

個案一

- 投訴警方延誤批准一名涉及非禮案的被捕人士保釋。
- 調查結果經監警會審核後，由「無法證實」改列為「獲證明屬實」。

6.1.1 投訴人因在街上觸犯非禮罪於晚上7:20分被拘捕。他被通宵扣留後，於翌日下午4時獲准保釋外出。他指責案件主管（高級偵緝督察）未有盡快批准他保釋外出〔「疏忽職守」〕。

6.1.2 警方在投訴人被捕當晚11時完成向他初步查問。高級偵緝督察認為有需要跟投訴人進一步澄清他的警誡供詞，同時，情報組人員亦可在翌日跟進投訴人有否涉及其他類似案件。高級偵緝督察考慮到當時正值夜深，於是決定通宵扣留投訴人，讓他休息，並安排一名調查人員，於翌日下午上班時向投訴人問話。

6.1.3 翌日下午，投訴人的代表律師向區助理指揮官（即高級偵緝督察的上級人員）表達不滿其當事人的扣留安排，又表示其當事人在警誡下不會再提供任何資料。區助理指揮官隨後檢視個案，並批准投訴人保釋。投訴人於下午4時保釋外出，離開警署前沒有被調查隊進一步問話，情報組亦沒有跟進。

6.1.4 投訴警察課認為高級偵緝督察將投訴人通宵扣留的決定正確，但由於他的上級人員於翌日指令他釋放投訴人，「疏忽職守」的指控應被列為「無法證實」。

Case 1

- **Complaint regarding delay in granting bail to arrested person involved in indecent assault case.**
- **Investigation results changed from “Unsubstantiated” to “Substantiated” after IPCC examination.**

6.1.1 The complainant (COM) was arrested at 7:20 pm for indecent assault in the street. He was detained overnight and released on bail at 4 pm the following day. He alleged that the Officer-in-charge (DSIP) of his case had not granted bail to him as early as possible [“Neglect of Duty (NOD)”].

6.1.2 The initial enquiries were completed at 11 pm on the day of arrest. DSIP found it necessary to seek further clarification from COM on his cautioned statement and considered that the Intelligence Section could take the chance to debrief COM the following day to see if COM was involved in other similar cases. Considering that it was late at night, DSIP decided to detain COM overnight and let him rest. DSIP then arranged an investigation officer, who would report for duty in the afternoon the following day, to interview COM.

6.1.3 In the afternoon of the following day, the Assistant District Commander, DSIP's supervisory officer, looked into the case after COM's lawyer expressed dissatisfaction with COM's detention arrangement and that COM would say nothing under caution. As directed by the Assistant District Commander, COM was eventually released on bail at 4 pm without being further interviewed by the Investigation Team or debriefed by the Intelligence Section.

6.1.4 CAPO considered that DSIP's decision to detain COM overnight was justifiable. However, he was directed by his supervisory officer the following day to release COM. Therefore, it was appropriate to classify the “NOD” allegation as “Unsubstantiated”.

6.1.5 不過，監警會不同意這調查結果的分類，認為：

- (i) 任何拒絕保釋的決定都是侵犯個人的人身自由。因此作出扣留決定時，必須確保根據當時情況及目的，扣留是確切需要的。
- (ii) 高級偵緝督察指稱，有需要通宵扣留投訴人，以便進一步跟投訴人澄清資料和讓情報組跟進。但是，投訴人最終獲保釋外出前，沒有再被問話，情報組亦沒有跟進。監警會不理解向投訴人進一步問話和情報組的跟進工作如何影響批准保釋的決定；及
- (iii) 高級偵緝督察理應作出更為妥善的安排，不應委派一名於翌日下午才上班的調查人員跟進案件。

6.1.6 投訴警察課接納監警會的意見，由於高級偵緝督察沒有採取適當行動，以致投訴人於翌日早上醒來至下午4時獲釋期間被不必要扣留，所以將「疏忽職守」的指控由「無法證實」改列為「獲證明屬實」。該課指出，沒有證據證明高級偵緝督察惡意扣留投訴人。高級偵緝督察會被口頭警告。

6.1.7 有見及這宗投訴個案，監警會建議警方研究現行的警隊命令或指引是否足以保障被查人士獲准保釋外出的權利。投訴警察課其後向監警會表示，警方正檢討「保釋和扣留」這課題，並會考慮監警會提出的觀點。

6.1.5 However, IPCC did not agree to the classification and had the following observations:

- (i) any decision to refuse bail infringes an individual's right to liberty. The decision must be justified as being both necessary and proportionate to the objective being sought;
- (ii) DSIP claimed that detaining COM overnight was necessary for seeking further clarification from COM and debriefing by the Intelligence Section. However, COM was eventually released on bail without any further interview or debriefing by the Intelligence Section. IPCC did not see how further interview and debriefing had any implication on the bail decision; and
- (iii) DSIP should have made alternative arrangement to expedite action instead of assigning the investigation officer to follow up the case only when the latter reported for duty in the afternoon the following day.

