

RESTRICTED

**Meeting of the Independent Police Complaints Council (IPCC)
with the Complaints & Internal Investigations Branch (C&IIB) (Open Part)
held at the IPCC Secretariat Office at 1615 hours on Thursday, 31 Oct 2013**

Present : Mr JAT Sew-Tong, SC, JP (Chairman)
The Hon Abraham SHEK Lai-him, SBS, JP (Vice-chairman)
Mr Eric CHEUNG Tat-ming
Ms Christine FANG Meng-sang, BBS, JP
Mr Lawrence MA Yan-kwok
Mr Simon IP Shing-hing, JP
Ms Noeline LAU Yuk-kuen
Hon Kenneth LEUNG Kai-cheong
Dr Carol MA Hok-ka
Miss Sandy WONG Hang-yee
Dr Hon Helena WONG Pik-wan
Miss Mary WONG Tak-lan
Mr Adrian YIP Chun-to, BBS, MH, JP
Mr Clement TAO Kwok-lau, BBS,JP
Mr John YAN Mang-yee, SC
Ir Dr Vincent Simon HO
Mr Gerard CHUNG Wai-hung
Mr Henry SO, ASG IPCC (Joint Secretary)
Mr LAU Yip-shing, DMS
Mr P. R. Morgan, ACP SQ
Mr HO Ying-foo, CSP C&IIB (Ag.)
Mr Mark STEEPLE, SP ADM TRAFFIC
Mr TONG Chi-chung, SP CAPO HQ (Joint Secretary)

In Attendance : Mr Ricky CHU, SG
Mr Daniel MUI, DSG
Ms Cherry CHAN, LA
Mr SHUM Hoi-kwong, CIP CAPO HQ (1)
Mr WONG Ho-hon, CIP CAPO HQ (2)
Mr CHEUNG Ka-po, SIP IPCC CAPO
Mr TING Ka-ho, SIP Road Safety Traffic

road safety by providing the figures on the increase of 14% of licensed vehicles from 575,106 in 2008 to 653,010 in 2012. In the same period, the traffic accidents with persons injured and traffic accidents with damage only also increased by 9% and 13% respectively. He highlighted the changing traffic risks over the past years from 'Drink Driving' in 2009 to 'Drug Driving' in 2010 in view of the 7 folds upsurge in drug driving and then the 'Cycling Safety' in 2012 as a result of the upsurge in bicycle accidents that caused 20 people killed in 2011.

6. SP ADM TRAFFIC explained to the meeting that the objectives of STEP were to maintain traffic flow and road safety in support of the Commissioner's Operational Priorities 2013 for reducing fatal and serious accidents; deterring drink driving, drug driving, speeding and illegal road racing; and promoting safe cycling. It was a scientific approach involving the review process of accidents, community liaison on traffic impact and focused response on critical areas. He emphasized that the whole process was not figures driven but driven by hazards and obstructions. Through this process, key themes were developed for the year ahead to enhance road safety. It also guided commanders in setting priorities for road safety policing and guided frontline officers in street level road safety policing.

7. SP ADM TRAFFIC went on to explain the roles of officers at different levels from reviewing legislations and setting up policies and procedures at the Traffic Branch, to the enforcement of various traffic offences at the Regional Traffic and Police District/Division levels. He further explained that there were four levels of traffic enforcement ranging from arrest to summons, fixed penalty tickets and verbal warnings. Officers could exercise their discretion when the offender was aged under 16 or over 60; the offence was of trivial nature; the offender was remorseful and had no intention to commit the offence; and there were no aggrieved party and no harm done to any person or property.

8. SP ADM TRAFFIC also reported the traffic enforcement figures of 2008 and 2012 which showed a significant increase of 21% and 120% in the prosecutions against drivers and cyclists respectively whilst prosecutions against pedestrians in the same period dropped by 11%. Warnings given to cyclists also increased by 24% in the same

period but warnings given to drivers and pedestrians had decreased by 21% and 34% respectively. He asserted that the increase in licensed vehicles and accidents would give rise to challenges and complaints that stemmed mainly from the differences in public perception as to the road safety, road obstruction and police discretion. Finally, he reminded that any persons who felt aggrieved with the enforcement actions taken against them could lodge a traffic complaint by phone or in person to the Central Traffic Prosecution Division.

