

“ 在任內我期望有關良好投訴調查的常規和準則能被規範化並輯錄成文。我亦希望在達致公義的過程中，能彰顯出公正持平、多元共容，及從學習中改進的精神。

During my tenure at IPCC, I would like to see standards and best practices in investigating complaints consolidated into documentation, and impartiality, sensitivity to diversity and a culture of learning and improvement ingrained in every element of achieving justice. ”

黃幸怡女士

於2011年1月1日獲委任為監警會委員

Miss Sandy WONG Hang-ye

Appointed as IPCC Member on 1 January 2011

投訴警察真實個案 Actual Cases of Police Complaints

01

個案 Case 01

Progress

Report

個案重點

此個案顯示監警會不但可在審核投訴個案時，要求投訴警察課重新考慮投訴的歸類，同時亦會質疑投訴警察課在調查過程中裁斷事實時，衡量涉案人士證詞可信性和可靠性的方法。

投訴人不滿兩名警務人員只票控投訴人違例駕車駛入限制區，而未有票控另一位同樣駛入限制區的人士，遂投訴該兩名警務人員「行為不當」及「疏忽職守」。由於其中一項指控是投訴當中一位警務人員沒有票控另一位駕車駛入限制區的人士，投訴警察課認為投訴人並不是直接受影響的人士，所以將該指控歸類為「須知會投訴」分別處理。監警會並不同意，因為投訴人對兩名警員的指控有緊密的關連，所以要求投訴警察課重新考慮投訴的歸類。此外，監警會亦不同意投訴警察課稱當時沒有獨立證人或其他確實證據證明或反駁投訴人的說法，因此要求投訴警察課重新考慮「無法證實」的調查結果。

經過監警會三輪質詢，投訴警察課接納監警會的論點，把指控歸類由「須知會投訴」改為「須匯報投訴」。並把另一項指控的調查結果分類由「無法證實」改為「無法完全證明屬實」。

Highlights of the Case

This case demonstrates that when examining complaint cases, IPCC will not only ask CAPO to reconsider the categorisation of a complaint but also enquire into the method CAPO used in weighing the credibility and reliability of a witness' statement to reach its findings during investigation.

The complainant was dissatisfied with two police officers who ticketed her for driving in a prohibited zone after allowing another driver, who had preceded her into the prohibited zone, to go free. She lodged a complaint against the two police officers for "Misconduct" and "Neglect of Duty". One of the allegations was against one of the police officers

for failing to ticket the driver who preceded her into the prohibited zone. Since the complainant was not a directly affected party, CAPO categorised it as a “Notifiable Complaint” and dealt with it separately. IPCC disagreed, as the complainant’s allegations against the two police officers were closely connected, and asked CAPO to reconsider the categorisation of the complaint. IPCC also disagreed with CAPO that there was no independent witness or corroborative evidence to support or disprove the complainant’s story and asked CAPO to reconsider its “Unsubstantiated” finding.

After three rounds of queries, CAPO accepted IPCC’s observations and recategorised the allegations from “Notifiable Complaint” to “Reportable Complaint”. It also reclassified the finding of one of the allegations from “Unsubstantiated” to “Not Fully Substantiated”.

詳細個案

事發當日，投訴人駕車前往西區海底隧道途中，在德輔道中附近迷路。於是她跟隨一輛由一名男司機駕駛的私家車行駛，未幾兩輛車均被警員截停。兩名警員其後分別接觸兩位司機。其中一名警員告知投訴人，將會票控她在限制區內駕駛。投訴人辯稱因不熟悉附近路段，遂跟隨著前方車輛。該名警員指兩位司機均會因同一罪名而被票控。聽罷，投訴人便出示駕駛執照和身份証讓警員簽發告票。

過程中，她看到該名男司機下車與另一名警員交談。不久，該男司機在沒有收到告票的情況下便駕車離開了。投訴人就此詢問正在向她簽發告票的警員，他答稱該男司機已被票控。她對此感到懷疑遂詢問另一名警員，這名警員回答稱該男司機並沒有被票控。

Details of the Case

On the day in question, the complainant was driving her vehicle en route to the West Harbour Tunnel. She lost her way when she approached Des Voeux Road Central, and decided to follow another private car driven by a man in front of her. Shortly afterwards, both vehicles were intercepted by police officers, who approached the vehicles separately. One officer informed the complainant that she would be ticketed for driving in a prohibited zone. The complainant contended that she was just following the vehicle ahead of her as she was unfamiliar with the vicinity. The officer told her that both drivers would be ticketed for the same offence. On hearing that, the complainant produced her driving license and identity card so the officer could issue a ticket.

In the process, she saw the driver from the car ahead of her alight from his vehicle and talk to the other police officer. Moments later, the driver returned to his car and drove off without receiving a ticket. The complainant then questioned the officer who was writing her ticket; he replied that the other driver had been issued a ticket. Doubting this reply, the complainant approached the other police officer to ask if the driver ahead of her had received a ticket; he replied that he had not.

