

1. Introduction

1.1 Hong Kong adopts a two-tier mechanism to handle complaints against the police. First, the Complaints Against Police Office ("CAPO"), a unit within the police, serves as a primary touch point for complainants.¹ It is responsible for **receiving and investigating** complaints concerning police conduct and any practice or procedure adopted by the police. Then it involves the Independent Police Complaints Council ("IPCC"), a statutory body tasked with **monitoring** CAPO investigations and **reviewing** their findings, although it has no direct investigation power.² With all members appointed by the Chief Executive ("CE") of HKSAR, IPCC may make recommendations to the police/CE in respect of the complaint cases as well as how to improve police practices.³ However, imposing disciplinary action is a matter of the police, although IPCC can comment on it. Since the police are primarily responsible for investigating police complaints, there are views that the current mechanism **lacks independence** and has **limited monitoring and disciplinary power**. Amid increased public concerns and complaints about police conduct and custody, there have been calls for a reform of Hong Kong's police oversight mechanism.

1.2 According to the handbook on police oversight issued by the United Nations Office on Drugs and Crime, an independent police oversight body ("POB") should, among others, have the capacity to conduct its own investigation, and have the powers to recommend disciplinary action and follow up on its recommendations. At the request of Dr Hon KWOK Ka-ki, the Research Office has completed a research task on police oversight mechanisms in six places selected by the Member. These places are England and Wales ("England") and Northern Ireland of the United Kingdom, New South Wales ("NSW") of Australia, New York City ("NYC") of the United States, New Zealand and the Netherlands. Relevant documents are presented in an information pack folder with key findings outlined below and in the [Table](#).

¹ Complaints should be first made to CAPO, any police station or other agency. These complaints will be directed to CAPO for handling or investigation.

² If IPCC disagrees with or rejects the results of police investigation, it may seek clarification or request CAPO to reinvestigate a case. An "Observers Scheme" also allows IPCC members or observers to attend and monitor CAPO investigations. IPCC does not conduct independent investigation.

³ For example, IPCC has pledged to conduct a fact-finding study on police operations during major public order events in the second half of 2019, with findings to be released in due course.

2. Police oversight mechanisms in selected places

2.1 Like Hong Kong, most selected places have established POBs dedicated to overseeing principally the police complaint system. An exception is Netherlands, whose National Ombudsman handles complaints against all administrative agencies including the police. On **leadership composition**, while most overseas POBs have their members appointed/recommended by government heads/officials, they have put in place additional requirements to help uphold the impartiality and independence of the body. For example, in NSW and New Zealand, the head of POBs needs to be a former or serving **judge**. The latter also requires its board members be appointed by the Governor-General based on **parliamentary advice**. The Ombudsman in the Netherlands is appointed by the **lower House of Parliament**, and NYC requires that a certain number of board members be designated by the **local legislative branch**. England ensures that the POB head has never worked for the police, which is similar to Hong Kong's IPCC membership requirement that those who were a member of the police could not be appointed.

2.2 On **complaint handling**, Northern Ireland is the only overseas POB with a mandate to directly handle all complaints on police misconduct. NYC's mandate is to deal with four specified types of police misconduct complaints, namely excessive or unnecessary use of force, abuse of authority, discourtesy and offensive language. For both places, all complaints should be made directly to POBs. As for England, NSW and New Zealand, while their POBs receive and/or assess public complaints, they count on police investigation in a majority of complaints and only investigate the **most serious cases**, especially those involving death or serious injury. The Netherlands has a different model. Its Ombudsman can handle complaints about police actions or procedures, but only after a complainant has filed a complaint with the police and is dissatisfied with the outcome.

2.3 On **investigative power**, POBs in all selected places can conduct their own investigations. POBs in NYC and Northern Ireland have a broad range of powers to assist their investigations. The former enjoys subpoena power and access to police records. The latter can use modern investigative tools, such as DNA analysis, and can even arrest police officers, if absolutely necessary. POBs in England, NSW and New Zealand have the power to take evidence (e.g. take witness statements or even summon witnesses), although the tools that are available to POB investigators are not exhaustively listed. These three places also monitor and review police investigation of less serious cases. For example, POB in England may provide **direction** to the police investigators in terms of scope, investigation strategy, etc.; however, its POB may also decide that less serious cases be investigated by the police without its involvement. To ensure **operational independence** from the police, NSW does not employ former

local police officers, while NYC hires civilians without a law enforcement background as investigators. However, it is not uncommon for POBs to hire investigators with policing or legal experience to facilitate investigation, as in the case of New Zealand and Northern Ireland.

