

For discussion on
2 May 2002

Legislative Council Panel on Security

Public Consultation: Independent Police Complaints Council Bill

Purpose

This paper seeks to inform Members of the Administration's plan to introduce the Independent Police Complaints Council (IPCC) Bill and the latest position of the public consultation exercise.

Background

2. Security Bureau issued a public consultation document on 1 March 2002. Copies were sent to all Members of LegCo on the same day. A six-week period was set for the consultation which ended on 12 April. To tie in with the meeting dates of some District Councils and District Fight Crime Committees, the Administration attended several meetings scheduled to be held after that date.

The Police Complaints System

3. Complaints Against Police Office (CAPO) is responsible for handling complaints against members of the Police Force, civilians attached to the Force and traffic wardens. The investigations are monitored by IPCC in order to ensure that complaints are fully and impartially investigated.

4. Complaints may be lodged directly to a CAPO officer or Police stations. It may also be referred to CAPO by LegCo, Independent Commission Against Corruption and other bodies. CAPO collects and records all the complaints, classifies them by their nature, identifies the complainees and assigns

investigation teams to follow up the cases. After investigations, CAPO submits the cases, the findings and all relevant documents to IPCC for review. A case will not be finalized until the IPCC has endorsed the results of investigations. If the complaints are substantiated, CAPO will take follow up action against the complainees.

5. In monitoring and reviewing the investigations, the IPCC examines the case files and other related documents, and seeks expert advice where appropriate. If it is not satisfied with results of investigations, it will ask CAPO to clarify areas of doubt or investigate the complaint again. If it is still not satisfied with the investigations, the case will be tabled at the joint meetings between IPCC and CAPO for in-depth discussion and deliberation. Where necessary, the IPCC may submit a report to the Chief Executive with its own recommendations.

6. IPCC can exercise a wide range of powers when discharging its monitoring functions. These include interviewing the complainants, complainees or other witnesses, putting queries to CAPO and demanding that certain cases be re-investigated. In respect of serious complaints which are placed under special monitoring by the IPCC Serious Complaints Committee, CAPO is required to submit monthly progress reports for monitoring by the committee. The IPCC may raise queries with CAPO on the progress reports or interview witnesses before the final report is submitted by CAPO.

7. The IPCC also monitors CAPO's investigations directly through the Observers Scheme. IPCC Members and Lay Observers can observe the interviews and scene visits conducted by CAPO during investigation of complaints. Subsequent to the observations, the Observers will forward their comments to IPCC Secretariat, which will follow them up with CAPO.

The Need to Legislate

8. The Police complaints system has been running well for over two decades. In the past, both IPCC and CAPO had implemented lots of measures to improve the system and enhance its transparency. For example, closed

circuit TV and recording facilities were installed at CAPO's interview rooms. IPCC Members are also allowed to interview witnesses.

9. Another proposal to enhance the transparency and credibility of the system is to turn the IPCC into a statutory body. The idea was first raised in 1992. The IPCC Bill was introduced to the then LegCo in 1996 and subsequently withdrawn by the Administration in 1997 because some unacceptable Committee Stage Amendments were carried.

10. Since then, we have re-assessed the system and implemented further improvement measures, such as expanding the Observers Scheme to include Lay Observers in 1999, and opening part of the joint meetings of the IPCC and CAPO to the public in 1998.

11. We are of the view that the current system is effective and suits the local situation. Therefore, we propose again to legislate to make IPCC a statutory body. This will help the public better understand the monitoring role of the IPCC, and enhance their confidence in its independence and impartiality. We believe that if members of the public know more about the IPCC's work, they will be more ready to use the Police complaints system when necessary. Through handling the complaints, the Police will be able to identify the deficiencies in its operations and procedures, and introduce measures to rectify them. This will in turn bring continuous improvement to our Police service.

The IPCC Bill

12. Details of the legislative proposals are set out in the public consultation document issued to Members before. In essence, we will stipulate the operations, functions and powers of the IPCC in the Bill. The IPCC Observers Scheme will also be written into the law. In addition, we propose that provisions be included to enable the IPCC to employ its own Secretary, Legal Adviser and other staff of the Secretariat.