她對這不公平的處理方法大感不滿，於是投訴票控她的警員(指控一)「行為不當」因他謊稱另一名司機有被票控，及(指控二)「疏忽職守」因他不公平地只票控投訴人。另外，她亦投訴另一警員(指控三)「疏忽職守」，因他沒有以同一罪名票控該名男司機。但由於投訴人並不是直接受影響的人士，所以投訴警察課把指控三歸類為「須知會投訴」分別處理。

經調查後，投訴警察課把指控一列為「無法證實」，因當時並沒有獨立證人或其他確實證據證明或反駁雙方的說法。至於指控二，由於證據顯示警員行為不當，投訴警察課列為「證明屬實」。因此，投訴警察課通知中央交通檢控組撤消對投訴人的票控，並退回有關罰款。

監警會對第一項指控的調查結果有所保留，原因如下：

- (i) 事發當日，投訴人透過傳真書面詳述了她的投訴(投訴人被票控時間為當日下午1時，警方於同日下午2時51分收到傳真)。傳真內容與投訴人其後向投訴警察課敘述的內容一致。
- (ii) 投訴人的傳真和證供中的詳情與兩名警員的陳述一致，而她的說法既合情理，亦沒有與其他證據矛盾。事發後她抄下兩名警員的編號和作出書面投訴等事情亦與她的證供一致。
- (iii) 兩名警員的記事簿中均沒有記錄他們與投訴人的對話內容。票控投訴人的警員曾表示當日聽到投訴人質疑他撒謊，而沒有票控另一名男司機的警員亦確認這點。在這種情況下警員審慎的做法是應該在記錄簿上記錄所發生的事。
- (iv) 兩名警員的證供中出現很多不一致之處，包括事發經過和對事件的描述。

儘管上述分析證明投訴人的證供明顯地更可靠和合情理，但因為指控一是嚴重指控，必須要有更多確切的證據支持才能證實。綜合各方因

Feeling aggrieved by this unfair treatment, the complainant lodged a complaint alleging that the police officer had (i) lied to her by saying the other driver was also ticketed, an allegation of Misconduct, and (ii) unjustly ticketed her while the other driver was spared, an allegation of "Neglect of Duty". She also complained against the second officer for (iii) failing to ticket the male driver for the same offence, an allegation of "Neglect of Duty". Since the complainant was not a directly affected party with regard to the third allegation, CAPO categorised it as a "Notifiable Complaint" and dealt with it separately.

After investigating the incident, CAPO found the first allegation to be "Unsubstantiated", in the absence of an independent witness or any corroborative evidence to support or disprove either side's story. CAPO classified the second allegation as "Substantiated" because there was sufficient reliable evidence proving the first police officer's impropriety. Therefore, CAPO informed the Central Traffic Prosecution Division to rescind the complainant's ticket and issue a refund of the fine she had paid.

IPCC had reservations concerning the finding on the first allegation for the following reasons:

- (i) The complainant's version of events was first set out in detail in a written complaint faxed to the Police on the same day the incident occurred (the fax was received by the Police at 14:51 hours; the ticketing occurred at around 13:00 hours on the same day). The details in the fax were consistent with a statement made by the complainant to CAPO later.
- (ii) Most of the facts in the complainant's letter and statement were supported by the two police officers' statements. In addition, the complainant's version of events was inherently probable and was not contradicted by any independent or documentary evidence. The fact that she jotted down the police identification numbers of both officers and made a written complaint to the Police soon after the incident was also consistent with her version of events.
- (iii) Notebook entries of the two police officers did not contain any record of the conversations with the complainant. Given that the first police officer stated that he heard the complainant challenge him and assert that he had lied to her, a prudent response would have been for the officer to record what had happened in his notebook.
- (iv) There were also notable inconsistencies in the versions of events told by the two police officers concerning the sequence and description of events.

In spite of the above analysis showing that the complainant's story was apparently more reliable and inherently probable, given the serious nature of the first allegation, more cogent evidence was

素，監警會認為指控一應列為「無法完全證明屬實」。

同時，監警會不同意把指控三列為「須知會投訴」，因為投訴人對兩名警員的指控有緊密的關連。實際上，本案中只有一項投訴同時指控兩名警員。所以，投訴警察課應一同處理三項指控並衡量各指控的相互影響。就此，監警會判斷應把指控三歸類改為「須匯報投訴」。

經過三輪的質詢後，投訴警察課最終認同監警會的觀察，並改列指控一為「無法完全證明屬實」。投訴警察課亦把指控三重新歸類為「須匯報投訴」。經進一步調查後，投訴警察課把此指控列為「獲證明屬實」。監警會同意這宗個案的修訂調查結果。

required to fully substantiate the allegation. In balancing all relevant factors, IPCC considered that a "Not Fully Substantiated" classification would be more appropriate in the circumstances.

IPCC also disagreed with the "Notifiable Complaint" categorisation of the third allegation, because the complainant's allegation against the second officer was closely connected with that against the first one; in effect, there was only one complaint in this case against both officers. As such, CAPO should view the allegations as a whole and consider their effects on each other. On this basis, IPCC judged that the third allegation should be recategorised as a "Reportable Complaint".

After three rounds of enquiry, CAPO eventually subscribed to the IPCC's observations and reclassified the first allegation as "Not Fully Substantiated". CAPO also recategorised the third allegation as a "Reportable Complaint". After further investigation, CAPO classified it as "Substantiated". IPCC endorsed CAPO's revised investigation findings accordingly.

