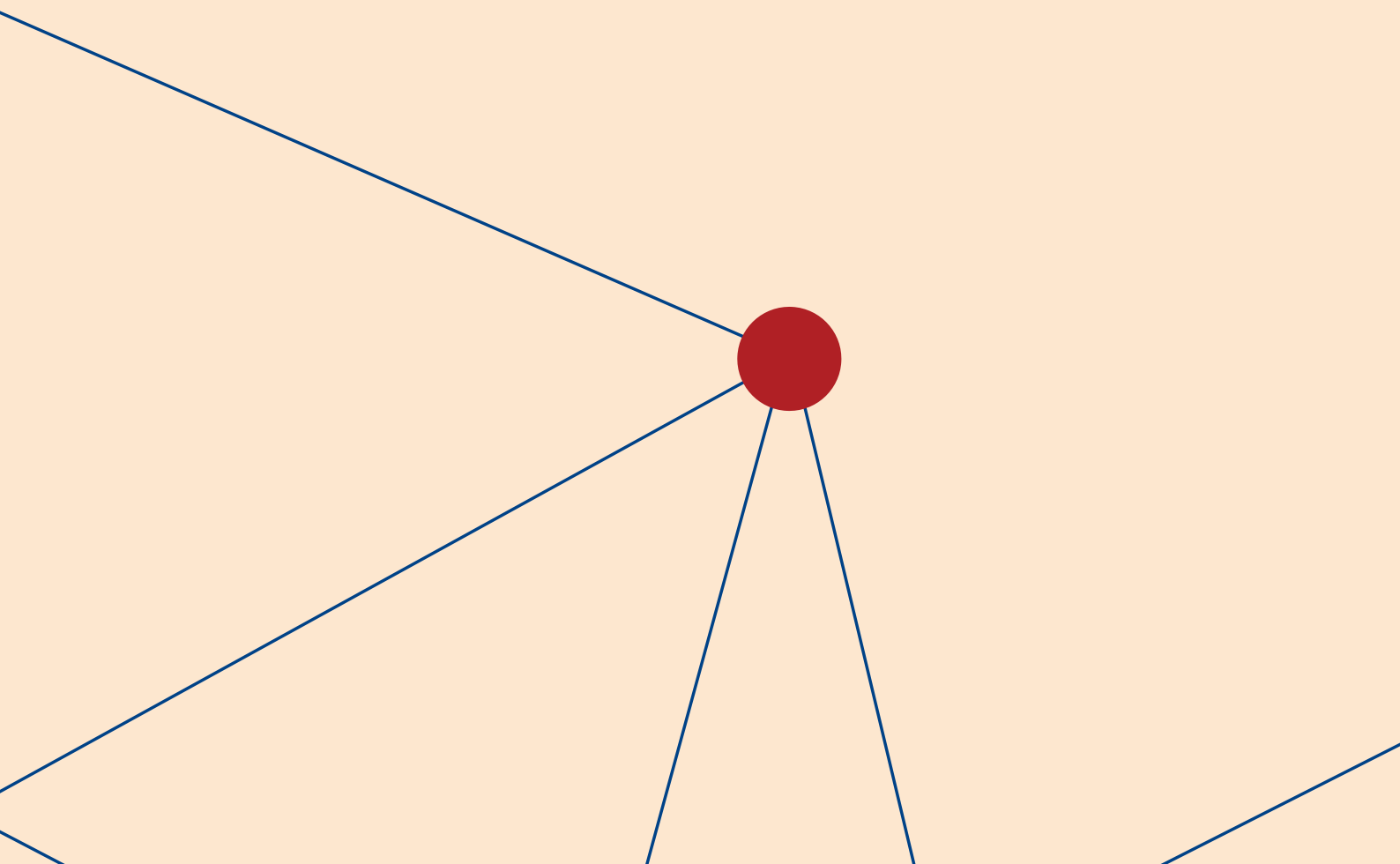


## 第 3 章 CHAPTER 3

# 真實投訴個案 Complaint cases



個案一  
Case 1



指控 Allegation(s)	被投訴人 Complainee(s)	投訴警察課的原本分類 Original Classification(s) by CAPO	最終分類 Final Classification(s)
1 疏忽職守 Neglect of Duty	女偵緝督察 Woman Detective Inspector (WDIP)	並無過錯 No Fault	獲證明屬實 Substantiated
2 疏忽職守 Neglect of Duty		並無過錯 No Fault	無法證實 Unsubstantiated
3 疏忽職守 Neglect of Duty		無法證實 Unsubstantiated	無法證實 Unsubstantiated
4 疏忽職守 Neglect of Duty		並無過錯 No Fault	獲證明屬實 Substantiated
5 疏忽職守 Neglect of Duty	偵緝警員 Detective Police Constable (DPC)	並無過錯 No Fault	並無過錯 No Fault

此個案反映監警會仔細審視一宗有關警方處理的傷人案件。當中一名女偵緝督察因未有及早就案中受害人的傷勢進行證據搜集，便決定以較輕的控罪起訴施襲者，而事後又拒絕向受害人提供資訊，協助她辦理民事訴訟，被受害人投訴四項「疏忽職守」的指控。其中兩項指控經過監警會的審核後，由投訴警察課最初建議的「並無過錯」改為「獲證明屬實」。

This case highlights the meticulous approach adopted by the IPCC in scrutinising a complaint case in relation to the Police's handling of a wounding case. When handling wounding case, a Woman Detective Inspector (WDIP) had not taken reasonable steps as soon as possible to ascertain the seriousness of the victim's injury before laying a lenient charge against the offender. Subsequently, the WDIP refused to provide necessary information for the victim to proceed with the civil claim. There were four allegations of "Neglect of Duty" made against the WDIP by the victim. After the IPCC's vetting, two of those allegations were re-classified from "No Fault", as suggested by CAPO initially, to "Substantiated".

