

真實投訴個案

Complaint cases

誠信 INTEGRITY

公正 IMPARTIALITY

獨立

INDEPENDENCE

第4章
CHAPTER



指控 Allegation(s)	被投訴人 Complainee(s)	投訴警察課原本分類 Original classification(s) by CAPO	最後分類 Final classification(s)
疏忽職守 Neglect of Duty	一名警長 A Sergeant	並無過錯 No Fault	獲證明屬實 Substantiated

此個案反映監警會仔細審視一宗投訴警長的個案，指他未有將一宗途人破壞的士的事件分類為刑事個案，反而當場終止調查。監警會提出質詢後，相關指控的分類由「並無過錯」改為「獲證明屬實」。

This case highlights the meticulous approach adopted by the IPCC in examining a complaint against a Sergeant, with regard to his decision of not classifying an incident in which a taxi was damaged by a pedestrian as a crime case, but curtailed the incident on the spot instead. After the IPCC’s Query, the related allegation was eventually reclassified from “No Fault” to “Substantiated”.

個案背景

投訴人（一名的士司機）駕駛其的士沿著威靈頓街方向行駛，當時一名外籍男子突然出現，並嘗試登上其的士。投訴人沒有將車門解鎖讓他進入，因該地點是限制區，不容許的士上客。投訴人嘗試向外籍男子解釋不能接載他的理由，但該名外籍男子變得情緒激動並不斷大力地敲打司機位的玻璃窗。結果，玻璃窗被擊碎。警方隨後收到相關的報案。

Case background

The Complainant, a taxi driver, was driving his taxi along Wellington Street, where an expatriate male (“the Expatriate”) suddenly turned up and tried to get into his taxi. The Complainant did not unlock the door to let him in, as the location concerned was a restricted area that prohibits taxis picking up passengers. The Complainant tried to explain to the Expatriate the reason for not accepting the hire, but the Expatriate became agitated and kept forcefully knocking on the glass window on the driver’s side. As a result, the glass window was smashed. A report was then made to the police.

兩名警員接報到現場處理事件。警方到場查問時發現，該名外籍男子急於登上投訴人的的士，是因為他急需帶他的朋友到醫院接受治療（他的朋友當時出現嚴重過敏反應和呼吸困難）。該名病人最終由救護車送到醫院。一名警長後來到場支援並向投訴人及外籍男子查問，外籍男子向警長解釋他截停投訴人的的士以及敲打其玻璃窗是為了要求投訴人接載他不適的朋友到醫院。據外籍男子所指，投訴人因語言不通拒絕接載他。他於是繼續敲打的士的玻璃窗，導致玻

Two police officers were called to the scene to handle the incident. Police enquiries on the spot revealed that the Expatriate was keen to get into the Complainant’s taxi because he wanted to take his friend – who was suffering from serious allergic reaction and having difficulty breathing – to a hospital for urgent treatment. The sick person was eventually conveyed to the hospital by an ambulance. A Sergeant (SGT) later came to reinforce the officers and enquire with the Complainant and the Expatriate, who explained to the SGT that the reason for intercepting the Complainant’s taxi and knocking on his glass window was to request the Complainant to drive his sick friend to a hospital. According to the Expatriate, the Complainant refused his request due to a language barrier. He therefore continued

璃窗碎裂。外籍男子否認他是有意圖地擊碎玻璃窗。

雖然雙方設法自行解決事件，但投訴人及外籍男子未能就賠償金額達成共識。因此，投訴人告知警長他決定追究外籍男子，並要求警長將個案轉交刑事調查隊作進一步跟進。然而，警長認為事件純屬意外，並無任何刑事成分。警長因此將事件分類為「發現汽車損毀」並沒有將個案轉交刑事調查隊調查。

