

Report of the IPCC 2004

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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 Ronny WONG Fook-hum, SC, JP
Chairman, IPCC

Education and Professional Qualifications

Senior Counsel

Occupation

Barrister

Major Public Service

- Chairman, Air Transport Licensing Authority
- Chairman, Appeal Board Panel (Town Planning)
- Chairman, Board of Review (Inland Revenue Ordinance)
- Member, Administrative Appeals Board
- Recorder of the High Court

Dr Eric LI Ka-cheung, GBS, JP
Vice-chairman, IPCC

Education and Professional Qualifications

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

Adjunct Professor, School of Business,
Hong Kong Baptist University

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

'Beta Gamma Sigma Chapter Honoree', Hong Kong University of Science and
Technology

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

Fellow, Hong Kong Institute of Certified Public Accountants (Practising)

Fellow, Institute of Chartered Accountants in England and Wales

FCPA(Aust.), 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 Planner

Honorary Fellow, The Hong Kong Institute of Housing
Certified Public Accountant

Occupation

Certified Public Accountant

Major Public Service

- Chairman, Process Review Committee for the oversight of Hong Kong Monetary Authority designated system under the Clearing and Settlement Systems Ordinance
- Member, Clearing and Settlement Systems Appeals Tribunal
- Member, Deposit-taking Companies Advisory Committee
- Member, Court of the Hong Kong Polytechnic University
- Former Member, Legislative Council (1998-2004)

Mr YEUNG Yiu-chung, BBS, JP
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

- Hong Kong Deputy to the Ninth and Tenth National People's Congress of the People's Republic of China
- President, Hong Kong Federation of Education Workers
- Member, Education Commission
- Member, Travel Industry Council Appeal Panel
- Former Member, Legislative Council (1998-2004)

Dr 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, 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
- Former Member, Legislative Council (2000–2004)

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
- Member, Hong Kong Housing Authority
- 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
- 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, Advisory Committee on Code of Practice for Recognized Certification Authorities
- Member, Hong Kong Logistics Development Council
- Member, Textiles Advisory Board

Hon 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

- Member, Legislative Council
- Chairman, Water Pollution Control Appeal Board Panel
- Director, Board of Directors of the Applied Research Council
- Member, Criminal and Law Enforcement Injuries Compensation Boards
- Former Member, Committee on Bilingual Legal System (1998–2004)

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 Complaints Committee
- Member, Engineers Registration Board

Dr SHUM Ping-shiu, BBS, JP

Member, IPCC

Education and Professional Qualifications

MBBS (HK)

FRC Psy (UK)

FHKAM (PSYCHIATRY)

Occupation

Doctor

Major Public Service

- Member, Long-term Prison Sentences Review Board
- Member, Health Committee, Medical Council of Hong Kong
- Member, Mental Health Review Tribunal
- Former Member, Elderly Commission (1997–2003)
- 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
- Vice-chairman, Society of Boys' Centres

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 South Area Committee
- Member, Security and Guarding Services Industry Authority
- Member, Committee on Community Support for Rehabilitated Offenders

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

- Treasurer, Causeway Bay Area Committee
- Member, Management and Executive Committees, SARDA
- 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, Tuen Mun District Council
- Member, Tuen Mun District Fight Crime Committee
- Member, Tuen Mun South West Area Committee

Mr HUI Yung-chung

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
- 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)
- Chairman, Ap Lei Chau Community Halls Management Committee

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
- Former Member, Working Group on Characters for Chinese Computer System (1999–2003)
- Former Member, Sir Edward Youde Memorial Fund Council (1987–2003)
- Former Member, Council of the Open University of Hong Kong (1991–1994)

Ms Vivien CHAN, JP

Member, IPCC

Education and Professional Qualifications

LLB (Hons), Reading University, UK

LLM (Hons), London University, UK

Occupation

Solicitor

Notary Public

Major Public Service

- Chairman, Advisory Committee on Travel Agents
- Deputy Chairman, Appeal Board on Closure Orders (Immediate Health Hazard)
- Deputy Chairman, Appeal Board on Public Meetings and Processions
- Member, Fight Crime Committee
- Member, Hong Kong Tourism Board

Dr Michael TSUI Fuk-sun

Member, IPCC

Education and Professional Qualifications

Master of Dental Science, University of Sydney, Australia

Bachelor of Laws (Hons), University of London, UK

Dental Surgeon, Dental Council of Hong Kong
Barrister, Supreme Court of Hong Kong

Occupation

Dentist (Private Practice)
Company in-house Counsel

Major Public Service

- Member, Securities and Futures Appeals Tribunal
- Member, Security and Guarding Services Industry Authority
- Former Member, Dental Council of Hong Kong (1989–2001)
- Former Member, Criminal and Law Enforcement Injuries Compensation Boards (1997–2003)
- Former Member, Consumer Council (1994–2000)

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

List of IPCC Lay Observers

1. Mr Bunny CHAN Chung-bun, BBS, JP
2. Mr CHAN Ka-wai
3. Mr Henry CHAN Man-yu
4. Mr Thomas CHAN Siu-kam, JP
5. Mr CHAN Tak-chor, MH
6. Mr Tony CHAN Tak-wai
(till 31 March 2004)
7. Mr CHAN Tung, BBS, JP
8. Mr CHAN Wai-chung, MH
(till 31 March 2004)
9. Mr CHAN Wai-ming, MH
10. Mr Dominic CHAN Wing-kam, MH
11. Mr Joseph CHAN Yuek-sut, BBS
12. Ms CHAU Chuen-heung, MH, JP
13. Mr CHAU How-chen, SBS, JP
14. Mr Francis CHAU Yin-ming, MH
15. Mrs Betty CHENG YUEN Pui-yan
16. Mr CHEUNG Fo-tai, MH
(till 31 March 2004)
17. Mr Christopher CHEUNG Wah-fung, JP
18. Ms Susanna CHING Che-man
19. Dr CHIU Chun-bong, JP
20. Mr CHONG Kam-ning, MH
21. Mr Joseph CHOW Kam-siu
22. Mr CHOW Yick-hay, BBS
23. Mr CHU Ching-hong
24. Ms Maureen CHU Mau-lam
25. Rev CHU Yiu-ming
26. Mr Christopher CHUNG Shu-kun, MH, JP
27. Mr CHUNG Wai-ping, BBS, MH
28. Mr FUNG Kam-chiu, MH
29. Mr HAU Shui-pui, SBS
30. Mr IP Kwok-chung, BBS, JP
31. Mr KAN Chi-ho, MH
32. Mr KO Tam-kan
33. Dr Lawrence LAM Chi-kit, MH, SBStJ
34. Mr Stewart LAM Kin-ko
35. Dr Conrad LAM Kui-shing, JP
36. Mr LAM Man-fai, JP
(till 31 March 2004)
37. Ms Leona LAM Wai-ling, JP
38. Mrs Peggy LAM PEI Yu-dja, GBS, JP
39. Mr Ivan LAU Ho-kit
40. Mr Francis LAU Mo-kaye, MH
(till 31 March 2004)
41. Ir Kenneth LAU To-koon
(till 31 March 2004)
42. Mr LAU Wai-wing
(till 31 March 2004)
43. Ms Elizabeth LAW
44. Miss Cecilia LEE Sau-wai
45. Mr LEUNG Che-cheung, MH
(till 31 March 2004)
46. Ms LEUNG Fu-wing, MH
47. Mr LEUNG Kin-man, MH
48. Mr LEUNG Lai
49. Mr LEUNG Sau-chi, JP
50. Mr Edward LEUNG Wai-kuen
51. Mr LEUNG Wing-kuen
52. Mr David LI Ka-fai, MH
53. Mr Bruce LIU Sing-lee
54. Mr LO Kwok-hung, MH, SBStJ

55. Ms MAR Yuet-har, MH
56. Miss Rosanda MOK Ka-han
57. Mr George NG Sze-fuk, BBS, JP
58. Mr Thomas PANG Cheung-wai, JP
59. Mr Joseph PANG Yuk-wing, JP
60. Mr David PONG Chun-yee
61. Mr Edinson SO Hoi-pan, BBS, JP
62. Mr SUEN Kai-cheong, MH, JP
(till 31 March 2004)
63. Mr TAM Kwok-kiu, MH
64. Mr George TAM Siu-ping
65. Ms Christina TING Yuk-chee, BBS, JP
66. Dr John TSE Wing-ling
67. Mr Aaron WAN Chi-keung, BBS, JP
68. Mr Justein WONG Chun, JP
69. Mr WONG Kam-chi, MH
70. Mr WONG King-cheung, JP
(till 14 December 2004)
71. Hon WONG Kwok-hing, MH
72. Ir Peter WONG Kwok-keung
73. Ir Billy WONG Wing-hoo
74. Ms Ada WONG Ying-kay, JP
75. Mr WU Chor-nam, JP
76. Mr Henry WU King-cheong, BBS, JP
77. Mr WU Kwok-cheung, MH
78. Mr Chris YIP Yiu-shing, MH
(till 31 March 2004)
79. Mr Jonathan YU Hoy-gin, JP
80. 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 2004.

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 2004 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	926 (873)	100 (100)
In writing	Within ten days	296 (248)	100 (100)
Standard response time for monitoring of complaints			
Normal cases	Less than 3 months	2,214 (2,551)	99.9 (99.8)
Complicated cases	Within three to six months	1,080 (1,006)	99.8 (99.3)
Appeal cases	Within three to six months	135 (123)	100 (99.2)

Figures in bracket denote the performance achieved for 2003.

- 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 To strengthen public confidence in the independence and impartiality of the IPCC, the Administration plans to provide a statutory basis for the operation of the IPCC and define its functions and power in law.
- 1.6 The IPCC will keep in view the reintroduction of the IPCC Bill into the Legislative Council.

Talks at Secondary Schools

- 1.7 As part of its on-going publicity programme, the IPCC continued to organize talks at secondary schools in 2004. 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 2004, a new batch of 18 Lay Observers were appointed by the Secretary for Security to observe investigations by CAPO/Formation investigating officers and Informal Resolution interviews, while 13 Lay Observers retired and one passed away during his term of appointment. Two briefings were conducted by the IPCC Secretariat on 28 April 2004 and 17 May 2004 respectively for the new Observers to familiarize them with the police complaints system and the operation of the Observers Scheme. As at 31 December 2004, there were altogether 69 Lay Observers.



Briefing for the new IPCC Lay Observers held on 17 May 2004.

- 1.9 In 2004, 319 observations (118 for Informal Resolution and 201 for others) were arranged under the Scheme, among which 18 visits were conducted by IPCC Members and 301 visits were conducted by Lay Observers.

Visit of the Delegation of the Supervision Department, Ministry of Public Security of the People's Republic of China

- 1.10 A 7-member delegation of the Supervision Department, Ministry of Public Security of the People's Republic of China visited the IPCC on 9 June 2004. During the visit, they were briefed on the Council's roles and functions by Professor Daniel SHEK Tan-lei, BBS, JP, IPCC Member.



The delegation of the Supervision Department, Ministry of Public Security of the People's Republic of China visited the IPCC.

Interview of IPCC Members by Representatives of the Complaints Prevention Committee, Hong Kong Police

1. 11 Three IPCC Members including Ir Edgar KWAN, Dr Charles KOO Ming-yan, MH and Dr Michael TSUI Fuk-sun were interviewed by representatives of the Complaints Prevention Committee (CPC), Hong Kong Police on 25 June 2004 to enquire about their concerns in examining complaint cases against the Police and their suggestions to reduce complaints. An article on the interview was published in the CPC Bulletin.





Three IPCC Members were interviewed by representatives of the Complaints Prevention Committee, Hong Kong Police on 25 June 2004.

Visits to Frontline Policing Activities

1.12 During the year, IPCC Members made five 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:

- | | |
|-------------------|--|
| 26 February 2004 | Observing an anti-vice operation in Mongkok |
| 23 April 2004 | Visit to the Emergency Unit of Kowloon West Region |
| 4 June 2004 | Observing the crowd management operation of the June 4th Candle Light Vigil at Victoria Park |
| 10 September 2004 | Observing an anti-crime operation in Yau Tsim Police District |
| 31 October 2004 | Observing the crowd management operation of Halloween in Central Police District |



Observing an anti-vice operation in Mongkok.



Visit to the Emergency Unit of Kowloon West Region.



Observing the crowd management operation of the June 4th Candle Light Vigil at Victoria Park.



Observing an anti-crime operation in Yau Tsim Police District.



Observing the crowd management operation of Halloween in Central Police District.

- 1.13 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.

Visit of the Delegation of the China Supervision Institute

- 1.14 A 10-member delegation of the China Supervision Institute, accompanied by the staff of the Office of The Ombudsman, visited the IPCC on 12 November 2004. During the visit, they were briefed on the Council's work by Professor Daniel SHEK

Tan-lei, BBS, JP, IPCC Member.



Professor Daniel SHEK Tan-lei, BBS, JP, IPCC Member, presented a souvenir to Mr WONG Tie, Head of the Delegation of the China Supervision Institute.

Monitoring of Serious Complaints

- 1.15 The Serious Complaints Committee monitored 17 cases in 2004. 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. No witness was interviewed by the IPCC under the Scheme in 2004.

Monitoring of CAPO's Investigation Reports

- 1.18 The IPCC endorsed a total of 3,299 CAPO's investigation reports involving 5,837 allegations during the year. More details are given in Chapter 4.

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 2004, Ms Vivien CHAN, JP and Dr Michael TSUI Fuk-sun were appointed as new members to the Council. Mr Ronny WONG Fook-hum, SC, JP was appointed as the Chairman of the IPCC with effect from 25 May 2004 to succeed The Hon Mr Justice Robert C. TANG, SBS, JP who resigned from chairmanship in April 2004 upon his appointment to the public service.
- 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: Hon Alan LEONG Kah-kit, SC
Members: 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 Edward PONG Chong, BBS, JP
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 LO Wing-lok, JP
Members: Dr LO Chi-keung, BBS
Hon Alan LEONG Kah-kit, SC
Ir Edgar KWAN
Dr SHUM Ping-shiu, BBS, JP
Dr Charles KOO Ming-yan, MH
Dr Michael TSUI Fuk-sun

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 right to left) Dr SHUM Ping-shiu, BBS, JP, IPCC Member, Ir Edgar KWAN, IPCC Member, Hon Alan LEONG Kah-kit, SC, IPCC Member, Dr LO Wing-lok, JP, IPCC Vice-chairman, Mr Ronny WONG Fook-hum, SC, JP, Chairman of the IPCC, Mrs Annie LEUNG FOK Po-shan, IPCC Secretary, Mr YEUNG Yiu-chung, BBS, JP, IPCC Vice-chairman and Dr LO Chi-keung, BBS, IPCC Member at the Joint IPCC/CAPO Meeting.



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 (COM), while using her mobile phone outside the scaffoldings of a construction site, got wet as some water and sand debris dropped from the construction site. Noting that her mobile phone which got wet was not working, she entered the construction site and managed to locate male A, the person-in-charge of the construction site, for compensation. She later went to a hospital for medical treatment with the finding of 'Head Injury'. On the following day, she reported the case to a police station where Detective Senior Police Constable X (DSPC X) took over the

investigation. After site enquiry by DSPC X, the person-in-charge of the scaffolding work expressed his willingness to compensate COM and requested to talk with COM regarding the compensation. DSPC X arranged a private talk between COM and male A at the crime office of the police station. DSPC X did not take part in the talk. After settlement of the compensation, COM, in the presence of male A and DSPC X, demanded the Police to take prosecution against the construction site. Amidst his explanation that police prosecutions hinged on evidence available and legal procedures, DSPC X said that 'the concerned party has agreed to compensate for the damage of your mobile phone, but you want more than that...'. On hearing this, COM became furious and vigorously interrupted the conversation by speaking foul language. COM refused to listen to DSPC X's further explanation and left the police station immediately afterwards. She alleged that the Police was biased in favour of the construction site ('Misconduct'). After investigation, the company which carried out the scaffolding work was summonsed under Section 4B, Summary Offences Ordinance.

After investigation, CAPO noted that DSPC X was put in a trying moment during which he had exercised his self-constraint towards COM's insulting words. Though DSPC X explained that his conversation with COM was interrupted by the latter, as corroborated by male A, CAPO noted that his unpleasant remarks uttered to COM in context, appeared subjective in nature and unnecessary. The allegation of 'Misconduct' was therefore 'Substantiated' against DSPC X.

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 (COM) made a report to the 999 console about a vehicle obstruction on a road. About 45 minutes later, COM alleged that he received a call from Police Constable X (PC X) who told him that there was no obstruction at the location and argued with him using foul language. Within half an hour following PC X's call, COM received two more calls of a similar nature. COM suspected that they were made by the same officer. He also received nine more similar nuisance calls on the following morning. COM lodged a complaint of 'Offensive Language' against PC X and made a report of 'Telephone Nuisance'.

COM later withdrew his complaint of 'Offensive Language' and the allegation was classified as 'Withdrawn'. Regarding his report of 'Telephone Nuisance', police investigation revealed that Police Constable Y (PC Y), after knowing the altercation between PC X and COM, made the nuisance calls to COM by using a prepaid SIM card. PC Y admitted having made the nuisance calls to COM and it transpired that PC X did not stop PC Y's act and kept quiet about it. The legal advice sought did not recommend a charge of 'Telephone Nuisance' due to the time bar for proceedings. Since the officers' misconduct constituted a breach of discipline which was closely related to the original complaint of 'Offensive Language', a 'Substantiated Other Than Reported' count of 'Misconduct' was registered against the two officers. Disciplinary proceedings were to be instituted against them.

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) went to a police station in District A to make a report of theft of her mobile phone which took place in District B. COM alleged that Detective Senior Police Constable X (DSPC X) told her that it was no use to report the case there and persuaded her to report the case directly to the police station

in District B. Instead of acting upon DSPC X's advice, the complainant lodged an allegation of 'Neglect of Duty' against DSPC X after leaving the police station.

DSPC X, who denied the allegation, admitted having explained the reporting procedures to the complainant by advising her that the case would be transferred to District B for follow-up enquiry, and COM then left without giving her statement. CAPO noted that it was the duty of the Duty Officer, or in his absence, the Assistant Duty Officer, to assess each individual report for referral to the Divisional Crime Unit. DSPC X should not have made a pre-judgment on the classification of COM's report. Moreover, CAPO opined that DSPC X might have over-emphasized the referral of the case, which led to the misinterpretation by COM that her report was rejected and her departure without making a report. However, considering that there was no independent witness or other corroboration to prove what actually transpired in the dialogue between COM and DSPC X at the material time, the allegation of 'Neglect of Duty' 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

Whilst the complainant (COM) was driving a public light bus (PLB) with passengers on board in the late evening of the material day, his vehicle was intercepted by Police Constable A (PC A) who was performing anti-PLB robbery snap check duty. In the course of checking, PC A observed that the upper part of COM's seat belt was fastened by a clip which hindered the proper movement of the belt, resulting in it being loosened. After conducting a measurement,

he found that the distance between COM's chest and the belt was about two fists apart. PC A thus pointed out to COM that he had committed the offence of 'Driving light bus without being securely fastened with seat belt' and ticketed him for the offence. COM said that he had fastened his seat belt while he was driving and only loosened the seat belt to get his driving licence from his wallet for PC A's checking.

