

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

**Response to issues raised at Bills Committee meeting
held on 14 November 2007**

Purpose

This note provides information in response to the issues raised by the Bills Committee at its meeting held on 14 November 2007.

Examination of complaint cases by the Independent Police Complaints Council (IPCC) and the IPCC Secretariat

To provide information on the number of complaint cases where the case files submitted by the Complaints Against Police Office (CAPO) were examined by members of the IPCC in 2006

2. As explained, IPCC members are divided into three sub-groups to share out the workload of examining the investigation reports submitted by CAPO. The IPCC Secretariat, before submitting an investigation report to a sub-group, first scrutinizes the report in detail. After scrutiny, it circulates the investigation report, together with its observations and any clarifications and/or supplementary information obtained from CAPO, to the sub-group for examination. The IPCC vice-chairman and members of the relevant sub-group may request the Senior Assistant Secretary of the IPCC Secretariat assigned to the sub-group for additional information and/or clarifications pertaining to the investigation report under their scrutiny. These requests are normally conveyed by phone or in writing to the IPCC Secretariat. Where necessary, the IPCC Secretariat will take follow-up action with CAPO. If the IPCC vice-chairman and members of the sub-group consider it necessary, they may examine the case files of the complaint concerned at the IPCC Secretariat. The IPCC Secretariat does not keep statistics on the occasions on which such examinations were made.

To provide information on the respective number of complaint cases where CAPO's classifications were accepted/disagreed by the IPCC Secretariat in 2006; to provide information on the respective number of complaint cases where the recommendations of the IPCC Secretariat on the cases were endorsed/disagreed by IPCC in 2006; to provide information on the number of complaint cases where CAPO's classifications were changed after IPCC provided its comments to the Police; to provide statistics on queries or requests for further information on complaint cases examined by IPCC members

3. The 2 114 investigation reports endorsed by the IPCC in 2006 involved 3 518 allegations. Among the 3 518 allegations, the IPCC Secretariat raised queries/suggestions on the appropriateness of CAPO's classifications of 69 allegations. CAPO accepted the IPCC Secretariat's suggestions and reclassified 42 allegations, and provided explanations and followed up on the IPCC Secretariat's queries/suggestions on the other 27 allegations. Following examination of CAPO's investigation reports, together with the amended classifications and CAPO's explanations on the classifications, for the afore-mentioned 69 allegations, the IPCC endorsed the reports. Separately, the IPCC raised queries/suggestions on the classifications of 6 allegations. CAPO accepted the IPCC's suggestion and reclassified 2 allegations, and satisfactorily addressed or followed up on the IPCC's queries/suggestions on the other 4 allegations. The IPCC then endorsed the investigation reports on these allegations. The major categories of queries/suggestions raised by the IPCC/IPCC Secretariat with CAPO in 2006 are set out in the IPCC's annual report of 2006, the relevant extract of which is at Annex A.

To provide information on previous cases where IPCC disagreed with CAPO's classification of complaints and made a report to the Chief Executive (CE) and the CE's reply to IPCC on the cases concerned

4. Under the existing IPCC's terms of reference, where and when the IPCC considers appropriate, it can make recommendations to the Commissioner of Police (CP) or, if necessary, to the CE. Since the IPCC was renamed from the Police Complaints Committee in December

1994, it has made two reports to the CE, one in 1998 and the other in 2004. Details of the two cases are set out in the extracts of the IPCC's annual reports of 1998 and 2004 respectively at Annex B. In the 1998 case, after the IPCC had made recommendations to CP and CP had accepted the general tenets of those recommendations, the IPCC made a report to the CE for information. The reply from the CE's Office said that the CE had noted the views of the IPCC and, reassured the IPCC that the police force would continue to carry out their duties in a professional manner and handle demonstrations in accordance with the law. In the 2004 case, the reply from the CE's Office was reported in the IPCC's 2004 annual report.

