

Report of the IPCC 2003

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Vision, Mission and Values of the IPCC

Our Vision

- That Hong Kong has a fair, effective and transparent police complaints system which ensures that the investigation of each and every public complaint against the Police is conducted justly, promptly, thoroughly and without prejudice.

Our Mission

- Independent, impartial and thorough monitoring of the results of investigation conducted by the Complaints Against Police Office into public complaints against the Police.
- Identification of and making recommendations on ways and means of improving the thoroughness, transparency, fairness and speed of the police complaint investigation process.

Our Values

- Unbiased and persistent pursuit of truth
- Thorough and attentive examination of investigation results
- Reasonable, fair and prompt in making judgements
- Promotion of good procedures, practices, and values which would minimize police complaints
- Efficient and effective use of resources
- Strict observance of the code of confidentiality

Biographies of IPCC Members



Mr Robert TANG Ching, SC, JP

Chairman, IPCC

Education and Professional Qualifications

Barrister (Senior Counsel)

Occupation

Senior Counsel

Major Public Service

- Member, Complaints Committee of the ICAC
- Non-executive Director, Mandatory Provident Fund Schemes Authority
- Member, Mandatory Provident Fund Schemes Authority Management Board
- Member, Exchange Fund Advisory Committee
- Former Chairman, Town Planning Appeal Board Panel (1996-2000)
- Former Chairman, Hong Kong Bar Association (1988-1990)
- Former Chairman, Securities and Futures Appeals Panel (1995-1999)
- Recorder of the High Court (1995-)



Dr Hon Eric LI Ka-cheung, GBS, JP,

Vice-chairman, IPCC

Education and Professional Qualifications

Adjunct Professor, School of Accountancy, Chinese University of Hong Kong

Honorary Doctor of Laws, University of Manchester, UK

Honorary Doctor of Social Sciences, Hong Kong Baptist University

Honorary Alumnus, London Business School

Honorary Fellow, Chinese University of Hong Kong

Honorary Fellow, Hong Kong Polytechnic University

BA in Economics (Honours), University of Manchester, UK

Fellow, Hong Kong Society of Accountants

Fellow, Institute of Chartered Accountants in England and Wales

F CPA, CPA Australia

Fellow, Institute of Chartered Secretaries and Administrators, UK

Fellow, The Hong Kong Institute of Company Secretaries

Honorary Hong Kong Accounting Technician

Registered Financial Planner, Society of Registered Financial Planners

Honorary Fellow, The Hong Kong Institute of Housing

Certified Public Accountant

Occupation

Certified Public Accountant

Major Public Service

- Member, Legislative Council
- Chairman, Public Accounts Committee
- Member, Deposit-taking Companies Advisory Committee
- Member, Inland Revenue Department User's Committee
- Member, Court of the Hong Kong Polytechnic University
- Honorary President, Hong Kong PHAB Association
- Member, Vetting Committee of the Professional Services Development Assistance Scheme
- Former Chairman, Commission on Youth (1991-2001)



Hon YEUNG Yiu-chung, BBS,
Vice-chairman, IPCC

Education and Professional Qualifications

BSocSc, Chinese University of Hong Kong

Diploma in Education, Chinese University of Hong Kong

Occupation

Secondary School Principal

Major Public Service

- Member, Legislative Council
- Hong Kong Deputy to the Ninth and Tenth National People's Congress of the People's Republic of China
- Chairman, Panel on Education, Legislative Council
- President, Hong Kong Federation of Education Workers
- Member, Education Commission
- Vice Convenor, Executive Committee, Hong Kong Culture Association
- Vice-chairman, Joint Committee for the Promotion of the Basic Law of Hong Kong
- Vice-chairman, Hong Kong Chinese Reform Association
- Member, Tung Wah Group of Hospitals Advisory Board



Dr Hon LO Wing-lok, JP,
Vice-chairman, IPCC

Education and Professional Qualifications

MBBS, HK
MRCP, UK
DTM&H, London
FHKCP (Fellow, Hong Kong College of Physicians)
FHKAM (Medicine) (Foundation Fellow of Hong Kong Academy of Medicine)
FRCP, Edinburgh

Occupation

Doctor

Major Public Service

- Member, Legislative Council
- Deputy Chairman, Panel on Health Services, Legislative Council
- President, Hong Kong Medical Association
- Member, Medical Council of Hong Kong
- Member, Advisory Council on Food and Environmental Hygiene
- Member, Hong Kong Council on Smoking and Health
- Member, Action Committee Against Narcotics
- Council Member, Hong Kong Society for Infectious Diseases
- Member, Scientific Committee of the Hong Kong Advisory Council on AIDS



Dr LO Chi-kin,
Member, IPCC

Education and Professional Qualifications

PhD (Economics), London School of Economics and Political Science
BSocSc, University of Hong Kong

Occupation

Managing Director
Company Director

Major Public Service

- Vice-chair, Oxfam Hong Kong
- Board Member of Hong Kong Policy Research Institute
- Member, Standing Committee on Agency Development & Partnership, Hong Kong Council of Social Service



Mrs Grace TAM CHEUNG Kit-ying,
Member, IPCC

Education and Professional Qualifications

MEd, Diploma in Education, Chinese University of Hong Kong
BA (Honours), Advanced Diploma in Education, University of Hong Kong
LLB, Beijing University
Registered Teacher

Occupation

School Principal

Major Public Service

- Member, Committee on Home-School Cooperation
- Member, Insurance Advisory Committee
- Member, Panel of the Police Witness Protection Review Board
- Member, Junior Secondary Education Assessment Committee
- Chairman, Hong Kong Children and Youth Services Executive Committee
- Chairman, Hong Kong Schools Dance Association



Mr CHAN Bing-woon, SBS, JP,
Member, IPCC

Education and Professional Qualifications

LLB (London)
Member, The Chartered Institute of Arbitrators (East Asia Branch)

Occupation

Solicitor
Notary Public
China-Appointed Attesting Officer
Company Director
HKIAC-Accredited Mediator

Major Public Service

- Member, Eastern District Council
- Chairman, Appeal Board (Amusement Game Centres)
- Member, Supervisory Board, Hong Kong Housing Society
- Member, Hong Kong Housing Authority
- Member, Appeal Board (Waste Disposal)

- Member, Appeal Board Panel (Dumping at Sea)
- Member, Solicitors Disciplinary Tribunal Panel
- Member, Advisory Council on Food and Environmental Hygiene
- Member, North Point East Area Committee



Dr LO Chi-keung, BBS,
Member, IPCC

Education and Professional Qualifications

MBBS, University of Hong Kong
FHKAM (Radiology), Hong Kong Academy of Medicine

Occupation

Doctor (private practice)

Major Public Service

- Vice-chairman, Democratic Alliance for the Betterment of Hong Kong
- Member, Consumer Council
- Member, Council of the Hong Kong Baptist University
- Member, Court of the Hong Kong Baptist University
- Member, Yau Tsim Mong District Fight Crime Committee
- Member, Yau Ma Tei Area Committee
- Former Member, Yau Tsim Mong District Council (2000-2003)
- Former Member, Hong Kong War Memorial Pensions Appeal Board (1995-2003)
- Former Member, Administrative Appeals Board (1997-2003)



Mr Justin YUE Kwok-hung,
Member, IPCC

Education and Professional Qualifications

BA (Honours), University of Hong Kong

Occupation

Chief Executive Officer

Major Public Service

- Chairman, Group "18" (Non-manufacturing I) and Member, Federation of Hong Kong Industries
- Member, Trade and Industry Advisory Board

- Member, Information Infrastructure Advisory Committee
- Member, Advisory Committee on Code of Practice for Recognized Certification Authorities
- Member, Hong Kong Logistics Development Council
- Member, Trade and Industry Department Textiles Customer Liaison Group
- Member, Textiles Advisory Board
- Member, Hong Kong Garment Manufacturers Association
- Member, Textile Council, General Committee



Mr Alan LEONG Kah-kit, SC,
Member, IPCC

Education and Professional Qualifications

LLB (University of Hong Kong)
LLM (University of Cambridge, UK)
Barrister (Senior Counsel)

Occupation

Senior Counsel

Major Public Service

- Chairman, Appeal Board (Water Pollution Control)
- Director, Applied Research Council
- Member, Committee on Bilingual Legal System
- Member, Criminal and Law Enforcement Injuries Compensation Boards
- Former Chairman, Hong Kong Bar Association (2001-2002)



Ir Edgar KWAN,
Member, IPCC

Education and Professional Qualifications

BSc (Eng), University of Hong Kong
MSc (Eng), University of Hong Kong
MBA, Chinese University of Hong Kong
Fellow, The Hong Kong Institution of Engineers
Fellow, The Institution of Civil Engineers, UK
Fellow, The Institution of Structural Engineers, UK
Chartered Engineer, UK
Registered Professional Engineer (Civil and Structural)

Occupation

Civil Engineer

Major Public Service

- Chairman, Construction Industry Training Authority (CITA)
- Hon Secretary, Hong Kong Construction Association
- Member, Appeal Tribunal Panel (Buildings)
- Co-opted Member, Broadcasting Authority Codes of Practice Committee
- Co-opted Member, Broadcasting Authority Complaints Committee
- Council Member, Hong Kong Institution of Engineers
- Member, Building and Civil Engineering Training Board, Vocational Training Council
- Member, Engineers Registration Board



Dr SHUM Ping-shiu, BBS, JP,
Member, IPCC

Education and Professional Qualifications

MBBS (HK)
FRC Psy (UK)
FRANZCP
FHKAM (PSYCHIATRY)

Occupation

Doctor

Major Public Service

- Member, Long-term Prison Sentences Review Board
- Former Member, Elderly Commission (1997-2003)
- Former Member, Mental Health Review Tribunal (1990-1999)
- Former Member, Medical Council of Hong Kong (1995-1996)



Professor Daniel SHEK Tan-lei, BBS, JP,
Member, IPCC

Education and Professional Qualifications

PhD (Psychology), University of Hong Kong
BSocSc, University of Hong Kong
Fellow, Hong Kong Psychological Society

Occupation

Professor

Major Public Service

- Chairman, Sub-committee on Research of the Action Committee Against Narcotics
- Member, Action Committee Against Narcotics
- Member, Fight Crime Committee
- Vice-chairman, Heep Hong Society
- Honorary Treasurer, Society of Boys' Centres
- Chairman, Committee on Social Development, Hong Kong Council of Social Service
- Consulting Editor, Journal of Clinical Psychology
- Former Member, Commission on Youth (1995-2003)
- Former Member, Nursing Council of Hong Kong (1997-2003)



Mr Daniel CHAM Ka-hung, MH,
Member, IPCC

Education and Professional Qualifications

MBA, University of Hull, UK
FCMI (Fellow of Chartered Management Institute, UK)
Diploma in Recreation Management, Chinese University of Hong Kong
Diploma in Management Studies, Hong Kong Polytechnic University

Occupation

Company Director

Major Public Service

- Member, Yuen Long District Council
- Chairman, Yuen Long District Fight Crime Committee
- Chairman, Tin Shui Wai Area Committee
- Member, Town Planning Board
- Member, Metro Planning Committee

- Member, Security and Guarding Services Industry Authority
- Member, Committee on Community Support for Rehabilitated Offenders
- Member, Hospital Authority N.T. Region Advisory Committee
- Former Member, Summer Youth Programme Committee (1994-2002)



Dr Charles KOO Ming-yan, MH,
Member, IPCC

Education and Professional Qualifications

PhD (Honoris Causa) in Business Management, Pacific Western University, USA

MA in Journalism, University of Wisconsin-Madison, USA

MSc in Education, University of Southern California, USA

Diploma in Communication, Hong Kong Baptist University

Fellow, The Royal Society for the Encouragement of Arts, Manufactures and Commerce, UK (FRSA)

Fellow, The Institute of Commercial Management, UK (FICM)

Full Member, Institute of Public Relations, UK (MIPR)

Professional Manager, The Professional Institute of Management of Canada (PMgr)

Occupation

Consultant

Major Public Service

- Member, Causeway Bay Area Committee
- Member, Management and Executive Committees, SARDA
- Co-opted Member, Wan Chai District Council Public Works Committee
- Member, Wan Chai District Council Development of Domestic Economy Committee
- Former Chairman, Wan Chai District Fight Crime Committee (1998-2002)
- Former Chairman, Causeway Bay Area Committee (1998-2000)
- Former Member, Fight Crime Committee Publicity and Promotion Sub-committee (1996-2000)



Mr Edward PONG Chong, BBS, JP,
Member, IPCC

Education and Professional Qualifications

MMet, University of Sheffield, England

BSc, University of Manchester, England

Chartered Engineer

Member, Institute of Materials, Minerals & Mining, UK

Member, The Hong Kong Institution of Engineers

Occupation

Company Executive Director

Major Public Service

- Chairman, Security Services Training Board, Vocational Training Council
- Vice-chairman, Security and Guarding Services Industry Authority
- Member, Appeal Board Panel (Environmental Impact Assessment)
- Member, Tuen Mun District Council
- Member, Tuen Mun District Fight Crime Committee
- Member, Tai Hing and Shan King Area Committee
- Adjudicator, Immigration Tribunal



Mr HUI Yung-chung, JP,
Member, IPCC

Education and Professional Qualifications

BA (Honours), University of Hong Kong

Certificate in Education, University of Hong Kong

Occupation

Assistant Principal

Major Public Service

- Chairman, Southern District Fight Crime Committee
- Chairman, Ap Lei Chau Area Committee
- Member, Appeal Panel (Housing)
- Member, Sub-committee on Preventive Education and Publicity of the Action Committee Against Narcotics
- Adjudicator, Panel of Adjudicators (Control of Obscene and Indecent Articles)



Professor Benjamin TSOU Ka-yin, BBS,
Member, IPCC

Education and Professional Qualifications

PhD (UC, Berkeley)
MA (Linguistics), Harvard University
Fellow, Institute of Linguists (UK)
Member, Royal Academy of Overseas Sciences (Belgium)

Occupation

Director, Language Information Sciences Research Centre, City University of Hong Kong
Professor (Chair) of Linguistics and Asian Languages, City University of Hong Kong

Major Public Service

- Member, Chinese Language Interface Advisory Committee
- Member, Working Group on Characters for Chinese Computer System
- Former Member, Sir Edward Youde Memorial Fund Council (1987-2003)
- Former Member, Council of the Open University of Hong Kong (1991-1994)



Mr Frederick TONG Kin-sang
(Representative of The Ombudsman)
Ex-officio Member, IPCC

List of IPCC Lay Observers

1. Mr Thomas CHAN Siu-kam, JP
2. Mr CHAN Tak-chor, MH
3. Mr Tony CHAN Tak-wai
4. Mr CHAN Tung, BBS, JP
5. Mr CHAN Wai-chung
6. Mr CHAN Wai-ming, MH
7. Mr Dominic CHAN Wing-kam
8. Mr Joseph CHAN Yuek-sut, BBS
9. Ms CHAU Chuen-heung, MH, JP
10. Mr CHAU How-chen, SBS, JP
11. Mr Francis CHAU Yin-ming, MH
12. Mrs Betty CHENG YUEN Pui-yan
13. Mr CHEUNG Fo-tai, MH
14. Mr Christopher CHEUNG Wah-fung, JP
15. Ms Susanna CHING Che-man
16. Dr CHIU Chun-bong, JP
17. Mr CHONG Kam-ning, MH
18. Mr CHOW Yick-hay, BBS
19. Ms Maureen CHU Mau-lam
20. Rev CHU Yiu-ming
21. Mr Christopher CHUNG Shu-kun, MH, JP
22. Mr FUNG Kam-chiu, MH
23. Mr HAU Shui-pui, BBS
24. Mr IP Kwok-chung, BBS, JP
25. Mr KO Tam-kan
26. Mr Billy KONG Churk-hoi, MH, JP
(till 31 August 2003)
27. Mr KWOK Chun-wah, MH
(till 31 August 2003)
28. Dr Lawrence LAM Chi-kit, MH, SBStJ
29. Mr Stewart LAM Kin-ko
30. Dr Conrad LAM Kui-shing, JP
31. Mr Wilfred LAM Kwok-hing, JP
(till 31 August 2003)
32. Mr LAM Man-fai, JP
33. Ms Leona LAM Wai-ling, JP
34. Mrs Peggy LAM PEI Yu-dja, GBS, JP
35. Mr Ivan LAU Ho-kit
36. Mr Francis LAU Mo-kaye, MH
37. Ir Kenneth LAU To-koon
38. Mr LAU Wai-wing
39. Ms Elizabeth LAW
40. Miss Cecilia LEE Sau-wai
41. Mr LEUNG Che-cheung, MH
42. Mr LEUNG Kin-man, MH
43. Mr LEUNG Sau-chi, JP
44. Mr David LI Ka-fai
45. Mr LIANG Tin, BBS
(till 6 March 2003)
46. Mr Bruce LIU Sing-lee
47. Mr LO Kwok-hung, MH, SBStJ
48. Mr Lawrence LOUR Tsang-tsay
(till 31 August 2003)
49. Miss Rosanda MOK Ka-han
50. Mr Thomas PANG Cheung-wai, JP
51. Mr Joseph PANG Yuk-wing, JP
52. Mr David PONG Chun-ye

53. Mr Peter PUN Yen-shou, JP (till 31 August 2003)
54. Mr Erik Ignatius SHUM Sze-man
55. Mr Edinson SO Hoi-pan, BBS, JP
56. Mr SUEN Kai-cheong, MH, JP
57. Mr TAM Kwok-kiu, MH
58. Ms Christina TING Yuk-chee, BBS, JP
59. Dr Michael TSUI Fuk-sun
60. Mr Aaron WAN Chi-keung, JP
61. Mr Justein WONG Chun, JP
62. Mr WONG Kam-chi, MH
63. Mr WONG King-cheung, JP
64. Prof WONG Siu-lun, BBS, JP
65. Ir Billy WONG Wing-hoo
66. Mr WU Chor-nam, JP
67. Hon Henry WU King-cheong, BBS, JP
68. Mr WU Kwok-cheung, MH
69. Mr Christ YIP Fong-keung, MH
70. Mr Jonathan YU Hoy-gin, JP
71. Mrs YUEN CHAN Po-hing

Chapter 1 Major Activities of the Year

Introduction

- 1.1 The Independent Police Complaints Council (IPCC) is an independent body whose Members are appointed by the Chief Executive. Its main function is to monitor and review the investigations conducted by the Complaints Against Police Office (CAPO) of the Hong Kong Police Force (HKPF) of complaints made against the Police by the public.
- 1.2 To further promote the independent status of the IPCC and enhance its monitoring role in the police complaints system, the IPCC has instituted a programme geared at continuous improvement. This chapter summarizes some of the major activities of the IPCC in 2003.

Performance Pledges of the IPCC

- 1.3 To provide a higher level of service, the IPCC promulgated in 1998 a set of performance pledges in terms of the standard response time in handling public enquiries and monitoring complaints against the Police. The standard response time for monitoring of complaints is measured from the date of receipt of CAPO's final investigation reports. The performance of the IPCC in meeting its pledges in 2003 is summarized below:

	Performance Target	No. of Enquiries/ Cases Processed Within Target	% Within Performance Target
Standard response time for enquiries			
By telephone or in person	Immediately	873 (789)	100 (100)
In writing	Within ten days	248 (340)	100 (100)
Standard response time for monitoring of complaints			
Normal cases	Less than 3 months	2,551 (2,498)	99.8 (99.0)
Complicated cases	Within three to six months	1,006 (1,081)	99.3 (99.6)
Appeal cases	Within three to six months	123 (109)	99.2 (100)

Figures in bracket denote the performance achieved for 2002.

- 1.4 With experience gained from the past years' operation, the IPCC will strive to maintain its high level of performance in future.

Proposal to establish the IPCC as a Statutory Body

- 1.5 In connection with the Administration's plans to establish the IPCC as a statutory body, the IPCC held special meetings, on top of regular Council meetings, to scrutinize and discuss the legislative proposals drawn up by the Security Bureau. Besides, a joint working group of the IPCC and the Security Bureau was formed to examine related issues, in particular the setting up of an independent IPCC Secretariat which was one of the major proposals in the bill.
- 1.6 In October 2003, the IPCC was informed by the Security Bureau that the bill would not be introduced into the Legislative Council in the 2003-04 legislative year after an assessment of the Bureau's overall work programme.

Talks at Secondary Schools

- 1.7 As part of its on-going publicity programme, the IPCC continued to organize talks at secondary schools in 2003. The talks aimed at promoting awareness of the operation of the police complaints system and the Council's work among the younger generation.

The IPCC Observers Scheme and Briefings for Newly Appointed Lay Observers

- 1.8 In 2003, nine Lay Observers were newly appointed by the Secretary for Security to observe investigations by CAPO/Formation investigating officers and Informal Resolution interviews, while five Lay Observers retired and one passed away during his term of appointment. Two briefings were conducted by the IPCC Secretariat on 26 February 2003 and 24 September 2003 respectively for the new Observers to familiarize them with the police complaints system and the operation of the Observers Scheme. As at 31 December 2003, there were altogether 65 Lay Observers.
- 1.9 In 2003, 231 observations (72 for Informal Resolution and 159 for others) were arranged under the Scheme, among which 42 visits were conducted by IPCC Members and 189 visits were conducted by Lay Observers.

Visit of African Ombudsman Association to the IPCC

- 1.10 On 14 March 2003, Mr L. A. MAINE, Botswana Ombudsman and President of African Ombudsman Association (AOA) and Ms Bience GAWANAS, Ombudswoman of Namibia and Executive Secretary of AOA, accompanied by officers of the Office of The Ombudsman, visited the IPCC. During the visit, they were briefed on the Council's work by Dr SHUM Ping-shiu, BBS, JP, Member, IPCC.



The African Ombudsman Association visited the IPCC.