投訴人隨後對該名警長作出投訴，指他並無將事件分類為刑事個案【[指控：疏忽職守](#)】。

投訴警察課的調查

經調查後，投訴警察課認為該名警長已採取合理行動在現場詢問事件並正確地將事件分類為「發現汽車損毀」。因此，投訴警察課將疏忽職守的指控分類為「並無過錯」。

監警會的觀察

根據香港法例第200章《刑事罪行條例》第60條第(1)款，「任何人無合法辯解而摧毀或損壞屬於他人的財產，意圖摧毀或損壞該財產或罔顧該財產是否會被摧毀或損壞，即屬犯罪」。在這個案中，監警會認為外籍男子不斷用力敲打窗戶屬魯莽行為，即他並無為意不停用力敲打玻璃窗很大機會對窗戶造成損毀。雖然他朋友的身體狀況急需接受治療，但這並不能作為他魯莽地敲打窗戶致令玻璃碎裂的合法辯解。再者，外籍男子為了讓他的朋友能夠盡快接受治療而做出如此行為並不恰當亦非必須。由於所有犯罪因素（罔顧窗戶可能會損毀，以及外籍男子的錯誤行為造成的損壞）在現場查問時

to knock on the taxi window, resulting in it being smashed. The Expatriate denied any intention of smashing the taxi's window.

Despite endeavours to settle the incident by themselves, the Complainant and the Expatriate failed to agree on the amount of compensation. Hence, the Complainant told the SGT that he decided to pursue the case against the Expatriate, and asked the SGT to refer it to the crime investigation team for further handling. However, the SGT considered that it was merely an accident without any crime element detected. The SGT therefore classified the incident as "Car Found Damaged" and did not refer it to the crime investigation team for investigation.

Subsequently, the Complainant lodged a complaint against the SGT for failing to classify the incident as a crime case [[Allegation: Neglect of Duty \(NOD\)](#)].

CAPO's investigation

After investigation, CAPO considered that the SGT had taken all reasonable steps on the spot to enquire into the incident and properly classified the incident as "Car Found Damaged". Therefore, CAPO found the NOD allegation as "No Fault".

The IPCC's observations

Section 60(1) of the Crimes Ordinance (Cap 200) provides that "A person who without lawful excuse destroys or damages any property belonging to another intending to destroy or damage any such property or being reckless as to whether such property would be destroyed or damaged shall be guilty of an offence". In this case, the IPCC was of the view that the Expatriate's act of repeatedly knocking on the window with force was a reckless act, i.e. heedless of the consequences of repeatedly applying such force to the window, as damage was likely. Though his friend's physical condition required urgent medical treatment, this did not constitute a lawful excuse for him to recklessly knock on the window, resulting in the glass being smashed. Furthermore, the Expatriate's act was deemed to be inappropriate and unnecessary for achieving his purpose of rendering timely assistance to his friend. As all elements of the offence – i.e. evidence of recklessness, and the Expatriate's wrongful action causing the damage at issue – were all in existence upon enquiries

經已存在，警長應將事件分類為一宗「刑事毀壞」的個案並將個案妥為轉交刑事調查隊跟進。監警會因此認為警長於現場倉促終止調查有關事件屬疏忽職守。

根據上述分析，將疏忽職守的指控分類為「獲證明屬實」應更為合適。

監警會提出質詢後，投訴警察課同意監警會的觀點，把疏忽職守的指控由「並無過錯」重新分類為「獲證明屬實」。投訴警察課建議對該名涉事警長作出訓諭，但無須將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。

conducted at the scene, the SGT should classify the incident as a “Criminal Damage” case and duly refer it to the crime investigation team for investigation. The IPCC therefore considered that the SGT was negligent in curtailing the incident so hastily on the spot.

Based on the above analysis, the NOD allegation should be more appropriately classified as “Substantiated”

After the IPCC’s Query, CAPO subscribed to the IPCC’s view, and reclassified the NOD allegation from “No Fault” to “Substantiated”. CAPO recommended advising the SGT without Divisional Record File (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)	投訴警察課原本分類 Original classification(s) by CAPO	最後分類 Final classification(s)
1. 疏忽職守 Neglect of Duty	一名偵緝警員 A Detective Police Constable	投訴撤回 Withdrawn	投訴撤回 Withdrawn
2. 疏忽職守 Neglect of Duty		投訴撤回 Withdrawn	投訴撤回 Withdrawn
3. 疏忽職守 Neglect of Duty	一名女偵緝督察 A Woman Detective Inspector	並無過錯 No Fault	無法完全證明屬實 Not Fully Substantiated
4. 疏忽職守 Neglect of Duty		並無過錯 No Fault	並無過錯 No Fault

