

立法會
Legislative Council

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Panel on Administration of Justice and Legal Services

Minutes of meeting
held on Friday, 14 May 2021, at 8:30 am
in Conference Room 3 of the Legislative Council Complex

Members present : Hon CHEUNG Kwok-kwan, JP (Chairman)
Hon Martin LIAO Cheung-kong, GBS, JP (Deputy Chairman)
Hon Starry LEE Wai-king, SBS, JP
Dr Hon Priscilla LEUNG Mei-fun, SBS, JP
Hon Mrs Regina IP LAU Suk-ye, GBS, JP
Hon Paul TSE Wai-chun, JP
Hon Elizabeth QUAT, BBS, JP
Hon CHUNG Kwok-pan
Hon Jimmy NG Wing-ka, BBS, JP
Dr Hon Junius HO Kwan-yiu, JP
Hon Holden CHOW Ho-ding
Hon YUNG Hoi-yan, JP

Public Officers attending : **Agenda item III**

Department of Justice

Mr Clifford TAVARES
Deputy Law Officer (Civil Law)
(Planning, Environment, Lands & Housing)

Miss Cindy TANG
Senior Assistant Law Officer (Civil Law)
(Mediation)(Acting)

Agenda item IV

Judiciary Administration

Ms Esther LEUNG
Judiciary Administrator

Miss Patricia SO
Deputy Judiciary Administrator (Development)

Mr Dominic CHOW
Deputy Administrative Assistant to the Chief Justice

**Attendance by
invitation**

: Agenda item III

Hong Kong Bar Association

Mr Paul HARRIS, SC

Mr Azan Aziz MARWAH

Ms Elaine LIU

The Law Society of Hong Kong

Ms Daphne LO Fung-yee
Member of Mediation Committee

Mr Ronald SUM Kwan-ngai
Member of Mediation Committee

Mr Kenneth FOK Wing-kuen
Director of Practitioners Affairs

Mr Barbarossa WAN Hoi-tick
Dispute Resolution Co-ordinator

Agenda item IV

Hong Kong Bar Association

Mr Paul HARRIS, SC

Mr Jeremy BARTLETT, SC

Mr Azan Aziz MARWAH

The Law Society of Hong Kong

Mr Amirali NASIR
Vice President

Mr Brian GILCHRIST
Vice President

Mr C M CHAN
Vice President

Mr Kenneth FOK Wing-kuen
Director of Practitioners Affairs

Clerk in attendance : Mr Lemuel WOO
Chief Council Secretary (4)6

Staff in attendance : Ms Clara TAM
Senior Assistant Legal Adviser 2

Miss Janice HO
Council Secretary (4)6

Ms Emily LIU
Legislative Assistant (4)6

Action

I. Information paper(s) issued since the last meeting

(LC Paper No. CB(4)954/20- - Letter dated 3 May 2021 from
21(01) Hon Holden CHOW Ho-ding
on matters relating to item for
discussion "Proposed creation
of one supernumerary post of
Deputy Principal Government
Counsel and one
supernumerary post of
Assistant Principal
Government Counsel in the
Rule of Law Unit of the
Inclusive Dispute Avoidance
and Resolution Office of the
Department of Justice")

Members noted the information paper issued since the last meeting.

II. Items for discussion at the next meeting

(LC Paper No. CB(4)956/20- - List of outstanding items for
21(01) discussion

LC Paper No. CB(4)956/20- - List of follow-up actions)
21(02)

2. Members noted that the following items would be discussed at the next regular meeting of the Panel on Administration of Justice and Legal Services ("AJLS Panel") to be held on 31 May 2021:

- (i) Latest development in international arbitration for Hong Kong; and
- (ii) Latest development on the framework for cooperation with the Mainland on corporate insolvency matter.

3. Dr Priscilla LEUNG suggested that Item #22 of the Panel's list of outstanding items for discussion (LC Paper No. CB(4)956/20-21(01)) on Legal education and training in Hong Kong be discussed at a future meeting in the current legislative session, with the deans/heads of law school/faculty of local universities invited. The Chairman said that he would explore the possibility of placing this item on the agenda of a future meeting.

