

**Meeting of the Independent Police Complaints Council (IPCC)
with the Complaints & Internal Investigations Branch (C&IIB) held at
the IPCC Secretariat Office at 1500 hours on Thursday, 2 September 2010**

Present :

Mr JAT Sew-Tong, SC	(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-yee	
Dr Lawrence LAM Chi-kit, BBS, MH	
Ms Emily CHEUNG Mui-seung	
Mr Eric CHEUNG Tat-ming	
Dr CHAN Pui-kwong	
Mr Lawrence MA Yan-kwok	
Mr Brandon CHAU, DSG	(Joint Secretary)
Mr TANG How-kong, DMS	
Mr WONG Fook-chuen, ACP SQ	
Mr Duncan McCosh, CSP C&IIB	
Mr CHUNG Siu-yeung, SSP CAPO	
Mr SIU Kit-hung, SP CAPO HQ	(Joint Secretary)
Mr TSE Sau-keung, SP Discipline	
Miss LAM Suk-yin, SP SS SQ	

In Attendance :

Mrs Philomena LEUNG, SG	
Ms Cherry CHAN, LA	
Mr Milton YEUNG, SVO(1)	
Ms Fiona LI, SVO(2)	
Mr Bernard KAN, SVO(3)	
Mr Alex CHAING, SVO(4)	
Mr Samson LAM, VO(2) Des.	
Miss Kiki LEUNG, VO(5)	
Ms Celia Lee, M(P&CS)1	
Ms YIP Yuk-ping, Elsie, SP CAPO HKI	
Mr CHEUNG Shun-ho, SP CAPO K	
Mr LEUNG Chung-man, CIP Team 3 CAPO K	
Ms WONG Ching-han, CIP CAPO HQ (Ag.)	
Mr WONG Ho-hon, SIP Discipline 3	
Mr MA Chi-wai, SIP IPCC C&IIB	

Mr SOO Wan-lok, SIP SD2 CAPO HQ
Mr NIP Hoi-kwan, SIP Team 3b CAPO K

Absent with Apologies: Dr Hon Joseph LEE Kok-long, SBS, JP (Vice-Chairman)
Ms Carmen CHAN Ka-mun, JP
Professor Stephen CHEUNG Yan-leung, BBS, JP
Ms Christine FANG Meng-sang, BBS, JP
Mr Eddie NG Hak-kim, JP
Mr Albert Jinghan CHENG, GBS, 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, in particular SP TSE Sau-keung and SIP WONG Ho-hon of Discipline Division as well as SP LAM Suk-yin of Service Standards Bureau.

I. CONFIRMATION OF THE MINUTES OF THE MEETING HELD ON 10 JUNE 2010 (Open Part)

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

II. MATTERS ARISING

3. The Chairman recalled that the Police had undertaken to deliver a briefing to the Council before promulgation of the Public Order Manual. He invited CSP C&IIB to update the Council of the progress in the drafting of the Manual.

4. CSP C&IIB confirmed that the relevant Policy Wing would be in a position to conduct a briefing at the December Joint Meeting in terms of the structure, content and rationale behind the Manual.

5. The Chairman noted that the Police had agreed to consider providing the investigation report for the Kwun Tong Bypass roadblock incident to the Council after conclusion of the related court proceedings. He requested an update in this regard.

6. CSP C&IIB updated the meeting that the case was investigated by a District Crime Squad of Kwun Tong District and a number of persons had been charged with Dangerous Driving offences. The case was set down for trial in the District Court commencing 2010-09-28 and verdict would be delivered on 2010-11-08. CAPO would await the outcome of the court trial as well as the Court's comments. By then, CAPO would be in a better position to approach the involved formations, i.e. Kwun Tong District and Traffic Kowloon East, for their comments as regards what information or material would be made available for the IPCC.

