

**123rd MEETING OF
THE INDEPENDENT POLICE COMPLAINTS COUNCIL (IPCC) MEETING WITH
THE COMPLAINTS & INTERNAL INVESTIGATIONS BRANCH (C&IIB) HELD
AT THE IPCC SECRETARIAT OFFICE
AT 1600 HOURS ON THURSDAY 14 SEPTEMBER 2006**

Present: Mr Ronny WONG Fook-hum, SC, JP (Chairman)
Hon Alan LEONG Kah-kit, SC (Vice-chairman)
Mr YEUNG Yiu-chung, BBS, JP
Ir Edgar KWAN
Dr SHUM Ping-shiu, BBS, JP
Mr Daniel CHAM Ka-hung, MH, JP
Dr Charles KOO Ming-yan, MH
Mr Edward PONG Chong, BBS, JP
Mr HUI Yung-chung, BBS, JP
Prof Benjamin TSOU Ka-yin, BBS
Dr Michael TSUI Fuk-sun
Ms Priscilla WONG Pui-sze, JP
Mrs Helena YUEN CHAN Suk-yee
Mr Frederick TONG Kin-sang, Assistant 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-ye, ACP SQ
Mr FAN Sik-ming, CSP C&IIB
Mr Oscar KWOK Yam-shu, SSP CAPO (Ag) (Joint Secretary)

In Attendance: Mr Eddie WONG, SAS (PS)
Mr Henry CHAN, SAS (1)
Ms Fiona LI, SAS (2)
Mr Bernard KAN, SAS (3)
Miss Mary KWOK, AS (PS) 1
Mr CHEUNG Kin-kwong, SP CAPO NT
Mr TONG Chi-chung, CIP CAPO HQ
Mr WONG Kwok-kit, CIP Team 1 CAPO K
Mr LEE Hang-lam, CIP Team 3 CAPO K
Ms Mandy CHIANG Lai-shan, SIP IPCC C&IIB
Mr AU Wing-leung, SIP SUP CAPO
Mr WONG Kai-man, SIP Team 1a CAPO K
Ms CHAN Har, SIP Team 9a CAPO NT
Mr LO Kwan-tung, SIP Team 9b CAPO NT

Absent with Apologies: Hon Daniel LAM Wai-keung, SBS, JP (Vice-chairman)
Dr Hon LUI Ming-wah, SBS, JP (Vice-chairman)
Dr LO Wing-lok, JP
Prof Daniel SHEK Tan-lei, BBS, JP
Dr TSE Tak-fu, BBS
Mr Michael B. DOWIE, DMS
Mr J.P. RIBEIRO, SSP CAPO

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 20 JULY 2006 (Open Part)

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 Checklist and highlighted that there had been five cases on the Checklist where officers handling dispute cases had failed to request the parties involved in a dispute to sign on their police notebooks to the effect that the dispute had been settled as required under FPM 53-08. This matter would be published in the Matter of Interest item of the CAPO Monthly Report to remind officers of the requirement.

4. Mr Daniel CHAM Ka-hung asked CAPO to comment on case A76 in which a police officer was deployed to perform traffic enforcement action on board a police vehicle equipped with video recording facility to record the driving manner of the complainant but the officer concerned claimed that he was unfamiliar with the operation of the recording equipment. He asked if officers deployed to perform such duty should have been trained on the operation of the equipment. He also wished to know if CAPO would consider reminding officers via the CAPO Monthly Report that if they had received the training but had become unfamiliar with the operation of the equipment after they had not performed such a duty for a long time, they should stop using the equipment

until after they had been re-trained.

5. CSP C&IIB replied that owing to the fact that the case in question had been endorsed by the Council he could not at the moment provide details of the case but in general before officers were deployed to operate any equipment, adequate training would be provided to them to ensure that they know how to operate the equipment. In the instant case, the police vehicle in question was equipped with video recording facility. Although the officer concerned was unable to operate the equipment, the police vehicle concerned could still be used to perform other general police duty and so the officer concerned could still use that police vehicle for duty.