III. Mediation initiatives of the Department of Justice

(LC Paper No. CB(4)956/20- - Paper provided by the
21(03) Administration

LC Paper No. CB(4)956/20- - Background brief prepared by
21(04) the Legislative Council
Secretariat)

Briefing by the Administration

4. Deputy Law Officer (Civil Law) of the Department of Justice ("DLO(CL)") briefed members on the initiatives of the Department of Justice ("DoJ") to promote the use of mediation in Hong Kong and to develop Hong Kong as an international mediation centre.

Views of The Law Society of Hong Kong

5. Mr Ronald SUM Kwan-ngai of The Law Society of Hong Kong ("the Law Society") expressed support for the Administration's initiatives for promoting the development of mediation services, and its comments that the Administration should focus on grooming talents for mediation, as well as developing online dispute resolution and mediation services.

6. Mr Ronald SUM then explained the various measures taken by the Law Society to foster the development of mediation in Hong Kong such as establishing of various panels of mediators with specialties in handling different subjects/issues, publication of sample contractual clauses for promoting the use of mediation to clients, and the provision of appropriate training to keep solicitors abreast of the latest knowledge about mediation. He further said that, during intervention into the practice of Messrs Wong, Fung & Co. earlier this year, the Law Society had lined up a pool of solicitor mediators who had agreed to help by acting as mediators on a pro bono basis. The list had been made available to eBRAM International Online Dispute Resolution Centre Limited ("eBRAM Centre").

Views of the Hong Kong Bar Association

7. Mr Paul HARRIS, SC of the Hong Kong Bar Association ("the Bar Association") expressed support for the development of the wider use of mediation in Hong Kong to resolve local and cross-border disputes. Ms Elaine LIU of the Bar Association suggested that more initiatives should be rolled out

and the Administration should provide relevant platforms and training to promote the wider use of mediation as an alternative means of dispute resolution.

8. Mr Azan Aziz MARWAH of the Bar Association said that Hong Kong should become an international dispute resolution centre for sports for Asia by providing a forum to resolve disputes arising from sports events in Asia. To do so, collaborative efforts between the Government, the sports sector and the legal profession would be necessary for building up the institution and talents. To this end, the Bar Association had set up a Sports Law Committee, which had provided draft rules on sports mediation and arbitration. It was vehemently working with DoJ, the Law Society and the sports sector to further the cause, and was also hoping to obtain the Legislative Council ("LegCo")'s support.

Declaration of interests

9. Ms YUNG Hoi-yan declared that she was a practising barrister and an accredited general and family mediator. Dr Priscilla LEUNG declared that she was a practicing barrister and the Associate Professor, School of Law of the City University of Hong Kong, but she was not teaching courses on mediation.

Discussion

General remarks

10. The Deputy Chairman, Dr Priscilla LEUNG, Mr Holden CHOW and Ms YUNG Hoi-yan expressed support for DoJ's initiatives to develop Hong Kong into an international mediation centre. Ms YUNG remarked that as the Administration's focus had been on the promotion of mediation to the business sectors, the general public remained unfamiliar with its use as an alternative means for dispute resolution. She urged the Administration to step up its efforts to promote community mediation directly to the general public in Hong Kong.

11. Dr Junius HO said that notwithstanding the efforts made by the proponents of mediation services, including the Law Society, for a decade, the mediation regime in Hong Kong was still a work in progress. He considered that it might be due to the protectionist's mindset held by some members in sectors with vested interests, which were uncondusive to the continued development of mediation.

12. Dr Priscilla LEUNG maintained that mediation was effective for dispute resolutions, and should also be considered for resolving political rows. She recalled that during LegCo's debate on the Land (Compulsory Sale for Redevelopment) (Specification of Lower Percentage) Notice back in 2010, many Members began to embrace the use of mediation mechanism for dispute

resolution between developers and the owners of flats under compulsory sale. Since then, she was pleased to note that Hong Kong had made impressive progress in the development of mediation.