Visits to Frontline Policing Activities

1.11 During the year, IPCC Members made four visits to frontline policing activities under a visit programme organized by the Complaints and Internal Investigations Branch of the Hong Kong Police Force. Details of the visits were as follows:

- | | |
|-----------------|----------------------------------------------------------------------------|
| 29 March 2003 | Observing policing work at the Hong Kong Stadium during a major tournament |
| 11 June 2003 | Visit to the Border Police District |
| 15 August 2003 | Visit to the Airport Police District |
| 27 October 2003 | Visit to the Marine Police Region |



Observing policing work at the Hong Kong Stadium during a major tournament.



Visit to the Border Police District.



Visit to the Airport Police District.



Visit to the Airport Police District.



Visit to the Marine Police Region.



Visit to the Marine Police Region.

- 1.12 The visits aimed at further enhancing IPCC Members' understanding of police operation and the work of frontline police officers. They were considered very useful by participating Members.

Broadcasting of the IPCC Corporate Video

- 1.13 During 2003, the IPCC corporate video was broadcast through

plasma televisions at the concourses of the Mass Transit Railway and LCD monitors on public light buses and New World First Buses. The broadcasting of the video was intended to enhance public understanding of the operation of the police complaints system and the work of the IPCC.

Visit of the Delegation of Guangdong Provincial Public Security Department

- 1.14 A 10-member delegation of Guangdong Provincial Public Security Department visited the IPCC on 20 August 2003. During the visit, they were briefed on the Council's roles and functions.



The delegation of Guangdong Provincial Public Security Department visited the IPCC.

Monitoring of Serious Complaints

- 1.15 The Serious Complaints Committee monitored 18 cases in 2003. CAPO provided monthly progress reports on these cases. The Committee raised queries and sought clarifications on some of the reports while CAPO's investigations were still being conducted.

Interviewing Witnesses Scheme

- 1.16 Under the IPCC Interviewing Witnesses Scheme, IPCC Members may interview witnesses to clarify doubtful points in the course of examining CAPO's investigation reports.
- 1.17 Each interview is conducted by a panel of two IPCC Members. After each interview, a report is submitted to the full Council which will follow up with CAPO on the panel's recommendations.
- 1.18 Three witnesses involved in a complaint case were invited to attend an interview under the Scheme during the year but they all declined the invitation. Therefore, no witness was interviewed by the IPCC under the Scheme in 2003.

Monitoring of CAPO's Investigation Reports

- 1.19 The IPCC endorsed a total of 3,569 CAPO's investigation reports involving 6,262 allegations during the year. More details are given in Chapter 4.

Submission of a Report on a Complaint Case to the Chief

Executive

- 1.20 During 2003, there was a complaint case in which no consensus could be reached between the IPCC and the Police on the classifications of the allegations. A report on the case was made by the IPCC to the Chief Executive for his consideration.

Chapter 2 General Information

The Independent Police Complaints Council (IPCC)

- 2.1 The IPCC has its origin in the UMELCO Police Group which evolved into the Police Complaints Committee (PCC), a non-statutory but independent body commissioned by the then Governor in 1986. The PCC was renamed as Independent Police Complaints Council (IPCC) on 30 December 1994.
- 2.2 The IPCC comprises a Chairman, three Vice-chairmen and fourteen Members appointed by the Chief Executive. The Ombudsman (or her representative) serves as an ex-officio Member. With effect from 1 January 2003, Mr Edward PONG Chong, BBS, JP, Mr HUI Yung-chung, JP and Professor Benjamin TSOU Ka-yin, BBS were appointed as new members to the Council.
- 2.3 The main function of the IPCC is to monitor and review the investigations conducted by CAPO of public complaints against the Police. Its terms of reference are:
- (a) to monitor and, where it considers appropriate, to review the handling by the Police of complaints by the public;
 - (b) to keep under review statistics of the types of conduct by police officers which lead to complaints by members of the public;
 - (c) to identify any faults in Police procedures which lead or might lead to complaints; and
 - (d) where and when it considers appropriate, to make recommendations to the Commissioner of Police or, if necessary, to the Chief Executive.
- 2.4 For better execution of its duties, the IPCC has committees dedicated for different subjects:
- (a) The Publicity and Survey Committee
To consider, plan and launch IPCC publicity activities, including surveys and researches.
Chairman: Mr Alan LEONG Kah-kit, SC

Members: Mrs Grace TAM CHEUNG Kit-ying
Mr CHAN Bing-woon, SBS, JP
Mr Justin YUE Kwok-hung
Professor Daniel SHEK Tan-lei, BBS, JP
Mr Daniel CHAM Ka-hung, MH
Mr HUI Yung-chung, JP

(b) The Serious Complaints Committee

To determine the criteria for classifying serious cases and the procedures for monitoring serious complaints; to monitor and review complaints which meet with the set criteria.

Chairman: Dr Hon LO Wing-lok, JP

Members: Dr LO Chi-kin
Dr LO Chi-keung, BBS
Ir Edgar KWAN
Dr SHUM Ping-shiu, BBS, JP
Dr Charles KOO Ming-yan, MH
Mr Edward PONG Chong, BBS, JP

The IPCC Secretariat

2.5 The IPCC is supported by a full-time Secretariat, headed by a Senior Principal Executive Officer (as Secretary) with 23 general grades staff and a Senior Government Counsel serving as legal adviser to the IPCC. The major function of the Secretariat is to examine all complaint investigation reports submitted by CAPO in detail to ensure that each and every case is investigated in a thorough and impartial manner before recommending them to IPCC Members for endorsement. Under the supervision of the Secretary and Deputy Secretary (Chief Executive Officer), four teams, each comprising one Senior Assistant Secretary (SAS) and one Assistant Secretary (AS), pitched at Senior Executive Officer and Executive Officer I levels respectively, are responsible exclusively for vetting complaint investigations. The fifth team, Planning and Support, comprising one SAS and 13 executive, clerical and secretarial staff, is responsible for general administration, research, publicity and other support services as well as servicing the Serious Complaints Committee. An organization chart of the IPCC Secretariat is at Appendix I.

Processing of Complaints Against the Police

(a) Role Played by the Complaints Against Police Office (CAPO)

2.6 All complaints, irrespective of origin, are referred to CAPO for investigation. A flow-chart illustrating the process by which complaints are examined and investigated by CAPO is at Appendix II. It also shows how Police Formations, specialist Police Divisions, the Government Prosecutor and the Police Legal Adviser may become involved in an investigation. At the conclusion of investigation, CAPO classifies a complaint according to the result (please refer to Chapter 3 for more details) and prepares a report to the IPCC for review and endorsement.

(b) Role Played by the IPCC

2.7 The CAPO submits to the IPCC all investigation reports together with the related case or crime investigation files. These are scrutinized in detail by the Executive Officers of the Council Secretariat who will seek legal advice from the in-house Senior Government Counsel where necessary.

2.8 All CAPO reports, including the draft replies to complainants, are discussed in detail at the weekly Secretariat case conferences chaired by the Secretary, IPCC.

2.9 After a case conference, the Secretariat raises written comments and queries, if any, with CAPO. Where appropriate, the Secretariat also draws CAPO's attention to inadequacies in existing Police policies, procedures and practices and proposes remedial measures.

2.10 The replies received from CAPO are carefully scrutinized by the Secretariat before preparing its own covering reports for consideration by the IPCC. Vetted cases are submitted to Members in batches every week.

2.11 IPCC Members are divided into three sub-groups to share the workload. Each sub-group comprises a Vice-chairman and five

Members. Each case is studied by the respective Vice-chairman and Members. The Chairman of the IPCC examines all serious cases and any other cases submitted to him by the Secretary and/or any Vice-chairman or Member.

- 2.12 The majority of the cases are cleared by circulation of papers. However, complicated cases which involve policy implications or which cannot be resolved by correspondence between the Secretariat and CAPO are discussed at the Joint IPCC/CAPO Meetings which are chaired by the Chairman of the IPCC.



(from left to right) Mr Justin YUE Kwok-hung, IPCC Member, Mrs Annie LEUNG FOK Po-shan, IPCC Secretary, Mr Robert C. TANG, SC, JP, Chairman of the IPCC, Dr Hon LO Wing-lok, JP, Vice-chairman of the IPCC, Mr CHAN Bing-woon, SBS, JP, IPCC Member and Dr LO Chi-keung, BBS, IPCC Member at the Joint IPCC/CAPO Meeting.

- 2.13 At Appendix III is a flow-chart illustrating the various steps by which complaints are examined and monitored by the IPCC.

Follow-up Action Taken after Endorsement of the CAPO Reports

- 2.14 Following endorsement by the IPCC, CAPO will inform the complainants of the results of investigations. CAPO will also notify the complainees of the results and take other appropriate follow-up or remedial action.

2.15 As part of the review mechanism, the IPCC Secretariat has assumed the responsibility of informing complainants of the outcome of CAPO review/re-investigation into their complaints.

Chapter 3 Complaint Classifications

Introduction

3.1 A complaint may consist of one or more allegations. After an allegation has been investigated, it is classified, according to the findings, into one of the following eleven classifications:

- Substantiated
- Substantiated Other Than Reported
- Not Fully Substantiated
- Unsubstantiated
- False
- No Fault
- Withdrawn
- Not Pursuable
- Curtailed
- Informally Resolved
- Sub-judice

Substantiated

3.2 An allegation is 'Substantiated' :

where there is sufficient reliable evidence to support the allegation made by the complainant.

Example

The complainant was issued with a Fixed Penalty Ticket for illegal parking. He disputed the ticket and lodged a complaint of 'Unjust Fixed Penalty Ticket' to the Central Traffic Prosecution Bureau (CTPB) of the Hong Kong Police Force. Later, he received a letter signed by WSIPA telling him that the ticket would be proceeded with. In the letter, the complainant was asked to pay HK\$640 if he had not paid the fixed penalty or formally informed the CTPB within ten days from the issue of the ticket that he would dispute the ticket in court.

The complainant later received a letter from the CTPB stating that there was a mistake in the first letter in which the amount of penalty was wrongly printed as HK\$640 instead of HK\$320. In the letter, the CTPB apologized to the complainant for the mistake made. Despite the clarification and apology, the complainant lodged a complaint of 'Neglect of Duty' against WSIP A for sending him a letter with a wrong amount of the fixed penalty.

Upon CAPO's investigation, there was no doubt that the CTPB had made a mistake in sending out the letter to the complainant with a wrong amount of the fixed penalty. WSIP A was held responsible for the mistake as she had the overall responsibility to ensure correct information in the letter, though the imperfect procedure in handling mail could be part of the cause of the mistake. The 'Neglect of Duty' allegation was classified as 'Substantiated'. WSIP A was suitably advised and the CTPB had taken steps to rectify the mailing procedure to avoid the recurrence of a similar mistake.

Substantiated Other Than Reported

- 3.3 The following definition is adopted for 'Substantiated Other Than Reported' ('SOTR') :

where matters other than the original allegations have been identified (such as breach of internal discipline or failure to observe Police Orders and Regulations) and are found to be substantiated. Such matters must be closely associated with the complaint itself.

Example

The complainant was arrested and charged with 'Theft'. She complained to CAPO that PC X and DPC Y fabricated the contents of the cautioned statements and induced her to sign them. During the trial, she disputed the admissibility of the two cautioned statements taken by PC X and DPC Y respectively. The presiding Magistrate ruled those cautioned statements inadmissible and the complainant was acquitted of the charge. However, the Magistrate commented that the acquittal of the complainant did not mean that she was not suspicious. Investigation of the complaint was re-opened after the trial but the complainant withdrew the complaint. The allegation of 'Fabrication of Evidence' was therefore classified as 'Withdrawn'.

An acquittal review was subsequently conducted, which revealed that PC X and DPC Y failed to advise the complainant of her rights in making alterations to her statements in accordance with the relevant provision in the Police Manual. For this reason, a 'Substantiated Other Than Reported' count of 'Neglect of Duty' was registered against the two officers. They were advised to avoid committing a similar mistake in future.

Not Fully Substantiated

3.4 The 'Not Fully Substantiated' classification applies:

where there is some reliable evidence to support the allegation made by the complainant, but insufficient to fully substantiate the complaint.

Example

The complainant (COM) was robbed and Mr A, a passer-by, assisted COM to chase after the robber but their efforts were in vain. COM, accompanied by Miss B, her friend, and Mr A, went to a Traffic Report Room to report the 'Robbery' case. COM lodged a complaint of 'Misconduct' against WPC X for reading a novel-like book when handling her case.

WPC X claimed that she was handling a telephone enquiry about the location of a police station when COM approached her. She gave priority to the telephone enquiry and was consulting a map book in order to locate the police station. CAPO's subsequent investigation revealed that the call record of WPC X on the material day was not available. CAPO then contacted Mr A and Miss B who said that WPC X was not engaged in telephone conversation and was reading a book at the material time. However, their views varied on the nature of the book.

CAPO had great reservations on WPC X's version of the incident. COM's allegation was attested by the two witnesses, Mr A and Miss B. There was no telephone record to support WPC X's version. On balance of probabilities after weighing both sides' statements and considering that there was no conclusion on the type of the book in question, the allegation of 'Misconduct' was classified as 'Not Fully Substantiated'.

Unsubstantiated

3.5 A complaint is classified as 'Unsubstantiated':

where there is insufficient evidence to support the allegation made by the complainant.

3.6 In a typical 'Unsubstantiated' complaint, the complainant's allegation is denied by the complainee and there is neither independent witness nor other evidence to support either side's story.

Example

The complainant was driving his private car along a highway with his two employees on board. After overtaking a vehicle in front of his car, he was stopped and summonsed for 'Careless Driving' by SIP X who was on police motorcycle patrol duty. The complainant alleged that SIP X neglected to tell him details of the offence ('Neglect of duty') and was rude and arrogant ('Impoliteness') during the incident. However, SIP X stated that he had explained clearly to the complainant about his offence twice and denied to have been rude and arrogant throughout the incident.

CAPO tried to contact the witnesses to the case, i.e. the two passengers on board the complainant's car, to assist in the investigation. However, the complainant opted not to invite them as his witnesses. CAPO could not find other witnesses in the incident.

This was a one-against-one case. The complainant's version was largely different from that of the police officer and there was no independent witness or other evidence to support either side. Under the circumstances, both the allegations of 'Neglect of Duty' and 'Impoliteness' were classified as 'Unsubstantiated'.

False

3.7 A 'False' complaint is one:

where there is sufficient reliable evidence to indicate that the allegation made by the complainant is untrue, be it -

- (a) a complaint with clear malicious intent; or
- (b) a complaint which is not based upon genuine conviction or sincere belief but with no element of malice.

3.8 When a complaint is classified as 'False', CAPO will consider, in consultation with the Department of Justice as necessary, prosecuting the complainant for misleading a police officer. Prosecution, however, will not be taken where there is no malicious intention on the part of the complainant.

Example

The complainant was arrested and charged for 'Attempted Theft' and 'Resisting Arrest'. During the court trial, he lodged a complaint of 'Assault' alleging that he was assaulted by an unidentified plainclothes police officer in the chest, the back and the spinal cord during the arrest. Upon medical examination, tenderness was found on the complainant's left scalp and redness was found on his left wrist. The complainant was eventually convicted of both charges after trial. In his verdict, the Judge commented that the complainant's injuries were caused by his struggle with the arresting officer and not as a result of assault by the Police as alleged. As such, the allegation of 'Assault' was regarded as judicially resolved and classified as 'False'.

No Fault

3.9 An allegation is classified as 'No Fault' :

where the allegation is made either because of a misinterpretation of the facts or a misunderstanding; or when there is sufficient reliable evidence showing that the actions of the officer concerned were fair and reasonable in the circumstances, done in good faith and conformed with the requirements stipulated in Section 30 of the Police Force Ordinance, Cap. 232, Laws of HKSAR.

3.10 Two common reasons for classifying a complaint as 'No Fault' are first, the complainant may have misunderstood the fact, and second, the complainees are acting under instruction from a superior officer or in accordance with an established police practice.

Example

The complainant made a report of 'Criminal Intimidation' to the Police as a result of an on-going business dispute between her husband and a business rival. The case was initially handled by Division A of Y police station. As there were other related reports arising from the business dispute, all the reports including the report of 'Criminal Intimidation' were consolidated and referred to Division B of the same police station for investigation.

DPC X, the investigating officer of Division B telephoned the complainant in order to obtain further information about the suspect. Thinking that her case should be handled by Division A, the complainant refused to answer the questions posed by DPC X and hung up the telephone abruptly. Later, she lodged a complaint of 'Misconduct' against DPC X alleging that the latter called to disturb her.

Upon CAPO's investigation and explanation, the complainant realized that DPC X was the new investigating officer who telephoned her in pursuance of his duties of enquiring into the case assigned. The complainant then withdrew her complaint.

CAPO considered that the complaint arose as a result of misunderstanding and DPC X was discharging his duties as instructed. The 'Misconduct' allegation was therefore classified as 'No Fault'.

Withdrawn

3.11 A complaint is classified as 'Withdrawn':

where the complainant does not wish to pursue the complaint made.

3.12 A complainant's withdrawal does not necessarily result in the case being classified as 'Withdrawn'. The IPCC and CAPO will examine the available evidence to ascertain whether a full investigation is warranted despite the withdrawal.

Example

The complainant slept inside his vehicle which was parked in a metered parking space. He was woken up by a passer-by who told him

that PC X was ticketing his vehicle. He then asked PC X whether the latter knew he was sleeping inside the vehicle and why PC X did not wake him up to feed the parking meter. PC X answered that he did not see the complainant inside the vehicle. A ticket was then issued. The complainant alleged that PC X treated him rudely during the encounter and thus lodged a complaint of 'Rudeness' against PC X. When the complaint investigating officer later contacted the complainant for details of his complaint, the latter expressed his wish to withdraw the complaint as he did not want to spend any more time on it. His withdrawal was verified by another senior police officer. The allegation of 'Rudeness' was therefore classified as 'Withdrawn'.

Not Pursuable

3.13 A complaint is classified as 'Not Pursuable' :

where the identity of the officer(s) being complained against cannot be ascertained; or where there is insufficient information to proceed with the investigation; or when it has not been possible to obtain the co-operation of the complainant to proceed with the investigation, e.g. when the complainant declines to make a statement.

3.14 The definition does not mean that when the complainant cannot identify the complaine, no further action will be taken. CAPO will still make an effort to identify the complaine(s) on the basis of the information available. Only after such an effort has produced no result will a conclusion be reached that the identity of the complaine cannot be ascertained.

3.15 If a complaint has been classified as 'Not Pursuable' because of the complainant's refusal to give a statement, he may reactivate it later by giving a statement, after which an investigation will be conducted.

Example

The complainant was arrested for 'Managing a vice establishment'. He alleged that when escorting him to a police station, the complaine punched him and threatened to harass his family members and girlfriend if he did not admit having committed the offence. He thus raised allegations of 'Assault' and 'Threat' against the

complainee. The complainant was subsequently convicted on his own plea in court and was imprisoned. As he did not renew his allegations during the trial, his allegations remained unresolved. Two call-up letters were sent to him but they were met with no response. Owing to the lack of co-operation from the complainant, the investigation of the complaint could not be proceeded with. The allegations of 'Assault' and 'Threat' were therefore classified as 'Not Pursuable'.

Curtailed

3.16 A complaint is classified as 'Curtailed':

where a complaint has been registered with CAPO but on the authorization of the Chief Superintendent (Complaints and Internal Investigations Branch), is curtailed, i.e. not to be investigated further, owing to special circumstances such as known mental condition of the complainant.

Example

The complainant (COM) reported a 'Kidnap' case to the crime officers of Police Station X. She stated that her two sons and their girlfriends were kidnapped. During the interrogation, the crime officers found COM's story illogical. They also confirmed that COM's sons were safe. COM's uncle was contacted and he said that COM had mental problem. He later went to Police Station X to take COM home.

COM later complained to CAPO that the crime officers were impolite and she felt being offended. In investigating COM's complaint, COM's uncle and younger son were interviewed and both of them stated that COM had psychiatric problem. COM's uncle said that COM's sons refused to meet COM because of her mental state. COM missed her sons very much and she often had delusive belief that her sons were kidnapped. COM's younger son also stated that COM had previously made several reports to the Police that he and his brother were kidnapped.

In investigating this complaint, two Inspectorate officers had interviewed COM. Both of them found that COM had mental problem as no logical sense could be established from her version. Having considered the mental state of COM, CAPO concluded that no useful

purpose would be achieved by investigating the complaint further. The complaint was therefore classified as 'Curtailed'.

Informally Resolved

- 3.17 The Informal Resolution (IR) scheme aims at a speedy, satisfactory resolution of very minor complaints such as impoliteness during the ticketing of traffic offence.
- 3.18 A minor complaint suitable for IR will not be subject to full investigation. Instead, a senior officer at least at the Chief Inspector of Police rank in the complainee's division will act as the Conciliating Officer (CO). The CO will make enquiry into the facts of a complaint by talking with the complainant and complainee separately. If he is satisfied that the matter is suitable for IR and if the complainant agrees, the complaint will be informally resolved.
- 3.19 The IR scheme cannot be used in the following circumstances:
- (a) The allegation is about unjust refusal of bail which amounts to a loss of personal freedom;
 - (b) The complainant does not agree to the complaint being dealt with by IR;
 - (c) Criminal or disciplinary charges might ensue; or
 - (d) There is a significant conflict of testimony between the complainant and the complainee. (The CO would formulate his judgement as to the facts and decide whether IR, or the normal full investigation, should be carried out.)

Example

The complainant was a witness of a 'Theft' case which was subsequently classified as 'Money Dispute'. She alleged that the complainee accused her of being a liar and treated her impolitely when she gave statement to the investigating officer of the case.

After an interview with the Conciliating Officer, the complainant agreed to have her complaint resolved informally. The complainee

was subsequently interviewed by the Conciliating Officer. He was reminded of the importance of service quality and was advised to treat members of the public with tact and courtesy.

