

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

**Administration's response to the issues raised by
the Independent Police Complaints Council (IPCC)
in its submission of March 2008 to the Bills Committee and
to relevant comments of the Bills Committee**

At its meeting held on 6 March 2008, the Bills Committee requested the Administration to provide a response to the issues raised by the IPCC in its submission of March 2008 to the Bills Committee. A table setting out the Administration's response to these issues as well as the relevant comments made by the Bills Committee at its meetings held on 22 January, 29 January, 21 February and 28 March 2008 is at the Annex for Members' reference.

2. Subject to Members' comments on the proposed amendments to the clauses concerned of the Bill as set out at the Annex, we will submit the necessary proposed Committee Stage Amendments for Members' consideration in due course.

Security Bureau
April 2008

**Administration’s response to the issues raised by the Independent Police Complaints Council (IPCC)
in its submission of March 2008 to the Bills Committee and to the relevant comments made by the Bills Committee**

IPCC’s comments	Bills Committee’s comments	Administration’s response
<p>1. Clause 20 – the Commissioner of Police (CP) to provide information relating to reportable complaints (RCs); and Legal Professional Privilege (LPP)</p>		
<p>With due respect to the common law position of LPP and the rights conferred by the Basic Law, the IPCC maintains that CP should not have the discretion to invoke his LPP and let (or not let) the IPCC see the information as he deems fit. The IPCC would be seriously constrained in discharging its function of monitoring the Police’s investigation without knowing whether and what information the Police has obtained arising out of or in the course of complaint investigation that may shed light on the determination of classification of an allegation.</p> <p>The Administration has previously produced, at the Bills Committee’s request, two cases involving out-of-court settlement</p>	<p>At the Bills Committee meeting held on 29 January 2008, the Bills Committee requested the Administration to reconsider the views of the IPCC regarding full and unrestricted access to information, or otherwise to consider setting out in the Bill the circumstances under which CP might refuse the IPCC's request for information subject to LPP that related to a reportable complaint, and/or to provide for the Secretary for Security or the Chief Secretary for Administration to determine whether the IPCC's request for information subject to LPP should be acceded to.</p>	<p>(1) As stated in LC Paper No. CB(2)829/07-08(01), we are committed to ensuring that the IPCC has access to the relevant information for monitoring the handling of reportable complaints by the Police, and the Bill has been drafted to enable the IPCC to have wide access to such information.</p> <p>In respect of information protected by LPP, we remain of the view that the common law position should be preserved. LPP is the cornerstone of our legal system, and is enshrined and safeguarded in the Basic Law. The Bill does not abrogate LPP, and permits the Police to consider waiving</p>

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<p>in which the IPCC's request for information had been declined (LC Paper No. CB(2)576/07-08(02)). The first case in particular demonstrates how legal advice affects the classification of an allegation, and how CP's claim of LPP hampers the IPCC's access to information pertinent to discharging its function of examining Complaints Against Police Office (CAPO)'s investigation and handling of a complaint. The IPCC sees the need to apprise the Bills Committee of the essence of the case to explain why the IPCC attaches great importance to having access to legal advice.</p> <p>In the abovementioned case, the IPCC requested CAPO to consider changing the "Unsubstantiated" classification of an "Assault" allegation in view of the Magistrate and Forensic Pathologist's unfavourable comments on the complainee (COMEE)'s version of the complainant (COM)'s injuries. Having noted that COM had sought damages in connection with his</p>		<p>their right to LPP on a case-by-case basis so that the IPCC will be provided with sufficient relevant information pertaining to the reportable complaints concerned for performing its function of monitoring the handling of police complaints.</p> <p>For the complaint mentioned by the IPCC involving civil litigation settled out-of-court, CAPO did not provide information on the relevant civil proceedings to the IPCC as the IPCC had requested since such information concerned communication between the Police and their legal adviser made for the purposes of the proceedings and was subject to LPP. CAPO also did not provide the Consent Order concerned to the IPCC as the IPCC had requested since the Order contained a confidentiality provision requiring parties to the Order not to disclose its content to a third party. The Police</p>

