

第四章

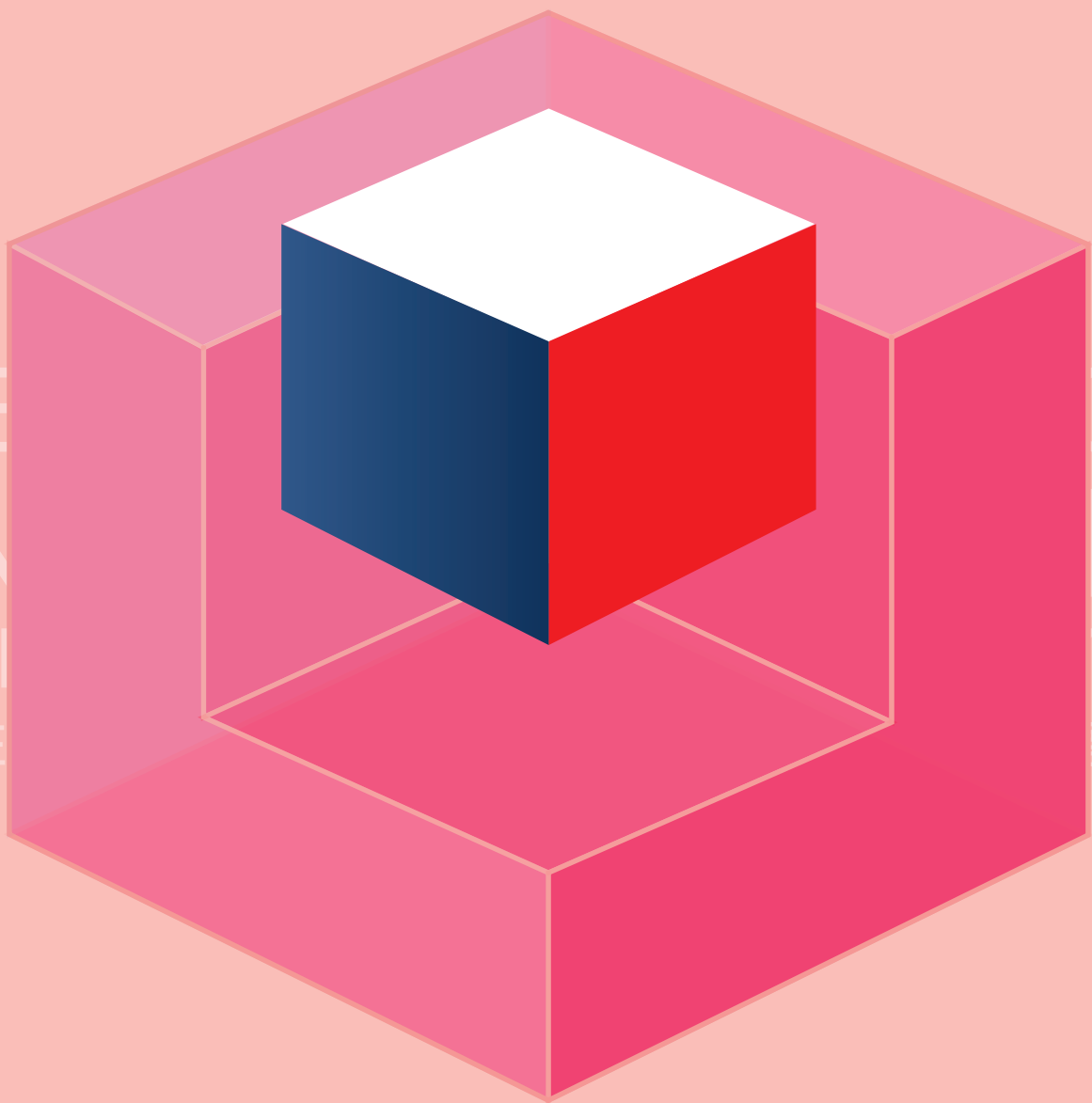
Chapter 4

真實投訴個案

Complaint cases

監察 INDEPENDENCE 獨立
MONITOR 監察 INDEF
IMPARTIALITY 公正 INTEGRITY 誠信 INI
監察 INDEPENDENCE 獨立 IMPARTIALITY 公正 MONITOR 監

INTE
PEN
DEPE
監察 INTE



DR
PA
公正
監察 IND



個案一
Case 1

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) 疏忽職守 Neglect of Duty	一名警長 A Sergeant	並無過錯 No Fault	無法完全證明屬實 Not Fully Substantiated
	一名女警員及一名警員 A Woman Police Constable and a Police Constable	並無過錯 No Fault	無（指控刪除） Nil (Allegation deleted)
2) 疏忽職守 Neglect of Duty	一名警長及一名警員 A Sergeant and a Police Constable	無 Nil	無法證實 Unsubstantiated
	一名警察通訊員 A Police Communications Officer	無法完全證明屬實 Not Fully Substantiated	無（改為指控三） Nil (Changed to Allegation 3)
3) 疏忽職守 Neglect of Duty	一名女警員 A Woman Police Constable	無 Nil	無法完全證明屬實 Not Fully Substantiated
	一名警察通訊員 A Police Communications Officer	無 Nil	無法完全證明屬實 Not Fully Substantiated

此個案反映監警會仔細地審視一宗涉及警方在調查及分類「刑事毀壞」案件時，而衍生的「疏忽職守」投訴。這個案亦顯示，監警會如何整體性考慮各被投訴警員的責任。

個案背景

投訴人經營一間私人補習社，有一天他發現其辦公室門上及旁邊的白板被人用紅筆寫上侮辱性字句。投訴人認為是一宗「刑事毀壞」的個案，於是報案。

This case highlights the meticulous approach adopted by the IPCC in examining a complaint of “Neglect of Duty” in relation to the Police’s classification and examination of a case of “Criminal Damage”. It also illustrates the IPCC’s holistic approach in considering the responsibilities of various officers in the incident under complaint.

Case background

