

**127th MEETING OF
THE INDEPENDENT POLICE COMPLAINTS COUNCIL (IPCC) MEETING WITH
THE COMPLAINTS & INTERNAL INVESTIGATIONS BRANCH (C&IIB) HELD AT
THE IPCC SECRETARIAT OFFICE
AT 1500 HOURS ON THURSDAY 17 MAY 2007**

Present: Mr Ronny WONG Fook-hum, SC, JP (Chairman)
Dr Hon Joseph LEE Kok-long, JP (Vice-chairman)
Mr YEUNG Yiu-chung, BBS, JP
Dr LO Wing-lok, JP
Mr Daniel CHAM Ka-hung, MH, JP
Dr Charles KOO Ming-yan, MH
Mr Edward PONG Chong, BBS, JP
Mr HUI Yung-chung, BBS, JP
Dr Michael TSUI Fuk-sun
Dr TSE Tak-fu, BBS
Dr Lawrence LAM Chi-kit, MH
Mr WONG Kwok-yan
Mrs Brenda FUNG YUE Mui-fun, Secy IPCC
Ms Angela HO, SGC IPCC
Mr Brandon CHAU, Deputy Secy IPCC (Joint Secretary)
Mr Michael B. DOWIE, DMS
Mr Alfred MA Wai-luk, ACP SQ
Mr Alan FAN Sik-ming, CSP C&IIB
Mr J.P. RIBEIRO, SSP CAPO
Mr Eddy TONG Chi-chung, SP CAPO HQ (Ag) (Joint Secretary)

In Attendance: Mr Eddie WONG, SAS (PS)
Mr Henry CHAN, SAS (1)
Ms Fiona LI, SAS (2)
Mr Bernard KAN, SAS (3)
Miss Mary KWOK, AS (PS) 1
Mr CHEUNG Kin-kwong, SP CAPO NT
Ms Pallas CHAN Po-chu, CIP T9 CAPO NT
Ms Winky CHAN Shuk-ming, SIP IPCC C&IIB
Mr Damon AU Wing-leung, SIP SUP CAPO
Mr Dick MA Wang-ngai, SIP T8a CAPO NT
Mr LUNG Siu-chuen, SIP T8b CAPO NT
Miss Kennis CHAN Har, SIP T9a CAPO NT
Mr YIP Wing-lam, SIP T9b CAPO NT
Mr Steve CHUNG Shing-keung, SIP T10b CAPO NT

Absent with Apologies: Hon Daniel LAM Wai-keung, SBS, JP (Vice-chairman)
Dr Hon LUI Ming-wah, SBS, JP (Vice-chairman)
Prof Benjamin TSOU Ka-yin, BBS
Ms Priscilla WONG Pui-sze, JP
Mrs Helena YUEN CHAN Suk-yee
Mr Barry CHEUNG Chun-yuen, JP
Mr Frederick TONG Kin-sang, Assistant Ombudsman

PART A CLOSED MEETING

This was the Closed Part of the meeting for the IPCC and representatives of C&IIB to discuss matters of mutual concern. The minutes of the meeting will not be uploaded onto the IPCC Homepage.

PART B OPEN MEETING

OPENING ADDRESS

The Chairman welcomed all to the meeting.

I CONFIRMATION OF THE MINUTES OF THE MEETING HELD ON 29 MARCH 2007 (Open Part)

2. The minutes of the last meeting (Open Part) were confirmed without amendment.

II CAPO'S CRIMINAL AND DISCIPLINARY CHECKLIST

3. CSP C&IIB briefed the meeting that there were several cases on the checklist where officers failed to comply with the requirements in Police General Orders/Force Procedures Manual (PGO/FPM) in relation to statement taking. In one of those cases, the officers concerned failed to record a statement in the native language of the complainant. In another case, the officer concerned failed to record the fact that he had taken a statement from the complainant in his police notebook and failed to ask the complainant to acknowledge receipt of a copy of the statement. There was also a case in which the officer concerned failed to contemporaneously record the cautioned statement of the complainant without reasonable explanation. He asserted that the Force had clear procedures set out in various PGO/FPM provisions in relation to statement taking from arrested persons or members of the public. The matters had been highlighted in the 'Matters of Interest' and 'Tips for Smart Cops' to remind frontline officers of the need to comply with the relevant provisions. CAPO officers would also disseminate the information to Formations during liaison visits and

complaints prevention talks. The matters would also be forwarded to the Complaint Prevention Committee for considering taking suitable measures to remind frontline officers.