6.1.6 CAPO subscribed to IPCC's comment and changed the classification of the "NOD" allegation from "Unsubstantiated" to "Substantiated" having regard to DSIP's failure to expedite action resulting in the unnecessary detention of COM between the time he woke up in the morning and the time he was released at 4 pm. As there was no evidence to prove any malicious intent in the decision to detain COM, a verbal warning was given to DSIP in this respect.

6.1.7 In the light of the instant complaint, IPCC suggested that the Force should consider if there was any deficiency in the existing Force orders or guidelines in ensuring the accused person's right to be released on bail be honoured. CAPO later conveyed to IPCC that a review on the subject of "Bail and Detention" was being undertaken and the issues raised by IPCC would be examined as part of the review.

個案二

- 投訴警方疏忽調查一宗刑事案件。
- 調查結果經監警會審核後，由「無法證實」改列為「獲證明屬實」。

6.2.1 投訴人與卡拉OK職員發生糾紛，被判「自稱身為三合會會員」及「襲擊致造成身體傷害」罪罪成，入獄18個月。投訴人隨後提出上訴。原審時呈堂的卡拉OK閉路電視錄影帶是以間歇拍攝及多影像制式錄影，故此只能以快速播放。上訴庭法官指令要改善有關錄影帶的影像質素。看過錄影記錄後，上訴庭法官認為，錄影記錄的內容支持投訴人的證供，同時令人質疑控方證人的證供。投訴人最終上訴得值，被判無罪。

6.2.2 投訴人被判無罪後，投訴負責處理他的刑事案件的警務人員，指他們決定檢控前，沒有小心檢視閉路電視錄影記錄的內容〔指控(a)＝「疏忽職守」〕，以致他無辜入獄342日〔指控(b)＝「疏忽職守」〕。

6.2.3 投訴警察課調查後，把指控(a)列為「無法證實」，因為負責處理投訴人的刑事案件的三名警務人員沒有相關技術知識，不懂得運用專門的器材改良閉路電視錄影帶的質素。

6.2.4 但是，監警會認為，警務人員是否具備處理錄像的技術並非關鍵，重點是他們有否徹底調查有關的刑事案件。根據所得的證據，被投訴的三名警務人員在最初檢視閉路電視錄影記錄時，確實察覺到一名卡拉OK職員看似拿著擬似凳子的物件，對著投訴人的一方，但卡拉OK職員的證供從來沒有提及這點。處理案件的警務人員察覺但沒有理會這點證供上的差異，沒有進行徹底和適切的調查。

Case 2

- **Complaint regarding police negligence in investigating a crime case.**
- **Investigation results changed from “Unsubstantiated” to “Substantiated” after IPCC examination.**

6.2.1 The complainant (COM) was involved in a dispute with the staff in a karaoke. He was convicted of “claiming to be a member of a triad society” and “assault occasioning actual bodily harm” and sentenced to 18 months’ imprisonment. He then filed an appeal. The appellate judge ordered the CCTV tape of the karaoke, which was recorded in time-lapsed, multiplexed mode, to be enhanced. The subject CCTV tape was only available in fast motion version during the first trial. The appellate judge considered that the CCTV recording lent weight to COM’s evidence and cast doubt on that of the prosecution witnesses. The appeal was eventually allowed and COM was acquitted.

6.2.2 After the acquittal, COM lodged a complaint against the officers involved in handling his crime case for their failure to clearly examine the contents of the CCTV recording before laying charges against him [**Allegation (a) – “Neglect of Duty (NOD)”**], resulting in his 342 days’ imprisonment [**Allegation (b) – “Neglect of Duty (NOD)”**].

6.2.3 After investigation, CAPO classified **allegation (a)** against three officers involved in handling of COM’s crime case as **“Unsubstantiated”** because they had no technical knowledge as to how the specially recorded CCTV tape could be transformed into clearer images by special equipments.

6.2.4 However, IPCC considered that the key issue was not the technical know-how in handling the video clips but the thoroughness of the crime case investigation itself. According to the evidence, the officers in fact noticed from initial viewing of the CCTV recording that a karaoke staff-member was seemingly holding a stool-like object before COM’s party but it had never been mentioned in the version of the karaoke staff. The discrepancy in evidence was spotted but ignored without thorough and satisfactory investigation.