### 個案背景

一名投訴人(女受害人)在一宗傷人案中遇襲受傷，案中的被告(男襲擊者)後來被控《侵害人身罪條例》第19條「傷人或對他人身體加以嚴重傷害」(簡稱「傷人十九」)，他認罪並被判罪成。根據法官指示，處理這宗案件的女偵緝督察(被投訴人一)致電女受害人，跟進其健康狀況及所承受的損失，以供法庭考慮對被告的判刑。

### Case background

A Complainant (a female victim) had been hit and injured in a wounding case. The defendant (a male offender) was later charged with "Wounding or Inflicting Grievous Bodily Harm", contrary to Section 19 of Offences Against The Person Ordinance ("Wounding 19"). The defendant pleaded guilty and was convicted. Upon the court's instruction, the WDIP who had been handling the case called the Complainant to obtain an update on her health condition and the losses she suffered for the court's consideration of the defendant's sentence.

投訴人得知判刑結果後，向女偵緝督察（被投訴人一）索取資料以向被告提出民事索償。由於投訴人不滿女偵緝督察的處理方式，她提出四項「疏忽職守」的指控，包括女偵緝督察沒有考慮到女事主傷勢的嚴重程度，不恰當地起訴被告較輕的控罪，而不是較嚴重的《侵害人身罪條例》第17條「意圖造成身體嚴重傷害而傷人」（簡稱「傷人十七」）【指控一：疏忽職守】；未有告知檢控官有關投訴人在電話中向女偵緝督察所講述的所有傷勢的檢驗結果【指控二：疏忽職守】；未有告知檢控官有關投訴人在電話中要求法庭向被告發出賠償令【指控三：疏忽職守】，以及未有應投訴人要求，提供案情摘要的文件，以便她作出民事訴訟【指控四：疏忽職守】。

與此同時，投訴人亦指控另一名處理案件的偵緝警員（被投訴人二）未有向女偵緝督察報告其傷勢的嚴重程度【指控五：疏忽職守】。

## 投訴警察課的調查

### 【指控一：疏忽職守】

投訴警察課最初的調查報告指，裁判官在審理此案時並無就控罪本身提出質疑，加上被告認罪，因此女偵緝督察向被告控以「傷人十九」罪，是「並無過錯」。

### 【指控二：疏忽職守】

投訴警察課的調查發現，女偵緝督察已按法庭指令向投訴人了解其最新的健康狀況，並以書面及電話通知檢控官，因此認為女偵緝督察已向檢控官全面披露投訴人的傷勢，將此指控列為「並無過錯」。

### 【指控三：疏忽職守】

女偵緝督察否認女事主曾在電話中表示，要求法庭向被告發出賠償令。基於沒有獨立證據證明雙方的說法，因此該課將這項指控分類為「無法證實」。監警會經審核後同意此分類。

Knowing the sentence, the Complainant requested the WDIP (Complainee 1) to provide information for her filing for a civil suit against the defendant. Dissatisfied with the WDIP's handling approach, the Complainant lodged a complaint with four allegations of "Neglect of Duty" against the WDIP, including: laid an inappropriate lenient charge of "Wounding 19" against the defendant but not the more serious charge of "Wounding or Striking with Intent to Do Grievous Bodily Harm", contrary to Section 17 of Offences Against The Person Ordinance ("Wounding 17") without considering the seriousness of the victim's injury, [Allegation 1: Neglect of Duty]; failed to inform the prosecutor of the full medical findings conveyed by the Complainant to the WDIP on the phone [Allegation 2: Neglect of Duty]; failed to notify the prosecutor that the Complainant had requested a compensation order by court over the phone [Allegation 3: Neglect of Duty]; and failed to provide the Complainant with the Brief Facts of the case to facilitate her civil action against the defendant [Allegation 4: Neglect of Duty].

Meanwhile, the Complainant also complained another Detective Police Constable (DPC/ Complainee 2) who had handled this case and failed to report the seriousness of her injury to the WDIP [Allegation 5: Neglect of Duty].

## CAPO's investigation

### 【Allegation 1: Neglect of Duty】

According to CAPO's original investigation report, the Magistrate had no doubt about the charge to which the defendant pleaded guilty. Therefore, the WDIP had "No Fault" in laying the charge of "Wounding 19" against the defendant.

