

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

**Response to issues raised at the Bills Committee meetings
held on 22 January 2008(2), 27 May 2008,
30 May 2008 and 3 June 2008 (1)**

Purpose

This note provides information in response to the issues raised by the Bills Committee at its meetings held on 22 January, 27 May, 30 May and 3 June 2008.

Complaints not made by a personally aggrieved person

To provide information on how the Independent Commission Against Corruption (ICAC) handles a complaint lodged by a person who is not the aggrieved person and, making reference to ICAC's practice, to consider providing for a complaint lodged by a person who is not the aggrieved person to be categorized as a reportable complaint

2. The Police accept a crime report made by a person who is not the personally aggrieved person in the same way ICAC accepts a report on corruption offence made by such a person. As for whether a complaint against a member of the police force not made by the personally aggrieved person is categorized as a reportable complaint, clause 14 of the Bill provides that a representative 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 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. As we have explained previously, 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 Independent Police Complaints Council (IPCC) to monitor whether the Police have handled the complaint impartially.

3. A complaint filed by an individual other than the personally aggrieved person or a representative as defined in clause 14 of the Bill (subject to clause 9 of the Bill) will be categorized as a notifiable complaint. Despite this categorization, the Police will look into the facts of the case and refer it to the relevant police formation for further follow-up actions as appropriate. In sum, every complaint received by the Police will be processed with care through the appropriate channel. There is no question of any member of the public being denied an opportunity to lodge a complaint with the Police or any complaint lodged with the Police being left unattended to.

Clause 15 – Reconsideration of categorization of notifiable complaints

To consider adding “, information and material” after “explanations” in clause 15(3)

4. Taking account of Members’ comments, we propose to amend clause 15(3) to the effect that the IPCC may require the Commissioner of Police (CP) to provide information or material in support of his explanations that a complaint should be categorized as a notifiable complaint.

Clause 20 – the IPCC may require the Police to provide information relating to reportable complaints

To review the scope of clause 20(1)(a), having regard to the definition of “material” in section 24 of the Organized and Serious Crimes Ordinance

5. Taking into consideration Members’ comments, we propose to revise clause 20. Reference will be taken from the definition of “material” (including “any book, document or other record in any form whatsoever, and any article or substance”) in the Organized and Serious Crimes Ordinance (Cap. 455).

To consider adding “and investigation report” after “relating to a reportable complaint” in clause 20(1)(a)

6. Clause 20(1)(a) empowers the IPCC to require the Police to provide any information or material relating to a reportable complaint. Meanwhile, clause 16 obliges the Police to submit an investigation report to the IPCC as soon as practicable after completing the investigation of a reportable complaint. With these two clauses, the IPCC may require the Police to address questions, provide additional information or material in respect of an investigation report on a reportable complaint. We therefore propose no amendment to clause 20(1)(a).

To consider amending clause 20(1)(b) along the lines of “to clarify any fact, discrepancy, allegation or conclusion relating to a reportable complaint (and investigation report) and to provide further information or material relating to such clarification”

7. As investigation reports on reportable complaints are required to be submitted to the IPCC under clause 16, clause 20(1) is sufficient to empower the IPCC to require the Police to provide any information or material relating to a reportable complaint and an investigation report, and to clarify any fact or discrepancy relating to a reportable complaint. The provision should sufficiently enable the IPCC to request the Police to clarify any matter, including any fact, discrepancy, finding and conclusion, in respect of a reportable complaint or an investigation report on a reportable complaint.

8. From a practical point of view, there are difficulties in clarifying an allegation which usually represents a party’s one-sided description of an event. Nevertheless, the finding of facts, the classification of the reportable complaint involved and the reasons for the classification as contained in the investigation report of the complaint should comprehensively reflect whether the Police have handled the allegation concerned properly. As set out in paragraph 7 above, clause 20(1) together with clause 16 enable the IPCC to require the Police to provide any information or material relating to the investigation report, including how the Police have handled an allegation. To better reflect the IPCC’s power in this respect, we propose to amend clause 20(1)(b) to include “findings” relating to a reportable complaint.

Clause 21 – IPCC may require the Police to investigate reportable complaints

To consider revising the drafting of clause 21(2) in relation to the word “notified”; to consider requiring a notification under clause 21(2) to be given by registered post and setting out such a requirement in the Bill

9. Clause 21(2) provides that the IPCC may require the Police to investigate any matter relating to a request for review of the classification of a reportable complaint if the request is made within 30 days after the complainant was notified by the Police of such classification. Some Members have suggested that the timing of such notification may not be readily ascertained and therefore the 30 days should be counted from the date of the complainant’s receipt of the Police’s notification.