To provide information on the outcome of the seven complaint cases discussed at bi-monthly joint meetings of IPCC and CAPO in 2006

5. For the seven complaint cases discussed at the bi-monthly joint IPCC/CAPO meetings in 2006, CAPO satisfactorily explained and/or followed up the observations, comments and/or suggestions made by the IPCC. The IPCC endorsed the seven cases either at the meetings or subsequent to follow-up actions taken by CAPO. As a result of the IPCC's questions raised at the joint IPCC/CAPO meetings concerned, in one of the seven cases, CAPO registered an additional allegation of "misconduct" against the complainee and disciplinary action was subsequently taken against the complainee for "contravention of police orders". In another case, apart from endorsing the classification of the allegation of "neglect of duty" against the original complainee, the IPCC considered that the officer-in-charge concerned had also committed negligence. In view of the IPCC's comments, CAPO registered the officer-in-charge as an additional complainee and undertook further investigation into the complaint. As the officer-in-charge had then resigned from the police force and become unavailable to assist in the investigation, the allegation against the officer-in-charge was eventually classified as "not pursuable".

CAPO

To advise on the pay point of the Head of CAPO

6. CAPO is headed by a Senior Superintendent of Police at Police Pay Scale Point 52 (\$84,660) to 54 (\$91,765).

Security Bureau
November 2007

Extract from the IPCC 2006 Report

ANNEX A

Major Categories of Queries/Suggestions Raised with CAPO in 2006

| Nature of Queries/Suggestions | No. of Queries/ Suggestions in 2006 | Accepted | Satisfactorily Explained/ Followed up |
|---|---|----------|---|
| <p>(a) Thoroughness of investigation and clarification on ambiguous points in the CAPO reports/CAPO files</p> <p>The IPCC is primarily concerned with the comprehensiveness and impartiality of the investigations carried out by CAPO. To ensure that a complaint has been thoroughly examined, the IPCC may suggest further interviews with complainant(s), complainee(s) and/or witness(es); scene visits or the seeking of further medical or legal advice, etc. The IPCC may also propose addition, deletion or amendment to allegations made against police officers, the complainant list, the complainee list and the contents of reports.</p> | 548 | 384 | 164 |
| <p>(b) Appropriateness of classifications</p> <p>In examining the evidence available, the IPCC may discuss with CAPO on the re-classifications of results (from a higher to a lower classification or vice versa). Proposals to add 'Substantiated Other Than Reported' counts may also be made.</p> | 75 | 44 | 31 |

| | | | |
|--|----|----|----|
| <p>(c) Reasonable grounds for exercising constabulary powers</p> <p>One of the IPCC's main concerns is to maintain a balance between the civil liberties and rights of individual citizens and the power of the Police in the detection or prevention of crime. Queries concerning the propriety of the Police in exercising certain constabulary powers, such as checking of identity cards, stop-and-search, use of handcuffs and arrest, are raised where necessary.</p> | 2 | 1 | 1 |
| <p>(d) Compliance with police procedures and practices</p> <p>Queries are raised by the IPCC with CAPO from time to time to ascertain if the police officers involved in a complaint case have complied with the relevant police procedures and practices in exercising their constabulary powers, although the complainant may not have raised a specific complaint.</p> | 52 | 23 | 29 |
| <p>(e) Improvement to police procedures</p> <p>Suggestions on improvement to police procedures which are complaint-inducing are made where appropriate by the IPCC</p> | 5 | 4 | 1 |

| | | | |
|---|-----|-----|-----|
| to the Force. For details, please refer to Chapter 5, para. 5.15. | | | |
| (f) Other queries | 147 | 109 | 38 |
| Total : | 829 | 565 | 264 |

個案摘要

個案 I

在不必要情況下使用權力 - 證明屬實

6.4 投訴人指稱一名高級警務人員濫用職權，在一次示威行動中授意在指定示威場地附近播放音樂，以蓋過他向市民和傳媒作出的講話。投訴人認為警方的舉動侵犯了他發表意見的自由。投訴警察課初步把指控列為「並無過錯」。

