

監警會 通訊

IPCC NEWSLETTER



休班警員的投訴個案

Complaint cases related to off-duty police officers



獨立監察警方處理投訴委員會
Independent Police Complaints Council

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休班警員的投訴個案

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照片來源 (封面及本頁): 星島日報 Photo Credit (cover and this page): Sing Tao Daily

不少市民可能誤以為只有當值警員的行為才會衍生投訴，其實，根據《獨立監察警方處理投訴委員會條例》，若某警務人員在休班期間表明自己警務人員的身份，若在此期間他的行為被人投訴，該投訴則有可能被分類為「須匯報投訴」。投訴警察課會必須向獨立監察警方處理投訴委員會(監警會)呈交「須匯報投訴」的調查報告，以供審核。今期的封面故事將介紹三宗有關休班警員的投訴個案：

Many people may have misbelief that only the conduct of on-duty police officers will be subject to complaints. In fact, according to the Independent Police Complaints Council Ordinance, a complaint may be classified as a “Reportable Complaint” if the complaint relates to the conduct of a member of the police force who identified himself as such member while off duty. The Complaints Against Police Office (CAPO) is required to submit the investigation report of the Reportable Complaint to the Independent Police Complaints Council (IPCC) for review. This cover story will feature three complaint cases related to off-duty police officers:

個案一：休班警員不恰當地截停一輛郵政車

Case 1: An off-duty police officer inappropriately stopped a post office vehicle

背景

在此個案中，投訴人(一名駕駛郵政車的司機)駕駛郵政車在新界區收信，被投訴人(一名休班警員)當時駕駛的私家車緊隨其後。該名警員因不滿投訴人的駕駛方式，故間歇性地「扒頭」並在郵政車前面停車。投訴人認為警員的行為是挑釁，故要求車上另一位職員拍下事件作為紀錄。

事件中，警員最終停下私家車阻擋投訴人的去路，他甚至倒車令投訴人需要突然煞車。其後，警員下車並指摘投訴人的駕駛方式。他在爭執期間表明自己警察的身份並展示其委任證，並大聲警告投訴人要控告他「不小心駕駛」。投訴人後來表示已向警方報案，但該名警員在警方抵達前離開現場。

投訴人事後投訴該名警員，指他不恰當地阻擋其駕駛路線【指控(a)：行為不當】；以及談話期間對他不禮貌【指控(b)：不禮貌】。

投訴警察課的調查

投訴警察課將指控(a)分類為「須知會投訴」，理由是(i)該名警員只在「扒頭」及截停投訴人的車後，才表明自己警員的身份；以及(ii)他在事發時沒有行使警權。因此，投訴警察課將有關警員駕駛方式的投訴個案轉交交通部處理。該名警員被控「不小心駕駛」罪名，最終被法庭裁定罪成，並罰款港幣3,000元。

Background

In this complaint case, the Complainant who is a driver of the Post Office was driving a Post Office vehicle to collect letters in the New Territories, while the Complainee who is a Police Constable but was off duty at the material time was driving his private car behind the Complainant's vehicle. The Police Constable, who was dissatisfied with the driving manner of the Complainant, overtook the Complainant's vehicle and stopped his private car in front of it intermittently. Considering that the Police Constable's behaviour was provocative, the Complainant asked another Post Office staff on board the vehicle to video record the incident.

During the incident, the Police Constable finally stopped his car to block the Complainant's way and even reversed his car, causing the Complainant to brake abruptly. The Police Constable further alighted from his car and challenged the Complainant regarding his driving manner. In the heat of the argument, the Police Constable disclosed his police identity and showed his warrant card. He warned the Complainant loudly that he would prosecute the Complainant for "Careless Driving". The Complainant said that he had reported this to the Police, but the Police Constable left the spot before the Police arrived.

The Complainant later lodged a complaint that the Police Constable had inappropriately blocked his driving path [Allegation (a): Misconduct], and had talked to him impolitely [Allegation (b): Impoliteness].

