

**125th MEETING OF  
THE INDEPENDENT POLICE COMPLAINTS COUNCIL (IPCC) MEETING WITH  
THE COMPLAINTS & INTERNAL INVESTIGATIONS BRANCH (C&IIB) HELD  
AT THE IPCC SECRETARIAT OFFICE  
AT 1544 HOURS ON THURSDAY 1 FEBRUARY 2007**

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Present: Mr Ronny WONG Fook-hum, SC, JP (Chairman)  
Hon Daniel LAM Wai-keung, SBS, JP (Vice-chairman)  
Dr Hon LUI Ming-wah, SBS, JP (Vice-chairman)  
Dr Hon Joseph LEE Kok-long, JP (Vice-chairman)  
Dr LO Wing-lok, 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  
Dr TSE Tak-fu, BBS  
Mrs Helena YUEN CHAN Suk-ye  
Mr Barry CHEUNG Chun-yuen, JP  
Dr Lawrence LAM Chi-kit, MH  
Mr WONG Kwok-yan  
Mrs Brenda FUNG YUE Mui-fun, Secy IPCC  
Ms Angela HO, SGC IPCC  
Mr Brandon CHAU, Deputy Secy IPCC (Joint Secretary)  
Mr Alfred MA Wai-luk, DMS (Ag)  
Mr Alan FAN Sik-ming, CSP C&IIB  
Mr J.P. RIBEIRO, SSP CAPO  
Mr Oscar KWOK Yam-shu, SP CAPO HQ (Joint Secretary)

In Attendance: Mr Eddie WONG, SAS (PS)  
Mr Henry CHAN, SAS (1)  
Ms Fiona LI, SAS (2)  
Miss Rainbow FU, SAS (3) (Ag)  
Miss Mary KWOK, AS (PS) 1  
Mr David LEE Woon-luen, SP CAPO HKI  
Mr Eddy TONG Chi-chung, CIP CAPO HQ  
Ms Rene LAM Suk-man, SIP A&S C&IIB  
Ms Winky CHAN Shuk-ming, SIP IPCC C&IIB  
Mr TSE Tin-hoo, SIP Team 5b CAPO HKI  
Ms Maggie SZE Yuk-sim, SIP Team 7a CAPO HKI

Absent with Apologies: Mr YEUNG Yiu-chung, BBS, JP  
Ms Priscilla WONG Pui-sze, JP  
Mr Frederick TONG Kin-sang, Assistant Ombudsman  
Mr Michael B. DOWIE, DMS

## **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 9 NOVEMBER 2006 (Open Part)**

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

### **II           CAPO'S CRIMINAL AND DISCIPLINARY CHECKLIST**

3.            The Chairman invited CAPO to brief the meeting on the checklist.

4.            CSP C&IIB highlighted two cases on the checklist which were related to the failure of the concerned officers to observe the requirement laid down in the Complaints Against Police Office Manual for statements from complainees to be taken by officers of at least one rank senior to the complainees. In this regard, CAPO would disseminate the information to formations during liaison visits and complaint prevention talks. The matter would also be forwarded to the Complaints Prevention Committee for information and consideration of any action that could be taken.

5.            There was no comment from Members of the meeting.

### **III          CAPO'S MONTHLY STATISTICS**

6.            CSP C&IIB informed the meeting that 248, 227 and 226 complaints were received in October, November and December 2006 respectively. This was an increase of 7.4% (+17 cases) but a decrease of 8.5% (-21 cases) and 0.4% (-1 case) when compared with the statistics of the respective previous months. The figure for September 2006 was 231 cases.

7. The number of 'Neglect of Duty' complaints received in October, November and December 2006 were 99 cases, 97 cases and 87 cases respectively. This was an increase of 23.8% (+19 cases) but a decrease of 2.0% (-2 cases) and 10.3% (-10 cases) when compared with the statistics of the respective previous months. The figure for September 2006 was 80 cases.

8. The number of 'Misconduct/Improper Manner & Offensive Language' complaints received in October, November and December 2006 were 66 cases, 60 cases and 62 cases respectively. This was a decrease of 1.5% (-1 case) and 9.1% (-6 cases) but an increase of 3.3% (+2 cases) when compared with the statistics of the respective previous months. The figure for September 2006 was 67 cases.