### 【Allegation 2: Neglect of Duty】

CAPO's investigation found that the WDIP had inquired the Complainant about her latest health condition as directed by the court and reported to the prosecutor the same by memo and over the phone. Therefore, CAPO classified this allegation as "No Fault" because the WDIP had fully disclosed the injury of the Complainant to the prosecutor.

### 【Allegation 3: Neglect of Duty】

The WDIP denied that the Complainant had told her to request the court for compensation order. As there was no independent evidence of what was said by both parties, CAPO classified this allegation as "Unsubstantiated". The IPCC agreed with this classification after vetting.

**【指控四：疏忽職守】**

女偵緝督察向投訴警察課解釋，她拒絕向投訴人提供案情摘要，是因為投訴人從來沒有表明要就案件提出民事訴訟，同時是為了符合《個人資料(私隱)條例》的要求(案情摘要包含了被告的個人資料)。投訴警察課認為女偵緝督察的做法「並無過錯」。

**【指控五：疏忽職守】**

投訴警察課的調查顯示，偵緝警員有向公立醫院索取投訴人的初步驗傷結果，及後他從投訴人得知其私家醫院的詳細醫療結果後，亦有如實向其上級女偵緝督察報告最新資料。由於他已盡本份向上級匯報調查所得資料，所以投訴警察課認為偵緝警員「並無過錯」。監警會經審核後同意此分類。

**旁支事項**

此外，投訴警察課在調查過程中，發現女偵緝督察未有按《個人資料(私隱)條例》的要求，在限期內以書面回覆投訴人的書面查詢，而向她多加一項旁支事項，並向她作出訓諭但無須記入其分區報告檔案中。

**監警會的觀察**

監警會在審核投訴警察課的調查報告及所有證據後，不同意該課就部分指控(即指控一、二及四)的調查結果分類，雙方召開工作層面會議討論個案。

**【指控一：疏忽職守】**

監警會留意到女偵緝督察向投訴警察課供稱，沒有證據顯示被告的襲擊是早有預謀，因此向被告起訴「傷人十九」罪，而不是較嚴重的「傷人十七」罪。然而，監警會認為女偵緝督察誤解了這兩項控罪的分別。兩項控罪的主要分別不只限於疑犯是否早有預謀去傷人，而是疑犯有沒有意圖使他人傷殘，因此傷勢是考慮控罪的關鍵。加上案情指出，投訴人與被告在地鐵車廂爭執後，已步

**[Allegation 4: Neglect of Duty]**

The WDIP explained to CAPO that she refused to provide the Complainant with the Brief Facts of the case because the Complainant did not clearly state her intention to proceed with a civil claim and the refusal was to fulfill the obligations of the Personal Data (Privacy) Ordinance (PDPO) (Brief Facts would include the defendant's personal data). CAPO considered that the WDIP had "No Fault" in refusing the request.

**[Allegation 5: Neglect of Duty]**

CAPO's investigation shows that the DPC had obtained the victim's preliminary medical report from a public hospital, and once he was notified of the victim's detailed medical findings by a private hospital, the DPC reported the same to the WDIP. CAPO was of the view that the DPC did perform his duty to submit all the information collected to his supervisor and thus had "No Fault" in this allegation. The IPCC agreed with this classification after vetting.

**Outwith Matter**

In addition, during CAPO's investigation, it was found that the WDIP did not comply with the provision of the Personal Data (Privacy) Ordinance to reply to the Complainant's written request in writing within the time limit. An Outwith matter was registered against the WDIP who should be advised without Divisional Record File (DRF) entry.

**IPCC's observation**

After scrutinising CAPO's investigation report and all the available evidence, the IPCC disagreed with CAPO's classification of investigation results concerning some of the allegations (i.e. Allegations 1, 2 and 4). A working level meeting was held between the two parties to discuss the case.

**[Allegation 1: Neglect of Duty]**

According to CAPO's statement, the WDIP considered that there was no evidence showing that the defendant had planned to wound the Complainant. As such, she classified the case as "Wounding 19" but not the more serious charge of "Wounding 17". The IPCC opined that the WDIP had misunderstood the difference between these two offences. The main difference between the two offences is not just whether the suspect had premeditated to wound the victim, but whether the suspect had the intent "to maim" the victim. Therefore, the seriousness of the injury is the crux when considering what charge to be laid. Furthermore, the facts of the case show that after disputing

行一段距離才遇襲，令人相信投訴人離開地鐵車廂後，被告一直尾隨著她，然後等待機會兩度用玻璃樽從後襲擊她的頭部。基於投訴人的傷勢和案情，監警會認為「傷人十九」的控罪不足以反映案情的嚴重性。

女偵緝督察承認在落案起訴前，已從偵緝警員得知投訴人在公立醫院求診後，再到私家醫院求診（投訴人表示她在私家醫院留院四日、傷口縫針13針、右手斷腱）。女偵緝督察解釋由於當時投訴人沒有提供私家醫院的病歷，亦無授權她去領取相關紀錄，因此她只按著手上公立醫院初步驗傷報告來撰寫案情摘要，但當中並沒有提及縫針或斷腱的情況。