02

個案 Case 02

Progress

Report

個案重點

此個案顯示監警會在衡量警方於刑事調查中採取行動的理由和依據時，定必嚴謹分析、細心求証。投訴人因濫用警權的行為而受屈，在監警會的質詢下，警方同意有關警務人員在未有徹底調查事件前採取拘捕行動，而錯誤的拘捕導致隨後非必要的保釋程序，確有「疏忽職守」及「濫用職權」的情況。

投訴人因一宗刑事恐嚇案遭拘捕，惟處理案件的主管並沒有徹底調查報案人口供前後矛盾便拘捕投訴人，其後並讓投訴人保釋外出。案件主管的上司認為無法證明報案人所聲稱的恐嚇成立，所以不同意跟進調查。當投訴人到警署報到時，案件主管的上司下令無條件釋放投訴人。投訴人不滿警方處理此事的手法，認為案件主管未有徹底調查事件便採取拘捕行動，也沒有權力要求投訴人保釋，遂投訴案件主管「疏忽職守」及「濫用職權」。

經調查後，投訴警察課認為兩項指控的調查結果為「無法證實」和「並無過錯」。但經監警會質詢，兩項指控的調查結果均改為「獲證明屬實」。

Highlights of the Case

This case demonstrates that IPCC is meticulous in its analysis and verification of the reasons and background behind the actions taken by the Police during criminal investigations. The complainant felt aggrieved because of a police officer's "Unnecessary Use of Authority". Under IPCC query CAPO eventually agreed that, as the officer concerned had made an arrest before investigating the case properly and the wrongful arrest led to unnecessary bail procedures, he was at fault for "Neglect of Duty" and "Unnecessary Use Of Authority".

The complainant was arrested for criminal intimidation, but the officer-in-charge made the arrest without investigating properly the contradictions in a statement given by the informant. The officer-in-charge subsequently released the complainant on bail. The supervising officer of the officer-in-charge was of the opinion that the alleged

intimidation could not be proved and did not agree to a follow-up investigation. When the complainant reported to the police station, the supervising officer instructed that he be released unconditionally. The complainant was dissatisfied with the way the Police had handled the case. He felt the officer-in-charge had made an arrest without a thorough investigation and did not have the authority to put him on bail. So he lodged a complaint against the officer-in-charge for "Neglect of Duty" and "Unnecessary Use of Authority".

After investigation, CAPO's findings classified the two allegations as "Unsubstantiated" and "No Fault" respectively. However, after the queries by IPCC, the findings of the investigation of both allegations were changed to "Substantiated".

詳細個案

投訴人和A先生皆是退休警員，二人在2005年10月分別被選為所居住屋苑的互助委員會司庫和主席。上任不久，投訴人與A先生就互助委員會的運作意見分歧。投訴人發現互助委員會的會計帳目異常，遂於2005年12月起接管記帳本及銀行存摺。

2006年5月13日，A先生聲稱曾致電投訴人，要求他歸還互助委員會的帳本及銀行存摺。A先生指投訴人拒絕並威脅若他繼續糾纏此事便會毆打及殺死他。在同年5月15日下午3時10分，A先生到警署報案指投訴人刑事恐嚇，並擔心自己的人身安全。

刑事恐嚇案的案件主管接管此案，隨即指派一名偵緝探員調查。當日下午3時53分，該探員為A先生正式錄取口供，A先生重覆投訴人恐嚇他。可是他的口供與早前說法矛盾，指自己是退休警員所以不害怕投訴人的恐嚇。

A先生指投訴人之前亦曾作出類似恐嚇。另外，他亦明確地指出他報案的真正目的是要借助警方之力，令投訴人交還互助委員會的財政紀錄。

Details of the Case

The complainant and another man (Mr A) are both retired police officers. In October 2005, they were elected as the Treasurer and Chairman respectively of the Mutual Aid Committee (MAC) of the housing estate at which they resided. Shortly after taking office, the complainant had disagreements with Mr A over the operation of the MAC. After noticing irregularities in the MAC's accounting records, the complainant took control of the MAC's cashbook and bankbook from December 2005.

On 13 May 2006, Mr A claimed to have called the complainant requesting that the MAC's cashbook and bankbook be returned to him. The complainant refused, and allegedly threatened to beat and kill Mr A if he continued to pursue the matter. On the afternoon of 15 May 2006 (at around 15:10 hours), Mr A went to a police station to make a criminal intimidation report against the complainant, saying he was worried about his personal safety.

The officer-in-charge of the criminal intimidation report took over the case, and assigned a Detective Police Constable as the investigating officer. When the investigating officer took a formal statement from Mr A at 15:53 hours on the same day, Mr A repeated that the complainant had intimidated him, but in contradiction to his earlier statement, he said he was not afraid because he was a retired police officer.

Mr A added that the complainant had made similar threats to him before. Mr A also stated unambiguously that his real intention in making the report was to seek police assistance in getting the complainant to return the MAC's financial records to him.