- 6.2.5 投訴警察課同意監警會的觀察，認為警務人員在決定檢控投訴人前，在調查和處理閉路電視錄影記錄方面有疏忽。故此，該課將針對刑事案件調查的**指控 (a)**由「**無法證實**」改列為「**獲證明屬實**」。三名涉及的警務人員會被警告，日後在調查刑事案件，特別是處理閉路電視錄影記錄時，要加倍小心和警惕。
- 6.2.5 CAPO subscribed to IPCC's observation and agreed that there was negligence of the officers in the investigation and handling of the CCTV recording prior to the prosecution against COM. Hence, CAPO changed the classification of **allegation (a)** in respect of the crime case investigation from "**Unsubstantiated**" to "**Substantiated**" and the three police officers involved would be warned to be more cautious and vigilant in crime investigation, particularly in handling CCTV recording, in future.
- 6.2.6 至於有關投訴人不滿無辜入獄342日的**指控 (b)**，投訴警察課表示，由於無法確定該342日的監禁是與被投訴的警務人員在調查刑事案件時疏忽有直接關係；再者，即使閉路電視錄影記錄的質素良好和被徹底檢視，亦無法確定投訴人當時會否因為干犯其他刑事罪行或因其他證據而被檢控及定罪，故此，這項指控仍被列為「**無法證實**」。
- 6.2.6 As for **allegation (b)** in respect of the 342 days' sentence for which COM should not have served, CAPO considered that it was uncertain that COM's imprisonment for 342 days was directly attributed to any negligence on the part of the complainees during the crime case investigation. Even if the CCTV recording was in good quality and thoroughly examined in the first place, it was uncertain whether COM might be charged with any other criminal offence or still be convicted in court based on other prosecution evidence. Therefore, this allegation was classified as "**Unsubstantiated**".
- 6.2.7 監警會通過這宗個案的調查結果。
- 6.2.7 IPCC endorsed the investigation results of the case.

個案三

- 監警會質疑投訴警察課純粹因為證人是投訴人的僱員而不考慮其證供的做法。
- 鑒於監警會的意見，投訴警察課嘗試分析所得的證據及評估證人的可信和可靠性。
- 投訴警察課最終把兩項指控的調查結果由原來的「無法證實」改列為「並無過錯」和「獲證明屬實」。

6.3.1 投訴人的店舖位處繁忙的街道旁。事發當日，一輛不知名的輕型貨車停泊在投訴人的店舖外。投訴人指，一名警員（警員X）步入店舖，沒有查問該車輛誰屬便著令他把車輛駛走（「疏忽職守」）。此外，投訴人指出，警員X向他說他沒有證據和錄音，示意即使投訴也不會有結果。投訴人認為警員X的態度不負責任和無禮（「行為不當」）。

6.3.2 警員X否認指控。他稱，當時他站在店舖外大聲詢問內裡的人該車輛是否屬於他們，若是，應該盡快把它駛走，以免阻塞交通。他承認由於當時環境嘈雜，他說話的聲線較大，但否認對投訴人說出無禮的言詞。

6.3.3 投訴警察課的調查顯示，事發時只有投訴人的僱員（Y女士）聲稱目睹投訴人和警員X之間對話的過程。但是，投訴警察課因為Y女士是投訴人的僱員，不把她視為獨立證人。投訴警察課基於沒有其他佐證和獨立證人以證實或否定任何一方的說法，把兩項指控皆列為「無法證實」。

Case 3

- IPCC challenged CAPO's disregard of evidence given by a witness simply because the witness was the complainant's employee.
- In the light of IPCC's advice, CAPO attempted to analyse the evidence given and evaluate the credibility and reliability of the witness.
- Finally, CAPO re-classified the investigation results of the two allegations from "Unsubstantiated" to "No Fault" and "Substantiated".

6.3.1 The complainant (COM)'s shop was located in a busy street. On the material day, an unknown light goods vehicle parked outside COM's shop. COM alleged that a police officer (PC X) came to the shop and ordered him to drive the vehicle away without enquiring to whom the subject vehicle belonged ["Neglect of Duty (NOD)"]. Besides, COM alleged that PC X told him that there was no evidence and no recording and hence futile for him to lodge complaint. COM considered PC X's attitude irresponsible and impolite ["Misconduct"].

