

**126th MEETING OF  
THE INDEPENDENT POLICE COMPLAINTS COUNCIL (IPCC) MEETING WITH  
THE COMPLAINTS & INTERNAL INVESTIGATIONS BRANCH (C&IIB) HELD AT  
THE IPCC SECRETARIAT OFFICE  
AT 1555 HOURS ON THURSDAY 29 MARCH 2007**

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Present: Mr Ronny WONG Fook-hum, SC, JP (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  
Prof Benjamin TSOU Ka-yin, BBS  
Dr Michael TSUI Fuk-sun  
Mrs Helena YUEN CHAN Suk-yee  
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 Michael B. DOWIE, DMS  
Mr Alfred MA Wai-luk, ACP SQ  
Mr J.P. RIBEIRO, CSP C&IIB (Ag)  
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)  
Mr Bernard KAN, SAS (3)  
Miss Mary KWOK, AS (PS) 1  
Mr Eddy TONG Chi-chung, CIP CAPO HQ  
Ms Winky CHAN Shuk-ming, SIP IPCC C&IIB  
Mr Damon AU Wing-leung, SIP SUP CAPO

Absent with Hon Daniel LAM Wai-keung, SBS, JP (Vice-chairman)  
Apologies: Mr YEUNG Yiu-chung, BBS, JP  
Mr HUI Yung-chung, BBS, JP  
Dr TSE Tak-fu, BBS  
Ms Priscilla WONG Pui-sze, JP  
Mr Frederick TONG Kin-sang, Assistant Ombudsman  
Mr Alan FAN Sik-ming, CSP C&IIB

## **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 1 FEBRUARY 2007 (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. ACP SQ highlighted three cases on the checklist, namely A9, A59 and A65, which related to the failure to comply with the requirements for notebook entries regarding search of premises and seizure of exhibits as required by Police General Orders (PGO) and Force Procedures Manual (FPM).

5. A9 related to a case where at the conclusion of a search of the complainant's premises, the officer failed to request the complainant to sign his notebook to the effect that the premises was in order, contrary to FPM 53-03(16) which states - "At the conclusion of a search of premises, whether conducted under a search warrant, authorization or occupant's consent, the officer-in-charge, or an officer nominated by him, should request the owner or occupant to sign the officer's notebook that the premises are in order or otherwise. Should the owner or occupant decline to do so an entry is to be

made to this effect in the officer's notebook.”

6. A59 related to a case in which the officers failed to ask the complainant to acknowledge in her notebook regarding the seizure of exhibits from a premises after a search, contrary to PGO 44-04(5) which states – “When property is seized from premises after a search, the officer in charge of the search will ensure that the owner or occupier of the premises, or in their absence another person who is assessed to be able to act on their behalf, acknowledges the seizure of the property by signing an itemized list of the property in a police notebook”

7. A65 was a case in which the officer failed to record in his notebook the details of the house search on the complainant's residence, contrary to FPM 53-03(14) which states – “All officers taking part in a search of premises should record the details of the search in their notebooks.”

8. ACP SQ emphasized that the Force has clear procedures regarding the use of notebook in relation to the search of premises and seizure of exhibits. As the matter was very important, this had been highlighted in the ‘Tips for Smart Cops’ to remind frontline officers of the need to comply with the relevant provisions. CAPO officers would avail themselves of all opportunities to disseminate the information to frontline officers during their liaison visits and complaint prevention talks given to police formations. The matter would also be forwarded to the Complaints Prevention Committee for information and consideration.

9. Members had no comments on the checklist.

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

10. The Chairman invited CAPO to brief the meeting on the CAPO's Monthly Statistics.

11. ACP SQ briefed the meeting that 244 and 180 complaints were received in January and February 2007 respectively. They represented an increase of 10.9% (+24 cases) but a decrease of 26.2% (-64 cases) when compared with the statistics of the previous months. The figure for December 2006 was 220 cases.

12. The number of 'Neglect of Duty' complaints received in January and February 2007 were 122 cases and 69 cases respectively. They represented an increase of 47.0% (+39 cases) but a decrease of 43.4% (-53 cases) when compared with the statistics of the previous months. The figure for December 2006 was 83 cases.

13. The number of 'Misconduct/Improper Manner & Offensive Language' complaints received in January and February 2007 were 53 cases and 65 cases respectively. They represented a decrease of 7.0% (-4 cases) but an increase of 22.6% (+12 cases) when compared with the statistics of the previous months. The figure for December 2006 was 57 cases.

