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## 第四章 CHAPTER 4

# 真實投訴個案

# COMPLAINT CASES

個案  
CASE

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| 1 | 指控<br>Allegation(s)     | 被投訴人<br>Complainee(s)               | 投訴警察課原來分類<br>Original Classification(s) by CAPO | 最後分類<br>Final Classification(s) |
|---|-------------------------|-------------------------------------|---|---------------------------------|
|   | 疏忽職守<br>Neglect of Duty | 一名高級警員<br>A Senior Police Constable | 無法證實<br>Unsubstantiated                         | 獲證明屬實<br>Substantiated          |

## 個案重點 Highlights of the Case

此個案顯示監警會以仔細的態度分析和推論，來審視警方的刑事調查行動。經監警會質詢後，投訴警察課同意把「疏忽職守」指控的分類由「無法證實」改為「獲證明屬實」。

投訴人因襲擊懲教署人員被捕。當涉事高級警員為他就襲擊事件錄取口供時，投訴人向他表示，另一名懲教署人員在押送他從監獄診所到另一樓房（C座）作單獨監禁期間，命令投訴人脫掉破爛的囚衣，換上清潔的囚衣。隨後投訴人被控「傷害他人身體」罪。審訊期間，投訴人發現他的破爛囚衣和C座的閉路電視片段（C座片段）沒有被列為呈堂證物。由於法庭不接納證人就該案提供的證據，故投訴人獲判無罪。投訴人遂投訴該名高級警員未有保留C座片段和其破囚衣。投訴警察課調查後，把指控分類為「無法證實」。然而，監警會認為高級警員沒有索取及觀看C座片段，作為客觀證據來支持或反駁投訴人對事件的說法，已屬疏忽職守，故指控應分類為「獲證明屬實」。投訴警察課視高級警員忽略了投訴人控詞內的調查方向，乃無心之失，並非惡意的疏忽，所以後來把分類改為「無法完全證明屬實」。可是監警會不同意這改動分類的理據，認為無惡意之說只能減輕其疏忽職守的嚴重性。投訴警察課最後認同監警會的見解，重新把指控分類為「獲證明屬實」，並向該名高級警員作出訓諭。

**This case demonstrates that the IPCC is meticulous in its analysis and reasoning in examining the actions taken by the Police during criminal investigations. Under the IPCC queries, CAPO agreed to change the classification of a "Neglect of Duty" allegation from "Unsubstantiated" to "Substantiated".**

**The complainant had been arrested for assaulting an officer of the Correctional Services Department (CSD). When giving a statement in relation to the assault incident to the concerned Senior Police Constable (SPC), the complainant stated that another CSD officer, who had escorted him from the prison clinic to another block (Block C) to place him in solitary confinement, had ordered the complainant to remove his torn prisoner's uniform and put on a clean one. Subsequently, the complainant was charged with the offence of "Assault Occasioning Actual Bodily Harm". During the trial, the complainant found that his torn prisoner's uniform and the CCTV footage covering Block C (the Block C footage) had not been tendered as exhibits. At his trial the complainant was acquitted, as the Court found the evidence from the witness unacceptable. The complainant later complained against the SPC for failing to preserve the Block C footage and his torn prisoner's uniform as exhibits. After a CAPO investigation, the allegation was initially classified as "Unsubstantiated".**

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However, the IPCC considered that the allegation should be classified as “Substantiated” since the SPC had indeed failed to view or seize the Block C footage which was objective evidence to prove or disprove the complainant’s version of events. CAPO then changed the classification to “Not Fully Substantiated” because of the SPC’s oversight in identifying possible lines of enquiry from the complainant’s statement, which was viewed as unintentional and without malicious intent to neglect his duties. However, the IPCC did not agree with CAPO’s rationale in suggesting a “Not Fully Substantiated” classification, considering that the oversight without malicious intent could only be considered as a mitigating factor for the SPC’s negligence. CAPO subscribed to the IPCC’s view to reclassify the allegation as “Substantiated” and to issue an advice to the SPC.

個案背景  
Case Background

投訴人是一名懲教所的囚犯，因襲擊一名懲教署人員被捕。投訴人在這襲擊事件中受傷而被送往監獄診所治理。診治完畢，另一名懲教署人員押送他離開診所，帶往另一樓房（C座）作單獨囚禁。

十日後，一名高級警員為投訴人就襲擊事件錄取口供。投訴人表示在襲擊事件中，他的囚衣被撕破，而當他被押送往C座作單獨囚禁時，他聽從同行的懲教

The complainant, an inmate in a correctional institution, had been arrested for assaulting an officer of the CSD. The complainant had sustained bodily injury and was treated at the prison clinic consequent to the assault incident. After the treatment at the prison clinic, the complainant was under the escort of another CSD officer (the escorting officer) to proceed to another block (Block C) to be placed in solitary confinement.