9. Hon Kenneth LEUNG expressed his appreciation of the presentation which he found very informative. He was concerned about the upsurge in accidents involving cyclists and enquired if the Police had ever considered the effectiveness in improving cyclists' safety by introducing mandatory requirement for cyclists to wear helmets.

10. DMS replied that the legislation in respect of traffic policy rested with the Transport Department and the Police could only take enforcement action in accordance with the existing legislations. The primary factor leading to traffic accidents was the driving manner of the cyclists and mandatory requirement for cyclists to wear helmets might not be able to reduce traffic accidents but might only be able to reduce the extent of the injuries caused to the cyclists in the accidents.

11. Mr Eric CHEUNG stated that most of the complaints arising from traffic enforcement action were related to Police not taking enforcement action against other traffic offenders and those complaints were classified as Notifiable Complaints. He enquired if the figures on traffic related complaints quoted earlier by CSP C&IIB (Ag) also included Notifiable Complaints and how these complaints were eventually handled. He also enquired how the 'STEP' could guide officers when they should or should not take enforcement action.

12. CSP C&IIB (Ag) replied that the figures he had provided only included Reportable Complaints. With regards the handling of Notifiable Complaints, they were also investigated fairly and impartially. Notifiable complaints of serious nature would be investigated by CAPO while those of minor nature would be referred to the police formations concerned for investigation under CAPO's monitoring. Concerning the traffic enforcement policy, he would leave that for SP ADM TRAFFIC to

reply.

13. SP ADM TRAFFIC responded by saying that the 'STEP' was a focused response concentrating on traffic hazards and traffic flow. Upon receipt of a traffic complaint, officers would first evaluate the situation and if there was no hazard or obstruction to the traffic flow, the drivers would be allowed to drive their cars away and enforcement action would only be taken if the drivers had not driven away their vehicles after a reasonable time. For areas with serious traffic obstruction, Police would proactively engage the local communities and District Councils to deal with the traffic problems to eliminate the obstruction to the traffic flow and to make sure that emergency vehicles could get through.

14. Ms Christine FANG noticed that there was a significant decrease in the number of verbal warnings to both drivers and pedestrians as opposed to the increase in traffic prosecutions. She enquired if that was the trend caused by the 'STEP' and she would like to know if there was any specific procedures governing officers as to when they should or should not take enforcement action rather than relying on the personal judgement of the officers at the scene.

15. SP ADM TRAFFIC replied that the decrease in both warnings and prosecutions against pedestrians were due to the change in pedestrians' behaviours. There was a standard pattern on how officers should respond and how officers should issue tickets, and whenever possible officers would try to educate the drivers and asked them to remove their vehicles. However, enforcement action would be taken against any non-compliance to the road signs set up by the Transport Department.

16. Mr Eric CHEUNG noted that there was an increase of 21% in the prosecutions against drivers between 2008 and 2012 and at the same time there was a decrease of 21% in the warnings given to drivers. He wondered if that was the Police policy to have more prosecutions and less warnings.

17. SP ADM TRAFFIC replied that he did not have specific details about the warnings issued to drivers but those might well be related to parking on quiet roads where there was no immediate traffic flow issue.

For the rise in prosecutions against drivers, he highlighted that there was an increase of 38% in the enforcement against speeding offences that posed greatest threat to road safety and the Police was taking more prosecutions than warnings in support of the Road Safety Council's objective of zero accident on the road.

18. Mr Lawrence MA noticed that most traffic related complaints stemmed from situations where officers took enforcement action against a row of illegally parked vehicles. While some drivers were able to drive their vehicles away without being ticketed, some other drivers were still ticketed when they returned whilst officers were still completing the tickets. Despite dissuasion, the officers still insisted on issuing the tickets on the excuse that the tickets could not be cancelled after they had been filled in and that triggered complaints from the ticketed drivers. He queried that if the purpose of traffic enforcement policy was for ensuring smooth traffic flow, then why the Police could not let the drivers go instead of issuing tickets to them and why a ticket could not be cancelled once it was filled in.

19. SP ADM TRAFFIC replied that when there were a number of illegally parked vehicles with only one officer taking enforcement action, other vehicles would be directed to move on while the officer was ticketing one of the vehicles. The driver being ticketed might disagree with the Police action upon his return but the proper way to dispute the ticket was to lodge a complaint to the Central Traffic Prosecution Division and the enforcement action would be continued.

