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**Advisory Committee on  
Complaints against Judicial Conduct  
Annual Report 2022**

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## 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 implemented since 2016 and the additional transparency measures introduced in 2020, the Judiciary conducted a review of the mechanism for handling complaints against judicial conduct with a view to enhancing its transparency and accountability. Arising from the review, an enhanced mechanism with a two-tier structure for handling complaints against judicial conduct was introduced in August 2021.
- 1.3 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

1.4 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

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

<b>Chairman</b>	The Hon Chief Justice Andrew CHEUNG, GBM Chief Justice of the Court of Final Appeal
<b>Members</b>	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)<sup>1</sup>, 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 A*.

## 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 this category of complaints where necessary and appropriate.

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<sup>1</sup> 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 In 2022, the Advisory Committee had reviewed the investigation reports of the Panel of Judges on five pursuable complaints, each involving a massive number of similar complaints and attracting wide public attention (case numbers: DCCC 153/2020 and 453/2020; ESCC700006/2019; FLCC 5275/2019; ESCC 182/2020 and ESCC 495/2020).
- 3.2 After a careful examination of the relevant facts and the investigation reports, the Advisory Committee considered that these complaints were not substantiated.
- 3.3 While the complaints were considered not substantiated, follow-up actions were taken to advise the judges or judicial officers concerned in respect of three complaints [case number: DCCC 153/2020 and 453/2020; ESCC700006/2019; FLCC 5275/2019]. A summary of the follow-up actions taken is at *Appendix B*. For transparency, the investigation outcomes and the decisions regarding the five complaints have been posted on the Judiciary [website](#) for public scrutiny.
- 3.4 The Advisory Committee also endorsed the conclusions on:
  - (a) 13 other pursuable complaints against judicial conduct which were found unsubstantiated or were repeated complaints without new grounds; and
  - (b) 83 non-pursuable complaints as they were either complaints against judicial decisions/frivolous complaints or repeated complaints without new grounds.

- 3.5 In light of the above pursuable cases, the Advisory Committee has expressed the view that the public has a high expectation for judges and judicial officers to maintain impartiality when exercising the judicial power. It is therefore important for judges and judicial officers to be careful to avoid giving rise to any misunderstanding or perception of partiality through their words or behaviour in court.
- 3.6 The Advisory Committee welcomed the publication of the 2022 Guide to Judicial Conduct. They considered that the provision of updated guidelines on handling of cases involving public controversies, making comments on parties and other persons when performing judicial functions, as well as apparent bias, were useful in enhancing public understanding of the high standard of judicial conduct expected of judges and judicial officers.



(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

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## Complaints Disposed of in 2022

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### Complaints Disposed of in 2022

- 4.1 In 2022, a total of 8 720 complaints were disposed of, including 8 625 pursuable complaints against judicial conduct and 95 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, 8 595 were related to mass complaints concerning four social event court cases<sup>2</sup>.
- 4.3 There was no justified or partially justified pursuable complaint in 2022.

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<sup>2</sup> Among the five mass complaints against judges or judicial officers reviewed by the Advisory Committee, one of them concerned complaints against a judicial officer involving five court cases. While the complaints involving four of the five court cases had been dealt with, those involving the remaining case will only be processed after conclusion of the relevant court proceedings. The number of mass complaints will be reported upon disposal of the remaining case.



4.4 Information regarding the complaints disposed of in 2022 is summarised below:

Number of Complaints Disposed of <sup>1</sup>	2022 Total
<b>a) Pursuable complaints against judicial conduct</b>	<b>8 625</b>
- <i>pursuable complaints comprising a large number of similar complaints and drawing wide public attention</i>	8 595 <sup>2</sup>
- <i>other pursuable complaints against judicial conduct</i>	30 <sup>3</sup>
<b>b) Non-pursuable complaints (judicial/statutory decisions or frivolous/vexatious complaints)</b>	<b>95<sup>4</sup></b>
<b>Total</b>	<b>8 720<sup>5</sup></b>

1. Under 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.
2. These 8 595 complaints were related to mass complaints relating to four court cases. These complaints have been reviewed by the Advisory Committee.
3. These pursuable complaints have been or will be regularly and summarily reported to the Advisory Committee.
4. These non-pursuable complaints have been or will 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 provided with the mandatory information (correspondence address and name).

