

# 監警會 通訊

## IPCC NEWSLETTER



### 刑事調查衍生的投訴個案

### Complaint cases arising from criminal investigation



獨立監察警方處理投訴委員會  
Independent Police Complaints Council

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## 刑事調查衍生的投訴個案

### Complaint cases arising from criminal investigation

警方在處理刑事案件時，會涉及不同的程序，包括搜證、錄取口供、拘捕疑犯和檢控等。在監警會審核的投訴中，便有不少個案是關於投訴警務人員在調查過程中「疏忽職守」及「行為不當」。亦有部分個案涉及疑犯投訴警務人員以不當手段影響其警誡供詞，但最後卻被發現是虛假投訴。今期的封面故事將介紹兩宗有關刑事調查衍生的投訴以及相關的投訴數據：

In the course of the Police's handling of crime cases, various procedures will be taken, such as collection of evidence, taking cautioned statement, arrest of suspects and prosecution. Among the complaint cases examined by the IPCC, many of them are about police officers being alleged of "Neglect of Duty" and "Misconduct" during the investigation. On the other hand, some complaints cases involve the suspects complaining against the police officers of affecting the cautioned statements inappropriately, but they are subsequently found to be false complaints. This cover story will feature two complaint cases arising from criminal investigation and related statistics:

### 個案一：一名總督察不恰當地將投訴人列入通緝及出入境監察名單

#### Case 1: A Chief Inspector inappropriately put the Complainant on the Wanted and Watch List



投訴人因被列入通緝及出入境監察名單，於離港時被補。

(照片來源(封面及本頁)：星島日報)

**The Complainant was arrested when leaving Hong Kong as he had been put on the Wanted and Watch List.**

**(Photo Credit (cover and this page): Sing Tao Daily)**

### 背景

投訴人是一名外籍人士，他受聘來港在一間貿易公司(下稱「公司」)工作，及後被公司解僱並要求他在限期前遷出公司提供的住所。投訴人遷出後，公司的總經理報案指投訴人偷走住所內的傢俬，該批傢俬是用總經理代公司轉交投訴人的兩萬元現金購買的。

### Background

The Complainant, an expatriate, had been hired to work in Hong Kong for a trading company ("the Company"), but was subsequently dismissed by the Company and required to move out of the apartment provided by the Company by a deadline. After the Complainant had moved out, the General Manager of the Company made a report to the Police, claiming that the Complainant had stolen the furniture in the apartment, which was purchased by Complainant with HK\$20,000 in cash given by the General Manager on behalf of the Company.



負責調查這宗懷疑「盜竊案」的一名總督察(被投訴人一)，指示其下屬用不同方法尋找投訴人但無結果，於是決定將投訴人列入通緝及出入境監察名單。

及後，投訴人在機場離港時被拘捕。在警誡下，投訴人聲稱該批傢俬是用公司的行政總裁給予他的現金購買的，認為這是公司從外地聘請他時贈送給他的。雙方並無任何書面或口頭協議，說明當投訴人離職後如何處置該批傢俬。投訴人亦透露曾經和公司發生糾紛，勞資審裁處裁定公司要向投訴人賠償逾12萬元。警方於是再找公司的人士調查，最終因公司未能提供有關傢俬擁有權的證據而終止刑事調查。

投訴人後來投訴警方在沒有足夠證據下便拘捕投訴人，由於該總督察決定將投訴人列入通緝及出入境監察名單，所以投訴警察課將他列為被投訴人一【指控一：疏忽職守】。另外，投訴人亦指在調查期間，一名刑事偵緝高級警員(被投訴人二)對他有偏見，多次致電他不要聯絡報案的總經理【指控二：行為不當】。

### 投訴警察課的調查

有關指控一，在投訴調查期間，總督察表示投訴人涉嫌偷去價值兩萬元的傢俬，是嚴重的罪行，當時並無其他證據反駁總經理的說法，因此認為有表面證據懷疑投訴人犯案。此外，警方曾嘗試電話聯絡投訴人但找不到他，當時亦無其他方法可以找到投訴人，而投訴人身為外籍人士，他很有可能離開香港。如果任由他離港而不用接受調查是不公義的。投訴警察課認為當時總督察的做法是別無他選，及後拘捕投訴人是必須和合理的，因此將有關他的「疏忽職守」指控分類為「並無過錯」。

至於指控二，投訴警察課的調查指，根據該名刑事偵緝高級警員撰寫的調查紀錄，他只致電過投訴人一次，原因是總經理指投訴人曾經致電他們共同相識的朋友聲稱總經理報假案，所以他建議投訴人不要和涉事的任何人討論事件，因為案件仍在刑事調查中。投訴警察課認為，投訴人向他人宣稱總經理報假案可能會影響調查及間接騷擾總經理，因此認為該名高級警員的做法恰當，並將有關他的「行為不當」指控分類為「並無過錯」。

The Chief Inspector (CIP/ Complainee 1) who was in charge of investigating this suspected "Theft" case, instructed his subordinate to locate the Complainant by various means, but in vain. The CIP therefore decided to put the Complainant on the Wanted and Watch List.

