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**真實投訴個案及
改善建議**

**Complaint
Cases and
Recommended
Improvements**

個案一 Case 1

警務人員捏造證據

Fabrication of evidence by police officers

指控 Allegation	被投訴人 Complainee(s)	投訴警察課的原本分類 Original classification(s) by CAPO	最終分類 Final classification(s)
1 捏造證據 Fabrication of Evidence	警員一至三 Police Constables 1-3	無法追查 Not Pursuable	無法完全證明屬實 Not Fully Substantiated

個案背景

投訴人與友人在某屋苑泊車處分別被兩名警員（被投訴人一和二）截停搜身。警方初步調查顯示投訴人為該車車主，其友人當時為司機，而案中的證物人員（被投訴人三）其後於投訴人身上搜出車匙。警員在搜車期間發現兩包疑似危險藥物（可卡因），因此以「販運危險藥物」罪名拘捕投訴人及司機。在警誡下，司機承認可卡因屬其個人使用，而投訴人則否認控罪。

投訴人與司機同被暫控「販運危險藥物」。投訴人於拘留期間作出投訴，指警員將車匙交給他是插贓嫁禍【指控：捏造證據】。警方在徵詢法律意見後，向投訴人及司機作出檢控。審訊期間，投訴人選擇不在庭上作供。而司機則在作供時表示，當他用車匙打開車門後，被投訴人一和二便立即將他截停。被投訴人二從司機手中取走車匙，再交給被投訴人三。隨後，當投訴人折返車輛並被截停時，被投訴人三才要求投訴人把車匙袋起，再從其身上檢取車匙。法官於審訊後裁定司機「管有危險藥物」罪名成立，但投訴人則因疑點利益歸於被告被判罪名不成立。

投訴警察課的調查

據被投訴人一至三所稱，他們當時正對投訴人的車輛採取秘密行動。被投訴人一至三確實目睹作為乘客的投訴人及作為司機的友人於該屋苑內下車。被投訴人一及二留在現場觀察，其後目睹司機返回車輛，於是將他截停。由於在司機身上並無發現車匙或任何可疑物品，他被搜身後隨即獲准離開。

Case background

The Complainant (COM) and his friend were intercepted for a search by Complainees (COMEEs) 1–2 on separate occasions in the immediate vicinity of COM's private car that was parked outside a housing estate. Police enquiry revealed that COM was the car owner and his friend was the driver, following which COMEE 3 (exhibit officer) seized the car key from COM. COM and his friend were subsequently arrested for “Trafficking in Dangerous Drugs” after two packs of suspected dangerous drugs (cocaine) were found inside the car. Under caution, the driver admitted that the cocaine was for self-consumption while COM denied the offence.

Both COM and the driver were holding charged with “Trafficking in Dangerous Drugs”. COM lodged the complaint when he was remanded in custody, alleging that the police officers framed him up by planting the car key on him [Allegation: Fabrication of Evidence]. Upon legal advice, both COM and the driver were charged with the arrested offence. During trial, COM chose not to give testimony in court while the driver testified that after he used the car key to unlock the car, he was immediately intercepted by COMEEs 1–2. COMEE 2 then took away the car key from him and later passed the car key to COMEE 3. Subsequently, after COM had returned to the car and was intercepted, COMEE 3 asked COM to pocket the car key and then seized the car key from COM. After trial, the court convicted the driver of “Possession of Dangerous Drugs” but acquitted COM due to benefit of doubt.

CAPO's investigation

According to COMEEs 1–3, they were conducting a covert operation against COM's car. COMEEs 1–3 saw COM (passenger) and COM's friend (driver) alighting the car at the housing estate. When staying at scene for observation, COMEEs 1–2 saw the driver returning to the car and intercepted him. Since no car key or anything suspicious was found on the driver, he was released after the search.

投訴人於30分鐘後返回車輛，被投訴人一及二隨即截停他並進行搜身。被投訴人一在投訴人身上發現車匙。此時，司機亦返抵現場，並由被投訴人一及二再次截停。同時，被投訴人三亦接報到場協助。投訴人在警員要求下用車匙打開車門後，警員在車內發現危險藥物，而負責檢取證物的被投訴人三則從投訴人身上檢取車匙。

投訴人被裁定罪名不成立後失去聯絡，所以投訴警察課將該投訴分類為「無法追查」。

監警會的觀察

鑑於警方檢取車匙的情況出現不同版本，監警會遂審閱法庭裁決，並發現法官曾就警方處理案件的手法作出批評，並對警員的供詞表示懷疑。監警會細閱所有相關文件（特別是法庭裁決及所有被投訴人的記事冊）後，向投訴警察課指出數項重點。

