

Absent with Apologies: Dr Hon LAM Tai-fai, BBS, JP (Vice-chairman)
The Hon Abraham SHEK Lai-him, SBS, JP (Vice-chairman)
Mr YEUNG Yiu-chung, BBS, JP
Dr TSE Tak-fu, BBS
Ms Priscilla WONG Pui-sze, JP
Ms Emily CHEUNG Mui-seung

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 5 December 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 20 November 2008 to 7 January 2009.

4. CSP C&IIB highlighted three cases relating to the failure to comply with the provision of Police Manual Chapter 14-07(14)(f) when obtaining cautioned statement from the complainant, as reported in items A132, A134 and A165 of the checklist covering the period from 20 November 2008 to 7 January 2009. The officers concerned in the three cases

failed to ask a senior police officer to certify the complainant's cautioned statement when the latter refused to sign on it.

5. CSP C&IIB briefed the meeting that the relevant provisions of the Police Manual stipulated that 'if the person who has made a statement refuses to read it or to write the above mentioned Certificate at the end of it or to sign it, the senior police officer present shall record on the statement itself, and in the presence of the person making it, what has happened. If the person making the statement cannot read, or refuses to read it, the officer who has taken it down shall read it over to him and ask him whether he would like to correct, alter or add anything to what has been recorded and to put his signature or make his mark at the end. The police officer shall then certify on the statement itself what he has done'. He commented that the Force had provided clear procedures in this regard and CAPO officers would remind officers of the relevant guidelines during liaison visits and complaint prevention talks. The matters would also be forwarded to the Complaint Prevention Committee for information.

III CAPO'S MONTHLY STATISTICS

6. CSP C&IIB reported that a total of 260 complaints were received in November 2008, an increase of 10.2% (+24 cases) when compared with the statistics of the previous month. For the month of December 2008, 236 complaints were received, which was a decrease of 9.2% (-24 cases) when compared with the statistics of the previous month.

7. The number of 'Neglect of Duty' complaints received in November 2008 was 127 cases, an increase of 60.8% (+48 cases) when compared with the statistics of the previous month. For the month of December 2008, the number of 'Neglect of Duty' complaints received was 102 cases, which was a decrease of 19.7% (-25 cases) when compared with the statistics of the previous month.

8. The number of 'Misconduct/Improper Manner & Offensive Language' complaints received in November 2008 was 76 cases, a decrease of 19.1% (-18 cases) when compared with the statistics of the previous month. For the month of December 2008, the number of 'Misconduct/Improper Manner & Offensive Language' complaints received was 79 cases, which was an increase of 3.9% (+3 cases) when compared with the statistics of the previous month.

9. The number of 'Assault' complaints received in November 2008 was 31 cases, no change when compared with the statistics of the previous month. For the month of December 2008, the number of 'Assault' complaints received was 28 cases, which was a decrease of 9.7% (-3 cases)

when compared with the statistics of the previous month.

10. For the whole year of 2008, a total of 2,714 complaints were received. It represents an increase of 7.4% (+186 cases) when compared with 2,528 cases of the same period in 2007.

11. The total number of 'Neglect of Duty' complaints received in the year of 2008 was 1,161 cases. It represents an increase of 10.5% (+110 cases) when compared with 1,051 cases of the same period in 2007.

12. The total number of 'Misconduct/Improper Manner & Offensive Language' complaints received in the year of 2008 was 804 cases. It represents an increase of 19.1% (+129 cases) when compared with 675 cases of the same period in 2007.

13. The total number of 'Assault' complaints received in the year of 2008 was 402 cases. It represents a decrease of 10.5% (-47 cases) when compared with 449 cases of the same period in 2007.

14. CSP C&IIB commented that there was no particular complaint trend noted from the complaints received in 2008 albeit the increase in the number of complaints of 'Neglect of Duty and 'Misconduct'. He said that the Complaints Prevention Committee would intensify its efforts in educating frontline officers in this regard with a view to preventing the avoidable complaints.