4. The Chairman expressed his concern about a court case concluded several days ago in which the statement of the victim was not correctly recorded. Although the judge thought that the victim's evidence was highly reliable and relevant but because the statement was deemed incorrectly recorded, the defendant was acquitted. He wondered if this was really common and would like to know if there was any dedicated team trained for the purpose of taking statement.

5. CSP C&IIB replied that all police officers were trained in taking statements, and PGO and FPM had already stipulated how statements should be taken. Some officers might not have fully observed the procedures and that would be investigated to see if disciplinary action was to be taken against the officers concerned. The training and prevention would also be strengthened to remind officers to pay attention to police orders and procedures.

6. The Chairman enquired if the statement concerned was handwritten, then the officer taking the statement would shoulder a very heavy responsibility. He enquired if it was possible to type the statement simultaneously when it was being taken.

7. CSP C&IIB replied that when the situation permitted some officers were able to type the statements by using computers concurrently with the statement taking, but that could not be done all the times because statements were sometimes taken at the scene of crime, or at the home or the work place of the witnesses.

8. Dr Charles KOO Ming-yan noted that there were many cases on the checklist in which officers forgot to sign their notebooks in accordance with PGO 53-06. He hoped that officers could be reminded to observe the relevant orders. There were more than ten cases of this nature and so training should be stepped up to remind officers of the need to do that so as to reduce complaints.

9. CSP C&IIB agreed with the comments that training and education should be strengthened to remind officers to avoid committing similar mistakes. The dissemination of the information would be stepped up and its importance would also be stressed.

10. Mr Daniel CHAM Ka-hung enquired if a person who was asked to give a statement could opt for video recording rather than giving a written statement. He was of the view that video recording could save the valuable time of police officers who sometimes might spend hours to take a written statement as the subsequent transcription of the contents of the video recorded interview could be done by civilians. He asked if the police would consider this or if it was being done.

11. CSP C&IIB replied that there were video recording facilities in police stations and if necessary these could be used for conducting interviews with certain people.

12. The Chairman further commented that in comparing with the practice of the ICAC, it appeared that the ICAC made more use of video recorded interviews than the police. He wished to know why there was such a difference in that the police only did that on a need basis.

13. CSP C&IIB replied that the reason for not using video recording in taking statements was because not all statements were taken in a police station but this would be done whenever feasible. Whether video recording was to be used would depend on the preference of the persons who were to give the statements, so the option of a written statement was still allowed. Both options were available and officers were encouraged to conduct video recorded interviews when it was appropriate, especially when the case was complicated. Still it would depend on the case nature and the wishes of the statement givers. The police did not make it a rule that all interviews should be video recorded.

14. Mr Daniel CHAM Ka-hung further commented that both the ICAC and the CAPO would tell interviewees to opt for a written statement or a video recording, but he did not think that such options were sufficiently tendered to interviewees at formation level. While the facilities were there, there was no guideline to make it a rule that the options must be offered and people were often unaware of such options. He hoped that some

improvement could be made because video recorded interviews had the advantages of accuracy and saving time (of the police interviewer concerned), albeit it also needed time to do the subsequent transcription which could be arranged administratively.

15. CSP C&IIB responded by saying that the comments of the Council members could be reflected to the relevant policy department to see whether the practice could be adopted more widely.

16. The Chairman enquired if all police stations were equipped with video recording facilities.

17. CSP C&IIB confirmed that each police station was equipped with video recording facilities.

18. Dr Charles KOO Ming-yan noted that sometimes statements were taken in the complainant's home where there was no video recording facilities, he wondered if it was possible to use a hand-held video camera for this purpose. He suggested officers to bring along a video camera to record the interview and it would save a lot of time because he understood that taking a written statement could be a lengthy process and if the interview was video recorded, this would save the possible argument that the statement did not reflect what exactly the statement giver had said. This was by no means high technology and he believed that video cameras should be available in the Force.

19. CSP C&IIB acknowledged the members' comments and undertook to bring this matter to the attention of the relevant policy department for consideration. There were of course some resource implications but this could be considered in the light of whether this was good for service quality and whether it was within the capability of the police.

20. Mr Daniel CHAM Ka-hung expressed his concern as to the feasibility of the suggestion as he was aware that the video recording system in the police station was digitalized and tamper-proofed so that persons giving statements knew that the facilities in the police station could not be tampered with but if it was done with a hand-held video camera, people might wonder whether the information could be altered subsequently.

