

**Bills Committee on
Independent Police Complaints Council Bill**

**Response to issues raised at the Bills Committee meeting
held on 6 December 2007**

Purpose

This paper provides information in response to the issues raised by the Bills Committee at its meeting held on 6 December 2007.

Categorization of complaints

To consider adding a provision to the Bill to require the Police to provide information on “cases which are neither reportable complaints nor non-reportable complaints” to the Independent Police Complaints Council (IPCC) for monitoring purpose

2. Clauses 10 to 12 of the Bill provide that a complaint received by the Police must be categorized as a reportable complaint if the complaint -

- (a) relates to -
 - (i) the conduct of a member of the police force while on duty or in the execution or purported execution of his duties;
 - (ii) the conduct of a member of the police force who identified himself as such a member while off duty; or
 - (iii) any practice or procedure adopted by the police force;
- (b) in the opinion of the Police, is not vexatious or frivolous and is made in good faith;
- (c) is made by or on behalf of a complainant directly affected by the police conduct;
- (d) is made by a person (whether on his own behalf or on behalf of a complainant) who has properly identified himself and provided

the Police with a means of contacting him;

- (e) (if made by a person on behalf of a complainant) is made in accordance with clause 14 (i.e. by a parent or guardian of a complainant who is below the age of 16 years when the complaint is made; by a relative or guardian of a complainant who is a mentally incapacitated person or is unable to make the complaint; or by a representative who has written authorization from the complainant to make the complaint on behalf of the complainant);
- (f) is made to the Police –
 - (i) within a period of 24 months from the date of the incident giving rise to the complaint; or
 - (ii) where proceedings relating to the subject matter of the complaint have been commenced in any court, magistracy or statutory tribunal within the period referred to in subparagraph (i), within a period of 12 months from the date of the final determination of such proceedings, whichever expires later; or
 - (iii) though made to the Police after the expiry of the period applicable to it under paragraph (f)(i) or (ii), in the opinion of the Police, the complaint is of a serious nature.
- (g) is a request for review made to the Police for reviewing the classification of a reportable complaint if the Police are of the opinion that the request for review is not vexatious or frivolous, is made in good faith, and (if made by a person on behalf of a complainant) is made in accordance with clause 14.

3. Clause 13 stipulates that a complaint received by the Police is a non-reportable complaint if it is not a reportable complaint.

4. Clause 9 provides that the Commissioner of Police (CP) must not take into account the following complaints for the purpose of compiling the list of reportable complaints and the list of non-reportable complaints for submission to the IPCC:

- (a) a complaint made by a person in his official capacity as a member of the police;

- (b) a complaint that arises from the issue of a summons and does not relate to police conduct;
- (c) a complaint arises from the issue of any notice for the imposition of a fixed penalty under any enactment and does not relate to police conduct; or
- (d) a complaint that a person is empowered to investigate pursuant to any function conferred on the person by any other Ordinance, except where the complaint relates to police conduct and the power of investigation does not extend to the investigation of that police conduct.

5. The complaints covered by clause 9 are dealt with in accordance with other existing established complaint systems. We consider that the IPCC should not duplicate the effort and look into them yet again. For a complaint set out in clause 9(a), the complaint will be handled by the respective police formation of the complainee and overseen by the Complaints Against Police Office (CAPO). The complaint will be handled as a matter of staff complaint. For a complaint under clause 9(b) arising from the issue of a summons other than a traffic summons, it will normally be investigated by the police formation where the summons is originated. The formation commander will inform the complainant of the outcome of investigation. A complaint which concerns the validity of a traffic summons or a fixed penalty ticket issued under the Fixed Penalty (Traffic Contraventions) Ordinance (Cap. 237) or the Fixed Penalty (Public Cleanliness Offences) Ordinance (Cap. 570) as set out in clause 9(c), is also dealt with by the issuing police formation. On completion of the investigation, a report and any recommendation from the formation will be forwarded to the Police Central Traffic Prosecutions Division for review, which will then notify the complainant of the result. An aggrieved party may take the case to a magistrate. For a complaint under clause 9(d), examples are the complaints handled by the Equal Opportunities Commission, the Privacy Commissioner for Personal Data and the Commissioner on Interception of Communications and Surveillance in accordance with the relevant legislation.

To consider amending “reportable” and “non-reportable” complaints in the Bill as “pursuable” and “non-pursuable” complaints

6. CAPO categorizes complaints it receives into “reportable” complaints and “non-reportable” complaints. These two categories of

complaints are subject to the IPCC's monitoring and review to different degrees. The IPCC's powers to monitor and review the Police's investigation of reportable complaints are provided under clause 16 to 25 of the Bill. For non-reportable complaints, the IPCC's powers to monitor the appropriateness of their categorization are provided under clause 15. Despite the categorization of a complaint as a non-reportable complaint, CAPO will look into the facts of the case and refer it to the relevant police formation or other appropriate authorities for necessary follow-up action. Every complaint received by CAPO, irrespective of whether it is categorized as a reportable complaint or a non-reportable complaint, will be examined and handled in a fair and proper manner.

7. Under the existing arrangement, CAPO classifies a reportable complaint as "not pursuable" when the identity of the officer(s) being complained against cannot be ascertained; or where there is insufficient information to proceed with the investigation; or when it has not been possible to obtain the cooperation of the complainant to proceed with the investigation (e.g. when the complainant declines to make a statement). Such classification is subject to the IPCC's endorsement.

8. We consider it appropriate to maintain the distinction between "reportable" complaints and "non-reportable" complaints to clearly identify complaint cases that will be closely monitored by the IPCC, and the classification of "non-pursuable" for those reportable complaints that CAPO cannot further pursue under the circumstances described in paragraph 7 above.

Consultation with the Hong Kong Bar Association (HKBA) and the Law Society of Hong Kong (Law Society)

To advise when HKBA and the Law Society had been consulted on the proposals in the Bill and to provide the views, if any, received in such consultation

9. Following the withdrawal of the 1996 IPCC Bill, we consulted the public on the revised legislative proposals for the IPCC Bill in 2002. Both the HKBA and the Law Society sent us their views on the revised legislative proposals then. Details of their views are at Annex A and Annex B respectively.

10. When we gazetted the latest IPCC Bill in July 2007, we invited the HKBA and the Law Society to provide their comments on the Bill.

The HKBA's views on the latest Bill are at Annex C and our response is at Annex D. The Law Society made an enquiry about clause 19(6) of the latest Bill (which provides that a solicitor or counsel does not have a right of audience before the IPCC at an interview unless he is the person who is interviewed under clause 19) (see Annex E). In the light of our clarification at Annex F, the Law Society subsequently confirmed at Annex G that it had no objection to the Bill.

Complaints addressed to the IPCC

To advise whether members of the existing IPCC were provided with copies of complaint letters addressed to IPCC and whether such a practice would be adopted for the proposed statutory IPCC

11. According to the IPCC Secretariat, all public complaints against the Police addressed to the IPCC are referred to CAPO for handling. For reportable complaints the investigation results of which are monitored and reviewed by the IPCC, if the complainant expressly requests his/her complaint to be brought to the personal attention of the IPCC chairman or specific IPCC member(s), the IPCC Secretariat will take action accordingly. For complaints received by the IPCC that are classified as non-reportable complaints, the investigation of which is not subject to the monitoring of the IPCC, the IPCC Secretariat will not copy the complaints to the IPCC chairman/members. CAPO regularly submits lists of non-reportable complaints to the IPCC for monitoring. For all complaints addressed to the IPCC, irrespective of whether they are reportable complaints or non-reportable complaints, the IPCC Secretariat will advise the complainants in writing of the actions taken.

