



投訴警方獨立監察委員會

Independent Police Complaints Council

FAIR

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Report **2007**

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Vision, Mission and Values of 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

- Former Chairman, Air Transport Licensing Authority (2004-2006)
- Former Chairman, Town Planning Appeal Board (2000-2006)
- Former Chairman, Board of Review (Inland Revenue Ordinance) (1996-2005)

Hon Daniel LAM Wai-keung, SBS, JP
Vice-Chairman, IPCC

Education and Professional Qualifications

Bachelor of Business Administration, Saint Olav's Academy, New Jersey, USA

Occupation

Managing Director

Major Public Service

- Member, Legislative Council
- Chairman, Islands District Council
- Vice-Chairman, Heung Yee Kuk, New Territories
- Member, Fisheries Development Loan Fund Advisory Committee
- Chairman, Peng Chau Rural Committee

Dr Hon LUI Ming-wah, SBS, JP
Vice-Chairman, IPCC

Education and Professional Qualifications

MSc, University of New South Wales, Australia

PhD, University of Saskatchewan, Canada

PEng

Occupation

Managing Director

Major Public Service

- Member, Legislative Council
- Member, Council of the Hong Kong Polytechnic University
- Advisor, Hong Kong International Arbitration Centre
- Member, The Chinese People's Political Consultative Conference
- Advisory Professor, Shandong University

Dr Hon Joseph LEE Kok-long, JP

Vice-Chairman, IPCC

Education and Professional Qualifications

PhD (Social Sciences), Lingnan University

MSc (Nursing & Education), University of Edinburgh

Bachelor of Nursing (Advanced Nursing Studies), La Trobe University

Registered Nurse

Occupation

Associate Professor and Programme Leader of Nursing, Open University of Hong Kong

Major Public Service

- Member, Legislative Council
- Member, Commission on Strategic Development
- Member, Hong Kong Housing Authority
- Member, Hospital Authority
- Member, Nursing Council Hong Kong

Mr YEUNG Yiu-chung, BBS, JP

Member, 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 9th and 10th National People's Congress of the People's Republic of China
- President, Hong Kong Federation of Education Workers
- Member, Executive Committee, Commission on Strategic Development
- Member, Antiquities Advisory Board
- Member, Action Committee Against Narcotics

Dr LO Wing-lok, JP

Member, IPCC

Education and Professional Qualifications

MBBS (HK)

MRCP (UK)

DTM&H (Lond)

FHKCP

FHKAM (Medicine)

FRCP (Edin)

Occupation

Doctor

Major Public Service

- Member, Scientific Committee on Emerging and Zoonotic Diseases, Centre for Health Protection
- Member, Equal Opportunities Commission
- Former Member, Advisory Council on Food and Environment
- Former Member, Commission on Strategic Development
- Former Member, Legislative Council (2000-2004)

Mr Daniel CHAM Ka-hung, MH, JP

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, Tin Shui Wai South Area Committee
- Vice-Chairman, Security and Guarding Services Industry Authority
- Chairman, Security Services Training Board, Vocational Training Council
- Member, Licensing Appeals Board

Dr Charles KOO Ming-yan, MH

Member, IPCC

Education and Professional Qualifications

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

MA in Journalism, University of Wisconsin-Madison, USA

MSc in Education, University of Southern California, USA

Diploma in Communication, Hong Kong Baptist University

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

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

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

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

Occupation

Consultant

Major Public Service

- Member, Executive Committee, Society for Aid & Rehabilitation of Drug Abusers
- Former Treasurer, Causeway Bay Area Committee (2004-2006)
- 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 and Guarding Services Industry Authority
- Ex-officio Executive Councillor, Heung Yee Kuk, New Territories
- Member, Tuen Mun District Council
- Member, Tuen Mun South West Area Committee
- Member, Advisory Board of Yan Oi Tong

Mr HUI Yung-chung, BBS, JP
Member, IPCC

Education and Professional Qualifications

BA(Hon), University of Hong Kong

Certificate in Education, University of Hong Kong

Master of Education, University of Hong Kong

Occupation

Principal

Major Public Service

- Chairman, Southern District Civic Education Committee
- Member, Appeal Panel (Housing)
- Adjudicator, Panel of Adjudicators (Control of Obscene and Indecent Articles)
- Member, Ap Lei Chau Area Committee
- Chairman, Aberdeen Kaifong Welfare Association Social Service Centre

Professor Benjamin TSOU Ka-yin, BBS
Member, IPCC

Education and Professional Qualifications

PhD (UC, Berkeley)

MA (Linguistics), Harvard University

Fellow, Chartered 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

- Expert Representative for China, ISO/TC37 Committee on Textual Segmentation
- Member, Appeal Board on Exemption from the Language Proficiency Assessment Requirement
- Member, Personalized Vehicle Registration Marks Vetting Committee
- Former Member, Chinese Language Interface Advisory Committee (1999-2007)
- Former Member, Sir Edward Youde Memorial Fund Council (1987-2003)

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)

Arbitrator (China International Economic and Trade Arbitration Commission)

Major Public Service

- Member, Municipal Services Appeals Board
- Member, Securities and Futures Appeals Tribunal
- Former Member, Security and Guarding Services Industry Authority (2000-2006)
- Former Member, Dental Council of Hong Kong (1989-2001)
- Former Member, Criminal and Law Enforcement Injuries Compensation Boards (1997-2003)

Dr TSE Tak-fu, BBS

Member, IPCC

Education and Professional Qualifications

MBBS(HK)

FRCP(Lond)

FRCP (Edin)

FRCP (Glasg)

FHKCP

FHKAM (Medicine)

FACC

Occupation

Medical Specialist (Cardiology)

Registered Chinese Medicine Practitioner

Major Public Service

- Deputy Commissioner (Human Resources), Auxiliary Medical Service
- Council Member, Hong Kong College of Cardiology
- Hon Medical Advisor, Hong Kong Life Saving Society
- Member, Court of the University of Hong Kong
- Member, Chinese Medicine Council of Hong Kong

Ms Priscilla WONG Pui-sze, JP

Member, IPCC

Education and Professional Qualifications

LLB , University of Hong Kong

LLM, London University, UK

Barrister (Counsel)

Advocate & Solicitor, Republic of Singapore

Occupation

Barrister-at-law

Major Public Service

- Chairman, Appeal Board (Betting Duty Ordinance)
- Deputy Chairman, Appeal Board Panel (Consumer Goods Safety)
- Member, Board of Trustees of the Lord Wilson Heritage Trust
- Member, Management Committee of the Consumer Legal Action Fund
- Member, Council of the Hong Kong Academy for Performing Arts

Mrs Helena YUEN CHAN Suk-ye

Member, IPCC

Education and Professional Qualifications

LLB, London School of Economics and Political Science, University of London

MA, Institute of Transpersonal Psychology, USA

PhD (Candidate), University of Hong Kong

Accredited Mediator and Supervisor, Hong Kong International Arbitration Centre

Occupation

Solicitor

Major Public Service

- Member, Advisory Board, Caritas Family Crisis Support Centre
- Member, Promotion and Fund-raising Sub Committee, Family Institute, University of Hong Kong
- Member, Election Committee for the Chief Executive (2006)
- Founding Chairman, Community Mediation Sub-committee (2000-2003), Former Council Member (1997-2006) and Vice-Chairman (2003-2006), Hong Kong Mediation Council, Hong Kong International Arbitration Centre
- Former Member, Standing Committee, Agency Development and Partnership, Hong Kong Council of Social Services (2001-2005)

Mr Barry CHEUNG Chun-yuen, JP
Member, IPCC

Education and Professional Qualifications

BSc, University of Sussex

MBA, Harvard Business School

Occupation

Company Chief Executive

Major Public Service

- Chairman, Board of Urban Renewal Authority
- Member, Standing Committee on Disciplined Services Salaries and Conditions of Services
- Former Chairman, Corruption Prevention Advisory Committee, ICAC (2001-2005)
- Former Member, Central Police Unit (1993-1994)
- Former Member, Energy Advisory Committee (2000-2006)

Dr Lawrence LAM Chi-kit, MH
Member, IPCC

Education and Professional Qualifications

DDM

FADI

Occupation

Dental Surgeon

Major Public Service

- Adjudicator, Panel of Adjudicators (Control of Obscene and Indecent Articles)
- Vice President, Central & Western District, Island East Road Safety Campaign Organizing Committee
- Deputy Commissioner, Hong Kong Road Safety Patrol
- Former Member, Panel of Film Censorship Advisers (1990-2005)
- Former Member, Summer Youth Programme (1999-2003)

Mr WONG Kwok-yan

Member, IPCC

Education and Professional Qualifications

Associateship in Textile Technology, Hong Kong Polytechnic University

CPE, Manchester Metropolitan University/HKU SPACE

PCLL, University of Hong Kong

LLB, Peking University/Hong Kong Shue Yan University

LLM, City University of Hong Kong

Occupation

Solicitor

Major Public Service

- Member, Personalized Vehicle Registration Marks Vetting Committee
- Member, Wong Tai Sin Central Area Committee
- Member, Court of City University of Hong Kong
- Adjudicator, Panel of Adjudicators (Control of Obscene and Indecent Articles)
- Member, Public Affairs Forum

List of IPCC Lay Observers

1. Mr CHAN Bing-woon, SBS, JP
(till 31 Mar 2007)
2. Mr Star CHAN Iu-seng, BBS, JP
3. Mr CHAN Ka-wai
4. Mr Jacky CHAN Kwok-kai
5. Mr CHAN Kwok-tim, MH
(till 31 Aug 2007)
6. Mr CHAN Man-chun
7. Mr Henry CHAN Man-yu
8. Ms Vivien CHAN, JP
9. Mr CHAN Wai-chung, MH
(till 31 Aug 2007)
10. Mr CHAN Wai-ming, BBS, MH
11. Mr Dominic CHAN Wing-kam, MH
12. Mr William CHAN Wing-lim, JP
13. Mr Joseph CHAN Yuek-sut, BBS
14. Ms CHAU Chuen-heung, MH, JP
15. Mrs Betty CHENG YUEN Pui-yan
16. Ms Emily CHEUNG Mui-seung
17. Ms CHEUNG Sik-yung
18. Mr Christopher CHEUNG Wah-fung, JP
(till 31 Mar 2007)
19. Ms Susanna CHING Che-man
20. Dr CHIU Chun-bong, JP
(till 31 Aug 2007)
21. Mr CHOW Yick-hay, BBS, JP
22. Mr CHU Ching-hong
23. Rev CHU Yiu-ming
24. Mr Christopher CHUNG Shu-kun, MH, JP
25. Mr FUNG Kam-chiu, MH
(till 31 Aug 2007)
26. Mr Eugene FUNG
27. Mr HUI Ka-hoo, MH
28. Mr IP Kwok-chung, SBS, JP
29. Mr KAN Chi-ho, BBS, MH
30. Mr KO Kam-cheung, MH
31. Mr KO Tam-kan, BBS
(till 31 Aug 2007)
32. Ir Edgar KWAN, JP
33. Mr David LAI Tat-sang, MH
34. Dr Lawrence LAM Chi-kit, MH
(retired and be appointed as IPCC Member
on 1 Jan 2007)
35. Mr Stewart LAM Kin-ko
36. Mr LAM Kit-sing
(till 31 Aug 2007)
37. Dr Conrad LAM Kui-shing, JP
38. Mr LAM Tak-leung, MH
39. Mrs Peggy LAM PEI Yu-dja, GBS, JP
40. Mr Ivan LAU Ho-kit
41. Ms Elizabeth LAW, MH
(till 31 Aug 2007)
42. Ms LEUNG Fu-wing, MH
43. Mr LEUNG Sau-chi, JP
44. Mr LEUNG Wing-kuen

45. Dr Eric LI Ka-cheung, GBS, JP
(till 31 Mar 2007)
46. Mr David LI Ka-fai, MH
47. Mr LO Kwok-hung, BBS, MH
(till 31 Aug 2007)
48. Mr LO Tze-on
49. Miss Rosanda MOK Ka-han
(till 31 Aug 2007)
50. Mr NG Kwok-fai
51. Mr Wilfred NG Sau-kei, MH, JP
52. Mr Thomas PANG Cheung-wai, JP
53. Mr Joseph PANG Yuk-wing, JP
54. Ms Samanta PONG Sum-yee
55. Mr PUK Kwan-kin
56. Prof Daniel SHEK Tan-lei, BBS, JP
57. Dr SHUM Ping-shiu, BBS, JP
58. Ir TAM King-leung
59. Mr TAM Kwok-kiu, MH, JP
60. Dr Banny TAM Ping-lap
61. Mr George TAM Siu-ping
62. Mr Teddy TANG Chun-keung, MH
63. Mr TANG Kwok-kong, MH
64. Ms Christina TING Yuk-chee, SBS, JP
65. Mr Jimmy TSE Lai-leung, MH
66. Dr John TSE Wing-ling, MH
67. Mr Aaron WAN Chi-keung, BBS, JP
68. Mr Justein WONG Chun, JP
69. Mr Helvin WONG Hau-yan
70. Mr WONG Kam-chi, MH, JP
71. Mr WONG Kin-pan
72. Dr James WONG Kong-tin
73. Ir Billy WONG Wing-hoo, JP
74. Mr WU Chor-nam, JP
75. Ir Hugh WU Sai-him
76. Mr Edwin YEUNG Chi-wai
77. Mr Andy YEUNG Chun-sing
78. Mr Stephen YIP Moon-wah, JP
79. Mr YIP Wah, BBS, JP
80. Mr David YIP Wing-shing, MH, JP
81. Mr Chris YIP Yiu-shing, MH
82. Mrs YUEN CHAN Po-hing
83. Mr Roger YUNG Kwok-chung

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 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 This chapter summarizes the major activities of IPCC in 2007.

Performance Pledges of IPCC

1.3 To provide a higher level of service, IPCC promulgated in 1998 a set of performance pledges in terms of standard response time in handling public enquiries and monitoring complaints against the Police. The performance of IPCC in meeting its pledges in 2007 is summarized below:

	Performance Target (Standard response time) *	No. of Enquiries/ Cases Processed Within Target	% Within Performance Target
<u>Enquiries</u>			
By telephone or in person	Immediately	695 (728)	100 (100)
In writing	Within 10 days	458 (350)	100 (99.4)
<u>Monitoring of complaints</u>			
Normal cases	Less than 3 months	1,550 (1,304)	99.9 (99.5)
Complicated cases	Within 3-6 months	956 (801)	99.8 (99.8)
Review cases	Within 3-6 months	93 (77)	96.9 (93.9)

**The standard response time for monitoring of complaints is measured from the date of receipt of CAPO's final investigation report. Figures in bracket denote the performance in 2006.*

1.4 IPCC will continue to strive for maintaining a high level of performance.

Monitoring of Serious Complaints

1.5 The Serious Complaints Committee monitored 5 cases in 2007. 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 being conducted.

Monitoring of CAPO's Investigation Reports

1.6 IPCC endorsed a total of 2,509 CAPO's investigation reports involving 4,341 allegations during the year. More details are given in Chapter 4.

The IPCC Observers Scheme

1.7 In 2007, 13 new Lay Observers were appointed by the Secretary for Security to observe investigations by CAPO/Formation investigating officers and Informal Resolution interviews, while 13 serving Lay Observers retired. Two briefings were conducted by the IPCC Secretariat on 18 April and 21 September 2007 for the new Observers to familiarize them with the police complaints system and the operation of the Observers Scheme. As at 31 December 2007, there were altogether 70 Lay Observers.

1.8 In 2007, 263 observations (125 for Informal Resolution and 138 for others) were arranged under the Scheme, among which 13 were conducted by IPCC Members and 250 were conducted by Lay Observers.

Interviewing Witnesses Scheme

1.9 Under the IPCC Interviewing Witnesses Scheme, IPCC Members may interview witnesses to clarify doubtful points in the course of examining CAPO's investigation reports.

1.10 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 IPCC under the Scheme in 2007.

Proposal to Establish IPCC as a Statutory Body

1.11 To enhance IPCC's independence and strengthen public confidence in the police complaints system, the Administration plans to make IPCC a statutory body. Its composition, functions and powers will be specified in law.

1.12 The Independent Police Complaints Council Bill was gazetted on 29 June 2007 and

was tabled at the Legislative Council (LegCo) on 11 July 2007 for First Reading. The Bill seeks to incorporate the existing IPCC, to provide for IPCC's functions of observing and monitoring the handling and investigation of reportable complaints by the Police, to provide for IPCC's powers relating to its affairs and operation, to provide for the appointment of observers in relation to reportable complaints, and to provide for connected matters.

1.13 The Chairman and Council Members attended a meeting of the relevant LegCo Bills Committee to exchange views with legislators. The Council also presented a written submission setting out the Council's comments on the Bill. The Council has kept in view discussion at LegCo and would contribute its views as appropriate.

Publicity Talks

1.14 As part of its on-going publicity programme, IPCC continued to organize publicity talks. In 2007, two publicity talks were delivered at the City University of Hong Kong and the Hong Kong Baptist University on 9 October and 16 November respectively.

1.15 IPCC also conducted two visits to secondary schools in 2007 and gave talks to students.

Visits to Frontline Policing Activities

1.16 As in previous years, IPCC Members made visits to different Police units for a better understanding of Police's operation and challenges faced by frontline officers. On 21 May 2007, Members visited CAPO and the Reporting Centre at the Police Headquarters. On 3 October 2007, Members visited the Traffic Kowloon East Headquarters at Tseung Kwan O Police Station. They were briefed on the complaint trend and complaint prevention initiatives in the region. Members also had an on-the-spot observation of laser gun operation in Tseung Kwan O.

Chapter 2

General Information

The Independent Police Complaints Council (IPCC)

2.1 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 the Independent Police Complaints Council (IPCC) on 30 December 1994.

2.2 IPCC comprises a Chairman, three Vice-Chairmen and 14 Members appointed by the Chief Executive. With effect from 1 January 2007, Dr Hon Joseph LEE Kok-long, JP, was appointed Vice-Chairman of the Council, while Mr Barry CHEUNG Chun-yuen, JP, Dr Lawrence LAM Chi-kit, MH, and Mr WONG Kwok-yan were appointed Members to the Council.

2.3 The main function of 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, IPCC has committees dedicated to different subjects:

(a) The Publicity and Survey Committee

To consider, plan and launch IPCC publicity activities, including surveys and researches.

Chairman: Dr Charles KOO Ming-yan, MH

Members: Mr Daniel CHAM Ka-hung, MH, JP
Mr Edward PONG Chong, BBS, JP
Mr HUI Yung-chung, BBS, JP
Prof Benjamin TSOU Ka-yin, BBS
Dr TSE Tak-fu, BBS

(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 the set criteria.

Chairman: Dr LO Wing-lok, JP

Members: Dr Hon LUI Ming-wah, SBS, JP
Dr Charles KOO Ming-yan, MH
Dr Michael TSUI Fuk-sun
Ms Priscilla WONG Pui-sze, JP
Mr WONG Kwok-yan

(c) The Management Committee

To oversee key duties in the administration of the IPCC Secretariat.

Chairman: Dr Hon LUI Ming-wah, SBS, JP

Members: Mr Daniel CHAM Ka-hung, MH, JP
Dr Charles KOO Ming-yan, MH
Dr Michael TSUI Fuk-sun
Mr Barry CHEUNG Chun-yuen, JP
Mrs Brenda FUNG, Secretary, IPCC

Ex-officio Member: Mr Ronny WONG Fook-hum, SC, JP, Chairman, IPCC

IPCC Secretariat

2.5 IPCC is supported by a full-time Secretariat, headed by an Administrative Officer Staff Grade 'C' (as Secretary) with 21 general grades staff and a Senior Government Counsel serving as legal adviser to 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), three 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 fourth team, Planning and Support, comprising one SAS and 13 executive, clerical and secretarial staff, is responsible for general administration, research and other support services, as well as servicing the Serious Complaints Committee and the Management Committee. Besides, a number of non-civil service contract staff, including a Special Duty Team, a Senior Public Relations Officer, and an Assistant Information Technology Officer were employed to support the smooth operation of the Secretariat. The organization chart of the IPCC Secretariat, as at 31 December 2007, is at Appendix I.

Processing of Complaints Against the Police

(a) Role Played by 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 Chapters 3 and 4 for more details) and prepares a report for IPCC's review and endorsement.

(b) Role Played by IPCC

2.7 CAPO submits to 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 IPCC Members are divided into three sub-groups to share the workload. Each sub-group comprises a Vice-Chairman and four to five Members. After examination by the

sub-groups, the investigation reports, together with any comments from the sub-groups on the cases, will be passed to the Chairman for further examination.

2.9 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 IPCC.

