

IPCC Paper No. 5/03
Analysis on 'Fabrication of Evidence' Complaints

Purpose

This paper provides an analysis of the 'Fabrication of Evidence' complaints endorsed by the Independent Police Complaints Council (IPCC) in the year 2002.

Introduction

2. The Police are entrusted with power under law to summons/arrest/charge those who have or are suspected to have breached the law when there is sufficient prima facie evidence to do so. According to the Complaints Against Police Office Manual Chapter 3-01, if a complainant alleges that a case has been brought against him based on false evidence made up by the Police, an allegation of 'Fabrication of Evidence' ('FOE') will be registered. If a police officer is found to have fabricated evidence against a citizen for an offence, he will be liable to criminal action and subject to disciplinary proceedings.

3. The common allegations made by complainants of 'FOE' complaints are:-

- (a) the police officers fabricated the contents of the cautioned statements;
- (b) the police officers planted evidence (such as dangerous drug/swag/weapon) on the complainants; and
- (c) the police officers made false accusations against the complainants.

Statistics Regarding 'FOE' Allegations Endorsed by the IPCC in the Years 2000, 2001 and 2002

4. The number of 'FOE' allegations endorsed by the IPCC and their percentage to the total number of allegations endorsed in the years 2000, 2001 and 2002 were 328 (5.5%), 309 (5.1%) and 277 (4.5%) respectively. Two 'FOE' allegations were 'Substantiated' and one allegation was 'Not Fully Substantiated' in each of 2000 and 2002. None of the allegations was substantiated in 2001. The majority of the rest of the 'FOE'

allegations in the three years were either found to be 'False' (54.6%, 55.3% and 54.9% respectively of the total allegations), or were 'Withdrawn' by the complainants (17.4%, 17.5% and 18.1% respectively of the total allegations) or 'Not Pursuable' (9.8%, 12.9% and 13.4% respectively of the total allegations). A table showing the number of 'FOE' allegations endorsed by the IPCC by result of investigation in these three years is at **Annex 1**.

Analysis of the 'FOE' Allegations Endorsed by the IPCC in 2002

5. The Secretariat has examined in detail the 'FOE' complaints endorsed by the IPCC in 2002 and the findings are set out below.

(A) Classifications of Allegations

6. Of the 277 'FOE' allegations endorsed by the IPCC in 2002, 2 (0.7%) were classified as 'Substantiated', 1 (0.4%) as 'Not Fully Substantiated', 29 (10.5%) as 'Unsubstantiated', 152 (54.9%) as 'False', 6 (2.2%) as 'No Fault', 37 (13.4%) as 'Not Pursuable', and 50 (18.1%) as 'Withdrawn'.

(B) Circumstances under which the Allegations were Made

7. All the 277 'FOE' allegations endorsed by the IPCC in 2002 were related to criminal, traffic or other offences. Of these, 238 (85.9%) were related to criminal offences, 26 (9.4%) were related to traffic offences, and 13 (4.7%) were related to other offences (e.g. 'Obstruction in Public Place', 'Littering' etc.). A table showing the number of 'FOE' allegations endorsed in 2002 and the types of offences that the allegations were related to is at **Annex 2**.

8. In 2002, the three major types of criminal offences to which the 'FOE' allegations were related, in descending order, were dangerous drugs related offences (84 allegations, 30.3%), other criminal offences (including 'Blackmail', 'Claiming to be a Member of Triad Society' etc.) (52 allegations, 18.8%), and offences related to 'Resisting Arrest'/'Obstructing Police' (36 allegations, 13%).

(C) Relevance of Court Verdicts in Determining Classification of 'FOE' Allegations

9. A total of 297 complainants were involved in the 277 'FOE' allegations endorsed in 2002. 267 complainants (89.9%) were charged with criminal/traffic/other offences of whom 211 (79% of the 267 complainants who were charged) were subsequently convicted, while no prosecution action was taken against the remaining 30 complainants (10.1%) following Police investigation of their cases. A table showing the breakdown of these complainants and their related charges is at **Annex 3**.

