

**For information****Legislative Council  
Panel on Administration of Justice and Legal Services****Enhancement to the Mechanism for  
Handling Complaints Against Judicial Conduct****PURPOSE**

This paper informs Members on a series of enhancement to the existing mechanism for handling complaints against judicial conduct.

**BACKGROUND**

2. The Judiciary attaches great importance to fair and proper handling of complaints against judicial conduct. 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.

3. The Chief Justice announced in his address at the Ceremonial Opening of the Legal Year on 11 January 2021 that a review of the existing mechanism would be undertaken with a view to enhancing the transparency and the accountability of the mechanism. The Judiciary has now completed the review and a series of enhancement to the existing mechanism will be introduced.

**CONSIDERATIONS****Upsurge in complaints against judicial conduct**

4. In recent years, there has been a significant increase in complaints against judges<sup>1</sup>. This is mainly attributable to the surge in the number of identical or similar complaints against judges in relation to certain court decisions and court cases. In 2020, a total of 5 559 complaints have been disposed of. Of this total, 5 488 are related to mass complaints with identical or similar contents. In accordance with the cardinal principle of judicial independence, complaints against judicial or

---

<sup>1</sup> The term “judges” is used to include judges and judicial officers.

statutory decisions cannot and will not be dealt with through this mechanism. Any dissatisfaction with judicial or statutory decisions can only be dealt with by way of appeal, review or other relevant legal procedures (where applicable). In practice, as shown by the summary statistics on complaints disposed of in recent years at **Annex A**, this category of complaints still constitutes a sizeable portion of the overall total number of complaints (1 028 complaints in 2020).

5. In 2020, the Judiciary announced additional transparency measures to enhance public understanding about its operations. From July 2020, as far as complaints against judicial conduct are concerned, where there are a large number of identical or similar complaints, the Secretariat for Complaints against Judicial Conduct will post on the Judiciary website the substance of the complaints, the outcome of investigations together with the underlying reasons. Starting from October 2020, summaries of selected decisions in the District Court and Magistrates' Courts which are of public interest are uploaded onto the Judiciary website as far as practicable.

6. Further to the improvement measures put in place since the last review in 2016, as announced by the Chief Justice, the Judiciary considered that it was timely to review the mechanism for handling complaints against judicial conduct with a view to enhancing its accountability and transparency, taking into account the experiences of handling complaints over the past years, recent developments and views from the community.

### **Principles underlying the review**

7. The review has been conducted having regard to the following overriding principles:

- (a) There should be no undermining of judicial independence as guaranteed under the Basic Law. The judicial power, including that of final adjudication, enjoyed by the Hong Kong Special Administrative Region under the Basic Law is exercised by the Judiciary independently, free from any interference, as provided for under Articles 2, 19 and 85;
- (b) Complaints against judicial decisions or decisions made under statutes such as the Legal Aid Ordinance (Cap. 91) will not be entertained. The only way to deal with any dissatisfaction with judicial or statutory decisions made by judges is by way of appeal, review or other relevant legal procedures (where applicable);

- (c) Article 89 of the Basic Law provides for the removal of judges (including the Chief Justice) by the Chief Executive upon the recommendation of a tribunal comprising judges only, on the grounds that they are unable to discharge their duties, or for misbehaviour. The investigating mechanism for handling complaints against judicial conduct should be consistent with the intent and spirit of these provisions, that is, the investigation process should be conducted by judges only;
- (d) The complaint handling mechanism should not create undue burden on judges whose main duty is to adjudicate cases. Hence, complaints which are frivolous and vexatious in nature should be disposed of summarily in an effective and efficient manner; and
- (e) For complaints which involve serious misconduct, they shall be handled in accordance with Article 89 of the Basic Law (concerning removal of judges) or the Judicial Officers (Tenure of Office) Ordinance (Cap. 433) (concerning disciplinary procedures involving 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. These two types of complaints will not be dealt with under the complaint mechanism.

## **EXISTING MECHANISM**

8. Under the existing mechanism, all complaints against judges are handled by the Chief Justice and/or the respective Court Leaders. For pursuable complaints against judicial conduct (“pursuable complaints”) <sup>2</sup>, the Chief Justice or the Court Leaders of the respective levels of courts will investigate the matter when all relevant court proceedings (including appeals) have been completed. Where appropriate, the complaint will be reviewed by one or more judges from a higher level of court.

