

**135th Meeting of the Independent Police Complaints Council (IPCC)  
with the Complaints & Internal Investigations Branch (C&IIB) held at  
the IPCC Secretariat Office at 1735 hours on Wednesday, 24 September 2008**

Present : Mr JAT Sew-tong, SC (Chairman)  
Dr Hon LUI Ming-wah, SBS, JP (Vice-chairman)  
Dr LO Wing-lok, JP  
Mr Edward PONG Chong, BBS, JP  
Mr HUI Yung-chung, BBS, JP  
Dr Helena YUEN CHAN Suk-yee  
Dr Lawrence LAM Chi-kit, MH  
Mr WONG Kwok-yan  
Mr Clement TAO Kwok-lau, BBS, JP  
Ms Emily CHEUNG Mui-seung  
Mrs Philomena LEUNG, 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 Alan FAN Sik-ming, CSP C&IIB  
Mr J.P. RIBEIRO, SSP CAPO  
Mr SIU Kit-hung, 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 Moira LAU, AS(PS)1  
Mr HO Wai-hong, SP CAPO K  
Mr MOK Hing-wing, CIP Team 2 CAPO K  
Mr CHAN Mun-ying, CIP Team 3 CAPO K  
Mr CHAU Kwok-kuen, CIP Team 1 CAPO K  
Mr LEE Kwok-chung, SIP Team 3a CAPO K  
Mr YU Kong, SIP Team 5a CAPO HKI  
Ms NG Kit-yung, SIP Team 5b CAPO HKI  
Ms CHUNG Wing-man, CIP CAPO HQ  
Mr WONG Kai-man, SIP SUP CAPO  
Ms CHAN Shuk-ming, SIP IPCC C&IIB

Absent with Apologies: Hon Daniel LAM Wai-keung, SBS, JP (Vice-chairman)  
Dr Hon Joseph LEE Kok-long, JP (Vice-chairman)  
Mr YEUNG Yiu-chung, BBS, JP  
Prof Benjamin TSOU Ka-yin, BBS  
Dr Michael TSUI Fuk-sun  
Dr TSE Tak-fu, BBS  
Ms Priscilla WONG Pui-sze, JP  
Mr Barry CHEUNG Chun-yuen, JP

## **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 18 July 2008 (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 regarding the CAPO's Criminal and Disciplinary Checklist covering the period from 26 June 2008 to 8 September 2008.

4. CSP C&IIB highlighted two cases relating to inaccurate description of the scene of accident by complainees, as reported in items A94 and A136 of the checklist. He went on to brief the meeting gist of the cases as follows:-

A94- The complainant, a bus driver, was involved in a 'Traffic Accident with Damage Only (TADO)' in Central on 28 July 2006. Complainees 1 and 2 were the first officers who attended the scene for enquiry which was subsequently taken over by a traffic officer, complainees 1 and 2. The complainant was later summonsed for 'Careless Driving' and he subsequently lodged a complaint against complainees 1 and 2 for failing to draw an accurate sketch of the scene of the accident. CAPO investigation revealed that complainees 1 and 2 failed to reflect the exact position of the involved vehicles right after the accident whereas the complainees 1 and 2 inaccurately drew the sketch by extending the relevant broken white lines unnecessarily.

A136- The complainant was involved in a traffic accident with a private car in Kowloon West on 16 May 2007 and was

subsequently charged with 'Careless Driving'. The complainant alleged that the complainee had made inaccurate sketches at the scene and his car's location was distorted in the sketch leading to his prosecution. The complainant was later convicted after trial. During trial, the magistrate did not put weight on the complainee's sketch on the Pol. 284A as it was noted to be not up-to-scale. CAPO found that the complainee's sketches of the accident as they appeared on a paper, the Pol. 284A and his notebook were different.

5. CSP C&IIB briefed the meeting that officers were trained to draw sketches on the scenes of traffic accidents during their Basic Training and Accident Investigation Course. Traffic Procedure Manual had laid down clear guidelines on sketch drawing that 'a measured sketch is to be made of the accident scene, showing the final positions of the vehicles and all road signs and markings, including lane dividing lines. If the accident occurs at night, the street lights are to be marked on the sketch with a note as to whether or not they were lit'. The issue would be highlighted in the CAPO Monthly Report as 'Matters of Interest' and forwarded to the Complaints Prevention Committee for suitable complaint prevention measures. CAPO officers would also disseminate the information to formations during liaison visits and complaint prevention talks.

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

6. CSP C&IIB reported that a total of 236 complaints were received in July 2008, representing an increase of 16.3% (+33 cases) when compared with 203 cases of the previous month. For the month of August 2008, 211 complaints were received, which was a decrease of 10.6% (-25 cases) when compared with the statistics of the previous month.