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<p>injuries and the civil claim was settled out of court, the IPCC also requested information of the relevant civil proceedings which would shed light on the reason for the settlement with COM to see if that would in turn impact on the classification. CAPO initially refused to change the "Unsubstantiated" classification of the "Assault" allegation and to provide CP's communications with the Department of Justice (DoJ) on the case by claiming LPP. After protracted discussions with the IPCC, CAPO agreed to classify the "Assault" allegation as "Not Fully Substantiated". IPCC still had reservations about the "Not Fully Substantiated" classification and requested to have sight of the content of the Consent Order. CAPO advised that the IPCC's request could not be acceded to owing to a confidentiality clause in the Consent Order. Upon the IPCC's insistence of seeing DoJ's advice on the out-of-court settlement, CAPO finally agreed to classify the allegation as</p>		<p>had in fact applied to the court for lifting the confidentiality provision. However, as the plaintiff did not appear at the hearing on the application, the court did not approve the application. Since that case, the Police have adopted a new confidentiality provision which permits the Police to disclose the content of a Consent Order without having to obtain the prior consent of the other party to the Order.</p> <p>The Police would like to emphasize that the change of the classification of the allegation mentioned by the IPCC from "unsubstantiated" to "substantiated" was based on careful consideration of the court's comments, the forensic pathologist's advice and the IPCC's comments. There was no question of the Police revising the classification upon the IPCC's insistence to see DoJ's advice on the</p>

<p>IPCC’s comments</p>	<p>Bills Committee’s comments</p>	<p>Administration’s response</p>
<p>“Substantiated”, yet still refusing the IPCC sight of the Consent Order or the legal advice. If CP could claim LPP and if this is accepted, it is doubtful if cases like this could be properly dealt with.</p> <p>The Bills Committee’s attention is also drawn to the fact that recently CAPO has departed from a standing practice of prior consultation with the IPCC on significant amendments to police procedures and <i>unilaterally</i> removed from the CAPO Manual the requirements to record in CAPO’s investigation reports (to the IPCC) the legal advice on complaint cases, including a statement by the legal adviser that he does not need to accept a case for advice, and CAPO’s decision not to seek legal advice on an assault allegation. In other words, following such amendments, IPCC would not even know whether or not CAPO has sought legal advice. The IPCC has raised strong objection to the amendments which would restrict the</p>		<p>out-of-court settlement.</p> <p>(2) The CAPO Manual is reviewed annually and as when necessary. It has been CAPO’s practice to consult the IPCC on any significant amendments to the CAPO Manual. As part of the annual review conducted in 2007, CAPO amended the CAPO Manual to remove provisions that DoJ’s statement of not accepting a case for advice and the Superintendent (CAPO)’s decision of not referring an assault case to DoJ should be referred to or included in the report submitted to the IPCC. This notwithstanding, DoJ’s statement of not accepting a case for advice must be recorded in the case file in accordance with the CAPO Manual. Likewise, the Superintendent (CAPO)’s decision of not referring an assault case to DoJ must also be recorded in the case file. As the case files are submitted to the</p>

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<p>IPCC's access to information pertaining to complaints investigation. Nevertheless, CAPO insisted on the amendments and argued that the amended versions were merely a true reflection of the spirit of LPP vested with CP whereas the original provisions were wrong in the common law principle.</p> <p>To enable the IPCC to properly discharge its function of monitoring the investigation of police complaints, the IPCC maintains that an express provision allowing the IPCC full and unrestricted access to information pertaining to complaints investigation, including <i>legal advice</i>, is definitely necessary.</p>		<p>IPCC to facilitate its monitoring work, the fact that DoJ's advice has been sought/given (though the content of the advice will be excluded) and the Superintendent's decision will be known to the IPCC.</p> <p>That the IPCC was not consulted on the amendments in question was due to an administrative oversight. To prevent recurrence of such oversight, CAPO will consider laying down clear procedures on prior consultation with the IPCC on significant amendments proposed to be made to the CAPO Manual in accordance with clause 26 of the Bill.</p>