The complainant ran a private tutorial centre. One day, he found some insulting words written with red marker pen on the door of his office and a white board near the door. Considering it a case of “Criminal Damage”, the complainant made a report to the Police.



一眾警務人員，包括一名警長、一名女警員及一名警員接報後到現場調查。經過調查後，警長的結論是該案並非「刑事毀壞」，因為門和白板上的字句可以輕易抹掉。警長指示女警員把調查的結果通過控制中心通知警察通訊員。警察通訊員於電腦系統裡記錄投訴人不打算追究該案。眾警務人員離開現場後，投訴人把字句抹掉。

然而，投訴人聲稱那些字句需要用天拿水才能抹掉。此外，他當日於現場曾告知眾警務人員他打算追究該案。後來，投訴人正式投訴一眾警務人員沒有把他的報案列為「刑事毀壞」（**指控一：[疏忽職守]**）及錯誤記錄他不打算追究該案（**指控二：[疏忽職守]**）。

投訴警察課的調查

投訴警察課調查後，把指控一分類為「並無過錯」，因涉事的一眾警務人員已合理地進行初步調查及告知投訴人有關該案的決定，已經履行了他們的職責。至於指控二，投訴警察課把警察通訊員也列為被投訴人，因為她就女警員給予的資料，作出自己的判斷，才記錄了錯誤的資料。投訴警察課認為有若干可靠的證據支持指控，所以把指控分類為「無法完全證明屬實」。

監警會的觀察

監警會翻查有關「刑事毀壞」的案例後，注意到於Morphitis v Salmon [1990] Crim LR 48, DC的個案中，法庭裁決了「這條文所採用毀壞的定義應廣泛闡釋，不但包括暫時及永久性的物質損壞，亦包括暫時及永久性的價值和效用損失。」換言之，損壞並不須要是永久性才能構成「刑事毀壞」。

A police party, comprising a Sergeant (SGT), a Woman Police Constable (WPC) and a Police Constable (PC) attended the scene. After investigation, the SGT concluded that the complainant's report was not a case of "Criminal Damage" because the words on the door and the white board could be easily wiped off. The SGT instructed the WPC to relay the enquiry result to a Police Communications Officer (PCO) via police console. The PCO recorded on the computer system that the complainant did not want to pursue the case. The complainant removed the insulting words after the Police party left the scene.