7. The number of 'Neglect of Duty' complaints received in July 2008 was 99 cases, an increase of 16.5% (+14 cases) when compared with 85 cases of the previous month. For the month of August 2008, the number of 'Neglect of Duty' complaints received was 89 cases, which was a decrease of 10.1% (-10 cases) when compared with the statistics of the previous month.

8. The number of 'Misconduct/Improper Manner & Offensive Language' complaints received in July 2008 was 68 cases, an increase of 17.2% (+10 cases) when compared with 58 cases of the previous month. For the month of August 2008, the number of 'Misconduct/Improper Manner & Offensive Language' complaints received was 72 cases, which was an increase of 5.9% (+4 cases) when compared with the statistics of the previous month.

9. The number of 'Assault' complaints received in July 2008 was 46

cases, an increase of 64.3% (+18 cases) when compared with 28 cases of the previous month. For the month of August 2008, the number of 'Assault' complaints received was 29 cases, which was a decrease of 37.0% (-17 cases) when compared with the statistics of the previous month.

10. In the first eight months of 2008, a total of 1,765 complaints were received, representing an increase of 3.6% (+61 cases) when compared with 1,704 cases of the same period last year.

11. The total number of 'Neglect of Duty' complaints received in the first eight months of 2008 was 757 cases, representing an increase of 7.1% (+50 cases) when compared with 707 cases of the same period last year.

12. The total number of 'Misconduct/Improper Manner & Offensive Language' complaints received in the first eight months of 2008 was 513 cases, representing an increase of 11.8% (+54 cases) when compared with 459 cases of the same period last year.

13. The total number of 'Assault' complaints received in the first eight months of 2008 was 279 cases, representing a decrease of 9.4% (-29 cases) when compared with 308 cases of the same period last year.

14. CSP C&IIB commented that no particular complaint trend was noted.

#### **IV CASE FOR DISCUSSION**

15. Secy/IPCC briefed the meeting on the case for discussion which related to police's arrangement regarding an interview with a student under the age of 16 at school. Complainant (COM) was a 12-year-old student who was involved in a money dispute with two schoolmates. The school authority noted that there was a gathering of suspicious persons outside the school a few days before. Fearing that an imminent incident of affray would occur, the school authority made a report to police. On the material day, a total of six plainclothes officers from the District Anti-Triad Squad (DATS) attended the school for enquiry in response to its report. Three students, including COM, were interviewed by the police officers at the school. No crime was detected after enquiry.

16. Later on the same day, COM accompanied by her mother, lodged a complaint against three DATS officers. The complaint involved a total of seven allegations of 'Misconduct', "Unnecessary Use of Authority (UUOA)", 'Assault' and 'Threat'.

17. All the alleged misdemeanours took place in the course of the police interview with COM in the interview room at school. A woman detective sergeant (COMEE 1), who took charge of the enquiry, invited the

school discipline master to accompany COM to look after the latter's welfare but he chose to stay outside the room claiming that he could monitor the interview outside as the door and curtain of the room were open. According to CAPO's investigation, in the course of the interview, the discipline master received a phone call and did not witness the entire process. Moreover, he later claimed that the voices of COM and the police officers in the room were too faint for him to hear the conversation.

18. Because of the discipline master's absence in the interview room and his claim of failing to hear the conversation inside, and since there was no other corroborative evidence to support or disprove COM's or COMEEs' version, CAPO classified all the allegations as 'Unsubstantiated'.

19. IPCC was concerned about the way police handled interviews with students under the age of 16 at school. IPCC opined that given that COM was only a 12-year-old girl at the material time, COMEE 1 and other detectives should have attempted to contact her parent or guardian and asked for his/her presence before conducting the interview. Besides, COMEE 1 should have insisted that the discipline master stayed inside the interview room to take care of the girl's welfare, especially in the absence of her parent or guardian. It was largely COMEE 1's arrangement that contributed to the one-against-one situation leading to the 'Unsubstantiated' classification of all allegations.

20. One of the allegations was about a detective police constable (COMEE 2) having unnecessarily exercised his police power to ask COM to surrender her mobile phone for examination and recorded the information therein. COMEE 2 admitted that he did examine the phone to look for any information relating to the imminent affray as reported by the school. IPCC queried if COMEE 2's action was justified as phone records alone could not shed light on the contents of the calls.

21. CAPO agreed that ideally COM should be interviewed in the presence of her parent or guardian. CAPO nevertheless pointed out that the police officers were summoned by the school in the morning to enquire into a possible affray that might break out right after school that day and they were under immense time pressure to interview COM as soon as practicable, even in the absence of her parent or guardian. As governed by Force Procedures Manual (FPM), if the Police found it essential to interview a person under the age of 16 at school, it should be done with the consent and in the presence of the head teacher or his nominee. There was no provision requiring the Police to contact the parent or guardian. CAPO did not see any procedural impropriety in this respect.

