

第 3 章 CHAPTER 3



# 真實投訴個案及 改善建議

Complaint cases  
and recommended  
improvements

## 有關使用手提電話的投訴個案

### Complaint cases related to the use of mobile phones

#### 個案一：兩名警員不恰當地使用手提電話錄影間接導致洩露涉案閉路電視片段

#### Case 1 : Two police officers inappropriately recorded CCTV video with their mobile phones, indirectly leading to the leakage of case-related video clip

指控 Allegations	被投訴人 Complainee(s)	投訴警察課的原本分類 Original classification(s) by CAPO	最終分類 Final Classification(s)
1 疏忽職守 Neglect of Duty	警員一 Police Constable 1  警員二 Police Constable 2	無法完全證明屬實 Not Fully Substantiated	獲證明屬實 Substantiated

#### 個案背景

個案中，一名男子涉嫌在便利店內偷竊不果後折返並用刀刺傷店主，事後逃離現場。數日後，店主傷重不治。兩名警員(被投訴人一及二)當日在案發後到現場翻看有關閉路電視錄影片段。便利店職員指該兩名警員曾用手提電話攝錄有關片段。數小時後，便利店負責人從互聯網見到這兩段由警員拍攝的片段。警方於案發翌日鎖定並拘捕疑犯。便利店負責人其後致函投訴警察課，投訴兩名警員用手提電話拍攝便利店內閉路電視片段後未有妥善處理影片，以致影片在網上流傳【指控：疏忽職守】。

#### Case background

In this complaint case, a man who was suspected of having unsuccessfully attempted to steal from a convenience store returned to the scene. The man stabbed a shopkeeper with a knife and fled. The shopkeeper sustained fatal injuries and passed away a few days later. On the same day after the incident, two Police Constables (Complainees 1 and 2) viewed the CCTV footages at the crime scene. A staff member of the convenience store claimed that the two Complainees had recorded the subject CCTV video clips with their mobile phones. Hours later, the person in charge of the convenient store saw two video clips taken by the Police Constables on internet. The suspect was located and arrested one day after the incident. The person in charge of the convenience store wrote a complaint letter to CAPO that two Complainees, after using their mobile phones to record the CCTV footages, failed to keep the footages in confidence which led to leakage of video clips on internet [Allegation: Neglect of Duty].

## 投訴警察課的調查

在接受投訴警察課查問時，兩名被投訴人承認曾用私人手提電話拍攝閉路電視片段，並透過手提電話即時通訊軟件以群組方式將片段傳送給案發地區的同事，讓他們能及早將疑犯逮捕歸案。二人均否認將影片上傳至互聯網，並指該新建立的群組屬臨時性質，在疑犯被捕後已被立即刪除。投訴警察課進一步追蹤將影片上傳至互聯網的源頭，得知上傳人士並非警務人員。投訴警察課曾聯絡相關人士提供更多資料及協助調查，但不成功。

投訴警察課認為，雖然兩名被投訴人使用手機執行職務的行為違反了《警察通例》，但根據二人的解釋，出發點是為了盡快拘捕疑犯。他們也在疑犯被捕後，立即將通訊群組刪除，將影片洩露的風險降至最低。同時，有明確證據顯示兩名被投訴人並非影片的上傳者，因此投訴警察課將指控分類為「無法完全證明屬實」，並建議對二人作出訓諭。

## 監警會的觀察

監警會不認同上述指控的調查結果分類。監警會認為事件的關鍵在於兩名警員是否疏忽洩露該錄影片段。二人傳送錄影片段的出發點並非指控的重點。雖然二人不是影片的上傳者，並據稱盡量將影片洩露的風險降至最低，但他們的行為確實間接導致影片外洩。根據《警察通例》第19章，如警務人員需使用私人手提電話執行職務，事前應先徵求上司同意；警員也不應以社交媒體或即時通訊等形式傳送敏感或保密資料。

基於上述原因，監警會建議將指控重新分類為「獲證明屬實」，並應提高對二人的處分以反映事件的嚴重性。投訴警察課最終接納上述建議，將指控重新分類為「獲證明屬實」，並對二人作出警告。

## CAPO's investigation

When interviewed by CAPO, the two Complainees admitted recording the CCTV footages with their private mobile phones, and shared the clips via a mobile messaging application chat group with colleagues working in the district where the crime occurred. Their intention was to alert these colleagues to apprehend the suspect as soon as possible. Both of them denied uploading the video clips to Internet. They claimed that the newly created chat group was a temporary one and was deleted immediately upon the arrest of the suspect. CAPO further investigated the source of video upload and found out that it was not done by police officers. CAPO contacted relevant persons for further information and assistance in investigation but the efforts were in vain.

CAPO considered that although the two Complainees failed to observe the Police General Orders by using their private mobile phones for official duty, they explained that their purpose were to ensure the suspect would be arrested as soon as possible. They also deleted the chat group immediately after the suspect was arrested to minimise the risk of video clips leakage. In addition, the available evidence strongly supported that two Complainees did not upload the footages. CAPO therefore classified the allegation as "Not Fully Substantiated" and recommended "Advices" against the two Complainees.

## IPCC's observations

The IPCC disagreed with the classification of investigation result regarding the above allegation. The IPCC was of the view that the crux of matter was whether the Complainees' negligence led to the footages being leaked to the public. The rationale for the Complainees' sharing of footages with their colleagues was not the determining factor for the allegation. Although they did not upload the footages and had tried their utmost to minimise the risk of leakage, the available facts indicated that their actions indirectly led to the leakage. According to chapter 19 of the Police General Orders, a police officer shall seek prior approval from a supervisor before using personal mobile phone for official duty purposes; and the transmission of sensitive or classified data by any means of social media and instant messaging applications are prohibited.

