

**120TH MEETING OF
THE INDEPENDENT POLICE COMPLAINTS COUNCIL (IPCC) WITH
THE COMPLAINTS & INTERNAL INVESTIGATIONS BRANCH (C&IIB)
HELD AT THE IPCC SECRETARIAT OFFICE
AT 1515 HOURS ON THURSDAY 2 MARCH 2006**

Present: Mr Ronny WONG Fook-hum, SC, JP (Chairman)
Hon Alan LEONG Kah-kit, SC (Vice-chairman)
Dr LO Wing-lok, JP
Ir Edgar KWAN
Dr SHUM Ping-shiu, BBS, JP
Prof Daniel SHEK Tan-lei, BBS, JP
Mr Daniel CHAM Ka-hung, MH
Dr Charles KOO Ming-yan, MH
Mr Edward PONG CHONG, BBS, JP
Mr HUI Yung-chung, JP
Prof Benjamin TSOU Ka-yin, BBS
Dr Michael TSUI Fuk-sun
Dr TSE Tak-fu, BBS
Ms Priscilla WONG Pui-sze, JP
Mrs Helena YUEN CHAN Suk-yee
Mr Frederick TONG Kin-sang, Asst Ombudsman
Mrs Brenda FUNG YUE Mui-fun, Secy IPCC
Ms Angela HO, SGC IPCC
Mr Brandon CHAU, Deputy Secy IPCC (Joint Secretary)
Mr WONG Doon-yea, ACP SQ
Mr WONG Fook-chuen, CSP C&IIB
Mr FAN Sik-ming, CSP C&IIB (Des)
Mr S. H. VERRALLS, SSP CAPO
Mr Oscar KWOK Yam-shu, SP CAPO HQ (Joint Secretary)

In Attendance: Mr Eddie WONG, SAS (PS)
Mr Michael TONG, SAS (1)
Ms Florence WAI, SAS (2)
Mr Bernard KAN, SAS (3)
Miss Mary KWOK, AS (PS) 1
Ms Marie YUEN, SP CAPO HKI (Ag)
Mr CHEUNG Kin-kwong, SP CAPO NT
Ms Catherine KWAN, CIP CAPO HQ
Mr HO Ka-fei, CIP Team 7 CAPO HKI
Mr MAK Ping-hong, SIP (SD) CAPO HQ
Ms Rene LAM Suk-man, SIP A&S C&IIB
Ms Mandy CHIANG Lai-shan, SIP IPCC C&IIB
Miss Amy YEUNG Chi-kwan, SIP Team 1b CAPO K
Mr Ken LAM Chi-ping, SIP Team 4b CAPO K (Des)
Mr YU Wai-lun, SIP Team 8a CAPO NT
Mr WONG Shing-wah, SIP Team 8b CAPO NT
Mr WONG Tak-cheung, SIP Team 9a CAPO NT

Absent with Apologies:	Hon Daniel LAM Wai-keung, BBS, JP Dr Hon LUI Ming-wah, SBS, JP Mr YEUNG Yiu-chung, BBS, JP Mr Michael B.DOWIE, DMS	(Vice-chairman) (Vice-chairman)
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PART A: CLOSED MEETING

This was the Closed Part of the meeting for the IPCC and representatives of C&IIB to discuss matters of mutual concern. The minutes of the meeting will not be uploaded onto the IPCC Homepage.

PART B: OPEN MEETING

OPENING ADDRESS

The Chairman welcomed all to the meeting.

(I) CONFIRMATION OF THE MINUTES OF THE MEETING HELD ON 12 JANUARY 2006

2. The minutes of the last meeting (Open Part) were confirmed without amendment.

(II) CAPO's CRIMINAL AND DISCIPLINARY CHECKLIST

3. CSP C&IIB tabled the Disciplinary Checklist and highlighted a common issue in three of the cases, namely A14, A26 and A80, all of which concerned the failure of police officers to render a reply to letters from members of the public within 10 days of their receipt. Such a failure contravened Police General Order (PGO) 12-04 para. 1 which required that a reply or interim reply be made within 10 days. Given that there had been 3 such cases, CAPO would remind officers the need to comply with the applicable PGO through the Monthly Matters of Interest and Tips for Smart Cops.

