

**132nd MEETING OF
THE INDEPENDENT POLICE COMPLAINTS COUNCIL (IPCC) MEETING WITH
THE COMPLAINTS & INTERNAL INVESTIGATIONS BRANCH (C&IB)
HELD AT THE IPCC SECRETARIAT OFFICE
AT 1640 HOURS ON THURSDAY, 27 MARCH 2008**

Present: Mr Ronny WONG Fook-hum, SC, JP (Chairman)
Dr LO Wing-lok, JP
Mr Edward PONG Chong, BBS, JP
Mr HUI Yung-chung, BBS, JP
Dr Michael TSUI Fuk-sun
Mrs Helena YUEN CHAN Suk-yee
Mr Barry CHEUNG Chun-yuen, JP
Mr WONG Kwok-yan
Mr Clement TAO Kwok-lau, BBS, JP
Ms Emily CHEUNG Mui-seung
Mrs Philomena LEUNG, 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&IB
Mr J.P. RIBEIRO, SSP CAPO
Mr CHEUNG Kin-kwong, SP CAPO HQ (Joint Secretary)

In Attendance: Mr Eddie WONG, SAS (PS)
Mr Henry CHAN, SAS (1)
Ms Fiona LI, SAS (2)
Miss Rainbow FU, AS(3)
Miss Moira LAU, AS(PS)1
Mr LEE Woon-luen, SP CAPO HKI
Ms CHUNG Wing-man, CIP Team 6, CAPO HKI
Mr YUNG Hoi-shing, SIP Team 6a CAPO HKI
Ms CHAN Shuk-ming, SIP IPCC C&IB
Mr WU Wing-cheong, SSGT CAPO RC

Absent with Apologies: Hon Daniel LAM Wai-keung, SBS, JP (Vice-chairman)
Dr Hon LUI Ming-wah, SBS, JP (Vice-chairman)
Dr Hon Joseph LEE Kok-long, JP (Vice-chairman)
Mr YEUNG Yiu-chung, BBS, JP
Prof Benjamin TSOU Ka-yin, BBS
Dr TSE Tak-fu, BBS
Ms Priscilla WONG Pui-sze, JP
Dr Lawrence LAM Chi-kit, MH

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 27 MARCH 2008 (Open Part)

2. The minutes of the last meeting (open part) were confirmed without amendment.

II CAPO'S CRIMINAL AND DISCIPLINARY CHECKLIST

3. The Chairman invited CAPO to brief the meeting regarding CAPO's Criminal and Disciplinary Checklist ending 5 March 2008.

4. CSP C&IIB informed the meeting that the checklist was as tabled and he had nothing to highlight.

5. The Chairman noted that there were several cases in the checklist, namely A50, A109 and A111, in which police officers were warned and advised to exercise due care when completing Fixed Penalty Tickets. The Council opined that there were many Fixed Penalty Tickets issued daily by the police and officers should exercise due care when completing those tickets. The Council would like to know if there were sufficient training given to officers concerned.

6. CSP C&IIB responded that training on how to complete the Fixed Penalty Tickets were given to police officers when they joined the Force or when they attended the continuation training. Officers of Central Traffic Prosecution Division (CTPD) would closely monitor the mistakes found on the Fixed Penalty Tickets and regularly provide the information to the Formation Commanders concerned so that they could remind their officers to exercise due care and pay attention to some common errors when completing the tickets. With regard to the cases that were mentioned, CAPO would

highlight the issue in the "Matters of Interest" of the CAPO's Monthly Report to remind all frontline officers of the need to exercise extra care when completing the Fixed Penalty Tickets.

7. Dr LO Wing-lok asked if Fixed Penalty Tickets would be automatically cancelled in the event the information contained therein, such as the location, date and time was wrong. He opined that if the record was wrong, police should not prosecute the offender. He would like to enquire how the police would deal with that.