6. Dr Charles KOO Ming-yan raised his concern about case A8 in which 14 officers had inappropriately used the handcuff transport belt. He wondered why so many officers were unfamiliar with the procedures as they should have received the training in the Police College. He asked CAPO to explain why this could happen.

7. CSP C&IIB explained that all police officers should have been trained during their foundation training and continuation training as to the need to record the reason for using the handcuff and the handcuff transport belt in their police notebooks. This issue would be published in the upcoming 'Tips for Smart Cops' to remind officers of the need to comply with the PGO requirement to record such in their police notebooks.

III CAPO'S MONTHLY STATISTICS

8. CSP C&IIB tabled the CAPO's Monthly Statistics. 219 and 260 complaints were received in July and August 2006 respectively. They represented an increase of 1.4% (+3 cases) and 18.7% (+41 cases) when compared with the statistics of the respective previous months. The figure for June 2006 was 216 cases.

9. The number of 'Neglect of Duty' complaints received in July and August 2006 were 94 and 108 cases respectively. They represented an increase of 11.9% (+10 cases) and 14.9% (+14 cases) when compared with the statistics of the respective previous months. The figure for June 2006 was 84 cases.

10. The number of 'Misconduct/Improper Manner & Offensive Language' complaints received in July and August 2006 were 56 and 78 cases respectively. They represented a decrease of 13.8% (-9 cases) but an increase of 39.3% (+22 cases) when compared with the statistics of the respective previous months. The figure for June 2006 was 65 cases.

11. The number of 'Assault' complaints received in July and August 2006 were 50 and 52 cases respectively, representing a decrease of 7.4% (-4 cases) but an increase of 4% (+2 cases) when compared with the statistics of the respective previous months. The figure for June 2006 was 54 cases.

12. In the first eight months of 2006, a total of 1,624 complaints were received, representing a decrease of 11.8% (-218 cases) when compared with 1,842 cases of the same period in 2005.

13. The total number of 'Neglect of Duty' complaints received in the first eight months of 2006 was 602 cases, representing a decrease of 9.3% (-62 cases) when compared with 664 cases of the same period in 2005.

14. The total number of 'Misconduct/Improper Manner & Offensive Language' complaints received in the first eight months of 2006 was 464 cases, representing a decrease of 18.5% (-105 cases) when compared with 569 cases of the same period in 2005.

15. The total number of 'Assault' complaints received in the first eight months of 2006 was 368 cases, representing an increase of 3.1% (+11 cases) when compared with 357 cases of the same period in 2005.

16. The accumulated total of 1,642 complaints for the first eight months of 2006 still showed a significant decrease by 11.8% (-218 cases) when compared with 1,842 cases of the same period in 2005.

17. When compared with the average figures of complaints received in July and August for the past nine years, which stood at 274 and 293 respectively, the 219 complaints received in July in fact showed a decrease of 20% (-55 cases) while the 260 complaints received in August showed a decrease of 11% (-33 cases).

18. Although there was still an increase in complaints received in July

and August 2006, the overall figures for the first eight months of 2006 still showed a decrease when compared with the same period of 2005. No particular reason could be discerned as to the cause of the increase in complaint figures in the last two months.

19. Mr Daniel CHAM Ka-hung requested CAPO to explain the vast difference in the number of outstanding cases for the years 2004-06 in that the number of outstanding cases in these three years was 53, 305 and 1,031 cases respectively. He was concerned that the figures seemed to be growing rapidly and he wished to know if CAPO had any difficulties in resolving these cases. He also expressed his concern about the upsurge in 'Neglect of Duty' cases which jumped from a few dozen cases to 108 cases. He also pointed out the anomaly in the 'Neglect of Duty' figure in that the chart showing the complaint figures of July 2006 indicated that there were 98 cases as opposed to 94 cases shown in the chart of August 2006. Similarly, the figures of 'Assault' and 'Misconduct' were also different in these two charts. He asked CAPO to explain these anomalies.