COM drove away after the incident and lodged a complaint of 'Rudeness' against PC A subsequently, alleging that the latter put the fixed penalty ticket and the driving licence on his hand with force and told him to drive away rudely after ticketing him. COM claimed that the other officer who also boarded his PLB in the course of the snap check could be his witness. COM did not dispute the ticket and had settled it before lodging his complaint.

PC A flatly denied COM's allegation and claimed that he had never treated COM rudely as alleged. He stated that throughout the incident, he was the only officer on board COM's vehicle. Sergeant B (SGT B), who came forward to mediate the case at a later stage, confirmed that the other two officers at the scene were at the material time engaged in their own duties and did not participate in the checking of COM's vehicle with PC A, but he did not witness how PC A returned the driving licence together with the ticket to COM. CAPO subsequently tried to locate the passengers on board COM's vehicle at the material time by visiting the PLB stand but to no avail.

This was a one-against-one case. COM's allegation was denied by PC A and there was no independent witness or other corroborative evidence to support either side's version. Under the circumstances, the allegation of 'Rudeness' was 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

Police Constable A (PC A) saw the complainant (COM) walking across the road without using a nearby footbridge. PC A intercepted COM and informed him that he would be summonsed for 'Jaywalking'. Upon receiving the summons, COM lodged a complaint of 'Fabrication of Evidence' against PC A alleging that the latter fabricated evidence to summons him as he was in fact riding on a bicycle and not walking across the road at the material time.

COM raised the same allegation in court but the Magistrate accepted PC A as an honest witness whose evidence reflected the truth and did not believe in COM's version. The Magistrate commented in his verdict that if COM had ridden on a bicycle across the road at the material time, PC A could have prosecuted him for other more serious offences. After trial, COM was convicted of the charge of 'Crossing within 15 metres of footbridge' and fined \$800.

As COM's complaint was deemed fully resolved in court, the allegation of 'Fabrication of Evidence' was 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 complaine is acting under instruction from a superior officer or in accordance with an established police practice.

Example

The complainant (COM) was the defendant in a 'Theft' case, in which male A was the victim and male B was the prosecution witness. On the material day, male A was sleeping on a platform outside the Hong Kong Cultural Centre with his pair of shoes left on the ground. Male B saw COM attempting to steal male A's portaphone but to no avail. COM then stole the shoes and walked away. When male B shouted at COM, he immediately threw away the shoes and ran. Males A and B chased and stopped COM in the vicinity. A report was made to the Police. Eventually, COM was arrested and charged with 'Theft'. During the trial, COM pleaded guilty and admitted the brief facts of the case. He was convicted and fined. Five months later, he applied for an appeal against conviction but his application was rejected. He then lodged a complaint against Detective Senior Inspector X (DSIP X) alleging that the latter should not believe in the versions of the witnesses and seized the shoes as exhibit ('Neglect of Duty'). He said that he pleaded guilty to the charge only because he did not want the trial Magistrate to impose a heavier sentence on him if he denied the charge.

DSIP X denied the allegation. He contended that having examined all the evidence available during the crime investigation, he concluded that there was sufficient evidence to lay the charge against COM, who made no complaint throughout the enquiry. After investigation, CAPO found that DSIP X's decision to charge COM was justified and appropriate, as evidenced by COM's conviction. In the circumstances, CAPO considered that the allegation was judicially resolved and accordingly classified it 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 (COM) was caught red-handed for stealing a handbag from a woman who was having tea with her family in a restaurant. He was arrested by the Police for the offence of 'Theft' and Detective Police Constable X (DPC X) took a Record of Interview (ROI) from him. Under caution, COM confessed that he stole the handbag out of greed. After he was charged with the offence, COM lodged a complaint of 'Threat' alleging that during the taking of the ROI, DPC X threatened to beat him up if he did not admit the offence.

After the trial, COM was convicted on his own guilty plea and was sentenced to six months' imprisonment. After the conclusion of the trial, CAPO interviewed COM at the prison to obtain details of his complaint. COM unequivocally expressed his decision to withdraw his complaint without giving any explanation. His withdrawal was verified by a staff of the Correctional Services Department. The allegation of 'Threat' was 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 e 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 (COM), who was arrested for 'Possession of Dangerous Drugs' outside a disco, lodged a complaint of 'Fabrication of Evidence' against Sergeant A (SGT A) for picking up a packet containing suspected dangerous drugs from the ground near her left foot and claiming that the packet belonged to her. The manager of the disco informed the Police that the CCTV tape outside the entrance of the disco for the material time had been erased. After the trial, the court acquitted COM on the benefit of the doubt.

SGT A denied the allegation. The complaint investigation officer sent two letters to COM in order to seek the latter's assistance in the investigation but the letters met with no response. Without the assistance of COM, the investigation of the complaint could not be proceeded with. The allegation of 'Fabrication of Evidence' was 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) had mental problem and was a client of a social service centre. One day, COM entered a classroom of the centre where a lesson was underway but he was not a student of the class. As COM caused trouble and disrupted the class, staff of the centre removed him from the classroom and a dispute arose. COM then dialed '999' to call for assistance from the Police.

In response to COM's report, Police Constable X (PC X) was deployed to the scene. Later, COM lodged a complaint alleging that PC X failed to show him his police warrant card ('Neglect of Duty') and did not allow him to go to the toilet ('Unnecessary Use of Authority').

PC X stated that he did show his warrant card to COM upon request, although this was not witnessed by any staff of the centre. Besides, PC X said that during the enquiry, COM requested to go to the toilet but his request was refused by staff of the centre.

After the incident, COM was admitted to the psychiatric ward of a hospital. The doctor in charge of COM's case said that COM refused to disclose his medical condition and his tentative date of release from the hospital. Besides, COM also declined to be interviewed by the CAPO investigator. Since CAPO did not have access to COM, it was impracticable for it to complete the investigation into COM's complaint against PC X.

Given COM's mental condition, Chief Superintendent (Complaints and Internal Investigations Branch) finally approved the curtailment of CAPO's investigation into the complaint case. The allegations of 'Neglect of Duty' and 'Unnecessary Use of Authority' were 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 questioned and searched by the complainee while chatting with a friend around mid-night in a park. He alleged that the complainee was impolite to him during the questioning and search and treated him like a criminal. In view of its minor nature, the complaint was considered suitable to be dealt with by 'Informal Resolution'.

After being explained of the aim of 'Informal Resolution' by the Conciliating Officer, the complainant agreed to have his complaint resolved informally. The complainee was interviewed by the Conciliating Officer. He was reminded to act professionally when discharging his duties and to treat members of the public with 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 (COM), a secondary school student, was arrested for 'Claiming to be a Member of Triad Society'. He alleged that when he was taken to the police station, two police officers punched his head and neck in the police vehicle (i. e. 'Assault') with a view to inducing his confession. COM agreed to have his complaint handled by sub-judice procedures and refrained from giving details of his complaint. CAPO suspended investigation pending court trial.

COM was subsequently convicted of three counts of 'Inviting a Person to become a Member of Triad Society', one count of 'Claiming to be a Member of Triad Society' and three counts of 'Criminal Intimidation'. He was sent to a rehabilitation centre. After trial, COM withdrew his complaint.

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 2004, CAPO registered the receipt of 3,222 complaints, representing a decrease of 4.8% over the figure of 3,383 for 2003. The number of complaints (Note: a complaint may consist of more than one allegation) received and registered by CAPO in 2002, 2003 and 2004 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 2002, 2003 and 2004 according to the nature of allegations. The five major areas of complaints against the Police in 2004, in descending order, were Neglect of Duty (35.1%), Misconduct/Improper Manner/Offensive Language (30.1%), Assault (21.2%), Unnecessary Use of Authority (5.1%) and Fabrication of Evidence (4.2%).

Number of Investigation Reports

- 4.3 In 2004, the IPCC received a total of 3,281 investigation reports from CAPO, a decrease of 6.6% over the preceding year in which 3,511 reports were received. A table showing the progress on the processing and endorsement of CAPO investigation reports as at 31 December 2004 is at Appendix VII.
- 4.4 In 2004, the IPCC endorsed a total of 3,299 investigation reports of which 250 were carried over from the previous years, involving

5,837 allegations. The respective number of allegations by category for cases concluded in 2002, 2003 and 2004 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 2004.

Queries Raised with CAPO

- 4.5 A total of 660 queries were raised with CAPO in respect of cases endorsed in 2004, of which 412 were accepted by CAPO and 248 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 2002, 2003 and 2004 together with the percentage distribution are at Appendix IX.
- 4.7 In 2004, 1,219 out of 5,837 allegations were resolved by IR. Of the remaining 4,618 allegations, 108 were classified as 'Substantiated', 145 'Substantiated Other Than Reported', 14 'Not Fully Substantiated', 1,070 'Unsubstantiated', 296 'False', 410 'No Fault', 5 'Curtailed', 1,690 'Withdrawn' and 880 '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 2,043 fully investigated allegations in 2004 was 13.1%, a breakdown of which is appended below:

Classification	No. of Allegations Endorsed	Substantiation Rate(s)
Substantiated	108	5.3%
Substantiated Other Than Reported	145	7.1%
Not Fully Substantiated	14	0.7%
Total	267	13.1%

- 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 2002, 2003 and 2004 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 2004 is at Appendix XI.

Follow-up Action Taken on Investigation Results

- 4.12 Criminal/disciplinary proceedings or internal action were taken against 298 police officers on 'Substantiated', 'Substantiated Other Than Reported', and 'Not Fully Substantiated' cases in 2004, 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 2002, 2003 and 2004 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 2004, no 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 89 complaint allegations were changed in 2004.

Suggested Improvements to Police Procedures and Practices

- 4.15 In 2004, the IPCC made a number of suggestions to improve police procedures. Some of the more significant ones are described below:

- (a) In examining the investigation report of a complaint against a police officer for failing to produce his warrant card upon request, the Police commented that as the complainee was in uniform at the material time and his U.I. number was properly displayed on his shoulder tag, he should be considered as having adequately identified himself as a police officer and thus there was no need for him to produce his warrant card on demand. It was also noted that the Complaints and Internal Investigations Branch of the Police had issued a directive to all CAPO Regional Offices advising them that a police officer in uniform was not obliged to produce Police warrant card on demand by members of the public. However, the IPCC observed that the directive was in fact inconsistent with the judge's observations in a previous court case that a citizen had the right to demand a police officer on duty, whether in uniform or otherwise, to produce his warrant card for identification. For this reason, the IPCC requested the Police to seek legal advice on the issue.

Acting on the request of the IPCC, the Police sought legal advice from the Department of Justice on whether a police officer in uniform was obliged to show his warrant card on demand by members of the public. The legal advice was that "a warrant card, rather than a uniform, is evidence of an officer's appointment as a police officer under the Police Force Ordinance, Cap. 232". Taking account of the legal advice, the Police agreed that uniformed police officers should, in general circumstances, produce their warrant cards upon request by members of the public. In this respect, the

relevant chapter of the Police General Orders was amended to reflect the new position of the Police on the issue.

- (b) In examining a complaint arising from a laser gun operation, the IPCC noticed that frontline police officers and the staff of a tunnel operator had different understanding regarding their respective authority of taking traffic enforcement action within the tunnel operation area. It was also revealed during the complaint investigation that the Police had not properly documented its policy regarding taking traffic enforcement action within tunnel operation areas. The Police were requested to look into the matter and consider measures to rectify the situation.

The IPCC was subsequently informed by the Police that they had held a meeting with representatives from the Transport Department and the tunnel operator with a view to clarifying their respective roles in taking traffic enforcement action within the tunnel area. Apart from this, the Police also informed the IPCC that they had issued a set of guidelines on conducting traffic enforcement operations in tunnels to provide all Regional Traffic Formations with guidelines on the matter.

- (c) The complainant requested a review of his complaint of 'Neglect of Duty' and 'Unnecessary Use of Authority' and at the same time raised a new allegation of 'Misconduct'. With the belief that the new complaint might contain fresh information relevant to the review, the CAPO officer responsible for the review case held the review in abeyance until the outcome of the new complaint was available. The new complaint was handled by another CAPO officer. However, owing to a misunderstanding between the responsible officers, the review investigation was only carried out nearly four months after the endorsement of the new complaint. As an improvement procedure, the IPCC requested CAPO to make it a rule that an interim report should be submitted to the Council within six months from the date a review request was received, if the investigation of the review case was still underway, and further interim reports, if applicable, be submitted after each subsequent lapse of six months.

The suggestion was accepted by CAPO and a new provision was introduced in the CAPO Manual to the effect that interim reports on review cases are to be submitted to the IPCC at six-month intervals until the completion of the investigation.

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 2004	Accepted	Satisfactorily Explained/ Followed up
(a) Thoroughness of investigation and clarification on ambiguous points in the CAPO reports/ CAPO files	386	220	166

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 2004	Accepted	Satisfactorily Explained/ Followed up
(b) Appropriateness of classifications	130	89	41
<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	12	3	9
<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	7	3	4
<p>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.</p>			
(e) Other queries	125	97	28
Total	660	412	248

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 16 occasions in 2004. Of these, 14 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 2002, 2003 and 2004 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 18 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 2004 and reflect the position as at the end of the year.

Case Summaries

Case 1

Unnecessary Use of Authority – Substantiated

Impoliteness – Unsubstantiated

- 6.5 In the morning of the material day, in response to a report that there might be electricity leakage from a salon's signboard which could cause danger to the public, Senior Police Constable A (SPC A) attended the scene and discovered that the signboard concerned posed no immediate danger as it was not connected to any electricity source. Since the salon concerned was not yet open for business, SPC A could not locate the owner of the signboard and left the scene. In the afternoon of the same day, upon receipt of a similar report, SPC A returned to the scene again and made enquiries with complainants (COMs) X and Y, father and daughter, who were the proprietors of the salon concerned. COM Y alleged that SPC A told her that he (SPC A) had cut the electric wire on top of the signboard to avoid leakage of electricity. A dispute ensued when COM Y demanded SPC A to reconnect the wire or compensate her for the broken wire but was ignored. Station Sergeant B (SSGT B), Inspector C (IP C) and Senior Inspector D (SIP D) subsequently attended the scene for enquiry. When COM Y heard SPC A deny having cut the wire to SSGT B, she complained to SSGT B against SPC A for abusing his authority by cutting the electric wire of the signboard ('Unnecessary Use of Authority' ('UUOA')) and acting in an impolite manner in the incident ('Impoliteness'). COM X lodged the same complaint as COM Y.
- 6.6 SPC A denied having cut the electric wire of the signboard or told COM Y that he had cut the electric wire. He also denied that he was impolite in the incident. He showed the personal properties on his person to SSGT B, but no sharp object or cutting tool was found. In giving his denial, he made no mention about his report to the Console, for which he had made a record in his police notebook that he (SPC A), together with Mr V, the caretaker of the building where the salon was located, had handled the wire during his visit to the scene in response to the first report.
- 6.7 CAPO's investigation revealed that Mr Z, an independent witness who worked at a bakery close to COM's salon, stated that he saw

a uniformed police officer cut the electric wire of the signboard concerned in the morning of the material day. The same police officer returned to the scene in the afternoon and conversed with COMs X and Y. CAPO considered that although Mr Z did not know the identity number of the police officer concerned and could not recognize him, there was strong evidence suggesting that the police officer in question was SPC A because SPC A was the only officer who was deployed to the scene twice on that day.

- 6.8 Moreover, Mr U, the informant of the first report about the signboard, stated that after he made the report, a police officer told him over the telephone that he (the police officer) had cut the exposed electric wire. While SPC A admitted having called Mr U, he denied having told the latter that he had severed the electric wire. CAPO found that Mr U's version corroborated with the first part of Mr Z's version.
- 6.9 Despite having been warned by SSGT B of the need to tell the truth, SPC A did not disclose to CAPO anything about his report to the Console on the material day concerning the cutting of the electric wire at the subsequent complaint investigation until he was confronted with the record of the audio-tapes of the Console. When being asked to explain about the content of his report to the Console, SPC A stated that he could not recall why he had made such a report to the Console. CAPO approached Mr V who stated that he did not assist SPC A to cut the electric wire and he had no idea why SPC A made such a report to the Console.
- 6.10 In view of the above findings, CAPO considered that there was substantial independent evidence disproving SPC A's denial of having cut the electric wire of the signboard. As such, the 'UUOA' allegation was classified as 'Substantiated' against SPC A.
- 6.11 Regarding the allegation of 'Impoliteness', Mr Z told CAPO that a police officer conversed with COMs at the scene and he (the police officer) was not friendly throughout the incident. CAPO strongly believed that the police officer mentioned by Mr Z was SPC A. However, Mr Z could not explain further how unfriendly the police officer was. As there was no substantive corroborative evidence supporting COMs' allegation, the 'Impoliteness' allegation was classified as 'Unsubstantiated'.
- 6.12 Upon examination of the complaint, the IPCC commented that the findings of CAPO's investigation indicated plainly that SPC A did

cut the electric wire as alleged by COMs. It was equally evident that SPC A lied to his senior officers at the scene and to CAPO by flatly denying to have done so. The IPCC raised concern about SPC A's misconduct and enquired whether any action would be taken against the officer in this aspect. In response, CAPO advised that according to the Police Legal Adviser, there was sufficient evidence to lay a disciplinary charge of 'UUOA' against SPC A. Following the conviction of this charge, consideration would be given to discipline SPC A for obstructing the disciplinary investigation and telling lies.

6.13 The IPCC endorsed CAPO's investigation results of this case.

Case 2

Unnecessary Use of Authority – Substantiated

Impoliteness – Unsubstantiated

6.14 The complainant (COM) and Police Constable A (PC A), an off-duty auxiliary police officer, had a dispute on board a bus over the ownership of the mobile phone possessed by COM. PC A, who lost a mobile phone on board a bus of the same route, suspected that the mobile phone being used by COM was the one he (PC A) had lost earlier. PC A asked COM to let him examine the phone but his request was rejected. PC A then disclosed his police identity, inspected COM's phone and made a report to the Police. COM asked PC A to produce his warrant card for inspection but was refused. In response to PC A's report, three police officers attended the scene for investigation and PC A's suspicion was subsequently confirmed to be groundless. As PC A did not apologize for his misdeed, COM lodged a complaint against him. COM alleged that after declaring his police identity and flicking his police warrant card in front of him (COM), PC A took away his mobile phone for inspection without offering any explanation ('Unnecessary Use of Authority'). He further alleged that PC A was impolite to him in the incident ('Impoliteness').

