

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

**Response to issues raised at the Bills Committee meeting  
held on 22 May 2008 (1)**

**Purpose**

This note provides information in response to a number of issues raised by the Bills Committee at its meeting held on 22 May 2008.

**The Independent Police Complaints Council's interviews**

*To consider allowing a person interviewed by the Independent Police Complaints Council (IPCC) to be accompanied by a lawyer or a person who could offer assistance to the interviewee at the interview; to consider setting out in the Bill that the company of a lawyer at an interview is not subject to the IPCC's consent; to consider providing in the Bill that any person can make a request for an interview with the IPCC for the purpose of providing information relating to an investigation report, or facilitating the IPCC in the performance of its duties in identifying any fault or deficiency in any practice or procedure adopted by the police force, and providing that if the IPCC refuses such a request, it must provide reasons*

2. According to the IPCC's existing practice, the IPCC's interviewees may be accompanied by their lawyers. The interviewees are free to communicate with their lawyers during the interviews, but the lawyers do not have a right of audience before the IPCC. Clause 19(6) of the Bill reflects this practice. We have no objection to amending this clause to make it clear that interviewees may be accompanied by their lawyers.

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3. For the purpose of considering investigation reports or interim investigation reports submitted by the Complaints Against Police Office (CAPO), the IPCC may interview any person who is or may be able to provide information or other assistance to the IPCC in relation to the reports. Interviewees' attendance of the interviews is entirely voluntary. The IPCC should have the full discretion to decide who should be interviewed and who may be present at the interviews. Such discretion is important for the IPCC to consider whether to interview a person requesting for such interview, and if any person should be allowed to accompany an interviewee, having regard to the circumstances of individual reportable complaints. The existing clause 19(1), (2) and (5) reflect such discretion and should be retained.

*To provide information on the IPCC's existing practice regarding persons who may be present at an interview by the IPCC, including circumstances under which a lawyer is allowed/not allowed to be present, and what such persons can/cannot do at the interview*

4. The IPCC Secretariat has provided an information leaflet outlining the arrangements of the IPCC Interviewing Witnesses Scheme to Members (see LC Paper No. CB(2)2069/07-08(01)). The leaflet sets out that persons other than the interviewees' lawyers and/or parents or guardians of minor interviewees will be excluded from the interviews. Lawyers, parents or guardians who may be present should not interfere with the conduct of interview. Interviewees are required to undertake not to make any unauthorized disclosure of the details of the interviews.

*To provide information on the number of persons interviewed by the IPCC in a year; to provide information on the number of cases in a year where the IPCC interviewed persons for the purpose of considering an investigation report or an interim investigation report after it has been submitted to the IPCC*

5. According to the IPCC Secretariat, since the introduction of the IPCC Interviewing Witnesses Scheme in 1994, the IPCC had interviewed 48 witnesses involved in 43 complaints under the Scheme. No interview was conducted under the Scheme in 2007.

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*To consider allowing the IPCC to conduct interviews upon receipt of an interim investigation report, unless it appears to the Commissioner of Police (CP) that there are reasonable grounds that the conduct of such interviews would be likely to prejudice the investigation of any crime or of any complaint made to him; to consider allowing the IPCC to interview any person at any time, to interview any person at any time after CAPO has interviewed such a person, to interview any person at any time unless there are reasonable grounds to believe that it would prejudice the investigation of any crime or any complaint made to CP, provided that "prejudice" is narrowly defined; to consider revising clause 19(3) in relation to the word "prejudice"*