20. Ms Christine FANG further enquired when the Police would take enforcement action and when would they only give warning. She noticed that some vehicles were parked at the roadside at night, such as the buses parked at Nam Fung Road, and she enquired if it was allowed. She also enquired about the Police enforcement on drug driving.

21. SP ADM TRAFFIC replied that when there was a sign restricting parking in certain areas, then there would be no discretion. If the ticket was issued without a useful purpose but giving warning would serve the purpose, the Police would prefer giving warning instead of enforcement. In relation to the parking buses, if the parking in the area was illegal, the Police could follow up if necessary. For enforcement of drug driving,

Police could look at the behaviours of the drivers and conduct a series of checks, including obtaining blood samples from the drivers concerned at a hospital to ascertain whether the drivers were under the influence of drugs.

22. Mr Lawrence MA enquired if the bus companies were forced to park their buses on the road at night because they had insufficient parking spaces for parking their buses.

23. SP ADM TRAFFIC replied that he was not aware of any particular buses in question but Police would take enforcement action if the buses were parked illegally.

24. Ir Dr Vincent Simon HO noticed that there were many traffic accidents caused by drivers using mobile phones and according to US statistics driving and texting at the same time accounted for 50% of the accidents. He enquired what the Police would do to educate people to stop driving and texting at the same time.

25. SP ADM TRAFFIC replied that the Police had already had educational materials to educate drivers in this regard and 28,000 people were also prosecuted in 2012 for using mobile devices while driving.

26. Miss Mary WONG enquired if the Police had separate traffic enforcement statistics on private and commercial vehicles as she noticed that commercial vehicles were more likely to double park on the roads but generally the Police were less active in taking enforcement actions against commercial vehicles.

27. SP ADM TRAFFIC asserted that there was no difference in the enforcement actions taken against private or commercial vehicles as the enforcement actions focused on hazards and obstructions. He also clarified that there was no discretion for double parking.

28. Dr Hon Helena WONG stated that she had received many complaints from taxi drivers for being ticketed while they parked their taxis at the roadside for a short while for using toilets. She enquired if the Police could exercise discretion to allow taxis to park for a short while outside public toilets or if the Transport Department could set aside

some parking spaces outside public toilets to facilitate taxi drivers to use the toilets. She noted that the number of licensed vehicles had jumped from 500,000 to more than 600,000 and she enquired if there was corresponding increase in metered parking spaces and parking lots. She noticed the imminent demolition of Yau Ma Tei Multi-storey Car Park that would further exacerbate the parking problem in the area and she was concerned that the Police would resort to taking more stringent enforcement action to tackle the parking problem. She enquired if the Police had the statistics on the traffic enforcement against illegal parking by police districts and whether the Police would provide the statistics to the Transport Department or other relevant government departments to work out how many parking spaces were needed in different areas.

29. SP ADM TRAFFIC replied that if the taxis were parked without causing any hazard or interference to the traffic flow, enforcement action would not normally be taken but if they caused hazard or interference to the traffic flow, enforcement action would be taken. Despite he did not have the figures, he would say that generally the number of car parks in commercial buildings had been increasing. He asserted that even a car park in Yau Ma Tei was demolished, so long as the traffic was flowing, enforcement action would not normally be taken against the illegally parked vehicles. Some multi-agency response should be in place which the District Council might not be fully aware of and so the Police would work with the District Council, the Transport Department and the Highway Department to pass on that message.

30. Dr Hon Helena WONG reiterated her request for the statistics on traffic enforcement actions against illegal parking by districts was for evaluating if the enforcement actions were the result of insufficient parking spaces that caused drivers to illegally park their vehicles in particular districts or were simply for meeting the quota set by the Police.

31. SP ADM TRAFFIC stressed that the Police traffic enforcement actions were obstruction driven and hazard driven but not figure driven. If areas were very built up and congested, there might not be car parks available for most people but still they could choose to go to those areas by MTR or taxis. He understood that people did enjoy driving but people needed to park their cars appropriately and legally at authorized parking spaces. He was unable to provide the traffic enforcement

figures right away but police divisions, districts and regions kept their own figures, and they kept a close eye on it and liaised with the District Councils on the traffic problem.