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<p>2. Clauses 8(3) and 15(3) – CP to provide brief descriptions of non-reportable complaints (NRCs) and explanations to support the NRC categorization</p>		
<p>The IPCC does not agree with the Administration that the general provision under clause 7(2) should sufficiently enable the IPCC to require the Police to provide additional information about NRCs as and when necessary. Clause 7(2) merely empowers the IPCC to do all such things that are reasonably necessary for the performance of its functions under the Ordinance. It does not impose an obligation upon CP for compliance. The IPCC also considers that if the general provision is sufficiently clear, many of the existing provisions in the Bill would not be needed, including clause 20(1) which expressly requires CP to provide any information or material relating to a RC.</p> <p>As the Administration states that the Police stand ready to provide additional information about NRCs, it should not be</p>	<p>At the Bills Committee meeting held on 22 January 2008, the Bills Committee requested the Administration to consider empowering the IPCC to determine the final categorization of a complaint, and to consider whether the Police could provide relevant information on non-reportable complaints to the IPCC to the same extent as reportable complaints.</p>	<p>The IPCC's monitoring of whether a complaint should be categorized by CAPO as a non-reportable complaint is to ensure that all complaints which should properly be categorized as reportable complaints will be so categorized and their investigations will consequentially be monitored by the IPCC. This is a function already covered by clauses 7(1)(f) and 7(2) of the Bill. Meanwhile, clause 15(3) empowers the IPCC to require the Police to provide explanations to support the categorization of a complaint as a non-reportable complaint. We therefore consider that clauses 7(1)(f), 7(2) and 15(3) should sufficiently empower the IPCC to require CAPO to provide relevant information on non-reportable complaints to facilitate the IPCC in discharging its function of monitoring the categorization of non-reportable complaints.</p>

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<p>objectionable to stipulate in the Bill the requirement for the Police to provide additional information about NRCs as and when required by the IPCC. It is always preferable to have express provisions to cater for arrangements agreed upon. The Administration and the Police can rest assured that the IPCC will make a request for such additional information only when necessary.</p>		
<p>3. Clause 27 – CP to comply with the requirements of the IPCC</p>		
<p>“Any requirement made by the IPCC” as referred to in clause 27 refers to any requirement <i>made under the Ordinance</i>, thus covering a range of matters binding on CP <i>before and after / irrespective of</i> the completion of investigation of complaints, such as to provide information relating to a RC (clause 20(1)), to investigate a RC (clause 21(1)), to inform the complainant of the classification of a RC (clause 22), to compile and submit to the Council statistics</p>	<p>At the Bills Committee meeting held on 29 January 2008, the Bills Committee requested the Administration to consider setting out in clearer terms the circumstances under which CP might refuse to comply with the requirements of the IPCC under clause 27.</p> <p>At the Bills Committee meeting held on 21 February 2008, the Bills Committee requested the Administration to consider</p>	<p>CP is responsible for law and order issues and has the obligation under the Police Force Ordinance (Cap. 232) to safeguard the integrity of the investigation of any crime, while ensuring that the IPCC is provided with sufficient information for the purpose of discharging its function to monitor reportable complaints. The intention of clause 27 is to ensure CP's compliance with the requirements of the IPCC under the Bill (including those under clauses 20, 21, 22,</p>

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<p>of the types of conduct of members of the Police that have led to RCs (clause 25(a)), and to consult the Council on orders and manuals relating to handling or investigation of RCs (clause 26(1)). The exceptions for CP not to comply with such requirements have therefore to be carefully worded to ensure that the IPCC's requirements would not be lightly abrogated.</p> <p>The IPCC has previously proposed amendments to narrow the exceptional circumstances under which CP could be exempted from compliance with the IPCC's requirements under clause 27, namely to qualify "any crime" by "an indictable offence", and to impose a time limit. The Administration has raised a number of arguments against the amendments. The IPCC however considers that the Administration's concerns can be resolved in practice. As soon as a non-indictable offence turns to be an indictable one and</p>	<p>amending clause 27 to require CP to provide information or materials relating to a complaint to the IPCC, subject to safeguards against the disclosure of certain information by the IPCC.</p>	<p>25 and 26 as mentioned by the IPCC) save in certain specified circumstances, e.g. when CP needs to protect the integrity of criminal investigation in accordance with Cap. 232. We envisage that clause 27 would rarely be invoked by CP.</p> <p>Taking into account the comments of the IPCC and the Bills Committee, we propose to revise clause 27 to provide that CP must comply with any requirement made by the IPCC under the Bill unless the Secretary for Security certifies that compliance with the requirement would be likely to prejudice the security of Hong Kong or the investigation of any crime, and that a certificate signed by the Secretary for Security certifying such matters is conclusive evidence as to the matters so certified.</p> <p>The IPCC supports the proposed amendment. It further suggests that the certificate to be issued by the Secretary for Security should stipulate a validity period</p>