---

<sup>2</sup> Only pursuable complaints against judicial conduct will be investigated. Complaints such as those against judicial/statutory decisions (or complaints on judicial conduct which in substance contain only elements against judicial/statutory decisions), or are of frivolous or vexatious nature will be summarily disposed of by the Chief Justice and/or the respective Court Leaders, and would not be considered pursuable complaints.

9. For reasons set out in paragraph 7(b) and (d) above, complaints against judicial decisions, or those which are frivolous and vexatious in nature should be summarily disposed of expeditiously in line with the prevailing arrangement. The review should hence focus on enhancing the accountability and the transparency in handling pursuable complaints.

## **MEASURES TO ENHANCE ACCOUNTABILITY AND TRANSPARENCY**

10. The Judiciary intends to introduce a two-tier structure for handling pursuable complaints against judicial conduct with a view to enhancing the accountability and the transparency of the mechanism.

### **(I) Tier One: Panel of Judges to investigate serious, complex cases, or those which have given rise to wide public concerns**

11. For pursuable complaints which are serious or complex, or have aroused wide public concerns, a Panel of Judges comprising more than one judge at High Court level will be responsible for investigating and making recommendation(s) on the disposal of such complaints, with the assistance of the relevant Court Leaders.<sup>3</sup> Since the majority of complaints on judicial conduct concerns magistrates and district judges, involvement of High Court judges at the Panel will ensure that the complaints are usually handled by more than one judge at a higher level of court.

12. The investigation reports and recommendation(s) from the panel judges will then be submitted to the second tier of the mechanism (i.e. the Advisory Committee) for review and advice (see paragraph below).

### **(II) Tier Two: An Advisory Committee with judges and members from the community to advise the Chief Justice on complaint handling**

13. An Advisory Committee on Complaints against a Judge's Conduct ("Advisory Committee") will be formed to oversee and advise on the handling of complaints against judicial conduct. The Advisory Committee will comprise both judges and members from the community with profound expertise and experience in professional/community/public services.

---

<sup>3</sup> As regards pursuable complaints concerning judges of the Court of Final Appeal, or the Chief Judge of the High Court, the Chief Justice will assign one or more Permanent Judge or Non-Permanent Judge of the Court of Final Appeal for handling.

14. The Advisory Committee will be chaired by the Chief Justice, and comprises both judges and members from the community. The terms of reference are as follows:

- (a) To monitor and advise on the handling of complaints against judicial conduct;
- (b) To identify problems in court practices/procedures which lead or might lead to complaints and recommend improvements where appropriate; and
- (c) To make recommendations on improvements to the complaint handling mechanism.

15. The Advisory Committee would be meeting on a regular basis to review and advise on the investigation reports from the panel judges on pursuable complaints. After considering the advice of the Advisory Committee, the Chief Justice will make a final decision on each complaint. Having regard to the seriousness, complexity, degree of public attention and other relevant considerations, the investigation outcome together with the underlying reasons will be posted on the Judiciary website for public scrutiny.

16. As a further step to enhance the transparency and the accountability, for **all** pursuable complaints against judicial conduct of judges of the Court of Final Appeal and the Court Leaders (i.e. the Chief Judge of the High Court, the Chief District Judge, and the Chief Magistrate)<sup>4</sup>, irrespective of whether these complaints are of a serious or minor nature, the two-tier system described above will be followed, and the investigation reports and recommendations will be submitted to the Advisory Committee for review and advice, before a final decision is made by the Chief Justice.

17. A flowchart illustrating the major procedural steps of the arrangement as set out above is at **Annex B**.

### **Other pursuable complaints**

18. For the other pursuable complaints, they will first be investigated by the relevant Court Leaders and then reviewed by one or more judges of the High Court level before disposal, and the results will be reported to the Advisory Committee in a summary manner. Where justified, the Chief Justice may direct to re-open and review the

---

<sup>4</sup> These complaints are directly related to their own conduct and should be distinguished from complaints against the handling and/or findings of the original complaints, i.e. repeated complaints which in substance do not involve matters on judicial conduct.

investigation of any case on the advice of the Advisory Committee. This arrangement puts in place a more elaborate checks and balances system involving High Court judges to enhance the accountability while ensuring efficient disposal of such complaints. With the introduction of the above measures, no repeated complaints will be considered unless there are new substantive grounds or evidence submitted.