20. CSP C&IIB replied that the outstanding cases for the year 2004, 2005 and 2006 represented those cases received in the respective years for which the investigation still had not been completed. This was a natural phenomenon as the older a case the more likely it would have been finished. For cases in 2004, due to the time lapse, fewer cases remained outstanding. Conversely, for cases in 2006, there were more cases outstanding as only eight months had elapsed. As regards the anomalies in the complaint figures, it could be explained by the fact that some cases were re-classified after further investigation.

21. Mr Daniel CHAM Ka-hung went on to say that whilst he understood that the more recent a case the more likely it would remain outstanding, he was concerned of the vast difference between 305 outstanding cases in 2005 and 1,031 outstanding cases in 2006. He also pointed out by quoting the two charts included in his bundle that not only were there differences between the figures he had quoted earlier, there were also differences in the number of cases received in that the chart for July 2006 indicated that 225 cases were received in that month but the chart for August 2006 showed that only 219 cases were received in the same month. He requested CAPO to explain why there was such a difference as the change in the classification would not have affected the number of cases received.

22. CSP C&IIB responded by saying that the documents in his hand might be different from that held by Mr CHAM and he needed some more time to look into the matter. He undertook to give a written reply to the IPCC Secretariat after clarifying the matter.

23. Dr Charles KOO Ming-yan requested CAPO to explain two terms, namely 'Advice with/without DRF Entry' and 'Warning with/without DRF Entry'.

24. ACP SQ replied that the term 'DRF' stood for the records of service of a police officer. 'Advice/Warning with DRF Entry' meant that an advice/warning given to an officer would be recorded in his DRF.

25. Ir Edgar KWAN sought to explain the number of outstanding cases in the CAPO report by suggesting that it could probably be due to the change in the cut off dates.

26. ACP SQ replied that the difference might be due to the fact that the figures for 2004 and 2005 were counted for the whole year whilst the figure for 2006 was only counted up to July 2006. The shortfall of several months might explain the difference.

27. Ir Edgar KWAN responded by saying that the outstanding cases for the months in 2004 were only single digit and it jumped to double digits in the months of 2005 and then triple digits in the months of 2006, he suspected that there should be some changes in the statistical methodology rather than a decline in CAPO's performance.

28. ACP SQ replied by quoting the figures of the outstanding cases in that out of the 238 cases received in January 2004, only 2 cases remained outstanding and out of the 276 cases received in January 2005, only 4 cases remained outstanding but out of the 196 cases received in January 2006, 82 cases remained outstanding. It could therefore be discerned that the older the case was the more likely that its investigation was completed. To assess CAPO's performance, one should look into whether substantial amount of cases remained outstanding. Judging by the fact that only 82 out of 196 cases received in January 2006 and 104 out of 191 cases received in February 2006 were outstanding, the figures would appear reasonable.

29. Mr Frederick TONG Kin-sang expressed his view on how the figures on outstanding cases should be interpreted. He pointed out that 2 outstanding cases out of the 238 cases received in January 2004 meant that at the time when these figures were prepared, the investigation of all 238 cases except the 2 cases had been finished. By the same token, all the 225 cases received in July 2006 had remained outstanding because they were only received recently and therefore the investigation had not been finished.

30. The Chairman requested CAPO to give a written reply on this issue later.

31. Mr Daniel CHAM Ka-hung further asked CAPO to clarify if the figures at the bottom of the table of outstanding cases were the accumulated total of the outstanding cases.

32. CSP C&IIB confirmed that the figures at the bottom of the table were the accumulated total of the outstanding cases of the corresponding year. The 1,031 cases in 2006 were the accumulated total of outstanding cases for the first seven months of 2006.

IV

A COMPLAINT CASE FOR DISCUSSION WITH CAPO

33. The Secy/IPCC briefed the meeting on the details of the case to be discussed. On the material day, the complainant (COM) had a scrap with a shop owner in the market (the victim). The victim claimed that she was assaulted by COM. Her allegation was corroborated by the medical findings on her and the version of a witness, who was a customer of the victim, located at the scene. COM was arrested, charged and convicted of the offence of “Common Assault” after the first trial. COM appealed against the conviction. Her appeal application was allowed and a re-trial was ordered. During the re-trial, COM was acquitted by the court. COM lodged a complaint against the police officer attending the scene and arresting her (COMEE) for his failure to conduct a thorough investigation, resulting in the prosecution against her (allegation – “Neglect of Duty”).