6.3.2 PC X denied both allegations. He said that he stood outside the shop and asked the people inside in a loud voice whether the vehicle belonged to them. If so, it should be driven away as it was obstructing the traffic. He admitted that he used a rather loud voice as the environment was very noisy but denied that he had made the alleged impolite remarks before COM.

6.3.3 CAPO investigation found that there was no other witness except COM's employee (Ms Y) who claimed to have seen what happened between COM and PC X. However, CAPO did not treat Ms Y as independent witness due to her relationship with COM. CAPO then classified both allegations as "Unsubstantiated" in the absence of any supportive evidence and independent witness to prove or disprove either side's version.

- 6.3.4 每當證人認識投訴人或被投訴的警務人員時，投訴警察課往往不考慮該證人的供詞。監警會不認同這做法。根據《監警會條例》第17(2)(b)條，調查必須就有關投訴所作的事實作出裁斷。故此，監警會認為，正確的做法是需要評估證人是否可靠，證供是否可信，才決定其證供應否被接納。
- 6.3.5 鑒於監警會的意見，投訴警察課重新審視這宗個案和Y女士的證供。她的證供沒有偏袒投訴人或被投訴人。
- 6.3.6 就「疏忽職守」的指控，Y女士向投訴警察課表示，她看見警員X詢問投訴人停泊在店舖外的車輛是否屬於他的，若是，需要盡快把它駛走。她的證供與警員X的說法相符。
- 6.3.7 就「行為不當」的指控，Y女士的說法則與投訴人（即其僱主）相符，指出確實聽到警員X曾作出投訴人指稱的無禮言詞。
- 6.3.8 投訴警察課分析了所有證據後，認為雖然Y女士是投訴人的僱員，但她是一個獨立和可信的證人，其證供應被重視。最後，投訴警察課將「疏忽職守」的指控，由原來的「無法證實」改列為「並無過錯」，而「行為不當」的指控，則由原來的「無法證實」改列為「獲證明屬實」。
- 6.3.9 監警會通過這宗個案的調查結果。警員X被訓諭日後與市民接觸時須注意自己的行為和待人以禮。
- 6.3.4 IPCC could not agree with CAPO's approach in assessing the evidence given by witness. If the witness was related to the complainant or the complainee, CAPO would often disregard that witness's evidence. According to section 17(2)(b) of IPCCO, the investigation should arrive at a finding of facts in relation to the complaint. Hence, IPCC considered that the proper approach should be to evaluate whether the witness was reliable, whether the evidence was credible and in the light of that how much weight should be attached to the evidence.
- 6.3.5 In the light of IPCC's advice, CAPO re-examined the case and the evidence given by Ms Y. Her evidence was not biased towards either the side of the complainant or the complainee.
- 6.3.6 As regards the **"NOD"** allegation, Ms Y told CAPO that she saw PC X had enquired with COM if the vehicle outside the shop was his and if so, the vehicle had to be driven away as soon as possible. Her version corroborated with PC X.
- 6.3.7 As regards the **"Misconduct"** allegation, Ms Y's version corroborated with COM (i.e. her employer) and claimed that she heard the said remarks made by PC X.
- 6.3.8 After analysing all the evidence, CAPO considered that Ms Y, notwithstanding her relationship with COM, should be treated as an independent and reliable witness, and therefore weight should be given to her evidence. As a result, classification of the **"NOD"** allegation was changed from **"Unsubstantiated"** to **"No Fault"** and the **"Misconduct"** allegation from **"Unsubstantiated"** to **"Substantiated"**.
- 6.3.9 IPCC endorsed the investigation results of the case. COM would be advised to be mindful of his behaviour and be polite when dealing with members of the public in future.

個案四

- 投訴警務人員未有及時舉報交通違例事故。
- 調查結果經監警會審核後，由「無法證實」改列為「獲證明屬實」。

6.4.1 投訴人因「不小心駕駛」被交通警務人員（警長A）票控。審訊當日，裁判官裁定投訴人罪成，罰款2,000元及取消駕駛資格15日，即時生效。

6.4.2 警長A聲稱在聆訊後，看見投訴人駕駛房車離開法院停車場。警長A當日身穿便服當值，目擊事故時已過了值班時間。他即場把事故詳情記在紙上。

6.4.3 警長A於事發後11日向交通調查組呈交口供，報告事故。

6.4.4 投訴人後來被警方拘捕及控以「在取消資格期間駕駛」和「沒有第三者保險而使用車輛」罪。經審訊後，投訴人獲裁定兩項罪名都不成立。裁判官表示，雖然警長A並非不誠實的證人，但他處理投訴人的交通案件的手法實在很奇怪，又認為警長A對事件的解釋難以令人信服。