9. The number of 'Assault' complaints received in October, November and December 2006 were 52 cases, 42 cases and 52 cases respectively. This was an increase of 4.0% (+2 cases), a decrease of 19.2% (-10 cases) and an increase of 23.8% (+10 cases) when compared with the statistics of the respective previous months. The figure for September 2006 was 50 cases.

10. In the year 2006, a total of 2,542 complaints were received. It represented a decrease of 5.6% (-152 cases) when compared with 2,694 cases of the same period in 2005.

11. The total number of 'Neglect of Duty' complaints received in the year 2006 was 957 cases. It presented a decrease of 1.5% (-15 cases) when compared with 972 cases of the same period in 2005.

12. The total number of 'Misconduct/Improper Manner & Offensive Language' complaints received in the year 2006 was 702 cases. It represented a decrease of 15.9% (-133 cases) when compared with 835 cases of the same period in 2005.

13. The total number of 'Assault' complaints received in the year 2006 was 561 cases. It represented an increase of 7.5% (+39 cases) when compared with 522 cases of the same period in 2005.

14. The Chairman noted that there was an item known as 'Other Offences' in the figures of 2006 and he wished to know the nature of those three 'Other Offences'.

15. CSP C&IIB replied that the three 'Other Offences' were those complaints which did not come under the normal categories but he did not have the information on their precise categories. He undertook to inform the Council in writing later. [Post-meeting Note: The three "Other Offences" were two complaints of "Theft" and one complaint of "Criminal Damage".]

16. The Chairman invited the meeting to comment on the statistics.
17. Dr Charles KOO Ming-yan said that he hoped the police could also provide the details of the ‘Other Offences’ to the Council in future.
18. CSP C&IIB replied that he would go back to look into how the ‘Other Offences’ could be listed in the statistics next year but because it could not be anticipated how many cases of this nature there would be in next year, he was not sure if that could be done.
19. Dr Hon LUI Ming-wah commented that the majority of the complaints were of a trivial nature when compared with other countries and it was such trivial complaints which mainly caused the increase in complaint figures. He wished to know if the Police had any means to educate frontline officers to improve their attitude and communication skills so as to reduce complaints.
20. CSP C&IIB replied that he shared the same view that the majority of the complaints were of a trivial nature. As reflected by the complaint figures, ‘Misconduct’, ‘Offensive Language’ and ‘Improper Manner’ accounted for the majority of the complaints, and for this reason the police has adopted a proactive approach in complaint prevention. Internally, a Complaints Prevention Committee comprising officers from various frontline units has been set up to look into complaint trends and to consider how complaints could be prevented. Moreover, information regarding the latest complaints would be disseminated to frontline officers on a monthly basis to let them know the circumstances that led to complaints. Also, CAPO would pay liaison visits to formations on a monthly basis during which the complaints received would be discussed to examine how to prevent complaints. There were also large scale events to prevent complaints and complaint prevention videos have been produced for use in training days for frontline officers. A Complaints Prevention Training Video Competition was being launched which all frontline officers could take part in. A total of 30 entries were received. It was hoped that through such activities the complaint prevention message would be disseminated, and awareness amongst officers would be enhanced. He believed that there were still a lot to be done and CAPO would continue to work hard in seeking new and different methods in preventing complaints. If the Council had any suggestion, he would be happy to make reference to it in future complaint prevention work.
21. Dr Charles KOO Ming-yan stated that he recalled that there used to be high numbers of complaints in certain districts, for example in Wanchai, and he had attended their training days to deliver complaint prevention talks and these were well received by the officers who were more likely to respond positively to talks delivered by outsiders, such as IPCC Members or Observers. He recalled that the complaint figures dropped significantly after the talks and he wondered whether the same would be done again.

22. CSP C&IIB thanked Dr KOO for his suggestion and acknowledged that the suggestion was worth considering. He undertook to look into how the suggestion could be implemented in consultation with the Secretariat and frontline units.

23. Mr Daniel CHAM Ka-hung enquired if complaint prevention trainings were given to officers receiving training in the Police College and the Police Tactical Unit.

24. CSP C&IIB replied that complaint prevention training had been included in the basic training program offered to every police officer. CAPO has been maintaining close liaison with the Police College to examine and update the training materials. In addition, CAPO would also promote the complaint prevention message at different levels outside the training curriculum to remind them of the importance of complaint prevention.