總括而言，被投訴人一及二於第一次截查司機的處理方式令人質疑。由於警方是基於投訴人車內藏有危險藥物的情報而採取行動，加上警員於觀察期間已確認由該友人駕駛目標車輛，即使被投訴人一及二於司機身上並無發現任何可疑物品，他們於第一次截查後讓司機離開的做法亦不合理。被投訴人二於14分鐘的搜查過程中，理應盤問過司機關於車匙的事。然而，被投訴人二在其記事冊上並無記錄任何有關詳情。他亦於庭上供稱自己已記不起盤問司機的詳情，以及曾否盤問有關車匙的事宜。

此外，被投訴人三在其記事冊上記錄，他在案發現場只從投訴人身上搜出金錢和手提電話，車匙則是投訴人被帶返警署後才搜出。其後，被投訴人三修正口供，改稱自己錯誤地記錄搜出車匙的時間，並重申車匙是於案發現場搜出的。

根據現有證據，會方認為未能重組當天事發經過。投訴警察課應監警會的質詢重新評估個案。儘管法庭質疑各被投訴人的供詞，並傾向相信投訴人及司機供稱，車匙是於司機而非投訴人身上發現，但事實並無獨立證據證明車匙於何時及從何人身上搜出。由於有若干可靠證據支持投訴人的指控但並不足以完全證明指控屬實，將該指控重新分類為「無法完全證明屬實」最為合適，並對三名被投訴人作出警告但無須將事件記入其分區報告檔案中。

Thirty minutes later, COM returned to the car and was intercepted by COMEES 1–2 for a search. COMEE 1 found the car key on COM. At this juncture, the driver also returned to the spot and was again intercepted by COMEES 1–2. Meanwhile, COMEE 3 was summoned to the scene for assistance. COM unlocked his car with the car key upon officer's request and the dangerous drugs were found inside the car. COMEE 3, as the exhibit officer, seized the car key from COM.

CAPO classified the complaint as “Not Pursuable” after COM had been acquitted and become out of reach.

IPCC's observation

Concerning the disputed versions of how and from whom the car key was found by the police, the IPCC examined the court verdict and found that the judge did comment on the police handling and raised doubts on the police's testimonies. The IPCC looked into details of all relevant documents, in particular the court verdict and notebook entries of all COMEES, and pinpointed a few critical issues to CAPO.

In gist, it was dubious as to how COMEES 1–2 handled the driver during the first interception. Considering that the police operation was based on intelligence that there were dangerous drugs in COM's car and the officers had identified COM's friend as the driver of the targeted car during observation, it was unreasonable for COMEES 1–2 to release the driver during the first interception even though nothing suspicious was found on him. Throughout the 14-minute search, COMEE 2 should have conducted thorough enquiry with the driver, including the whereabouts of the car key. However, no particular details about the search were recorded in COMEE 2's notebook. He also testified in court that he could not recall the details of his enquiry on the driver or whether he had asked the driver about the car key.

In addition, COMEE 3 had recorded in his notebook that he only seized the money and mobile phone at the scene from COM but seized the car key from COM after COM was taken back to the police station. Later on, COMEE 3 rectified in his crime statement that he had mistakenly recorded the seizure time of the car key and reiterated that the key was seized at the scene of interception.

The existing evidence, as per the IPCC's assessment, was not adequate for reconstructing what had happened on the day. Upon the IPCC's queries, CAPO re-assessed the case. Whilst the court cast doubts on COMEES' versions and tended to believe in COM and the driver's versions that the car key was found on the driver instead of COM, there was no independent evidence to verify when and from whom the car key was seized. It was thus considered most appropriate to reclassify the allegation as “Not Fully Substantiated” as there were some reliable evidence to support COM's allegation but insufficient to fully substantiate it. Three COMEES were given “warnings without Divisional Record File entry”.

個案二 Case 2

獨立證人的錄影片段佐證警方行動恰當
Proper Police action supported by video footage recorded by an independent witness

	指控 Allegation	被投訴人 Complainee(s)	投訴警察課的原本分類 Original classification(s) by CAPO	最終分類 Final classification(s)
1	毆打 Assault	高級警員 Senior Police Constable (SPC)	無法追查 Not Pursuable	並無過錯 No Fault
2	捏造證據 Fabrication of Evidence	高級警員 SPC	無法追查 Not Pursuable	並無過錯 No Fault

個案背景

投訴人與四名朋友於深夜時分，在一處熟食攤檔外喝酒及高聲聊天。一名高級警員及另一名警員巡經上址，發現投訴人一行人等發出噪音，或會對鄰近居民造成滋擾。兩名警員於是走近投訴人一方，勸喻他們降低聲量，以防滋擾他人。當時，投訴人及其兩名朋友已經喝醉，並以粗言穢語及懷有敵意地喝罵兩名警員。兩名警員數度警告他們，而投訴人其中一名朋友亦多番嘗試令他們冷靜，但投訴人與其兩名朋友並無停止挑釁行為，甚至對警員拳打腳踢。為制止他們的暴力行為，兩名警員拔出警棍戒備，並向投訴人一行人施放胡椒噴劑以控制場面。不久，多名警員到場增援，合力制服投訴人及其兩名朋友，並以襲警罪拘捕他們。一名鄰近居民攝錄了部分事發經過。