13. A controversial issue about the Bill is whether IPCC should be given the powers to investigate complaints. The Administration's view on this is

unequivocal. The Police complaints system is part and parcel of the effective management of the Police Force. CAPO analyzes and monitors trends of complaints in order to identify areas in Police work that may lead to dissatisfaction of the public. As mentioned above, such work is important for improving the service of the Police Force. It also enables the Force Management to take prompt actions to rectify irregularities.

14. Moreover, investigation and monitoring are two totally different functions and should be performed by different bodies. If investigative powers are given to the IPCC, its role as a monitoring body will be confused. If the IPCC deviates from its present functions to engage in investigations, doubts will arise on the independence of its monitoring work.

Latest Position of Public Consultation

15. As at 20 April, the Administration has collected the views of 106 individuals and organizations. The general patterns of the views collected are summarized in the Annex.

Way Forward

16. The Administration will take the views into consideration before finalizing the legislative proposals. We intend to introduce the Bill to LegCo later this year.

Advice Sought

17. Members are invited to note the general patterns of public views on the IPCC Bill, and express their opinions on the legislative proposals.

Security Bureau
April 2002

**Latest Position of Public Consultation
(as at 20 April 2002)**

The Administration has attended nine meetings of District Councils (DCs) and District Fight Crime Committees (DFCCs) to collect the community representatives' views on the proposed IPCC Bill. Eight meetings were also held with Heung Yee Kuk and other organizations. To tie in with the meeting dates of some DCs and DFCCs, another ten meetings have been scheduled to be held within the next couple of weeks. Apart from views collected from those meetings, written submissions have been received from individuals and organizations. In total, the Administration has received views from some 106 parties by 20 April 2002.

2. The views collected often touch on several common key points. The general patterns are presented below:

- (a) An overwhelming majority of the parties support turning IPCC into a statutory body.
- (b) A number of parties express their satisfaction with the present Police complaints system and clear support for the Administration's legislative proposals. Many others indicate their agreement with some of the proposals and make suggestions as to how certain proposals may be modified. Only two reject the legislative proposals outright.
- (c) Amongst those who have commented on the issue of investigative powers, some support the status quo, i.e. that CAPO should continue to conduct investigations. Others support investigative powers for IPCC. Few address the questions whether CAPO should become independent of the Police Force or whether an independent body should be established to investigate complaints.

(d) Comments have also been received on the functioning of IPCC and the Lay Observers, and on matters relating to their appointment.

3. Those who support giving IPCC investigative powers or making CAPO independent of the Police Force contend that IPCC can only exercise very limited monitoring powers under the present system. Some opine that there is intrinsic problem with “Police investigating the Police”.

4. People who oppose to giving investigative powers to IPCC or making CAPO independent of the Police Force are of the view that the existing system is running well. They do not think the Police are having excessive powers. Investigation of complaints is a supervisory function which should not be taken away from the Police management. Giving the IPCC investigative powers would confuse its role as the monitoring body. They also note that IPCC already has a wide range of powers enabling it to discharge its monitoring functions effectively.

5. Other points of interest include –

- publicity of the Police complaints system should be strengthened to remove any misconception regarding the fairness of “Police investigating the Police”;
- consideration should be given to appointing a full-time Chairman and substantially strengthening the staffing of the IPCC Secretariat;
- IPCC should have the power to publicly state its disagreement with the Police’s handling of complaint cases;
- more members of the public should be appointed as Lay Observers, in order to enhance the transparency of the system;
- a minimum limit should be set on the number of observations made by Observers within a given period of time;

- IPCC should also accept complaints against the Police. The complaints could then be referred to CAPO for follow up. This could allay the fear of some people in lodging complaints directly to a Police officer;
- IPCC should have greater influence over the penalty to be imposed on offending officers;
- measures should be introduced to prevent abuse of the system by people making false complaints; and
- the quorum for an IPCC meeting as proposed in the consultation paper should be raised.