CAPO's investigation

CAPO categorised Allegation (a) as a "Notifiable Complaint" on the ground that (i) the Police Constable disclosed his police identity only after he had driven past the Complainant's vehicle and stopped in front of it; and (ii) the Police Constable did not exercise his police power at the material time. CAPO subsequently referred the Complainant's report about the Police Constable's driving manner to the Traffic Unit for further handling. The Police Constable was charged with "Careless Driving" and was finally convicted after trial with a HK\$3,000 fine.

至於指控(b)，投訴人提供了錄影片段協助投訴警察課調查。影片呈現的事件經過如上述所言，警員表露其警察身份並以粗魯的語氣跟投訴人對話，包括聲稱會控告他「不小心駕駛」。投訴警察課將這項指控分類為「無法證實」，認為這些爭執期間的對話，不應被視為無禮或具攻擊性。

監警會的觀察

就指控(a)而言，監警會不認同「須知會投訴」的投訴分類，因為當警員決定緊隨投訴人的郵政車，顯示他有意圖攔截該車。警員在接觸投訴人不久便展示其委任證，並警告將會控告他「不小心駕駛」。這一連串舉動足以證明，該名警員在一開始追著投訴人的車輛時，便有意執行警察職務。因此指控(a)應歸類為「須匯報投訴」，而根據法庭對警員的裁決，監警會認為應將指控分類為「獲證明屬實」。

至於指控(b)，監警會認為從投訴人提供的錄影片段中，可以清楚見到該警員以咄咄逼人的態度對待投訴人，因此應將這項指控分類為「獲證明屬實」。

除此以外，監警會認為警員在事件中不應披露其警察身份和聲稱會控告投訴人「不小心駕駛」。即使他不滿意投訴人的駕駛方式，他可以將事件向交通部報告。監警會認為警員這些行為不恰當和不必要，因此建議應對涉事警員增加一項「未經舉報但證明屬實」的「行為不當」指控。

經過監警會與投訴警察課的討論後，投訴警察課決定接納監警會的結論，建議就披露警員身份一事對涉事警員採取紀律覆檢。

監警會通過這宗投訴個案的調查結果。

For Allegation (b), the Complainant provided the video recording to assist CAPO's investigation. The recording captured the incident as described above. The Police Constable revealed his police identity and spoke to the Complainant in a rude manner, including that he would prosecute the Complainant for "Careless Driving". CAPO classified this allegation as "Unsubstantiated", as they considered that the conversation occurred in the context of an argument, so the Police Constable's demeanour could not be taken as rude or offensive.

IPCC's observation

For Allegation (a), the IPCC disagreed with the "Notifiable Complaint" categorisation because when the Police Constable decided to chase the Complainant's vehicle, he must have the intention to intercept the vehicle. The Police Constable showed his warrant card to the Complainant shortly after approaching him and more importantly, warned the Complainant that he would prosecute the Complainant for "Careless Driving". It was apparent from the chain of events that the Police Constable must have intended to execute his police duty once he started chasing the Complainant's vehicle. Hence, Allegation (a) should be a "Reportable Complaint". Based on the result of the conviction against the Police Constable in the trial, the IPCC opined that this allegation should be classified as "Substantiated".

As regards Allegation (b), the video clip provided by the Complainant clearly showed that the Police Constable spoke to the Complainant in an aggressive manner. The IPCC was of the view that this allegation should have been classified as "Substantiated".

Furthermore, the IPCC considered that the Police Constable should not have revealed his police identity and said that he would prosecute the Complainant for "Careless Driving" in the incident. Even though he was dissatisfied with the driving manner of the Complainant, he could have reported the matter to the Traffic Unit. The IPCC was of the view that such acts were inappropriate and unnecessary. The IPCC recommended that an additional count of "Misconduct" allegation with the classification of "Substantiated Other Than Reported" be registered against the Police Constable.

After deliberations between the IPCC and CAPO, CAPO agreed to the IPCC's views. The Police Constable will be subjected to a "Disciplinary Review" for revealing police identity in the incident.

The IPCC endorsed CAPO's findings in this case.

