

**Meeting of the Independent Police Complaints Council (IPCC)  
with the Complaints & Internal Investigations Branch (C&IIB) held at  
the IPCC Secretariat Office at 1520 hours on Thursday, 9 December 2010**

Present :

Mr JAT Sew-Tong, SC	(Chairman)
Dr the 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 Lawrence LAM Chi-kit, BBS, MH	
Ms Emily CHEUNG Mui-seung	
Ms Carmen CHAN Ka-mun, JP	
Mr Eric CHEUNG Tat-ming	
Professor Stephen CHEUNG Yan-leung, BBS, JP	
Ms Christine FANG Meng-sang, BBS, JP	
Dr CHAN Pui-kwong	
Mr Lawrence MA Yan-kwok	
Mr Brandon CHAU, DSG IPCC	(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	
Ms YIP Yuk-ping, SP CAPO HQ	(Joint Secretary)
Mr Steven WORDSWORTH, DC PTU	

In Attendance :

Mrs Philomena LEUNG, SG	
Ms Cherry CHAN, LA	
Mr Eddie WONG, SM(P&CS)	
Ms Celia LEE, M(P&CS)1	
Mr TSE Ming-yeung, SP CAPO HKI	
Mr CHENG Wai-kin, CIP CAPO HQ	
Mr TSE Chun-chung, CIP Team 1 CAPO K	
Mr SHUM Hoi-kwong, CIP Team 8 CAPO NT	
Ms TANG Wai-ying, CIP Team 10 CAPO NT	
Mr MA Chi-wai, SIP IPCC C&IIB	
Mr SOO Wan-lok, SIP SD2 CAPO	
Ms WAN Hiu-ting, SIP Team 2b CAPO K	
Mr CHAN Chiu-fai, SIP Team 5b CAPO HKI	

Absent with Apologies: Dr Hon Joseph LEE Kok-long, SBS, JP (Vice-chairman)  
Dr TSE Tak-fu, BBS, JP  
Ms Priscilla WONG Pui-sze, JP  
Dr Helena YUEN CHAN Suk-yee  
Mr Eddie NG Hak-kim, JP  
Mr Albert Jinghan CHENG, GBS, JP

## **PART B OPEN MEETING**

### **OPENING ADDRESS**

The Chairman welcomed all to the meeting, particularly Mr Steven Wordsworth, DC PTU, who would deliver a presentation on the 'Public Order Manual' ("POM") to the meeting.

## **I CONFIRMATION OF THE MINUTES OF THE MEETING HELD ON 02 SEPTEMBER 2010 (Open Part)**

2. The minutes of the last meeting (Open Part) were confirmed without amendment.

## **II MATTERS ARISING**

3. The Chairman asked if CAPO had updates on any matters, other than the presentation on the 'POM' and the Complaint Trend.

4. CSP C&IIB reported the court result of the Kwun Tong Bypass Incident, which concluded on 11<sup>th</sup> November 2010. The five defendants were convicted and sentenced to 12-16 months' imprisonment with disqualification from driving for three years. The appeal period lapsed on 8<sup>th</sup> December 2010 with no appeal having been received. As reported at the last meeting, lessons were learnt from the incident and Traffic HQs had amended relevant guidelines accordingly.

5. The Chairman thanked CSP C&IIB for the report and then invited DC PTU to deliver his presentation on 'POM'.

6. DC PTU briefed the meeting on the POM, which was in its drafting stage. He introduced the background and the aims of the Manual, including the different elements covered therein.

7. The Chairman thanked DC PTU for the presentation and invited comments from Members.

8. Ms Christine FANG acknowledged that the POM would be a police restricted document. She asked whether the section relating to policing public order events (“POE”) could be communicated to the public so as to enhance their understanding of the police’s role and thereby reduce POE related complaints.

9. CSP C&IIB replied that there were specific sections in the POM relating to engagement with people involved in POEs; an initiative which had been standard practice for years.

10. Ms Christine FANG asked which parts of the POM concerning policing POE could be made known to the public.

11. DC PTU replied that considerable parts of the POM related to engagement with groups before the event. Various units of the Police, like the Police Community Relation Officers, would make every effort to explain the police approach and ensure people understand police actions. Safety had always been a major consideration. (Post meeting note: *The POM or its draft would not be made an open document but police could examine how key messages could be conveyed to the public at large.*)

12. Mr YEUNG Yiu-chung said there had been criticisms on the issue of over-policing in POEs. He asked if there was any guiding principle in POE manpower deployment.

