
**Advisory Committee on
Complaints against Judicial Conduct
Annual Report 2021**

Background

- 1.1 The Judiciary is committed to ensuring that judges and judicial officers observe the highest standards of conduct, displaying integrity and propriety in all relevant matters both in and out of court. There is an established mechanism for dealing with complaints against judicial conduct by the Chief Justice and the Court Leaders at all levels of court.
- 1.2 Further to the improvement measures put in place to the mechanism since 2016 and the additional transparency measures introduced in 2020, the Chief Justice announced in his address at the Ceremonial Opening of the Legal Year on 11 January 2021 that a review of the mechanism for handling complaints against judicial conduct would be undertaken with a view to enhancing the transparency and the accountability of the mechanism.
- 1.3 Upon completion of the above review, the enhanced mechanism with a two-tier structure for handling complaints against judicial conduct came into effect on 16 August 2021.
- 1.4 The two-tier system comprises-
 - (a) Tier 1 – A Panel of Judges comprising more than one judge at the High Court level to investigate into serious or complex pursuable complaints against judicial conduct or those which have aroused wide public attention;
 - (b) Tier 2 – The Advisory Committee on Complaints against Judicial Conduct (the Advisory Committee) chaired by the Chief Justice and comprising judges and members from the community to review and advise on these cases before the Chief Justice makes a final decision on each complaint.

Terms of reference

1.5 The terms of reference of the Advisory Committee are:

- (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.

Membership

1.6 The membership of the Advisory Committee from 16 August 2021 to 15 August 2023 is as follows:

Chairman	The Hon Chief Justice Andrew CHEUNG, GBM Chief Justice of the Court of Final Appeal
Members	The Hon Mr Justice Johnson LAM Permanent Judge of the Court of Final Appeal
	The Hon Mr Justice Patrick CHAN, GBM Non-Permanent Judge of the Court of Final Appeal
	The Hon Mr Justice Jeremy POON Chief Judge of the High Court
	The Hon Madam Justice Susan KWAN Vice-President of the Court of Appeal of the High Court
	Dr Christopher CHENG Wai-chee, GBS, JP
	Mr Patrick FUNG Pak-tung, BBS, SC
	Ms Connie LAU Yin-hing, SBS, JP
	Professor LEE Chack-fan, GBS, SBS, JP

Overview

- 2.1 The Judiciary attaches great importance to the fair and proper handling of complaints against judicial conduct while ensuring that the principle of judicial independence is not compromised.
- 2.2 Judicial independence is constitutionally guaranteed by the Basic Law. It is fundamentally important to our judicial system. Each judge or judicial officer at any level of court shall exercise judicial power independently according to the law and legal principles, free from any interference. All complaints against judicial decisions will NOT be entertained under the mechanism. A party who is aggrieved by a judicial decision may, in accordance with the applicable legal procedures, seek redress by appeal or apply for a review.
- 2.3 For the purpose of applying the complaint handling mechanism, complaints against judicial conduct are categorized into “non-pursuable complaints” and “pursuable complaints”:
 - (a) “Non-pursuable complaints” are complaints that do not involve judicial conduct (i.e. complaints against judicial/statutory decisions, or complaints that are in substance complaints against judicial/statutory decisions, etc.), or complaints that are frivolous or vexatious (i.e. when the factual contentions are clearly baseless such as where serious allegations are made which are not supported by any factual evidence, or where the complaints are misconceived or lacking in substance, etc.);
 - (b) “Pursuable complaints” are complaints other than non-pursuable complaints and which are to be dealt with under the complaint handling mechanism as described below.

Mechanism for handling Pursuable Complaints against Judicial Conduct

- 2.4 As from 16 August 2021, all pursuable complaints against judicial conduct are handled under the two-tier structure. For serious or complex pursuable complaints against judicial conduct or those which have aroused wide public attention, the first-tier Panel of Judges will investigate into such complaints. The second-tier Advisory Committee will then review and advise on these cases before the Chief Justice makes a final decision on each complaint.
- 2.5 For pursuable complaints directly related to 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)¹, they will also be handled under the two-tier system, irrespective of whether these complaints are of a serious or minor nature.
- 2.6 For 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 investigation of any case on the advice of the Advisory Committee.
- 2.7 A flowchart showing the steps for handling pursuable complaints is at *Appendix*.

Report on Non-pursuable Complaints

- 2.8 The disposal of non-pursuable complaints will be regularly and summarily reported to the Advisory Committee. The Advisory Committee may raise questions and express views on the handling of this category of complaints where necessary and appropriate.

¹ These are complaints which are directly related to their own conduct, and are not complaints against the handling of the original complaints or complaints on their neglect of their monitoring role regarding allegations against other judges.