Ten days later, the SPC concerned took a statement from the complainant in relation to the assault incident. The complainant stated that his prisoner’s uniform had been torn

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署人員的命令，把破囚衣脫掉，換上另一件乾淨囚衣。投訴人更表示懷疑此舉旨在毀滅對他有利的證據。之後該名高級警員只拿取襲擊事件現場（I座）的閉路電視片段，並認為不需要查看C座片段。他後來向該名懲教署押送人員錄取口供，押送人員否認有關指控。高級警員遂根據押送人員的口供，不再追查或試圖找回那件破囚衣。

事後，投訴人被控「傷害他人身體」罪。審訊時，投訴人發現他的破囚衣及C座片段沒有被列為呈堂證物。法庭依照投訴人的要求，下令檢控官提供C座片段檢查。然而，由於事件已發生了一段時間，C座片段已被刪除而未能呈堂。在審訊時，法庭不接納證人的證據，因此判投訴人無罪。

投訴人其後投訴該名高級警員未有取得C座片段及其破囚衣為呈堂證據 [指控：疏忽職守]。

during the assault incident and that when he was on the way to Block C to be placed in solitary confinement, the escorting officer ordered him to remove his torn prisoner clothes and put on a clean one, he complied with the order. The complainant further stated that he suspected the purpose of the escorting officer in so doing was to destroy evidence in his favour. The SPC had only seized the CCTV footage covering the location (Block I) where the alleged assault took place, but claimed he had not considered it necessary to examine the Block C footage. He then took a statement from the escorting officer, who denied the accusation. Hence, with the escorting officer's statement, the SPC did not further investigate or attempt to recover the torn prisoner's uniform.

Subsequently, the complainant was charged with the offence of "Assault Occasioning Actual Bodily Harm". During the trial, the complainant found that his torn clothing and the Block C footage had not been tendered as exhibits. The Court, at the complainant's request, ordered the Prosecution to produce the Block C footage for examination. However, due to the lapse of time, the Block C footage had been erased and could not be produced as an exhibit. At his trial the complainant was acquitted as the Court found the evidence from the witness unacceptable.

The complainant later complained against the SPC for failing to seize the Block C footage and his torn clothing as exhibits [Allegation: Neglect of Duty].

### 投訴警察課的調查 CAPO's Investigation

在調查此個案時，投訴警察課考慮到投訴人遲遲才提出有關囚衣的指控，加上押送人員否認有關指控，遂認為沒有足夠證據證明高級警員在調查襲擊事件時「疏忽職守」。投訴警察課因而建議將指控分類為「無法證實」。

In investigating this case, CAPO took into consideration the complainant's belated accusation concerning his clothing and the escorting officer's denial of the accusation, and deemed that there was insufficient evidence to prove the alleged negligence on the part of the SPC in the investigation of the assault incident. CAPO, therefore, recommended an "Unsubstantiated" classification to the "Neglect of Duty" allegation against the SPC.

## 監警會的觀察 The IPCC's Observation

可是監警會不認同投訴警察課的建議分類，並建議投訴警察課考慮把指控的分類改為「獲證明屬實」。因為該名高級警員事實上沒有查看或索取C座片段，而該片段正是支持或推翻投訴人聲稱押送人員命令他換掉破囚衣說法的客觀證據。再者，高級警員不應單憑押送人員否認指控便不去索取C座片段，因為依據投訴人的供詞，押送人員是當然的被告。

投訴警察課補充，高級警員忽略了投訴人供詞內的調查方向，屬無心及無惡意的疏忽。法庭沒有因而對高級警員的調查作出批評。法庭判投訴人無罪是基於不能穩妥地接納主要證人提供的證據。因此，投訴警察課把分類由「無法證實」改為「無法完全證明屬實」。

但監警會不同意投訴警察課「無法完全證明屬實」的分類理據。監警會認為投訴警察課所指的「無心及無惡意的疏忽」只能視為高級警員疏忽職守的減刑考慮因素。事實上，投訴警察課已確定高級警員未有查看及索取C座片段實為疏忽職守。監警會堅持建議指控應分類為「獲證明屬實」。

經監警會質詢後，投訴警察課認同監警會的見解，把分類改為「獲證明屬實」，並訓諭該名高級警員，但無需把此事記入其分區報告檔案內。

監警會通過這宗個案的調查結果。

However, the IPCC had reservations about such a classification and suggested that CAPO consider reclassifying the allegation as “Substantiated”, since the SPC had indeed failed to view or seize the Block C footage, which was objective evidence to prove or disprove the complainant’s version of events concerning the escorting officer’s order for him to remove his torn uniform and put on a clean one, as raised in his statement. Moreover, the SPC should not have ruled out the seizure of the Block C footage based on the denial of the escorting officer, who was a de facto accused in the complainant’s statement.

CAPO added that the SPC had been negligent in failing to identify possible lines of enquiry from the complainant’s statement, even though this was unintentional and without malicious intent to neglect his duties. The Court, however, had made no adverse comments on the SPC’s investigation. The complainant was only acquitted when the Court considered that evidence given by the core witness could not be safely accepted. Hence, CAPO changed the classification from “Unsubstantiated” to “Not Fully Substantiated”.

The IPCC did not agree with CAPO’s rationale in suggesting a “Not Fully Substantiated” classification. The IPCC was of the view that CAPO’s comment of “unintentional oversight with no malicious intent to neglect his duties” could only be considered as a mitigating factor for the SPC’s negligence. As a matter of fact, CAPO had already confirmed that the SPC was negligent in failing to view or seize the Block C footage. The IPCC suggested that the allegation should be classified as “Substantiated”.