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

Follow-up Action after Endorsement of CAPO Investigation Reports

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

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

Chapter 3

Handling of Complaints

Introduction

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

- Substantiated
- Substantiated Other Than Reported
- Not Fully Substantiated
- Unsubstantiated
- False
- No Fault

3.2 A complaint may also be classified/handled as follows:

- Withdrawn
- Not Pursuable
- Curtailed
- Informally Resolved
- Sub-judice

Substantiated

3.3 An allegation is 'Substantiated':

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

Example

In the small hours of the material night, the complainant (COM) made a noise complaint of dog barking to the Report Room of a police station. COM left her mobile phone number as a means of contact with the Police. She then switched off her phone, and diverted all incoming calls to the voicemail box. A team of police officers including Police Constable X (PC X) was assigned to handle COM's report. The police party conducted investigation at the scene, but did not hear any dog barking. PC X then used a government mobile phone to call COM with a view to obtaining more information from her, but to no avail. The police

party then left the scene with no further action taken.

When COM switched on her mobile phone the next morning, she found that a message containing foul language was left at the voicemail box. Having confirmed with the police station that the message was sent from PC X's mobile phone, COM lodged a complaint of 'Offensive Language' against PC X.

CAPO's investigation revealed that the message left at COM's voicemail box on the material night was sent from a government mobile phone issued to PC X. PC X admitted that he had used the aforesaid phone to call COM on the material night. In view of PC X's admission of his own misdeeds, CAPO classified the allegation as 'Substantiated', and disciplinary proceedings would be instituted against him.

Substantiated Other Than Reported

3.4 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 and have a major impact on the investigation.

Example

The complainant (COM), who was a Chinese Two-way Permit holder, was arrested and charged with the offences of 'Soliciting for an Immoral Purpose' and 'Breach of Condition of Stay'. When brought before the Magistracy, she pleaded guilty to the offences but alleged that Police Constable X (PC X), Police Constable Y (PC Y) and Woman Police Constable Z (WPC Z) had pressed her on the ground, hit her back, and bit her thighs and chest vigorously in order to take her fingerprints inside the police station ('Assault'). The Magistrate convicted COM on her own guilty plea, but made no comment on her allegation against the Police. After the trial, COM was sent to hospital for examination. The medical findings, however, did not corroborate the extent of force allegedly used by the Police on her. Moreover, the versions of PC X, PC Y and WPC Z indicated that COM was very hostile inside the police station. They had clearly explained to COM the police power of taking fingerprints from the arrested person as conferred by Section 59 of the Police Force Ordinance (Cap. 232). However, COM insisted that she had not committed any offence and refused to have her fingerprints taken. Despite being repeatedly persuaded and warned that minimum force might be used to complete the fingerprinting process according to the relevant

provision of the Force Procedures Manual, COM still did not cooperate. She kicked the table over, making the fingerprint form and ink plate fall onto the ground. As such, PC X and PC Y held COM onto a chair by pressing her shoulders and four limbs so that WPC Z could grasp the hand of COM to take the fingerprints. They denied having used excessive force on COM throughout the fingerprint-taking process.

In the absence of any independent and corroborative evidence to prove or disprove whether excessive force had been used by the Police on COM, the allegation of 'Assault' was classified as 'Unsubstantiated'. However, it was found that PC Y had failed to make a notebook entry regarding the incident, especially when he had exercised police power by applying minimum force on COM during the fingerprint-taking process. For this reason, a 'Substantiated Other Than Reported' count of 'Neglect of Duty' was registered against PC Y and he was advised without an entry in his divisional record file to comply with the provision of the Police General Order in making notebook entry whenever police power is exercised.

Not Fully Substantiated

3.5 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), who was charged with the offence of 'Dealing with Property Known/Believed to Represent Proceeds of Indictable Offence', was acquitted after trial. COM subsequently lodged a complaint of 'Neglect of Duty' against Detective Police Constable X (DPC X), for failing to return his seized property upon conclusion of the court case despite his repeated requests.

DPC X stated that he had assisted COM to get his seized property back as soon as possible and had no intention to cause any delay. He explained that the property was returned to COM five months after the conclusion of COM's court case because some of the property submitted as exhibits were kept by the court after the trial. DPC X claimed that he had immediately contacted Miss A, the Court Clerk after the trial regarding the return of the exhibits. However, Miss A informed DPC X that the exhibits could not be returned at that moment and she would inform him when the exhibits were ready for collection. In the light of Miss A's advice, DPC X subsequently informed COM that he could collect his property except those still kept by the court. However, COM expressed that he would like to collect the property all in one go. Therefore, he arranged COM to collect all his property upon

receiving Miss A's notification that the exhibits were ready for collection which was about five months after the conclusion of COM's court case.

Miss A stated that the court would normally keep the exhibits until expiry of the appeal period which was one month after the trial, and the Police should contact her for return of the exhibits. According to the relevant court record, the exhibits concerned were ready for collection one month after the conclusion of COM's crime case.

DPC X alleged that he had contacted Miss A but Miss A had no record or recollection of whether DPC X had contacted her as alleged. Under such circumstance, there was some evidence to support that there was a delay in returning the property to COM. However, there was no independent witness or evidence to fully prove or disprove DPC X's version. Therefore, COM's allegation was classified as 'Not Fully Substantiated'.

Unsubstantiated

3.6 A complaint is classified as 'Unsubstantiated':

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

3.7 In a typical 'Unsubstantiated' complaint, the complainant's allegation is denied by the complainees and there is neither independent witness nor corroborative evidence to support either side's version.

Example

The complainant (COM) was a university student. He was approached and enquired by Sergeant X (SGT X) whilst watching two groups of petitioners staging protests at the main entrance of his university where an official ceremony was taking place. COM alleged that when he intended to note down SGT X's particulars from the latter's warrant card hung on his chest, SGT X immediately put his warrant card into the pocket of his trousers and walked away ('Misconduct').

SGT X flatly denied COM's allegation. He claimed that he had displayed his warrant card on his chest throughout the incident, and COM had not asked for his particulars. He was not aware that COM intended to note down the particulars from his warrant card during the incident.

CAPO's investigation found that the video footage taken by the Police video team during the incident did not capture any interaction between COM and SGT X, and no independent

witness could be located. In the absence of independent witness or corroborative evidence to support either side's version, the complaint was a one-against-one case, and the allegation was classified as 'Unsubstantiated'.

False

3.8 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.

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

Example

The complainant (COM) had a dispute with the owner of a restaurant (Mr A) over the bill. In the heat of the row, COM claimed himself as a member of a triad society and took out a knife from his waist, attempting to chop Mr A. In response, Mr A threw bottles of soft drink at COM for self-defence, and COM therefore suffered injuries on elbow, head and chin whereas Mr A had no injury. COM was arrested for 'Claiming to be a Member of a Triad Society' and 'Possession of Offensive Weapon' while Mr A was arrested for 'Wounding'. On the strength of legal advice, COM was charged with the two offences whereas no charge was laid against Mr A. When brought before the Magistracy, COM pleaded not guilty to the charges and alleged that Detective Police Constable X (DPC X) forced him to sign the cautioned statement and did not allow him to make any alteration to the statement inside the interview room of the police station ('Misconduct'). During the trial, both Mr A and DPC X were called to testify as prosecution witnesses and their testimonies were consistent with their statements. Though COM renewed his allegation against DPC X as his defence, the Magistrate, in delivering his verdict, found the prosecution witnesses honest and reliable, and rejected COM's evidence in support of the allegation. COM was therefore convicted and sentenced to a total of six months' imprisonment.

In view of the Magistrate's comments during the trial, the allegation of 'Misconduct' against

DPC X was considered judicially resolved and classified as 'False'.

No Fault

3.10 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.

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

Example

The complainant (COM) was a taxi driver. On the material day, he was intercepted and ticketed by a Sergeant (SGT X) for 'Failing to Comply with Traffic Sign' after jumping the red light. COM denied the offence, and called '999' twice to make a report. COM also tried to keep the female passenger (Ms A) on board his taxi to be his witness. However, Ms A stated to the Police that she did not see the traffic signal, and hence refused to be COM's witness. She then took another taxi and left the scene. Feeling aggrieved by the ticketing action of SGT X and the way he handled the incident, COM lodged a complaint on the following day alleging SGT X of abusing his authority by disallowing COM to get the contact details of Ms A and sending her away ('Unnecessary Use of Authority').

SGT X denied the allegation. SGT X stated that when he asked COM to produce his driving licence, COM ignored him and asked Ms A if she had seen him jumping the red light. Ms A said that she did not take any notice of the incident and got off his taxi. When SGT X was recording the personal particulars of Ms A, COM suddenly grasped the arm of Ms A, and requested her to leave her contact number with him. On seeing this, SGT X told COM to let go of Ms A. SGT X enquired with Ms A again to see if she had witnessed COM committing the offence, but she replied in the negative. Ms A then took another taxi and left the scene. During the complaint investigation, CAPO contacted Ms A who confirmed that she did not see the traffic signal at the material time, and she therefore refused to be a witness at the scene. She also stated that COM had grasped her arm, and kept asking her for her contact number. A police officer (identified as SGT X) came up to stop COM from grasping her.

After investigation, CAPO concluded that it was proper and reasonable for SGT X to stop COM from causing nuisance to Ms A who had expressly refused to stay at the scene or to serve as a witness to COM in the incident. The allegation of 'Unnecessary Use of Authority' was classified as 'No Fault'.

Withdrawn

3.12 A complaint is classified as 'Withdrawn':

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

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

Example

The complainant (COM) was stopped and searched by Police Constable X (PC X) for having acted furtively in the small hours outside a convenience store. During the search, a packet of suspected dangerous drug was found in COM's possession. PC X then arrested COM for 'Possession of Dangerous Drug'. Under caution, COM admitted that he had bought the drug for his own consumption. COM was charged with the offence and appeared before the Magistracy. He pleaded not guilty to the charge and complained in court that he was induced by PC X to admit the offence at the time of arrest ('Misconduct'). When the complaint investigating officer subsequently contacted COM to ascertain his stance, he expressed his wish to withdraw the complaint as he decided to plead guilty to the charge in the impending trial. His withdrawal was verified by another senior police officer. The allegation of 'Misconduct' against PC X was therefore treated as 'Withdrawn'.

Not Pursuable

3.14 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.

3.15 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 complainee cannot be ascertained.

3.16 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) was arrested and charged with the offence of 'Obtaining Property by Deception' at a shopping mall. At the court hearing, COM pleaded not guilty to the charge and alleged that Police Constable X (PC X) slapped his left face twice during the course of arrest. CAPO's initial investigation revealed that no CCTV facility was found at the location of the incident, the security guards of the shopping mall did not witness any assault on COM, and no other independent witness was located. During CAPO's contact with COM, he agreed to have his complaint handled by way of 'Sub-judice' procedures and refrained from giving details of his complaint. CAPO suspended investigation pending court trial. COM was subsequently convicted after trial.

Noting that COM did not renew his allegation at trial, CAPO re-opened the complaint case after the conclusion of the trial. 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 'Assault' was therefore classified as 'Not Pursuable'.

Curtailed

3.17 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) was arrested in connection with suspected involvement in making bomb hoax calls to the Police. During his interview in a police station, COM kicked the wall of the interview room causing damage to it. COM was admitted to the psychiatric ward of a hospital for observation afterwards.

COM was eventually charged with two counts of 'Causing Wasteful Employment of Police' and one count of 'Criminal Damage'. When he appeared in the Magistracy, COM complained that he was assaulted by the Arresting Officer (PC A) during his interview in the police station ('Assault'). COM was later transferred to a psychiatric centre for detention. During detention, COM was interviewed by CAPO officers and he further complained that PC A induced him to admit the offences by allowing him to smoke ('Misconduct'), and fabricated evidence to frame him for the charge of 'Criminal Damage' ('Fabrication of Evidence'). COM also lodged similar complaint of assault by the Police at the psychiatric centre. COM was examined by a medical officer at the centre with a finding of "no external marks were seen".

COM later pleaded guilty to the charges and was sentenced to a Hospital Order (under the Mental Health Ordinance (Cap. 136)) for 12 months.

Having considered the mental state of COM, Chief Superintendent (Complaints and Internal Investigations Branch) finally approved the curtailment of CAPO's investigation into the complaint case. The allegations were therefore classified as 'Curtailed'.

Informally Resolved

3.18 The Informal Resolution (IR) scheme aims at a speedy, satisfactory resolution of very minor complaints such as impoliteness during the ticketing of traffic offence.

3.19 A minor complaint suitable for IR will not be subject to a full investigation. Instead, a senior officer, at least at the Chief Inspector of Police rank, will act as the Conciliating Officer (CO). The CO will make enquiry into the facts of a complaint with the complainant and complainees separately. If he is satisfied that the matter is suitable for IR and if the complainant agrees, the complaint will be informally resolved.

3.20 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 complainees. (The CO would formulate his judgement as to the facts and decide whether IR, or normal full investigation, should be carried out.)

Example

The complainant was ticketed by the complainee for the offence of 'Failure to comply with Traffic Signals'. He alleged that, during the ticketing, the complainee refused to inform him of the amount of fine and number of points to be deducted for his driving licence and dropped the fixed penalty ticket together with his driving licence to the ground ('Misconduct'). In view of its minor nature, the complaint was considered suitable to be dealt with by way of '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 more sympathetically and professionally when dealing with members of the public asking for assistance and to maintain service quality in future.

Sub-judice

3.21 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 complaint 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 interest 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 –

- the complaint does not concern matters which will impinge on the Court's prerogative; or
- the complaint is serious and there is sufficient evidence or some other good reasons to suggest that it is likely to be substantiated; or
- there is indication of police misconduct sufficient to justify interference with the prosecution; or
- 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
- it is in the interest of justice that the complaint be investigated sub-judice; or
- 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 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.

3.22 When an investigation is suspended under the sub-judice procedures, CAPO will furnish a report to IPCC. The Council 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) was intercepted by the Police in the small hours of a morning.

Suspected dangerous drugs were found on him after the search. During the process, COM put up a vigorous struggle and was eventually subdued. He was arrested for 'Possession of Dangerous Drug' and 'Obstructing a Police Officer in the Due Execution of his Duty'. At the trial, COM alleged that two police officers hit him on his back when he was on board a police vehicle. The complainant opted to have his complaint handled by way of sub-judice procedures and refused to give any statement pending conclusion of the trial. CAPO suspended the complaint investigation and treated the case as sub-judice.

Others

3.23 As a verdict on a complaint, the classification is no doubt the single most important aspect monitored and reviewed by IPCC. However, the importance of the classification should not deflect attention from the ultimate objectives of the complaints 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.

3.24 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, 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.

3.25 CAPO is also required to submit regularly summaries of 'Non-Reportable Complaints' to IPCC. This is to ensure that all complaints which should properly be categorized as reportable complaints are so categorized and that the investigations will consequentially be subject to IPCC's monitoring and review.

Chapter 4

General Review of Statistics on Complaint Cases Endorsed by IPCC

Number of Complaints

4.1 In 2007, CAPO registered the receipt of 2,569 complaints, representing an increase of 2.3% over the figure of 2,511 for 2006. The number of complaints received and registered by CAPO in 2005, 2006 and 2007 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 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 2005, 2006 and 2007 according to the nature of allegations. The five major areas of complaints against the Police in 2007, in descending order, were 'Neglect of Duty' (41.4%), 'Misconduct/Improper Manner/Offensive Language' (27.9%), 'Assault' (18.2%), 'Threat' (4.6%) and 'Unnecessary Use of Authority' (4.0%).

Number of Investigation Reports

4.3 In 2007, IPCC received a total of 2,774 investigation reports from CAPO, representing an increase of 337 investigation reports or 13.8% over the figure of 2,437 in 2006. A table showing the progress in processing and endorsing CAPO investigation reports as at 31 December 2007 is at Appendix VII.

4.4 In 2007, IPCC endorsed a total of 2,509 investigation reports of which 461 were carried over from the previous years, involving 4,341 allegations. The respective number of allegations by category for cases concluded in 2005, 2006 and 2007 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 94.5% of the total figure in 2007.

Queries Raised with CAPO

4.5 A total of 1,700 queries/suggestions were raised with CAPO in respect of cases endorsed in 2007, of which 1,205 were accepted by CAPO and 495 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 IPCC in 2005, 2006 and 2007 together with the percentage distribution are at Appendix IX.

4.7 In 2007, 926 out of 4,341 allegations were resolved by way of Informal Resolution. Of the remaining 3,415 allegations, 36 were classified as 'Substantiated', 64 'Substantiated Other Than Reported', 5 'Not Fully Substantiated', 769 'Unsubstantiated', 160 'False', 148 'No Fault', 1 'Curtailed', 1,510 'Withdrawn' and 722 'Not Pursuable'. Allegations which were 'Curtailed', 'Withdrawn', 'Not Pursuable' or 'Informally Resolved' were normally not fully investigated.

4.8 The substantiation rate in relation to the 1,182 fully investigated allegations in 2007 was 8.9%, a breakdown of which is appended below:

<u>Classification</u>	<u>No. of Allegations Endorsed</u>	<u>Substantiation Rate(s)</u>
Substantiated	36	3.1%
Substantiated Other Than Reported	64	5.4%
<u>Not Fully Substantiated</u>	<u>5</u>	<u>0.4%</u>
Total :	105	8.9%

4.9 Since substantiating a complaint requires clear evidence or convincing justifications, IPCC has to examine each individual complaint thoroughly and impartially to uphold fairness to both complainants and 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 IPCC in 2005, 2006 and 2007 are shown in Appendix X.

4.11 A table showing the breakdown of the results of investigations, by each category of allegations, endorsed by IPCC in 2007 is at Appendix XI.

Follow-up Action Taken on Investigation Results

4.12 Criminal/disciplinary proceedings or internal action were taken against 91 police officers on 'Substantiated', 'Substantiated Other Than Reported', and 'Not Fully Substantiated' cases in 2007, subsequent to the endorsement of the results of investigations by IPCC. The criminal/disciplinary proceedings and internal action taken against police officers on cases endorsed in 2005, 2006 and 2007 are at Appendix XII. The Police Force will also take remedial actions 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 (see Chapter 3, para. 3.9 above). For the complaint cases endorsed in 2007, no complainant was charged for making a false complaint.

Classification Changes

4.14 As a result of IPCC's queries, the results of investigation in respect of 82 complaint allegations were changed in 2007.

Suggested Improvements to Police Procedures and Practices

4.15 IPCC made a number of suggestions to improve police procedures and practices. Some of the more significant ones which were accepted by CAPO in 2007 are described below:

- (a) The complainant while driving her vehicle was stopped by two police officers who were conducting a closed road permit check. One police officer asked the complainant to produce her driving licence with a view to ticketing her for driving within a closed road without a permit. The complainant opined that the police officer concerned should also have asked for her identity card so as to verify her identity. Noting this, IPCC has asked CAPO to consider the complainant's comment on the need for checking a driver's identity before taking ticketing actions.

The Police advised that the responsible policy unit had reviewed the issue and re-issued the Force guidelines outlining the circumstances in which a police officer should request production of proof of a driver's identity for inspection during traffic enforcement and highlighting that there would be an intrinsic duty for an officer to establish and verify the identity of the offender before taking further action. Demanding proof of identity of the offender would be expected as a matter of course rather than an exception.

- (b) The complainant made a telephone report to a police station after he was nearly hit by a motorcycle driving on the pavement. The complainant was dissatisfied with the handling of the traffic complaint by the police officer concerned and lodged a complaint which was investigated by another police officer of the same police station. The complainant subsequently lodged a complaint against the second police officer for inducing him to resolve his complaint by way of informal resolution against his request for a full investigation. It was confirmed that the conversations between the complainant and the two complainees were not recorded. During the case examination, IPCC suggested the Police to record all telephone conversations between the public and the Police so that the recorded information could serve as evidence in support of a police complaint case.

The Police replied that they had commissioned a service improvement project to install a Report Room Recording System which would operate in a manner similar to the current '999' Reporting System and be made available to all formations which had public interface facilities.

- (c) While scrutinizing a complaint which involved issuing call-up letters to a complainant of a potential sub-judice (SJ) case, IPCC noted that CAPO had asked the complainant to approach CAPO to provide full details of the complaint. This might contravene the principle of SJ procedures which were devised to protect the interest of the complainant cum defendant so that the latter's line of defense would not be prematurely revealed to the Police prior to the trial. IPCC opined that the complainants should not be given any impression in CAPO's call-up letters that they are expected to reveal full details of their complaints to CAPO. To avoid misunderstanding, IPCC suggested CAPO to remove the message of requesting complainants to 'provide full details of your complaint' from call-up letters to complainants of potential SJ cases; and in the longer term, to consider whether a concise message on SJ arrangements could be included in call-up letters to complainants of potential SJ cases to positively discharge the obligation of protecting the interests of complainants.

The Police agreed with IPCC's observations and have conveyed this to their officers so that complainants in potential SJ cases would not be given the wrong impression in future. The Police also replied that they would take this into account in the next review of the relevant chapter of CAPO Manual.

- (d) During the course of investigating a burglary case, the Police, on the basis of the identity card particulars provided by a suspect, had taken a series of action

to locate him but in vain. The Police then put the name on the Immigration Watchlist to prevent the suspect from leaving Hong Kong. The complainant was subsequently arrested but later released unconditionally as no incriminating evidence could be found against him. It was also discovered then that the identity card held by the suspect was in fact an identity card reported lost by the complainant earlier. The complainant lodged a complaint of neglect of duty against the Police for failing to investigate the burglary case. During the case examination, IPCC noted that the police officer concerned had not attempted to check the police records to ascertain if the identity card had been reported lost earlier. IPCC invited the Police to review the existing operational procedures to see if any factors should be considered or any steps taken before the holder of a lost identity card is placed on the Immigration Watchlist so as to minimize the possibility of intercepting a wrong person.