Afterwards, the Complainant was arrested at the airport when he was departing from Hong Kong. Under caution, the Complainant stated that he had purchased the furniture with the cash given by the Chief Executive of the Company, and he regarded the furniture as a gift for hiring him from abroad. Both parties did not make any written or verbal agreement about the disposal of the furniture upon his dismissal. The Complainant also revealed that he and the Company had a dispute, which was settled after the Company compensated over HK\$120,000 to the Complainant, following a verdict by the Labour Tribunal. The Police then contacted the Company for further investigation, but the criminal investigation was curtailed as the Company could not provide the evidence related to the ownership of the furniture.

The Complainant then lodged a complaint against the Police for arresting him without sufficient evidence. Since the CIP made the decision to put the Complainant on the Wanted and Watch List, CAPO identified him as the Complainee 1 [Allegation 1: Neglect of Duty]. In addition, Complainant alleged that during the investigation, a Detective Senior Police Constable (DSPC/ Complainee 2) showed bias against the Complainant, by calling him many times to ask him not to contact the General Manager [Allegation 2: Misconduct].

### CAPO's investigation

Regarding allegation 1, during CAPO's investigation, the CIP stated that the Complainant was suspected of stealing furniture worth HK\$20,000, which was a serious offence. There was no other evidence to rebut the General Manager's version. The CIP opined that there was a prima facie case against the Complainant, who committed a crime. Furthermore, the Police had attempted to call the Complainant, but in vain, and there was no other means available to reach him. Considering that the Complainant was a foreigner who would likely leave Hong Kong, it would be an injustice if the Complainant was allowed to do so without being subjected to any investigation. The CIP's decision was a last resort at that moment, and the subsequent arrest was necessary and justified. Therefore, the allegation of "Neglect of Duty" was classified as "No Fault".

As for allegation 2, CAPO's investigation indicated that according to the DSPC's investigation record, he only called the Complainant once, as he was informed by the General Manager that the Complainant had called a friend they had in common, alleging the General Manager had made a false report to the Police. The DSPC just advised the Complainant not to discuss the case with other parties involved, as the case was under investigation. CAPO opined that the Complainant's allegation against the General Manager for making a false report might affect the investigation, and indirectly created a nuisance to the General Manager. Therefore, CAPO regarded DSPC's action as appropriate, and classified the allegation of "Misconduct" against him as "No Fault".

### 監警會的觀察

然而，監警會並不同意上述兩項指控的調查結果分類，並先後向投訴警察課提出兩輪質詢及召開工作層面會議討論個案。

有關指控一，監警會認為將嫌疑人士列入通緝及出入境監察名單是會嚴重影響其人身自由，這決定應該要有很強的理據支持，不可倉促決定。對於這宗報稱「盜竊」案是否有表面證據支持，監警會亦有保留，因為總經理由始至終未能提供其報稱失竊的各項傢俬詳情，以及有關會計或文書紀錄，以證明其公司擁有該批傢俬，而給投訴人買傢俬的現金並不是贈送給他的。監警會認為，更好的做法是先向行政總裁核實是在甚麼情況下給投訴人現金買傢俬，及釐清傢俬的擁有權，才決定應否將投訴人列入通緝及出入境監察名單，因此建議將有關總督察的「疏忽職守」指控，由「並無過錯」重新分類為「獲證明屬實」。投訴警察課接納監警會的觀點，並對該名總督察作出訓諭但無須將事件記入其分區報告檔案中。

有關指控二，監警會認為刑事偵緝高級警員自行撰寫的調查紀錄，不能作為獨立證據證明他只曾致電投訴人一次，因此建議將「行為不當」的指控由「並無過錯」重新分類為「無法證實」。投訴警察課最終接納建議。

### IPCC's observation

However, the IPCC did not agree with the classification of investigations results regarding the two allegations mentioned above. Two rounds of Queries were raised to CAPO, and a working level meeting was held to discuss the case.