Sub-judice

- 3.20 A sub-judice complaint is a complaint related to a matter pending prosecution in court. It will be dealt with by a set of special procedures of which the main principles and features are:
- (a) The basic facts of a complaint including the time, date, location and nature of the allegation(s) and the identity of complainees should be established as soon as possible;
 - (b) A complainant may choose to either give a statement (which will not be under caution) or give the basic facts of his complaint orally or lodge a complaint but defer the disclosure of detailed information until the court hearing of the case against him has been completed;
 - (c) Where the basic facts of the complaints are disclosed, CAPO will carry out a preliminary enquiry irrespective of whether any written statement has been provided by the complainant;
 - (d) The preliminary enquiry may include, among other things, scene visit(s) and identifying and interviewing independent witnesses;
 - (e) Where the identity of complainee(s) is in dispute or there is prima facie evidence to suggest criminal or disciplinary proceedings are likely to be pursued, identification parades should be conducted as soon as practicable;
 - (f) On completion of preliminary enquiry, if CAPO considers that the complaint is sub-judice and there is no other evidence which makes it necessary to continue with the investigation in the interests of justice and the complainant has indicated unequivocally that he wishes his complaint to be treated as sub-judice, the complaint investigation will be suspended.
 - (g) Nevertheless, complaint investigation will proceed as normal if the case falls within the following circumstances -

- (i) The complaint does not concern matters which will impinge on the Court's prerogative; or
- (ii) The complaint is serious and there is sufficient evidence or some other good reasons to suggest that it is likely to be substantiated; or
- (iii) There is indication of police misconduct sufficient to justify interference with the prosecution; or
- (iv) Where the complainant unequivocally requests that his complaint be investigated and not be treated as sub-judice and CAPO considers it reasonable and appropriate to carry on the investigation; or
- (v) It is in the interest of justice that the complaint be investigated sub-judice; or
- (vi) Investigation can proceed in-part for the preservation of evidence including the conduct of identification parades;

In case of doubt, advice from the Department of Justice will be sought;

- (h) Albeit investigation is suspended until the completion of the legal proceedings against the complainant, steps will be taken to preserve exhibits and documentary evidence for any future investigation; and
- (i) Upon completion of the legal proceedings against the complainant, CAPO will conduct a review. If it is considered that the results of the court case or matters arising from the court proceedings have in effect finalized the complaint and that no further investigation is necessary, a final report will be submitted to the IPCC. If it is considered that the complaint should be investigated, the complainant will be contacted for a full statement so that full investigation can be conducted.

3.21 When an investigation is suspended under the sub-judice procedures, CAPO will furnish a report to the IPCC. The IPCC will be provided with a final report after the conclusion of the court case and, where necessary, the completion of further investigation.

Example

The complainant was stopped and asked to produce his identity card for checking by a traffic warden when he crossed the road recklessly. The complainant refused and struggled with the officer. He was subsequently arrested for the offences of 'Criminal Intimidation', 'Obstructing an Authorized Officer in Execution of Duty', 'Common Assault' and 'Disobeying Light Signal'. He alleged that the complainee kicked his right knee and grabbed his neck (i. e. 'Assault') during the arrest at the scene. The complainant gave a brief verbal account of his complaint but refused to disclose the details until the conclusion of his trial.

CAPO classified the complaint as 'Sub-judice' and suspended its investigation pending court trial.

The complainant was subsequently convicted of all the four charges after trial. The court found the prosecution witnesses (including the complainee) honest and reliable, and rejected the complainant's allegation. In view of the court's findings, the allegation of 'Assault' against the complainee was finally classified as 'False'.

Others

3.22 As a verdict on a complaint, the classification is no doubt the single most important aspect monitored and reviewed by the IPCC. However, the importance of the classification should not deflect attention from the ultimate objectives of the complaint system, which are to:

- (a) give the complainant a fair, reasonable and clear reply on the outcome of his complaint; and
- (b) recommend remedial action (including legal or disciplinary action where appropriate) to prevent any police action which would cause justified grievance.

3.23 The IPCC monitors and reviews all complaints, including those classified as 'Withdrawn', 'Not Pursuable' and 'Informally Resolved'. Even where the complainants themselves have withdrawn their cases, the IPCC has to ensure that reasonable effort has been made by CAPO to get at the truth, that no undue influence has been exerted on the complainants and that any lessons which can be learnt are learnt and remedial actions taken accordingly. CAPO is also required to submit regularly summaries of 'Non-Reportable Complaints' to the IPCC to ensure that every reportable case of complaint against the Police will be monitored by the IPCC.

Chapter 4 General Review of Statistics on Complaint Cases Endorsed by the IPCC

Number of Complaints

- 4.1 In 2003, CAPO registered the receipt of 3,384 complaints, representing a decrease of 11.5% over the figure of 3,822 for 2002. The number of complaints (Note: a complaint may consist of more than one allegation) received and registered by CAPO in 2001, 2002 and 2003 and the avenues through which these complaints were received are shown in Appendices IV and V respectively.

Nature of Allegations

- 4.2 All complaints received and registered by CAPO are categorized by the nature of the allegations. Where there are several allegations in a complaint case, the more serious one will be taken as the principal allegation and the case is generally categorized as such. Appendix VI illustrates the categorization of complaints received by CAPO in 2001, 2002 and 2003 according to the nature of allegations. The five major areas of complaints against the Police in 2003, in descending order, were Neglect of Duty (41.7%), Misconduct/Improper Manner/Offensive Language (27.6%), Assault (18.2%), Unnecessary Use of Authority (5.4%) and Fabrication of Evidence (4.4%).

Number of Investigation Reports

- 4.3 In 2003, the IPCC received a total of 3,511 investigation reports from CAPO, a decrease of 4.6% over the preceding year in which 3,679 reports were received. A table showing the progress on the processing and endorsement of CAPO investigation reports as at 31 December 2003 is at Appendix VII.
- 4.4 In 2003, the IPCC endorsed a total of 3,569 investigation reports of which 344 were carried over from the previous years, involving 6,262 allegations. The respective number of allegations by category for cases concluded in 2001, 2002 and 2003 and the

percentage distribution of these allegations are shown in Appendix VIII. Allegations of Assault, Misconduct/Improper Manner/Offensive Language, Neglect of Duty, Unnecessary Use of Authority and Fabrication of Evidence accounted for 95.8% of the total figure in 2003.

Queries Raised with CAPO

- 4.5 A total of 687 queries were raised with CAPO in 2003, of which 429 were accepted by CAPO and 258 were met with satisfactory explanations by CAPO. More details are given in Chapter 5.

Results of Investigations and Substantiation Rates

- 4.6 The results of investigations endorsed by the IPCC in 2001, 2002 and 2003 together with the percentage distribution are at Appendix IX.
- 4.7 In 2003, 1,539 out of 6,262 allegations were resolved by IR. Of the remaining 4,723 allegations, 113 were classified as 'Substantiated', 152 'Substantiated Other Than Reported', 21 'Not Fully Substantiated', 1,040 'Unsubstantiated', 255 'False', 395 'No Fault', 12 'Curtailed', 1,905 'Withdrawn' and 830 'Not Pursuable'. Allegations which were 'Curtailed', 'Withdrawn', 'Not Pursuable' or 'Informally Resolved' were normally not fully investigated.
- 4.8 The substantiation rate in relation to the 1,976 fully investigated allegations in 2003 was 14.5%, a breakdown of which is appended below:

Classification	No. of Allegations Endorsed	Substantiation Rate(s)
Substantiated	113	5.7%
Substantiated Other Than Reported	152	7.7%
Not Fully Substantiated	21	1.1%
Total :	286	14.5%

- 4.9 Since substantiating a complaint requires evidence or clear convincing justifications, the IPCC has to examine each individual complaint thoroughly and impartially to uphold fairness to both the complainants and the complainees. It must be stressed that substantiation rates should not be regarded as a yard-stick in assessing the effectiveness of the police complaints system.
- 4.10 The substantiation rates in relation to fully investigated allegations endorsed by the Council in 2001, 2002 and 2003 are shown in Appendix X.
- 4.11 A table showing the breakdown of the results of investigations, by each category of allegations, endorsed by the IPCC in 2003 is at Appendix XI.

Follow-up Action Taken on Investigation Results

- 4.12 Criminal/disciplinary proceedings or internal action were taken against 243 police officers on 'Substantiated', 'Substantiated Other Than Reported', and 'Not Fully Substantiated' cases in 2003, subsequent to the endorsement of the results of investigations by the IPCC. The criminal/disciplinary proceedings and internal action taken against police officers on cases endorsed in the years 2001, 2002 and 2003 are at Appendix XII. The Police Force will also take remedial action to rectify procedural weaknesses revealed in the course of investigating complaints.
- 4.13 A complainant making a false allegation with clear intent of malice is liable to prosecution. In 2003, one complainant was charged for making a false complaint on complaint cases endorsed in the year.

Classification Changes

- 4.14 As a result of the IPCC's queries, the results of investigation in respect of 105 complaint allegations were changed in 2003.

Suggested Improvements to Police Procedures and Practices

4.15 In 2003, the IPCC made a number of suggestions to improve police procedures. Some of the more important ones are described below:

- (a) In examining the investigation report of a complaint of 'Unnecessary Use of Authority', the IPCC raised concern regarding the rights of and restrictions on a detainee to make outside contact, including telephone calls and visits. CAPO was requested to conduct a procedural review on the issue.

The Police advised that following a procedural review on the issue, they had revised the relevant provision of the Police General Orders and Force Procedures Manual. Amongst other amendments, a new paragraph was added to ensure that persons detained under police custody would be allowed to have outside contacts, including visits by his friends, relatives and legal representatives. The OC Case should ensure that a detained person was informed of any restriction imposed on him/her in exercising such a right. When the restriction was lifted, the OC Case would also arrange the detained person to be so informed as soon as possible. Proper records on the restrictions imposed and their subsequent lifting would be recorded in the officers' notebooks and the Communal Information System (CIS).

- (b) In examining the investigation report of a complaint of 'Neglect of Duty', the IPCC noticed that police officers were not required to obtain the written agreement or otherwise of the victim concerned to the binding over arrangement of the offenders. With a view to avoiding misunderstanding and potential complaints, the IPCC suggested that in future, agreement or otherwise to the binding over arrangement should be obtained from the victims in writing instead of by telephone enquiries. The victims should also be invited to append their signatures in the police records to confirm their stance.

The Police considered that the requirement of a written record confirming the victim's intention might set a binding precedent over a broad range of police activities, giving rise to much inconvenience to the public and the Police. Instead, police officers would be requested to contact victims for their views on the binding over application of the offenders and document the victims' views on either the case file or the

investigation report. Such a requirement would be incorporated into the Force Procedures Manual to ensure strict compliance.

- (c) When scrutinizing a complaint investigation report concerning the withdrawal of a complaint made by a complainant during a video interview, the IPCC noticed that while clear guidelines on handling withdrawal of complaints by letter/telephone or during statement-taking were set out in the CAPO Manual, there was no provision on the procedures in handling a Withdrawn complaint by video interview. The IPCC therefore suggested CAPO to consider updating the CAPO Manual to incorporate relevant procedures.

The Police agreed to the IPCC's suggestion and a new paragraph on the procedures of handling Withdrawn complaints by video interviews was incorporated in the CAPO Manual.

- (d) It was noticed from a complaint investigation report that the complaint notification recorded by a police formation had not been faxed to CAPO in accordance with the existing notification system. Instead, the complaint report was forwarded to CAPO by normal dispatch resulting in a delay of some 4 days before the investigation commenced. Though the responsible officer claimed that he had faxed the report to CAPO right after the complaint was received, no relevant record was found in the audit log of the fax machine. The IPCC therefore suggested the Police to consider whether it was necessary to request the report room staff to retain a transmission journal generated by the fax machine for record purposes after faxing a complaint report to CAPO.

The Police clarified that under the existing practice, a complaint received by a police formation would be recorded in the Communal Information System (CIS) and CAPO would be informed by telephone and/or fax to refer to the CIS. The complaint documents would also be sent to CAPO by dispatch. However, the present CIS did not have an automated function to notify CAPO Duty Officer of a new complaint recorded by other police formations. To avoid unnecessary delay in the investigation of a complaint, the Police agreed to include an automated notification function in the enhancement project of the CIS. In the interim, CAPO report rooms would maintain a fax journal containing the record of incoming and outgoing

transmissions for at least two months before its destruction for monitoring purpose.

- (e) In examining a complaint of 'Neglect of Duty' pertaining to the investigation of a kidnap case, the IPCC noticed certain inadequacies in the police procedures on line-tracing operation, including the authorization of line-tracing operation in urgent and sensitive cases, the recording of line-tracing requests, and the arrangement of line-tracing tests with the telephone company, etc. The Police were requested to review the existing procedures on line-tracing and to provide better training for crime investigation officers to perform such duties.

The Police advised the IPCC that the Crime Wing had implemented a new telephone checking system known as Enhanced System for Telecommunications Data Access and Retrieval (ESTAR) which requires the OC Case to submit electronically a formal line-tracing request from his office to the telephone company through a 'four-tiered' workflow system after making a verbal request. The log-in time of the submission and the type of line-tracing required will be recorded in the system. The Police also advised that they would arrange for more training to frontline police officers with a view to improving their skills in performing line-tracing duties.

- (f) When examining the report of a complaint of 'Neglect of Duty', it was noticed that due to a misunderstanding between the Police Communications Officer at the Regional Command and Control Centre (RCCC) and the reporting police officer, the Police had not taken any follow-up action on the complainant's report of 'Assault and Person Injured'. However, the officer responsible for recording the report in the RCCC computer could not be traced. The IPCC considered that every endeavour should be made to ensure the reliability and accountability of the RCCC computer records and suggested that officers in the RCCC should be requested to record their identity in the console messages when inputting into the RCCC computer.

In response, the Police issued an instruction requiring all RCCC staff to add a short note at the end of every RCCC computer record to indicate their identity. To further enhance the reliability and accountability of the RCCC computer records

and to prevent sharing of the use of terminal user ID, the RCCC staff are also required to log-off immediately from the computer terminal whenever they are not using it.

- (g) When examining a complaint of 'Neglect of Duty', the IPCC noted that the complainee (COMEE) had made two phone calls to the complainant (COM) inviting the latter to attend the police station for answering a charge and providing fingerprints again. COMEE, who was on report room duty, did not make any notebook entry about his telephone contacts with COM because he did not consider such contacts amounted to execution of police power. CAPO confirmed that this report room practice was acceptable. The IPCC was concerned that such a practice was tantamount to an exemption from the requirement to make notebook entries and could result in the lack of records for the police management to monitor the actions taken by report room staff. The IPCC therefore requested the Police to review the report room staff's current practice regarding making of notebook entries.

CAPO in response advised that following a review conducted by the Support Wing of the Police, a new provision was added to the Police General Orders to the effect that officers deployed to RCCCs and report room duties are exempted from making notebook entries of all matters pertaining to their duties since during the normal course of their duties, the information required to be included in a notebook is officially recorded by the officers elsewhere. However, this exemption does not extend to instances where such officers personally effect the arrest of an individual or otherwise execute any constabulary power.

Chapter 5 Monitoring and Review of the Handling of Complaints

Introduction

5.1 The IPCC's role in monitoring and reviewing CAPO's work has been clearly described in Chapter 2. This Chapter illustrates how the IPCC performs its role in a proactive way and highlights its achievements in reviewing individual complaints and police procedures.

Major Categories of Queries/Suggestions Raised with CAPO

Nature of Queries/ Suggestions	No. of Queries/ Suggestions in 2003	Accepted	Satisfactorily Explained/ Followed up
(a) Thoroughness of investigation and clarification on ambiguous points in the CAPO reports/ CAPO files	436	264	172

The IPCC is primarily concerned with the comprehensiveness and impartiality of the investigations carried out by CAPO. To ensure that a complaint has been thoroughly examined, the IPCC may suggest further interviews with the complainant(s), complainee(s) and/or witness(es); scene visits or the seeking of further medical or legal advice, etc. The IPCC may also propose addition, deletion or amendment to allegations made against police officers, the complainant list, the complainee list and the content of the reports.

Nature of Queries/ Suggestions	No. of Queries/ Suggestions in 2003	Accepted	Satisfactorily Explained/ Followed up
(b) Appropriateness of classifications	151	105	46
<p>In examining the evidence available, the IPCC may discuss with CAPO on the re-classifications of results (from a higher to a lower classification or vice versa). Proposals to add 'Substantiated Other Than Reported' counts may also be made.</p>			
(c) Compliance with police procedures and practices	4	0	4
<p>Queries are raised by the IPCC with CAPO from time to time to ascertain if the police officers involved in a complaint case have complied with the relevant police procedures and practices in exercising their constabulary powers, although the complainant may not have raised a specific complaint.</p>			
(d) Improvement to police procedures Suggestions on improvement to police procedures which are complaint-inducing are made where appropriate by the IPCC to the Force. For details, please refer to Chapter 4, para. 4.15.	13	7	6
(e) Other queries	83	53	30
Total:	687	429	258

- 5.2 The Commissioner of Police has full discretion in the imposition of disciplinary action on police officers. The IPCC may, however, comment on the proposed disciplinary action such as whether it is commensurate with the gravity of the offence. In a number of 'Unsubstantiated' cases, the IPCC took the initiative to recommend that the officers concerned be advised to make improvements, such as the exercise of more common sense and tact in dealing with members of the public, compliance with the provisions of the relevant Police General Orders and/or Police Headquarters Orders, making adequate notebook entries, etc.
- 5.3 The Council commented on the proposed disciplinary action/advice for the police officers concerned on 24 occasions in 2003. Of these, 22 were accepted and 2 were satisfactorily explained and followed up by CAPO.
- 5.4 The number and nature of queries/suggestions raised by IPCC in 2001, 2002 and 2003 are listed in Appendix XIII.

Chapter 6 Cases of Interest

Reason for Reporting Individual Cases

- 6.1 The earlier Chapters, in particular, Chapters 2 and 3 have described in detail the framework, procedures and the major factors affecting IPCC's deliberations. This Chapter gives accounts of actual cases which the Council considered would be of interest to the general public.

Selection of Cases for Reporting

- 6.2 This Chapter presents summaries of 20 selected cases. They aim at giving the readers a glimpse of the efforts of the investigating officers, the contributions of the Council and the various factors taken into account in classifying a complaint. These cases are sampled from the more 'controversial' ones where the IPCC and CAPO may not necessarily be in agreement over the interpretation of evidence or even the findings of an allegation. Hopefully, these cases would highlight the fact that investigation reports are always vigorously vetted by the IPCC in an independent and impartial manner.

Anonymity

- 6.3 In the following summaries, the persons involved will remain anonymous for reasons of personal privacy. To minimize the probability of their being identified, details such as date, time and place of the incidents will be omitted unless these are absolutely necessary for a better understanding of the case.
- 6.4 The case summaries are prepared on the basis of the investigation reports endorsed by the Council in 2003 and reflect the position as at the end of the year.

Case Summaries

Case 1

Neglect of Duty – Substantiated

Offensive Language – Unsubstantiated

Neglect of Duty – Substantiated Other Than Reported

- 6.5 The complainant (COM) was arrested by PC X and SPC Y in a Mass Transit Railway station for 'Theft'. PC X took possession of COM's identity card during the enquiry at the scene before taking COM to a police station for further investigation. When PC X was taking a statement from COM inside an interview room, COM alleged that PC A obtained COM's identity card from PC X for photocopying. Subsequently PC X requested PC A to return COM's identity card to him (PC X), but PC A did not know where he (PC A) had placed the card. After initial attempts to locate COM's identity card were in vain, PC A gave a 'Loss' memo and a photocopy of COM's identity card to COM and asked the latter to make a 'Loss' report if he (PC A) ultimately could not find the latter's identity card. As PC A failed to locate COM's identity card in the end, he gave COM \$400 and told COM to apply for a new identity card. COM subsequently lodged a complaint against the Police alleging that (i) PC A lost his (COM's) identity card when he (COM) was under police custody ('Neglect of Duty'); and (ii) DPC B and DSGT C spoke foul language to him in the police station ('Offensive Language').
- 6.6 In response to CAPO's investigation, PC A alleged that he discovered that COM's identity card was missing when PC X approached him for the card. After attempts to locate the missing card were futile, he reported the case to SGT D who advised him to make a computer record about the loss and give a 'Loss' memo to COM if COM's identity card could not be found eventually. PC A acted in accordance with SGT D's instruction. PC A added that he did not know when COM's identity card went missing and he was not sure whether he had returned the card to COM, PC X or SPC Y. CAPO considered that PC A should be held responsible for the loss of COM's identity card as he (PC A) was the last police officer who handled the identity card before it went missing. The allegation of 'Neglect of Duty' was classified as 'Substantiated'. Disciplinary action would be taken against PC A.

- 6.7 DPC B and DSGT C denied having spoken foul language to COM. As there was no conclusive evidence to support COM's allegation, CAPO concluded that this was a one-against-one situation and classified COM's 'Offensive Language' allegation as 'Unsubstantiated'.
- 6.8 In examining COM's complaint, CAPO noted that PC A reported the loss of COM's identity card to SGT D but the latter failed to handle the report properly. SGT D claimed that he found no criminal element in the incident and attributed the loss of COM's identity card to carelessness. As he regarded COM's identity card as COM's personal property instead of a 'Prisoner's Property', he treated it solely as a case of 'Loss of Identity Card'. On the other hand, CAPO considered that it was not proper for SGT D to treat COM as the informant of the 'Loss of Identity Card' report since the report was made by PC A instead of COM. According to the relevant provision of the Police General Orders (PGO), COM's identity card should be regarded as a 'Prisoner's Property' and it was SGT D's duty to report the case to his supervisor, conduct formal enquiries with COM and the police officers concerned and make a proper record. As SGT D failed to comply with the relevant provision of the PGO and discharge his duties properly, CAPO registered a 'Substantiated Other Than Reported' count of 'Neglect of Duty' against him. Disciplinary action would be taken against SGT D.
- 6.9 The Council endorsed CAPO's investigation results of the case.