12. The IPCC will consider its future arrangements for handling complaint letters addressed to the IPCC when it becomes a statutory body, having regard to the powers, functions and mode of operation of the statutory IPCC as provided for under the Bill.

Complaints not lodged by an aggrieved person

To consider allowing a complaint to be lodged by a person other than the aggrieved

13. Clause 14 of the Bill provides that representatives may make a complaint against a member of the police force on behalf of a

complainant under a variety of circumstances. Specifically, clause 14(1)(c) allows a representative to make a complaint on behalf of a complainant if he/she has a written authorization from the complainant. We consider that this arrangement has provided for sufficient flexibility to enable a third party to make a complaint on behalf of an aggrieved person. From a practical point of view, allowing any third party (including one without any authorization of the directly affected person) to file a complaint may not have taken into account the wish and privacy of the directly affected person who may then be put under pressure to disclose information which he would otherwise not be willing to disclose. Indeed, without the full cooperation of the directly affected person in providing accurate and comprehensive information for the Police to investigate the complaint, it would be difficult for the Police to draw up a full and fair report on the complaint and impracticable for the IPCC to observe, monitor and review whether the Police have handled the complaint impartially.

14. A complaint filed by an individual other than the personally aggrieved person or a representative as defined in clause 14 of the Bill will be categorized as a non-reportable complaint. Despite this categorization, CAPO will look into the facts of the case, refer it to the relevant police formation for further follow-up actions as appropriate.

Police's guidelines

To provide information on the Police's guidelines on the procedures involved in receiving complaints against the Police, including that on the assignment of a case number for each complaint received

15. Police's guidelines set out the procedures to be followed in receiving complaints against the conduct of members of the police force under the following circumstances -

- (a) when a complaint is received by a police officer during outdoor duties; when a complaint is made to a police officer concerning his own actions, or relating to an incident in which he is a party or is directly involved; and when a complaint is brought to the attention of a supervisory officer;
- (b) when a complaint is made to a police station;
- (c) when a complaint is received by letter;

- (d) when a complaint is made about the actions of a member of the police force during any court proceedings; and
- (e) in the case of a traffic related complaint in which the conduct of a member of the police force is complained against.

The details are set out in Police General Order (PGO) 21-07 and 26-02 (see Annex H).

16. Under the established procedures, all such complaints will be recorded in the Police Communal Information System (CIS)^{Note} with the necessary details of the complaints and sufficient information to identify the complainants and/or witnesses. A case number will be assigned to each complaint. For complaints involving allegations of criminal offences or misconduct of a serious or sensitive nature, it is necessary to restrict disclosure of the information concerned so as not to prejudice any subsequent investigation. Therefore, it will be recorded in the CIS that a confidential report has been received and the complaint will be immediately referred to CAPO for a decision on the further actions to be taken. All complaints will be referred to CAPO for handling. CAPO will issue an acknowledgement letter to the complainants within one working day upon CAPO's receipt of the complaints.

To advise on the safeguards and the Police's guidelines, if any, against the disclosure of information about a complaint to other Police Officers

17. Police General Order 26-20 (see Annex I) stipulates that all complainees should not be forewarned of the complaints against him by another police officer and that a breach of such an order should amount to a disciplinary offence. The objective is to minimize the opportunity for a complainee/police witness involved in a complaint to interfere with other witnesses or to conceal, destroy or alter evidence.

To advise whether and how a complainant could be informed of the contents of the Complaints Against Police Office's report on his or her case submitted to IPCC

18. Upon completion of the investigation of a reportable complaint and the IPCC's endorsement of the investigation report, CAPO will issue a full reply to the complainant, setting out the complainant's allegation(s),

^{Note} The CIS provides information processing service to the Hong Kong Police Force. One of its functions is to record the details of cases reported by members of the public or processed by police officers.

a succinct account of the investigation conducted, the outcome of the investigation, the classification of the complaint and that the case has been reviewed by the IPCC. The reply will contain adequate information on the facts and evidence examined by CAPO and reviewed by the IPCC. If the complainant is not satisfied with the classification of the complaint, he/she may request for a review of the classification.

The IPCC's membership

To consider appointing representatives from vulnerable groups such as sex workers and ethnic minorities to the proposed statutory IPCC

19. Appointments to the IPCC are made on an *ad personam* basis. In making such appointments, we are guided by the principle of selecting the best person for the job, having regard to the functions and nature of business of the IPCC, and an individual's integrity, ability, experience, expertise and commitment to public service. We shall continue to observe this principle in making appointments to the statutory IPCC. To facilitate the IPCC's effective discharge of its function, especially in monitoring the manner in which the Police handle public complaints against members of the police force, in considering appointments to the IPCC, we will also take account of prospective candidates' background to avoid any real or perceived conflict of interest.

Security Bureau
January 2008

HONG KONG BAR ASSOCIATION

Comments on Public Consultation Paper: Independent Police Complaints Council Bill

General Comments

1. The Bar welcomes the Administration's decision to provide a statutory basis for the Independent Police Commission (IPCC).
2. The Bar also appreciates the Administration's effort to enhance the credibility and transparency of the existing police complaints system.
3. Since the Consultation Paper does not include a draft Bill, the Bar's comments on the proposal of the Administration can only relate to principles and are not exhaustive.
4. The Bar is of the view that the Government's proposals do not strike a balance between the police's desire to investigate itself when a complaint is made and the need to ensure public confidence in complaint mechanisms that are now dominated by police.
5. What is needed is a fully accountable complaints system if the rule of law is to be maintained. The Bar urges the Administration to consider legislative initiatives in other democratic countries, such as those applying to the Australian Federal Police, the New Zealand Police and the Toronto Police Force.
6. It is only when the police investigation of a complaint may be re-investigated by an outside body that there are sufficient checks and balances for the public to be satisfied in the integrity of its police force.

Specific Comments

Independence of the IPCC

7. The IPCC's title suggests that it is an independent body which handles complaints against the Police but there is nothing in the proposals to make that independence a reality. Instead, the IPCC will continue to rely on what is fed to them by CAPO and it is therefore not independent.
8. The IPCC plays a passive role in police complaints. It is given no power to investigate a complaint itself if it is of the view that the police investigation or follow up action is unacceptable. Neither may the IPCC pass on a complaint for investigation to an outside body, such as the Ombudsman. The IPCC will be limited to informing the Commissioner of Police or the Chief Executive of its views about an investigation. Further, the IPCC may merely request but not require the Complaints Against Police Office (CAPO) to re-investigate a complaint.

Scope of IPCC supervision

9. The Consultation Paper provides for IPCC observers to oversee police investigation of complaints. However, observers are given no clear power to inspect files or make copies. Further, the observers do not belong to the IPCC.

They are appointed by the Secretary for Security without reference to the IPCC.

10. It is unclear from the proposals whether the IPCC must be informed on every occasion when a complaint is made. Neither is it clear how delay in investigating a complaint may be remedied. It appears that the IPCC will continue to rely on what is fed to them by CAPO and so will not be independent.

Complaint system

11. The complaint system itself is not wide enough. Only aggrieved persons may lodge a complaint. A person who is subject to police misconduct may not feel able to confront those responsible. It is often the public spirited member of the community who can provide the most independent account of police misconduct.

Transparency and Credibility

12. The IPCC is limited to having only a general report put before the Legislative Council on an annual basis. Reports on individual complaints on an *ad hoc* basis cannot be made to LegCo.
13. Further, the IPCC will be prevented from disclosing to interested third parties the basis for its views, if the Chief Executive certifies disclosure would not be in the public interest. The IPCC is thus subject to censorship on an arbitrary basis.

