

### 監警會審視警方在證據不足以控告投訴人的情況下不斷延長投訴人保釋期限的做法

### The IPCC scrutinises the Police's action in repeatedly extending bail without sufficient evidence to charge the complainant

	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	疏忽職守 Neglect of Duty	一名偵緝督察 A Detective Inspector of Police	並無過錯 No Fault	獲證明屬實 Substantiated

#### 個案重點

此個案顯示監警會仔細審視警方在沒有足夠證據起訴一名被捕人士 (此案的投訴人) 的情況下，不斷延長其警察保釋期限的行為，時間長達五個月。

在這次事件中，投訴人(一名香港導遊)、兩名內地遊客及一名途人，因「在公眾地方打鬥」而被捕。被捕者互相指控對方首先引起打鬥。負責此案的偵緝督察認為案件需要更多時間來完成調查工作和尋求法律意見，因此所有被捕人士均獲准警察保釋。兩名遊客其後棄保潛逃並返回內地，而偵緝督察在尋求法律意見後決定無條件釋放涉事的途人，但仍要求投訴人在五個月內定期向警方報到。投訴人在得知該名途人被無條件釋放後，便指控偵緝督察在沒有理由下不斷延長其保釋期限，故投訴他「疏忽職守」。經調查後，投訴警察課將指控分類為「並無過錯」。

#### Highlights of the case

This case demonstrates that the IPCC was meticulous in scrutinising the actions taken by Police in repeatedly extending bail of an arrested person (the complainant) over a period of five months, although there was insufficient evidence to charge the complainant.

In the incident, the complainant (a Hong Kong tour guide), two tourists from mainland China and a passer-by were arrested by police for "Fighting in a Public Place". All the arrestees accused each other of initiating the fight. The Detective Inspector (DIP), who was the case officer, released them on police bail for further investigation and seeking legal advice. The two tourists jumped police bail and returned to mainland China. The DIP released the passer-by unconditionally upon legal advice, but still required the complainant to report bail over a period of five months. The complainant, upon learning that the passer-by had already been released, alleged that the DIP had repeatedly extended her bail without justification [Neglect of Duty]. After investigation, CAPO classified the allegation as "No Fault".

# 真實投訴個案

## Real complaint case

然而監警會認為，由於該名偵緝督察並沒有詳細考慮延長被捕人士的保釋期限是否必須，故應將指控分類為「獲證明屬實」。投訴警察課同意監警會的觀點。

### 個案背景

事發時，兩名內地遊客和負責帶隊的內地導遊在尖沙咀發生爭執，投訴人(一名香港導遊)嘗試調停。過程中，兩名內地遊客和投訴人表現激動，一名途人嘗試將他們分開，避免該兩名遊客襲擊投訴人。警察到達現場並以「在公眾地方打鬥」為由拘捕投訴人、兩名遊客及該名途人。由於現場無人向警方透露內地導遊亦牽涉在打鬥中，在警方向他錄取口供後，該名內地導遊便返回國內。

被捕人士否認參與打鬥，但卻指控其餘被捕者襲擊自己。偵緝督察遂以短暫保釋的形式釋放所有被捕者，以便進一步調查案件，但警方卻找不到更多有關投訴人參與打鬥的證據。偵緝督察於是延長所有被捕人士的保釋期限，並尋求法律意見。

律政司建議拘捕該名內地導遊，以及在向該名途人錄取口供後，便要無條件釋放他。建議中並沒有提及警方應否起訴任何人。因此，偵緝督察釋放了該名途人，並跟他錄取了一份口供，口供只提及他被其中一名內地遊客毆打。兩名遊客返回內地沒有向警方報到，警方嘗試聯絡兩人和涉事的內地導遊但不果。

為了在確保潛逃的遊客及導遊回港後能繼續尋求法律意見，偵緝督察延長了投訴人的保釋期四次，時間長達五個月。在調查的過程中，警方發出通緝令，通緝棄保潛逃的兩名遊客。由於不滿警方不斷延長其保釋期，投訴人遂向投訴警察課投訴。

However, the IPCC is of the view that, as the DIP did not critically consider the necessity of extending bail of an arrested person, the allegation should be classified as “Substantiated”. CAPO eventually subscribed to the IPCC’s views.