13. Ms YUNG Hoi-yan enquired how the Administration planned to strengthen its efforts to promote and popularize mediation. DLO(CL) advised that the Administration had all along been striving to promote mediation in multiple disciplines across different sectors, including through the Steering Committee on Mediation chaired by the Secretary for Justice. Examples of initiatives included community mediation and sports dispute resolution. There was also an upcoming "Mediate First" pledge ("MFP") event (i.e. the MFP event 2021 Webinar to be held on 28 May 2021), with aims to promote mediation for resolving disputes in the private wealth and healthcare sectors.

Promoting mediation in Hong Kong and the Greater Bay Area

14. Mr Holden CHOW urged the Administration to expedite the establishment of the planned mediation platform in the Greater Bay Area ("GBA") ("the GBA Mediation Platform"). DLO(CL) advised that in September 2019, the Guangdong-Hong Kong-Macao Bay Area Legal Departments Joint Conference established by DoJ had endorsed the establishment of the GBA Mediation Platform. The GBA Mediation Platform aimed to promulgate a set of unified qualification, accreditation and other relevant standards required for mediators providing service in GBA and facilitate the establishment of a panel of recognized GBA mediators in each of the three places of Hong Kong, Macao and the Mainland. Relevant draft documents had been passed onto the relevant authorities of the Mainland and Macao for consideration, and would be promulgated as soon as practicable. The GBA Mediation Platform would also study the formulation of best practices for mediation rules applicable to cross-border disputes and best practices for mediators' code of conduct.

15. Mr Holden CHOW urged the Administration to further promote the West Kowloon Mediation Centre ("WKMC") to encourage more settlements of small claims cases from the Small Claims Tribunal ("SCT"). In response, DLO(CL) said that the Pilot Mediation Scheme implemented at the WKMC, apart from handling cases referred from the SCT, also took walk-in cases so long as the amount of dispute fell within the jurisdictional limit of the SCT. The pilot scheme would end in January 2022 and the Administration would consider the way forward, including further promotion as appropriate.

16. Dr Priscilla LEUNG said that Hong Kong should have competitive edge in providing international dispute resolution services in the Asia-Pacific region. Noting that the Administration's priority was on the expansion of mediation within GBA, Dr LEUNG urged that the Administration should also consider

expanding and promoting Hong Kong's mediation and dispute resolution services to other regions worldwide. In response, DLO(CL) confirmed that the current priority of the Administration was to promote the use of mediation services in GBA.

Online dispute resolution platform

17. Dr Priscilla LEUNG requested the Administration to report on the work of the publicly-funded eBRAM Centre, in particular the COVID-19 ODR Scheme. DLO(CL) advised that the COVID-19 ODR Scheme, launched in June 2020, was developed by eBRAM Centre with funding provided by the Government. It aimed to speedily resolve dispute which was COVID-19 related and the amount in dispute was not more than \$500,000.00. Up until 2 April 2021, about 200 enquiries were received under the Scheme, of which 13 were substantive cases with two cases successfully settled through mediation.

18. In response to Mr Holden CHOW's enquiry, DLO(CL) advised that the COVID-19 ODR Scheme involved a multi-tier dispute resolution mechanism resolving conflicts by negotiation, followed by mediation, and then arbitration. Dr Priscilla LEUNG enquired about the governance of privately-run mediation platforms in Hong Kong. DLO(CL) advised that there had not yet been a regulatory framework governing privately-run mediation platforms, and patrons may choose the most suitable mediation platforms and mediators on their own initiative. At the request of Dr LEUNG and Mr CHOW, DLO(CL) undertook to provide the following information relating to the COVID-19 ODR Scheme:

- (i) details of the 200 enquiries received, including the numbers of cases relating to disputes involving (i) Mainland cities in GBA and (ii) foreign countries, and the mechanism for determining whether these enquiries may be established as substantive cases; and
- (ii) the amount of professional charges subsidized by Government funding in the 13 substantive cases.

(Post-meeting note: the supplementary information provided by the Administration was circulated for members' information vide LC Paper No. CB(4)1031/20-21(01) on 27 May 2021.)

"Mediate First" pledge campaign

19. The Deputy Chairman commended DoJ for promoting the MFP campaign, which had a sizable membership of 692 pledgees. However, he noted that the statement of commitment made by "Mediate First" ("MF") pledgees was not legally binding, which might affect their actual compliance with

MFP. He enquired whether the Administration would consider improving the campaign in this regard.

