

Bills Committee on Independent Police Complaints Council Bill

Purpose

This paper responds to some Bills Committee Members' suggestion that the statutory Independent Police Complaints Council (IPCC) should be empowered to investigate complaints lodged by the public against the Police.

The two-tier police complaints system

2. The police complaints system dates back to 1977. Under the existing system, the Complaints Against Police Office (CAPO) of the Police is responsible for handling and investigating complaints lodged by members of the public against members of the police force. CAPO works separately from other Police formations to ensure its impartiality in handling the complaints.

3. The IPCC is an independent civilian oversight body specifically appointed to monitor and review CAPO's investigations of the complaints. Members of the IPCC are drawn from a wide spectrum of the community. Their ability, expertise and commitment to public service are tapped to ensure that the complaints are dealt with fairly and impartially. To underline the IPCC's independence, an IPCC Secretariat has been established as an independent Government department to provide full-time support to the IPCC in carrying out its monitoring and review functions.

4. There are effective checks and balances to ensure that the complaints lodged with CAPO are handled thoroughly, fairly and impartially. CAPO prepares detailed investigation reports on all reportable complaints for submission to the IPCC. The IPCC rigorously examines the reports. Where IPCC members have doubts about a particular investigation, they may invite the complainants, complainees and witnesses to interviews. The IPCC can also ask CAPO to submit for its reference any documents or information relevant to a complaint. In discharging their duties, IPCC members may observe CAPO's investigations in person, on either a surprise or a scheduled basis. If the IPCC is not satisfied with the result of a CAPO investigation, it can ask CAPO to clarify any doubts or to reinvestigate the complaint. It may

also bring the case to the personal attention of the Chief Executive, together with recommendations as to its disposition. The IPCC has adequate means to ensure that the investigations of all reportable complaints lodged with CAPO are conducted properly and effectively.

5. The IPCC also monitors CAPO's investigations directly through the Observers Scheme under which IPCC members and 70 lay observers can undertake scheduled or surprise observations of the interviews and collection of evidence conducted by CAPO during investigations. The observers will report to the IPCC their comments on whether the interviews or collection of evidence have been conducted in a fair and impartial manner as well as any irregularities detected.

Suggestion to empower the IPCC to investigate CAPO complaints

6. Suggestions have been made that the IPCC should be empowered to investigate a reportable complaint if it is not satisfied with CAPO's investigation, and to determine the acceptability of the findings and results of the investigation of all complaints.

7. We consider that the suggestion has a number of shortcomings :

- (a) The IPCC does not have investigative powers similar to those available to the Police (e.g. the search and seizure powers) or the necessary expertise and knowledge for investigating complaints which often involve allegations of breaches of Police discipline or procedures or of criminal law. This would adversely affect the quality of the IPCC's investigations;
- (b) The IPCC would need to have its own investigation team, in addition to the investigation complement in CAPO. This would result in an overlapping of resource requirement and duplication of efforts. The cost effectiveness of the suggestion is in doubt; and
- (c) Empowering the IPCC to investigate complaints lodged with CAPO would confuse the IPCC's role as an oversight body. The arrangement might create two different sets of findings and results in respect of a complaint, and hence cause confusion. In contrast, under the established practice, the IPCC and CAPO will seek to reach a consensus on the classification of a reportable complaint through discussions.

The IPCC Bill introduced in July 2007

8. The Independent Police Complaints Council Bill, which was introduced into the Legislative Council in July 2007, codifies a wide range of powers now available to the IPCC to enable it to closely scrutinize the process and manner in which CAPO handles complaints for the purpose of discharging its monitoring and review functions. These powers are :

- (a) to require the Police to provide explanations to support the categorization of complaints as “non-reportable complaints”, and to require the Police to re-consider such categorization (Clause 15);
- (b) to advise the Police of the IPCC’s recommendations on the Police’s investigation reports, classification of complaints, the Police’s handling or investigation of complaints, any faults or deficiencies in any police practices or procedures, and to advise the Police of the IPCC’s opinions on the Police’s disciplinary actions taken or to be taken in respect of members of the police force (Clause 18);
- (c) to interview any persons who are or may be able to provide information or other assistance to the IPCC in relation to the investigation reports or interim investigation reports submitted by the Police (Clause 19);
- (d) to require the Police to provide any information or materials, or clarify any facts or discrepancies relating to “reportable complaints” (Clause 20);
- (e) to require the Police to investigate or re-investigate “reportable complaints” (Clause 21);
- (f) to require the Police to inform complainants or representatives of complainants of the classification of “reportable complaints” and the reasons for the classification (Clause 22);
- (g) to observe the Police’s interviews and collection of evidence for investigating “reportable complaints” (Clause 23);

