

立法會
Legislative Council

LC Paper No. CB(4)583/19-20(05)

Ref : CB4/PL/AJLS

Panel on Administration of Justice and Legal Services

Meeting on 25 May 2020

**Updated background brief on the mechanism for handling complaints
against judicial conduct**

Purpose

This paper provides updated background information on the mechanism for handling complaints against judicial conduct. It also summarizes the major views and concern of Legislative Council Members on the above and related subjects in recent years.

Background

Mechanism for handling complaints against judicial conduct

2. Articles 89, 90 and 91 of the Basic Law ("BL") (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 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. BL 89 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 on Administration of Justice and Legal Services ("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 Review"). At its meeting on 21 March 2016, the Panel was briefed on the outcome of the Review, and members noted that 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.

9. After the improvement measures had been introduced, the Panel was briefed on the progress made in implementing the measures to improve the mechanism for handling complaints against judicial conduct following the Review at its meeting on 18 July 2018. According to the Judiciary, the enhanced

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.

mechanism with the improvement measures put in place had been operating smoothly. The Judiciary would continue to monitor the situation with a view to handling complaints against judicial conduct in an efficient and effective manner.

Major views and concerns of Legislative Council Members

10. Legislative Council Members have expressed views and concerns on the mechanism for handling complaints against judicial conduct and related subjects at meetings of the Panel and a Council meeting. Their major views and concerns are summarized in the ensuing paragraphs.

Setting up of the Secretariat for Complaints against Judicial Conduct

11. At the Panel meeting on 18 July 2018, some members indicated support for the setting up of SCJC as it would relieve the workload of Court Leaders. They asked whether SCJC would provide central support for all courts or one SCJC was set up at each court level. In response, the Judiciary Administration replied that since the number of complaints against JJOs was small, a central SCJC was set up to handle all complaints at all levels of court at that moment.

12. Noting that the complaints against judicial conduct were sensitive in nature, some members at the above Panel meeting were concerned about the staff composition of SCJC, qualifications of the staff concerned and whether legal background was required, and whether there was any need for enhancing the manpower. In reply, the Judiciary Administration said that SCJC was headed by a Chief Executive Officer and supported by two Executive Officers and one Clerical Officer. While the complaints were investigated by CJ and Court Leaders, SCJC mainly provided administrative support to them and prepared replies on their instruction. The existing staffing arrangement of SCJC was considered adequate to discharge its duties. Furthermore, although legal qualification was not required for the SCJC staff, internal guidelines had been provided to familiarize them with the justice system and court operations.

13. A Panel member also enquired about the number of complaints against judicial conduct and the way in which the complaints were classified. The Judiciary Administration advised that in 2017, there were 128 complaints disposed of by CJ and Court Leaders. Complaints against judicial conduct could broadly be classified into four categories. 97 out of 128 complaints were related to judicial decisions or statutory decisions which could not and would not be handled under the mechanism. The remaining 31 complaints were either solely relating to judicial conduct; partially relating to judicial conduct; or complaints to CJ lodged by complainants who were not satisfied with the Court Leader's handling and/or findings of their original complaints. Moreover, while

complaints would be initially classified by SCJC, respective Court Leaders would make the final decision on the classification.

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

14. While some members at the Panel meeting on 21 March 2016 expressed support that the handling of complaints against judicial conduct should comprise judges and judges only to ensure judicial independence, some Panel 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.

15. Some Panel members at the same meeting 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 Panel 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.

16. 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.

17. The Judiciary explained that the justifications for confining the handling of complaints against the conduct of judges to judges only were:

- (a) the constitutional responsibility of JJOs to discharge their responsibilities independently and impartially;
- (b) the separation of roles and responsibilities amongst the Government, Legislative Council and the Judiciary in dealing with their respective internal affairs;
- (c) the potential high risk that the processing of complaints would be politicized if outside parties were involved in the process;
- (d) 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

- (e) 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

18. At its meeting on 21 March 2016, the Panel 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 would 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.

19. 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 BL 89 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 severe than those sanctions as laid down in the formal disciplinary procedures as a matter of principle.

20. 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 BL 89 or Cap. 433. Under BL 89, 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.

Measures to ensure compliance with the Guide to Judicial Conduct issued by the Judiciary

21. A question was raised at the Council meeting of 4 December 2019, where a Member noted that a serving judge had earlier on signed a joint public petition in opposition to the proposed legislative amendments and some judges had anonymously expressed to the media their views on the proposed legislative amendments while CJ merely issued an advice to the judge who had signed the joint petition. In that regard, the Member asked about the measures currently put in place by the Judiciary to ensure that judges complied with the Guide to Judicial Conduct issued by the Judiciary (especially paragraph 76 which provided that judges should refrain from association with political activities), and deal with breaches of the Guide by judges.