Case 2

Impoliteness – Substantiated

- 6.10 In most complaint cases of 'Impoliteness', it is rather difficult to substantiate the allegation because complaints of this nature usually occur in a one-against-one situation and impoliteness can be a matter of subjective perception.
- 6.11 The complainant (COM) was the branch manager of a bank. DSPC A, without making an appointment, went to see COM intending to seek her assistance in the investigation of a 'Suspected Theft' case. COM asked DSPC A to wait at the lobby of the bank as she was engaged in scheduled meetings with her clients. After waiting for more than an hour, DSPC A became impatient. When COM walked out of her office to a counter to perform some documentary work, COM alleged that

DSPC A approached her, pointing his finger at her and said, 'I have been waiting for you for an hour and do not have the chance to talk to you for 5 minutes. Do police officers need to wait or make an appointment when they are conducting investigations?' COM retorted by answering in the affirmative. After telling COM that he would report the matter to her supervisor, DSPC A left the bank angrily. COM subsequently lodged a complaint against DSPC A alleging that the latter pointed his finger at her and talked to her impolitely ('Impoliteness').

6.12 CAPO interviewed Miss B, a receptionist of the bank, who witnessed the dispute between COM and DSPC A at the material time. She told CAPO that COM and DSPC A conversed with each other in a high-pitched voice and DSPC A was agitated. Miss B stated that she heard DSPC A utter the words as alleged by COM.

6.13 During his interview with CAPO, DSPC A basically agreed to the sequence of events described by COM. He admitted that he had said the words as alleged by COM but denied having pointed his finger at COM and talked to her loudly and angrily. Rather, he considered COM's manner impolite and lodged a complaint against COM to the headquarters of the bank the following day.

6.14 After investigation, CAPO considered that while Miss B's version of the incident supported COM's allegation against DSPC A, it could not be ruled out that COM had lodged the complaint in retaliation against DSPC A after knowing DSPC A's complaint against her. Although there was no evidence to prove that DSPC A had pointed his finger at COM, it was inappropriate for the former to utter the challenging and unpleasant words to the latter at the scene to express his dissatisfaction. As DSPC A's remarks were unnecessary and his manner had fallen short of a professional police officer, CAPO classified the allegation as 'Substantiated'. For his betterment, DSPC A was to be advised without an entry in his divisional record file to exercise more tact and patience when dealing with members of the public.

6.15 The Council endorsed CAPO's investigation result of this case.

Case 3

Impoliteness – Unsubstantiated

Misconduct – Not Fully Substantiated

Neglect of Duty – Unsubstantiated

Impoliteness – Unsubstantiated

- 6.16 The complainant (COM) parked her vehicle illegally near a market, causing obstruction to the traffic. PCs A and B were conducting traffic enforcement action at the scene. Seeing that COM was pregnant and to facilitate her to finish her shopping in the market, PC B, in the knowledge of PC A, exceptionally allowed COM to leave her car unattended for three minutes. COM returned to her vehicle after five minutes and was aggrieved to find that PC A was about to ticket her car. A dispute ensued and COM was eventually given ten more minutes to finish her shopping. No ticket was issued to COM.
- 6.17 COM subsequently lodged four allegations against PCs A and B. She alleged that PC A (i) asked her (who is a Chinese Canadian) not to speak in English and told her that PC B, instead of him (PC A), was the officer who promised not to ticket her ('Impoliteness'); (ii) asked her to clean his shirt with her shirt when she inadvertently spat some saliva on PC A's shirt and did not accede to his request to give tissue paper to him to clean it up ('Misconduct') and (iii) ignored her request to summon his senior officers to the scene ('Neglect of Duty'). Moreover, she complained against PC B for his bad manner throughout the incident ('Impoliteness').
- 6.18 Regarding the allegations of 'Impoliteness', PCs A and B denied having been impolite to COM. PC A said that COM could speak fluent Cantonese and he had merely asked her to speak in Cantonese instead of English for better communication. As there was no independent evidence to support COM's allegations, CAPO classified the two 'Impoliteness' allegations as 'Unsubstantiated'. As regards the allegation of 'Neglect of Duty', PC A denied hearing COM make the request while PC B conceded hearing it. However, PC B explained that the presence of senior officers was not necessary as COM was eventually given an allowance of ten more minutes and she had no complaint then. CAPO therefore classified the allegation as 'Unsubstantiated'. For the allegation of 'Misconduct' against PC A, PC A admitted having acted out of instinct and asked COM for tissue paper to wipe away the saliva as he did not carry any handkerchief or tissue paper with him on the material day. However, he denied having asked COM to use her shirt to clean his shirt. CAPO considered that PC A's request for tissue paper might have caused COM's suspicion that he was trying to embarrass or cause

trouble to her. Although PC A made the request out of instinct, it was unprofessional and fell short of the standard expected of a professional police officer. CAPO therefore classified the allegation as 'Substantiated'.

6.19 In examining the complaint case, the IPCC agreed with CAPO's classifications except the one for the allegation of 'Misconduct' against PC A and suggested CAPO to re-classify the allegation from 'Substantiated' to 'Not Fully Substantiated' for the following reasons:

(a) COM alleged that PC A asked her (i) for tissue paper and (ii) to clean his shirt with her shirt. PC A's version was that he only asked COM if she had tissue paper to wipe away the saliva on his shirt. He denied having asked COM to clean his shirt with her shirt. Therefore, the second part of the allegation could neither be proved nor disproved in a one-against-one situation;

(b) Under normal circumstances, COM, who illegally parked her vehicle near the market, would have been ticketed by PCs A and B. The two officers, having noted that COM was pregnant, exercised their discretion not to ticket her and exceptionally allowed her a short period of time to finish her shopping. This showed that they had displayed a high degree of flexibility and tolerance in handling the case; and

(c) It was possible that PC A had asked for tissue paper from COM out of his natural reaction. His act was understandable as he did not carry any handkerchief or tissue paper with him at that time.

6.20 In response, CAPO heeded the IPCC's views and re-classified the allegation of 'Misconduct' as 'Not Fully Substantiated'. PC A was to be advised without an entry in his divisional record file to be more tactful when dealing with members of the public.

6.21 The Council endorsed CAPO's revised investigation results.

Case 4

Neglect of Duty – Not Fully Substantiated

- 6.22 The complainant (COM) was a solicitors' firm representing a finance company. The company was informed that someone had fraudulently applied to the Transport Department (TD) for a replacement of the vehicle registration document of a vehicle which had been mortgaged with its original vehicle licence kept by the finance company. Mr A of the finance company made a report of 'Deception' to the Police which was handled by DSPC X and WDSIP Y. DSPC X interviewed Mr A who expressed his concern that the replacement vehicle licence might be used to transfer the ownership of the vehicle in question unlawfully. DSPC X then advised Mr A to send a letter to the TD to stop the transfer of the vehicle. Although Mr A acted accordingly, he learned from the TD subsequently that the ownership of the vehicle concerned was transferred a few days later. COM, on behalf of the finance company, therefore sent a letter to the Police complaining about the Police's mishandling of the 'Deception' case. Upon receipt of COM's complaint letter, the Police conducted a disciplinary review and sought advice from the Police Legal Adviser (PLA) on the civil liability of the Police in the case. After obtaining PLA's advice, the Police sent a reply letter to COM advising the latter that the Commissioner of Police neither had the authority nor the duty to stop the Commissioner for Transport from performing his statutory function and the Police denied any liability or negligence in the case.
- 6.23 Being dissatisfied with the Police's reply, COM sent a complaint letter to CAPO alleging that (i) the Police should not have requested Mr A to make a request direct to the TD to stop the transfer of the vehicle ownership because the request was rejected on the ground that the TD would not entertain a request of this nature raised by the private sector and (ii) the Police did not request the TD to stop the transfer of the vehicle ownership ('Neglect of Duty').
- 6.24 Upon CAPO's enquiry, DSPC X admitted having suggested Mr A to send a letter to the TD in order to stop the possible transfer of the ownership of the vehicle concerned. However, he did not know that the TD would not entertain such a request made by the private sector because he had previously handled a similar case in which the informant wrote to the TD direct. Moreover, he stated that he had asked his supervisor, WDSIP Y, whether it was necessary to formally draw the TD's attention to Mr A's case, but WDSIP Y only asked him to handle the documentation of the case. When interviewed by CAPO,

WDSIP Y claimed that she did not raise a formal request to the TD because DSPC X told her that the finance company itself would approach the TD. She had no knowledge that the TD would not accept such a request made by the private sector and denied that DSPC X had ever requested her to write to the TD.

- 6.25 Taking account of PLA's advice and the absence of established procedures or formal arrangements between the Police and the TD for handling requests similar to the one raised by Mr A, CAPO considered that there was no wilful neglect of duty on the part of DSPC X and WDSIP Y and classified the 'Neglect of Duty' allegation as 'Unsubstantiated'.
- 6.26 The IPCC disagreed with the 'Unsubstantiated' classification and pointed out to CAPO that although there was no laid down Police Order to guide police officers on how to deal with Mr A's request, DSPC X and WDSIP Y should have the professional insight to perceive that it would be unavailing for Mr A to write to the TD. If they were unaware of what to do, they should have approached their supervisors for guidance and they would have been advised that it was the Police's responsibility in the circumstances to write to the TD. In fact, it transpired that to assist in the prevention of crime, the TD would, as a normal practice, suspend the processing of an application for transfer of ownership of a vehicle upon request of the Police. In this case, therefore, it was grossly unfair to Mr A that he was denied of governmental assistance simply because of DSPC X and WDSIP Y's failure to carry out their duties properly.
- 6.27 After confirming with the Criminal Records Bureau that similar deception cases were not found in the Police record, CAPO maintained that how to deal with Mr A's request mainly depended on each individual handling officer's own experience and common sense. As such, DSPC X and WDSIP Y could not be regarded as having grossly neglected their duties in handling the case. Nevertheless, although the two officers had acted on their honest belief, they could have provided a better service by notifying the TD about Mr A's case instead of asking Mr A to write to the TD direct. For this reason, CAPO agreed to re-classify the allegation of 'Neglect of Duty' as 'Not Fully Substantiated'. DSPC X and WDSIP Y were advised without an entry in their divisional record files to take note of the result of the disciplinary review with a view to preventing the recurrence of a similar negligence. The Police would also

consider formalizing procedures with the TD for handling similar requests in future.

- 6.28 The Council finally endorsed CAPO's revised investigation result of this case.

Case 5

Impoliteness – Unsubstantiated

Impoliteness – Unsubstantiated

Neglect of Duty – Substantiated

Neglect of Duty – Unsubstantiated

Impoliteness – Unsubstantiated

Misconduct – Unsubstantiated

Neglect of Duty – Substantiated Other Than Reported

Neglect of Duty – Substantiated Other Than Reported

- 6.29 Complainant (COM) 1, whose elder brother died in Macau, was advised by the Macau Police to make a report to a nearby police station in Hong Kong so that the Hong Kong Police could contact the Macau Police to deal with the death of her elder brother. COM 1, accompanied by a social worker (COM 2), went to a police station to make the report. WSGT X, a 'B' shift officer at the reception counter of the police station, handled COM 1's report. However, before COM 1 gave the details of her case, WSGT X advised COM 1 to deal with the issue by herself. COM 1 then told WSGT X that her (COM 1's) late brother left a box at her home and she worried that it contained dangerous drugs. At that juncture, SSGT Y, a 'B' shift officer, came to the counter. COM 2 repeated the details of COM 1's case to SSGT Y and asked the latter to inspect the box left by COM 1's late brother. However, SSGT Y told COM 2 that there was no need to inspect the box and COM 1 would be all right so long as the box did not belong to her (COM 1). COMs 1 and 2 then left the report room. COM 2 reported the matter to her supervisor. After conversing with police officers of the 'C' shift of the same police station, COM 2's supervisor advised her to make the report again. COMs 1 and 2 acted accordingly and SGT Z of the 'C' shift advised them to go to Macau to handle the case. Regarding the box left by COM 1's late brother, SGT Z deployed two officers to COM 1's residence and found that the box contained cigarettes only.

- 6.30 COMs 1 and 2 subsequently lodged six allegations against WSGT X and SSGT Y. COM 1 alleged that (i) during her conversation with WSGT X, the latter appeared to be chewing something and lost her temper by setting down the phone handset forcefully after answering an incoming call and throwing some documents onto the desk ('Impoliteness'); (ii) SSGT Y was rude when talking to her in the report room and at the staircase of the police station ('Impoliteness'); and (iii) WSGT X and SSGT Y failed to take action concerning her request to liaise with the Macau Police. COM 2 also alleged that SSGT Y refused her request either to record the details of COM 1's report or to register COM 1's brother as a missing person ('Neglect of Duty') and (iv) WSGT X and SSGT Y failed to check her late brother's box ('Neglect of Duty'). COM 2 further alleged that (v) WSGT X appeared to be annoyed by COMs, making her feel uncomfortable talking to WSGT X ('Impoliteness') and (vi) SSGT Y told her that the police station was not a telephone company when she asked SSGT Y for the telephone number of the relevant government department to handle COM 1's case ('Misconduct').
- 6.31 After investigation, CAPO classified the three 'Impoliteness' allegations as 'Unsubstantiated' because WSGT X and SSGT Y denied the allegations, coupled with the fact that impoliteness could be a matter of subjective perception and there was no independent evidence to support the allegations. For the allegation of 'Neglect of Duty' against WSGT X and SSGT Y concerning their alleged failure to liaise with the Macau Police, CAPO opined that had WSGT X and SSGT Y sought advice from their senior officer, they might have been advised to approach the Liaison Bureau for assistance. However, it might not be necessary for a police officer to approach his supervisor for advice unless he harboured doubts about his own judgment or the action required to be taken. As there were no laid down procedures for handling COM 1's request and there was no evidence to suggest that WSGT X and SSGT Y were deliberately unhelpful, CAPO classified the allegation as 'Unsubstantiated'.
- 6.32 Regarding the allegation of 'Neglect of Duty' concerning WSGT X's and SSGT Y's alleged failure to inspect the box left by COM 1's late brother, CAPO considered that although SGT Z deployed manpower to check the box, it did not imply that WSGT X and SSGT Y had neglected their duties. Whether follow-up action was required on a particular report to the Police depended on whether the information provided by the informant at the material time caused a reasonable suspicion to the police officers. It could not be ascertained if COMs 1 and 2 had provided identical information

to WSGT X and SSGT Y and later to SGT Z, though there were two different police responses in the case. As there was no clear evidence suggesting that the two officers made a wrong judgment or failed to take action which ought to have been taken, CAPO classified the allegation as 'Unsubstantiated'. For the allegation of 'Misconduct' against SSGT Y, the officer denied the allegation. As there was no independent evidence to support either side's version, the allegation was classified as 'Unsubstantiated'.

6.33 Notwithstanding the above findings, CAPO considered that the advice given by SSGT Y in response to COM 1's request to inspect the box left by her late brother lacked professionalism. SSGT Y should have advised COM 1 to inspect the box first and report to the Police if she found something suspicious. SSGT Y should have recorded down the report and informed COMs accordingly so as to allay their worries and at the same time avoid unnecessary deployment of manpower. A 'Substantiated Other Than Reported' count of 'Neglect of Duty' was registered against SSGT Y for his failure to give proper advice to COM 1. He was to be advised without an entry in his divisional record file to heed CAPO's view on the proper course of action to take in this case. Moreover, WSGT X and SSGT Y failed to make a record on the police station's computer regarding the report made by COMs or the reason for their not taking up COMs' report. The absence of such a record had resulted in SGT Z taking a different action when COMs approached the police station on the same matter again. The disparity in the police actions with no reason given had resulted in an unprofessional image of the Police Force to COMs. CAPO therefore registered a 'Substantiated Other Than Reported' count of 'Neglect of Duty' against WSGT X and SSGT Y. They were to be advised without an entry in their divisional record files of the need to make a proper computer record in future similar cases.

6.34 Upon examination of the investigation report, the IPCC had reservations on the 'Unsubstantiated' classification of the 'Neglect of Duty' allegation against WSGT X and SSGT Y for failing to liaise with the Macau Police. The IPCC considered that in view of the close ties between Macau and Hong Kong, reports of a similar nature were not uncommon and there should be an established channel for dealing with them. Even if there were no laid down rules or procedures for handling COM 1's report, the two officers should have used their common sense to deal with the case. Regarding CAPO's comment that there was no evidence to show that WSGT X's

and SSGT Y's act was deliberate, the IPCC noted that the CAPO Manual defined 'Neglect of Duty' as 'where an officer failed to carry out all or part of the duty required of him' and it did not touch on the question of intent. As such, the crux of the matter was (i) what duties were required of WSGT X and SSGT Y and (ii) whether they had failed to carry out part or all of them. In fact, the Liaison Bureau of the Hong Kong Police Force was the agent to take up COM 1's case with the Macau Police. The IPCC considered that upon receipt of COM 1's report, WSGT X and SSGT Y should have obtained the details and referred the matter to the Liaison Bureau. COM 1 was denied of available governmental assistance simply because the two officers were unaware of the role and functions of the Liaison Bureau and failed to act on COM 1's report properly. As both WSGT X and SSGT Y were experienced police officers who joined the Police Force in 1979, their performance in the case was unsatisfactory. Accordingly, the IPCC advised CAPO that the classification for the allegation of 'Neglect of Duty' should be upgraded and that it was advisable for the Force to draw up guidelines or procedures for dealing with reports similar to the one made by COM 1.

- 6.35 In response to the IPCC's observations, CAPO conducted a survey among police officers who had the experience of working as a Duty Officer in order to ascertain the course of actions that they would take in similar cases and whether they were aware of the role and functions of the Liaison Bureau. The survey concluded that a professional Duty Officer was reasonably expected to accept the request and take follow-up action properly. Taking account of the results of the survey and WSGT X's and SSGT Y's length of service in the Police Force, CAPO agreed that the 'Neglect of Duty' allegation against the two officers should be 'Substantiated'. They were to be advised without an entry in their divisional record files to seek assistance from the Liaison Bureau when handling similar cases in future. Moreover, the Police accepted the IPCC's suggestion and would conduct a review on the existing procedures and orders with a view to incorporating guidelines for handling reports involving liaison with police departments or law enforcement agencies outside Hong Kong.
- 6.36 The Council endorsed CAPO's revised investigation results of this case.

Case 6

Unnecessary Use of Authority – Substantiated

- 6.37 PC X and Mr A were friends. Ms B, Mr A's ex-girlfriend, dated the complainant (COM) after she broke up with Mr A. Thereafter, Mr A made a lot of nuisance calls to Ms B at the shop where she worked. On one occasion, Mr C, nicknamed 'Ah Kong', who was a salesman working adjacent to the shop of Ms B, answered Mr A's call and had a heated argument with him. Thereafter, PC X went in one afternoon to the shopping arcade where Ms B worked allegedly with a view to mediating between the two ex-lovers and he met COM. Two days later, COM lodged a complaint against PC X alleging that the officer abused his authority in obtaining COM's personal particulars by disclosing his (PC X's) police identity and purporting to be investigating a reported crime during their encounter.
- 6.38 According to COM's version to CAPO, COM saw PC X, a stranger to him, talking to his friend in the shopping arcade on the material day. When COM approached, PC X told him his police identity and nickname. PC X produced his police warrant card upon COM's request and COM saw PC X's name on it. PC X explained that he was looking for 'Ah Kong'. COM replied that Mr C, whose nickname was 'Ah Kong', was working in the same shopping arcade. He took PC X to meet Mr C. PC X then introduced himself as a police officer and had a casual chat with Mr C. PC X later told COM that the Police had received a report that a man was unlawfully detained by a man named 'Ah Kong'. PC X demanded to record COM's particulars from his identity card and asked for his address and telephone numbers. PC X also gave his mobile phone number to COM.
- 6.39 PC X gave a different account of his encounter with COM to CAPO. PC X explained that he went to the shopping arcade to find Ms B. Since he did not know in which shop she worked, he enquired with two young men but they gave a negative reply. COM later approached him and identified himself as the bouncer there. After knowing that PC X was looking for Ms B, COM asked him for the purposes of his visit. PC X replied that he wanted to have a chat with Ms B because she broke up with her boyfriend whose Christian name was 'John' and he heard that Ms B was dating a colleague named 'Ah Kong'. When COM later enquired of him the name of Ms B's ex-boyfriend, he did not respond as he did not know whether COM was acquainted with Mr A. He only told COM that 'Ah Kong' had intimidated Ms B's

ex-boyfriend over the phone. After some further chat, PC X provided his mobile phone number to COM and asked COM to tell Ms B to call him. He also told COM his nickname and his surname.

6.40 After reviewing the versions of all parties involved, CAPO considered that although there was no direct evidence to disprove PC X's explanation, the officer's version went against common sense in the following aspects:

- (a) He did not check in advance in which shop Ms B worked before looking for her; instead he wandered in the shopping arcade and asked some complete strangers for the whereabouts of Ms B;
- (b) He stated that he refused to tell COM whether Mr A's Christian name was 'John'. However, in PC X's statement to CAPO, he referred to Mr A as 'John' twice during his conversation with COM;
- (c) He did not react to COM's remark that he (COM) was a bouncer in the shopping arcade and still had a lengthy dialogue with COM;
- (d) While he stated that his purpose of going to the shopping arcade was to look for Ms B, when he met COM, he told the latter that he was looking for 'Ah Kong' who had allegedly intimidated Mr A over the phone. It apparently deviated from his stated purpose; and
- (e) When he could not find Ms B, he provided his mobile phone number to COM who was a complete stranger to him.

6.41 In view of the flaws in PC X's version, CAPO believed, on balance of probabilities, that PC X did reveal his police identity and obtain the personal particulars of COM by purporting to be investigating a reported crime. CAPO classified the allegation of 'Unnecessary Use of Authority' as 'Substantiated'. Legal advice sought on PC X's disciplinary liability supported a charge of 'Conduct Calculated to Bring the Public Service into Disrepute'. Formal disciplinary action was to be initiated against the officer.

