

**Meeting of the Independent Police Complaints Council (IPCC)
with the Complaints & Internal Investigations Branch (C&IIB) held at
the IPCC Secretariat Office at 1600 hours on Friday, 4 September 2009**

Present :

Mr JAT Sew-Tong, SC	(Chairman)
Dr Hon Joseph LEE Kok-long, SBS, JP	(Vice-chairman)
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, JP	
Ms Priscilla WONG Pui-sze, JP	
Dr Helena YUEN CHAN Suk-ye	
Dr Lawrence LAM Chi-kit, MH	
Mr Clement TAO Kwok-lau, BBS, JP	
Ms Emily CHEUNG Mui-seung	
Mr Eric CHEUNG Tat-ming	
Professor Stephen CHEUNG Yan-leung, BBS, JP	
Mr PANG Yiu-kai, SBS, JP	
Mr Brandon CHAU, DSG	(Joint Secretary)
Mr Michael B. DOWIE, DMS	
Mr WONG Fook-chuen, ACP SQ	
Mr Alan FAN Sik-ming, CSP C&IIB	
Mr Mike DEMAID-GROVES, CSP Traffic	
Ms CHU Ming-po, SSP Adm Traffic	
Mr J.P. RIBEIRO, SSP CAPO	
Mr. CHUNG Siu-yeung, SSP CAPO (Des.)	
Mr SIU Kit-hung, SP CAPO HQ	(Joint Secretary)

In Attendance :

Mrs Philomena LEUNG, SG	
Ms Cherry CHAN, LA	
Mr Eddie WONG, SM(P&CS)	
Mr Milton YEUNG, SVO(1)	
Ms Fiona LI, SVO(2)	
Miss Rainbow FU, SVO(3)(Ag.)	
Mr Alex CHAING, SVO(4)	
Miss Moira LAU, M(P&CS)1	
Ms Celia Lee, M(P&CS)1 (Des.)	
Mr HO Wai-hong, SP CAPO K	
Ms CHUNG Wing-man, CIP CAPO HQ	
Mr CHAU Chung-mun, CIP Team 4 CAPO K (Des.)	

Mr YU Kong, SIP Team 5a CAPO HKI
Mr WONG Kai-man, SIP SUP CAPO
Ms SZE Yuk-sim, SIP IPCC C&IIB

Absent with Dr Michael TSUI Fuk-sun
Apologies: Ms Carmen CHAN Ka-mun, JP
 Ms Christine FANG Meng-sang, BBS, JP
 Mr Eddie NG Hak-kim, 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, particularly Mr Mike DEMAID-GROVES and Ms CHU Ming-po of Traffic Headquarters.

I CONFIRMATION OF THE MINUTES OF THE MEETING HELD ON 21 MAY 2009 (Open Part)

2. The minutes of the last meeting (open part) were confirmed without amendment.

II REVIEW OF OPERATIONS AND PROCEDURES AGAINST ILLEGAL CAR RACING

3. The Chairman invited police to introduce the operations and procedures against illegal road racing.

4. CSP Traffic briefed the meeting that illegal road racing was an offence under section 55 of the Road Traffic Ordinance which carried a penalty of \$10,000 fine and twelve months' imprisonment upon conviction. The driver would also be disqualified for driving for twelve months. Police considered that illegal road racing was a serious offence as it involved wilful actions by racers who showed a complete disregard for public safety. Police would not tolerate illegal road racing and would prevent and disrupt such activities whenever it was safe to do so. The safety of innocent members of

the public and police officers was of paramount concern in the detection and investigation of such offences. Overseas experiences suggested that there was no simple and safe method to stop illegal road racing or other anti-social driving behaviours such as drag racing, drifting and burnout in the course of the offences. Law enforcement officers found themselves in a very difficult situation when dealing with road racing in progress. While actions in an attempt to stop the road racing might result in serious consequences, innocent members of public may lose their life if such reckless racers were not stopped. In some countries, legislation deterring road racing had shifted from placing emphasis on the driver to the vehicle. For instance, the vehicles involved in road racing might be confiscated and destroyed without the conviction of the drivers or the owners. He highlighted that police officers were doing what they could under the existing regime.