10. At present, the Police’s notification to a complainant of the classification of the reportable complaint concerned is sent by recorded delivery unless the complainant has specified other means (e.g. by fax or email) of receiving such notification. As there are practical ways of recording the timing of the notification, we consider it unnecessary to amend clause 21(2), but will add a provision in clause 21 to expressly provide for the determination of the time at which a notification is made.

Clause 23 – IPCC members may attend interviews and observe collection of evidence

To consider amending clause 23(1) along the lines that a member of the IPCC may, at any time and without appointment, attend interviews or observe the investigation of a reportable complaint, including but not limited to subclauses (a) and (b)

11. Clause 23(1) empowers IPCC members to, on a scheduled or surprise basis, attend an interview conducted by the Police or observe the collection of evidence by the Police in the investigation of a reportable complaint. Such interviews and collection of evidence have already comprehensively covered the wide range of investigation steps (see Annex A) taken by the Police in respect of a reportable complaint. We therefore propose no amendment to clause 23(1).

Clauses 24 and 25 – the IPCC may require the Police to provide explanation on actions taken or to be taken in respect of a member of the police force, and to submit statistics and reports

To consider providing explicitly that the word “action” in clause 24 includes “non-action”

12. Clause 24 already covers the scenario where the Police have made a decision to take no disciplinary action against a member of the police force. It is not necessary to revise the wording.

To consider deleting “types of” in clause 25(a)

13. At present, the Police compile statistics of types of conduct of members of the police force subject to reportable complaints for the IPCC’s reference. The statistics are compiled by reference to the different natures of such conduct, such as “assault”, “misconduct/improper manner/offensive language”, “neglect of duty”, “unnecessary use of authority”, “fabrication of evidence” and “threat”. Clause 25(a) reflects the existing practice and “types of” should be retained in the clause.

To provide examples explaining the difference between an “explanation” under clause 24 and a “report” under clause 25(b)

14. Clause 24 provides that the IPCC may require the Police to provide an explanation in relation to any disciplinary action taken or to be taken in respect of a member of the police force by the Police in connection with any reportable complaint. Matters relating to disciplinary actions taken or to be taken in connection with reportable complaints will be shown on the Disciplinary and Criminal Checklist, a sample of which has been provided in LC Paper No. CB(2)2265/07-08(01). Normally, further questions from the IPCC will be raised at the joint IPCC/Police meetings, and oral answers will be given by the Police. A written explanation in relation to disciplinary actions taken or to be taken is rarely required.

15. As the IPCC has accepted, disciplinary actions instituted against members of the police force are within the prerogative of the CP. Thus, while the CP stands ready to provide an explanation in relation to any action he has taken or will take in respect of a member of the police force in connection with any reportable complaint, it would not be appropriate

to stipulate in the Bill that the IPCC may require the CP to submit a report to it in relation to such action.

16. Clause 25(b) provides that the IPCC may require the Police to submit to it 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). Clause 7(1)(a) specifies the IPCC's power to monitor the Police's handling and investigation of reportable complaints. Depending on the details to be included in the Police's report as the IPCC may require, a report under clause 25(b) in respect of a recommendation of the IPCC made under clause 7(1)(a) may take the form of a memo complemented by an amended investigation report as appropriate (see samples at Annex B) of the reportable complaint concerned incorporating the details required by the IPCC. Clause 7(1)(c) empowers the IPCC 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. Depending on the details of the recommendation of the IPCC, a report under clause 25(b) in respect of a recommendation of the IPCC made under clause 7(1)(c) may take the form of a memo (see sample at Annex C).

Clause 26 – the IPCC may require the Police to consult the IPCC on orders and manuals relating to handling or investigation of reportable complaints

To consider providing the Bills Committee with a copy of the documents referred to in clause 26(1)(b)

17. The Police General Order covered by clause 26(1)(b)(i) is available on the Police's website (www.police.gov.hk). For other orders and manuals of the police force covered by clause 26(1)(b)(ii) to (iv) relating to the handling or investigation of reportable complaint, which contain details of internal operational procedures, we suggest providing them to the Legislative Council Secretariat for Members' access on a restricted basis.

Clause 28 – Report to the Chief Executive

To review the drafting of clause 28, having regard to the views expressed by members

18. Taking into consideration Members' comments, we propose to delete "from time to time" in clause 28, to provide that the IPCC may make such reports to the Chief Executive as it thinks necessary.