20. DLO(CL) advised that in order to improve the effectiveness of the MFP campaign, DoJ had launched in 2017 the MFP Star Logo Award Scheme to encourage MF pledgees to continue fulfilling their MFP and to actively consider mediation in resolving disputes. In this year, 34 MF pledgees were awarded the Star Logo for having fulfilled their commitment.

Mediation Approval Group

21. The Deputy Chairman enquired about the progress of work relating to the Mediation Approval Group ("MAG") under consideration by DoJ. DLO(CL) said that the MAG under planning signified the Administration's commitment to promoting a general policy within the Administration to explore mediation first before reverting to other dispute resolution procedures. It would invite all bureaux and departments ("B/Ds") to commit using mediation first for dispute resolution in suitable cases and be "Mediation First" pledgees. To this end, MAG would give advice to B/Ds on suitability to mediate and to ensure compliance with policy, as well as providing education to B/Ds on mediation.

Accreditation of mediators

22. Ms YUNG Hoi-yan expressed concerns that the prerequisites of becoming an accredited family mediator, which involved obtaining multiple tertiary degrees in sociology, psychology and law etc., and completing cases under supervision would span a few years and hence rather prohibitive. This would discourage aspiring talents from obtaining accreditation, which would in turn precipitate a shortage in mediators.

23. To increase the supply of mediators, Dr Priscilla LEUNG suggested that the Administration should make arrangement for the relevant academic qualifications obtained in the law schools of local universities be recognized as valid courses applicable for exemption from the 40-hour General Mediator Training Course requirement for accreditation.

24. In response to members' views, DLO(CL) said that the accreditation system of mediators in Hong Kong was currently industry-driven and was administered by the Hong Kong Mediation Accreditation Association Limited.

Case Settlement Conference Pilot Scheme

25. Dr Priscilla LEUNG enquired about the effectiveness of collaborations between the Administration, the Judiciary, the Bar Association and the Law

Society on promoting mediation in the legal sector, such as the Case Settlement Conference Pilot Scheme ("the CSC Pilot Scheme"). In reply, DLO(CL) advised that the CSC Pilot Scheme aimed to instill the concept of assisted settlement in civil litigations to help parties to reach a settlement with techniques of mediation. Ms Elaine LIU also advised that she was a participant of the CSC Pilot Scheme as a Master of the Judiciary. While the details of cases she handled could not be divulged, she opined that the scheme was highly effective in facilitating settlements for cases suitable for the use of mediation.

IV. Enhancements to the mechanism for handling complaints against judicial conduct

(LC Paper No. CB(4)956/20- - Paper provided by the
21(05) Administration

LC Paper No. CB(4)956/20- - Updated Background brief
21(06) prepared by the Legislative
Council Secretariat)

Briefing by the Administration

26. Judiciary Administrator ("JA") briefed members on a series of proposed enhancement to the existing mechanism for handling complaints against judicial conduct ("the proposed mechanism"), which included the introduction of a two-tier mechanism comprising a Panel of Judges to investigate into complex cases and the Advisory Committee on Complaints against a Judge's Conduct ("the Advisory Committee") to oversee and advise on the handling of complaints against judicial conduct.

Views of the Hong Kong Bar Association

27. Mr Paul HARRIS, SC welcomed the idea of forming the Advisory Committee. He pointed out that the Barristers Disciplinary Tribunal¹ had all along been composed of lay persons who, in the opinion of the Chief Justice of the Court of Final Appeal ("CJ"), were not in any way connected with the practice of the law, and this system had been working very well. As such, provided that there would be some sort of pre-screening to ensure the suitability of lay members to be appointed to the Advisory Committee, the Bar Association welcomed and supported the proposed mechanism.

¹ Appointed by the Chief Justice of the Court of Final Appeal according to section 34 of the Legal Practitioners Ordinance (Cap. 159)

Views of the Law Society of Hong Kong

28. Mr Amirali NASIR of the Law Society expressed the Law Society's full support for the proposed mechanism on the grounds that it would not hamper the principle of judicial independence. Mr Brian GILCHRIST of the Law Society said that in light of the importance of upholding judicial independence, it made sense for judges of higher ranks in the Judiciary to review the conduct of other judges and judicial officers ("JJOs") who were the subject of complaints.

