

IPCC Paper No. 9/04
Analysis on ‘Neglect of Duty’ Complaints

Purpose

This paper provides an analysis of the Neglect of Duty (“NOD”) complaints endorsed by the Independent Police Complaints Council (IPCC) in the year 2003.

Introduction

2. Police officers’ duties are of a wide variety, such as patrolling, stop and search, ticketing, crowd control, crime investigation, etc. If a member of the public believes that an officer has failed to carry out all or part of his/her duties or to take appropriate actions, he/she may lodge a complaint with the Complaints Against Police Office (CAPO) and an allegation of “NOD” will be registered.

3. “NOD” is one of the major categories of complaints lodged by members of the public. The table at **Annex 1** shows that the number of “NOD” allegations endorsed by the IPCC has increased from 1,249 (23.2% of total allegations endorsed) in 1999 to 2,212 (35.3% of total allegations endorsed) in 2003. As it is part and parcel of the IPCC’s role to keep under review statistics of the types of conduct by police officers which lead to complaints by members of the public, the Secretariat decides to research into complaints of “NOD”.

Analysis of “NOD” allegations endorsed by the IPCC in 2003

4. The Secretariat has examined in detail the “NOD” complaints endorsed by the IPCC in 2003 and the findings are set out below.

Overview

(A) Classifications of “NOD” allegations

5. Of the 2,212 “NOD” allegations endorsed by the IPCC in 2003, 80 (3.6%) were classified as ‘Substantiated’, 139 (6.3%) as ‘Substantiated Other

Than Reported’, 10 (0.5%) as ‘Not Fully Substantiated’, 350 (15.8%) as ‘Unsubstantiated’, 20 (0.9%) as ‘False’, 252 (11.4%) as ‘No Fault’, 5 (0.2%) as ‘Curtailed’, 220 (9.9%) as ‘Not Pursuable’, 589 (26.6%) as ‘Withdrawn’ and 547 (24.7%) were Informally Resolved.

(B) Substantiation rate of “NOD” allegations

6. The substantiation rate of the fully investigated “NOD” allegations¹ in 2003 is 26.9%, which is almost double that of all fully investigated allegations endorsed by the IPCC in the year (14.5%). It is the second highest substantiation rate among the different types of allegations endorsed in 2003² and indeed the highest if the complaints against Police Procedures, which are few in number and unrepresentative for comparison purpose, are discounted.

Detailed Analysis

(C) Circumstances under which “NOD” allegations were made

7. Unlike other types of allegations where there is normally a linkage to a certain type of policing duties (e.g. the majority of allegations of Assault, Fabrication of Evidence and Threat are related to the handling/investigation of crime cases), complaints of “NOD” may arise from almost all kinds of policing duties. Of the 2,212 “NOD” allegations endorsed in 2003, 901 (40.7%) were related to crime cases, 585 (26.4%) to traffic cases, 351 (15.9%) to miscellaneous cases such as missing person or noise nuisance cases etc., 185 (8.4%) to report room/patrolling duties, 33 (1.5%) to police operations such as crowd control and licensed premises checks, 15 (0.7%) to court cases, and 142 (6.4%) to other policing duties.

¹ Fully investigated allegations refer to those allegations for which thorough investigations have been carried out and the allegations are classified as Substantiated, Substantiated Other Than Reported, Not Fully Substantiated, Unsubstantiated, No Fault, and False after investigation. The circumstances under which full investigation is inapplicable or cannot be conducted are set out in paragraph 11 of this paper.

² The substantiation rates in respect of all fully investigated allegations endorsed in 2003 in descending orders are: 38.9% for Police Procedures, 26.9% for Neglect of Duty, 9.1% for Other Offences, 6.7% for Unnecessary Use of Authority, 5.7% for Offensive Language/Misconduct /Improper Manner, 2.1% for Assault, 0.7% for Fabrication of Evidence, and 0% for Threat.