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<p>compliance with the IPCC's requirements would prejudice the investigation of the crime, the Police could notify the IPCC and refrain from complying with the IPCC's requests at that turning point. Vice versa, the Police could resume complying with the IPCC's requirements upon an indictable offence having become a non-indictable one. Setting a time limit for CP's non-compliance is also not impractical because the time limit can be subject to review as and when necessary. The Administration has referred to CP's "supreme direction and administration of the police force" under section 4 of the Police Force Ordinance, but clause 27 specifically provides that "notwithstanding section 4 of the Police Force Ordinance (Cap. 232), the Commissioner must comply with any requirement made by the Council..." This argument is thus irrelevant and untenable.</p>		<p>upon the expiry of which the Secretary for Security should review the matter to see if the Police could resume complying with the IPCC's requirements. We do not consider such a stipulation necessary as we envisage that in practice, where CP's compliance with the IPCC's requirement is critical to the IPCC's consideration of the case in question, the matter would naturally be under regular review so that the IPCC's examination of the case could be completed at the earliest opportunity.</p>

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<p>The suggestion of replacing “any crime” with “an indictable offence” and/or setting a time limit for CP not to comply with the IPCC’s requirements subject to reviews is pursuable and reasonable.</p>		
<p>4. Clauses 7(1)(b) and 24 – the IPCC to advise CP or the Chief Executive (CE) of its opinion on CP’s actions taken on a member of the Force; and CP to provide explanation for actions taken on a member of the Force</p>		
<p>In respect of the IPCC’s view that clause 7(1)(b) should be amended to allow the IPCC to give <i>recommendations</i>¹ on CP’s actions taken or to be taken in connection with any RC (except disciplinary actions which are CP’s prerogative on which the IPCC will give its <i>opinions</i> only) which may not be covered by clause 7(1)(a) or (c), the Administration considers that training needs of officers, service improvement suggestions and terms of a reply to a complainant quoted by the IPCC as</p>	<p>-</p>	<p>Clause 7(1)(c) provides that a function of the IPCC is 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 CE or both of them in respect of such practice or procedure.</p> <p>The dictionary meaning of “deficiency” is “the state of being short of, less than, what is correct or needed”. We envisage that if</p>

¹ The difference between a “recommendation” and an “opinion” in the Bill is that CP is obliged to report on any action taken or to be taken by him in respect of a “recommendation” under clause 25(b).

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<p>examples of CP's actions taken in connection with a RC have already been covered by clause 7(1)(a) or (c).</p> <p>The IPCC observes that advice on service quality improvements may not necessarily arise from a fault or deficiency in police practices or procedures as captured by clause 7(1)(c). The advice may merely serve to enhance the Police's professionalism with a view to avoiding possible complaints and earning the public's recognition. There the IPCC maintains that clause 7(1)(b) should be amended.</p>		<p>the IPCC has any recommendation on service quality improvements of the Police, an existing police practice or procedure "short of what is needed" will in practice be identified. Clause 7(1)(c) should therefore be able to serve the purpose of empowering the IPCC to make recommendations on how the Police's service quality can be improved.</p>
<p>5. Clauses 16 and 17 – CP to submit investigation reports and interim investigation reports</p>		
<p>The IPCC has no strong views on the Administration's contention that clause 25(b) already covers "amended investigation reports" (amended in response to the IPCC's recommendations); and "supplementary reports" are covered by clauses 12(1) and 16, in response to the IPCC's request for a specific provision to</p>	<p>At the Bills Committee meeting held on 29 January 2008, the Bills Committee requested the Administration to reconsider adding an express provision in the Bill to require CP to submit amended investigation reports and supplementary investigation reports to the IPCC.</p>	<p>Taking into consideration the IPCC's comments in its submission of December 2007 to the Bills Committee, we propose to make additional provisions under clauses 16 and 18 to expressly provide for the Police's submission of amended investigation report and supplementary investigation report to the IPCC.</p>