7. The Chairman noted that the Police had reported in the last Joint Meeting about the completion of upgrading the station CCTV system in April and that the Police would consider providing the concerned guidelines to the Council when ready. He asked the Police to advise the Council on the availability of the guidelines.

8. CSP C&IIB replied that the concerned guidelines had recently been promulgated and a copy of the same would be made available to the Council.

9. The Chairman enquired about the progress of Police's follow up action in respect of the non-retrieval of CCTV footage relevant to a complaint investigation.

10. CSP C&IIB reported that the matter had been looked into. A preliminary review of the case revealed that the responsible officer had mistakenly retained the wrong tape, which covered the day prior to the period in question. The error was due to manual handling of the old CCTV system, which had now been completely replaced. The new digital CCTV recorder does not require daily exercise of manually changing tape, so similar types of problem should not be an issue in future. In addition to the respective guidelines which had just been promulgated, Support Wing would ensure the provision of on-site training to all divisions with the CCTV system by the contractor starting next month while the relevant training video and manual would be uploaded onto the Police Intranet.

11. The Chairman requested CSP C&IIB to advise the Council the result of the analysis on substantiation rates for cases reported in 2009, which the Police had agreed to conduct in the March meeting.

12. CSP C&IIB reported that CAPO had conducted a comparative study of cases registered within the five months' period leading up to the

implementation of IPCCO as well as that of the five months afterwards. These time frames were considered appropriate, as this allowed suitable time for the full process of endorsement to take place, allowing a realistic picture for substantiation rates for cases in the 'pre' and 'post' implementation periods. The study revealed 92% of cases received in the five months' period prior to implementation of IPCCO had been endorsed and 85.5% in the post-implementation five months' period. No significant trend was identified with substantiation rates of 19.2% and 20.3% registered for the 'pre' and 'post' implementation periods respectively. Similarly, there was no significant trend seen in the unsubstantiation rates for these two periods which sat at 40% and 43.8% respectively.

13. Mr Eric CHEUNG observed that the periods chosen for comparison might not show the effect of implementation of IPCCO on the substantiation rate as both IPCC and CAPO had been following the requirements under IPCCO several months before commencement of the Ordinance.

14. After discussions, ACP SQ suggested, and the Chairman agreed, that CAPO could draw comparisons of the statistics for the first halves of 2008 and 2009, and the second halves of 2008 and 2009.

15. CSP C&IIB informed the meeting that the concern raised in the March Joint Meeting over the use, in context, of the word 'simply' in the orders and guidelines on roadblocks, was being addressed by the relevant policy branch who was willing to make suitable amendment to the order in question.

III. BRIEFING ON FORCE DISCIPLINARY ACTION

16. The Chairman briefed the meeting on the background for requesting a presentation from the Police on 'Force Disciplinary Action'. It had been a concern for the Council over how CAPO determined follow up actions to be taken in the case of a substantiated complaint. Although the Council had a better understanding on the procedures for disciplinary action after CAPO gave a briefing in March 2009, with the limited information provided in investigation reports, there were still concerns on what factors had been considered by the Police in deciding the actions to be taken in individual cases. The Chairman then invited SP D to brief the meeting in relation to 'Force Disciplinary Action'.

17. SP D delivered a presentation on 'Disciplinary Action Against Misconduct'. The content of the presentation included the discipline system of the Hong Kong Police Force; types of disciplinary action; procedures for defaulter hearings; factors to be considered by the Force Discipline Officer in the determination of disciplinary action; measures for consistency in the determination of disciplinary action and level of award. A copy of the presentation materials is at *Annex*.

18. The Chairman thanked SP D for the presentation. He requested the Police to provide the breakdown of disciplinary actions ensuing from the substantiation of complaints per year in the past two years. He would also like to know whether a Government Counsel would prosecute in defaulter proceedings; whether a defaulter could have his legal representative in defaulter proceedings and if positive, who would pay for it or what assistance would be provided if a defaulter could not afford a legal representative.