2.4 On **follow-up action**, most POBs (NYC, NSW, New Zealand and Northern Ireland) can **recommend disciplinary actions** and/or **criminal prosecution**. POB in NYC can even establish an administrative prosecution process against police officers. The Police Commissioner in NYC retains the ultimate authority to impose discipline but has to give explanations when he/she deviates from POB's decisions. On **appeal/review**, POB's decisions derived from its own investigations are generally **final** in all places except the Netherlands, which allows a review of the case or decision by the Ombudsman. In England, a review request is only accepted for cases investigated by the police without POB's involvement. In New Zealand, for cases investigated by the police under POB's monitoring, a dissatisfied complainant may request that the case be reviewed by POBs, a practice similar to Hong Kong's.



Table – Police oversight mechanisms in selected places

	Hong Kong	Australia (New South Wales)	New Zealand	The Netherlands	The United Kingdom (England and Wales)	The United Kingdom (Northern Ireland)	The United States (New York City)
Police oversight body ("POB")	Independent Police Complaints Council ("IPCC")	Law Enforcement Conduct Commission ("LECC")	Independent Police Conduct Authority ("IPCA")	National Ombudsman ("Ombudsman")	Independent Office for Police Conduct ("IOPC")¹	Police Ombudsman for Northern Ireland ("PONI")	Civilian Complaint Review Board ("CCRB")
Founded in	1986 ²	2017	2007	1982	2018	2000	1953
Relevant legislation	Independent Police Complaints Council Ordinance (Cap. 604)	Law Enforcement Conduct Commission Act 2016 (No. 61)	Independent Police Conduct Authority Act 1988	National Ombudsman Act	Policing and Crime Act 2017	Police (Northern Ireland) Act 1998	New York City Charter (Chapter 18-A)
Leadership composition	<ul style="list-style-type: none"> It comprises the Chairman, three Vice-Chairmen and not fewer than eight members, all appointed by the Chief Executive of HKSAR. Under the legislation, persons who hold an office of emolument in a Government bureau or department, and those who were a member of the Police Force are not eligible for appointment. 	<ul style="list-style-type: none"> It consists of three independent Commissioners who are appointed by Governor, and are responsible to Parliament in the performance of the functions of LECC. The Chief Commissioner must be a serving or former judge. 	<ul style="list-style-type: none"> It consists of up to five members appointed by the Governor-General on the advice of the House of Representatives. The Chairman must be a serving or retired judge. 	<ul style="list-style-type: none"> The Ombudsman is appointed by the House of Representatives. 	<ul style="list-style-type: none"> It is headed by the Director General ("DG"), who is appointed by the Queen on the recommendation of the Secretary of State for the Home Department. Under the legislation, the DG can never have worked for the police. 	<ul style="list-style-type: none"> It is headed by a Police Ombudsman, who is appointed by the Queen, on the recommendation of the Secretary of State. The Police Ombudsman is accountable to the Northern Ireland Assembly, through the Minister for Justice. 	<ul style="list-style-type: none"> It consists of 13 members. Five members including the Chairman are designated by the Mayor; five members designated by the City Council; and three members designated by the Police Commissioner. None may be public employees or serve in public office.
Staffing, caseload and operational budget/ expenditure	<ul style="list-style-type: none"> 51 staff, including 16 vetting officers for handling cases.³ It received 1 521 reportable complaints in 2018-2019.⁴ Its expenditure was HK\$79.2 million in 2018-2019. 	<ul style="list-style-type: none"> About 108 staff. None of the staff are serving or former local police officers. It assessed 2 547 complaints in 2018-2019. Its budget was A\$25.3 million (HK\$124.4 million) in 2018-2019. 	<ul style="list-style-type: none"> About 30 staff, including investigators with former policing or legal experience. It received 3 026 complaints in 2018-2019. Its expenditure was NZ\$4.6 million (HK\$21.3 million) in 2018-2019. 	<ul style="list-style-type: none"> About 170 staff, including former lawyers. It received 25 674 complaints in 2018 (of which 1 882 cases were related to the police). Its revised budget was €19.5 million (HK\$162.4 million) in 2019-2020. 	<ul style="list-style-type: none"> 1 030 staff, including a team investigators from various backgrounds. It received 9 565 complaints in 2018-2019. Its net expenditure was £72.5 million (HK\$694.1 million) in 2018-2019. 	<ul style="list-style-type: none"> 150 staff (about 80% are investigators who are former lawyers, ex-police officers from foreign jurisdictions, etc.). It received 2 627 complaints in 2018-2019. Its expenditure was £9.6 million (HK\$91.9 million) in 2018-2019. 	<ul style="list-style-type: none"> About 170 staff (over 50% are civilian investigators from varied backgrounds except law enforcement). It received 4 745 complaints in 2018. Its budget was US\$16.7 million (HK\$129.4 million) in 2018-2019.
Mandate	<ul style="list-style-type: none"> It handles alleged police misconduct, any practice or procedure adopted by a police officer or civilian member attached to the police. 	<ul style="list-style-type: none"> It handles complaints relating to police misconduct and maladministration. 	<ul style="list-style-type: none"> It handles complaints concerning misconduct or neglect of duty, or concerning any police practice, policy or procedure.⁵ 	<ul style="list-style-type: none"> It handles complaints about actions and procedures of public administration including the police. 	<ul style="list-style-type: none"> It handles complaints relating to police conduct or the way the police force is run. 	<ul style="list-style-type: none"> It handles all complaints about the conduct of police officers (e.g. excessive use of force, failure in duty and rude behavior), in addition to discharges of firearms, fatal traffic accidents and any death involving the police.⁶ 	<ul style="list-style-type: none"> It handles complaints relating to excessive or unnecessary use of force; abuse of authority; discourtesy; and use of offensive language.