34. COMEE stated that he had enquired with COM and the victim at the scene, and located in the market a witness, who corroborated the victim’s

version. He considered the witness an independent witness as she was just an ordinary customer of the victim. Based on the findings of his enquiries and the injuries of the victim observed at the scene, COMEE arrested COM for “Common Assault”. COMEE also seized and viewed a CCTV tape from the management office of the market. The tape captured images of nine cameras and the images were not continuous. COMEE did not see any body contact between COM and the victim from the CCTV recording. This notwithstanding, a charge of “Common Assault” was subsequently laid against COM, based on the versions of the victim and the witness, together with the medical findings on the victim.

35. COM pleaded not guilty to the offence. The Magistrate, in the first trial, did not view the CCTV tape as he considered that the CCTV recording would not be conducive to his judgement, having regard to COMEE’s description in court that the CCTV recording was intermittent, and did not capture the whole incident. After the trial, the Magistrate found COM guilty of the offence. COM appealed against her conviction. According to the affidavit submitted by a staff of the Electrical and Mechanical Services Department in COM’s appeal, the CCTV recording jumped from one camera to another at every 0.18 second and it took every 1.62 seconds to capture the images of all nine cameras. The appeal judge, after viewing the CCTV tape, allowed COM’s appeal application and ordered a re-trial. The appeal judge further commented that should the trial Magistrate have viewed the CCTV tape, he might have a different judgment.

36. During the re-trial, the CCTV tape was viewed, with the victim and the witness being cross-examined. The Magistrate ruled a case to answer. After taking into account all the evidence, including the oral evidence, exhibits and submission, the Magistrate considered that there were material inconsistencies in the evidence of the victim and the witness as to the relative positions, sequence of events and descriptions of acts. The CCTV recording simply contradicted the oral testimonies of the victim and the witness, and cast doubt on their credibility. COM was therefore acquitted after the re-trial.

37. Regarding COM’s allegation, CAPO found that COMEE had been assigned to assist the officer-in-charge of the case (OC Case) in the investigation of the “Common Assault” case. He had conducted proper investigation at the scene before arresting COM. He had also seized and viewed the relevant CCTV tape of the market, but he did not see any body contact between COM

and the victim from the CCTV recording. He had made a pertinent notebook record regarding the actions taken, and reported his findings to the OC Case. As clarified by CAPO, COMEE was not the Investigating Officer of the case. His duty was confined to enquiring with COM, the victim and the witness at the scene, taking a cautioned statement from COM, reviewing the CCTV tape, and reporting his findings. CAPO considered that COMEE's duty in the case had been fulfilled. CAPO also considered that COMEE was not in a position to note any discrepancies between the statements of the victim and the witness as against the CCTV recording, as those statements were obtained by other police officers. The decision on whether to lay a charge rested ultimately with the OC Case. The allegation of "Neglect of Duty" against COMEE was hence classified as "Unsubstantiated."

38. Based on CAPO's confirmation that COMEE's duty was more confined to evidence collection for the case, the IPCC had no further comments on the "Unsubstantiated" classification of the allegation against COMEE.

39. Upon examining the complaint case and the Court Prosecutor's report on the CCTV recording viewed in the re-trial, the IPCC noted that there were material discrepancies between the statements of the victim and the witness vis-à-vis the CCTV recording, including what happened after COM went to the victim's shop, and how COM and the victim moved from the shop to the entrance of the market. In addition, both the victim and the witness indicated in their statements that COM had kept hitting the victim's hand on the material day. If the assault happened in the way described, it would be captured by the CCTV tape, even if the recorded images were intermittent. However, no episode of the alleged assault was recorded. The IPCC considered that the said discrepancies cast doubt on the credibility of the victim and the witness, and the veracity of their versions. In this connection, CAPO was requested to comment on the role of the OC Case in the case, particularly on how she handled and assessed the available evidence of the case, including the CCTV recording, before making a decision to prosecute COM.