(III) CAPO's MONTHLY STATISTICS

4. CSP C&IIB reported that 204 complaints had been received in January 2006, representing an increase of 10.3% (+19 cases) when compared with the previous month. The figure for February 2006 was yet available. The figure for December 2005 was 185 cases. The increase of 19 cases was not considered to be of significance because the complaint figure for December 2005, which was the Hong Kong Ministerial Conference period, was the lowest in the past few years.

5. The number of "Misconduct/Improper Manner & Offensive Language" complaints received in January 2006 was 66, representing an increase of 32.0% (+16 cases) when compared with previous months. The figure for December 2005 was 50. The number of "Neglect of Duty" complaints received in January 2006 was 56 cases, a decrease of 23.3% (-17 cases) when compared with 73 cases of the previous month. The number of "Assault" complaints received in January 2006 was 53, an increase of 29.3% (+12 cases) when compared with 41 cases of the previous month.

6. In the first month of 2006, 204 complaints were received, representing a decrease of 26.1% (-72 cases) when compared with 276 cases of the same period last year. However, CSP C&IIB reminded the Council that it would be more appropriate to look at the figure for the entire first quarter of 2005 and 2006 for comparison purpose because the Chinese New Year holidays fell on different months in the two years.

7. The 66 cases of "Misconduct/Improper Manner & Offensive Language" complaints received in January 2006 represented a decrease of 20.5% (-17) cases when compared with 83 cases of January 2005. The 56 cases of "Neglect of Duty" complaints received in January 2006 represented a decrease of 47.7% (-51 cases) when compared with January 2005. The 53 cases of "Assault" complaints received in January 2006 represented a decrease of 8.3% (-5 cases) when compared with 58 cases of January 2005.

8. The Chairman invited Members to comment on the statistics. Prof

Daniel SHEK Tan-lee asked if the Police would consider making available an online complaint proforma as a channel for the lodging of complaints, a suggestion he had raised one or two years previously and which the Police had said it would consider.

9. CSP C&IIB pointed out that in 2005, 56 complaints were lodged via online means, representing 2.1% of all complaints received. In January 2006 alone, 5 complaints were lodged online, which increased the percentage to 2.5%. Although there was no dedicated online complaint web page, current police web pages already made it possible for the public to lodge complaints through them, and CAPO had indeed received complaints through this channel in the past. The Service Quality Wing was currently considering if there was a need to create an additional channel, not merely for complaint purposes, but also for expression of other opinions in general.

10. Dr Charles KOO Ming-yan suggested that a proforma styled after the Crime Information Form (CIF) be made available on the Web to make it easier for members of the public to lodge complaints. CSP C&IIB thanked Dr KOO for his suggestion and said that would certainly be one of the options considered. He also pointed out that a main consideration in the receipt of complaints was to obviate the need for complainants to write too much in the first instance, because in any event CAPO investigators would have to contact the complainants for further details.

(IV) A COMPLAINT CASE FOR DISCUSSION WITH CAPO

11. The Secy/IPCC briefed the meeting on a case concerning the Police's handling of requests for inspection of warrant cards from members of the public. On the material day, the complainant (COM) was intercepted by the complaine (COMEE), who was a Senior Inspector in uniform performing motorcycle patrol duty, for driving in a careless manner. During the encounter, COM claimed to have requested COMEE to show his (COMEE's) warrant card because it was inappropriate for COMEE to summons him, and he wished to jot down COMEE's full name and service number for lodging a complaint. COM stated that COMEE had told him his (COMEE's) rank, surname and formation. Upon receipt of a summons for 'Careless Driving', COM lodged a complaint against COMEE. COM alleged that during his argument with COMEE, he asked

COMEE to produce his warrant card three times but was refused ('Neglect of Duty'). COM also alleged that COMEE was impolite to him during the incident ('Impoliteness').