5. The Chairman asked how serious the problem of road racing was and difficulties for enforcement actions.

6. CSP Traffic said that the current legislation defined road racing as the trial of speed between vehicles and therefore there were some difficulties to prove the offence as allowing road racing to take place would endanger the public. On the other hand, the penalty of the offence was also out of line when compared to other traffic offences, for example, dangerous driving which carried a penalty of imprisonment of three years, a fine of \$25,000 and disqualification for driving for at least six months. The lacking of deterrent effect of the legislation and certainty of the punishment were areas of concern. Regarding the trend of road racing in the recent years, the complaints against road racing in the first half of 2009 stood at 137 and 23 of those reports were subsequently confirmed. As compared to 226 complaints and 26 confirmed reports in 2008 and 497 complaints and 31 confirmed reports in 2007, there was no consistent trend. He highlighted that the activities of road racing tended to come up in the later half of the year where the Zhuhai Race and the Macau Grand Prix were held. In tackling such activities, police would run special operations before the events took place.

7. The Chairman highlighted that under section 8(1)(c) of the IPCCO, one of the functions of the Council was to 'identify any fault or deficiency in any practice or procedure adopted by the police force that has led to or might lead to reportable complaints, and to make recommendations to the Commissioner or/and the Chief Executive'. He explained that the Council had invited the representatives from Traffic to the meeting because a recent incident involving the use of roadblock had raised the Council's concern that the recurrence of similar incident would likely lead to reportable complaints. He invited police to comment if there was any deficiency regarding the police guidelines on roadblock operations.

8. CSP Traffic reiterated that police would endeavour not to put the

public at risk during operations including operations on the roads and roadblocks. Roadblocks were used to control traffic flow with a view to identifying vehicles of interest and they were conducted on a daily basis in anti-crime operations or to detect traffic offences etc. The police guidelines on roadblock were laid down in Force Procedure Manual (FPM) Chapter 41 which delineated the command and control, the safety equipment, the manpower and the tactics of roadblocks. FPM 41-06 provided the direction on dealing with vehicles failing to stop at roadblocks. Under the circumstances, consequent roadblocks would be operated to form a tail back of traffic and thus helping to impede the progress of the wanted vehicle. The guidelines also prohibited using unmarked police or civilian vehicle to be placed across a carriageway at an angle and marked police vehicles with reflective chevrons, reflective signs and flashing blue lights must be displayed on a carriageway to form the roadblock. In regard to the police power, he pointed out that under section 60 of the Road Traffic Ordinance, a police officer in uniform could direct a driver to stop a vehicle on a road regardless of whether a roadblock was formed.

9. Mr Eric CHEUNG asked if there were any guidelines under which police could use vehicles of uninvolved members of the public to form part of the roadblock and the legal basis of such guidelines, if any.

10. CSP Traffic wished to emphasize that a distinction should be made between a roadblock and blocking the road. The operation of a roadblock was specified in FPM and if no equipment was used as specified, the action was not a roadblock.

11. The Chairman asked under what circumstances a police officer might request a member of public to assist police in stopping vehicles involved in road racing or other traffic offences.

12. CSP Traffic said that it was not police policy to use vehicles of members of the public to form roadblocks with a view to stopping vehicles of interest.

13. Mr Eric CHEUNG commented that while the use of vehicles of members of the public in roadblocks was prohibited, it appeared that police could stop the vehicles of members of the public with a view to impeding the traffic flow for stopping vehicles involved in road racing. He asked if there were any guidelines explicitly prohibiting officers to stop vehicles for such purpose, and if not, whether police would consider amending the existing guidelines.

14. CSP Traffic said that it was permissible for a police officer to stop a vehicle for a purpose and whether or not to do so depended on the judgment of individual officers. There was no definite rule in that regard and

officers were required to use their judgement, their experience and training to ensure that vehicles were stopped at appropriate time and manner.

15. Hon Abraham SHEK asked if police lacked the capability and resources to combat road racing.

16. CSP Traffic said that there were reactive and proactive modes of operations to tackle road racing. In proactive mode, pre-planned operations were organized to deter and disrupt road racing or making arrest. He highlighted that the reactive mode would be very different as officers had to react under stress.

17. Hon Abraham SHEK asked for the number of successful pre-planned operations and reactive operations in the past year. He also asked if vehicles of members of the public were involved in those operations.

18. CSP Traffic replied that police had conducted 4,700 roadblocks in 2008 and 2,000 roadblocks in the first half of 2009 for various purposes and there was no statistics on roadblocks specifically for tackling road racing. There was also no statistics on the interceptions. From 2006, prosecution was made in ten cases in which the drivers were apprehended while they were road racing, bearing in mind the possible deterrent effect of proactive operations or roadblocks. None of the drivers were convicted of road racing due to the difficulties in proving the offence. Nevertheless, police was able to prove the alternative offences of dangerous driving, careless driving or speeding.

