

真實投訴個案

Real complaint case

監警會全面審視一宗涉及一名精神上無行為能力人士的 警方調查所衍生的投訴個案

The IPCC holistically examines a complaint in relation to a police investigation involving a mentally incapacitated person

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)	採取的行動 Action to be taken
1 疏忽職守 Neglect of Duty	一名警長及一名警員(警員一) A Sergeant & a Police Constable (SGT & PC 1)	並無過錯 No Fault	無法證實 Unsubstantiated	-
2 疏忽職守 Neglect of Duty	警員一 PC 1	無法證實 Unsubstantiated	獲證明屬實 Substantiated	作出警告但無須將此事記入其分區報告檔案中 Warning without Divisional Record File (DRF) entry
3 疏忽職守 Neglect of Duty	四名值日官(職級: 警署警長、值日官一、二、三、四) Four Duty Officers (rank: Station Sergeant, DO 1, 2, 3 & 4)	無法證實 Unsubstantiated	無法證實 Unsubstantiated	-
4 行為不當 Misconduct	一名總督察及一名警司 A Chief Inspector & a Superintendent (CIP & SP)	並無過錯 No Fault	並無過錯 No Fault	-
5 捏造證據 Fabrication of Evidence	警員一 PC 1	無法證實 Unsubstantiated	無法證實 Unsubstantiated	-
6 行為不當 Misconduct	總督察及警司 CIP & SP	並無過錯 No Fault	無法完全證明屬實 Not Fully Substantiated	作出訓諭但無須將此事記入其分區報告檔案中 Advice without DRF entry
7 行為不當 Misconduct	一名警署警長 A Station Sergeant (SSGT)	無法證實 Unsubstantiated	無法證實 Unsubstantiated	-
8 行為不當 Misconduct	警長 SGT	獲證明屬實 Substantiated	獲證明屬實 Substantiated	紀律覆檢 Disciplinary Review
9 疏忽職守 Neglect of Duty	總督察、警署警長及警司 CIP, SSGT & SP	獲證明屬實 Substantiated	獲證明屬實 Substantiated	紀律覆檢 Disciplinary Review
10 濫用職權 Unnecessary Use of Authority	警司 SP	無法證實 Unsubstantiated	獲證明屬實 Substantiated	紀律覆檢 Disciplinary Review
11 行為不當 Misconduct	總督察及警司 CIP & SP	無法證實 Unsubstantiated	無法證實 Unsubstantiated	-
12 疏忽職守 Neglect of Duty	總督察 CIP	未經舉報但證明屬實 Substantiated Other Than Reported (SOTR)	未經舉報但證明屬實 SOTR	紀律覆檢 Disciplinary Review
13 疏忽職守 Neglect of Duty	警員一 PC 1	未經舉報但證明屬實 SOTR	未經舉報但證明屬實 SOTR	作出訓諭但無須將此事記入其分區報告檔案中 Advice without DRF entry
14 疏忽職守 Neglect of Duty	警員一 PC 1	未經舉報但證明屬實 SOTR	未經舉報但證明屬實 SOTR	作出警告但無須將此事記入其分區報告檔案中 Warning without DRF entry
15 疏忽職守 Neglect of Duty	警員一 PC 1	-	未經舉報但證明屬實 SOTR	作出警告但無須將此事記入其分區報告檔案中 Warning without DRF entry
16 疏忽職守 Neglect of Duty	一名警員(警員二) A Police Constable (PC 2)	-	未經舉報但證明屬實 SOTR	作出訓諭但無須將此事記入其分區報告檔案中 Advice without DRF entry
17 濫用職權 Unnecessary Use of Authority	警司 SP	-	未經舉報但證明屬實 SOTR	紀律覆檢 Disciplinary Review

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18 -	一名警員(警員三) A Police Constable (PC 3)	旁支事項 Outwith Matter	旁支事項 Outwith Matter	作出訓諭但無須將此事記入其分區報告檔案中 Advice without DRF entry
19 -	值日官二 DO 2	-	旁支事項 Outwith Matter	作出訓諭但無須將此事記入其分區報告檔案中 Advice without DRF entry
20 -	一名督察 An Inspector (IP)	-	旁支事項 Outwith Matter	作出訓諭但無須將此事記入其分區報告檔案中 Advice without DRF entry