6.42 The Council endorsed CAPO's investigation result of this case.

Case 7

Neglect of Duty – Unsubstantiated
Neglect of Duty – Unsubstantiated
Neglect of Duty – Substantiated
Misconduct – Unsubstantiated
Neglect of Duty – Substantiated
Neglect of Duty – Unsubstantiated
Police Procedure – Substantiated Other Than Reported

6. 43 The complainant (COM), a secondary school student, was kicked by his classmate during an argument. His private part was injured and he underwent an operation in hospital. COM made a report of 'Assault Occasioning Actual Bodily Harm' ('AOABH') to the Police. During the statement-taking, COM told DPC X that he was hospitalized and his right testicle was ruptured as a result of the incident. He produced a medical chit with the finding of 'tenderness and swelling over right scrotum' to DPC X. About two weeks later, COM signed a consent form for releasing to the Police his full medical report with the finding of 'ruptured right testis'. Before the full medical report was available, DSIP Y charged the assailant with the offence of 'AOABH' and the latter pleaded guilty when he was brought before the Juvenile Court. The presiding Magistrate dismissed the charge and bounded the assailant over for two years in the sum of \$1,000.
6. 44 COM was dissatisfied with the Police's failure to produce his full medical report to the court as he believed the court result would be different had the Police done so. COM raised a series of allegations against the officers who handled his case. He lodged three 'Neglect of Duty' allegations against DSIP Y, alleging that the officer failed to investigate his report impartially and thoroughly, failed to inform him to attend court when the assailant was first brought before the court, and failed to obtain his full medical report before charging the assailant. In addition, he claimed that DSIP Y made some inappropriate remarks to him ('Misconduct'). COM also complained that DPC X failed to obtain his consent for releasing his full medical report to the Police when he first reported the case to him ('Neglect of Duty'), and that DCIP Z failed to keep his promise to produce his full medical report to court ('Neglect of Duty').

6.45 When being interviewed by CAPO, DSIP Y and DCIP Z denied having made the alleged inappropriate remarks and promise respectively. In the absence of corroborative evidence, CAPO classified the respective 'Misconduct' and 'Neglect of Duty' allegations as 'Unsubstantiated'. CAPO reviewed the actions taken by DSIP Y in relation to COM's report and considered that he had taken immediate actions to arrest and charge the assailant. As there was no independent evidence indicating that DSIP Y failed to conduct an impartial and thorough investigation, CAPO classified this 'Neglect of Duty' allegation as 'Unsubstantiated'.

6.46 As regards the remaining three 'Neglect of Duty' allegations about DSIP Y's failure to notify COM to attend court and to produce his full medical report to the court, and DPC X's failure to seek his consent to release the full medical report, CAPO classified them as 'Unsubstantiated' for the following reasons:

- (a) COM was not informed to attend court because the assailant was brought before the court for taking plea only and COM was not required to give evidence on that occasion;
- (b) Under normal circumstances, a full medical report would not be obtained until a defendant pleaded not guilty to the charge and a date of trial was fixed; and
- (c) It was not mandatory for DPC X to obtain COM's consent for releasing his full medical report at the initial stage of the crime investigation.

6.47 Upon examination of the complaint, the IPCC had reservations on the 'Unsubstantiated' classifications for the above three allegations for the following reasons :

- (a) COM was actually complaining of his not being informed of the date of the court hearing. The Victim's Charter indeed stipulated that a victim should be kept fully informed of the progress of his case, including the date and place of the hearing of the proceedings. DSIP Y failed to follow the requirement under the Victim's Charter;
- (b) The medical finding as indicated in the brief facts which was submitted to court was different from that of the full medical report. As medical evidence was very important in an AOABH case, DSIP Y should have furnished correct information in the brief facts

for the court to take into consideration in determining the sentence; and

(c) DPC X had the duty to obtain COM's consent for releasing his full medical report as COM had informed the officer that his actual injury was much more serious than what was reflected in the original medical report.

- 6.48 CAPO sought legal advice which confirmed that the underlying principle of the Victim's Charter was that a victim had the right to the information relevant to him; whether he (the victim) served any functional purpose in the trial had no bearing on the spirit of this principle. However, in view of the fact that there was no existing Force orders or guidelines requiring an officer to inform COM of each and every court hearing of his case, CAPO maintained the 'Unsubstantiated' classification for this 'Neglect of Duty' allegation against DSIP Y. On the other hand, since the prevailing Force procedures were found to be incommensurate with the right of a victim, CAPO registered an 'Substantiated Other Than Reported' count in respect of the flaw in procedures against the Force. CAPO also advised that the Police Headquarters had been addressed to review the existing orders and guidelines. Regarding the other two allegations of 'Neglect of Duty', CAPO agreed to re-classify them as 'Substantiated'. Formal disciplinary action would be instituted against DSIP Y, while DPC X would be warned without an entry in his divisional record file on the need to exercise due diligence in crime investigation.
- 6.49 The Council endorsed CAPO's revised investigation results of the case.

Case 8

Neglect of Duty – Unsubstantiated

Police Procedure – Substantiated Other Than Reported

- 6.50 In early June 2002, PC X arrested the complainant (COM) for 'Possession of Dangerous Drugs (DD)' and seized from him a white tablet. COM was holding charge to appear at a Magistracy on the following day as he could not raise sufficient bail money. The Magistrate adjourned the case to mid-July 2002 pending the result

of the chemical examination of the suspected DD and allowed COM to be bailed out at \$1000. Since COM still could not raise sufficient bail money, he was committed to the custody of Correctional Services Department (CSD) under a Committal Warrant. In mid-June 2002, the Government Chemist confirmed that the tablet found on COM was not a DD. COM was subsequently released by the court when the case was brought up in mid-July 2002.

- 6.51 After his release, COM lodged a complaint against PC X alleging that the officer failed to declare arrest on him and explain to him the reason of his arrest at the scene ('Neglect of Duty'). PC X denied the allegation and maintained that he did inform COM of the reason of the latter's arrest at the scene when he told COM that he was under arrest. His version was supported by corroborative notebook record as well as the post-recorded cautioned statement signed by COM. In the absence of corroborative evidence, CAPO classified the allegation as 'Unsubstantiated'.
- 6.52 In the course of complaint investigation, CAPO noted that COM was in fact unnecessarily detained for nearly a month from mid-June to mid-July 2002 when the Police were aware that there would not be a successful prosecution against COM upon receiving the Chemist's Report that the tablet found on COM was not a DD. CAPO therefore examined the reason for the failure to arrange a timely release of COM.
- 6.53 The investigation revealed that COM was originally allowed a court bail at cash \$1000. The Prosecutor thus made a relevant remark in the case paper which was later returned to the Police. However, as COM could not raise sufficient bail money before the close of play on that day, a Committal Warrant was issued by the Magistrate to commit COM to CSD custody. COM was then handed over to CSD by the court police, who was not required by the prevailing Force procedures to inform the officer-in-charge of the case (OC Case) of the change. On the other hand, the Prosecutor was also not required to follow up the status of a defendant as to whether he/she had been bailed out. The OC Case was therefore not aware that COM had been detained when he received the Chemist's Report in mid-June.
- 6.54 CAPO considered that the prolonged detention of COM was not due to the fault of any individual officer. Rather, it resulted from a flaw in the prevailing Force procedures which did not adequately cover the issue to ensure that the final bail status of a defendant

was brought to the attention of the OC Case. As such, CAPO treated this issue as an 'Outwith Matter'. CAPO also advised that the Force had subsequently reviewed the matter and devised procedures so that OCs Case were fully aware of the 'detention' or 'bail' status of the defendants to ensure that they would not be detained, or court-bailed, for longer than was necessary.

- 6.55 As the flaw in police procedures revealed from this complaint case could have serious consequences, the IPCC requested CAPO to register a 'Substantiated Other Than Reported' count in respect of the flaw in procedures against the Hong Kong Police Force instead of treating it as an 'Outwith Matter'. In response, CAPO agreed with the Council's view. The Council endorsed CAPO's revised investigation result of this case.

Case 9

Unnecessary Use of Authority – No Fault

Unnecessary Use of Authority – Unsubstantiated

Unnecessary Use of Authority – Unsubstantiated

Unnecessary Use of Authority – No Fault

Misconduct – Unsubstantiated

Neglect of Duty – Unsubstantiated

Neglect of Duty – Unsubstantiated

- 6.56 On the first day of an important international conference held in Hong Kong with a high security operation conducted by the Police, the complainant (COM), who was an active protester, complained that the Police had placed him under surveillance and stopped and questioned him without good reasons for his intended destination on several occasions during his two visits to the operational areas outside the venue of the conference. COM was dissatisfied and raised a series of allegations concerning his encounters with the Police. He alleged that the Hong Kong Police Force had abused its authority in pinpointing him and he was being blacklisted in the police record. He claimed that the Police repeatedly and selectively intercepted and questioned him amongst the crowd, and followed him without reasonable grounds. He further alleged that he was held up for almost an hour during one of his encounters with the Police ('Unnecessary Use of Authority'). COM also alleged that during his several encounters with the Police, SSGT A requested him to walk on the ground level instead of on the footbridge, and

questioned him why he was wandering and did not tell the officers his intended movement ('Unnecessary Use of Authority'). He further alleged that PC B demanded him to produce his identity card without reason ('Unnecessary Use of Authority'), SGT C infringed his (COM's) privacy and personal safety by remarking to him that 'You may leave now, but we, the Police, would follow you!' ('Misconduct'), SGT D failed to answer his question as to why the Police stopped him for an hour and then let him go ('Neglect of Duty'), and the same officer failed to display his warrant card upon his repeated requests ('Neglect of Duty').

- 6.57 CAPO explained to the IPCC that the Police adopted a 'Meet, Greet and Facilitate' approach in handling public order activities during the international conference. In sum, the Police would facilitate lawful demonstrations and engage in constructive dialogues with potential protesters so as to ensure that while the protesters exercised their freedom of expression, other members of the community would not be unduly inconvenienced and the whole security operation would not be jeopardized. Police officers were instructed to greet, facilitate and explain to any potential protester about the arrangement of the Designated Public Activity Areas and meanwhile report to the Command Post, which would deploy staff from the Police Community Relations Office to deal with the potential protesters.
- 6.58 Against this background, CAPO considered that the officers were duty bound to ascertain COM's intended destination as they had reason to believe that COM, being an active protester, might be coming to the venue to participate in some form of protest action. CAPO's investigation revealed that it was not in dispute that some of the officers did monitor COM's activities within the operational ground for a while, but it was because COM was evasive and uncooperative with the Police. There was neither evidence suggesting that a blacklist was kept by the Police nor that COM was blacklisted. As regards the part of COM's allegation that he was held up by the Police for an hour, CAPO maintained that COM was in fact 'spending time' with the Police by challenging and questioning them on various issues including the locations of the designated security areas of the police operation at that time as well as making phone calls to his friends to notify them that he was being stopped by the Police. CAPO considered that the police action under the prevailing circumstances was both necessary and justified to ensure the security of the event and maintain public

order and safety. The first 'Unnecessary Use of Authority' allegation was thus classified as 'No Fault'.

- 6.59 For the 'Unnecessary Use of Authority' allegation against PC B, the officer explained that he found COM, of whom he had no personal knowledge, acting in a suspicious manner and avoided eye contact with him. CAPO considered that PC B's demand to check COM's identity card was legitimate in accordance with the relevant provision of the Police Force Ordinance regarding 'Power to stop, detain and search', and classified this allegation as 'No Fault'. As regards the other four allegations of 'Unnecessary Use of Authority', 'Misconduct' and 'Neglect of Duty', the officers concerned denied COM's allegations. In the absence of any independent evidence to support either COM's version or that of the Police, CAPO classified these four allegations as 'Unsubstantiated'.
- 6.60 At the Joint IPCC/CAPO Meeting, when the investigation results of the case were discussed, the IPCC accepted CAPO's findings in general with the following observations:
- (a) Regarding the alleged one-hour detention of COM by the Police, although CAPO explained that it was COM who was 'spending time' with the Police, it was not possible to ascertain what actually happened between COM and the Police during that period in question. As there was no independent corroborative evidence to support either COM's version or that of the Police, the IPCC considered it more appropriate to extract this one-hour encounter from the first 'Unnecessary Use of Authority' allegation and treat it as a separate allegation with an 'Unsubstantiated' classification; and
 - (b) The IPCC was concerned that the Police should ensure that the 'Meet, Greet and Facilitate' approach would be adopted with common sense and great caution so that frontline officers knew how to draw the line between a reasonable anticipation of 'facilitation' and harassment without disappointing the public expectation that peaceful demonstrations should be facilitated.
- 6.61 In response, CAPO agreed to register an additional allegation of 'Unnecessary Use of Authority' regarding the alleged one-hour detention of COM with an 'Unsubstantiated' classification. CAPO

also heeded the IPCC's comments on the 'Meet, Greet and Facilitate' approach.

- 6.62 The Council endorsed the revised investigation results of the case.

Case 10

Misconduct (Non-reportable Complaint) – Substantiated

Neglect of Duty – No Fault

Rudeness – Not Fully Substantiated

Neglect of Duty – No Fault

- 6.63 The complainant (COM) was a driver of the Correctional Services Department (CSD). While he was driving a prisoner van with prisoners on board, he was involved in a traffic incident with SGT X who was off-duty at that time. In the incident, COM changed lane to avoid a roadwork and allegedly caused SGT X's vehicle to brake abruptly. Feeling aggrieved by COM's driving manner, SGT X overtook the prisoner van and cut into COM's lane allegedly causing it to brake sharply too. SGT X then got out of his vehicle and argued with COM. The part of the road where the vehicles stopped was a 24-hour restricted zone. SGT X did not reveal his police identity during the incident. COM later made a traffic complaint against the driving manner of SGT X and the latter also raised a counter-allegation against COM. The legal advice sought subsequently by the Police on the traffic complaints recommended no prosecution against either driver for 'Careless Driving'.
- 6.64 Being dissatisfied with the traffic investigation result, COM sent two letters to the Police raising several queries on the case which was replied in writing by SP Y. COM later formally lodged three allegations against the Police. He alleged that SGT X intercepted a government vehicle with prisoners on board without reasonable excuse ('Misconduct'). This allegation was classified as a Non-reportable Complaint as SGT X was off-duty at the material time and no exercise of police authority was involved. COM also alleged that SP Y made an untrue remark against him in one of the reply letters to COM and that SP Y breached the Personal Data Privacy Ordinance (PDPO) by informing the Commissioner of Correctional Services, COM's Head of Department, of the correspondence between COM and the Police ('Neglect of Duty'). COM further alleged that

the Police failed to take action against SGT X for intercepting a government van and stopping at a restricted zone without reasonable excuse ('Neglect of Duty').

6.65 After investigation, CAPO considered that SGT X's interception of COM was merely an impulsive act and there was no valid reason for him to do so. Furthermore, the interception was in contravention with the Road Traffic Ordinance and the Force Procedures Manual which stipulated that officers in plainclothes, whether on or off duty, should not stop any vehicle for a traffic offence. CAPO therefore classified the allegation of 'Misconduct' as 'Substantiated' and SGT X was to be verbally warned for failing to adhere to the relevant orders. The remaining two allegations of 'Neglect of Duty' were classified as 'No Fault' for the following reasons:

- (a) The remark in question, i. e. that 'COM was not really interested in what the truth of the matter was or why no prosecution was undertaken', was SP Y's personal view based on COM's inaction to his written invitation to discuss the matter. CAPO considered that the remark, though rather strongly worded, could not be regarded as untrue when viewed from SP Y's perspective;
- (b) As the CSD had requested the Police to inform it of the progress of the traffic case, CAPO opined that SP Y had good and justifiable reasons to keep the Commissioner of Correctional Services informed of any development concerning the traffic case; hence there was no breach of the PDPO; and
- (c) CAPO was of the view that the Police did consider the liability of SGT X in the incident. The decision of no prosecution was in accordance with the legal advice.

6.66 Upon examination of the case, the IPCC had the following observations:

- (a) In view of the background and training of SGT X as a disciplined officer, his act of intercepting a prisoner van was by itself a very serious misconduct. The proposed disciplinary action of a verbal warning might not be commensurate with the seriousness of SGT X's impropriety;

- (b) A few remarks made by SP Y in his replies to COM were strongly worded, unnecessary and provoking. It was inappropriate for an officer to include his personal views, which were considered offensive, in his reply to a member of the public. The IPCC therefore recommended that the original 'Neglect of Duty' allegation should be split into two allegations, with the act of informing the CSD of the traffic case being classified as 'No Fault' and the strongly worded remarks to be re-categorized as 'Misconduct' and classified as 'Substantiated'; and
- (c) CAPO was also asked to review if there were sufficient guidelines reminding officers to avoid expressing personal views in official correspondence.
- 6.67 The case was discussed at three Joint IPCC/CAPO Meetings. CAPO responded to the IPCC's observations as follows:
- (a) CAPO accepted the IPCC's view regarding the disciplinary liability of SGT X. According to subsequent legal advice, there was sufficient evidence to support a disciplinary charge of 'Conduct Calculated to Bring the Public Service into Disrepute' against SGT X. The matter would be referred to the officer's Formation Commander for appropriate disciplinary action;
- (b) CAPO considered it more appropriate to re-categorize the allegation concerning SP Y's strongly worded remarks as 'Rudeness' because it had more to do with a particular remark rather than the officer's behaviour in his approach in dealing with COM. CAPO concluded that the remark in question was factual and was not meant to be rude or critical. However, it was unnecessary and SP Y could have been more tactful in his choice of words. The classification of this allegation was up-graded to 'Not Fully Substantiated' and SP Y would be advised without an entry in his divisional record file; and
- (c) There was a standing Government circular which stated that all correspondence with members of the public should always be written in polite terms. Many training courses on improving writing skills, particularly in answering complaint letters, were organized for police officers at various levels. The Force was of the view that there were already sufficient guidelines and training on official correspondence.

- 6.68 The Council endorsed the revised investigation results of the case.

Case 11

Unnecessary Use of Authority – Unsubstantiated

Assault – Unsubstantiated

Unnecessary Use of Authority – Substantiated Other Than Reported

- 6.69 The complainant (COM), who was arrested for the offence of 'Burglary', was detained in a police station for enquiries. He alleged that during his detention, two uniformed police officers (PC X was one of them) told him that he was not allowed to wear spectacles and asked him to hand his spectacles to them ('Unnecessary Use of Authority'). Despite his explanation that he was shortsighted and could not see clearly without his spectacles and the lenses, which were made of plastic, would not cause any trouble, PC X pushed his forehead and snatched the spectacles away ('Assault'). Later when the spectacles were returned to him, he found that the right temple of the frame of the spectacles near the joint was damaged and demanded compensation for it.
- 6.70 CAPO's investigation revealed that PC X removed the spectacles from COM in accordance with a written order issued by SIP Y, which stipulated that spectacles must be removed from all detainees before they were put into the cell. In view of COM's strong refusal to comply with PC X's request, PC X exercised some degree of force to take away the spectacles. CAPO considered that it was not unreasonable given COM's unco-operative attitude. Besides, the 1 mm crack found on the right temple of COM's spectacles looked like an old mark because the edge was smooth. CAPO therefore concluded that there was no evidence to prove that the damage found on the spectacles was caused by the police officer and classified the allegation of 'Unnecessary Use of Authority' as 'Unsubstantiated'.
- 6.71 Regarding the 'Assault' allegation, the medical findings on COM did not support the allegation. CAPO considered that it was a one-against-one situation with no evidence to support either version and classified the allegation as 'Unsubstantiated'.

- 6.72 On SIP Y's issue of the internal order to remove all spectacles from detainees, the relevant Force Procedures Manual (FPM) in fact stipulates that a prisoner may be allowed to retain his spectacles unless the Duty Officer directs otherwise. Although SIP Y was aware of the relevant FPM, he believed that such a discretion was not necessary for the prisoners' security given the design of the temporary holding area of the police station. CAPO considered that it was inappropriate for SIP Y to issue an internal order which was different from the instruction in the said FPM. A 'Substantiated Other Than Reported' count of 'Unnecessary Use of Authority' was therefore registered against SIP Y. Considering that he issued the order in question entirely out of good faith, CAPO would give the officer an advice without an entry in his divisional record file.
- 6.73 In examining the case, the IPCC considered that as internal orders served to set out instructions for staff to follow, it was of paramount importance that their contents were accurate as any wrong message would result in grave consequences. The responsibility for accuracy rested with the issuer of the instruction. In this case, it was noted that the internal order was issued in September 2000. However, no one discovered the mistake until the complaint came to light in September 2002. It was apparent that the internal order which contravened the provision of the FPM was issued by SIP Y on behalf of and without the knowledge of his supervisor. For this reason, CAPO was asked to review the authority and procedures for the issue of internal orders to see if they required tightening up.
- 6.74 In response, CAPO maintained that there were clear guidelines in the FPM on the issue of internal orders by Formations. The guidelines stipulated, inter alia, that "an officer commanding a Formation may issue written orders as necessary for the control, direction and information of personnel under his command. These Orders are not to be at variance with the Law or Police General Orders". CAPO concluded that the current incident was just an isolated case. Nevertheless, a memorandum had been sent to the Formation concerned to address the matter.
- 6.75 The Council endorsed CAPO's investigation results of this case.