6.5 警監會委員其後會見投訴警察課人員和被投訴人，以了解實情。在澄清疑點、確定被投訴人在示威的關鍵時刻播放音樂的動機和仔細審議個案後，大部分委員都對「並無過錯」的分類有所保留。警監會認為，應把指稱被投訴人「在不必要情況下使用權力」的指控列為「證明屬實」。除對指控分類有意見外，警監會也認為此事對日後處理示威事件來說，是十分寶貴的經驗。警監會在研究現行指引和守則後，向警務處處長提交四項建議，以確保公眾能在不擾亂治安的和平氣氛下行使發表意見的自由。

6.6 不過，警務處處長雖同意警監會所作建議的原則，但卻堅稱被投訴人在事件中播放音樂是合理的。警監會堅持立場並把個案的報告呈交行政長官。

6.7 在這宗個案中，警監會和警方無法就指控分類達成共識。雖然警監會對個案的意見不獲警方認同，但投訴人也獲告知有關意見。

Case Summaries

Case I

Unnecessary Use of Authority - Substantiated

6.4 The complainant alleged that a senior police officer had abused his authority in authorizing the broadcast of music near a designated demonstration area to drown out his address to the general public and media during a protest. The complainant considered the Police act had infringed his freedom of expression. CAPO's initial classification of the allegation was 'No Fault'.

6.5 After interviews with CAPO officers and the complainee to gather facts, clarifying ambiguities, ascertaining the complainee's motive to broadcast the music in the heat of the demonstration and due deliberations, the majority of IPCC Members had reservation on the 'No Fault' classification. IPCC's view was that the allegation of 'Unnecessary Use of Authority' against the complainee should be classified as 'Substantiated'. Apart from the classification, IPCC felt that the incident provided valuable lessons for the future handling of demonstrations. After studying the existing guidelines and practices, IPCC made four recommendations to the Commissioner of Police to ensure that members of the public were able to exercise their freedom of expression without disrupting public order and peace.

6.6 The Commissioner of Police, however, maintained that the complainee was justified to broadcast the music in the incident although he accepted the general tenets of the IPCC's recommendations. IPCC maintained its stance and made a report of the case to the Chief Executive.

6.7 This was a case in which no consensus could be reached between the Council and the Police on the classification of the allegation. The complainant was informed by IPCC of its views on the case, notwithstanding Police disagreement.

Extract from Chapter 6 of the IPCC Report 2004

Case 5

Unnecessary Use of Authority – No Fault

Misconduct – No Fault

Unnecessary Use of Authority – No Fault

Unnecessary Use of Authority – No Fault

Neglect of Duty – Unsubstantiated

6.34 Members of an organization staged a continual sit-in with banners and placards at a section of a pavement outside a building. Upon receipt of complaints from nearby shop-owners and residents about the nuisance and obstruction caused by the protest, the Police issued a number of warnings to the protesters demanding them to remove their banners. However, the protesters paid no heed to the warnings and consequently, a joint-departmental operation involving the District Office, Food and Environmental Hygiene Department (FEHD) and the Police was mounted to remove the offending banners and placards.

6.35 Complainants (COMs) 1 and 2, who were members of the organization, subsequently lodged eight allegations against the Police. COM 1 alleged that:

- (a) The Police were biased and targeted the organization ((a) 'Unnecessary Use of Authority');
- (b) The Police used excessive force in removing the banners from members of the organization ((b) 'Unnecessary Use of Authority');
- (c) Police officers solicited complaints against the organization from residents of a nearby building in a deliberate attempt to gather evidence to force the protesters away ((c) 'Unnecessary Use of Authority');
- (d) The Police videotaped the activities of the organization. The videotaping interfered with the freedom of expression of members of the organization and gave members of the public the impression that their activities were illegal ((d) 'Unnecessary Use of Authority');

- (e) The Police lied to the District Officer that they had sent more than ten warning letters to instruct members of the organization to remove their banners ((e) 'Misconduct');
- (f) The Police's warning to the protesters to remove a banner which contained a slogan was an interference with their freedom of speech ((f) 'Unnecessary Use of Authority'); and
- (g) The Police repeatedly threatened the protesters to remove the banners and this infringed on their right of expression ((g) 'Unnecessary Use of Authority').

6.36 COM 2 further alleged that (h) the Police had been dilatory in handling his request for the return of the seized banners ((h) 'Neglect of Duty').