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<p>cater for these reports. The request for a separate provision arose from the Administration's removal of a sub-clause under the present clause 20 requiring CP to submit a report to the Council on any RC in the draft Bill. The IPCC sees merit in reinstating this general provision so that it would cover other reports on RCs, e.g. CAPO's Criminal and Disciplinary Checklist which includes summaries of follow-up actions taken against officers in RCs and is a regular agenda item for the Joint IPCC/CAPO Meeting.</p>		<p>We wish to clarify that an earlier draft of the Bill contained the provisions of clauses 16 and 17 as well as a sub-clause under clause 20 as mentioned by the IPCC. That sub-clause provided that the IPCC might require the Police to submit to the IPCC a report on any reportable complaint, and the intention was to cover the investigation reports submitted by CAPO to the IPCC on reportable complaints. Clauses 16 and 17 already clearly provide that the Police must submit investigation reports and interim investigation reports, as applicable, on reportable complaints to the IPCC; and clause 25(b) stipulates that the IPCC may require the Police to submit to the IPCC a report on any action taken or to be taken by the Police in respect of a recommendation of the IPCC made under clause 7(1)(a) or (c). The afore-mentioned sub-clause under clause 20 was therefore redundant and was deleted.</p>

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		<p>We also wish to point out that the information currently submitted by CAPO to the IPCC are all covered by relevant provisions of the Bill, as follows –</p> <ul style="list-style-type: none">(a) lists of reportable complaints as covered by clause 8(1)(a);(b) lists of non-reportable complaints as covered by clause 8(1)(b);(c) lists of non-reportable complaints deleted (because of duplicate entry) or cancelled (as the complaints have been re-categorized as reportable complaints) as covered by clause 8(1)(b);(d) disciplinary and criminal checklist (providing information on the disciplinary actions taken or to be taken by the Police and the criminal charges against any members of the police) as covered by clause 24; and

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		<p>(e) statistical information (providing information on complainants/complainees, questions raised by the IPCC, classification of complaints etc. for the purpose of analyzing complaint trends and compilation of statistical reports) as covered by clause 25(a).</p> <p>Given the above, we do not consider it necessary to reinstate the afore-mentioned sub-clause in question in the Bill.</p> <p>The IPCC has no further comments on this issue.</p>

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6. Clause 37 – the IPCC's duty to keep confidence		
<p>The IPCC considers it essential that its power of disclosure is clearly provided for in the Bill. In response to the IPCC's request for express provisions in this regard, the Administration has repeatedly explained that the IPCC may disclose matters if it considers that the disclosure is necessary for the performance of its functions of the Ordinance, which is largely the position of clause 37(2)(a). The IPCC is concerned with this as this places the onus of proof on the IPCC when the IPCC is challenged on making unauthorized disclosure.</p> <p>The IPCC is concerned that it may not be able to rely on clause 37(2)(a) to make public the Police's explanations for not accepting the IPCC's advice and the reasons for any disagreement with the Police on the disciplinary action to be taken, as such disclosure may not fall within <i>any</i> of the IPCC's functions under clause 7(1). Given</p>	<p style="text-align: center;">-</p>	<p>As we have explained in LC Paper No. CB(2)829/07-08(01), clause 37 as currently drafted already permits the IPCC to disclose "protected information" (defined as "matters relating to any complaint that come to a specified person's actual knowledge in the performance of the person's functions under this Ordinance") to such persons as the IPCC considers appropriate, as long as the disclosure is necessary for the performance of the IPCC's functions under the Bill. This clause will enable the IPCC to make public the Police's explanations for not accepting the IPCC's advice and the reasons for any disagreement of the IPCC with the Police on the disciplinary action to be taken, if the IPCC considers that the disclosure is necessary for discharging its monitoring function.</p> <p>In its letter of 26 February 2002 to the IPCC, the Administration accepted the</p>