The Hong Kong Bar Association
18.4.2002



THE

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Annex B

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BY FAX (28107702) AND BY POST

23 April 2002

Mrs. Regina Ip
Secretary for Security
Security Bureau
6/F., Main Wing,
Central Government Offices,
Lower Albert Road,
Hong Kong.

Dear Mrs. Ip,

Independent Police Complaints Council (IPCC) Bill

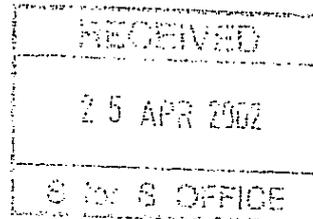
Thank you for your letter dated 1 March 2002.

I am pleased to advise that the Society's Criminal Law & Procedure Committee has considered the Public Consultation Paper on the above Bill. The Committee welcomes the various proposals put forward but would reserve its overall position pending sight of the Bill.

Yours sincerely,

Christine W.S. Chu
Assistant Director of Practitioners Affairs

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Independent Police Complaints Council Bill

The Hong Kong Bar Association's Position Paper

1. The Hong Kong Bar Association ("HKBA") has been asked to comment on the Independent Police Complaints Bill ("IPCC Bill").
2. The Explanatory Memorandum of the IPCC Bill states that its main object is to incorporate the existing Independent Police Complaints Council ("IPCC"). The Legislative Council Brief refers to a consultation exercise in 2002 and the support for turning the IPCC into a statutory body.
3. The HKBA has reviewed its submission in the 2002 consultation exercise. The principal submission back in 2002 was a call for a fully accountable complaints system that allows the police internal investigation of a complaint to be re-investigated by an outside independent body, so that the public would have trust and confidence in the integrity of the police force and the complaint mechanism. There were also submissions on specific aspects.

4. The HKBA notes that in March 2006, the UN Human Rights Committee expressed its continuing concern that the investigation of police misconduct were still carried out by the police themselves through the Complaint Against the Police Office (“CAPO”) and that the IPCC did not have the power to ensure proper and effective investigation of complaints nor power for the effective implementation of its recommendations. The Human Rights Committee urged the Administration to ensure that the investigation of complaints against the police is carried out by an independent body, the decisions of which are binding on the relevant authorities.

5. The HKBA notes that the IPCC Bill only suggests an “as is” or minimalist approach of merely putting into a statutory basis the current structure of the IPCC and the current division of roles and working relationship between the IPCC and the Commissioner of Police, without contemplating any improvement or enhancement, with the exception, probably, of the elaboration of the IPCC’s terms of reference relating to feedback into specific powers in clauses 25 and 26 over statistics and consultation; and the introduction of statutory immunity for members of the IPCC and its Secretariat (but not people the IPCC engage for their technical or professional services).

6. The HKBA strongly urges the Administration to consider establishing a statutory entity, independent of both the police force and the IPCC, that is responsible for investigating complaints against members of the police force. The IPCC may in turn be tasked with overseeing the operation of this statutory investigatory entity. Such an arrangement is not a novel one. Currently, the Ombudsman has jurisdiction to determine complaints of abuse of power by members of the Customs and Excise Department and the Immigration Service, both of which are disciplined services, under the Ombudsman Ordinance (Cap 397).

7. In addition to the aforesaid, the following are the comments of the HKBA on the provisions of the IPCC Bill.

Commissioner's Categorization of Complaints

8. Clause 7(1) of the IPCC Bill indicates that the IPCC is 'to observe, monitor and review the manner in which reportable complaints are handled or investigated by the Commissioner'. This clause highlights the passive role of the IPCC and this is reinforced in the clauses that follow in the strict separation between the Commissioner's investigation role and the IPCC's review role.

9. The IPCC Bill proposes that the Commissioner has the sole power and discretion to categorize complaints as reportable. The Commissioner has, inter alia, to come to an opinion that a complaint is not vexatious or frivolous and is made in good faith, before categorizing a complaint as reportable. The Commissioner will only categorize a belated complaint as reportable if in his opinion, it is of a serious nature. Only reportable complaints will be investigated. The IPCC is to be notified of lists of reportable complaints and non-reportable complaints. It may only ask the Commissioner to reconsider the categorization of a non-reportable complaint. However, the IPCC cannot require the Commissioner to categorize a non-reportable complaint as a reportable complaint. If the Commissioner refuses to categorize a non-reportable complaint as a reportable complaint, the IPCC will only be provided with an explanation and has no other remedy. The HKBA finds this system unsatisfactory. It cannot be right that a complainant or even the IPCC will have to seek judicial review of an invalid categorization decision of the Commissioner before it can be set aside and the Commissioner directed to categorize the complaint in accordance with law.
10. The HKBA urges the Administration to empower the IPCC with the power to require the Commissioner to investigate a complaint he has categorized as non-reportable.

Making a Complaint or Request a Review

11. Clause 10(c) of the IPCC Bill proposes that a condition, among others, for categorization of a complaint as a reportable one is that it is made by or on behalf of a complainant 'directly affected' by police conduct. Clause 14 proposes to limit the categories of persons who may make a complaint on behalf of a complainant to three classes: (i) a parent or guardian making a complaint on behalf of a juvenile person; (ii) a relative or guardian making a complaint on behalf of a mentally incapacitated person; and (iii) a representative who has the written authorization from the complainant. These two requirements may exclude a witness of police misconduct from making a reportable complaint or requesting a review of a classification and will exclude anonymous complaints and complaints lodged by concern groups. As a matter of policy, the HKBA queries whether such restriction is necessary or appropriate.

Classifications

12. Clause 16 of the IPCC Bill indicates that the Commissioner is to conduct investigation into a reportable complaint and determine its classification after investigation. The IPCC may only see a report of the investigation conducted. Although the IPCC may interview privately for the purpose of considering a report, the Commissioner may prevent interviews from being conducted if he is of the opinion that the interviews would be likely to prejudice the

investigation of any crime or any complaint made to him. The sole discretion on the part of the Commissioner to classify complaints may be abused to divert attention of the IPCC away from deserving complaints simply by classifying them as 'customer service issues' suitable 'for informal resolution', since, with such a classification, the IPCC will not read in the investigation report any summary of the investigation and any finding of facts in relation to the complaint and the supporting evidence; the IPCC will most probably read only brief reasons for the classification. The Administration and the police force need to assure the Legislative Council and the public that the apparently more expeditious and cheaper method of informal resolution is properly utilized.

13. The HKBA considers that the Administration and the police force should make plain the standard of satisfaction at which the Commissioner will classify a reportable complaint as one that is substantiated. Similarly, the Administration and the police force should make plain the circumstances in which a reportable complaint will be classified as unsubstantiated.

14. The HKBA urges the Administration to empower the IPCC to conduct private interviews for the purpose of considering investigation reports without requiring the consent of the Commissioner. The HKBA also urges the Administration to delete Clause 16(3).

Consulting the IPCC

15. The HKBA urges the Administration to expand the scope of Clause 26 to require Commissioner to consult the IPCC not only on any proposal relating to the handling or investigation of reportable complaints but also on any significant amendment proposed to be made to the police general orders, the headquarters orders, the Hong Kong Police Force Procedures Manual, and any other orders or manuals of the police force that has anything to do with contact with members of the public, including suspects and arrested persons.

Observers

16. The HKBA urges the Administration to empower the IPCC to appoint observers, rather than proposing to vest the power of appointment with the Secretary for Security.