8. CSP C&IIB replied that in general term when information on the Fixed Penalty Tickets were found to be wrong and according to experience, many of the tickets would be cancelled. However, every case needed to be examined on a case-by-case basis in order to ascertain if the wrong information would affect the subsequent prosecution. Because of that, officers were required to exercise extra care when completing the tickets. Should any tickets be eventually cancelled, it would mean wastage of resources.

III CAPO'S MONTHLY STATISTICS

9. CSP C&IIB briefed the meeting that 241 complaints were received in January 2008, an increase of 13.1% (+28 cases) when compared with the statistics of the previous month. The figure for December 2007 was 213 cases. For the month of February 2008, 214 complaints were received, which was a decrease of 11.2% (-27 cases) when compared with the statistics of the previous month.

10. The number of 'Neglect of Duty' complaints received in January 2008 was 101 cases, an increase of 8.6% (+8 cases) when compared with the statistics of the previous month. The figure for December 2007 is 93 cases. For the month of February 2008, the number of 'Neglect of Duty' complaints received was 82 cases, which was a decrease of 18.8% (-19 cases) when compared with the statistics of the previous month.

11. The number of 'Misconduct/Improper Manner & Offensive Language' complaints received in January 2008 was 79 cases, an increase of 41.1% (+23 cases) when compared with the statistics of the previous month. The figure for December 2007 is 56 cases. For the month of February 2008, the number of 'Misconduct/Improper Manner & Offensive Language' complaints received was 71 cases, which was a decrease of 10.1% (-8 cases) when compared with the statistics of the previous month.

12. The number of 'Assault' complaints received in January 2008 was

41 cases, an increase of 13.9% (+5 cases) when compared with the statistics of the previous month. The figure for December 2007 is 36 cases. For the month of February 2008, the number of 'Assault' complaints received was 39 cases, which was a decrease of 4.9% (-2 cases) when compared with the statistics of the previous month.

13. In the first two months of 2008, a total of 455 complaints were received. It represented an increase of 13.2% (+53 cases) when compared with 402 cases of the same period last year.

14. The total number of 'Neglect of Duty' complaints received in the first two months of 2008 was 183 cases. It represented an increase of 10.2% (+17 cases) when compared with 166 cases of the same period last year.

15. The total number of 'Misconduct/Improper Manner & Offensive Language' complaints received in the first two months of 2008 was 150 cases. It represented an increase of 30.4% (+35 cases) when compared with 115 cases of the same period last year.

16. The total number of 'Assault' complaints received in the first two months of 2008 was 80 cases. It represented an increase of 6.7% (+5 cases) when compared with 75 cases of the same period last year.

17. Overall speaking, there was a slight increase in the complaint figures for the first two months of 2008 but no particular trend was identified as it might involve some seasonal factors.

18. Mr Clement TAO Kwok-lau noted that a significant number of complaints of "Offensive Language", "Misconduct" and "Neglect of Duty" arose during the course of arrest actions on suspects. He would like to know if there were many cases that did not stem from arrest actions but involved officers using offensive language whilst walking on beat or failing to take summons actions against illegally parked vehicles.

19. CSP C&IIB responded that with regard to "Misconduct" allegation, CAPO did not find many cases from members of the public who alleged officers on beat using offensive language. That kind of complaint did not show any increasing trend. Regarding the allegations of not taking enforcement action against illegally parked vehicles, CAPO did receive complaints of similar nature on occasions. However from statistical point of view, the figure was not much.

IV

STATISTICAL REPORT ON THE WORK OF IPCC IN 2007

20. Secy/IPCC briefed the meeting on the statistical work report of IPCC in 2007. In 2007, a total of 2,509 investigation reports were endorsed. This represented an increase of 395 cases when compared with 2,114 cases endorsed in 2006. Of these 2,509 complaint cases, 1,551 were normal cases and the remaining 958 cases were complicated ones. The 2,509 endorsed cases contained 4,341 allegations, among which, 1,182 were fully investigated. Of the fully investigated allegations, 36 were classified as "Substantiated", 64 as "Substantiated Other Than Reported" and 5 as "Not Fully Substantiated". The substantiation rate in respect of fully investigated allegations was 8.9%.