29. Mr C M CHAN of the Law Society said that as a lawyer, he welcomed any suggestion that might enhance the transparency of the mechanism for handling complaints against judicial conduct so long as judicial independence covered by the Basic Law would not be compromised. Noting that the Advisory Committee was not a decision-making body under the proposed mechanism, Mr CHAN considered that judicial independence would not be affected.

Discussion

General views

30. Members welcomed and supported the proposed mechanism and considered it a substantive positive step taken by the Judiciary to address public concerns regarding the existing mechanism for handling complaints against judicial conduct ("existing mechanism").

31. Dr Priscilla LEUNG stressed that the dignity and reputation of the Judiciary should be cherished and paid the greatest respect. It must also be allowed to exercise its independent judicial power free from any interference. She pointed out that when deciding on a case, JJOs had to take into account the relevant facts, applicable law and legal points, etc. It was particularly difficult for politically sensitive cases since, even if a judgment was based on well-founded legal principles such as the presumption of innocence, parties holding different political views might still feel aggrieved by the decisions. Dr LEUNG expressed her strong disagreement for a person to criticize or complain against JJOs simply because they disagreed with the JJOs' decisions owing to one's political stance or views. She also emphasized that the mechanism for handling complaints against judicial conduct must not be used for exerting pressure or making unreasonable criticisms against JJOs.

32. Mr Holden CHOW agreed that, having regard to the importance of upholding the principle of rule of law and judicial independence, the proposed mechanism could not and would not handle complaints against judicial decisions. Dissatisfaction with judicial decisions should only be dealt with through the established legal procedures such as appeal or review.

Existing mechanism for handling complaints against judicial conduct

33. Mrs Regina IP and Ms Elizabeth QUAT noted that there was a surge in the complaints against judicial conduct last year relating to a number of court cases. Ms QUAT said that while she had explained to the complainants that complaints against judicial decisions would not be handled, there were criticisms about the existing mechanism due to the handling of these complaints, including that the investigation process was carried out by JJOs only, there might be varying standards applied and the lack of transparency about the follow-up actions taken, etc.

34. Dr Priscilla LEUNG said that queries had been raised on the handling of certain complaints against judicial conduct. For example, in relation to the complaints regarding the Reasons for Sentence delivered by a District Judge in 2020, it was decided that the District Judge concerned should not deal with any cases involving a similar political context for the time being. However, complaints against other JJOs under similar contexts were found not substantiated. Dr LEUNG said that the different handling of these complaints might give rise to a perception of unfairness.

35. JA said that the significant increase in complaints against judicial conduct disposed of in 2020 was mainly attributable to the surge in the number of identical or similar complaints against JJOs relating to a number of social event court cases. Among the complaints involving judicial conduct, 4 510 are related to handling of actual proceedings in court, of which 4 505 were identical or similar complaints relating to two court cases. As CJ announced in his address at the Ceremonial Opening of Legal Year on 11 January 2021, a review would be undertaken with a view to enhancing the transparency and the accountability of the existing mechanism. The enhanced mechanism with a two-tier structure was hence proposed.

Handling of complaints against judicial conduct under the enhanced mechanism

36. Quoting some court cases as examples, Mrs Regina IP, Ms Elizabeth QUAT and Mr Paul TSE enquired how various complaints would be handled under the proposed mechanism. Ms YUNG Hoi-yan requested JA to elaborate on the procedures for processing a complaint through the two-tier system. Ms QUAT enquired on the types of complaints that would be classified as frivolous or vexatious. She suggested that the Judiciary Administration ("Jud Adm") should explain to the public on the classification of frivolous or vexatious complaints.