32. Dr Hon Helena WONG would like to have the districts' traffic enforcement figures in the next meeting and stressed that the figures were for evaluating if any districts were more problematic and for finding out the reasons behind the problems.

33. CSP C&IIB (Ag) replied that given that the requested figures were not related to any complaints, further deliberation was required to decide if the figures could be provided. He asserted that the spirit of 'STEP' was not figure driven but focused on factors that would lead to traffic accidents with a view to eliminating the hazards posed to road users and ensuring smooth traffic flow. The design of 'STEP' was based upon the analysis of figures on traffic offences that caused deaths or injuries so as to prioritize the traffic enforcement actions.

34. Dr Hon Helena WONG reinforced her request by saying that she had indeed received complaints from taxi drivers. She further explained that the districts' traffic enforcement figures were required to analyse if more stringent traffic enforcement was due to insufficient public parking spaces in particular locations that caused drivers to park their cars illegally on the road. If the illegal parking problem was caused by insufficient parking spaces, then she could demand the relevant government departments to increase the number of parking spaces so as to minimise the conflicts between the Police and the drivers, and thereby preventing complaints against the Police. Regarding the complaints of taxi drivers, she suggested the Police to explicitly explain to taxi drivers that Police would not normally take enforcement action against them when they parked their taxis on the road for using toilets, except when the parking had caused obstruction.

35. DMS thanked members for their comments and asserted that the STEP targeted mainly on offences that caused serious traffic accidents and Police Districts should review if the problems existed in their respective districts and took enforcement actions accordingly. Frontline officers had no discretion in the enforcement of the traffic offences in STEP and they could only exercise their discretion in some other traffic offences. Before taking enforcement actions against STEP offences, individual Police District might set a grace period during which some

publicity and education campaigns would be launched. He clarified that STEP was not meant to allow officers to exercise discretion but to guide officers to purposely pinpoint the enforcement actions on specific traffic offences to ensure road safety.

36. DMS went on to say that members of the public might sometimes complain about being ticketed without warnings probably not knowing that there was no discretion in STEP offences which must be enforced not only to remove the instant traffic problems but also to serve a deterrent effect to the drivers. With regard to the enforcement actions against a row of illegally parked vehicles, enforcement actions would not normally be taken if drivers drove their vehicles away as directed but enforcement actions would be taken if the drivers refused to do so. Concerning taxi drivers parking their taxis illegally for using toilet, enforcement actions would be taken regardless how long the taxis were parked if obstruction or hazard was caused. Police would like to communicate with taxi drivers to let them understand the objectives of traffic enforcement and to gather their views for reflecting to other government departments for making concerted efforts to resolve the problems. He reiterated that the primary objective of traffic enforcement was not to reduce the related complaints but to protect life and property and there must be consistency between enforcement and discretion.

37. Mr Eric CHEUNG agreed that the primary objective for traffic enforcement was to ensure road safety but he was also concerned about the traffic related complaints that accounted for 30% of the overall complaints. He suggested the Police to improve the transparency of STEP to let the public know when discretion would or would not be exercised as well as the problematic areas where stringent enforcement actions would be taken so that drivers could avoid parking their vehicles in the areas. He thought that the increased transparency would reduce unnecessary complaints.

38. DMS agreed that increased transparency would enhance public understanding but the enforcement priority in STEP kept changing in accordance with the factors that contributed to traffic accidents and so the situations where officers could exercise discretion also kept changing. However, it could be considered to request officers through internal

communications to clearly explain to the public when they had no discretion during traffic enforcement.

39. Mr Simon IP enquired if the road safety education would aim at any specific target groups, such as young drivers, lorry drivers and cyclists, who were more prone to be involved in traffic accidents.

40. SP ADM TRAFFIC responded by saying that the Police used public campaigns to promote road safety, such as a whole series of bus notices and TV advertisements. The Police also liaised with lorry associations and taxi associations through the Transport Department, and discussions had always been underway with motor trade about vehicles repairs for discussing illegal road racing. Villagers were also liaised regarding illegal parking in villages to make sure that the emergency vehicle accesses were always clear. Police would try to talk things out first and then enforcement had to be the overriding tool to change behaviours. He also supplemented that when Police divisions found any parking problems that were not critical with no hazard or obstruction caused, the Police divisions might keep an eye on the problems by putting notices on the car windows so that all the drivers in the area would get the message. Police would do as much as they could to inform people.