21. ACP SQ acknowledged the members' concern but hoped that members could understand that the use of video recorded interviews would have some legal consideration. Just as what Mr CHAM had mentioned, the officer who used the equipment had to testify in court that the equipment was free from interference and was in good working order. There were serious resource implications and from the practical point of view this might not be worthwhile to spend such amount of money. If a witness had a strong desire to have his interview conducted with video recording, this should be done in a police station equipped with video recording facilities. For an ordinary witness in a simple case, this might not be suitable for using the video recording facilities. Video recording should of course be used for interviewing suspects but it might not be possible to do so for ordinary witnesses. The proposal should be considered from the legal and practical point of view.

22. The Chairman suggested to discuss the issue in more details in the next meeting as there were several court cases recently in which serious consequences had resulted from the lack of video recording.

III CAPO'S MONTHLY STATISTICS

23. CSP C&IIB briefed the meeting on the complaints statistics for the month of March 2007. There were 251 complaints received in March 2007. It represented an increase of 43.4% (+76 cases) when compared with the statistics of the previous month. The figure for February 2007 was 175 cases.

24. The number of 'Neglect of Duty' complaints received in March 2007 was 91 cases. It represented an increase of 37.9% (+25 cases) when compared with the statistics of the previous month. The figure for February 2007 was 66 cases.

25. The number of 'Misconduct/Improper Manner & Offensive Language' complaints received in March 2007 was 84 cases, representing an increase of 33.3% (+21 cases) when compared with the statistics of the previous month. The figure for February 2007 was 63 cases.

26. The number of 'Assault' complaints received in March 2007 was 48 cases, representing an increase of 65.5% (+19 cases) when compared with that of the previous month. The figure for February 2007 was 29 cases.

27. In the first three months of 2007, a total of 666 complaints were received, representing an increase of 17.3% (+98 cases) when compared with 568 cases of the same period last year.

28. The total number of 'Neglect of Duty' complaints received in the first three months of 2007 was 275 cases. It represented an increase of 81 cases (+41.8%) when compared with 194 cases of the same period last year.

29. The total number of 'Misconduct/Improper Manner & Offensive Language' complaints received in the first three months of 2007 was 201 cases. It represented an increase of 47 cases (+30.5%) when compared with 154 cases of the same period last year.

30. The total number of 'Assault' complaints received in the first three months of 2007 was 122 cases, representing a decrease of 3 cases (-2.4%) when compared with 125 cases of the same period last year.

31. From the figures of the first three months of 2007, there were slight increases for all kind of cases but there was no obvious trend indicating an increase for any particular type of cases.

32. Dr Charles KOO Ming-yan raised his concern about the 14 cases that had remained outstanding since December 2005. He wished to know the nature of the 14 cases.

33. CSP C&IIB replied that he had no details in hand about the nature of the 14 cases and he undertook to give a written reply after the meeting. (*Post-meeting note: The principal allegations of the 14 cases comprised eight 'Neglect of Duty', five 'Assault' and one 'Unnecessary Use of Authority'.*)

IV

A COMPLAINT CASE FOR DISCUSSION

34. The Secy/IPCC briefed the meeting on the case for discussion which related to the police handling of a dispute involving owners'

corporation affairs. The complainant (COM) who was the secretary of the Landlord and Resident Association of a building had grudges with members of the Owners' Corporation Committee (OCC) of the building. On the material day, COM requested to sit in and observe a meeting held by the OCC but his request was refused. A dispute therefore arose between COM and members of the OCC. Since COM did not leave the scene upon request, the OCC made a report to the Police. According to police records, 4 uniformed police officers, and 3 plainclothes officers of the District Anti-triad Squad (DATS officers) attended the scene after the OCC had made the report to the Police. After investigation, the case was classified as 'Dispute', and COM voluntarily followed DATS officers to a police station for further enquiry. He was subsequently released unconditionally.

35. COM was dissatisfied with the Police's handling of the 'Dispute' case. Two days after the incident, he lodged a complaint against a Sergeant at the Police Console receiving the report (COMEE 1) and a Station Sergeant who attended the scene (COMEE 2). COM alleged that COMEE 1 should not waste police resources by deploying 15 uniformed police officers [allegation (a) – 'Neglect of Duty (NOD)'] and three DATS officers [allegation (b) – 'NOD'] respectively to the scene, as the case only related to building management affairs. He further complained that COMEE 2 failed to enquire with his subordinates before requesting him to show his authorization document and asking him questions, the details of which he had already told COMEE 2's subordinates [allegation (c) – 'NOD']. COM was also dissatisfied with COMEE 2 standing at the entrance of the venue of the OCC meeting to prevent him from knocking on the door and entering the venue [allegation (d) – 'Misconduct'].

