

### 以仔細和客觀方式審視「無法追查」的投訴個案 Meticulous and objective approach in reviewing a "Not Pursuable" complaint case

#### 個案重點

#### Highlights of the Case

	指控 Allegation(s)	被投訴人 Complainee	投訴警察課最初分類 Initial Classification(s) by CAPO	最後分類 Final Classification(s)
1	毆打 Assault	一名警長 A Sergeant	無法追查 Not Pursuable	無法完全證明屬實 Not Fully Substantiated
2	疏忽職守 Neglect of Duty		旁支事項 Outwith Matter	未經舉報但證明屬實 Substantiated Other Than Reported (SOTR)

此個案反映監警會仔細審視客觀證據。一宗原本分類為「無法追查」的投訴個案，亦因此被再分類為「無法完全證明屬實」。

投訴人被警方拘捕和控告，並被送上法庭應訊。在首次出庭時，投訴人投訴一名警長多項指控，包括在拘捕行動時毆打她。在往後的聆訊，由於控方決定不提供指控她的證據，故投訴人獲法庭無條件釋放。投訴警察課在處理這宗個案時，曾多次去信投訴人，邀請她協助調查，但未獲回覆。在沒有其他途徑可與她聯絡的情況下，投訴警察課初步把這宗投訴個案分類為「無法追查」。然而，保安系統卻攝錄了整個拘捕過程，而投訴警察課亦取得該段閉路電視的錄影片段。有鑑於此，監警會認為該錄影片段存有「毆打」指控的證據，所以個案應分類為「無法完全證明屬實」。此外，在審視證據時，監警會發現警長就該刑事案件的供詞不夠全面，因他遺漏了與投訴人接觸時的一些重要細節。因此，監警會建議多加一項「疏忽職守」的指控，並將該指控分類為「未經舉報但證明屬實」。投訴警察課認同這項建議，並向警長發出警告。

#### 個案背景

在一次警方和入境處的聯合行動中，投訴人（一名持雙程證的內地人）被一名警長拘捕，被控以「為不道德目的而唆使他人」和「違反逗留條件」兩項罪名。其後，投訴人就上述兩項指控到法庭應訊。在庭上她否認控罪，並投訴一名警長，指控包括該名警長在拘捕行動時曾毆打她（**指控1：毆打**）。案件押後審訊。

#### 投訴警察課的調查

投訴警察課接獲投訴後，聯同一名監警會觀察員到案發現場視察。投訴警察課取得閉路電視錄影片段，當中可以見到警長在拘捕過程中「推撞」投訴人。

This case illustrates the meticulous approach adopted by the IPCC in examining a complaint initially classified as "Not Pursuable", but eventually reclassified as "Not Fully Substantiated" on the basis of objective evidence.

The complainant had been arrested by police officers, charged and brought to court. During her initial appearance at court, the complainant made a complaint against a Sergeant, alleging, among other things, that he had assaulted her during the arrest. In the subsequent hearing, the complainant was released unconditionally by the court, as the prosecution offered no evidence against her. CAPO had initially classified the woman's complaint as "Not Pursuable" since she had not responded to CAPO's letters inviting her to assist in the investigation of her complaint, and they had no other means of contacting her. However, the arrest had been captured by a security camera, and CAPO had access to the CCTV footage. The IPCC was of the view that this footage contained evidence to support the "Assault" allegation, and hence the case should be classified as "Not Fully Substantiated". Furthermore, during its examination of the evidence, the IPCC noted that the Sergeant had made an inadequate statement in the criminal case against the complainant, as he had failed to include significant details of his encounter with the complainant. Therefore, the IPCC suggested registering a "Substantiated Other Than Reported" count of "Neglect of Duty" against him. CAPO subscribed to the IPCC's suggestions and the Sergeant was issued a warning.

#### Case Background

In the course of a joint operation between the Police and the Immigration Department, the complainant, who was found to be a mainland visitor holding a Chinese two-way permit, was arrested by a Sergeant for the offences of "Soliciting for an Immoral Purpose" and "Breach of Condition of Stay". Subsequently, the complainant was charged with the two offences and brought to court, where she pleaded not guilty to the charges and alleged, among other things, that the Sergeant had assaulted her during the arrest (**Allegation 1 : Assault**). The trial was adjourned to a later date.

#### CAPO's Investigation

CAPO took up the complaint and conducted a site visit, accompanied by an IPCC Observer. CAPO seized the CCTV footage that showed the Sergeant "pushing" the complainant during the arrest.