6.37 After investigation, CAPO classified all the allegations as 'No Fault'.

6.38 For allegation (a) 'Unnecessary Use of Authority', CAPO explained that there was no evidence to prove that the Police were biased and targeted the organization. The interdepartmental meeting with FEHD and District Office (Central and Western) concluded that the display of banners was a contravention of Public Health and Municipal Services Ordinance, Cap 132. As the law was considered straight forward, it was unnecessary to seek legal advice prior to the clearance. Moreover, as the FEHD was the lead department in the joint-departmental operation and the Police only assisted the FEHD in the clearance operation, it was within the FEHD's purview to seek legal advice on the operation if deemed necessary.

6.39 For allegation (b) 'Unnecessary Use of Authority', CAPO maintained that the videotape revealed that the Police acted in a restrained and polite manner and no excessive force was used. After repeated warnings issued by FEHD and the Police were ignored, police officers then assisted FEHD to remove the banner. When enquired by the Police subsequently, three protesters sought medical treatment and were found to have sustained minor injuries during the incident.

6.40 For allegation (c) 'Unnecessary Use of Authority', after obtaining legal advice from the Department of Justice regarding the complaint received, the Police had a reasonable belief that an offence of obstruction was committed by the protesters. In the absence of any identifiable complainant, it would have been impossible to adequately resolve the matter. Therefore, door-to-door enquiry was subsequently conducted, which was a normal and common police action and an operational decision based on the merits of an individual case.

6.41 For allegation (d) 'Unnecessary Use of Authority', CAPO explained that the Police

videotaped the protest for gathering evidence and for record purpose. This was in line with the internal order of the Police. Moreover, preliminary legal advice confirmed that there appeared to be a prima facie case for the 'obstruction' offence. The Police, therefore, was required to conduct further investigation and collect evidence by close-up shots in order to identify the alleged offenders. All the close-up shots were taken at a distance with zoom lens and it should not have brought about an intimidating effect on the protesters.

6.42 For allegation (e) 'Misconduct', CAPO clarified that the allegation arose out of a misunderstanding between COM 1 and the staff of the District Office.

6.43 For allegation (f) 'Unnecessary Use of Authority', CAPO opined that the banner in question had caused a breach of the peace and the Police acted in good faith to deliver a warning to the protesters to prevent the recurrence of untoward incidents. Before the warning was issued, the Police had increased local patrols to protect the protesters and laid a covert ambush in the area with a view to apprehending the culprits who threw plastic bags containing suspected urine to the protesters. Although the warning was ignored, the Police did not take any action to prohibit the display of the banner in question.

6.44 For allegation (g) 'Unnecessary Use of Authority', CAPO maintained that the warnings were given in good faith and the Police, after considering the initial legal advice, believed that there was prima facie evidence against the protesters for 'Obstruction'.

6.45 For allegation (h) 'Neglect of Duty', CAPO explained that the Police had asked an official representative of the organization to submit a request letter in order to ensure that the receipt was issued to a bona-fide representative. However, the Police never received such a letter from the organization.

6.46 After examining CAPO's explanation, the IPCC concluded that it was more appropriate to classify all the allegations, except allegation (e) 'Misconduct', as 'Substantiated'.

6.47 Regarding allegation (a) 'Unnecessary Use of Authority', the IPCC considered that the Police had no legal basis for their clearance operation as the legal advice sought by the FEHD after the operation was that the evidence did not establish a case of obstruction. In fact, the CAPO investigation report indicated that shortly before the operation, the Police itself was seeking legal advice as to the appropriateness of taking summoning actions and the Police's future actions under the relevant Ordinances in relation to the prolonged occupation of a public place and the unauthorized display of banners by the protesters. The IPCC was of the view that the Police should have deferred action until the legal advice on these two aspects were available. Moreover, the sequence of events leading to the clearance operation and the caution displayed by the FEHD both before and after the operation demonstrated that

the Police was in the driving seat rather than merely assisting the FEHD in the clearance operation as claimed. Even if the Police was responding to the FEHD's request for assistance, they should ensure that the FEHD's action was lawful in the first place.