同日，即2006年5月15日，負責調查的警員亦為投訴人錄取口供。投訴人否認指控，亦否認曾在2006年5月13日與A先生有指控中的那段對話。相反，投訴人反指責A先生報假案及盜用互助委員會帳戶1,000港元。

案件主管研究A先生和投訴人的證供以及這刑事恐嚇案的案情，他質疑投訴人的說法，並認為有足夠的表面證據拘捕投訴人。

案件主管在2006年5月15日晚上下令負責調查的警員拘捕投訴人，但其後讓他保釋外出。案件主管認為此一連串行動是正確和恰當的，即使他沒有證據證明A先生與投訴人於2006年5月13日曾通電話，亦沒有其他證據證明任何人曾於此事中犯罪。

案件主管建議跟進調查，但他的上司認為無法證明A先生所聲稱的恐嚇成立，所以不同意跟進調查。2006年6月4日，當投訴人到警署報到時，案件主管的上司下令無條件釋放投訴人。

投訴人不滿警方處理此事的手法，遂作出投訴和提出兩項指控：(指控一) 案件主管「疏忽職守」，因為他未有徹底調查事件便採取拘捕行動；(指控二) 案件主管「濫用職權」，因為他只需要查問投訴人，而沒有權力要求投訴人保釋。

經調查後，投訴警察課把第一項指控列為「無法證實」，因沒有明確證據證明雙方的供詞。同時，投訴警察課認為案件主管拘捕投訴人並要求他保釋是恰當的做法，亦合乎程序，因此投訴警察課把第二項指控列為「並無過錯」。

監警會對兩項指控的調查結果有所保留，原因如下：

(i) 第一項指控的關鍵是案件主管在拘捕投訴人之前並沒有徹底地調查事件。案件主管沒有要求A先生澄清為何他改變初衷，於2006年5月15日在短時間內，由聲稱害怕投訴人的恐嚇到後來表示不害怕。投訴警察課未有針對此事質詢案件主管。案件主管認同A先生與投訴人之間的通話紀錄是

The investigating officer also recorded an interview with the complainant on the same day, during which the complainant denied committing an offence, and denied having had the alleged conversation with Mr A on 13 May 2006. On the contrary, the complainant counter-accused Mr A of making a false report and embezzling HK\$1,000 from the MAC account.

Having studied the statements of Mr A and the complainant, and the circumstances surrounding the criminal intimidation report, the officer-in-charge cast doubt on the complainant's version of events and concluded there was prima facie evidence to arrest the complainant.

He ordered the investigating officer to arrest the complainant on the evening of 15 May 2006, but later released him on police bail. The officer-in-charge considered such a course of action proper and appropriate even though he had no record of the telephone call between the complainant and Mr A on 13 May 2006 and there was no other evidence that an offence had been committed.

The officer-in-charge recommended a follow-up investigation, but was overturned by his supervising officer, who opined that the alleged intimidation could not be proven. Upon his instruction, the complainant was released unconditionally when he reported to the police station on 4 June 2006.

Feeling aggrieved by the way the Police handled the case, the complainant lodged a complaint and alleged, among other things, that the officer-in-charge (i) failed to investigate the case properly before arresting him, an allegation of "Neglect of Duty"; and (ii) should have only questioned him and had no authority to put him on bail, an allegation of "Unnecessary Use of Authority".

After investigating the incident, CAPO classified the first allegation as "Unsubstantiated" in the absence of corroborative evidence to support either side's version of events, and the second allegation as "No Fault" because the officer-in-charge's decision to arrest the complainant and put him on police bail was appropriate and in line with police procedures.

IPCC had reservations over the findings of both allegations on the following grounds:

(i) The crux of the first allegation was the officer-in-charge's lack of thoroughness in conducting an investigation prior to arresting the complainant. CAPO's investigation and subsequent query with the officer-in-charge was unable to address his failure to clarify with Mr A why he changed his story (from being worried about the complainant's alleged intimidating remarks to not being afraid of such remarks) within a very short span of time on 15 May 2006. The absence of the call records between the complainant and Mr A (which the officer-in-charge admitted were essential evidence

案件關鍵證物，但他一直未有取得該紀錄。其他證據亦顯示，案件主管在當時拘捕投訴人是倉促和有問題的決定。

- (ii) 沒有表面證據顯示，A先生對於改變初衷有難言之隱。
- (iii) A先生已明確表示他報案是另有原因，即借助警方之力，令投訴人交還互助委員會的財政紀錄。可是案件主管未有即時進一步與A先生釐清此事。
- (iv) 案件主管的上司迅速地否決案件主管進一步調查的提議，並決定無條件釋放投訴人，這證明當時沒有足夠證據支持拘捕行動。案件主管在缺乏詳細調查的情況下拘捕投訴人是「疏忽職守」的表現。
- (v) 由於兩項指控關係密切，任何一項指控的結果如有改變可能會影響另一項指控。如果第一項指控的調查結果有變，亦需要重新考慮第二項指控「並無過錯」的決定。

經過四輪的質詢後，投訴警察課把投訴案件主管因未有詳細調查案件而「疏忽職守」的指控，改為「獲證明屬實」。另一項「濫用職權」的指控改為「無法證實」。儘管如此，監警會對第二項指控的調查結果仍然有所保留。

監警會和投訴警察課於工作層面會議上再詳細討論本案。投訴警察課接納監警會的意見，認同兩項指控的調查結果應該同步，所以改列第二項指控為「獲證明屬實」。由於案件主管的疏忽，導致投訴人被剝奪自由此嚴重後果，即使案件主管並無惡意，投訴警察課在考慮監警會的建議後改變對案件主管的處分。處分由毋須在部門紀錄中備案的口頭勸導，改為毋須備案的訓諭，警告他在處理同類案件時表現要更為專業。

第二項「濫用職權」的指控是第一項指控的合理後果，而投訴人亦獲准保釋外出。投訴警察課同意監警會的建議，決定不用就此對案件主管採取進一步的行動。監警會通過這宗個案的修訂調查結果。

in the case) and other independent evidence suggested that the officer-in-charge's decision to arrest the complainant at that juncture was premature and problematic.