6.15 PC A stated that at the material time, he found the ring tone, model and colour of COM's mobile phone being identical to the one he had lost. PC A then checked with his brother at home for the serial number of his lost phone. PC A admitted having revealed his police identity and produced his warrant ward to COM in order to gain the

latter's confidence in letting him examine the phone concerned. After obtaining the phone from COM, PC A examined it and found some numbers inside the phone being identical to those he obtained from his brother. PC A then asked COM whether he had the receipt and the packing of the phone. After learning that COM only had the packing of the phone but not the receipt, PC A suspected that COM was lying and a report was made to the Police. PC A considered that he did not exercise any constabulary power in the incident. He said that COM did not raise any request to inspect his warrant card. He also denied having been impolite to COM and stated that he made apologies to COM but the latter paid no heed to him.

- 6.16 CAPO considered that it was indisputable that PC A's act was to facilitate conducting an investigation into his lost mobile phone, but PC A's behaviour reflected his ignorance of the Hong Kong Auxiliary Police Force (HKAPF) Standing Orders which governed his conduct as an auxiliary police officer. His 'reasonable belief' that COM had committed an offence only allowed him to make a report to the Police in the capacity of a citizen in accordance with the HKAPF Standing Orders rather than conducting an investigation into it himself while he was off-duty. Moreover, PC A's declaring his police identity whilst off-duty also contravened the said Standing Orders. CAPO therefore classified the 'Unnecessary Use of Authority' allegation as 'Substantiated' and disciplinary action was to be taken against PC A.
- 6.17 As PC A denied the 'Impoliteness' allegation and there was no independent evidence corroborating PC A's demeanor throughout the incident, CAPO classified the COM's accusation of 'Impoliteness' allegation as 'Unsubstantiated'.
- 6.18 The IPCC endorsed CAPO's investigation results of this case.

Case 3

Assault – Unsubstantiated

- 6.19 The complainant (COM), a taxi driver, was ticketed by Police Constable A (PC A) for stopping at the lay-by of a bus stop. At the material time, a number of police officers, including PC A and Inspector B (IP B) were at the scene to deal with taxis suspected of illegal parking. COM claimed that he was upset with PC A's demand

for his identity card for inspection when he had already produced his driving licence to PC A. However, on PC A's explanation that COM had to produce his identity card as well because his driving licence did not have a photograph, he offered his identity card to PC A. COM became agitated when he heard the conversation between PC A and IP B that he might be prosecuted for other offences. COM then got out of his taxi and exchanged angry words with IP B. At that time, the other taxis left the scene. COM alleged that when he was standing at the offside of his taxi, IP B suddenly walked up to him and kicked COM's left kneecap with the front part of his (IP B's) right foot ('Assault'). COM dialed '999' to report that he was kicked by a police officer and requested an ambulance. He was subsequently admitted to a hospital for treatment. Medical examination showed an abrasion on COM's left knee.

- 6.20 IP B denied having kicked COM. He stated that COM produced his identity card together with his driving licence for examination only after the Police issued a warning to him. When PC A filled out the fixed penalty ticket at the front nearside of COM's taxi, COM got off his taxi and scolded PC A. As COM refused to accept the ticket and get back his documents from PC A, IP B further warned COM that he would be arrested for obstructing the Police in the execution of duties if he refused to cooperate. IP B alleged that COM became annoyed and kicked with his left leg onto the taxi at a position near the offside front wing and bumper to the front of the driver's seat. On seeing this, he grabbed COM's right arm and pulled him away from his taxi. COM then shouted that he was beaten by the Police.
- 6.21 CAPO's investigation revealed that other than PC A, the police officers and taxi drivers at the scene did not witness the incident. PC A stated in his initial statement that COM kicked the front offside bumper of his taxi with his left leg, but he subsequently clarified that he did not know how COM sustained his injury as he (PC A) was not facing COM at the time. Police officers escorting COM to the hospital and the ambulance staff stated that COM did not tell them the cause of his injury. The Government Chemist's examination did not establish any contact evidence to support either COM's or IP B's version.
- 6.22 The Forensic Pathologist, whose expert opinion was sought, advised that COM's injury was of no diagnostic value, as the injury might support the assault as alleged by COM but a kick by COM himself with sufficient force onto the curved edge at the back end of the

bumper and/or the adjacent edge of the wheel arch could have produced a linear band of abrasion similar to the injury found on COM. As such, there was no conclusive evidence to prove either COM's or IP B's version of the incident.

- 6.23 CAPO sought legal advice on the sufficiency of evidence in respect of a charge of 'Common Assault' against IP B. Legal opinion was that there was insufficient evidence to proceed with a charge of assault against IP B. After reviewing all the available evidence, CAPO concluded that there was no independent witness or corroboration to support either COM's or IP B's story. As such, the 'Assault' allegation was classified as 'Unsubstantiated'.
- 6.24 The IPCC endorsed the investigation result of this case.

Case 4

Neglect of Duty – Substantiated

Neglect of Duty – Substantiated Other Than Reported

Misconduct – Substantiated Other Than Reported

- 6.25 The complainant (COM) drove his vehicle which collided with a government vehicle driven by Woman Police Constable A (WPC A) at a roundabout. Woman Sergeant B (WSGT B) was on board the government vehicle at the time of the traffic accident. The two vehicles were slightly damaged at the point of impact and nobody was injured in the accident. COM requested that the case be reported to the Police.
- 6.26 COM claimed that WPC A told him that it was not necessary to report the accident to the Police because she (WPC A) would pay him for the repair cost. COM and WPC A then discussed about compensation and the former asked his wife, who was on board his vehicle at the time of the accident, to prepare a settlement agreement. To ascertain the cost of repairing his vehicle, COM arranged a technician to come to the scene. At the suggestion of WPC A, COM and the former drove their vehicles to a pavement to avoid causing obstruction to the traffic. Inspector C (IP C) and Chief Inspector D (CIP D) arrived at the scene and conversed with WPC A, after which WSGT B told COM that they would report the case to the Police. Shortly afterwards, the technician arrived at the scene. COM subsequently lodged a complaint against WPC A for not reporting

the accident to the Police promptly ('Neglect of Duty'). He alleged that owing to WPC A's delay in reporting the case to the Police, the circumstantial evidence of the accident was lost as the two vehicles involved were subsequently driven away from the roundabout.

- 6.27 WPC A admitted having conversed with COM during the incident but denied having negotiated with COM about compensation or seen any settlement agreement. She also denied having heard any conversation between COM and WSGT B regarding compensation. WPC A claimed that she was not feeling well after the collision. She therefore took a rest in the government vehicle while WSGT B alighted from the vehicle and conversed with COM. After resting for a while, WPC A alighted from the vehicle, checked its damage and attempted to report the case to the Traffic Formation by using her mobile phone. However, her attempt was in vain because her phone ran out of battery. She told WSGT B accordingly and believed that the latter would make a report for her. In view of the heavy traffic, COM and WPC A drove their vehicles away from the roundabout. After IP C and CIP D arrived at the scene, WSGT B asked WPC A to use her (WSGT B's) mobile phone to report the case.
- 6.28 WSGT B denied having discussed with COM about compensation. She stated that she made a report to CIP D after the accident. In so doing, she believed that she had followed the traffic accident reporting procedure and CIP D would inform traffic police officers of the accident. Later, when she knew that the accident had not been reported to the Police, WSGT B told WPC A to make a report and informed COM accordingly. She admitted it was her negligence that the accident was not reported to the Regional Command Control Centre (RCCC) promptly after the accident.
- 6.29 After investigation, CAPO considered that there was evidence showing that WPC A had negotiated with COM about compensation at some stages and WSGT B was aware of the negotiation. However, on second thought they dropped their plan to compensate COM. Although COM could not produce any concrete evidence to support his claim that WPC A promised to compensate him, CAPO noted that the technician told the Police that he went to the scene for the purpose of making a quotation for repairs. This corroborated COM's version. Moreover, the delay of one and a half hours before the case was reported to the RCCC seemed to indicate that COM's allegation that WPC A promised to compensate him was true. CAPO concluded that WPC

A's and WSGT B's explanations for the delay in reporting the case were unconvincing and were only attempts to cover up their misdeed.

- 6.30 CAPO's investigation further revealed that WPC A and WSGT B contravened Police General Orders by (i) failing to draw a sketch and mark the positions of the vehicles before they were moved away from the scene of the accident, (ii) failing to inform the RCCC promptly of the accident and (iii) indicating acceptance of liability for the damage caused to COM's vehicle by a government vehicle before the accident was reported and investigated. CAPO classified the allegation of 'Neglect of Duty' as 'Substantiated' and recommended that WPC A and WSGT B be warned without an entry in their divisional record files.
- 6.31 In respect of WPC A's and WSGT B's failure to comply with the relevant Police General Orders, the IPCC considered that CAPO should follow the normal practice of dealing with police officers who made similar mistakes by registering additional 'Substantiated Other Than Reported' counts of appropriate allegations against WPC A and WSGT B. As WPC A's and WSGT B's wilful concealment of their negotiation with COM over compensation was a rather serious misconduct, CAPO was also requested to consider whether giving warnings only to WPC A and WSGT B was commensurate with the gravity of their misdeed.
- 6.32 In reply to the IPCC's queries, CAPO agreed to register a 'Substantiated Other Than Reported' count of 'Neglect of Duty' against WPC A and WSGT B for failing to draw a sketch at the scene of the traffic accident and another 'Substantiated Other Than Reported' count of 'Misconduct' against WPC A for accepting liability for the damage caused by a government vehicle to COM's vehicle before investigation. Disciplinary actions were to be taken against WPC A and WSGT B.
- 6.33 The IPCC endorsed CAPO's revised investigation results of this case.

Case 5

Unnecessary Use of Authority – No Fault

Unnecessary Use of Authority – No Fault

Unnecessary Use of Authority – No Fault

Unnecessary Use of Authority – No Fault

Misconduct – No Fault

Unnecessary Use of Authority – No Fault

Unnecessary Use of Authority – No Fault

Neglect of Duty – Unsubstantiated

6.34 Members of an organization staged a continual sit-in with banners and placards at a section of a pavement outside a building. Upon receipt of complaints from nearby shop-owners and residents about the nuisance and obstruction caused by the protest, the Police issued a number of warnings to the protesters demanding them to remove their banners. However, the protesters paid no heed to the warnings and consequently, a joint-departmental operation involving the District Office, Food and Environmental Hygiene Department (FEHD) and the Police was mounted to remove the offending banners and placards.

6.35 Complainants (COMs) 1 and 2, who were members of the organization, subsequently lodged eight allegations against the Police. COM 1 alleged that:

(a) The Police were biased and targeted the organization ((a) 'Unnecessary Use of Authority');

(b) The Police used excessive force in removing the banners from members of the organization ((b) 'Unnecessary Use of Authority');

(c) Police officers solicited complaints against the organization from residents of a nearby building in a deliberate attempt to gather evidence to force the protesters away ((c) 'Unnecessary Use of Authority');

(d) The Police videotaped the activities of the organization. The videotaping interfered with the freedom of expression of members of the organization and gave members of the public the impression that their activities were illegal ((d) 'Unnecessary Use of Authority');

(e) The Police lied to the District Officer that they had sent more than ten warning letters to instruct members of the organization to remove their banners ((e) 'Misconduct');

- (f) The Police's warning to the protesters to remove a banner which contained a slogan was an interference with their freedom of speech ((f) 'Unnecessary Use of Authority'); and
- (g) The Police repeatedly threatened the protesters to remove the banners and this infringed on their right of expression ((g) 'Unnecessary Use of Authority').
- 6.36 COM 2 further alleged that (h) the Police had been dilatory in handling his request for the return of the seized banners ((h) 'Neglect of Duty').
- 6.37 After investigation, CAPO classified all the allegations as 'No Fault'.
- 6.38 For allegation (a) 'Unnecessary Use of Authority', CAPO explained that there was no evidence to prove that the Police were biased and targeted the organization. The interdepartmental meeting with FEHD and District Office (Central and Western) concluded that the display of banners was a contravention of Public Health and Municipal Services Ordinance, Cap 132. As the law was considered straight forward, it was unnecessary to seek legal advice prior to the clearance. Moreover, as the FEHD was the lead department in the joint-departmental operation and the Police only assisted the FEHD in the clearance operation, it was within the FEHD's purview to seek legal advice on the operation if deemed necessary.
- 6.39 For allegation (b) 'Unnecessary Use of Authority', CAPO maintained that the videotape revealed that the Police acted in a restrained and polite manner and no excessive force was used. After repeated warnings issued by FEHD and the Police were ignored, police officers then assisted FEHD to remove the banner. When enquired by the Police subsequently, three protesters sought medical treatment and were found to have sustained minor injuries during the incident.
- 6.40 For allegation (c) 'Unnecessary Use of Authority', after obtaining legal advice from the Department of Justice regarding the complaint received, the Police had a reasonable belief that an offence of obstruction was committed by the protesters. In the absence of any identifiable complainant, it would have been impossible to adequately resolve the matter. Therefore, door-to-door enquiry was subsequently conducted, which was a

normal and common police action and an operational decision based on the merits of an individual case.

- 6.41 For allegation (d) 'Unnecessary Use of Authority', CAPO explained that the Police videotaped the protest for gathering evidence and for record purpose. This was in line with the internal order of the Police. Moreover, preliminary legal advice confirmed that there appeared to be a prima facie case for the 'obstruction' offence. The Police, therefore, was required to conduct further investigation and collect evidence by close-up shots in order to identify the alleged offenders. All the close-up shots were taken at a distance with zoom lens and it should not have brought about an intimidating effect on the protesters.
- 6.42 For allegation (e) 'Misconduct', CAPO clarified that the allegation arose out of a misunderstanding between COM 1 and the staff of the District Office.
- 6.43 For allegation (f) 'Unnecessary Use of Authority', CAPO opined that the banner in question had caused a breach of the peace and the Police acted in good faith to deliver a warning to the protesters to prevent the recurrence of untoward incidents. Before the warning was issued, the Police had increased local patrols to protect the protesters and laid a covert ambush in the area with a view to apprehending the culprits who threw plastic bags containing suspected urine to the protesters. Although the warning was ignored, the Police did not take any action to prohibit the display of the banner in question.
- 6.44 For allegation (g) 'Unnecessary Use of Authority', CAPO maintained that the warnings were given in good faith and the Police, after considering the initial legal advice, believed that there was prima facie evidence against the protesters for 'Obstruction'.
- 6.45 For allegation (h) 'Neglect of Duty', CAPO explained that the Police had asked an official representative of the organization to submit a request letter in order to ensure that the receipt was issued to a bona-fide representative. However, the Police never received such a letter from the organization.
- 6.46 After examining CAPO's explanation, the IPCC concluded that it was more appropriate to classify all the allegations, except allegation (e) 'Misconduct', as 'Substantiated'.

6. 47 Regarding allegation (a) 'Unnecessary Use of Authority', the IPCC considered that the Police had no legal basis for their clearance operation as the legal advice sought by the FEHD after the operation was that the evidence did not establish a case of obstruction. In fact, the CAPO investigation report indicated that shortly before the operation, the Police itself was seeking legal advice as to the appropriateness of taking summoning actions and the Police's future actions under the relevant Ordinances in relation to the prolonged occupation of a public place and the unauthorized display of banners by the protesters. The IPCC was of the view that the Police should have deferred action until the legal advice on these two aspects were available. Moreover, the sequence of events leading to the clearance operation and the caution displayed by the FEHD both before and after the operation demonstrated that the Police was in the driving seat rather than merely assisting the FEHD in the clearance operation as claimed. Even if the Police was responding to the FEHD's request for assistance, they should ensure that the FEHD's action was lawful in the first place.
6. 48 Regarding allegation (b) 'Unnecessary Use of Authority', the IPCC opined that this was closely related with allegation (a). As there was no legal foundation for the clearance operation, the classification of allegation (b) should follow that of allegation (a).
6. 49 Regarding allegation (c) 'Unnecessary Use of Authority', the IPCC considered that since the alleged offence of obstruction and nuisance was minor in nature and as CAPO could not substantiate its assertion that door-to-door enquiry was a normal police operational practice in investigating minor obstruction and nuisance reports with no criminal elements, the allegation should be classified as 'Substantiated'.
6. 50 Regarding allegation (d) 'Unnecessary Use of Authority', the IPCC noted that in accordance with the relevant Police Order for recording public order events, the over-riding principle is that "it is the event, not the personalities involved, that is the subject. Only if a breach of peace is likely to occur, or has occurred, do the individuals suspected of causing that breach become the subject". As apparently there was no actual or imminent breach of the peace at the material time, the taking of 114 close-up shots of individuals was not justifiable. 'Detection of offences'

could not and should not be used as the sole reason to videotape individual citizens indiscriminately.

- 6.51 Regarding allegation (e) 'Misconduct', the IPCC accepted the 'No Fault' classification because the allegation arose out of a misunderstanding between the complainant and the staff of the District Office.
- 6.52 Regarding allegation (f) 'Unnecessary Use of Authority', the IPCC opined that although the content of the banner in question might not be agreeable, it did not go beyond the bounds of free expression of opinion. In relation to the argument that the banner in question might cause a breach of the peace, IPCC took the view that the crucial question was to identify where the threat was coming from and it was there that preventive action must be directed. Instead of issuing warnings to the protesters, the Police should protect the protesters' freedom of expression and take necessary action to prevent the recurrence of untoward incidents.
- 6.53 Regarding allegation (g) 'Unnecessary Use of Authority', the IPCC concluded that this was related to allegations (a), (b) and (f) and the Police should not have issued warnings to the protesters without waiting for fuller advice.
- 6.54 Regarding allegation (h) 'Neglect of Duty', the IPCC noted that there was no requirement under existing police procedures that the request for return of the banners must be made in writing. As such, as long as the Police were satisfied that the claimants were the actual possessors from whom the banners were seized at the material time, the Police should return the banners to them.
- 6.55 The case was subsequently discussed at three Joint IPCC/CAPO Meetings. After discussion, CAPO only agreed to re-classify allegation (h) 'Neglect of Duty' as 'Unsubstantiated' and maintained that the remaining classifications be upheld. For allegation (h) 'Neglect of Duty', CAPO reckoned that the police officer concerned might be over-cautious when dealing with COM 2's request but he did it in good faith and there was no evidence which suggested that he deliberately withheld the receipt. The police officer concerned would be advised without an entry in his divisional record file that he should act flexibly in future and consider other means to confirm the owner's right to the property.