個案重點

此個案反映監警會在審核一宗投訴個案中，如何仔細和全面地審查所有可用的證據，以評核投訴警察課的調查結果。投訴人(一名精神上無行為能力人士)在街上被截停，隨後因涉嫌「謀殺」被捕。警方調查後發現投訴人可能有不在犯罪現場的抗辯理由，需要進一步調查。當警方還在搜集不在場證據時，負責此案的警司決定召開一個臨時簡報會，向公眾交代投訴人被捕的消息，並在投訴人被扣留接近48小時後，以「誤殺」罪名提出起訴。在投訴人被起訴後不久，警司得悉投訴人的不在場證據被確立。投訴人於被扣留多數小時後獲准保釋。

投訴人的哥哥其後代表投訴人對數名警務人員作出投訴，共涉及11項指控(「疏忽職守」、「行為不當」、「捏造證據」及「濫用職權」)。經調查後，投訴警察課發現一名警長在一個已作出警誡的會面裡為投訴人錄取口供時，發問了引導性的問題。該名警司、一名總督察及一名警署警長亦不適當地延誤了警方調查投訴人的不在場證據。因此，投訴警察課將這些指控分類為「獲證明屬實」。至於其餘的指控，投訴警察課將它們分類為「並無過錯」或「無法證實」。此外，投訴警察課亦就不同警務人員在程序及文件記錄上的過失，多加了三項「未經舉報但證明屬實」的「疏忽職守」指控以及一項「旁支事項」。

監警會不認同一些「並無過錯」或「無法證實」的分類，並且認為刑事調查過程中，警方採取的一些行動並不恰當。就監警會提出的質詢，投訴警察課：

- 將一項有關沒有安排投訴人接受醫療護理的「疏忽職守」指控分類，由「無法證實」改為「獲證明屬實」；

Highlights of the case

This case demonstrates the meticulous and holistic approach that the IPCC has taken in examining the available evidence in its totality to assess CAPO's findings. The Complainant (COM), a mentally incapacitated person (MIP), was intercepted on the street and subsequently arrested for "Murder". Police investigation then revealed that COM might have an alibi defense, and that further enquiries would have to be conducted in this regard. Whilst the alibi evidence was being gathered, the Superintendent (SP) in charge of the case decided to hold a stand-up briefing to inform the public of COM's arrest, and eventually charged COM with the offence of "Manslaughter" after COM had been detained for almost 48 hours. Shortly after COM was charged, the SP was informed that COM's alibi was established. COM was eventually released on Police bail a few more hours later.

COM's elder brother later lodged a complaint on COM's behalf with 11 allegations ("Neglect of Duty (NOD)", "Misconduct", "Fabrication of Evidence" and "Unnecessary Use of Authority (UUOA)") against various officers. After investigation, CAPO found that a Sergeant (SGT) had put forward to COM some leading questions during a cautioned interview. The SP, a Chief Inspector (CIP) and a Station Sergeant (SSGT) had caused undue delay in investigating into COM's alibi. Hence, CAPO classified those allegations as "Substantiated". For the remaining allegations, CAPO classified them as either "No Fault" or "Unsubstantiated". In addition, CAPO registered three counts of "Substantiated Other Than Reported (SOTR)" (NOD) and an "Outwith" matter for some procedural and documentation errors made by different officers.

IPCC disagreed with some "No Fault" and "Unsubstantiated" classifications and considered that some actions taken in the criminal investigation were inappropriate. In response to the IPCC's queries, CAPO:

- reclassified an "NOD" allegation about failure to arrange medical care for COM from "Unsubstantiated" to "Substantiated";

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- 將一項有關拘留時間過長的「濫用職權」的指控分類，由「無法證實」改為「獲證明屬實」；
- 將一項有關不恰當地召開臨時簡報會的「行為不當」的指控分類，由「並無過錯」改為「無法完全證明屬實」；
- 就警方不恰當地以「誤殺」罪名起訴投訴人，多加一項「未經舉報但證明屬實」的「濫用職權」指控；
- 多加兩項「未經舉報但證明屬實」的「疏忽職守」指控及兩項「旁支事項」以反映警務人員在處理投訴人的刑事調查時的過失；
- 加重對涉事警務人員的處分；及
- 告知監警會警方已成立一個專責工作小組，以優化現時針對成為刑事調查疑犯的精神上無行為能力人士的處理程序。