Work of the Advisory Committee

- 3.1 During the reporting period (16 August 2021 to 31 December 2021), the Advisory Committee had reviewed the investigation reports of the Panel of Judges on two pursuable complaints, each involving a massive number of similar complaints and attracting wide public attention (case numbers: FLCC 3419/2019 and ESCC 2461/2019).
- 3.2 The two complaints alleged bias against the judicial officers concerned. In dealing with these complaints against alleged bias based on certain remarks made by the judicial officers, the Advisory Committee was of the view that it was important to take into account the relevant contexts in which such remarks were made. After a careful examination of the relevant facts and the reports, the Advisory Committee considered that both complaints were unfounded. For transparency, the investigation outcomes of the two complaints have been posted on the Judiciary [website](#) for public scrutiny.
- 3.3 The Advisory Committee also endorsed the conclusions on four non-pursuable complaints as they were either complaints against judicial decisions or repeated complaints without new grounds.
- 3.4 The Advisory Committee stressed that when carrying out their judicial functions, judges and judicial officers should refrain from expressing views on controversial issues in the community so as to avoid unnecessary misunderstanding and allegations of actual or perceived bias, which might compromise public confidence in the impartiality of the Judiciary.
- 3.5 The Advisory Committee noted that the Judiciary will continue its efforts in providing judges and judicial officers with appropriate training on judicial conduct, particularly on aspects relating to impartiality and bias.



(from left to right) The Hon Madam Justice KWAN; The Hon Mr Justice POON; The Hon Mr Justice CHAN; The Hon Mr Justice LAM; The Hon Chief Justice CHEUNG; Prof LEE Chack-fan; Dr Christopher CHENG Wai-chee; Ms Connie LAU Yin-hing; Mr Patrick FUNG Pak-tung, SC

Complaints Disposed of in 2021

- 4.1 For 2021, a total of 2 205 complaints were disposed of, including 1 994 pursuable complaints against judicial conduct and 204 non-pursuable complaints that were mainly related to judicial decisions. In accordance with the principle of judicial independence, complaints against judicial decisions cannot and will not be dealt with under the complaint handling mechanism. Any dissatisfaction with judicial decisions can only be dealt with by way of appeal or review through existing legal procedures.
- 4.2 Among these complaints, 1 943 were related to mass complaints concerning two social event court cases.
- 4.3 There was no justified or partially justified pursuable complaint in 2021.

4.4 Information regarding the complaints disposed of in 2021 is summarised below:

Number of Complaints Disposed of	2021 Total
a) Pursuable complaints against judicial conduct	1 994
- <i>pursuable complaints comprising a large number of similar complaints and drawing wide public attention</i>	1 943 ¹
- <i>other pursuable complaints against judicial conduct</i>	51 ²
b) Non-pursuable complaints (judicial/statutory decisions or frivolous/vexatious complaints)	204³
c) Review cases on Court Leaders' findings	7⁴
Total	2 205⁵

1. These 1 943 complaints were related to mass complaints relating to two court cases. The complaints which were dealt with after commencement of the enhanced mechanism have been reviewed by the Advisory Committee.
2. Those pursuable complaints that were or are dealt with after commencement of the enhanced mechanism have been or will be regularly and summarily reported to the Advisory Committee.
3. Non-pursuable complaints that were or are dealt with after commencement of the enhanced mechanism have been or will be regularly and summarily reported to the Advisory Committee.
4. Prior to commencement of the enhanced mechanism, complaints regarding dissatisfaction with Court Leaders' findings of the original complaints were reviewed by the Chief Justice. As from 16 August 2021, under the new arrangement of the enhanced mechanism, the investigation findings of all pursuable complaints are to be reviewed either by the Advisory Committee (for complaints which are serious/complex/drawing wide public attention or directly related to judicial conduct of specific judges) or by High Court judges (for other pursuable complaints) before disposal. In addition, the disposal of other pursuable complaints and non-pursuable complaints is to be regularly and summarily reported to the Advisory Committee.
5. For those identical or similar complaints against a judge / judicial officer involving more than one court case, the number of complaints will only be reported in the above table upon full disposal of complaints of all court cases involved. The number of complaints disposed of only includes complaints with the provision of the mandatory information (correspondence addresses and names).