Clause 29 – the IPCC may charge fees

To consider adding "reasonable" before the word "fees" in clause 29

19. We have no objection to adding "reasonable" before the word "fees" in clause 29.

Clause 31 - Appointment of observers

To consider amending clause 31(1) to the effect that observers are to be appointed by the IPCC on the recommendation of the Secretary for Security or that observers are to be appointed by the Chief Executive

20. The function of an observer is to assist the IPCC to observe the manner in which the Police handle or investigate reportable complaints. In this respect, the Administration has the responsibility and is well positioned, in view of its extensive knowledge of individuals from a wide cross-section of the community who are potentially suitable candidates, to ensure that the right persons are appointed as observers. We therefore propose no amendment to clause 31.

21. It is not uncommon for appointments of different nature to the same statutory/advisory body to be made by different authorities. In the case of the IPCC, having regard to the respective functions of the IPCC members and IPCC observers, we consider the appointment arrangement stipulated in the Bill (i.e. IPCC members to be appointed by the Chief Executive and IPCC observers to be appointed by the Secretary for Security, which reflects the existing practice) appropriate.

To consider including the immediate family members of members of the police force under clause 31(2)

22. As we have explained previously, the Administration attaches importance to putting in place measures to ensure the impartiality of the IPCC. Thus, in considering appointments of IPCC observers, we shall have regard to potential candidates' background to ensure that any persons who may have a real or perceived conflict of interest in carrying out the function of an observer will not be appointed as observers. With this safeguard already in place, we consider that no amendment to clause 31(2) is needed.

To review the use of the term "civil servant" in clause 31(2)(a) whether it covers employees of the Government who are not civil servants or directors of bureaux

23. Having considered Members' comments, we propose to replace "civil servant" by "a person who holds an office of emolument, whether permanent or temporary, in a Government bureau or department". For consistency, further to our proposal set out in paragraph 11 of LC Paper No. CB(2)1842/07-08(01), we propose to similarly replace "civil servant" in clause 4(2) by "a person who holds an office of emolument, whether permanent or temporary, in a Government bureau or department". The proposed amendments cover all employees of the Government, including political appointees and employees on non-civil service contract terms. These government employees will be ineligible for appointment as IPCC members or observers.

Declaration of interest by IPCC members

To consider providing in clauses 10 and 14 in Schedule 1 to the Bill as to how a member of the IPCC or a member of a committee of the IPCC having an interest in a matter being discussed or to be discussed should be handled, taking into account the requirement for observers to withdraw from an interview or observation of collection of evidence as specified in clause 34(3)(c)

24. Having considered Members' comments, we propose to amend clauses 10 and 11 in Schedule 1 in respect of the IPCC's determination of matters to the following effect, taking reference from similar provisions in the Legislative Council Commission Ordinance (Cap. 443) -

- (a) if an IPCC member has an interest in a matter being discussed or to be discussed at a meeting of the IPCC, he must disclose the nature of his interest at or before the meeting, withdraw from the meeting during the discussion of the matter if so required by a majority of the other members present at the meeting;
- (b) except as otherwise determined by a majority of the other members present at the meeting, he must not vote on a resolution concerning the matter and must not be counted for the purposes of forming a quorum;
- (c) if the disclosure is made by the IPCC member presiding at the meeting, he must, if so required by a majority of the other members present at the meeting, vacate the chair during the discussion of the matter;
- (d) if the IPCC member under (c) above is required to vacate his chair, the other members present at the meeting must appoint, by a majority of their votes, one of their members to preside at the meeting; and
- (e) in the case of a written resolution on a matter in which an IPCC member has an interest, he must state the nature of his interest in respect of the relevant paper(s) being circulated and return the papers to the Secretary-General. He must not vote on the written resolution and must not be counted in calculating a majority for the approval of the written resolution.

25. Similar amendments will be made to clauses 14 and 16 in Schedule 1 in respect of the determination of matters by IPCC committees.

26. For observers, their only function is to observe an interview or the collection of evidence by the Police, and each observation is conducted by an observer on his own. As such, the requirement for an observer having an interest in the reportable complaint concerned to withdraw from the observation as specified in clause 34(3)(c) is appropriate.

Police's investigation steps covered by interviews and collection and collection of evidence under clause 34(1) of the IPCC Bill

(A) Interviews conducted by the Police under clause 34(1)(a)

Interviews with -

- complainant(s)
- complainant's witness(es)
- complaine(e)s
- complaine(e)'s witness(es)
- other Police witness(es)
- other (independent) witness(es)
- expert witness(es)

(B) Collection of evidence by the Police under clause 34(1)(b)

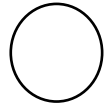
Scene visits

An investigating officer may conduct a scene visit. The objective of a scene visit is to -

- locate possible witness(es);
- find possible evidence (e.g. CCTV capture, exhibits);
- assist the investigating officer in re-constructing the events which led to the complaint;
- assist in corroborating the statements of any party to a complaint; and
- check the physical layout of the scene if relevant.