III. Matters Arising

41. There was nothing on this item to raise for discussion.

IV. CAPO's Monthly Statistics

42. The Chairman invited CSP C&IIB (Ag) to report on the complaint statistics.

43. CSP C&IIB (Ag) reported that there had been a steady drop in complaint figures over the past three years. There was a drop of 15.9% between the figures of the first nine months of 2011 and 2012, and a further drop of 0.7% between the same period of 2012 and 2013. There was a total drop of 16.5% from 2011 to 2013. Except 'Neglect of Duty' with an increase of 10%, all allegations dropped in the first nine months of 2013 when compared with the same period of 2012. There was

however a drop of 5.2% in 'Neglect of Duty' in 2013 when it was compared with the same period of 2011. The figures on all serious allegations dropped in the first nine months of 2013. There was a significant drop in the allegations of 'Unnecessary Use of Authority' with a decrease of 31.4% as compared with the same period last year. The allegations of 'Fabrication of Evidence', 'Assault' and 'Threat' continued to fall by 2.1%, 6% and 9.3% respectively. He opined that the decrease in complaint figures in the past years was the result of the joint efforts of IPCC and the Force as well as the understanding and recognition of the public.

44. CSP C&IIB (Ag) also reported the figures on cases resolved by 'Expression of Dissatisfaction Mechanism' (EDM) which was introduced in April 2012. Between January and September 2013, there were 1,505 cases, including reportable complaints and miscellaneous reports, resolved by way of EDM, representing a monthly average of 167 cases. The figures had remained quite steady. There was a significant drop in reportable complaints resolved by way of EDM in September 2013 and this was due to the agreement reached between IPCC and CAPO in a working level meeting held on 25 July 2013 to cease employing EDM in resolving reportable complaints since September 2013.

45. The Chairman noticed that there was a rise in complaint figures over the last several months from 184 cases in June to 239 cases in July and then dropped to 220 cases in August as compared with the monthly average of around 160-180 in the earlier months. He enquired about the natures of complaints and the reasons attributed to the rise.

46. CSP C&IIB (Ag) shared the Chairman's observation that the complaints figures in the last several months did show a rising trend but it was still too early to conclude the cause for the increase. However, the cases resolved by EDM might shade some light on the trend. Minor complaints consistently accounted for around 80% of the overall complaints and cases resolved by EDM were around 21% but rose to 26% in recent months while the proportion of minor complaints remained steady, reflecting that the rise mainly came from minor complaints.

47. The Chairman commented that the proportion of minor complaints had consistently remained at around 80% over the years and

he wondered if any academic research could explain the situation.

V. CAPO's Criminal and Disciplinary Checklist

48. CSP C&IIB (Ag) reported that there was no deviation from the endorsed follow-up actions and he had nothing to supplement.

VI. Any Other Business

Service Improvement arising from Case Examination

49. The Chairman was aware that there was a case which had led to service improvement through case examination and he invited the representative of CAPO to share the case with the meeting.

50. CSP C&IIB (Ag) briefed the meeting that IPCC had from time to time made recommendations to the Police for service improvements through case examinations and he would like to share with the meeting a case that could reflect the effectiveness of the existing two-tier complaint handling system. The case stemmed from the complainant making a 'Loss' report of his 'Rolex' watch to a Police Station. The lost watch was later recovered from a pawnshop. The person who pawned the watch was identified and was subsequently convicted of 'Theft'. The complainant was requested to pay half of the pawned amount to the pawnshop to get back his lost watch and he thus lodged a complaint against police. The complaint investigation revealed that there was discrepancy in the procedures between the handling of loss and theft reports involving identifiable properties. For theft reports involving identifiable properties, there was a mechanism to inform the pawnshops of the identifiable properties so that any persons who pawned the stolen properties would be identified. However, there were no similar procedures in handling loss reports. After examination by IPCC, it was considered necessary to review the procedures in handling loss reports to get in line with the procedures in handling of theft reports. The procedures stipulated in the Force Procedures Manual regarding the handling of loss reports with identifiable properties were accordingly amended to get in line with the procedures in handling theft reports.

51. There being no other business, the meeting concluded at 1730

hours.

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