

以務實積極的態度處理意見分歧

Pragmatic and Positive Attitude in Resolving Differences of View

個案重點 Highlights of the Case

		被投訴人 Complainee(s)	投訴警察課原來分類 Original Classification(s) by CAPO	最後分類 Final Classification(s)
1	疏忽職守 Neglect of Duty	一名警司 A Superintendent	並無過錯 No Fault	無法完全證明屬實 Not Fully Substantiated
2		一名偵緝總督察 A Detective Chief Inspector		獲證明屬實 Substantiated
3		一名偵緝高級督察 A Detective Senior Inspector		無法完全證明屬實 Not Fully Substantiated

此個案讓公眾了解監警會如何全面及仔細地審核投訴個案，同時反映監警會和投訴警察課以務實和積極的態度來處理雙方意見分歧。在此個案中，投訴人指控涉事的數名警務人員「疏忽職守」，誤把她列入「出入境監察名單」。投訴警察課原先把指控列為「並無過錯」，經監警會的質詢和在工作層面會議討論後，投訴警察課因應該數名警務人員在事件中不同程度的參與，而把指控分別改為「獲證明屬實」和「無法完全證明屬實」。

個案背景

在2009年初，投訴人的母親指控投訴人於2005年，在公司文件上偽冒她的簽名，從其公司銀行

This case provides an example to help the public better understand the comprehensive procedures and meticulous approach taken by the IPCC in scrutinising and reviewing the investigation of a Reportable Complaint. It also shows the pragmatic and positive attitude adopted by both IPCC and the CAPO in resolving differences of view. In the instant case, CAPO had initially classified the allegation "Neglect of Duty", for the complainees placed the complainant on the "Immigration Watch List", as "No Fault". After the IPCC's queries and the deliberations at the working level meeting, the allegation was reclassified as "Substantiated" and "Not Fully Substantiated" subject to the different involvements of the complainees in the incident.

Case Background

In early 2009, the complainant was accused by her mother of stealing more than ten million dollars from her mother's company bank account by falsifying her mother's signature on a company document in 2005. She was also accused of stealing some unspecified items

戶口中偷取了逾一千萬元，並且在2008年下旬從其家中偷取了一些珠寶。母親於是往警署報案，指投訴人「偽造」和「偷竊」，惟她未能提供證據文件支持她的証供，同時聲稱聯絡不上投訴人。由於案件涉及巨款，加上投訴人的母親聲稱無法聯絡投訴人，負責此個案的偵緝總督察在取得一名警司的批准後，決定把投訴人列入「出入境監察名單」。其後，警方聯絡到投訴人的弟弟，他亦是涉案公司的股東。根據其弟弟的資料，該筆款項只是負債的轉移，而非如他母親所述的現金轉帳。雖然投訴人的母親與弟弟的言論有所分歧，但該名偵緝總督察和負責此個案的偵緝高級督察仍然繼續把投訴人列入「出入境監察名單」。在警方尚未找到投訴人的母親試圖釐清事件之前，投訴人卻在離港時被捕。經警方進一步查問和徵詢過律政司意見後，發覺「偽造」和「偷竊」兩項指控證據不足。投訴人獲無條件釋放，個案亦沒有刑事成份。

投訴人即時向投訴警察課投訴，其中包括指控一名警司在調查期間未有妥善監督其下屬，以致錯誤地把她列入「出入境監察名單」，並且不合理地把她拘捕。[指控 — 疏忽職守]

投訴警察課的調查

投訴警察課認為除了該名警司之外，同時將偵緝總督察和偵緝高級督察列為被投訴人，因為他們負責把投訴人列入「出入境監察名單」。

經調查後，投訴警察課把指控分類為「並無過錯」。投訴警察課認為該刑事案件涉及巨款，是嚴重罪行，故應即時拘捕投訴人。投訴警察課更考慮到投訴人當時去向未明，若然警方以電話聯絡投訴人，有可能令投訴人有所警惕而毀滅證據。因此投訴警察課認為把她列入「出入境監察名單」是合理和必須的，以便把她緝拿歸案。

of jewellery from her mother's home in late 2008. In reporting these acts as "Forgery" and "Theft" to the Police, her mother gave a witness statement without corroborative documentary support, and she claimed that the complainant was out of reach at that time. In view of the substantial amount of money involved and the mother's claim that the complainant was out of reach, a Detective Chief Inspector decided to put the complainant on the "Immigration Watch List" upon the approval of a Superintendent. Several days later the Police contacted the complainant's brother, who was a shareholder of the company in question, and learnt from him that the amount of money involved was in fact a transfer of liabilities instead of a transfer of cash as claimed by the complainant's mother. The Detective Chief Inspector and the Officer-in-charge (a Detective Senior Inspector) then attempted in vain to clarify the discrepancies between the versions of events provided by the complainant's mother and brother; meanwhile the complainant remained on the "Immigration Watch List". Before the Police could locate the complainant's mother for further clarification, the complainant was arrested for the alleged offences when she was attempting to leave Hong Kong. Further police enquiries and legal advice obtained from the Department of Justice revealed that there was insufficient evidence that she had committed either "Forgery" or "Theft". The complainant was released unconditionally and the case concluded with no crime disclosed.