37. In response, JA said that complaints received by Secretariat for the Complaints against Judicial Conduct would be assessed preliminarily by the relevant Court Leaders on whether these complaints were pursuable. In this process, the Court Leaders might consult one or more judges at High Court ("HC") level. Specifically, for pursuable complaints which were serious or complex or which had drawn wide public attention, a Panel of Judges comprising more than one judge at HC level, with the assistance of the relevant Court Leaders, would be responsible for investigating and making recommendation(s) on the complaints. The second-tier Advisory Committee would then review and advise on these cases before CJ made a final decision on each complaint. For other pursuable complaints, they would be investigated by the Court Leaders and then reviewed by one or more judges of the HC level.

38. JA further explained that based on past experience, a complaint might be classified as frivolous or vexatious if it contained mere allegations which were not supported by any factual evidence. Moreover, the disposal of these non-pursuable complaints would be summarily reported to the Advisory Committee. JA stressed that every legitimate complaint against judicial conduct would be dealt with in a fair manner.

39. Ms Elizabeth QUAT and Dr Junius HO enquired whether the investigation reports would be made available to the public. JA said that having regard to the seriousness, complexity and degree of public attention and other relevant considerations, the investigation outcome together with the underlying reasons would be posted on the Judiciary website. JA also pointed out that complaints with ongoing court proceedings (including appeals) would only be handled after the conclusion of all relevant court proceedings. In this connection, the outcome of complaints would be made available after conclusion of relevant proceedings and completion of the investigation. To further enhance the transparency, the work of the Advisory Committee would also be reported together with the complaint statistics in the Annual Report of the Judiciary.

Handling of complaints which are serious or complex

40. Dr Priscilla LEUNG referred to Article 89 of the Basic Law ("BL") which stipulated that "A judge of a 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 CJ and consisting of not fewer than three local judges". Noting that the proposed mechanism would also deal with complaints against the misbehaviour of judges, Dr LEUNG enquired whether it had any relationship with BL 89.

41. Mr Paul TSE noted that pursuable complaints which were serious or complex, or had aroused wide public concerns, were likely to be misbehaviour serious enough to trigger the application of BL 89. Mr TSE was concerned that there might be ambiguities as to whether such complaints should be handled through the proposed mechanism or under BL 89, or whether a dual-track approach should be taken with both procedures triggered in parallel.

42. In response, JA explained that there was no direct relationship between BL 89 and the proposed complaint handling mechanism. Any serious misbehaviour identified through any complaints would be handled in accordance with BL89 (concerning removal of judges) or the Judicial Officers (Tenure of Office) Ordinance (Cap. 433) (concerning disciplinary procedures involving judicial officers) as appropriate. Any allegations of criminal offences would be dealt with by law enforcement agencies if the relevant complaints appeared to have any substance.

43. Dr Priscilla LEUNG agreed with JA that complaints to be handled by the proposed mechanism should be clearly distinguished from serious misbehaviour which might lead to the removal of judges under BL89 or disciplinary action against judicial officers under Cap. 433. Dr Junius HO enquired that if in the process of complaint handling, serious misbehaviour which might lead to the removal of judges was identified, whether action under BL89 would be immediately initiated. He also expressed that as BL 89 had already provided a legal framework for handling the removal of judge, serious misbehaviour should be dealt with through the BL 89 framework.

44. JA clarified that if a complaint against the conduct of a JJO appeared to have any substance and identified certain serious misbehavior which warranted action under BL89 or Cap. 433, or the same was identified through investigation by the Panel of Judges or the Court Leaders, the matter would immediately be brought up to the CJ for initiation of action under BL89 or Cap. 433 where appropriate.

Composition of and appointment to the Advisory Committee and its function

45. Mrs Regina IP observed that lay members were involved in a number of professional bodies such as the Medical Council of Hong Kong and the Hong Kong Institute of Certified Public Accountants in the handling of complaints against their respective members. Mr Paul TSE also shared the Bar Association's view that the involvement of lay members in the work of the Barristers Disciplinary Tribunal had been working well.