個案二：休班警員在一宗交通事故中不恰當地表明警員身份

Case 2: An off-duty police officer inappropriately disclosing his police identity during a traffic incident



一名休班警員在一宗交通事故中，不恰當地展示其委任證。
(照片來源：南華早報)

An off-duty police officer inappropriately showed his warrant card during a traffic incident. (Photo Credit: South China Morning Post)

背景

在此個案中，被投訴人(一名休班警員)連同他的家人，和投訴人發生一宗輕微的交通事故。事發在新界一個路邊避車處，該名警員的家人將私家車停泊在投訴人的車輛旁邊，其中一名家人在打開車門下車時，車門無意中刮花了投訴人的車身。警員於是下車並向投訴人披露其警員身份，期間雙方發生口角，投訴人決定報案。事後，投訴人投訴該名警員於休班期間不恰當地展示委任證【指控：濫用職權】。

投訴警察課的調查

在投訴警察課的調查期間，投訴人及被投訴人的一方均聲稱被對方指罵。投訴人指，該名警員披露其身份後，詢問投訴人車輛受損的位置，當中夾雜粗言穢語，並指控投訴人企圖勒索賠償。而該名被投訴警員則承認自己曾展示委任證，及詢

Background

In this case, the Complainee (a Police Constable who was off duty at the material time) and his family members were involved in a minor traffic incident with the Complainant at a lay-by area in the New Territories. One of the family members of the Police Constable stopped the private car next to the Complainant's car. Another family member of the Police Constable opened the door to get out of the vehicle but the door accidentally scratched the Complainant's car. The Police Constable then got off the car and revealed his identity as a police officer, a verbal dispute ensued, and the Complainant called 999 to report the case. The Complainant lodged a complaint against the Police Constable, alleging that he had inappropriately displayed his police warrant card whilst off duty. [Allegation: Unnecessary Use of Authority]

CAPO's investigation

During CAPO's investigation, both the Complainant and Complainee's parties alleged being abused verbally by each other. The Complainant alleged that the Police Constable revealed his police identity, and asked with foul language which part of the vehicle had

問投訴人是否需要任何協助，因為他知道沒有涉及人身傷害的交通事故，可以賠償金和平解決，因此向投訴人確認車輛損毀位置，並表示他的一方願意為車輛損毀作出賠償，他否認自己在整件事務中使用粗言穢語。

此項指控的關鍵在於警員展示委任證時是否有理據；以及展示委任證時，他是否意圖影響投訴人不再追究該交通事故。投訴警察課最初因沒有獨立證據支持投訴人或投訴警員的說法，所以把此案的指控分類為「無法證實」。

監警會的觀察

監警會認為該名警員在事件中並非在行使警察權力，故此沒有迫切的理由披露其警員身份。會方認為單是展示委任證，足以對投訴人構成壓力不去追究。因此，應將指控改為「獲證明屬實」。但投訴警察課不同意此觀點，並認為沒有證據證明警員展示委任證是出於惡意，或是向投訴人施壓。

雙方進一步討論此案後，投訴警察課最終同意由於警員是交通事故中其中一方的近親，展示委任證有可能令投訴人誤會警員是企圖利用其身份解決此交通事故。為了避免任何可能引起的利益衝突，警員不應展示委任證，以處理該交通事故。明顯地，警員的介入對整件事情沒有幫助，反而當投訴人得知其警員身份後表現激動。

由於警員在事件中沒有行使任何警權，投訴警察課將指控由「濫用職權」改為「行為不當」，而由於警員不恰當表明警員身份，因此把指控分類為「獲證明屬實」。涉案的警員將被給予警告但無須記入分區報告檔案中。監警會通過投訴警察課的結論。

been damaged and accused the Complainant of trying to blackmail for compensation. The Police Constable admitted that he showed his warrant card, and asked the Complainant if he needed any help. Since the Police Constable knew that a traffic incident without injury could be handled by the way of settlement, he asked the Complainant to check which part of his vehicle had been damaged. The Police Constable claimed that his party was willing to offer compensation for the damage. He denied using any foul language in the course of the dispute.

The crux of the allegation is whether the Police Constable was justified in showing his police warrant card and, by doing so, had intended to influence the Complainant to not pursue the traffic incident. CAPO initially classified the allegation as “Unsubstantiated” because there was no independent evidence to support either the Complainant’s or the Police Constable’s version of the events.

