

For Information

Legislative Council Panel on Administration of Justice and Legal Services

The Mechanism for Handling Complaints Against Judicial Conduct: An update since the last information note to the Panel

Purpose

This paper updates Members on the implementation of the improvement measures on the mechanism for handling complaints against judicial conduct since the last information note in 2018.

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 put in place since 2003. Following a review conducted by the Working Group on Review on the Mechanism for Dealing with Complaints against Judicial Conduct (the “Review”) chaired by the Chief Justice and comprising the Court Leaders (i.e. the Chief Judge of the High Court, the Chief District Judge and the Chief Magistrate), Members were informed on 21 March 2016 the outcome of the review and the improvement measures to be introduced for the mechanism for handling complaints against judicial conduct (details are set out in the LC Paper No. CB(4)717/15-16(03)).

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. Following the Review, improvement measures have been introduced since 2016 and Members were last briefed on 18 July 2018 of the progress of the implementation of the improvement measures (LC Paper No. CB(4)843/17-18(01)).

Latest Update

5. The Judiciary has been taking forward the following various measures, and the mechanism has been operating smoothly. The latest progress and the complaint statistics in 2018 and 2019 are as follows:

- (a) Enhancing the administrative support with the setting up of the Secretariat for Complaints against Judicial Conduct (“SCJC”): While the Chief Justice and / or the relevant Court Leaders will investigate complaints against judicial conduct, the SCJC provides administrative support and serves as the central depository for receiving and screening cases, assisting the Chief Justice / the Court Leaders in dealing with frivolous and vexatious complaints summarily and maintaining filing records, etc. The SCJC has also been providing one-stop service to the complainants for answering their enquiries, explaining complaint procedures, and assisting on compilation of statistics and information on complaints for release to the public;
- (b) Measures to facilitate the users: Measures including the introduction of a user-friendly form for the complainants to provide the necessary complaint information and publication of details of the complaint handling procedures in the form of a pamphlet have been put in place to facilitate the users to lodge complaints. The information have been made available at the Judiciary’s premises as well as the Judiciary’s website. For the complaints disposed of in 2018 and 2019, over 70% are lodged through the complaint forms;
- (c) Court Leaders to consult senior / expert judges in handling complaints as necessary: A refined system has been instituted to deal with complaints against judicial conduct which are substantive in nature (but not serious enough to trigger Article 89 of the Basic law or Cap. 433). Under the refined system, the Court Leaders may consult a senior member and / or seek input from the principal JJOs of the relevant courts of the Judiciary as necessary when dealing with such substantive

complaints¹. In 2018 and 2019, most of the complaints received were straight forward and there were a few cases entailing the above refined mechanism;

- (d) Enhancing transparency: To enhance transparency and facilitate the public to have a better understanding of the nature of the complaints, further information including 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 complaints nor JJOs involved) and appropriate action taken was published in the Annual Reports posted onto the Judiciary's website since 2016. The relevant complaint statistics in 2018 and 2019 are set out in Annex. Of the complaints relating to judicial conduct dealt with in 2018 and 2019, there is no complaint found to be justified or partially justified².

Training for JJOs

6. 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. Along with the 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, having regard to the lessons learnt. For example, in 2018 and 2019, training on case management, judgment writing, sentencing and how to handle self-represented parties,

¹ 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. 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 their purview.

² A large proportion of the complaints disposed of in 2018 and 2019 are related to judicial / statutory decisions. These complaints cannot and will not be handled.

and induction course / briefing for newly appointed permanent magistrates and deputy magistrates were conducted.

Way Forward

7. The Judiciary takes a serious view in ensuring that complaints against judicial conduct are handled in a fair and proper manner. We will continue to monitor the situation and consider the implementation of further improvement measures as and when necessary.

The Judiciary
May 2020

Complaints Statistics

Table 1: Caseload and Judicial Manpower Position (2018 - 2019)

Level of Court	2018		2019	
	C ¹	JM ²	C ¹	JM ²
Court of Final Appeal	234	5	509	5
• No. of Judges		4		4
• Registrar, Court of Final Appeal		1		1
High Court ³	42,840	65	43,401	67
• No. of Judges		50		52
• No. of Registrar/ Deputy Registrars		15		15
District Court ⁴	50,285	50	55,010	52
• No. of Judges		40		42
• Members, Lands Tribunal		2		2
• No. of Registrar/ Deputy Registrars		8		8
Magistrates' Court ⁵	408,981	71	414,228	67
Total	502,340	191	513,148	191

¹ Caseload of a year refers to the number of cases filed in the year.

² 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 19 Non-Permanent Judges in the Court of Final Appeal.

³ The caseload and judicial manpower deployed also included those regarding the Competition Tribunal.

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

⁵ 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 (2018 - 2019)

Disposed of by	2018				2019			
	JD/ SD ⁶	JC ⁷	JD/SD + JC ⁸	R ⁹	JD/ SD ⁶	JC ⁷	JD/SD + JC ⁸	R ⁹
Chief Justice	5	0	0	9	4	0	0	5
Chief Judge of the High Court	38	0	2	N/A	38	0	2	N/A
Chief District Judge	15	0	2	N/A	14	0	2	N/A
Chief Magistrate	27	3	20	N/A	297 ¹⁰	0	6	N/A
Sub-total		3	24	9		0	10	5
Sub-total (relating to judicial conduct and review cases)	85	36			353	15		
Total	121				368			

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

⁷ “JC” denotes “Judicial Conduct”. These complaints will be dealt with.

⁸ Only the part relating to JC will be dealt with.

⁹ “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.)

¹⁰ Includes 240 complaints relating to the judicial decision of one court case.

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 ¹¹ (Attitude and Behaviour in Court)	C2 ¹² (Conduct of Proceedings)	C3 ¹³ (Conduct Outside Court)	R (Review on Court Leader’s Complaint Handling)	Mixed (Involving more than one Category)
2018	36	6	15	0	9	6 [C1 + C2]
2019	15	2	4	0	5	4 [C1 + C2]

¹¹ Category 1 (“C1”) – allegations of poor or undesirable attitude or behaviour of JJOs in court e.g. lack of punctuality, rudeness, etc.

¹² 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.

¹³ 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.