- 6.56 In view of the divergent views between the IPCC and CAPO on the majority of the classifications of the allegations, the IPCC reported the case to the Chief Executive for a decision on the classifications of the allegations.
- 6.57 In response, the Chief Executive gave his decision on the complaint case. The gist of his reply was as follows:
- (a) He agreed with the IPCC that the Police should ensure that the rights of the protesters were protected. In the present case, it was considered that the Police did not attempt to suppress the civil rights of members of the organization. The warnings relating to the banners displayed were justified as the Police also had the duty to protect the rights of other people affected by the protests. The legal powers exercised by the FEHD in the banner removal operation were in respect of the unauthorized display of banner on government land. Legal advice sought by the Police on the separate offence of obstruction would not affect consideration of the need to render assistance to FEHD in the latter's exercise of its powers in respect of the unauthorized display of barrier on government land;
 - (b) In the incident, it was believed that the Police acted in good faith and in full accord with their internal guidelines. Accordingly, CAPO's findings were in order; and
 - (c) The IPCC had made a number of valuable points and observations in the course of reviewing the investigation of the complaint. The Police would take these into serious consideration with a view to improving their work and continue to uphold the law without bias or political consideration.
- 6.58 The Chief Executive's reply letter to the IPCC brought the complaint case to a close.

Case 6

Misconduct – Unsubstantiated

Neglect of Duty – Substantiated

Neglect of Duty – No Fault

Neglect of Duty – Unsubstantiated

6. 59 The complainant (COM), a part-time Public Light Bus (PLB) driver, was assaulted by Mr A, the person-in-charge of the PLB Stand. A report was made to the Police and Mr A was arrested for 'Common Assault'. On a day about one month after the incident, COM gave a statement indicating that he did not wish to pursue the matter. Mr A was then released after a warning was given to him on the same day.
6. 60 COM raised four allegations against Senior Inspector X (SIP X), the Officer-in-charge of the case, after the release of Mr A. He complained that SIP X attempted to persuade him over the phone to settle the case and SIP X also claimed that he had located ten witnesses who corroborated with Mr A but there were only two witnesses in the end ('Misconduct'). COM alleged that SIP X inappropriately arranged him and Mr A to stay inside the same interview room on the material day, which made him scared and thus agreed to settle the case ('Neglect of Duty'). He further alleged that SIP X failed to examine the statements of four to five police officers who were present at the scene ('Neglect of Duty'). COM also complained that SIP X ignored his repeated requests to provide a further statement during case enquiry ('Neglect of Duty').
6. 61 SIP X denied all the allegations. He explained that he telephoned COM four or five times to clarify the ambiguities in the case. He scheduled an interview with COM at 1530 hours on the material day as COM raised a request just the day before to provide a further statement. SIP X stated that he interviewed two witnesses in the presence of Mr A at 1515 hours. At approximately the same time, COM attended the police station for an interview with him. After seeing Mr A, COM requested to talk with the former privately before giving his statement. SIP X acceded to COM's request and arranged them to meet in the same room with Mr A's consent. As SIP X had to leave the interview room for an operational briefing soon after COM, Mr A and his two witnesses got into the room, he explained the situation to them who agreed to continue the talk on their own. SIP X then left the door of the room open and instructed the report room staff to keep an eye on them. Upon his return to the room, COM expressed that he did not want to pursue the case and a further statement was then taken to confirm his stance.
6. 62 As regards the alleged failure by SIP X to examine the statements of other police officers at the scene, CAPO considered that the case enquiry was properly conducted and it was not necessary to

take statements from those officers as they were not present when COM was allegedly assaulted and only attended the scene for enquiry of COM's report. Hence, CAPO classified this 'Neglect of Duty' allegation as 'No Fault'. In the absence of corroborative evidence to support either COM's or SIP X's version, CAPO classified the allegation of 'Misconduct' and the remaining two allegations of 'Neglect of Duty' as 'Unsubstantiated'.

6.63 Upon examination of the complaint, the IPCC had reservation on the propriety of the interview arrangement made by SIP X. The IPCC made the following observations on the first 'Neglect of Duty' allegation and suggested CAPO to re-consider the appropriate classification for this allegation:

- (a) SIP X arranged to interview two witnesses in the presence of Mr A at 1515 hours on the material day, i.e. only 15 minutes prior to his scheduled interview with COM at 1530 hours. SIP X explained that he wanted to obtain the statements from the witnesses on the material day to decide whether to charge Mr A as the latter was due to answer his bail on the following day. However, it did not appear to be a sensible arrangement for SIP X to interview the two witnesses and COM at nearly the same time. It was doubtful that SIP X's interview with the witnesses could be completed within 15 minutes; and
- (b) No matter whether it was COM's request to meet Mr A or not, SIP X did actually leave COM (the victim) and Mr A (the arrested person/alleged assailant) and two witnesses alone in the interview room without direct police supervision. Such an arrangement was unprofessional because the arrested person could seize this opportunity to threaten or even hurt the victim during the encounter.

6.64 In response, CAPO heeded the IPCC's views and re-classified this 'Neglect of Duty' allegation from 'Unsubstantiated' to 'Substantiated'. SIP X was to be advised without an entry in his divisional record file of the need to ensure the security and well-being of potential victims and that alleged assailants and victims were correctly separated while in police premises.

6.65 The Council endorsed the revised investigation results of the case.

Case 7

Neglect of Duty – No Fault

Neglect of Duty – Not Fully Substantiated

- 6.66 The complainant (COM), who was a tourist, reported a 'rip-off' case to the Police when he met Auxiliary Sergeant X (ASGT X) on the street in midnight. COM alleged to Police Constables (PCs) A and B, the officers who subsequently took over the case, that when he went to a dispensary for money exchange, the dispensary staff persuaded him to buy 'Viagra' and gave him 15 tablets of 'Viagra' (10 of which were cut into halves) at a price of \$2,100. When COM refused to buy all the 15 tablets, he was forced by the staff to accept all the tablets against his will. He requested the Police to assist him in getting a refund by returning the intact tablets to the dispensary.
- 6.67 PCs A and B accompanied COM to the dispensary for enquiry but found that it had closed for business on that day. In view of COM's possession of the tablets, PC A arrested him for 'Possession of Part 1 Poison'. COM was then holding charge with the offence pending further investigation and the court adjourned the case with bail granted to COM. Inspector C (IP C), the Officer-in-charge of the case, subsequently proceeded with the charge against COM but the prosecution later withdrew the charge and COM was discharged by the court accordingly. COM then lodged a complaint against PC A and IP C. He alleged that PC A failed to conduct a thorough investigation before arresting him ('Neglect of Duty') and IP C failed to consider his explanation before proceeding with the charge against him ('Neglect of Duty').
- 6.68 When interviewed by CAPO, PC A explained that since COM was in possession of the 'Viagra' tablets (i.e. Part 1 Poison) without any medical prescription and his version could not be verified at the scene, PC A could not release COM and had to arrest him for further investigation. CAPO noted that prior to the arrest, PC A had already established that COM knew that the tablets he bought were 'Viagra'. Since the possession of Part 1 Poison without medical prescription was an offence and the officer was unable to ascertain the facts of the case as reported by COM, CAPO considered PC A's decision of arresting COM justified and appropriate under the prevailing circumstances. CAPO classified the first allegation of 'Neglect of Duty' against PC A as 'No Fault'.

6. 69 In response to CAPO's enquiry, IP C explained that he had conducted follow-up investigation with the dispensary staff who denied having any dealings with COM. He noticed from a signboard hanging outside the dispensary indicating the provision of money exchange service, which corroborated with part of COM's account. Suspecting that COM's report of the 'rip-off' case could be genuine, he instructed PC A to report the alleged unscrupulous dispensary business to the District Intelligence Section for necessary action. Nevertheless, he considered COM's version of being forced to buy the 'Viagra' tablets doubtful and unreasonable. In view of the positive results of the chemical examination of the drugs and the absence of independent or corroborating evidence supporting COM's claim, he decided to proceed with the charge against COM and let the court make a fair judgment. However, prior to the court proceedings, the prosecutor suggested IP C not to proceed with the charge as the prospect of getting COM convicted was minimal. After consideration, IP C applied to withdraw the charge and the case was dismissed by the court.

6. 70 CAPO considered that IP C's judgment to proceed with the charge was not meticulous and classified the second 'Neglect of Duty' allegation against him as 'Substantiated' for the following reasons:

(a) The location where COM met ASGT X was full of vice establishments. COM was found in possession of 'Viagra' tablets and a bottle of sex oil when he first lodged a complaint with ASGT X. Coupled with the officers' corroborating versions that COM expressed dissatisfaction with the price and quantity of the tablets, CAPO tended to postulate the incident to be a possible business dispute over scrupulous fraud on tourist, which was not uncommon in the district;

(b) Mere possession of the 'Viagra' tablets in this case could not be regarded as conclusive evidence to support IP C's decision. Taking into account that it was COM who initiated to report the case to the Police and the money exchange signboard hanged outside the dispensary corroborated with COM's claim of his purpose of being there, CAPO considered that COM's version was not entirely unconvincing; and

(c) With suspicion on the dispensary and the fact that there was no refuting evidence to discredit COM's version, IP C should have considered seeking legal advice on the weight of evidence

or conducted further investigation before making a final decision to proceed with the charge.

6.71 Upon examination of the complaint, the IPCC informed CAPO that it had reservation on the 'Substantiated' classification against IP C for the following reasons:

(a) The evidence of PC A and the chemical examination result did support a prima facie case that COM was knowingly in physical possession of 'Viagra' tablets;

(b) COM's claim of being forced to take possession of 'Viagra' tablets was in fact refuted by firstly the unequivocal statements of the dispensary staff and secondly ASGT X's version that COM initially complained that he was persuaded (but not forced) to buy 'Viagra' tablets, which indicated that his possession of the tablets was voluntary; and

(c) IP C's decision to proceed with the charge was not blatantly wrong, although the obviously better and simpler alternative would have been to seek legal advice.

6.72 In response, CAPO accepted the IPCC's views and re-classified the 'Neglect of Duty' allegation against IP C from 'Substantiated' to 'Not Fully Substantiated'. IP C was to be advised without an entry in his divisional record file on the need to ensure sufficiency of evidence before proceeding with a charge and to seek legal advice whenever in doubt.

6.73 The Council endorsed CAPO's revised investigation results.

Case 8

Neglect of Duty – Withdrawn

Fabrication of Evidence – Unsubstantiated

Misconduct – Substantiated

Neglect of Duty – Substantiated

Neglect of Duty – Substantiated Other Than Reported

Neglect of Duty – Substantiated Other Than Reported

6.74 The complainant (COM), a bus driver, was involved in a traffic accident in which his bus scraped against a light goods vehicle

while cutting lanes. About one month later, Police Constable X (PC X), who was the officer handling the accident at the scene, gave a statement which mentioned that COM had made a verbal remark of '我架車咁大, 撞倒都唔知啦!' ('As my car is so big, I would not be aware even if there is a collision.') at the scene. COM was subsequently summonsed for 'Careless Driving'. During the trial, COM denied having made that verbal remark. PC X testified in court that he recorded COM's verbal remark in his police notebook but forgot to bring it to the courtroom. COM was convicted after trial and the Magistrate found all the police witnesses, including PC X, reliable.

- 6.75 Before the trial, COM lodged a complaint against Police Constable Y, the investigating officer of the case, for his failure to investigate the case thoroughly before summonsing him ('Neglect of Duty'). Since COM withdrew this allegation after the conclusion of the trial, CAPO classified it as 'Withdrawn'. COM also lodged three other allegations against PC X. He alleged that the verbal remark was fabricated as he never made that remark at the scene ('Fabrication of Evidence'), and PC X gave false evidence in court by claiming that he (PC X) had recorded COM's verbal remark in his police notebook ('Misconduct'). He further complained that PC X failed to bring along his police notebook to the courtroom ('Neglect of Duty').
- 6.76 CAPO's investigation revealed that PC X did fail to record the verbal remark in his police notebook. PC X explained that he did not make that record in his notebook at the scene because he was busy looking after the safety of the road users thereat. He forgot to record the verbal remark when he later made a post-entry in his notebook. He then included, according to his memory, the verbal remark in his statement which he gave about a month later. Although CAPO considered that PC X's explanation was unconvincing and it was doubtful whether the officer could, based on sheer memory, remember that verbal remark when he gave a statement about a month after the accident, there was no independent evidence which proved that COM never made that remark. Under such circumstances, CAPO classified the allegation of 'Fabrication of Evidence' as 'Unsubstantiated'. Nevertheless, a 'Substantiated Other Than Reported' count of 'Neglect of Duty' was registered against PC X for his failure to make a detailed entry in his police notebook regarding the accident. He was to be advised without an entry in his divisional record file on the need and importance of making adequate and detailed notebook entry.

- 6.77 As regards the allegation of 'Misconduct', PC X explained that he noted the verbal remark recorded in his own statement when he read it over to refresh his memory before attending court. Thinking that the statement was based on his notebook entry, he testified in court that he had recorded the verbal remark in his police notebook. CAPO considered that although the evidence that PC X gave in court was not necessarily fabricated as he might genuinely believe that it was true at the time of giving the evidence, it was an indisputable fact that the evidence given was untrue. CAPO therefore classified the allegation of 'Misconduct' as 'Substantiated' and legal advice was sought on the criminal and disciplinary liability of PC X. The subsequent legal advice did not recommend laying any criminal charge against PC X as it was difficult to prove beyond reasonable doubt that the officer deliberately lied to the court, but supported a disciplinary charge of 'Conduct Calculated to Bring the Public Service into Disrepute' instead. Formal disciplinary action was to be initiated against the officer in view of the seriousness of the matter.
- 6.78 PC X admitted the allegation of 'Neglect of Duty' against him regarding his failure to bring along the police notebook when attending court. As his failure contravened the relevant provision in the Police Manual which gives detailed guidelines on the preparation for attending court, CAPO classified the allegation as 'Substantiated'. PC X was to be warned without an entry in his divisional record file regarding the need for and the importance of bringing with him the relevant police notebook when giving evidence in court.
- 6.79 In addition, CAPO noted that PC X had apparently failed to adequately prepare himself for his court attendance. His failure to refresh his memory by referring to the relevant entry in his police notebook contravened the relevant guidelines laid down in the Police Manual. Moreover, CAPO considered that PC X should not have made a bold presumption and testified in court that he had made a record of COM's verbal remark in his police notebook when he (PC X) was in fact uncertain about the evidence that he was giving. Another 'Substantiated Other Than Reported' count of 'Neglect of Duty' was therefore registered against PC X. He was to be warned without an entry in his divisional record file regarding the need to adhere to the relevant provision in the Police Manual and to prepare himself adequately prior to giving evidence in court.

6.80 While endorsing CAPO's investigation results of this case, the IPCC noted that COM's guilty verdict stood inter alia on PC X's untrue evidence regarding his notebook entry. The IPCC therefore raised its concern with CAPO on whether the Police or the prosecuting authority should undo or mitigate the damage done by taking up the matter with the Judiciary. In response, CAPO referred the IPCC's query to the relevant Traffic Formation for consideration. According to the legal advice sought in this matter, COM might apply for an appeal against his conviction in accordance with Sections 114A(1) and 118(b) of the Magistrates Ordinance. The Traffic Formation subsequently issued a letter to notify COM of the background and result of the legal advice and his rights of appeal. The IPCC agreed with the follow-up action taken by CAPO.

Case 9

Neglect of Duty – Substantiated

Misconduct – Unsubstantiated

Neglect of Duty – Substantiated Other Than Reported

6.81 The complainant (COM), a driving instructor, was involved in a traffic accident in which his vehicle (driven by a learner driver, Mr A) collided with another vehicle driven by Ms B. As a settlement could not be reached, COM and Ms B made reports to the Police at 1345 hours and 1832 hours respectively on the material day. At 0100 hours on the following day, two beat officers located COM at his home and arranged a telephone conversation between COM and Police Constable X (PC X), the traffic accident investigator. COM was dissatisfied with the late night visit and lodged a complaint. He alleged that PC X unnecessarily assigned the beat officers to visit him in the small hours, causing nuisance to his wife and neighbours ('Neglect of Duty'). COM further alleged that PC X told him during their telephone conversation that he would be in trouble if he failed to compensate the opposite party ('Misconduct').

6.82 PC X explained that he interviewed Ms B regarding the traffic case at 2005 hours on the material day. Since he had no knowledge of COM's contact telephone number for case enquiry, he obtained COM's address by conducting a check with the Vehicle And Drivers Licensing Integrated Data (VALID) computer system, which was managed by the Transport Department. At 2155 hours, he sent a

telephone message to the report room of Formation A requesting the officers there to locate COM at his residential address. At 2300 hours, he telephoned the report room again to check if his request had been processed. He denied the alleged content of his telephone conversation with COM.

- 6.83 CAPO's investigation revealed that PC X's request was not processed immediately as no beat officer was available and it was until 0055 hours on the following day that Police Constable Y (PC Y) of the report room deployed officers to locate COM. CAPO noted that at 0020 hours, PC X also sent a telephone message to Formation B requesting the officers there to locate Mr A but Formation B decided against making a nocturnal visit as there was insufficient justification for doing so. Police records indicated that COM's report of the traffic case was not transferred to the relevant Police traffic unit for follow-up action until 2346 hours on the following day.
- 6.84 For the 'Neglect of Duty' allegation, CAPO considered that PC X's first request made to locate COM at 2155 hours on the material day was acceptable on the basis that visiting COM was the only means to locate him under the circumstances. However, after knowing that the visit had not yet been arranged when he checked with the report room at 2300 hours, PC X did not give a clear instruction as to whether he still wanted to pursue his request. Although PC X denied having urged Formation A to conduct the visit there and then, his request made to Formation B at 0020 hours indicated that he had asked to locate Mr A even in the small hours. CAPO considered that the late night visit to COM's home merely for a trivial traffic enquiry was unjustified and classified the allegation as 'Substantiated'. CAPO noted that PC Y acceded to PC X's request and deployed two beat officers to pay a late night visit to COM without exercising his common sense to consider whether the urgency or seriousness of the case justified doing so. A 'Substantiated Other Than Reported' count of 'Neglect of Duty' was registered against PC Y. Both PC X and PC Y were to be advised without an entry in their divisional record files on the need to exercise common sense and consider the urgency and seriousness of each case before arranging a visit to a citizen's residence in the small hours in future. For the 'Misconduct' allegation against PC X, CAPO classified it as 'Unsubstantiated' in the absence of corroborative evidence.