12. COMEE stated that COM disputed the offence and argued with him. In response to COM's request for his particulars, COMEE identified himself to COM twice by giving his rank, full name, Unique Identification (UI) number and formation. COM then asked to inspect COMEE's warrant card. COMEE answered that he had already told COM his full police details, and queried if COM really wanted to see his warrant card since he was in uniform. As COM did not respond, COMEE continued explaining to COM the offence and his intended summons action. COMEE considered COM's request to see his warrant card as unreasonable, since he was in full uniform. COMEE also denied being impolite to COM, and stated that COM's attitude was bad.

13. According to the relevant provision in the Police General Orders (PGO), uniformed police officers should produce their warrant cards upon request by members of the public, unless the request is unreasonable. CAPO supported COMEE's view that COM's request was unreasonable, because any right-minded citizen would have had no doubt about COMEE's police identity as COMEE rode on a police motorcycle, was dressed in full police uniform and checked COM's driving licence through the police beat radio. Since COM also agreed that COMEE had given him details of his police identity, CAPO considered that COMEE had fulfilled his duties according to the police procedures, and classified the allegation of 'Neglect of Duty' as 'No Fault'. For the allegation of 'Impoliteness', CAPO classified it as 'Unsubstantiated' in the absence of corroborative evidence to support either side's version.

14. Upon examining the case, the IPCC had reservation about the 'No Fault' classification for the allegation of 'Neglect of Duty'. The IPCC's observations were summarized as follows:

- (a) it was noted that, unlike rank-and-file officers who were required to wear numerals on their shoulders, all Inspectorate grade officers including COMEE did not wear any numerals on their shoulders or

a name badge on their uniform for identification. Since COM stated that COMEE had only told him his rank, surname and formation, COM's explanation that he wanted to inspect the warrant card to jot down the name and service number of COMEE for the purpose of lodging a complaint could not be considered as totally unreasonable. Other than proving COMEE's police identity, COM's purpose of inspecting the warrant card might have been to verify the verbal information given by COMEE (i.e. surname, rank and formation), and/or to obtain the information that was allegedly given incompletely by COMEE (i.e. full name and UI number), in order to lodge a complaint;

- (b) requesting to inspect a police officer's warrant card for the purpose of lodging a complaint could be considered as reasonable under certain circumstances. If COM had told COMEE at the scene that COMEE's warrant card was the only piece of corroborative evidence to prove the veracity of COMEE's version in order to lodge a complaint, COMEE might not have been justified in considering COM's request as unreasonable; and
- (c) COM only stated that he had requested COMEE to produce his warrant card thrice, but did not describe in detail how he raised his requests with COMEE, and how COMEE refused his requests. Even if COM did elaborate on his encounter with COMEE, there was still no other independent evidence supporting the version of either side. In this connection, the IPCC considered it more appropriate to re-classify the allegation as 'Unsubstantiated'.

15. After considering the observations made by the IPCC, CAPO agreed to change the 'No Fault' classification for the allegation to 'Unsubstantiated'. CAPO's views in making the change were summarized as follows:

- (a) CAPO agreed with the IPCC's views that requesting to inspect a police officer's warrant card for the purpose of lodging a complaint could be considered as reasonable under certain circumstances;
- (b) however, CAPO maintained that COM's request for the production of COMEE's warrant card was unreasonable under the

circumstances. On the basis that there was a difference between the two versions of the events put forward by COM and COMEE, and there was no concrete indication of the motive of COM's request for the warrant card, CAPO agreed that an 'Unsubstantiated' classification was more appropriate; and

- (c) on the application of the relevant PGO, there was no obligation on a uniformed police officer to produce his warrant card for the mere purpose of lodging a complaint. The relevant PGO was designed only to prove an officer's police appointment, rather than his individual identity. Furthermore, such provision could not be interpreted as imposing an obligation on an officer to produce his warrant card when his being a properly appointed police officer was not in doubt. It followed that any 'reasonable' request for the purpose of lodging a complaint would be judged on the circumstances, rather than the PGO provision alone.

