hong Kong; budgetary situation of the Government; 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%
2017-2018	+2.95%

8. The above proposed judicial service pay adjustments were discussed at the meetings of the Panel on Administration of Justice and Legal Services ("the Panel"),<sup>7</sup> which were then considered and approved by the Finance Committee ("FC").<sup>8</sup>

### **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.

### Judicial remuneration

#### *Benchmark study*

10. Some members considered that the existing judicial remuneration was not sufficient to recruit and retain the best possible talents as JJOs. They suggested

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<sup>7</sup> 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, 23 January 2017 and 30 October 2017.

<sup>8</sup> The seven 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, 10 February 2017 and 5 January 2018.

that the benchmark study should be conducted at more frequent intervals, e.g. once every two or three years instead of five years, in order to keep abreast of the latest information/data on legal sector earnings. The Administration responded that a two-year interval might be too short for the Judicial Committee to ascertain whether the pay relativities between judicial positions and legal positions were widening or narrowing over time. However, the Administration undertook to relay the suggestion to the Judicial Committee for consideration.

*Differences in pay adjustment for judges and judicial officers at different levels of courts*

11. 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 of courts 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*

12. 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*

13. In relation to 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

14. 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 responded that the Judiciary had improved the conditions of service for JJOs by making enhancements to items such as cash housing allowances, medical benefits and local education allowances since 1 April 2017. The Administration further advised that 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. Moreover, 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.

### Effectiveness of upward pay adjustments and enhancement in other conditions of service of judges and judicial officers

15. Some members urged the Administration to conduct a comprehensive study to assess the effectiveness of upward pay adjustments and enhancement in some of the conditions of service for JJOs in attracting new blood and grooming and retaining existing talents in the Judiciary. The Administration advised the Panel in October 2017 that it would closely monitor whether the pay increase and implementation of the enhanced conditions of service for JJOs would have a positive impact on recruiting and retaining the best possible talents to serve as JJOs.

## Shortage of judicial manpower and related issues

### *Recruitment difficulties*

16. 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. There was also a suggestion that the Administration should consider attracting more law students to serve as assistants to JJOs so as to gain exposure to the Judiciary and help increase the judicial manpower in the long run.

17. The Administration advised the Panel in January 2017 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*

18. 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. At its meeting on 18 July 2018, the Panel was briefed on the Judiciary's proposals to extend the statutory retirement ages for JJOs. In gist, it was proposed that the statutory retirement ages for:

- (a) Judges at the level of CFI and above be raised from 65 to 70;
- (b) Registrar/Senior Deputy Registrars/Deputy Registrars of the High Court be maintained at 65;
- (c) Magistrates and Members of the Lands Tribunal and other Judicial Officers at the magistrate level be raised from 60 to 65; and
- (d) District Judges be maintained at 65, but there would be allowance for discretionary extension of the term of service of not exceeding five years in aggregate beyond this age.

19. The Administration was supportive of the Judiciary's proposals as set out above, and was working with the Judiciary on amending the relevant legislation with a view to introducing it into LegCo in the 2018-2019 legislative session.

*Prohibition against return to private practice in Hong Kong*

20. With a view to alleviating the problem of manpower shortage, some members suggested relaxing the requirement of prohibition against judges' return to private practice, such as imposing the requirement that judges might not work in the private sector only within a certain period of time after leaving their judicial service. Nonetheless, some members considered that the prohibition was a long established arrangement conducive to uphold of the principle of judicial independence and the maintenance of public confidence in the judiciary. In response, the Administration advised that the suggestion of allowing permanent judges to return to private practice should be considered with due care and prudence as it might affect judicial independence.

*Long court waiting time*

21. 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 CFA, 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*

22. 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 CFA 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.

23. 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 junior solicitors and barristers as Judicial Assistants. It would therefore better help JJOs to cope with the increased workload.

## **Latest position**

24. For the 2018 JRR, the Judicial Committee submitted its report to CE on 20 July 2018, recommending a 4.69% increase in the pay for JJOs for 2018-2019. 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.<sup>9</sup>

25. On the recommendation of the Judicial Committee, CE-in-Council has decided at its meeting on 9 October 2018 that the pay for JJOs for 2018-2019 should be increased by 4.69%. The pay adjustment will take retrospective effect from 1 April 2018. 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.

26. The Administration plans to consult members on its proposal to increase the pay for JJOs at the Panel meeting to be held on 29 October 2018.

## **Relevant papers**

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

Council Business Division 4  
Legislative Council Secretariat  
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<sup>9</sup> Hyperlink of the report: [https://www.jsscs.gov.hk/reports/en/jscs\\_18.pdf](https://www.jsscs.gov.hk/reports/en/jscs_18.pdf) [Accessed October 2018].



