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Panel on Administration of Justice and Legal Services

Meeting on 14 May 2021

**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 ("LegCo") 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 (where this is available) through the existing legal provisions. For complaints

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 ("CFA"), 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 CFA, the High Court and the District Court.

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 ("CFA"). 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 the request of the Panel on Administration of Justice and Legal Services ("the Panel"), the Judiciary Administration discussed with members the mechanism for handling complaints against judicial conduct at the Panel 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) the 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

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.

Review at its meeting on 18 July 2018 and 25 May 2020. According to the Judiciary, it took a serious view in ensuring that complaints against judicial conduct would be handled in a fair and proper manner. The Judiciary would continue to monitor the situation and consider the implementation of further improvement measures as and when necessary.

Major views and concerns of Legislative Council Members

10. The major views and concerns expressed by Members on the mechanism for handling complaints against judicial conduct and related subjects are summarized in the ensuing paragraphs.

Handling of complaints against judicial conduct under the existing mechanism

11. In a question raised at the Council meeting of 2 December 2020, having regard to the controversies and complaints arising from the judgments handed down by a number of judges on cases involving a political context, a Member questioned about the criteria adopted by the Judiciary for making the relevant decisions regarding the complaints.

12. Based on the information provided by the Judiciary, the Administration replied that the Judiciary had been taking the complaints against judicial conduct seriously and each complaint was to be handled by CJ and the relevant Court Leader in accordance with the established mechanism. The Guide to Judicial Conduct ("the Guide") set out the important principles regarding the conduct of JJOs. Pursuant to the Guide, where there was actual, presumed or apparent bias, the JJOs concerned might be disqualified from hearing certain cases. As the actual circumstances of each complaint vary (including the legal basis relied upon, the wording, the context of the relevant statement(s) made by the judge in court concerned etc.), CJ and the relevant Court Leader would consider the circumstances of each complaint in detail and examine if the case was in line with the principles stipulated in the Guide. Where there had been a large number of identical or similar complaints on judicial conduct in relation to any case, the Judiciary would post on its website the gist of the complaints, the outcome of investigation and the relevant grounds, so as to enhance the transparency in handling complaints against judicial conduct.

13. At the Panel meeting on 25 May 2020, some members suggested that the Judiciary should consider the need for reviewing the Guide which had been drawn up for some time.

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

14. At the Panel meeting on 21 March 2016, some members expressed support that the handling of complaints against judicial conduct should comprise judges and judges only to ensure judicial independence, while some other 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 CFA who were the subordinates of CJ.

15. Some members 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 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, LegCo 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 the Panel meeting on 21 March 2016, some members enquired whether consideration would be given to providing different levels of sanctions, short of removal from office, against JJOs who were found to have misbehaved after investigation into complaints against them. In response, the Judiciary Administration 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 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.

19. The Judiciary Administration 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 judicial officer might be subject to one of the sanctions under section 8 of Cap. 433 for misbehaviour proved.

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

20. At the Panel meeting on 18 July 2018, some members 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.

21. 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 ("HC") respectively, whereas the daily operation of the Institute was overseen by a deputy judge of the HC designated by CJ. Besides, some of the staff recruited to work in the Institute had legal qualifications.

Investigation into complaints against judicial conduct

22. At the Panel meeting on 25 May 2020, noting some recent reports which had aroused public concerns about judicial conduct, some members strongly urged the Judiciary to conduct investigation into the matter and should not take the matter lightly, as these reports might lead others to believe that the controversial views on political issues had the support of JJOs, and could put into question the impartiality of JJOs and even the Judiciary.

23. Some members suggested that there might be a need for the Judiciary to consider ways to follow up anonymous complaints and complaints filed against JJOs whose identity could not be established. A member noted that there were a considerable number of complaints lodged against individual JJOs regarding the remarks made in their judgments on cases relating to the social events, which were of the same or similar contents, and was concerned that the mechanism might have been abused for personal attack against individual JJOs. The member enquired about the measures to be taken by the Judiciary to protect JJOs from unreasonable criticisms.

24. In response, the Judiciary Administration said that it had always been handling complaints against judicial conduct in a fair and impartial manner. Under the established mechanism, the Judiciary would conduct investigation if the required information was provided.

Proposed setting up of an independent judiciary monitoring committee

25. Questions were raised at the Council meetings of 10 June 2020 and 2 December 2020, where Members enquired if the Judiciary would make reference to the practices in overseas jurisdictions and set up an independent judiciary monitoring committee to subject the conduct of judges to public scrutiny, so as to enhance the credibility of the judicial system.

26. In consultation with the Judiciary, the Administration responded that the existing mechanism for dealing with complaints against judicial conduct was integral to upholding the principle of judicial independence. Judicial independence in handling complaints against judicial conduct against JJOs must be safeguarded and respected. In accordance with the framework of BL 89, a tribunal for investigation into the alleged misbehaviour of a judge should comprise judges and judges only. The investigating mechanism for handling complaints against judicial conduct should be consistent with the provisions and spirit of the Basic Law. The investigation should hence be conducted by judges and judges only. The Judiciary must continue to do this on its own without outside influence or interference. Besides, any dissatisfaction with judicial decisions should be rectified by way of appeal or review. This is the foundation of the Hong Kong legal system.

Latest position

27. At the Panel meeting to be held on 14 May 2021, the Judiciary will brief the Panel on a series of enhancements to the existing mechanism for handling complaints against judicial conduct.

Relevant papers

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

Council Business Division 4
Legislative Council Secretariat
7 May 2021

**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

Enhancements to the 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
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

Date of meeting	Meeting	Minutes/Paper	LC Paper No.
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/ajls_cb4-843-1-e.pdf
		Minutes of meeting	CB(4)446/18-19 https://www.legco.gov.hk/yr17-18/english/panels/ajls/minutes/ajls20180718.pdf
25.5.2020	Panel on Administration of Justice and Legal Services	Judiciary Administration's paper on the mechanism for handling complaints against judicial conduct: an update since the last information note to the Panel	CB(4)583/19-20(04) https://www.legco.gov.hk/yr19-20/english/panels/ajls/papers/ajls_20200525cb4-583-4-e.pdf
		Minutes of meeting	CB(4)872/19-20 https://www.legco.gov.hk/yr19-20/english/panels/ajls/minutes/ajls20200525.pdf
10.6.2020	Council meeting	Hon Elizabeth QUAT raised a question on open and fair trials	https://www.info.gov.hk/gia/general/202006/10/P2020061000371.htm
2.12.2020	Council meeting	Hon Elizabeth QUAT raised a question on the conduct, decisions and promotion of judges	https://www.info.gov.hk/gia/general/202012/02/P2020120200333.htm