Financial and Other Provisions

17. Philip Stenning, at the beginning of his essay on *Evaluating Police Complaints Legislation: A Suggested Framework* (in Goldsmith and Lewis (eds), *Civilian Oversight of Policing: Governance, Democracy and Human Rights* (Hart Publishing, 2000) (at pp 146-163)), outlined the following factors for an effective process for handling public complaints against the police: (a) a sound legislative foundation; (b) dedicated, competent,

experienced and/or trained personnel to administer it; (c) a reasonable level of commitment and co-operation on the part of the police organizations and personnel to whom the process applies; (d) an adequate degree of, confidence in, and willingness to use, the process; and good faith, on the part of potential complainants; and (e) the commitment of political support and adequate resources for full and effective implementation of the process. The HKBA respectfully agrees and will invite the Administration to bear these factors in mind when considering the IPCC Bill.

18. The HKBA urges the Administration to ensure that the IPCC receives the financial provision necessary for it to perform its statutory functions, particularly the employment and retention of dedicated and competent staff and the commissioning of necessary research on police complaint data to enable feedback, assisted by public sector organizational learning, to be made to the Administration and the police management.

Dated 20 October 2007.

Hong Kong Bar Association

Independent Police Complaints Council Bill

The Administration's Response to the Position Paper of the Hong Kong Bar Association of 20 October 2007

Purpose

This note sets out the Administration's responses to the views put forward by the Hong Kong Bar Association (HKBA) on the Independent Police Complaints Council (IPCC) Bill in its position paper of 20 October 2007.

The Administration's response to HKBA's views

HKBA's view: To consider establishing a statutory entity, independent of both the police force and the IPCC, that is responsible for investigating complaints against members of the police force (paragraphs 4 to 8 of HKBA's position paper)

2. Under the existing police complaints system, the Complaints Against Police Office (CAPO) of the Police is responsible for handling and investigating complaints lodged by members of the public against members of the police force. CAPO operates separately from other Police formations to ensure its impartiality in handling the complaints. The IPCC is an independent civilian oversight body specifically appointed to monitor and review CAPO's investigation of the complaints. Members of the IPCC are drawn from a wide spectrum of the community on the basis of their ability, expertise and commitment to public service. To underline the IPCC's independence, an IPCC Secretariat operating as a separate government department has been established to provide full-time support to the IPCC in carrying out its monitoring and review functions.

3. There are effective checks and balances to ensure that the complaints lodged with CAPO are handled thoroughly, fairly and impartially. CAPO prepares detailed investigation reports on all reportable complaints for submission to the IPCC. The IPCC rigorously examines the reports. If IPCC members have doubts about a particular investigation, they may interview the complainant, the complaine(e)s and the witness(es). The IPCC can also request CAPO to submit for its reference any documents or information relevant to a complaint. In discharging their duties, IPCC members may observe CAPO's investigations in

person, on either a surprise or a scheduled basis. If the IPCC is not satisfied with the result of a CAPO investigation, it can ask CAPO to clarify or reinvestigate the complaint. It may also bring the case to the personal attention of the Chief Executive, together with recommendations as to its disposition. The IPCC has adequate means to ensure that the investigation of all reportable complaints lodged with CAPO is conducted properly and effectively.

4. The IPCC also monitors CAPO's investigation directly through its Observers Scheme under which IPCC members and 70 lay observers can undertake scheduled or surprise observation of the interviews and collection of evidence conducted by CAPO during its investigation of complaints. The observers will report to the IPCC their comments on whether the interviews or collection of evidence have been conducted in a fair and impartial manner as well as any irregularities detected.

5. The IPCC Bill seeks to codify a wide range of powers now available to the IPCC to enable it to closely scrutinize the process and manner in which CAPO handles complaints for the purpose of discharging its monitoring and review functions. These powers are :

- (a) to require the Police to provide explanations to support the categorization of a complaint as a "non-reportable complaint", and to require the Police to re-consider such categorization (Clause 15);
- (b) to advise the Police of the IPCC's recommendations on the Police's investigation reports, classification of complaints, the Police's handling or investigation of complaints, any faults or deficiencies in any police practices or procedures, and to advise the Police of the IPCC's opinions on the Police's disciplinary actions taken or to be taken in respect of a member of the police force (Clause 18);
- (c) to interview any person who is or may be able to provide information or other assistance to the IPCC in relation to an investigation report or an interim investigation reports submitted by the Police (Clause 19);
- (d) to require the Police to provide any information or materials, or clarify any facts or discrepancies relating to "reportable complaints" (Clause 20);
- (e) to require the Police to investigate or reinvestigate "reportable complaints" (Clause 21);

- (f) to require the Police to inform complainants or representatives of complainants of the classification of “reportable complaints” and the reasons for the classification (Clause 22);
- (g) to observe interviews and collection of evidence conducted by the Police in the course of investigating “reportable complaints” (Clause 23);
- (h) to require the Police to provide explanation in relation to the Police’s disciplinary actions taken or to be taken in respect of a member of the police force (Clause 24);
- (i) to require the Police to submit statistics of the types of conduct of members of the police force that have led to “reportable complaints”, and reports on actions taken or to be taken pursuant to the IPCC’s recommendations (Clause 25);
- (j) to require the Police to consult the IPCC on any proposed new police orders or manuals, or significant amendments to existing police orders or manuals, relating to the handling or investigation of “reportable complaints” (Clause 26); and
- (k) to report to the Chief Executive as the IPCC thinks necessary (Clause 28).

6. The Bill also obliges the Police to comply with the IPCC’s requirements (Clause 27), submit investigation reports to the IPCC and provide relevant information to facilitate the IPCC to monitor and review the Police’s investigation findings (Clauses 16 and 17).

7. The two-tier system as described above has been operating effectively. The IPCC has effective oversight over the handling of complaints by CAPO, ensuring that each reportable complaint is investigated thoroughly, fairly and impartially. It also enables the Police to identify inadequacies in their procedures and practices, and formulate solutions to improve their service. We consider that the police complaints system, as codified in the Bill, is appropriate and proportionate to our objective of ensuring that public complaints against members of the police force are handled fairly and impartially.

HKBA's view: The Commissioner of Police (CP) has the sole power and discretion to categorize complaints as reportable; the IPCC cannot require CP to categorize a non-reportable complaint as a reportable complaint; if CP refuses to categorize a non-reportable complaint as a reportable complaint, the IPCC will only be provided with an explanation and has no other remedy; to empower the IPCC to require CP to investigate a complaint he has categorized as non-reportable (paragraphs 9 to 10 of HKBA's position paper)

8. Clause 10 defines the criteria for categorizing a complaint as a reportable complaint, and clause 13 defines non-reportable complaints. The Police must act in accordance with these provisions in categorizing a complaint. Under the existing system, the Police are committed to providing sufficient information to enable the IPCC to consider whether a non-reportable complaint should be re-categorized. This practice has been codified in the Bill. Clause 8 requires the Police to submit a list of non-reportable complaints to the IPCC at such intervals and in such manner, as the Police and the IPCC may agree. The list must contain a brief description of all non-reportable complaints received by the Police and the reasons for categorizing the complaints as such. Such reasons should have already provided sufficient justification for categorizing the complaints as non-reportable complaints. If the IPCC has any questions or needs any clarifications with respect to the categorization of a non-reportable complaint, clause 15(3) empowers the IPCC to require the Police to provide explanations to support the categorization, and in relation to a complaint that is a non-reportable complaint only by virtue of its belated nature, the Police's opinion that the complaint is not of a serious nature. In addition, with the general provision under clause 7(2) which empowers the IPCC to do all such things as are reasonably necessary for, or incidental or conducive to, the performance of its functions under the Bill, the IPCC will be able to require the Police to provide additional information in relation to non-reportable complaints. Under clause 15(1), if the IPCC considers that a non-reportable complaint should be categorized as a reportable complaint, it may advise the Police of its opinion, and the Police must have regard to such opinion and reconsider the categorization. The Police are also obliged under clause 15(2) to inform the IPCC of the outcome of their reconsideration as soon as practicable. Clause 28 further empowers the IPCC to make reports to Chief Executive as it thinks necessary. Given the above-mentioned provisions, the IPCC will be adequately empowered to monitor

whether the Police's categorization of non-reportable complaints is appropriate and to take necessary action. Ultimately, the categorization of a complaint is to be determined by reference to the statutory provision and the facts of the case.