22. However, in the light of IPCC's concern and for complaint prevention, COMEE 1 would be suitably advised to be more prudent when arranging interviews with students under the age of 16 at school. CAPO would also request the relevant policy unit to review the existing provisions

of FPM.

23. Despite the discipline master did not stay inside the interview room, CAPO opined that COMEE 1 had given due consideration in regard to the limited space of the interview room and that the discipline master should be able to monitor the interview via the opened door and curtain. CAPO nevertheless would advise COMEE 1 that she should be more circumspect regarding the interview setting when the interview involved a student under the age of 16.

24. Regarding the allegation of 'UUOA' against COMEE 2, the officer stated that he had not examined COM's phone records indiscriminately but focused on persons or phone numbers that were known triad characters by DATS. CAPO was satisfied that the examination was reasonable and proportionate as the result was conducive to subsequent investigation and reinforcement if necessary. As COM and COMEE 2 gave different accounts as to whether the examination was agreed by COM and the information retrieved was recorded by COMEE 2, CAPO maintained the 'Unsubstantiated' classification for this allegation.

25. IPCC considered that if there was reasonable cause to conduct enquiries at school and interview a student under the age of 16, police must obtain the consent from the school principal or the designated teacher and ensure that the interview would be conducted in their presence. Police should also pay attention to the interview setting which should protect the interest of the interviewee. IPCC would also like to remind school authorities of the importance of their care-taking role under such circumstances and to pay attention to police interview arrangement so that the welfare of students at school could be fully taken care of. Secy/IPCC invited CAPO to comment.

26. CSP C&IIB responded by saying that the Council's observations and recommendations would be forwarded to relevant formation commander with a view to ensuring a suitable interview arrangement for persons under the age of 16 at school to protect their interest in the future.

27. The Chairman said that the Council was of the view that the protection of the interest of minors should be of paramount importance. In addition to informing the relevant formation commander, he commented that it would be necessary for police to issue a guideline requiring the presence of parent/guardian of young persons throughout the interview inside the interview room and if circumstances could not permit, the interviewees should be accompanied by the principal of the school or his/her authorized representative.

28. CSP C&IIB replied that the Chairman's recommendations would be forwarded to relevant policyholder for a review on the existing guidelines.

29. In respect of the Council's suggestion to the school authorities, the Chairman asked whether police could provide assistance.

30. CSP C&IIB said that CAPO would convey the Council's suggestion to relevant Government Department and inform IPCC of the feedback in due course.

31. The Chairman highlighted the fact that IPCC had no authority to request school authorities for certain actions demonstrated the need for police to issue a guideline requiring interviews with minors be conducted only in the presence of their parent/guardian, school principal or his/her authorized representative.

32. CSP C&IIB undertook to follow up the issue.

33. Dr LO Wing-lok said that he was aware that police and school authorities had been co-operating in the combat against triad activities at school. He asked how the responsibilities of police and school authorities were divided and if it was possible for some school authorities to exploit the cooperation by inviting police to deal with unruly students on their behalf.

34. CSP C&IIB responded by saying that the charters of police and school authorities were unambiguous. School authorities were wholly responsible for the school discipline and police would interfere only when an offence had been committed by a student or at the school. As police was mainly charged with the responsibility of prevention and detection of crime, police would not educate students on behalf of the school authorities.

35. Dr LO Wing-lok queried if it was unusual for the officers in the instant complaint to interview COM in the absence of a third party.

36. CSP C&IIB replied that the officers concerned had received a report that there was a display of force outside the school a few days before and it was very probable that a similar incident, which might constitute the offences of 'Affray' or 'Unlawful Assembly', would happen after school on the material day. As part of their corresponding actions to the report and in order to fulfil their duties of prevention and detection of crime, the officers interviewed COM and their action should not be misinterpreted as interference in the discipline matters of the school.

37. Mr HUI Yung-chung asked if police would be involved in some educational activities, for instance, crime prevention seminars conducted by school liaison officers. Secondly, he asked whether police would explain to school authorities that the school principal or an authorized teacher had the right and responsibility to accompany a student throughout a police interview at school.

38. CSP C&IIB confirmed that frontline formations would conduct crime prevention talks to students from time to time with a view to preventing students from becoming victims of crimes or drugs etc. In respect of Mr HUI's second question, CSP C&IIB pointed out that there existed no police guideline stipulating the way officers should explain the responsibility to school authorities. This issue would be examined by the relevant policyholder during the review.