After the IPCC raised these queries, CAPO subscribed to the IPCC’s view and changed the classification of the allegation to “Substantiated”. CAPO recommended advising the SPC without a DRF entry.

The IPCC endorsed CAPO’s findings in this case.

個案  
CASE 2

| 2 | 指控<br>Allegation(s)                  | 被投訴人<br>Complainee(s)    | 投訴警察課原來分類<br>Original Classification(s) by CAPO | 最後分類<br>Final Classification(s)                       |
|---|--------------------------------------|--------------------------|---|---|
| 1 | 濫用職權<br>Unnecessary Use of Authority | 警署警長<br>Station Sergeant | 獲證明屬實<br>Substantiated                          | 獲證明屬實<br>Substantiated                                |
| 2 | 疏忽職守<br>Neglect of Duty              | 高級督察<br>Senior Inspector | 無<br>Nil  | 未經舉報但證明屬實<br>Substantiated Other Than Reported (SOTR) |

個案重點  
Highlights of the Case

此個案反映監警會仔細審視一名督察級警務人員錯誤把投訴人的身份由保釋者改為被捕者的投訴指控。個案同時說明處理保釋者拒絕警方延長保釋期的正確原則和處理手續。由於涉事警務人員作出錯誤決定，並將投訴人當作被捕者看待，監警會公正地認為有關警務人員需接受相應的懲處。

投訴人因「刑事毀壞」被捕後獲警方安排保釋。投訴人其後往警署報到轉擔保時，拒絕延長保釋期。之後當投訴人往醫院就醫時，警署警長下令禁止她與外界接觸，並在送院途中為她戴上解犯鍊。事後投訴人投訴警署警長，指控包括「濫用職權」。投訴警察課在調查此宗個案後，把指控分類為「獲證明屬實」，並建議警告警署警長，但無需把此事記入其分區報告檔案內。

監警會認為需要把此事記入其分區報告檔案內，以反映其不正當指令的嚴重性。此外，監警會在詳細審閱投訴報告後，留意到負責此個案的高級督察，在投訴人拒絕延長保釋期時，指示警署警長把她的身份由保釋者轉為被捕者。警署警長的不正當指令，正是源於高級督察原則上的錯誤決定。因此，監警會認為作為案件主管的高級督察應加一項「未經舉報但證明屬實」的「疏忽職守」指控，此事需記入其分區報告檔案內。經監警會的質詢後，投訴警察課認同監警會的見解，向高級督察多加一項「未經舉報但證明屬實」的「疏忽職守」指控。警署警長及高級督察均被警告，而此事將記入他們的分區報告檔案內。

This case highlights the meticulous approach adopted by the IPCC in examining a complaint to identify the erroneous decision of an inspectorate officer in changing the complainant's status from a bailee to an arrestee. It also helps to illustrate the correct principles and practices in dealing with a bailee who refuses an offer from the Police to extend her bail. The IPCC also fairly considered the appropriate level of action to be taken against the police officers concerned for the said erroneous decision and the degrading treatment of the complainant consequent upon that decision.

The complainant was arrested for “Criminal Damage” and then released on police bail. When the complainant later answered the police bail at the police station, she refused to extend her bail. Subsequently, when the complainant was taken for medical treatment, a Station Sergeant (SSGT) ordered that she be denied all outside contact and restrained with a handcuff transport belt during the trip to the hospital. Later the complainant, among other things, lodged an allegation of “Unnecessary Use of Authority” against the SSGT. After investigation, CAPO classified the allegation as “Substantiated” and recommended that the SSGT be warned without a Divisional Record File (DRF) entry.

The IPCC deemed that the SSGT should be warned with a DRF entry, to reflect the serious consequences of his unjustified orders. Furthermore, in scrutinising the complaint, the IPCC noticed that the officer-in-charge of the case, who was a Senior Inspector (SIP), had, as a result of the complainant’s refusal to extend her police bail, directed the SSGT to change the complainant’s status from a bailee to an arrestee. The SSGT’s unjustified orders had stemmed from the SIP’s decision to treat the complainant as an arrestee. The IPCC deemed the SIP’s decision wrong in principle. Therefore, the IPCC considered it appropriate to register a SOTR count of “Neglect of Duty” against the SIP with a warning and with a DRF entry. After the IPCC’s queries, CAPO subscribed to the IPCC’s view to register the SOTR count of “Neglect of Duty” against the SIP and that both the SSGT and the SIP should be warned with DRF entries.