Based on the above reasons, the IPCC recommended that the allegation should be re-classified as "Substantiated" and the penalty should be raised to reflect the seriousness of the incident. CAPO accepted these recommendations and re-classified the allegation as "Substantiated". The two Complainees were given warnings.

## 個案二：警員不恰當地使用手提電話錄影導致片段於網上流傳

### Case 2 : A police officer inappropriately recorded video with his mobile phone, leading to its circulation on the Internet

指控 Allegations	被投訴人 Complainee(s)	投訴警察課的原本分類 Original classification(s) by CAPO	最終分類 Final Classification(s)
1 行為不當 Misconduct	警員 Police Constable (PC)	無法證實 Unsubstantiated	無法證實 Unsubstantiated
2 疏忽職守 Neglect of Duty	高級督察；警員 Senior Inspector of Police (SIP); Police Constable (PC)	—	未經舉報但證明屬實 Substantiated Other Than Reported

#### 個案背景

個案中，一名的士司機(投訴人)與兩名乘客發生爭執。投訴人聲稱乘客下車時導致其的士車窗碎裂，遂報警求助。警方對的士車窗損毀原因存疑，懷疑的士司機事前刻意調較的士車窗玻璃，致使在乘客開關車門時令玻璃碎裂，從而敲詐乘客賠償損失。

為了調查車窗如何碎裂，警方遂安排政府化驗所為涉事的士進行模擬測試。在模擬測試中，一名警員示範了車窗如何在車門關上時自動碎裂。及後，該模擬測試的錄影片段於網上流傳，投訴人的車輛更被形容為「黑的」。投訴人不滿調查個案警務人員的處理及調查案件手法，因此向投訴警察課投訴。其中一項「行為不當」的指控，投訴人懷疑參與模擬測試的警員向傳媒指其的士是「黑的」，並洩露有關錄影片段以致片段在互聯網上流傳。

#### 投訴警察課的調查

參與警員否認指控，並表示沒有評論投訴人及其的士。投訴警察課審視了網上流傳的模擬測試片段，發現形容「黑的」的旁白是傳媒在剪輯片段時自行加上。由於沒

#### Case background

In this complaint case, the Complainant, who was a taxi driver, had a dispute with two passengers. He claimed that the passengers caused the glass of one of his taxi windows to shatter when they were alighting, and hence made a report to the Police. The Police were suspicious regarding how the window was broken, and suspected that the taxi driver had adjusted the taxi window so that the glass would be shattered when a passenger opened / closed the door, in order to extort compensation from passengers.

To determine how the window was broken, the police arranged for a Government Chemist to conduct a simulation test (the Test) on Complainant's taxi. During the Test, a Police Constable (PC) demonstrated how the window was broken automatically when someone closed the taxi door. A video on the Test was later found online, describing the Complainant's taxi as a "black taxi". The Complainant alleged that the investigating police officers failed to handle and investigate his case properly, and thus lodged a complaint to CAPO. One of the allegations concerned "Misconduct". The Complainant speculated that the PC who attended the Test had told the media that the taxi was a "black taxi" and leaked the video, leading to its circulation on internet.

#### CAPO's investigation

The PC denied the allegation and made no comments about Complainant or his taxi. CAPO reviewed the video footage of the Test and found that the "black taxi" commentary was added by the media during post-production. Since there was no

有證據證明參與調查警員洩露模擬測試片段，故將「行為不當」的指控分類為「無法證實」。

另外，投訴警察課在調查模擬測試片段外洩事件時，發現該案件發生前後有多宗的士司機藉詞乘客損毀車窗而要求賠償的事件，因此在模擬測試進行時，曾有數名負責調查其他同類型案件的警員到場觀察，以了解造成車窗碎裂的手法。期間，一名高級督察曾用其私人手提電話拍攝模擬測試過程，並將片段透過手機通訊程式發送其下屬(另一名警員)，以作撰寫報告之用。而該名警員其後將片段轉發給其他同事，作經驗分享及學習用途。不過，二人均否認曾上載有關模擬測試片段至互聯網上。基於二人事前未有獲准拍攝模擬測試過程或轉傳他人，故其上司對他們作出訓諭，以提醒他們應審慎處理調查的相關資料。

## 監警會的觀察

監警會不認同投訴警察課對模擬測試片段外洩一事的處理。會方認為事件性質嚴重，因為片段不但洩露了投訴人的士車牌號碼和案件模擬測試細節等資料，而且拍攝片段原意只為警方撰寫報告及內部參考之用，並非用作公眾傳閱或瀏覽。再者，根據《警察通例》第19章，如警務人員需使用私人手提電話以執行職務，事前應先徵求上司同意；警員也不應以社交媒體或即時通訊等形式傳送敏感或保密資料。因此，高級督察用手提電話錄影模擬測試過程，並將片段發送給他的下屬，而其下屬再轉發給其他同事並不恰當及輕率。

基於上述原因，監警會建議對兩名警務人員分別增加一項「未經舉報但證明屬實」的「疏忽職守」指控。投訴警察課最終接納上述建議，並對二人作出訓諭但無須將事件記入其分區報告檔案中。

針對警員在執行公務時不恰當地使用私人手提電話及即時通訊軟件的情況，監警會認為警方有責任審視現時的相關守則，並提點警務人員加以嚴格遵守。另外，監警會建議警方著手研究准許警務人員在合理情況下，靈活使用私人手提電話執行若干警務工作，並可在事後追溯上級批核許可。投訴警察課接納會方的建議，同意會檢視相關守則，並將適時向監警會報告。

evidence to prove that the leakage of the video was caused by the PC, the allegation regarding “Misconduct” was classified as “Unsubstantiated”.