The complainant lodged the instant complaint with CAPO, alleging among other things that the Superintendent had failed to supervise his subordinates in the investigation by allowing her name to be wrongly placed on the "Immigration Watch List" and arresting her without justification. [Allegation – Neglect of Duty]

CAPO's Investigation

Apart from the Superintendent, CAPO also registered the Detective Chief Inspector and the Detective Senior Inspector as complainers under this allegation, as they were responsible for putting the complainant on the "Immigration Watch List".

After investigating the matter, CAPO classified the allegation as "No Fault". CAPO opined that, as this was a serious criminal case involving a large sum of money, an immediate arrest was justified. CAPO also considered that the whereabouts of the complainant were unknown to the complainers at that time, and the complainant might be alerted to destroy the evidence if she were contacted by the Police over the telephone. CAPO thus considered that it was reasonable and necessary to put her on the "Immigration Watch List" so as to locate her for the purpose of effecting arrest in the first place.

監警會的觀察

監警會認為把任何人士列入「出入境監察名單」，意味著每當他/她經過出入境管制區時便會被捕。此舉嚴重影響當事人的人身自由，故此安排應在非常必要的情況下方可使用。

在審閱過投訴警察課的調查報告和相關檔案後，監警會認為投訴人母親在錄取口供時所提供的資料含糊，對投訴人「偽造」和「偷竊」的指控只屬片面之詞，並沒有任何佐證，在案件證據薄弱的情況下，警方懷疑投訴人犯法，並要採取拘捕行動，屬不合理和草率的做法。此外，監警會亦注意到投訴人被指控的罪行並非持續發生，故警方毋須採取即時行動，以保存證據。負責此個案的警務人員應作進一步調查，搜集更多的證據以證明這嚴重的指控，才把投訴人列入「出入境監察名單」。再者，投訴人弟弟的證供，令「偷竊」現金的指控成疑，所以負責此個案的警務人員應意識到案件可能只是一宗投訴人及其母親之間的民事糾紛，並非警方的職權範圍。負責此個案的警務人員在調查個案的初期把投訴人列入「出入境監察名單」中，屬疏忽的行為，因此應重新把指控結果分類為「獲證實屬實」。

監警會委員及秘書處職員與投訴警察課代表召開了一次工作層面會議，雙方在會議上就監警會的質詢作出仔細討論，投訴警察課同意監警會的見解，但亦重申是否把目標人士列入「出入境監察名單」，應就個別案件而決定，不能一概而論。由於涉事的偵緝總督察下令把投訴人列入「出入境監察名單」，投訴警察課對他的指控分類為「獲證明屬實」。至於該名警司在認同偵緝總督察的決定前，應先核實支持的理據是否充份，所以對他的指控分類為「無法完全證明屬實」。而涉事的偵緝高級督察，在得悉所述的現金轉帳是負債轉移時，應檢討是否需要把投訴人列入「出入境監察名單」。因此針對該名高級督察的指控亦同樣分類為「無法完全證明屬實」。投訴警察課向各涉事警務人員作出訓諭。

監警會通過這宗個案的調查結果。

IPCC's Observation

The IPCC was of the view that to place a subject on the "Immigration Watch List" meant that the subject would be arrested anytime he/she passed through an Immigration Control Point. Such action would seriously affect the subject's freedom of movement and therefore should only be taken with strong justification.

Upon examination of CAPO's investigation report and the related files, the IPCC considered that the information contained in the statement of the complainant's mother was vague and her accusations of "Forgery" and "Theft" were merely a one-sided claim without any corroboration; therefore the case was too weak to form a reasonable suspicion of an offence and it was premature to arrest the complainant. It was also observed that the alleged crime was not an ongoing one that might require the Police to take immediate action to preserve the evidence. The complainees therefore should have conducted further enquiries to find out if there was any evidence to support such serious accusations before placing her on the "Immigration Watch List". Furthermore, the clarification from the complainant's brother cast doubt upon the accusation of "theft" of cash; therefore the complainees should have realised that the case might turn out to be merely a civil dispute between the complainant and her mother, which was out of the purview of the Police. Hence, the complainees were negligent in putting the complainant on the "Immigration Watch List" at the beginning of the investigation and thus the allegation should be reclassified as "Substantiated".

Following the IPCC's queries and a detailed case discussion at a working level meeting convened by IPCC Members and Secretariat staff with representatives from CAPO, CAPO agreed with the IPCC's views, though it reiterated that the inclusion of a subject on the "Immigration Watch List" should be decided on a case-by-case basis and subject to its own merit. CAPO then registered a "Substantiated" classification for the Detective Chief Inspector as he was the officer who gave the instruction to place the complainant on the "Immigration Watch List". The Superintendent was registered with a "Not Fully Substantiated" classification, as he should have clarified if there were strong justification of doing so before endorsing the decision of the Detective Chief Inspector, and the Detective Senior Inspector was also registered with a "Not Fully Substantiated" classification, as he should have reviewed the necessity of placing the subject on the "Immigration Watch List" when he learnt that the amount of money involved was a transfer of liabilities. Suitable advice would be given to the complainees.

The IPCC endorsed CAPO's findings in this case.