The Police have since amended the Force Procedures Manual (FPM). Under the amended FPM, before listing the holder of a lost identity card as a wanted person and putting him/her on the Immigration Watchlist, the written consent of the rightful owner of the identity card would be obtained. Prior to a decision of listing the holder of a lost identity card as a wanted person, the Assistant District Commander/Divisional Commander or equivalent would have to give careful consideration to all relevant factors, including the seriousness of the offence and the likely inconvenience caused to the rightful owner of the identity card. When such a decision was made, a written notification explaining the Police decision would be sent to the rightful owner of the lost identity card so that the latter, if not involved in any criminal activities before, could make necessary arrangements with the Police in advance to minimize the chance of a wrongful arrest.

- (e) The complainant, who was summonsed for 'Careless Driving', lodged a complaint of neglect of duty alleging that the Police had failed to send the summons to his address in Shenzhen which was provided to the police officer at the scene. In the course of examining the complaint, IPCC noted that drivers frequently commuting between Hong Kong and the Mainland might provide a postal address on the Mainland to Transport Department for licence application/registration purpose. This might in turn have an impact on how the Police could ensure that traffic summonses are successfully served on those drivers via their non-local addresses. IPCC advised the Police to look into the matter and work out a possible solution with the Transport Department accordingly.

The Police replied that, under the Road Traffic (Driving Licences) Regulations

(Cap. 374B), the Commissioner for Transport may require a person who has given notification of a change of address to provide documentary proof of such change within 14 days. Any non-local address, if so provided by a driving licence holder/registered vehicle owner to the Transport Department, could be duly verified to ensure that correspondences, including traffic summons, were deliverable to the person concerned via such address. In addition, in view of the practical difficulties for the Police to ensure that a traffic summons is successfully served on the traffic offender via his non-local address, it has been the practice of frontline officers to seek a correspondence address in Hong Kong from the traffic offender to facilitate the issue of traffic summons. Depending on the nature and seriousness of the traffic contraventions, warning or arrest action on the spot in lieu of summons actions might also be considered in case where a non-local address is given.

- (f) The complainant lodged a complaint of neglect of duty alleging that when he was detained by the Police after being arrested for 'Possessing a False Instrument with Intent', the police officer concerned had asked him to take off his spectacles but later failed to return the same to him. While scrutinizing the case, IPCC observed that Police procedures pertaining to the handling of detainees' personal items were not entirely clear and requested CAPO to consider reviewing the relevant procedures with a view to laying down clearer procedures.

The Police have amended the FPM in respect of handling detained persons' personal items. With such amendment, prior to detention in a cell, a detained person may be allowed to retain his personal items, such as spectacles, contact lenses, and hearing aid, provided that he has not been identified as having any suicidal tendencies.

Chapter 5

Monitoring and Review of the Handling of Complaints

Introduction

5.1 IPCC's role in monitoring and reviewing CAPO's work has been described in Chapter 2. This Chapter illustrates how IPCC performs its role in a proactive way.

Major Categories of Queries/Suggestions Raised with CAPO

Nature of Queries/Suggestions	No. of Queries/ Suggestions in 2007	Accepted	Satisfactorily Explained/ Followed up
<p data-bbox="186 898 788 1043">(a) Thoroughness of investigation and clarification on ambiguous points in CAPO reports/CAPO files</p> <p data-bbox="236 1137 788 1899">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, IPCC may suggest further interviews with complainant(s), complaine(e)s and/or witness(es); scene visits or the seeking of further medical or legal advice, etc. IPCC may also propose addition, deletion or amendment to allegations made against police officers, the complainant list, the complaine(e) list and the contents of reports.</p>	<p data-bbox="890 913 967 947">1,250</p>	<p data-bbox="1094 913 1145 947">915</p>	<p data-bbox="1278 913 1329 947">335</p>

<p>(b) Appropriateness of classifications</p> <p>In examining the evidence available, IPCC may discuss with CAPO 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>	<p>123</p>	<p>82</p>	<p>41</p>
<p>(c) Compliance with police procedures and practices</p> <p>IPCC may raise queries with CAPO 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 relating to this.</p>	<p>127</p>	<p>59</p>	<p>68</p>
<p>(d) Improvement to police procedures</p> <p>IPCC may suggest improvements to police procedures which come to light in the course of examining the complaint. For details, please refer to Chapter 4, para. 4.15.</p>	<p>7</p>	<p>3</p>	<p>4</p>

(e) Other queries	193	146	47
Total :	1,700	1,205	495

5.2 The Commissioner of Police has full discretion in the imposition of disciplinary action on police officers. IPCC may, however, comment on the disciplinary action such as whether it is commensurate with the gravity of the offence. The Council commented on the proposed disciplinary action/advice on 39 occasions in 2007. Of these, 27 were accepted and 12 were satisfactorily explained and followed up by CAPO.

5.3 The number and nature of queries/suggestions raised by IPCC in 2005, 2006 and 2007 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 IPCC's framework, monitoring procedures and the major factors affecting IPCC's deliberations. This Chapter gives an account of actual cases which would be of interest to the general public.

Selection of Cases for Reporting

6.2 This Chapter presents summaries of 12 selected cases. They aim at giving the public further information on the role of the Council and the various factors taken into account in classifying a complaint. These cases are sampled from the more 'controversial' ones where 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 IPCC in an independent and impartial manner.

Anonymity

6.3 In the following summaries, the persons involved will remain anonymous for protecting personal privacy. To minimize the probability of them being identified, details such as date, time and place of the incidents have been 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 2007 and reflect the position as at the end of the year.

Case Summaries

Case 1

Neglect of Duty - Unsubstantiated

Fabrication of Evidence - Unsubstantiated

6.5 The complainant (COM) conducted garage business on a piece of land in the New Territories since 1987. COM did not know the owner of the land he occupied, nor did he pay rent for occupying the lot. Upon repossession of the land by the owner in early 2003, COM was forced to move out of the lot, and subsequently built a hut on a piece of unclaimed land adjacent to the original plot, and continued with his garage business. Some time in 2004, the Housing Authority (HA) issued a removal notice to COM informing him

that the piece of unclaimed land occupied by him was Government Land, and he had to vacate it as soon as possible. Since then, COM continued to receive verbal and written notifications from the HA regarding the same issue. In mid 2005, the HA started demolishing the outer boundary of the hut while some iron and steel structure and asbestos were left un-dismantled.

6.6 One day in September 2005, COM walked past his hut and found two workers clearing the iron structure thereat. COM suspected that they had stolen iron from the site because he had not received further demolition notice from the HA. COM then made a '999' call and reported a case of 'Theft' to the Police. The Officer-in-Charge of the police car (SGT A) deployed to the scene made enquiry with COM and the workers with the assistance of a Woman Police Constable (WPC B). COM insisted that the workers were thieves, and that SGT A should arrest them immediately and bring the whole party back to police station for further processing. After enquiry, SGT A confirmed that the workers were employees of a company engaged by the HA to clear the site. He also managed to obtain some fax documents from the supervisor of the concerned workers which verified the clearance service arrangements. SGT A relayed the enquiry result to COM, concluded the case as 'No Crime Disclosed', and released the workers at the scene.

6.7 Dissatisfied with the way SGT A handled his report, COM lodged a complaint with CAPO alleging that SGT A should not have relied solely on the fax documents, and did not arrest the two workers at the scene [Allegation (a) – 'Neglect of Duty']. CAPO's investigation revealed that upon arrival at the scene, police officers had intercepted the workers and made enquiry with them. The enquiry revealed that the workers were employees of a company engaged by the HA to conduct clearance work at the site on the material day. As the workers failed to produce documentary proof to support their claims, SGT A called their supervisor, Mr X, who confirmed the workers' bona fide identities, and further agreed to fax some documents to a nearby police station in support of the company's legality to undertake the project. SGT A then instructed WPC B to attend the police station and obtain the fax documents for his perusal. After examination, SGT A accepted the authenticity of the documents, and was satisfied that the company concerned was properly engaged by the HA to conduct clearance work thereat. SGT A relayed the enquiry result and explained his decision to COM who then asked SGT A to let him keep the fax documents. However, in light of their nature and the fact that COM was not the intended recipient of those documents, SGT A declined COM's request, and added that he would dispose of them shortly after the incident. COM raised no complaint at that time. Thereafter, SGT A made entries of the incident in his notebook and the Occurrence Book of the police car to which he was in charge. After investigation, CAPO concluded that SGT A's action taken was appropriate and proper throughout the incident, and classified the allegation as 'No Fault'.

6.8 After examining the case, IPCC had reservation over the 'No Fault' classification

for allegation (a), because there was no clear and definitive evidence to suggest that the fax documents received and examined by SGT A on the material day included the official authorization letter issued by the HA to the company for undertaking the clearance project. A checking of the relevant entries in SGT A's notebook and the Occurrence Book of the police car revealed that SGT A only received and perused some documents issued by the HA to the company in connection with the clearance project (which comprised an invitation to quotation for professional service, an architectural plan of site and a letter). In addition, as SGT A had already disposed of the documents shortly after the incident, no documentary proof could be retrieved to support his version. In the circumstances, it was unsafe for CAPO to conclude that the fax documents received and perused by SGT A on the material day had indeed included the official authorization letter issued by the HA to the company. IPCC suggested CAPO to (i) clarify with Mr X regarding the details of the documents faxed to SGT A on the material day; and (ii) check with the police station to see if they had kept any record indicating the contents of in-coming fax documents on the material day.

6.9 In response, CAPO took a further statement from SGT A and WPC B respectively. As far as SGT A was concerned, he confirmed receipt and perusal of three pieces of fax documents sent by Mr X to him on the material day, and one of them was the official authorization letter issued by the HA to the company for conducting the clearance project. SGT A explained that given the documents were of the same reference series, he only recorded one (i.e. the invitation to quotation, but not the authorization letter) in his notebook and the Occurrence Book of the police car. WPC B's version corroborated with that of SGT A. CAPO also contacted Mr X who refused to give a further statement, because he could not recall the details of the incident given the lapse of time. Mr X only agreed to give a verbal account that he had asked his staff to fax some documents (issued by the HA to his company) to a police station with a view to confirming that his company was the authorized contractor for undertaking the clearance project at the site on the material day. Besides, CAPO's enquiry with the police station revealed that no record indicating the contents of in-coming fax documents on the material day was kept. Taking the above into account, CAPO maintained that SGT A had taken all reasonable steps to handle COM's report, and the original 'No Fault' classification should be upheld. That said, advice would be given to SGT A and WPC B reminding them of the need for making proper and precise entries in police notebook and other documents to avoid possible misunderstanding and omission in future cases.

6.10 IPCC held a different view from CAPO, because there was neither independent witness nor conclusive evidence to support SGT A's claim that he had received and perused the official authorization letter issued by the HA to the company for conducting the clearance project on the material day. As such, it was more appropriate to re-classify allegation (a) as 'Unsubstantiated'. Upon IPCC's insistence, CAPO re-considered the case, and subscribed to change the classification for allegation (a) to 'Unsubstantiated'. IPCC endorsed CAPO's

revised investigation result of the instant case.

6.11 Upon notification of the investigation result, COM requested a review of the finding of allegation (a). COM alleged that he had attended a police station around noon on the material day with a view to enquiring further into his 'Theft' report. A senior police officer of the Report Room [later identified by CAPO as the Assistant Duty Officer (SGT C)] told COM that he was aware of his report, and the relevant case information had been recorded in the police computer system. SGT C went on to say that SGT A's handling of COM's report was proper, and that SGT A had brought back the authorization documents obtained from the company to the police station for filing purpose. Finally, SGT C remarked that if COM wished to have sight or obtain a copy of the documents, he could file in an application to the police station. In view of the foregoing, COM was dissatisfied to learn from CAPO's reply saying that SGT A had already disposed of the authorization documents shortly after the completion of the enquiry at the scene.

6.12 COM also raised a new 'Fabrication of Evidence' allegation [Allegation (b)] against SGT A. COM alleged that the so-called 'authorization documents' obtained by SGT A from the company on the material day were either fabricated by SGT A himself or did not even exist, because SGT A refused to let him have sight of them at the scene or upon his request, or give them to him after the enquiry.

6.13 In relation to the review of allegation (a), CAPO took a statement from SGT C who confirmed that he had met COM at the police station on the material day. However, SGT C denied COM's assertion in paragraph 6.11 above. CAPO's investigation revealed that no copies of the authorization documents were kept by the police station as alleged by COM. SGT A also fully explained to COM regarding the role of the two workers, and the reasons for the police action at the scene. In addition, COM admitted in his statement that he was well aware of the HA's clearance action taken on the lot. In view of the foregoing, and in the absence of any fresh evidence or witness to support COM's allegations, CAPO considered that the 'Unsubstantiated' classification for allegation (a) should be maintained.

6.14 As regards allegation (b), CAPO commented that as the authorization documents were collected by SGT A for the purpose of case investigation, and that they were not intended to be addressed to COM in the first instance, it was appropriate for SGT A to decline COM's request for inspecting and retaining the documents at the scene. That said, in the absence of independent witness or corroborative evidence to support or disprove either side's version, CAPO classified allegation (b) as 'Unsubstantiated'.

6.15 IPCC accepted and endorsed CAPO's review result of allegation (a), and the finding of allegation (b).

Case 2

Misconduct - Unsubstantiated

Neglect of Duty - Unsubstantiated

6.16 On the material day, Senior Police Constable A (SPC A) was responsible for serving a court summons to the complainant (COM) at her residence. When COM received SPC A at the door, SPC A revealed his police identity by producing his police warrant card, and explained to COM the purpose of his visit. On seeing SPC A, COM recognized his face, as he had served another court summons on her on a previous occasion. COM allegedly told SPC A that she had already sorted out the subject summons, and asked him to wait for a while. COM also jotted down the enquiry telephone number printed on the summons, and returned to her flat. COM then called the responsible government department to enquire about the subject summons. When COM was talking on the phone inside her flat, SPC A allegedly pressed her doorbell continuously for some 20 minutes which annoyed COM. While SPC A was waiting outside, COM allegedly heard someone asked SPC A if there was anybody inside COM's flat. COM then heard SPC A saying that he would put down the summons, and reminded COM to attend court at the time and date specified on the summons. On hearing this, COM rushed to the door telling SPC A that he had disturbed her by unnecessarily pressing her doorbell continuously. SPC A responded by asking COM to sign the receipt for the summons, but COM refused. SPC A then placed the summons in the gap between the frame and the iron grille of her door and left.

6.17 Feeling aggrieved by SPC A's action, COM lodged a complaint with CAPO alleging that:

- (a) SPC A pressed COM's doorbell continuously for 20 minutes, making her feel disturbed and annoyed [Allegation (a) – 'Misconduct']; and
- (b) although SPC A had revealed his police identity, he only produced his police warrant card at COM's request [Allegation (b) – 'Neglect of Duty'].

6.18 CAPO made enquiry with SPC A who denied that he had pressed the doorbell continuously. SPC A stated that after his arrival at COM's residence on the material day, he pressed the doorbell and a lady (COM) opened the door. SPC A identified himself by showing his police warrant card, and informed COM of the purpose of his visit. On hearing this, COM showed no response, but just closed the door after taking a look at the summons. When he was waiting outside COM's flat, an old lady (who lived next door to COM) walked past, and asked SPC A if he was looking for COM, and SPC A replied in the affirmative. The old lady then returned to her residence. Having waited for COM for about 10 minutes, SPC A pressed the doorbell for two to three times, but COM showed no response. SPC A tried again after a while, but still to no avail. SPC A stated that the whole process only lasted for about three to four minutes, and COM gave no response throughout. Since SPC A was sure that COM was inside the flat, he told COM from the outside that he would leave the

summons at her door. He also reminded COM of the details of her court attendance. SPC A then left the summons in the gap between the frame and the iron grille of COM's door. When SPC A was about to leave, COM opened the door, and took the summons in her hand. SPC A requested COM to acknowledge receipt of the summons by signing it, but was refused by COM. COM expressed that she had settled the matter with the concerned department, and that she would not attend court. COM lost her temper, and started scolding SPC A. SPC A tried to explain to COM that he was duty-bound to serve her the summons, and he was just doing what was required of him. COM did not accept his explanation, and kept yelling at SPC A who then left at this juncture.

6.19 After investigation, CAPO classified allegation (a) as 'No Fault', because SPC A was only discharging his constabulary duty at the material time. There was no evidence to prove that SPC A had any ill intention when he pressed the doorbell, nor had he failed to comply with any internal orders. In relation to allegation (b), CAPO classified it as 'Unsubstantiated', as it was a typical one-against-one situation with no independent witness or corroborative evidence to support or disprove either side's version.

6.20 After examining the case, IPCC had reservation over the 'No Fault' classification for allegation (a) on the following grounds:

- (i) Since COM and SPC A each gave a different version regarding the way and duration of SPC A pressing the doorbell on the material day, and in the absence of any independent witness or corroborative evidence to support or disprove either side's version, it was basically a one-against-one situation;
- (ii) COM alleged that she told SPC A that she had already sorted out the summons with the concerned department. That said, SPC A denied hearing COM made the above remark. This was another typical one-against-one situation; and
- (iii) CAPO's confirmation that SPC A did not breach any internal orders lent no weight to support the 'No Fault' classification, because it bore no material relevance to the crux of allegation (a) whereby COM considered SPC A's act of pressing her doorbell continuously was totally unwarranted, and a nuisance to her.

In the light of the foregoing, IPCC considered that an 'Unsubstantiated' classification would be more appropriate in the circumstances.

6.21 After considering IPCC's suggestion, CAPO agreed to re-classify allegation (a) as 'Unsubstantiated'. IPCC endorsed CAPO's revised investigation result of this case.

Case 3

Neglect of Duty – Unsubstantiated

Neglect of Duty – Unsubstantiated

6.22 The complainant (COM) was in the process of divorcing her husband (Mr W) who worked in a fast food stall (the Stall) in 2005. COM had experienced difficulties locating Mr W to complete the necessary divorce procedures. One day in June 2006, COM called the Stall in an attempt to locate Mr W for signing some documents, but was told by the Stall staff that Mr W no longer worked there. COM then attended the Stall in person, and found Mr W was present thereat. COM was agitated, and had a dispute with the proprietress of the Stall (Ms X), accusing the Stall staff of lying to her. In the heat, the disputing parties each made a report to the Police. In response, a party of police officers [including a Police Sergeant (SGT A), a Senior Police Constable (SPC B), a Police Constable (PC C) and a woman Police Constable (WPC D)] attended the scene to handle the incident. After initial enquiry, the Police, having regard to COM's mental status as revealed by Mr W, decided to send COM to hospital for medical attention, as she was extremely emotional and started to talk incoherently at that time. An ambulance was called to the scene to convey COM to hospital in Mr W's company, and under the escort of PC C and WPC D. After being discharged from the hospital, COM felt aggrieved by the Police action, and lodged a complaint with CAPO alleging that:

- (a) WPC D only arranged for COM to be taken to hospital, but failed to bring her and other concerned parties to a police station as requested, and to take necessary follow-up actions at the scene. In her statement, COM specifically alleged that WPC D had failed to find out (i) who had professed to be a police officer and made a phone call to COM in January 2006; (ii) why the Stall staff had lied to COM that Mr W no longer worked there [Allegation (a) – 'Neglect of Duty']; and
- (b) WPC D failed to provide the report number to COM [Allegation (b) – 'Neglect of Duty'].

Apart from the above, COM demanded the Police to contact her social worker, and alleged that Mr W was wanted in connection with an 'Assault' case.

6.23 In respect of allegation (a), CAPO's investigation revealed that WPC D and other attending police officers had conducted proper enquiry at the scene with COM and Ms X to address COM's queries regarding who had called her in January 2006. Mr W was also enquired who admitted that he had asked the Stall staff to lie in case COM tried to locate him. Since it was a 'Dispute' case which essentially arose from the marital problems between COM and Mr W, the Police considered that nobody had to be brought back to the police station for further enquiry. In addition, the Police had taken the following actions in response to COM's other requests:

- (i) an attempt was made to contact COM's social worker but in vain; and
- (ii) an 'EPONICS'* check against Mr W was conducted to ascertain if he was a 'Wanted Person'. Action was also taken to locate Mr W when COM made another '999' call in the hospital.

In sum, CAPO considered that WPC D and other police officers at the scene had handled COM's case properly, and had taken all actions necessary to investigate the 'Dispute' report, and hence classified allegation (a) as 'No Fault'.

6.24 As regards allegation (b), WPC D denied the allegation and stated she had told COM the report number of the case, but COM could have forgotten it. CAPO's investigation revealed that an Ambulanceman (Mr Y), who attended the scene to check on COM and helped convey COM to hospital on the material day, confirmed that he had heard a police officer informing COM of the report number. In light of the foregoing, CAPO classified allegation (b) as 'No Fault'.