16. The IPCC had no further comment on the revised investigation results of the case. Nevertheless, it noted that the allegation of 'Neglect of Duty' could have been triggered by the fact that COM was unable to inspect COMEE's warrant card at the scene to obtain or verify the full name and UI number of COMEE, who did not have any shoulder numerals or name badge on his uniform, for the purpose of lodging a complaint. The Chairman invited CAPO to comment on the case.

17. CSP C&IIB confirmed that CAPO agreed to change the classification of the allegation to "Unsubstantiated" due to the difference between the accounts of COM and COMEE. CSP C&IIB went on to explain that the requirement in PGO 20-16 for uniformed police officers to produce their warrant cards on request was brought about by another complaint case. Following consultation with the Department of Justice, it was recognized that the warrant card, rather than police uniform or equipment such as a police motorcycle, was the proper proof of police appointment. The practical effect of the PGO was that in most situations, police officers in uniform would be required to produce their warrant cards upon request. The only exceptions were stated in the relevant PGO. The first two exceptions were relatively clear in themselves. As for the third exception, i.e. the request was unreasonable, officers had to make their judgement based on prevailing circumstances. Officers must be prepared to justify their decisions,

like in this case, to CAPO. This was no different from other situations where officers had to rely on their own judgement rather than PGO to make their decisions. Ultimately, officers had to face the consequences of their decisions. Even in the absence of specific reference in PGO, if an officer's decision was later judged to be defective, the officer might still be regarded as having committed a disciplinary offence, such as "Conduct to the prejudice of good order and discipline" or even "Conduct calculated to bring the public service into disrepute". In the present case, having regard to the circumstances prevailing at the time, the officer made the decision not to produce his warrant card immediately upon request. In hindsight, it was agreed that had the officer chosen to produce his warrant card, there might have been one less complaint as a result.

18. Ir Edgar KWAN commented that the new procedure indicated that the Police attached great importance to public opinion. However, he asked how the Police would handle a difficult member of the public who requested for inspection of an officer's warrant card merely as a retaliation for being asked to produce his identity card for inspection by the police.

19. CSP C&IIB thanked Ir KWAN for raising the issue. He commented that whilst he could not say that these situations arose everyday, such incidents indeed happened regularly. There had been a case where an officer on patrol alone was accosted by several persons appearing from a side alley to demand for his warrant card, merely because they did not like the way he was and wanted to complain against him. The request was certainly unreasonable in that situation. As mentioned earlier, it was a decision an officer had to make having regard to the prevailing circumstances. In most situations, whether a request was reasonable would be subject to debate. Officers who received such requests should consider the likely effect of acceding to the requests, which could prove beneficial to the overall situation. CSP C&IIB said his view was that if it could be done, then why not do it?

20. Dr Charles KOO Ming-yan commented that since the officer in the case in question was a Senior Inspector, he did not wear his service number on his uniform. The request to verify the officer's number by inspecting his warrant card could therefore have been considered reasonable. He also suggested the Force to consider requiring all officers to wear their service numbers on their uniform irrespective of their ranks. This would remove a ready excuse for citizens to ask officers to produce their warrant cards for the mere purpose of

lodging a complaint.

21. CSP C&IIB responded by referring to the facts of the case in question. The case took place on Tuen Mun Highway, where the officer was patrolling in full uniform on his police motorcycle. He observed that the manner in which COM was driving was dangerous, and therefore stopped COM when it was safe to do so. The officer first pointed out to COM the driving offence he had committed. COM disagreed with the officer and asked not to be summonsed. The officer considered that it was not a suitable case to be dispensed with by way of a warning and therefore asked COM to produce his driving licence. COM said that he then asked for the production of the officer's warrant card. It could be seen that the encounter itself was an entirely normal execution of traffic enforcement duty. Given that the request was only made at this point, it was clear that the reason behind it was not that he doubted the officer's police identity, but was for some other reasons. However, because the accounts from the officer and COM began to differ from this point onwards, CAPO classified the allegation as "Unsubstantiated".