HKBA's view: Whether it is necessary or appropriate to restrict the categories of persons who may make a complaint on behalf of a complainant to those set out in clause 14 (paragraph 11 of HKBA's position paper)

9. CAPO receives complaints against members of the police force from various channels (e.g. members of the public, referrals from different police formations, other government departments and Legislative Council Members, etc). On receipt of a complaint lodged by the personally aggrieved person, CAPO will examine if the complaint relates to the conduct of a member of the police force while on duty or in the execution or purported execution of his duties, the conduct of a member of the police force who identified himself as such a member while off duty, or any police practices or procedures. If so, CAPO will categorize the complaint as a reportable complaint and will submit an investigation report to the IPCC for examination after the completion of its investigation. Complaints filed by an individual other than the personally aggrieved person will be categorized as non-reportable complaints. CAPO regularly submits a list of non-reportable complaints to the IPCC for reference. As set out in paragraph 8 above, the Bill provides the IPCC with sufficient powers to monitor the appropriateness of the categorization of non-reportable complaints. Despite the categorization of a complaint as a non-reportable complaint, CAPO will look into the facts of the case and refer it to the relevant police formation for further follow-up actions as appropriate. Every complaint received by CAPO, irrespective of whether it is categorized as a reportable complaint or a non-reportable complaint, will be examined and handled in a fair and proper manner.

10. Clause 14 of the Bill already enables representatives to make complaints on behalf of complainants under a variety of circumstances. Specifically, clause 14(1)(c) allows a representative to make a complaint on behalf of a complainant if he/she has a written authorization from the complainant. We believe that this arrangement has provided for sufficient flexibility to enable a third party to make a complaint on behalf of an aggrieved person. From a practical point of view,

allowing any third party (including one without any authorization of the directly affected person) to file a complaint may not have taken into account the wish and privacy of the directly affected person who may then be put under pressure to disclose information which he would otherwise not be willing to disclose. Indeed, without the full cooperation of the directly affected person in providing accurate and comprehensive information for the Police to investigate the complaint, it would be difficult for the Police to draw up a full and fair report on the complaint and impracticable for the IPCC to observe, monitor and review whether the Police have handled the complaint impartially.

HKBA's view: The IPCC may only see a report of the investigation conducted whereas CP is to conduct investigation into a reportable complaint and determine its classification after investigation; CP may prevent IPCC interviews from being conducted if he is of the opinion that the interviews would be likely to prejudice the investigation of any crime or any complaint made to him; the sole discretion on the part of CP to classify complaints may be abused to divert attention of the IPCC away from deserving complaints simply by classifying them as "customer service issue" suitable for "informal resolution"; IPCC will not read in the investigation report any summary of the investigation and any finding of facts in relation to the complaint and the supporting evidence and will most probably read only brief reasons for the classification; the Administration and the Police need to assure the Legislative Council and the public that the apparently more expeditious and cheaper method of informal resolution is properly utilized; to make plain the standard of satisfaction at which CP will classify a reportable complaint as one that is substantiated; to make plain the circumstances in which a reportable complaint will be classified as unsubstantiated; to empower the IPCC to conduct private interviews for the purpose of considering investigation reports without requiring the consent of CP; to delete clause 16(3) (paragraphs 12 to 14 of HKBA's position paper).

IPCC's powers in considering investigation reports

11. As explained in paragraphs 2 to 6 above, the Bill provides the IPCC with a wide range of powers to closely scrutinize the process and manner in which CAPO handles public complaints against the Police, and the Police will be

statutorily obliged to comply with the IPCC's requirements made under the Bill.

12. IPCC has a role to play even before CAPO has completed its investigation and submitted an investigation report to IPCC. Clause 17(1) of the Bill provides that if the investigation of a reportable complaint is not completed within six months from the date of receipt of the complaint, or such shorter period as the Police and the IPCC may agree, the Police must as soon as practicable after the expiry of those six months or that shorter period, submit to the IPCC an interim investigation report. Clause 17(2) specifies that until the completion of the investigation, the Police must submit to the IPCC further interim investigation reports after the expiry of every successive period of six months or such shorter period as the Police and the IPCC may agree. Under clause 17(3), an interim investigation report must explain the progress of the investigation and the reasons for not being able to complete the investigation within the six months' period or such shorter period covered by the report. Clause 17(4) empowers the IPCC to advise the Police of its opinion on the explanation given under clause 17(3). Indeed, for reportable complaints involving serious allegations of assaults resulting in death or serious injuries, or involving wide public interest, the IPCC has established the Serious Complaints Committee to closely monitor them. The Committee requires CAPO to provide monthly progress reports on these cases, and may seek clarifications or raise questions on the progress reports while the investigation of the cases is still underway.

Interviews

13. Clause 19(1) of the Bill empowers the IPCC to, at any time after the Police have submitted an investigation report to it, interview any person who is or may be able to provide information or other assistance to the IPCC for the purpose of considering the report. Such an interview is not subject to CP's consent. Clause 19(2) stipulates that the IPCC may with the consent of CP and for the purpose of considering an interim investigation report interview any person who is or may be able to provide information or other assistance to the IPCC. As such an interview will be conducted when the investigation is still underway, the Police as the investigative authority have the duty to ensure that the investigation will not be adversely affected or prejudiced by the interview. The arrangement for obtaining CP's consent serves this purpose. Clause 19(3) specifies that CP must give his

consent unless the interview would be likely to prejudice crime or complaint investigation. CP will not lightly decline to give consent to such an interview. CP will take into account all facts and evidence available, and carefully assess the risk of any crime or complaint investigation being prejudiced if the interview is conducted. In the very rare circumstances where CP declines to give his consent to an interview, he will provide an explanation to the IPCC. If the IPCC is not satisfied with CP's explanation, it may under clause 28 make a report to the Chief Executive. In any event, CAPO is invariably required to submit an investigation report on the complaint concerned to the IPCC in accordance with clause 16. If by then the IPCC still considers it necessary to interview any relevant persons, it may do so under clause 19(1). In practice, since the introduction of the IPCC Interviewing Witnesses Scheme in 1994, the Police have not objected to any interviews to be conducted under the Scheme.

Informal resolution cases

14. "Informal Resolution" cases are minor cases where the Police resolve the complaints with the complainants through reconciliation without requiring a full investigation. Informal resolution does not apply if there is a significant conflict between the testimony of the complainant and that of the complaine; the complainant does not agree to its use; circumstances indicate that if the complaint is fully investigated and substantiated, criminal or disciplinary charges will ensue; or the complaint refers to a refusal or reluctance to grant bail. Informal resolution cannot be adopted at the sole discretion or as a matter of convenience on the part of the Police.

15. Informal resolution cases are reportable complaints and are subject to the IPCC's monitoring and review as set out in paragraphs 2 to 6 above. For example, the IPCC may under clause 20 of the Bill require the Police to provide any information or material relating to an informal resolution case. IPCC members and observers may, under clauses 23 and 34 respectively, undertake scheduled or surprise observations of interviews conducted by the Police in respect of an informal resolution case.

16. Clause 16(3) of the Bill provides that clause 16(2)(a) (on "a summary of the investigation") and (b) (on "a finding of facts in relation to the complaint and

the evidence in support of the finding”) does not apply to an investigation report on an informal resolution case as CAPO deals with such cases through conciliation with the complainants without conducting a full investigation. This notwithstanding, the Police are required to submit reports on these cases to the IPCC so that the IPCC can monitor the manner in which CAPO handles these cases and take necessary follow-up actions.