個案背景

一名老人(受害人)於沙田美田路的籃球場上被一名身份不明的男性毆打後身亡。事件中的兩名目擊者其後向警方報案。個案由一名總督察負責調查，並由一名警司負責監督。

根據目擊證人的描述，一名警長及一名警員(警員一)在案發現場附近截查投訴人。據該名警長及警員一所指，投訴人當場承認曾推過受害人，因此他們以「謀殺」罪拘捕投訴人。經過在現場進一步查問後，警方得知投訴人是一間復康中心(中心)的病人，並在他身上找到一些藥物(幫助睡眠的鎮靜劑)。警員一致電予中心，了解到投訴人在案發時可能身在中心。警員一亦致電給投訴人的哥哥，請他到警署陪伴投訴人。到達警署後，警員一為投訴人補錄一份警誡供詞。

當天晚上，警務人員搜查投訴人的住所。不過，其中一名警務人員在查問投訴人前，沒有給予警誡。搜查完畢後，負責此個案的警司及總督察在投訴人的住宅外召開了一個臨時簡報會，向傳媒交代警方就著該案拘捕了一名男子。其後，一名督察和該名警長與投訴人進行了一次警誡後的錄影會面，但投訴人無法以容易理解的答案回應督察的問題。該名警長繼續向投訴人發問一些引導性問題。儘管投訴人在錄影會面的較早時段所給予的答覆含糊不清，該警長仍請投訴人示範如何將受害人推跌。第二天晚上，一名警署警長發

- reclassified an “UUOA” allegation about lengthy detention from “Unsubstantiated” to “Substantiated”;
- reclassified a “Misconduct” allegation about the inappropriate stand-up briefing from “No Fault” to “Not Fully Substantiated”;
- registered an additional “SOTR” count of “UUOA” for the Police’s inappropriate decision to charge COM with “Manslaughter”;
- registered two more “SOTR” counts of “NOD” and two more counts of “Outwith” matters to address the officers’ mistakes in their handling of COM during the criminal investigation;
- escalated the penalties against the officers concerned; and
- informed IPCC that the Police has formed a designated working group to enhance the existing procedures for handling MIP who are suspects of criminal investigations.

Case Background

An old man (Victim) died after being assaulted by an unknown male at the basketball court at Mei Tin Road, Shatin. The incident was seen by two witnesses, who reported the incident to the Police. The case was investigated by the CIP under the supervision of the SP.

Based on the description given by the witnesses, the SGT and a Police Constable (PC 1) intercepted COM for enquiry on the street near the crime scene. According to the SGT and PC 1, COM, when questioned on the spot, admitted having pushed the Victim and hence they arrested him for “Murder”. Further enquiry at the scene revealed that COM was an inmate of a rehabilitation centre (the Centre) and had some medicines (tranquillizers to help him sleep) on him. PC 1 called the Centre and learnt that COM might be at the Centre at the offence time. COM’s elder brother was contacted to go to the police station to accompany COM. After arriving at the police station, PC 1 took a post-recorded cautioned statement from COM.

On the same night, police officers searched COM’s residence. However, one of the officers failed to caution COM before asking him further questions. After the search, the SP and CIP held a stand-up briefing to the press about arresting a male in connection with the case on the ground floor outside the building where COM resided. Later, an Inspector (IP) and the SGT conducted a cautioned video recorded interview (VRI) with COM, who however was unable to give comprehensible answers to questions asked by the IP. The SGT continued to ask COM some leading questions, and invited COM to demonstrate how he had pushed the Victim onto the floor, despite the unclear answers given in the earlier part of the VRI. At night time on the following day, the SSGT found that, according to the records of the Centre,

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現根據中心的記錄，案發時投訴人正在中心服藥，並有一名中心職員照料他。警署警長隨即約見該名中心職員錄取口供。