22. As regards the suggestion for officers to wear their service number on their uniform irrespective of rank, it was considered that it would not help the situation because very often junior police officers, who did have their service numbers on their uniform, were still requested to produce their warrant cards on the premise that there was no telling if the numbers displayed were genuine. Nevertheless, CSP C&IIB assured Dr KOO that his suggestion would be considered if appropriate circumstances arose.

23. Dr Charles KOO Ming-yan clarified that he meant that if numbers were displayed on all officers' uniforms, members of the public could jot down the numbers themselves for the lodging of complaints without the need for asking for the officers' warrant cards. He reckoned that this might reduce the chance of any conflict or argument over what actually happened and which officer was involved. CSP C&IIB agreed that if complainants could provide the officer's service number which they jotted down, it would make it easier for CAPO to identify the complaine. However, even if the complainant could only provide the time and location of the incident, CAPO would have little difficulty in identifying the complaine. The most important point was that the Force did encourage its officers to communicate with members of the public. As in the present case, the officer told the complainant his name, service number and

formation, and there was absolutely no difficulty for CAPO to identify the officer involved.

24. Dr Michael TSUI Fuk-sun said in his personal opinion it was a simple thing for officers to produce their warrant cards and doing so would make things easier for the Police in most situations. He believed that most police officers would not have a problem with producing their warrant cards. Problem only arose in a minority of cases where certain members of the public sought to provoke the officers by deliberately asking to inspect the warrant cards. When this happened, the officers would be placed in a difficult situation. He suggested that the Force might consider issuing guidelines to help officers in such situations, so that they would not fall into the trap of being accused of being unreasonable when in fact they were extremely reasonable.

25. CSP C&IIB said that he agreed fully with Dr TSUI's view. As he had said earlier, under most situations officers should produce their warrant cards on request. Given the peculiar facts of this case, CAPO would make use of available channels to share the information with frontline officers.

(V) STATISTICAL REPORT ON THE WORK OF THE IPCC IN 2005

26. The Secy/IPCC briefed the meeting on the statistics of the work of the IPCC. In 2005, IPCC endorsed a total of 2,828 cases, including 1,806 "normal" cases (minor cases which were endorsed after one round of query by the IPCC) and 1,022 "complicated" cases (all serious cases plus minor cases which were endorsed after two or more rounds of query by the IPCC). All the 1,806 "normal" cases were endorsed within the performance pledge of 3 months from the receipt of the cases from CAPO. Of the 1,022 "complicated" cases, 99.9% (or 1,021 cases) were endorsed within the performance pledge of 6 months from the receipt of the cases from CAPO.

27. The 2,828 cases endorsed in 2005 involved a total of 4,695 allegations, of which 1,522 were fully investigated. Of those fully investigated allegations, 66 were classified as "Substantiated", 79 were classified as "Substantiated Other Than Reported", 8 were classified as "Not Fully Substantiated". All substantiated complaints accounted for 10.1% of all fully investigated allegations. It was necessary to stress that to substantiate a complaint there must

be sufficient evidence or clear and compelling justifications. It would therefore be inappropriate to assume that a certain percentage of complaints must be substantiated. The IPCC and CAPO would judge the substantiation or otherwise of each and every allegation on the evidence available. The substantiation rate therefore should not be regarded as the yardstick to measure the conduct of police officers or the effectiveness of the police complaint mechanism.

28. Of the allegations endorsed by the IPCC in 2005, 201 (or 4.3%) were "Fabrication of Evidence", whilst 710 (or 15.1%) were "Assault". Both categories of serious allegations showed a decrease when compared with the figures for 2004. The 3 most prevalent allegations endorsed by the IPCC in 2005 were "Misconduct/Improper Manner/Offensive Language" - 1,817 or 38.7%; "Neglect of Duty" - 1,412 or 30.1%; and "Assault" - 711 or 15.1%.