13. DC PTU noted the criticisms. He explained that deployment planning was based on a number of factors, including the anticipated number of participants provided by the organizer prior to the event. It took time to plan and to arrange officers to deploy in a location. Police would only know that the number of participants who have actually turned up is significantly lower than declared, at the later stage after their arrival. Assessment would be made by the Commander on the ground and he/she would decide to withdraw manpower that was not required.

14. Mr Eric CHEUNG followed up the issue raised by Ms Christine FANG earlier in relation to allowing the public to know how any particular POE would be policed. He suggested, rather than publish part of the POM, the Force could consider publishing information regarding common scenarios, explaining, for example, when coloured warning banners and force would be used, what actions police would take at different stages, such as when protestors were attempting to charge through police lines or mills barriers, what the number of officers to be deployed and road closures would be for different numbers of estimated participants. The information might help ease public concerns. With reference to protecting dignitaries in accordance with the Vienna Convention, which only applied to foreign state leaders, Mr CHEUNG asked if there was clear explanation for ‘dignitaries’. He also

asked if there were guidelines governing the protection of China's State leaders as the Convention would not apply when they visited Hong Kong. Lastly, he asked if the POM addressed issues relating to policing POE in private premises.

15. CSP C&IIB stated that the Manual was drawn up as a guideline for officers. It gave them a framework on which to work. It emphasized things they must abide by and guidelines, which they could take into consideration when operating on the ground. Ultimately, officers had to make judgment within this framework depending on the situation they were facing. Given one factor in any given scenario, things could change dramatically. Officers had one fundamental underlying principle to work upon and that is they must work in accordance with the Laws of Hong Kong. That was something stressed in the Manual and in all training given.

16. The Chairman shared with the meeting his experience of a previous IPCC visit to Central District, where he witnessed coloured warning banners being used. On that occasion, IPCC members voiced out and the police side agreed that it would be helpful if POE participants were made aware at scene where a bottom line at different stages of a protest was set and what consequences they might face if they stepped over same. The Chairman added that frontline officers should also know their powers and when to exercise them clearly. He stressed the importance of uniformity when police officers exercised their powers or else it would cause confusion to participants.

17. DC PTU echoed the views of the Chairman. He added that warning banners had been in use for many years in order to warn people when the Police intended to use force. The banners had been refined lately because the Police had experienced different types of activities like protestors charging at mill barriers, which was dangerous and would cause injuries. The refined banners were used effectively in an operation earlier in 2010. These were used in support of a policy, where geographical and behavioural "bottom lines" were established. These are briefed to officers so they will understand how they should act and behave in response to protestors' actions. Considerable time was spent discussing with officers what they could and could not do. As mentioned in Justice Bokhary's Report (on the Lan Kwai Fong Incident), many types of police operations such as these are very complex and with a lengthy police line any situation is dynamic and can change quickly. When protestors surge against police, for example, this can be extremely difficult to control; however, Police will consistently strive to set uniformity across the line in terms of how they measure their response. This is where command and control came in; a concept well understood and heavily stressed and practised during training.

18. The Chairman supplemented that educating the public prior to major POEs in respect of police actions could be considered as it might help prevent possible confrontations. The Chairman requested the Police to briefly explain other issues raised by Mr CHEUNG relating to the protection of China State leaders and policing POEs in private premises.

19. DC PTU replied that whether the ground was private or public was set out clearly in the notification forms for holding a procession or public meeting. The event organizer should understand clearly that when police act in private premises, they would be invited in by the landlord to act. As regards protecting VIPs and dignitaries, it involved communicating with people in order to allow them understanding of the approach being adopted by Police.

20. Mr Eric CHEUNG asked whether any section of the Manual explained in detail the definition of ‘dignity of VIP’, which was a complicated issue.

21. DC PTU replied that there were clear guidelines in the Manual on this issue and officers are well briefed in advance of any operation involving such issues.

22. Professor Stephen CHEUNG appreciated frontline officers had to deal with various situations and were required to make decisions or apply their discretion at scene due to changing circumstances. With a view to improving transparency, he asked if any part of the guidelines could be made public so that event organizers and participants knew what restrictions were placed on them in POEs.

23. CSP C&IIB replied that the Manual or its draft would not be made an open document, but police could examine how key messages could be conveyed to the public at large. Indeed, this was already being done in some areas. For example, this has been a longstanding and relatively straightforward practice for normal crowd management events, such as fireworks, where public announcements on street closures, direction for people to move etc. were made. Protest events can however be more complex, given the different types, size of participants involved and mood of those involved. Disseminating a general message may not serve the requisite purpose and Police are very conscious about sending any message that may be misinterpreted as discouraging protest.

24. DC PTU supplemented that the Police did conduct pre-event meetings with organizers, who would be made aware clearly of the restrictions and “bottom lines”. It would be difficult for the Police to know who would attend the events themselves and brief them. The organizers were thus required to assume the responsibility and communicate these messages to those who would be attending the event.