此個案反映監警會仔細及公正地審視一宗投訴個案，涉及警方於一項「普通襲擊」的個案中，決定不控告一名被捕人士。經過監警會的質詢，並與投訴警察

This case demonstrates that the IPCC was meticulous and impartial in examining a complaint case that involved the Police’s decision of taking no prosecution action against an arrested person in a “Common Assault” case. Upon the IPCC’s Queries and discussion

課於工作層面會議的討論後，相關的指控分類由「無法證實」改為「無法完全證明屬實」。

個案背景

投訴人為一名佛堂文員。某天早上，數名現任佛堂董事因佛堂的帳目問題跟該名文員發生爭執，隨後向警方報案指文員涉嫌盜竊。警方到場查問後，把案件列為「糾紛」。

同日下午，文員因拒絕交出一張會計憑證而再次跟數名董事發生爭執。一輪擾攘後，文員的頸部紅腫，頭部和頸部均感到觸痛，隨後向警方報案。警方查問後，以「普通襲擊」罪名拘捕了其中一名董事（下文稱為「被捕人士」）。

一名女偵緝督察負責調查此案。文員指稱事件發生時，被捕人士從後抓住他的頸，並把他的頭推向牆。他大受驚嚇並大聲求救。不過，事發地點的閉路電視片段顯示，被捕人士只是用手臂箍著文員的頸，並沒有把他的頭推向牆。從片段可見另外兩名董事嘗試從文員手中搶走一張相信是會計憑證的物件。文員用力掙扎，但被董事按在椅上。在警誡會面中，被捕人士否認襲擊文員，但承認與他有身體接觸。其他董事和職員均表示沒有目擊任何襲擊行為。

女偵緝督察審視閉路電視的片段和各方的口供後，認為雖然文員與被捕人士在事件中發生身體接觸，被捕人士可能真誠地相信文員沒有權利保存會計憑證，因此使用了適當的武力取回，並沒有意圖傷害文員。不過，女偵緝督察誤以為文員所指稱的襲擊是發生於早上的爭執當中，而文員沒有在警員查詢「糾紛」案件時立刻向警方舉報被捕人士。因此，女偵緝督察質疑文員的誠信，建議終止調查該案，而且不檢控被捕人士。

with CAPO at a Working Level Meeting (WLM), the related allegation was reclassified from “No Fault” to “Not Fully Substantiated”.

Case background

The Complainant was a clerk of a temple. One morning, several incumbent directors of the temple had a dispute with the clerk over the temple accounts and made a report of “Theft” to the Police against the clerk. After police enquiry at the scene, the report was classified as “Dispute”.

On the afternoon of the same day, the directors and the clerk again had a dispute, as the clerk refused to surrender an accounting voucher. After a commotion, the clerk sustained redness over his neck and tenderness on his neck and head, and he made a report to the police. After enquiry, one of the directors was arrested for “Common Assault” (hereinafter referred to as the “Arrested Person” (AP)).

A Woman Detective Inspector (WDIP) was responsible for the investigation of the case. The clerk claimed that during the incident, the AP had grabbed his neck from behind and pushed his head against the wall. He was so frightened that he loudly shouted for help. However, footage from the CCTV installed at the location showed that AP had only put his arm around the clerk’s neck, without pushing the clerk’s head against the wall. The other two directors were seen to be attempting to take something, believed to be a voucher, from the clerk. The clerk struggled, but was pressed by the directors to sit on a chair. When interviewed under caution, the AP denied having assaulted the clerk but admitted that they had body contact. The other directors and staff at the scene maintained that they did not witness any assault.

Having examined the CCTV footage and the statements given by the parties concerned, the WDIP considered that even though the clerk and the AP had body contact in the incident, the AP might have had an honest belief that the clerk had no right to keep the voucher, and thus exercised reasonable force to take it back and had no intent to hurt the clerk. Nevertheless, the WDIP had misunderstood and thought that the alleged assault occurred in the dispute that took place in the morning, and that the clerk had failed to immediately make a report against the AP to the police officers when they handled the “Dispute” case. The WDIP had doubts regarding the clerk’s credibility, and recommended to curtail the case without any prosecution action against the AP.

