

**Special Panel Report on Complaints against
The IPCC Chairman, 2 Vice Chairmen and 7 Members**

I. Background

1.1 Between 28 September and 15 December 2014 (a total of 79 days), a series of demonstrations took place in Hong Kong during which some major roads in Admiralty, Causeway Bay, and Mongkok were occupied by demonstrators, resulting in serious interruption of traffic flow. This series of demonstrations were initially named as “Occupy Central Movement” and later on evolved to some other names, the most common ones include “Occupation Movement” and “Umbrella Movement”. During these 79 days, the Hong Kong Police had to deploy a large number of Police Officers to the “Occupied Areas” for maintenance of law and order. Such Police actions unavoidably incurred volatile encounters with the demonstrators and other members of the public, resulting in complaints being made against the Police Officers involved in these series of actions. For convenience purpose, these incidents of volatile encounters are hereinafter referred to as “Occupied Central Incidents (OCI)” and that complaints against the Police arising therefrom be termed as “OCI complaints”.

1.2 As many OCI complaints are Reportable Complaints (RC) which would require monitoring and scrutiny by the IPCC under the provisions stipulated in the Independent Police Complaints Council Ordinance (hereinafter referred to as “IPCCO”), and these complaints are of immense public interest, members of the public have expressed grave concerns over the behaviour, conduct, and views of a number of IPCC members, albeit their acts, appearance and speeches, whilst connected with OCI and made in the public domain, were not made in their official IPCC capacities.

1.3 Since 17 October 2014, the IPCC has received a total of 30,748 items of incoming correspondence, many of them emails with similar templates and contents. A detailed breakdown as to the sources of these incoming items of correspondence is annexed herewith (Annex refers).

Allegations / Concerns / Worries against various IPCC Members

1.4 Altogether 10 IPCC Members, including the Chairman and two Vice-chairmen, were named in the aforesaid incoming correspondence. The allegations lodged against them, and the concerns or worries in connection therewith, are listed out herein:

(a) Mr Larry Kwok, IPCC Chairman (hereinafter referred to as “CLK”)

A total of 16,785 items of incoming correspondence were received, alleging that CLK, when interviewed by the media, was biased in describing complaints against certain IPCC Members as merely opinions.

(b) The Hon. Abraham Shek, then IPCC Vice-chairman (hereinafter referred to as “VAS”)

An incoming correspondence was received, alleging that VAS had a “pre-set stance” of supporting the Police, and voted against the motion that Legislative Council (hereinafter referred to as “LegCo”) should conduct an inquiry into the Police’s handling of OCI.

(c) The Hon. Chan Kin-por, IPCC Vice-chairman (hereinafter referred to as “VCK”)

A total of 16,787 items of incoming correspondence were received, alleging that VCK had a “pre-set stance” of supporting the Police, and voted against the motion that LegCo should conduct an inquiry into the Police’s handling of OCI.

(d) The Hon. Kenneth Leung, IPCC Member (hereinafter referred to as “MKL”)

A total of 2,583 items of incoming correspondence were received, alleging that MKL had a political stance of supporting the OCI protestors, and that he wore a yellow ribbon in public appearances, signifying his political stance as above. MKL had also criticized the Police for having used excessive force, including using tear-gas and OC foam improperly, during the OCI.

- (e) The Hon. Helena Wong, IPCC Member (hereinafter referred to as “MHW”)

A total of 1,027 items of incoming correspondence were received, alleging that MHW had a political stance of supporting the OCI protestors, and that she wore a yellow ribbon in public appearances, signifying her political stance as above. MHW had also criticized the Police for having used excessive force, including using tear-gas and OC foam improperly, during the OCI. MHW also jumped to the conclusion that there was prima facie evidence against the Police officers involved in the “7 Police Officers Case”.

- (f) Mr Eric Cheung, then IPCC Member (hereinafter referred to as “MEC”)

A total of 62 items of incoming correspondence were received, alleging that MEC had a political stance of supporting the OCI protestors; was seen appearing in the company of a pro-OCI LegCo Member during an on-site visit to an “Occupied Area”; pre-judged on the “7 Police Officers Case”; made comments on the issue of police officers being provoked by protestors in an inappropriate manner (humorously / jokingly); and that his advice to Police officers that they should better control their emotion was biased and unfair to the Police officers concerned.

- (g) Ms Christine Fang, then IPCC Member (hereinafter referred to as “MCF”)

Two items of incoming correspondence were received, alleging that MCF had a political stance of supporting the OCI protestors, and that she had criticized the Police for using excessive force during the OCI.