19. SP D responded that factors to be considered in determining disciplinary actions were laid down in the guidelines for the Force Discipline Officer but each case should be judged on its own merits. Even for cases of the same gravity in nature, whether an officer involved was a newly passed out recruit or a veteran; and whether he was a follower or a key player in the behaviour in question would be important factors in considering the appropriate disciplinary actions. Judgement of Formation Discipline Officers, who are Senior Superintendents with ample experience, were relied upon.

20. SP D provided the meeting with the statistics in relation to formal disciplinary actions. The numbers of cases dealt with by way of disciplinary hearings in 2007, 2008, 2009 and January to August 2010 are 100, 91, 49 and 51 respectively. The numbers of cases with Minor Offence Reports issued in the same periods are 141, 110, 111 and 97 respectively. As regards CAPO-related discipline cases, CSP C&IIB agreed to provide the statistics to the Council later.

21. SP D further advised that legal representation was allowed in disciplinary hearings. When a defaulter requested legal representation, the Appropriate Authority would make reference to a list of factors to decide whether the request should be allowed. In cases where permission for legal representation for the defaulter was granted, the Prosecuting Officer's advocacy role would normally be taken up by a brief-out counsel engaged by the Department of Justice. For disciplinary hearings without legal representation, the Prosecuting Officer would normally be an inspectorate officer. A defaulter should retain legal representation at his own expense, and the Force would not be responsible for the costs incurred in respect of such representation.

22. The Chairman questioned whether it was fair to a defaulter if he received no assistance from the Force in this regard and whether it would be necessary for the Force to review the present mechanism.

23. DMS replied that allowing legal representation for defaulters in disciplinary hearings was a new arrangement. Should a defaulter consider his conviction or his award received unfair, he could seek judicial review. There had been previous news coverage on cases where defaulters successfully had CP's decision to compulsorily retire them after disciplinary proceedings overturned through judicial review. Whilst some defaulters might find it unfair to use their own resources to retain legal representation, there were diverse views

on whether taxpayer's money should be used on defaulters in getting legal representation in disciplinary proceedings. The present mechanism has evolved over the years from precedents and court judgements; and was still evolving. The Force would consider its position when society moved towards a new consensus on the issue.

24. The Chairman said that the Council had concerns over perceived disparities on the recommended follow up actions to be taken in substantiated complaints. He requested the Police to include factors that had been taken into consideration and an elaboration of the rationale behind the recommended follow up action to be taken, in the investigation reports submitted by CAPO to IPCC.

25. ACP SQ reiterated that in determining the follow up action to be taken, each case would be considered individually based on its own merits. Whilst CAPO would have information about the circumstances of a complaint case, relevant factors and the profile of the officers involved, there were other relevant information that CAPO might not possess during the complaint investigation, such as the officer's working performance and attitude. CAPO could only make recommendation of the action to be taken based upon all available information in hand. It would be the Formation Discipline Officer to decide on the appropriate follow up action, e.g. by way of Minor Offence Report or defaulter proceedings, and that he would properly record the considerations he had taken in reaching such a decision.

26. Mr Eric CHEUNG supplemented the Chairman's views and drew members' attention to a case discussed in the Open Part of the January 2009 Joint Meeting. In that case, IPCC endorsed CAPO's recommended follow up action (to advise the complainee without divisional record file entry) upon substantiation of the complaint, but the Formation subsequently decided to proceed with disciplinary action instead. He noted that there was no requirement for the officer handling the disciplinary proceedings to record factors he had considered in deciding the course of actions to take. Mr Eric CHEUNG proposed two measures to improve the present mechanism. First was to list out factors that had been considered in determining the follow up action to be taken. Second was to set out concrete guidelines as regards the actions to be taken to ensure they were commensurate with the gravity of the allegation substantiated. Mr Eric CHEUNG noted that there had been improvement in this aspect since last year with explanations included in the investigation reports on why a particular follow up action was recommended.