6.4.5 投訴人獲悉裁決後，向投訴警察課投訴，指出：

- (i) 警長A目擊投訴人「在取消資格期間駕駛」，卻沒有即場截停投訴人〔指控(a) — 「疏忽職守」〕；
- (ii) 基於上述罪行性質嚴重，警長A應該要求警隊支援，截停投訴人，並向上級報告。然而，他直至事發後11天才向交通調查組報告事故〔指控(b) — 「疏忽職守」〕；及
- (iii) 警長A捏造證據，投訴人對其真正動機感到大惑不解〔指控(c) — 「捏造證據」〕。

Case 4

- **Complaint regarding police officer's delay in reporting traffic offence.**

- **Investigation results changed from “Unsubstantiated” to “Substantiated” after IPCC examination.**

6.4.1 The complainant (COM) was summonsed for “careless driving” by a Police Sergeant (Sergeant A) who was attached to a Regional Traffic Formation. On the day of trial, COM was convicted of the offence, fined \$2,000 and disqualified from driving for 15 days with immediate effect by the Magistrate.

6.4.2 After the hearing, Sergeant A allegedly saw COM driving his own saloon car leaving the carpark of the Magistracy. Sergeant A was on plainclothes duty that day and was off-duty when he witnessed the alleged incident. As such, he noted down the details of the incident on a piece of paper at the scene.

6.4.3 Eleven days after the incident, Sergeant A submitted a statement to the Traffic Investigation Unit to report the incident.

6.4.4 COM was later arrested by the Police and charged with the offence of “driving whilst disqualified” and “using a motor vehicle without insurance in respect of third party risks”. COM was acquitted of both charges after trial. The Magistrate commented that, while Sergeant A was not a dishonest witness, he found it very strange for Sergeant A to handle COM's case in such a manner, and considered Sergeant A's explanation of the incident not convincing.

6.4.5 After the trial, COM lodged a complaint with CAPO alleging that:

- (i) Sergeant A failed to stop COM at the scene when he spotted COM “driving whilst disqualified” [**Allegation (a) – “Neglect of Duty”**];
- (ii) as the said offence was of serious nature, Sergeant A should have called for assistance to stop COM and reported it to his supervisory officers. He did not report the incident to the Traffic Investigation Unit until 11 days after the alleged incident [**Allegation (b) – “Neglect of Duty”**]; and
- (iii) Sergeant A fabricated the evidence and COM was puzzled by Sergeant A's real intention of doing this [**Allegation (c) – “Fabrication of Evidence”**].

- 6.4.6 投訴警察課調查後，把**指控 (a)** 列作「**並無過錯**」，因為警長A的做法符合《警察程序手冊》和《交通程序手冊》。有關的程序列明，如便裝/休班警務人員目睹交通違例事故，不得試圖截停違例的車輛，但應記下有關詳情，以便採取傳票行動。如絕對有必要截停該違例車輛，便裝人員必須召喚軍裝人員協助。
- 6.4.7 **指控 (b) 和 (c)** 則因為沒有具體證據證明或反駁該等指控，因此被列為「**無法證實**」。
- 6.4.8 監警會並不同意**指控 (b)** 的調查結果被列為「**無法證實**」，因為警長A知道投訴人被取消駕駛資格，並聲稱目擊投訴人「在取消資格期間駕駛」，實有責任立即向交通部的上級舉報，或致電警察控制室，要求截停據稱當時仍在駕駛的投訴人，這樣才能協助搜集所需證據，作為控罪的佐證。
- 6.4.9 投訴警察課再次審視個案後，接納了監警會的意見，把**指控 (b)** 由原來的「**無法證實**」改列為「**獲證明屬實**」。監警會通過這宗個案的調查結果。警長A會被訓諭，日後不要再犯。
- 6.4.6 After investigation, CAPO classified **allegation (a)** as “**No Fault**” because Sergeant A was acting in accordance with the Force Procedures Manual and Traffic Procedures Manual which stated that if an officer in plainclothes or an off-duty officer witnessed a traffic offence, he should not attempt to stop the offending vehicle but note down the particulars for summons action. If it was absolutely necessary to stop a particular vehicle, he must call for uniformed assistance.
- 6.4.7 **Allegations (b) and (c)** were classified as “**Unsubstantiated**” in the absence of concrete evidence to prove or disprove the allegations.
- 6.4.8 IPCC could not agree to the “**Unsubstantiated**” classification of **allegation (b)** because Sergeant A, who was aware of COM’s disqualification from driving and allegedly witnessed COM committing the offence of “driving whilst disqualified”, had the duty to assist in collecting the necessary evidence in support of the offence by either immediately reporting the matter to his supervisors in the Traffic Wing or calling the Police Console for assistance to intercept COM who was allegedly still on the road then.
- 6.4.9 Having re-examined the case, CAPO concurred with the Council’s observation and agreed to re-classify **allegation (b)** from “**Unsubstantiated**” to “**Substantiated**”. IPCC endorsed the investigation results of the case. Sergeant A would be advised to guard against recurrence in future.