15. Dr Hon Joseph LEE asked if there was any reason for the significant increase in the number of complaints of 'Neglect of Duty'.

16. CSP C&IIB responded by saying that most of the complaints of 'Neglect of Duty' were related to criminal investigations or traffic enforcement actions. He could not ascertain the underlying reasons for the increase at this stage.

IV

CASE FOR DISCUSSION

17. Secy/IPCC briefed the meeting on the case for discussion which related to the Police's investigation of a 'Traffic Accident-Damage Only' report. On the material day, the complainant (COM) drove to Mr A's place and parked her car in the carpark of the building. Later she returned and found the offside front bumper of her car was dented. COM reported the case to the Police. At that time, COM was undecided whether or not to pursue the case. The scene handling officer then advised her to contact the investigation team within 10 days if she was to pursue the case.

18. Mr A viewed the relevant CCTV tape of the car park which showed a vehicle had closely passed COM's car several times. He noticed that the vehicle belonged to Mr B, a resident of the same building, and found a blue paint on the nearside rear corner of that vehicle which matched the color of COM's car. Mr A contacted Mr B who admitted that he had hit COM's car and agreed to make compensation. Mr B subsequently sent a letter to COM stating that he would pay the repair cost.

19. Two weeks after making the report, COM decided to pursue the case and contacted the Police. Mr B verbally admitted to his misdeed but had not reported to the Police. He also told the Police that he had already compensated COM for the repair cost. Mr B also faxed the mutual agreement with COM on making compensation to the officer-in-charge of the case. However, Mr B refused to provide a statement or paint sample of his vehicle to the Police.

20. Police investigation showed that the relevant CCTV tape did not capture the actual collision and no blue paint was found on Mr B's car since the vehicle had been waxed and cleaned.

21. The officer-in-charge considered the available evidence insufficient to lay any charge against Mr B. He issued an advisory letter to Mr B instead, without taking any prosecuting action against him.

22. COM was dissatisfied with the handling of the case and lodged a complaint with CAPO against the officer-in-charge for 'Neglect of Duty'.

23. Upon receipt of the complaint, legal advice from the Department of Justice was sought which advised that there should be sufficient evidence to charge Mr B with one count of 'careless driving' and one count of 'failure to report'. However, the charges had already been time-barred when the Police obtained the above legal advice.

24. CAPO believed that the officer-in-charge had taken into account all available evidence and relevant factors before deciding not to press any charges. His decision was impartial. CAPO added that the duty of an officer-in-charge was to make judgment to the best of his professional knowledge rather than to make a correct judgment. The decision might not be the best judgment but there was no negligence on the part of the officer-in-charge. Therefore, CAPO classified the allegation of 'Neglect of Duty' as 'Unsubstantiated'.

25. IPCC could not agree to CAPO's investigation results and comments. The Council took the view that the officer-in-charge had ignored all circumstantial evidence, including the CCTV tape, Mr B's

admission and his agreement to making compensation, and the photos provided by COM, which were strong prima facie evidence to support a charge against Mr B. It was inappropriate for him not to seek legal advice in this respect.

26. Although Mr B refused to provide a written statement, the officer-in-charge should have taken necessary action to locate him for further enquiry and statement taking.

27. After several rounds of exchanges, CAPO agreed that, in the light of the strong prima facie evidence against Mr B, the officer-in-charge should have tried to locate Mr B for further enquiry and laid charges against him. As there existed a certain degree of negligence or oversight in the investigation of the traffic accident case, CAPO re-classified the allegation of 'Neglect of Duty' from 'Unsubstantiated' to 'Substantiated'.

28. After IPCC's endorsement of the findings, CAPO reviewed the internal action against the defaulting officer and upgraded it from 'Verbal Advice' to 'Disciplinary Action' to properly reflect the gravity of consequence arising from the negligence.

29. The Chairman invited CAPO to comment on the change of classification from 'Unsubstantiated' to 'Substantiated' and the change of the follow-up action from verbal advice to formal disciplinary action.