### **Enhancing public disclosure arrangements**

19. To further enhance the transparency, the work of the Advisory Committee will be reported together with the complaint statistics in the Annual Report of the Judiciary.

### **WAY FORWARD**

20. Members are invited to note the above enhancement measures. The Judiciary will proceed to set up the Advisory Committee, with the target of implementing the enhanced measures in the third quarter of 2021.

**The Judiciary**  
**May 2021**

**Table 1: Number of Complaints Disposed of by the Chief Justice and the Court Leaders (2018 - 2020)**

Disposed of by	2018				2019				2020			
	JD/SD <sup>1</sup>	JC <sup>2</sup>	JD/SD + JC <sup>3</sup>	R <sup>4</sup>	JD/SD <sup>1</sup>	JC <sup>2</sup>	JD/SD + JC <sup>3</sup>	R <sup>4</sup>	JD/SD <sup>1</sup>	JC <sup>2</sup>	JD/SD + JC <sup>3</sup>	R <sup>4</sup>
Chief Justice	5	0	0	9	4	0	0	5	3	123 <sup>6</sup>	4 286 <sup>7</sup>	7
Chief Judge of the High Court	38	0	2	N/A	38	0	2	N/A	20	0	0	N/A
Chief District Judge	15	0	2	N/A	14	0	2	N/A	13	1	2	N/A
Chief Magistrate	27	3	20	N/A	297 <sup>5</sup>	0	6	N/A	992 <sup>8</sup>	1	111 <sup>9</sup>	N/A
<b>Sub-total</b>	85	3	24	9	353	0	10	5	1 028	125	4 399	7
<b>Total</b>	<b>121</b>				<b>368</b>				<b>5 559</b>			

**Note**

- 1 “JD/SD” denotes “Judicial Decision/Statutory Decision”. These complaints cannot and will not be handled.
- 2 “JC” denotes “Judicial Conduct”. These complaints will be dealt with.
- 3 “JD/SD+JC” denotes both “Judicial Decision/Statutory Decision and Judicial Conduct”. Only the part relating to JC will be dealt with.
- 4 “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.
- 5 Including 240 complaints relating to the judicial decision of one court case.
- 6 Identical or similar complaints related to one court case.
- 7 Identical or similar complaints related to one court case.
- 8 Including 983 identical or similar complaints relating to 70 court cases.
- 9 Including 96 identical or similar complaints related to one court case.
- 10 Among the complaint cases related to judicial conduct from 2018 to 2020, there is one partially justified case involving 4 286 complaints (i.e. the case indicated under Note 7).