個案五

- 投訴警務人員在票控違例司機時表現無禮。
- 調查結果經監警會審核後，由「無法證實」改列為「並無過錯」。

6.5.1 投訴人是一名的士司機。事發當日，投訴人駕駛的士，遭警員X截停。警員X指投訴人違反交通規例並票控他。投訴人稱，當他請求警員X讓他離開時，警員X不禮貌地對他說：「我鍾意告邊個，就告邊個！」投訴人被票控後，用手機拍下現場的照片，當時警員X正在處理另一車輛，及後回頭向投訴人說：「你影乜嘢呀，你好走啦！」投訴人質問警員X為何沒有向對面馬路行車線的另外三輛違例車輛採取行動，警員X變得鬍怒，再說：「我鍾意告邊個，就告邊個！」（「無禮」）。

6.5.2 警員X否認向投訴人作出無禮的言詞。他曾向投訴人表示，待他處理停泊在投訴人的士後面的輕型貨車後，便會票控其他違例的車輛。他知道投訴人被票控後，用手機拍下現場的照片，但他沒有再與投訴人談話或有任何接觸。

Case 5

- **Complaint regarding police impoliteness in ticketing action.**
- **Investigation results changed from “Unsubstantiated” to “No Fault” after IPCC examination.**

6.5.1 The complainant (COM) was a taxi driver. On the material day, COM, driving his taxi, was intercepted and ticketed by PC X for traffic contravention. COM alleged that when he asked PC X to let him go, PC X talked to him impolitely by saying “我鍾意告邊個，就告邊個 (I would book whoever I like to book)”. After being ticketed, COM started taking a few pictures of the scene by his mobile phone while PC X was handling another vehicle. COM stated that PC X returned to him saying “你影乜嘢呀，你好走啦 (What are you photographing? Leave)”. When COM pointed out why PC X did not take action against three other vehicles parked in the restricted zone on the opposite side of the road, PC X became angry and repeated “我鍾意告邊個，就告邊個 (I would book whoever I like to book)” [**“Impoliteness”**].

6.5.2 PC X denied having made the alleged remarks before COM. PC X said that he had told COM that he would deal with other contravening vehicles after handling a light goods vehicle parked behind COM's taxi. After ticketing COM, PC X noticed that COM was taking pictures of the scene by mobile phone but did not talk to him or have any contact with him ever since.

- 6.5.3 投訴警察課向當日在場的輕型貨車司機查問，他的證供與警員X相符。輕型貨車司機表示，事發時投訴人非常騷怒。投訴人在拍照及返回的士期間，不斷咒罵警員X，但警員X若無其事，繼續票控投訴人，並將傳票交給他。投訴人怒氣未消，警員X向他表示如有不滿，他可以作出投訴。輕型貨車司機當時與投訴人的的士距離約10米，未能完整聽到投訴人與警員X之間的對話。
- 6.5.4 投訴警察課認為雖然輕型貨車司機可被視作獨立證人，他的證供又與警員X相符，但是他沒有目睹事故的整個過程。該課基於沒有其他獨立證人目擊事故的始末以支持或推翻投訴人的指控，把「無禮」的指控列為「無法證實」。
- 6.5.5 監警會不同意把調查結果列為「無法證實」，認為這宗個案不是一般各執一詞的情況。監警會認為，即使獨立證人（即輕型貨車司機）沒有目睹事故的全部過程，但亦能夠道出事發時大致的情況，投訴警察課不考慮輕型貨車司機的證供的做法對警員X不公平。
- 6.5.6 投訴警察課考慮監警會的意見後，同意把指控的調查結果由「無法證實」改列為「並無過錯」。監警會通過這宗個案的修訂調查結果。
- 6.5.3 CAPO located the driver of the light goods vehicle (LGV Driver). His statement was in line with PC X. The LGV Driver noticed that COM was very angry and kept on swearing at PC X when COM was taking pictures and after returning to his taxi. Meanwhile, PC X looked unperturbed and continued booking COM. When PC X handed the ticket to COM, the latter kept on venting his anger. PC X told COM that he was free to make a complaint if he was dissatisfied. The LGV Driver was about 10 metres away from COM's taxi and could not clearly hear the conversation between COM and PC X.
- 6.5.4 CAPO considered that although the LGV Driver could be treated as an independent witness and his version in general corroborated PC X's version, he did not witness the entire incident and therefore the **"Impoliteness"** allegation was classified as **"Unsubstantiated"** as there was no independent witness who had observed the entire event to support or negate COM's allegation.
- 6.5.5 However, IPCC did not agree to the **"Unsubstantiated"** classification. IPCC opined that the instant case was not typical one-against-one situation as there was in fact an independent witness (i.e. LGV Driver) who, though not having witnessed the entire incident, could tell by and large what happened at the material time. CAPO's disregard of the evidence given by the LGV Driver did not appear to be fair to PC X.
- 6.5.6 In the light of IPCC's comments, CAPO re-considered the case and agreed to re-classify the allegation from **"Unsubstantiated"** to **"No Fault"**. IPCC endorsed the re-classification of the investigation results of the case.