¹ Formerly known as Independent Police Complaints Commission, IOPC is given some new powers under the Policing and Crime Act 2017. These include the power to launch investigations without a police referral. Appeals are also replaced by a new system of reviews, intended to be simpler than the previous system.

² IPCC was established in 1986 as the Police Complaints Committee, which was renamed IPCC in 1994. It did not gain statutory status until 2009 under the Independence Police Complaints Council Ordinance (Cap. 604).

³ Latest data available in 2015-2016.

⁴ A reportable complaint is a public complaint, made in good faith, that relates to police conduct.

⁵ It also has an explicit mandate of monitoring detention places and treatment of detainees in police custody.

⁶ It normally only investigates cases occurred in the past year. Yet it also investigates serious incidents occurred more than a year ago, including historic deaths during "the Troubles".

Table – Police oversight mechanisms in selected places (cont'd)

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Complaint handling procedure	<ul style="list-style-type: none"> Complaints should be made to Complaints Against Police Office ("CAPO"), any police station or other agency. These complaints are handled by CAPO. Minor complaints will be handled using informal resolution. For reportable complaints, CAPO will conduct investigation, which will be observed, monitored and reviewed by IPCC. Notifiable complaints (e.g. those outside the purview of IPCC) are also required to be submitted to IPCC regularly for examination to ensure proper categorization. 	<ul style="list-style-type: none"> Complaints can be lodged to LECC or the police. These complaints are centralized at LECC for assessment. For more serious cases of misconduct and maladministration, LECC will conduct investigation. Less serious cases are referred to the police for resolution or for investigation under LECC's oversight. 	<ul style="list-style-type: none"> Complaints can be lodged to IPCA or the police. These complaints are centralized at IPCA for assessment. For incidents involving death or serious bodily harm, IPCA will conduct investigation. Less serious cases are referred to the police for resolution or investigation under its oversight. 	<ul style="list-style-type: none"> Complaints must be first made to the police. The Ombudsman may only accept a case only after relevant authorities (e.g. the police complaints unit) have been given a chance to handle it. 	<ul style="list-style-type: none"> Complaints can be made directly to the police or via IOPC to the police. These complaints are assessed by the police, and cases that meet certain criteria (i.e. deaths and serious injuries involving police actions) must be referred to IOPC. Upon receiving a referral from the police, IOPC will decide whether to (a) let the police investigate without IOPC's involvement; (b) let the police investigate under IOPC's direction and control (known as directed investigation); or (c) carry out its own investigation. 	<ul style="list-style-type: none"> Complaints should be made directly to PONI. PONI then handles and investigates complaints that fall within its mandate. 	<ul style="list-style-type: none"> Complaints should be made directly to CCRB. CCRB then handles and investigates complaints that fall within its mandate.
Investigative power	<ul style="list-style-type: none"> No. It has no direct investigation power, but it is authorized to review police investigations. If dissatisfied with the results of police investigation, it may request CAPO to reinvestigate the case and interview witnesses for clarification. An "Observers Scheme" allows IPCC members or observers to attend and monitor CAPO investigations. 	<ul style="list-style-type: none"> Yes. It conducts independent investigation for serious complaint cases, with power to summon witnesses. For cases handled by the police, LECC has the power to monitor the investigation, such as attending interviews and reviewing results of police investigation. 	<ul style="list-style-type: none"> Yes. It conducts independent investigation in serious complaint cases, with power to summon witnesses. Other cases under police investigation are subject to IPCA's active oversight (e.g. IPCA can review all material gathered during investigation as it is generated, and discuss with investigating officers on arising issues). 	<ul style="list-style-type: none"> Yes. It conducts investigations based upon public complaints, but only after one has filed a complaint with the police and is dissatisfied with the outcome. It may require the authorities and witnesses to cooperate in investigation. 	<ul style="list-style-type: none"> Yes. It conducts independent investigation on serious cases, by taking necessary step to collect evidence, such as taking witness statements, analyzing footage from CCTV and obtaining phone records. For cases under IOPC's directed investigation, IOPC will give direction in terms of scope, investigative strategy, etc. 	<ul style="list-style-type: none"> Yes. It conducts full investigations or informal mediation, depending on the severity of complaints. It has a broad range of investigative power similar to that of the police (e.g. arrest police officers and search premises, if absolutely necessary; and access to modern tools e.g. DNA analysis). A critical response team helps facilitate evidence collection. 	<ul style="list-style-type: none"> Yes. It conducts full investigations or mediation, depending on the severity of complaints. It has a broad range of investigative powers similar to that of the police (e.g. access to police department records and subpoena power to obtain commercial and medical records). A field team helps facilitate evidence collection, including video evidence.