- (ii) There was no prima facie evidence to suggest that Mr A was precluded from disclosing the reason for his change of story for reasons beyond his control.
- (iii) Mr A had made known in very clear terms his genuine intention in making the report (i.e. that he wanted the Police to help him get the complainant to return the MAC's financial records to him), yet the officer-in-charge failed to further clarify the matter with Mr A then and there.
- (iv) The supervising officer's swift decision to overturn the officer-in-charge's decision and his instruction to release the complainant unconditionally showed that there was insufficient evidence to justify the complainant's arrest, and that the officer-in-charge had been negligent in discharging his duties by not investigating the case more thoroughly before making the arrest.
- (v) Since the two allegations were closely related, any change in the findings regarding one allegation would likely have a bearing on the other. The "No Fault" classification of the second allegation would therefore need to be reconsidered if there was a change in the classification of the first allegation.

After four rounds of queries, CAPO reclassified the allegation of "Neglect of Duty" in failing to investigate the case as "Substantiated", and the other charge of "Unnecessary Use of Authority" as "Unsubstantiated". Notwithstanding this, IPCC still had reservations over the revised finding of the second allegation.

This case was further discussed at the working level meeting held between IPCC and CAPO. After reconsideration, CAPO subscribed to IPCC's observation that the findings with regard to the two allegations should go hand-in-hand, and hence reclassified the second allegation as "Substantiated". Since the officer-in-charge's negligence resulted in the serious consequence of depriving the complainant of his personal liberty, although there was no bad faith on his part, CAPO, on IPCC's advice, agreed to upgrade the action to be taken against the officer-in-charge from verbal advice without a Divisional Record File entry to a warning without a Divisional Record File entry, cautioning him to be more professional in handling similar situations in future.

As the alleged "Unnecessary Use of Authority" was a logical consequence of the substantiation of charges in the first allegation, and the granting of bail meant that the complainant could be released from police custody, CAPO also concurred with IPCC's suggestion that no further action would be taken against the officer-in-charge. IPCC endorsed the findings of the investigation in this case.

03

個案 Case 03

Progress

Report

個案重點

此個案反映監警會在審核投訴個案時，是從個案整體的情況考量，仔細分析投訴警察課的假設再作判斷。即使被列為「旁支事項」的事宜亦會審慎處理。

投訴人涉嫌刑事毀壞而被捕，其後被判無罪，遂投訴警方在未清楚調查事件之前逮捕她乃「疏忽職守」。投訴警察課認為拘捕她的警員在拘捕行動之前，已在現場作出充分的查詢，故決定把指控列為「並無過錯」。投訴警察課在調查時，發現拘捕投訴人的警員在法庭作供時未有根據其筆記如實作供。故此，對該警員加以一項「疏忽職守」的指控，列為「未經舉報但證明屬實」，投訴警察課並忠告為投訴人錄取口供的警員及其直屬上司，在向投訴人澄清其原來的警誡供詞時，需要再警誡投訴人。投訴警察課對錄取口供的警員和其直屬上司的疏忽列為「旁支事項」。

經監警會的質詢後，「並無過錯」的調查結果改為「無法證實」，而「旁支事項」的疏忽指控改為「未經舉報但證明屬實」的「疏忽職守」。

Highlights of the Case

This case demonstrates that the IPCC considers each case in its entirety, and that it will carefully analyse and evaluate the assumptions made by CAPO. Allegations classified as “Outwith” are also prudently reviewed.

The complainant was arrested upon suspicion of criminal damage, but was acquitted after trial. She lodged a “Neglect of Duty” allegation against the arresting officer for his failure to investigate the case thoroughly before arresting her. CAPO, judging that the arresting officer had made sufficient enquiry into the situation at the scene before arresting the complainant, classified the allegation as “No Fault”. Yet CAPO had found that the arresting officer did not give proper testimony in court in accordance with the facts recorded in his notebook. CAPO therefore registered a “Substantiated Other Than Reported” count of “Neglect of Duty” against the arresting officer, and advised the officer that took the complainant’s statement and his supervising officer of the need to caution an arrested person when they sought to clarify what he or she initially said

under caution. The matter was registered by CAPO as an “Outwith” matter against this officer and his supervising officer.

After IPCC’s query, the finding of “No Fault” was changed to “Unsubstantiated”, and the negligence pertaining to the “Outwith” matter was reclassified as a “Substantiated Other Than Reported” count of “Neglect of Duty”.

詳細個案

事發當日，投訴人帶同其12歲的兒子到前僱主A先生的店舖，並懷疑以紅色不褪色箱頭筆在金屬餐具上寫上侮辱性字句。警方接報後派遣一隊警員到現場。查詢情況後，一名警員以懷疑刑事毀壞的理由拘捕投訴人。投訴人、其兒子及A先生被一同帶回警署協助調查。這案件由分區調查隊接手處理，並由一名偵緝警員負責調查。經進一步調查後，投訴人被指其行為構成刑事毀壞，但經審訊後獲判無罪。投訴人不滿警方處理這案件的手法 and 對她兒子的安排，認為警方在未清楚調查事件之前而當場逮捕她，故向拘捕她的警員提出一項「疏忽職守」的指控；她還投訴另一名呼喝她的警員「不禮貌」；而對第三名警員在未知會她之前送她的兒子回家，以及在警署錄取口供時沒有給她解釋的機會而提出兩項「疏忽職守」的投訴。