As a result of the CAPO's investigation about the leakage of video on the Test, it was found that there had been similar incidents in which taxi drivers attempted to extort compensation from passengers for damage to the windows of their taxis during the same period. Therefore, several police officers who were working on similar cases also attended the Test to observe. Among them was a Senior Inspector who recorded the Test using his personal mobile phone and sent the video clip to his subordinate (another PC) via a mobile messaging application, for compiling a report on another case of similar nature. The subordinate further disseminated the video footage to other officers for experience sharing and educational purposes. However, both Senior Inspector and his subordinate denied having uploaded the video clip to the Internet. Since neither officers sought permission to film the Test or forward the video to others, they were advised by their supervisors to exercise caution when handling investigation-related information.

## IPCC's observations

The IPCC disagreed with CAPO's handling of the leakage of the video footage on the Test. The Council considered that the incident was serious, as the preamble to the video footage revealed the licence number of the Complainant's taxi and particulars of the Test. In addition, the video was filmed solely for compiling a report and internal reference instead of for public circulation. According to chapter 19 of the Police General Orders, a police officer shall seek prior approval in order to use a personal mobile phone for official duty purposes; and the transmission of sensitive or classified data by means of social media and instant messaging applications are not permitted. Therefore, it was inappropriate and reckless for the Senior Inspector to record the Test with his mobile phone and send the video clip to his subordinate who then re-sent it to other colleagues.

Based on the above reasoning, the IPCC recommended that two “Substantiated Other Than Reported” counts of “Neglect of Duty” be registered against each of the two police officers. CAPO finally subscribed to IPCC's view, and each officer was given an advice without Divisional Record File entry.

Regarding improper use of personal mobile phones and instant messaging applications by police officers for official duties, the IPCC considers that the Police are responsible to review the existing guidelines to ensure compliance. In addition, IPCC also recommended the Police to study the feasibility to allow certain flexibility in justified situations where officers may seek retrospective permission to use their private phones for carrying out certain duties. CAPO accepted these recommendations and agreed to review relevant guidelines and report to the IPCC in due course.

### 個案三：警員不恰當地使用手提電話拍攝投訴人資料

#### Case 3 : Police officer inappropriately used mobile phone to record Complainant's personal data

指控 Allegations	被投訴人 Complainee(s)	投訴警察課的原本分類 Original classification(s) by CAPO	最終分類 Final Classification(s)
1 行為不當 Misconduct	警員 Police Constable	無法證實 Unsubstantiated	無法完全證明屬實 Not Fully Substantiated

#### 個案背景

個案中，投訴人將私家車駛離停車場轉入一小路時，因未有停車讓路予行經該路段之警車，導致警車須急閃避以免發生碰撞。就此，駕駛警車的警員截停投訴人，表示將票控他「不小心駕駛」，並要求他出示身份證及駕駛執照以作紀錄。當時，投訴人的同事(證人)一直坐在私家車乘客前座位置。事後，投訴人向投訴警察課指控警員不恰當地將其個人資料抄寫在個人筆記簿上，並用私人手提電話拍攝其身份證及駕駛執照【指控：行為不當】。投訴人其後被票控「不小心駕駛」，並在法庭認罪及被判罰款。

#### 投訴警察課的調查

在投訴警察課調查期間，警員指稱當時環境不適合詳細紀錄有關事件詳情，遂將投訴人的個人資料抄寫在個人筆記簿上。當他回到警署後，旋即將事件細節補錄在警察記事冊上，然後將寫有投訴人資料的筆記用碎紙機碎掉，再放入機密文件袋等待銷毀。警員否認曾用手提電話拍攝投訴人的身份證及駕駛執照。他指當時為了查核事發地點街名，將筆記簿、投訴人的身份證及駕駛執照放置警車車頭蓋上，再以其私人手提電話內的手機應用程式查閱地圖。

#### Case background

In this complaint case, when the Complainant drove his private car away from a carpark into a trail, he failed to give way to a police saloon which forced the police saloon to evade abruptly to avoid collision. The Police Constable (PC) who drove the police saloon stopped the Complainant and informed him that he would be summonsed for “Careless Driving”. He also requested the Complainant to produce his HKID card and driving licence for record purpose. At the material time, a colleague of the Complainant sat in the front passenger seat of the private car. The Complainant lodged a complaint to CAPO and alleged that the PC inappropriately recorded his personal data onto a notepad and took photo of his HKID card and driving licence using his personal mobile phone [Allegation: Misconduct]. Subsequently, the Complainant pleaded guilty to the charge of “Careless Driving” and was fined accordingly.

#### CAPO's investigation

During CAPO's investigation, the PC claimed that the scene was not a suitable location for him to record incident details entry, thus he copied Complainant's personal particulars onto his notepad. When he returned to police station, he immediately recorded the details on the police notebook, shredded the relevant page from his notepad and then disposed of the remains by means of confidential materials disposal bag. The PC denied having taken photo of the Complainant's HKID card and driving licence using his mobile phone. He stated that at the material time, he placed his notepad, Complainant's HKID card and driving licence on the hood of his police saloon so that he could take out his mobile phone to check the street name of the incident location using mobile application.