文員對調查結果不滿，指稱該案的調查人員，即一名偵緝警員，沒有即時及公正地調查該案【**指控一和指控二**】。當文員得悉該案是由女偵緝督察負責後，他撤回對偵緝警員的投訴，繼而投訴女偵緝督察沒有檢控被捕人士【**指控三**】以及沒有告知他有關個案的進展【**指控四**】。

投訴警察課的調查

在該文員的要求下，投訴警察課把指控一和指控二分類為「投訴撤回」。指控四則分類為「並無過錯」，因女偵緝督察已根據警方的程序，以書面形式把案件結果告知投訴人。監警會同意指控一、指控二和指控四的分類。

至於指控三，投訴警察課把它分類為「並無過錯」，因該課認為女偵緝督察把事件中的爭執界定為輕微，以及沒有證據證明被捕人士曾襲擊該名文員，是公平和合理的判斷。

監警會的觀察

關於指控三，監警會注意到，文員指稱被捕人士把他的頭推向牆的說法沒有閉路電視的片段佐證，而且現場的證人亦不能證明被捕人士涉嫌襲擊。不過，監警會亦留意到閉路電視的片段清楚顯示被捕人士用他的手臂箍著文員的頸，並試圖從文員右邊的褲袋拿取物件。縱使該名被捕人士真誠地相信他有權取回該憑證，任何合理的人都會知道，不能在那種情況下採取武力（用手臂箍著文員的頸，並強行搶奪物件）。再者，女偵緝督察錯誤地認為文員沒有即時就指稱的襲擊向警方報案。總括來說，女偵緝督察沒有充分理解該案的實情。因此，有若干可靠的證據支持女偵緝督察沒有在決定終止調查前考慮到所有相關因素。

The clerk was dissatisfied with the investigation result, alleging that a Detective Police Constable (DPC) who was the Investigating Officer of the case failed to investigate the case promptly and impartially [Allegations 1 and 2]. He withdrew the complaints when he realised that the WDIP was responsible for the case but complained that the WDIP failed to prosecute the AP [Allegation 3] and failed to inform him of the case progress [Allegation 4].

CAPO's investigation

Upon the request of the clerk, CAPO classified Allegations 1 and 2 as "Withdrawn". For Allegation 4, CAPO classified it as "No Fault" as the clerk had been duly informed in writing of the case result, in accordance with the Force procedures. IPCC agreed with the classifications of Allegations 1, 2 and 4.

In regard to Allegation 3, CAPO initially classified it as "No Fault" as they considered that the WDIP had made a fair and reasonable judgment that the struggle in the incident was mild and there was no evidence, against the AP for having assaulted the clerk.

The IPCC's observations

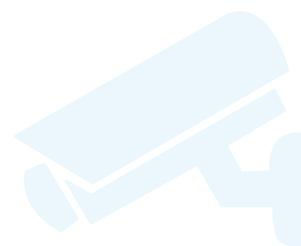
Regarding Allegation 3, IPCC noted that the clerk's claim that AP had pushed his head against the wall was not corroborated by the CCTV footage, and that the witnesses at the scene failed to implicate AP of the alleged assault. IPCC, however, noted that the CCTV footage clearly showed that the AP put his arm around the neck of the clerk in an attempt to take something from the right pocket of the clerk's trousers. Even if the AP honestly believed that he was entitled to recover the voucher from the clerk, any reasonable person should have known that one cannot resort to the use of force under such circumstances, i.e. by putting his arm around the neck of the clerk and snatching something from him. In addition, the WDIP had mistakenly thought that the clerk had failed to make an immediate report to the Police about the alleged assault. Overall, the WDIP had not been fully acquainted with the facts of the case. Hence, there is some reliable evidence to prove that the WDIP has failed to take into consideration all relevant factors before deciding to curtail the case.