個案六

- 投訴警務人員拒絕大律師接觸正被警方查問的當事人。
- 調查結果經監警會審核後，由「並無過錯」改列為「無法完全證明屬實」。

6.6.1 這宗個案的投訴人分別是一名大律師（大律師A）和一名律師行文員。他們陪同當事人（B先生）於晚上10:50分就一宗傷人案件向警方自首。根據《警察程序手冊》第49-20(12)條，大律師需要提供委託他的律師所簽發的授權書，才能以大律師身分會見當事人。不過，由於二人當時未能提供有關文件，負責調查案件的警長拒絕讓他們陪同B先生接受警方查問。期間，B先生被帶到報案室的會見室。警方於同日晚上11:27分拘捕B先生，當時大律師A和律師行文員並沒有在場。

6.6.2 與律師行文員同屬一間律師行的一名律師（律師C）於午夜致電警署數次。律師C提供了他所屬律師行的名稱、個人資料和律師會員號碼，同時亦口頭委託大律師A代表B先生。但是，報案室值日官和案件主管堅持要律師C把有關的證明和轉介文件傳真到警署。那時正值夜深，律師C無法把文件傳真到警署。大律師A和律師行文員最終沒有獲准陪同B先生，並於大約凌晨1時離開警署。

6.6.3 大律師A和律師行文員離開前在報案室作出投訴，指三名相關的警務人員拒絕讓他們陪同B先生接受警方查問，剝奪了B先生在被拘捕期間獲法律代表的權利（「濫用職權」）。

Case 6

- **Complaint regarding police rejection of barrister's access to client during police enquiries.**
- **Investigation results changed from “No Fault” to “Not Fully Substantiated” after IPCC examination.**

6.6.1 The complainants of this case were a barrister (Barrister A) and a clerk of a law firm (Clerk). They accompanied their client (Mr B) to surrender to the Police at 10:50 pm in connection with a wounding case. However, the Sergeant responsible for investigating the case did not allow them to accompany Mr B during police enquiries because they could not produce a solicitor's written instruction in accordance with requirement set out in the Force Procedures Manual (FPM) 49-20(12). In the meantime, Mr B was escorted alone into the interview room of the Report Room and was later arrested by the Police in 11:27 pm in the absence of Barrister A and the Clerk.

6.6.2 A solicitor (Solicitor C), who was from the Clerk's law firm, made a number of phone calls to the police station at mid-night. Solicitor C provided the name of his law firm, his personal details and solicitor membership number and verbally entrusted Barrister A to represent Mr B. However, the Duty Officer of the Report Room and the Officer-in-charge of the case insisted that Solicitor C should fax his proof of identity and referral document to the police station. As Solicitor C was unable to fax the said materials to the police station late at night, Barrister A and the Clerk were not allowed to accompany Mr B and they left the police station at about 1 am.

6.6.3 Before leaving, Barrister A and the Clerk jointly lodged a complaint at the Report Room against the three police officers concerned for disallowing them to accompany Mr B during police enquiries, depriving Mr B of his right to legal representation in the course of arrest [**“Unnecessary Use of Authority (UUOA)”**].