36. COMEE 1 denied the allegations against him. He claimed that he had only deployed two uniformed police officers (PC A and SPC B) to handle the 'Dispute' case upon receiving the report made by the OCC on the material day.

37. COMEE 2 explained that he attended the scene together with another Station Sergeant (SSGT C) for the purpose of supervising their subordinates, PC A and SPC B to handle the 'Dispute' case. COMEE 2 claimed that he had made enquiry with the two at-scene officers as well as the members of the OCC upon arrival at the scene before making enquiry with COM. COMEE 2 further stated that he had explained the stance of the

OCC to COM, and COM had not made a request to him for attending the OCC meeting. COMEE 2 denied blocking COM from entering the meeting venue. COMEE 2 confirmed that throughout the incident, only 4 uniformed officers, including himself, SSGT C, PC A and SPC B, and three DATS officers attended the scene at the material time.

38. CAPO had made enquiry with the police officers who attended the scene at the material time, as well as the secretary of the OCC and a security guard of the building. The versions of PC A, SPC B and SSGT C corroborated with COMEE 2's version. The three DATS officers stated that earlier on the same day, they visited the building in connection with a "Criminal Intimidation" case and saw a notice which was displayed on the notice board of the building mentioning a possible wounding case against members of the OCC. They went back to the building to conduct investigation into the alleged crime case at the material time, and by coincidence encountered the 'Dispute' case. The three DATS officers claimed that upon request, COM followed them to the police station voluntarily for further enquiry in connection with the alleged crime case instead of the 'Dispute' case. They also indicated that there were 4 to 6 uniformed police officers at the scene at the material time. DATS officers' versions corroborated with COMEE 2's version.

39. The secretary of the OCC confirmed that COM had requested to sit in and observe a meeting held by the OCC at the material time. Since COM did not apply for attendance and was unable to provide any authorization document in support of his attendance, his request was therefore refused. A report was subsequently made to the Police as COM did not leave the scene upon request, and 4 to 5 police officers attended the scene afterwards. The version of the security guard corroborated with the secretary's version, as he stated that he was instructed by the Chairman of the OCC to make a report to the Police since COM interfered with the OCC meeting. He also stated that throughout the incident, there were 3 to 4 uniformed and 3 plainclothes officers who attended the scene.

40. CAPO's investigation revealed that CCTV facility was installed at the scene, but the relevant tape was only kept for two weeks and had been reused. No independent witness was located. The OCC confirmed that it had posted a notice at the common area of the building, stating that triad members might employ someone to chop a member of the OCC. CAPO

found in the relevant incident log (a computer record) of the 'Dispute' case that COMEE 1 had deployed two uniformed police officers to handle the case, and assigned a Mobile Patrol (MP) Car to the scene at the material time. As admitted by COMEE 1, he had made a wrong entry about assigning the MP Car to the scene in the Incident Log. An examination of the Occurrence Book record of the MP Car showed that the MP Car was engaged in other commitments during the period when COM's 'Dispute' case was being handled.

41. After investigation, CAPO considered that there was no evidence to support the allegations of over-deployment, improperly assigning DATS officers to handle the 'Dispute' case nor any kind of wastage of police resource, and hence classified allegations (a) and (b) as 'No Fault' based on the following reasons:

- (a) COMEE 1 denied the allegations and stated that he had only deployed 2 uniformed police officers to handle the 'Dispute' case at the material time;
- (b) COMEE 2 and SSGT C attended the scene for supervising their subordinates in handling the 'Dispute' case;
- (c) the three DATS officers came to the scene for their own investigation of an alleged crime case instead of COM's 'Dispute' case; and
- (d) the secretary of the OCC and the security guard of the building could be treated as independent witnesses. Their versions corroborated with COMEE 1's version.

42. As regards COMEE 1's negligence in making a wrong entry about deploying the MP Car to handle the 'Dispute' case in the relevant incident log, COMEE1 would be suitably advised on the importance of ensuring accuracy in entering information into the computer record.

