真實投訴個案
Real complaint case

監警會找出警務常規中不足之處
The IPCC identifies deficiencies in police practice

個案重點 Highlights of the case

	指控 Allegation(s)	被投訴人 Complainee(s)	投訴警察課原來分類 Original classification(s) by CAPO	最後分類 Final classification(s)
1	毆打 Assault	一名警長及三名警員 A Sergeant and three Police Constables	無法完全證明屬實 Not Fully Substantiated	無法證實 Unsubstantiated
2	捏造證據 Fabrication of Evidence	一名警長及三名警員 A Sergeant and three Police Constables	無法證實 Unsubstantiated	無法證實 Unsubstantiated
3	疏忽職守 Neglect of Duty	一名警員 A Police Constables	並無過錯 No Fault	無法證實 Unsubstantiated
4	疏忽職守 Neglect of Duty	一名警員 A Police Constables	無法證實 Unsubstantiated	無法證實 Unsubstantiated
5	疏忽職守 Neglect of Duty	一名警長 A Sergeant	無 Nil	未經舉報但證明屬實 Substantiated Other Than Reported
6	疏忽職守 Neglect of Duty	一名警長及兩名警員 A Sergeant and two Police Constables	無 Nil	未經舉報但證明屬實 Substantiated Other Than Reported

此個案反映監警會審慎努力地在警務常規之中，找出引致投訴或容易引致投訴的不足之處。

投訴人被一名警長和兩名警員截停問話，並拒絕出示身份證。投訴人欲離開現場時與警務人員發生衝突。警方期後制服投訴人，為她戴上手銬拘留在警車內。由於警方認為拘捕行動應該由沒有涉及事件的警員執行，因此，在場的警務人員當時沒有即時拘捕投訴人，警長更要求增援。最後，另一名警員到達現場，並以「妨礙警務人員執行任務」和「襲警」兩項控罪拘捕投訴人。投訴警察課認為，被捕人士如被指控「襲警」罪名，便該由沒有涉及案件的警員拘捕疑犯，是前線警務人員的一貫做法。監警會則認為此做法會導致警務人員未能盡快拘捕疑犯，並隨時有非法禁錮之嫌。投訴警察課認同監警會的看法，並同意就該名警長和兩名警員未能即時拘捕疑犯的「疏忽

This case illustrates the IPCC's meticulous and calculated efforts in identifying deficiencies in police practices that have led to or may lead to complaints.

The complainant had been stopped for questioning by a Sergeant (SGT) and two Police Constables (PCs) who requested her to produce an identity document, which she failed to do. A struggle ensued when the complainant attempted to leave the scene, resulting in the complainant being subdued, handcuffed and detained inside a police vehicle. The police officers did not arrest the complainant, as they thought that this action should be taken by another police officer who was not involved in the incident. The SGT called for reinforcements. Eventually, another PC who later arrived at the scene arrested the complainant for "Obstructing Police" and "Assault on Police Officer". CAPO stated that it was a working practice of frontline police officers that a person who had committed the offence of "Assault on Police Officer" should be arrested by someone other than an officer involved in the incident. The IPCC opined that this practice could lead to an absurd and unresolvable situation in which either the suspect could not be arrested in a timely manner, or the police officers concerned could be at risk for unlawfully detaining the suspect.

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職守」列為「未經舉報但證明屬實」，並向三名被投訴人作出訓諭。投訴警察課同時提醒前線警員日後要避免發生同類事件。

個案背景

個案中的警長和兩名警員以警車巡邏時，發現投訴人在公眾地方形跡可疑，懷疑投訴人是非法入境者，故截停投訴人並要求她出示身份證明文件。投訴人拒絕並企圖離開現場，雙方發生衝突。警方期後制服投訴人，並為她戴上手銬。然而，在場的警務人員沒有即時拘捕投訴人，因為他們認為該由沒有涉及案件的警員執行拘捕行動。警長遂致電控制中心要求增援。同時，在場的警務人員把投訴人拘留在警車內，等候另一批警員到場。隨後，增援警隊趕到，當中一名警員以「阻差辦工」和「襲警」兩項控罪拘捕投訴人。