在參考過閉路電視的錄影片段和警長的供詞後，控方決定不提出證據指控投訴人，法庭因而無條件把她釋放。

投訴人獲釋後致電投訴警察課，表示有意撤銷投訴。其後她沒有再和投訴警察課聯絡，所以未能確實撤銷投訴。

就此，投訴警察課開展了深入的調查，包括與涉事警長因應「毆打」指控兩次會面、向槍械訓練科索取專家意見、評估事發時警長所使用武力的強度，以及徵詢法律意見了解是否有足夠證據向該名警長作紀律指控。完成調查後，投訴警察課得出結論，認為沒有足夠證據支持對該名警長的指控，所以指控不應分類為「虛假不確」、「無法完全證明屬實」或「獲證明屬實」。加上投訴人沒有回覆投訴警察課的信件和電話，在沒有其他途徑與她聯絡的情況下，投訴警察課根據《投訴手冊》(CM) 4 – 03，把指控分類為「無法追查」。

投訴警察課翻閱警長的記事簿，內裏沒有記錄他使用武力前，曾向投訴人作出口頭警告。故此，投訴警察課建議，因應警長這項疏忽，多加一項「旁支事項」。

#### 監警會的觀察

監警會觀看閉路電視的錄影片段後，認為有確鑿證據證明「毆打」的指控。因此，監警會建議把指控分類由「無法追查」改為「無法完全證明屬實」。

另外，在檢視案情資料後，監警會認為在該宗刑事案件中，警長的供詞未夠詳盡，內容沒有提及他與投訴人接觸時的重要資料。所以監警會認為控方不提供證據指證投訴人是由於警長供詞的粗疏，與閉路電視的證據不符。正因警長的疏忽跟投訴有密切關係，同時對該宗刑事案件的結果有重大影響，監警會建議多加一項「疏忽職守」的指控，並分類為「未經舉報但證明屬實」(指控2：疏忽職守)。

雖然根據專家意見，警長未算使用不必要武力，但考慮到監警會的觀察，即閉路電視的錄影片段、警長未在記事簿記錄相關事項、以及他的口供資料不足，投訴警察課認同這些觀察足以視為支持「毆打」指控的可靠證據，故同意把指控重新分類為「無法完全證明屬實」。另一方面，投訴警察課認為在一般情況下，警員會依據其記事簿記錄作出陳述，兩件事情實同出一轍，因此投訴警察課同意以一項「疏忽職守 - 未經舉報但證明屬實」的指控取代「旁支事項」。

投訴警察課建議就指控向警長發出警告，但不記入其分區報告檔案內。

監警會通過這宗個案的調查結果。

Having examined the CCTV footage and the Sergeant's statement, the prosecution decided to offer no evidence against the complainant, who was then released unconditionally by the court.

After the release, the complainant called CAPO to indicate her intention to withdraw the complaint. After that she had no further contact with CAPO; hence, the withdrawal could not be confirmed.

CAPO therefore commenced an in-depth inquiry by interviewing the Sergeant twice regarding the "Assault" allegation, obtaining the opinion of any expert from the Weapons Training Division to evaluate the level of force used by the Sergeant, as well as seeking legal advice on whether there was sufficient evidence to lay a disciplinary charge against the Sergeant. As the inquiry yielded insufficient evidence against the Sergeant, CAPO considered that the allegation should not be classified as "False," "Not Fully Substantiated" or "Substantiated". Since the complainant had not responded to CAPO's letters and telephone calls, and there was no other means of contacting the complainant, CAPO classified the allegation as "Not Pursuable" in accordance with the Complaints Manual (CM) 4 – 03.

CAPO examined the Sergeant's notebook and found that it did not contain an entry regarding a verbal warning given to the complainant or the Sergeant's subsequent use of force. CAPO therefore recommended that an "Outwith" matter be registered against the Sergeant for this negligence.

#### IPCC's Observation

Nevertheless, after viewing the CCTV footage, the IPCC was of the view that it contained reliable evidence to support the allegation of "Assault". Thus the IPCC proposed that the classification of the complaint should be amended from "Not Pursuable" to "Not Fully Substantiated".

Furthermore, upon examining the case documentation, the IPCC was of the view that the Sergeant's brief statement in the criminal case against the complainant was inadequate, as he had failed to include significant details of his encounter with the complainant. Therefore, the IPCC deemed that the prosecution's decision to provide no evidence against the complainant was mainly due to the Sergeant's negligence in making his statement, which was inconsistent with evidence contained in the CCTV footage. Since the Sergeant's negligence was closely related to the complaint and had a major impact on the criminal case, the IPCC suggested registering an additional "Substantiated Other Than Reported (SOTR)" count of "Neglect of Duty" against him (**Allegation 2: Neglect of Duty**).

Having considered the IPCC's observations, CAPO accepted that, even though the expert's opinion was that the Sergeant had not used unnecessary force, the CCTV footage and the absence of the relevant notebook entry as well as the inadequate statement of the Sergeant constituted reliable evidence in support of the allegation of "Assault". CAPO therefore agreed that the allegation should be reclassified as "Not Fully Substantiated". On the other hand, CAPO considered that the absence of a notebook entry and the inadequate statement were essentially the same, as police officers normally refer to their notebooks in formulating statements. Hence CAPO also agreed that one count of "SOTR – Neglect of Duty" should be registered against the Sergeant to replace the "Outwith" matter.

CAPO recommended that the Sergeant be issued a warning without a Divisional Record File entry.

The IPCC endorsed CAPO's findings in this case.