投訴警察課認為警員將投訴人的資料抄寫在個人筆記簿上並無不當，因警員在事後已銷毀寫有投訴人資料的筆記。警察守則並無禁止警務人員把資料紀錄在警察記事冊以外的文件，只要做法符合《個人資料(私隱)條例》便可。投訴警察課認為，因應當時事發路面情況，要求警員即場將事件有條理地紀錄在警察記事冊上並不可行，亦無此急切需要。

至於有關指控警員使用手提電話拍攝投訴人資料方面，投訴警察課審視了投訴人行車記錄儀的錄影片段，當中可見警員曾將投訴人的身份證及駕駛執照放在警車的車頭蓋上繼而使用手提電話，但片段未能顯示所使用的手機應用程式。此外，投訴警察課亦有向證人錄取口供，不過證人並沒有留意警員有否拍攝投訴人的個人資料。由於並無獨立證據支持任何一方的說法，因此投訴警察課將「行為不當」的指控分類為「無法證實」。

## 監警會的觀察

監警會並不認同上述指控的調查結果分類。監警會認為縱使行車記錄儀片段並未能顯示警員當時正使用的手提電話功能，但從片段可見警員曾以橫向方式手持電話，並在警車車頭蓋上方使用手提電話約五秒鐘，而車頭蓋上放置了投訴人的身份證和駕駛執照。監警會認為，警員上述動作似在拍照多於查核路名，令人懷疑其解釋只是用手提電話來查閱地圖的真確性。

監警會認為雖則個案中未有充分證據證明指控完全屬實，但基於上述錄影片段，可視作有若干可靠的證據支持投訴人的指控，故此建議對警員的「行為不當」指控，由「無法證實」改為「無法完全證明屬實」。

投訴警察課接納監警會的建議，並對警員作出訓諭而無須將事件記入其分區報告檔案中。

CAPO did not consider any impropriety for the PC to record the Complainant's personal details on his notepad, as he had shredded the relevant record after use. Police guidelines do not prohibit an officer from recording information in documents other than official notebook, as long as Personal Data (Privacy) Ordinance is adhered to. CAPO considered that it would be impracticable to require PC to make organised and detailed entries on the official notebook entries when PC would be heavily engaged in the investigation at the scene.

With regard to the allegation concerning the PC taking photo of Complainant's personal data using his mobile phone, CAPO reviewed the video clip captured by the dash camera in the Complainant's car. The video footage showed that the PC placed the Complainant's HKID card and driving licence on the hood of saloon, and then he used his mobile phone. However, the mobile application being used was not captured. In addition, CAPO also enquired the witnesses who indicated that he did not notice whether the PC had photographed the Complainant's personal particulars. As there was no independent evidence supporting either party in their counter-allegations, CAPO classified the "Misconduct" allegation as "Unsubstantiated".

## IPCC's observations

The IPCC disagreed with the classification of investigation result regarding the above allegation. The IPCC opined that though the video footage captured by the dash camera system could not show the mobile application being used by the PC at the material time, the video footage revealed that the PC had put his mobile phone horizontally when he used his phone above the hood of police saloon, where the Complainant's HKID card and driving license were placed. This action lasted about 5 seconds. The IPCC was of the view that the PC appeared taking pictures rather than checking the location and the actions of the PC might cause suspicion on the creditability of his explanation that he took out his mobile phone only for checking the map.

Although the IPCC considered that there was insufficient evidence to substantiate the allegation, the above video footage could be regarded as some reliable evidence to support the Complainant's allegation. Therefore, the IPCC recommended the allegation of "Misconduct" against the PC to be changed from "Unsubstantiated" to "Not Fully Substantiated".

CAPO finally subscribed to IPCC's view, and the PC was given an advice without Divisional Record File entry.



## 修正調查結果分類的投訴個案

### Complaint case relating to reclassification of investigation results

**個案四：警員在反毒行動的濫用職權及疏忽職守指控屬「並無過錯」**

**Case 4 : Police officers who were alleged of Unnecessary Use of Authority and Neglect of Duty during antinarcotic raid were found “No Fault”**

指控 Allegations	被投訴人 Complainee(s)	投訴警察課的原本分類 Original classification(s) by CAPO	最終分類 Final Classification(s)
1 濫用職權 Unnecessary Use of Authority	警長 Sergeant (SGT)	無法追查 Not Pursuable	並無過錯 No Fault
2 疏忽職守 Neglect of Duty	高級督察 Senior Inspector of Police (SIP)	無法追查 Not Pursuable	並無過錯 No Fault

#### 個案背景

在一次反毒的突擊搜查行動中，一名警長及其他警務人員在一個單位內搜出微量疑似危險藥物、吸食工具，以及一副手銬。因此，該名警長以「販運危險藥物」、「管有適合於吸食危險藥物的設備或器具」及「管有攻擊性武器」罪拘捕單位內的四名遊客(包括投訴人)。該名警長亦檢取了投訴人的手提電話、平板電腦及其他證物作進一步調查。其後，法庭認為無足夠證據支持檢控而將投訴人及其餘三人當庭釋放。事後，投訴人不滿該名警長(被投訴人一)在沒有合理理由的情況下拘捕她，並檢取其手提電話、平板電腦和護照【指控一：濫用職權】。她又指控一名高級督察(被投訴人二)未有向入境事務處安排延長其在港逗留期限，以便她取回被警方扣查作證物的個人物品【指控二：疏忽職守】。