22. In consultation with the Judiciary, the Administration responded that as stated by CJ, generally speaking, having regard to the independence and

impartiality of the Judiciary, judges should refrain from expressing comments on political and other controversial issues. In particular, judges should avoid expressing views on legal issues which might come before the courts. CJ had reminded all the judges of the importance of the foregoing and would take such further action where appropriate.

Complaints relating to judicial decisions

23. 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, some members at the Panel meeting on 21 March 2016 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.

24. On the question raised at the same Panel meeting 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.

25. At the Panel meeting on 25 February 2014, responding to some 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.

Training provided to judges and judicial officers relating to the subjects of complaints against judicial conduct

26. Some members at the Panel meeting on 18 July 2018 asked about the operation and supervision of the Judicial Institute. They noted that in the course of handling various complaints against judicial conduct, Court Leaders would come to know about the problems and difficulties encountered by JJOs in their daily work, and hence they considered that any room for improvement should be

suitably addressed by the provision of training under the Judicial Institute. They also asked whether the number of complaints against judicial conduct had decreased with enhanced training provided to JJOs.

27. In response, the Judiciary Administration advised that the Judicial Institute was overseen by a governing body and an executive committee chaired by CJ and the Chief Judge of the High Court respectively, whereas the daily operation of the Institute was overseen by a deputy judge of the High Court designated by CJ. Besides, some of the staff recruited to work in the Institute had legal qualifications.

Latest position

28. At the Panel meeting to be held on 25 May 2020, the Judiciary will update members on the implementation of the improvement measures on the mechanism for handling complaints against judicial conduct since the last information note in 2018.

Relevant papers

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

Council Business Division 4
Legislative Council Secretariat
22 May 2020

**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.

Appendix III

Mechanism for handling complaints against judicial conduct

List of relevant papers

Date of meeting	Meeting	Minutes/Paper	LC Paper No.
23.7.2013	Panel on Administration of Justice and Legal Services	Judiciary Administration's paper on the mechanism for handling complaints against judicial conduct	CB(4)871/12-13(02) https://www.legco.gov.hk/yr12-13/english/panels/ajls/papers/aj0723cb4-871-2-e.pdf
		Follow-up paper	CB(4)840/13-14(01) https://www.legco.gov.hk/yr12-13/english/panels/ajls/papers/aj0723cb4-840-1-e.pdf
		Minutes of meeting	CB(4)206/13-14 https://www.legco.gov.hk/yr12-13/english/panels/ajls/minutes/aj20130723.pdf
25.2.2014	Panel on Administration of Justice and Legal Services	Judiciary Administration's paper on the mechanism for handling complaints against judicial conduct	CB(4)415/13-14(03) https://www.legco.gov.hk/yr13-14/english/panels/ajls/papers/aj0225cb4-415-3-e.pdf
		Follow-up paper	CB(4)840/13-14(01) https://www.legco.gov.hk/yr12-13/english/panels/ajls/papers/aj0723cb4-840-1-e.pdf
		Minutes of meeting	CB(4)552/13-14 https://www.legco.gov.hk/yr13-14/english/panels/ajls/minutes/aj20140225.pdf

Date of meeting	Meeting	Minutes/Paper	LC Paper No.
21.3.2016	Panel on Administration of Justice and Legal Services	Judiciary Administration's paper on the mechanism for handling complaints against judicial conduct	CB(4)717/15-16(03) https://www.legco.gov.hk/yr15-16/english/panels/ajls/papers/ajls20160321cb4-717-3-e.pdf
		Minutes of meeting	CB(4)976/15-16 https://www.legco.gov.hk/yr15-16/english/panels/ajls/minutes/ajls20160321.pdf
18.7.2018	Panel on Administration of Justice and Legal Services	Judiciary Administration's 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) https://www.legco.gov.hk/yr17-18/english/panels/ajls/papers/ajls20180718cb4-843-1-e.pdf
		Minutes of meeting	CB(4)446/18-19 https://www.legco.gov.hk/yr17-18/english/panels/ajls/minutes/ajls20180718.pdf
4.12.2019	Council meeting	Hon Elizabeth QUAT raised a question on the administration of justice	https://www.info.gov.hk/gia/general/201912/04/P2019120400486.htm