監警會認為女偵緝督察的做法不合理、不恰當，她應該主動地取得投訴人的同意，索取其私家醫院的詳細醫療結果，確定投訴人的傷勢，才決定合適的控罪。監警會建議將這項指控由「並無過錯」改為「獲證明屬實」，獲投訴警察課接納。

#### **【指控二：疏忽職守】**

資料顯示女偵緝督察有因應法庭的要求向檢控官報告投訴人的健康情況。然而，女偵緝督察向檢控官報告投訴人的傷口縫了11針，而非投訴人報稱在電話中所說的13針。由於沒有獨立證據證明女偵緝督察和投訴人的電話對話內容，因此監警會同意投訴警察課將這項指控由「並無過錯」改為「無法證實」。

#### **【指控四：疏忽職守】**

監警會翻查警方的內部指令，當中列明警務人員不應一律拒絕市民索取資料的要求。假如部分文件，例如案情摘要，有助受害人就索償或庭外和解等進行初步評估，警務人員有責任向受害人提供必要的資料（當中包括被告人士的個人資料）。在這情況下向第三方披露個人資料，可獲《個人資料（私隱）條例》豁免法律責任。

with the defendant in the MTR compartment, the Complainant had walked for some distance before she was attacked. It was believed that once she left the MTR, she was followed by the defendant looking for a chance to hit her head twice with a glass bottle from behind. Based on the victim's serious injury and the facts of the case, the IPCC was of the view that "Wounding 19" was not a charge that adequately reflected the seriousness of the case.

The WDIP admitted that before laying the charge, she was informed by the DPC that the Complainant sought medical consultation at a private hospital after consulting at a public hospital (the Complainant said that she had been admitted to the private hospital for four days and received 13 stitches on the wound and suffered from a broken tendon in her right hand). The WDIP explained that she wrote the brief facts of the case (without mentioning the stitches or the broken tendon) only based on the medical findings from the public hospital because she did not have the findings from the private hospital and was not given the consent to obtain them.

The IPCC opined that the WDIP's way of handling was unreasonable and inappropriate. She should have taken reasonable steps to ask the Complainant for her consent to obtain the medical findings from the private hospital in order to ascertain the injury and decide the appropriate charge. The IPCC suggested to reclassify this allegation from "No Fault" to "Substantiated", which was accepted by CAPO.

#### **【Allegation 2: Neglect of Duty】**

Available evidence shows that the WDIP provided the information regarding the Complainant's health condition, including 11 stitches on the wound, to the prosecutor as instructed by the court. However, the Complainant claimed that it was 13 stitches as conveyed to the WDIP on the phone. Since there was no independent evidence of their phone conversation, the IPCC agreed with CAPO's reclassification of this allegation from "No Fault" to "Unsubstantiated".

#### **【Allegation 4: Neglect of Duty】**

According to the Police's internal directives, the Police should not issue blanket refusal to all requests for information from the members of the public. If some documents, such as Brief Facts of the case, may help the prospective plaintiff assess the merits of their claims or to explore pre-action settlement at the pre-wit stage, the Police are obliged to provide the victim with necessary information (including the defendant's personal data). In this circumstance, the PDPO does not inhibit such disclosure of the third party's personal data.

監警會認為投訴人明顯是受害人，考慮到被告經已被定罪，加上她蒙受健康及經濟損失，她有足夠理由向被告索償，並符合上述警方內部指令的條件索取被告的資料。女偵緝督察拒絕投訴人的要求，明顯沒有依照上述指令行事。監警會建議將這項指控，由「並無過錯」改為「獲證明屬實」，獲投訴警察課接納。

女偵緝督察最後需要接受警告並記入其分區報告檔案中。

The IPCC opined that the Complainant was obviously the victim in the incident. Considering the defendant's guilty plea, the Complainant's health condition and economic loss, the Complainant was justified and eligible to claim compensation from the defendant under the above-mentioned police's internal directive. Apparently, the WDIP did not follow the internal directive when declining the request. The IPCC suggested to reclassify this allegation from "No Fault" to "Substantiated", which was accepted by CAPO.

Finally, the WDIP should be warned with Divisional Record File (DRF) entry.

個案二  
Case 2



指控 Allegation(s)	被投訴人 Complainee(s)	投訴警察課的原本分類 Original Classification(s) by CAPO	最終分類 Final Classification(s)
1 疏忽職守 Neglect of Duty	警員 Police Constable (PC)	無法證實 Unsubstantiated	無法證實 Unsubstantiated
2 疏忽職守 Neglect of Duty	高級督察 Senior Inspector of Police (SIP)	並無過錯 No Fault	獲證明屬實 Substantiated

此個案反映監警會仔細審視一宗有關交通意外的投訴個案。一名高級督察因未有充分考慮所有證據，不恰當地控告投訴人「行人疏忽」。經監警會的審核後，其「疏忽職守」指控分類由「並無過錯」改為「獲證明屬實」。

This case demonstrates that the IPCC was meticulous in examining a complaint case that involved a traffic accident. A Senior Inspector of Police (SIP) failed to carefully consider all evidence before summoning the Complainant for "Pedestrian Negligence". Upon the IPCC's review, the "Neglect of Duty" allegation was reclassified from "No Fault" to "Substantiated".