Nevertheless, the complainant alleged that the words could only be wiped off by using thinner and he had told the police party at the scene that he wanted to pursue the case. Subsequently, the complainant lodged the instant complaint against the police party for failing to classify his report as "Criminal Damage" [**Allegation 1: Neglect of Duty**] and causing a wrong entry in the police system, reporting that he did not want to pursue the case [**Allegation 2: Neglect of Duty**].

CAPO's investigation

After investigation, CAPO classified Allegation 1 as "No Fault" since the police party had reasonably fulfilled their duty to conduct the initial enquiry and advise the complainant of the decision on the case. Regarding Allegation 2, CAPO registered the PCO as the officer under complaint, and found that she formed her own opinion based on the second-hand information from the WPC, and made the wrong entry. CAPO considered that there was some reliable evidence in support of the allegation, and thus classified it "Not Fully Substantiated".

The IPCC's observations

Having examined court precedents in relation to the offence of "Criminal Damage", the IPCC noted that "*the term 'damage' for the purpose of this provision, should be widely interpreted so as to include not only permanent or temporary physical harm, but also permanent or temporary impairment of value or usefulness.*" (Morphitis v Salmon [1990] Crim LR 48, DC). In other words, it is not necessary for damage to be permanent for the offence of "Criminal Damage".



監警會認為，雖然不能斷定那些字句可否輕易抹掉，但是警長沒有考慮墨水有可能導致門和白板受到暫時性的物質損壞或價值和效用的損失，從而構成「刑事毀壞」罪名中所指的「毀壞」，是有所疏忽。

至於指控二，投訴人投訴一眾警務人員沒有正確記錄他要求跟進案件的立場，有疏忽之嫌。為了處理投訴人的不滿，監警會要求投訴警察課重新考慮三位警務人員在這項指控中的責任，以及確認女警員是否沒有清晰地向警察通訊員轉達查詢結果。

投訴警察課進一步的調查

經過進一步的調查後，投訴警察課同意監警會的觀點，把指控一的分類由「並無過錯」改為「無法完全證明屬實」。而針對女警員及警員的指控一則被刪除，因為決定不把投訴人的報案列為「刑事毀壞」是由該名警長獨自決定的，而他亦是在場中最高級的警務人員。投訴警察課建議對涉事警長作出訓諭，但無需把事件記錄在分區報告檔案中。

投訴警察課亦同意重新考慮指控二中一眾涉事警員的責任。在翻查控制中心的錄音後，投訴警察課發現有若干可靠的證據證明女警員和警察通訊員之間的訊息傳達中有所誤會，導致記錄了不正確的資料。

因此，投訴警察課把指控二分拆為兩項[疏忽職守]的指控，其中一項針對警長和警員（維持為指控二），另外一項針對女警員和警察通訊員（新增的指控三）。修改後的指控二，即針對警長和警員的指控，因沒有證據支持或否定投訴人有否告知到場的一眾警務人員他打算追究該案，被分類為「無法證實」。新增的指控三，即針對女警員和警察通訊員的指控則分類為「無法完全證明屬實」。投訴警察課建議對涉事女警員和警察通訊員作出訓諭，但無需把事件記錄在分區報告檔案中。

監警會通過這宗個案的調查結果。

The IPCC was of the view that despite the fact that it could not be possible to determine whether the words could be easily wiped off, the SGT was negligent in failing to consider that the ink might have caused temporary physical harm or temporary impairment of value or usefulness of the door and the white board, which might have constituted “damage” for the purpose of the offence of “Criminal Damage”.

Regarding Allegation 2, the complainant complained that the police party was negligent in failing to have his stance properly recorded. In order to address the complainant’s grievances, the IPCC requested CAPO to revisit the responsibilities of the three involved officers and to confirm whether the WPC had failed to clearly relay the result of the enquiry to the PCO.