10. For 'FOE' allegations that are related to cases being heard in court, information related to the complaints may be revealed when the complainants, complainees, and other witnesses are examined in the trial. CAPO and the IPCC may draw direct reference from the court's comments or the trial result when deciding on the classification of a related complaint. For such cases, the allegations would be regarded as judicially resolved. This is most common of cases in which the complainants are found by the court to be guilty of the offences alleged to have been fabricated by the Police (such allegations will consequently be classified as 'False'), or the complainees are convicted of charges brought against them arising from 'FOE' allegations (such allegations will normally be classified as 'Substantiated'). On the other hand, there are instances in which the trial results do not have a conclusive bearing on the credibility or otherwise of the complainants/complainees. Moreover, the standard of proof for classifying complaints in the police complaints system is lower than that of criminal prosecutions and the strict rules on admissibility of evidence adopted by the court do not apply. For instance, hearsay evidence, which would normally be excluded in court, can be considered for the purpose of deciding on the classification of a complaint. **Case 1 of Annex 4** and **the case in Annex 5** are such examples. In these two cases, the 'FOE' allegations against the complainees, despite their acquittal after trial, were found to be substantiated/partially substantiated after taking into account evidence not acted upon by the court.

(D) Defaulter Actions in Substantiated 'FOE' Allegations

11. Of the 277 'FOE' allegations endorsed by the IPCC in 2002, 2 were classified as 'Substantiated'. Summaries of the two 'Substantiated' cases are at **Annex 4**. The complainees involved in the two cases were respectively charged with 'Doing an Act Tending and Intended to Pervert the course of Public Justice' (coaching the complainant to give a false statement) and 'Perverting the course of Public Justice' (fabricating the complainant for committing an offence). Of the 4 complainees involved in the two cases, 3 were convicted and given custodial sentence. The remaining one, despite acquittal after trial, was given a recorded warning.

(E) Follow-up Action in the Not Fully Substantiated 'FOE' Complaint Case

12. Since 'FOE' is a very serious allegation, ample evidence is required to substantiate the allegation. An 'FOE' allegation will be classified as 'Not Fully Substantiated' when there is some reliable evidence to support the allegation made by the complainant but insufficient to fully substantiate the complaint.

13. One 'FOE' allegation was classified as 'Not Fully Substantiated' in 2002. A summary of the case is at **Annex 5**. The 6 complainees involved in the case were charged with, inter alia, 'Doing Acts Tending and Intended to Pervert the course of Public Justice' and/or 'Misleading a Police Officer by Making a False Statement'. The judge stated clearly in the verdict that there was grave doubt about the evidence given by the complainees; however, he could not be satisfied that their statements were false and made with the intention of perverting the course of justice. As the charges could not be proved beyond reasonable doubt, the complainees were acquitted. Nevertheless, based on the court's comment and the evidence available, CAPO classified the allegation of 'FOE' as 'Not Fully Substantiated' and warnings with entries in their divisional record files were given to the complainees.

14. It is noted that after the conclusion of the court case, the Police sought the advice of the Police Legal Adviser (PLA) as to whether a disciplinary hearing should be held against the complainees despite their acquittal. The PLA advised that pursuant to section 37(2) of the Police

Force Ordinance Cap. 232, no police officer who has been acquitted by a court of any crime or offence shall be tried departmentally on the same charge. Nevertheless, on review of the disciplinary procedures about the complainers' professionalism and conduct in handling the complainant's crime case, the PLA advised that one of the complainers was to be charged with two counts of 'Contravention of Police Orders' for failing to make notebook entries regarding his action taken in conducting the investigation into the complainant's crime case. The default action against the complainer is in progress.

(F) Unsubstantiated Allegations

15. The IPCC endorsed 29 'FOE' allegations in 2002 involving 29 complainants as 'Unsubstantiated'. Among the 29 complainants, 26 were involved with charges for criminal/traffic/other offences.

16. Of the 29 'Unsubstantiated' allegations, 4 were so classified notwithstanding that the complainants concerned were convicted of the related charges after trial since there was no corroborative evidence to support either the complainant's or the complainer's version upon CAPO's investigation. 22 allegations were classified as 'Unsubstantiated', despite the acquittal of the 22 complainants concerned, as the court had ruled that there was a case to answer, which tended to support that the Police had prima facie evidence to lay the charges against the complainants. The remaining 3 allegations were so classified due to the lack of supporting evidence to prove the complainants' allegations that the actions taken by the Police in their cases (i.e. warning, non-prosecution of the opposite party, and recording of an inaccurate record of interview) were based on fabricated evidence.

(G) False Allegations

17. In 2002, 152 'FOE' allegations endorsed by the IPCC were classified as 'False', representing 54.9% of all the 'FOE' allegations endorsed in the year. Among the 152 'False' allegations, 137 (90.1%) were so classified because the complainants were convicted by the court and/or the court commented that the versions of the complainers were reliable and credible whereas that of the complainants were unreliable. The remaining 15 (9.9%) of the allegations were classified as 'False' because there was evidence (e.g. statements from independent witnesses

or other circumstantial evidence) to disprove the complainants' accusations.