IPCC’s observation

The IPCC was of the view that in the instant case, it was clear that the Police Constable was not exercising his police powers and there was no compelling reason for the Police Constable to reveal his police identity in the incident. Therefore, the allegation should be reclassified as “Substantiated”. However, CAPO disagreed and opined that there was no evidence to support the suggestion that the Police Constable had ill intent in showing his police warrant card, let alone was seeking to exert pressure on the Complainant.

After further deliberation, CAPO concurred that since the Police Constable is a close relative of one party in the traffic incident, the display of the police warrant card might have given the Complainant a wrong perception that the Police Constable was using his police identity to settle the traffic incident. To avoid any possible conflict of interests, the Police Constable should not have displayed his police warrant card and stepped in to handle the traffic incident. It was clear that his involvement did not help and that the Complainant was agitated once he knew the Complainee was a police officer.

As the Police Constable did not exercise any police power in the incident, CAPO re-categorised the allegation from “Unnecessary Use of Authority” to “Misconduct” and classified the allegation as “Substantiated” for inappropriately disclosing his police identity. The Police Constable would be given a warning without Divisional Record File entry. The IPCC endorsed CAPO’s findings in this case.

個案三：休班警員制服投訴人時被指過度使用武力

Case 3: An off-duty police officer was alleged for using excessive force when subduing the Complainant



一名休班警長在港鐵車廂內制服襲擊他人的投訴人時，被指過度使用武力及捏造證據。
(照片來源: 星島日報)

An off-duty Sergeant was accused of using excessive force and fabrication of evidence when subduing the Complainant who was assaulting another person inside a train compartment.
(Photo Credit: Sing Tao Daily)

背景

在這宗投訴個案中，投訴人(一名男士)跟一名女乘客正乘搭一列沿荃灣線往中環方向的港鐵列車。一名休班警長(即被投訴人)及兩名證人目睹投訴人於車廂內突然襲擊該名女乘客，因此三人一同上前制服投訴人。掙扎中，警長披露其警員身份，並在油麻地站拘捕投訴人。投訴人被控以「襲擊致造成身體傷害」及「襲警」罪名。

投訴人其後通過電郵投訴該名警長，有關投訴包括在車廂內制服他時過度使用武力(扭手臂、掐頸、並三度將他的頭撞向車廂窗門)，

【指控(a)：濫用職權】。此外，投訴人亦投訴警長在法庭上提供假證據誣捏他(聲稱投訴人襲擊他和企圖逃脫，以及聲稱自己在車廂內披露其警員身份)【指控(b)：捏造證據】。

投訴警察課的調查

指控(a)：濫用職權

這項指控的關鍵在於警長制服投訴人時，是否正在執行職務；以及所使用的武力是否合理。

Background

In this complaint case, the male Complainant and a female passenger were travelling on the MTR along the Tsuen Wan Line heading to Central. The Complainee, a Sergeant who was off duty at the material time, and two witnesses saw that the Complainant suddenly assaulted the female passenger inside the train compartment. The Sergeant, together with the witnesses attempted to subdue the Complainant. During the struggle, the Sergeant revealed his police identity. The Complainant was arrested at Yau Ma Tei Station. He was subsequently charged with “Assault Occasioning Actual Bodily Harm” and “Assaulting a Police Officer”.

The Complainant lodged a complaint by email against the Sergeant afterwards, claiming that the Sergeant had used excessive force against him when subduing him inside the train compartment – by twisting his arm, squeezing his neck, and banging his head against the window of the train compartment for three times. [Allegation (a): Unnecessary Use of Authority]. He also alleged that the Sergeant had framed him up by giving false evidence in court [Allegation (b): Fabrication of Evidence] – namely stating that the Complainant attacked him, tried to escape, and that the Sergeant had revealed his police identity inside the train compartment.

CAPO's investigation

Allegation (a): Unnecessary Use of Authority

The cruxes of this allegation are whether the Sergeant was executing his duty at the time he was subduing the Complainant; and whether the force used by the Sergeant was reasonable.