- 6.85 CAPO noted that Sergeant Z (SGT Z), the officer who received COM's report, forgot to transfer COM's case to the relevant Police traffic unit for investigation immediately. Had COM's report been transferred promptly, the late night visit could have been avoided. As an outwith matter, SGT Z was to be advised without an entry in his divisional record file on the need to be more diligent and exercise due care in handling similar cases in future.
- 6.86 While endorsing CAPO's investigation results of this case, the IPCC suggested CAPO to enhance the awareness and professionalism of police officers in conducting night visits by publicizing this case within the Force. Moreover, the IPCC noted that the Police had deployed two beat officers to locate COM at his home address because the contact telephone numbers of drivers were not recorded in the existing version of the VALID system. The IPCC considered that the inclusion of contact telephone numbers in the VALID system would save police resources by reducing the need to locate vehicle owners in person. In response, CAPO agreed to consider publishing the case internally for complaint prevention purpose. CAPO also advised that the Transport Department would replace the old version of the VALID system with an enhanced version in March 2005, which would include drivers' contact telephone numbers. It was envisaged that the new version would enhance the efficiency of officers handling enquiries of traffic cases.

Case 10

Neglect of Duty – Unsubstantiated
Unnecessary Use of Authority – Substantiated
Offensive Language – Unsubstantiated
Unnecessary Use of Authority – Substantiated
Neglect of Duty – Substantiated Other Than Reported

- 6.87 The complainant (COM) was arrested for a 'Theft' case reported by his business partner in late 2002 for pocketing decoration fees collected from the tenants of the premises at a housing estate. Since then, he had been put on police bail until he was released seven months later. Before completion of the investigation, COM lodged the following complaints:
- (a) Detective Police Constable A (DPC A), the investigating officer of his case, failed to explain to him the reason for

extending his bail when he reported back to the police station every two to three weeks ('Neglect of Duty');

- (b) DPC A and Detective Senior Inspector B (DSIP B) kept him waiting for about one hour after he had reported on time to the police station for bail procedures on two or three occasions ('Unnecessary Use of Authority');
- (c) DSIP B used abusive language, although not directly at him, to comment on his case on the first occasion he reported for bail after his arrest ('Offensive Language'); and
- (d) DSIP B extended his bail unjustifiably when he refused to settle the money matter with his business partner ('Unnecessary Use of Authority').

6.88 For allegation (a), DPC A maintained that he had told COM the purpose of extending his bail when he personally interviewed COM on each occasion. Without any corroborative evidence, CAPO classified this allegation as 'Unsubstantiated'.

6.89 For allegation (b), CAPO found that COM was kept waiting for more than three hours on two out of the six occasions he attended the police station for bail procedures. On the remaining four occasions, COM was released on bail in less than an hour which, in CAPO's opinion, was not unnecessarily long in view of the processing and documentation work involved. Of the two occasions on which COM was kept waiting for more than three hours, the first occasion involved DPC A who explained that as he was busily engaged in dealing with three other different crime cases at the material time, he had to leave COM waiting before he finished handling such cases. As he had told COM to return to the station in two hours as he would need some time to prepare for COM's interview, it was COM's own choice to leave or remain in the station during the two-hour period. CAPO considered that DPC A had not deliberately or negligently caused undue delay to COM and hence classified allegation (b) against DPC A as 'Unsubstantiated'. On the second occasion, CAPO noted that DPC A had informed DSIP B of his engagement with other cases and asked the latter to deal with COM. As DSIP B failed to do so, he was found 'Substantiated' for allegation (b).

- 6.90 For allegation (c), DSIP B denied having used offensive language to comment on COM's case on the day when COM first answered his bail. His denial was corroborated by DPC A. In the absence of any supportive evidence, CAPO classified the allegation of 'Offensive Language' as 'Unsubstantiated'.
- 6.91 For allegation (d), COM alleged that DSIP B unjustifiably extended his bail when he could not reach a settlement with his business partner. CAPO's investigation revealed that there was nothing to suggest that DSIP B, being the OC case, failed to investigate the case promptly and efficiently. However, it was incumbent upon DSIP B to take reasonable steps in arranging the extensions of COM's bail to ensure that the inconvenience caused to the latter was kept to the minimum. It was noted that the duration of most of COM's extended bail periods was for just two to three weeks, which was not commensurate with the complexity of the inquiry and this had resulted in the need for COM to return frequently for bail extension. CAPO concluded that judging from the circumstantial evidence, allegation (d) should be classified as 'Substantiated'.
- 6.92 CAPO's investigation also revealed that DSIP B's supervisor, Chief Inspector C (CIP C), should be held responsible for failing to examine fully the necessity and justification for each bail extension before giving his approval. A 'Substantiated Other Than Reported' count of 'Neglect of Duty' was registered against CIP C. On scrutiny of the bail records, CAPO also found that CIP C failed to maintain a proper record of COM's bail extensions, except for the first four occasions, in the Force's computer system. As an outwith matter, he was to be advised, without an entry in his divisional record file, to avoid similar recurrence in future.
- 6.93 After examining CAPO's explanation, the IPCC agreed with the classifications recommended by CAPO for allegations (a), (c) and (d) as well as the 'Substantiated Other Than Reported' count of 'Neglect of Duty' registered against CIP C. Regarding allegation (b), the IPCC observed that DPC A did not make a proper notebook entry regarding his duties in his encounter with COM. The fact that he had taken a statement from COM some time later on the material day was not an evidence to prove that he did request COM to come back for statement-taking in two hours. Besides, the IPCC considered that a scheduled appointment should be adhered to from the angle of service quality and suitable alternative arrangements should be made if the original appointed time could not be met. DPC A's delay in conducting the interview with COM for two hours

showed that he did not care about the latter's feeling or the inconvenience caused to him. Moreover, the fact that COM was kept waiting for about an hour on each of the four other occasions indicated that COMEE habitually and persistently ignored the scheduled time of appointment. In view of the above observations, the IPCC suggested to CAPO that the unnecessary delays by DPC A in handling COM's bail should more appropriately be classified as 'Substantiated'.

- 6.94 In response, CAPO agreed to the IPCC's suggestion to revise the 'Unsubstantiated' finding for allegation (b) to 'Substantiated'.
- 6.95 The Council endorsed CAPO's revised investigation result of this case.

Case 11

Unnecessary Use of Authority – Substantiated

Neglect of Duty – Unsubstantiated

Unnecessary Use of Authority – Substantiated

Rudeness – Unsubstantiated

Neglect of Duty – Substantiated

Neglect of Duty – Substantiated Other Than Reported

- 6.96 The complainant (COM)'s son made a loss report of his 'ETC' card to the bank in early January 2003 when his bank account relating to the card was frozen by the bank until a new card was issued. A few days later, COM's son was informed by the Police that his bank account had been fraudulently used in a 'Deception' case. His son agreed to attend a police station to assist in the investigation. However, COM, his wife and his son were arrested by officers of Police Station X when they went to the bank to enquire about the bank account in question. They were later handcuffed and escorted to Police Station Y. COM eventually lodged the following complaints:

- (a) Detective Police Constable A (DPC A) abused his authority in making a decision to arrest him and his wife ('Unnecessary Use of Authority');

- (b) Station Sergeant B (SSGT B) and Station Sergeant C (SSGT C) of Police Station X failed to entertain his request to see a lawyer ('Neglect of Duty');
- (c) The escorting officer Police Constable E (PC E) should not have used handcuff transport belt on him in the course of escorting him to Police Station Y ('Unnecessary Use of Authority');
- (d) An unidentified uniformed officer addressed him as a prisoner during his detention in Police Station X ('Rudeness'); and
- (e) DPC A of Police Station Y failed to explain to him the reason of his arrest and release ('Neglect of Duty').

6.97 On allegation (a), CAPO's investigation revealed that DPC A was the case officer of the 'Deception' case whereas Sergeant Z (SGT Z) was the Officer-in-charge of the police party called to the bank. When informed by SGT Z that COM was at the bank, DPC A sought his supervisor's instruction but omitted to mention the presence of the suspect's parents (COM and COM's wife). His supervisor was therefore not aware of the presence of COM and COM's wife and did not give specific instruction regarding how to handle them. The arrest of COM and COM's wife was partly attributed to this communication problem.

6.98 CAPO conducted investigation to ascertain who should be held responsible for giving the instruction to arrest COM and his family. It was revealed that as SGT Z failed to contact the case officers at the bank, he invited COM and his family to go to Police Station X. Upon arrival at the police station, SGT Z met DPC A who told him (SGT Z) that the OC case was not available then. In the absence of the OC case, SGT Z arrested the suspect, COM and his wife, as advised by DPC A. CAPO considered that it was possible that SGT Z, not having knowledge of the background of the case, had arrested the persons accompanying COM's son through a misunderstanding though DPC A did not specifically name such persons in his instruction to arrest. Having considered the evidence available, CAPO tended to believe that it was DPC A who gave instruction to take the arresting action and allegation (a) was found 'Substantiated' against him.

6.99 On allegation (c), CAPO revealed that PC E was authorized by Sergeant D (SGT D) to use handcuff transport belt on COM having

considered that COM was emotional and it was a long escort journey between Police Stations X and Y. CAPO considered the arrangement acceptable as COM was a prisoner at the material time. The allegation was classified as 'Unsubstantiated'.

- 6.100 On allegation (e), CAPO considered that the arrest of COM and his wife was unnecessary. DPC A, however, stated that the decision to arrest was made by the uniformed officers called to the bank. As DPC A was believed to be the one who gave the instruction for the arrest action and he could not satisfactorily explain the arrest action, he was found 'Substantiated' for the allegation.
- 6.101 On allegations (b) and (d), SSGT B, SSGT C and all the officers present in the report room of Police Station X denied the allegations. In the absence of corroborative evidence, CAPO concluded that the allegations should be classified as 'Unsubstantiated'.
- 6.102 In examining the case, the IPCC had reservation on the classification of allegation (c) which was related to the use of handcuff transport belt on COM. Considering that the arrest of COM was unlawful and that COM had shown no sign of violence, the IPCC held the view that it was not justified to apply handcuff transport belt on him. Most importantly, the use of handcuff transport belt did not meet the criteria laid down in the relevant Police General Orders. While the police officers present said that COM was emotional at the time, it did not necessarily mean that he would become violent and cause injury to himself or the escorting officers to require the use of handcuff transport belt. Besides, the investigation revealed that COM's party had all along been cooperative with the Police. For the above reasons, the IPCC considered that allegation (c) should more appropriately be classified as 'Substantiated' instead of 'Unsubstantiated' and that SGT D, who authorized the use of handcuff transport belt, should be held responsible for the allegation.
- 6.103 The IPCC also observed that SGT D and PC E failed to record in their notebooks regarding the use of transport handcuff belt, for which a 'Substantiated Other Than Reported' count of 'Neglect of Duty' should be registered against them. Similarly, a 'Substantiated Other Than Reported' count of 'Neglect of Duty' should also be registered against Woman Police Constable F (WPC F) for her failure to make a notebook entry on the use of handcuff on COM's wife.

- 6.104 In response, CAPO agreed that SGT D, who authorized the use of handcuff transport belt on COM, should be held responsible for the unjustified course of action and be 'Substantiated' for allegation (c) 'Unnecessary Use of Authority'. PC E, who had acted on the instruction of SGT D, should not be held responsible for the improper use of handcuff transport belt.
- 6.105 CAPO also agreed to the IPCC's recommendation to register a 'Substantiated Other Than Reported' count of 'Neglect of Duty' against SGT D, PC E and WPC F for their failure to comply with the relevant Police General Orders to record in their notebooks the justification for the use of wrist restraints on COM, his wife and his son.
- 6.106 The Council endorsed CAPO's revised investigation results of this case.

Case 12

Neglect of Duty – Unsubstantiated

Neglect of Duty – Unsubstantiated

Police Procedure – Substantiated Other Than Reported

- 6.107 The complainant (COM) was the driver of a Public Light Bus (PLB). On the material day, a passenger lodged a traffic complaint with the 999 console against COM as COM did not reduce speed when driving past the road humps, thus causing injury to his neck. Police Constable A attended the scene and classified the case as 'Traffic Accident with Person Injured' (TAPI) after initial enquiry. Police Constable B (PC B) of the Accident Investigation Team was called to the scene to take over the investigation. The passenger was sent to hospital for medical treatment whereas COM's PLB was towed away by the Police for Motor Vehicle Examination (MVE) due to suspected defects on its suspension system.
- 6.108 COM lodged the following allegations against PC B:
- (a) PC B failed to serve a 'Vehicle Examination Notice' (Pol 566) to him at the scene ('Neglect of Duty'); and
 - (b) PC B failed to tell him the telephone number for enquiry and the relevant case reference ('Neglect of Duty').

- 6.109 In their initial investigation, CAPO explained that under Section 80 of the Road Traffic Ordinance (RTO), Cap 374, a police officer might examine a vehicle which was being used on the road, for the purpose of ascertaining whether the vehicle complied with the RTO. If the police officer had reason to believe that the vehicle had been involved in an accident or the vehicle was not road-worthy, he might cause the vehicle to be detained at a vehicle examination centre for not more than 72 hours for MVE. Though the RTO required the Police to serve a notice on the driver, it did not specify 'when' the notice must be served. Similarly, the Traffic Procedures Manual did not specify when the notice must be served on the driver.
- 6.110 PC B claimed that he was unable to serve a Pol 566 on COM as he had to leave the scene for other duty commitments before the arrival of the tow truck. The relevant Standing Order issued by PC B's Formation Commander stipulated that "when the tow car arrives at the scene, the accident investigator, if available, will issue a Pol. 566 to the driver/owner and hand over the vehicle to the I/C towing team or the I/C authorized commercial/private agent and will make an entry in his notebook to this effect". CAPO was of the view that since PC B did not actually see the removal of the PLB, he was not wrong in not issuing the Pol 566 to COM at the scene. In fact, PC B had, after making the towing arrangement, informed COM that he would serve the Pol 566 to COM when the latter attended his office to give a statement later. Under the circumstances, CAPO classified allegation (a) ('Neglect of Duty') as 'No Fault'.
- 6.111 On allegation (b) ('Neglect of Duty'), PC B denied that he failed to provide the telephone number and the case reference to COM. He stated that he had given his name card which contained the required information to COM and his friend at the scene. However, COM's friend said that he did not see PC B giving any reference card to COM and he had never received the same from PC B. Given the relationship between COM and his friend and in the absence of any independent and corroborative evidence to support either version, CAPO found it appropriate to classify the allegation as 'Unsubstantiated'.
- 6.112 In examining the case, the IPCC expressed reservations over CAPO's explanation regarding allegation (a) ('Neglect of Duty'). Firstly, the IPCC noted that the wordings in the Pol 566 clearly indicated that a Pol 566 should be served on the driver on the spot and before

the vehicle was towed away to the vehicle pound for examination. There was no specification in the Pol 566 or in any section of the law that a verbal notification made to the driver at the scene could substitute a written notice. Secondly, the Standing Order quoted by PC B presupposed that the accident investigator would wait for the arrival of the tow truck and issue the Pol 566 at the scene. It did not stipulate that the notice could be issued after the vehicle was towed away. Besides, if the MVE in the vehicle pound was not given a duplicate copy of the Pol 566 when COM's vehicle was towed to the pound, the MVE would have no directive as to which part of the vehicle he should examine. CAPO was also asked to explain if PC B who left the scene before the arrival of the tow truck was in breach of the said Standing Order.

- 6.113 The IPCC also drew CAPO's attention to Section 70 of the Interpretation and General Clauses (IGC) Ordinance which specified that 'Where no time is prescribed or allowed within which any thing shall be done, such thing shall be done without unreasonable delay, and as often as due occasion arises'. As far as the issue of Pol 566 was concerned, the IPCC considered that it should be served 'as soon as practicable'. This was important as the notice also served as a documentary record of the Police having taken possession of a piece of private property. While PC B's decision to serve the notice to COM when COM attended the Accident Investigation Office later to give a statement, or his final act to post the notice to COM as COM did not turn up for statement taking, was an arrangement convenient to PC B, it did not meet the 'as soon as practicable' requirement.
- 6.114 In response, CAPO explained that according to Section 80(3) of the RTO, the intended purpose of a Pol 566 was to notify the driver of a vehicle, under the circumstances as described at Section 80(2)(a)-(c), that a police officer believed there was the need to exercise the power pertaining to vehicle examination under Section 80(1). Hence the Pol 566 was merely a notice and a statement of fact specifying COMEE's belief that COM's PLB was involved in an accident. The Pol 566 itself did not carry legal powers.
- 6.115 While agreeing with the IPCC that a Pol 566 should be served to the driver as soon as practicable, CAPO added that it was not uncommon that a Pol 566 could not be served to the driver on the spot. In this case, PC B considered it appropriate to serve the Pol 566 to COM in the next available opportunity when the latter attended his office to give a statement. PC B's Formation Commander

considered the action taken by PC B in the prevailing circumstances was adequate and no breach of the relevant Standing Order was observed.

6.116 Finally, regarding the IPCC's point of contention made with reference to the IGC Ordinance, CAPO sought clarification with the Department of Justice (DoJ). In gist, the DoJ advised that the law required that the notice (i.e. Pol 566) be served on the driver immediately after a directive that the vehicle be towed away for an MVE was given. PC B should have so served the notice irrespective of whether the tow truck had arrived. If the conditions prevailing precluded the service of the notice on the spot, it should be served "without unreasonable delay". In the DoJ's view, the fact that PC B posted the Pol 566 to COM some four days after the incident did not, as a matter of fact, appear to be service of the notice "as soon as practicable".

6.117 After reviewing the case in the light of the legal opinion, CAPO held the view that PC B genuinely believed that by following the relevant Standing Order issued by his Formation Commander, he was not required to effect the serving of the Pol 566 at the scene under the prevailing situation whereby the tow truck had not yet arrived prior to his departure. In all fairness, PC B had adopted a practice sanctioned by the Standing Order although it transpired that the Standing Order was not in line with the legal advice. Therefore, CAPO did not regard it as a fault on the part of PC B but a flaw of the said Standing Order. Accordingly, CAPO concluded that it was more appropriate to classify allegation (a) against PC B as 'Unsubstantiated' while registering a 'Substantiated Other Than Reported' count in respect of the flaw in procedures against the concerned Traffic Formation. Arising from this case, CAPO asked the Traffic Headquarters to look into the issue and devise necessary procedures to avoid recurrence in future.