經過監警會的質詢和在工作層面會議中討論後，投訴警察課向女偵緝督察作出進一步的查問，確認她對所指的襲擊的案發時間及文員有否延誤報案有所誤解。就著這次查問的結果，投訴警察課同意監警會的看法，認為女偵緝督察在檢視閉路電視的片段時應加倍謹慎，並記錄閉路電視片段跟各方口供不符的地方，以及評估是否有合理機會就指稱罪行將被捕人士定罪。

檢視可用的證據後，監警會同意，基於該文員證供與閉路電視影像所顯示的不一致，女偵緝督察決定終止調查未必是不合理的。不過，由於女偵緝督察沒有充分地檢視個案的資料(尤其是閉路電視的片段，因該片段影響到終止調查的決定)，投訴警察課同意監警會的看法，認為有若干可靠的證據支持指控三，把該指控重新分類為「無法完全證明屬實」。該課向女偵緝督察作出警告，但無須把事件記錄在分區報告檔案中。

After the IPCC's Queries and discussion at a WLM, CAPO conducted a further enquiry with the WDIP and confirmed that she had misunderstood when the alleged assault occurred and whether the clerk had delayed making a report to the Police. Given the result of this enquiry, CAPO shared the IPCC's view that before deciding to curtail the case, the WDIP should have exercised a higher level of care in reviewing the CCTV footage, detailed the inconsistency between the CCTV footage and the statements of the parties involved, and evaluated if there was reasonable prospect of convicting the AP of the alleged offence.

Having examined the evidence available for the alleged assault, IPCC agreed that the decision to curtail the case may not have been unreasonable, given the inconsistency between the statement of the Complainant and what transpired from the CCTV. However, as the WDIP had not adequately reviewed the case materials – particularly the CCTV footage, which had a bearing on the decision to curtail the case – CAPO subscribed to IPCC's view that there was some reliable evidence to support Allegation 3 and reclassified it as "Not Fully Substantiated". The WDIP was accordingly warned without DRF entry.



指控 Allegation(s)	被投訴人 Complainee(s)	投訴警察課原本分類 Original classification(s) by CAPO	最後分類 Final classification(s)
毆打 Assault	六名警務人員包括一名警署警長、一名警長、一名女警員及三名身份不明的男性警務人員 6 officers including a Station Sergeant (SSGT), a Sergeant (SGT), a Woman Police Constable (WPC), and 3 unidentified male officers	並無過錯 No Fault	虛假不確 False

此個案反映監警會公正地審視一宗投訴去維持一個公平的投訴制度。

This case illustrates the IPCC's impartial approach in examining a complaint in order to maintain a fair complaint system.

個案背景

投訴人(一名女士)因「盜竊」罪名被捕，並被拘留於警署作進一步查問。投訴人對拘留期間負責看管她的警員共提出了七項指控，包括一項「毆打」、三項「行為不當」、一項「粗言穢語」、一項「濫用職權」以及一項「盜竊」的指控。投訴人要求作出全面調查並就投訴事宜與投訴警察課錄取了一份口供。不過，後來投訴警察課欲向投訴人澄清有關涉事警務人員的身份時，卻未能聯絡上她。

關於「毆打」的指控，投訴人聲稱她事發時懷孕，當她拒絕被拘留在臨時羈留室時，有六名警務人員毆打了她十至二十分鐘。投訴人亦指她在受傷及吐血後要求治療但沒有人理會她。

投訴警察課的調查

涉事的警務人員接受投訴警察課的查問時否認指控。關於「毆打」的指控，他們指投訴人不合作並拒絕到臨時羈留室；故他們需使用適當的武力將她帶到臨時羈留室。

臨時羈留室走廊的閉路電視片段證實了警務人員的說法，錄影片段顯示投訴人被警員帶到臨時羈留室時表現抗拒。影片中可見投訴人坐在地上，擋著入口並把頭撞向鐵閘。其中一名警員於是把投訴人推開，並立即關上鐵閘。事發後不久，救護員被拍到曾兩度進入臨時羈留室，但投訴人拒絕當場接受治療及跟隨救護員到醫院治理。投訴人之後被拍到以正常姿勢步行到洗手間。

約七小時後，投訴人作出投訴，並在警方監護下到醫院接受了治療。經檢查後發現她只是四肢觸痛和腹痛。尿液測試確認她當時並沒有懷孕。

Case background

The Complainant (a lady) was arrested for 'Theft' and detained at a police station for further enquiry. The Complainant made a total of seven allegations, comprising one count of "Assault", three counts of "Misconduct", one count of "Offensive Language", one count of "Unnecessary Use of Authority" and one count of "Theft" against the police officers who handled her during her detention. The Complainant requested a full investigation and gave a complaint statement to CAPO. However, she could not be contacted when CAPO later sought clarification from her in relation to the identities of the police officers concerned with the allegation.