翌日早上，總督察將上述事件向警司匯報。同日下午，警方為中心職員錄取口供。但是該名警司仍決定以「誤殺」罪起訴投訴人。投訴人當時已被拘留了接近48小時。落案起訴後不久，該名警司被告知，中心職員的口供證實了投訴人不在犯罪現場。數小時後，該警司決定撤回起訴投訴人，並在其母親到達警署後讓投訴人獲准保釋。

投訴人的哥哥隨即代表投訴人投訴數名警務人員，共涉及11項指控【指控一至十一】，包括沒有為投訴人安排合適成人在現場、誣衊投訴人承認犯罪、沒有安排投訴人服用藥物及接受治療、在錄影會面時發問引導性問題、不恰當地召開臨時簡報會、搜查住宅時誘使投訴人認罪、延誤調查、以及拘留投訴人的時間過長。

投訴警察課的調查

經調查後，投訴警察課認為刑事調查隊沒有盡早確認投訴人的不在場證據，因此將指控九(疏忽職守—延誤調查)分類為「獲證明屬實」。涉事的總督察和警署警長將接受紀律覆檢；另外會對該名警司作出警告以及將此事記入其分區報告檔案中。

再者，投訴警察課將指控八(行為不當—警長在錄影會面中發問引導性問題)分類為「獲證明屬實」；並建議對涉事的警長作出警告，但無須將此事記入其分區報告檔案中。

至於其餘的指控，投訴警察課將它們分類為「並無過錯」或「無法證實」。

投訴警察課亦發現(i)總督察和警員一沒有根據有關警察指引，把投訴人身上的藥物交給值日官保管；及(ii)警員一在警察記事簿中錯誤地紀錄在投訴人的住宅搜查時檢走的物件數量，以及沒有正確記錄有否要求投訴人再次確認自己是否明白補錄警誡供詞上的聲明。投訴警察課因此對他們多加三項「未經舉報但證明屬實」的「疏忽職守」指控【指控十二至十四】。此外，投訴警察課亦發現一名警員(警員三)在警察記事簿中錯誤紀錄在警署為投訴人提供飲料的時間，因此對他多加了一項「旁支事項」。

COM was taking medicine at the Centre during the offence time with a staff member of the Centre (the Centre Staff) attending to him. The SSGT then made an appointment with the Centre Staff for statement taking.

Next morning, the CIP reported the above to the SP. In the afternoon, a statement was taken from the Centre Staff. The SP, however, decided to charge COM with "Manslaughter". COM had been detained for almost 48 hours at that time. Shortly after the charge was laid, the SP was informed that COM's alibi was confirmed in the Centre Staff's statement. A few hours later, the SP decided to drop the charges against COM and released COM on police bail after his mother arrived at the police station.

COM's elder brother, on behalf of COM, lodged the instant complaint with 11 allegations against various police officers [Allegations 1 to 11], including failure to arrange an appropriate adult to be present at the scene, fabrication of COM's admission, failure to arrange medication and medical treatment, asking leading questions during the VRI, inappropriate stand-up press briefing, inducement for admitting the offence during house search, delay in investigation and lengthy detention of COM.

CAPO's Investigation

After investigation, CAPO considered that the crime team had failed to take the earliest opportunity to verify COM's alibi. Hence CAPO classified Allegation 9 (NOD – causing undue delay in the investigation) as "Substantiated". Disciplinary review would be initiated against the CIP and the SSGT whereas a "warning with Divisional Record File (DRF) entry" would be issued to the SP.

Moreover, CAPO classified Allegation 8 (Misconduct – the SGT's asking leading questions in the VRI) as "Substantiated"; and proposed the SGT be "warned without DRF entry".

As to the remaining allegations, CAPO classified them either as "No Fault" or "Unsubstantiated".

CAPO also found that (i) the CIP and PC 1 had failed to pass the medicine found on COM to the Duty Officer for safekeeping in accordance with the relevant police guideline; and (ii) PC 1 had made wrong notebook records in relation to the number of items seized during the house search, and failed to properly record his reassurance of COM's understanding of the ending declaration of the post-recorded cautioned statement. CAPO therefore registered three "SOTR" counts of "NOD" against them [Allegations 12 to 14]. In addition, an officer (PC 3) was found to have made a mistake in his police notebook in relation to the time of serving water on COM at the police station and thus CAPO registered it as an "Outwith" matter.

