

投訴警方獨立監察委員會

秘書處： 香港灣仔告士打道 56 號
東亞銀行港灣中心 10 樓



INDEPENDENT POLICE COMPLAINTS COUNCIL

SECRETARIAT : 10/F, Bank of East Asia Harbour
View Centre,
56 Gloucester Road,
Wan Chai, Hong Kong

Press Release

IPCC TO DISCUSS A COMPLAINT CASE REGARDING POLICE'S LAYING OF WRONG PARTICULARS OF OFFENCE ON TRAFFIC SUMMONS

The Independent Police Complaints Council (IPCC) discussed the captioned complaint case with the Complaints Against Police Office (CAPO) at the Joint IPCC/CAPO Meeting today.

Case Background

The instant 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. As a result, COM fell onto the ground and sustained minor injuries.

After investigation, the Worker was found to be at fault, and the Central Traffic Prosecution Division (CTPD) was to summons the Worker for the offence of 'Jaywalking'. A Sergeant of the 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.

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.

Allegations

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

警民權益 同樣重視 監察投訴 獨立公平

- (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’].

CAPO’s Investigation

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 the CTPD.

CAPO commented that the court prosecutor held the same view as COMEE 1’s 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’.

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’.

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

IPCC's Observations

IPCC agreed with CAPO's classification of allegation (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'.

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 RTO was written in a straightforward and unambiguous fashion, 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 SPO of the CTPD, COMEE 1 should be fully conversant with his job and well versed with details of traffic-related legislations and summoning actions. It was apparent 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 the CTPD.

IPCC pointed out that when the Worker committed the negligent act, it would equally pose a potential danger 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. In fact, COM's injury was an aggravating factor reinforcing the Worker's negligent act instead of a determining factor for not including COM as a 'person affected' in the defendant summons.

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 noticed 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 was mainly due to procedural considerations, and could not be taken to mean that the court prosecutor shared the same view as COMEE 1's.

CAPO's Response & IPCC's Recommendations

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.

Taking into account that COMEE 1's interpretation of the word 'endanger' in RTO was supported by two senior supervisory officers, IPCC considered it pertinent for the CTPD to brief all their staff of the investigation results of this complaint, and particularly tender service quality counseling 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 was satisfied with CAPO's response and endorsed the investigation report.

Independent Police Complaints Council
27 March 2008