投訴人被控以「妨礙警務人員執行職務」和「襲擊執行職責的警務人員」兩項罪名，經審判後獲無罪釋放。

法庭認為，現有證據顯示，投訴人被扣留在警車之前，可能還未被警方正式拘捕。如果情況屬實，警方當時的行動乃非法禁錮，而非執行職務。

投訴警察課的調查

投訴人不滿警方的處事手法，於是即時作出投訴，聲稱涉事警長和兩名警員拘捕她時毆打她〔指控一：毆打〕和捏造證據〔指控二：捏造證據〕。另外，她指控逮捕她的警員沒有向她宣告已正式拘捕她〔指控三：疏忽職守〕和為她錄取口供〔指控四：疏忽職守〕。

經過調查後，投訴警察課把指控一的分類列為「無法完全證實」，指控二及四列為「無法證實」，指控三則列為「並無過錯」。

投訴警察課認為涉事警長和兩名警員把投訴人扣留在警車內等待增援，而沒有通知她被正式拘捕的做法沒有問題，因為警方的一貫做法是由不涉案的警務人員拘捕襲警疑犯。

CAPO agreed with the IPCC's view and found it appropriate to register a "Substantiated Other Than Reported" (SOTR) count of "Neglect of Duty" (NOD) against the SGT and the two PCs for their failure to arrest the complainant in a timely manner. It was recommended that the SGT and the two PCs be advised. CAPO also issued a reminder to frontline officers to prevent the recurrence of similar incidents.

Case background

While a SGT and two PCs were patrolling in a police vehicle driven by another PC, they found the complainant acting suspiciously in an open area. Suspecting that the complainant might be an illegal immigrant, the SGT and the two PCs stopped her for questioning and demanded to see her identity document. The complainant refused and attempted to leave the scene. A vigorous struggle ensued, resulting in the complainant being subdued and handcuffed by the police officers. However, the police officers did not arrest the complainant, as they thought that should be done by another police officer who was not involved in the incident. The SGT called the police console for reinforcements. In the meantime, the police officers kept the complainant inside the police vehicle pending the arrival of another police team. Eventually, a PC on the reinforcement team (the arresting officer) arrested the complainant for "Obstructing Police" and "Assault on Police Officer".

The complainant was subsequently charged with obstructing a police officer in the due execution of his duty and assaulting a police officer in the due execution of his duty, but she was acquitted after trial.

The Court was of the view that the available evidence could not rule out the possibility that the complainant had not been arrested at all before she was held in the police vehicle against her will. If that were the case, it would amount to unlawful detention by the Police, i.e. not in due execution of their duty.

CAPO's investigation

Dissatisfied with the police actions during this incident, the complainant lodged the present complaint, alleging that the SGT and the PCs had assaulted her [Allegation 1: Assault] and fabricated evidence in order to arrest her [Allegation 2: Fabrication of Evidence]; and that the arresting officer had failed to declare her under arrest [Allegation 3: Neglect of Duty] and to take a statement from her [Allegation 4: Neglect of Duty].

After investigation, CAPO classified allegation 1 as "Not Fully Substantiated", allegations 2 and 4 as "Unsubstantiated" in lack of supporting evidence and allegation 3 as "No Fault".

CAPO did not find the SGT or the PCs at fault for keeping the complainant in the police vehicle without declaring her under arrest while pending the arrival of reinforcements, as it was a working practice in the Force. The arrest was usually made by an uninvolved police officer in such circumstances.