Identification parade

When it is apparent that the identity of an officer who is the subject of complaint is in dispute, or that there is prima facie evidence to suggest a criminal charge is likely to be initiated against a police officer, the investigating officer may arrange for the formal identification of the complaine(e) by holding an identification parade.

**MEMO**

From Commissioner of Police (SSP CAPO)
 Ref. (X) in XXXXXXXX
 Tel No. XXXXXX
 Fax No. XXXXXX
 Date 2007-XX-XX

To Secretary, Independent Police
Complaints Council
 Your Ref. (X) in XXXXXX
 Dated 2007-XX-XX Fax. No. XXXXXX
 Total Pages _____

Query : XXXXXXXX
 Request for additional information
 Request for re-classifying the allegation
Request for amendment to CAPO Report

Thank you for your MUR.

2. CAPO has enquired with XXX, who stated that he did not see the complainant put his hands up in a surrender gesture as alleged. The requested information is attached at Encl. (16).
3. Having examined the circumstances surrounding the allegation, this Office had decided to re-classify the allegation from 'False' to 'No Fault'. The CAPO Report was amended accordingly.
4. The CAPO file, with the Amended Report, is returned for your endorsement, please.

(XXXXXX)
 for Commissioner of Police

[Note: The information requested by IPCC as mentioned in paragraph 2 above has been included in paragraph 8 of the amended investigation report.]

CAPO RN/Team : XXXXXX

Date/How Received : 2006-XX-XX to CAPO (In person)

Complainant : Mr. X XXX, XX years,
HKID No.: XXXXXX,
Rm XXX
XXXX House,
XXXX Estate.
(tel. XXXXXX)
Worker

Complaint : (a) Unnecessary Use of Authority
(b) Neglect of Duty

Officers Concerned : (1) PC A, XX years (a)
(2) SSGT B, XX years (b)

AMENDED REPORT
(Final Report Submitted on 2006-XX-XX)

INTRODUCTION

Encls. (2),(6)

In the early morning of 2006-XX-X, the complainant was drunk and went to a congee stall at XXX Street. The stall attendant made a report of 'Person Causing Trouble'. Complainee (1) attended scene for enquiry. The complainant was later arrested for 'Drunk and Disorderly Conduct'. He was taken to XXX Police Station for processing and was later charged with the above offence (XX RN XXXXXX refers).

2. On 2006-XX-X, the complainant lodged a complaint to CAPO in person. The complaint was referred to CAPO X for investigation.

COMPLAINANT'S VERSION

Mr XXXX, XX years

Encl. (5)

He was interviewed by SGT XX of CAPO on 2006-XX-XX. His version was:

- (a) In the small hours on 2006-XX-XX, he was having drinks with his friends in XXX. At about 0600 hours on 2006-XX-XX, he was on the way home alone and decided to have breakfast at a congee stall at XX Street.
- (b) He was incapacitated due to the alcohol consumed and he lay on the pavement.

- (c) Later Complainee (1) arrived and asked him to get up.
- (d) He put his hands up in a surrender gesture. However, Complainee (1) used his hand to press forcefully on his shoulder. He felt painful as he was handcuffed. He considered that excessive force was used [allegation (a) – Unnecessary Use of Authority].
- (e) He was taken to the police station. He complained that he was asked whether he had had breakfast and not provided with meal until lunch time [allegation (b) – Neglect of Duty].

MEDICAL REPORT

4. The complainant did not request medical treatment and no superficial injury was seen.

POLICE VERSION

PC A, XX years [Complainee (1)]

Encls. (8),(9)

5. He was interviewed by SGT XX of CAPO on 2006-XX-XX. His version was:

- (a) On 2006-XX-XX, he was on 'A' shift duty. At 0654 hours on 2006-XX-XX, he responded to a call of 'Person Causing Trouble' at a congee stall at XX Street.
- (b) When he arrived, he saw the complainant lying on the pavement.
- (c) The complainant repeatedly swore and looked drunk and incapacitated. He issued verbal warning to the complainant twice requesting him to leave the pavement but the complainant ignored.
- (d) He then arrested the complainant for 'Drunk and Disorderly Conduct'. During the arrest, the complainant struggled. He therefore handcuffed the complainant. He denied having used excessive force.