19. The Chairman asked if there were any suggestions from the police to enhance the penalty for road racing or other reckless driving behaviours.

20. CSP Traffic replied that police had already raised the matter of illegal road racing and the penalty to the Transport and Housing Bureau. Police suggested raising the penalty that exceeded that for dangerous driving as the offence of road racing was considered more serious in view of the deliberate and continuous nature of the offence.

21. Dr Hon LAM Tai-fai asked if members of the public could reject police's request for using their vehicles for apprehending racing or speeding vehicles. He also asked what police would do if members of the public were injured or their vehicles were damaged during such operations.

22. CSP Traffic reiterated that it was not police policy to use the vehicles of members of the public to form a roadblock. He said that under common law police had the power to seek assistance from members of the public. Failing to provide such assistance might constitute an offence. Under

section 63 of the Police Force Ordinance, it was an offence to refuse to assist a police officer in the execution of his duty when called upon to do so. Nevertheless, the use of the police power would be subject to careful consideration and police had no intention to put members of the public at risk.

23. Dr Hon LAM Tai-fai asked if there was any statistics on the incidents in which members of the public were injured or their property were damaged as a result of their assistance to police.

24. CSP C&IIB said police had no statistics in this regard. Members of the public who were injured while assisting police might apply for the Criminal and Law Enforcement Injuries Compensation Scheme administrated by the Social Welfare Department. For damaged property, members of the public were entitled to take civil action to seek remedy and police guidelines were in place to deal with claims for compensation.

25. Mr YEUNG Yiu-chung commented that police should learn a lesson from the recent incident and introduce guidelines to prohibit stopping racing vehicles in the same way.

26. CSP Traffic said that police had commenced a review on all orders and instructions relating to roadblocks late last year. After the recent incident, a working group had been established to review all instructions adopted by traffic formations with a view to identifying the best practices and promulgating the Commissioner's Order in that respect.

27. Ms Emily CHEUNG asked if illegal road racing was connected to gambling activities.

28. CSP Traffic said that it was possible that people were racing for some kind of rewards including monetary rewards in organized road racing activities.

29. Dr Hon Joseph LEE asked whether the policy of not using vehicles of members of the public to form roadblocks was incorporated in any procedural guidelines and whether supervisory officers would ensure compliance of such guidelines. He also asked whether police would duly inform members of the public when officers requested to use their vehicles for roadblocks.

30. CSP Traffic reiterated that it was not a police policy to use the vehicles of members of the public to form a roadblock. To set up a roadblock, the authorization of an officer at the rank of Chief Inspector would be required as in line with the statutory requirement of the Road Traffic Ordinance regarding the use of statutory signs. A sergeant must be present

throughout the roadblocks for supervision. Other supervisory officers at the rank of Station Sergeant and Inspector were also required to conduct supervisory checks on regular basis. As a responsible organization, if police were to request for the assistance from members of the public, police had a duty to ensure the members of the public would be cared for.

31. The Chairman suggested that in the review on the existing police orders, police should consider whether a member of public might refuse the police's request for using himself or his property in the assistance of police. He commented that in the absence of any specific guidelines, it would be unfair to ask frontline officers to make the decision on the spot.

32. CSP Traffic said that under common law a citizen might refuse to assist police should there be grave risk of death or serious injury.

33. The Chairman commented that not all members of the public were aware of their rights under common law. He urged police to consider the issue in the review.

34. Mr PANG Yiu-kai asked for the time required to set up a roadblock and whether police could set up a roadblock to intercept road racers when they were captured by the CCTV system on roads.

35. CSP Traffic said that it would take six to eight minutes for trained officers to set up a roadblock. If racing vehicles were travelling at 120 kilometres per hour, they were travelling 30 metres per second and 12 kilometres in six minutes. It would be very unlikely that police could have enough time to set up a roadblock to intercept the vehicles without any precise information on the route of the vehicles. On the other hand, he welcomed the suggestion of using camera or recording system and police would look into the suggestion further.

36. Dr Hon LAM Tai-fai said that he reckoned police would consider the safety of officers and members of the public whilst setting up roadblocks. He asked if police considered that the manner in which vehicles were stopped in the Kwun Tong Bypass Incident was safe.

37. CSP Traffic said that he could not comment on the incident which was under investigation. In setting up a roadblock, police would generally consider the speed limit of a road, the location and other occupational safety and health issues. The current review on FPM entailed careful consideration on the safety issue and future instructions would require risk assessment on the location with reference to the purposes of the roadblocks.