ARREST ↔ BAIL

### 個案背景 Case Background

投訴人經營培訓中心，與鄰近的一家競爭機構素有積怨。事發當日，投訴人與該機構的一名男子發生爭執。期間，投訴人指該男子損毀其展示架，並報警求助。警察到場時，男子反指投訴人毀壞其機構的財物。經現場初步查問後，投訴人和該名男

The complainant operated a training institution and held long-term grudges against a rival institution adjacent to hers. On the day in question, the complainant had a dispute with a male of the rival institution (the rival). In the heat of the dispute, the rival allegedly damaged the display stand of the complainant’s institution. The complainant then made a report to the Police. When the Police arrived, the rival

## 個案 CASE 2

子均以「刑事毀壞」罪被捕。兩人被帶往警署作進一步調查並獲准保釋。

及後投訴人到警署報到，但她拒絕延長保釋期。由於當時投訴人感到不適，遂自行致電999要求救護車到場協助。警署警長認為投訴人在送院途中有潛逃可能，故指令下屬禁止投訴人與外界接觸，以及在途中為她戴上解犯鍊。及後投訴人由醫院返回警署獲准無需保釋而釋放。

最後，經調查和徵詢律政司法律意見後，投訴人及該名男子獲警方警誡後無罪釋放。

投訴人其後向投訴警察課投訴，指控包括警署警長濫用權力，禁止她使用電話和送往醫院途中要她戴上解犯鍊 [指控一：濫用職權]。

counter-alleged that the complainant had damaged the property of his institution. After initial enquiries at the scene, both the complainant and the rival were arrested for “Criminal Damage”. They were brought to the police station for further enquiries and then released on bail.

When the complainant later answered bail at the police station, she refused to extend her bail. The complainant was also feeling unwell, so she made a 999 call for an ambulance. A SSGT considered that there was a risk of the complainant's absconding during the trip to the hospital for medical treatment. He therefore ordered his subordinates to deny the complainant outside contact and to restrain her with a handcuff transport belt during the trip. Subsequent to the complainant's return to the police station from the hospital, she was released without police bail.

Eventually, after investigation and as per legal advice from the Department of Justice, the complainant and the rival were warned by the Police and released without charge.

The complainant then lodged a complaint with CAPO. She, among other things, alleged that the SSGT concerned had abused his authority in refusing to allow her to make phone calls and in restraining her with a handcuff transport belt during the trip to the hospital [Allegation 1: Unnecessary Use of Authority].

### 投訴警察課的調查 CAPO's Investigation

經調查後，投訴警察課認為有關警署警長錯誤評估投訴人的潛逃可能。另外，只有案件主管可以發出被拘留人士不准與外界接觸的指令，但在這事件中，案件主管沒有發出這一項指令。所以投訴警察課把針對警署警長的「濫用職權」指控分類為「獲證明屬實」，並建議警告該警署警長，但無需把此事記入其分區報告檔案內。

After investigation, CAPO considered that the SSGT concerned had made an error of judgment in assessing the likelihood of the complainant's making an escape. Furthermore, the instruction to allow “no outside contact” to a detainee should come from the officer-in-charge of the case (the OC Case), but there was no such instruction given. Therefore, CAPO classified the “Unnecessary Use of Authority” allegation against the SSGT as “Substantiated” and recommended that he be warned without a DRF entry.

## 監警會的觀察 The IPCC's Observation

然而，監警會認為警署警長禁止投訴人與外界接觸和送院期間要戴上解犯鍊屬不正當的指令，可視為「非法禁錮」，並嚴重侵犯投訴人的權利。由於警署警長這種濫用職權的行為影響深遠，監警會認為應向他提出警告，而且需要把此事記入其分區報告檔案內。

另外，在仔細審視投訴後，監警會注意到作為案件主管的高級督察，因為投訴人拒絕延長保釋期而指示警署警長把她的身份由保釋者改為被捕者。警署警長的不正當指令是基於高級督察把投訴人視為被捕者的決定。

對於保釋者的身份，監警會的見解為保釋者獲釋後，便不應被視為被捕者。當保釋者按其保釋責任如期到警署報到時，保釋者已履行其法律義務。保釋者是否繼續轉擔保，即延長保釋期，是由保釋者自行決定。當保釋者拒絕延長保釋期時，警方應就案件情況，決定即時提出起訴或是無條件釋放保釋者。

監警會認為高級督察把拒絕延長保釋期的保釋者視為被捕者，是犯了原則上的錯誤。如果沒有此錯誤決定，投訴人可能已獲釋，並得到應有的治療，以及可隨意與外界接觸。故監警會認為應對該高級督察多加一項「未經舉報但證明屬實」的「疏忽職守」指控 [指控二：疏忽職守]，並警告該高級督察，而且此事需要記入其分區報告檔案內。

經監警會的質詢後，投訴警察課同意監警會的見解對高級督察加錄指控二，並且警告兩名被投訴人，以及把此事記入他們的分區報告檔案內。

監警會通過這宗個案的調查結果。

Nevertheless, the IPCC was of the view that the SSGT's unjustified orders to deny the complainant outside contacts and to restrain her with a handcuff transport belt during the hospital trip might amount to "false imprisonment" of the complainant, a serious infringement of the complainant's rights. With regard to the grave consequences of the SSGT's unnecessary use of authority, the IPCC considered it more appropriate to issue him a warning with a DRF entry.

Furthermore, in scrutinising the complaint the IPCC noticed that the OC Case, who was a SIP, had, as a result of the complainant's refusal to extend her bail, directed the SSGT to change the complainant's status from a bailee to that of an arrestee. The SSGT's unjustified orders had stemmed from the SIP's decision to treat the complainant as an arrestee.

Regarding the status of a bailee, the IPCC was of the view that a bailee once released on bail is no more an arrestee. When a bailee answers bail and fulfills the bail conditions by reporting to the police station at the scheduled time, the bailee has discharged her legal obligation. Whether to enter into further recognizance, i.e. to extend the bail, is for the bailee to decide. In case the bailee refuses to extend the bail, the Police should either charge the bailee if appropriate, or release her unconditionally.