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<p>that IPCC has no power to determine the results of the investigation, disclosure is a means for IPCC to invite the public's comments and scrutiny on matters which it cannot agree with CAPO and such a means is of paramount importance to the IPCC.</p> <p>The IPCC considers that its power to appeal to the public on unresolved matters with CP should not be subject to unnecessary restrictions or hurdles, or civil or criminal liability, and insists on having abundantly clear provisions to allow the IPCC to make such disclosure.</p> <p>The Bills Committee's attention is also drawn to the Administration's undertaking in its letter dated 26 February 2002 that the IPCC will be provided with such powers of disclosure in the Bill on the clear understanding that data privacy will be given full protection The undertaking does not seem to have been reflected in the current Bill.</p>		<p>IPCC's suggestion that the Bill should provide for the IPCC to make public the explanations given by the Police for not accepting the IPCC's advice regarding the findings and classifications of CAPO's investigations as well as the reasons for its disagreement with the Police on the disciplinary action to be taken against complainers. Clause 37 of the Bill as currently worded has accommodated the IPCC's suggestion.</p>

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7. Clause 28 – the IPCC may make a report to CE		
<p>The IPCC notes the Administration's argument that it is an established practice that CE or his authorized officer will respond to the statutory body submitting a report to him, rendering it not necessary to make an express provision in the Bill. It remains however the IPCC's stance that stipulation of the requirement would be in the interest of its discharging of the Council's functions under the Ordinance.</p>	<p>At the Bills Committee meeting held on 29 January 2008, the Bills Committee requested the Administration to provide information on provisions in local legislation concerning the submission of reports by statutory bodies to CE and the requirement, if any, that CE should respond to such reports.</p>	<p>As stated in LC Paper No. CB(2)829/07-08(01), upon receipt of any report from the IPCC, CE will consider the report in detail and examine if any recommendations made in the report should be accepted and if any other follow-up action is required. It is established practice that CE or his authorized officer will respond to a report submitted by a statutory body. We remain of the view that it is not necessary to make an express provision for this in the Bill.</p> <p>Indeed, we note that a number of existing Ordinances establishing statutory bodies (e.g. the Release under Supervision Board established under the Prisoners (Release Under Supervision) Regulations (Cap. 325A), the Vocational Training Council established under the Vocational Training Council Ordinance (Cap. 1130) and The Ombudsman established under the The</p>

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		<p>Ombudsman Ordinance (Cap. 397)) provide that the statutory bodies may make reports to CE, but do not contain express provisions that CE must respond to the reports.</p> <p>The IPCC has no further comments on this issue.</p>
<p>8. Clauses 2, 12 and 16 – provisions in relation to RCs classified as for “Informal Resolution” or “Withdrawn”</p>		
<p>This is largely a drafting matter. The difference between the IPCC and the Administration's views on the status of “Informal Resolution” cases lies in the definition of “investigation” in the provisions. Unless “investigation” is extended to cover the preliminary steps taken prior to informally resolving a complaint, it would not be valid to consider “Informal Resolution” a classification (i.e. result of investigation) in clause 2. In fact, “Informal Resolution” is not regarded as a result of investigation in the CAPO Manual, and only represents a way of handling minor</p>	<p>At the Bills Committee meeting held on 28 March 2008, the Bills Committee requested the Administration to consider setting out all the existing classifications of reportable complaints in the definition of “classification” and revising the order of classifications in the definition.</p>	<p>As explained in LC Paper No. CB(2)829/07-08(01), “informal resolution” cases are reportable complaints subject to the IPCC's monitoring, on which the Police are required to submit investigation reports in accordance with clause 16. The preliminary steps taken prior to informally resolving a complaint such as making an initial assessment on the suitability of the complaint to be dealt with by “informal resolution” and obtaining descriptions of the event concerned from the complainant and complaine(s) are regarded as part of the investigation process. For any</p>

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<p>complaints. Reports on such cases are not termed as “investigation reports”.</p> <p>To provide a statutory basis for “Informal Resolution” cases, clause 16(3) can be rephrased to stipulate that CP must submit a report to the IPCC on such cases, which are distinguished from investigation reports in clause 16(1) and (2).</p>		<p>inconsistency in the terminology used in the Bill and the CAPO Manual, the Police will amend the CAPO Manual accordingly. Given the foregoing, we consider that clause 16(3) should remain as currently worded.</p> <p>To reflect the existing practice and taking account of the comments of the Bills Committee, we propose amending the definition of “classification” in clause 2 to list out all the existing classifications, and to amend clause 12 to expressly provide that a request for review must not seek for the review of a reportable complaint that is classified as “for informal resolution”.</p> <p>For reportable complaints classified as “withdrawn” (where the complainant does not wish to pursue the complaint made) and “not pursuable” (where the identity of the complainee cannot be ascertained or where it has not been possible to obtain the cooperation of the complainant to proceed with the complaint investigation e.g. when</p>