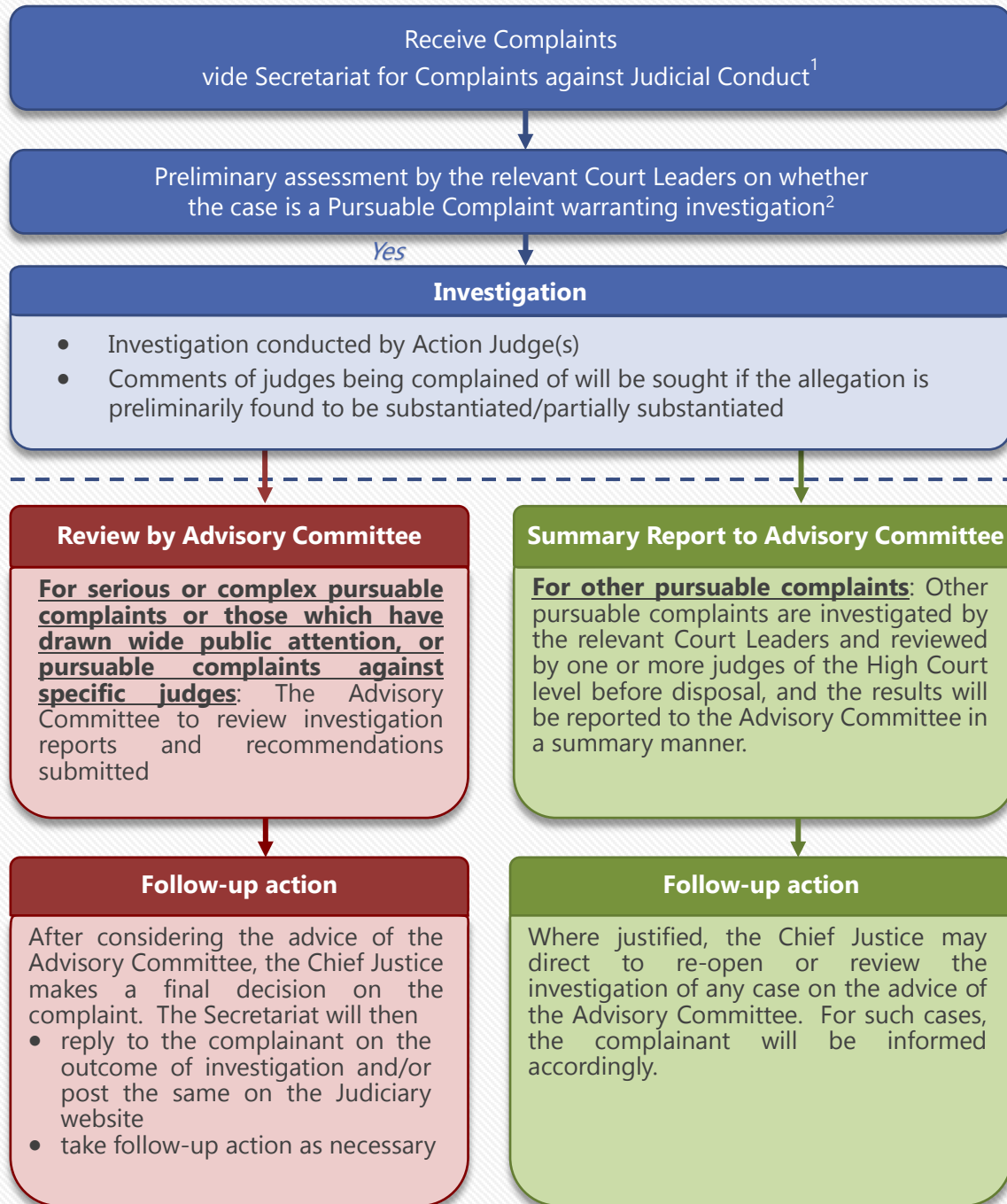
4.5 Complaints related to judicial conduct are broadly classified according to their nature. Among pursuable complaints against judicial conduct, 23 cases were related to attitude and behavior in court, 1 961 cases (involving 1 943 mass complaints concerning two social event court cases) were related to the handling of the actual proceedings in court, 1 case was related to conduct not directly related to court work and 9 cases were of a mixed nature.

Period	No. of Complaints disposed of relating to Judicial Conduct	Classification by Nature			
		C1 ¹ (Attitude and Behaviour in Court)	C2 ² (Conduct of Proceedings)	C3 ³ (Conduct Outside Court)	Mixed (Involving more than one category)
2021	1 994	23	1 961 ⁴	1	9 [C1+C2]

1. Category 1 ("C1") – allegations of poor or undesirable attitude or behaviour of judges and judicial officers 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 judges and judicial officers, using judicial stationery when writing in private capacity, etc.
4. Including 1 943 mass complaints concerning two social event court cases.

Appendix

Flowchart for Handling of Pursuable Complaints



Note:

1. Where the allegations in a complaint are associated with on-going court proceedings, the investigation will normally be deferred until after the conclusion of all relevant court proceedings.
2. The disposal of non-pursuable complaints will be regularly and summarily reported to the Advisory Committee. Where justified, the Chief Justice may on the advice of the Advisory Committee direct that a complaint be re-opened or reviewed.