Regarding allegation 1, the IPCC opined that putting a suspect on the Wanted and Watch List was a serious infringement of one's liberty, which should be supported by strong justification, and the decision should not be made hastily. The IPCC also had reservations as to whether there was a prima facie case of Theft, as the General Manager was unable to give details about the alleged stolen furniture and provide any accounting or written records to prove that the Company owned the furniture. The IPCC was of the view that it would be better to conduct further enquiries with the Company's Chief Executive, in order to verify under what situation the cash was given to the Complainant for purchasing the furniture, and to clarify its ownership before putting the Complainant on the Wanted and Watch List. Therefore, the IPCC recommended reclassifying the allegation of "Neglect of Duty" against the CIP from "No Fault" to "Substantiated", which was accepted by CAPO. An advice without Division Record File (DRF) entry should be issued to the CIP.

As for allegation 2, the IPCC was of the view that the DSPC's written record could not be regarded as independent evidence to prove that he only called the Complainant once. Therefore, the IPCC recommended reclassifying the allegation of "Misconduct" against the DSPC from "No Fault" to "Unsubstantiated". CAPO accepted the recommendation.

## 個案二：一名督察不恰當地以「簽保守行為」處理傷人案

### Case 2: An Inspector dealt inappropriately with a wounding case by advocating "Binding Over"



一名的士司機被醉漢毆打，卻被警方要求「簽保守行為」。  
(照片來源: 星島日報)

A taxi driver was assaulted by drunkard, but was requested by the Police to be "Bound Over".  
(Photo Credit: Sing Tao Daily)

### 背景

在此個案中，一群醉漢在一間酒店外無故拍打投訴人的的士。投訴人(的士司機)及其友人在附近的餐廳用膳，見狀立刻出來制止這群醉漢，雙方繼而打架。警方接報到場，以「在公眾地方打鬥」罪拘捕投訴人、他的朋友，以及其中一名醉漢，其餘人士則已逃離現場。三名被捕人士在警誡下均表示是另一方先動手，自己只是自衛。驗傷報告顯示投訴人和他的朋友頭部多處受傷需要縫針；而該名醉漢則只是擦傷面部和手臂。

案件其後交由一名警員(被投訴人一)及女督察(被投訴人二)負責調查。女督察將案件分類為「在公眾地方打鬥」，並指示其下屬，即該名警員，詢問被捕三人是否同意以「簽保守行為」了結事件。投訴人的朋友和醉漢同意此建議，但投訴人拒絕，認為自己在事件中是被對方毆打。於是向投訴警察課投訴警員及女督察未有妥善調查案件，並要求他簽保守行為【指控：疏忽職守】。女督察其後就應否起訴三人向律政司尋求法律意見。律政司考慮三人的傷勢後，建議控告醉漢兩項傷人罪，並將投訴人及其朋友轉為控方證人。經審訊後，醉漢被判罪成及接受感化令。

### 投訴警察課的調查

投訴人指警員曾要他承認犯事及簽保守行為，否則將會被起訴，但警員否認曾經這樣說。投訴警察課認為由於沒有獨立證據證明任何一方的說法，加上警員在調查期間，有全面審視證人口供、被捕三人的警誡供詞及閉路電視片段，並嘗試找尋其他在場人士協助調查。他只是依循女督察的指示詢問三人是否同意簽保守行為，因此投訴警察課將有關警員的「疏忽職守」指控分類為「無法證實」。

至於女督察對案件的定性，投訴警察課認為並非無理。理由是當時有證人看到三人均有參與打鬥，而且案件性質輕微。再者，案中證人拒絕協助認人，閉路電視片段畫質又欠佳，故無獨立證據支持任何一方的供詞。根據《警務手冊》，若案件性質輕微且涉事雙方均有過錯，亦無獨立證據支持任何一方的

### Background

In this complaint case, a group of drunken persons hit the Complainant's taxi outside a hotel for no reason. The Complainant (a taxi driver) and his friend were having a meal at the restaurant near the hotel. Seeing the incident, they went out from the restaurant to stop the drunkards, and a fight between them ensued. After police arrived, the Complainant, his friend and one of the drunken persons were arrested for "Fighting in Public Place", while the other drunken men fled the scene. Under caution, each of the three arrested persons stated that it was the other party who initiated the fight, and they merely acted in self-defence. Medical findings showed that the Complainant and his friend sustained wounds on their heads that required multiple stitches, whereas the drunkard only suffered from abrasions on his face and arms.