封面故事

Cover story

該名警長於案發時正在休班。投訴警察課認為當警長得知女乘客遇襲，便行使他的法定權力來逮捕犯事者，因此屬於執行職務。

為了阻止投訴人逃走及襲擊其他乘客，警長所使用的武力是必須的。該名女乘客及兩位證人的證供清楚指出，投訴人掌摑及踢傷女乘客胸部，他表現情緒化及用力掙扎，被三人制服後仍不停嘗試逃走。其中兩名證人給投訴警察課的供詞亦證實，警長當時只是抓住投訴人的手腕，並非如投訴人所說，扭他的手臂、掐頸或把他的頭推向車門。兩名證人均認為警長所用的武力是適當的。因此，投訴警察課把指控列為「並無過錯」。

指控(b)：捏造證據

就投訴人指警長在法庭上提供假證供，鑑於兩名證人作供指投訴人確實曾激烈反抗，並試圖揮拳打向警長，因此投訴警察課認為警長所作的供詞是誠實的。

至於警長何時披露身份，警長的陳述跟其中一名證人的證供吻合(即他在車廂內制服投訴人時大叫自己是警察)。由於車廂內的事情發生得很快，警長根本沒有時間在糾纏中出示委任證。投訴人可能基於誤會，以為警察的身份是在出示委任證時才披露。

基於以上因素，投訴警察課認為警長於庭上的證供並非捏造，因此這項指控應分類為「並無過錯」。監警會通過投訴警察課的結論，並建議投訴警察課對警長見義勇為的表現加以讚賞。

The Sergeant was off duty at the material time. CAPO considered that he was discharging his police duty as soon as he became aware of the attack on the female passenger. He was exercising his legal power to apprehend the offender.

In the instant case, the use of force by the Sergeant under the circumstances was necessary to prevent the Complainant from escaping and attacking other people. The evidence from the female passenger and two witnesses revealed that the Complainant slapped the female passenger's face and stamped on her chest. During the incident, the Complainant was emotional, put up vigorous struggle and kept trying to run away. Two witnesses' statements to CAPO supported that the Sergeant only grabbed the Complainant's arm but did not bend his wrist, grasp his neck or push him towards the train door as alleged. Both witnesses perceived that the force used by the Sergeant was not excessive. Therefore, CAPO classified this allegation as "No Fault".

Allegation (b): Fabrication of Evidence

In regard to whether the Sergeant had given false testimony in court, the two witnesses testified that the Complainant had put up a vigorous struggle and had even attempted to strike the Sergeant with his fist. CAPO considered that the Sergeant was honest in his testimony.

As to when the Sergeant revealed his police identity, the Sergeant's version of the events was supported by one of the witnesses (he shouted that he was a police officer while attempting to restrain the Complainant inside the train compartment). As the events in the train compartment took place very quickly, there was no chance for him to produce his police warrant card during the struggle. The Complainant's allegation likely stemmed from his misunderstanding that the police identity was not revealed until the police warrant card was produced.

In view of the above, CAPO considered that the Sergeant's testimony in court was not falsified, and it was therefore appropriate to classify this allegation as "No Fault". The IPCC endorsed CAPO's findings in this case and recommended CAPO to compliment the Sergeant on his righteous behaviour.

總結

以上三宗個案的結果反映監警會以公平、公正及以證據為依歸的原則審核每一宗投訴個案的調查報告。

另外，監警會要求投訴警察課加強警務人員對有關休班時表露身份的警察通例及守則的認識。投訴警察課接納建議，並已透過外訪計劃及電子版的預防投訴簡訊，提醒所有警務人員在休班時以個人身份跟市民接觸時，應避免不恰當地表明警員身份。

Conclusion

The results of these three complaint cases illustrate how the IPCC scrutinizes the investigation report of every complaint case independently, fairly, and on the basis of evidence.

In addition, the IPCC requested CAPO to enhance police officers' understanding of Police General Order and codes in relation to disclosing police identity when they are off duty. CAPO has accepted the recommendations and reminded all officers through "Outreach Programme" and "CAPO e-Newsletter" channels that they should not inappropriately reveal their police identity while dealing with members of public in their personal capacity when they are off duty.