14. The number of 'Assault' complaints received in January and February 2007 were 45 and 29 cases respectively. They represented a decrease of 11.8% (-6 cases) and 35.6% (-16 cases) when compared with the statistics of the previous months. The figure for December 2006 was 51 cases.

15. In the first two months of 2007, a total of 424 complaints were received. It represented an increase of 9.6% (+37 cases) when compared with 387 cases of the same period last year.

16. The total number of 'Neglect of Duty' complaints received in the first two months of 2007 was 191 cases. It represented an increase of 65 cases (+51.6%) when compared with 126 cases of the same period last year.

17. The total number of 'Misconduct/Improper Manner & Offensive Language' complaints received in the first two months of 2007 was 118 cases. It represented an increase of 10 cases (+9.3%) when compared with 108 cases of the same period last year.

18. The total number of 'Assault' complaints received in the first two months of 2007 was 74 cases. It represented a decrease of 13 cases (-14.9%) when compared with 87 cases of the same period last year.

19. The Chairman noted that the number of 'Neglect of Duty' complaints increased from 83 cases in December 2006 to 127 cases in January 2007, which was the highest figure since 2004. He wished to know

if there were any particular reasons leading to such an upsurge.

20. ACP SQ replied that there was no noticeable trend or reason leading to the increase. He assured that CAPO has been monitoring the complaint trend at all times to see if there is anything worth bringing to the attention of frontline officers. In the meantime, the cases would be investigated to gather more facts, and if required, necessary guidelines would be given to frontline officers.

#### IV

#### A COMPLAINT CASE FOR DISCUSSION

21. The Secy/IPCC briefed the meeting on the details of the complaint which related to the police handling of a ‘Criminal Damage’ case. The mother of the complainant (COM) operated a fast food shop with the assistance of COM’s sister adjacent to a hair salon. On the material day, COM was informed by his sister that the air duct of the fast food shop was damaged by the decoration workers when the latter were erecting a new awning for the hair salon. COM then returned to the fast food shop and made a report to the Police. The complainees, including two Police Constables and a Sergeant (COMEES 1 to 3), who attended the scene and enquired separately with the parties concerned, concluded that there was “No Crime Detected”. Two days after, COM approached the Divisional Commander of the police district, and alleged that he was unfairly treated in the incident. A Senior Inspector of Police (COMEE 4) was then assigned to conduct a thorough investigation of COM’s case, which was eventually curtailed as there was insufficient evidence to support the “Criminal Damage” allegation. Aggrieved by the way the Police handled his case, COM lodged a formal complaint alleging that COMEES 1 to 3 were unfair and unjust when handling his report at the scene (allegation (a) – “Neglect of Duty”). He also alleged that COMEE 4 had neglected his duty by taking witness statements instead of cautioned statements from the decoration workers, who were suspects of the alleged crime (allegation (b) – “Neglect of Duty”).

22. According to COMEES 1 to 3, COM instructed them to arrest the decoration workers for “Criminal Damage” as he alleged that the air duct of the fast food shop was damaged by them. The decoration workers, on the other hand, denied having damaged the air duct in the course of their work.

COM's mother and sister, who were present at the scene when the air duct was allegedly damaged, as well as the security guard on duty on the material day were also enquired but they stated that they did not see anybody damaging the duct. COMEE 3 had also inspected the air duct himself and found that the cracks on the outer layer of the duct appeared to be caused by normal wear and tear without any act of deliberate damage being detected. In the light of the findings from the inspection at the scene, the decoration workers' denial as well as the absence of any eye witness to support the "Criminal Damage" allegation, COMEES 1 to 3 classified the case as "No Crime Detected". COM turned emotional when being informed of the investigation result, and the person-in-charge of the decoration work in the hair salon then voluntarily offered to repair the air duct for COM.

23. COMEE 4 was also enquired for the complaint investigation. He stated that after being assigned to look into COM's case by the Divisional Commander of the police district, he had taken three witness statements respectively from COM's mother, COM's sister and the security guard concerned. Moreover, he had also taken statements under caution with two workers involved in the decoration work of the hair salon on the material day. The statements of the parties concerned were basically in line with their versions given at the scene, except COM's mother and sister, who claimed in their witness statements that they did witness the damage of the air duct on the material day, though their accounts on how the damage was caused were somewhat different. For the purpose of further examining COM's "Criminal Damage" allegation, the staff of COMEE 4 had also conducted two scene visits, during which COM refused to remove the adhesive tape on the air duct for inspection. It was also found that there were other cracks on the surface of the air duct, which appeared to have been caused by normal wear and tear. On the basis of the above findings, COMEE 4 concluded that there was insufficient evidence to prove that the air duct had been criminally damaged by any person on the material day.

