

## **Press Release**

### ***The IPCC impartially examined complaints concerning crime investigation Police officers should adhere to proper procedures for investigation***

(HONG KONG – 7 September 2018) The Independent Police Complaints Council (IPCC) introduced its twenty-fourth issue *IPCC Newsletter* today. The cover story of this newsletter featured four complaint cases stemmed from crime investigation. In addition, the newsletter covered a feature article on the result of public opinion survey announced in July 2018 as well as a series of stakeholders' engagement activities. Miss Lisa Lau Man-man (Chairman of Publicity and Survey Committee), accompanied by Mr Daniel Mui (Deputy Secretary-General, Operations), hosted the press briefing.

In case one of the cover story, while shopping in a supermarket, the Complainant found his personal belongings in the trolley had gone missing and thus reported this case to the Police. The case was handled by three police officers (Complainees 1-3). About a year after the incident, the Complainant called the Police via phone for enquiry and learnt that his case was curtailed. He claimed that while reviewing the supermarket CCTV footage, he realized that the suspect took his bag and used the suspect's own membership card to check out at the cashier. As a result, the Complainant believed that the police should use this clue to identify the suspect instead of closing the case hastily. He therefore alleged that COMEEs 1-3 failed to investigate the case properly [Allegation 1: Neglect of Duty].

COMEE 3 was informed by the manager of the supermarket that one membership card account could be used by several persons and the supermarket could not provide transaction records and customer information of the membership cards. Therefore, he considered that all lines of investigation had been exhausted and made recommendation to COMEEs 1-2 for curtailment of the case. They both agreed with COMEE 3's views. After investigation, Complaints Against Police Office (CAPO) revealed that if police provided the location and time of the membership card transaction, the membership card company could retrieve the personal particulars of the card user from their transaction records. CAPO considered that COMEE 3, who failed to investigate the case properly and had subsequently misled COMEEs 1-2, should bear the main responsibility and the allegation against COMEE 3 should be classified as "Substantiated". On the other hand, as COMEE 1 had only served for four years in the Force and COMEEs 1-2 were mainly misled by COMEE 3, the allegation

against COMMEs 1-2 should be classified as “Unsubstantiated”.

IPCC disagreed with the above classifications and opined that COMEEs 1-2, who were supervisors to COMEE 3, should provide proper guidance to him. Moreover, short service experience was not a valid excuse to exonerate the negligence in making a wrong decision to curtail the case prematurely. The IPCC recommended that the allegation against COMEEs 1-2 should be re-classified as “Substantiated” and all three COMEEs were given advices without Divisional Record File (DRF) entry.

In complaint case two, the Complainant had an argument with her brother about the ownership of their mother’s guesthouse. During the dispute, the Complainant became emotional and used an iron pole to break a laundry room door in the guesthouse. The Complainant’s brother called Police. Three police officers attended the scene for inquiries and arrested the Complainant for “Criminal Damage”. After the arrest, the Complainant requested to meet her mother but her request was rejected. The Complainant thus filed a complaint against the three police officers (COMEEs 1-3) [Allegation 1: Neglect of Duty]; and alleged that COMEE 1 had failed to investigate the case properly at the scene, and arrested her based solely on her brother's one-sided words [Allegation 2: Neglect of Duty].

After investigation, CAPO opined that COMEEs 1-3 considered that the Complainant's mother might later become a prosecution witness. For safety concern of Complainant’s mother, it was reasonable for them to refuse the Complainant’s meeting request. CAPO therefore classified Allegation 1 as "No Fault". As for Allegation 2, CAPO had conducted investigation and found that: (i) two witnesses had seen the Complainant damaging the laundry room door; (ii) the Complainant claimed to own shares of the guesthouse but failed to provide any supporting documents; and (iii) the Complainant’s mother insisted to pursue the incident at the material time. As a result, CAPO considered that the arrest action was justified and classified Allegation 2 as "No Fault". The IPCC agreed with the above classifications and opined that the Complainant might have misunderstood the police investigation procedure while she lodged the complaint. The IPCC recommended that the police officers to clearly state the rights and responsibilities to the people involved in the investigations in future to avoid similar complaints due to misunderstandings .

In complaint case three, a female teacher (Complainant) made a report to the Police alleging that a male teacher (Defendant) had peeped at her when she was having a shower in school. After investigation, the officer-in-charge of the case (COMEE) charged the Defendant with one count of “Loitering” based on the advice from the Department of Justice. The COMEE,

however, arranged the Defendant to appear in court on a day after the six-month statutory time bar. The case had to be dropped and the Defendant was released unconditionally because the statutory time bar had already passed. After noting the above situation, the Complainant lodged a complaint alleging that the COMEE had failed to prosecute the Defendant within the statutory time bar [Allegation: Neglect of Duty].