21. The three most common allegations against the Police in 2007 were "Neglect of Duty" which stood at 1,551 or 35.7%, followed by "Misconduct / Improper Manner / Offensive Language at 1,539 or 35.5% and "Assault" at 587 or 13.5%.

22. IPCC is primarily concerned with the comprehensiveness and impartiality of the investigations carried out by CAPO. In 2007, a total of 1,700 queries / suggestions were raised by IPCC with CAPO. Among them, 1,205 or 70.9% were accepted and 495 or 29.1% were met with satisfactory explanations by CAPO.

23. As a result of IPCC's queries or suggestions, the results of investigation on 82 allegations were changed. Among them, four were changed from "No Fault", "Withdrawn" or "Not Pursuable" to "Substantiated"; two from "No Fault" and "Unsubstantiated" to "Not Fully Substantiated" and 45 from "No Fault" to "Unsubstantiated". In addition, there were also eight "Substantiated Other Than Reported" findings added to the results of investigation. IPCC also made seven recommendations to CAPO for improvement of police procedures. Three of them were accepted and the remaining four were satisfactorily explained.

V

A COMPLAINT CASE FOR DISCUSSION WITH CAPO

24. Secy/IPCC said that the complaint stemmed from the complainant (COM)'s dissatisfaction with the Police for laying the wrong particulars of offence on a traffic summons in which COM was involved, resulting in the acquittal of the defendant by the court. On the material day, COM was riding a motorcycle and drove past a sewage collection vehicle parked along a road. At that juncture, a worker (the Worker) who was pushing a sewage collection bucket suddenly dashed out from the rear of the sewage collection

vehicle. COM immediately veered his motorcycle but the bucket still hit the offside front of his motorcycle. As a result, COM fell onto the ground and sustained minor injuries.

25. After investigation, the Worker was found to be at fault, and CTPD was to summons the Worker for the offence of 'Jaywalking'. A Sergeant of CTPD (COMEE 1) was responsible for examining the case and laying the particulars of offence on the defendant summons. He inputted the data into the Case and Summons Management System (CASEMAN) which automatically generated the summons to be issued to the Worker, while a Typist (COMEE 3) of the same Division inputted the relevant data into CASEMAN which automatically generated a witness summons to be issued to COM.

26. The Worker was acquitted of the offence after trial. The Magistrate opined that the prosecution had laid the wrong particulars of offence [being a pedestrian who was using the road did negligently endanger the safety of your own (i.e. the Worker)] on the defendant summons, as the Worker appeared to have endangered another person (i.e. COM)'s safety rather than that of his own.

27. Having learned about the verdict and the court's comment, COM lodged a total of three allegations with CAPO as follows:

- (i) that COMEE 1 had laid the wrong particulars of offence on the defendant summons, resulting in the acquittal of the Worker by the court [**Allegation (a) – 'Neglect of Duty'**];
- (ii) that the Police (COMEE 2) failed to summons the Worker again with the correct offence after his acquittal [**Allegation (b) – 'Police Procedures'**]; and
- (iii) that COMEE 3 wrongly typed COM's age as 10 on the witness summons [**Allegation (c) – 'Neglect of Duty'**].

28. COMEE 1 denied allegation (a), and claimed that he had carefully examined COM's traffic case with due consideration to the word 'endanger' in s.48 of the Road Traffic Ordinance (Cap 374) (RTO) which states that 'a

pedestrian who, in using any road, negligently endangers his own safety or that of any other person commits an offence'. COMEE 1 perceived that the word 'endanger' would refer to an act which posed a potential danger, i.e. something which has not yet taken place. Since COM was already injured in the traffic accident while the Worker's act posed a danger to his own safety, COMEE 1 considered that the Worker instead of COM should be the 'person affected' in the traffic case, and laid the particulars of offence on the defendant summons as 'being a pedestrian who was using the road did negligently endanger the safety of *your own* (i.e. the Worker)'. CAPO also pointed out that COMEE 1's interpretation of the word 'endanger' was supported by two senior supervisory officers of CTPD.