24. Regarding allegation (a) – "Neglect of Duty", CAPO classified it as "No Fault". Justifications submitted by CAPO in support of the classification were summarized as follows –

- (a) apart from enquiring with COM, his mother and sister as well as the decoration workers, COMEES 1 to 3 had also enquired with the security guard, the only independent

- witness located, who told COMEEs that he did not witness any person damaging the air duct;
- (b) the enquiry with the security guard was clearly recorded in the notebook of COMEE 2, though there was no recording in the police notebook regarding the details of COMEEs' enquiries with COM's mother and sister;
  - (c) the law is that for there to be an offence of "Criminal Damage", both the act of damage as well as the criminal state of mind to damage had to be proved. Damage incurred as a result of carelessness or an accident was thus not criminal, but an entirely civil matter. In other words, a criminal classification would only be possible if clear evidence of the necessary intent was present. This would understandably be rare. Most reports of a similar nature of COM's case would inevitably belong to a civil type, regardless of whether the process of any damage was actually witnessed by any person;
  - (d) insofar as there was no evidence to show the necessary intent on the part of the decoration workers to damage the air duct, COM's mother and sister not witnessing the alleged damage, was, in itself, not material to COMEEs 1 to 3's determination of the "No Crime Detected" classification at the scene. There was no ground for criticism for COMEEs 1 to 3 not to make any record of their enquiries with COM's mother and sister, as a recording of non-events was not expected as a rule; and
  - (e) after evaluating COMEEs 1 to 3's actions at the scene, CAPO believed that they had conducted all the necessary enquiries with the parties concerned on the material day before arriving at the "No Crime Detected" classification. CAPO was not prepared to infer that the enquiries of COMEEs 1 to 3 were incomplete simply because of the absence of the recording of some non-crucial events in the police notebooks.

25. As regards allegation (b) – “Neglect of Duty”, COM was aggrieved that COMEE 4 had not interviewed the decoration workers under caution, as they were suspects of the alleged crime. However, CAPO’s investigation revealed that COM’s allegation was contradicted by the relevant records of interviews, which showed that the decoration workers had been properly cautioned before they were interviewed for the alleged crime. In view of this, CAPO classified allegation (b) as “No Fault”.

26. While the IPCC had no objection to the “No Fault” classification for allegation (b), the IPCC did have reservation about the “No Fault” classification for allegation (a). The IPCC’s observations were summarized as follows –

- (a) in response to COM’s allegation of “Criminal Damage”, it was imperative for COMEEs 1 to 3 to make enquiries with all the relevant parties at the scene, including COM’s mother and sister, not only to see if there was evidence to show that the alleged act of damage was witnessed by any person, but also how the damage was done, if witnessed, from the acts and demeanors of the decoration workers concerned, to show if the criminal state of mind did exist (as opposed to a damage from accident/carelessness, which was not criminal);
- (b) COMEE 3 clearly indicated in his statement with CAPO that one of the reasons for him to classify COM’s report as “No Crime Detected’ was that nobody, including COM, his mother and sister, had witnessed the alleged damage;
- (c) in the subsequent investigation of COMEE 4, witness statements were also taken from COM’s mother and sister. The act of COMEE 4 indicated that the versions of COM’s mother and sister were relevant, rather than immaterial, in determining whether there was any crime disclosed in the case; and
- (d) COMEEs 1 to 3, however, did not make any notebook record of their enquiries with COM’s mother and sister, which, to the IPCC, were relevant to their decision of “No Crime Detected” made at the scene. Moreover, such records, if



available, could lend weight to the thoroughness of the at-scene enquiries of COMEEs 1 to 3 of the alleged crime. In the absence of such records, the IPCC considered that there was no sufficiently reliable evidence to support CAPO's belief that the enquiries of COMEEs 1 to 3 were thoroughly and fairly conducted. Hence, it would be more appropriate to classify allegation (a) as "Unsubstantiated" rather than "No Fault".

27. After considering the observations made by the IPCC, CAPO agreed to change the "No Fault" classification for allegation (a) to "Unsubstantiated".

28. The IPCC appreciated that police officers might have practical difficulties in compiling an exhaustive record of their investigations at the scene. This notwithstanding, for findings that were of relevance to an at-scene decision on whether an allegation of crime should be further pursued by the Police, it was always in the officers' interests to record them, as such records might eventually prove to be of evidential value to any ensuing crime investigation. They also lend weight to the thoroughness of the officers' investigative actions at the scene as well as the propriety of their decisions in case they were subject to any subsequent challenge or complaint.

