

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

**Response to issues raised at the Bills Committee meeting
held on 6 November 2007 (3)**

Purpose

This note provides information in response to a number of issues raised by the Bills Committee at its meeting held on 6 November 2007.

Clause 27 of the Bill

To advise on the number of and nature of allegations in reportable complaints involving civil litigation settled out-of-court, where the Police did not provide information as required by the Independent Police Complaints Council (IPCC) and the reasons why the Police did not provide the required information concerned

2. There have been two reportable complaints involving civil litigation settled out-of-court, in relation to which the IPCC has asked the Police to provide information. Both complaints were lodged in 1999. In the first case, the complainant made an allegation of “assault” against a police officer and at the same time filed a civil claim against the Police. Noting that the civil claim had been settled out of court, the IPCC requested the Complaints Against Police Office (CAPO) to provide it with information on the relevant civil proceedings. As such information concerned communication between the Police and their legal adviser made for the purposes of the proceedings and was subject to legal professional privilege (LPP), CAPO did not provide the information to the IPCC. The IPCC also requested to see the Consent Order on the settlement. As the Consent Order contained a confidentiality provision requiring parties to the Order not to disclose its content to a third party, CAPO had expressed difficulty in acceding to the IPCC’s request^{Note}. Meanwhile, taking into account the comments of the IPCC, CAPO re-classified the allegation of “assault” against the police officer concerned (which was initially classified as “unsubstantiated”) as

^{Note} In this case, the Police had in fact applied to the court for lifting the confidentiality provision in the Consent Order. However, as the plaintiff did not appear at the hearing on the application, the court did not approve the application.

“substantiated”. Based on the revised classification, the IPCC endorsed the investigation report on the complaint.

3. In the second case, the complainant, a mother whose son had died during police detention, complained that his son had been assaulted and ill-treated whilst under such detention and made allegations of “assault”, “misconduct” and “neglect of duty” against police officers concerned. The Coroner found that the cause of death of the deceased was “heroin intoxication”. Upon investigation, CAPO concluded that the allegation of “neglect of duty” against the duty officer of the police station concerned was substantiated, while the other allegations were unsubstantiated. The IPCC endorsed CAPO’s investigation report at the joint IPCC/CAPO meeting held in June 2001.

4. In September 2001, the deceased’s father filed a civil claim seeking damages against the Police for negligence in looking after his son. The claim was settled out of court. The IPCC requested to see the Consent Order on the settlement. As the confidentiality provision in the Consent Order permitted the Police to disclose the Consent Order to a third party, CAPO provided a copy of it to the IPCC. The IPCC also requested CAPO to provide information on the rationale for the settlement and to confirm whether the settlement had any implications on the classifications of the allegations in the complaint. CAPO responded that as information on the rationale for the settlement involved legal advice sought by the Police and such information was subject to LPP, it could not be disclosed to the IPCC. Meanwhile, CAPO confirmed that the settlement did not affect the classifications of the allegations endorsed by the IPCC.

5. We are committed to ensuring that the IPCC has access to the relevant information for monitoring the handling of reportable complaints by the Police. The Bill has been drafted to enable the IPCC to have wide access to such information. In this connection, we consider that the well-established principle of LPP under the common law should be preserved. The Bill does not abrogate this principle, and permits the Police to consider waiving their right to LPP on a case-by-case basis.