29. CAPO commented that the court prosecutor held the same view as COMEE 1 during the trial, and decided not to amend the particulars of offence on the defendant summons. Although the Magistrate viewed otherwise and acquitted the Worker, CAPO considered that the acquittal was solely attributable to the Magistrate's different interpretation of the law. CAPO concluded that COMEE 1 had fulfilled his duty to examine the case. In the absence of any conclusive evidence to support COM's claim, CAPO classified allegation (a) – 'Neglect of Duty' as 'Unsubstantiated'.

30. In response to allegation (b), CAPO stated that the Magistrate acquitted the Worker on the benefit of a doubt. In accordance with s.31 of the Criminal Procedure Ordinance (Cap 221), if a person has been tried by a court for an offence and acquitted, he cannot be tried again for that or substantially the same offence. Therefore, the Police could not summons the Worker again for the same offence (i.e. 'Jaywalking') under RTO, and no fault could be attributed to the Police in respect of this allegation. Allegation (b) – 'Police Procedures' was thus classified as 'No Fault'.

31. Concerning allegation (c) – 'Neglect of Duty', as COMEE 3 admitted the typo made, CAPO classified the allegation as 'Substantiated'.

32. IPCC agreed with CAPO's classification of allegations (b) and (c) but was unable to subscribe to the 'Unsubstantiated' classification for allegation (a). IPCC considered that there was clear and convincing evidence showing that COMEE 1 had neglected his duty, and that the allegation should be re-classified as 'Substantiated'.

33. CAPO's investigation revealed that COMEE 1 was well aware of the fact that COM had sustained injuries in the accident as a result of the negligent act of the Worker. On this basis, and taking into account that the relevant provision of RTO was straightforward and unambiguous, the proper charge to be laid on the defendant summons should be 'you (i.e. the Worker) did negligently endanger the safety of another person (i.e. COM) in addition to your own'. As an experienced Sergeant and a Summons Processing Officer (SPO) of CTPD, COMEE 1 should be fully conversant with his job and well versed with details of traffic-related legislations and summoning actions. It was clear that the incomplete and faulty charge laid by COMEE 1 on the defendant summons constituted an obvious sign of negligence on COMEE 1's part to thoroughly discharge his duties as a SPO of CTPD.

34. IPCC pointed out that when the Worker committed the negligent act, it would pose a potential danger equally to himself and any other road users including COM. Therefore, COMEE 1's reasoning for not including COM as a 'person affected' on the basis that COM had already sustained injuries was invalid.

35. IPCC observed that the court prosecutor did point out that injustice might be caused to the Worker when an amendment to a material particular was made to the summons at a late stage of the proceedings, especially when the Worker was unrepresented in the trial. IPCC also noted that after the Magistrate had queried the particulars of offence laid on the defendant summons, the court prosecutor had invited the Magistrate to amend the information stated therein but was declined. This indicated that the court prosecutor also considered the original particulars of the charge to be inappropriate. The prosecution did not amend the summons at the end mainly because of procedural considerations, and could not be taken to mean that the court prosecutor shared the same view as COMEE 1.

36. After several rounds of exchanges, CAPO concurred with IPCC's observations and agreed to re-classify allegation (a) as 'Substantiated'. COMEE 1 would be advised to be more cautious in handling similar cases in future.

37. Given COMEE 1's interpretation of the word 'endanger' in RTO was supported by two senior supervisory officers, IPCC considered it

pertinent for CTPD to brief all their staff of the investigation results of this complaint, and tender service quality counselling to the two senior supervisory officers so that they were put in the correct perspective as regards the interpretation of RTO and the laying of the particulars of offence on defendant summons with a view to avoiding recurrence of similar incidents in future. CAPO subscribed to IPCC's suggestion and would request the Chief Superintendent of Police/Traffic (CSP Traffic) to take appropriate follow-up actions. CAPO would also request CSP Traffic to remind CTPD officers to be vigilant in data input when processing summonses through CASEMAN. IPCC then endorsed the investigation report.