17. A complaint is classified as “substantiated” where there is sufficient reliable evidence to support the allegation, and as “unsubstantiated” where there is insufficient evidence to support the allegation. Generally, the standard of proof for classifying complaints is the “balance of probabilities”.

HKBA’s view: To expand the scope of clause 26 to require CP to consult the IPCC on any significant amendment proposed to be made to the police general orders, the headquarters orders, the Hong Kong Police Force Procedures Manual, and any other orders or manuals of the police force that has anything to do with contact with members of the public, including suspects and arrested persons (paragraph 15 of HKBA’s position paper)

18. Clause 26 of the Bill empowers the IPCC to require CP to consult it on any proposed new order or manual of the police force that relates to the handling or investigation of reportable complaints, or any significant amendment proposed to be made to the police general orders, the headquarter orders, the Hong Kong Police Force Procedures Manual or any other orders or manuals of the police force in so far as the amendment relates to the handling or investigation of reportable complaints. The power so conferred to the IPCC is appropriate and proportionate in facilitating the IPCC’s effective discharge of its functions of monitoring and reviewing the Police’s handling of complaints against the Police. Under clause 7(1)(c) of the Bill, the Council is empowered to identify any fault or deficiency in any practice or procedure adopted by the police force that has led to or might lead to reportable complaints and to make recommendations to CP or the Chief Executive or both of them in respect of such practice or procedure. Such recommendations may be made at the initiative of the IPCC without reference to any investigation report submitted by CAPO.

HKBA's view: To empower the IPCC to appoint observers (paragraph 16 of HKBA's position paper)

19. Clause 32 of the Bill provides that the function of an observer is to assist the IPCC to observe the manner in which the Police handle or investigate reportable complaints. In line with the current practice, the Secretary for Security will continue to appoint suitable candidates from a wide spectrum of sectors as observers, having regard to their integrity, ability, experience and commitment to public service, so as to provide effective assistance to the IPCC. In making the appointments, the Secretary for Security will take into account the IPCC's opinions and views.

HKBA's view: To consider various factors to ensure an effective process for handling public complaints against the Police; to ensure that the IPCC receives the financial provision necessary for it to perform its statutory functions (paragraphs 17 to 18 of HKBA's position paper)

20. We thank HKBA for sharing with us Philip Stenning's suggested factors for an effective process for handling public complaints against the Police. The enactment of the IPCC Bill will provide a clear legislative basis for the IPCC to exercise a wide range of powers to discharge its functions of monitoring and reviewing the Police's handling of public complaints. The Police will be legally obliged to submit investigation reports to the IPCC, provide information as the IPCC requires for reviewing the Police's investigation findings and comply with the IPCC's other requirements. Over the years, we have also introduced a number of improvements to the police complaints system to enhance its effectiveness, credibility and transparency, and in turn public confidence in making use of it. For example, the IPCC Interviewing Witnesses Scheme was introduced in 1994 under which the IPCC may interview witnesses, including complainants, complainees, pathologists, government chemists and independent witnesses, to clarify matters. The Observers Scheme has been put in place since 1996 and expanded in 1999 for IPCC members and lay observers to make scheduled or surprise visits to observe investigations of complaints conducted by the Police. The IPCC Serious Complaints Committee was set up in August 1996 to closely monitor selected serious complaints in respect of which CAPO is required to

provide monthly progress reports. In addition, the bi-monthly joint meetings between the IPCC and the CAPO have been partially open to the public since 1998.

21. The Bill will provide the IPCC with its own secretariat and the flexibility to employ its own staff to assist it in performing its statutory functions. In this regard, we are committed to ensuring that the IPCC will continue to be provided with appropriate support and resources under the new regime. We are in discussion with the IPCC on this to work out the detailed arrangements.

Security Bureau
January 2008



THE

LAW SOCIETY
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Annex E

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SBCR 1/2801/77

BY FAX (25243762) AND BY POST

14 August 2007

Miss Jane Lee
Office of the Secretary for Security
Government Secretariat
Lower Albert Road,
Hong Kong.

Dear Miss Lee,

INDEPENDENT POLICE COMPLAINTS COUNCIL BILL

Thank you for your letter dated 27 June 2007 to our President, enclosing the above Bill and relevant papers on the proposed legislation for our consideration.

The Law Society Criminal Law & Procedure Committee has reviewed the Bill and would like to seek clarifications from the Administration on the rationale behind including Section 19(6) in the Bill.

Yours sincerely,

Christine W. S. Chu

Assistant Director of Practitioners Affairs

P.59

President Lester G. Huang	Vice-Presidents No. 103153 Wong Kwai Huen Junius K.Y. Ho	Council Members Peter C.L. Lo Michael J. Lintern-Smith Ip Shing Hing Billy W.Y. Ma Sylvia W.Y. Siu	Cecilia K.W. Wong Alex T.H. Lai Kenneth S.Y. Ng Andrew Jeffries	Stephen W.S. Hung Dieter L.T. Yih Ambrose S.K. Lam Joseph C.W. Li	Amirali B. Nasir Melissa K. Pang Thomas S.T. So James E. Jamison	Secretary General Patrick R. Moss Deputy Secretary General Raymond C.K. Ho
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GOVERNMENT SECRETARIAT
LOWER ALBERT ROAD
HONG KONG

本函檔號 OUR REF: SBCR 6/1/2801/77

來函檔號 YOUR REF: Criminal

By Mail

電話號碼 Tel. No.: 2810 3523

傳真號碼 Fax. No.: 2524 3762

17 September 2007

Ms Christine W S Chu
Assistant Director of Practitioners Affairs
The Law Society of Hong Kong
3/F, Wing On House
71 Des Voeux Road
Central
Hong Kong

Dear Ms Chu,

Independent Police Complaints Council Bill

Thank you for your letter of 14 August 2007, which sought our clarifications on the reason for including clause 19(6) in the Independent Police Complaints Council (IPCC) Bill.

Clause 19 allows the IPCC to, for the purpose of considering an investigation or interim investigation report, interview any person who is or may be able to provide information or other assistance to IPCC in relation to the report. Clause 19(6) stipulates that a solicitor or counsel does not have a right of audience before the IPCC at such an interview unless he is the interviewee.

Such interviews are intended to facilitate the IPCC in performing its statutory function to monitor whether the Police have handled a complaint fairly and impartially. The IPCC may seek clarifications on any apparent ambiguities, discrepancies or other points relating to the reports through these interviews. The interviewee attends the interview on an entirely voluntary basis. In view of the nature and intended purpose of such interviews, we consider the arrangement now proposed under clause 19(6) appropriate. Clause 19(6) does not however, prohibit a solicitor or counsel from accompanying the interviewee at the interview and communicating with or tendering advice to the interviewee in private.

We thank the Law Society Criminal Law and Procedure Committee for reviewing the IPCC Bill. We welcome any further comments that the Committee may have on the Bill.

Yours sincerely,

A handwritten signature in cursive script, appearing to read 'J Lee', is written in dark ink.

(Miss Jane LEE)
for Secretary for Security



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BY FAX (25243762) AND BY POST

17 October 2007

Miss Jane Lee
 Office of the Secretary for Security
 Government Secretariat
 Lower Albert Road,
 Hong Kong.

Dear Miss Lee,

INDEPENDENT POLICE COMPLAINTS COUNCIL BILL

Thank you for your letter dated 17 September 2007.

We are pleased to confirm that the Law Society Criminal Law & Procedure Committee has considered and has no objection to the above Bill.