6.25 After examining the case, IPCC had reservation about the 'No Fault' classifications for both counts of 'Neglect of Duty' allegations on the following grounds:

Allegation (a)

- (i) IPCC observed that COM, WPC D and Mr Y all stated in their respective statements that they had spoken with COM's lawyer (Ms Z) on the phone on the material day. COM claimed that while she was talking with Ms Z, she had asked WPC D to speak with Ms Z who allegedly told WPC D of COM's intention to request the Police to bring her to a police station to take a statement rather than going to hospital. COM reiterated her wish to attend a police station to WPC D when the latter finished her teleconversation with Ms Z. Although WPC D admitted that she had spoken with Ms Z on the material day, WPC D gave a different version by stating that she had explained to Ms Z why the Police did not consider it necessary to bring COM to a police station for further enquiry, and maintained that it was in COM's interest to arrange her to go to a hospital to receive medical treatment the soonest. On hearing that, Ms Z replied that she could only try her best to convince COM. WPC D added that she did not overhear the subsequent teleconversation between COM and Ms Z. Given Ms Z was a critical witness to allegation (a), IPCC requested CAPO to make enquiry with Ms Z to obtain her version of the incident; and
- (ii) IPCC noted that when being asked if COM had ever mentioned about her allegation that 'someone had professed to be a police officer and called her in January 2006', WPC D replied in the positive in her statement, and stated that SGT A and SPC B had explained the enquiry result to COM. However, a review of the statements of the concerned

* EPONICS stands for Enhanced Police Operational Nominal Index Computer System.

officers revealed that they had only conducted enquiry with Ms X at the scene, and it was uncertain if they had explained the enquiry result to COM. Besides, Mr Y stated in his statement that although COM had vaguely mentioned the aforesaid allegation, he was not sure if the Police had heard about it at the scene. In this connection, CAPO was requested to clarify the issues with the parties concerned.

Allegation (b)

IPCC observed that COM and WPC D each gave a totally different version regarding the same incident in their respective statements. On review of the statement of Mr Y who was the only independent witness at the scene, he only stated that he had heard a police officer informed COM of the report number without specifying if that particular police officer was WPC D or not. In the absence of a definite answer from Mr Y, IPCC considered that it was more appropriate for CAPO to re-classify this allegation as 'Unsubstantiated'.

6.26 In response, CAPO replied that in respect of allegation (a), Ms Z was contacted for enquiry who only agreed to give a verbal account of her teleconversation with COM on the material day. Ms Z confirmed that COM did reveal her wish to go to a police station instead of a hospital, and Ms Z had relayed COM's request to WPC D for consideration. Ms Z added that as COM's health condition was very poor, she told WPC D that it would be up to the Police to make a decision in the best interest of COM. Ms Z further expressed that she did try to persuade COM to go to hospital when she spoke with COM after talking to WPC D.

6.27 In the course of police enquiry at the scene, CAPO observed that COM had made a series of requests/complaints to the Police, as follows:

- (i) demanding the Police to arrest the Stall staff for lying to her;
- (ii) demanding to go to a police station to give a statement instead of going to hospital;
- (iii) requesting the Police to contact her social worker;
- (iv) alleging that Mr W was wanted in connection with an 'Assault' case; and
- (v) alleging someone professing to be a police officer had called her in January 2006, and requested the Police to investigate and inform her of the result.

CAPO's investigation revealed that WPC D and other attending police officers had made the necessary enquiries in respect of each and every request/demand made by COM at the scene. With regard to the 'phone call incident' in January 2006, CAPO's investigation revealed that SGT A and SPC B had made enquiry with Ms X who confirmed that she did witness a police officer (who had responded to her 'Telephone Nuisance' report made sometime in January 2006) having made a call to COM for enquiry at the time. As the telephone call to COM was made by a police officer with no suspicion of 'impersonating a police officer', SGT A and SPC B took no further action on COM's allegation. CAPO took further statements from the aforesaid officers who stated that they had relayed the enquiry result to COM on the material

day.

6.28 In the light of the foregoing, and taking into account COM's emotional and mental condition at the material time, the Police considered that arranging COM for medical care and attention the soonest would best serve her interest in the circumstances. CAPO therefore maintained that the 'No Fault' classification for allegation (a) was proper and appropriate. Having taken IPCC's observation on allegation (b) at paragraph 6.25 above into consideration, CAPO agreed to re-classify the allegation as 'Unsubstantiated'.

6.29 IPCC was unable to subscribe to CAPO's view of maintaining the 'No Fault' classification for allegation (a). It was observed that although SGT A and SPC B stated in their respective statements that they had made enquiry with Ms X on the material day, and ascertained from her that she had made a 'Telephone Nuisance' report to the Police sometime in January 2006, and had witnessed the attending police officer (PC E) calling COM and warning her to refrain from making further nuisance calls to the Stall in future, Ms X made no mention of such in her own statement. Besides, a review of PC E's relevant notebook entry revealed that he had only recorded the action taken by him on COM, without mentioning whether Ms X had witnessed the incident or not. CAPO was requested to clarify the matter with Ms X. In this connection, CAPO took a further statement from Ms X who stated that on the material day, the Police (identified to be SGT A and SPC B) had made enquiry with her regarding the 'Telephone Nuisance' report made to the Police in January 2006. Ms X also confirmed that one police officer (identified to be PC E) had called COM, and warned her to stop making further nuisance calls to the Stall in future. In view of Ms X's confirmation, CAPO considered that the 'No Fault' classification should be upheld.

6.30 On examination of Ms X's further statement, IPCC observed that Ms X said she was not sure if SGT A and SPC B had explained the action taken by the Police to COM on the material day. In the light of the foregoing, and in the absence of other independent witness or corroborative evidence to support or disprove either side's version, IPCC considered that an 'Unsubstantiated' classification for allegation (a) would be more appropriate in the circumstances.

6.31 After considering IPCC's observation, CAPO agreed to re-classify allegation (a) as 'Unsubstantiated'. IPCC endorsed CAPO's investigation result of the instant case.

Case 4

Neglect of Duty – No Fault

Neglect of Duty – Unsubstantiated

Fabrication of Evidence – No Fault

Neglect of Duty – Unsubstantiated

6.32 In the morning of a day in July 2005, the complainant (COM), a senior citizen, was knocked down by a taxi while crossing the road. A report was made to the Police in which a Senior Inspector of Police (SIP A) attached to a regional traffic formation was assigned as the Officer-in-Charge of COM's traffic case, while a Police Constable (PC B) was the investigating officer. After investigation, the available evidence indicated that COM had crossed the road negligently via the front of a container truck which was parked by the roadside at the material time. As such, the Police concluded that COM was at fault, and did not prosecute the taxi driver. COM was informed of the investigation result in writing by the Police in late October 2005.

6.33 Dissatisfied with the investigation result of his traffic case, COM wrote to IPCC in early July 2006 (about eight months after receipt of the investigation result from the Police) lodging a complaint against SIP A and PC B for failing to conduct proper enquiries of his case. COM's complaint was referred to CAPO for investigation, and details of his complaint were as follows:

- (a) SIP A failed to investigate COM's traffic accident thoroughly, resulting in no prosecution against the taxi driver [Allegation (a) – 'Neglect of Duty']. COM alleged that there was no container truck parked by the roadside when the traffic accident occurred. [Note: During the complaint investigation, COM produced a witness (Ms X) who was his neighbour to support his claim. When enquired by CAPO as to why he did not provide Ms X as a witness during the traffic accident investigation, COM stated that he did not realize that Ms X had witnessed the accident until his friend told him about it a few months after the accident];
- (b) PC B failed to record COM's full version of the traffic accident in COM's statement taken when he was hospitalized [Allegation (b) – 'Neglect of Duty']. Specifically, COM alleged that PC B had failed to (i) record that there was no container truck parked by the roadside when the traffic accident took place; (ii) write down the conversation between the taxi driver and a police officer made at the scene; and (iii) accurately record that the taxi did not sound the horn at the material time. Instead, PC B stated that COM did not hear the horn. COM added that he had not read the full content of his statement because he was not feeling very well at the time. However, PC B had read the content to him once. [Note: COM stated that his daughter (Ms Y) was present at some stage during the statement-taking process, and that she was willing to assist in the complaint investigation];
- (c) PC B produced fabricated photos of the scene (nine in total) as evidence [Allegation (c) – 'Fabrication of Evidence']. COM stated that the traffic accident took place at dawn, but he alleged that the photos taken and produced by PC B showed that it was then at dusk. COM also alleged that there was no container truck at the scene when the traffic accident took place, but the photos indicated otherwise. COM further

alleged that he fell down near the kerb, instead of the position as indicated in the photos. COM submitted photocopies of the nine photos he had obtained from PC B to CAPO to support his claim; and

- (d) SIP A failed to accede to COM's requests for interview on three occasions, namely sometime in late October 2005, and a day each in November and December 2005 [Allegation (d) – 'Neglect of Duty']. COM stated that his requests to have an interview with SIP A were respectively made to an unidentified police officer of the Report Room, and two Assistant Clerical Officers (ACO C and ACO D) of SIP A's formation. COM admitted that he did not make any interview appointment with SIP A on all three occasions.

6.34 In respect of allegation (a), SIP A denied the allegation, and stated that he had examined all lines of enquiries before coming up with the conclusion of not prosecuting the taxi driver. During the accident investigation, SIP A noticed that COM and the taxi driver gave contradictory versions as to the cause of the traffic accident, and no independent witness could be located for enquiry. Nevertheless, the photos taken by PC B at the scene on the material day and the final position of the taxi tended to support the taxi driver's version that COM had suddenly walked onto the road via the front of a container truck parked by the roadside, and that the taxi driver could not immediately bring his vehicle to a complete halt under such an unexpected circumstance which led to the occurrence of the traffic accident. SIP A also noted that the photo evidence had clearly refuted COM's claim that there was no container truck parked by the roadside when the accident took place. As regards Ms X, CAPO took a statement from her in early September 2006, i.e. almost 14 months after the occurrence of COM's traffic accident. After examining Ms X's statement, CAPO observed the following discrepancies between her version and that of COM:

- (i) COM claimed that he did not produce Ms X as his witness at any stage of the traffic accident investigation because he did not realize that Ms X had witnessed the accident until his friend told him about that; and
- (ii) Ms X stated that she did not realize COM was the victim of the traffic accident until she met COM in the lobby of their residential building a few months after the accident took place.

Ms X added that while there used to be many vehicles parked at the accident location, she recalled that there was none parked thereat on the material day. CAPO cast doubt on Ms X's version, as it did not fully corroborate with that of COM. It was also unlikely for Ms X to give such a definite description of the event after such a long lapse of time. In view of the foregoing, CAPO considered that SIP A had exhausted all lines of enquiry in investigating COM's traffic accident, and that his decision of not prosecuting the taxi driver was fully endorsed by his supervisory officers. On this basis, CAPO classified allegation (a) as 'No Fault'.

6.35 On allegation (b), PC B denied the allegation, and stated that COM's statement was recorded when the latter was hospitalized, and in the presence of Ms Y. PC B added that COM only mentioned to him that COM did not hear the horn. PC B also afforded COM ample opportunities to read the statement and make any amendments as he wished. In fact, COM did make an amendment at the end of his statement. CAPO took a statement from Ms Y who stated that she was present throughout the statement-taking process conducted by PC B on the material day. Ms Y confirmed that PC B had read over the content of the statement to COM before she and COM signed on it. CAPO observed that PC B did record in COM's statement that no vehicles were parked at the accident location as alleged by COM. If COM really felt aggrieved by PC B's action, he could have raised his discontent with PC B immediately at the interview, or approached SIP A to make the necessary clarification as soon as possible, instead of remaining silent for such a long time. CAPO therefore cast doubt on the veracity of COM's version. In the absence of other independent evidence to support COM's allegation, allegation (b) was classified as 'Unsubstantiated'.

6.36 As regards allegation (c), when CAPO investigator made enquiry with COM regarding the photocopies of the photo evidence submitted by him to CAPO, COM refused to provide further information on this allegation, and claimed that he could not distinguish the photographs. PC B denied the allegation, and stated that he had taken the photos with a conventional camera drawn from the police station when he attended the scene shortly after the accident took place on the material day. PC B's version was supported by the first at-scene police officer. Upon examination of the photos in question, CAPO observed that it was clearly shown in the photos that (i) the ambulancemen were applying first aid on an injured person (COM) next to the involved taxi; (ii) the Police were conducting scene enquiries; and (iii) a container truck was parked by the roadside at the accident location. In view of the foregoing, CAPO concluded that it was impossible for PC B to fabricate the photo evidence, or to reconstruct the scene in such a manner. As such, no fault could be attributed on the part of PC B. That said, given COM's old age and unfortunate encounter in the traffic accident, CAPO was of the view that COM might have raised the instant allegation as a result of poor memory and resentment, rather than out of any malicious intent of making a false complaint against PC B. It was on this basis that CAPO considered it more appropriate to classify allegation (c) as 'Unsubstantiated'.

6.37 In respect of allegation (d), SIP A denied the allegation, and stated that he had never been informed on all three occasions that COM wanted to see him, nor did COM make any request to him for an interview. CAPO interviewed ACOs C and D who stated that they could not recall whether COM had made such requests to them given the long lapse of time. In the absence of any independent witness or corroborative evidence to support or disprove either side's version, CAPO classified this allegation as 'Unsubstantiated'.

6.38 After examining the case, IPCC considered allegation (a) 'Neglect of Duty' and allegation (c) 'Fabrication of Evidence' were co-related, as SIP A relied very much upon the

photo evidence obtained and produced by PC B to support his decision that COM was at fault in the traffic accident, and the taxi driver would not be prosecuted by the Police. Although IPCC appreciated CAPO's 'compassionate' consideration in the determination of the finding of allegation (c), it might well send a confusing or even wrong signal to COM that CAPO's overall investigation standard was inconsistent vis-à-vis the 'No Fault' finding of allegation (a). To this end, IPCC held the view that if CAPO was satisfied with SIP A's handling of COM's traffic accident case and his subsequent decision of taking no prosecution against the taxi driver, it would be more appropriate for CAPO, in the principle of fairness and consistency, to re-classify allegation (c) as 'No Fault' as well.

6.39 After considering IPCC's observation, CAPO agreed to re-classify allegation (c) as 'No Fault'. IPCC endorsed CAPO's investigation result of the instant case.

Case 5

Assault – False

Unnecessary Use of Authority – Not Pursuable

Neglect of Duty – Not Pursuable

Neglect of Duty – Not Pursuable

6.40 One day in May 2005, a party of police officers [comprising a Police Sergeant (SGT A) and two Police Constables (PCs B and C)] spotted the complainant (COM) acting furtively. When COM was intercepted by the Police for enquiry, he immediately discarded an object onto the ground. PC C picked it up for examination, and found a quantity of suspected dangerous drugs wrapped in a piece of tissue paper. PC B then declared arrest on COM who put up a struggle. COM was finally subdued, and was arrested for the offence of 'Possession of Dangerous Drug'. Under caution, COM denied the offence. When COM was brought back to a police station for further processing, he lodged a complaint with the Duty Officer of the Report Room against SGT A, PCs B and C with details as follows:

- (a) SGT A assaulted COM during the arrest [Allegation (a) – 'Assault'];
- (b) PC B injured COM's wrists when handcuffing him [Allegation (b) – 'Unnecessary Use of Authority'];
- (c) PC B did not caution COM at the scene [Allegation (c) – 'Neglect of Duty']; and
- (d) PC C failed to display his police warrant card [Allegation (d) – 'Neglect of Duty'].

6.41 CAPO took over COM's complaint investigation, and interviewed COM who had opted to adopt the 'Sub-judice' procedures in dealing with his complaint, and refused to give a statement to CAPO at that stage. In response, CAPO suspended the complaint investigation until the conclusion of COM's trial.

6.42 COM's crime case was concluded in late December 2005 when he was convicted of the offence of 'Trafficking in Dangerous Drug', and was sentenced to seven years' imprisonment. During the trial, COM renewed allegations (a) and (b) against SGT A and PC B respectively. In a document to CAPO, the prosecution counsel remarked that 'there were allegations of assault by the Police at the scene including those raised by COM in the Complaint Against Police Form (Pol. 964)', and 'the defence counsel put the case that after PC B had handcuffed the Defence (COM), he was lying on the ground at the scene. When the Police vehicle arrived, PC B then lifted up the Defence from the ground by grabbing the handcuff of the Defence's hands, sort of suggesting a reason for the injury sustained at the Defence's wrists'. In sentencing, the Magistrate commented that 'the verdict vindicated the integrity of prosecution witnesses 1 – 3 (i.e. SGT A, PCs B and C)', and 'from his 25-year experience as a barrister practising in the field of criminal law, the officers were very able and honest police officers.'

6.43 CAPO re-opened the investigation of COM's complaint after the conclusion of his trial. In this connection, CAPO issued two call-up letters to COM in August and September 2006 respectively requesting COM to contact CAPO to assist in the complaint investigation, but to no avail. Having regard to the Magistrate's comment, CAPO considered that allegations (a) and (b) were deemed to have been judicially resolved, and classified them as 'False' and 'No Fault' respectively. As regards allegations (c) and (d), given COM's non-response to CAPO's call-up letters, CAPO concluded the investigation of these two allegations in COM's absence, and classified them as 'Not Pursuable'.

6.44 After examining CAPO's investigation result of the instant case, IPCC had reservation about the findings of allegations (a) and (b), because it appeared to the Council that the Magistrate's comments had not directly addressed the assault allegation lodged by COM. Besides, although the aspect of COM's wrist injuries caused by the handcuffing was raised in court as an 'Assault' allegation, it was categorized in CAPO's investigation report as an allegation of 'Unnecessary Use of Authority'. CAPO was requested to clarify the aforesaid matters.

6.45 In response, CAPO reiterated the comments made by the prosecution counsel and the Magistrate, and maintained that the categorization and findings of allegations (a) and (b) were in order. On review of the case materials, although IPCC had no further comment on the 'False' classification for allegation (a) and the categorization of allegation (b) as 'Unnecessary Use of Authority', the Council was still unable to subscribe to CAPO's view of classifying allegation (b) as 'No Fault' on the following grounds:

- (i) COM stated in the Pol. 964 that 'PC B injured his wrists when handcuffing him', and the same was recorded in CAPO's investigation report. However, the prosecution counsel remarked in a document to CAPO that 'there was one allegation of assault which was not mentioned in the Pol. 964. The defence counsel put the

case that after PC B had handcuffed COM, he was lying on the ground at the scene. When the Police vehicle arrived, PC B then lifted the Defence (COM) up from the ground by grabbing the handcuff on the Defence's hands, sort of suggesting a reason for the injury sustained at the Defence's wrists.' In the light of the foregoing, there were material differences in the versions given by COM and the defence counsel concerning the alleged assault (which appeared to have occurred on two separate occasions and under different causes) raised against PC B. In the absence of COM's further clarification and verification, the final version and details of allegation (b) remained unclear; and

- (ii) according to the court documents, there was no doubt that COM had sustained injuries on both wrists. However, the reason for the injury remained unknown, and it was not clear from the prosecution counsel's document to CAPO as to how that issue had been dealt with in court [Note: The focus of the defence case was that COM was framed up]. In the circumstances, the IPCC considered it unsafe for CAPO to conclude from the Magistrate's general comment on sentencing (paragraph 6.42 above was relevant) that COM's versions had been rejected, and that allegation (b) was deemed to have been judicially resolved, and classified as 'No Fault'.

Taking the above into consideration, and given COM's non-response to CAPO's call-up letters soliciting his assistance in the complaint investigation, IPCC considered that it would be more appropriate for allegation (b) to be re-classified as 'Not Pursuable', in line with CAPO's handling of allegations (c) and (d).

6.46 After considering IPCC's observation, CAPO agreed to re-classify allegation (b) as 'Not Pursuable'. IPCC endorsed CAPO's investigation result of the instant case.

Case 6

Unnecessary Use of Authority – Non-Reportable Complaint

Neglect of Duty – Unsubstantiated

Neglect of Duty – Unsubstantiated

Misconduct – Non-Reportable Complaint

6.47 The instant complaint stemmed from an incident of police handling of protestors who attempted to approach the Chief Executive (CE) on his way to a CE election campaign which was held in February 2007. Three political groups intended to stage protests in the vicinity of the venue of the event. A crowd management operation was mounted by Police District A where a Chief Inspector of Police (CIP D) was the Field Commander. A Designated Public Activity Area (DPAA), cordoned off by mills barriers, was initially set up near the venue of the visit to facilitate protestors in expressing their views. In addition, two Designated Press Areas (DPA) were set up in close proximity to the venue of the event.

6.48 Prior to the arrival of the CE, three political groups turned up to stage protests. The complainant (COM) was a member of one of the three political groups thereat, and was one of the protestors who were arranged to stay inside the DPAA. As the situation developed, the protestors refused to enter the designated DPAA. After negotiation, one of the two DPAs was converted into an ad-hoc DPAA. Both the ad-hoc DPAA and the remaining DPA were cordoned off by mills barriers, and were guarded by officers of the Police Tactical Unit (PTU) of Police Region B [comprising among others a uniformed Police Sergeant (SGT E)] and Police District A respectively.