## Updated background brief on judicial service pay adjustments

## List of relevant papers

Date of meeting	Meeting	Minutes/Paper	LC Paper No.
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 <a href="http://www.legco.gov.hk/yr12-13/english/panels/ajls/papers/aj1030-csoadmcr6322102-e.pdf">http://www.legco.gov.hk/yr12-13/english/panels/ajls/papers/aj1030-csoadmcr6322102-e.pdf</a>
		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) <a href="http://www.legco.gov.hk/yr12-13/english/panels/ajls/papers/aj1030cb4-79-1-e.pdf">http://www.legco.gov.hk/yr12-13/english/panels/ajls/papers/aj1030cb4-79-1-e.pdf</a>
		Minutes of meeting	CB(4)220/12-13 <a href="http://www.legco.gov.hk/yr12-13/english/panels/ajls/minutes/aj20121030.pdf">http://www.legco.gov.hk/yr12-13/english/panels/ajls/minutes/aj20121030.pdf</a>
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 <a href="http://www.legco.gov.hk/yr13-14/english/panels/ajls/papers/aj1126-csoadmcr6322102-e.pdf">http://www.legco.gov.hk/yr13-14/english/panels/ajls/papers/aj1126-csoadmcr6322102-e.pdf</a>
		Administration's follow-up paper	CB(4)223/13-14(01) <a href="http://www.legco.gov.hk/yr13-14/english/panels/ajls/papers/aj1126cb4-223-1-e.pdf">http://www.legco.gov.hk/yr13-14/english/panels/ajls/papers/aj1126cb4-223-1-e.pdf</a>
		Minutes of meeting	CB(4)511/13-14 <a href="http://www.legco.gov.hk/yr13-14/english/panels/ajls/minutes/aj20131126.pdf">http://www.legco.gov.hk/yr13-14/english/panels/ajls/minutes/aj20131126.pdf</a>

Date of meeting	Meeting	Minutes/Paper	LC Paper No.
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 <a href="http://www.legco.gov.hk/yr14-15/english/panels/ajls/papers/ajls20141124-csoadmcr6322102-e.pdf">http://www.legco.gov.hk/yr14-15/english/panels/ajls/papers/ajls20141124-csoadmcr6322102-e.pdf</a>
		Administration's follow-up paper	CB(4)992/14-15(01) <a href="http://www.legco.gov.hk/yr14-15/english/panels/ajls/papers/ajls20141124cb4-992-1-e.pdf">http://www.legco.gov.hk/yr14-15/english/panels/ajls/papers/ajls20141124cb4-992-1-e.pdf</a>
		Minutes of meeting	CB(4)355/14-15 <a href="http://www.legco.gov.hk/yr14-15/english/panels/ajls/minutes/ajls20141124.pdf">http://www.legco.gov.hk/yr14-15/english/panels/ajls/minutes/ajls20141124.pdf</a>
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 <a href="http://www.legco.gov.hk/yr15-16/english/panels/ajls/papers/ajls20151123-csoadmcr6322102-e.pdf">http://www.legco.gov.hk/yr15-16/english/panels/ajls/papers/ajls20151123-csoadmcr6322102-e.pdf</a>
		Administration's follow-up paper	CB(4)385/15-16(01) <a href="http://www.legco.gov.hk/yr15-16/english/panels/ajls/papers/ajls20151123cb4-385-1-e.pdf">http://www.legco.gov.hk/yr15-16/english/panels/ajls/papers/ajls20151123cb4-385-1-e.pdf</a>
		Minutes of meeting	CB(4)422/15-16 <a href="http://www.legco.gov.hk/yr15-16/english/panels/ajls/minutes/ajls20151123.pdf">http://www.legco.gov.hk/yr15-16/english/panels/ajls/minutes/ajls20151123.pdf</a>

Date of meeting	Meeting	Minutes/Paper	LC Paper No.
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 <a href="http://www.legco.gov.hk/yr16-17/english/panels/ajls/papers/ajls20170123-csoadmcr6322102-e.pdf">http://www.legco.gov.hk/yr16-17/english/panels/ajls/papers/ajls20170123-csoadmcr6322102-e.pdf</a>
		Minutes of meeting	CB(4)1189/16-17 <a href="http://www.legco.gov.hk/yr16-17/english/panels/ajls/minutes/ajls20170123.pdf">http://www.legco.gov.hk/yr16-17/english/panels/ajls/minutes/ajls20170123.pdf</a>
30.10.2017	Panel on Administration of Justice and Legal Services	Legislative Council Brief on 2017-2018 judicial service pay adjustment	File Ref: CSO/ADM CR 6/3221/02 <a href="https://www.legco.gov.hk/yr17-18/english/panels/ajls/papers/ajls20171030-csoadmcr6322102-e.pdf">https://www.legco.gov.hk/yr17-18/english/panels/ajls/papers/ajls20171030-csoadmcr6322102-e.pdf</a>
		Minutes of meeting	CB(4)562/17-18 <a href="https://www.legco.gov.hk/yr17-18/english/panels/ajls/minutes/ajls20171030.pdf">https://www.legco.gov.hk/yr17-18/english/panels/ajls/minutes/ajls20171030.pdf</a>