6.118 The Council endorsed CAPO's revised investigation results.

Case 13

Neglect of Duty – Withdrawn

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

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
Neglect of Duty – Substantiated Other Than Reported
Neglect of Duty – Substantiated Other Than Reported

- 6.119 The complainant (COM) reported a case of 'Unregistered Dentist Practising Dentistry (Unregistered Dentist)' alleging that an unregistered dentist practised dentistry at Flat C on the 3rd floor of a building. COM phoned Police Constable A (PC A) about two months after making the report and learnt that the Police had visited the premises concerned but met with negative result as the dental clinic had already closed down and no arrest was made. COM was dissatisfied and alleged that either PC A did not investigate the case properly or the Police had leaked information about her report ('Neglect of Duty').
- 6.120 COM subsequently withdrew her complaint upon knowing that the Police had later arrested the unregistered dentist. Despite COM's withdrawal, CAPO still conducted a full investigation into the case.
- 6.121 After CAPO's investigation, a number of irregularities were found on the part of the officers who handled COM's case. As a result, additional 'Substantiated Other Than Reported' counts of 'Neglect of Duty' were registered against the officers concerned. The irregularities found were as follows:
- (a) Senior Inspector of Police X (SIP X), Senior Police Constable B (SPC B), Police Constable A (PC A) and Police Constable Z (PC Z) conducted surveillance operations and a physical check as well as made a test call to the clinic concerned on different occasions during the investigation. They, however, did not make notebook entries pertaining to their duties. As a result, 'Substantiated Other Than Reported' counts of 'Neglect of Duty' were registered against the officers (one count each for SIP X, SPC B and PC Z and three counts for PC A) for their failure to comply with the relevant provision of the Police General Orders (PGO) which stipulated that 'an officer shall make notes of all matters pertaining to his duty and in particular details of exercise of any power'.

- (b) SIP X was acting Chief Inspector of Police and the person-in-charge of the party conducting the first house search in this case. At the material time, he executed a search warrant which authorized the police to enter Flat C of the building, but the police party actually entered Flat A and later arrested the suspect and his wife for 'Possession Part One Poison' and 'Unregistered Dentist Practising Dentistry' there. He explained that during the initial enquiry, he was misled by the suspect's name card and signboard on the outer wall of the building with the address 'Flat C' on them indicating that the suspect was physically operating at Flat C. At the time of the raid, he found the suspect inside Flat A and held the belief that the location was Flat C, which was later found to be wrong. CAPO considered that SIP X neglected his duty in that he did not establish the exact location when raiding the clinic. While there was no evidence of ill intention on his part, a 'Substantiated Other Than Reported' count of 'Neglect of Duty' was registered against SIP X ('Neglect of Duty').
- (c) At the completion of the second house search in the investigation, SIP X, being the Officer-in-charge of the house search party, neither instructed any officer nor obtained by himself the signature of the occupants in his notebook to the effect that after the house search, the premises were in order or otherwise. This was in breach of the relevant provision of the Force Procedures Manual (FPM) which stipulated that 'at the conclusion of a search of premises, whether conducted under a search warrant, authorization or with the occupants' consent, the Officer-in-charge or an officer nominated by him, should request the owner or occupant to sign the officer's notebook that the flat is in order or otherwise.' A 'Substantiated Other Than Reported' Count of 'Neglect of Duty' was therefore registered against SIP X ('Neglect of Duty').
- (d) SIP X, being the Officer-in-charge of the house search party present in the two house searches, did not report to the Duty Officer in the Division concerned at the conclusion of both house searches and record the incident on the Formation Information Communal System (FICS). This was in breach of the Assistant Commissioner of Police (Support)'s written instruction which stipulated that all house searches with or without search warrant must be reported to the Duty Officer in the Division concerned where the search was conducted and

recorded in the FICS. A 'Substantiated Other Than Reported' count of 'Neglect of Duty' was therefore registered against SIP X ('Neglect of Duty').

(e) In the first house search in this case, Sergeant Y (SGT Y) was the exhibit officer who physically seized a number of items of property from the clinic in question. After the house search when the property was seized from the premises, he did not invite the suspect or his wife to acknowledge the seizure of the property by signing an itemized list of the property in his police notebook, but only recorded his action in the FICS. This was in breach of the relevant PGO which stipulated that 'when property is seized from premises after a search, the Officer-in-charge of the search will ensure that the owner or occupier of the premises, or in his absence another person who is assessed to be able to act on their behalf, acknowledges the seizure of the property by signing an itemized list of property in a police notebook. In circumstances that make the use of a police notebook impractical, the Officer-in-charge may authorize the list to be compiled in an alternative document.' A 'Substantiated Other Than Reported' count of 'Neglect of Duty' was registered against SGT Y.

6.122 For his betterment, SIP X was to be advised without an entry in his divisional record file to be mindful that the execution of a search warrant at a wrong location might cause disturbance to innocent persons and result in an abortive police operation. In addition, SIP X and SGT Y were to be advised without an entry in their divisional record files to observe the relevant PGO and FPM in handling cases of a similar nature in future.

6.123 In examining the case, the IPCC noted that there was a two months' delay between COM's lodging of her complaint and the first joint operation conducted by the Police with the Dental Council. It appeared that the Police had contributed significantly towards the delay because with the information provided by COM who was the victim of an unregistered dentist, coupled with the initial observation conducted by SPC B and his obtaining verbal confirmation from the Dental Council two days after COM's report that the suspect was not a registered dentist, the joint operation could have been arranged immediately thereafter. In addition, part of this delay could have been avoided if PC A, the Investigating Officer, had confirmed the unregistered dentist's status with the

Dental Council in writing instead of just making a telephone enquiry which was later considered to be unsafe and the Dental Council had to be approached again for confirmation. Moreover, PC A and SPC B had mounted a series of observations before the raid at the given location with SPC B and PC Z posing as patients. These actions could be done in parallel with the seeking of written confirmation from the Dental Council in order to save time and speed up the investigation. In the IPCC's view, for cases of this nature, the speed with which they were processed was of paramount importance in the Police's action to bring the culprit to justice.

6.124 In response, CAPO explained that the Police had to complete a series of actions before a strong case for conducting a raid was ascertained. When making her report, COM only provided hearsay information of an 'Unregistered Dentist' and it was the duty of the Investigating Officers, PC A and SPC B, to prove or disprove the information given by COM. CAPO considered that during the initial investigation, the actions taken (i.e. conducting ambushes, posing as patients and checking with the Dental Council prior to arranging the joint operation) were the officers' professional decisions and there was no element of unnecessary delay in handling the investigation. CAPO opined that the time spent for the whole investigation was reasonable and appropriate bearing in mind that the officers had other duty commitments. Notwithstanding this, CAPO undertook to bring to the attention of the District concerned the IPCC's view regarding the need to act with speed when handling joint operation with the Dental Council.

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

Case 14

Neglect of Duty – Substantiated

Police Procedure – Substantiated Other Than Reported

6.126 The complaint stemmed from a 'Theft' case in which the complainant (COM)'s domestic helper stole a Rolex watch and some gold ornaments from her and pawned them to three pawnshops. After Police investigation, all the stolen items were retrieved from the pawnshops and COM's domestic helper was charged with and convicted of the offence of 'Theft'. COM claimed that although she had indicated after the trial her intention to redeem the stolen items,

Police returned all the items to the pawnshops and as a result she was unable to redeem most of the items. COM subsequently lodged a complaint against Detective Senior Inspector A (DSIP A), the Officer-in-charge of the case, for failing to make appropriate arrangements for her to redeem the stolen items from the pawnshops ('Neglect of Duty').

- 6.127 CAPO's investigation revealed that the legal provision for disposing of goods unlawfully pawned was contained under Section 23 of the Pawnbrokers Ordinance, which stipulated that the court might order the return of unlawfully pawned goods to the owner on payment or without payment to the pawnbroker of the loan advanced. Nevertheless, under the Force practice, a court order was not always required provided that the parties concerned had come to an agreement for the disposal of such items.
- 6.128 Upon CAPO's enquiry, DSIP A claimed that he instructed Detective Senior Police Constable B (DSPC B) after the trial to contact COM to see if she could reach any mutual agreement with the three pawnbrokers for the disposal of the stolen items. DSPC B later told him that agreement had been reached between COM and the three pawnbrokers. DSIP A then instructed Detective Sergeant C (DSGT C) to brief the pawnbrokers that the stolen items should only be returned to COM and not to be sold to any other person. He also asked DSGT C to inform the Property Office of the police station to return all stolen items to the respective pawnshops, so that the pawnbrokers could deal with COM directly in accordance with their agreement. Unfortunately, two pawnbrokers revoked their verbal agreement with COM and disposed of the returned items according to their own will. As a result, COM could only redeem two items from one of the pawnshops but not the remaining six items.
- 6.129 CAPO sought advice from the Police Legal Advisor (PLA) on the sufficiency of evidence for a disciplinary charge of 'Neglect of Duty' against DSIP A. In this connection, the Divisional Commander (DVC) advised PLA that the "current practice" in the Force was to return stolen items to the pawnshops in the first instance, that the victim had to contest for the ownership if an agreement was not forthcoming, and that the Force procedures in this regard were inadequate and caused misunderstanding. Based on DVC's comments, PLA concluded that DSIP A's act to return the stolen items to the pawnshops in the first instance did not seem to be a neglect of duty and the real cause for the undesirable consequence was the pawnbrokers' breach of their agreement with COM.

- 6.130 Having regard to PLA's advice, CAPO classified this allegation of 'Neglect of Duty' against DSIP A as 'Unsubstantiated'. Nevertheless, CAPO proposed that DSIP A, DSGT C and DSPC B be advised without an entry in their divisional record files to be more alert on pawnbrokers not honouring their verbal agreement with the victims and of the need to seek a court order under Section 23 of the Pawnbrokers Ordinance if in doubt. On the other hand, in view of the inadequate procedure on the disposal of pawned property being the subject of a theft case as commented by DVC, CAPO registered a 'Substantiated Other Than Reported' count in respect of the flaw in procedure against the Hong Kong Police Force. Police's Support Wing undertook to review the relevant provisions in the Force Procedures Manual.
- 6.131 In examining the case, the IPCC noted that PLA's advice that DSIP A's act did not constitute neglect of duty was based on the "current practice" described by DVC. However, the "current practice" as detailed by the Clerical Assistant of the Property Office of the police station concerned was different from that described by DVC. In her statement to CAPO, the Clerical Assistant described that the practice was that in the absence of a court order, the property would be returned to either the victim or the pawnbroker, as specified by the Officer-in-charge of the case. If the property was returned to the pawnbroker, the victim would be present, and the pawnbroker would be required by the Police to sign an agreement to confirm how much money the victim would have to pay to redeem the property. The property would then immediately be redeemed there and then. The IPCC considered that the "current practice" as described by the Clerical Assistant was indeed consistent with the spirit behind the approach described in the relevant provision of the Force Procedures Manual, which stipulated that "In any case where the property has been recovered from a pawnshop, the Property Officer should confirm the instructions for disposal with the Officer-in-charge of the case to ensure that the owner is given the opportunity to be present when or if the property is to be returned to the pawnshop." The IPCC was of the view that if the "current practice" was other than what was described by DVC, the legal advice was based on a different factual basis and might not be able to support the conclusion that DSIP A was not in neglect of duty. The IPCC thus requested CAPO to consider seeking further legal advice on the matter. Besides, CAPO was asked to consider if there was any criminal liability of the two pawnbrokers for

having knowingly sold the stolen properties instead of honouring their verbal agreement with COM.

- 6.132 CAPO sought further advice from PLA. On the basis of the descriptions of "current practice" given by the Clerical Assistant and a Detective Chief Inspector of another district who had relevant experience, PLA concluded that there was prima facie evidence to initiate a disciplinary charge of 'Neglect of Duty' against DSIP A under the above-mentioned provision of the Force Procedures Manual having regard to his responsibility as the Officer-in-charge of the case. Furthermore, DSIP A also failed to act in accordance with the relevant provision of the Police General Orders regarding the handling of case property, which stipulated that "the case shall not be considered completed until he (Officer-in-charge of the case) has ensured such property has been finally disposed of in accordance with Police General Orders/Force Procedures Manual or a court order."
- 6.133 CAPO consequently re-classified the allegation of 'Neglect of Duty' against DSIP A as 'Substantiated'. Formal disciplinary action was instigated against DSIP A for his failure to exercise the required degree of care and attention to ensure that the mutual agreement between COM and the pawnshops was honored, resulting in COM's failure to redeem the property as agreed. DSGT C and DSPC B were advised without an entry in their divisional record files to be more alert on pawnbrokers not honouring their agreement with the victims and of the need to seek a court order under Section 23 of the Pawnbrokers Ordinance if in doubt.
- 6.134 As regards the two pawnbrokers' liability for not honouring their agreement with COM, Department of Justice advised that there was no reasonable prospect to secure the conviction of any theft related offence. Nevertheless, CAPO had notified Superintendent (Licensing) in writing of the matter for his consideration of any future licensing applications from the two pawnshops.
- 6.135 As an outwith matter, DSIP A was advised without an entry in his divisional record file to be more cautious in preparing property disposal instructions as he had mistakenly ordered the return of two stolen items to a wrong pawnshop. These items were later returned to the pawnshop where they were originally seized.
- 6.136 Arising from the complaint investigation and PLA's advice, CAPO decided to make it a mandatory requirement for a court order to

be applied for the disposal of pawned property where the ownership was in dispute, regardless of whether the claimants had entered into any agreement. Police's Support Wing undertook to amend the relevant provisions in the Force Procedures Manual accordingly.

- 6.137 The IPCC endorsed CAPO's revised investigation result of this case.

Case 15

Neglect of Duty – Withdrawn

Neglect of Duty – Substantiated Other Than Reported

Neglect of Duty – Substantiated Other Than Reported

Neglect of Duty – Substantiated Other Than Reported

- 6.138 The complainant (COM) was a witness of a case of 'Wounding'. As the arrested person pleaded not guilty to the charge, the case was scheduled to be heard in court. In order to serve the witness summons to COM to testify in court, Detective Police Constable A (DPC A) contacted COM over the phone on several occasions but still could not make an appointment with COM for serving the summons to him. DPC A claimed that COM showed strong reluctance to attend court in the telephone conversations. When DPC A managed to contact COM again in the evening of the material day, COM told him that the summons could be served to his residence not earlier than 2300 hours in that evening. DPC A then asked his colleague, Woman Detective Police Constable B (WDPC B), who lived in the same district as COM, to serve the summons to COM.
- 6.139 At 0015 hours of the following day, WDPC B phoned COM who was already in his residence and promised to wait for her. WDPC B went off duty at 0030 hours and drove to COM's residence in her own private car. As it was a new building in an area not familiar to WDPC B, she had to phone COM again at 0200 hours for the latter to indicate her the right route. At 0230 hours, WDPC B finally reached COM's residence and served the witness summons to him.
- 6.140 Two days later, COM lodged a complaint of 'Neglect of Duty' against DPC A alleging that (i) DPC A failed to inform him of his right to choose the location for giving his witness statement; (ii) DPC A had previously made an appointment with him for serving the summons but failed to turn up as agreed; (iii) during a telephone

conversation with DPC A on the day before he was served with the summons, when he was dissatisfied that DPC A only informed him to attend court over the phone without serving him the witness summons, he asked for but the officer refused to provide him with CAPO's telephone number and referred him to the telephone company's 1083 hotline; and (iv) DPC A should not arrange serving the summons to him at 0230 hours causing nuisance to him.

- 6.141 COM subsequently decided to withdraw his complaint as he did not want to pursue the matter further. As COM withdrew his complaint at his own wish, the allegation of 'Neglect of Duty' was classified as 'Withdrawn'.
- 6.142 In examining COM's complaint, CAPO noted that as the witness summons for COM was ready to be served three weeks before the trial day, DPC A should have sufficient time to make suitable arrangement, either in person or by way of other alternatives, to serve the summons to COM. The relevant provision of the Police General Orders (PGO) stipulated that "Witness summonses must be served upon the witness personally or be left for him with some person at his last or usual place of abode." Nevertheless, DPC A did not consider leaving the witness summons at COM's place of abode. If such action was taken, COM's complaint might have been avoided. Since DPC A failed to comply with the relevant provision of the PGO, CAPO registered a 'Substantiated Other Than Reported' count of 'Neglect of Duty' against him. He was advised without an entry in his divisional record file of the need to adhere to the relevant provision of the PGO in future and to give due consideration to the nature of the cases and the possibility of causing nuisance to members of the public before making late night visits. Furthermore, as DPC A did not properly record all his contacts with COM, he was also advised on the importance of making clear and precise records.
- 6.143 Besides, CAPO observed that Detective Sergeant C (DSGT C), the immediate supervisor of DPC A, knew that the latter was having difficulties in serving the witness summons to COM but did not give any proper instructions to DPC A to resolve the matter. Upon CAPO's enquiry, DSGT C simply stated that he had never thought about what action could be taken if COM refused to take the witness summons. CAPO considered that DSGT C's performance was below the expected standard. A 'Substantiated Other Than Reported' count of 'Neglect of Duty' was therefore registered against him. He was advised without an entry in his divisional record file of the need to

properly supervise his subordinates and to improve his working attitude in future.

- 6.144 CAPO noted that WDPC B went off duty at 0030 hours on the material day and proceeded to serve the summons to COM. Although no overtime work was claimed by WDPC B, she failed to make an entry in her police notebook regarding the serving of the witness summons to COM. This was in breach of the relevant provision of the PGO, which stipulated that "Any officer shall make notes of all matters pertaining to his duty and in particular details of the exercise of any power, even if by exercising the power there is no offence disclosed". CAPO thus registered a 'Substantiated Other Than Reported' count of 'Neglect of Duty' against WDPC B who was advised without an entry in her divisional record file of the need to strictly comply with the relevant provision of the PGO when handling similar incidents in future.
- 6.145 As an outwith matter, CAPO observed that Detective Senior Inspector D (DSIP D), the Officer-in-charge of the case, failed to brief his successor that there was an outstanding witness summons involving an imminent court trial, resulting in the latter not kept aware of the situation and not taking any prompt action to sort out the matter. For his betterment, DSIP D was advised without an entry in his divisional record file to be more thorough when handing over his post to his successor.
- 6.146 The Council endorsed CAPO's investigation results of the case.

Case 16

Neglect of Duty – Unsubstantiated

Neglect of Duty – Substantiated

Misconduct – Unsubstantiated

Neglect of Duty – Substantiated Other Than Reported

- 6.147 The complaint stemmed from a 'Traffic Accident Person Injured' ('TAPI') case. In the late evening of the material day, the complainant (COM) was on board her husband's private car. While queuing up before the traffic lights, a light goods vehicle (LGV) rammed onto the rear part of her husband's car which was pushed forward to hit on the rear part of a taxi. A total of five persons including COM sustained slight injuries after the accident.