## 個案背景

投訴人(一名女士)橫過行車路時被迎面而來的私家車撞倒，她手部多處擦傷、門牙被撞碎和感到頭暈，坐在路邊等待救護人員協助。一名警員(被投訴人)接報到場處理及調查事件。投訴人稱私家車當時並無按響號。

之後案件交由一名高級督察負責(被投訴人二)，並安排了投訴人及私家車司機錄取警誡供詞。投訴人在警誡下承認當時戴著耳機行過馬路，而司機則供稱私家車當時以每小時五至六公里行駛，在撞車前先按響號再剎車。基於上述因素，高級督察認為司機是一名負責任的駕駛者，因此票控投訴人「不小心過馬路」。投訴人於庭上否認控罪，審訊後，法官認為司機的說法存疑，因此裁定投訴人無罪。

投訴人隨後向投訴警察課投訴，指到達意外現場的警員未有準確記錄其口供【指控一：疏忽職守】；而負責調查意外的高級督察，則在未有充分考慮司機的口供及現場照片前，便決定票控她【指控二：疏忽職守】。

## 投訴警察課的調查

涉事的兩名警務人員接受投訴警察課的查問時均否認指控。關於指控一，該名警員重申他於案發現場已妥善地和投訴人錄取口供，並抄寫在筆記簿上。當時投訴人向他表示過路時正在聽音樂和趕時間。

及後，投訴人卻認為警員在案發現場未有準確記錄她的說法。投訴人表示當時向警員承認意外發生時戴著耳機，但沒有在聽音樂。由於投訴人和警員各執一詞，又沒有其他證據和獨立證人，因此投訴警察課將指控一分類為「無法證實」。

至於指控二，有關負責調查案件的高級督察是否有充分考慮所有證供才提出起

## Case background

When the Complainant (a woman) was crossing a carriageway, she was hit by a moving vehicle. Suffering from abrasion on her hand, a broken incisor and dizziness, the Complainant sat at the roadside waiting for the help of ambulance men. A Police Constable (PC/Complainee 1) responded to the scene for enquiry and investigation. The Complainant stated that the private vehicle's horn did not sound.

The case was subsequently taken over by an SIP (Complainee 2), and both the Complainant and the private vehicle driver had provided a cautioned statement. The Complainant admitted under caution that she was wearing a pair of earphones when crossing the carriageway. The driver stated that he was driving at about 5 to 6 km per hour, and that he had firstly sounded the horn and applied the brake right before the incident happened. In view of the above, the SIP considered the driver a responsible driver, and thus summonsed the Complainant for "Pedestrian Negligence". The Complainant pleaded not guilty. After the trial, the court decided that the driver's account of the event was doubtful and acquitted the Complainant accordingly.

The Complainant later lodged a complaint to CAPO, alleging that the PC at the scene failed to make an accurate record regarding what she had said [Allegation 1: Neglect of Duty]; the SIP in charge of the investigation failed to carefully consider the statement of the driver and the photos of the scene before summonsing the Complainant for the traffic offence [Allegation 2: Neglect of Duty].

## CAPO's investigation

When interviewed by CAPO, both police officers concerned denied the allegations. Regarding Allegation 1, the PC reiterated that he properly conducted enquiry with the Complainant at the scene, and jotted down what she said in his notebook. The Complainant told the PC that she was listening to music with earphones and in a rush at the material time.

Subsequently, the Complainant alleged that the PC had inaccurately recorded what she said at the scene. The Complainant insisted that she had only admitted wearing a pair of earphones but not listening to music when the accident occurred. CAPO considered that in the absence of any independent witness and corroborative evidence, the case was a one-against-one situation. Therefore, Allegation 1 should be classified as "Unsubstantiated".

As for Allegation 2, the only fact in dispute was whether the SIP in charge of the case had carefully considered all the available evidence

訴，高級督察表示他在作出票控之前，已考慮了司機所提供的口供、現場照片、車速及投訴人的警誡供詞等證據，而且投訴人在警誡下承認戴著耳機。因此，投訴警察課認為高級督察的決定是公平和合理的，故將指控二分類為「並無過錯」。

### 監警會的觀察

關於指控一，監警會同意投訴警察課的調查結果分類，但並不同意指控二的分類。監警會認為意外發生在寬闊的馬路上，以投訴人的傷勢（包括手部擦傷以及門牙被撞碎）、私家車的擋風玻璃碎裂的情況來看，司機指車速為每小時五至六公里的說法並不可信。再者，私家車與投訴人相距僅四至五米，事發時應立即剎車而非先按響號。

基於高級督察在票控投訴人前未有考慮這些因素，監警會建議投訴警察課將指控二重新分類為「獲證明屬實」，最終獲投訴警察課接納。高級督察需接受警告和將事件記入其分區報告檔案中。

before summoning the Complainant. The SIP reiterated that he had considered the available evidence, including the statement of the driver, photos of the scene, driving speed and the Complainant's cautioned statement. He noted in particular the Complainant's admission of wearing a pair of earphones in the cautioned statement. CAPO considered that the decision made by the SIP was fair and reasonable. Therefore, Allegation 2 should be classified as "No Fault".