The IPCC deemed that the SIP's decision to automatically treat the complainant, a bailee who refused to extend police bail, as an arrestee was wrong in principle. But for this erroneous decision, the complainant might have been released and would have been able to seek medical treatment as well as to make outside contacts freely. The IPCC, therefore, considered it appropriate to register a SOTR count of "Neglect of Duty" [Allegation 2: Neglect of Duty] against the SIP with a warning with a DRF entry.

After the IPCC's queries, CAPO agreed with the IPCC's view to register Allegation 2 against the SIP, and that both the SSGT and the SIP be warned with DRF entries commensurate with the severity of their unjustified orders and erroneous decisions.

The IPCC endorsed CAPO's findings in this case.

### 個案 CASE 3

| 3 | 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 行為不當 Misconduct      | 文書助理 Clerical Assistant           | 獲證明屬實 Substantiated                                | 獲證明屬實 Substantiated                                |
|   | 2 疏忽職守 Neglect of Duty |                                   | 未經舉報但證明屬實 Substantiated Other Than Reported (SOTR) | 未經舉報但證明屬實 Substantiated Other Than Reported (SOTR) |
|   | 3 行為不當 Misconduct      | 助理文書主任 Assistant Clerical Officer | 無法證實 Unsubstantiated                               | 無法完全證明屬實 Not Fully Substantiated                   |

### 個案重點 Highlights of the Case

此個案說明監警會全面公正地衡量被投訴警員的責任。個案同時反映警方處理無人認領「拾獲財物」的正確手續。

投訴人是一名教師，她在巴士上拾獲一個錢包後到警署報告「拾獲財物」。其後錢包未獲認領。警署證物室的一名文書助理（助理）和一名助理文書主任（主任）遂安排投訴人領取該錢包。該兩名警署職員先後致電投訴人任教的學校，核實投訴人認領財物的資格。校長隨即就此事召見投訴人。事後，投訴人認為該兩名警署職員不應致電學校，並在電話對話中使用不恰當言詞，故向助理和主任提出兩項「行為不當」的指控。

經調查後，投訴警察課認為助理致電校方查詢實屬不必要，對話內容亦不恰當，因此把「行為不當」的指控分類為「獲證明屬實」。另外，由於該名助理沒有在寄出認領財物信函前，核實投訴人的職業，故多加一項「未經舉報但證明屬實」的「疏忽職守」指控。投訴警察課建議就此兩項指控向助理作「紀律處分」。

至於對主任的「行為不當」指控，投訴警察課則認為沒有足夠證據證實，故把指控分類為「無法證實」。然而，監警會卻認為根據一名獨立證人的佐證，其證供足以支持主任曾作出不必要的電話查詢，而該名主任的電話對話內容，引起校長對投訴人的關注，故指控應分類為「無法完全證明屬實」。投訴警察課同意此觀點，把指控分類為「無法完全證明屬實」，並對該名主任作出訓諭。

**This case demonstrates the IPCC's holistic and fair approach in considering the liability of officers under complaint. It also helps to illustrate the correct procedures for police handling of unclaimed "Found Property".**

**The complainant, a teacher, had found a wallet on a bus and filed a "Found Property" report at a police station. The wallet remained unclaimed. A Clerical Assistant (CA) and**

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an Assistant Clerical Officer (ACO) of the Property Office at the police station arranged for the complainant to claim the wallet. The CA and the ACO made calls to the school where the complainant worked to check the latter's eligibility to claim the property. The principal then conducted an urgent interview with the complainant. Subsequently, the complainant lodged two "Misconduct" allegations, against the CA and the ACO, claiming that they had inappropriately called personnel at her school and made inappropriate remarks during the telephone conversations.

After investigation, CAPO found the CA's telephone enquiries to school personnel unnecessary and the contents of the telephone conversations inappropriate. The "Misconduct" allegation against the CA was classified as "Substantiated". In addition, a SOTR count of "Neglect of Duty" was registered against the CA for her failure to confirm the complainant's occupation before sending the letter to advise the complainant to claim the property. CAPO recommended taking "Disciplinary Action" against the CA for the two allegations.

However, CAPO found insufficient evidence to support the "Misconduct" allegation against the ACO and thus classified it as "Unsubstantiated". Nevertheless, given the corroboration of an independent witness, the IPCC noted that there was reliable evidence that the ACO had made an unnecessary telephone enquiry and had unnecessarily raised the principal's concern over the complainant. Hence, the IPCC considered that the allegation should be classified as "Not Fully Substantiated". After the IPCC's queries, CAPO subscribed to the IPCC's views to reclassify the allegation as "Not Fully Substantiated" and to issue an advice to the ACO.