The Complainant later expressed that she decided to withdraw the complaint as she only wanted the COMEE's supervisor to be apprised of the incident with a view to improving the Force's service quality. Meanwhile, the Formation of the COMEE opined that there appeared to be prima facie evidence to support the Neglect of Duty allegation and thus a Disciplinary Review was initiated. Taking into account of the Complainant's decision and the arrangement of COMEE's Formation, CAPO classified the Allegation as "Withdrawn". The IPCC, however, had reservation on CAPO's classification. Given the fact that the allegation was serious in nature and that it was supported by prima facie evidence, the IPCC considered that the allegation should be reclassified from "Withdrawn" to "Substantiated" with the COMEE subject to Disciplinary Review.

Miss Lisa Lau Man-man, Chairman of Publicity and Survey Committee (PSC), said, "The above case showed that even if the Complainants have withdrawn their complaints, their withdrawals do not necessarily result in the "Withdrawn" classification. The IPCC will also review such cases and request CAPO to conduct full investigation when appropriate to ensure that no undue influence has been exerted on the Complainants."

In complaint case four, an informant made a report to the Police that a suspicious male (Complainant) was kicking at the door of his neighbour's flat. Four police officers (COMEEs 1-4) responded to the scene. The Complainant explained to the police officers that the owner of the flat was his friend. He stated that the owner had allowed him to live in the flat temporarily for a few months then and was able to present the iron gate key to the flat as a proof. Since the police officers could not verify with the owner of the flat directly and they had doubt about the Complainant, the COMEEs decided to conduct search on the Complainant and in the flat. After searching in the flat, the police officers found a bag of suspicious white powder and a spring loaded knife stashed in the Complainant's bag. The police officers then arrested the Complainant and charged him with "Criminal Damage", "Possession of Dangerous Drugs (PDD)" and "Possession of Prohibited Weapon (POPW)". The Complainant was remanded in custody when the case was pending the examination results of the suspected white powder and the spring loaded knife by Government Chemist. Six weeks later, the test result confirmed that the bag of white powder did not contain any dangerous drugs. In addition, the Police had got in touch with the owner of the flat and confirmed the Complainant's version. After reviewing the case, the

Police decided to proceed with the charge of “POPW” only. During the trial, the Judge criticized the Police for conducting a search of the flat without a warrant and considered that the Police’s search action on that day was not legal and the spring loaded knife seized could not be presented as a valid exhibit. Therefore, the Complainant was acquitted.

Upon conclusion of the court case, the Complainant approached CAPO and alleged that COMEE 2 had seized a bag of corn flour from the kitchen in the flat. Suspecting the white powder as heroin, he arrested the Complainant for the offence of “PDD” [Allegation 1: Fabrication of Evidence], and COMEEs 1-4 had treated him impolitely in the course of the enquiry [Allegation 2: Impoliteness]. CAPO had tried to contact the Complainant to obtain his statement and to follow up on the complaint case. However, the Complainant did not respond. CAPO therefore classified both allegations as “Not Pursuable”.

The IPCC agreed with the above allegations. However, IPCC had reservations on the illegal search conducted by the Police in the Complainant’s flat. The IPCC opined that when the Police conduct search in private premise, prior consent must be sought from the owner of the flat or the residents. If no consent was granted, the Police must apply for a search warrant from Court. In this case, however, the Police failed to conduct a house search in accordance with the proper procedures. Their action was considered inappropriate. As a result, the IPCC held the view that CAPO should register a new “Substantiated Other Than Reported” count of “Unnecessary Use of Authority” against COMEE 1, who was the highest-ranking officer at the scene that day, and he should be given an advice without DRF entry.

In addition, the Complainant was kept in custody for six weeks before the Government Chemist confirmed whether the suspected white powder contained any dangerous drugs. The IPCC opined that this situation was unsatisfactory. In order to prevent the occurrence of similar incidents, the IPCC recommended the Police to enhance collaboration with the Government Laboratory to conduct urgent preliminary examinations on suspected dangerous drugs. This would speed up the process to ascertain if the seized exhibits contained any dangerous drugs to avoid detaining the suspect for a prolonged period. The Police agreed to strengthen the training of officers in handling similar cases and to remind them to work together with the Government Laboratory with an aim to obtain preliminary test results in a speedy manner.

Miss Lisa Lau Man-man, PSC Chairman, pointed out, “Though the examination of exhibits to ascertain whether there were dangerous drugs was not one of the allegations in this complaint case, to discharge its function under section 8(1)(c) of the IPCC Ordinance, the IPCC strived to make timely recommendations to the Police whenever a deficiency was identified in the

police practices or procedures while vetting the Reportable Complaint reports.”

The twenty-fourth issue of the IPCC Newsletter is now available on the IPCC’s website at: <http://www.ipcc.gov.hk/en/publications/newsletters/2018.html>

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**Notes to editor:**

**About the Independent Police Complaints Council**

The Independent Police Complaints Council (IPCC) is an independent body established under the Independent Police Complaints Council Ordinance (IPCCO) (Cap. 604) to observe, monitor and review the handling and investigation of “Reportable Complaints” (RCs) against the Police by the Commissioner of Police (CP). The IPCC has become a statutory body since the commencement of IPCCO on 1 June 2009.