The case was referred to a Police Constable (PC/ Complainee 1) and a Woman Inspector of Police (WIP/ Complainee 2) for investigation. The WIP classified the case as "Fighting in Public Place" and instructed her subordinate (the PC) to ask the arrested parties if they would agree to be "Bound Over" in order to conclude the case. Both the Complainant's friend and the drunkard agreed with the suggestion, but the Complainant refused. He claimed that he had been assaulted by the opposite party, and lodged a complaint to CAPO, alleging that the PC and the WIP had failed to investigate the case properly, by asking him to consider for "Binding Over" [Allegation: Neglect of Duty]. The WIP then sought advice from the Department of Justice (DOJ) regarding possible charges against the trio. Considering the injuries of the different parties, the DOJ advised charging the drunkard with two counts of "Wounding", and turning the Complainant and his friend into prosecution witnesses. The drunkard was convicted after trial, and sentenced to a probation order.

### CAPO's investigation

The Complainant stated that the PC had asked him to admit the offence and accept the "Binding Over" arrangement or otherwise he would be charged, but the PC denied saying this. CAPO considered that there was no independent evidence supporting either party's version, and the PC had conducted the investigation in a proper way by carefully examining the witness statements, cautioned statements of the arrested parties, and CCTV footage; and through striving to locate other involved persons to assist in the investigation. He only acted on the WIP's instruction to seek the arrested parties' views regarding "Bind Over". Therefore, CAPO classified the "Neglect of Duty" allegation against the PC as "Unsubstantiated".

CAPO considered the judgement of the WIP regarding the case was not unreasonable, because witness had seen the arrested parties fighting, and the case had stemmed from a minor dispute. Furthermore, the witness refused to attend the identity parade, and the CCTV footage was of low resolution – hence there was no independent evidence supporting either party's version. According to the Police Manual, "Applications to bind a person over may be made in minor cases where it is obvious that both parties are at



說法，便可以「簽保守行為」處理事件。因此投訴警察課亦將有關女督察的「疏忽職守」指控分類為「無法證實」。

### 監警會的觀察

監警會同意投訴警察課就有關警員的調查結果分類，但並不同意就女督察的調查結果分類，並與投訴警察課召開工作層面會議作進一步討論。

監警會認為，證據顯示投訴人及其朋友的傷勢遠比醉漢的嚴重，而且女督察忽略了其中一名在附近工作的證人目睹部分事發經過的口供，稱二人曾被醉漢打至倒地，投訴人和他的朋友在案件中有機會是受害者。監警會認為有一定可靠的證據顯示，女督察未有充分評估所有證據，便不恰當地建議涉事雙方均以「簽保守行為」來處理事件，加上律政司最終建議起訴該名醉漢，法庭又將其定罪，因此監警會建議對女督察的「疏忽職守」指控，由「無法證實」重新分類為「無法完全證明屬實」。

投訴警察課接納監警會的建議，並對女督察作出訓誡而無須將事件記入其分區報告檔案中。

fault with no other evidence to support either party in their counter-allegations.” Therefore, CAPO classified the “Neglect of Duty” allegation against the WIP as “Unsubstantiated”.

### IPCC's observation

The IPCC subscribed to CAPO's classification of the result of the investigation concerning the allegation against the PC, but disagreed with the result concerning the WIP. A working level meeting was held between the IPCC and CAPO, to further discuss the case.

The IPCC took into consideration the injuries of the Complainant and his friend, which were far more serious than the injuries of the drunkard. The WIP overlooked the witness statement from a man who worked nearby and witnessed part of the incident. The witness claimed that two persons fell down on the floor after being assaulted by the drunkard. It could be the case that the Complainant and his friend were victims in this incident. The IPCC was of the view that there was some compelling evidence that the WIP did not fully examine all the available evidence before suggesting that both parties should be “Bound Over” in order to conclude the case. Moreover, DOJ recommended charging the drunkard, who was convicted by the Court after trial. Therefore, the IPCC recommended reclassifying the “Neglect of Duty” allegation against the WIP from “Unsubstantiated” to “Not Fully Substantiated”.

CAPO finally subscribed to the IPCC's view, and the WIP was given an advice without Divisional Record File (DRF) entry.

## 其他和刑事調查相關的投訴

### Other complaints related to criminal investigation

有關刑事調查衍生的投訴，不少個案是關於投訴人指控警務人員施以「毆打」、「誘導」、「恐嚇」等不當手段以取得投訴人的招認，或指控有關警務人員捏造證據，或指警方所記錄的供詞不確、調查不足或偏頗。

以2017年上半年為例，監警會合共通過776宗投訴個案(不包括覆檢個案)，其中213宗個案，即約四分之一，屬於上述類型的投訴(見下表)。部分投訴人是在警方進行刑事個案調查期間作出投訴，另一部分則是在案件進入司法程序後才作出投訴。

Many of the complaints arising from criminal investigation involve allegations against police officers regarding use of improper means, including “Assault”, “Inducement” and “Threat”, to obtain admissions from the Complainants, or fabrication of evidence, record of inaccurate statements or conduct of investigations that were neither thorough nor impartial.