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		<p>the complainant declines to make a statement), the complainants may re-activate their complaints upon a change of mind or any other reasons. CAPO will handle such reactivated complaints as fresh complaints rather than requests for review. We will consider the need to reflect this practice in clause 12.</p>
<p>9. Clause 17(3) and (4) – the IPCC may advise CP of its opinion on interim investigation reports</p>		
<p>NRC lists are compiled at intervals and contain only brief descriptions of the cases. On the other hand, NRCs reported in interim reports are more informative and allow the IPCC to give its opinion <i>instantly</i>. That said, the IPCC does not insist on amending clause 17(3) and (4) to cover the NRC categorization of an allegation as it will examine the NRC categorization, among other things, as reported in the final investigation reports.</p>	<p>-</p>	<p>We note the IPCC's comments that it does not insist on amending clause 17(3) and (4) to cover allegations categorized as non-reportable complaints. In practice, CAPO will only mention a non-reportable complaint (with a brief description of the complaint and the reason for categorizing it as a non-reportable complaint) in an investigation report/interim investigation report of a complaint if the complaint involves other allegations constituting reportable complaints. This is consistent with the provision in clause 8(3). As is the</p>

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		<p>current practice, in the above-mentioned situation, CAPO will in parallel include the allegation categorized as a non-reportable complaint in the list of non-reportable complaints regularly submitted to the IPCC under clause 8(1)(b).</p> <p>The IPCC has no further comments on this issue.</p>
<p>10. Clause 22 – the IPCC may require CP to inform a complainant of classification of RCs</p>		
<p>The IPCC comments that CP should be obliged to inform a complainant of any other matters relating to police operation raised by the complainant, as there were occasions that the Police asked the IPCC to convey their reply to the complainant's query on operational matters given that the IPCC is under the duty to reply complainants on review results. Whilst the Administration responds that these other enquiries and suggestions do not relate to matters within the purview of the IPCC, and</p>	<p>At the Bills Committee meeting held on 22 January 2008, the Bills Committee requested the Administration to consider stipulating in the Bill that a complainant would be informed of the progress regarding the handling of his complaint.</p> <p>At the Bills Committee meeting held on 29 January 2008, the Bills Committee requested the Administration to consider amending clause 22 to empower the IPCC to require CP to inform a complainant how the complaint concerned had been followed</p>	<p>There are occasions where a complainant requesting for a review of the classification of his complaint also raises questions on operational matters concerning the Police that are unrelated to the complaint in question. Since the IPCC issues replies to complainants' requests for review, the Police have hitherto provided the IPCC with information for addressing such questions so as to facilitate a consolidated reply to the complainants. In view of the IPCC's comments, the Police will in future address</p>

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<p>CAPO will address them, the IPCC would need the Police's assurance that this is their understanding to avoid disputes in future.</p>	<p>up, the outcome of investigation as well as the basis on which the relevant conclusion was drawn</p>	<p>such questions from the complainants separately so that the IPCC's replies to the complainants will be confined to matters related to the latter's requests for review. The IPCC is agreeable to this.</p> <p>According to the existing practice and the Police's performance pledge, CAPO aims to complete the investigation of a complaint within four months and will keep the complainant informed of the progress of the investigation every two months. Upon the IPCC's endorsement of the investigation report of the complaint, CAPO will issue a full reply to the complainant, setting out a succinct account of the investigation conducted, the outcome of the investigation, the classification of the complaint, that the complaint has been reviewed by the IPCC and any follow-up actions taken by the Police. Taking into consideration the Bills Committee's comments, we propose to amend clause 22 to the effect that CP must inform a complainant or his representative</p>