CAPO’s further investigation

After further investigation, CAPO subscribed to the IPCC’s view and reclassified Allegation 1 against the SGT from “No Fault” to “Not Fully Substantiated”. Whereas, Allegation 1 against the WPC and the PC was deleted because it was the SGT – the most senior police officer at the scene – who solely made the decision to not classify the complainant’s report as “Criminal Damage”. CAPO recommended advising the SGT without a Divisional Record File (DRF) entry.

CAPO also agreed to examine the responsibility of the Police party in Allegation 2. Upon reviewing the audio recording of the subject console conversation, CAPO found that there was some reliable evidence showing the wrong entry was caused by the miscommunication between the WPC and the PCO.

As a result, CAPO split Allegation 2 into two allegations of “Neglect of Duty”: one against the SGT and the PC (still registered as Allegation 2); and another against the WPC and the PCO (newly registered as Allegation 3). The revised Allegation 2, now against the SGT and the PC, was classified as “Unsubstantiated” due to the lack of evidence to prove or disprove whether the complainant had told the police party at the scene that he wanted to pursue the case. The new Allegation 3 against the WPC and the PCO was now classified as “Not Fully Substantiated”. CAPO recommended advising the WPC and the PCO without a DRF entry.

The IPCC endorsed CAPO’s findings in this case.



個案二 Case 2

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	一名警員 A Police Constable	無法證實 Unsubstantiated	並無過錯 No Fault
2) 行為不當 Misconduct		並無過錯 No Fault	並無過錯 No Fault
3) 行為不當 Misconduct		無法證實 Unsubstantiated	並無過錯 No Fault

此個案反映監警會作為一個公正的監察警方處理投訴的機構，會基於客觀的證據和清晰的推論，鑑定投訴人因誤解而指控被投訴的警員。

個案背景

案發當日，投訴人正駕駛其的士經過一個道路交匯處時，被一名電單車巡邏警員截停。該名警員提醒投訴人不應在駕駛時使用手提電話後便讓他離開，並沒有向投訴人發出告票。

其後，投訴人認為該警員於當時截停他的的士而不截停其他車輛是具針對性（**指控一：[行為不當]**）；該警員不恰當地指出他在儀表盤上放置太多雜物（**指控二：[行為不當]**）；以及誣捏他在車輛行駛時使用手提電話（**指控三：[行為不當]**）。

This case illustrates that, being an impartial police complaint oversight body, the IPCC will, on the basis of objective evidence and articulate reasoning, identify the misinterpreted accusations against the police officer subjected to a complaint.

Case background

On the material day, a Police Constable (PC) on motorcycle patrol intercepted the complainant's taxi after it passed a road junction. The PC reminded the complainant not to use a mobile phone when driving, and then released him without ticketing action.

Subsequently, the complainant lodged the instant complaint, alleging that the PC pinpointed him by intercepting his taxi at the material time, without intercepting other vehicles [**Allegation 1: Misconduct**]; the PC inappropriately said that there were many things placed on the dashboard of his taxi [**Allegation 2: Misconduct**]; and the PC falsely accused him of having used a mobile phone while his taxi was in motion [**Allegation 3: Misconduct**].



投訴警察課的調查

經調查後，投訴警察課認為沒有足夠證據證明或否定雙方所述有關投訴人當時有否使用手提電話，所以把指控一和三分類為「無法證實」。至於指控二，從投訴人提供的照片所顯示，他的擋風玻璃的確有存放物品（一部相機及兩部手提電話）。投訴警察課認為該警員提示投訴人不應在儀表盤上放置太多雜物，以防意外發生是合理的，因此投訴警察課把指控二分類為「並無過錯」。

監警會的觀察

關於指控一，監警會衡量各方的可能性後，認為該名警員為了截停投訴人的的士，而在道路交匯處旁邊埋伏來針對投訴人的機會很微。根據《道路交通條例》第60條，警方有權力截停車輛以作查詢。該名警員的截停行動是基於他觀察到投訴人觸碰儀表盤上的手提電話，所以該截停行動是合理的。監警會認為因沒有可靠證據支持該項指控，所以「並無過錯」的分類是合適的。

CAPO's investigation

After investigation, CAPO classified Allegations 1 and 3 as "Unsubstantiated" since there was insufficient evidence to prove or disprove each party's version of whether the complainant had used a mobile phone at the material time. Regarding Allegation 2, a photo from the complainant himself revealed that there were indeed objects (a camera and two mobile phones) on the windscreen of his taxi. CAPO considered it reasonable for the PC to remind the complainant not to place so many objects on the dashboard, to safeguard against untoward incidents. CAPO, therefore, classified Allegation 2 as "No Fault".