38. CSP C&IIB expressed that CAPO did not have any supplementary comments to make.

39. Dr LO Wing-lok noted that although CAPO accepted IPCC's comments to re-classify allegation (a) as "Substantiated", the action taken against the officer concerned was only advice without record, which was the same course of action taken in respect of the typist for making one typo. He asked CAPO to explain the criteria adopted by the police in deciding what course of action would be taken commensurate with the degree of negligence.

40. CSP C&IIB replied that the Force would have different level in sanctioning the officers who committed mistakes or were found in breach of discipline. The lightest sentence was verbal advice and the most serious was dealt with by way of disciplinary proceedings which might possibly lead to the dismissal of an officer. There was quite a broad platform in which disciplinary action could be taken. Since the nature and background of each case was different, it was not possible to have a hard and fast rule to decide how the cases were to be dealt with. The nature, fact and severity of individual case would be considered to determine the appropriate actions. The recommendations would be sent to the Formation Commander concerned for consideration whether or not the recommended actions would be taken against the officer. All the actions taken could be found in CAPO's Criminal and Disciplinary Checklist. In some cases, the actions taken against the officers might not be punitive but that of advisory in order that the officer could be able to rectify the problem and would not commit the same mistake in future.

41. Dr LO Wing-lok opined that the fault involved in framing a wrong charge was obviously more serious than that of making one typo but the

actions taken against the two officers were the same. He queried if advice with record was already a serious penalty in the police system.

42. CSP C&IIB responded that for actions taken against the officers, even if there was no record made, the two officers in the instant case would have an entry in their complaint records to reflect the mistakes made. To certain extent, it was already a serious record to the officer. Under the current police complaints system, there was a need to keep that record. The actions recommended by CAPO to advise the officers concerned were considered appropriate. He further elaborated that one might feel that an officer who made a typo mistake and another officer who framed a wrong charge would lead to different results. The fact was that in terms of prosecution procedures, a typo mistake and some mistakes in listing the particulars of the charge could also result in the same consequence. It could hardly be said that the two mistakes were very different in nature. CAPO considered that the course of actions taken against the officers in the instant case was appropriate.

43. Dr LO Wing-lok also noted that the complaint case had been investigated for a long time from November 2006 to March 2008 with much resources spent. He wondered if CAPO had chosen to admit minor mistakes such as a typo but would only take heed of IPCC's comments after several rounds of correspondences, yet the actions taken against the officers concerned were the same. The instant case was another example where CAPO tended to respect the feelings of the officers concerned in the handling of complaints.

44. CSP C&IIB replied that there were several rounds of correspondence between the IPCC and CAPO with some delicate points of view discussed. That was exactly an important part of the complaint investigation which was to find out the facts. Based on the facts and questions surfaced, CAPO would then examine carefully if there was any fault on the part of the officers concerned. Each case would be looked into carefully and it took time. That kind of investigation was necessary which fulfilled the expectation of members of the public on the IPCC and CAPO. If the complainant accepted to resolve the complaint by way of Informal Resolution in the early stage, the case could be processed in a simpler way with public resources saved. Since the complainant did not accept the offer of Informal Resolution, CAPO was obliged to conduct a full investigation. As a result, a lot of resources were spent on the instant case. From members of the public's point of view, they should understand there was a need for CAPO to do the job in order to ensure the existing complaints system and the IPCC's monitoring role were effective.

V

ANY OTHER BUSINESS AND CONCLUSION OF THE MEETING

45. There being no other business, the open part of the meeting was concluded at 1724 hours.

(CHEUNG Kin-kwong)
Joint Secretary
Complaints and Internal
Investigations Branch

(Brandon CHAU)
Joint Secretary
Independent Police
Complaints Council