#### Case background

During an antinarcotic raid, a Sergeant (SGT) and other police officers discovered a small amount of suspected dangerous drugs, smoking apparatus and a pair of handcuffs from a flat. The SGT arrested four tourists (including Complainant) therein for “Trafficking in a Dangerous Drug”, “Possession of Equipment Fit for Smoking Dangerous Drug” and “Possession of Offensive Weapon”. The SGT also seized the Complainant’s mobile phone, tablet computer and a number of exhibits for further investigation. Later on, the Complainant and three arrested persons were released by Court unconditionally due to insufficient evidence to support the charges. The Complainant was dissatisfied with the SGT for arresting her and seizing her mobile phone, tablet computer and passport without justification [Allegation 1: Unnecessary Use of Authority]. Moreover, the Complainant alleged that the Senior Inspector (SIP) failed to liaise with Immigration Department to extend her stay in Hong Kong for collecting properties kept by the Police as case exhibits [Allegation 2: Neglect of Duty].

## 投訴警察課的調查

投訴警察課多次以電話、電郵及書信方式聯絡投訴人協助調查投訴，但均不果。由於無法聯絡投訴人以獲取更多資料作跟進其投訴個案，投訴警察課將上述兩項指控分類為「無法追查」。

## 監警會的觀察

監警會不認同上述指控的調查結果分類。監警會認為即使投訴警察課未能聯絡投訴人，仍可根據現有資料來判斷警員的處理是否恰當，因此透過質詢要求投訴警察課重新審視投訴個案，並應按照調查結果將兩項指控重新分類。

## 投訴警察課的重新調查

投訴警察課認為由於單位內搜出疑似危險藥物、吸食工具及一副手銬，故警方有合理理由懷疑投訴人及其餘三人干犯「販運/管有危險藥物」、「管有適合於吸食危險藥物的設備或器具」及「管有攻擊性武器」等罪行，從而作出拘捕行動，並檢取投訴人的手提電話和平板電腦為證物，檢查當中有沒有四人販運危險藥物的證據。此外，投訴人的護照在首次提堂時已轉交了法庭，並非檢取的證物之一。由於在調查過程中並無發現警長有任何不妥之處，故投訴警察課將指控一由「無法追查」重新分類為「並無過錯」。

至於指控二，投訴人及其餘被捕人士被法庭無條件釋放時，該名高級督察已馬上聯絡入境事務處安排延長其逗留期限，並告知他們可到警署取回個人物品。除投訴人外，所有被捕人士均於當日取回他們的物品。警方期後亦為此聯絡投訴人但不果。最後，投訴人約於兩星期後才到警署取回其個人物品。

投訴警察課認為該名高級督察已依照程序，並採取所有切實可行的方法將投訴人的物品歸還給她，過程中並無故意延誤，因此將指控二由「無法追查」重新分類為「並無過錯」。監警會認同投訴警察課對兩項指控的分類，並通個這宗個案的調查結果。

## CAPO's investigation

CAPO repeatedly contacted the Complainant by telephone, email and mail to seek her assistance in the investigation of complaint, but failed to reach her. As CAPO could not reach the Complainant to acquire further information to follow up this complaint case, CAPO classified the above two allegations as "Not Pursuable".

## IPCC's observations

The IPCC disagreed with CAPO's classification of investigation result for the above-mentioned allegations. The IPCC was of the view that even if CAPO could not reach the Complainant, the appropriateness of police officer's handling can still be judged based on information available. The IPCC therefore requested CAPO to re-examine the complaint case and re-classify two allegations based on the result thereof.

## CAPO's re-investigation

CAPO considered that as suspected dangerous drugs, smoking apparatus and a pair of handcuffs were found inside the flat, it was reasonable for the Police to suspect that the Complainant and three other persons committed the offence of "Trafficking / possession of Dangerous Drug", "Possession of Equipment Fit for Smoking Dangerous Drug" and "Possession of Offensive Weapon". The subsequent arrests and seising of the Complainant's mobile phone and tablet computers as exhibits were thus justified. The purpose of doing so was to collect evidence for the offence of "Trafficking/ possession of Dangerous Drug". In addition, the Complainant's passport was not seised as an exhibit but was transferred to the Court for the Complainant's first appearance at the court. As no impropriety was found on the part of the SGT during the investigation process, CAPO has reclassified Allegation 1 from "Not Pursuable" to "No Fault".

For Allegation 2, upon the release of the Complainant and the other arrested persons by Court, the SIP had immediately arranged with Immigration Department to extend their periods of stay in Hong Kong and informed them to collect personal properties from police station on the same day. All the arrested persons retrieved their belongings on that day except the Complainant who could not be located by the Police thereafter. In the end, the Complainant retrieved her belongings from police station two weeks later.

CAPO considered that the SIP had followed the procedures and had taken all practical and reasonable steps to return the properties to the Complainant without any undue delay. Therefore, CAPO reclassified allegation 2 from "Not Pursuable" to "No Fault". The IPCC agreed with CAPO's revised classification and endorsed CAPO's findings in this case.