調查後，投訴警察課認為拘捕她的警員在拘捕行動之前，已在現場作出充分的查詢才拘捕投訴人，故決定把第一項指控列為「並無過錯」。由於其他指控缺乏獨立證人和佐證以支持或反駁，均列為「無法證實」。此外，投訴警局課在審視有關法庭研訊的紀錄時，發現拘捕投訴人的警員在法庭作供時未有根據其筆記如實作供。故此，對該警員加上一項「疏忽職守」的指控，並列為「未經舉報但證明屬實」。由於這警員缺乏上庭經驗和在警界資歷尚淺，其指揮官只需訓示他將來上庭作供的重要性。投訴警察課審視後亦忠告錄取口供的警員及其直屬上司(B警長)在向投訴人澄清其原來的警誡供詞時，需要再警誡投訴

Details of the Case

On the day in question the complainant, with her 12-year-old son, went to the shop of her former employer (Mr A) and allegedly wrote abusive words with a non-erasable red marker pen on some metal utensils. A police report was made, and in response, a police party arrived at the scene. After enquiring into the circumstances, one police officer arrested the complainant upon suspicion of criminal damage, and she, her son and Mr A were taken to a police station for further questioning. The complainant’s case was taken over by a divisional investigative team, with a Detective Police Constable assigned as the investigating officer. After further investigation, the complainant was charged with the offence of criminal damage, but was acquitted after trial. Dissatisfied with the way the Police handled the case and treated her son, the complainant lodged a “Neglect of Duty” allegation against the arresting officer for his failure to investigate the case thoroughly before arresting her at the scene; she also accused a second police officer of “Impoliteness” for shouting at her, and a third officer with two counts of “Neglect of Duty” for failing to inform her before sending her son back home and for failing to allow her to offer an explanation when her statement was taken at the police station.

After investigation, CAPO classified the first allegation as “No Fault”, judging that the arresting officer had made sufficient enquiry into the situation at the scene before arresting the complainant. The other allegations were all classified as “Unsubstantiated” in the absence of independent witnesses or corroborative evidence to support or disprove the allegations. In addition, a “Substantiated Other Than Reported” count of “Neglect of Duty” was registered against the arresting officer, because a review of the acquittal showed that he did not give proper testimony in court in accordance with facts recorded in his notebook and made in his statement. However, in light of the officer’s lack of experience in court and his relatively short period of police service, he was merely reminded by his commanding officer of the importance of giving evidence in court in future. The acquittal review also recommended that the officer that took the complainant’s statement and his supervising officer (Sergeant B) should be advised

人。投訴警察課把對這警員和B警長的疏忽列為「旁支事項」。因為他們已得到指揮官的忠告，所以投訴警察課對他們不作進一步行動。

在審核這個案後，監警會有以下觀察：

- (i) 對拘捕投訴人的警員「疏忽職守」的指控，投訴警察課的裁決是建基於假設警員當時在筆記上記錄的案情是真實和正確的，只是他在法庭上的表現欠佳。但事實上他在庭上的口供是在宣誓下所作出的，而他的筆記卻並非誓章，所以作出以上假設並不妥當。值得注意的是在法庭上他供稱即使他看着他的證人陳述書（內容應與他的筆記一致），也不會有助他恢復當時的記憶。故此不應斷定警員拒絕重覆其證人陳述書和筆記內容只因表現欠佳，而有可能是因為他不想在已宣誓的情況下複述不正確的記錄。投訴警察課被要求重新考慮這指控的「並無過錯」分類。
- (ii) 原被列為「旁支事項」，即錄取口供警員和B警長的疏忽，其實是與投訴人的指控有密切關係，並可能影響此個案的結論。雖然不能確定投訴人是否曾在錄口供時向警員要求作辯護解釋，該警員和B警長未有尋求進一步澄清，足以影響是否有充分證據起訴投訴人。因此投訴警察課應把這項不當行為由「旁支事項」改列為「未經舉報但證明屬實」的「疏忽職守」。
- (iii) 安排投訴人兒子回家的幾名警員行為也有不當。拘捕的警員和被指「不禮貌」的警員均認為該男孩年紀尚輕，在事發現場沒有人可以照顧他，因此在拘捕投訴人時一併帶他回警署。然而，錄口供的警員卻讓該男孩晚上10時在沒有警員陪同下從警署乘巴士回家。如果認為以男孩的年齡可以獨自乘巴士回家，起初就不應該帶到警署。似乎拘捕的警員未有考慮或與投訴人商討是否讓男孩回家；他們只假定以他小小年紀應與母親一起到警署。因此監警會要求投訴警察課調查有關的幾名警員做法有否不當。

of the need to caution an arrested person when they sought to clarify what he or she initially said under caution. However, as this issue had no direct impact on the complainant's allegations, CAPO registered it as an "Outwith" matter against this officer and Sergeant B. No action would be taken against them by CAPO as they had already been advised by their commanding officer.