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監警會的觀察

經監警會的質詢，由於沒有證據證實或否定投訴人或被投訴人的陳述，投訴警察課把指控一及指控三的分類改為「無法證實」。投訴警察課認同監警會的見解，就涉事警長因無法確保負責進行拘捕的警務人員執行拘捕懷疑非法入境者的指令而向他多加一項「未經舉報但證明屬實」的「疏忽職守」指控〔指控五： 疏忽職守〕，並建議警告該名警長，但不記入其分區報告檔案內。

同時，監警會極度關注警方要等待由不涉案的警務人員拘捕襲警疑犯此延遲拘捕的做法。如果這做法成為慣例，可能會導致只要有一名警務人員受襲，在場所有警務人員因事發時身在現場而牽涉入事件當中，有未能獨立處理情況之嫌，而不能執行拘捕行動這荒謬情況。這宗個案事發時情況非常混亂，投訴人涉嫌在企圖離開現場時作出激烈反抗，以致警方要給她戴上手銬，並把她扣留在警車之內。經此等種種動作後，警方仍然沒有拘捕投訴人，容易引起投訴，甚至被指控非法禁錮。

監警會認為，如果這常規不是列明在警方的內部指引或程序手冊內，投訴警察課應就涉事警務人員沒有即時拘捕投訴人，對他們多加一項「未經舉報但證明屬實」的「疏忽職守」指控。監警會認為倘若這種常規確實列明在《警務程序》內，這便是程序上的錯誤，建議對《警務程序》提出「未經舉報但證明屬實」的指控。

投訴警察課贊同監警會的觀點，並證實該常規沒有註明在任何警方指引內。因此，投訴警察課就涉事警長和兩名警員沒有即時拘捕投訴人，而向他們多加一項「未經舉報但證明屬實」的「疏忽職守」指控 [指控六: 疏忽職守]，並建議訓諭三人，但此事不記入其分區報告檔案內。投訴警察課更向前線警務人員發出指引，提醒他們即使在混亂或涉及傷害警務人員的情況下，必須遵守正確程序的重要性。當擁有初步證據便應考慮即時逮捕疑犯。

監警會通過這宗個案的調查結果。

IPCC's observations

After the IPCC's queries, CAPO reclassified allegations 1 and 3 as "Unsubstantiated" since there was no evidence to either support or negate the versions of events of both parties. CAPO also subscribed to IPCC's views to register a "SOTR" count of "NOD" against the SGT for his failure to ensure that the arresting officer had carried out his instruction to arrest the complainant for the offence of "Suspected Illegal Immigrant" [Allegation 5: Neglect of Duty] and recommended a warning without a Divisional Record File entry to the SGT.

The IPCC had grave concerns over the police practice of deferring the arrest to be made by an uninvolved police officer in a case where the police officers were allegedly assaulted. If this was adopted as conventional practice, it might lead to an absurd situation whereby no suspect could be arrested in a timely manner even if he or she had assaulted one officer since all police officers present at the scene would then be considered "involved and therefore not independent". Given the chaotic situation in this case, whereby the complainant had allegedly put up a vigorous and violent struggle with the police officers in an attempt to leave the scene, the officers had had to subdue the complainant by handcuffing her and detaining her in the police vehicle. Such actions against the complainant without declaring her under arrest would likely give rise to allegations of, or even amount to, unlawful detention.

The IPCC considered that CAPO should register a "SOTR" count of "NOD" against the police officers concerned for their failure to arrest the complainant in a timely manner. In the event that such a practice was indeed laid down as procedure in Police Force guidelines or manuals, the IPCC was of the view that this practice was at fault, and therefore alternatively proposed an "SOTR" count against the "Police Procedures".

CAPO subscribed to the IPCC's view, and confirmed that the practice was not laid down in any Police Force guidelines. Thus, CAPO registered an "SOTR" count of "NOD" against the SGT and the two PCs for their failure to arrest the complainant in a timely manner [Allegation 6: Neglect of Duty], and recommended advising them without a Divisional Record File entry. CAPO also issued a reminder to frontline officers, advising them of the importance of making timely arrests in accordance with proper procedures. Even in chaotic situations where offences concern assault or other criminal acts against one or more police officers, arrest action should be considered if there is prima facie evidence.

The IPCC endorsed CAPO's findings in this case.