29. The Secy/IPCC invited CAPO to comment.

30. ACP SQ responded by saying that the classification of 'Unsubstantiated' for allegation (a) was agreed after the IPCC and CAPO had exchanged views for several times. He commented that it was in the interest of the officers concerned to record in their notebooks the investigation they had conducted at the scene as this might be helpful to them. Indeed, there were provisions in the Police General Orders requiring officers to record details relating to their duties for the purpose of refreshing their memories in future and protecting them from any false or malicious complaints. If there was information of evidential value, officers should also record such information in their police notebooks to strengthen the evidence and this was the underlying principle of the related police orders. On this issue, frontline officers would be regularly reminded of their need to properly use their notebooks.

**STATISTICAL REPORT ON THE WORK OF THE IPCC IN 2006**

31. The Secy/IPCC briefed the meeting on the Statistics Report on the Work of the IPCC in 2006.

32. In 2006, the IPCC endorsed 2,114 cases, comprising 1,311 'Normal' cases (i.e. minor cases with not more than one round of query) and 803 'Complicated' cases (i.e. all serious cases and the minor cases with two or more rounds of query). 99.5 % of the 'Normal' cases (i.e. 1,131 cases) and 99.8% of the 'Complicated' cases (i.e. 801 cases) were endorsed within the pledged periods of three months and three to six months after receipt of the final investigation reports from CAPO respectively.

33. In 2006, IPCC endorsed 2,114 cases, representing a decrease of 714 cases when compared to 2,828 cases endorsed in 2005. The Secy/IPCC explained that the reduction was mainly attributable to the outbreak of the data leakage incident in March 2006. During the initial period of the incident, the Secretariat's manpower resources were redeployed to follow up on matters arising from the incident. As a result, normal case examination work was protracted. There was also a general trend showing a decrease in the number of complaints raised against the Police in recent years. In 2006, the number of cases received by the IPCC from CAPO was 2,437, representing a reduction of 546 cases or 18% over the figure of 2,983 in 2005.

34. The number of cases endorsed by the IPCC had resumed to a normal level with 386 cases endorsed in the first two months in 2007, which showed an increase over the 309 cases endorsed in the same period of 2006.

35. In 2006, the IPCC endorsed 2,114 cases involving 3,518 allegations, among which 1,053 were fully investigated. Of the fully investigated allegations, 40 were classified as 'Substantiated', 60 were 'Substantiated Other Than Reported' and 4 were 'Not Fully Substantiated'. The substantiation rate in relation to fully investigated allegations was 9.9%. It must be stressed that an allegation would be substantiated only on the grounds of sufficient evidence or strong and unequivocal justification. There was no presumption on the percentage of the substantiation rate.

Both the IPCC and CAPO would base on discernable evidence to determine whether an allegation should be substantiated. Therefore, the substantiation rate should not be regarded as a yard-stick in assessing the integrity of police officers or the effectiveness of the police complaints system.

36. Of the serious allegations endorsed by the IPCC in 2006, 143 were 'Fabrication of Evidence' (4.1%) and 532 were 'Assault' (15.1%). When compared with 2005, a fall was recorded in these two types of serious allegations. Among the allegations endorsed by the IPCC in 2006, the most prevalent ones were 'Misconduct/ Improper Manner/ Offensive Language' (1,293 allegations or 36.8%), 'Neglect of Duty', (1,144 allegations or 32.5%) and 'Assault' (532 allegations or 15.1%). In 2006, the IPCC had raised 829 queries/suggestions with CAPO. Of these queries/suggestions, 565 (68.2%) were accepted by CAPO and the remaining 264 (31.8%) were satisfactorily explained or followed up by CAPO. As a result of the IPCC queries, CAPO amended the investigation results of 44 allegations, including 2 allegations reclassified from 'Unsubstantiated' to 'Substantiated'. 11 counts of 'Substantiated Other Than Reported' findings were also added.

37. The Chairman invited the Secy/IPCC to provide additional information on the operation of the IPCC Observers Scheme in 2006.

38. The Secy/IPCC informed the meeting that there were 317 observations/visits conducted by IPCC Members and Observers in 2006. When compared with the 327 observations/visits in 2005, there was a slight decrease which was not a significant one.

39. Members had no comments on the statistical report.

## **VI ANY OTHER BUSINESS AND CONCLUSION OF THE MEETING**

40. There being no other business, the meeting concluded at 1644 hours. The next meeting will be held on 17 May 2007.

( Oscar KWOK )  
Joint Secretary  
Complaints and Internal  
Investigations Branch

( Brandon CHAU )  
Joint Secretary  
Independent Police  
Complaints Council