6.49 When the CE's convoy arrived at the scene, the protestors became rowdy inside the ad-hoc DPAA. Two female protestors pushed apart the mills barriers at one end of the ad-hoc DPAA, and broke through the police cordon. They were followed by other protestors inside the ad-hoc DPAA who ran towards the CE who had just alighted from his car. At this juncture, one of the plainclothes police officers (an officer of the rank of Chief Inspector of Police) of the Police VIP Protection Unit (VIP PU) (CIP C) immediately went forward to intercept the protestors, and other police officers rendered reinforcement. As a result, a scuffle ensued between the protestors and the Police during which CIP C's pistol, which was placed in the holster secured on his right waist, dropped onto the ground. The magazine ejected and several rounds of ammunition came out of the magazine. Shortly afterwards, another officer of the VIP PU picked up the pistol and temporarily kept it in his custody. The magazine and all ammunitions were quickly retrieved by other police officers at the scene. Knowing that his pistol and ammunitions were in the safe custody of officers of the VIP PU, CIP C continued with his escort of the CE for the remaining part of the event.

6.50 Subsequently, COM called CAPO to lodge the following complaints against police officers involved in the incident:

- Allegation (a) - 'Unnecessary Use of Authority':

CIP C unnecessarily abused his authority by dashing out to intercept the protestors at the scene, because PTU officers of Police Region B were already there to guard against the protestors.

- Allegation (b) - 'Neglect of Duty':

After COM watched the television news footage on the incident, he realized that the pistol-like object he observed at the scene was a genuine pistol. COM was scared and felt threatened, because he alleged that the muzzle had pointed at him and the public at that time. COM therefore complained against CIP C for failing to secure his personal pistol and as a result, it dropped onto the ground.

- Allegation (c) - 'Neglect of Duty':

COM alleged that he and another protestor (Mr X) who belonged to the same political

group had told CIP D that they wanted to submit petition letters to the CE at the scene on the material day, and requested him to make the necessary arrangement. CIP D had allegedly agreed to that. However, he eventually failed to make arrangement for COM and his political group as promised.

- Allegation (d) - 'Misconduct':

COM saw SGT E used his right elbow to bump against the left breast of a female protestor at the ad-hoc DPAA on the material day.

6.51 The gun-dropping incident was widely covered by the local media. CAPO completed its investigation on the instant case in mid June 2007, submitted an Investigation Report and the related CAPO file to IPCC for scrutiny.

6.52 In relation to allegation (a) – 'Unnecessary Use of Authority', COM confirmed in his statement that although he was one of the protestors at the scene, he remained in the ah-hoc DPAA throughout and observed the incident from there. He did not join the protestors who had dashed past the mills barriers and were later intercepted by CIP C and other police officers at the scene. On this basis, CAPO considered that COM was not an aggrieved party, and categorized the allegation as a 'Non-Reportable Complaint (NRC)*'.

6.53 Similarly, in relation to allegation (d) – 'Misconduct', COM stated in his statement that although he had discussed with the alleged female victim about SGT E's misconduct, she had neither responded to COM nor made any complaints. COM had no knowledge of the alleged female victim, nor could he provide any contact details of her. COM also had no witness to support his claim. As such, CAPO considered COM not an aggrieved party and categorized the allegation as an 'NRC'.

6.54 As regards allegations (b) and (c) which were classified as 'Reportable Complaints', CAPO's investigation results were summarized as follows:

- Allegation (b) – 'Neglect of Duty':

CIP C denied the allegation, and stated that he wore his personal semi-automatic pistol (the pistol) strictly in accordance with the VIP PU's internal guidelines. He said he did not know how his pistol dropped onto the ground, but considered it to be just an accident.

CAPO's investigation revealed that the holster and belt worn by CIP C were checked shortly after the incident by officers of the VIP PU, and were confirmed to be in good serviceable condition. CAPO could not locate any eyewitness (police or civilian alike

* 'Non-Reportable Complaints' are those complaints which are not required to be reported to IPCC, but are required to be reviewed by CAPO. They include mere traffic complaints, or complaints against a member of the Police Force who is off-duty, or complaints lodged by persons who are not aggrieved parties, or the complainant does not wish to lodge a formal complaint.

including COM himself), or gather any corroborative evidence to prove when and how CIP C's pistol was dislodged from the holster and dropped onto the ground on the material day.

CAPO also consulted the Superintendent of the VIP PU (SP E) (CIP C's supervisory officer) who was at the scene on the material day. SP E commented that to draw the pistol from the holster under normal circumstances, a police officer had to hold the butt of the pistol and apply a straight upward lifting force. Special training was required before an officer could master the skill. He added that if an officer was exposed to an unusual scenario, the possibility of the pistol dislodging from the holster could not be ruled out, as long as a strong enough straight upward lifting force was applied on the pistol. CAPO also examined the relevant television news footage, newspaper clippings and photographs which all failed to capture the moment CIP C's pistol fell out from the holster. Instead, they revealed that the pistol was seen lying on the ground, and was being kicked around by people during the scuffle. There was no sign to show that CIP C's pistol fell out from his holster as soon as he intercepted the protestors. CAPO also noted the built-in safety mechanism of CIP C's pistol had prevented any unintentional discharge that might jeopardize the safety of the public.

Taking all the above into consideration, CAPO commented that:

- ✧ the situation at the material time was chaotic, and believed that CIP C was pushed by other people on his waist during the scuffle;
- ✧ there was no concrete and compelling evidence to suggest that CIP C or any person had deliberately drawn the pistol from the holster during the scuffle;
- ✧ the possibility of the pistol dislodging from the holster cannot be ruled out as long as there was a strong enough external straight upward lifting force applied on CIP C's pistol during the chaos, rendering it to fall out of the holster and onto the ground accidentally;
- ✧ after CIP C's pistol dropped onto the ground and was being kicked around by people, the possibility of the muzzle pointing at COM at any one stage could not be ruled out. That said, the pistol was seen finally lying on the pavement with its muzzle pointing in the direction of the CE's vehicle with no accidental discharge of firearm throughout; and
- ✧ all in all, this incident was a pure accident, and there was insufficient evidence to prove that CIP C was negligent in wearing his pistol. In the absence of any independent witness or corroborative evidence to support or disprove COM's claim, this allegation was classified as 'Unsubstantiated'.

- Allegation (c) 'Neglect of Duty':

CIP D denied the allegation, and stated that he did not receive any request from COM or his group members about their wish to present petition letters to the CE on the material day. He only received such a request from representatives of the two other political groups. All other police officers at the scene also stated that they did not receive a request from any persons or political groups. COM clarified in his statement that he only overheard Mr X making a verbal request to CIP D about the wish to present petition letters to the CE, and that he himself had not made such a request. Although COM's version was supported by Mr X, CAPO did not consider Mr X as a totally independent witness, because they belonged to the same political group. In the absence of independent evidence to support or disprove either side's version, this allegation was classified as 'Unsubstantiated'.

6.55 After careful consideration of CAPO's rationale to classify allegations (a) and (d) as 'NRCs', IPCC did not object to CAPO's categorization.

6.56 As regards CAPO's investigation of the two Reportable Complaints of allegations (b) and (c), IPCC raised three rounds of queries with CAPO, the details of which were summarized as follows:

Allegation (b)

- IPCC requested CAPO to advise if the Headquarters or the VIP PU of the Police Force had issued any specific guidelines/procedures guiding and governing the safekeeping of firearms by officers, and in particular any specific instructions in dealing with sudden situations similar to the one that occurred on the material day. If there were not any, IPCC saw it opportune and appropriate for the Force to consider drawing up guidelines to cater for such type of contingency which caused public concern. The Council would also like to know if the Formation(s) concerned had conducted a review on the matter, and devised any further precautionary measures to avoid recurrence of similar incidents in future.
- Although IPCC saw no evidence to dispute the conclusion that the incident was an accident, the Council considered that if CIP C was truly pushed by people on the waist during the scuffle, it would not be unreasonable to assume that the force exerted would come from all directions (as opposed to a straight upward lifting force which seemed to be the required direction and force for dislodging the pistol). There did not exist a logical cause-and-effect relationship vis-à-vis CAPO's investigation result of the allegation, in particular the absence of any concrete evidence to prove that someone had intentionally attempted to draw the pistol from CIP C's holster during the scuffle, and CAPO's deduction of the possible cause of the incident, i.e. a strong enough external upward lifting force had been applied on CIP C's pistol, causing it to have been accidentally dislodged from the holster. CAPO needed to further examine and account

for the parties involved and the factors contributing to the accident.

Allegation (c)

- CIP D asserted in his statement that CIP C had informed him that the CE's Election Office had arranged the CE to receive petition letters from various protest groups at the ad-hoc DPAA on the material day, and hence CIP D did not intervene further in dealing with the requests to present petition letters to the CE. However, it was not clear to the Council whether this information was passed to the protest groups by any police officers to avoid complaints of requests not being attended to. CAPO was requested to clarify the position.
- IPCC noted that according to CIP D, he had an encounter with a protestor who was a member of COM's political group and a serving District Councillor (Mr Y) on the material day, during which apparently Mr Y did not raise any request to CIP D for presenting petition letters to the CE at the ad-hoc DPAA. The Council requested CAPO to make enquiry with Mr Y to obtain his version of the encounter.

6.57 A summary of CAPO's replies were as follows:

Allegation (b)

- CAPO confirmed that there were VIP PU Standing Orders governing the proficiency qualification for officers issued with the pistol, the wearing of the pistol and the holster, the safekeeping and proper maintenance of the pistol and its accessories/equipment. CAPO informed that there were no specific Force or VIP PU guidelines or procedures governing the actions to be taken by officers in gun dropping situations. That said, CAPO stated that the subject matter had been referred to the relevant policy holder of the Police Force for further examination, and CAPO would keep IPCC posted of development.
- CAPO clarified that the 'straight upward lifting force' was only meant to describe how the pistol dislodged from the holster, rather than the source or direction of the force. There was no concrete evidence to prove that during the scuffle, someone had intentionally pulled the pistol from CIP C's holster. CIP C (including his waist) was being pushed from around with external forces coming from almost all directions during the chaos. CAPO, however, could not establish whether this external force leading to the accidental dislodge of CIP C's pistol was a 'push' or 'pull' force. CAPO was of the view that a strong upward push from below the butt of the pistol, or a combination of external forces and CIP C's continuous bodily movements at the time, could have led to an upward lifting or pushing force, resulting in the accidental dislodge of the pistol from the holster.
- As no concrete and sufficient evidence was unveiled from CAPO's investigation to prove:

- ✧ that CIP C had failed to wear his pistol and accessories/equipment according to VIP PU internal guidelines;
- ✧ that CIP C or other persons had intentionally drawn CIP C's pistol from his holster; and
- ✧ the direction and formation of the upward force,

CAPO concluded that the incident was an accident. In the absence of independent evidence to support COM's version, CAPO considered it appropriate to classify allegation (b) 'Neglect of Duty' as 'Unsubstantiated'.

- Arising from the incident, CAPO stated that the VIP PU had conducted a review to identify areas for improvement. Procurement process was then underway to replace the existing holster with a latest model. The model under acquisition would provide a locking mechanism to engage the pistol trigger guard when the pistol was holstered, and would not let go until the lock had been released. In addition, protective security training to officers performing personal security duties for the CE would continue to be held on a regular basis. The pistol would continue to be checked by the Senior Force Armourer on a yearly basis, while supervising officers would enhance inspection of the holster and equipment issued to officers under their command.

Allegation (c)

- CAPO took a second statement from CIP C who clarified that he was informed by the CE's Election Office of the CE's intention to receive petition letters from protestors in front of the ad-hoc DPAA at the scene about five to six minutes prior to the arrival of the CE at the scene on the material day. CIP C then verbally informed CIP D of the arrangement to facilitate the latter's deployment of duties about two to three minutes before the arrival of the CE. CIP C stated that he knew little about the arrangement for receiving petition letters because the CE's Election Office only gave him a very brief notice. He also did not know if CIP D had passed the information to the protestors, and did not engage himself further in this duty because his primary responsibility was to ensure the personal safety of the CE on the material day.
- CAPO also took a second statement from CIP D who stated that he was informed by CIP C that the CE's Election Office had made arrangement for the CE to receive petition letters from protestors shortly before the arrival of the CE at the scene on the material day. However, CIP C did not go into the details of the arrangement. CIP D decided not to intervene with the decision because it had already made the necessary arrangement. At this juncture, CIP D observed that some protestors of a protest group at the lay-by area of the ad-hoc DPAA suddenly became rowdy. As he perceived the protestors might cause confusion at the scene and hinder the petition arrangement, he immediately deployed three to four PTU officers to the area close to those rowdy protestors as a precautionary measure.
- CIP D remarked that given the series of event took place in a nick of time (about two to

three minutes), and coupled with the chaotic situation caused by the rowdy protestors at the ad-hoc DPAA, his priority at the time was to contain the situation and restore order the soonest. CIP D added that the circumstances did not practically allow him to communicate with the protest groups on the petition arrangement. Nevertheless, he did make an effort to facilitate the petition arrangement by deploying officers to monitor and control those rowdy protestors. CIP D stated that he had not received any requests for presenting petition letters from the protestors of COM's political group, or promised COM or his political group to make such an arrangement on the material day. CIP D remarked that he would certainly relate any such request to the responsible persons or officers for necessary arrangements if he was in receipt of them. Besides, he had not received any complaints from any persons on the material day.

- Mr Y (a protestor at the scene who was a member of COM's political group and a serving District Councillor) stated that COM, Mr X, himself and several other senior citizens had arrived at the scene in the morning of the material day to stage a protest at the ad-hoc DPAA. At that time, a Chief Inspector of Police (identified by CAPO as CIP D) came up to Mr Y and requested him and other protestors to stage their protest at the established DPAA set up on the pavement. Mr Y rejected CIP D's request, and remained at the ad-hoc DPAA. Mr Y stated that he was the only person who had negotiated with CIP D at the material time, while Mr X and COM did not take part in the process.
- Mr Y stated that he had already written to the CE's Election Office notifying the latter of his intention to present petition letters to the CE during his visit on the material day. Mr Y recalled that he was approached by a male staff of the CE's Election Office at the scene who told him that arrangement would be made for the CE to receive petition letters from protestors but he did not go into details. Mr Y stated that he had briefly mentioned his intention to present petition letters to the CE to CIP D during their negotiation at scene, and CIP D only acknowledged his request without telling him further details. Since Mr Y knew that the CE's Election Office had made the arrangement, he did not pursue the matter further with CIP D. Mr Y confirmed that a staff of the CE's Election Office had received his petition letter at the scene after the incident. Mr Y stated that he did not know COM had lodged a complaint against the Police until CAPO contacted him for taking a witness statement. He did not have any complaint against the Police.
- On the basis of information gathered, CAPO observed that there were conflicting versions of the incident between COM, CIP D, Mr X and Mr Y. While Mr Y claimed that he alone had negotiated with CIP D at the scene, COM and Mr X stated otherwise. CIP D flatly denied the allegation, stating that he had only met with Mr Y (but not COM and Mr X) at the scene. CIP D added that he had received requests for presenting petition letters to the CE from two other political groups but not COM's political group at the scene. All other police officers at the scene also stated that they did not receive

any requests from any persons concerning presentation of petition letters to the CE on the material day. In the absence of independent witness or corroborative evidence to support or disprove either side's version, CAPO considered that the classification for allegation (c) should remain as 'Unsubstantiated'. Notwithstanding this, CAPO considered that to minimize possible inconvenience to and misunderstanding by protestors, CIP D could have made alternative arrangement to inform the protest groups of the CE's intention to receive petition letters when he was otherwise fully engaged in the crowd management operation. In this connection, CIP D would be given verbal advice to this effect.

- Police District A which was responsible for policing the crowd management operation concerned, conducted an after-action review and identified areas of improvement which included the deployment of the District's Police Community Relations Officer to facilitate better communication with protestors, the strategic setting up of DPAA and the effective deployment of officers to manage different protest groups in future operations.

6.58 IPCC had an in-depth discussion of the instant case with CAPO at the Joint IPCC/CAPO Meeting held in September 2007. After thorough deliberation, apart from the observations made in paragraph 6.56 above, IPCC made the following additional comments and suggestions:

- (i) police officers should be reminded that in setting the retention tension of their holsters, they should strike a balance between their personal preference/operational need and the safety of the public; and
- (ii) as the incident arose from the presentation of petition letters, better communications should be made with the protestors regarding the arrangement of presenting petition letters to senior government officials in similar situations in future.

CAPO accepted the recommendations of IPCC, and undertook to bring to the attention of the related policy wings for appropriate action. IPCC endorsed the investigation results of the instant case.

Case 7

Neglect of Duty – Substantiated

Unnecessary Use of Authority – Not Fully Substantiated

6.59 The complainant (COM) was the legal representative of Mr X, who was arrested in connection with a case of 'Handling of Stolen Goods'. On the material day, COM arrived at the police station and requested to accompany Mr X during his police interview. COM's request was refused by the Detective Station Sergeant (DSSGT A) of the District Crime Squad taking charge of the case of Mr X. COM instantly lodged a complaint with the Duty Officer

in the Report Room, alleging that DSSGT A had neglected his duty by refusing his request for access to his client ('Neglect of Duty'). COM opined that if his attendance was not required, Mr X should have given explicit instruction to him direct. COM further alleged that when he put his identity card and Law Society Membership Card on the front desk of the Report Room to facilitate the recording of his complaint by the report room staff, DSSGT A appeared again and picked up COM's identity documents for inspection without his consent ('Unnecessary Use of Authority'). COM felt his privacy had been infringed by the action of DSSGT A. As Mr X was subsequently released by the Police unconditionally, COM decided to pursue the allegation of 'Unnecessary Use of Authority' only and withdrew the allegation of 'Neglect of Duty'. The withdrawal was duly verified by a senior police officer.

6.60 DSSGT A indicated that when COM turned up at the police station and requested to meet Mr X, he told COM that the interview with Mr X had already started as Mr X had informed the Police earlier that he could be interviewed in the absence of COM. COM felt dissatisfied with the arrangement and instantly lodged a complaint with the Duty Officer. DSSGT A admitted having picked up COM's identity documents that were placed on the front desk for inspection when COM was having his complaint recorded in the report room. After verifying the professional status of COM, DSSGT A returned the identity documents to COM.

6.61 CAPO initially classified the allegation of 'Neglect of Duty' as 'Withdrawn', given COM's decision of not pursuing the matter any further. As regards the allegation of 'Unnecessary Use of Authority', CAPO considered DSSGT A had acted according to the requirement of the Force Procedures Manual (FPM) 49-20(6)* to inspect COM's identity documents with a view to establishing his professional status on the material day. CAPO opined that COM should have been well aware that his identity needed to be examined and verified when he requested to meet his client detained in the police station. As such, CAPO did not consider DSSGT A had misused his authority to infringe COM's privacy, and hence the allegation of 'Unnecessary Use of Authority' was classified as 'No Fault'.

6.62 Upon examining the complaint investigation, IPCC had reservation about the classifications for both allegations. IPCC's observations were set out as follows: –

- (i) although the allegation of 'Neglect of Duty' was classified as 'Withdrawn', CAPO mentioned, in the draft reply to COM, that DSSGT A should have given COM's client, Mr X, the opportunity to decline the service of COM pursuant to the existing police procedures;
- (ii) according to CAPO Manual 6-02, even upon the withdrawal of a complaint, CAPO's investigation should continue when there are indications, on the basis of the information available, that the case is likely to be classified as False/Not Fully

* Force Procedures Manual 49-20(6) states that when a solicitor requests to see a detained person, the Duty Officer or the Officer-in-charge of the case shall request the solicitor to produce his/her Hong Kong Identity Card and proof of membership of the Law Society. Provided the details on both documents correspond and the authenticity of the documents is not in doubt, the identity of that person as a solicitor may be considered as having been established.

Substantiated/Substantiated. In the instant case, if DSSGT A's version unveiled a clear breach of existing police procedures, COM's decision of not pursuing the allegation of 'Neglect of Duty' should not preclude CAPO from classifying this allegation as 'Substantiated', and taking appropriate action against DSSGT A to ensure that the relevant police procedure would be strictly adhered to when DSSGT A handled similar situations in future; and

- (iii) as for the allegation of 'Unnecessary Use of Authority', FPM 49-20(6) requires the police officer to request a solicitor to produce his identity documents for inspection in order to establish his professional status at the time when the solicitor requests to see his client. In the instant case, there was no indication from COM or DSSGT A's version that DSSGT A had expressly requested COM to produce his identity documents for inspection when COM attended the police station. Moreover, it was only after COM had been informed by DSSGT A that Mr X did not require COM's attendance in his interview, and COM, being dissatisfied with the arrangement, lodged a complaint in the Report Room did DSSGT A pick up COM's identity documents produced at the time for reporting his complaint for inspection. As the legitimate purpose for DSSGT A to verify COM's identity and professional status seemingly did not exist at that juncture, the IPCC had reservation on whether DSSGT A had no fault in exercising his power of inspection there and then.