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監警會的觀察

監警會經審視個案後有以下的觀察：

指控一【疏忽職守】—有關警長和警員—沒有在拘捕投訴人時安排一名合適成人在場陪同（投訴警察課的分類：「並無過錯」）

- 監警會認為，由於沒有任何獨立證據顯示投訴人在街上被截停時的行為舉止為何，所以很難斷定當時的情況是否需要安排一名合適成人在現場。因此，這項指控應該被分類為「無法證實」而不是「並無過錯」。

指控二【疏忽職守】—有關沒有安排投訴人服用藥物及接受治療（投訴警察課的分類：「無法證實」）

- 投訴人是一位精神上無行為能力人士，需定時服用他帶在身上的藥物。在這種情況下，監警會認為警員一應在投訴人被捕後，安排他服用藥物及接受治療，但他沒有。因此，對警員一的指控應該分類為「獲證明屬實」，而非分別於指控十二中，連同總督察沒有把藥物交給值日官的指控上加添一項「未經舉報但證明屬實」的「疏忽職守」指控（總督察仍然為指控十二的涉事警員，將受到紀律覆檢）。

指控六【行為不當】—有關未經徹底調查便召開臨時簡報會（投訴警察課的分類：「並無過錯」）

- 當警方在現場查問時，經已發現投訴人可能有不在場證據。及時向公眾交代一宗「謀殺」案的資訊及發展固然重要，但更恰當的做法是警方應在召開臨時簡報會前，確認或反駁投訴人的不在犯罪現場聲稱。因此，監警會認為應將指控分類更改為「無法完全證明屬實」而不是「並無過錯」。

指控八【行為不當】—有關警長在錄影會面中發問引導性問題（投訴警察課的分類：「獲證明屬實」，跟進行動：「作出警告但無須將此事記入其分區報告檔案中」）

- 監警會認同投訴警察課的指控分類，但認為僅對涉事警員作出警告而無須將此事記入其分區報告檔案中的處分未能充分反映指控的嚴重性。監警會認為應該加重處分。

The IPCC's Observations

Upon examination of the case, the IPCC has the following observations:-

Allegation 1 [NOD] – concerning the failure of the SGT and PC 1 to arrange an appropriate adult to be present at the scene (CAPO's classification: "No Fault")

- The IPCC considered that, in the absence of any independent evidence to show COM's demeanour when he was intercepted on the street, it would be difficult to conclude if the situation should have warranted an arrangement of an appropriate adult's presence there and then. Therefore, this allegation should be classified as "Unsubstantiated" instead of "No Fault".

Allegation 2 [NOD] – concerning PC 1's failure to arrange medication and medical care for COM (CAPO's classification: "Unsubstantiated")

- COM was an MIP who needed to regularly take the medication found on him. Under such circumstances, the IPCC considers that PC 1 should arrange medication and medical care for COM after his arrest, but he failed to do so. Hence, PC 1 should be found substantiated for this allegation, instead of being separately registered in the "SOTR" count of "NOD" along with the CIP in Allegation 12 for failing to handle the medicine (the CIP remains as the officer concerned under Allegation 12 and would be subject to "Disciplinary Review").

Allegation 6 [Misconduct] – concerning the holding of a stand-up press briefing prior to a thorough investigation (CAPO's classification: "No Fault")

- During police enquiry at the scene, it was revealed that COM might have an alibi defense. Although it was important to timely release the case information and development to the public for a "Murder" case, it would be more appropriate for the police to consider holding a stand-up press briefing after verifying or rebutting the alibi. The IPCC therefore considered that this allegation should be reclassified as "Not Fully Substantiated" instead of "No Fault".

Allegation 8 [Misconduct] – concerning the SGT's asking leading questions during VRI (CAPO's classification: "Substantiated", action: "warning without DRF entry")

- Whilst agreeing to the CAPO classification, the IPCC considered that the action of "warning without DRF entry" was insufficient to address the seriousness of the allegation. It should be escalated.