38. Mr Eric CHEUNG commented that the existing police guidelines and instructions were far from satisfactory. While it was not police policy to

use vehicles of members of the public to intercept offending vehicles, there was no order to prohibit officers from doing so. While the existing guidelines had highlighted the danger of intercepting racing vehicles and asked officers not to take risk to stop the vehicles, police should not allow frontline officers to make their own judgment on whether or not to request members of the public to assist police in intercepting such vehicles. He asked when the review on the guidelines could be completed and whether the Council could be provided with the review findings so that it could discharge its function of identifying the deficiency in police practice. He also requested police to provide the investigation report on the Kwun Tong Bypass Incident as it would help the Council to make recommendations on the Force procedure.

39. CSP Traffic said that the review would be provided to the Council upon completion. As regards the investigation report on a particular case, he would discuss with other stakeholders in the Force.

III CATEGORISATION OF COMPLAINTS AS NOTIFIABLE COMPLAINTS

40. LA briefed the meeting that under IPCCO, complaints against police would be categorized as reportable complaints or notifiable complaints. For a complaint to be categorized as a reportable complaint, it must be related to the conduct of a member of the Force whilst on duty or when the police officer had identified himself as a Force member while off duty, and the complaint was not vexatious or frivolous and must be lodged in good faith by a person directly affected by the conduct. The handling and investigation of reportable complaints would be monitored and reviewed by the Council. Notifiable complaints included anonymous complaints and complaints lodged by a person not directly affected by the police conduct. The functions of the Council did not include the monitoring of the investigation of notifiable complaints. However, police was required to submit list of notifiable complaints to the Council at regular intervals. One of the important elements in regard to the categorization of complaints was whether a complaint was lodged by a person directly affected by police conduct and there existed differences in opinion between CAPO and the Council in that respect. CAPO considered that a complainant was directly affected if the police action was directly taken on him or the police's comment was communicated or addressed to the complainant who must be present then. The Council could not subscribe to the interpretation. For example, a complainant alleged that police conducted a search on his residence without reasonable cause. CAPO categorized the complaint as notifiable complaint as the complainant was not present during the house search. In another example, the complainant, who was involved in a domestic violence incident, complained that police should not have suggested to his wife that she should move out of their premises. CAPO also considered

that the complainant was not directly affected as the suggestion was only allegedly made to the wife. There were a number of examples in which the complainants complained that the officers concerned had made inappropriate and negative remarks about them to the complainant's colleagues or family. CAPO considered that as the remarks were not made directly to the complainants, the complainants were not directly affected. The Council considered that a complainant should be regarded as directly affected if his interest was affected by the police conduct.

41. The Chairman commented that the police's interpretation on 'directly affected' appeared to be too narrow. He asked if police would consider the Council's comments.

42. DMS said that he had already directed a review to be conducted on CAPO's stance in that regard.

43. CSP C&IIB supplemented that CAPO would review the categorization of the cases highlighted by the Council and seek legal advice if necessary. He pointed out that CAPO had not altered its practice regarding categorization of complaints and the differences lied in the interpretation of the Ordinance. He noted that most of the complaints concerned were received prior to the implementation of the Ordinance and he suggested that the working level meeting should discuss how to deal with the unresolved complaints received before the implementation of the Ordinance. For complaints received after 1 June, CAPO would reexamine the categorization with reference to the Council's comments.

44. The Chairman said that he was concerned whether the past categorization practice was in compliance of the Ordinance. He welcomed the suggestion that the working level meeting should convene to resolve the differences.

IV CAPO'S MONTHLY STATISTICS

45. CSP C&IIB briefed the meeting that 425 complaints were received in June 2009, an increase of 24.6% (+84 cases) when compared with the statistics of the previous month. For the month of July 2009, 421 complaints were received, which was a decrease of 0.9% (-4 cases) when compared with the statistics of the previous month.

46. The number of 'Neglect of Duty' complaints received in June 2009 was 224 cases, an increase of 18.5% (+35 cases) when compared with the statistics of the previous month. For the month of July 2009, the number of 'Neglect of Duty' complaints received was 197 cases, which was a decrease of 12.1% (-27 cases) when compared with the statistics of the

previous month.

47. The number of 'Misconduct/Improper Manner & Offensive Language' complaints received in June 2009 was 118 cases, an increase of 15.7% (+16 cases) when compared with the statistics of the previous month. For the month of July 2009, the number of 'Misconduct/Improper Manner & Offensive Language' complaints received was 141 cases, which was an increase of 19.5% (+23 cases) when compared with the statistics of the previous month.