30. CSP C&IIB replied after the exchanges of viewpoints between CAPO and the Council, CAPO accepted the perspective of the Council and therefore CAPO substantiated the complaint of 'Neglect of Duty'. CAPO originally recommended the administration of verbal advice from the angle of and for the purpose of service improvement. During the re-examination of the case, CAPO considered that the complainee was an experienced inspectorate officer and his negligence resulted in the serious consequence that the victim's right to seek prosecution against the driver was denied. Under the circumstances, CAPO changed its recommendation on the follow-up action from verbal advice to formal disciplinary proceeding.

31. Mr Clement TAO commented that there was a significant change in both the classification and the follow-up action of the instant complaint after the submission of the case to the Council. He asked if there could be any measures to improve the transparency of complaints investigation and enhance the exchange of views between CAPO and the Council.

32. CSP C&IIB responded by saying that the change of the classification represented one of the advantages of the existing complaints handling mechanism under which all the investigations completed by CAPO would be scrutinized by the Council thereby enabling complaint investigators

to fully consider different viewpoints through the unreserved exchanges between CAPO and the Council. To enhance members' understanding on police duties and practices, visits to police formations had been organized for Council members on regular basis. Similar visit could be arranged for members' better understanding on the Force disciplinary process and guidelines.

33. Mr Clement TAO asked whether CAPO would consider affording more opportunities for two-way exchanges between CAPO and the Council regarding the classification of the individual complaint.

34. The Chairman supplemented that viewpoints on individual case could only be exchanged during the Joint Meeting at present. He wondered if it would be feasible to provide opportunities or occasions where viewpoints or queries could be addressed or exchanged between working level of CAPO and the Council members.

35. CSP C&IIB welcomed the proposal and suggested to follow-up the issue with the Secretariat.

36. The Chairman said that he had reviewed the past IPCC reports and noted that a number of briefings or visits had been organized. He believed that members would be interested in such activities which could assist members' examination of complaints investigation. He also took the opportunity to thank CAPO's undertaking to organize a briefing session on the Force disciplinary process.

37. CSP C&IIB said that currently three visits to police formations were arranged for members every year. He said that if situation permitted, CAPO could organize more such visits.

38. Mr Eric CHEUNG noted that in the instant complaint, CAPO abruptly changed the recommended follow-up action from the lowest award of verbal advice to formal disciplinary proceeding. He asked whether CAPO had considered other awards in between the continuum and whether the responsible CAPO officer was negligent when he made the original decision.

39. CSP C&IIB replied that the original recommendation on the follow-up action was mainly orientated towards the objective of service improvement. Having considered the seriousness of the consequence and the level of experience of the officer concerned, CAPO changed its recommendation during a subsequent review. He emphasized that the recommended follow-up action should not be interpreted as a conclusion of the disciplinary process and that the officer concerned was guilty. Instead, the case would be determined by an adjudicating tribunal. He pointed out that at various stages of the complaint investigation, CAPO had considered a

number of factors and adopted different perspectives resulting in the change of the classification and follow-up action. The alteration of classification or decision should not be interpreted as negligence in the complaint investigation.

40. The Chairman noted that the complainee in the instant case attracted eleven complaints in the past two and a half years. He asked what actions would be taken by CAPO for officers subject to frequent complaints.

41. CSP C&IIB replied that a mechanism was in place to alert the relevant formation commanders of officers subject to frequent complaints. The formation commanders might consider tendering suitable advice or reviewing the duty performance of the officers concerned.

42. Mr Eric CHEUNG commented that in the absence of clear guidelines on objective criteria on appropriate follow-up actions, the recommending officer's decision was entirely discretionary. He suggested police to consider formulating such guidelines.

43. CSP C&IIB said that the rationale of the decisions in regard to the instant complaint would be brought to the attention of CAPO officers with a view to apprising the officers of the appropriate recommendation for similar cases.

V

ANY OTHER BUSINESS AND CONCLUSION OF THE MEETING

44. There being no other business, the meeting concluded at 1930 hours.

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

(Brandon CHAU)
Joint Secretary
Independent Police
Complaints Council