18. When a complaint is classified as 'False', CAPO will consider, in consultation with the Department of Justice as necessary, prosecuting the complainant for misleading a police officer. For the complainants involved in the 'False' allegations endorsed in 2002, all of them were warned by the Police and none was prosecuted.

(H) No Fault Allegations

19. The IPCC endorsed 6 'No Fault' allegations of 'FOE' in 2002. Of these, 2 (33.3%) were so classified as the complainants had misunderstood the police procedures/actions and the rest (4 allegations, 66.7%) were so classified because there was sufficient and reliable evidence indicating that the actions of the police officers concerned were fair and reasonable in the circumstances. Summaries of the six 'No Fault' cases are at **Annex 6**.

(I) Withdrawn Allegations

20. The 50 complainants who withdrew their complaints of 'FOE' were involved in criminal/traffic/other offences. Of these 50 complainants, 44 were charged by the Police for the offences. 42 (95.5%) out of the 44 complainants withdrew their complaints when the investigation was re-opened after the court cases were concluded and the complainants did not give any specific reasons for their withdrawal. The remaining 2 complainants withdrew their complaints before their cases were heard or concluded in court.

(J) Not Pursuable Allegations

21. Of the 39 complainants involved in the 'Not Pursuable' cases, 31 (79.5%) were charged with criminal/traffic/other offences and 21 were convicted after trial. These cases were classified as 'Not Pursuable' because the complainants did not respond to CAPO's investigation after their court cases were concluded.

IPCC Secretariat's Observations

22. Having examined the 277 'FOE' allegations endorsed in 2002, the IPCC Secretariat has the following observations:-

- (a) There was a decrease in the number of 'FOE' complaints in the past 3 years. (*Paragraph 4*)
- (b) The proportions of 'Substantiated' (including 'Not Fully Substantiated') allegations of 'FOE' were relatively low in the three years under review. (*Annex 1*)
- (c) Most, if not all, of the 'FOE' allegations are related to criminal/traffic/other offences with which the complainants are involved. A large number of such complainants in 2002 were involved in dangerous drugs offences. (*Paragraphs 7, 8 and Annex 2*)
- (d) For cases being heard in court, reference will be drawn from the trial results (including the court's comments) in determining the classification of the related 'FOE' allegations. However, additional evidence or other information related to the complaint which has not been adduced in or acted upon by the court would also be considered where appropriate. (*Paragraph 10*)
- (e) The acquittal of a complainee does not mean that he will naturally go free. As illustrated from Case 1 of Annex 4 and the case in Annex 5, if there is evidence to prove that the complainee concerned has committed the alleged misconduct, the 'FOE' allegation against him can still be classified as 'Substantiated' or 'Not Fully Substantiated'. (*Paragraph 10 and Annexes 4 and 5*)
- (f) The Police did take a serious view on the 'Substantiated' and 'Not Fully Substantiated' allegations of 'FOE' in view of their serious nature. In the 2002 cases, apart from the three complainees who were convicted and given custodial sentence, the Police also gave recorded warnings to seven

complainees notwithstanding their acquittal in court.
(*Paragraphs 11,13, 14, and Annexes 4 and 5*)

(g) Legal advice is that no officer who has been acquitted by a court of any crime or offence shall be tried departmentally on the same charge. Nonetheless, the complainee concerned may be subject to disciplinary proceedings in respect of any other misconduct or fault found of him in the investigation of the complaint case. Disciplinary action may also be taken against other police officers for any misconduct or fault revealed during the complaint investigation even if such misconduct or fault is not directly related to the complaint.
(*Paragraph 14*)

(h) The court's ruling is a major determining factor in the classification of the related 'FOE' complaint, particularly if such allegations were raised and examined in court. The allegations would be considered as judicially resolved. A substantial number of 'FOE' allegations endorsed in 2002 (152 allegations, 54.9%) were classified as 'False'.
(*Paragraphs 10 and 17*)

(i) Though not frequent, there are complaints of 'FOE' raised by members of the public as a result of misunderstanding of the Police procedures or actions. In such cases, the allegations are classified as 'No Fault' to accord fairness to the complainees concerned. (*Paragraph 19 and Annex 6*)

(j) It is also discerned that many complainants choose to withdraw their 'FOE' complaints or not to respond to CAPO's enquiry after the court cases on the related offences are concluded. (*Paragraphs 20 and 21*)

Presentation

23. This paper is issued for discussion at the IPCC In-house Meeting and the closed part of the Joint IPCC/CAPO Meeting to be held on 3 April 2003. Members are invited to give their views on the subject at the meeting.

Independent Police Complaints Council Secretariat
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