During the first half of 2017, the IPCC endorsed a total of 776 complaint cases (reviewed cases excluded), of which 213, or about one-fourth, belongs to the above categories (see the table below). Some of the complaints were made when the Police was conducting criminal investigation, while others were filed after the commencement of legal proceedings.

# 封面故事

## Cover story

	經全面調查的個案 Fully investigated cases			無須進行全面調查的個案 Cases not subject to full investigation	總數 Total
	虛假不確 False	並無過錯 No Fault	無法證實 Unsubstantiated	無法追查/投訴撤回 Not Pursuable/ Withdrawn	
毆打 Assault	4	0	1	12	17
誘導/恐嚇 Inducement/ Threat	11	1	2	36	50
捏造證據 Fabrication of Evidence	5	0	1	0	6
警誠供詞不確 Accuracy of Statement	0	0	1	5	6
調查不足/偏頗 Thoroughness/ Impartiality of Investigation	0	18	3	113	134
<b>總數 Total</b>	<b>20</b>	<b>19</b>	<b>8</b>	<b>166</b>	<b>213</b>

在這213宗投訴個案中，有47宗需經投訴警察課全面調查並由監警會審核，基於法庭就案件的裁斷及/或調查時所得的證據，當中有39宗被分類為「虛假不確」或「並無過錯」，八宗為「無法證實」。監警會發現，部分個案的投訴人最初在法庭上否認控罪，並質疑其警誠供詞內的招認並非出於自願，但當法庭裁定接納其供詞作呈堂證供後，投訴人遂改為認罪。投訴人在審訊後亦沒有向投訴警察課跟進有關投訴事項。因此，監警會認為上述「虛假不確」及「並無過錯」的個案或屬策略性投訴，即投訴人當初很可能是基於抗辯需要才投訴有關警務人員。

至於其餘166宗個案，因應投訴人後來的要求而列為「投訴撤回」，或因投訴人一直拒絕回覆投訴警察課的跟進，令個案變成「無法追查」。在這兩種情況下，投訴個案無須進行全面調查。然而，監警會亦發現當中近三成的個案(48宗)，投訴人最終承認有關控罪，或經審訊後被裁定罪名成立，或以自簽保守行為的方式結案，這某程度上顯示投訴人當初作出的指控未必真確。而剩下約七成的個案(118宗)，則因不同情況而無法判斷投訴的真確性，例如該刑事案件最終未有上庭審訊。

無論情況如何，監警會在處理這類投訴個案時，定當貫徹公平、公正及以證據為依歸的審核原則，確保結果不偏不倚。與此同時，監警會希望市民明白，投訴機制是開明社會的一大基石，投訴人在行使公民權利的同時，也有責任確保所提供的資料真確，令處理投訴的公共資源用得其所。

Among these 213 complaint cases, 47 were fully investigated by CAPO and reviewed by the IPCC. Based on court results and/ or evidence obtained from investigation, 39 of them were classified as “False” or “No Fault” and eight as “Unsubstantiated”. The IPCC found that some of the Complainants had initially pleaded not guilty at court and challenged the admissibility and voluntariness of the cautioned statements, but after the statements were ruled admissible by court, the Complainants pleaded guilty instead. After the trials, they also did not follow up on the matter concerned with CAPO. Therefore, the IPCC was of the view that the above “False” and “No Fault” cases might be tactical complaints where the Complainants initially used their complaints against police officers only as a line of defense.

The remaining 166 cases were later classified as “Withdrawn” as requested by the Complainants or as “Not Pursuable” due to the Complainants’ refusal to respond to the follow-up actions by CAPO. Under these two situations, the complaints did not require full investigation. However, the IPCC discovered that in about 30% of the cases (48 cases), the Complainants were convicted upon guilty pleas; convicted after trials or ordered to be “Bound Over” after admitting to the facts of the cases. That shows to a certain extent that the allegations made by the Complainants might not be genuine in nature. The validity of about 70% (118 cases) could not be decided for various reasons, one of them being the criminal cases not brought to court for trial eventually.

In any case, the IPCC must handle a complaint fairly and impartially based on evidence to ensure an unbiased result. Meanwhile, the IPCC hopes that members of the public understand that a complaint mechanism is one of the cornerstones for a liberal society. Therefore, a Complainant should make sure that all information provided is accurate when executing his/her civil rights, so that our public resources for complaint handling could be effectively deployed.