## 警隊常規和程序改善建議

# Recommended improvements to police practices and procedures

為履行《監警會條例》第8條(1)(c)的職能，監警會於審核須匯報投訴時，若發現警隊常規或程序有任何缺失或不足，均會適時向警方提出改善建議。監警會秘書處會透過「調查報告通過後的跟進工作事項」，與投訴警察課跟進改善的相關事宜。委員會亦會在季度聯席會議上，與警方討論改善建議的實施進度，確保警方作出妥善的跟進，進一步提升警隊的服務質素。

於報告期內，監警會向警方提出了26項改善建議。這些建議可大致分為三個類別：即(1)改善警隊指引及常規；(2)提升電腦記錄系統的便利度；以及(3)向警務人員提供建議並加強其知識及培訓。

以下是部份改善建議及相關投訴個案示例。

### (1) 改善警隊指引及常規

#### a. 修訂在執行公務時使用私人手提電話的警隊指引

智能電話為日常生活帶來便利。然而，警務人員不當使用智能電話或會導致違規，甚或引起侵犯私隱等問題。過往幾年，曾有數宗涉及警務人員於當值期間因警務工作使用私人手提電話而衍生的投訴個案。投訴警察課的調查顯示，這數宗投訴個案涉及資料外洩，個案中的警務人員在未獲得上級批准下，使用私人手提電話攝錄敏感資料，以致相關資料在社交媒體上流傳，因而涉嫌違反《警察通例》的規定。

To discharge the function under section 8(1)(c) of the IPCCO, the IPCC makes timely recommendations to the Police whenever it identifies any fault or deficiency in the police practices or procedures while vetting the Reportable Complaint reports. The IPCC Secretariat will monitor improvement-related matters via “Post-endorsement Issues Follow-up” with CAPO. The Council will also discuss the implementation progress of the recommended improvements at quarterly Joint Meetings with the Police to ensure their proper follow-up with a view to further enhance the service quality of the Police.

During the reporting period, the IPCC made 26 improvement recommendations to the Police. These recommendations can be broadly grouped into three categories: (1) enhancement of police guidelines and practices; (2) improvement in the user-friendliness of the computer record system; and (3) giving advice to and strengthening knowledge-building and training for police officers.

Provided below are examples of improvement recommendations illustrated by related complaint cases.

### (1) Enhancement of police guidelines and practices

#### a. Modification of police guidelines on the use of personal mobile phones for official duty purposes

Smartphones bring convenience to our daily lives. However, improper use of smart phones by police officers may result in violation of police guidelines or lead to infringement of privacy issue. In the past few years, there were a number of complaints related to the use of personal mobile phones for official duty purposes by on-duty police officers. CAPO's investigations revealed data leakage issues in a few complaint cases in which the police officers concerned had allegedly violated the provisions in the “Police General Orders” by recording sensitive data on their personal mobile phones without seeking approval from their supervisors, leading to the leakage of the data on social media which resulted in unrestricted access of these sensitive information by the public.

監警會對於警員未經上級批准，使用私人手提電話執行公務而違規的趨勢表示關注，認為警隊的使用手提電話指引有必要因應社會環境的演變而適時檢討及更新，並確保警務人員充分理解和熟悉指引變更的內容及應用，從而提升效率並減少違規或侵犯私隱等問題。有鑒於此，監警會要求警方深入了解警員利用私人電話的情況，並檢視《警察通例》中的條文，確保指引清晰明確及務實可行，讓警務人員能夠有據可依並嚴格遵守。此外，監警會亦建議警方考慮應否在合理情況下讓警務人員靈活應變，因應公務所需使用私人手提電話並於事後再行取得上司許可，及恰當地處理所得到的個人資料，包括適時刪除等措施。

警方接納監警會的建議，並成立工作小組檢討相關的警隊政策及指引。經檢討後，警方議定修改《警察通例》及《警察程序手冊》內的有關章節，建議修訂將從多方面著手，包括准許警務人員在合理情況下靈活使用私人手提電話執行若干警務工作。監警會將密切跟進指引的修訂內容和進度，及警方向前線警務人員解釋、介紹相關指引的計劃，確保新修訂的指引能發揮作用，減低相關投訴及有效提升警隊的服務質素和效率。

## **b. 改善「表達不滿機制」程序的建議**

成立「表達不滿機制」的目的，是讓投訴人在提出正式投訴以外，可選擇其他方式處理性質輕微的投訴，以便能有效地處理投訴人所表達的不滿，更能善用資源調查其他較為嚴重的個案。為幫助投訴人充分了解「表達不滿機制」的用途，以及可供選擇的投訴處理方式，投訴警察課的人員在開始與投訴人對話前，須播放一段關於「表達不滿機制」的錄音序言。

The IPCC is concerned about the trend of violation of police guidelines due to unauthorised use of personal mobile phones by police officers. The IPCC opined that the police guidelines relating to use of personal mobile phones should be reviewed and updated timely to reflect the latest development in the society. In addition, police officers should be communicated to attain sufficient understanding of the considerations for the modification and application of the guidelines such that violation of guidelines and infringement of privacy issues could be reduced while work efficiency of the police officers could also be enhanced. The IPCC therefore recommended the Police to deepen their understanding of situations involving the use of personal mobile phones, review the “Police General Orders” to ensure relevant guidelines are clear and pragmatic for policy officers to make reference and comply with. Furthermore, the IPCC suggested the Police consider the appropriateness of allowing some flexibility for the police officers to use personal mobile phones in warranted situations. Officers might seek retrospective permission for using their personal mobile phones for official duty purposes and proper handling of acquired personal data including timely removal as appropriate.

The Police accepted the IPCC's recommendations and formed a working group to review the relevant Force Policy and guidelines. After the review, the Police planned to modify the relevant sections in “Police General Orders” and “Force Procedures Manual” in several aspects, including more flexibility being allowed for officers to use personal mobile phones for performing official duty under justifiable situations. The IPCC will closely follow up on the revisions and progress in updating guidelines by the Police; as well as the Police's plan to explain and introduce related guidelines to the front line police officers with a view that the updated guidelines could achieve the objective in reducing related complaints and effectively enhancing the service quality and efficiency of the police force.