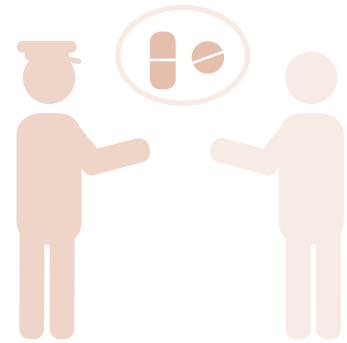
### The IPCC's observations

The IPCC agreed with CAPO's classification of Allegation 1 but not that of Allegation 2. Having considered that the carriage way in question was wide, the injury sustained by the Complainant (including abrasion on the hand and a broken incisor) and the way the private car's windshield was broken, the IPCC decided that the driver's account of driving at 5 to 6 km per hour was unreliable. Furthermore, as the private vehicle was only 4 to 5 meters away from the Complainant, the driver should have immediately stopped the car instead of sounding the horn first.

Since the SIP had not carefully considered the above factors before summoning the Complainant, the IPCC suggested CAPO to reclassify Allegation 2 to "Substantiated". CAPO finally subscribed to the IPCC's view and the SIP would be warned with Divisional Record File (DRF) entry.



## 個案三 Case 3



指控 Allegation(s)	被投訴人 Complainee(s)	投訴警察課的原本分類 Original Classification(s) by CAPO	最終分類 Final Classification(s)
1 恐嚇 Threat	警長；警員 Sergeant (SGT); Police Constable (PC)	並無過錯 No Fault	虛假不確 False
2 疏忽職守 Neglect of Duty	警員 Police Constable (PC)	並無過錯 No Fault	虛假不確 False
3 行為不當 Misconduct	督察 Inspector of Police (IP)	並無過錯 No Fault	虛假不確 False

此個案反映監警會仔細審視一宗典型的策略性投訴個案。投訴人在法庭上否認控罪並質疑警誡供詞的自願性及可接納性，並向警方投訴有關警務人員在執行職務時行為失當。但當法庭裁定接納他的警誡供詞為證供後，投訴人即時改為認罪。其後更一直拒絕回覆投訴警察課的跟進。監警會最終認為投訴人的指控全屬「虛假不確」，並希望藉此個案提醒公眾有關投訴的權利和責任。

### 個案背景

某日凌晨，警方在一公共屋邨展開反危險藥物行動，數名警務人員（包括本個案的四名被投訴人）持搜查令進入投訴人的單位，行動中搜獲一個懷疑載有危險藥物的膠袋。在警誡下，投訴人承認該些藥物屬其自用，他同日被捕並獲准保釋。

該些藥物經化驗後證實為氯胺酮，投訴人因而被控「管有危險藥物」。審訊期間，他否認控罪，並投訴警方恐嚇他，

This case highlights the meticulous approach adopted by the IPCC in scrutinising a typical tactical complaint. The Complainant initially pleaded not guilty at court and challenged the voluntariness and admissibility of his cautioned statements, and later raised complaint allegations against the police officers for misconduct when performing duties. However, right after the cautioned statements were ruled admissible, the Complainant pleaded guilty instead. Upon conclusion of his court case, he failed to respond to CAPO's investigation. The IPCC opines that all allegations should be classified as "False" and would like to take this opportunity to reiterate the rights and responsibilities for lodging complaints.

### Case background

One early morning, the Police mounted an anti-dangerous drug operation in a public housing estate. Several police officers (including the four Complainees in this case) entered the Complainant's residence with a search warrant, upon which a plastic bag containing suspected dangerous drug was found. Under caution, the Complainant admitted that the drug was for self-consumption. He was arrested on the same day and released on bail.

After chemical examination, the suspected drug was confirmed to be Ketamine. The Complainant was thus charged with "Possession of a Dangerous Drug". During the trial, he pleaded not guilty and made

在錄取警誡口供期間曾作出誘導。投訴警察課其後接手跟進，透過電話錄音系統聯絡投訴人，解釋個案已進入「有案尚在審理中」的程序，投訴人未有異議。

在及後的兩次提堂中，投訴人提出警誡供詞並非在其自願情況下作出，故不可接納為證供。他對警方提出三項指控：分別指一名警長（被投訴人一）舉起中指並恐嚇他，如不認罪便會一併拘捕其家人，而另一警員（被投訴人二）則威嚇他自行拿出危險藥物，否則後果會更嚴重【指控一：恐嚇】；一名警員（被投訴人三）未有在警察記事冊內記錄他否認控罪，亦無向他解釋其權利【指控二：疏忽職守】；及一名督察（被投訴人四）作出不恰當言論，誘導他承認控罪【指控三：行為不當】。

### 投訴警察課的調查

經檢視相關刑事個案資料後，投訴警察課發現投訴人分別於現場及警誡下的會面中承認「管有危險藥物」，而所作出的招認則分別記錄在有關警務人員的警察記事冊及警誡供詞中，並由投訴人簽署確認有關內容真實無誤。此外，投訴人亦在《發給被羈留人士或接受警方調查人士的通知書》中簽署確認已獲悉有關權利。