Regarding the 'Assault' allegation, the Complainant claimed that she was pregnant at the material time, and six police officers had assaulted her for 10 to 20 minutes when she refused to enter the Temporary Holding Area (THA) for detention. The Complainant also claimed that she suffered injury and vomited blood but her request for medical treatment was ignored.

CAPO's investigation

When interviewed by CAPO, the police officers concerned denied the allegations. Regarding the 'Assault' allegation, they said that the Complainant was uncooperative and refused to go into the THA; they therefore had to apply necessary force to put her into the THA.

The version given by the police officers was corroborated by the CCTV footage covering the corridor of the THA, which showed that the Complainant's behaviour was unruly when the police officers tried to take her into the THA. The Complainant was seen sitting on the floor, blocking the entrance and hitting her head against the iron gate therein. One of the police officers then pushed the Complainant aside and immediately closed the iron gate. Soon after the incident, paramedics were seen entering the THA twice but the Complainant refused to receive medical treatment on the spot or to go to hospital with them. Later on, the Complainant was seen to walk normally as she headed to the toilet.

About seven hours later, the Complainant lodged this complaint, and subsequently received medical treatment at a hospital when she was still under police custody. The medical findings revealed that she only had tenderness to limbs and abdominal pain. A urine test confirmed that she was not pregnant at the time.

投訴警察課最初將「毆打」的指控分類為「並無過錯」，因閉路電視的錄影片段證明了警務人員對事件的說法。

監警會的觀察

根據在事發地點拍到的閉路電視片段、投訴人的驗傷結果以及投訴人聲稱懷孕，足以肯定她提出的「毆打」指控是虛假不確。該名警員並沒有如投訴人所指般毆打她，而她更訛稱懷孕。監警會於是建議投訴警察課考慮將「毆打」的指控分類由「並無過錯」改為「虛假不確」，因這個指控明顯是懷有惡意，或者並非基於真誠相信自己所言而提出。

然而，監警會注意到由於閉路電視錄影系統發生故障，未能取得其他地點的錄影片段作調查（這些錄影片段牽涉到投訴人的其他指控）。監警會要求投訴警察課處理疏忽保養閉路電視錄影系統的問題。

考慮到監警會的觀察，投訴警察課將「毆打」的指控重新分類為「虛假不確」並向投訴人發出書面警告。投訴警察課亦對負責處理警署大廈維修事宜（包括閉路電視系統）的總督察紀錄了一項「旁支事項」，並對他作出訓諭但無須將此事記入其分區檔案中。

至於投訴人提出餘下的六個指控，其中五個被分類為「無法證實」，因沒有足夠證據證實或推翻這些指控。餘下的一個指控則被分類為「無法追查」，因投訴警察課要求投訴人澄清有關涉事警務人員的身份時，她不作回應。

CAPO initially classified the 'Assault' allegation as 'No Fault' as the version given by the police officers concerned was supported by the CCTV records.

The IPCC's observations

Based on the available CCTV footage covering the location and the medical findings on the Complainant's injuries and her claim of pregnancy, it can be ascertained that the "Assault" allegation she made was false. The officers had not assaulted her as she had falsely claimed. She also falsely claimed to be pregnant. IPCC thus suggested CAPO to consider reclassifying the 'Assault' allegation from 'No Fault' to 'False', as the allegation was either made with clear intent of malice or not based upon genuine belief.

Nevertheless, the IPCC noted that owing to a malfunction of the CCTV recording system, the CCTV recordings of other locations, which had bearing on other allegations made by the Complainant, could not be retrieved for examination. IPCC therefore requested CAPO to address the negligence in the maintenance of the CCTV recording system.

Taking IPCC's observation into consideration, CAPO reclassified the 'Assault' allegation to 'False' and issued a written warning to the Complainant. CAPO also registered another 'Outwith Matter' against a Chief Inspector (CIP) who was in charge of the maintenance of the police station building, including the CCTV system. The CIP would be advised without DRF entry.

Regarding the other six allegations made by the Complainant, five of them were classified as 'Unsubstantiated' as there was insufficient evidence to prove or refute the allegations. The remaining one was classified as 'Not Pursuable' as the Complainant did not respond to CAPO to clarify the identities of the police officers concerned in the allegation.