43. For allegations (c) and (d), CAPO classified them as 'Unsubstantiated' since COMEE 2 denied the allegations, and there was no corroborative evidence or independent witness to prove or disprove either side's version.

44. Upon examining the investigation result of COM's complaint, the IPCC had reservation about the 'No Fault' classifications for allegations (a)

and (b) against COMEE 1 and raised the following comments and suggestions with CAPO:

- (i) in view of the fact that the secretary of the OCC was involved in the 'Dispute' case, and the security guard of the building was an employee of the OCC and was instructed by the OCC to make a report against COM to the Police at the material time, it would not be appropriate to treat them as independent witnesses in the instant case;
- (ii) although COMEE 1 denied the allegations, the relevant incident log of the 'Dispute' case showed that COMEE 1 had not only deployed two uniformed officers but also an MP Car to the scene at the material time. The number of uniformed officers at the scene as reported by the witnesses, including the three DATS officers, the secretary of the OCC and the security guard, was not consistent. Some of them indicated that there were more than 4 uniformed officers at the scene. There was apparently a lack of independent witness and evidence to prove or disprove either side's version, and the versions of other witnesses were not fully consistent. The IPCC considered that the available evidence was insufficient to support the 'No Fault' classification of allegation (a), and suggested re-classifying the allegation as 'Unsubstantiated';
- (iii) similar to allegation (a), there was a lack of independent witness and evidence to prove the DATS officers' versions in respect of allegation (b). Therefore, the IPCC suggested re-classifying allegation (b) as 'Unsubstantiated' as well; and
- (iv) in order to further ascertain the versions given by COMEE 1 and the three DATS officers, the IPCC suggested CAPO to examine the relevant console tape related to the 'Dispute' case, clarify with the police officers on board the MP Car at the material time whether they had attended the scene at the material time, and confirmed with the supervisor of the three DATS officers whether they had been assigned to investigate the alleged crime case.

45. After discussion, CAPO subscribed to the IPCC's view that the secretary of the OCC and the security guard of the building should not be

treated as independent witnesses in the instant case, and agreed to change the 'No Fault' classifications for allegations (a) and (b) to 'Unsubstantiated'. CAPO also made clarifications with the relevant officers as suggested by the IPCC, and confirmed that the MP Car had not attended the scene at the material time, and the DATS officers were assigned to investigate the alleged crime case. With regard to the relevant console tape, CAPO's investigation revealed that it had been reused in accordance with standard police procedure. It was thus unavailable for scrutiny.

46. The IPCC noted that the versions of the Police witnesses generally corroborated with COMEE 1's version. However, a long-established principle adopted by both the IPCC and CAPO in examining complaint investigations is that in general, (i) any person who may be an interested party in an incident relating to a complaint case, and a police officer who has a working relationship with the complainee(s) of a complaint case cannot be treated as an independent witness of the case; (ii) any record made or created by the complainee or non-independent witness of a complaint case cannot serve as independent evidence to refute an allegation made against the complainee; and (iii) in the absence of any independent witness or evidence to disprove an allegation, the allegation should not be classified as 'No Fault'. CAPO's re-classification of allegations (a) and (b) as 'Unsubstantiated' was in line with the above principle, and thus endorsed by the IPCC.

47. The Chairman invited CAPO to apprise the meeting of the guidelines on the deployment of officers in handling dispute cases.

48. CSP C&IIB replied that the deployment of officers in handling dispute cases generally depended on the prevailing circumstances of the cases, such as the time and the place of the incident. The deployment was done by the officers in the Police Console who, in accordance with the circumstances of the cases, would decide on the number of officers to be deployed. It required certain degree of flexibility in the deployment, depending on the nature of the cases and the experience of the officers in the Console.

49. Dr LO Wing-lok asked if there were any differences in the follow up action between the cases classified as 'No Fault' and the cases classified as 'Unsubstantiated'.

50. CSP C&IIB responded by saying that as far as the follow up action was concerned, there was no difference between cases of these two classifications because in both cases there was no evidence to prove that the officers concerned were at fault and therefore there would be no follow up action.

V

ANY OTHER BUSINESS AND CONCLUSION OF THE MEETING

51. There being no other business, the meeting concluded at 1656 hours. The next meeting will be held on 19 July 2007.

(Eddy TONG)
Joint Secretary
Complaints and Internal
Investigations Branch

(Brandon CHAU)
Joint Secretary
Independent Police
Complaints Council