After examining the findings in this investigation and the case materials, IPCC had the following observations:

- (i) With regard to the allegation of "Neglect of Duty" against the arresting officer, CAPO's analysis proceeded on the assumption that what the officer had recorded in his notebook was the true and correct version of events, and that the problem lay only in his poor performance when giving evidence in court. However, given that his testimony in court was made under oath while his notebook entry was not, it was not safe to proceed on this assumption. It was noteworthy that the officer said in court that even if he were to be shown his witness statement (presumably it contained the same facts as his notebook entry), it would not help refresh his memory. As such, one could not rule out the possibility that the officer's refusal to repeat what he said in his witness statement and notebook was not because of his poor performance, but because the facts stated therein were not true and he did not wish to repeat them under oath. CAPO was thus requested to revisit the "No Fault" classification in this instance.
- (ii) The negligence pertaining to the "Outwith" matter registered against the officer who took the complainant's statement and Sergeant B was closely related to the complainant's allegation against this officer, and had an impact on the conclusion in this case. Although it could not be ascertained whether the complainant had asked the officer to allow her to offer an explanation in her defence when her statement was taken, the failure of the officer and Sergeant B to seek further clarification would be a factor in assessing the sufficiency of evidence of the complainant's commission of the offence. As such, CAPO should handle this impropriety by way of a "Substantiated Other Than Reported" count of "Neglect of Duty" rather than as an "Outwith" matter.
- (iii) The police officers concerned should be faulted concerning the handling of the complainant's son. Both the arresting officer and the officer accused of "Impoliteness" said that as the boy was young and there was no other person to look after him at the scene, they brought him to the police station with his mother after arresting her. However, at the police station, the officer who took the complainant's statement found it appropriate to allow her son to return home by bus unaccompanied by an officer, although it was after 22:00 hours. If the boy was considered old enough to be able to return home alone by bus, he should not have been taken to the police station in the first place. It seemed that the arresting

經過兩輪質詢，投訴警察課作出以下回應：

- (i) 投訴警察課認同監警會對拘捕投訴人的警員「疏忽職守」的觀察，並改列為「無法證實」。
- (ii) 投訴警察課亦同意監警會意見，把原列為「旁支事項」的疏忽指控改為「未經舉報但證明屬實」的「疏忽職守」。為此對錄取口供的警員和B警長一同新增一項指控。
- (iii) 有關投訴人兒子的安排，投訴警察課維持原來的判斷，即有關警員決定把男孩從案發現場帶回警署是恰當的處理方法。但投訴警察課發現錄口供的警員在讓男孩獨自乘巴士回家之前，未有諮詢當值警官，亦沒有安排警員陪同男孩回家或衡量投訴人的女兒是否有能力在家照顧男孩，故此該警員被指控多一項「未經舉報但證明屬實」的「疏忽職守」。由於投訴警察課認為有關警員的做法是出於善意而且沒有不良意圖，加上男孩最終安全回家，因此建議提示該警員將來須遵從警方有關處理被拘留人士子女的守則和指引。這提示將不會記錄在部門記錄文件。

監警會通過這宗個案的調查結果。

officers did not consider or discuss with the complainant the option of allowing her son to return home; they simply proceeded on the assumption that because of his young age he should be taken to the police station together with his mother. CAPO was requested to examine if any impropriety was found on the part of the officers involved.

After two rounds of query, CAPO responded as follows:

- (i) CAPO subscribed to IPCC's observation on the "Neglect of Duty" allegation against the arresting officer, and reclassified it as "Unsubstantiated".
- (ii) CAPO also concurred with the Council's view that the negligence pertaining to the "Outwith" matter should be disposed of by way of a "Substantiated Other Than Reported" count of "Neglect of Duty". To this end, a fresh allegation was registered against the officer who took the complainant's statement and Sergeant B.
- (iii) Regarding the police officer handling of the complainant's son, CAPO maintained that the decision to bring the boy from the crime scene to the police station was appropriate. However, CAPO found that the officer had failed to consult the Duty Officer before sending the boy home alone by bus. He also failed to arrange a police escort for the boy or to ascertain the capability of the complainant's daughter to look after the boy at home. An additional "Substantiated Other Than Reported" count of "Neglect of Duty" was therefore registered against the officer who sent the boy home alone. As CAPO opined that the officer had acted in good faith with no ill intent and the boy had eventually returned home safely, the officer would be advised without a Divisional Record File entry to follow the relevant provisions in police orders and guidelines in handling children of detained persons in future.

IPCC endorsed the findings of the investigation into this case.

04

個案 Case 04

Progress

Report

個案重點

此個案突顯監警會作為獨立的監察機構，確保投訴處理公平公正，不偏不倚。在監察投訴警察課處理投訴時，如遇到投訴人涉嫌濫用投訴機制，無理取鬧，監警會不會偏袒任何一方。

投訴人駕駛時以流動電話拍攝一輛警車使用快綫行車的片段作為證據，投訴駕駛該輛警車的警務人員違例。經調查後，負責此宗投訴個案的高級督察認為沒有證據證明當日負責駕駛該輛警車的警務人員有不小心或魯莽駕駛，遂終止有關調查。但由於投訴人在駕駛時使用流動電話觸犯法例，高級督察決定運用酌情權不檢控投訴人，只向他發出警告信。惟此舉惹起投訴人不滿，並投訴該名負責的高級督察有意報復他指控駕駛警車的警務人員。監警會了解事件後，同意投訴警察課把個案列為「並無過錯」。

Highlights of the Case

This case highlights the IPCC's role as an independent oversight body in ensuring that complaints against police handling of cases are treated justly and without prejudice. In monitoring CAPO's handling of complaint cases, IPCC will not take sides even when a complaint is trivial or represents an abuse of the system.