- (h) Mr Lawrence Ma, IPCC Member (hereinafter referred to as “MLM”)

A total of 28,103 items of incoming correspondence were received, alleging that MLM had a political stance of supporting the Police; displayed a blue ribbon on his social media account signifying his political stance as above; was a member and legal adviser of the

“Alliance for Peace and Democracy” (保普選反佔中大聯盟); and that MLM had also allegedly written an article to support the use of force by the Police in OCI back in April 2014.

- (i) Ms Ann So, IPCC Member (hereinafter referred to as “MAS”)

A total of 28,103 items of incoming correspondence were received, alleging that MAS had a political stance of supporting the Police.

- (j) Dr Eugene Chan, IPCC Member (hereinafter referred to as “MDC”)

A total of 16,785 items of incoming correspondence were received, alleging that MDC had a political stance of supporting the Police.

1.5 Many senders of the above-mentioned items of incoming correspondence expressed their concern on the Members’ impartiality and/or demanded them to resign or refrain from examining complaints arising from OCI.

The Special Panel

1.6 On 20 November 2014, the Council resolved that a Special Panel (hereinafter referred to as “the Panel”) comprising Members Messrs Arthur LUK, John YAN, Adrian YIP and Vincent Simon HO, and Miss Lisa LAU be formed to deal with the aforesaid incoming correspondence. The terms of reference of the Panel are:

- (a) To handle or deal with all incoming correspondence in connection with complaints, queries or concerns expressed in connection with discharge of the IPCC functions or duties, or other related business of the Council, by individual Members related to OCI; and
- (b) To report and make recommendations to the Council where the Special Panel considers appropriate.

1.7 The Panel convened meetings to deliberate the aforesaid incoming correspondence received. The Panel noted that VAS, MEC and MCF would retire as IPCC Members on 1 January 2015. Nonetheless, the Panel decided to deal with the incoming correspondence concerning them in the

same manner as those concerning the serving Members as the allegations and concerns against them were raised during their tenure as IPCC Members. This report highlights the relevant facts, and the Panel's deliberation.

II. The Relevant Events

2.1 On 15 October 2014, it was broadcast in a television news programme that a person, believed to be an OCI protestor, when being taken away from a scene of protest, was filmed to be beaten up by several persons believed to be police officers (hereafter referred as the "7 Police Officers Case") outside the Central Government Offices. On the same date, MKL and MHW joined a number of Legislative Councilors to hold a press conference to condemn the alleged assault in the "7 Police Officers Case". On the following day, MKL wore a yellow ribbon when attending a press interview. During the material time, the display of a yellow ribbon was generally perceived as signifying support to OCI protestors.

2.2 Starting from 17 October 2014, more than 2,500 items of correspondence were received and the senders expressed their concern of impartiality on MKL, MHW, MEC and MCF as they had expressed views and opinions that were perceived to be pro-OCI. On the other hand, D100, a local radio station, provided two pre-drafted templates and made an appeal for members of the public to write to IPCC Chairman requesting MLM and MAS to resign because of their stance of supporting the Police. As a result, the IPCC received more than 11,000 emails, mostly in template forms. 10,825 of the emails were coordinated and sent from the same source i.e., D100's social media account. Amongst these items of incoming correspondence, one of the senders also complained against VAS and VCK.

2.3 On 20 November 2014, after an IPCC In-house Meeting, CLK attended a stand-up interview with the media to explain how the complaints against the Members would be dealt with. On the following day, D100 made another appeal to repeat their complaints against MLM and MAS and to lodge complaints against CLK for his alleged understatement of describing the complaints against MLM and MAS as opinion expressing only. More emails, mostly in a pre-drafted template, were then received. Some of these emails also alleged VCK and MDC for their stance of supporting the Police. An overwhelming number of 16,692 emails were sent from the D100 social media account.

2.4 Since 28 November 2014, after MEC had made some comments in relation to the police handling of OCI during one of his on-site visits to the “Occupied Areas” in Mongkok, the IPCC received another lot of incoming correspondence alleging that MEC was biased and unfair.

III. Deliberation by the Special Panel

Categorization of the allegations / concerns / worries

3.1 The Panel resolved that all the allegations / concerns / worries contained in the aforesaid incoming correspondence can be categorized into the following:

Category	Allegations / Concerns / Worries
A	CLK’s choice of words during the media interview on 20 November 2014
B	The votes cast by VAS and VCK against the LegCo motion of conducting an inquiry to the Police handling of OCI
C	The wearing / display of yellow / blue ribbon by IPCC Members, signifying their political stances
D	Member’s known political stance of either supporting or being against Occupy Central, as well as their general support to the Police
E	General criticisms expressed by Members in public forums on Police actions
F	Members’ specific comments made on particular incidents / cases

3.2 In view of the large number of senders of the incoming correspondence, the Panel considers that it would be impracticable for the Council to approach them individually for more detailed information, if any. On the other hand, the allegations / concerns / worries etc. expressed by the senders were invariably based on media reports or information otherwise available to the public. The Panel is of the view that the available information contained in the aforesaid incoming correspondence is deemed to be sufficient for deliberation and making recommendations to the Council.