25. ACP SQ supplemented that the improvement of service quality had all along been the Force's long term goal and was part of the process of continuous improvement. It proceeded gradually from promoting officers' awareness to fostering a service-oriented culture. He hoped that through the hard work of various parties, officers starting from day one would know that they should aim at offering their best as their objectives.

26. Dr Hon Joseph LEE Kok-long, referring to page 34 of the report, commented that most of the complaints were classified as 'Unsubstantiated' or 'Withdrawn', especially in cases of 'Misconduct' and 'Assault', and he wondered if this would create a negative effect to cause frontline officers to think that the complaints were unreasonable or to cause them to think that it did not matter being complained against as the complaints would ultimately be found unsubstantiated and there was no consequence even if they were complained against.

27. CSP C&IIB replied that the papers discussed in the meeting were not accessed by frontline officers who would only know about the complaints concerning themselves as well as the summary of the complaint figures that were accessible through the police intranet. Most importantly, whether a complaint was substantiated was not the focus of complaint prevention. During complaint prevention talks, CAPO officers would not focus on figures and percentage of cases that were found unsubstantiated. The emphasis was not on the result of the investigation but on how complaint could be prevented, irrespective of whether the complaint was substantiated or not. The focus of complaint prevention was that every single case could have been prevented, especially those preventable complaints, such as 'Misconduct', 'Improper Manner' and 'Offensive Language'. Therefore, the focus was not on the result of the complaint investigation and he was confident that officers understood very well the message that irrespective of the result of the

investigation, complaint should have been avoided as far as possible and that they should provide the best service to prevent every single complaint irrespective of the cause.

28. Dr Hon LUI Ming-wah asked CAPO if there were any records on recidivist officers and he wished to know if there were any special measures to be taken against officers subjected to two or more substantiated complaints.

29. CSP C&IIB replied that the complaint records of officers frequently subjected to complaints would be referred to their respective commanders for appropriate actions.

#### **IV A COMPLAINT CASE FOR DISCUSSION – CAPO H 05001226 (6a)**

30. The Chairman invited the Secy/IPCC to brief the meeting on the case to be discussed.

31. The Secy/IPCC briefed the meeting that on the material day, the complainant (COM), a barrister by profession, was stopped and searched by a police constable (COMEE), and another woman police officer, as he was suspected of being in possession of equipment fit for unlawful purpose. After the search, COM was released unconditionally since no illegal item was found on him.

32. COM was dissatisfied with the COMEE's acts during the search, and lodged a complaint against the COMEE later on the same day. COM alleged that the COMEE failed to inform him of the reason for conducting the search on him at the material time [allegation (a) – 'Neglect of Duty']. He further complained that at the moment when he emptied the front right pocket of his trousers and showed COMEE the keys and coins as per COMEE's request during the search, the COMEE suddenly touched his right buttock without prior notification. He considered this an indecent act [allegation (b) – 'Misconduct']. COM was also dissatisfied with the COMEE's making unnecessary remarks regarding his profession and suddenly moving towards him during the search [allegation (c) – 'Impoliteness'].

33. COMEE categorically denied all the allegations made by the COM. COMEE explained that he intercepted the COM, and conducted a search on him (COM) at the material time because COM had walked hastily and avoided eye contact with him (COMEE). The shoulder bag carried by COM was bulky which gave rise to his (COMEE's) suspicion that COM might have carried in his shoulder bag equipment fit for unlawful purpose. COMEE stated that he had told COM the reason for the stop and search, and demanded to search his (COM's) body and bag. Since COM appeared to be nervous and kept moving when he (COMEE) requested to search COM's bag, COMEE immediately stepped one pace

forward and requested COM to stop moving, and conducted a quick search on COM to ensure that there was no dangerous item in his (COM's) possession. COMEE claimed that he gave clear instructions to COM during the search. He started the search from the upper body, waist, trousers, and finally searched the shoulder bag. COMEE admitted that he patted on COM's upper clothes and trousers' pockets quickly during the search. The statement of the woman police officer, who assisted COMEE in conducting the stop and search at the material time, corroborated COMEE's version.