6.48 Regarding allegation (b) 'Unnecessary Use of Authority', the IPCC opined that this was closely related with allegation (a). As there was no legal foundation for the clearance operation, the classification of allegation (b) should follow that of allegation (a).

6.49 Regarding allegation (c) 'Unnecessary Use of Authority', the IPCC considered that since the alleged offence of obstruction and nuisance was minor in nature and as CAPO could not substantiate its assertion that door-to-door enquiry was a normal police operational practice in investigating minor obstruction and nuisance reports with no criminal elements, the allegation should be classified as 'Substantiated'.

6.50 Regarding allegation (d) 'Unnecessary Use of Authority', the IPCC noted that in accordance with the relevant Police Order for recording public order events, the over-riding principle is that "it is the event, not the personalities involved, that is the subject. Only if a breach of peace is likely to occur, or has occurred, do the individuals suspected of causing that breach become the subject". As apparently there was no actual or imminent breach of the peace at the material time, the taking of 114 close-up shots of individuals was not justifiable. 'Detection of offences' could not and should not be used as the sole reason to videotape individual citizens indiscriminately.

6.51 Regarding allegation (e) 'Misconduct', the IPCC accepted the 'No Fault' classification because the allegation arose out of a misunderstanding between the complainant and the staff of the District Office.

6.52 Regarding allegation (f) 'Unnecessary Use of Authority', the IPCC opined that although the content of the banner in question might not be agreeable, it did not go beyond the bounds of free expression of opinion. In relation to the argument that the banner in question might cause a breach of the peace, IPCC took the view that the crucial question was to identify where the threat was coming from and it was there that preventive action must be directed. Instead of issuing warnings to the protesters, the Police should protect the protesters' freedom of expression and take necessary action to prevent the recurrence of untoward incidents.

6.53 Regarding allegation (g) 'Unnecessary Use of Authority', the IPCC concluded that this was related to allegations (a), (b) and (f) and the Police should not have issued warnings to the protesters without waiting for fuller advice.

6.54 Regarding allegation (h) 'Neglect of Duty', the IPCC noted that there was no

requirement under existing police procedures that the request for return of the banners must be made in writing. As such, as long as the Police were satisfied that the claimants were the actual possessors from whom the banners were seized at the material time, the Police should return the banners to them.

6.55 The case was subsequently discussed at three Joint IPCC/CAPO Meetings. After discussion, CAPO only agreed to re-classify allegation (h) 'Neglect of Duty' as 'Unsubstantiated' and maintained that the remaining classifications be upheld. For allegation (h) 'Neglect of Duty', CAPO reckoned that the police officer concerned might be over-cautious when dealing with COM 2's request but he did it in good faith and there was no evidence which suggested that he deliberately withheld the receipt. The police officer concerned would be advised without an entry in his divisional record file that he should act flexibly in future and consider other means to confirm the owner's right to the property.

6.56 In view of the divergent views between the IPCC and CAPO on the majority of the classifications of the allegations, the IPCC reported the case to the Chief Executive for a decision on the classifications of the allegations.

6.57 In response, the Chief Executive gave his decision on the complaint case. The gist of his reply was as follows:

- (a) He agreed with the IPCC that the Police should ensure that the rights of the protesters were protected. In the present case, it was considered that the Police did not attempt to suppress the civil rights of members of the organization. The warnings relating to the banners displayed were justified as the Police also had the duty to protect the rights of other people affected by the protests. The legal powers exercised by the FEHD in the banner removal operation were in respect of the unauthorized display of banner on government land. Legal advice sought by the Police on the separate offence of obstruction would not affect consideration of the need to render assistance to FEHD in the latter's exercise of its powers in respect of the unauthorized display of barrier on government land;
- (b) In the incident, it was believed that the Police acted in good faith and in full accord with their internal guidelines. Accordingly, CAPO's findings were in order; and
- (c) The IPCC had made a number of valuable points and observations in the course of reviewing the investigation of the complaint. The Police would take these into serious consideration with a view to improving their work and continue to uphold the law without bias or political consideration.

6.58 The Chief Executive's reply letter to the IPCC brought the complaint case to a close.