- (h) to require the Police to provide explanations in relation to the Police's disciplinary actions taken or to be taken in respect of members of the police force (Clause 24);
- (i) to require the Police to submit statistics of the types of conduct of members of the police force that have led to "reportable complaints", and reports on actions taken or to be taken pursuant to the IPCC's recommendations (Clause 25);
- (j) to require the Police to consult the IPCC on any proposed new police orders or manuals, or significant amendments to existing police orders or manuals, relating to the handling or investigation of "reportable complaints" (Clause 26); and
- (k) to report to the Chief Executive as the IPCC thinks necessary (Clause 28).

9. The Bill also obliges the Police to comply with the IPCC's requirements (Clause 27), submit investigation reports to the IPCC and provide relevant information to facilitate the IPCC to monitor and review the Police's investigation findings (Clauses 16 and 17).

Improvements introduced to the public complaints system

10. Since the 1990s, we have introduced a number of improvements to the police complaints system to enhance its effectiveness, credibility and transparency, as summarized at the Annex. Our efforts in this regard will continue to further increase public confidence in the system.

Conclusion

11. The two-tier system as described in paragraphs 2 to 5 above has been operating effectively and smoothly. The IPCC has effective oversight over the handling of complaints by CAPO, ensuring that each reportable complaint is fairly and thoroughly investigated. It also enables the Police to identify inadequacies in their procedures and practices, and formulate solutions to improve their service. We see considerable merit in maintaining the current arrangement under which CAPO investigates the complaints it receives and the IPCC reviews and monitors CAPO's investigations.

12. We are of the view that the police complaint system, as codified in the Bill, is appropriate and proportionate to our objective of ensuring that public complaints against members of the police force are handled fairly and impartially.

Security Bureau
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Improvements made by CAPO and IPCC since 1990s

- Introduction of the IPCC Interviewing Witnesses Scheme in 1994 - Under the Scheme, the IPCC may interview witnesses, including complainants, complainees, pathologists, government chemists and independent witnesses, to clarify matters. If the IPCC considers it necessary, it may refer the cases back to CAPO for further investigation. The Scheme enhances the IPCC's ability to monitor the Police's investigations.
- Introduction of the IPCC Observers Scheme in 1996 – The Scheme enabled IPCC Members to make scheduled or surprise visits to observe investigations conducted by CAPO or formation police officers.
- Expansion of the IPCC Observers Scheme in 1999 – To further enhance the IPCC's monitoring function as well as the transparency of the Observers Scheme and the credibility of the police complaint system, the Scheme was extended in 1999 to cover observations of Informal Resolution interviews conducted by formation police officers. The pool of observers was also expanded by appointing retired IPCC Members and other community leaders as lay observers. The number of lay observers has increased from 29 in 1999 to 70 in October 2007.
- Establishment of the Serious Complaints Committee in 1997 - This is a special panel established (within the IPCC) by the IPCC in 1997 in order to monitor selected serious complaints, such as allegations of assaults resulting in serious injuries and cases of wide public interest. The Committee requires CAPO to provide monthly progress reports on the cases so selected. The Committee may seek clarification of matters contained in those reports before CAPO concludes its investigations into the cases in question.
- Enhancing transparency in 1998 - The bi-monthly joint meetings between the IPCC and the CAPO have been partially open to the public since March 1998. The minutes of the open part of those meetings are publicly available on the IPCC's web site.

- Performance pledges – CAPO has made a formal commitment to handle complaints within various prescribed time limits. For example, complainants will be contacted within two working days; complainants and complainees will be kept informed of progress every two months; and CAPO aims to complete investigations within four months. In practice, simple cases are completed sooner.

- Increasing public awareness - Information leaflets on the police complaint system have been made available at all police stations and on the Police's website. An interactive telephone inquiry system, with pre-recorded messages on matters relating to ways of lodging complaints, investigation procedures, etc. is available to the public on a 24-hour basis.