3.3 The Panel is of the view that the crux of the allegations / concerns / worries expressed by the incoming correspondence hinged on the issue of Council's impartiality in discharging its statutory functions. To address this fundamental issue, the Panel adopts a judicial approach which is deliberated below.

The Common Law Test of Bias

3.4 The Panel adopts the common law test of bias as the standard in addressing the issue of impartiality. This test is generally adopted by courts in considering whether an administrative decision-maker should be prevented from participating in a decision-making exercise because of his or her interest in the matter respecting which a decision is to be made. Such test is one of the predeterminations, i.e., in the context of IPCC, one should ask whether a Member has closed his or her mind and is not prepared to change his or her mind in a decision-making exercise in which the Member is involved. In applying this test of bias, the Panel made reference to the following authorities.

Judicial Authorities

3.5 Richard LJ stated in *Condrón v National Assembly for Wales* [2007] *LGR* 87 that "We were referred to various cases in which the distinction has been drawn between a legitimate predisposition towards a particular outcome (for example, as a result of a manifesto commitment by the ruling party of some other policy statement) and an illegitimate predetermination of the outcome (for example, because of a decision already reached or a determination to reach a particular decision). The former is consistent with a preparedness to consider and weigh relevant factors in reaching the final decision; the latter involves a mind that is closed to the consideration and weighing of relevant factors..." (hereinafter referred to as "*Condrón*")

3.6 Richard LJ further stated that "I have referred to a number of respects in which, in my view, the judge fell into error by disregarding relevant circumstances or in his assessment of their significance. He appears to have concentrated unduly on the encounter and how it would have appeared to an observer at the time, rather than taking into account the totality of circumstances apparent to the court upon investigation."

3.7 For the generality of decision-makers governed by public law, the dividing line between predisposition and predetermination is to be assessed by reference to whether a fair-minded and informed observer would conclude, having considered all the facts as appearing at the time the Court comes to determine the matter, that there was a real possibility of bias: see paras 40 and 57 of the judgment of *Condron* and the reference to *Gillies v Secretary of State for Work and Pensions* [2006] 1 All ER 731.

3.8 In *R (Island Farm Development Ltd.) v Bridgend County Borough Council* [2006] EWHC 2189 (Admin.), Collins J said: “The reality is that Councilors must be trusted to abide by the rules which the law lays down, namely that, whatever their views, they must approach their decision-making with an open mind in the sense that they must have regard to all material considerations and be prepared to change their views if persuaded that they should...unless there is a positive evidence to show that there was indeed a closed mind, I do not think that prior observations or apparent favouring of a particular decision will suffice to persuade a court to quash the decision.”

IPCC Jurisdiction

3.9 The Panel also recognizes that in maintaining the Council’s independence and impartiality, there is no provision in the IPCCO which confers any power to the Council to exclude a Member from examining reports and papers although a Member must withdraw from the meeting when he or she has an interest in accordance with Sections 12, 13 and 20 and 21 of Schedule 1, IPCCO. Chairman, Vice Chairmen and Members are appointed by the Chief Executive in accordance with Section 5 of the IPCCO and the Council has no jurisdiction to suspend or remove them from office.

Declaration of Interest

3.10 On the issue of “Declaration of Interest”, the Panel takes into consideration the resolutions passed by the Council in the Special In-house Meeting and In-house Meeting respectively held on 14 and 20 November 2014. It has been resolved that Members’ disclosure of interest in OCI is solely on Members’ own initiatives by making reference to the relevant provisions in the IPCCO and paragraph 12(4)(d) of the Council’s rules on proceedings of meetings.

3.11 It is also noted that Members' disclosure of interest is not a one-off exercise, but a continuous process throughout their tenure, i.e., whenever they come across a scenario whereby they consider disclosure of interest is necessary, they should do so. Hence it does not preclude a Member from disclosing interest when he or she actually reads a Complaints Against Police Office (hereinafter referred to as “CAPO”) report on complaints arising from OCI in the future even if he or she does not see the need of disclosing any interest prior to such reading.