Case 12

Misconduct – Unsubstantiated

Neglect of Duty – Substantiated Other Than Reported

Neglect of Duty – Substantiated Other Than Reported

Neglect of Duty – Substantiated Other Than Reported

Neglect of Duty – Substantiated Other Than Reported

- 6.76 The complainant (COM), a taxi driver, collided his taxi with another private car during a traffic accident. SPC X attended the scene for enquiry and completed a road accident report. COM was later summonsed for 'Careless Driving'. In preparing his defence, COM discovered from the police documents that SPC X marked on the sketch the width of the road in question as 4.8m. He was skeptical on the measurement and returned to the scene to conduct his own measurement. He found that the width of the road was 9m and produced his finding in court. After trial, COM was acquitted on benefit of the doubt. Ten months after the court hearing, he lodged a complaint alleging that SPC X deliberately marked on the sketch the width of the road in question as 4.8m instead of 9m with a view to perverting the course of justice ('Misconduct').
- 6.77 COM's allegation was raised in court during the cross-examination of the prosecution witnesses. The presiding Magistrate ruled a case to answer. In delivering the verdict, the presiding Magistrate expressed his reservation about COM's version of the traffic accident but also cast doubt on the prosecution's evidence. In the absence of any proof that SPC X had deliberately made a mistake about the width of the road for the purpose of perverting the course of justice, CAPO classified the allegation as 'Unsubstantiated'.
- 6.78 CAPO's investigation revealed that the acquittal of COM was mainly attributed to the inaccurate measurement of the width of the road. The decision to summons COM might vary had its correct width (9m), which could allow two vehicles travelling abreast, been known. A 'Substantiated Other Than Reported' count of 'Neglect of Duty' was therefore registered against SPC X. He was warned without an entry in his divisional record file to ensure the accuracy of measurements in preparing sketches of traffic scenes in future.
- 6.79 CAPO's investigation also revealed SPC X's some other irregularities in handling the traffic case. He failed to write

a further statement when making clarification with COM about the reason that his taxi was mounted on the pavement after the accident but only recorded the clarification on the original statement after the ending declaration. He also wrongly stamped the starting declaration instead of the ending one at the conclusion of statements taken from COM and another witness. Besides, SPC X failed to make notebook records regarding the taking of statements from COM and another witness as well as the scene visit made for investigation of the traffic accident. Two additional 'Substantiated Other Than Reported' counts of 'Neglect of Duty' were therefore registered against him. He was advised without an entry in his divisional record file to adhere to the relevant provisions of the Force Procedures Manual and the Police General Orders.

- 6.80 In examining the case, the IPCC noted that COM alleged that SPC X gave false evidence in court as he insisted that the width of the road was 4.8m instead of 9m. CAPO was asked to examine if this accusation was true since SPC X did mention in one of his CAPO statements that he realized during the trial that he had made a mistake about the width of the road. CAPO was also asked to comment if any officer was at fault in not verifying SPC X's measurements before deciding to summons COM.
- 6.81 Having examined the court transcript, CAPO explained that SPC X in his testimony insisted that the width of the road was 4.8m and had never indicated any doubt about having made a mistake. However, CAPO found that SPC X in his two statements to CAPO gave inconsistent versions as to when he came to know of his mistake about the width of the road. He attributed the inconsistency to a mistake made by the statement-taker in putting down 'during' instead of 'after' the trial in one of his statements and alleged that he failed to notice the mistake. CAPO considered that for an experienced officer like SPC X, he should be well aware of the importance of accurate statements and he had made a declaration himself on the truthfulness of his statements. As such, his negligence in this respect should not be tolerated. A 'Substantiated Other Than Reported' count of 'Neglect of Duty' was therefore registered against him and he was warned without an entry in his divisional record file on the importance of giving accurate statements.
- 6.82 CAPO further explained that the decision to summons COM for 'Careless Driving' was not only based on the width of the road but

also on other evidence including the inconsistency in COM's statement as well as his being unable to explain the mounting of his taxi on the pavement after the accident. SPC X was a very experienced officer who had been engaged in traffic duties since August 1999. Being an investigating officer, he was accountable for the accuracy of the evidence he gathered and unless the mistake was very obvious, there was no reason for his senior officer to doubt his measurement on the width of the road. It was also impracticable for his senior officer to counter check each routine in every case handled by SPC X. Hence, CAPO found no fault on the officer who made the decision to proceed with the summons.

6.83 The Council endorsed CAPO's investigation results of this case.

Case 13

Neglect of Duty – Substantiated

Neglect of Duty – Substantiated

Neglect of Duty – Unsubstantiated

6.84 The complainant (COM) was a Pakistani. He was identified as the assailant who allegedly assaulted another Pakistani. As a result, he was arrested and charged with 'Wounding'. He pleaded not guilty to the charge in court. The trial was concluded with a 'No Case to Answer' ruling.

6.85 COM lodged three allegations of 'Neglect of Duty' against the police officers who handled his case, namely: (a) DPC X allegedly failed to inform him that he was arrested and did not caution him subsequent to his arrest; (b) DSIP Y allegedly put him on bail far too long; and (c) DSIP Y allegedly failed to conduct a thorough investigation resulting in the charge against him.

6.86 On allegation (a), CAPO's investigation revealed that DPC X cautioned COM in Cantonese and the caution statement was written in Chinese in DPC X's notebook. However, CAPO's subsequent communication with COM during the complaint investigation showed that the latter could only understand some simple Cantonese. The antecedent statement given by COM also showed that he could read and write English and Pakistani only. According to the relevant provision of the Police Manual, all interviews should be conducted in the mother tongue of the suspect, unless the suspect chooses,

or with his consent, another language in which he is clearly proficient. In this case, DPC X should have conducted the interview with COM in Pakistani or, with COM's consent, in English. For this reason, CAPO classified allegation (a) 'Neglect of Duty' against DPC X as 'Substantiated'. He was verbally warned without an entry in his divisional record file on the need to follow the Rules on Questioning of Suspects laid down in the Police Manual.

- 6.87 Regarding allegation (b), it was noted that COM was put on police bail in February 2001. He was released 13½ months later. CAPO observed that although active police enquiries were conducted in the first seven months, there was no active investigation in the subsequent months. Notwithstanding this, the police bail of COM was extended for five times within the last five months. As the fact that COM had reported bail to DSIP Y for five times would have served as repeated reminders to the officer of the need for action to be taken, CAPO concluded that DSIP Y's failure to exercise due diligence had prolonged the bail of COM and delayed the criminal investigation. Hence, allegation (b) 'Neglect of Duty' was classified as 'Substantiated' against DSIP Y. Disciplinary action was instigated against him upon legal advice.
- 6.88 Pertaining to allegation (c), CAPO explained that it was based on legal advice that COM was charged. According to the report of the Court Prosecutor, COM was acquitted because the court found it unsafe to rely on the credibility of the victim after cross-examination. The Court Prosecutor further commented that the acquittal was not due to any fault on the part of the Police or the prosecution. CAPO therefore concluded that the investigation conducted by DSIP Y was proper and in compliance with the law. As a result, allegation (c) 'Neglect of Duty' was classified as 'Unsubstantiated'.
- 6.89 In addition to the allegations raised by COM, CAPO found that SIP Z and DSIP Y as the supervising officers failed to point out to DPC X about his mistake in taking the caution statement from COM in Chinese. They were verbally advised without an entry in their divisional record files on the need to follow the Rules on Questioning of Suspects detailed in the relevant provision of the Police Manual. Besides, CAPO also observed that the then acting ADV C Crime failed to spot the non-submission of an outstanding file in this case. It indicated that there was a flaw in the bring-up system of crime investigation files. The Division concerned was

advised to examine the bring-up system to prevent recurrence in future.

6.90 The Council endorsed CAPO's investigation results of this case.

Case 14

Unnecessary Use of Authority – No Fault

Impoliteness – Withdrawn

6.91 The complainant (COM) was the proprietor of a decoration company. Her company was hired to carry out decoration work in a flat in Lok Fu. However, as her customer (male A) was dissatisfied with the quality of the decoration work, the contract was terminated in the middle of the work. COM alleged that she went to collect the decoration paraphernalia left in the flat but found that the flat was locked up by male A. COM therefore called the Police for assistance. After police mediation, both parties agreed to discuss the matter in the police station.

6.92 However, before the scheduled appointment, male A made a report of 'Criminal Damage' that COM's worker had damaged the tiles inside his flat. Moreover, COM chained up the flat. DPC X was tasked to handle the report. After examining the background of the case, he concluded that it was not a criminal case because the tiles were damaged in the course of the decoration work. Male A refused to attend an appointment scheduled for the following day for COM to collect her belongings. He broke COM's lock to gain access to his flat and handed over the paraphernalia left by the decoration workers to DPC X who handled the items as found property.

6.93 DPC X then repeatedly asked COM to collect her belongings but the latter refused to do so. Eventually DPC X personally sent those items to COM's company in Tuen Mun.

6.94 COM lodged a complaint against DPC X alleging that the latter should not have permitted male A to break her lock and that DPC X had no right to seize her belongings as found property as this had stopped her from pursuing the matter as a 'Theft' case against male A ('Unnecessary Use of Authority'). COM also alleged that DPC X treated her impolitely ('Impoliteness'). However, COM later

claimed that she was too busy, could not spare any time to give a statement, and eventually withdrew her complaints.

6.95 CAPO's investigation revealed that DPC X had made a detailed record of his mediation between the two parties in his notebook and the case file. He had to go between the parties as they refused to talk to each other. Despite DPC X's effort, they could not reach a settlement. Prior to male A's intention to break the lock, DPC X had urged COM to open the lock herself but COM refused. CAPO considered that DPC X had handled the civil dispute in a professional manner. Male A, being the registered tenant of the flat, had the legal right to break COM's lock to gain access to his flat. DPC X had the duty to take possession of the decoration paraphernalia, otherwise they would be discarded by male A. CAPO commented that DPC X had done more than his fair share by personally sending the property to COM's company in Tuen Mun. Despite COM's withdrawal, CAPO found it more appropriate to classify the allegation of 'Unnecessary Use of Authority' as 'No Fault'. The allegation of 'Impoliteness' remained as 'Withdrawn' as COM voluntarily withdrew it.

6.96 The Council endorsed CAPO's investigation results of this case.

Case 15

Threat – Unsubstantiated

Unnecessary Use of Authority – Substantiated

6.97 The complainant (COM) was arrested for 'Assault'. He was subsequently charged with 'Assault Occasioning Actual Bodily Harm'. During the trial, one of the prosecution witnesses, female A, the girlfriend of the victim, gave evidence that DPC X showed her six photographs (one depicting COM) for identification when taking a statement from her. In delivering his verdict, the learned Magistrate indicated his belief that female A had seen the photographs as she told the court. COM was acquitted after trial because the prosecution was unable to prove its case beyond reasonable doubt.

6.98 Police record showed that COM had previously been arrested about nine months before this case in an anti-robbery operation for investigation of robberies. He was subsequently released

unconditionally after an identification parade. COM alleged that he came to know DPC X during the enquiries and the Police had taken photographs of him on that occasion. He added that the Police also took photographs of him when he was arrested in connection with yet another case of 'Fighting in a Public Place' about another year before.

- 6.99 COM lodged two complaints against DPC X. He alleged that at the time of the arrest, DPC X said to him "Nail (you) to death (釘死你)" ('Threat') and that the officer showed his photograph to female A without his consent ('Unnecessary Use of Authority').
- 6.100 On the 'Threat' allegation, DPC X denied having uttered any threatening words to COM. The policeman who accompanied DPC X to arrest COM stated that he did not pay attention to the conversation between COM and DPC X. Female A who was present when COM was arrested refused to assist in the investigation. In the absence of supportive and corroborative evidence, CAPO classified the 'Threat' allegation as 'Unsubstantiated'.
- 6.101 Regarding the 'Unnecessary Use of Authority' allegation, CAPO made enquiries into the origin of COM's photograph. The officers who took part in the arrest of COM in the anti-robbery operation stated that they did not take any photograph of COM. The photograph register of arrested persons kept by the Duty Officer also showed no record of COM having been so photographed. However, there was a record that an officer deposited a photo negative of COM in relation to the 'Fighting in a Public Place' case.
- 6.102 CAPO sought legal advice on the sufficiency of evidence to lay charges against DPC X for (a) 'Perverting the Course of Justice' (by showing female A photographs); and (b) 'Perjury' (for giving evidence that he had not shown female A the photographs). Legal advice was also sought on whether the evidence was sufficient to support a 'Substantiated' classification for the allegation of 'Unnecessary Use of Authority'.
- 6.103 CAPO's advising counsel commented that as female A refused to render assistance to the complaint investigation, it was hard to prove that DPC X did show her the photographs at the material time. The Magistrate's comment that he strongly believed DPC X had shown the photographs to female A was not a finding of fact, and could not be regarded as solid and concrete evidence to prove DPC X's fault. In the circumstances, the prosecution was unable to proceed

with either charge against DPC X. CAPO consequently classified the allegation of 'Unnecessary Use of Authority' as 'Unsubstantiated'.

- 6.104 The IPCC disagreed with CAPO's 'Unsubstantiated' classification for the allegation of 'Unnecessary Use of Authority'. The IPCC highlighted that the verdict unequivocally recorded the Magistrate's acceptance of female A's version and rejection of that of DPC X on this particular issue. Besides, the Magistrate's statement of findings stated that such an act undermined the identification evidence for the case.
- 6.105 The IPCC also pointed out to CAPO that an advice not to prosecute did not necessarily mean that a complaint could not be substantiated. Back in 1996, in a review of the standard of proof for classifying complaints conducted by the IPCC, CAPO accepted that the classification of a complaint is a separate matter from the decision of the Secretary for Justice on whether to prosecute, although it would still be a factor to be taken into consideration in the classification. In any event, the evidence supported a 'Substantiated' finding for the 'Unnecessary Use of Authority' allegation in the CAPO investigation although it did not form sufficient ground to prosecute the officer for perverting the course of public justice and perjury in criminal court.
- 6.106 Based on the above observations, the IPCC suggested to CAPO that the allegation of 'Unnecessary Use of Authority' should be upgraded to 'Substantiated'.
- 6.107 Having considered the IPCC's comment, CAPO agreed to re-classify the allegation from 'Unsubstantiated' to 'Substantiated'. The Council endorsed CAPO's revised investigation result of this case.

Case 16

Unnecessary Use of Authority – Substantiated

Misconduct – Not Fully Substantiated

Misconduct – Unsubstantiated

- 6.108 An off-duty PC (PC X) was driving his private motorcycle and had a minor collision with a private car. The three complainants (COMs 1-3) were on board the car. PC X sustained a slight injury to his

left knee and COMs were not hurt. A dispute ensued between the two parties after the collision. COMs lodged a complaint on the following day alleging that during the dispute, PC X abused his official position to demand them to show their Hong Kong Identity Cards (HKID cards) or else they would be charged with 'Obstructing a police officer in the execution of his duty' (allegation (a) 'Unnecessary Use of Authority'); PC X falsely reported to the '999' console that he was being surrounded and threatened by three triad society members and was very frightened (allegation (b) 'Misconduct'); and PC X obstructed COM 3 from recording the registration number of the motorcycle (allegation (c) 'Misconduct').

- 6.109 Upon CAPO's enquiries, PC X claimed that after the collision, COMs 2-3 pushed and hit him. They also swore at him and threatened him aggressively. Believing that his life was in danger, he showed his warrant card to COMs 2-3 and dialed '999' to report the traffic accident. He then asked COMs 1-3 to have their HKID cards ready because the police traffic officers who were about to arrive at the scene would ask COMs to show them. He denied having threatened to charge COMs 1-3 for 'Obstructing a police officer' when they ignored his request to produce their HKID cards; or having told the '999' operator that he was surrounded by members of a triad society. He only admitted to have said that he was very frightened at the material time, and that COMs were surrounding him shouting loudly. He also denied obstructing COM 3 from recording the registration number of his motorcycle.
- 6.110 As revealed from the console tape of the conversation between PC X and the '999' operator, PC X neither mentioned that COMs had committed any acts of threatening behaviour nor referred to them as triad society members. He however repeatedly mentioned that he was very frightened because he was surrounded by three men and believed that his life was in danger. He then changed his version and alleged that he was surrounded by two men because the driver of the private car refused to get out of the vehicle. He subsequently said that he was surrounded by many people and sustained injury in the traffic accident. In the background of the tape, it could be heard that PC X had declared his police identity to COMs and demanded them to produce their HKID cards.
- 6.111 PC Y was the investigating officer of the traffic accident case. He stated that upon his arrival at the scene and during the processing of the case, both parties were calm and co-operative.

PC X did not mention COMs' aggressive behaviour and there was no indication that COMs would lodge a complaint against PC X. It appeared to PC Y that it was a common traffic accident case.

6.112 CAPO's investigation revealed that the circumstances and available evidence did not support PC X's version of having been assaulted or threatened by COMs. His explanation that he requested COMs to produce their HKID cards for the purpose of having them ready for inspection by the police officers who were about to arrive at the scene was neither convincing nor supported by the console tape. CAPO thus classified allegation (a) as 'Substantiated'. For his betterment, PC X was warned with an entry in his divisional record file that whilst off-duty he must not declare his status as a police officer unless he had a valid reason to do so. If he deemed it necessary to declare his police identity, he should ensure that he conducted himself in a professional manner. As regards allegation (b), it was revealed from the console tape that PC X did not refer to COMs as triad society members. CAPO thus classified allegation (b) as 'Unsubstantiated'. In the absence of corroborative evidence and independent witnesses, CAPO also classified allegation (c) as 'Unsubstantiated'.

6.113 In examining the case, the IPCC considered that although it was evident that PC X did not refer to COMs as triad society members, he had exaggerated the situation in his report to the '999' console and his version of the incident was not credible. As such, the IPCC suggested CAPO to upgrade the classification of allegation (b) from 'Unsubstantiated' to 'Not Fully Substantiated'.

6.114 In response, CAPO heeded the IPCC's views and re-classified allegation (b) to 'Not Fully Substantiated'. PC X was advised without an entry in his divisional record file that he should report impartially, factually and in a professional manner the details of any off-duty incidents in which he was involved and conduct himself in an appropriate manner commensurate with his occupation in such incidents.

6.115 The Council endorsed CAPO's revised investigation results.

Case 17

Impoliteness – Unsubstantiated

Neglect of Duty – Substantiated

- 6.116 The complainant (COM) rang up a police station to make a report of 'Vehicle Obstruction'. She reported that a private car had been parked at an open space near her residence for several months and there was no sign that it would be driven away. Although enough space was left at the location for pedestrians to walk through, she believed that the car was parked there illegally and requested the Police to take appropriate action.
- 6.117 COM stated that her telephone call was answered by a female officer who did not identify herself. After obtaining the details of her report and personal particulars, the female officer told her that she would send officers on patrol to the scene to investigate. COM then asked the female officer in the event that the private car was verified to have been illegally parked there, whether the Police would take summons action against the vehicle owner or tow away the vehicle. In response, the female officer allegedly made the remarks 'Miss, Chief Executive TUNG had said that if vehicles do not cause obstruction to the traffic or pedestrians, it is not necessary to issue tickets so as to avoid the vehicle owners from suffering loss of several hundred dollars'. They then ended their telephone conversation.
- 6.118 COM stated that till the evening of that day, she was not contacted by any police officer regarding her report of 'Vehicle Obstruction' and the vehicle was still there. She thus lodged a complaint on the following day alleging that the female officer was impolite to her by quoting the remarks made by the Chief Executive during their telephone conversation ('Impoliteness') and the same officer failed to take follow-up action in response to her report of 'Vehicle Obstruction' ('Neglect of Duty').
- 6.119 Upon CAPO's investigation, WSGT X was identified as the female officer who answered the telephone call made by COM. It was also revealed that no police record in respect of COM's alleged report of 'Vehicle Obstruction' was made.
- 6.120 Upon CAPO's enquiries, WSGT X claimed that she was busy in handling some cases in the report room on the material day. She recalled that she had answered a telephone call from a female caller enquiring about the police procedures in handling reports of 'Vehicle Obstruction' but could not recall the timing of the call. She had explained to the female caller that police officers would consider the prevailing circumstances at the scene, i. e. whether

a vehicle caused obstruction or danger to others, before deciding on whether summons action would be taken or a warning notice would be served. She denied having quoted any remarks made by the Chief Executive during her telephone conversation with the female caller. In the absence of corroborative evidence and witness in a one-against-one situation, CAPO classified the allegation of 'Impoliteness' as 'Unsubstantiated'.

- 6.121 Regarding the 'Neglect of Duty' allegation, WSGT X stated that as she was busy at the time, she passed the phone on to a report room reserve PC to continue dealing with the female caller. However, she could not recall to which officer she had handed over the phone and how the officer handled the case. She pointed out that if the caller had made a specific report of 'Vehicle Obstruction' to her, she would have recorded the report and sent officers on patrol to the scene to take follow-up action.
- 6.122 CAPO enquired with the six other police officers who were on duty in the report room with WSGT X at the time in question. They all denied having answered any telephone call concerning 'Vehicle Obstruction'. They further stated that they had neither heard any officer answer such a call nor had they arranged any officer to take follow-up action on the call.
- 6.123 Taking into consideration the circumstances and available evidence, CAPO considered that the version of WSGT X that she had passed on COM's telephone call to an unidentified officer for follow-up action was not convincing, whereas the versions of COM and the six colleagues of WSGT X were more credible. Relying on the principle of balance of probabilities, CAPO concluded that WSGT X had failed to take appropriate action after receiving the telephone call from COM and classified the allegation of 'Neglect of Duty' as 'Substantiated'. WSGT X was advised without an entry in her divisional record file of the need to perform her duties properly in future.
- 6.124 The Council endorsed CAPO's investigation results.