6. Clause 16 of the Bill provides that an investigation report submitted by the Police to the IPCC must contain a summary of the investigation, a finding of facts in relation to the complaint and the evidence in support of the finding, the Police's classification of the complaint, reasons for the classification, the action taken or to be taken by the Police in connection with the complaint, such other information as the Police think necessary as well as such other information as the IPCC and the Police may agree (as we have newly proposed). Such a full range of information should enable the IPCC to have a comprehensive overview of whether the Police have handled and investigated a complaint fairly and impartially. If the IPCC considers that an interview with the relevant person(s) is needed to assist it in considering the report, clause 19(1) will serve the purpose. Clause 19(2) additionally provides that the IPCC may conduct such an interview for the purpose of considering an interim investigation report submitted by the Police under clause 17. Furthermore, clauses 23 and 34 respectively empower IPCC members and IPCC observers to attend an interview conducted by the Police or observe the collection of evidence undertaken by the Police in respect of a reportable complaint at any time and without prior appointment, so as to assist the IPCC to observe the manner in which the Police handle or investigate reportable complaints.

7. We believe that the above arrangements already effectively enable the IPCC to carry out its monitoring role. Providing the IPCC with a general power to conduct interviews at any time, or to interview any person at any time after CAPO has interviewed such a person, would

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amount to giving the IPCC an investigative power. As we have explained previously, this is not consistent with our policy intention of maintaining the effective two-tier police complaints system now in place under which the Police's handling and investigation of public complaints are monitored by the IPCC.

8. Clause 19(3) provides that CP must give his consent to an interview by the IPCC under clause 19(2) unless such an interview would be likely to prejudice crime or complaint investigation. Whether such investigation would be likely to be so prejudiced will be considered by CP having regard to the circumstances pertaining to individual reportable complaints. Indeed, "prejudice" is quite commonly used in existing Ordinances (see examples at the Annex). We therefore consider that the word should be retained.

9. Meanwhile, taking account of Members' comments, we propose to amend clause 19(3) to spell out in express terms that CP must act reasonably in forming his opinion, by adopting the formulation of "the Commissioner is reasonably of the opinion that ...".

*To consider revising clause 19(8) and (9), such as combining the two subclauses, to set out clearly that the IPCC could disclose information relating to an interview by the IPCC for any purpose allowed under clause 37*

10. Taking Members' comments into consideration, we propose to amend clause 19(8) to provide that the IPCC must keep a record of every interview and such record is to be kept for such period as may be necessary for the performance of the IPCC's statutory functions, and to revise clause 19(9) to the effect that the IPCC may use the record of interview for a purpose permitted under clause 37(2).

Security Bureau  
June 2008

**Annex**

**Examples of existing legislative provisions  
containing the word "prejudice"**

**(A) Interpretation and General Clauses Ordinance (Cap. 1)**

Section 85 provides –

“(6) Subject to subsection (7), it shall be a term of any warrant issued under this section that a person who seizes journalistic material pursuant to the warrant shall seal the material upon seizure and shall hold the sealed material until otherwise authorized or required under section 87.

(7) Subsection (6) shall not apply where the judge is satisfied that there may be serious prejudice to the investigation if the applicant is not permitted to have immediate access to the material.”

**(B) Drug Trafficking (Recovery of Proceeds) Ordinance (Cap. 405)**

Section 25A(5) provides –

“A person commits an offence if, knowing or suspecting that a disclosure has been made under subsection (1) or (4), he discloses to any other person any matter which is likely to prejudice any investigation which might be conducted following that first-mentioned disclosure.”

**(C) United Nations (Anti-Terrorism Measures) Ordinance (Cap. 575)**

Section 12(5) provides –

“Where a person knows or suspects that a disclosure has been made under subsection (1) or (4), the person shall not disclose to another person any information or other matter which is likely to prejudice any investigation which might be conducted following that first-mentioned disclosure.”

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**(D) Financial Reporting Council Ordinance (Cap. 588)**

Section 36(3) provides –

“As soon as practicable after deciding to exercise a power under subsection (1), the Council shall give written notice of the decision to—

(a) in the case where the relevant irregularity is an auditing irregularity, the auditor concerned; or

(b) in the case where the relevant irregularity is a reporting irregularity, the reporting accountant concerned,

unless the Council is satisfied that the notification may prejudice the investigation, or any other action by the Council, or a specified body, relating to the investigation.”