另一方面，投訴人曾經在庭上向警方提出三項指控，但在法庭裁定他的警誡供詞屬自願性質，並接納為證供後，投訴人立刻改為認罪並同意案情摘要的內容，最終投訴人被定罪及判往勞教中心。隨著審訊完結，投訴警察課再次開展調查工作，向投訴人發出掛號信件，惟一直未獲回覆。

鑑於上述情況，投訴警察課根據法庭裁決，把全部指控歸類為「並無過錯」。

a complaint allegation that the Police had threatened and induced him during cautioned statement taking. The complaint case was then referred to CAPO. CAPO contacted the Complainant via the Telephone Recording System (TRS) and explained that his case was being treated as “Sub-Judice”. He had no objection.

During the two subsequent court trials, the Complainant challenged the admissibility of his cautioned statements as they were not voluntarily made and raised three allegations against the Police. He alleged that a Sergeant (Complainee 1) pointed his middle finger towards him and threatened to arrest his whole family if he did not admit the offence, whereas a Police Constable (Complainee 2) threatened him to take out the dangerous drug by himself or else his situation would be really bad [Allegation 1: Threat]; another Police Constable (Complainee 3) failed to record his denial in the Police Notebook and explain to him his rights [Allegation 2: Neglect of Duty]; and an Inspector of Police (Complainee 4) induced him to admit the offence by making inappropriate verbal remarks [Allegation 3: Misconduct].

### CAPO's investigation

Having reviewed the relevant criminal case file, CAPO noted that the Complainant had admitted to “Possession of a Dangerous Drug” both at scene and during an interview under caution. His admission was recorded in the Police Notebook and the cautioned statements, where the Complainant had signed to confirm the content was true and accurate. He also signed on the “Notice to Persons in Police Custody or Involved in Police Enquiries” to confirm that the rights concerned had been explained to him.

On the other hand, the Complainant raised three allegations against the Police, but when the court ruled that his cautioned statements were voluntary and admissible, he soon pleaded guilty instead and agreed to the brief facts of the case. The Complainant was convicted and eventually sentenced to a detention centre. Upon conclusion of the court case, CAPO relaunched the investigation and tried to contact the Complainant by registered post but no response had been received.

In view of the above, CAPO classified all three allegations as “No Fault” in accordance with the court findings.

## 監警會的觀察

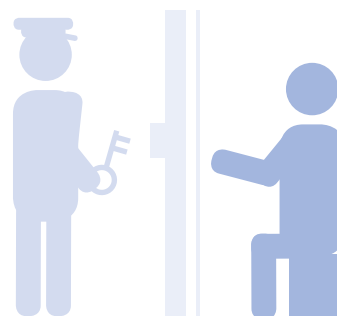
監警會認為這個案的投訴人是基於抗辯上的需要而作出策略性的投訴，企圖令案件產生疑點。當法庭裁定投訴人的警誠供詞是在自願的情況下提供，投訴人隨即轉為認罪，由此證明，投訴人的指控並非基於真確理據而提出，故應歸類為「虛假不確」。在此個案中，投訴人因濫用投訴程序而被嚴正警告。

當投訴被列為「虛假不確」，投訴警察課會視乎情況，在徵詢律政司的意見後，考慮控告投訴人誤導警務人員。監警會希望藉此個案提醒公眾，投訴人在行使投訴權利的同時，亦有責任提供真實可信的資料，確保各方得到公正無私的對待。

## IPCC's observations

The IPCC considered the case a tactical complaint exploited by the Complainant as a line of defence at court with a view to creating doubts. The allegations made by the Complainant have been proven untrue as he pleaded guilty right after the cautioned statements were ruled voluntary. As such, all allegations should be classified as "False". In this case, the Complainant was sternly warned for abusing the complaint procedures.

If an allegation is classified as "False", CAPO will consider, in consultation with the Department of Justice as necessary, prosecuting the Complainant for misleading police officer(s). By sharing the above case, the IPCC would like to remind the public that it is the responsibility of the complainant to provide authentic and credible information while exercising the right to complain to ensure that all parties involved receive fair and impartial treatment.



## 改善警隊常規和程序的建議

根據《監警會條例第8條》(1)(c)，監警會可就警隊常規或程序中引致或可能引致投訴的缺失或不足之處，向警務處處長和/或行政長官作出建議。以下是報告期內，警方因應監警會提出的建議而優化警務程序的例子。

## 個案背景

監警會於報告期內通過一宗有關警方錯誤起訴一名精神上無行為能力人士（投訴人）「誤殺」的投訴。事發時，負責此案的警務人員在投訴人被拘留期間，發現其可能有不在場證據，但仍召開臨時簡報會向公眾公布投訴人被拘捕的消

## Recommended improvements to police practices and procedures

Under section 8(1)(c) of the IPCCO, the IPCC may make recommendations to the Commissioner of Police and/or the Chief Executive if it identifies any fault or deficiency in a police practice or procedure that has led to or might lead to a complaint. The following is an example during the reporting period where the Police had implemented refined procedures based on the IPCC's recommendations.