34. CAPO's investigation indicated that CCTV facility was installed at one of the shops in the vicinity. However, it did not capture the search location, and the shop attendants stated that they had no idea about the search. The owner of a newspaper stall in the vicinity, who noticed that two police officers conducted a stop and search on a Chinese male at the material time, stated that she did not pay attention to them and only heard the Chinese male said 'I will complain you'. She refused to give any statement to assist in the CAPO investigation.

35. After investigation, CAPO considered that the stop and search conducted by the COMEE on COM was fully justified under Section 54(1) of the Police Force Ordinance, Cap 232. For allegations (a) – 'Neglect of Duty' and (c) – 'Impoliteness', CAPO classified them as 'Unsubstantiated' since COMEE denied the allegations, and there was no corroborative evidence or independent witness to prove or disprove either side's version.

36. For allegation (b) – 'Misconduct', CAPO commented that the 'touch' alleged by COM was not a physical contact on his buttock, but rather a search of the rear right pocket of his trousers. CAPO observed that COM considered the 'touch' as an act of indecency, based only on his subjective perception since he (COM) might be over sensitive and had a flawed perception of the search. CAPO was of the view that the COMEE did nothing more than the lawful execution of his duty based on his reasoned judgment at the material time, and the allegation was purely a misconception and misunderstanding on the part of the COM himself. CAPO therefore classified this allegation as 'No Fault'.

37. Upon examining the investigation result of COM's complaint, the IPCC had reservation about the 'No Fault' classification for allegation (b) – 'Misconduct'. The IPCC raised the following observations and comments:

- (i) allegation (b) was a typical one-against-one situation without any independent witness or corroborative evidence to prove or disprove the allegation, which was similar in situation to allegations (a) and (c) that were classified as 'Unsubstantiated';

- (ii) COM's version indicated that the COMEE touched him over the front right pocket of his trousers and his right buttock in a sudden way without prior notification in the course of the search at the material time. It was different from the usual way of conducting a body search by the Police such as giving prior instruction, starting the search from the upper body, waist, trousers, etc. as described in COMEE's version. There was also no corroborative evidence to support CAPO's comment that 'the 'touch' alleged by COM was not a physical contact on his buttock but rather the search of the rear right trousers' pocket';
- (iii) in determining whether the alleged 'touch' in the instant case was indecent, a number of parameters should be taken into consideration such as COMEE's manner in carrying out the search, the force of the 'touch', the tone adopted by the COMEE, as well as the feeling of COM at the material time, etc. However, there was no independent witness or objective evidence to demonstrate the details of those parameters in the instant case; and
- (iv) in the absence of any independent witness and corroborative evidence to support either side's version, it was not appropriate to rely mainly on COMEE's version to classify allegation (b) as 'No Fault'.

38. After discussion between the IPCC and CAPO, CAPO agreed to change the 'No Fault' classification for allegation (b) to 'Unsubstantiated'. CAPO's views were summarized as follows:

- (i) the crux of allegation (b) was whether the alleged 'touch' had exceeded the limit of normal physical contact during a body search and whether it amounted to an act of indecency;
- (ii) both sides' versions suggested that COMEE searched the pockets of COM's trousers one by one. Hence it was reasonable to conclude that the alleged 'touch' was part of the search and nothing more than a normal physical contact during a body search;
- (iii) in respect of the issue of 'indecency', CAPO subscribed to the IPCC's observation that whether a 'touch' was indecent depended on various parameters including the form of contact, the force of the touch, etc.; and
- (iv) there was no corroborative evidence or independent witness to describe the details of the search conducted by the COMEE at the material time. In this regard, CAPO agreed to re-classify the allegation (b) – 'Misconduct'.

39. The IPCC appreciated that ‘Stop and Search’ actions were essential for the Police in its crime detection and prevention work, and agreed that the COMEE had lawful and justifiable grounds to stop and search the COM in the instant case. There was also no conclusive evidence to prove that the COMEE had committed any procedural impropriety in conducting the search at the material time. Nevertheless, in a one-against-one situation where there was no corroborative evidence or independent witness to prove or disprove either side’s version, the IPCC considered that an ‘Unsubstantiated’ classification was more appropriate, and thus endorsed CAPO’s re-classification of allegation (b) – ‘Misconduct’ as ‘Unsubstantiated’.