Yours sincerely,

Christine W. S. Chu
 Assistant Director of Practitioners Affairs

P.67

President Lester G. Huang	Vice-Presidents No. 103153 Wong Kwai Huen Junius K.Y. Ho	Council Members Peter C.L. Lo Michael J. Lintern-Smith Ip Shing Hing Billy W.Y. Ma Sylvia W.Y. Siu	Cecilia K.W. Wong Alex T.H. Lai Kenneth S.Y. Ng Andrew Jeffries	Stephen W.S. Hung Dieter L.T. Yih Ambrose S.K. Lam Joseph C.W. Li	Amirali B. Nasir Melissa K. Pang Thomas S.T. So James E. Jamison	Secretary General Patrick R. Moss Deputy Secretary General Raymond C.K. Ho
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Police General Order (PGO) 21-07 and 26-02

PGO 21-07 Handling Reports and Recording of Personal Particulars from Complainants/ Witnesses

[mandatory and non-compliance will make an officer liable to disciplinary action]

All reports made to a Formation by an informant in person or by telephone, fax, email or letter, shall be entered without delay in Communal Information System (CIS) as appropriate. Reports will not be entered in unofficial registers or on loose paper.

PGO 26-02 Complaints Against Police - Reporting and Immediate Action

[mandatory and non-compliance will make an officer liable to disciplinary action]

Definitions

'Aggrieved Party' is defined as a person who seeks personal redress for the alleged misconduct of a member of the Force.

'Complaint Against Police' is defined as a complaint, made by a member of the public against the conduct of a member of the Police Force in the execution of his official duties, or when on duty, where the complainant is an aggrieved party to the alleged misconduct, but does not include:-

(a) traffic complaints, complaints against the unjust issue of Fixed Penalty Notices under the Fixed Penalty (Public Cleanliness Offences) Ordinance, Cap. 570, or complaints made against an officer in his personal capacity, or when off duty, unless such complaint refers to some misconduct connected with his official authority; and

(b) complaints against police standards, procedures or methods unless the complainant is an aggrieved party.

'Traffic Complaints' are complaints that a person is unjustly

or unfairly the subject of an alleged traffic violation. These complaints include allegations of:-

- (a) the complainant was the only person ticketed, whilst other offenders were not;
- (b) the facts as presented by the Police are an incorrect description of events;
- (c) the Police did not accept the complainant's explanation; and
- (d) the Police had failed to exercise discretion.

'Member of the Police Force' is defined as any police officer of the Hong Kong Police Force and the Hong Kong Auxiliary Police Force, traffic warden and civilian Government employee including non-civil service contract staff, attached to the Regular and Auxiliary Forces.

'Forewarning' is defined as when a Complaint Against Police has been made, a police officer shall not disclose to the complainee or any other person, except in the execution of his duty, any details of the complaint or identity of the complainant.

'Sub-judice' means the matter is under judicial consideration but not yet decided.

Complaints to Individual Officers

Whenever a complaint is made to a police officer on outdoor duties, he will take the following action:-

- (a) if immediate action is required, the officer will report the case to his Divisional Console by telephone (beat radio should not be used). The Divisional Controller will take appropriate action. If a telephone is not available for contact, he will invite and accompany the complainant to the nearest police station, or report centre where the Duty Officer (DO) will take appropriate action;

(b) if the matter does not require immediate action the officer will report the facts to the DO when he next returns to the police station; and

(c) the officer receiving the complaint from the complainant will inform him that his complaint will be recorded and that he will be informed in due course of the action taken and any further queries should be directed to the Complaints Against Police Office (CAPO).

2. Whenever a Complaint Against Police is made to a police officer concerning his own actions, or relating to an incident to which he is a party or is directly involved, he is to inform his immediate supervisory officer at the earliest opportunity. He will not initiate action but if asked, will inform the complainant how to lodge a complaint, i.e. to any police station, to Complaints Against Police Reporting Centre in person, by telephone, via the Complaints Hotline (2866 7700), fax or e-mail.

3. When a Complaint Against Police is brought to the attention of a supervisory officer he will initiate action to secure independent witnesses and corroborative evidence, and will ensure that the facts are reported to the DO immediately.

Complaints to Police Stations

4. Where a report is made to a police station:-

(a) in all cases inform the complainant that his/her Complaint Against Police will be passed to CAPO for investigation;

(b) the DO will record the Complaint Against Police in the CIS, giving brief details, together with sufficient information to identify the complainant and/or witnesses and complaine(s), and transfer the case to CAPO via CIS;

(c) if the allegation is one of crime or misconduct of a serious or sensitive nature, the RN should only include the fact that a Confidential Report has been received. It should not contain any details of the complaint or those of the complainant or complaine. The DO should immediately inform the Duty Officer of the Complaints Against Police Reporting Centre or

Reserve Inspector who will decide on further actions to be taken. Sub-paragraphs (d) to (h) below will not apply. If in doubt, DO of the Complaints Against Police Reporting Centre Duty Officer or Reserve Inspector should be consulted;

(d) for complaints other than Assault, if the DO notes any injuries on the complainant, make a note of this along with any comments by the complainant or police officers in the Remarks column;

(e) either the complainant or a police officer will complete the Pol. 964 (First Information of Complaint Against Police Report) (Rev 3/2005) generated via the POINT system;

(f) the complainant may, if he/she wishes, take the Pol. 964 (Rev 3/2005) away for completion and then send it to CAPO by facsimile (Fax 2200 4460/2200 4461/2200 4462) or by post at his/her convenience;

(g) a photocopy of the completed Pol. 964 (Rev 3/2005) will be given to the complainant;

(h) the DO of CAPO Reporting Centre staff will send the completed Pol. 964 (Rev 3/2005) to the respective CAPO Office by facsimile together with the transfer of RN via CIS;

(i) the original Pol. 964 (Rev 3/2005) should then be forwarded to the respective CAPO Office by despatch;

(j) where the complaint is one of Assault, complete both Part I and Part II of a Pol. 964 (Rev 3/2005) and arrange escort to accompany the complainant for medical treatment. If the complainant consents to the taking of photographs of his injuries, action should be taken in accordance with para. 9;

(k) contact CAPO if the complaint requires immediate action. In other cases, inform CAPO as soon as practicable by telephone and transfer the case to CAPO via CIS. In any event send the Pol. 964 (Rev 3/2005) in accordance with para. (f) and (h); and

(1) if a complaint requires immediate action outside CAPO duty hours, consider contacting the CAPO Reserve Inspector through HQ CCC for advice.

Complaints By Letter

5. Where a Complaint Against Police is received by letter, the Formation Commander will:-

(a) record the complaint in CIS. If the complaint relates to crime or misconduct of a serious or sensitive nature, the RN should only include the fact that a 'Confidential Report' was received. It should not contain details of the complaint or those of the complainant or complainee;

(b) forward the letter to CAPO as soon as practicable; and

(c) treat an anonymous letter as if it had been received from an identifiable person.

6. If there is any doubt, contact the SSP CAPO who will direct whether or not an incident is to be classified as a Complaint Against Police.

Complaints made during a Court Proceeding

7. Where during any court proceedings a complaint is made about the actions of a member of the Force, the prosecutor will record such complaint on the case file. Upon receipt of the file from the prosecutor, or upon being informed that a complaint has been made, the SIP Court or equivalent, will inform CAPO immediately by telephone and confirm in writing. Where the complaint is one of Assault, the officer should:-

(a) take photographs of complainant's alleged injured part in accordance with para. 9 below;

(b) issue Pol. 42 and request escort from the nearby Police Station to accompany the complainant for medical treatment with his/her consent;

(c) make a brief physical check with the complainant for obvious signs of

injury and make a note of such in the OB; and

(d) take action in accordance with para. 26-02 (4)(e) to 4(j).