## Case background

In the reporting period, a complaint case was endorsed by the IPCC. In this case, the Police mistakenly charged the Complainant, a mentally incapacitated person (MIP), with "Manslaughter". At the time of the incident, the police officer in charge of the case decided to hold a stand-up briefing to inform the public of the Complainant's arrest when the Complainant was being detained even though there were

息，並在投訴人被扣留接近48小時後，才向他起訴「誤殺」罪。其後當警方確定投訴人有不在場證據後，仍然將他扣留多個小時才准保釋。投訴人的哥哥其後投訴多名警務人員處理失當，共涉及11項指控，包括警方沒有在拘捕投訴人期間，安排一位合適成人在場陪同、在錄影會面中發問引導性問題等等。

監警會最終通過10項指控「獲證明屬實」或「未經舉報但證明屬實」，包括「行為不當」、「疏忽職守」、「濫用職權」等，共九名警務人員需要接受不同程度的紀律行動。

### 優化現行處理精神上無行為能力人士的程序

監警會早在2015年9月收到投訴警察課的調查報告，得悉在此投訴個案出現時，警方既定的程序只要求在精神上無行為能力人士錄取口供時，有一位合適成人在場，但沒有明確的指引列出當他們成為刑事調查的對象時，應如何處理。因此監警會與投訴警察課討論後，建議警方需要優化有關對精神上無行為能力人士進行刑事調查的指引。

警方及後回應指他們已成立一個工作小組，檢視如何優化處理涉及精神上無行為能力人士案件的程序。工作小組分別與不同的家長組織和關注團體會面，就可行的改善措施交換意見。其後，監警會分別於2016年6月及10月的公開會議中，要求投訴警察課交代檢視和優化程序的進度，並適時向會方提供新修訂或新增的指引和培訓資料。投訴警察課於會後回覆了監警會的質詢，並提供了相關資料供委員參考。

likely alibi that the Complainant was not at the scene. Furthermore, the offence of “Manslaughter” was not charged until almost 48 hours after the Complainant was detained. Later when the Complainant’s alibi that he was not at the scene was established, the Complainant had to wait for a few more hours before being released on bail. Subsequently, the Complainant’s elder brother lodged a complaint with 11 allegations against several police officers for their mishandling of the case including the Police failed to arrange for an appropriate adult to accompany the Complainant at the scene after arrest and had put forward to the Complainant some leading questions during the video recorded interview (VRI).

The IPCC eventually endorsed 10 allegations which were classified as “Substantiated” or “Substantiated Other Than Reported”. These allegations included “Misconduct”, “Neglect of Duty” and “Unnecessary Use of Authority”. A total of nine police officers were subject to disciplinary actions of different degrees.

### Enhancing existing procedures for handling MIPs

The investigation report was first submitted by CAPO in September 2015. The IPCC learned that at the time when this incident occurred, the laid-down police procedure only required an appropriate adult to be present when a statement is taken from an MIP. There was, however, no specific guideline on the handling of an MIP if he or she was the subject of a criminal investigation. Therefore, after the discussion between the IPCC and CAPO, the IPCC suggested that the Police consider enhancing the guidelines with respect to conducting criminal investigation of an MIP.

The Police later responded that a working group had been formed to review and enhance the procedures for handling of MIP. The working group had held meetings with different parent associations and concern groups to exchange views on possible improvements. Later, at the open meetings between the IPCC and CAPO in June and October 2016, the IPCC requested CAPO to report on the progress of the review and enhancement measures, and to provide the IPCC with any revised or newly formulated guidelines and training materials in due course. CAPO responded to the Queries raised by the IPCC after the meetings and relevant information was provided for Members’ reference.

綜合相關團體的意見後，警方於2016年11月推出了一系列的改善措施，包括(一)推出「守護咭計劃」，精神上無行為能力人士可自願攜帶此咭，在緊急情況或被執法人員調查時，警務人員可憑咭上資料得悉他們在溝通和醫療方面的需要；(二)訂立一套「行為指標」，列出一些精神上無行為能力人士的常見特徵，讓執法人員能盡早識別他們；(三)以及推出「合適成人通知書」，讓當事人自己認清作為一名合適成人的角色、法律權利和責任。在推出新措施的同時，警隊亦為前線警員舉辦專題培訓，以提昇他們在處理精神上無行為能力人士時的技巧和敏感度。

Having integrated suggestions made by relevant organisations, the Police rolled out in November 2016 a series of enhancement measures, including (1) the launch of “Care Card Scheme” to allow an MIP to bring along the card voluntarily and in case of emergency or a law enforcement investigation, the card can help police officers understand the MIP’s medical and communication needs; (2) the formulation of “Behavioural Indicators Guide”, which lists out some of the common characteristics of MIPs and serves as a quick reference for law enforcement officers’ early identification of MIPs; and (3) the introduction of “Notice to Appropriate Adult”, which aims to better inform appropriate adults of their roles, legal rights and responsibilities. Whilst new measures have been implemented, the Force has also provided thematic trainings to frontline officers with a view to enhancing their skills and sensitivity when dealing with MIPs.