

以證據為基礎衡量證人供詞的標準

Evidence-based Approach in Evaluating Witness Statement

個案重點 Highlights of the Case

	指控 Allegation(s)	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	粗言穢語 Offensive Language	一名警員 A Police Constable	虛假不確 False	虛假不確 False

此個案反映監警會以證據為基礎的審核方針，並顯示監警會衡量證人供詞的標準。當一名警員與市民接觸時被指控使用粗言穢語，基於兩者之間的對話內容難以被證實，一般情況下很難取得肯定的調查結果，因此這類指控（粗言穢語）通常會被分類為「無法證實」。但個案中的兩名獨立證人，不但證明被指控的警員沒有使用粗言穢語，更反指投訴人曾使用粗言穢語辱罵該名警員。因此，個案中警員使用粗言穢語的指控被分類為「虛假不確」。

個案背景

2011年底，一名警員票控一輛閒置的輕型貨車違例泊車。及後投訴人回來，將輕型貨車駛前三米

This case illustrates the evidence-based approach adopted by the IPCC and the criteria it uses to evaluate the statements of a witness. It is generally difficult to reach a definitive finding in a scenario where a police officer is alleged to have used offensive language in an encounter with a civilian, as it is usually impossible to determine exactly what verbal exchange took place. Therefore such allegation (i.e. "offensive / foul language") is usually classified as "Unsubstantiated". In this instance, during the complaint investigation two independent witnesses confirmed that the Police Constable (PC) had not used foul language. On the contrary, they claimed that the complainant had scolded the PC using foul language during the encounter. Hence, the "Offensive Language" allegation in this particular case was classified as "False".

Case Background

In late 2011, a PC ticketed an unattended Light Goods Vehicle (LGV) for illegal parking. The complainant arrived, drove the LGV three

至指定貨物裝卸區，但沒有裝貨或卸貨。該名警員三次警告投訴人把車駛開卻不被理會，警員於是再次票控投訴人違反交通標誌。同日，投訴人向投訴警察課投訴，指控該名警員在票控時使用粗言穢語，說「抄你就抄你，咁點呀，x你老母」

[指控1 – 粗言穢語]。

投訴警察課的調查

投訴警察課確認兩名在案發地點附近商舖工作的證人，兩人表示目睹事發時該輕型貨車在路中央停泊，並憶述當日該警員在發出違例泊車告票前，曾嘗試尋找輕型貨車的司機。正當警員發出告票時，投訴人回來以粗言穢語辱罵該警員，並表示會作出投訴，該警員亦應要求報上警員編號。兩名證人均表示目睹整個過程，並證實該名警員沒有使用任何粗言穢語。投訴警察課確認兩名證人與案件及涉案雙方沒有任何關係，認為兩人的供詞能有效地駁回指控，指控因而被分類為「虛假不確」。

監警會的觀察

監警會審視相關文件後，認同該兩名市民為獨立及可信的證人，因此同意投訴警察課的分析。

監警會通過這宗個案的調查結果。

metres forward and stopped in a designated loading area, but did not load or unload goods. The PC warned the complainant to leave three times; upon being ignored, he further issued a ticket to the complainant for contravening a traffic sign. Later the same day, the complainant lodged a complaint with CAPO, alleging that the PC had used offensive language, saying “I am now ticketing you. So what? Fxxx your mother” (抄你就抄你，咁點呀，x你老母) while issuing the ticket **[Allegation 1 - Offensive Language]**.

CAPO's Investigation

CAPO identified two civilian witnesses who worked in shops near the location where the incident occurred. They recalled seeing the unattended LGV parked in the middle of the road at the relevant time and location. They reported that a PC had arrived and attempted in vain to locate the driver of the vehicle in the vicinity before issuing a ticket to the LGV for illegal parking. At this juncture, they confirmed that the complainant returned to the vehicle and scolded the PC, using foul language and stating that he would file a complaint against him. In response, the PC told the complainant his Unique Identification (UI) number. Both witnesses stated that they had observed the entire incident until the complainant left the scene, and verified that the PC had not used any offensive language with the complainant. CAPO determined that neither witness had been involved in the incident or was related to either party, and thereby considered that their statements clearly rebutted the allegation. Therefore the allegation was classified as “False”.

IPCC's Observation

Upon examination of the case document, the IPCC was satisfied that the two civilian witnesses were independent and credible witnesses, and therefore agreed with CAPO's assessment.

The IPCC endorsed CAPO's findings in this case.

仔細衡量證人供詞的可靠性

Meticulous Approach in Evaluating the Weight of Evidence Provided by Witnesses

個案重點 Highlights of the Case

	指控 Allegation(s)	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	粗言穢語 Offensive Language	一名警員 A Police Constable	無法證實 Unsubstantiated	無法證實 Unsubstantiated
2	行為不當 Misconduct		獲證明屬實 Substantiated	獲證明屬實 Substantiated
3	疏忽職守 Neglect of Duty		無法證實 Unsubstantiated	無法完全證明屬實 Not Fully Substantiated

此個案顯示監警會如何仔細分析證人供詞的可靠性。

個案背景

2011年中，一名警員截停並票控投訴人「在車輛行駛時使用包括手提式流動電話或其他通訊設備」。投訴人不滿警員在簽發告票時的態度，投訴該名警員及提出三項指控。投訴人指控該警員在查問時使用粗言穢語 **[指控1 - 粗言穢語]**。據投訴人指，該警員曾張開雙手，並說：「你打我丫！你打我丫！」來挑釁投訴人襲警 **[指控2 - 行為不當]**。最後，投訴人要求警員提供投訴警察課熱線，但該警員的回答方法令投訴人難以清楚聽到 **[指控3 - 疏忽職守]**。

This case illustrates that the IPCC is meticulous in evaluating the weight of evidence provided by witnesses.