40. The Chairman invited the meeting to comment.

41. Dr LO Wing-lok commented that according to the facts of the case, the reasons for the search were firstly, because COM evaded eye contact with the police officer, and secondly, the bag COM was carrying was too bulky, and lastly, because COM appeared nervous. He wondered if those were the criteria for a body search and if those were really the case, it would be quite worrying. Avoiding eye contact would be equated with having committed an offence. A bag for containing sports equipment could be very bulky and it was also natural to become a bit nervous on seeing the police. He wished CAPO to explain if those were the criteria for the body search and what the compelling reason was that led to COM being stopped and searched by the police.

42. CSP C&IIB replied that according to the Police Force Ordinance, any police officer may stop and search any person acting suspiciously in a public place. Regarding the circumstances under which a person might be found suspicious, this would depend on many factors, including the demeanour of that person, the time and place, as well as the other persons in his company, etc. Each case had to be decided on its own merits and those factors had to be judged by the officer at the scene. CAPO could only rely on the established facts and the explanations of the concerned officer to assess if the suspicion was reasonable. In the instant case, there was nothing to indicate that the suspicion of the officer was unreasonable. CAPO was of the view that the stop and search was conducted in accordance with the law and therefore no fault was found on the part of the officer concerned. As regards other arguments of the IPCC in respect of the case, these had been reported by the Secy/ IPCC and he had nothing to supplement.

43. Dr LO Wing-lok further commented that, in other words, apart from the three criteria he had just mentioned, CAPO agreed after the investigation that the officer had correctly exercised his discretion in deciding if the search should be conducted. He wished to know the percentage of arrests made as a result of stop and search.

44. CSP C&IIB undertook to find out the figures and to give a written reply to the Council after the meeting. He stressed that the figures might not be very high but, as reflected by previous cases, stop and search was a very effective means for preventing crimes. As a matter of fact, there was still an officer in hospital at the moment as a result of the injury inflicted by a suspect during a stop and search. From this case and other similar cases, it could be seen that there was a genuine need to conduct stops and searches and patrol officers were doing just that everyday. CAPO played the role of investigating complaints from the public who objected to the searches conducted on them. CAPO would examine if the searches were justified. [Post-meeting Note: In the year 2006, there were a total of 11,544 persons arrested as a result of stop and search actions and there were 14,189 persons arrested as a result of stop and question actions.]

45. Dr LO Wing-lok acknowledged that there was a genuine need for the police to conduct stops and searches as pointed out by CAPO, the percentage of yielding a positive result after a search was not high, and the decision to search was the subjective judgment of individual officers and whenever there was a complaint, it could hardly be substantiated as this would always be an one-against-one situation. He opined that as an advanced police force, it would be desirable for officers to offer an apology to the persons searched for the inconvenience caused to them after the search if it yielded a negative result.

46. CSP C&IIB replied that there was indeed an internal guideline stipulating that after a stop and search that yielded nothing suspicious, the officer conducting the search, where appropriate, could offer an apology to the person being searched for the inconvenience caused.

47. The Chairman noted that there were many complaints involving the touching of private parts of persons searched. As in the case reported by the Secy/IPCC earlier, normal body contact was mentioned. He wondered if there should be no touching of private parts in a normal stop and search. Also, if the search involved the touching of the private parts, he asked if the person searched should be given the choice for the search to be conducted on the spot or in a police station.

48. CSP C&IIB responded by saying that the circumstances of a stop and search varied from one case to another and whether a search would involve the touching of the sensitive parts of the body would depend on the circumstances. In general, when a person was searched in a public place, the search would be a simple one but in some situations there might be a need to conduct a thorough search and it might sometimes be necessary to take the person to a nearby police station for the search. When transporting the person to a police station for search, the officer should make sure that the subject person was not in possession of any weapon that might do harm to others or was able to destroy any evidence before he was taken to a nearby police station.

V

**ANY OTHER BUSINESS & CONCLUSION OF THE MEETING**

49. There being no other business, the meeting concluded at 1630 hours. The next meeting will be held on 29 March 2007.

( Oscar KWOK )  
Joint Secretary  
Complaints and Internal  
Investigations Branch

( Brandon CHAU )  
Joint Secretary  
Independent Police  
Complaints Council