6.63 IPCC also noted from the investigation report submitted by CAPO that the relevant CCTV recording of the Report Room on the material day could not be retrieved by the complaint investigator due to a lapse of about five months after receiving the instant complaint. However, as COM lodged the instant complaint immediately after his encounter with DSSGT A in the report room, IPCC considered the complaint investigator should have been more diligent and seized the relevant CCTV footage at the earliest possible time, given that the CCTV footage might shed light on COM's allegations, and having regard to the time limit specified in CAPO Manual 4-09 that report rooms would only retain CCTV tapes for a period of one month before re-use.

6.64 After two rounds of queries, CAPO agreed to re-classify the allegation of 'Neglect of Duty' as 'Substantiated', and the allegation of 'Unnecessary Use of Authority' as 'Not Fully Substantiated' for the following reasons: –

- (i) according to FPM 49-20(7) and 49-20(9), a detained person is entitled to be visited by his properly instructed solicitor, provided that no unreasonable delay or hindrance is caused to the process of investigation or the administration of justice. Moreover, a solicitor should be allowed to communicate privately with his client unless the detained person states, in the presence of the solicitor and an independent officer not below the rank of Inspector, that he does not wish to consult the solicitor concerned;
- (ii) CAPO, after re-examining the case with reference to the above provisions,

considered DSSGT A should have given Mr X the opportunity to decline the service of COM direct. The fact that the interview had started prior to the arrival of COM should not have constituted a reasonable excuse for DSSGT A not to adhere to the above provisions. Moreover, CAPO did not foresee any unreasonable delay or hindrance to the investigation or the administration of justice if the interview with Mr X was interrupted in the circumstances. Although COM had withdrawn the allegation of 'Neglect of Duty', in the absence of any reasonable grounds to derail from the above provisions, the allegation of 'Neglect of Duty' was re-classified as 'Substantiated', and DSSGT A would be advised, without an entry in his divisional record file, to adhere to the relevant provisions of the FPM; and

- (iii) as for the allegation of 'Unnecessary Use of Authority', CAPO considered it obligatory for DSSGT A to exercise his power to inspect COM's identity documents according to FPM 49-20(6) on the material day so as to verify the professional status of COM. On the other hand, CAPO agreed that whilst exercising the power required, DSSGT A had not fully followed the procedures laid down in FPM 49-20(6) to expressly request COM to produce his identity documents for inspection at the time when COM requested to meet Mr X. As such, CAPO re-classified the allegation of 'Unnecessary Use of Authority' as 'Not Fully Substantiated', and would advise DSSGT A, without an entry in his divisional record file, on the requirement to strictly adhere to the relevant provisions of the said FPM in exercising his power of inspection in similar circumstances.

6.65 In addition, CAPO also agreed that the complaint investigator had failed to timely seize the relevant CCTV tape of the report room after receiving the instant complaint. As such, an 'Outwith' matter* was registered and the complaint investigator concerned would be suitably advised on the importance of retrieving the relevant CCTV tape in a timely manner as the CCTV footage may contain evidence useful to a complaint investigation.

6.66 Having examined CAPO's response, IPCC had no further comments on the revised classification for the allegation of 'Neglect of Duty'. As for the allegation of 'Unnecessary Use of Authority', IPCC opined that DSSGT A had a legitimate ground to exercise his power to inspect COM's identity documents on the material day as DSSGT A should have verified COM's professional status and then arranged the meeting of COM and Mr X so that the latter could have exercised his decision to decline COM's service direct where necessary. There was no indication that the power of inspection was exercised unnecessarily by DSSGT A so as to infringe COM's privacy. However, DSSGT A, in exercising the requisite power, did fail to fully follow the procedures laid down in the relevant FPM. The 'Not Fully Substantiated' classification for the allegation of 'Unnecessary Use of Authority' was considered appropriate.

* According to the CAPO Manual, an 'Outwith' matter means any breach of discipline or Force orders which has been disclosed in the course of the complaint investigation but is not closely related to the complaint.

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

Case 8

Neglect of Duty – Unsubstantiated

Impoliteness – Unsubstantiated

6.68 The complainant (COM) was intercepted by a Senior Inspector of Police in uniform performing motorcycle patrol duty (SIP A) for driving in a careless manner as COM's vehicle almost crashed into SIP A's motorcycle. COM disputed the offence and argued with SIP A. COM requested SIP A to show his police warrant card because he considered it inappropriate for SIP A to summons him, and he wished to jot down SIP A's full name and service number for lodging a complaint. According to COM, SIP A only told him his rank, surname and formation in response. Upon receipt of a summons for 'Careless Driving', COM lodged a complaint against SIP A. COM alleged that during his argument with SIP A, he had asked SIP A to produce his police warrant card three times but his requests were refused ('Neglect of Duty'). COM also alleged that SIP A was impolite to him during the incident ('Impoliteness').

6.69 SIP A's version was that he intercepted COM for summons action as COM was found to be driving in a careless manner. However, COM did not accept SIP A's observation, but requested instead SIP A's particulars. SIP A identified himself to COM twice by giving his rank, full name, Unique Identification (UI) number and formation. COM then requested to inspect SIP A's police warrant card. SIP A answered that he had already told COM his full police details, and queried if COM really wanted to see his police warrant card since he was in uniform. As COM made no further response at that juncture, SIP A continued to explain to COM the offence and his intended summons action. SIP A also denied being impolite to COM.

6.70 According to Police General Orders (PGO) 20-16(4)(c), uniformed police officers should produce their police warrant cards upon request by members of the public unless the request is unreasonable. CAPO opined that COM's request at the material time was unreasonable because any man on the street would have no doubt about SIP A's police identity, as SIP A had ridden on a police motorcycle, checked COM's driving licence with a beat radio, and was dressed in full police uniform. Since COM's version also corroborated that SIP A had identified himself by disclosing his rank, surname and formation to COM, CAPO considered SIP A had fulfilled his duty and classified the 'Neglect of Duty' allegation as 'No Fault'. For the allegation of 'Impoliteness', CAPO classified it as 'Unsubstantiated' in the absence of other independent and corroborative evidence to support either side's version.

6.71 In examining the complaint investigation, IPCC had no objection to the

‘Unsubstantiated’ classification for the allegation of ‘Impoliteness’, but had reservation about the ‘No Fault’ classification of the ‘Neglect of Duty’ allegation for the following reasons: –

- (i) according to COM, SIP A had only disclosed his rank, surname and formation (vis-à-vis SIP A’s claim that he had also disclosed his full name and UI number) to COM at the scene. In the circumstances, COM’s explanation that he wanted to inspect SIP A’s police warrant card in order to jot down the latter’s full name and service number for the purpose of lodging a complaint could not be considered as totally unreasonable;
- (ii) requesting to inspect a police officer’s warrant card for the purpose of lodging a complaint could be considered as reasonable under certain circumstances. If COM had told SIP A at the scene that SIP A’s police warrant card was the only piece of reliable evidence for him to verify the particulars given verbally by SIP A with a view to lodging a complaint, it might not be justified for SIP A to reject COM’s request as unreasonable;
- (iii) however, as COM only stated that he had requested SIP A to produce his police warrant card thrice with no elaboration on how he raised his requests with SIP A and how the latter refused his requests, in the absence of any other independent evidence to show what actually transpired on the material day, IPCC considered it more appropriate to re-classify the ‘Neglect of Duty’ allegation as ‘Unsubstantiated’.

6.72 Regarding IPCC’s observations, CAPO had the following response: –

- (i) the relevant PGO does not impose an obligation on a uniformed police officer to produce his warrant card when his being a properly appointed police officer is not in doubt;
- (ii) requesting to inspect a police officer’s warrant card for the purpose of lodging a complaint could be considered as reasonable under certain circumstances, but each case must be considered on its own merits;
- (iii) COM had indicated that he intended to lodge a complaint as he was dissatisfied with the summons action of SIP A. Given a strong suspicion on the retaliatory motive of COM, CAPO maintained that COM’s requests to inspect SIP A’s police warrant card was unreasonable in the circumstances;
- (iv) however, on the basis that COM and SIP A gave different accounts of how the requests for inspection of the police warrant card were made and how the requests were refused, CAPO agreed to re-classify the ‘Neglect of Duty’ allegation as ‘Unsubstantiated’.

6.73 The case was discussed at the Joint IPCC/CAPO Meeting. During the discussion, IPCC raised its concern on whether the mere fact that a request for inspection of the police

warrant card might be regarded as retaliatory by the police officer concerned would automatically render the request as unreasonable under PGO 20-16(4)(c). To minimize any confrontation between the public and the Police in requests similar to those of COM in future, IPCC made the following suggestions at the meeting: –

- (i) requiring police officers, irrespective of ranks, to wear shoulder numerals/name tags whilst on duty, or carry and produce name cards indicating their names, ranks, positions, means of contact upon requests for information on their police identities from members of the public;
- (ii) conveying a clear message to all uniformed police officers that they should not inflexibly apply the provision of the PGO concerned to refuse requests for inspection of their police warrant cards from members of the public; and
- (iii) devising clear guidelines on how uniformed officers could objectively determine if a request for inspection of the police warrant card is reasonable or not.

6.74 On the suggestion of wearing shoulder numerals/name tags, CAPO responded at the Joint IPCC/CAPO Meeting that although junior police officers wear shoulder numerals on their uniforms, they would still be requested to produce their police warrant cards when the authenticity of the numbers displayed was questioned. Whilst uniformed police officers working indoor were now required to wear name tags for personal identification purposes, for officers performing outdoor duties, due to occupational safety considerations (e.g. the possibility of injuries caused by hard objects to the police officers or members of the public in the event of a scuffle), they were at present not required to wear name tags.

6.75 As regards the suggestion of carrying name cards, CAPO subsequently responded that the costs and efforts involved in issuing name cards for over 20,000 uniformed officers and updating the information contained therein would be significant, continuous and recurrent in nature. Given the resource constraint, CAPO did not see any compelling reason at the moment to pursue this course of action.

6.76 For the remaining two suggestions of IPCC, they were accepted by the Police and guidance on how the reasonableness of a request for inspection of a police warrant card could be judged, and the need to act flexibly and in accordance with the principle of quality service was given to frontline police officers through the ‘Tips for Smart Cops Series’ in the internal publication of the Police.

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

Case 9

Misconduct – No Fault

Threat – Unsubstantiated

Neglect of Duty – Not Fully Substantiated

Unnecessary Use of Authority – Unsubstantiated

Neglect of Duty – Unsubstantiated

Unnecessary Use of Authority – Unsubstantiated

Misconduct – Unsubstantiated

6.78 The complainants 1 and 2 (COMs 1 and 2) were a couple who engaged the victim (VTM) to carry out decoration work for their home. As COM 1 (i.e. the husband of COM 2) was dissatisfied with the work done, he disputed with VTM on the outstanding payment. On the material day, VTM called COM 1 purporting to chase him for the money. Following that, VTM received several phone calls between 2200 hours and 0034 hours from a male (Mr X), who claimed himself to be a triad member. Mr X warned VTM to be careful and not to bother the two COMs anymore. He also threatened that he would locate VTM within two days for a settlement talk regarding the outstanding decoration fee. Frightened by the phone calls of Mr X, and having grave concern about his own safety and that of his family, VTM immediately made a report in person to the police station of District A at 0057 hours. Detective Sergeant B (DSGT B) and Detective Police Constable C (DPC C) of District A were responsible for handling VTM's report.

6.79 According to COM 2, DSGT B called COM 1 through the latter's mobile phone at about 0140 hours. When she answered the call, DSGT B claimed himself as belonging to Team 2 of the police station of District A. COM 2 was dissatisfied that DSGT B phoned her late at night ('Misconduct'), and asked DSGT B the reason for making a late night call. DSGT B told COM 2 that a report had just been made to the Police regarding their outstanding decoration payment. He requested COMs to attend the police station instantly for enquiries. When COM 2 questioned the need of attending the police station in the small hours, DSGT B allegedly spoke in a threatening manner, "Do you live in YY Garden? I will come to visit you." ('Threat'). COM 2 had asked DSGT B twice his police unique identification (UI) number and surname, but the latter allegedly failed to identify himself in response to her specific request, but only replied that "I belong to Team 2" ('Neglect of Duty'). COM 2 also suspected that DSGT B was acquainted with VTM, or else he would not call them late at night ('Unnecessary Use of Authority').

6.80 COM 1's version corroborated that of COM 2. At the time when DSGT B called COM 1, both he and COM 2 were sleeping. He heard COM 2 picking up the call, talking with his mobile phone and requesting the police UI number of DSGT B. After finishing the teleconversation, COM 2 told COM 1 that the phone call was from the police station of District A, during which COMs were requested to attend the police station in the small hours to assist in police enquiries. As there were no details of the caller, COMs telephoned the

police station of District A for clarification. The call was answered by DPC C. DPC C allegedly failed to tell COM 1 his police identity instantly, and only replied upon COM 1's repeated requests ('Neglect of Duty'). COM 1 also suspected that DPC C was acquainted with VTM, or else DPC C would not have refused to disclose his police identity until he told DPC C that his telephone had recording function ('Unnecessary Use of Authority'). In addition, COM 2 was dissatisfied that DPC C had covered up the wrong doing of his colleague as he should know who had made the earlier phone call to COM 1 ('Misconduct').

6.81 For complaint investigation, DSGT B was interviewed. He stated that after receiving the report of VTM and making some initial enquiries, he had tried to locate Mr X by phone but in vain. Having considered the serious nature of the case, and that there was a need to conduct investigation and locate Mr X in order to prevent any untoward incident, DSGT B made a call to COM 1 even though it was in the small hours and his call was answered by COM 2. He had explained to COM 2 that COM 1 was involved in a case, which was serious in nature and requested COM 1 to contact him. He also suggested that COM 1 could either go to the police station to meet him, or he could meet COM 1 in his residence. COM 2 then became agitated and requested him to provide his police UI number. He told COM 2 his surname, rank and posting, and then COM 2 hung up the phone. He denied being acquainted with VTM, or having threatened COM 2 while he was talking to her over the phone.

6.82 As for DPC C, he admitted having received a phone call from COM 2, who enquired about the identity of the police officer who had made the phone call to COM 1 earlier on. As he did not know which police officer had made the earlier phone call to COM 1 nor the identity of COM 2, he refused to give details to COM 2 over the phone. Instead, he asked COM 2 to leave her personal particulars and phone number so that he could revert to her when he found out the answer. At that juncture, COM 1 took over the phone from COM 2. DPC C claimed that he had disclosed his police UI number to COM 1 immediately upon request, and explained to COM 1 that he did not know who had made the previous call to COM 2. COM 1 then hung up the phone. DPC C denied being acquainted with VTM.

6.83 For the allegation of 'Misconduct' against DSGT B, CAPO opined that DSGT B had duly considered the disturbance that might be caused by a late night call to COMs. However, taking into account the serious nature of the offence of 'Claiming to be a Member of a Triad Society' as reported by VTM, and that Mr X could not be reached by phone at the material time, as well as the imminent danger faced by VTM if the latter was located by a triad member in the next two days, CAPO considered DSGT B's late night call to COM 1 was justified, and hence classified the allegation as 'No Fault'.

6.84 As regards the allegation of 'Neglect of Duty' against DSGT B, CAPO considered DSGT B's reply, which covered his surname, rank and posting, to COM 2 was sufficient to identify himself as there was only one Sergeant with the said surname in Divisional Crime

Investigation Team 2 of District A. In the absence of any independent evidence to support the version of COM 2, the allegation was classified as ‘Unsubstantiated’.

6.85 As for the remaining five allegations, COMs, DSGT B and DPC C gave different accounts of the matters concerned. Moreover, COM 1, when further enquired, confirmed that he did not have any audio recording of the teleconversation with DPC C. In the absence of any independent and corroborative evidence to support the version of either side, CAPO classified these allegations as ‘Unsubstantiated’.

6.86 Upon examining the complaint investigation, IPCC had no objection to the findings, except the ‘Unsubstantiated’ classification for the allegation of ‘Neglect of Duty’ against DSGT B. IPCC’s observations were as follows: –

- (i) COM 2 had specifically requested DSGT B twice to identify himself by his police UI number and surname during the unexpected late night call from DSGT B. It did not appear unreasonable for COM 2 to make such a request so as to ascertain whether it was a genuine call from the Police or a late night nuisance;
- (ii) according to DSGT B, he was well aware that COM 2 was specifically asking for his police UI number during their teleconversation but he chose not to disclose it to COM 2. He informed COM 2 of his surname, rank and posting instead;
- (iii) IPCC did not see any just cause for DSGT B to withhold the disclosure of his police UI number to COM 2; and
- (iv) given that the subject matter of the complaint was about DSGT B’s failure to identify himself by providing his police UI number as requested, and the said failure was sufficiently proved by DSGT B’s own version, IPCC considered the ‘Unsubstantiated’ classification could not be agreed with.

6.87 In response to IPCC’s observations, CAPO provided further comments as summarized below to support the ‘Unsubstantiated’ classification for this allegation: –

- (i) neither CAPO nor DSGT B had ever queried that COM 2’s request for DSGT B’s police UI number was unreasonable there and then;
- (ii) there was no specific order/guideline in the Force governing how requests for disclosing police UI numbers from members of the public should be handled, and every case must be judged on its own merits;
- (iii) a request made by a member of the public could not automatically create a duty or obligation dictating an officer’s action in response to that particular request when there was no particular order/guideline obliging an officer to follow a set course of action;
- (iv) as a general principle, police officers should provide sufficient information that

could establish their identities to the requestor. DSGT B's reply to COM 2, which covered his surname, rank and posting, was considered sufficient by CAPO for COM 2 to establish DSGT B's identity, even though his police UI number was not disclosed, as there was only one Detective Sergeant with that particular surname in Divisional Crime Investigation Team 2 of District A, and the said team was also a small unit;

- (v) it was a common practice for police officers above the rank of Sergeant and also crime officers, who did not wear uniform and badges of ranks/UI numbers, to identify themselves by their surnames, ranks and postings. CAPO did not consider DSGT B had breached any order/guideline, nor practice in the instant complaint; and
- (vi) further clarification was made by CAPO with DSGT B. The latter recalled that apart from his UI number, COM 2 had also asked him for his surname. In view of the supplementary information provided by DSGT B, CAPO considered COM 2's request could not be regarded as totally ignored as DSGT B's version at least showed that he had provided his surname, which was part of the request made by COM 2.

6.88 Having examined CAPO's further comments, IPCC maintained its reservation about the 'Unsubstantiated' classification for the 'Neglect of Duty' allegation against DSGT B for the following reasons: –

- (i) where a member of public asked a police officer to identify himself in the course of his duty with no specific request for his police UI number, it might be acceptable for the officer concerned to identify himself according to the Force's common practice, e.g. to identify himself by his surname, rank and posting instead of his police UI number, if the officer was a plainclothes officer of the rank of Sergeant or above;
- (ii) in the instant case, COM 2 had specifically requested DSGT B to identify himself by his police UI number and surname during an unexpected and unpalatable late night call. It meant that only by obtaining DSGT B's police UI number and his surname would COM 2 consider the information adequate for her to establish the police identity of DSGT B in the circumstances;
- (iii) as CAPO had never queried that COM 2's request was unreasonable, IPCC did not see any sanctity for DSGT B to withhold the disclosure of his police UI number, which remained a unique identifier of DSGT B's police status, upon COM 2's repeated and unequivocal requests;
- (iv) for a straightforward and reasonable request like this, it would be difficult to accept that a police officer, being a public servant, was entitled to withhold the disclosure of his police UI number upon the request of a member of the public simply because there was no order/guideline in the Force obliging him to disclose;

- (v) one of the reasons for CAPO to consider DSGT B's reply adequate was that there was only one Detective Sergeant with that particular surname in Divisional Crime Investigation Team 2 of District A, and the said team was also a small unit. However, there was no evidence showing that COM 2 was as familiar with the staffing position and size of the Divisional Crime Investigation Team concerned as CAPO, nor should it be reasonably expected that COM 2 should so familiarize herself in this respect. Without the benefit of such knowledge, DSGT B could not be regarded as having identified himself fully on demand of COM 2 by withholding the disclosure of his police UI number; and
- (vi) taking into account DSGT B's version which indicated that he had not totally ignored COM 2's request at the material time as he had at least provided his surname, which was part of COM 2's request according to the versions of both sides in the complaint, but not his police UI number, IPCC considered it more appropriate to re-classify the allegation as 'Not Fully Substantiated'.

6.89 After further rounds of queries by IPCC on the above, CAPO agreed to re-classify the allegation of 'Neglect of Duty' against DSGT B from 'Unsubstantiated' to 'Not Fully Substantiated'. DSGT B would be advised, without an entry in his divisional record file, that he could have done better in dealing with COM 2 in the incident had he elected to provide his police UI number in addition to the information that he had already given.

6.90 When the case was discussed at the Joint IPCC/CAPO Meeting, IPCC noted that there was at present no specific order/guideline in the Force governing how requests for disclosing police UI numbers from members of the public should be handled. From the angle of complaint prevention, IPCC requested CAPO to consider whether some guidelines would be put in place so that frontline police officers could deal with similar requests more prudently in the course of their duties.