**Table 2: Breakdown of Complaints relating to Judicial Conduct by Major Categories (2018 - 2020)**

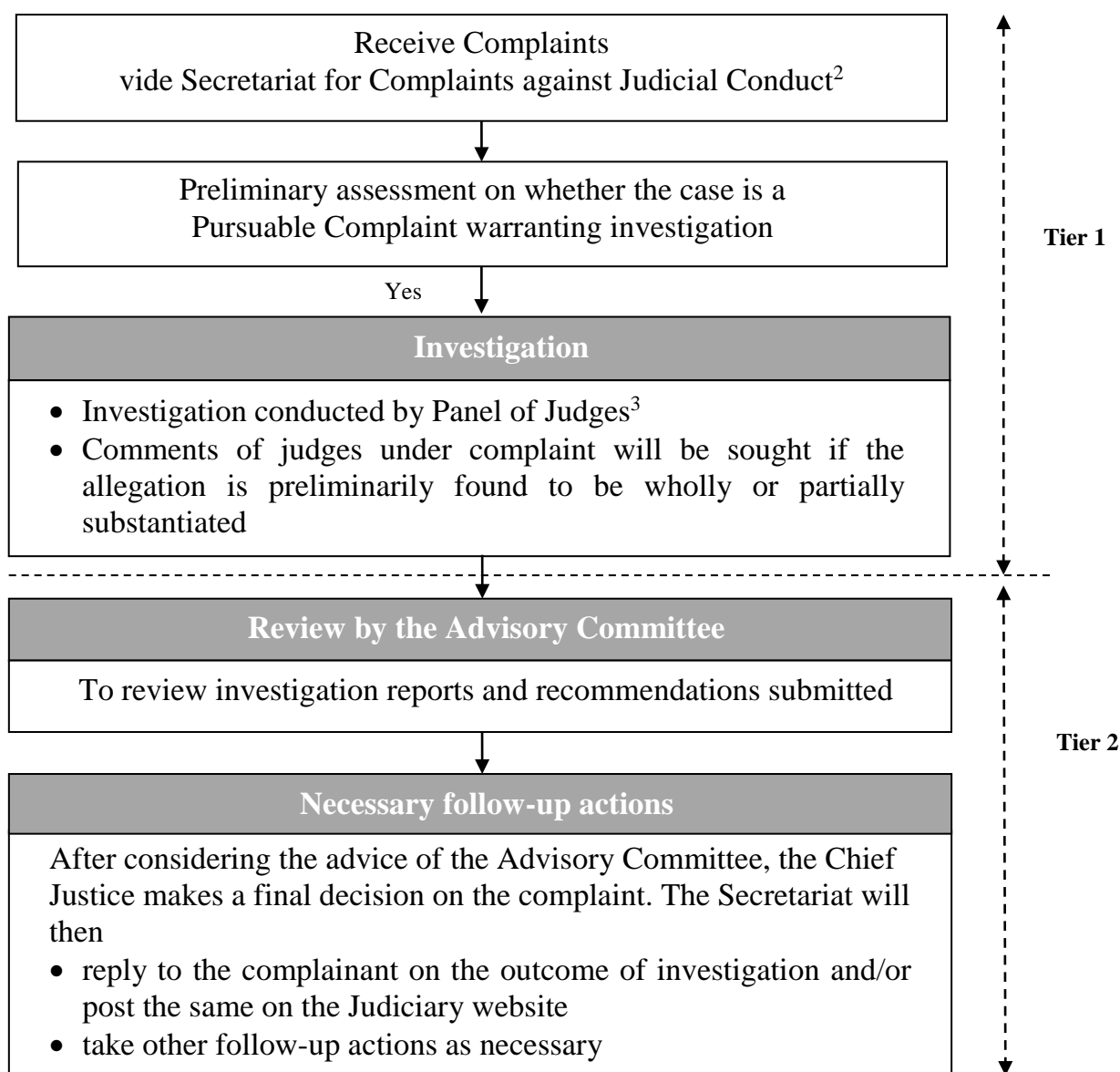
Year	No. of Complaints relating to Judicial Conduct and Review Cases	Preliminary Classification by Nature				
		C1 <sup>1</sup> (Attitude and Behaviour in Court)	C2 <sup>2</sup> (Conduct of Proceedings)	C3 <sup>3</sup> (Conduct Outside Court)	R (Review on Court Leader's Complaint Handling)	Mixed (Involving more than one Category)
2018	36	6	15	0	9	6 [C1+C2]
2019	15	2	4	0	5	4 [C1+C2]
2020	4 531	8	4 510 <sup>4</sup>	1	7	5 [C1+C2]

**Note**

- 1 Category 1 ("C1") – allegations of poor or undesirable attitude or behaviour of JJOs in court e.g. lack of punctuality, rudeness, etc.
- 2 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.
- 3 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.
- 4 Including 4 505 identical or similar complaints relating to two court cases.



**Flowchart for the Enhanced Complaint Handling Mechanism**  
(for Pursuable Complaints which are serious/complex/have drawn wide public attention,  
or against specific judges<sup>1</sup>)



**Note:**

1. Specific judges refer to the judges of the Court of Final Appeal / the Court Leaders (see paragraph 16).
2. The Secretariat assists in coordinating the handling of complaints against judges, provides administrative support and assists in the compilation of complaint statistics, etc. Where the allegations in a complaint are associated with on-going court proceedings, the investigation will normally be deferred until the conclusion of all relevant court proceedings. The complainant will be informed in writing that follow-up actions on his/her complaint will be taken upon conclusion of all relevant court proceedings.
3. See paragraph 11 and footnote 3.