27. Mr Eric CHEUNG further requested CAPO to provide more information about the implications of the different types of disciplinary action, say, an advice with divisional record file entry, a warning without divisional record file entry and a minor offence report in terms of the effect on the officer concerned. The Chairman and Dr Lawrence LAM echoed the request. Mr Lawrence MA supplemented that information on the prevalent offences

and the corresponding follow up action should be provided to assist the Council in understanding what circumstances would lead to the consideration of certain type of disciplinary action.

28. CSP C&IIB highlighted that the determination of the appropriate disciplinary action was not an exact science as there were so many factors taken into consideration and stressed that each case had to be determined on its own merits. He said that it was not possible to give specific scenarios that warranted a certain type of award, bearing in mind that there existed various ambient circumstances of what took place and individual background in each case. He agreed that CAPO could expand more in the Criminal and Disciplinary Checklist. Remarking that the IPCC/CAPO Joint Working Level Meeting had done a tremendous job in the past months, CSP C&IIB believed that cases and specific issues such as recommended follow up action could be resolved through discussion in these forums. He stressed that we need to rely on the senior police officers in Formations and CAPO to make judgement calls in determining the appropriate actions based on their experience. He added that he fully agreed with the need for documenting the reasons for such decisions on disciplinary action being made.

29. The Chairman said whilst he agreed that each case differed in circumstances, it was the transparency in the process that mattered. He echoed Mr Eric CHEUNG's views that improvement was seen in CAPO reports which now included explanations for the recommended actions to be taken. He suggested CAPO to include in the Criminal and Disciplinary Checklist the considerations and justifications made by the Formation Discipline Officers should there be any change in the course of actions to be taken as recommended by CAPO. This was for the Council to discharge its function under IPCCCO in monitoring actions taken or to be taken in respect of any member of the Police Force in connection with reportable complaints. He said that the Council would like to see fairness to both complainants and complainees.

30. Mr Lawrence MA requested CAPO to explain the consequences of different types of disciplinary action. CSP C&IIB briefly explained to the Council the continuum of disciplinary actions and the consequences of the actions. ACP SQ added that some disciplinary awards would lead to suspension of promotion eligibility. DMS supplemented that an adverse entry in the divisional record file entry was also a stigma that would make the officer concerned less competitive for not only promotion but also certain career moves.

31. Dr Lawrence LAM asked what would happen if an officer was complained against after he had been recommended for promotion and whether the promotion board would be apprised of the nature of the complaint in consideration for his promotion.

32. DMS explained that all officers recommended for promotion were subject to an internal vetting process. DMS told the meeting that the Force had recently implemented a mechanism, which would save the need for candidates who were already qualified for promotion to go through promotion interviews again if not for outstanding results of vetting checks delayed due to protracted on-going investigation or other matters yet to be cleared. DMS noted what had been achieved through the IPCC/CAPO Joint Working Level Meeting and believed that such deliberations could enhance the decision on appropriate disciplinary action.

33. The Chairman welcomed the exchange of views. He reiterated that the Council was not expecting lengthy explanations. He agreed with DMS that resources of both IPCC and CAPO could be saved if there was transparency in the deliberations on the appropriate disciplinary action. He acknowledged that protracted investigations and vetting of a complaint caused frustrations to both complainant and complainee and the latter's career might be affected. He commented that both the IPCC and the Police have to seek additional resources to speed up the workflow. He further noted that through visits to Police formations, the Council appreciated the difficulties and challenges faced by frontline officers. He hoped that the joint working group of IPCC and CAPO would streamline procedures for handling minor complaints and speed up the processing time.

IV. PRESENTATION FOR LIVING THE VALUE – 'PROFESSIONALISM AND SENSITIVITY IN CHANGING WORLD'

34. SP SS SQ briefed members of the Force's Vision and Mission and the themes of 'Living the Values' workshops conducted since 1997. The video on 'Living the Value - Wave VII', which was titled 'Professionalism in the Changing World', was also shown.