### 個案背景 Case Background

投訴人是一名直資學校的教師，她在巴士上拾獲一個錢包並把它交到警署作「拾獲財物」。案件由兩名警署證物室的職員——一名文書助理（助理）和一名助理文書主任（主任）處理。三個月後錢包未被認領，故此該警署助理便去信投訴人，告知她可以領取該無人認領的財物，而助理和

The complainant, a teacher at a Direct Subsidy Scheme school, had found a wallet on a bus and reported a case of "Found Property" at a police station. The case was later handled by two staff members, a CA and an ACO, of the Property Office at the police station. The wallet was unclaimed after three months. The CA sent a letter to inform the complainant that she was entitled to collect the unclaimed property. The CA and the ACO then made calls to the school principal where the complainant worked to check the latter's

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主任先後致電投訴人任教的學校校長，查證她是否有資格領取該錢包（包括查問投訴人是否在官立學校任教的公務員，以及學校政策是否容許她領取該項失物）。

其後，校長緊急召見投訴人，說警署的職員曾致電學校，對話內容是投訴人拾獲大筆金錢和詢問校長投訴人有否提及把款項捐贈學校。警署職員更詢問學校政策有否管制認領失物，及懷疑投訴人會把財物據為己有而不捐贈學校。投訴人更得知該兩名警署職員曾與校內其他兩名職員談及此事。

投訴人後來投訴助理 [指控一：行為不當] 及主任 [指控三：行為不當]，因為兩人不恰當地致電學校三名職員，而且電話對話內容有不恰當的言論，損害她的聲譽和誠信。

eligibility to claim the property, by determining whether the complainant was a civil servant teaching in a government school and whether the school policy permitted her to claim the property.

Subsequently, the principal conducted an urgent interview with the complainant and informed her that the staff of the Property Office at the police station had called to say that the complainant had found a huge sum of money and whether she had expressed an intention of donating the money to the school. The staff had also asked about the school policy governing claims for found property, and voiced suspicions that the complainant would pocket the money herself instead of donating it to the school. The complainant also learnt that the staff had talked to two other persons at the school about the matter as well.

The complainant later alleged that the CA [Allegation 1: Misconduct] and the ACO [Allegation 3: Misconduct] had inappropriately called the three persons at her school and made inappropriate remarks during the telephone conversations, damaging her reputation and casting doubt on her integrity.

### 投訴警察課的調查 CAPO's Investigation

投訴警察課經調查後證實，除非該財物是在執行職務時拾獲，或物件是由警員尋獲，否則沒有任何規定禁止公務員取得未獲認領失物。因此即使投訴人是公務員，她仍有權取得該項未獲認領的失物。警署助理亦可以從學校網頁得知學校是官立還是直資學校，而學校政策更不會影響投訴人取得該項財物的權利。

投訴警察課認為該名助理不熟悉處理「拾獲財物」的規定和程序，致電學校職員查詢亦屬不必要。至於助理曾致電三名學校職員時所作的言論，投訴警察課視三人為獨立證人，故認為有充份證據證實有關內容有不恰當之處。因此，投訴警察課把投訴助理的指控一分類為「獲證明屬實」。

After investigation, CAPO confirmed that there was no provision forbidding a civil servant to claim found property unless the property was found in the course of duty or found by a police officer, and the complainant was eligible to claim the property concerned even if she were a civil servant. The CA could easily have checked the school's website to determine whether it was a government school or a Direct Subsidy Scheme school. Moreover, school policy did not impact the complainant's eligibility to claim the property.

CAPO considered the CA's telephone enquiries of the school personnel unnecessary, and found that the CA was not familiar with relevant provisions and procedures for handling "Found Property" cases. Regarding the contents of the telephone conversations between the CA and the three persons at the school, CAPO accorded full weight to the evidence of the three persons who were taken as independent witnesses and thus deemed the contents inappropriate. Therefore, CAPO classified Allegation 1 against the CA as "Substantiated".

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投訴警察課的調查更發現該名助理在寄信通知投訴人可領取財物之前，未有履行她的職責確定投訴人的職業。故此多加一項「未經舉報但證明屬實」的「疏忽職守」指控 [指控二：疏忽職守]。

投訴警察課建議就指控一和二，向助理作出「紀律處分」。

至於指控三方面，涉事主任承認曾致電學校一次，找投訴人談論「拾獲財物」的事宜。代校長接聽電話的學校職員表示，接電話的同事告訴她來電者是警署的助理文書主任，故她沒有再核實來電者身份，而來電者是要求與校長通話而不是找投訴人。投訴警察課認為沒有足夠證據證實指控，故把指控分類為「無法證實」。

### 監警會的觀察 The IPCC's Observation

監警會認為接電話的兩位學校職員應視作獨立證人，她們提供的證據可全面接納，並可證實來電者為該警署的助理文書主任。根據相對可能性衡量的舉證標準，她所提供的電話談話內容版本亦視為可信。因此，監警會認為即使兩位學校職員的證供未獲佐證，但仍視作主任曾致電學校的可靠證據。就投訴人「拾獲財物」一事而言，此舉實屬不必要。由於主任此不必要的舉動，引起校長對投訴人起疑。因此，指控三應分類為「無法完全證明屬實」。

投訴警察課同意監警會的見解，把指控三的分類改為「無法完全證明屬實」。投訴警察課建議對該主任作出訓諭，以提醒她正確的工作程序，但無需把此事記入其分區報告檔案內。

監警會通過這宗個案的調查結果。

CAPO's investigation also revealed that the CA had neglected her duty to confirm the complainant's occupation before sending the letter to inform the complainant of her entitlement to claim the property. As such, a SOTR count of "Neglect of Duty" (Allegation 2: Neglect of Duty) was registered against the CA.