8. An allegation which challenges the admissibility of cautioned statement or which is raised by defendant in giving evidence for his defence shall not be referred to CAPO unless the defendant clearly states that he/she wants to make a formal Complaint Against Police or if the Court requires investigation by the police.

Taking Photographs of Complainant's Injury

9. Where a complaint of Assault is made in person to a police station or to Court, Pol. 964 (Rev 3/2005) should be completed. If the complainant consents to the taking of photographs of his/her injuries, the DO or SIP Court will:-

(a) arrange for the completion of Pol. 964 (Rev 3/2005) Part II;

(b) if the complainant is under the age of 16, consent should be obtained from his parent/guardian;

(c) take appropriate colour photographs using an automatic camera. Instant/Polaroid/digital camera should NOT be used for this purpose;

(d) where no physical injuries can be seen, take photographs of those parts of the body which have allegedly been struck;

(e) if the taking of photographs involves parts of the body which are not commonly exposed, the DO will authorise another officer of the same sex as the complainant to take the photographs;

(f) one roll of film should be used for taking photographs of a complainant or complainants for complaints arising from the same incidents;

(g) the number of photographs taken in respect of each complainant and the Pol. 69A number should be recorded in the RN for cases reported to a

police station, and an equivalent entry should be made in the OB for cases reported in court; and

(h) the used film should be treated as an exhibit and handed over to the CAPO investigator as soon as practicable.

Traffic Complaints

10. Traffic complaints shall be investigated as unfair issue of summons/Fixed Penalty Ticket by the Formation which instituted the summons process or by Central Traffic Prosecutions Division (CTPD) in case CTPD decides an investigation/review is required. CSP Traffic (SP CTPD) will decide whether to proceed with action or to cancel the process.

11. When a complaint made to a police station or a Traffic Office relates only to traffic matters, the following action will be taken:-

(a) if the complaint is made in person or by telephone, the DO will obtain all relevant details, record the complaint in the CIS system and inform the complainant that the matter will be investigated and that he will be informed of the result as soon as possible;

(b) if the complaint is received by letter, it shall be acknowledged by GF 17 and an entry made in the station or Traffic Office CIS system;

(c) a hard copy of the RN shall be despatched without delay to CSP Traffic (SP CTPD) who, where possible, will take steps to delay the processing of a Fixed Penalty Ticket Pol. 525 or Pol. 570 or summons application and monitor the investigation of the complaint. CSP Traffic (SP CTPD) will then issue a Pol.568 to the Formation Commander concerned;

(d) the Formation Commander, on receiving the Pol 568, shall cause an enquiry to be made and forward his recommendations and investigation papers, which should include a statement from the reporting police officer, copy of the relevant notebook entry and a sketch plan, where relevant, to CSP Traffic (SP CTPD) without delay. Enquiries into complaints

concerning Pol. 525, Pol. 570 or summons applications shall be completed within 30 days of the date of the Pol 568;

(e) On receiving the completed Pol. 568, CSP Traffic (SP CTPD) shall inform the complainant by letter of the outcome of the enquiry and the decision reached; and

(f) where a person has been charged and bailed for a traffic offence and alleges that the charge is unjust or unfair, the Formation Commander, will review the evidence to satisfy himself that there is a prima facie case before the complainant appears in court or before the date set for trial.

12. When a traffic complaint is made either in person or in writing to a police station or to a Traffic Office contains a complaint of wilful fabrication of evidence, misconduct of a police officer or lack of appropriate action by Police, i.e. dual complaints, the following additional action shall be taken:-

(a) action as per PGO 26-02 paragraphs 4 or 5 above and transfer of the case to CAPO, via the CIS system;

(b) SSP CAPO will then consider the substance of the Complaint Against Police and shall either:-

(i) classify the complaint as 'minor' and refer it back to the Formation Commander for investigation into the Complaint Against Police; or

(ii) treat it as a separate issue from the Traffic complaint and cause a separate investigation to be done either by CAPO or an appropriate formation;

(c) SSP CAPO shall inform CSP Traffic (SP CTPD) and the Formation Commander of the decision made without delay;

(d) a Formation Commander who is required to investigate a Complaint Against Police in a dual complaint relating to Traffic matters, will forward the CAPO file direct to the CAPO Regional Office and will not be required to forward the file to CSP Traffic (SP CTPD) or to make any

comment in relation to the Traffic complaint on the file;

(e) To enable CTPD to examine the Traffic complaint, the following documents, if any, are to be attached to the CTPD Action Form by the Formation Commander who is required to investigate the Complaint Against Police, or CAPO, as appropriate:-

(i) Pol. 154 of the complainant, Pol. 964, and/or letter and sketch from the complainant;

(ii) Pol. 154 of witnesses provided by the complainant and of independent witnesses located by police, if they are relevant to the traffic complaint investigation;

(iii) Pol. 154, Pol. 155, copy of notebook entry and sketch of the complaine;e;

(iv) Pol. 155 of the investigating officer; and

(v) Any other documentary information relevant to the traffic complaint surfaced during the Complaint Against Police investigation;

(f) CSP Traffic (SP CTPD) shall consider the traffic aspects of the complaint and endorse his decision on the CTPD Action Form and will inform the complainant of the result of investigation by letter and copy the letter to CAPO for reference; and

(g) SSP CAPO shall inform the complainant of the result of the enquiry into the Complaints Against Police aspect of the complaint.

13. When a traffic complaint is made direct to Traffic HQ:-

(a) CSP Traffic (SP CTPD) shall, if possible, suspend action on the Pol. 525 or Pol. 570 or summons and acknowledge the complaint. If the complaint only concerns traffic matters, he may refer the complaint to the appropriate Formation Commander for enquiry;

(b) the Formation Commander shall take action as outlined in the CTPD

Action Form. If the complaint also includes a Complaint Against Police, as defined in PGO Chapter 26, he shall forward the complaint to SSP CAPO who shall take action as outlined in PGO 26-02 paragraph 12(b) above; and

(c) at the conclusion of the enquiry, CSP Traffic (SP CTPD) and SSP CAPO shall take action as appropriate, as outlined in PGO 26-02 paragraph 12(f) or 12(g) above.

14. When a traffic complaint is made direct to CAPO, the following action shall be taken:-

(a) if the complaint relates solely to Traffic matters:-

(i) obtain full particulars of the complaint, if made in person;

(ii) acknowledge a written complaint;

(iii) inform the complainant that the matter will be dealt with by CSP Traffic (SP CTPD); and

(iv) forward the complaint to CSP Traffic (SP CTPD) without delay for action;

(b) if the complaint includes a Complaint Against Police:-

(i) acknowledge a written complaint;

(ii) record the complaint in CIS;

(iii) SSP CAPO will decide whether or not the Complaint Against Police aspect is considered minor;

(iv) if considered minor, investigation of the Complaint Against Police aspect of a dual complaint will be passed to the Formation Commander for action as outlined in PGO 26-02 paragraph 12(d) above and FPM 26-05; and

(v) inform CSP Traffic (SP CTPD) of the action taken who will take appropriate action as outlined in paragraphs 11(c) and 12(f).

Police General Order (PGO) 26-20

PGO 26-20 Forewarning of Complainee in Complaint Against Police Case

[mandatory and non-compliance will make an officer liable to disciplinary action]

All complainees in Complaint Against Police cases should not be forewarned of the complaints against him by another police officer and that a breach of such an order should amount to a disciplinary offence. The objective is to minimise the opportunity for a complainee/police witness involved in a complaint to interfere with other witnesses or to conceal, destroy or alter evidence.

2. Details as to the application of Forewarning, examples, responsibility for investigation and the reporting and recording procedures are laid down in FPM 26-20.