29. The IPCC's primary function was to monitor complaint investigations to ensure that they were thorough and impartial. In this regard, the IPCC raised 541 queries or suggestions with CAPO in 2005, of which 381 (70.4%) were accepted by CAPO. The remaining 160 (29.6%) were given satisfactory explanation or follow-up action by CAPO. Worthy of note was that following the IPCC's queries, the findings of 64 allegations were changed as a result, including amongst them 6 which were changed from "Not Fully Substantiated" or "Unsubstantiated" or "No Fault" to "Substantiated"; 3 which were changed from "Unsubstantiated" or "False" to "Not Fully Substantiated"; and 4 which were added as "Substantiated Other Than Reported". In the same period, the IPCC made a total of 9 suggestions to the Police for improvement in its procedures. Of these, 4 were accepted, whilst 5 were given satisfactory explanations by the Police.

30. Mr Daniel CHAM Ka-hung noted the decrease of over 1,000 complaints in 2005 when compared with 2004. He believed that this was attributable to the complaint prevention efforts of the Police. He also noted that there were 244 and 296 "False" complaints in 2005 and 2004 respectively, a lot of which involved the abuse of the complaint mechanism. Apart from warnings, he wished to know the number of prosecutions for "Wasteful Employment of Police" or "Making a False Report" conducted as a result.

31. CSP C&IIB responded by confirming that 2 complainants were prosecuted for lodging false complaints in 2005, and both were convicted in

Court. One of the complainants was given the maximum imprisonment term of 6 months, whereas the other one was also imprisoned.

32. Dr LO Wing-lok noted that the statistics were expressed in terms of number of allegations. He asked if statistics in terms of "number of persons making complaints" and "number of officers being complained" should be published to more completely reflect the work of the IPCC.

33. The Secy/IPCC responded by saying that she believed that those statistics could be made available but she would need to ascertain with her Secretariat colleagues whether such statistics were routinely maintained.

34. Ir Edgar KWAN asked if the figure for prosecution of complainants included all the prosecutions launched or just those which led to convictions. CSP C&IIB confirmed that only two prosecutions were launched, and both led to convictions. Ir Edgar KWAN then commented that this represented less than 1% of the false complaints. Given that false complaints wasted the resources of both the Police as well as the IPCC, he questioned if the Police ought to review whether a deterrent effect was achieved by launching so few prosecutions.

35. CSP C&IIB pointed out that a great majority of the 244 "False" complaints were tactical complaints related to the defence of criminal cases (Sub-judice complaints). CAPO adopted a special procedure in dealing with such complaints and would suspend investigations into them until after the Court cases have been resolved. Generally speaking, if the complainants were convicted in Court, CAPO would classify the complaints as "False". He acknowledged that the number of prosecutions of 2 might be regarded as being low but commented that apart from considering if sufficient evidence would support a prosecution, the penalties already meted out by the Court for the convictions were also relevant.

36. Prof Daniel SHEK Tan-lee commented that prosecuting and punishing complainants who made false complaints was important, but cautioned that in doing so it must not give the impression that making complaints would easily lead to one's imprisonment. A balance must be struck carefully.

(VI) ANY OTHER BUSINESS & CONCLUSION OF MEETING

37. There being no other business, the Open Part of the meeting concluded at 1630 hours. The next meeting would be held on 18 May 2006. The Chairman noted that this was the last occasion on which CSP C&IIB would attend the meeting in such a capacity. CSP C&IIB confirmed that he would be taking up the post of ACP ISW from the following week onwards. The Chairman took the opportunity to thank CSP C&IIB for his attendance at the meetings. CSP C&IIB also thanked the IPCC for its cooperation and support to him during the period.

(Mr Oscar KWOK)
Joint Secretary
Complaints and Internal
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(Mr Brandon CHAU)
Joint Secretary
Independent Police
Complaints Council