While he was driving, the complainant took a video clip with his mobile phone of a police vehicle traveling in the third lane as evidence to lodge a complaint against the police driver for violating traffic regulations. After investigation, the Senior Inspector assigned to the case concluded that there was insufficient evidence to prove that the police driver had carelessly or recklessly contravened any traffic regulation and dismissed the case. However, the complainant had violated traffic regulations by using his mobile phone while driving. The Senior Inspector exercised her discretion and decided not to charge the complainant, but to issue him a warning letter. Dissatisfied with the outcome, the complainant lodged a complaint against the Senior Inspector, claiming she sought to take revenge against him for complaining about the police driver. After looking into the incident, IPCC agreed with CAPO's "No Fault" finding.

詳細個案

事發當日，投訴人在快速公路駕駛時，指稱目睹一輛警車沿途使用右邊行車綫(即快綫)，涉嫌違反香港法例第374Q章《道路交通(快速公路)規例》(第12條)有關「交通局限在左邊行車」的規定。投訴人即日向警方投訴，並提供一段由他在駕駛時以流動電話拍攝的影片作為證據。一名高級督察被指派負責調查該宗投訴，看罷有關影片後，該督察認為沒有充分證據證明當日負責駕駛該輛警車的警務人員有不小心或魯莽駕駛，因為當時正有其他車輛使用左邊行車綫，令該輛警車沒有足夠空間和距離，由右邊行車綫安全地駛回左邊行車綫。因此該名高級督察建議毋須作出進一步行動，並終止有關調查。

然而，在調查過程中，該名高級督察留意到投訴人在駕駛時使用流動電話，因為有關影片清楚顯示投訴人只用單手控制駕駛盤，而這行為已觸犯了香港法例第374G章《道路交通(交通管制)規例》(第42條(1)(g))有關「在汽車移動中使用流動電訊設備」的規定。雖然如此，該名高級督察決定運用酌情權，只向投訴人發出一封警告信，提醒他在駕駛時使用流動電話的危險。該名高級督察獲得上司的同意後，便向投訴人發出警告信。

投訴人因不滿警方處理此投訴的手法，以及向他發出警告信。遂投訴該名負責的高級督察「疏忽職守」，認為該名高級督察報復他指控駕駛警車的警務人員，因而無理地向他發出警告信。

經進一步調查後，毫無疑問投訴人在駕駛時確曾使用流動電話拍攝事件經過。投訴警察課認為沒有證據顯示，該名高級督察向投訴人發出警告信乃存心報復。相反，該名高級督察恰當和公平地履行職責，向涉嫌觸犯交通條例的人士採取行動。因此，投訴警察課把個案列為「並無過錯」。

為了確保可公平公正地審核有關「疏忽職守」的指控，監警會要求審閱該名高級督察所發出的警告信。在審閱過該警告信後，監警會認同發出該信是恰當及公正的，因此同意投訴警察課的調查結果。

Details of the Case

The complainant stated that, while driving along an expressway one day, he witnessed a police vehicle travelling in the third lane, apparently in contravention of a regulation that restricts traffic to the nearside lane under s.12 of the Road Traffic (Expressways) Regulations, Cap. 374Q. The complainant lodged a traffic complaint the same day, and provided Police with a video clip of the incident taken with his mobile phone while he was driving. A Senior Inspector of Police was assigned to investigate the traffic complaint. After viewing the footage provided by the complainant, the Senior Inspector concluded that there was insufficient evidence to prove that the police driver had carelessly or recklessly contravened any traffic regulation, as there was not enough space for the police vehicle to safely pull back from the third lane to the inner lane, which was occupied by other vehicles at the time. The Senior Inspector therefore recommended that no action be taken against the police driver, and dismissed the case.

In the course of the investigation, however, the Senior Inspector noticed that the complainant had used his mobile phone while driving. The footage clearly showed him controlling his vehicle with a single hand on the steering wheel, which constituted the offence of using a mobile telephone or other telecommunications equipment while the vehicle is in motion, under s.42(1)(g) of the Road Traffic (Traffic Control) Regulations, Cap. 374G. Nonetheless, the Senior Inspector exercised her discretion and decided only to issue a warning letter to the complainant, to give him the clear message that it was dangerous to use a mobile phone while driving. The Senior Inspector's recommendation was endorsed by her supervising officer, and the letter was issued accordingly.

The complainant, dissatisfied with the way his complaint was handled and with the warning letter issued to him, lodged a complaint against the Senior Inspector. The complainant alleged that the Senior Inspector had been negligent in her duty in unreasonably giving him a warning, which he viewed as revenge against him for complaining about the police driver.

After further investigation, it was undisputed that the complainant had used his mobile phone to video-record the incident while driving at the same time. The CAPO concluded that there was no evidence that the Senior Inspector had issued the warning letter with the intent of taking revenge against the complainant. On the contrary, CAPO found that she had carried out her duty properly and impartially, as she was duty bound to take appropriate action against any offender suspected of committing a traffic offence. As such, CAPO classified the case as "No Fault".

To ensure that the investigation into the allegation of "Neglect of Duty" was fair and impartial, IPCC requested CAPO to provide a copy of the warning letter issued by the Senior Inspector to the complainant. After examining its contents, IPCC was satisfied that the letter was issued in a proper and just manner, and hence endorsed CAPO's finding.