IPCC's comments	Bills Committee's comments	Administration's response
		<p>of the classification of his complaint and the reason for the classification, and that the clause does not apply to cases where the complainant or his representative has indicated to CP that he does not wish to be so informed. This reflects the existing practice. The IPCC supports the proposed amendment.</p>
<p>11. Clause 37(4) – disclosure of identity of parties involved in a complaint</p>		
<p>The IPCC understands from the Administration's response that it will further examine the IPCC's comments in respect of the need to disclose the identity of parties involved to <i>potential witnesses</i> who may decline to attend an interview with the IPCC in the end, <i>legal representatives, friends or relatives</i> who accompany a witness to be interviewed by the IPCC (provided that their presence is approved under clause 19), and <i>CE</i>.</p>	<p>-</p>	<p>Taking into consideration the IPCC's comments in its submission of December 2007 to the Bills Committee, we propose to revise clause 37(4) to include a person whom the IPCC invites to an interview pursuant to clause 19 and any person that is present at an interview in accordance with clause 19 as well as the Chief Executive.</p> <p>As explained in LC Paper No. CB(2)829/07-08(01), clause 7(1)(a) empowers the IPCC to make recommendations on the Police's handling</p>

IPCC's comments	Bills Committee's comments	Administration's response
<p>As regards the Administration's contention that the IPCC may make recommendations to CAPO for referral of a case to other relevant Government departments or statutory/advisory bodies for necessary actions, the IPCC does not have strong views provided that CAPO shares the same understanding. It follows that if the IPCC <i>directly</i> receives a complaint against the Police that may involve matters of other jurisdictions, the IPCC will simply refer the case to CAPO for necessary action.</p>		<p>or investigation of reportable complaints. If the IPCC considers that a case should be referred to other relevant Government departments or statutory/advisory bodies for necessary actions, it may make such recommendations to CAPO. CAPO will take follow-up actions as appropriate. If the IPCC directly receives a complaint against the Police that may involve matters within the purview of other statutory bodies, the IPCC can refer the case to CAPO for necessary follow-up actions.</p> <p>The IPCC has no further comments on this issue.</p>

IPCC's comments	Bills Committee's comments	Administration's response
12. Commencement of the Ordinance		
<p>The IPCC considers that a commencement clause, the insertion of which is now under consideration by the Administration, should allow the coming into operation of the Ordinance <i>after</i> the transitional arrangements have been put in place.</p>	<p>-</p>	<p>We propose to add a commencement clause to the Bill so that the Administration may appoint a commencement date for the Bill after its enactment, subject to the IPCC's readiness and the progress of the IPCC's preparatory arrangements for its operation as a statutory body. The IPCC has no further comments on this issue.</p>
13. Establishment of and financial provision for the proposed statutory IPCC		
<p>These issues relate to the administrative arrangements for the proposed statutory body, and will be further examined and discussed between the IPCC and the Administration before a proposal is forwarded to the Bills Committee.</p>	<p>At the Bills Committee meeting held on 6 November 2007, the Bills Committee requested the Administration to provide information on the composition of the Secretariat of the proposed statutory IPCC and the arrangements for transition from the existing IPCC Secretariat to the Secretariat of the proposed statutory IPCC.</p> <p>At its meeting held on 13 December 2007, the Bills Committee invited the IPCC to</p>	<p>We are working with the IPCC on the administrative and transitional arrangements for its establishment as a statutory body and will revert to the Bills Committee as soon as possible.</p>

IPCC's comments	Bills Committee's comments	Administration's response
	<p>provide a further submission setting out the IPCC's views on the following –</p> <ul style="list-style-type: none">(a) the role and functions of the proposed statutory IPCC;(b) the proposed committee structure and membership size for the proposed statutory IPCC;(c) relationship between members of the proposed statutory IPCC and the staff of its Secretariat;(d) the manpower requirement for the Secretariat of the proposed statutory IPCC;(e) the proposed rank of the Secretary to the proposed statutory IPCC;(f) the employment conditions of staff of the proposed statutory IPCC;	

IPCC's comments	Bills Committee's comments	Administration's response
	<p>(g) the arrangements and timetable for transition from the existing IPCC Secretariat to the Secretariat of the proposed statutory IPCC; and</p> <p>(h) issues relating to the future administrative framework and the transitional arrangements on which the existing IPCC and the Administration could not come to an agreement.</p>	

Security Bureau
April 2008