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Follow-up action as a result of investigation	<ul style="list-style-type: none"> It can comment and raise queries on disciplinary actions against police officers to ensure that the actions commensurate with the seriousness of the offences, but it cannot press charges against police officers. It can also make recommendations to the Commissioner of Police and/or the Chief Executive of HKSAR on how to improve police practices. 	<ul style="list-style-type: none"> It can make recommendations on disciplinary actions, but it cannot press charges against police officers. It can refer investigation findings to the Director of Public Prosecutions for consideration. The decision rests with the public prosecutors. 	<ul style="list-style-type: none"> It can make recommendations for disciplinary or criminal proceedings, but it cannot press charges against police officers. If unsatisfied with police response to its recommendations, IPCA can inform the Minister of Police and the Attorney-General, who must then inform the Parliament. 	<ul style="list-style-type: none"> It can make recommendations on redresses, but its decisions are not binding, and neither can it press charges against police officers. 	<ul style="list-style-type: none"> It can decide whether those police officers involved may need further training, face a misconduct meeting, etc., but it cannot press charges against police officers. It can also make recommendations on areas for improvement to the police, which will then be required to give a response within a specified period. 	<ul style="list-style-type: none"> It can make recommendations and directions about disciplinary actions, but it cannot press charges against police officers. For more serious criminal offences, it can make recommendations to the Public Prosecution Service for criminal prosecution. The decision rests with the public prosecutors, based on evidence provided by PONI. 	<ul style="list-style-type: none"> It can make recommendations on disciplinary actions against police officers. In the most serious cases, it can establish an administrative prosecution process.⁷ The Police Commissioner is the final arbiter of discipline but has to give explanations when he/she deviates from CCRB's recommendations.
Complainant's right to request appeal/review of police investigation	<ul style="list-style-type: none"> Yes. A complainant can request that a review of police investigation be conducted. IPCC will then review the second report of police investigation. 	<ul style="list-style-type: none"> Information not available.⁸ 	<ul style="list-style-type: none"> Yes. When a case is referred to the police and the complainant is not satisfied with their findings, the complainant can request the case be reviewed by IPCA. 	<ul style="list-style-type: none"> Yes. A complainant dissatisfied with the findings of police investigation can bring his/her case to the Ombudsman. 	<ul style="list-style-type: none"> Yes, only if the investigation is conducted by the police without IOPC's involvement. Where IOPC finds that the outcome is not reasonable and proportionate, it may direct that the complaint be reinvestigated, and determine the mode of investigation. 	<ul style="list-style-type: none"> Not applicable (PONI does not count on police investigation). 	<ul style="list-style-type: none"> Not applicable (CCRB does not count on police investigation).
Complainant's right to request appeal/review of POB's/Ombudsman's own investigation	<ul style="list-style-type: none"> Not applicable. 	<ul style="list-style-type: none"> Information not available.⁸ 	<ul style="list-style-type: none"> Not explicitly stated. Yet according to its website, a complainant can ask IPCA to review a case if he/she can provide new evidence or there are issues that IPCA does not address. 	<ul style="list-style-type: none"> Yes. A complainant can apply to the Ombudsman for a review of its decision. 	<ul style="list-style-type: none"> No. IOPC's decision is final. 	<ul style="list-style-type: none"> No. PONI's decision is final. 	<ul style="list-style-type: none"> No. CCRB's decision is final.

⁷ A police officer may lose vacation days, be suspended or terminated if he/she is found guilty.

⁸ The Research Office has sent an email to LECC requesting information on the review right. As of the publication date of this Research Task, LECC has not responded to the enquiry.

Police oversight mechanisms in selected places

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International

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Hong Kong

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[Australia \(New South Wales\)](#)

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