CAPO recommended taking "Disciplinary Action" against the CA for Allegations 1 and 2.

Regarding Allegation 3, the ACO admitted having called the school once to contact the complainant concerning her "Found Property" report. The school staff member who answered the call for the principal stated that she had not verified the identity of the caller as her colleague, who had picked up the call, had informed her that the caller was the ACO and that she had asked to talk to the principal, not the complainant. CAPO considered that there was insufficient evidence to support the allegation and thus classified it as "Unsubstantiated".

The IPCC considered that the two school staff members who answered the call should be taken as an independent witness and full weight should be accorded to her evidence. The school staff member stated that the caller was the ACO, and her version of the content of the telephone conversation was also considered to be credible on balance of probabilities. The IPCC therefore viewed the school staff members' testimony, albeit uncorroborated, as a piece of reliable evidence supporting the allegation that the ACO had made the telephone enquiry to the complainant's school, which was deemed unnecessary for the purpose of handling the complainant's "Found Property" case, and had unnecessarily raised the principal's concern over the complainant. Hence, Allegation 3 should be classified as "Not Fully Substantiated".

Following the IPCC's queries, CAPO agreed with the IPCC's view to classify Allegation 3 as "Not Fully Substantiated". CAPO recommended advising the ACO without a DRF entry, to remind her of correct working procedures.

The IPCC endorsed CAPO's findings in this case.

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| 4 | 指控<br>Allegation(s)   | 被投訴人<br>Complainee(s)         | 投訴警察課原來分類<br>Original Classification(s) by CAPO | 最後分類<br>Final Classification(s)        |
|---|---|-------------------------------|---|--|
|   | 行為不當<br>(初時列為<br>「沒有禮貌」)<br>Misconduct<br>(Originally<br>registered as<br>"Impoliteness") | 一名警員<br>A Police<br>Constable | 無法證實<br>Unsubstantiated                         | 無法完全證明屬實<br>Not Fully<br>Substantiated |

個案重點  
Highlights of the Case

此個案反映覆核制度的優點，和監警會全面考量投訴指控性質，以及個別警員的表現對警隊整體形象帶來的影響。

在這個案中，投訴人指控一名警員在票控行動後，不禮貌地向他呼喊「Go! Go! Go!」。經投訴警察課調查後，指控初時被列為「沒有禮貌」並分類為「無法證實」。投訴人要求覆核個案，並向投訴警察課提供事發時其車上乘客的聯絡方法以作佐證。雖然該乘客證實在車上聽到警員說「Go! Go! Go!」，但投訴警察課接受警員的解釋，表示此舉只是自我鼓勵，故維持原來「無法證實」的分類。監警會認為有充足證據證明警員當時曾高呼「Go! Go! Go!」，讓投訴人感到警員的舉動不專業，並有戲弄投訴人之嫌。有見及此，指控性質應列為「行為不當」而不是「沒有禮貌」，結果分類亦應改為「無法完全證明屬實」。投訴警察課認同監警會的見解，警員需要接受訓諭，以避免同類事情再發生。

**This case illustrates the merits of the review system as well as the holistic approach adopted by the IPCC in considering the nature of an allegation and its impact on the behavior of the police officer concerned on the image of the Police as a whole.**

**After a ticketing action by the Police Constable (PC) concerned, the complainant alleged that the PC had been impolite by shouting "Go! Go! Go!" at him. The allegation was initially registered as "Impoliteness" and classified as "Unsubstantiated" after CAPO's investigation. The complainant requested a review and provided CAPO with contact information of the passenger in his vehicle at the time of the incident. Although the passenger confirmed that she had heard the PC say "Go! Go! Go!" even though she was inside the complainant's vehicle, CAPO accepted the PC's explanation that he was**

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merely saying the words to encourage himself, and maintained the classification as “Unsubstantiated”. The IPCC concluded that there was reliable evidence to prove that the PC had loudly uttered the words “Go! Go! Go!” at the scene, and that such an act projected an unprofessional image to the complainant and appeared to be making fun of the complainant. Hence, the allegation should be registered as “Misconduct” instead of “Impoliteness” and be classified as “Not Fully Substantiated”. CAPO subscribed to the IPCC’s views and the PC was to be advised to prevent a recurrence of this type of incident.



### 個案背景 Case Background

事發當日，警員票控投訴人「在沒有亮着所需車燈的情況下駕駛」，當時車上還有一名乘客。在警員發出告票時，投訴人告知警員有一輛從相反方向駛過的的士亦沒有亮着車頭燈。投訴人要求警員票控該的士，但警員表示他沒有看到所述的士。投訴人遂提出可協助警員攔截該輛的士。在投訴人跑向的士時，警員騎上電單車駛出，並高呼「Go! Go! Go!」。結果投訴人未能追上該輛的士，並站在安全島上等候警員，但警員沒有理會他，逕自駛離現場。

事後，投訴人投訴該名警員不禮貌地向他呼喝「Go! Go! Go!」[原指控：沒有禮貌]。

On the day in question, the complainant was ticketed by a PC for “Driving Without Necessary Lights Illuminated”. There was a passenger in the complainant’s vehicle. While the PC was issuing the ticket, the complainant informed the PC that a taxi driving past in the opposite direction also did not have its headlights on. The complainant asked the PC to take action against the taxi, but the PC said he didn’t see the taxi. The complainant offered to assist in intercepting the taxi. While the complainant was running after the taxi, the PC mounted his motorcycle to pull out and shouted “Go! Go! Go!” The complainant failed to catch up with the taxi and stood on a safety island to wait for the PC, but the PC ignored him and drove away.