### Case background

At the material time, the complainant (a Hong Kong tour guide) tried to mediate a dispute in Tsim Sha Tsui between two tourists and their tour guide, who were all from mainland China. A commotion between the two tourists and the complainant ensued. A passer-by tried to protect the complainant from being assaulted by the tourists. Police came to the scene and arrested the complainant, the two tourists and the passer-by for “Fighting in a Public Place”. As nobody at the scene revealed to the police that the mainland China tour guide was also involved in the fight, the police took a witness statement from him. Afterwards, the mainland China tour guide returned to mainland China.

The arrested persons denied fighting, but each accused the opposite party of assaulting them. The DIP responsible for the investigation initially released all the arrested persons on a short bail for further investigation, but no further evidence against the complainant was unveiled. The DIP then extended the bail for all the arrested persons, in order to seek legal advice.

The Department of Justice recommended that the mainland China tour guide be arrested and the passer-by be released unconditionally, with a witness statement taken from him. It did not mention whether police should charge anyone. As a result, the DIP released the passer-by and obtained a witness statement from him, in which he could only state that he was assaulted by one of the mainland China tourists. The two tourists returned to mainland China and failed to answer the police bail. Police tried to locate them and the mainland China tour guide without success.

The DIP further extended the complainant’s bail on four further occasions over a period of about five months, with a view to obtaining further legal advice after securing the return of the absconded tourists and the mainland China tour guide. During the investigation, the tourists who had absconded had been placed on the “Wanted List”. Dissatisfied with the Police keeping her on bail, the complainant lodged the complaint.

### 投訴警察課的調查

經調查後，投訴警察課將「疏忽職守」的指控分類為「並無過錯」，認為偵緝督察(i)依循律政司的建議釋放該名途人；以及(ii)就是否控告投訴人及其他相關人士尋求法律意見之前和繼續嘗試聯絡回到內地的相關人士期間，不斷延長投訴人保釋期的做法是公平和合理的。

### 監警會的觀察

監警會認為偵緝督察不斷延長投訴人保釋期的做法欠缺充分理據支持，因為沒有證據證明投訴人曾參與打鬥，即使警方嘗試聯絡棄保潛逃的遊客及導遊，亦不足以成為延長投訴人保釋期的原因。根據警隊程序，如獲准保釋的人士到期向警方報到，而仍沒有足夠證據提出起訴，便應將他無條件釋放，而不是延長保釋期。監警會亦提醒警方，在調查疑犯或重要證人是外籍人士的案件時，應更加警惕並加緊調查，而在處理外籍人士的保釋時亦應格外留意。

投訴警察課同意監警會的觀點，將指控的分類由「並無過錯」改為「獲證明屬實」，並建議對涉事的偵緝督察作出訓諭，但無須把此事記入其分區報告檔案中。投訴警察課同時承諾會就監警會的意見，提醒大家在處理牽涉遊客保釋的個案時應當更加警惕，因為遊客在事後多會馬上離開香港。

### CAPO's investigation

After investigation, CAPO classified the "Neglect of Duty" allegation as "No Fault" on the grounds that it was fair and reasonable for the DIP to (i) release the passer-by in accordance with the legal advice and (ii) extend the complainant's bail while continuing to seek the return of the mainland Chinese before seeking further legal advice regarding whether the complainant and the others should be charged.

### IPCC's observations

IPCC was of the view that the repeated extensions of the complainant's bail by the DIP was not justified, because there was no evidence against her and the Police's attempts to locate the absconded tourists and the tour guide did not necessitate keeping the complainant on police bail. According to police procedures, if a bailee answers police bail and there is insufficient evidence to support a charge the bailee should be released unconditionally, instead of extending the bail. The IPCC was also concerned that the Police should make more effort to promptly complete investigations in cases in which the suspects or key witnesses are from outside Hong Kong, and there should be special consideration regarding bail issues.

CAPO eventually subscribed to the IPCC's views and re-classified the allegation from "No Fault" to "Substantiated", and proposed that the DIP be advised without Divisional Record File entry. CAPO also undertook to pass on the IPCC's concerns that the Police should be more vigilant in considering granting police bail when handling cases involving tourists, who would mostly leave Hong Kong shortly after incidents.