真實投訴個案

Real complaint case

指控十【濫用職權】—有關不合理地拘留投訴人超過48小時(投訴警察課的分類：「無法證實」)

- 監警會不認同投訴警察課的指控分類，因為在投訴人被扣留未滿48小時之前，中心職員經已證實了他不在犯罪現場。因此，投訴人應該早點獲釋。所以這項指控應該分類為「獲證明屬實」。

指控十五【疏忽職守(未經舉報但證明屬實)】—有關警員一沒有正確記錄投訴人於現場的口供

- 警員一的記事簿內記錄了投訴人簡潔及精確地承認罪行。雖然沒有獨立證據確定投訴人和兩名執行拘捕任務的警務人員(包括警員一)於拘捕現場的實際對話，監警會認為，考慮到(從錄影會面可見)投訴人並沒有清晰回答問題的能力，投訴人和警員一於現場的對話不會是如警員一的記事簿中所記錄。因此，監警會認為應該就著警員一沒有正確記錄投訴人於現場的口供，增加一項「未經舉報但證明屬實」的「疏忽職守」指控。

指控十六【疏忽職守(未經舉報但證明屬實)】—有關搜查人員(警員二)在搜查住宅期間向投訴人作出提問前沒有給予警誡

- 監警會認為，由於投訴人是被捕者，警員二在搜查其住宅期間向投訴人作出任何提問之前，應該作出警誡。警員二查問投訴人有關他在案發時所穿的衣服之前，並沒有作出警誡。監警會認為應該向警員二增加一項「未經舉報但證明屬實」的「疏忽職守」指控。

指控十七【濫用職權(未經舉報但證明屬實)】—有關警司以「誤殺」罪起訴投訴人

- 投訴警察課的調查顯示，投訴人被起訴之前，已證明他的不在場證據。因此，警司起訴投訴人的決定並不恰當。監警會認為應該向警司提出一項「未經舉報但證明屬實」的「濫用職權」指控。

「旁支事項」—有關督察沒有停止錄影會議

- 從錄影會議可觀察到，投訴人沒有能力給予清晰的答覆。在這種情況之下，該名督察應該在警長繼續提問之前，停止錄影會議，但他沒有。因此，應該就這事記錄一項「旁支事項」。

Allegation 10 [UUOA] – concerning the unreasonable detention of COM for more than 48 hours (CAPO's classification: "Unsubstantiated")

- The IPCC disagreed with CAPO's classification on the rationale that the alibi had already been confirmed by the Centre Staff before COM was detained for 48 hours. Therefore COM should be released earlier. Hence, this allegation should be reclassified as "Substantiated".

Allegation 15 [NOD (SOTR)] – concerning PC 1's failure to accurately record COM's response at the scene

- In PC 1's police notebook, it was recorded that COM admitted the offence in a concise and precise manner. Although there is no independent evidence to ascertain the exact communication between COM and the two arresting officers (including PC 1) on the spot of the arrest, the IPCC considered that, given COM's inability in answering questions clearly (as shown in the VRI), the conversation between COM and PC 1 at the scene could not be in the manner as described by PC 1 in his notebook. Hence, an "SOTR" count of "NOD" should be registered against PC 1 for his failure to accurately record what COM had said on the street.

Allegation 16 [NOD (SOTR)] – concerning the searching officer (PC 2)'s omission of cautioning COM before asking questions during house search

- The IPCC opined that PC 2 should have cautioned COM before asking him any questions during the house search, as COM was an arrestee. PC 2, however, asked COM about which outfits he had worn at the offence time without administering caution beforehand. An "SOTR" count of "NOD" should be registered against PC 2.

Allegation 17 [UUOA (SOTR)] – concerning the SP's charging COM with "Manslaughter"

- CAPO investigation showed that before the time of charging, COM's alibi had already been established. Hence the SP's decision of laying charge against COM was inappropriate. An "SOTR" count of "UUOA" should be registered against the SP.

"Outwith" matter – concerning the IP's failure to stop the VRI

- It is observed in the VRI that COM was unable to give clear answers. Under such circumstances, the IP should have stopped the VRI before the SGT asked further questions. As the IP failed to do so, an "Outwith" matter should be registered in this regard.