6.91 After due consideration of IPCC's concern, CAPO subsequently advised that all frontline staff had been advised via the 'Tips for Smart Cops Series' in the internal publication of the Force that if a specific request is made for an officer's UI number, and if the request is not considered unreasonable, the officer concerned should provide his UI number to the member of the public requesting such information. Moreover, Formation Commanders have been requested via the Monthly Report of Complaints Against Police Office to remind all officers to exercise common sense and good judgement in handling similar requests from members of the public to avoid unnecessary complaints. For the sake of clarity, specific guidelines in this respect would also be included in the amended Police General Order Chapter 20* for officers' compliance.

* Under the amended Police General Order Chapter 20, police officers, without prejudicing operational efficiency, should disclose adequate personal information to identify themselves upon request when exercising statutory powers. For officers of the ranks of Police Constable, Sergeant, Traffic Warden and Senior Traffic Warden, they should at least disclose their ranks and police UI numbers in identifying themselves upon request. For officers of the ranks of Station Sergeant and above, they should at least identify themselves by their ranks and surnames upon request.

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

Case 10

Impoliteness – Unsubstantiated

Neglect of Duty – Unsubstantiated

Impoliteness – Unsubstantiated

6.93 On the material day, the complainant (COM) was driving a vehicle along Nathan Road with her colleague, Ms X, on board. She was summonsed for ‘Careless Driving’ for cutting into the path of a police Mobile Patrol (MP) Car by Sergeant A (SGT A) and Police Constable B (PC B) who were respectively the officer-in-charge and driver of the MP car.

6.94 COM was dissatisfied with the manners of SGT A and PC B during the summoning action, and lodged a total of three allegations against them as follows: -

- (a) SGT A spoke loudly to COM and questioned her as if she were a prisoner, and invaded COM’s privacy by asking her the car owner’s particulars and her relationship with the owner (‘Impoliteness’);
- (b) SGT A ignored COM’s safety by asking her to alight from her vehicle in a busy street and failed to tell her the reason thereof (‘Neglect of Duty (NOD)’); and
- (c) PC B treated COM impolitely when COM asked him for his and SGT A’s police identification numbers (‘Impoliteness’).

6.95 SGT A denied allegations (a) and (b) against him. He claimed that since they were in a busy street at the material time, he used a voice level which he believed COM would be able to hear him. He asked COM for the particulars of the owner of the vehicle and their relationship to verify whether COM was legally in charge of the vehicle. He requested COM to alight from the vehicle to ascertain whether COM was drunk. He had told COM the reason of requesting her to alight from the vehicle and had taken the safety factor into consideration, in that he asked her to alight from the vehicle when the pedestrian light was green, the blue light of the MP car was on to alert other road users and he had kept observing the traffic condition when COM was on the road.

6.96 PC B denied allegation (c) against him. He claimed that he had provided his and SGT A’s police unique identification numbers to COM as requested.

6.97 After investigation, CAPO noted that COM’s version was supported by Ms X and the versions of SGT A and PC B were supported by a woman police constable who attended the scene at the material time. They were all not regarded as independent witnesses. CAPO therefore classified allegations (a) and (c) – ‘Impoliteness’ as ‘Unsubstantiated’ since

the officers concerned denied the allegations and there was no independent witness or corroborative evidence to prove or disprove either side's version.

6.98 Regarding allegation (b) – 'NOD', CAPO commented that SGT A's explanation was reasonable and was satisfied that he had taken the necessary precautions to ensure the safety of COM before asking her to alight from the vehicle. Therefore, CAPO classified the allegation as 'No Fault'.

6.99 Upon examining the investigation result of COM's complaint, IPCC considered that SGT A's explanation on allegation (b) was his own version without any support of independent witness or objective evidence. Hence, it was not appropriate to classify the allegation as 'No Fault' solely by relying on the one-sided version of SGT A. It was also inconsistent with the principle and approach adopted by CAPO in classifying allegations (a) and (c) as 'Unsubstantiated' in the instant complaint. IPCC therefore suggested CAPO to re-classify allegation (b) – 'NOD' as 'Unsubstantiated'.

6.100 CAPO subscribed to IPCC's comment above and re-classified allegation (b) – 'NOD' from 'No Fault' to 'Unsubstantiated'.

6.101 IPCC endorsed CAPO's investigation result of the case.

Case 11

Neglect of Duty – Unsubstantiated

Neglect of Duty – Unsubstantiated

Neglect of Duty – Unsubstantiated

Misconduct – Unsubstantiated

6.102 The Complainant (COM), who was the secretary of the Landlord and Resident Association of a building, had grudges with members of the Owners' Corporation Committee (OCC) of the building. On the material day, COM requested to sit in and observe a meeting held by the OCC but his request was refused. A dispute therefore arose between COM and members of the OCC. Since COM refused to leave the scene upon request, the OCC made a report to the Police. According to police records, four uniformed police officers, and three plainclothes officers of the District Anti-triad Squad (DATS) attended the scene after the OCC had made the report to the Police. After investigation, the case was classified as 'Dispute', and COM voluntarily followed DATS officers to a police station for further enquiry. He was subsequently released unconditionally.

6.103 COM was dissatisfied with the Police's handling of the 'Dispute' case. Two days after the incident, he lodged a complaint against a Sergeant (SGT A) at the Police Console receiving the report, and a Station Sergeant (SSGT B) who attended the scene. COM

alleged that SGT A should not waste police resources by deploying 15 uniformed police officers [Allegation (a) – ‘Neglect of Duty (NOD)’] and three DATS officers [Allegation (b) – ‘NOD’] respectively to the scene, as the case only related to building management matters. He further complained that SSGT B failed to enquire with his subordinates before requesting him to show his authorization document and asking him questions, the details of which he had already told SSGT B’s subordinates [Allegation (c) – ‘NOD’]. COM was also dissatisfied with SSGT B standing at the entrance of the venue of the OCC meeting to prevent him from knocking on the door and entering the venue [Allegation (d) – ‘Misconduct’].

6.104 SGT A denied the allegations against him. He claimed that he had only deployed two uniformed police officers (PC C and SPC D) to handle the ‘Dispute’ case upon receiving the report made by the OCC on the material day.

6.105 SSGT B explained that he attended the scene together with another Station Sergeant (SSGT E) for the purpose of supervising their subordinates, PC C and SPC D, to handle the ‘Dispute’ case. SSGT B claimed that he had made enquiry with the two at-scene officers as well as members of the OCC upon arrival at the scene before making enquiry with COM. SSGT B further stated that he had explained the stance of the OCC to COM, and COM had not made a request to him to attend the OCC meeting. SSGT B denied blocking COM from entering the meeting venue. SSGT B confirmed that throughout the incident, only four uniformed police officers, including himself, SSGT E, PC C and SPC D, and three DATS officers attended the scene at the material time.

6.106 CAPO had made enquiry with the police officers who attended the scene at the material time, as well as the secretary of the OCC and a security guard of the building. The versions of PC C, SPC D and SSGT E corroborated with SSGT B’s version. The three DATS officers stated that earlier on the same day, they visited the building in connection with a ‘Criminal Intimidation’ case and saw a notice which was displayed on the notice board of the building mentioning a possible wounding case against members of the OCC. They went back to the building to conduct investigation into the alleged crime case at the material time, and by coincidence encountered the ‘Dispute’ case. The three DATS officers claimed that upon request, COM followed them to the police station voluntarily for further enquiry in connection with the alleged crime case, instead of the ‘Dispute’ case. They also indicated that there were four to six uniformed police officers at the scene at the material time. DATS officers’ versions corroborated with SSGT B’s version.

6.107 The secretary of the OCC confirmed that COM had requested to sit in and observe a meeting held by the OCC at the material time. Since COM did not apply for attendance and was unable to provide any authorization document in support of his attendance, his request was therefore refused. A report was subsequently made to the Police as COM refused to leave the scene upon request, and four to five police officers attended the scene afterwards. The version of the security guard corroborated with the secretary’s version, as he stated that

he was instructed by the Chairman of the OCC to make a report to the Police since COM interfered with the OCC meeting. He also stated that throughout the incident, there were three to four uniformed police officers and three plainclothes police officers who attended the scene.

6.108 CAPO's investigation revealed that CCTV facility was installed at the scene, but the relevant tape had been reused. No independent witness was located. The OCC confirmed that it had posted a notice at the common area of the building, stating that triad members might employ someone to chop a member of the OCC. CAPO found in the relevant incident log (a computer record) of the 'Dispute' case that SGT A had deployed two uniformed police officers to handle the case, and assigned a Mobile Patrol (MP) Car to the scene at the material time. As admitted by SGT A, he had made a wrong entry about assigning the MP Car to the scene in the incident log. An examination of the Occurrence Book record of the MP Car showed that the MP Car was engaged in other commitments during the period when COM's 'Dispute' case was being handled.

6.109 After investigation, CAPO considered that there was no evidence to support the allegations of over-deployment, improperly assigning DATS officers to handle the 'Dispute' case nor any kind of wastage of police resource, and hence classified allegations (a) and (b) as 'No Fault' since SGT A denied the allegations, and his version was corroborated by the versions of other police officers involved in the incident, the secretary of the OCC and the security guard of the building who could be treated as independent witnesses in the incident.

6.110 As regards SGT A's negligence in making a wrong entry about deploying the MP Car to handle the 'Dispute' case in the relevant incident log, SGT A would be suitably advised on the importance of ensuring accuracy in entering information into the computer record.

6.111 For allegations (c) and (d), CAPO classified them as 'Unsubstantiated' since SSGT B denied the allegations, and there was no corroborative evidence or independent witness to prove or disprove either side's version.

6.112 Upon examining the investigation result of COM's complaint, IPCC had reservation about the 'No Fault' classifications for allegations (a) and (b) against SGT A and raised the following comments and suggestions with CAPO:

- (i) according to the long-established principle adopted by both IPCC and CAPO in examining complaint investigations, any person who may be an interested party in an incident relating to a complaint case, and a police officer who has a working relationship with the complainee(s) of a complaint case cannot be treated as an independent witness of the case. Any record made or created by the complainee or a non-independent witness of a complaint case also cannot serve as independent evidence to refute an allegation made against the complainee;

- (ii) in view of the fact that the secretary of the OCC was involved in the 'Dispute' case, and the security guard of the building was an employee of the OCC and was instructed by the OCC to make a report against COM to the Police at the material time, it would not be appropriate to treat them as independent witnesses in the instant case;
- (iii) although SGT A denied the allegations, the relevant incident log of the 'Dispute' case showed that SGT A had not only deployed two uniformed police officers but also an MP Car to the scene at the material time. The number of uniformed police officers at the scene as reported by the witnesses, including the three DATS officers, the secretary of the OCC and the security guard, was not consistent. As there was a lack of independent witness and evidence to prove or disprove either side's version, and the versions of other witnesses were not fully consistent, IPCC considered that there was insufficient evidence to support the 'No Fault' classification of allegation (a), and suggested re-classifying the allegation as 'Unsubstantiated';
- (iv) similarly, there was a lack of independent witness and evidence to prove the DATS officers' versions in respect of allegation (b). Therefore, IPCC suggested re-classifying allegation (b) as 'Unsubstantiated' as well; and
- (v) to further establish the versions given by SGT A and the three DATS officers, IPCC suggested CAPO to examine the relevant console tape related to the 'Dispute' case, clarify with the police officers on board the MP Car at the material time whether they had attended the scene at the material time, and confirmed with the supervisor of the three DATS officers whether they had been assigned to investigate the alleged crime case.

6.113 After discussion, CAPO subscribed to IPCC's view that the secretary of the OCC and the security guard of the building should not be treated as independent witnesses in the instant case, and agreed to change the 'No Fault' classifications for allegations (a) and (b) to 'Unsubstantiated'. CAPO also made clarifications with the relevant officers, and confirmed that the MP Car had not attended the scene at the material time, while the DATS officers were assigned to investigate the alleged crime case. With regard to the relevant console tape, CAPO's investigation revealed that it had been reused in accordance with standard police procedure. It was thus unavailable for scrutiny.

6.114 IPCC endorsed the investigation result of the case.

Case 12

Neglect of Duty – Unsubstantiated

Neglect of Duty – Unsubstantiated

6.115 The complainant (COM)'s private vehicle and a light goods vehicle (LGV) were involved in a traffic case of 'Traffic Accident Damage Only (TADO)'. Police Constable A (PC A) attended the scene for enquiry. Both parties initially agreed to settle the case at the scene but were eventually unable to reach an agreement among themselves. Therefore, the investigation was taken up by the Accident Investigation Team of the Formation concerned. After investigation, COM was summonsed for 'Careless Driving'. He was acquitted of the offence after trial. COM was dissatisfied with the way PC A handled his traffic case, and lodged two allegations against him as follows: -

- (a) PC A failed to make any sketch or take any photographs of the involved vehicles at the scene ('Neglect of Duty (NOD)'); and
- (b) the post-entry sketch made by PC A in his police notebook was inaccurate and unfair to COM, which resulted in the prosecution and subsequent acquittal of COM ('NOD').

6.116 PC A stated that he immediately drew a sketch on the positions of the two vehicles, recorded details of COM and the driver of the LGV on a piece of brown A4 paper upon making initial enquiry at the scene. As soon as he finished the drawing of the sketch, he directed both drivers to drive off the road junction to another street in order to minimize the risks of further accidents and traffic congestion. As COM and the driver of the LGV agreed to settle the case, PC A left the scene without making further investigation. PC A subsequently made a post-entry of the case including the sketch on his police notebook when he returned to the police station. Due to the rainy weather on the material day, the piece of A4 paper was moistened and the original sketch was worn away so he disposed of the sketch without passing it to the Accident Investigation Team for reference.

6.117 CAPO interviewed the driver of the LGV involved in the traffic accident. He confirmed that he saw PC A marked something on a piece of paper. It was raining at the time, and he agreed to settle the case with COM at the scene. CAPO's investigation also found that the CCTV installed at the scene had no recording function and no independent witness was located.

6.118 After investigation, CAPO classified allegation (a) – 'NOD' as 'No Fault' since (i) there was no mandatory requirement set out in the Police Traffic Procedures Manual (TPM) for an at-scene officer to take photographs in a TADO case; (ii) as both parties involved in the case agreed to settle at the scene, there was no requirement for PC A to make any sketch under such circumstance; (iii) PC A contended that he did make a sketch at the scene and had made a post-entry of the case including a sketch on the positions of the involved vehicles in

his notebook; (iv) PC A's version was corroborated by the driver of the LGV involved in the case; (v) the court had no adverse comment on PC A's testimony including the time he made the sketch; and (vi) PC A's assessment of the case and initial action taken at the scene were proper.

6.119 Regarding allegation (b) – 'NOD', CAPO commented that there was no evidence to prove that PC A's sketch was the sole contributing factor resulting in the acquittal of COM. In fact, the acquittal of COM was mainly due to lurking doubts about the testimony of the driver of the LGV, and the Court granted the benefit of doubt to COM. In the absence of concrete evidence to prove or disprove allegation (b), CAPO classified the allegation as 'Unsubstantiated'.

6.120 Having examined the investigation result of COM's complaint, IPCC found that there was no evidence indicating that both parties involved in the TADO case agreed to settle the case at the scene as mentioned by CAPO. On the contrary, as recorded in PC A's relevant notebook entry, COM and the driver of the LGV agreed to settle the case after PC A directed them to drive off the scene to a street nearby. Therefore, PC A must make a sketch at the scene as stipulated in the TPM. Although PC A claimed that he did make a sketch on the positions of the involved vehicles at the scene on a piece of A4 paper before the removal of the vehicles, the paper was already disposed of and there was no objective evidence to prove his version. In the absence of corroborative evidence to support the existence of the sketch in question, and that the involved parties did not agree to settle the case at the scene, IPCC considered it insufficient to support the 'No Fault' classification for allegation (a), and hence suggested CAPO to re-classify the allegation as 'Unsubstantiated'. Moreover, IPCC found that PC A had failed to make a proper record in his notebook that his entry about the TADO case was a post-record, which was in breach of the relevant guidelines set out in the Police General Orders. Hence, IPCC suggested CAPO to properly address PC A's negligence in this respect in the investigation report.

6.121 After several rounds of discussion, CAPO accepted IPCC's suggestions to re-classify allegation (a) – 'NOD' from 'No Fault' to 'Unsubstantiated', and address PC A's failure to make a proper record in his notebook that his entry about the TADO case was a post-record as an 'Outwith' matter. PC A would be give appropriate advice without a divisional record file entry in this regard.

6.122 IPCC endorsed CAPO's investigation result of the case.

Chapter 7

Acknowledgements

7.1 The Council would like to express its gratitude to the Commissioner of Police and his staff - in particular the Director of Management Services, the Assistant Commissioner of Police (Service Quality), the Chief Superintendent, and all the staff of the Complaints and Internal Investigations Branch of the Police Force - for their co-operation and assistance in responding to the Council's queries and suggestions in the past year.

7.2 Mr Daniel CHAM Ka-hung, MH, JP and Dr Charles KOO Ming-yan, MH retired from IPCC at the end of 2007. Mr CHAM and Dr KOO had served the Council for six years. In the same year, The Ombudsman (or her representative) relinquished membership as an ex-officio Member of IPCC. IPCC is most grateful for their devoted service and valuable contributions to the work of the Council over the years.

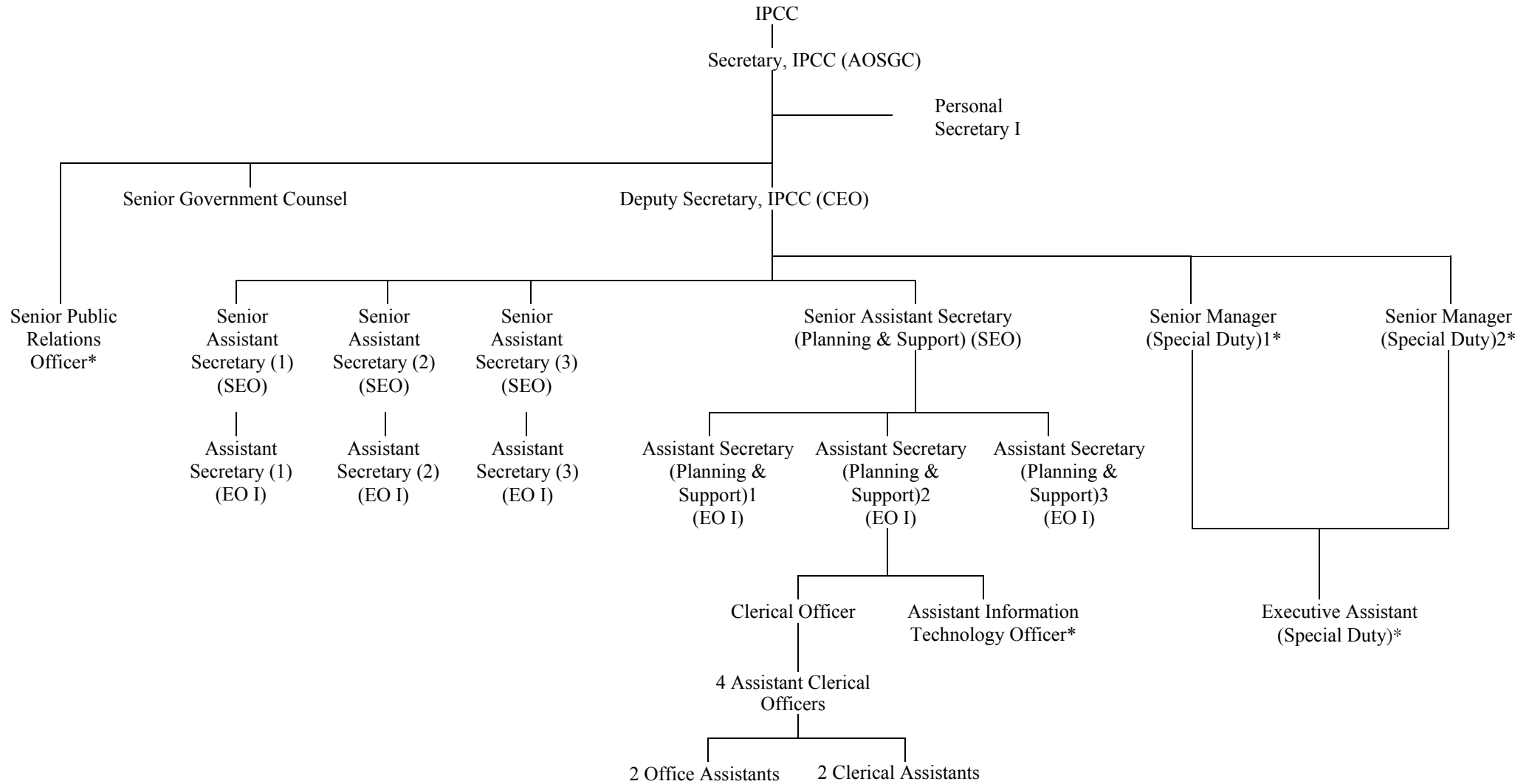
7.3 Finally, the Council would also like to record its appreciation of the contribution and dedicated support given by Mrs Brenda FUNG, Secretary to the Council, and the staff of the Council Secretariat.