SSGT B, XX years [Complainee (2)]

Encls. (10)

6. He was interviewed by SIP XXX of CAPO on 2006-XX-XX. His version was:

- (e) On 2006-XX-XX, he was on 'A' shift duty as the Duty Officer. At 0745 hours, Complainee (1) brought the complainant to him and reported the arrest of the complainant for 'Drunk and Disorderly Conduct'.

- (f) He admitted it did not occur to him that he should order a prisoner's meal for the complainant, as he had provided breakfast for the persons in custody at an earlier time.

OTHER WITNESS

Mr XXXX, XX years

Encl. (15)

7. Mr XXX is the proprietor of 'XXXX' congee stall at XXX Street. On the day and time in question, he was working in his stall. He gave a statement for the 'Drunk and Disorderly Conduct' case against the complainant and declined to give a further statement to CAPO for the complaint. His version corroborated that of Complainee (1).

Encl. (16)

8. On 2007-XX-XX, CAPO made further enquiry with Mr XXX as recommended by IPCC. He stated that he did not see the complainant put his hands up in a surrender gesture as alleged.

CAPO INVESTIGATION

9. On 2006-XX-XX, SGT XX of CAPO contacted the complainant, who did not opt for Sub-judice arrangement and requested to give a statement instantly. On 2006-XX-XX, a statement was taken from the complainant. On 2006-XX-XX, scene visit was conducted at the congee stall and the temporary cell. There were no CCTV facilities at both sites. Relevant copies of the crime case file were examined with no irregularities observed. On 2006-XX-XX, SSP CAPO's approval was obtained to suspend the complaint investigation due to the Sub-judice nature of the allegations. On 2006-XX-XX, CAPO investigation was re-opened on conclusion of the court case.

Encls. (10)-(16)

10. Record was checked and there was no meal order made between 0700 hours and 1230 hours. Police notebooks of the complainees were examined with no irregularities observed.

COURT TRIAL

Encl. (22)

11. The complainant was charged with 'Disorderly Conduct'. On 2006-XX-XX, he pleaded not guilty and the trial was adjourned to 2006-XX-XX. On 2006-XX-XX, he pleaded guilty to the charge with facts admitted. He was convicted as charged and was fined \$1,000. The court had not made any adverse comment on the arrest. During the trial, the complainant did not renew his allegation. However, in his mitigation, the complainant stated that he struggled when he was handcuffed.

CRIMINAL RECORD

12. The complainant has no criminal record.

COMMENT

13. In respect of allegation (a), the complainant alleged that Complainee (1)

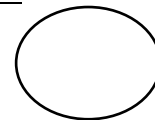
forcefully pressed on him when he was handcuffed. During the trial, the complainant stated to the Magistrate in his mitigation that he struggled when he was handcuffed. Having examined the circumstances surrounding the allegation, CAPO considers it appropriate to classify the allegation as 'No Fault'.

14. In respect of allegation (b), Complainee (2) admitted that it was a matter of fact that he had failed to provide the complainant with meal until lunch time. The allegation of Neglect of Duty is 'Substantiated'. It is recommended that a suitable advice without R/S entry be given to complainee (2) for the need to make special order for prisoner's meal if waiting until the next meal time would involve undue distress to the person in custody.

RESULT OF INVESTIGATION

<u>15. (a) Officer</u>	<u>Allegation</u>	<u>Classification</u>	<u>Action</u>
(i) PC A	Unnecessary Use of Authority	No Fault	Nil
(ii) SSGT B	Neglect of Duty	Substantiated	To be advised without R/S Entry as per PARA 12

(b) The complainant will be informed.



MEMO

From Commissioner of Police

To Secretary, Independent
Police Complaints Council

Ref. (X) in XXXXXXXXXXXX

(Attn.: _____ *)*

Tel. No. XXXXXX

Your Ref. _____ *in* _____

Fax. No. XXXXXX

dated _____ *Fax No.* _____

Date 2007-XX-XX

Total Pages _____

Disclosure of Full Name to Members of the Public

During the Xth IPCC /CAPO Joint Meeting on 2007-XX-XX, the Chairman requested to be informed of the details of action taken in relation to the captioned subject which was raised in the Xth IPCC/CAPO Joint Meeting.

2. Please be informed that the matter was referred to the relevant policyholder, ACP SUP, on 2007-XX-XX for examination and consideration. In response to our request, ACP SUP sent a reply to CAPO on 2007-XX-XX informing that PGO Chapter 20 will be amended to include the guideline. A copy of the memo is attached for ease of reference.

3. You will be informed of the formal promulgation of the relevant PGO in due course. I should be grateful if you could bring the above information to the Chairman's attention.

(XXXXXXXXXXX)
for Commissioner of Police