(D) The issues involved in “NOD” allegations

8. As the definition of “NOD” (i.e. failing to discharge all or part of one’s duty or to take appropriate action) is rather broad, the issues of the complaints are diversified. The table at **Annex 2** shows the number of “NOD” allegations endorsed by the IPCC in 2003 by categories of the issues of complaints and by results of investigation. Of the 2,212 “NOD” allegations endorsed in 2003, the complainants (COMs) were dissatisfied with the services provided by the complainees (COMEEs) and lodged complaints against the COMEEs for –

- (a) not taking appropriate action (489 allegations, 22.1% of total “NOD” allegations);
- (b) failing to investigate a case properly (267 allegations, 12.1%);
- (c) failing to respond promptly (229 allegations, 10.4%);
- (d) failing to give explanation (157 allegations, 7.1%);
- (e) failing to handle a case impartially (141 allegations, 6.4%);
- (f) failing to provide water/meals/clothing to a detainee (106 allegations, 4.8%);
- (g) failing to reveal police identity when discharging duty (80 allegations, 3.6%);
- (h) failing to accept a report (78 allegations, 3.5%);
- (i) failing to fully record the version of the statement-maker (64 allegations, 2.9%);
- (j) failing to inform COMs about the case progress/results (59 allegations, 2.7%);
- (k) not taking enforcement action against the opposite party (51 allegations, 2.3%);
- (l) failing to answer enquiries (28 allegations, 1.3%);
- (m) irregular traffic enforcement (23 allegations, 1%); and
- (n) others, e.g. failing to exercise discretion during traffic enforcement, recording wrong details in a report, issuing a Fixed Penalty Ticket with wrong code, etc. (440 allegations, 19.9%).

(E) Nature of the “NOD” allegations

9. While the issues of “NOD” complaints in each of the above categories

are the same, the nature and causes of the complaints can be different. Police officers have to follow the rules and instructions issued by the Force to govern and monitor the work and performance of its officers. Non-compliance with such rules and regulations by an officer constitutes a case of “NOD”. From time to time, police officers have to take into account other factors, such as the prevailing situations (e.g. the traffic conditions of a location in traffic enforcement action), the sufficiency of evidence or otherwise in crime investigations, and the need to balance the interests of the parties involved (e.g. in handling cases of family disputes), before taking the action they consider most appropriate. On the other hand, members of the public may have their own expectation of what the Police should or should not do, or they may not be able to appreciate the restrictions on and constraints of police authority. When the police action does not meet with their expectation, they may perceive that it is a case of “NOD” and lodge a complaint against the Police.

(i) “NOD” allegations which are minor in nature

10. When examining the investigation reports involving “NOD” endorsed in 2003, it is not uncommon to notice that many of the “NOD” allegations were rather trivial in nature and the consequences, if any, brought about by the alleged act of “NOD” were insignificant. Examples of such minor “NOD” allegations are :-

- (a) COMEE forgot to stamp the chop of the Hong Kong Police Force on the envelope of the letter sent to COM;
- (b) COMEE used police jargon when answering COM’s enquiry;
- (c) COMEE did not respond to COM’s request for talking to a senior officer in handling a minor dispute case ;
- (d) COMEE did not give COM enough time to read COMEE’s warrant card during a ‘stop and search’;
- (e) COMEE refused to lend COM the use of his pen;
- (f) COMEE could not remember the telephone number of CAPO; and
- (g) COM considered that COMEE’s handwriting on his statement was poor.

11. Among the 2,212 “NOD” allegations endorsed in 2003, 1,946 (88%) allegations were considered to be minor in nature. In many of these minor complaint cases, the COMs were agreeable to having their complaints settled

by way of informal resolution or subsequently withdrew their complaints voluntarily. Among the 1,946 minor allegations endorsed in 2003, 547 (28.1%) were informally resolved and 562 (28.9%) were voluntarily withdrawn by COMs. In addition, 184 (9.5%) minor “NOD” allegations were classified as ‘Not Pursuable’ because the Police did not have the co-operation of COM or due to the lack of sufficient information to proceed with the complaint investigation, while the investigation of 5 (0.3%) frivolous “NOD” allegations were ‘Curtailed’.