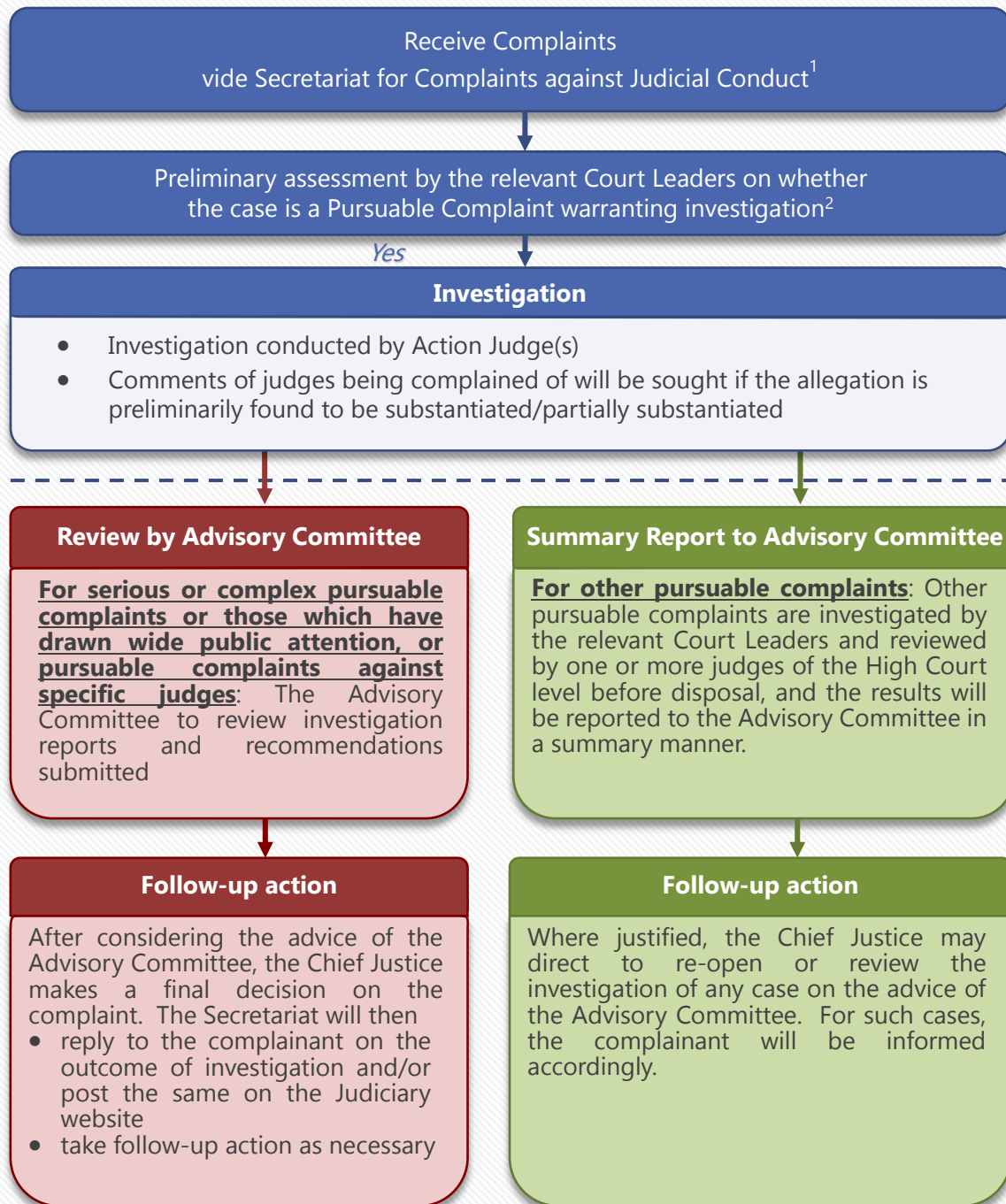
4.5 Complaints related to judicial conduct are broadly classified according to their nature. Among pursuable complaints against judicial conduct, 73 cases were related to attitude and behaviour in court (involving 62 mass complaints concerning a social event court case), 8 542 cases (involving 8 533 mass complaints concerning three social event court cases) were related to the handling of the actual proceedings in court and 10 cases were of a mixed nature.

Period	No. of Complaints disposed of relating to Judicial Conduct	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)	Mixed (Involving more than one category)
2022	8 625	73 <sup>4</sup>	8 542 <sup>5</sup>	0	10 [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 62 mass complaints concerning a social event court case.
5. Including 8 533 mass complaints concerning three social event court cases.

# Appendix A

## 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.

## Appendix B

### Follow-up Actions regarding Mass Complaints

In respect of three (out of five) mass complaints that were found to be unsubstantiated, follow-up actions taken are summarised below:

<b>Gist of Complaints</b>	<b>Follow-up Actions</b>
<b>ESCC 700006/2019</b>	
The Magistrate, in stating at the hearing that the only person who might be injured was the defendant when being subdued, was expressing views that showed bias on the part of the Magistrate and a political inclination.	The Magistrate was reminded to be more careful in court to avoid making any remarks that were unnecessary or irrelevant to the issues before the court, particularly those which might give rise to any unnecessary perception of partiality in his judicial work.
<b>DCCC 153/2020 and 453/2020</b>	
The District Judge made unjustified instructions / remarks in court which gave rise to a perception of partiality. While viewing the video footage in court, the District Judge's remarks that the reporters who were conducting recording at the scene had become part of the riot were unreasonable and biased.	The District Judge was reminded that in general, a judge or a judicial officer should be very slow in court in making any suggestions of serious wrongdoing on the part of anyone who is not before the court and who has not been given an opportunity to explain himself or herself to the court.
<b>FLCC 5275/2019</b>	
The Magistrate was biased for finding the police officers credible. Her conduct and words spoken, including her "demanding" the defendant to remove his mask when giving evidence, calling for psychiatrist's	The Magistrate was strongly advised that (a) she had made a serious error in calling for two psychiatrist's reports and revoking the defendant's bail, which had led to his being remanded in Siu Lam Psychiatric Centre; and (b) she was expected to reflect on the

<b>Gist of Complaints</b>	<b>Follow-up Actions</b>
reports and revoking the defendant's bail, demonstrated that she held serious prejudice against the defendant.	handling of this case and not to commit errors of similar nature in future.