## **b. Suggested improvement on procedures regarding the Expression of Dissatisfaction Mechanism (EDM)**

The aim of EDM is to provide Complainants with an alternative to filing a formal complaint for cases with minor nature. This not only can effectively cope with dissatisfaction expressed by Complainants but also make optimum use of investigation resources for cases that are of a more serious nature. To help Complainants fully understand the purpose of EDM and the available options for handling their complaints, CAPO officers are required to play an audio-recorded EDM preamble at the beginning of their conversation with the Complainants.

然而，在一宗投訴個案的調查過程中，投訴人不滿投訴警察課在未有清楚講解「表達不滿機制」且未經其同意下，即以該方式處理其個案，因此對若干投訴警察課人員作出投訴。

監警會審核投訴警察課的調查報告時發現，在上述個案發生期間，投訴警察課人員僅會在電話通話期間播放「表達不滿機制」的錄音序言來解釋投訴程序，但播放序言這程序卻不會用於面談。監警會認為投訴警察課應加強有關常規做法，不論是電話通話或會談方式，均須向投訴人解釋「表達不滿機制」，確保投訴人清楚了解所有選擇和權利，以防止未來出現類似投訴。

警方同意監警會的觀點，認同面談時也應向投訴人播放「表達不滿機制」的錄音序言，以便投訴人了解「表達不滿機制」的用途，以及其他可供選擇的投訴處理方式。此外，投訴警察課人員亦會將播放序言、向投訴人解釋其他可供選擇的投訴處理方式、投訴人就「表達不滿機制」所作的決定，以口供形式或在警察記事冊內一一記錄在案，然後請投訴人在警方的文件上簽署確認。監警會認為這些措施能有效避免誤會及有助統一投訴警察課人員向投訴人解釋「表達不滿機制」的程序。

## (2) 提升電腦紀錄系統的便利度

### 運輸紀錄系統的改善建議

警方肩負交通方面的執法工作，在履行職責時經常要接觸市民大眾。在大多數情況下，交通警員也須先查核駕駛人士的駕駛執照。因此，一套準確易用的紀錄系統有助前線警員有效執行職務。

During the investigation of a complaint, however, the Complainant was dissatisfied that CAPO dealt with his case by way of EDM without explaining to him the mechanism and seeking his consent. Therefore, he filed a complaint against certain CAPO officers.

Upon review of CAPO's investigation report, the IPCC found that CAPO officers would only play the audio-recorded EDM preamble during telephone interviews to explain the complaint procedures but such explanation were not provided in face-to-face interviews. In IPCC's opinion, CAPO should improve their operational practice by adopting the same arrangement to explain the mechanism to and seek consent from the Complainant regardless of whether the interview would be taken over phone or face-to-face. This is to ensure that the Complainants understand the choices available and their rights which will help avoid similar complaints in the future.

The Police accepted IPCC's recommendations that the audio-recorded EDM preamble should also be played to Complainants in face-to-face interviews to enable their understanding of the purpose of the EDM and other available options for handling a complaint. In addition, CAPO officers will record, either as a statement or in the police notebook, the broadcast of the preamble, the explanation to the Complainants of other available options for handling a complaint, and the Complainant's decision regarding the EDM. The Complainants will then be invited to sign and confirm the documentation. IPCC considered that the above measures would avoid mis-understanding and enable the adoption of uniform best practice for the EDM mechanism.

## (2) Improvement in the user-friendliness of the computer record system

### Suggested improvement to the transport record system

Having a major role in traffic enforcement, the Police frequently encounter members of the public when carrying out their duties. Checking the driver's driving licence is often the first thing a traffic police officer does in almost every scenario. An accurate and user-friendly recording system will facilitate the frontline police officer in performing his duty efficiently.

在一宗投訴個案中，一名被吊銷駕駛導師執照的的士司機(投訴人)涉及一宗交通事故。案發現場的警務人員先向控制中心查核投訴人的駕駛執照。控制中心經警方的運輸紀錄系統查核投訴人駕駛執照狀況後，告知警員投訴人所有類別的駕駛執照均遭停牌。因此，該警務人員以「在沒有有效駕駛執照的情況下駕駛」為由拘捕投訴人並將其帶回警署。然而，其後證實投訴人僅駕駛導師執照被吊銷，而其他駕駛執照則仍然有效。投訴人最終獲無條件釋放。半年後，該名投訴人再次遭遇類似情況，控制中心人員仍未能確定其駕駛執照是否有效。投訴人雖然未被拘捕，但仍被帶返警署接受進一步問話。

監警會認為警方運輸紀錄系統不便於使用，因而令類似誤會一再發生。由於控制中心人員對該運輸紀錄系統及所用的代碼並不熟悉，因此無法將正確訊息轉達給前線警務人員，導致投訴人因同一原因被兩度帶返警署，對他造成極大不便和困擾，監警會認為上述情況極不理想。

為防止類似錯誤再次發生及提升前線和控制中心人員的工作效率，監警會建議警方檢討及提升系統的便利性，同時避免使用過多縮寫或代碼，令控制中心人員及前線警務人員均可以清楚理解代碼的含意，快而準地執行工作。於提升紀錄系統的過渡期間，如遇有不確定之處，監警會亦建議控制中心人員應馬上向有關的警隊部門及運輸署查證，避免造成不必要的誤會和投訴。同時，監警會認為警方應加強培訓控制中心人員，務求操作人員均熟識系統代碼的含意。上述建議獲警方接納，監警會將繼續留意該等建議的實踐情況。

