

### 監警會審視一宗警方因調查「失竊」案所衍生的「濫用職權」投訴

### The IPCC examines a complaint of “Unnecessary Use of Authority” in the Police investigation into a “Theft” report

	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	濫用職權 Unnecessary Use of Authority	一名高級偵緝督察 A Detective Senior Inspector of Police	並無過錯 No Fault	獲證明屬實 Substantiated

#### 個案重點

此個案反映監警會仔細審視一宗警方因調查「失竊」案所衍生的「濫用職權」投訴。經監警會提出質詢後，投訴指控最終由「並無過錯」重新分類為「獲證明屬實」。

在這次事件中，投訴人是一名租客，他向警方報稱「失竊」，指房東在沒有知會他的情況下進入其住宅，而他部分私人物品亦不翼而飛。負責調查此個案的高級偵緝督察決定在未能釐清二人關係之前，將住宅暫時封鎖。兩日後，警方把住宅歸還給投訴人。投訴人指控該名高級偵緝督察在沒有充分理據的情況下封鎖其住宅。經調查後，投訴警察課將指控分類為「並無過錯」，認為該名高級偵緝督察在未經證實投訴人是該住宅的居住者之前將單位封鎖的決定是公平和恰當的。

監警會認為該名高級偵緝督察在完成現場取證後，調查「失竊」案期間應將單位迅速交還予投訴人。投訴警察課認同監警會觀點，並將指控重新分類為「獲證明屬實」。

#### Highlights of the case

This case demonstrates that the IPCC was meticulous in examining a complaint of “Unnecessary Use of Authority” in the Police investigation into a “Theft” report made by the complainant. The complaint allegation was eventually re-classified from “No Fault” to “Substantiated” after IPCC Queries.

In the incident, the complainant, who was a tenant of a premises, made a “Theft” report to the Police against his landlord, when he found the latter had entered his premises without his knowledge and some of his personal belongings went missing. The Detective Senior Inspector of Police (DSIP) responsible for the criminal investigation decided to lock up the premises before the relationship between two parties could be ascertained. Two days later, the premises were returned to the complainant. The complainant alleged that the DSIP had locked up his residence without justification. After investigation, CAPO classified the allegation as “No Fault”, having considered the DSIP’s decision was fair and proper in temporarily taking control of the flat until the complainant was proved to be the occupant of the premises.

IPCC opined that the DSIP could have swiftly returned the flat to the complainant while the investigation into the “Theft” case was continuing after the necessary actions were taken at the scene. CAPO subscribed to IPCC’s views and re-classified the allegation as “Substantiated”.

# 真實投訴個案

## Real complaint case

### 個案背景

投訴人與其友人共同租住一個單位，但隨後與該名友人失去聯絡。自此，投訴人因為租約問題與房東發生多次爭執，並數次向警方報稱受到「騷擾」、「刑事毀壞」和「刑事恐嚇」。有一日，投訴人回到該單位時，發現房東在屋內，並帶著一些裝修工具。投訴人發現部分私人物品亦不知所蹤。投訴人隨即向警方報案，指控房東偷取其個人物品。

警察到達現場，並以「盜竊」罪名拘捕房東。該名高級偵緝督察決定封鎖單位，以防在繼續調查時單位被進一步干擾，或有物品再度失竊。兩日後，該名高級偵緝督察在證明投訴人是單位的真正居住者，以及指稱闖入者是單位的擁有人後，便將單位歸還予投訴人。

投訴人遂投訴該名高級偵緝督察「濫用職權」，因他在沒有充分理據的情況下封鎖其住宅。

### 投訴警察課的調查

在投訴警察課的調查過程中，該名高級偵緝督察解釋當時不論房東或投訴人皆無法拿出證據證明他們是單位的真正居住者，以及在單位內存有他們的個人物品。因此，該名高級偵緝督察認為在調查未能確認單位屬誰，和「盜竊」罪名是否成立前，警方應暫時看管單位，防止任何一方進入。投訴警察課認為該名高級偵緝督察的決定是公平的，故將指控分類為「並無過錯」。

### 監警會的觀察

在審閱過個案的文件後，監警會認為，投訴人與指稱闖入者從事件一開始已明顯是租客和房東的關係。再者，在把單位歸還予投訴人之前，警方幾乎沒有為釐清二人關係而作出任何調查。因此，該名高級偵緝督察在沒有文件證明二人的關係之前封鎖該單位，並於兩日後在沒有進一步證據的情況下將單位歸還投訴人的決定是不公平和不合理的。

經進一步商議，投訴警察課認同監警會的觀點，並將指控重新分類為「獲證明屬實」。投訴警察課建議對涉事的高級偵緝督察作出訓誡，但無須把此事記入其分區報告檔案中。

### Case background

The complainant jointly rented a flat with his friend, with whom he subsequently lost contact. Since then, the complainant had arguments with the landlord about the lease and made several reports of “Harassment”, “Criminal Damage” and “Criminal Intimidation” to the Police. One day, when the complainant returned to the flat, he found his landlord was present inside with some decoration tools, and some of the complainant’s personal property was missing. The complainant made a report to the Police and alleged that the landlord had stolen his personal property.

Police arrived at the scene and arrested the landlord for “Theft”. The DSIP decided to lock up the flat to secure it from further tampering or theft of property for further investigation. Two days later, the DSIP returned the flat to the complainant, after it was proved that the complainant was the genuine occupant of the flat and the alleged intruder was the owner.

The complainant then lodged the complaint of “Unnecessary Use of Authority” that the DSIP had locked up his residence without justification.

### CAPO’s investigation

During CAPO’s investigation, the DSIP explained that neither the landlord nor complainant could produce any proof at the scene that they were the bona fide occupant of the flat and they had their own personal belongings in the flat at that time. Therefore, the DSIP considered it appropriate for the Police to temporarily take control of the flat by preventing entry by either party, while the Police continued its investigation to confirm to whom the flat belonged and whether any crime of theft was substantiated. CAPO considered that the decision of the DSIP was fair and classified the allegation as “No Fault”.

### IPCC’s observations

Upon examining the crime case documents, IPCC noticed that the roles of the complainant and the alleged intruder as the tenant and landlord were clear from the outset of the incident. Furthermore, there was hardly any investigation conducted to clarify their relationship before the premises was returned to the complainant after two days of the report. So the decision of the DSIP to lock up the premises in absence of any documentary proof of their relationship and return the premises to the complainant after two days without any furtherance of evidence, was not fair or reasonable.

Upon further deliberation, CAPO agreed with IPCC’s views and reclassified the allegation to “Substantiated”. CAPO recommended advising the DSIP without a Divisional Report File entry.