6.6.4 投訴警察課最初認為有關的警務人員當時已採取適當的步驟去確認律師C的身分，故此，把「濫用職權」的指控列為「並無過錯」。不過，監警會不信納這項調查結果並要求投訴警察課重新考慮分類。該課回覆指，由於他們的調查確認了律師C的身分，所以把「濫用職權」的指控改列為「無法證實」。

6.6.5 監警會仍然不同意「無法證實」的調查結果分類，因為：

- (i) 既然B先生是由大律師A陪同向警方自首，B先生委託大律師A作為他的法律代表的意願明確；
- (ii) 《警察程序手冊》第49-20 (12) 條列明，如大律師能「提供委託他的律師所簽發的授權書，或能從有關律師所得到口頭覆實（可在會面前核實）」，便可會見他的當事人，因此實際上《警察程序手冊》容許彈性處理，即大律師不一定需要提供授權書。律師C既然已提供了他所屬律師行的名稱、個人資料和律師會員號碼，同時亦口頭委託大律師A代表B先生，看來已經做到「能從有關律師所得到口頭覆實」的要求。
- (iii) 《警察程序手冊》第49-20 (12) 條處理的情況是大律師會見已被警方拘捕和扣留的當事人。但這宗個案中，被投訴人拒絕兩名投訴人陪同B先生時，其當事人還未被拘捕或扣留；及

6.6.4 CAPO at first considered that the police officers had taken reasonable steps on the spot to confirm Solicitor C's identity and therefore classified the "UUOA" allegation as "No Fault". However, IPCC was not convinced of the investigation results and requested CAPO to reconsider the classification. In response, CAPO added that as Solicitor C's identity was later confirmed in their investigation, the "UUOA" allegation would be re-classified as "Unsubstantiated".

6.6.5 IPCC still could not agree to the "Unsubstantiated" classification of investigation results because of the following:

- (i) as Mr B was accompanied by Barrister A to surrender to the Police, Mr B's intention to entrust Barrister A to represent him was clear;
- (ii) FPM 49-20(12) actually provided for a flexible approach in granting a barrister's access to the client by either requiring "production of written instructions by a solicitor, or on confirmation of verbal instructions by a solicitor (which may be subject to verification prior to access)". In other words, the production of written instruction was not a must. Solicitor C had already provided the name of his firm, his personal details and solicitor membership number, and verbally entrusted Barrister A to represent Mr B. It therefore appeared that the requirement of "confirmation of verbal instructions by a solicitor" was satisfied;
- (iii) FPM 49-20(12) dealt with the situation where the barrister visited his client after the latter had been arrested and detained by the Police. However, the scenario of the instant case was slightly different. At the time the two complainants were disallowed to accompany Mr B, the latter had not yet been arrested or detained; and

(iv) 任何人在任何情況下，都不應被剝奪獲法律代表的憲法和基本權利。這宗個案中，當事人在夜深自首，有關的警務人員應該體諒律師C要在非辦公時間傳真身分證明文件到警署存在實際困難。再者，警務人員在考慮個案的整體情況後，應酌情先准許大律師A會見B先生，再要求大律師A或B先生盡早於翌日辦公時間提供轉介信。

6.6.6 鑒於監警會的意見，投訴警察課同意涉及這宗個案的三名警務人員應行使酌情權，以保障B先生獲法律代表的權利。雖然該些警務人員的做法並非完全正確，但是已按《警察程序手冊》中相關的條文真誠地行事；因此，「濫用職權」的指控被改列為「無法完全證明屬實」。有關的三名警務人員會被適當訓諭，避免日後再發生同類情況。

6.6.7 警方亦會按監警會的建議，就警方如何更妥善地處理類似這宗個案涉及大律師要求陪同當事人的安排，諮詢香港大律師公會和香港律師會。

6.6.8 監警會通過這宗個案的修訂調查結果。

(iv) in any event, one must not be deprived of his constitutional and fundamental right to legal representation. In the instant case, the surrender took place late at night and the police officers concerned should have appreciated the practical difficulty of Solicitor C to fax his proof of identity to the police station outside normal office hours. Besides, having regard to the entire circumstances of the case, the police officers should have exercised discretion by allowing Barrister A to access Mr B, subject to an undertaking from either Barrister A or Mr B to provide a written referral letter early the following working day.

6.6.6 In the light of IPCC's comments, CAPO agreed that in the instant case, the three police officers concerned should have exercised discretion to protect the right of Mr B to legal representation. Notwithstanding this, the police officers had acted in accordance with the relevant FPM, and their act was considered to be in good faith, though not entirely correct. Therefore, the "UUOA" allegation should be classified as "Not Fully Substantiated" and the police officers would be suitably advised to prevent recurrence.

6.6.7 On IPCC's recommendation, the Police would consult the Hong Kong Bar Association and the Law Society of Hong Kong with a view to working out the best way for the Police to handle a barrister's request for accompanying his client in similar situations.

6.6.8 IPCC endorsed the revised investigation results of the case.