25. Professor Stephen CHEUNG asked whether the public would perceive that some political groups were receiving preferential treatment when frontline officers were allowed to exercise discretion due to varying circumstances at scene.

26. DC PTU replied that as professional police officers, they were there to facilitate the POE and to ensure safety of the protestors. Political background of the participants was not a concern for police officers.

27. CSP C&IIB emphasized that in POEs, discretion was not vested in each and every officer on the ground allowing officers to do whatever they wanted to. Police officers came as a team and they were briefed on a set of established guidelines and “bottom lines” to work with during policing of the event.

28. The Chairman said the organizer would not be able to advise all participants as some might not have any affiliation with them and only attended the event because of its general theme. Continual public education was therefore necessary.

29. CSP C&IIB agreed that certain general information relating to the event would be suitable for dissemination to the public prior to an event. Nevertheless, Police had to be cautious in striking a balance between pushing necessary information to the public at large and not giving an impression that Police are seeking to restrict public protest activity. On the ground, and when Police know who and how many participants are involved, communication can be established through loudhailers or public announcement by officers at scene.

30. Mr Lawrence MA asked if the China State leaders would be less protected when they visited HK because they did not fall within the category of ‘foreign dignitary’ under the Vienna Convention.

31. DC PTU replied that an appropriate level of protection would be available to them.

32. The Hon Abraham SHEK enquired how the police determine the distance of any cordon line from the target location.

33. DC PTU replied that this was determined by the establishment of any public activity area set up and its position, which in turn is based on the assessment made by the commander at scene after discussion with the event organizer. There were many other considerations, like safety concerns and possible obstruction that might be caused to the general public. These issues were discussed in the Manual and officers were made aware of the obligation to facilitate the protestors as much as possible, striking the balance between the rights of those lawfully protesting as well as the needs of the public at large.

34. The Hon Abraham SHEK suggested to include guidelines in the Manual illustrating to commanders how they could make decisions at scene fairly, impartially and transparently in order to prevent criticism of unfair treatment to different protest groups.

35. DMS thanked Members for their valuable comments, which would be consolidated and reflected when finalizing the Manual. He reiterated that public safety was the prime concern of the police. The public would form the view that an event was safe after it had been completed without any casualties. Taking the Lan Kwai Fong Incident as an example, Police could not foresee the outcome when they planned in advance and therefore had to make assessments based on information available at the time of planning to determine deployment. Relevant decisions from the Court of Final Appeal would also be included in the Manual for officers' information. As regards setting up the cordon line, the distance was not simply based on the number of participants attending. There were a number of risk factors to consider, e.g. the nature of participants, their different underlying motives for being there and even whether there was potentially any terrorist involvement. Safety was therefore police's main concern. In respect of transparency, DMS stressed that the Force has been keeping the public informed of the police stance, policy and procedural matters through various channels and this would continue. If Members had further questions relating to specific cases in future, discussions at IPCC / CAPO Working Level Meeting were welcome.

36. The Chairman thanked DMS for his comments. He also thanked DC PTU for the presentation, which was a general introduction of the Public Order Manual. IPCC hoped to see both the public and frontline officers being made aware of the limitations placed upon both parties in POEs so that confrontations could be minimized and such events carried out smoothly, safely and lawfully.

37. The Chairman invited CAPO to report on the analysis on complaint trends and statistics.

38. CSP C&IIB briefed the meeting on an expanded comparative analysis on substantiation rates from both pre- and post-enactment and implementation of IPCC Ordinance. There was a noticeable increase in the number of reportable complaints ("RC") received in the pre-implementation period from January-June 2009 through to July-December 2009. A continual decline was noted thereafter in the period from January-June 2010 and July-November 2010. There was a significant increase in cases endorsed from July 2009 onwards, reflecting good work by IPCC and CAPO. The number of fully investigated cases also saw an increase from 597 cases in 2009 to 894 cases in 2010 up to this meeting. Of the fully investigated cases, those endorsed as "Substantiated / Not Fully Substantiated / Substantiated Other than Reported" increased from 15.5% in early 2008 to 25.6% in early 2010, followed by a slight drop to 20.1% since July 2010. The figure for "Unsubstantiated" cases changed considerably over the 35-month period in view, from a high 58.1% in the first 6-months period of 2008 to a low 38.5% in the second half of 2009. Cases endorsed as 'No Fault' had gradually risen over the

period in view from 1.4% to 19.5% in the latest period. Finally, cases endorsed as 'False' had seen a downward trend since the first half of 2009. As an overview, there was a general rising trend of substantiation rate, as well as a consistent trend of 'No Fault' rising.