- 6.148 Police's initial enquiry at the scene revealed that the LGV was unable to stop in time, causing the accident. The LGV was towed to the Police's vehicle pound for examination. The Motor Vehicle Examiner (MVE) confirmed that the LGV had an effective braking system after the accident. The damaged parts of the LGV, including the fan support bearing, drive belt and pulley, were sent to the Government Chemist for further examination. The Government Chemist revealed that the belt sent for inspection was linked to the vacuum pump, which assisted the driver in putting pressure on the footbrake. Nevertheless, there was no evidence to suggest whether such parts were damaged before or after the accident. The Government Chemist also advised that his examination into the damaged parts was superfluous as the MVE had established after the accident that the LGV had an effective braking system. Upon Police's investigation, the 'TAPI' case was classified as 'No Further Action'.
- 6.149 After receiving the investigation result of the 'TAPI' case, COM lodged a complaint of 'Neglect of Duty' against Police Constable A (PC A), Sergeant B (SGT B), Senior Inspector C (SIP C) and Chief Inspector D (CIP D) alleging that they failed to conduct a thorough investigation, resulting in no prosecution being taken against the driver of the LGV. She also lodged a complaint of 'Misconduct' against an unidentified police officer suspecting that he knew the senior management of the company of the LGV, resulting in a biased investigation.
- 6.150 Upon investigation, CAPO found that PC A and SGT B had properly taken all initial actions including taking photographs, drawing sketch, making enquiries with the parties involved and detaining the LGV for examination. There was no gross negligence observed from the two officers in their handling of this 'TAPI' case. Furthermore, PC A and SGT B were not in a position to decide whether the LGV driver should be summonsed or not. The final decision rested with SIP C, who was the officer-in-charge of the case, and his supervisor CIP D. For this reason, CAPO classified the 'Neglect of Duty' allegation against PC A and SGT B as 'Unsubstantiated'.
- 6.151 As regards the 'Neglect of Duty' allegation against SIP C and CIP D, CAPO found that the two officers did fail to handle the 'TAPI' case with due care by making proper references to the MVE's report and the advice given by the Government Chemist in conjunction with the relevant regulations in the Road Traffic Ordinance

(Construction and Maintenance of Vehicle) Regulation (Cap. 374 A), or by seeking legal advice for any possibility of proceeding with an offence of 'Careless Driving' against the LGV driver. CAPO considered that there was evidence to show that the LGV driver had failed to properly apply the brake of his vehicle in the incident and could have been summonsed for the offence of 'Careless Driving'. Unfortunately, in a lapse of six months after the traffic accident, the statutory time limit barred the bringing of any prosecution against the offender. CAPO thus classified the allegation of 'Neglect of Duty' against SIP C and CIP D as 'Substantiated'. For the betterment of SIP C, CAPO proposed that he should be advised with an entry in his divisional record file of the need to investigate traffic cases in a thorough and proper manner before a final decision was made in future. As CIP D had retired from the Force, no further action was taken against him.

- 6.152 Regarding the 'Misconduct' allegation, it was classified as 'Unsubstantiated' in the absence of corroborative evidence.
- 6.153 In examining the complaint case, CAPO found that PC A, SGT B, SIP C and CIP D had failed to comply strictly with the guidelines on performance pledge promulgated by Traffic Branch Headquarters that non-fatal traffic investigations should be completed within three months from the receipt of the report. Because of their delay, all the parties involved in the 'TAPI' case were informed of the investigation result one month after the expiry of the performance pledge. In this connection, CAPO registered a 'Substantiated Other Than Reported' count of 'Neglect of Duty' against the four officers (i. e. PC A, SGT B, SIP C and CIP D). For their betterment, except for CIP D who had retired from the Force, the other three officers were advised without an entry in their divisional record files of the need to comply strictly with the guidelines on performance pledge promulgated by Traffic Branch Headquarters.
- 6.154 The IPCC endorsed CAPO's investigation results.
- 6.155 After the IPCC's endorsement, CAPO further reviewed the complaint case and proposed to scale down the disciplinary action against SIP C from 'Advice with an entry in his divisional record file' to 'Advice without an entry in his divisional record file' regarding COM's allegation of 'Neglect of Duty' against him. CAPO explained that SIP C merely failed to consider thoroughly the reports from the MVE and the Government Chemist and made a wrong decision of 'No Prosecution' against the LGV driver. It was a

matter of wrong judgment rather than an intentional negligence with malice.

6.156 The IPCC fully appreciated that decisions on disciplinary actions against police officers who were substantiated of complaints rested with the Commissioner of Police. However, the IPCC considered it necessary to make observations and recommendations on such actions to ensure equity to the complainees and credibility of the police complaints system. In response to CAPO's proposal to scale down the disciplinary action against SIP C in this particular case, the IPCC expressed the following views:

(a) The mistake made by SIP C was obvious and serious. Taking into account the fact that he was an experienced officer who had been posted to the Traffic Division for three years before handling this 'TAPI' case, the IPCC did not think 'Advice with an entry in his division record file' was inappropriate in the circumstances; and

(b) SIP C was found substantiated in four other complaint cases since 1999 and in all these cases, he was advised without an entry in his division record file. Taking into account his complaint records which were all concerned with allegations of negligence of duty, it should be considered carefully whether it would serve any meaningful purpose if too lenient follow-up action was taken against SIP C for the present complaint case.

6.157 After serious consideration of the IPCC's comments, CAPO agreed that the IPCC's concerns were valid and reasonable and recommended to proceed with 'Disciplinary Action' against SIP C in this case instead in order to properly reflect the gravity of the consequence arising from his negligence of duty.

6.158 The Council endorsed the revised follow-up action recommended by CAPO for this case.

Case 17

Neglect of Duty – Unsubstantiated

Unnecessary Use of Authority – Unsubstantiated

Neglect of Duty – Unsubstantiated

- 6.159 The complainant (COM) went to a sports ground to play football match in an evening and parked his private car at a nearby public carpark. After the match, COM paid the parking fee of \$12 and drove away his car.
- 6.160 At about 0200 hours on the following day, Detective Sergeant A (DSGT A) took up investigation of a report of 'Making Off Without Payment' made by the two carpark attendants of the above-mentioned carpark. In the report, the two attendants were adamant that they had the drive-in record of a private car but not its drive-out and payment records while the car was no longer at the carpark. DSGT A came to know that COM was the registered car owner. As the registered address of COM was not in his district, he requested the police station of COM's district by telephone to send police officers to visit the address with a view to locating COM for enquiry.
- 6.161 In response to DSGT A's request, Police Constables (PCs) B and C arrived at COM's registered address at about 0420 hours on the same day. The two PCs located COM's 83-year-old father, who told them that COM was staying elsewhere that night. They were unable to ascertain from COM's father the whereabouts of COM, his means of contact and the alleged missing vehicle. They left the contact telephone number of DSGT A to COM's father and left the address.
- 6.162 In the same morning, having learned from his father that he was wanted by the Police, COM immediately went to see DSGT A with the parking slip which certified that he had made payment of the required parking fee. It was later realized that a carpark attendant had mistakenly given COM the portion of the payment ticket to be kept by the carpark, leading to the report that someone had driven the car off without payment. The case was thus classified as 'No Crime Disclosed'.
- 6.163 COM lodged a complaint against the Police two days later alleging that DSGT A failed to conduct detailed investigation before classifying his case as 'Making Off Without Payment', which caused nuisance to him ('Neglect of Duty'); DSGT A abused his authority by sending police officers to his address in the small hours of the morning, which caused nuisance to his parents ('Unnecessary Use of Authority'); and PCs B and C failed to explain clearly the reason of their visit to COM's father ('Neglect of Duty').

6.164 Upon investigation, CAPO considered that the Police had the duty to look into the report made by the two carpark attendants based on the information provided by them at the material time. CAPO deemed it natural and justified for DSGT A to approach COM who was the registered car owner for clarification, notwithstanding that it was in the early hours of the morning. The Police practice was that whenever a crime was reported to the Police, the Duty Officer of the police station would give the most appropriate initial classification of the case based on the limited information provided by the informant to start off the investigation. Should any evidence subsequently obtained reveal a more serious crime having been committed, the Case Officer would be responsible for reclassifying the case. This explained why the case was initially classified as 'Making Off Without Payment'. For this reason, CAPO classified the first 'Neglect of Duty' allegation as 'Unsubstantiated'. As regards the allegation of 'Unnecessary Use of Authority', DSGT A claimed that at the material time since he opined that the driver of the private car concerned had either driven off without paying the parking fee or the car was stolen, he considered that there was urgency to locate COM for clarification. CAPO accepted DSGT A's explanation and classified the allegation as 'Unsubstantiated'. Pertaining to the other 'Neglect of Duty' allegation, both PCs B and C denied the allegation. In the absence of independent witnesses and corroborative evidence, this allegation was classified as 'Unsubstantiated'.

6.165 When the complaint case was first discussed at the Joint IPCC/CAPO Meeting, the IPCC expressed reservation on whether DSGT A's genuine reason for conducting the nocturnal visit was based on the suspicion that COM's vehicle might have been stolen. The IPCC opined that if DSGT A really had such a thought in mind, he should have put up an alert for COM's vehicle to draw it to the attention of the patrolling officers. CAPO was thus asked to confirm whether DSGT A did place COM's vehicle on the 'Wanted Vehicle List'. Moreover, the telephone message sent by DSGT A only requested the police officers who visited COM's home to locate COM to contact the investigating officer in connection with a case of 'Making Off Without Payment'. The IPCC was of the view that if the Police visited COM's residence in the small hours for only a minor offence of failure to pay \$12 parking fee, it would merit a 'Substantiated' classification for the allegation of 'Unnecessary Use of Authority'. The IPCC also commented that the Police should avoid

visiting a person's residence in the middle of the night unless they had justifiable reasons.

6.166 In response, CAPO confirmed at the subsequent Joint IPCC/CAPO Meeting that there was documentary proof that DSGT A did place COM's vehicle on the 'Wanted Vehicle List' prior to locating COM. This corroborated his claim of having suspicion that the report made by the carpark attendants could be a case of 'Taking Conveyance Without Authority', which might be linked to other more serious and urgent crimes. Because of his suspicion, DSGT A considered that there was urgency to locate COM to clarify what had actually happened. For this reason, CAPO maintained that the allegation of 'Unnecessary Use of Authority' should be classified as 'Unsubstantiated'. Nevertheless, CAPO was of the view that DSGT A's decision of putting COM's vehicle on the 'Wanted Vehicle List' prior to locating COM for clarification was pre-mature. As an outwith matter, DSGT A was advised without an entry in his divisional record file for making such a pre-mature decision. CAPO also heeded the IPCC's comment that the Police should avoid visiting a person's residence in the middle of the night unless they had justifiable reasons and would step up its training and education to enhance the awareness of frontline police officers to make sound judgment regarding visits to private homes in the small hours.

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

Case 18

Indecent Assault – False

6.168 The complainant (COM) was arrested for 'Shop Theft' inside a pet shop. She was subsequently charged with the offence and released on bail pending the case to be tried in court. Several days later, COM lodged a complaint of 'Indecent Assault' alleging that after her arrest, an unidentified male officer squeezed her right breast two to three times when she was taken to the Temporary Holding Area (THA) of the police station for detention. COM was then conveyed to hospital for examination with the medical finding of 'no obvious external injury found'. Afterwards, COM said that she was very tired and left without giving a statement to clarify the details of her allegation to the Police.

- 6.169 When COM was located in a hospital on the following day, she was observed to have drug overdose and not yet fully regained her consciousness. COM's mother disclosed that COM had habitual drug abuse by taking cough medicine and sleeping pills. Six days later, when COM was interviewed by the Police in the hospital after the medical officer confirmed that she was suitable to give a statement, she expressed her decision to withdraw her complaint without giving any explanation.
- 6.170 Upon investigation, COM's allegation was found unequivocally refuted by the Detained Person Movement Record as COM was already detained in the THA at the time when the indecent assault allegedly occurred. There was also inconsistency in the versions given by her regarding the area (right or left breast) she was indecently assaulted. CAPO commented that without prejudice, COM's repeated abnormal behavioural pattern gave rise to grave concern about her mental condition at the time when enquiries were made with her after her arrest and when she lodged her complaint of 'Indecent Assault'. COM appeared to have behaved irrationally, exemplified by her prior self-incriminating warning given to the keeper of the pet shop that she was going to steal things in the shop. In addition, when being enquired about the 'Shop Theft' case after her arrest, COM told the officers that 'she did not steal things in the pet shop; it was she who created the dog clothes and collar by magic.'
- 6.171 Given COM's psychiatric report which revealed that she had drug-induced psychosis and dissocial personality disorder as well as a history of drug abuse, it was believed that she might have delusion at the time when she lodged the complaint which was proved to be unfounded and groundless. Despite COM's withdrawal of her complaint, the allegation of 'Indecent Assault' was classified as 'False' and the alleged complainees remained unidentified. As there was no indication to suggest that COM had knowingly misled the Police by providing inaccurate information, no prosecution or warning action was taken against her.
- 6.172 The IPCC endorsed the investigation result of this 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 The Hon Mr Justice Robert C. TANG, SBS, JP, who had served the Council for some four years, resigned from chairmanship in April 2004 upon his appointment to the public service. Besides, Dr Eric LI Ka-cheung, GBS, JP, Mr CHAN Bing-woon, SBS, JP, Dr LO Chi-keung, BBS and Mr Justin YUE Kwok-hung retired from the IPCC at the end of 2004. Dr Eric LI Ka-cheung, GBS, JP had served the Council for nine years whereas Mr CHAN Bing-woon, SBS, JP, Dr LO Chi-keung, BBS and Mr Justin YUE Kwok-hung had served the Council for six years. The IPCC is most grateful to them for their devoted service and valuable contributions to the work of the Council 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.

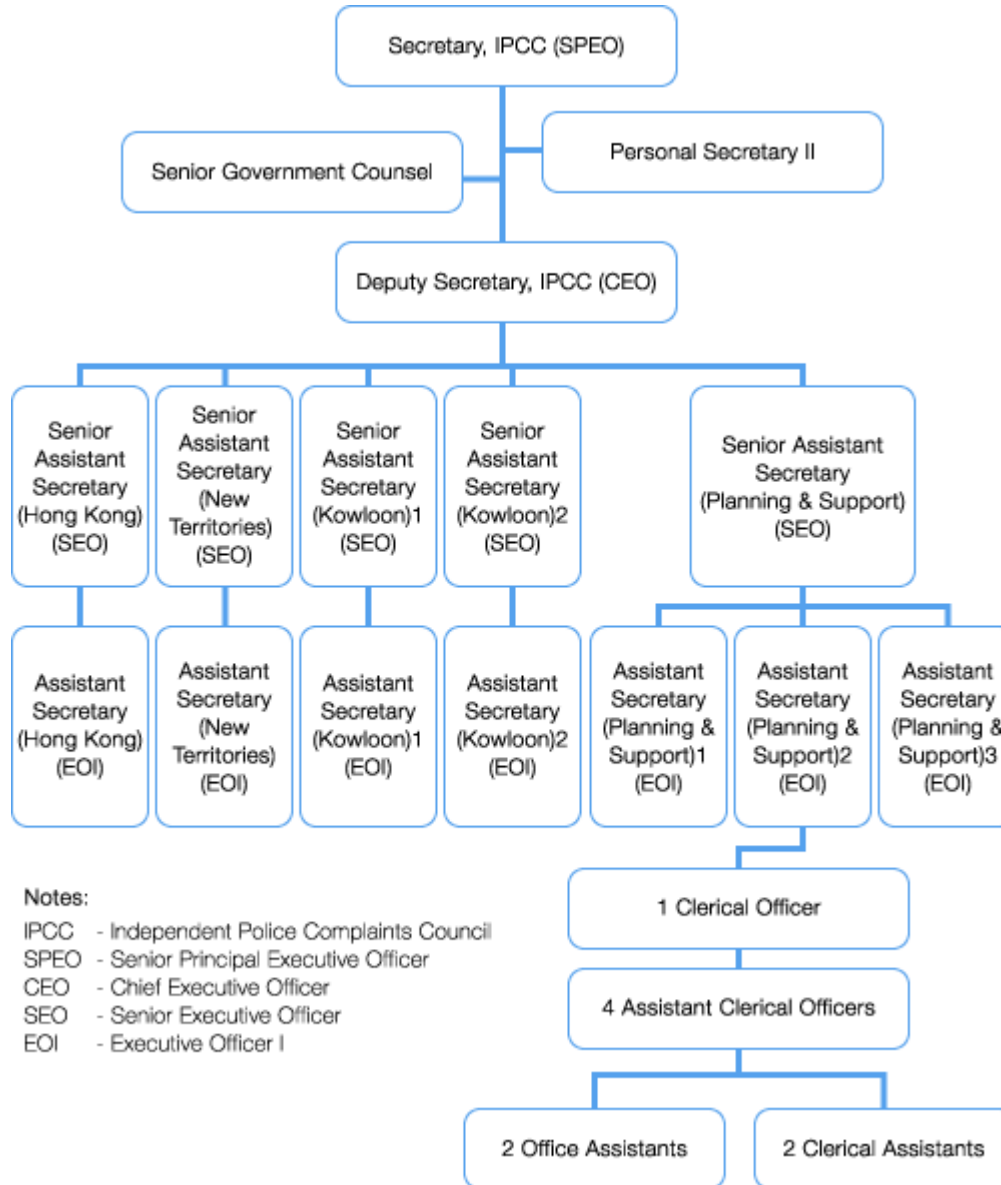
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Appendix

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Appendix I

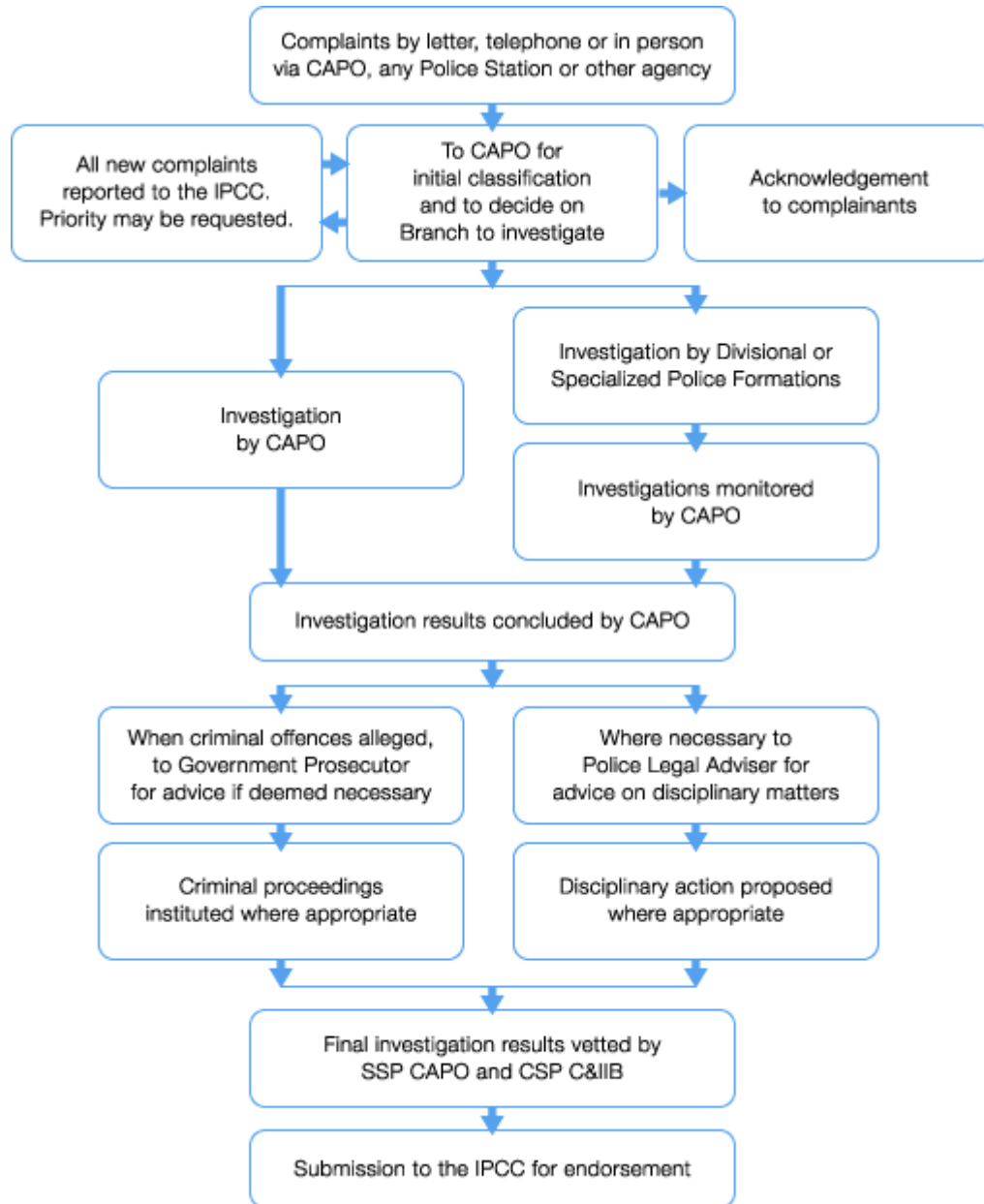
Organization Chart of the IPCC Secretariat



Remarks: One EOI post of the Case Vetting Teams was deleted on 1 December 2004.