39. ACP SQ supplemented that in addition to school liaison officers, police including District Commanders or Police Community Relations Officers had fostered close working relationship with schools. For example, more than 100,000 students participated the Junior Police Call. In respect of the instant complaint, he commented that there was room for improvement and he agreed with the Chairman's concern that persons under the age of 16 should be interviewed by police in the presence of their parent/guardian or authorized school representative. In this regard, CAPO would invite the relevant policyholder to review the existing police procedures and report progress to IPCC in due course.

40. The Chairman said that he could not foresee any practical difficulties for police to lay down a requirement that parent/guardian or school representative must be present throughout an interview and he urged police to consider the Council's recommendation.

41. Dr Hon LUI Ming-wah asked what the establishment of a DATS was and whether the deployment of six officers in the instant complaint unusual.

42. CSP C&IIB highlighted that the officers concerned were charged with the responsibility to prevent an affray or assault at a school where an untoward incident had just occurred days before. The officer-in-charge, without the benefit of hindsight, made a decision and sent the six officers to deal with the report. In retrospect, it would be difficult to comment whether the deployment of the six officers was appropriate but CAPO would reflect the Council's comment to the relevant formation commander.

43. Dr Hon LUI Ming-wah said that even if a display of force eventually occurred, the incident would be handled by uniform police officers instead of plainclothes officers. He asked what the usual deployment would be under similar circumstances.

44. CSP C&IIB replied that the six officers were all attached to a DATS team. In general, the duty of prevention of crime was borne mainly by uniform officers but plainclothes officers would also perform such duty if situation so warranted, for instance, anti-triad duty at the beginning of the school term. The instant report was a report of crime and thus it was appropriate to deploy crime investigation officers to deal with it.



45. Mr Clement TAO commented that while members of the public fully supported police's efforts in preventing the infiltration of triad into schools, it was important that police powers would not be abused. Bearing in mind that there was no evidence to prove COM's connection with the affray and that all the allegations raised by COM were classified as 'Unsubstantiated' after police investigation, he asked CAPO to comment on the motive behind COM's allegations against police especially COM was only a 12-year-old girl.

46. CSP C&IIB said that he would not speculate on COM's motive and emphasized that the evidence available was insufficient to substantiate COM's complaint. The 'Unsubstantiated' classification only represented that there was insufficient evidence to prove or disprove either versions of COM and COMEEs and had no implication on the truthfulness of the evidence of either party.

47. The Chairman commented that from the perspectives of COM, a 12-year-old girl who was surrounded by six police officers in the absence of her parent/guardian or school representative, it was undeniably an unpleasant experience for her. He said that if police had ensured the presence of an appropriate adult throughout the interview and frontline officers had adopted a sensitive approach towards minors, such complaint could have been prevented.

48. Mr Clement TAO accepted CSP C&IIB's explanation of the 'Unsubstantiated' classifications having regard to the available evidence of the instant complaint. He commented that members of the public had great concern over their rights and he encouraged complainants and complainees to provide evidence as far as possible so that CAPO could conduct thorough complaint investigation in the future.

49. DMS thanked the comments made by Council Members. He asserted that there were very good lessons learnt in the instant complaint, particularly in regard to the sensitivity of the officers concerned. He assured the Council that its comments would be conveyed to members of the Force.

50. The Chairman said that the room for improvement to the existing Force procedures was the very reason why the instant complaint, though relatively minor, was tabled for discussion. He commented that any improvement to the procedural inadequacy would benefit the community and he urged joint efforts from the Council and the police in this regard.

51. Dr LO Wing-lok echoed the Chairman's observation on the sensitivity issue. He said that police officers should be sensitive in the ways they adopt in each and every report and should not presume that the persons they dealt with were all of unruly character. He agreed that there were good lessons learnt in this complaint.

52. Dr Hon LUI Ming-wah expressed his dissatisfaction over the way the six officers concerned conducted the interview with COM. He commented that the alleged misdemeanours in this case could have been avoided and in fact 70-80% of all complaints were avoidable. Such misconducts, though minor in nature, seriously damaged the reputation of the Force. He urged police to enhance educational measures to frontline police officers.

53. DMS assured the Council that the issues of police conduct, integrity and complaints were regarded as extremely important to the Force. Currently the Force had four strategic directions and direction two specifically tackled those areas. Over the years the Force had taken a lot of actions to seek improvement but there was always room for further improvement. As society and public expectation changed, the Force would train officers to adapt to such changes. He considered the instant complaint was not minor and the lessons learnt should be taken seriously.

54. Dr HON LUI Ming-wah was pleased to note the assurance from DMS but was of the view that the current educational measures provided to frontline officers were inadequate, as evidenced by the consistent complaint figures over the years.

#### IV

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

55. There being no other business, the meeting concluded at 1838 hours.

( SIU Kit-hung )  
Joint Secretary  
Complaints and Internal  
Investigations Branch

( Brandon CHAU )  
Joint Secretary  
Independent Police  
Complaints Council