39. The Chairman noted the encouraging result of a decline in 'Unsubstantiated' cases and a rise in 'No Fault' cases, which might be effected by the change to a 'Finding of Facts' approach after the implementation of IPCC Ordinance as agreed by IPCC and CAPO. The Chairman stressed the importance of a thorough investigation and the 'Finding of Facts' approach. It was hoped that frontline officers would understand that this oversight mechanism aimed to be fair to both complainants and complainees, but not meant to discourage them from exercising their constabulary duties.

40. DMS echoed the remarks made by the Chairman and hoped that with efforts by all parties, both the public's and police officers' misconceptions of the complaint mechanism could be minimized.

41. CSP C&IIB briefed the meeting of the statistical returns for the period between August and October 2010, during which a total of 659 complaints were received. It represented a decrease of 44.2% when compared with 1,181 cases of the same period last year. 'Neglect of Duty' remained the most prevalent type of allegation, which accounted for 335 cases, marking a decrease of 44.1% when compared with the same period last year. The number of 'Assault' cases received during the period was 59 cases, representing a decrease of 56.3% or 76 cases down from 135 case of the same period last year. In the first ten months of 2010, a total of 2,842 complaints were received. It represented a decrease of 18.8% when compared with 3,499 cases of the same period last year.

42. CSP C&IIB further updated the meeting on the statistics with regard to CAPO-related discipline cases from 2008 up to now, which had been included in the papers forwarded to the Council. The figures revealed that a range of follow up actions had been taken in respect of officers for cases endorsed as substantiated. Primarily, CAPO-recommended follow up actions were aimed at being corrective rather than punitive and for the purpose of service improvement. Most of the substantiated allegations were relatively minor in nature and follow up actions were commensurate with the seriousness of them. As such, the follow up actions recommended tended to be of an advisory nature. For serious cases, officers had been subjected to formal disciplinary action.

43. The Chairman suggested to breakdown the figures for 'Substantiated', 'Not Fully Substantiated', and 'Substantiated Other Than Reported' for better understanding of the situation.

44. CSP C&IIB noted the recommendation.



45. Mr Eric CHEUNG wished to raise further comment on the presentation by DC PTU. He considered that police should not rely on the event organizer to inform participants about details of public order activities. He suggested the police publish information detailed in the ‘Letter of No Objection’, including date, time, venue, number of anticipated participants and conditions or restrictions imposed, on the Force homepage to avoid misunderstanding.

46. CSP C&IIB thanked Mr CHEUNG for the suggestion and said that this would be taken into consideration.

47. The Chairman noted the Working Level Meetings between CAPO and IPCC was an effective forum to exchange views and that it should be encouraged to continue. Results achieved in those meetings could be made known to the public periodically.

48. Ms Christine FANG suggested that, apart from the usual statistical report at year end, the Force should also consider including what policy improvements the Force had made as a result of lessons learnt from substantiated complaint cases. This would allow the public to appreciate police efforts and improve the Force’s public relations.

49. CSP C&IIB agreed to reflect this suggestion.

50. Professor Stephen CHEUNG suggested to analyse the average time spent in the investigation of reportable complaints. The longer the time an investigation took, the more stress it brought to the parties, in particular the complainees. It might serve as an indicator on the efficiency of the complaints handling system and a reflection on IPCC if the time taken was reduced over a period of time.

51. The Chairman added that this could be used to evaluate CAPO as well.

52. CSP C&IIB replied that CAPO was committed to resolve cases as quickly as possible for the benefit of all, including both the complainant and the complainee. The Working Group established earlier had the aim of streamlining the investigation procedures. That said, concrete deadlines could not always be set for cases due to the complexity and different circumstances of each case.

53. The Chairman reiterated that IPCC and CAPO would continue working together to improve the complaints handling mechanism. The Chairman then invited CAPO to brief on the Criminal and Disciplinary Checklist (“DCL”).

54. CSP C&IIB reported that, at the request of Members in the last meeting, CAPO investigation teams had been briefed to beef up investigation reports in respect of how a finding was arrived at. CAPO had also taken on board the recommendation to include considerations and deliberations of action taken or to be taken on officers if it deviated from the endorsed recommendation in the DCL. CSP C&IIB reported that there was no such instance noted during the period covered in the current DCL.

(V) **ANY OTHER BUSINESS AND CONCLUSION OF THE MEETING**

55. There being no other business, the meeting concluded at 1655 hours. The next meeting is scheduled for 1<sup>st</sup> March 2011 (pm).

( YIP Yuk-ping, Elsie )  
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( Brandon CHAU )  
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