40. In response, CAPO re-examined the investigation process of the case, and made the following comments on the role of the OC Case:-

- (a) There was no record in the crime case file showing how the decision to prosecute COM was arrived at by the OC Case, and whether the OC Case had viewed the CCTV tape before

proceeding with the prosecution;

- (b) There was no specific requirement by way of police order that records should be made in the case file regarding how a decision to prosecute was arrived at. The complexity of each case would determine the extent of record keeping;
- (c) The “duty” to adopt any specific investigative action, including reviewing the CCTV tape before deciding to prosecute, was dictated by the circumstances of each case and could not be a subject of mandatory orders;
- (d) Being a case of the Magistrate’s court, the decision to prosecute COM rested ultimately with the OC Case. No legal advice had been sought before the decision was made. The prosecuting counsel was a counsel-on-fiat and he made no comment on the state of the evidence, including the CCTV recording;
- (e) The OC Case, being the officer having overall responsibility of the crime investigation, must be prepared to answer to any deficiency in the prosecution case. CAPO also indicated that the discrepancies between the versions of the victim and the witness as against the CCTV tape, if noticed by the OC Case, might have pointed her in a different direction; and
- (f) For the purpose of this complaint investigation, CAPO considered it appropriate to further examine the role of the OC Case in the case. However, due to her resignation from the Force early this year, the issue could not be pursued further.

41. On CAPO’s response, the IPCC had further observations as follows:-

- (a) After re-visiting the matter, CAPO confirmed that the OC Case had the overall responsibility in the investigation and the decision to prosecute in the case. From the crime case file, the IPCC noted that the OC Case had commented in her instruction to the Court Prosecutor before the first trial that the CCTV tape was of no evidential value, because it did not record any body contact

between COM and the victim. Apart from that, no other records could be located in the file showing the investigation work done by the OC Case for the case.

- (b) Throughout the discussions between CAPO and the IPCC, there was no dispute about the existence of the discrepancies between the versions of the victim and the witness as against the CCTV recording. The issue was whether the Police should be faulted for not having sufficiently assessed and weighed all available evidence, including the CCTV recording, which subsequently transpired to be a material factor according to the Appeal Court, and making further clarifications with the parties concerned regarding the said discrepancies before bringing the charge against COM.
- (c) Although COM did not name the OC Case as the COMEE, CAPO took the stance that it would be appropriate to further examine the role of the OC Case for complaint investigation. Notwithstanding that the OC Case was no longer available in the Force, having regard to her crucial role in the investigation of the crime case and the decision to prosecute, which were the subject matters of the complaint, it was considered appropriate for CAPO to name the OC Case as a COMEE, and to send call-up letters to her last known address to confirm whether she was willing to offer any assistance in the complaint investigation. Only if she made no response would it be appropriate for CAPO to draw the conclusion that the matter could not be pursued further in the absence of her response to the allegation.
- (d) In any event, it was considered that CAPO had a duty to explain to COM the respective roles played by COMEE and the OC Case in the decision to prosecute, and the reasons why the matter could not be pursued further to clear any doubt of COM.

42. CSP C&IIB responded by saying that CAPO agreed with the Council's observations and would accordingly initiate action to locate the OC Case to clarify the matter. CAPO would also explain to COM the respective roles played by COMEE and the OC Case. As regards whether the OC Case should record on file the reason for prosecution, the Brief Facts of the Case

would generally record all the evidence in support of the prosecution and this served to explain the OC Case's decision to prosecute. In response to the Council's comment to require the OC Case to record on file the reason for prosecution, he undertook to reflect this comment to the responsible officer to look into the appropriateness of doing so.

V

ANY OTHER BUSINESS & CONCLUSION OF THE MEETING

43. There being no other business and the meeting concluded at 1715 hours. The next meeting will be held on 9 November 2006.

(Oscar KWOK)
Joint Secretary
Complaints and Internal
Investigations Branch

(Brandon CHAU)
Joint Secretary
Independent Police
Complaints Council