48. The number of 'Assault' complaints received in June 2009 was 41 cases, an increase of 41.4% (+12 cases) when compared with the statistics of the previous month. For the month of July 2009, the number of 'Assault' complaints received was 46 cases, which was an increase of 12.2% (+5 cases) when compared with the statistics of the previous month.

49. In the first seven months of 2009, a total of 2,329 complaints were received, representing an increase of 51.8% (+795 cases) when compared with 1,534 cases of the same period last year.

50. The total number of 'Neglect of Duty' complaints received in the first seven months of 2009 was 1,146 cases, representing an increase of 73.1% (+484 cases) when compared with 662 cases of the same period last year.

51. The total number of 'Misconduct/Improper Manner & Offensive Language' complaints received in the first seven months of 2009 was 724 cases, representing an increase of 73.2% (+306 cases) when compared with 418 cases of the same period last year.

52. The total number of 'Assault' complaints received in the first seven months of 2009 was 244 cases representing an increase of 0.8% (+2 cases) when compared with 242 cases of the same period last year.

53. CSP C&IIB said that the first seven months of 2009 saw a notable increase in the number of complaints but most of the complaints were minor complaints. The complaints of serious nature including 'Assault' and 'Fabrication of Evidence' were still at a low level.

54. Dr Hon Joseph LEE asked what CAPO had done and would do in regard to the significant increase of complaints.

55. CSP C&IIB replied that the complaints trend was discussed in the Commissioner's meeting with senior commanders who were requested to

remind officers to be composed in execution of their duty. CAPO also highlighted the trend and cases of interest to formation commanders during liaison visits to formations. On the other hand, the Complaints Prevention Committee was examining possible complaints prevention measures.

56. ACP SQ supplemented that he personally visited the three districts that attracted most complaints in August and officers responded positively. In addition to CAPO's Complaints Prevention Committee, major formations had stepped up to set up Complaints Prevention Committee at regional or district level with a view to addressing the problem locally.

57. Mr Eric CHEUNG commented that the trend was worrying. He asked if police could provide the Council with the analysis or recommendation in that regard, if any.

58. CSP C&IIB welcomed the suggestion.

59. The Chairman said that such information would be vital for the Council's carrying out of its function of complaints prevention.

V

CAPO's CRIMINAL AND DISCIPLINARY CHECKLIST

60. CSP C&IIB tabled the Criminal and Disciplinary Checklist covering the period from 30 April 2009 to 12 August 2009. He highlighted two cases relating to the failure of the statement taking officer to comply with Force procedures when obtaining cautioned statements from the complainants as reported in item A137 and A216 of the checklist. In A137, the complainant, an arrested person of a crime case, made a complaint against two uniformed officers for assaulting him and using excessive force to subdue him during the arrest. Despite the case was eventually classified as 'Not Pursuable', it was disclosed that the officer who took the cautioned statement from the complainant failed to initial at the bottom of each page of the cautioned statement. In A216, the complainant was arrested for common assault. He alleged that the investigation officer neglected his duty, threatened him to admit the offence and fabricated the evidence during the taking of a cautioned statement. Notwithstanding the allegations were classified as 'Withdrawn' and 'Not Pursuable', it was found that the officer failed to record the correct location on the statement when taking a cautioned statement from the complainant. Police Manual (PM) 10-05(9) stipulated that 'when completed the statement should be read over to the witness, or, if he wishes, he should read it himself. He should be invited to make any alterations, additions or deletions he wishes; they should be initialled by both witness and police officer, as should any other changes made when the statement was being recorded. If the statement has been recorded on more than one sheet of paper, the witness should be asked to initial the bottom of

each page; the police officer should add his initials too'. FPM 21-33(2) also stipulated that 'when recording a statement an officer is to write legibly and ensure accuracy'. The Force had laid down clear procedures set out in provisions of PM and FPM relating to the taking of cautioned statements from arrested persons. The matters would be highlighted in the CAPO Monthly Report 'Matters of Interest'. CAPO Officers would disseminate the information to formations during liaison visits and Complaint Prevention Talks to remind the frontline officers.

VI ANY OTHER BUSINESS AND CONCLUSION OF THE MEETING

61. The Chairman, on behalf of the Council, thanked DMS and SSP CAPO for their contribution to the work of the Council during their tenure. He also wished them all the best in the future.

62. The Chairman highlighted that starting from this meeting, Joint Meetings would be held on quarterly basis and the next meeting was tentatively scheduled on 15th December 2009.

63. There being no other business, the meeting concluded at 1745 hours.

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

(Brandon CHAU)
Joint Secretary
Independent Police
Complaints Council