In one of the complaint cases, a taxi driver (the Complainant), whose driving instructor's licence (DIL) had been suspended, was involved in a traffic accident. The police officers who attended the scene made enquiry with Console about the Complainant's driving licence status. After checking the Police's transport record system, the Console officer told the police officer at the scene that all classes of the Complainant's driving licence had been suspended. The police officers therefore arrested the Complainant for "Driving without a Valid Driving Licence" and took him to the police station. The Complainant was eventually released unconditionally as it was later confirmed that only his DIL had been suspended while other classes of his driving licences were still valid. Six months later, the Complainant encountered a similar situation and the Console officer was again unsure about the validity of his driving licence. Though not arrested, the Complainant was taken to the police station for further enquiry.

The IPCC was of the view that the recurrence of similar misunderstanding was a result of Police's transport record system being somewhat not user-friendly. As the Console officers were not familiar with the transport record system and codes used, they were not able to provide accurate information to the frontline officers. The IPCC considered this unsatisfactory as it caused inconvenience and hassle to the Complainant for being taken to the police station twice.

In order to prevent recurrence of similar mistakes and enhance the work efficiency of the frontline and Console officers, the IPCC recommended the Police to review and improve the user-friendliness of the record system and avoid overusing abbreviations or codes, so that both Console officers and frontline officers could easily understand the meaning of the codes and discharge their duties efficiently and properly. In the interim, Console officers would be advised to consult the relevant police units and the Transport Department if there were ambiguities so as to avoid unnecessary misunderstanding and complaints. At the same time, relevant training should be provided to Console officers to ensure users are familiar with the meanings of the codes. The above recommendations were accepted by the Police. The IPCC will continue to monitor the implementation of these recommendations.

### (3) 向警務人員提供建議並加強其知識及培訓

#### 加強處理家庭暴力案件的培訓

家庭暴力事件如處理失當，足以導致嚴重後果。警方是家庭暴力事件的首要舉報機構，角色舉足輕重，既要確保家暴受害者獲得保護及支援，同時亦需將肇事者適時繩之於法。前線警員能否有效處理家庭暴力舉報個案，以及適當評估相關風險均非常重要，因為家庭暴力案件與性命攸關，不當處理或會導致嚴重後果。

在一宗投訴個案中，一名高級警員與兩名警員接報處理投訴人與前夫之間的糾紛。投訴人報稱前夫毆打她11歲的兒子，該名高級警員雖發現投訴人兒子身上有傷，卻只是將個案分類為「糾紛」。投訴警察課的調查顯示，該名高級警員決定將案件分類為「糾紛」的做法有誤，個案應分類為「家庭暴力(刑事)」，並交由刑事調查隊跟進調查。

監警會認為警員將家庭暴力案件錯誤分類為「糾紛」，很可能令無助的受害人面臨更大危險，因而對他們的心理及生理造成長遠損害。有見及此，監警會建議警方應定期檢討家庭衝突案件的分類和準則，確保前線警務人員掌握該等準則並作出相應處理。此外，監警會亦建議警方加強前線警員對處理家庭暴力個案的認識，並為他們提供相關專業訓練，令家庭暴力案件得到適時及恰當的處理。

### (3) Giving advice to and Strengthening knowledge-building and training for police officers

#### Reinforced training on the handling of domestic violence cases

Domestic violence can cause serious consequence if not being appropriately handled. The Police, being the first point of contact for reported domestic violence, have an essential role in ensuring that victims of domestic violence are protected and supported, and perpetrators are held accountable timely for the harm they have caused. It is important that frontline police officers can handle domestic violence reports effectively and assess the risks appropriately as the consequences for such incidents could be serious and might be a matter of life and death.

In one complaint case, a Senior Police Constable (SPC) and two Police Constables (PC) handled a dispute between the Complainant and her ex-husband. The Complainant reported that her ex-husband had assaulted her 11-year-old son. The SPC, however, merely classified the case as "Dispute" despite the injuries found on the Complainant's son. CAPO's investigation revealed that the SPC's decision to classify the case as "Dispute" was wrong. The case should have been classified as "Family Violence (Crime)" for further investigation by a crime unit.

The IPCC considered that the wrong classification of the domestic violence case to "Dispute" by the police officer might put those helpless victims who were already vulnerable under additional risks. This would also result in long-term adverse impact to victims psychologically and physically. In view of the above, the IPCC recommended the Police to regularly review the classification and assessment criteria of domestic violence cases to ensure that frontline police officers fully understand the assessment criteria and handle cases appropriately. In addition, the IPCC was of the view that the Police should promote the knowledge of frontline officers on the handling of domestic violence cases and provide professional training to them to ensure the domestic violence cases are handled properly in a timely manner.

警方接納監警會的建議，並保證家庭暴力議題已納入各級警員的必修培訓及溫故知新課程之中。此外，警務人員亦可通過警方的電子學習平台掌握最新資訊。警方會以上述投訴個案為例，提醒全體前線警員應如何根據準則正確分類及處理家庭暴力案件。

The Police accepted the IPCC's recommendations and affirmed that the subject matter is now included in the compulsory curriculum at all levels of police training. Besides, police officers will refresh their skills through refresher training and reference to the latest information posted on the Police's e-learning portal. The Police have also given all frontline police officers appropriate advice on how to classify and handle domestic violence cases, citing the instant complaint case as an example.