35. The Chairman thanked SP SS SQ for the presentation.

36. Dr Lawrence LAM suggested that the video should be shown to members of the public.

37. The Chairman echoed Dr Lam's suggestion and stated that other members had expressed similar opinion on other occasions. The video explained Police work and established a positive public image.

38. Mr Eric CHEUNG suggested editing out certain scenes from the video 'Living The Value - Wave VII' if the video is to be released to the public as certain parts of the video may create unnecessary expectations from members of the public.

39. ACP SQ replied that the video was not meant for display to the public. It was produced by serving officers themselves, from script writing to shooting, displaying the general concerns of police officers and what they perceived to be lessons to learn. There were a few videos chosen from 20 odd videos for display on Training Day to facilitate discussions and prompt thoughts amongst officers. The objectives were to uphold officer's professionalism by enhancing their 'Responsiveness to Change', 'Effective Communication' and 'Dedication to Quality Service and Continuous Improvement'.

V. CAPO MONTHLY STATISTICS

40. The Chairman then invited CAPO to brief the meeting on complaint figures and the Disciplinary Checklist.

41. CSP C&IIB briefed the meeting on the figures between January and July of 2010 :-

- There was no conclusive reason to account for the sharp increase in 2009's figures.
- It might be due to the implementation of the IPCCO and the publicity drawn from it.
- The figure started to drop since December 2009, except a sharp increase in March 2010.
- By category, 'Neglect of Duty' and 'Misconduct/Improper Manner & Offensive Language', which were relatively minor in nature, represented the vast majority of the complaints.
- Serious complaints, namely 'Assault', 'Fabrication of Evidence' and 'Threat', remained constant.
- 2,248 cases were received from January to July this year, representing a decrease of 70 cases or 3% when compared with the same period of last year.
- Among them, 1,131 cases of 'Neglect of Duty' and 685 cases of 'Misconduct/Improper Manner & Offensive Language' were received. These two accounted for 80% of the total complaints received.
- 'Assault' and 'Fabrication of Evidence' dropped 3% and 12% respectively.
- The monthly average was 321 cases while this sat at 354 cases last year.
- It was projected that the annual figure will be 3,854 cases, which represents a decrease of 9% when compared with 2009.

42. The Chairman thanked CSP C&IIB for the presentation. The Chairman echoed that minor complaints represented the majority of complaints. He highlighted two issues. First, the majority of the complaints handled by

CAPO and IPCC were minor in nature and internal training could lead to a reduction in the number of complaints. Secondly, public education is important so the public could better understand why Police enforcement action is necessary. To cope with the changing environment, Police would need to be responsive and provide appropriate services to meet the reasonable demands of the general public.

43. CSP C&IIB stated that joint agreement could be achieved through the working level meetings which could help improve public expectation especially on what the Police could or could not do.

44. The Chairman stated that there was certainly room for the Police and IPCC to enhance public education together.

45. Mr Eric CHEUNG suggested that setting aside the punitive actions, the Police should seek to rectify the causes leading to the complaints. He proposed to include suggestions to rectify the problem in the investigation reports and for IPCC to comment. Mr CHEUNG further commented that it might be unfair to an officer if he is given less favourable consideration because of a minor or tactical complaint. He suggested the Police to consider measures to enhance officers' confidence in executing their duties without fear that in doing so, unjustified complaints might arise which would affect their promotion prospects.

46. Dr Lawrence LAM asked if the swift Police actions in the Manila hostage incident had led to any decrease in the complaint figures in August 2010. If positive, this could be used to promote the positive image of the Police, which might help reducing the number of complaints.

47. ACP SQ stated that no direct link could be observed between the complaints figures and the Manila incident. CAPO was still finalizing the complaint figures for August 2010, however, these were similar to the preceding months.