Appendices

Appendix

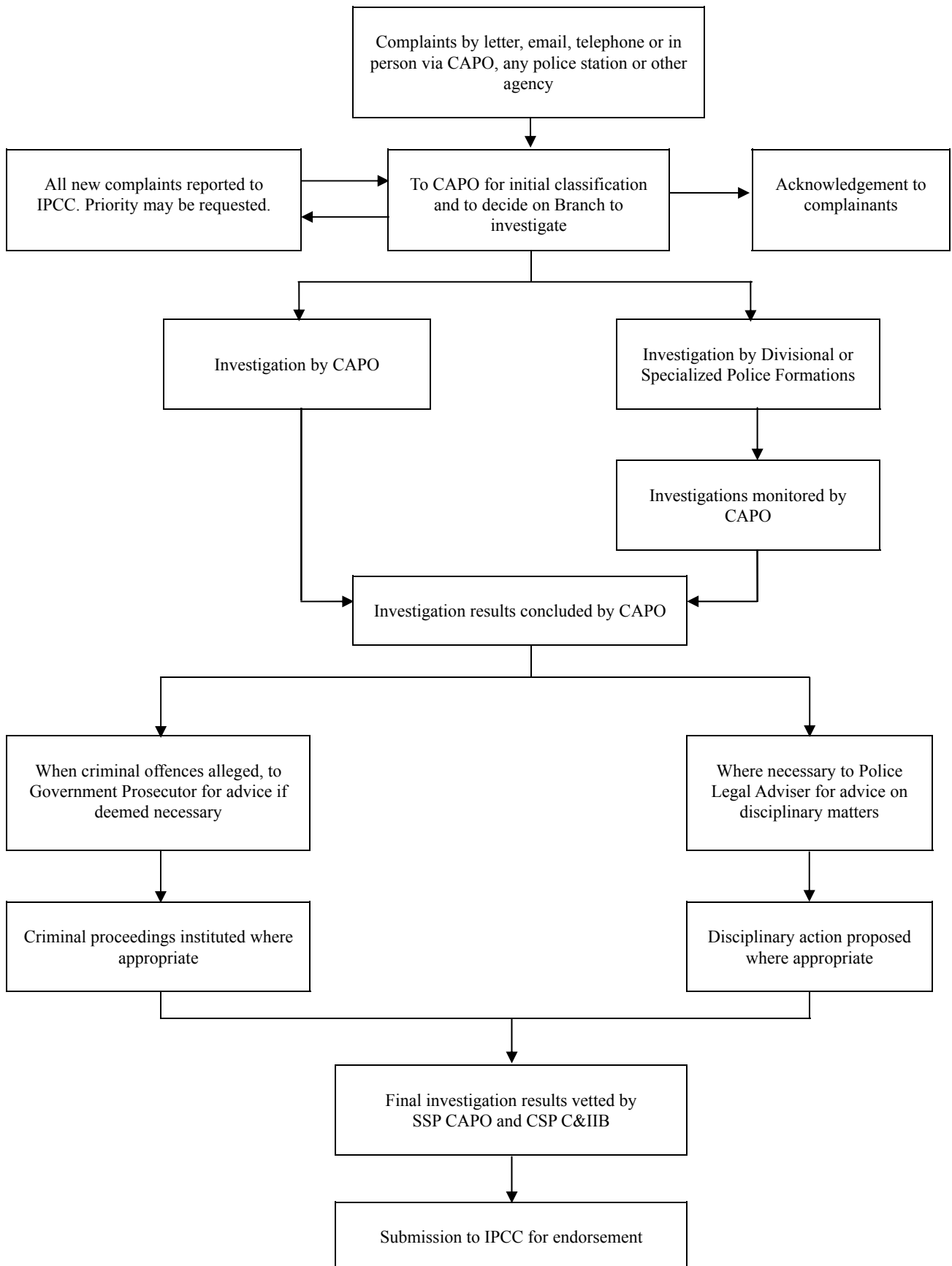
- I Organisation Chart of IPCC Secretariat
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Organisation Chart of IPCC Secretariat

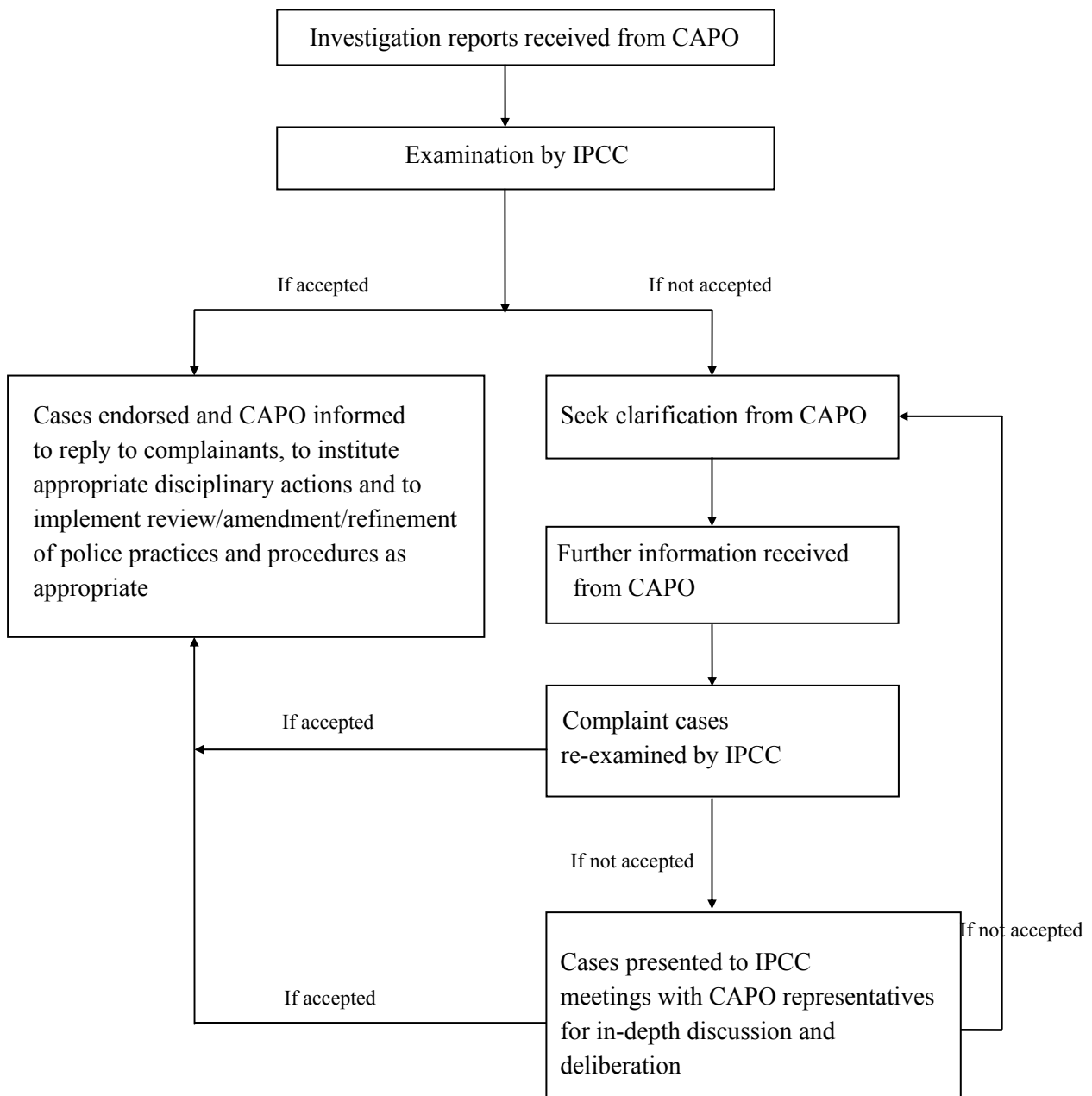


- Notes:
- IPCC - Independent Police Complaints Council
 - AOSGC - Administrative Officer Staff Grade C
 - CEO - Chief Executive Officer
 - SEO - Senior Executive Officer
 - EO I - Executive Officer I
 - * - Staff employed on non-civil service contract terms

**The Processing of Complaints
by CAPO before Submission to IPCC**



The Monitoring of Completed CAPO Investigations by IPCC



**Number of Complaints* Against the Police
Registered by CAPO in 2005, 2006 and 2007**

<u>Month</u>	<u>2005</u>	<u>2006</u>	<u>2007</u>
January	276	196	238
February	205	190	164
March	200	180	238
April	252	153	176
May	255	205	227
June	213	213	216
July	197	214	237
August	241	255	212
September	241	230	188
October	214	242	226
November	214	216	220
December	183	217	227
<hr/>			
Total	<u>2,691</u>	<u>2,511</u>	<u>2,569</u>

Note : The figures for 2005 and 2006 have been adjusted to take account of cancellation and consolidation, etc.

* A complaint may consist of more than one allegation.

Origin of Complaints* Received by CAPO in 2005, 2006 and 2007

	2005 (% of total)	2006 (% of total)	2007 (% of total)
A. Reported to CAPO in person or by telephone	1,092 (40.6)	940 (37.4)	1,102 (42.9)
B. Reported to a police station in person or by telephone	906 (33.7)	738 (29.4)	705 (27.4)
C. Reported by letter or email (to the Commissioner of Police, Box 999, CAPO or police formation)	195 (7.2)	218 (8.7)	212 (8.3)
D. Complaints made at prisoner reception centre/in prison	15 (0.6)	12 (0.5)	4 (0.2)
E. Received via ICAC	8 (0.3)	0 (0.0)	2 (0.1)
F. Received via LegCo or solicitors	13 (0.5)	10 (0.4)	0 (0.0)
G. Received via Judiciary	442 (16.4)	571 (22.7)	526 (20.5)
H. Received via Police Public Relations Bureau/press/radio	6 (0.2)	4 (0.2)	5 (0.2)
I. Received via other government departments	5 (0.2)	9 (0.4)	4 (0.2)
J. Received via IPCC	8 (0.3)	8 (0.3)	6 (0.2)
K. Others	1 (0.0)	1 (0.0)	3 (0.1)
Total reports received	2,691 (100.0)	2,511 (100.0)	2,569 (100.0)

Note 1 : The figures for 2005 and 2006 have been adjusted to take account of cancellation, consolidation, and 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.

Nature of Complaints* Received by CAPO in 2005, 2006 and 2007
(According to Initial Categorization)

	<u>2005</u> <u>(% of total)</u>	<u>2006</u> <u>(% of total)</u>	<u>2007</u> <u>(% of total)</u>
A. Assault	522 (19.4)	541 (21.5)	467 (18.2)
B. Misconduct/ Improper Manner/ Offensive Language	828 (30.7)	688 (27.4)	717 (27.9)
C. Neglect of Duty	976 (36.3)	930 (37.0)	1,063 (41.4)
D. Unnecessary Use of Authority	144 (5.4)	89 (3.5)	103 (4.0)
E. Fabrication of Evidence	124 (4.6)	120 (4.8)	97 (3.8)
F. Threat	85 (3.2)	134 (5.3)	119 (4.6)
G. Other Offences	5 (0.2)	4 (0.2)	0 (0.0)
H. Police Procedures	7 (0.3)	5 (0.2)	3 (0.1)
Total	<u>2,691</u> <u>(100.0)</u>	<u>2,511</u> <u>(100.0)</u>	<u>2,569</u> <u>(100.0)</u>

Note 1 : The figures for 2005 and 2006 have been adjusted to take account of cancellation and consolidation, etc.

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

* A complaint may consist of more than one allegation. 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.

Position as at 31.12.2007 on the Processing of CAPO Investigation Reports Received by IPCC in 2007

<u>Vetting Team</u>	<u>Team 1</u>	<u>Team 2</u>	<u>Team 3</u>	<u>Total</u>
(a) No. of cases endorsed by IPCC :	660	693	695	2,048*
(b) No. of cases returned to CAPO for comments :	24	15	17	56
(c) No. of examined cases under circulation/in the process of being circulated to IPCC Members :	24	45	34	103
(d) No. of cases being/to be examined :	248	157	162	567
Total no. of cases received from CAPO :	956	910	908	2,774

* The figure of 2,048 represents those investigation reports received in 2007 and endorsed within the same year.

Nature of Allegations
Endorsed by IPCC in 2005, 2006 and 2007

	2005 <u>(% of total)</u>	2006 <u>(% of total)</u>	2007 <u>(% of total)</u>
A. Assault	710 (15.1)	532 (15.1)	587 (13.5)
B. Misconduct/Improper Manner/ Offensive Language	1,817 (38.7)	1,293 (36.8)	1,539 (35.5)
C. Neglect of Duty	1,412 (30.1)	1,144 (32.5)	1,551 (35.7)
D. Unnecessary Use of Authority	344 (7.3)	237 (6.7)	277 (6.4)
E. Fabrication of Evidence	201 (4.3)	143 (4.1)	146 (3.4)
F. Threat	182 (3.9)	152 (4.3)	227 (5.2)
G. Other Offences (See Appendix VIII(a))	11 (0.2)	7 (0.2)	4 (0.1)
H. Police Procedures	18 (0.4)	10 (0.3)	10 (0.2)
<hr/>			
Total no. of allegations	4,695 <u>(100.0)</u>	3,518 <u>(100.0)</u>	4,341 <u>(100.0)</u>

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

Breakdown of 'Other Offences' allegations

	<u>2005</u>	<u>2006</u>	<u>2007</u>
(i) Involvement in Deception Cases and/or Criminal Syndicate/Unlawful Society	0	0	0
(ii) Theft Ordinance	7	5	2
(iii) Dangerous Drugs Ordinance	0	0	0
(iv) Perverting the Course of Justice	2	1	0
(v) Rape/Indecent Assault	2	0	1
(vi) Other Crime Ordinances	0	1	1
(vii) Others	0	0	0
Total	<u>11</u>	<u>7</u>	<u>4</u>

Results of Investigations
Endorsed by IPCC in 2005, 2006 and 2007

	<u>2005</u> (% of total)	<u>2006</u> (% of total)	<u>2007</u> (% of total)
A. Substantiated/ Substantiated Other Than Reported	145 (3.1)	100 (2.8)	100 (2.3)
B. Not Fully Substantiated	8 (0.2)	4 (0.1)	5 (0.1)
C. Unsubstantiated	854 (18.2)	610 (17.3)	769 (17.7)
D. False	244 (5.2)	187 (5.3)	160 (3.7)
E. No Fault	271 (5.8)	152 (4.3)	148 (3.4)
F. Curtailed	25 (0.5)	7 (0.2)	1 (0.1)
G. Withdrawn/Not Pursuable	2,246 (47.8)	1,719 (48.9)	2,232 (51.4)
H. Informal Resolution	902 (19.2)	739 (21.0)	926 (21.3)
<hr/>			
Total no. of allegations	<u>4,695</u> <u>(100.0)</u>	<u>3,518</u> <u>(100.0)</u>	<u>4,341</u> <u>(100.0)</u>

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

Analysis of Fully Investigated Allegations Endorsed by IPCC in 2005, 2006 and 2007

Year	2005		2006		2007	
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	66	4.3%	40	3.8%	36	3.1%
Substantiated Other Than Reported	79	5.3%	60	5.7%	64	5.4%
Not Fully Substantiated	8	0.5%	4	0.4%	5	0.4%
Sub-total	153	10.1%	104	9.9%	105	8.9%
(II) Other Allegations which are Fully Investigated						
False	244	16.0%	187	17.8%	160	13.5%
No Fault	271	17.8%	152	14.4%	148	12.5%
Unsubstantiated	854	56.1%	610	58.0%	769	65.1%
Total No. of Fully Investigated Allegations	1,522 (100.0%)		1,053 (100.0%)		1,182 (100.0%)	

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

Number of Allegations by Nature and by Results of Investigations as per CAPO Reports Endorsed by IPCC in 2007

Nature of Allegation	Substantiated/ Substantiated Other Than Reported	Not Fully Substantiated	Unsubstantiated	False	No Fault	Curtailed	Not Pursuable/ Withdrawn	Informal Resolution	Total
Assault	0 (0)	0 (0)	30 (5.1)	49 (8.3)	4 (0.7)	1 (0.2)	503 (85.7)	0 (0)	587 (100.0)
Misconduct/Improper Manner/Offensive Language	7 (0.5)	0 (0)	334 (21.7)	18 (1.2)	11 (0.7)	0 (0)	654 (42.5)	515 (33.5)	1,539 (100.0)
Neglect of Duty	90 (5.8)	4 (0.3)	319 (20.6)	10 (0.6)	97 (6.3)	0 (0)	648 (41.8)	383 (24.7)	1,551 (100.0)
Unnecessary Use of Authority	2 (0.7)	1 (0.4)	61 (22.0)	4 (1.4)	28 (10.1)	0 (0)	155 (56.0)	26 (9.4)	277 (100.0)
Fabrication of Evidence	0 (0)	0 (0)	10 (6.8)	58 (39.7)	3 (2.1)	0 (0)	75 (51.4)	0 (0)	146 (100.0)
Threat	0 (0)	0 (0)	12 (5.3)	21 (9.3)	0 (0)	0 (0)	194 (85.5)	0 (0)	227 (100.0)
Other Offences (Note 4)	1 (25.0)	0 (0)	2 (50.0)	0 (0)	0 (0)	0 (0)	1 (25.0)	0 (0)	4 (100.0)
Police Procedures	0 (0)	0 (0)	1 (10.0)	0 (0)	5 (50.0)	0 (0)	2 (20.0)	2 (20.0)	10 (100.0)
Total	100	5	769	160	148	1	2,232	926	4,341

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 4 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	1	0	1	0	0	0	0	0	2
Involvement in Deception Cases and/or Criminal Syndicate/ Unlawful Society	0	0	0	0	0	0	0	0	0
Perverting the Course of Justice	0	0	0	0	0	0	0	0	0
Dangerous Drugs Ordinance	0	0	0	0	0	0	0	0	0
Rape/Indecent Assault	0	0	1	0	0	0	0	0	1
Other Crime Ordinances	0	0	0	0	0	0	1	0	1
Others	0	0	0	0	0	0	0	0	0
Total	1	0	2	0	0	0	1	0	4

**Criminal/ Disciplinary Proceedings and Internal Action
Taken by Police in respect of Cases Endorsed in 2005, 2006 and 2007**

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

(i) <u>Criminal proceedings instituted</u>	<u>No. of Officers</u>		
	<u>2005</u>	<u>2006</u>	<u>2007</u>
Acquitted	1	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	0	0	1
Trial is pending and outcome is not yet known	0	0	0
Others	0	0	0
	<u>1</u>	<u>0</u>	<u>1</u>

(ii) <u>Disciplinary proceedings instituted</u>	<u>No. of Officers</u>		
	<u>2005</u>	<u>2006</u>	<u>2007</u>
Acquitted	0	1	0
Conviction recorded but no punishment	0	0	0
Caution	3	5	5
Caution, suspended	1	0	0
Reprimand	0	0	1
Reprimand, suspended	11	0	0
Severe reprimand	3	2	2

Severe reprimand, suspended	0	0	0
Warned for dismissal	0	0	0
Dismissed	0	0	0
Hearing is pending and outcome is not yet known	1	0	2
Others	1	1	0
	<u>20</u>	<u>9</u>	<u>10</u>
(iii) <u>Action by Formation Commanders</u>			
Warning given to police officers concerned	9	5	2
Advice given to police officers concerned	146	100	78
	<u>155</u>	<u>105</u>	<u>80</u>
Total ((i) + (ii) + (iii)) *	<u>176</u>	<u>114</u>	<u>91</u>

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

	<u>No. of Officers</u>		
	<u>2005</u>	<u>2006</u>	<u>2007</u>
(i) Criminal proceedings	0	0	0
(ii) Disciplinary proceedings	0	0	0
(iii) Warning given to police officers concerned	0	0	0
(iv) Advice given to police officers concerned	26	25	23
	<u>26</u>	<u>25</u>	<u>23</u>

Note : Figures for 2005 and 2006 have been adjusted following case reviews.

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

Nature of Queries/ Suggestions Raised by IPCC in 2005, 2006 and 2007

	<u>2005</u>	<u>2006</u>	<u>2007</u>
A. Results of Investigation	93	75	123
B. Thoroughness of Investigation/Clarification of Ambiguous Points in the CAPO Reports/CAPO Case Files	342	548	1,250
C. Grounds for the Exercise of Constabulary Powers	0	2	0
D. Compliance with Police Practices/Procedures	1	52	127
E. Suggested Improvement to Police Procedures	9	5	7
F. Other Queries	96	147	193
<hr/>			
Total Number of Points Raised	<u>541</u>	<u>829</u>	<u>1,700</u>

Note : A query/suggestion raised by IPCC may contain more than one point.

Out of the 1,205 query points accepted by CAPO, 82 results of investigations were changed in 2007. The corresponding figures for 2005 and 2006 were 64 and 44 respectively.