Subsequently, the complainant complained, among other things, against the PC for being impolite by shouting “Go! Go! Go!” at him [Original Allegation: Impoliteness].

個案  
CASE 4投訴警察課的調查  
CAPO's Investigation

投訴人向投訴警察課提供一封聲稱是由乘客撰寫但沒有簽署的信件，以證明他的投訴指控。然而，由於投訴人沒有提供乘客的聯絡方法，故投訴警察課未能核實信件的内容。警員與投訴警察課會面時否認指控，並辯稱說「Go! Go! Go!」旨在自我鼓勵，而說話對象亦並非投訴人。由於缺乏獨立證人和確鑿的證據，以證明其中一方的說法，故指控被分類為「無法證實」。監警會通過調查結論，並由投訴警察課通知投訴人調查結果。

The complainant provided CAPO with an unsigned letter purportedly prepared by the passenger as proof of his allegation. However, CAPO was unable to verify the contents of the letter as the complainant could not provide the means of contacting the passenger. When CAPO interviewed him, the PC denied the allegation and explained that he said "Go! Go! Go!" to encourage himself, not to the complainant. In the absence of any independent witness or corroborative evidence to prove either party's version of events, the allegation was classified as "Unsubstantiated". The IPCC endorsed the findings and the complainant was informed of the results of the investigation by CAPO.

投訴人要求覆核  
Complainant's review request

投訴人得悉調查結果後，要求覆核投訴個案，並向投訴警察課提供乘客的聯絡方法。投訴警察課根據投訴人提供的新資料聯絡該乘客，並證實她在車廂內也聽到警員說「Go! Go! Go!」。但投訴警察課接受警員自我鼓勵的解釋，所以維持「無法證實」的指控分類。

After being informed of the results of the investigation, the complainant requested a review of the allegation and later provided CAPO with contact information for the passenger. Based on the fresh information provided by the complainant, CAPO contacted the passenger, who confirmed hearing the PC say "Go! Go! Go!" even though she was inside the complainant's vehicle. But CAPO accepted the PC's explanation that he was merely saying these words to himself in self-encouragement, and thus maintained the classification of the allegation as "Unsubstantiated".

個案  
CASE 4監警會的觀察  
The IPCC's Observation

由於乘客所提供的佐證，監警會對投訴警察課覆核此個案仍維持「無法證實」的指控分類有所保留。監警會認為有可靠證據證明警員當時是大聲說「Go! Go! Go!」，此舉令投訴人覺得警員並不專業。此外，警員的自我鼓勵之說亦甚為牽強，因為在一般情況下，說話如旨在自我鼓勵，其聲浪不應大至車內乘客也能聽到。事實上，這投訴指控的重點似乎是警員故意說「Go! Go! Go!」來戲弄投訴人，故應該將指控性質列為「行為不當」而不是「沒有禮貌」，並建議把指控分類改為「無法完全證明屬實」。

經監警會的質詢，投訴警察課同意把指控列為「行為不當」[最後指控：行為不當]。投訴警察課亦同意警員在公眾場所大聲說「Go! Go! Go!」並不恰當。然而，現有證據無法完全證實警員當時故意戲弄投訴人。投訴警察課因而把「行為不當」的指控結果分類為「無法完全證明屬實」。投訴警察課向該名警員作出訓諭，避免同類事件再發生，但無需把此事記入其分區報告檔案內。

監警會通過這宗個案的調查結果。

Given the corroboration of the passenger, the IPCC had reservations over CAPO's review and its proposal that the "Unsubstantiated" classification for the allegation should be maintained. The IPCC was of the view that there was reliable evidence to prove that the PC had loudly uttered the words "Go! Go! Go!" at the scene, and that such an act projected an unprofessional image to the complainant. Moreover, the explanation offered by the PC that the words were uttered in self-encouragement was deemed too far-fetched, as it was improbable that the PC would have spoken to himself so loudly that he could be heard by the passenger inside the vehicle. Indeed, it seemed that the essence of the allegation was that the PC had deliberately uttered those words to make fun of the complainant. Hence, it would be more appropriate to register the allegation as "Misconduct" rather than "Impoliteness" and to classify the allegation as "Not Fully Substantiated".

After the IPCC's queries, CAPO agreed with the IPCC's view that the allegation should be registered as "Misconduct" [Final Allegation: Misconduct]. CAPO also agreed that it was inappropriate for the PC to utter such a remark loudly in public. Nonetheless, the available evidence could not fully prove that the PC had uttered those words for the purpose of making fun of the complainant. CAPO therefore classified the "Misconduct" allegation as "Not Fully Substantiated". CAPO recommended advising the PC to prevent the recurrence of such an incident, without a DRF entry.

The IPCC endorsed CAPO's findings in this case.