3.12 Nevertheless, the IPCCO does not confer any power to the Council in taking any disciplinary sanction against Members who are found to have failed to comply with the statutory requirements in disclosing their interest.

Decision-making Process in IPCC

3.13 The Panel notes that at the time of the OCI, the Council had 24 Members with a wide spectrum of expertise and backgrounds. In respect of the complaint case examination mechanism, the Council Members are evenly divided into four Sub-groups, each of which consisting of five or six Members, for the purpose of deciding the outcome of a complaint case. Complaints of a serious nature, in particular those bearing substantial public interest, would be placed under the purview of the Serious Complaints Committee currently consisting of 21 Members. Given the dedicated setup, the Panel is of the view that there is no real possibility that would allow any individual Member to exert undue influence upon the Council or any committee or any sub-group in carrying out its statutory functions.

Members' Integrity

3.14 The Panel further notes that Council Members, who are statutorily appointed to take up public duties, are persons deemed to be of integrity and trustworthy to carry out the statutory functions of the Council.

Views of the Panel

3.15 Members of the Panel have meticulously deliberated each of the six Categories of allegations / concerns / worries against the Chairman and the other nine IPCC Members by taking reference to the relevant judicial authorities in the application of the common law test of bias, and noting the relevant jurisdiction provided to the Council in the IPCCO, particularly in

relation to declaration of interest requirements, as well as the actual operation of the Council in discharging its statutory functions. The Panel's views are as follows.

Cat. A - allegations / concerns / worries against CLK

3.16 Even assuming that CLK had described any of the incoming correspondence against certain Members as "expressing opinion" instead of "complaints", it would have been merely a choice of words. Whilst the senders of those incoming correspondence may feel free to disagree with such description, there is nothing to suggest that had he so described the incoming correspondence, CLK was biased or not impartial. The choice of words is entirely semantic and cannot be construed as biased as the Council does not distinguish between the handling of the incoming correspondence whether they are termed as complaints or otherwise. There is no evidence, nor any inference to be drawn, that CLK has closed his mind if he were to be involved in the decision-making in respect of the complaints against the Members named in the incoming correspondence. The Panel concludes that the complaints against CLK are unfounded.

Cat. B - allegations / concerns / worries against VAS & VCK

3.17 The allegations against VAS and VCK were in relation to their casting votes against the LegCo motion of conducting an inquiry into the Police handling of OCI, thus implying that they were biased against the OCI protestors. There is no doubt that they were acting in their capacity as a LegCo Member and exercising their public duties in casting their votes in the motion. There is nothing to suggest that they were not being impartial when discharging their IPCC duties. The Panel concludes that the complaints against them are unfounded.

Cat. C - allegations / concerns / worries against various IPCC Members

3.18 The following Members were alleged to be biased and not impartial because of their wearing / displaying of yellow or blue ribbon publicly and thus showing their political stances, hence should either resign from the Council or be precluded from any decision-making process involving the determination of outcomes of the OCI complaints.

Displaying yellow ribbon: MKL & MHW

Displaying blue ribbon: MLM

3.19 The Panel takes the view that the Members' display of either a yellow or blue ribbon tends to show their political stances only. However, whatever political stance a Member may take, it will not automatically and necessarily shut off his or her mind in the decision-making exercise involving an OCI complaint. There is in existence an effective operation system within the IPCC to deal with declaration of interest issues and case examination matters. The Panel concludes that the allegations against the Members concerned are deemed to be unsubstantiated.

Cat. D - allegations / concerns / worries against various IPCC Members

3.20 The following Members were alleged to be biased or not impartial because their stances were known to be either supporting or against the OCI, or in general supporting the Police.

Supporting OCI: MKL, MHW, MEC & MCF

Against OCI & Supporting the Police: VCK, MLM, MAS & MDC

3.21 The Panel is of the view that a Member's stance of supporting or being against the OCI, or whether or not a Member is inclined to support the Police or otherwise, relate to his or her political belief only. As the IPCC Members are appointed from a wide-spectrum of talents and backgrounds, such diversity in political belief is only natural. There is nothing to suggest that Members with different political beliefs would not adopt an impartial or an evidence-based approach during the decision-making process in connection with OCI complaints handling. The Panel concludes that the allegations are therefore unsubstantiated.

Cat. E - allegations / concerns / worries against various IPCC Members

3.22 IPCC Members MKL and MHW were alleged to be biased and not impartial because they had openly criticized the Police for using excessive force. On the other hand, MLM was alleged to be biased and not impartial because he had published an article in newspapers to support the use of force by the Police well before OCI actually took place.