Case 18

Neglect of Duty – Not Fully Substantiated

Neglect of Duty – Unsubstantiated

- 6.125 The complainant (COM) was practising cycling on a road and lost his balance while turning a sharp bend on a downward slope. He fell on the ground and sustained injuries to his right hand and right foot. After the accident, he laid on the ground in a semi-conscious state with his bicycle, which he claimed was worth \$14,000, fallen next to him on the road.
- 6.126 Shortly afterwards, PC X, who was on motorcycle patrol duty, arrived at the scene. After directing the traffic in order to avoid a further accident, he helped COM to sit up against the railing on the side of the road to wait for the ambulance. He also placed COM's bicycle against the railing of the road after marking its original position on the road. Upon arrival of the ambulance, the ambulance crew considered that it would be dangerous to stop the vehicle at the accident location which was a road bend to render first aid to COM and decided to move forward to a safer location before attending to COM's injuries. After informing PC X of his decision, the ambulance crew took COM on board the ambulance, drove forward for about 200 metres and parked at a lay-by. PC X drove his motorcycle to follow the ambulance.
- 6.127 While the crew members of ambulance were attending to COM's injuries at the lay-by, PC X made enquiries with COM about the details of the accident. Subsequently, COM agreed to PC X's suggestion that the Police would make arrangements for his bicycle to be towed away. After PC Y of the Accident Investigation Team arrived at the lay-by to assist in conducting enquiries with COM, PC X walked back to the accident location with a view to guarding COM's bicycle but found that it was missing. PCs X and Y conducted a search in the vicinity but in vain. COM recalled that a crime officer made enquiries with him in the hospital about the loss of his bicycle on the material day.
- 6.128 Two days later, COM lodged a complaint of 'Neglect of Duty' against PCs X and Y for their failure to keep safe custody of his bicycle after the accident.
- 6.129 When enquired by CAPO as to why he did not guard COM's bicycle at the accident location, PC X explained that he needed to attend to COM's injuries and conduct initial enquiries with COM. As he did not see anybody else at the location, he assumed that there would be no problem for him to leave the bicycle unattended for a short while. He did attempt to seek reinforcement for guarding the accident location before following the ambulance to the lay-by to

conduct enquiries with COM but the console did not receive the radio message as the subject location might be a radio blindspot. He had considered removing COM's bicycle to the ambulance or using a chain to fasten the bicycle to the railing, but he finally did not do so because the ambulance left the accident location quickly and he could not find any chain. He maintained that throughout the incident, he had left the accident location for only about 5 minutes.

- 6.130 PC Y's version corroborated that of PC X as far as the incident was concerned. He stated that he had never seen COM's bicycle as he went to the lay-by direct and his route did not pass through the accident location.
- 6.131 Scene visit was conducted by CAPO. It was revealed that the accident location was a dual carriageway with a sharp bend sloping downwards. The location was not within the view of the lay-by where the ambulance was parked. Beat radio test also confirmed that there was difficulty in transmitting or receiving messages via the beat radio at the accident location and its vicinity.
- 6.132 CAPO's investigation revealed that PC X, to a great extent, had carried out all the required actions laid down in the Traffic Manual when he conducted the initial investigation of the traffic case in question. Nevertheless, CAPO considered that as the first officer attending the scene, PC X could have done a better job by taking further steps to have COM's bicycle properly secured before he followed the ambulance to the lay-by to conduct enquiries with COM about the details of the accident, such as continuing his quest for reinforcement by moving to another location to try the radio contact or borrowing a mobile phone from the ambulance crew to contact the console. In that case, the loss of COM's bicycle might have been avoided. In addition, if the bicycle was the case exhibit of the traffic accident, PC X might have lost an important piece of exhibit for the subsequent investigation.
- 6.133 Having considered the circumstances and the available evidence, although it could not be proved that PC X had grossly neglected his duty on purpose, CAPO concluded that there was certainly room for improvement in the way he handled the incident. As such, CAPO classified the allegation of 'Neglect of Duty' against PC X as 'Not Fully Substantiated'. For his betterment, PC X was advised without an entry in his divisional record file of the need to pay more attention in future to the personal property of an injured person

to ensure that it was safely kept when enquiries were being conducted. As regards the allegation of 'Neglect of Duty' against PC Y, in the absence of evidence to support any accusation against him since he only arrived at the scene at a later stage and had not seen COM's bicycle, CAPO classified the allegation as 'Unsubstantiated'.

6.134 The Council endorsed CAPO's investigation results.

Case 19

Misconduct – Substantiated

- 6.135 The complainant (COM), a legal professional, went to a police station at about 0100 hours on the material day with a view to accompanying his client, who had earlier been arrested to give a statement, and to arranging bail for his client afterwards. COM was aggrieved that although the officer-in-charge of the case (OC Case) had previously told him that his client could be interviewed upon his (COM's) arrival and they would discuss the bail terms after COM's client had made a statement, when he (COM) subsequently arrived at the police station, the OC Case informed him over the telephone that no officers of the Anti-triad Unit would be available to deal with his client's case before 0200 hours.
- 6.136 When COM asked the Duty Officer (DO) of the report room to contact the OC Case's supervisor or other senior officers who could deal with his complaint that he was misled by the OC Case, the DO replied that all the senior officers were off-duty. COM requested the DO to give him the senior officers' residential telephone numbers but was refused. COM then proceeded to call all the telephone numbers of the senior officers listed on the notice board in the reception of the police station, the Police hotline and CAPO. In each and every instance, either nobody answered the telephone or he was greeted with a recorded message. Having exhausted all other avenues, COM used a telephone of the report room to dial '999'. He got it through and asked to speak to a senior officer who could handle the issue but the police officers manning the Console were unable to have his problem solved.
- 6.137 Two days later, COM received a call from a reporter of a local newspaper who sought to confirm with him that he did abuse the '999'

hotline on the material day. The reporter told him that she had received the information from a member of the Police Force. COM was appalled to learn that the information he gave to the '999' Console had been released to a third party. He subsequently sent a letter to CAPO complaining that police officers manning the '999' Console released his personal particulars to the press ('Misconduct'). In his letter, COM stated that he had no complaints against either the police officers of the Anti-triad Unit or the DO of the police station.

- 6.138 CAPO contacted the reporter but she declined to disclose the source of information. All police officers manning the '999' Console concerned were enquired but there was no indication that any officer had disclosed COM's case to the press. All police officers who were on duty that day in the report room of the police station in question were also enquired. It was revealed that PCs X and Y had disclosed COM's case to a local newspaper and the professional association to which COM belonged.
- 6.139 Upon CAPO's enquiries, PC X stated that he was on duty in the report room on the material day. He alleged that COM approached him and asked if his client was detained in the police station. PC X replied in the affirmative after checking. COM then talked to the DO. Having learned from the DO that the OC Case would not be available to deal with his client's case until 0200 hours, COM's manner turned rough and demanded to talk to the supervisor of the OC Case. When the DO told COM that he was representing the Divisional Commander at the time, COM asked for the residential telephone numbers of more senior officers but was refused. COM then fetched a telephone in the report room and dialed '999' to demand talking to the more senior officers. The conversation lasted for about ten minutes.
- 6.140 PC X, who witnessed the whole incident, later discussed the matter with another report room reserve, PC Y. PC X wrote a letter of complaint during tea break, showed it to PC Y who endorsed the content and both signed on it. PC X then sent the letter via the e-mail system of the report room addressing it to COM's professional association, with a copy to a local newspaper. In the letter, they disclosed their police identity and the name and profession of COM. However, they stressed that they had sent the letter in their private capacity.

6.141 Taking into account the Police Legal Adviser's advice, CAPO concluded that by disclosing COM's personal data, which were obtained in the course of their duties, to a third party (i.e. the local newspaper and COM's professional association) without the prescribed consent of COM, PCs X and Y had contravened Data Protection Principle 3 of the Personal Data (Privacy) Ordinance which stated that "personal data shall not, without the prescribed consent of the data subject, be used for any purpose other than the purpose for which the data were to be used at the time of the collection of the data". Although the two officers claimed that the complaint letter was sent by them in their private capacity, their letter was sent via the e-mail system of the report room and in fact, they had identified themselves as police officers. Under the circumstances, CAPO classified the allegation of 'Misconduct' against PCs X and Y as 'Substantiated'. For their betterment, they were advised with entries in their divisional record files to act strictly in accordance with the relevant Data Protection Principle of Personal Data (Privacy) Ordinance.

6.142 The IPCC endorsed CAPO's investigation result.

Case 20

Misconduct – Unsubstantiated

Unnecessary Use of Authority – Unsubstantiated

Misconduct – Unsubstantiated

6.143 The complainant (COM), a known active member of a political group, was refused by a staff member of the Home Affairs Department (HAD) from entering a square to view the flag-raising ceremony on a public holiday and was subsequently removed by the Police from the scene. Later, COM raised three allegations against the Police, viz. (a) it was inappropriate for WPC A, who acted on the instruction of SSGT B, to repeat a remark made by the HAD officer that COM was an unwelcome person to the ceremony ('Misconduct'); (b) the police officers, who acted on the instruction of SP C, abused their authority by forcibly lifting COM up and placing her inside a police vehicle even though she had not committed any offence, and detained her unlawfully inside the police vehicle against her will before releasing her ('Unnecessary Use of Authority'); and (c) SP D informed the media that COM was going to conduct a protest, therefore, she was not allowed to go to the ceremony. SP D also

remarked that COM had participated in protest activities before. COM opined that these remarks were unfair and insulting to her ('Misconduct').

- 6.144 COM concurrently lodged a complaint with The Ombudsman alleging that the HAD placed her on a blacklist and prevented her from attending the ceremony. The Ombudsman concluded after investigation that as the ceremony was open to the public, members of the public had the right to view the ceremony. It was not appropriate that officers of the Home Affairs Bureau (HAB) and the HAD used their own judgment to refuse COM from entering the ceremony area. The Ombudsman thus recommended that the HAB should apologize to COM. There was however no evidence to show that a blacklist existed as claimed by COM. The Ombudsman also suggested that for future similar events, clear guidelines should be established by the HAB and the organizing authority for all personnel to follow and any such regulations should be publicized prior to the events, allowing the public to know clearly beforehand.
- 6.145 At the same time, the HAB sought legal advice from the Department of Justice (DoJ) regarding the incident. The DoJ confirmed that although the HAB was the event organizer, it had no legal power to refuse entry of certain persons to the venue on the grounds that they had records of protesting at major events. As the ceremony was a public function and the venue was a public place, every member of the public had a right to join the function. If any person acted disorderly during the ceremony, the HAB could call the Police for assistance and action under the Public Order Ordinance (Cap 245).
- 6.146 COM's complaint against the Police was raised for discussion at the Joint IPCC/CAPO Meeting. Regarding COM's first allegation of 'Misconduct', CAPO's investigation revealed that SSGT B honestly believed that the HAB, the event organizer, had the authority to refuse any person's entry to the ceremony and that the Police were duty-bound to assist the HAB in ensuring no breach of the peace occurred when officers of the HAB and the HAD were discharging their duties. SSGT B merely wanted to reinforce the HAD officer by instructing WPC A to repeat the officer's remark that COM was not welcome to the ceremony. Given the fact that there was no way at that time that SSGT B or other police officers could have known that the HAD officer's decision to refuse COM's entry was inappropriate and no evidence existed that the remark was made out of malice, CAPO classified this allegation as 'Unsubstantiated'.

- 6.147 Regarding the allegation of 'Unnecessary Use of Authority', CAPO's investigation revealed that COM was emotional and agitated when she was intercepted by the HAD officer. SP C had personally observed the behavior of COM for 25 minutes. It was his professional assessment that the behaviour of COM resulted or would likely result in a breach of peace. He thus took lawful measure to preserve the public peace. SP C's decision to remove COM from the scene was therefore reasonable and justified in the circumstances. COM was lifted to a police vehicle which she stayed on board for approximately five minutes, so as to let her calm down. She was not handcuffed and was free to choose her drop off point. There was thus no evidence to show that COM was detained in the police vehicle unnecessarily. As such, CAPO classified this allegation as 'Unsubstantiated'.
- 6.148 Regarding the other allegation of 'Misconduct', CAPO noted from an abridged version of SP D's press briefing, the only record available, that the officer did make remarks similar to those as alleged by COM. Nevertheless, CAPO considered that these were general remarks based on facts and it remained unclear regarding under what circumstances and in answering precisely what questions that SP D had made such remarks. Besides, none of the remarks had any indication of assuming that COM would commit an offence or was meant to be discriminatory against COM. As such, CAPO considered that benefit of the doubt should be given to SP D and classified this allegation as 'Unsubstantiated'.
- 6.149 After careful consideration, the IPCC agreed to the 'Unsubstantiated' classifications for COM's three allegations as recommended by CAPO. Nevertheless, the IPCC raised two observations for CAPO's consideration. Firstly, the Council was of the view that every police officer should act with prudence when releasing information at a press briefing. To avoid causing unnecessary misunderstanding and complaints, a police officer should avoid mentioning publicly any suspicion in respect of a person's motive. Secondly, learning a lesson from this incident, the Police should try to anticipate the likely scenarios that might arise in the course of performing their duties at major public functions and seek legal advice on any ambiguous points beforehand. CAPO accepted the Council's observations and would take appropriate follow-up action.
- 6.150 The Council endorsed CAPO's investigation results of the case.

Chapter 7 Acknowledgements

- 7.1 The Council would like to express its gratitude to the Commissioner of Police and his staff – in particular the Director of Management Services, the Assistant Commissioner of Police (Service Quality), the Chief Superintendent and all the staff of the Complaints and Internal Investigations Branch of the Police Force – for their co-operation and assistance in responding to the Council's queries and suggestions in the past year.
- 7.2 Dr LO Chi-kin and Mrs Grace TAM CHEUNG Kit-ying, who had served the Council for six years, retired from the Council at the end of 2003. The Council is most grateful to them for their devoted service and valuable contributions to the work of the IPCC over the years.
- 7.3 Finally, the Council would also like to record its appreciation of the contribution and dedicated support given by Mrs Annie LEUNG FOK Po-shan, Secretary to the Council, and the staff of the Council Secretariat.

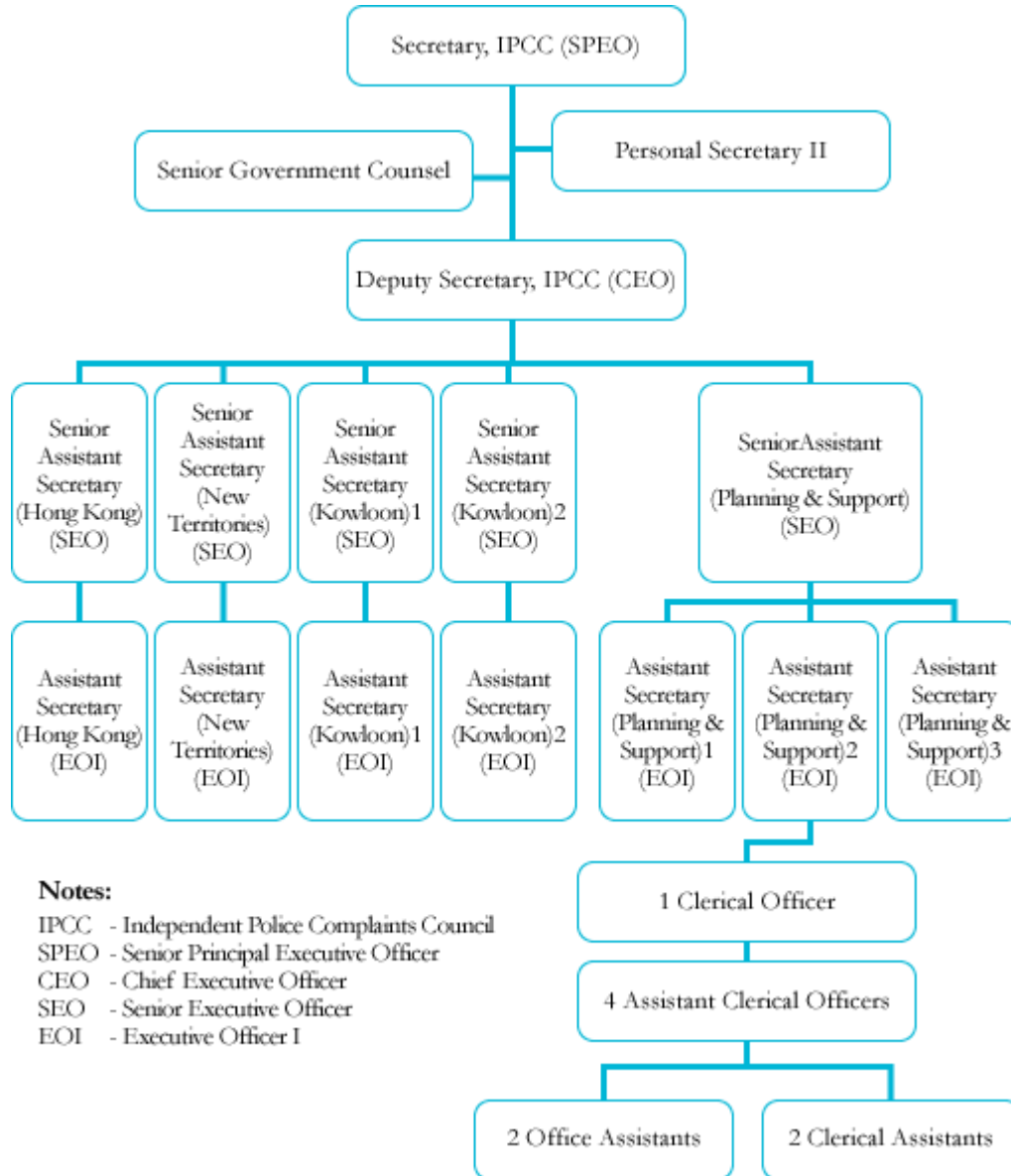
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Appendix

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Appendix I

Organization Chart of the IPCC Secretariat

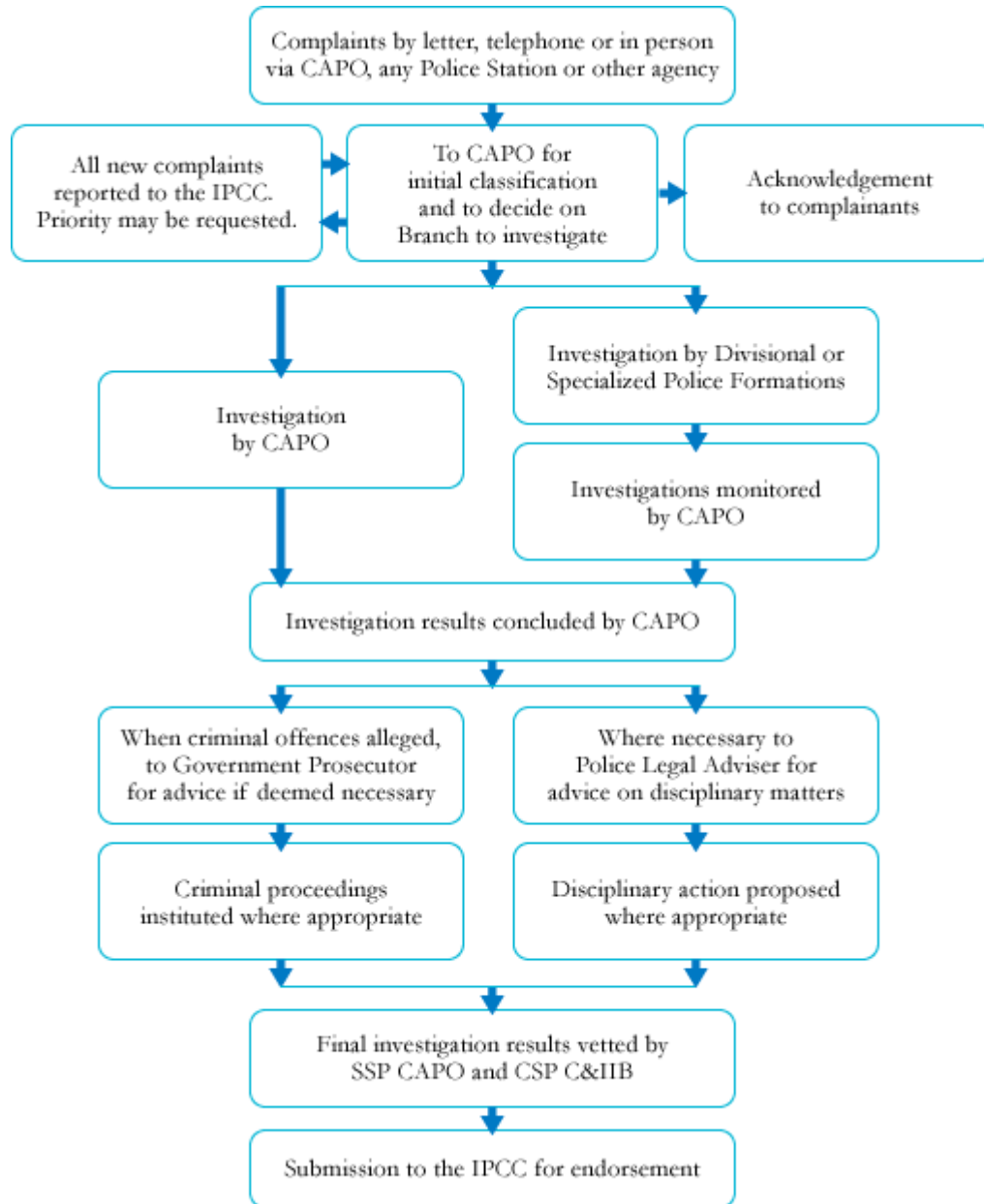


Notes:

- IPCC - Independent Police Complaints Council
- SPEO - Senior Principal Executive Officer
- CEO - Chief Executive Officer
- SEO - Senior Executive Officer
- EOI - Executive Officer I