Case Background

In mid-2011, a Police Constable (PC) intercepted and ticketed the complainant for "Using a mobile telephone or other telecommunications equipment while the vehicle is in motion". Dissatisfied with the PC's demeanor while issuing the ticket, the complainant lodged a complaint with three allegations. The complainant alleged that the PC had used offensive language while conducting his enquiry **[Allegation 1 - Offensive Language]**. According to the complainant, the PC had also provoked the complainant to hit him by saying, "Hit me! Hit me!" (你打我丫！你打我丫!) with his hands wide open **[Allegation 2 - Misconduct]**. In the end, the complainant asked the PC for the number of the CAPO hotline. However, the PC replied to the complainant in such a way that the complainant could not clearly catch the number **[Allegation 3 - Neglect of Duty]**.

投訴警察課的調查

當時一名市民正橫過事發的馬路，他憶述曾看見該名警員張開雙手說：「你打我丫！」，同時亦聽到投訴人當場表示警員無禮，並要求警員提供投訴警察課熱線號碼。但該名警員的急促回答，令人難以清楚聽到熱線號碼。然而，這名市民並沒有聽到警員使用粗言穢語。投訴人及後發現這名市民在場，並邀請他作為此案的證人。

投訴警察課與證人會面並錄取供詞，認為證人的供詞獨立而可信。然而，證人表明他並沒有目擊整個過程，亦沒有聽到警員使用粗言穢語，因此，投訴警察課認為雙方只是在語言上發生衝突，將指控1分類為「無法證實」。而警員曾張開雙手說：「你打我丫！」，由於證人與投訴人供詞一致，因此投訴警察課將指控2分類為「獲證明屬實」。至於指控3，投訴警察課與被投訴警員會面時，發現他說話急促，並經常喃喃自語，認為這可能是該警員個人的說話方式，而且形容某人的說話速度感覺主觀，因此投訴警察課將指控3分類為「無法證實」。

監警會的觀察

經審視個案文件後，監警會認為一名理性的警員在任何情況下，在執行職務時都不應該挑釁公眾襲警。監警會認為該名警員張開雙手並出言不慎是極不妥當的行為，屬嚴重過失，不應草率對待。至於指控3，監警會認為既有獨立證人在場，而他的供詞亦充份地支持了投訴人的指控，故此投訴警察課應作出覆查。

投訴警察課接受監警會的建議並再次與證人會面，為指控3的調查釐清事實。投訴警察課根據覆查結果，認為有更多的可靠證據，因此投訴警察課把指控3的分類由「無法證實」改為「無法完全證明屬實」。

監警會滿意投訴警察課的跟進工作，並通過這宗個案的調查結果。

CAPO's Investigation

A civilian witness who happened to be crossing the road at the time and place of the incident recalled seeing the PC gesturing with open hands and saying, "Hit me!". The witness also heard the complainant respond by saying to the PC that he was impolite and asking for the CAPO hotline. He heard the PC reply in a rapid manner that was not easy to catch. However, the witness did not hear any offensive language uttered by the PC. The complainant later noticed the presence of the witness and invited him to be a witness to the incident.

Having interviewed the witness and taken a statement from him, CAPO considered the witness to be independent and credible. However, the witness said he did not witness the entire incident and that he did not hear the PC utter any offensive language. CAPO therefore considered Allegation 1 came down to a situation of one person's word against another's, and classified the allegation as "Unsubstantiated". As the witness's account of seeing the PC say, "Hit me!" with his hands wide open substantially corroborated the complainant's version of events, CAPO classified Allegation 2 as "Substantiated". As for Allegation 3, CAPO observed that the PC spoke quickly and sometimes mumbled during his interview. CAPO considered that this might be his natural way of speaking and that describing the pace of someone's speech was rather subjective. As such, CAPO classified Allegation 3 as "Unsubstantiated".

IPCC's Observation

Upon examination of the case document, the IPCC was of the view that under no circumstances should a reasonable police officer, in the course of executing his duty, provoke a member of the public to assault him. It considered that the PC had acted inappropriately by spreading his hands and saying such words, which was clearly a serious misdemeanor and should not be taken lightly. As for Allegation 3, the IPCC noted that an independent witness had been identified at the scene whose evidence largely supported the complainant's version of events. CAPO was then asked to re-examine this allegation.

Upon the IPCC's recommendation, CAPO re-interviewed the witness, which shed further light on Allegation 3 by clarifying some ambiguities. Based on this additional information, CAPO considered there was reliable evidence to support the allegation. Therefore, Allegation 3 was re-classified to "Not Fully Substantiated".

The IPCC was satisfied with CAPO's follow-up actions and endorsed CAPO's findings in this case.