VI. CAPO'S CRIMINAL AND DISCIPLINARY CHECKLIST

48. The Chairman emphasized the importance of fairness towards complainants and complainers in complaint investigations. The Chairman reiterated the importance to better handle minor or frivolous complaints, to speed up processing of cases and the importance of public education. IPCC was pleased to note that Police had taken some service improvement measures based on advice made by IPCC. In respect of the Criminal and Disciplinary Checklist, the Chairman asked if CSP C&IIB had anything to supplement other than the information tabled.

49. CSP C&IIB replied that there was nothing specific to report.

VII. ANY OTHER BUSINESS AND CONCLUSION OF THE MEETING

50. There being no other business, the meeting concluded at 1715 hours. The next meeting was tentatively scheduled for 9th December 2010.

(YIP Yuk-ping, Elsie)
for Joint Secretary
Complaints and Internal
Investigations Branch


(Brandon CHAU)
Joint Secretary
Independent Police
Complaints Council

1

Briefing to IPCC Members

“Disciplinary Action Against Misconduct”


TSE Sau-keung, Superintendent
Discipline Division



2

Overview

- **Disciplinary System of HKPF**
- **Types of Disciplinary Action**
- **Factors to be Considered by Formation Discipline Officers (FDO)**
- **Consistency of Disciplinary Action & Awards**




3

Disciplinary System of HKPF

Police (Discipline) Regulations [P(D)R], CAP 232A enacted in 1977

Minor Offence Report


- **Part IA**
- **Defaulter Hearings**
- **Part II - Junior Police Officers (JPO)**
- **Part III - Inspectorate Officers**



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Types of Disciplinary Action


- **Defaulter hearings under Part II and III of Police (Discipline) Regulations [P(D)R]**
- **Minor Offence Report under Part IA of P(D)R**
- **Advice or warning with or without record of service entry (Force Procedures Manual 6-7 and 6-12)**



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Defaulter Hearings


- **Police (Discipline) Regulations**
- **Part II for JPOs and Part III for Inspectorate Officers**
- **Disciplinary Investigation to examine sufficiency of evidence**
- **Akin to criminal proceedings**
- **Adjudicating Officer / Prosecuting Officer / Defaulter and Defence Representative**



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Minor Offence Report


- **Part IA of Police (Discipline) Regulations**
- **Offences of less serious nature**
- **Facts accepted by defaulters**
- **Written admonishment**
- **Corrective rather than punitive**



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Advice or Warning

- Advice or Warning with or without record of service entry
- Force Procedures Manual 6-7 and 6-12
- Minor misconducts
- Corrective rather than punitive



8


Determination of Disciplinary Action

Against Junior Police Officers:

- Decided by Formation Discipline Officers (FDO) : Deputy District Commanders of SSP rank or equivalent SSPs in other Formations

Against Inspectorate Officers:


- Decided by Senior Police Officer (SPO) : CSP (normally), ACP, SACP



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Factors to be Considered by FDO


- Force Discipline Manual 1- 03
- Nature and gravity of misconduct
- Circumstances when the officer committed the misconduct
- Prevalence of misconduct within formation or the Force
- General standard of discipline within the formation



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Factors to be Considered by FDO


- Officer's standard of discipline and overall service record
- Presence of any extenuating / aggravating factors
- Officer's attitude
- Breach of statutory requirements



11

Consistency of Disciplinary Action

- To ensure consistency by FDOs:
 - Decisions by FDO on disciplinary action in accordance with P(D)R, Force Procedures Manual and Force Discipline Manual
 - Seminars for FDOs and Prosecuting Officers
 - Legal advice on charges and evidence by a dedicated unit in DoJ



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Consistency of Disciplinary Awards

- To ensure consistency :
 - Moderating effect by SPO & Force Discipline Officer (ACP P) in JPO cases and DCP MAN in Inspectorate cases
 - Quarterly Discipline Bulletin to advise FDOs, Adjudicating Officers and Prosecuting Officers