12. A full investigation will be carried out by CAPO if there is evidence to support that COMEE has failed to properly discharge part or all of his/her duties which, if substantiated, will result in disciplinary action against the COMEE, or if COM insists that his allegation be investigated. Of the minor “NOD” allegations endorsed in 2003, 648 were fully investigated, of which 45 (6.9%) were classified as ‘Substantiated’, 91 (14.0%) as ‘Substantiated Other Than Reported’, 10 (1.5%) as ‘Not Fully Substantiated’, 288 (44.4%) as ‘Unsubstantiated’, 207 (31.9 %) as ‘No Fault’ and 7 (1.1%) as ‘False’.

(ii) “NOD” allegations which are serious in nature

13. Among the 2,212 “NOD” allegations endorsed in 2003, 266 (12%) were considered to be serious in nature having regard to the consequences of the alleged neglect of duty. Examples of serious “NOD” allegations are :-

- (a) COMEE’s poor court performance had led to the defendant’s acquittal;
- (b) COMEE did not take immediate action to delete COM’s name from the Immigration Watch List and, as a result, COM was stopped and arrested while departing at the Border Control Point;
- (c) COMEE allegedly failed to conduct a proper line-tracing operation in a kidnap case;
- (d) COMEE allegedly failed to rescue COM’s family member who committed suicide while in police custody;
- (e) COMEE did not take prompt action to arrange medical treatment for COM; and
- (f) COMEE failed to caution the arrestee before taking statement from him and as a result, the statement was ruled inadmissible by the court.

14. Of the serious “NOD” allegations endorsed in 2003, 203 were fully investigated, of which 35 (17.2%) were classified as ‘Substantiated’, 48 (23.6%) as ‘Substantiated Other Than Reported’, 62 (30.5%) as ‘Unsubstantiated’, 13 (6.4%) as ‘False’, and 45 (22.2%) as ‘No Fault’. None of the serious “NOD” allegations was handled by way of Informal Resolution.

15. A table showing the minor and serious “NOD” allegations by results of investigation is at **Annex 3**.

Follow-up action taken after investigation

16. In 2003, 273 police officers were involved in 229 “NOD” allegations which were classified as ‘Substantiated’/‘Not Fully Substantiated’/‘Substantiated Other Than Reported’. Disciplinary actions (including disciplinary proceedings and warnings) were instituted against 36 of them and the rest were given advice.

Measures taken/proposed by the Police with a view to reducing “NOD” complaints

17. As advised by CAPO, the Police are concerned about the increase in the number of “NOD” complaints received and have taken a number of complaint prevention initiatives to reduce “NOD” complaints, which include:

- (a) A three-pronged approach
The Police have adopted a “three-pronged” approach to reduce complaints, namely (i) reducing avoidable complaints; (ii) educating the public on police powers and the difficulties of police work; and (iii) improving service quality through continuous review of police procedures. The nature and prevalence of “NOD” complaints make them the prime target of this strategy.
- (b) Complaints Prevention Committee (研究預防投訴警察委員會)
The Complaints Prevention Committee comprises a cross section of officers from different frontline formations who meet regularly

to design complaint prevention measures. In 2003, special meetings were held targeting on reducing “NOD” complaints and a bulletin dedicated on how to prevent “NOD” complaints was published in April 2003.

(c) Tips for Smart Cops (醒目警察小貼士)

Launched in April 2003, the project ‘Tips for Smart Cops’ publicizes common mistakes/omissions by frontline officers in Light Emitting Diode (LED) display boards and notice boards at police stations on a monthly basis.

(d) CAPO’s Monthly Report

Case examples of complaints against the Police and the relevant police procedures involved are published in CAPO’s Monthly Report which are accessible from the Police intranet for experience sharing purposes. In 2003, “NOD” complaints were published in eight issues of the Report.