46. Mrs Regina IP said that, while she supported the appointment of members from the community to the Advisory Committee, the cardinal principle of judicial

independence must not be compromised. Mrs IP and Dr Priscilla LEUNG concurred that it was imperative that members from the community to be appointed should not have any political affiliations in order to uphold impartiality of the Advisory Committee. Ms YUNG Hoi-yan expressed concern on the lack of transparency about the nomination process of members to the Advisory Committee, and whether there would be enough safeguards to guarantee that the lay members appointed would not have any political affiliations

47. Mr Paul TSE said that while the proposed mechanism was a step forward in enhancing the transparency and the accountability of the existing mechanism, with the investigation of complaints continued to be carried out by the JJOs and the final decision on a complaint to be made by the CJ, the Advisory Committee would not play any substantive role.

48. Ms Elizabeth QUAT reckoned that as CJ would make the final decision on a complaint as the Chairman of the Advisory Committee, it might give a perception that members from the community serving on the Advisory Committee were merely for window-dressing. Ms QUAT was worried that the Advisory Committee would be tantamount to a "toothless tiger". She considered that more information on the appointment of lay members should be provided so that the public would have more confidence in the effective discharge of the role of the Advisory Committee.

49. JA explained that the handling of complaints against judicial conduct required judicial knowledge and experience. The composition of the Advisory Committee would hence include both judges and members from the community, with judges comprising the majority. Nonetheless, there would be a considerable number of members from the community in the Advisory Committee. JA added that in appointing members from the community to serve on the Advisory Committee, CJ would take into account the potential appointees' expertise and experience in professional/community/public services, their standing and credibility, and that they should not have any political affiliation. She further said that these members would be appointed *ad personam* so that independent and professional advice could be offered, and reference would be made to the practices of the Administration in appointing members to the various committees and advisory bodies on the need for any background checking.

50. Mr Paul TSE noted that the Advisory Committee's terms of reference were general and appeared to be limited to giving advice on the mechanism itself rather than on individual cases.

51. JA pointed out that the functions of the Advisory Committee were not limited to making recommendations on improvements to the complaint handling mechanism. She further said that while the Advisory Committee would not take

up the investigation role or make the final decision on a complaint, the Advisory Committee would have a significant role to review and comment on each complaint which was of a serious or complex nature, or which had drawn wide public attention and give advice to CJ for making a final decision on the individual case.

(At 10:23 am, the Chairman extended the meeting for 15 minutes to 10:45 am to allow sufficient time for discussion.)

Follow-up actions on substantiated complaints

52. Ms Elizabeth QUAT expressed dissatisfaction regarding the varied follow-up actions taken on justified complaints. She also queried the Judiciary for not taking action against a Magistrate who had been repeatedly criticized by judges of the Court of Appeal for making mistakes. Dr Junius HO enquired about the possible recommendations by the Advisory Committee and sanctions taken towards JJOs, in particular whether dismissal would be a possible course of action. He considered that follow-up actions such as giving advice or counsel to the JJOs concerned were too lenient.

53. In response, JA clarified that the proposed mechanism was for handling complaints against conduct of JJOs. Whether and what action would be taken on justified or partially justified complaints under the proposed complaint handling mechanism would be determined having regard to the gravity of the misconduct in each case. If the case warranted any action to be taken under Cap. 433 or BL89, the relevant procedures under Cap. 433 or BL89 would be followed and such case would not be handled through the complaint mechanism.

54. Mrs Regina IP considered that a drastic change to the existing mechanism was not necessary and the proposed two-tier mechanism was acceptable. Nonetheless, she was of the view that JJOs should be mindful that having regard to the independence and impartiality of the Judiciary, they should refrain from expressing comments on political and other controversial issues such as signing public petition related to political or controversial issues.

55. Mr Holden CHOW said that he had previously suggested Jud Adm to make reference to the work of the Judicial Conduct Investigations Office of the United Kingdom in reviewing the existing mechanism. He believed that the proposed two-tier mechanism, i.e. for having those pursuable complaints of a serious or complex nature, or those aroused wide public attention to be reviewed by the Advisory Committee, was similar to the overseas practice. He considered that the Judiciary should continue monitor the developments and improve the mechanism as appropriate.

56. The meeting noted that the Judiciary would proceed to form the Advisory Committee, with the target of implementing the enhanced measures in the third quarter of 2021.

V. Any other business

57. There being no other business, the meeting ended at 10:40 am.

Council Business Division 4
Legislative Council Secretariat
12 October 2021