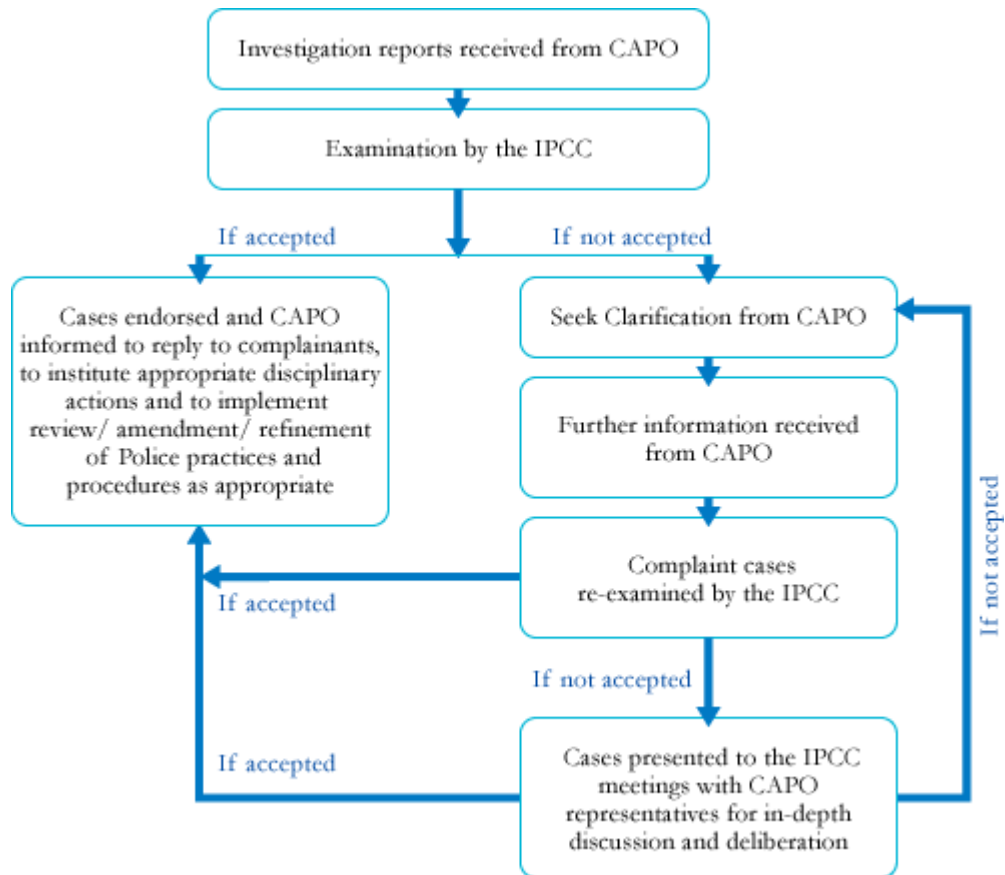
Appendix II

The Processing of Complaints by CAPO Prior to their Submission to the IPCC



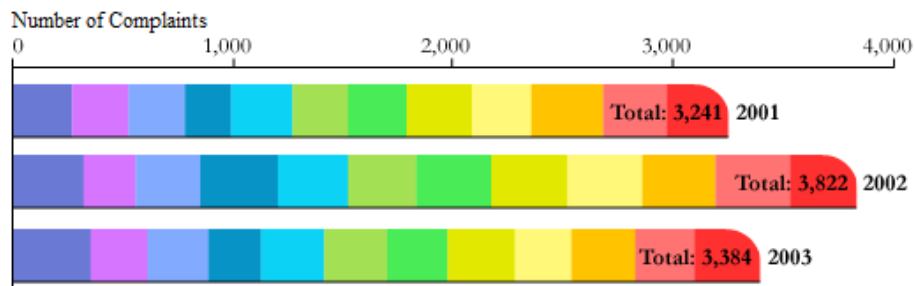
Appendix III

The Monitoring of CAPO Completed Investigations
on Police Complaints by the IPCC



Appendix IV

Number of Complaints* Against the Police Registered by CAPO
in the Years 2001, 2002 and 2003



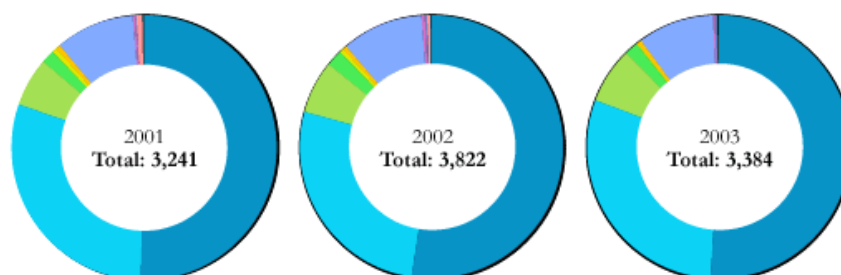
Month	2001	2002	2003
January	275	326	358
February	255	236	258
March	254	292	274
April	210	351	240
May	277	318	284
June	252	308	286
July	264	339	273
August	296	345	305
September	268	339	255
October	326	332	289
November	288	338	267
December	276	298	295
Total	3,241	3,822	3,384

Note : The figures for 2001 and 2002 have been adjusted to take account of cancellation, consolidation, etc.

* A complaint may consist of more than one allegation.

Appendix V

Origin of Complaints* Received in the Years 2001, 2002 and 2003



	2001 (% of total)	2002 (% of total)	2003 (% of total)
A. Reported to CAPO in person or by telephone	1,635 (50.4)	2,003 (52.4)	1,725 (51.0)
B. Reported to a Police Station in person or by telephone	969 (29.9)	1,027 (26.9)	1,007 (29.8)
C. Reported by letter (to the Commissioner of Police, Box 999, CAPO or Police Formation)	193 (6.0)	247 (6.5)	232 (6.9)
D. Complaints made at Prisoner Reception Centres/in Prisons	53 (1.6)	78 (2.0)	56 (1.7)
E. Received via ICAC	19 (0.6)	19 (0.5)	4 (0.1)
F. Received via LEGCO, Solicitors	18 (0.6)	19 (0.5)	19 (0.6)
G. Received via Judiciary	311 (9.6)	382 (10.0)	317 (9.4)
H. Received via Police Public Relations Bureau/ Press/ Radio	9 (0.3)	15 (0.4)	7 (0.2)
I. Received via other Government Departments	7 (0.2)	10 (0.3)	8 (0.2)
J. Received via the IPCC	23 (0.7)	16 (0.4)	2 (0.1)
K. Others	4 (0.1)	6 (0.2)	7 (0.2)
Total reports received	3,241 (100.0)	3,822 (100.0)	3,384 (100.0)

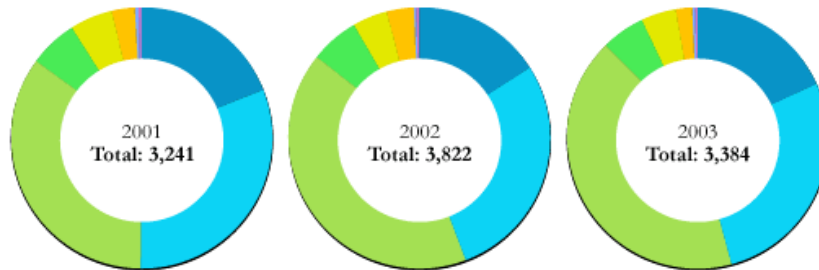
Note 1 : The figures for 2001 and 2002 have been adjusted to take account of cancellation, consolidation, amendments etc. following subsequent investigation.

Note 2 : Percentage shares may not add up to the total due to rounding.

* A complaint may consist of more than one allegation.

Appendix VI

Nature of Complaints* Received in the Years 2001, 2002 and 2003
(According to Initial Categorization)



	2001 (% of total)	2002 (% of total)	2003 (% of total)
A. Assault	615 (19.0)	609 (15.9)	615 (18.2)
B. Misconduct/ Improper Manner/ Offensive Language	1,009 (31.1)	1,081 (28.3)	935 (27.6)
C. Neglect of Duty	1,130 (34.9)	1,582 (41.4)	1,411 (41.7)
D. Unnecessary Use of Authority	194 (6.0)	229 (6.0)	183 (5.4)
E. Fabrication of Evidence	172 (5.3)	166 (4.3)	148 (4.4)
F. Threat	92 (2.8)	127 (3.3)	68 (2.0)
G. Other Offences	15 (0.5)	12 (0.3)	13 (0.4)
H. Police Procedures	14 (0.4)	16 (0.4)	11 (0.3)
Total	3,241 (100.0)	3,822 (100.0)	3,384 (100.0)

Note 1 :The figures for 2001 and 2002 have been adjusted to take account of cancellation, consolidation, etc.

Note 2 :Percentage shares may not add up to the total due to rounding.

* A complaint may consist of more than one allegation.

Appendix VII

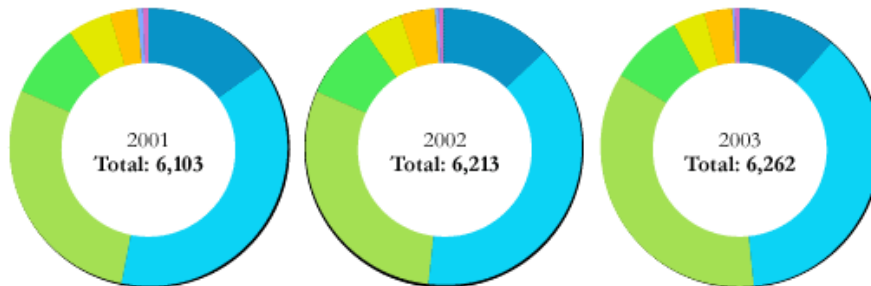
Position as at 31.12.2003 on the Processing of CAPO Investigation Reports Received in 2003

Vetting Team	Hong Kong	Kowloon 1	Kowloon 2	New Territories	Planning & Support	Total
(a) No. of cases endorsed by the IPCC	776	803	814	831	1	3,225*
(b) No. of cases returned to CAPO for comments	13	6	2	6	0	27
(c) No. of examined cases under circulation/ in the process of being circulated to IPCC Members	31	38	22	34	0	125
(d) No. of cases being/ to be examined	49	27	40	18	0	134
Total no. of cases received from CAPO	869	874	878	889	1	3,511

* The figure of 3,225 represents those investigation reports received in 2003 and endorsed within the same year.

Appendix VIII

Nature of Allegations Endorsed by the IPCC
in the Years 2001, 2002 and 2003

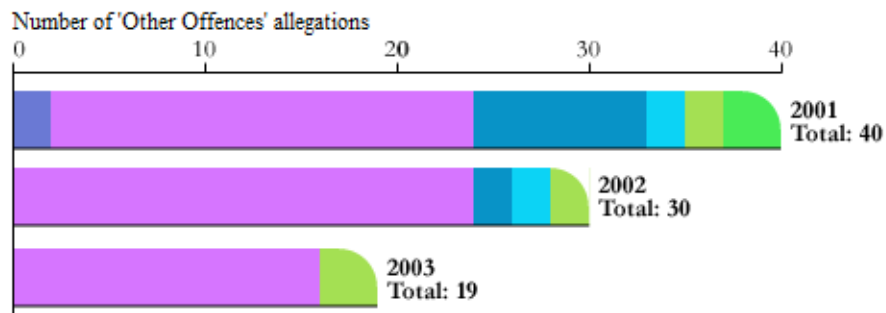


	2001 (% of total)	2002 (% of total)	2003 (% of total)
A. Assault	926 (15.2)	802 (12.9)	714 (11.4)
B. Misconduct/ Improper Manner/ Offensive Language	2,315 (37.9)	2,414 (38.9)	2,314 (37.0)
C. Neglect of Duty	1,741 (28.5)	1,847 (29.7)	2,212 (35.3)
D. Unnecessary Use of Authority	536 (8.8)	556 (8.9)	532 (8.5)
E. Fabrication of Evidence	309 (5.1)	277 (4.5)	230 (3.7)
F. Threat	195 (3.2)	251 (4.0)	204 (3.3)
G. Other Offences (See Appendix VIII(a))	40 (0.7)	30 (0.5)	19 (0.3)
H. Police Procedures	41 (0.7)	36 (0.6)	37 (0.6)
Total no. of allegations	6,103 (100.0)	6,213 (100.0)	6,262 (100.0)

Note : Percentage shares may not add up to the total due to rounding.

Appendix VIII(a)

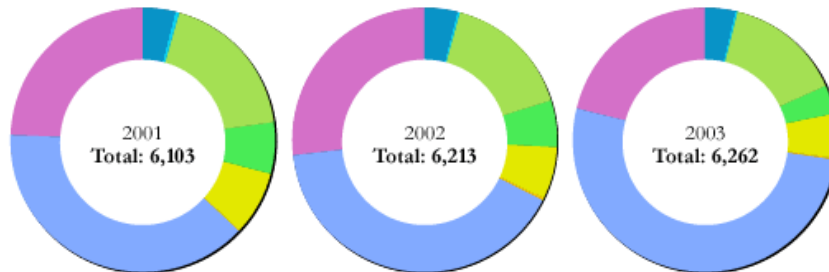
Breakdown of 'Other Offences' allegations:



	2001	2002	2003
(i) Involvement in Deception Cases and/ or Criminal Syndicate/ Unlawful Society	2	0	0
(ii) Theft Ordinance	22	24	16
(iii) Dangerous Drug Ordinance	0	0	0
(iv) Perverting the Course of Justice	9	2	0
(v) Rape/ Indecent Assault	2	2	0
(vi) Other Crime Ordinances	2	2	3
(vii) Others	3	0	0
Total	40	30	19

Appendix IX

Results of Investigations Endorsed by the IPCC
for the Years 2001, 2002 and 2003



	2001 (% of total)	2002 (% of total)	2003 (% of total)
● A. Substantiated/ Substantiated Other Than Reported	241 (3.9)	246 (4.0)	265 (4.2)
● B. Not Fully Substantiated	30 (0.5)	19 (0.3)	21 (0.3)
● C. Unsubstantiated	1,123 (18.4)	986 (15.9)	1,040 (16.6)
● D. False	383 (6.3)	354 (5.7)	255 (4.1)
● E. No Fault	478 (7.8)	397 (6.4)	395 (6.3)
● F. Curtailed	4 (0.1)	16 (0.3)	12 (0.2)
● G. Withdrawn/ Not Pursuable	2,353 (38.6)	2,526 (40.7)	2,735 (43.7)
● H. Informal Resolution	1,491 (24.4)	1,669 (26.9)	1,539 (24.6)
Total no. of allegations	6,103 (100.0)	6,213 (100.0)	6,262 (100.0)

Note : Percentage shares may not add up to the total due to rounding.

Appendix X

Analysis of Fully Investigated Allegations Endorsed by the IPCC in 2001, 2002 and 2003

Results of Investigation	2001		2002		2003		
	No. of Allegations	Number	Percentage to Total No. of Fully Investigated Allegations	Number	Percentage to Total No. of Fully Investigated Allegations	Number	Percentage to Total No. of Fully Investigated Allegations
(I) Allegations that Belong to the 'Substantiated' Category							
Substantiated		112	5.0%	97	4.8%	113	5.7%
Substantiated Other Than Reported		129	5.7%	149	7.4%	152	7.7%
Not Fully Substantiated		30	1.3%	19	1.0%	21	1.1%
Sub-total		271	12.0%	265	13.2%	286	14.5%
(II) Other Allegations which are Fully Investigated							
False		383	17.0%	354	17.7%	255	12.9%
No Fault		478	21.2%	397	19.8%	395	20.0%
Unsubstantiated		1,123	49.8%	986	49.3%	1,040	52.6%
Total No. of Fully Investigated Allegations		2,255 (100.0%)		2,002 (100.0%)		1,976 (100.0%)	

Note : Percentage shares may not add up to the total due to rounding.

Appendix XI

Number of Allegations by Nature and by Results of Investigations as per CAPO Reports Examined by the IPCC in 2003

Number of Allegations by Nature and by Results of Investigations as per CAPO Reports Examined by the IPCC in 2003

Nature of Allegation	Substantiated/ Substantiated Other Than Reported	Not Fully Substantiated	Unsubstantiated	False	No Fault	Curtailed	Not Pursuable/ Withdrawn	Informal Resolution	Total
Assault	1 (0.1)	2 (0.3)	60 (8.4)	63 (8.8)	16 (2.2)	1 (0.1)	571 (80.0)	0 (0)	714 (100.0)
Misconduct/ Improper Manner/ Offensive Language	26 (1.1)	5 (0.2)	454 (19.6)	32 (1.4)	29 (1.3)	2 (0.1)	883 (38.2)	883 (38.2)	2,314 (100.0)
Neglect of Duty	219 (9.9)	10 (0.5)	350 (15.8)	20 (0.9)	252 (11.4)	5 (0.2)	809 (36.6)	547 (24.7)	2,212 (100.0)
Unnecessary Use of Authority	11 (2.1)	3 (0.6)	100 (18.8)	16 (3.0)	79 (14.8)	4 (0.8)	233 (43.8)	86 (16.2)	532 (100.0)
Fabrication of Evidence	0 (0)	1 (0.4)	31 (13.5)	107 (46.5)	5 (2.2)	0 (0)	86 (37.4)	0 (0)	230 (100.0)
Threat	0 (0)	0 (0)	39 (19.1)	14 (6.9)	2 (1.0)	0 (0)	138 (67.6)	11 (5.4)	204 (100.0)
Other Offences (Note 4)	1 (5.3)	0 (0)	5 (26.3)	3 (15.8)	2 (10.5)	0 (0)	8 (42.1)	0 (0)	19 (100.0)
Police Procedures	7 (18.9)	0 (0)	1 (2.7)	0 (0)	10 (27.0)	0 (0)	7 (18.9)	12 (32.4)	37 (100.0)
Total	265	21	1,040	255	395	12	2,735	1,539	6,262

Note 1: Figures in brackets denote percentages to total allegations of the same nature.

Note 2: Percentage shares may not add up to the total due to rounding.

Note 3: In respect of the 16 allegations of assault which were classified as 'No Fault', there was sufficient evidence to indicate that the use of force by the complainers was reasonable and justifiable.

Note 4

Breakdown of 'Other Offences' Allegations by Results of Investigations

	Substantiated/ Substantiated Other Than Reported	Not Fully Substantiated	Unsubstantiated	False	No Fault	Curtailed	Not Pursuable/ Withdrawn	Informal Resolution	Total
Theft Ordinance	1	0	4	2	1	0	8	0	16
Involvement in Deception Cases and/ or Criminal Syndicate/ Unlawful Society	0	0	0	0	0	0	0	0	0
Perverting the Course of Justice	0	0	0	0	0	0	0	0	0
Dangerous Drug Ordinance	0	0	0	0	0	0	0	0	0
Rape/ Indecent Assault	0	0	0	0	0	0	0	0	0
Other Crime Ordinances	0	0	1	1	1	0	0	0	3
Others	0	0	0	0	0	0	0	0	0
Total	1	0	5	3	2	0	8	0	19

Appendix XII

Criminal/ Disciplinary Proceedings and Internal Action Taken by Police
in respect of Cases Endorsed in the Years 2001, 2002 and 2003

A. For 'Substantiated', 'Substantiated Other Than Reported' and 'Not Fully Substantiated' Complaints

(i) Criminal proceedings instituted	No. of Officers		
	2001	2002	2003
Acquitted	1	7	0
Nolle Prosequi	0	0	0
Offer no evidence	1	0	0
Convicted with absolute discharge	0	0	0
Convicted with conditional discharge	0	0	0
Bound over	0	0	0
Probation	0	0	0
Fine	1	0	0
Suspended sentence	0	0	0
Custodial sentence	0	3	1
Trial is pending and outcome is not yet known	0	0	0
Others	0	0	0
	3	10	1

(ii) Disciplinary proceedings instituted	No. of Officers		
	2001	2002	2003
Acquitted	0	1	2
Conviction recorded but no punishment	2	0	0
Caution	8	6	10
Caution, suspended	2	7	0
Reprimand	0	4	2
Reprimand, suspended	0	0	0
Severe reprimand	1	3	2
Severe reprimand, suspended	0	0	0
Warned for dismissal	0	0	0
Dismissed	0	0	0
Hearing is pending and outcome is not yet known	0	0	15
Others	0	0	1
	13	21	32
(iii) Action by Formation Commanders	No. of Officers		
	2001	2002	2003
Warning with Entry in Record of Service	22	36	24
Advice given to police officers concerned	257	236	243
	279	272	267
Total ((i) + (ii) + (iii)) *	295	303	300

B. For other complaints where some form of Disciplinary Proceedings/
Internal Action was considered necessary

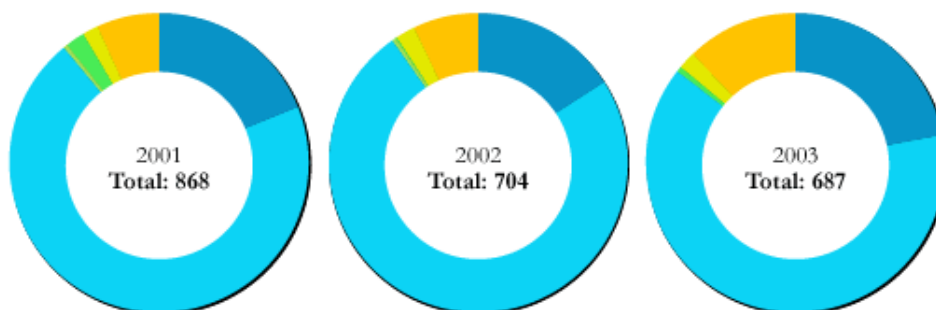
	No. of Officers		
	2001	2002	2003
(i) Criminal proceedings	0	0	0
(ii) Disciplinary proceedings	0	0	0
(iii) Warning with Entry in Record of Service	0	0	0
(iv) Advice	55	23	20
	55	23	20

Note : The figures for 2001 and 2002 have been adjusted following case review.

* This figure does not include 'Substantiated' complaints directed against the Police Force/ Police procedures, unidentified officers and officers no longer serving in the Police Force.

Appendix XIII

Nature of Queries Raised by the IPCC in 2001, 2002 and 2003



Nature of queries raised by the IPCC

Nature	2001	2002	2003
(1) Results of Investigation	164	112	151
(2) Thoroughness of Investigation/ Clarification of Ambiguous Points in the CAPO Reports/ CAPO Case Files	608	523	436
(3) Grounds for the Exercise of Constabulary Powers	4	3	0
(4) Compliance with Police Practices/ Procedures	18	1	4
(5) Suggested Improvement to Police Procedures	15	15	13
(6) Other Queries	59	50	83
Total Number of Points Raised	868	704	687

A query raised by the IPCC may contain more than one point.

Out of 429 points accepted by CAPO, 105 results of investigations were changed in 2003. The corresponding figures for 2001 and 2002 were 93 and 84 respectively.