3.23 The Panel considers that these complaints relate to general comments made by Members without referring to any specific case against any Police Officer in particular. For similar rationale as stated above, it cannot be said that any Member who made such general comments on Police as a whole will automatically or necessarily shut off his or her mind when involved in a decision-making exercise in connection with an OCI complaint. The Panel concludes that the allegations are therefore unsubstantiated.

Cat. F - allegations / concerns / worries against various IPCC Members

3.24 IPCC Members MKL, MHW and MEC were alleged to be biased and not impartial because they had made comments on some particular incidents, including Police's use of OC foam and tear gas in handling of OCI, as well as "the 7 Police Officers Case".

3.25 The senders of the incoming correspondence alleged that MKL and MHW had pre-judged that the Police was acting improperly in using OC foam and tear gas in handling OCI without first examining the actual complaint investigations on these cases. MHW and MEC were further alleged to have made pre-judged comments that there was a prima facie case against the Police Officers concerned in the "7 Police Officers Case". Also MEC had inappropriately commented that the provocative remarks made by OCI protesters during their encounters with the Police were just humorous and that the police officers should better control their emotions in handling OCI.

3.26 The Panel has been made aware that the Police's use of OC foam and tear gas in handling the OCI, and the "7 Police Officers Case" have been subject of RCs, the investigation of which are being conducted by CAPO who would submit reports for IPCC scrutiny upon completion of investigations. The Panel recommends that in considering such cases, Members should be reminded of the relevant judicial authorities and the common law test of bias that would assist them in determining if they should refrain from being involved in the decision-making exercise in connection with those reportable complaints. Members should also be reminded to declare any interest in accordance with the Council's rules and IPCCO.

3.27 The Panel duly notes that MKL had already declared to the Council that he would not be involved in the scrutiny and decision-making exercise in connection with the “7 Police Officers Case”, and that MEC had retired from the Council on 1 January 2015. In any event, all the relevant complaint investigations have yet to be completed by CAPO. Hence it is premature at this stage to judge that any Members might be biased or not impartial if he or she were to be involved in the decision-making exercises of these cases. The Panel concludes that the allegations are deemed to be unsubstantiated.

Replies to the Massive Correspondence

3.28 Among the 30,748 complaints, a total of 27,518 emanated from the same source (D100 Social Media Account). The majority of them are in the forms of pre-drafted templates. The Panel has considered the practical difficulty and resources required to reply to each of the individual named writers directly, and is of the view that such a “Direct Reply Exercise” would be too time consuming and counter-productive, and therefore not worthwhile to embark on. It is recommended that a single consolidated reply to D100 will suffice. The rest of the mails have to be replied to individually in accordance with the prevailing practice.

Handling of Massive Complaints

3.29 The Panel also anticipates that similar massive complaints may be received in the future. It is recommended that a similar mechanism for handling such massive complaints be considered by the Council, but the detailed arrangements should be decided on the individual facts and circumstances of the cases as they arise.

IV. Conclusions

4.1 The Panel has reached the following conclusions:

- (1) The complaints against CLK that he was biased and not impartial because of his public statement in which the aforesaid incoming correspondence received by IPCC were described as “expressing opinion” instead of “complaints” are unfounded.

- (2) The complaints against VAS and VCK that they were biased and not impartial because of their “pre-set stance” in supporting the Police and voting against the LegCo motion of conducting inquiries to the Police handling of OCI are unfounded.
- (3) The complaints against MKL, MHW and MLM that they were biased and not impartial because of their displaying yellow or blue ribbons in public are unsubstantiated.
- (4) The complaints against VCK, MLM, MAS and MDC that they were biased and impartial because of their publicly known stance of supporting the police; and that MKL, MHW, MEC and MCF were biased and not impartial because of their publicly known stance of supporting the “Occupy Central” are unsubstantiated.
- (5) The complaints against MKL and MHW that they were biased and not impartial because they had publicly criticized the Police for excessive use of force; and the complaints against MLM that he was biased and not impartial because of his support for the police in the use of force are unsubstantiated.
- (6) The respective complaints against MKL, MHW and MEC that they were biased and not impartial because they had publicly criticized the Police for having improperly used tear gas and OC foam on particular occasions, as well as commented on the “7-Police Officers Case” before investigation of the case was completed, were unsubstantiated. The Panel recommends that Members be reminded of the common law test of bias that would assist them in determining if they should refrain from being involved in the decision-making exercise in connection with relevant reportable complaints. Members should also be reminded to declare any interest in accordance with the rules and IPCCO. As MEC had already retired, such reminder is deemed not necessary.

V. The Council’s deliberation

- 5.1 The Council endorsed the above findings after deliberation.