真實投訴個案

Real complaint case

「旁支事項」—有關沒有安排合適成人於進行羈留搜查期間在現場

- 當警方得悉投訴人是一名精神上無行為能力人士，所有涉及投訴人的調查都在投訴人的哥哥在場的情況下進行—唯獨是其中一次於警署進行的羈留搜查沒有。監警會認為應就該值日官(值日官二)的疏忽提出一項「旁支事項」。

涉及指控九、十及十七的警司的處分—有關延誤調查、過長拘留及不恰當地起訴投訴人(跟進行動:「作出警告及將此事記入其分區報告檔案中」)

- 被投訴人九負責監督該「謀殺」案的整體調查，所以應承擔最終的責任。因此對該警司的處分應由「作出警告及將此事記入其分區報告檔案中」升級為「紀律覆檢」。

改善建議—優化現行處理精神上無行為能力人士的程序

- 現時警方既定的程序只要求在為精神上無行為能力人士(不論該位精神上無行為能力人士是證人或疑犯)錄取口供的時候，有一位合適成人在場，但沒有明確的指引列出當精神上無行為能力人士成為刑事調查的對象時，應如何處理。警方應該考慮優化有關對精神上無行為能力人士進行刑事調查時的指引。

由於此個案的性質嚴重，當中亦涉及公眾利益，會方決定將此投訴個案的調查交由監警會的嚴重投訴個案委員會審核。經過和監警會討論後，投訴警察課決定接納監警會的看法。就著對警務人員採取的跟進行動，投訴警察課把在錄影會面中提出引導性問題【指控八】的警長的處分，由「作出警告但無須記入分區報告檔案」提升至「紀律覆檢」。對於涉事警司延誤調查、過長拘留及不恰當地起訴投訴人【指控九、十及十七】的處分，則由「作出警告及將此事記入其分區報告檔案中」升級為「紀律覆檢」。至於投訴警察課因應監警會的觀點而須更改分類的調查結果【指控六、十五及十六】，以及新增的「旁支事項」，投訴警察課已向有關的警務人員作出不同的處分(包括「作出訓諭但無須記入分區報告檔案」及「作出警告但無須記入分區報告檔案」)，詳情請參考指控總表。除此之外，警方亦成立了一個工作小組，檢視如何優化處理涉及精神上無行為能力人士案件的程序。

監警會通過了這宗個案中投訴警察課的調查結果。

“Outwith” matter – concerning omission of arranging an appropriate adult to be present during one of the custodial searches

- Upon knowing that COM was an MIP, all the investigative actions on COM were carried out in the presence of COM's elder brother, except for one of the custodial searches conducted on COM at the Police station. An “Outwith” matter should be registered against the relevant Duty Officer (DO 2) for this negligence.

Penalty against the SP in connection with Allegations 9, 10 and 17 – concerning the delay in investigation, lengthy detention and inappropriate charging of COM (action: “warning with DRF entry”)

- COMEE 9 was the supervisor of the overall investigation of the “Murder” case and should hold the ultimate responsibility. Hence, the penalty against the SP should be escalated from “Warning with DRF entry” to “Disciplinary Review”.

Further Improvements – enhancing existing procedures for handling MIP

- Currently, the laid-down police procedure only requires an appropriate adult to be present when taking a statement from an MIP, irrespective of whether the MIP was a witness or a suspect. There is no specific guideline on the handling of an MIP if he is the subject of criminal investigations. The Police should consider enhancing the guidelines with respect to conducting criminal investigation on an MIP.

In view of the serious nature of this case and the public interest arising therefrom, this complaint investigation was monitored by the Serious Complaints Committee of the IPCC. After discussions with the IPCC, CAPO subscribed to the IPCC's views. For actions to be taken against the officers, CAPO escalated the penalty against the SGT for asking leading questions in the VRI and his accountability in the investigation from “Warning without DRF entry” to conducting “Disciplinary Review” [Allegation 8]; and the penalty against the SP for the delay in investigation, lengthy detention and inappropriate charging of COM from “Warning with DRF entry” to “Disciplinary Review” [Allegations 9, 10 & 17]. For the allegations which were reclassified as a result of CAPO's subscription of the IPCC's view [Allegations 6, 15 & 16] and the newly registered “Outwith” matters, different penalties, ranging from “Advice without DRF entry” to “Warning without DRF entry”, were issued to the officers concerned (For details, please refer to the allegation summary table). In addition to the above, the Police also formed a designated working group to explore enhancement of the existing procedures for handling MIP.

IPCC endorsed CAPO's findings in this case.