The IPCC's observations

Regarding Allegation 1, the IPCC considered that, on balance of probability, it was very unlikely that the PC had pinpointed the complainant by laying an ambush at the road junction for the purpose of intercepting his taxi. The PC was empowered to intercept vehicles for enquiries, in accordance with section 60 of the Road Traffic Ordinance. The interception was reasonable and justified, as it was based on the PC's observation that the complainant had touched a mobile phone placed on the dashboard. The IPCC was of the view that there was no reliable evidence to support the allegation, for which a "No Fault" classification was deemed appropriate.





至於指控三，該名警員並沒有就投訴人於車輛行使期間使用手提電話採取票控，他只是提點投訴人在駕駛時應留心，這一點是沒有爭論空間的。根據投訴人提供的錄影片段，該名警員在對話開始時已經強調他不會對投訴人發出傳票，只是給予提示。該名警員的意圖及行為於整個截停過程中是一致的。鑑於這項證據，監警會認為投訴人可能把警員的提示誤會為指控。因此，指控三應分類為「並無過錯」。

監警會提出質詢後，投訴警察課同意監警會的觀點，把指控一和三分類由「無法證實」改為「並無過錯」。

監警會通過這宗個案的調查結果。

Regarding Allegation 3, it was indisputable that the PC had not ticketed the complainant for using a mobile phone while his taxi was in motion, but only reminded the complainant to be attentive while driving. In the video footage provided by the complainant, the PC had emphasised at the very beginning of the conversation that he was not going to summons the complainant but only intended to give him a reminder. The PC's intent and action in giving the complainant a reminder were seen as consistent throughout the interception. In light of this evidence, the IPCC was of the view that the complainant had probably misinterpreted the reminder as an accusation against him. Hence, Allegation 3 should be more appropriately classified as "No Fault".

After the IPCC Query, CAPO subscribed to the IPCC's view, and reclassified Allegations 1 and 3 from "Unsubstantiated" to "No Fault".

The IPCC endorsed CAPO's findings in this case.





個案三
Case 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) 疏忽職守 Neglect of Duty	一名女高級督察 A Woman Senior Inspector	投訴撤回 Withdrawn	獲證明屬實 Substantiated
2) 疏忽職守 Neglect of Duty	一名高級督察 A Senior Inspector	獲證明屬實 Substantiated	獲證明屬實 Substantiated

此個案說明監警會在審核一個的士司機多收車資的投訴個案時，作出了非常仔細的分析及推論。經監警會的質詢後，相關指控的分類由「投訴撤回」改為「獲證明屬實」。

This case demonstrates that the IPCC was meticulous in its analysis and reasoning in examining the prosecution's decision in a taxi overcharging case. The related allegation was eventually reclassified from "Withdrawn" to "Substantiated" after IPCC Queries.

個案背景

Case background

投訴人是一名的士司機，他有一天在北角接載了一名乘客。到達目的地黃大仙時，車費指示器顯示車資為136.5元，但投訴人卻告訴乘客該程車資為137元。乘客沒有跟投訴人爭論，直接支付了車資並取回一張金額為136.5元的收據。後來，該名乘客向交通投訴組投訴，該投訴由一名女高級督察負責。經調查後，該名女高級督察票控的士司機「多收車資」，司機在法庭上否認控罪。警方向律政司索取意見後，最終決定撤銷起訴該名的士司機。

The complainant was a taxi driver. One day, he picked up a passenger at North Point. Upon arriving at the destination in Wong Tai Sin, the taximeter showed the fare was \$136.5 but the complainant told the passenger that the fare was \$137. The passenger did not argue with the complainant, but paid the fare and obtained a receipt for \$136.5. Later, the passenger made a complaint to the Traffic Complaint Unit, which was taken up by a Woman Senior Inspector (WSIP). After investigation, the WSIP summonsed the driver for "Taxi Overcharging". The driver pleaded not guilty in court. Eventually, the prosecution dropped the case against the driver, in accordance with legal advice sought by the Police from the Department of Justice.