(e) Liaison with Formation Commanders

To facilitate Formation Commanders to take timely complaint prevention measures, CAPO maintains close liaison with Formation Commanders to apprise them of the latest complaint trends and areas of police activities conducive to complaints. “NOD” has been continuously highlighted as an area of concern. Commencing July 2003, CAPO uploads the latest complaint figures as well as information about the causation of complaints on the Police intranet to facilitate Formation Commanders to monitor the complaint trends of their formations.

(f) Complaint Prevention Training

Complaints against the Police lodged by the public are closely monitored by CAPO. When cases with training implications are identified (for example “NOD” complaints arising from a stop and search, traffic enforcement, report room process, CID case enquiry etc.), CAPO will refer them to the Training Wing for incorporation into training courses and development of Training Day packages. CAPO also conducts complaint prevention seminars for police officers at different levels and “NOD” is a

recurrent theme. Apart from in-house training, the Police also commission outside professionals to conduct workshops on mediation skills to enhance the competence of frontline officers in resolving disputes and confrontational situations.

(g) Educating the public

Another complaint prevention initiative taken by the Police is to educate the public through police TV/radio programmes in areas of police work/procedures conducive to complaints.

(h) Review of Police Procedures

The Police keep under constant review its procedures with a view to improving the level of service to the public and reducing complaints.

Observations/Recommendations

18. The IPCC Secretariat has the following observations/recommendations in the analysis of the “NOD” complaint cases endorsed in 2003:

- (a) In view of their trivial nature and the observation that the consequences, if any, brought about by the alleged act of “NOD” are insignificant in such minor cases, it is agreed that the Police may continue to resolve the minor “NOD” allegations by way of informal resolution if the complainants are also agreeable. This will allow CAPO to make best use of its available resources and focus more on investigating complaints of a serious nature.
- (b) It is noted that the complainees involved in the substantiated “NOD” allegations were normally given advice in the minor cases; formal disciplinary actions were instituted only in the more serious cases. CAPO have explained to the IPCC that the Force Management will take into consideration the gravity of the offences concerned in imposing disciplinary actions, and that the Force is inclined towards adopting an ‘educational’ instead of ‘punitive’ approach in dealing with the occasional and minor offenders. It is the prerogative of the Commissioner of Police to

decide on the disciplinary action to be taken in each case. Nevertheless, the IPCC will offer its observations and comments regarding the follow-up/disciplinary actions to be taken for the Force Management's consideration where necessary and appropriate.

- (c) In most of the substantiated "NOD" complaint cases, there was no evidence to support that the complainers deliberately failed to carry out their duties. Rather, the evidence seemed to indicate that the complainers were simply not familiar with the Police orders/rules/regulations governing what they should do in the particular situation. To reduce complaints of "NOD", the Force may consider what more they can do to help police officers to make themselves fully conversant with Police orders/rules/regulations and be familiar with their practical application.
- (d) The Police have taken measures to educate the public about the restriction and/or authority of police officers with a view to reducing complaints. Notwithstanding this, "NOD" complaints still rank top among the various types of complaints against the Police. It is recommended that from the perspective of complaint prevention, the Police should further step up its efforts in enhancing the public's knowledge in police work so as to eliminate complaints arising from misunderstanding. On the other hand, police officers should be encouraged to strive for excellence and, where resources permit, take one step more to serve the public when carrying out their duties.

19. The number of "NOD" allegations received in the first five months of 2004 (572 allegations) has decreased by 37.5% when compared with the statistics of the same period last year (915 allegations). It is hoped that this decreasing trend can be maintained under the Police's continual pledge for quality service to the public.

Presentation

20. This paper is issued for discussion at the IPCC In-house Meeting and

the closed and open parts of the Joint IPCC/CAPO Meeting to be held on 22 July 2004. Members are invited to give their views on the subject at the meeting.

Independent Police Complaints Council Secretariat
July 2004

Ref: IPCC 8/04/02/5
c.c. IPCC 9/02