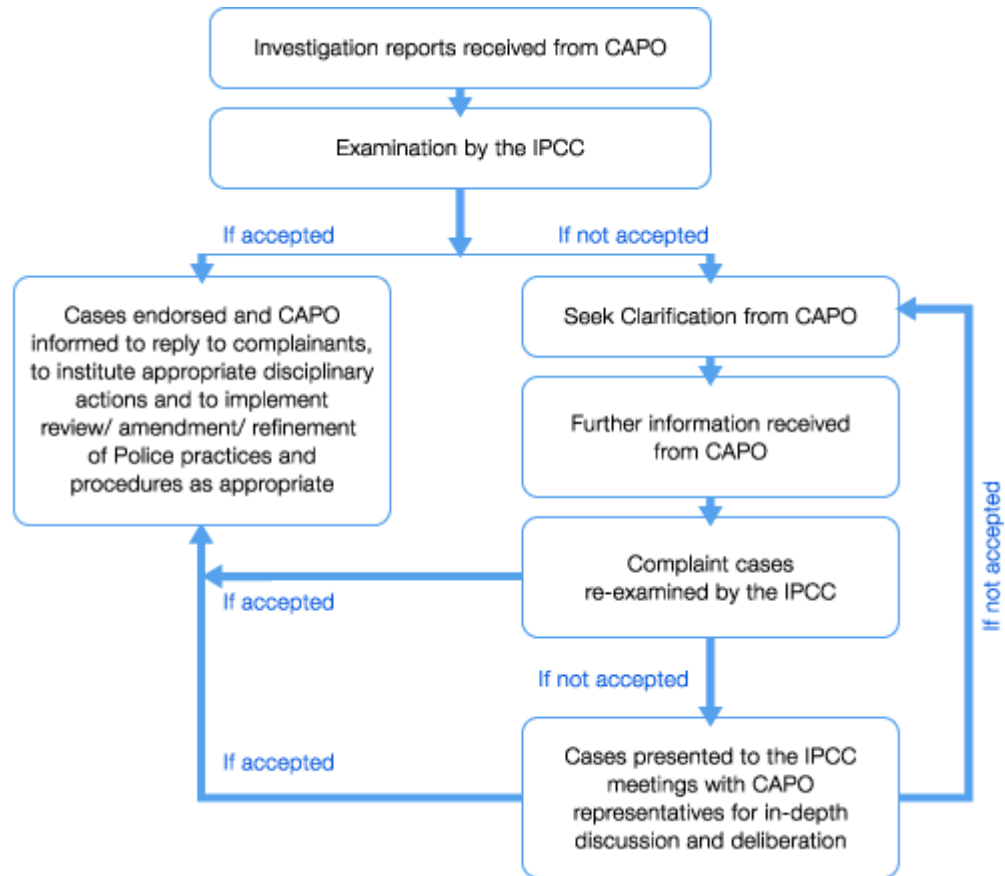
Appendix II

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



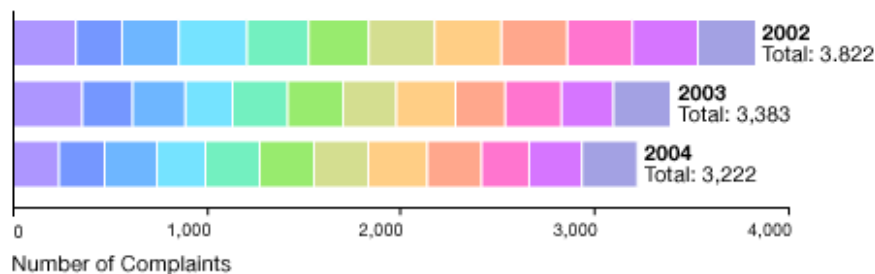
Appendix III

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 2002, 2003 and 2004



Month	2002	2003	2004
January	326	358	238
February	236	258	236
March	292	274	270
April	351	240	249
May	318	284	281
June	308	286	280
July	339	273	281
August	345	304	305
September	339	255	279
October	332	289	244
November	338	267	274
December	298	295	285
Total	3,822	3,383	3,222

Note : The figures for 2002 and 2003 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 2002, 2003 and 2004



	2002 (% of total)	2003 (% of total)	2004 (% of total)
● A. Reported to CAPO in person or by telephone	2,006 (52.5)	1,744 (51.6)	1,384 (43.0)
● B. Reported to a Police Station in person or by telephone	1,023 (26.8)	969 (28.6)	984 (30.5)
● C. Reported by letter or email (to the Commissioner of Police, Box 999, CAPO or Police Formation)	247 (6.5)	232 (6.9)	207 (6.4)
● D. Complaints made at Prisoner Reception Centres/in Prisons	79 (2.1)	57 (1.7)	43 (1.3)
● E. Received via ICAC	19 (0.5)	4 (0.1)	8 (0.2)
● F. Received via LEGCO, Solicitors	18 (0.5)	18 (0.5)	22 (0.7)
● G. Received via Judiciary	383 (10.0)	334 (9.9)	544 (16.9)
● H. Received via Police Public Relations Bureau/ Press/ Radio	15 (0.4)	7 (0.2)	7 (0.2)
● I. Received via other Government Departments	10 (0.3)	8 (0.2)	2 (0.1)
● J. Received via the IPCC	16 (0.4)	4 (0.1)	16 (0.5)
● K. Others	6 (0.2)	6 (0.2)	5 (0.2)
Total reports received	3,822 (100.0)	3,383 (100.0)	3,222 (100.0)

Note 1 : The figures for 2002 and 2003 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 2002, 2003 and 2004
(According to Initial Categorization)



	2002 (% of total)	2003 (% of total)	2004 (% of total)
● A. Assault	602 (15.8)	594 (17.6)	682 (21.2)
● B. Misconduct/ Improper Manner/ Offensive Language	1,080 (28.3)	922 (27.3)	971 (30.1)
● C. Neglect of Duty	1,586 (41.5)	1,443 (42.7)	1,130 (35.1)
● D. Unnecessary Use of Authority	230 (6.0)	172 (5.1)	164 (5.1)
● E. Fabrication of Evidence	167 (4.4)	168 (5.0)	134 (4.2)
● F. Threat	127 (3.3)	65 (1.9)	123 (3.8)
● G. Other Offences	13 (0.3)	9 (0.3)	9 (0.3)
● H. Police Procedures	17 (0.4)	10 (0.3)	9 (0.3)
Total	3,822 (100.0)	3,383 (100.0)	3,222 (100.0)

Note : The figures for 2002 and 2003 have been adjusted to take account of cancellation, consolidation, etc.

Note : 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 31.12.2004 on the Processing of
CAPO Investigation Reports Received in 2004

Vetting Team	Hong Kong	Kowloon 1	Kowloon 2	New Territories	Total
(a) No. of cases endorsed by the IPCC	748	752	777	772	3,049*
(b) No. of cases returned to CAPO for comments	7	7	1	3	18
(c) No. of examined cases under circulation/ in the process of being circulated to IPCC Members	19	30	23	22	94
(d) No. of cases being/ to be examined	43	27	25	25	120
Total no. of cases received from CAPO	817	816	826	822	3,281

* The figure of 3,049 represents those investigation reports received in 2004 and endorsed within the same year.

Appendix VIII

Nature of Allegations Endorsed by the IPCC
in the Years 2002, 2003 and 2004

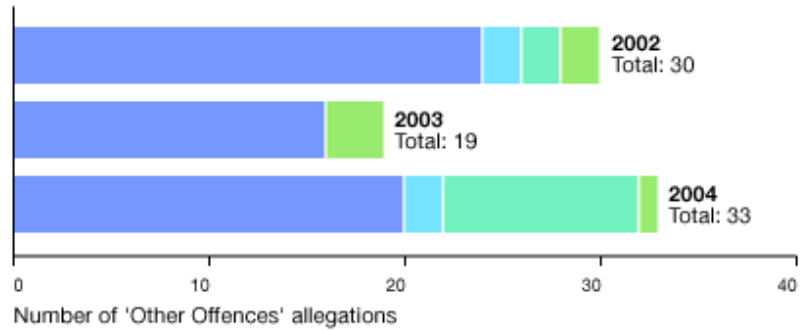


	2002 (% of total)	2003 (% of total)	2004 (% of total)
A. Assault	802 (12.9)	714 (11.4)	776 (13.3)
B. Misconduct/ Improper Manner/ Offensive Language	2,414 (38.9)	2,314 (37.0)	2,105 (36.1)
C. Neglect of Duty	1,847 (29.7)	2,212 (35.3)	1,983 (34.0)
D. Unnecessary Use of Authority	556 (8.9)	532 (8.5)	482 (8.3)
E. Fabrication of Evidence	277 (4.5)	230 (3.7)	243 (4.2)
F. Threat	251 (4.0)	204 (3.3)	197 (3.4)
G. Other Offences (See Appendix VIII(a))	30 (0.5)	19 (0.3)	33 (0.6)
H. Police Procedures	36 (0.6)	37 (0.6)	18 (0.3)
Total no. of allegations	6,213 (100.0)	6,262 (100.0)	5,837 (100.0)

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

Appendix VIII(a)

Breakdown of 'Other Offences' allegations:



	2002	2003	2004
(i) Involvement in Deception Cases and/ or Criminal Syndicate/ Unlawful Society	0	0	0
(ii) Theft Ordinance	24	16	20
(iii) Dangerous Drug Ordinance	0	0	0
(iv) Perverting the Course of Justice	2	0	2
(v) Rape/ Indecent Assault	2	0	10
(vi) Other Crime Ordinances	2	3	1
(vii) Others	0	0	0
Total	30	19	33

Appendix IX

Results of Investigations Endorsed by the IPCC
for the Years 2002, 2003 and 2004



	2002 (% of total)	2003 (% of total)	2004 (% of total)
A. Substantiated/ Substantiated Other Than Reported	246 (4.0)	265 (4.2)	253 (4.3)
B. Not Fully Substantiated	19 (0.3)	21 (0.3)	14 (0.2)
C. Unsubstantiated	986 (15.9)	1,040 (16.6)	1,070 (18.3)
D. False	354 (5.7)	255 (4.1)	296 (5.1)
E. No Fault	397 (6.4)	395 (6.3)	410 (7.0)
F. Curtailed	16 (0.3)	12 (0.2)	5 (0.1)
G. Withdrawn/ Not Pursuable	2,526 (40.7)	2,735 (43.7)	2,570 (44.0)
H. Informal Resolution	1,669 (26.9)	1,539 (24.6)	1,219 (20.9)
Total no. of allegations	6,213 (100.0)	6,262 (100.0)	5,837 (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 2002, 2003 and 2004

Year	2002		2003		2004		
Results of Investigation	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		97	4.8%	113	5.7%	108	5.3%
Substantiated Other Than Reported		149	7.4%	152	7.7%	145	7.1%
Not Fully Substantiated		19	1.0%	21	1.1%	14	0.7%
Sub-total		265	13.2%	286	14.5%	267	13.1%
(II) Other Allegations which are Fully Investigated							
False		354	17.7%	255	12.9%	296	14.5%
No Fault		397	19.8%	395	20.0%	410	20.1%
Unsubstantiated		986	49.3%	1,040	52.6%	1,070	52.4%
Total No. of Fully Investigated Allegations		2,002 (100.0%)		1,976 (100.0%)		2,043 (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 2004

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)	0 (0)	59 (7.6)	87 (11.2)	7 (0.9)	0 (0)	622 (80.2)	0 (0)	776 (100.0)
Misconduct/ Improper Manner/ Offensive Language	16 (0.8)	3 (0.1)	500 (23.8)	39 (1.9)	46 (2.2)	1 (0.1)	812 (38.6)	688 (32.7)	2,105 (100.0)
Neglect of Duty	219 (11.0)	9 (0.5)	391 (19.7)	27 (1.4)	255 (12.9)	4 (0.2)	627 (31.6)	451 (22.7)	1,983 (100.0)
Unnecessary Use of Authority	14 (2.9)	1 (0.2)	83 (17.2)	4 (0.8)	92 (19.1)	0 (0)	215 (44.6)	73 (15.1)	482 (100.0)
Fabrication of Evidence	0 (0)	1 (0.4)	13 (5.3)	114 (46.9)	4 (1.6)	0 (0)	111 (45.7)	0 (0)	243 (100.0)
Threat	0 (0)	0 (0)	15 (7.6)	21 (10.7)	1 (0.5)	0 (0)	159 (80.7)	1 (0.5)	197 (100.0)
Other Offences (Note 4)	0 (0)	0 (0)	8 (24.2)	4 (12.1)	0 (0)	0 (0)	21 (63.6)	0 (0)	33 (100.0)
Police Procedures	3 (16.7)	0 (0)	1 (5.6)	0 (0)	5 (27.8)	0 (0)	3 (16.7)	6 (33.3)	18 (100.0)
Total	253	14	1,070	296	410	5	2,570	1,219	5,837

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 7 allegations of assault which were classified as 'No Fault', there was sufficient evidence to indicate that the use of force by the complainees was reasonable and justifiable.

Note 4

Breakdown of 'Other Offences' Allegations by Results of Investigations

Nature of Allegation	Substantiated/ Substantiated Other Than Reported	Not Fully Substantiated	Unsubstantiated	False	No Fault Curtailed	Not Pursuable/ Withdrawn	Informal Resolution	Total	
Theft Ordinance	0	0	5	1	0	0	14	0	20
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	1	0	0	1	0	2
Dangerous Drug Ordinance	0	0	0	0	0	0	0	0	0
Rape/ Indecent Assault	0	0	3	1	0	0	6	0	10
Other Crime Ordinances	0	0	0	1	0	0	0	0	1
Others	0	0	0	0	0	0	0	0	0
Total	0	0	8	4	0	0	21	0	33

Appendix XII

Criminal/ Disciplinary Proceedings and Internal Action Taken by Police
in respect of Cases Endorsed in the Years 2002, 2003 and 2004

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

(i) Criminal proceedings instituted	No. of Officers		
	2002	2003	2004
Acquitted	7	0	0
Nolle Prosequi	0	0	0
Offer no evidence	0	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	0	0	0
Suspended sentence	0	0	0
Custodial sentence	3	1	0
Trial is pending and outcome is not yet known	0	0	0
Others	0	0	0
	10	1	0
(ii) Disciplinary proceedings instituted			
Acquitted	1	8	0
Conviction recorded but no punishment	0	0	0
Caution	6	11	4
Caution, suspended	7	2	0
Reprimand	4	5	3
Reprimand, suspended	0	0	0
Severe reprimand	3	6	0
Severe reprimand, suspended	0	0	0
Warned for dismissal	0	0	0
Dismissed	0	2	0
Hearing is pending and outcome is not yet known	0	1	2
Others	0	1	0
	21	36	9
(iii) Action by Formation Commanders			
Warning with Entry in Record of Service	36	24	17
Advice given to police officers concerned	236	246	272
	272	270	289
Total ((i) + (ii) + (iii)) *	303	307	298

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

	No. of Officers		
	2002	2003	2004
(i) Criminal proceedings	0	0	0
(ii) Disciplinary proceedings	0	0	0
(iii) Warning with Entry in Record of Service	0	0	1
(iv) Advice	23	20	23
Total	23	20	24

Note: The figures for 2002 and 2003 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/ Suggestions Raised by the IPCC in 2002, 2003 and 2004



Nature of queries/ suggestions raised by the IPCC				
Nature	2002	2003	2004	
1. Results of Investigation	112	151	130	
2. Thoroughness of Investigation/ Clarification of Ambiguous Points in the CAPO Reports/ CAPO Case Files	523	436	386	
3. Grounds for the Exercise of Constabulary Powers	3	0	0	
4. Compliance with Police Practices/ Procedures	1	4	12	
5. Suggested Improvement to Police Procedures	15	13	7	
6. Other Queries	50	83	125	
Total Number of Points Raised	704	687	660	

A query/ suggestion raised by the IPCC may contain more than one point. Out of 412 points accepted by CAPO, 89 results of investigations were changed in 2004. The corresponding figures for 2002 and 2003 were 84 and 105 respectively.