其後，的士司機立即作出投訴，指控該名女高級督察在決定起訴他之前並沒有徹底調查案件（**指控一：[疏忽職守]**）以及中央交通違例檢控組的一名高級督察在交給投訴人的其中一封信件中寫錯了乘客的名字（**指控二：[疏忽職守]**）。

Subsequently, the taxi driver lodged an instant complaint, alleging that the WSIP had failed to investigate his traffic case thoroughly before summonsing him **[Allegation 1: Neglect of Duty]** and a Senior Inspector (SIP) of the Central Traffic Prosecutions Division had misspelled the name of the passenger in a letter sent to him relating to his traffic case **[Allegation 2: Neglect of Duty]**.



投訴警察課的調查

在接受投訴警察課的調查時，投訴人決定撤回投訴，改為採用表達不滿機制處理投訴。投訴警察課因此將指控一分類為「投訴撤回」。就指控二而言，由於該名高級督察承認自己寫錯了乘客的名字，投訴警察課將指控二分類為「獲證明屬實」，並建議對涉事的高級督察作出訓誡，但無需要把此事記入其分區報告檔案中。

監警會的觀察

就指控一而言，監警會就觀察上述案件所得，認為並無證據顯示投訴人不誠實或故意欺騙，因為乘客同樣可以看到車費指示器上顯示的金額，而投訴人僅將車資四捨五入至整數。此外，該名女高級督察並沒有在提出票控前，諮詢法律意見。雖然警方對的士多收車資的案件非常重視，但並不代表每宗案件都可以在沒有充分考慮證據及公眾利益之前，便提出檢控。正因本案涉及的金額太少（五毫子），所以基於公眾利益的考慮，並不需要對投訴人作出檢控。因此監警會認為該名女高級督察在決定起訴投訴人時存在疏忽及作出了錯誤的判斷，因此指控一仍應該分類為「獲證明屬實」，而並非「投訴撤回」。

經監警會的質詢後，投訴警察課同意監警會的觀點，並將指控一的分類由「投訴撤回」改為「獲證明屬實」。投訴警察課建議對涉事的女高級督察作出訓誡，但無需要把此事記入其分區報告檔案中。

監警會通過這宗個案的調查結果。

CAPO's investigation

When interviewed by CAPO, the complainant decided to withdraw the complaint and reflect his dissatisfaction through the Expression of Dissatisfaction Mechanism. CAPO, therefore, classified Allegation 1 as "Withdrawn". Regarding Allegation 2, the SIP admitted that he had misspelled the name of the passenger as alleged. Hence, CAPO classified Allegation 2 as "Substantiated", and advised the SIP without a Divisional Record File (DRF) entry.

The IPCC's observations

Regarding Allegation 1, the IPCC observed that in the traffic case, there was no evidence showing that the complainant was dishonest or fraudulent, as the passenger could see the fare displayed by the taximeter and the complainant merely rounded up the fare to the nearest dollar. Moreover, the WSIP had not sought legal advice prior to summoning the complainant. Despite the Police giving high priority to tackling taxi overcharging cases, not every such case should be pursued by prosecution without due consideration of evidential and public interest issues. The minimal amount (50 cents) involved in the traffic case did have bearing on the public interest perspective and did not warrant prosecution against the complainant. The IPCC was of the view that the WSIP had been negligent and erred in her decision to prosecute the complainant. Hence, Allegation 1 should be classified as "Substantiated" instead of "Withdrawn".

After IPCC Queries, CAPO subscribed to the IPCC's view, and reclassified Allegation 1 from "Withdrawn" to "Substantiated". CAPO recommended advising the WSIP without a DRF entry.

The IPCC endorsed CAPO's findings in this case.