經調查後，警方就是否有足夠證據起訴投訴人一千人等徵詢律政司的法律意見後，以襲警罪起訴投訴人及其兩名朋友。投訴人不滿被控，遂向投訴警察課作出投訴，指控該名高級警員事發時曾以警棍打他【指控一：毆打】，並誣陷他干犯襲警罪【指控二：捏造證據】。

投訴人的兩名朋友在法庭上認罪後被定罪，但投訴人否認控罪。法官於審訊後裁定投訴人罪名不成立。法官認為，該名高

Case background

The Complainant (COM) and his four friends were drinking and chatting loudly outside a cooked food stall late at night. A SPC and a Police Constable (PC) who patrolled nearby noticed that COM's party making loud noise that might cause nuisance to the neighborhood. They then approached COM's party and advised them to lower their voices and not to disturb others. However, COM and two of his friends, who were drunk, shouted foul language in return and were hostile towards the officers. Despite multiple warnings by the two officers and attempts by one of the COM's friends to calm them down, COM and his two friends did not stop their aggressive acts and even assaulted the officers with fists and kicks. In facing the violent acts, the two officers drew out their batons as precaution and discharged OC foam at COM's party in order to control the situation. Soon after, reinforcements arrived at the scene. Eventually, officers subdued COM and his two friends and arrested them for "Assault on a Police Officer". Part of the incident was captured on video by a nearby resident.

After investigation, Police sought legal advice from the Department of Justice (DoJ) on the sufficiency of evidence to lay charges against COM's party. Subsequently, Police charged the COM and his two friends with "Assault on a Police Officer". Dissatisfied with being charged, COM lodged a complaint to CAPO, alleging that the SPC had hit him with a baton in the incident [Allegation 1: Assault], and had framed him up for the offence of "Assault on a Police Officer" [Allegation 2: Fabrication of Evidence].

COM's two friends were convicted on their guilty pleas whereas COM pled not guilty. The court subsequently acquitted COM after trial. The court commented that the SPC and PC were honest and reliable but

級警員及另一名警員誠實可靠，但他們的供詞不足以證明事發時兩人的身安全受到即時威脅或曾遭投訴人施襲。

投訴警察課的調查

投訴人於法庭結案後失去聯絡，並且未就投訴調查提供任何協助。由於投訴警察課未能向投訴人取得本投訴個案的進一步資料，投訴警察課遂將上述兩項指控分類為「無法追查」。

監警會的觀察

監警會審核過現有證據，尤其是錄影片段及相關的案件檔案後，認為即使未獲投訴人提供協助，投訴警察課仍可就指控一及二得出明確結論。

關於指控一，監警會從錄影片段觀察到投訴人及其朋友於整個事發過程中，對該名高級警員及警員所作出的行為極具敵意及攻擊性，例如多次推撞及衝向他們。投訴人的兩名朋友曾拳打腳踢襲擊他們，但片段未能清晰顯示投訴人有否作出相同的行為。從片段可見，投訴人大部分時間均在大聲指罵兩名警員，並似有推撞他們。高級警員因此拔出警棍揮動，從而製造距離，以防被投訴人所傷。根據警方有關武力使用層次的內部指引，使用武力的適當程度取決於當事人的對抗程度、警務人員所判斷的威脅程度，以及警務人員自身的能力。警務人員在受到暴力攻擊的情況下，有充分理由在各種武力使用層次中選擇使用胡椒噴劑及警棍。儘管投訴人被裁定罪名不成立，片段顯示當時情況危急，警員有充分理由根據警方指引使用警棍。

至於指控二，監警會注意到，除片段所顯示的攻擊行為外，警方於起訴投訴人前曾徵詢律政司的法律意見，反映現有證據已足夠並充分作檢控投訴人的理據。

監警會考慮上述理由後，認為投訴個案可得出明確結論，並建議投訴警察課重新審視指控一及二的相應分類。兩項指控及後獲重新分類為「並無過錯」。

their testimonies were insufficient to show that there was imminent threat of physical violence nor were they physically hit by COM.

CAPO's investigation

After the conclusion of the court case, COM became out of reach and did not provide any assistance into the complaint investigation. As CAPO could not reach COM to acquire further information on the complaint case, both allegations were classified as "Not Pursuable".

IPCC's observation

The IPCC, having examined the available evidence, particularly the video footage and the relevant crime case file, considered that even without the assistance of COM, a definite finding could be reached for both Allegations 1 and 2.

In relation to Allegation 1, the IPCC observed from the video footage that COM and his friends had acted extremely aggressive and hostile towards the SPC and PC throughout the incident, such as by repeatedly pushing and charging at them. Two friends of COM kicked and punched the officers, but it was unclear from the video on whether COM had done the same. COM was seen pointing and yelling at the two officers most of the time. At some points, it looked like COM had pushed the officers. The SPC drew out his baton and waved it to create space in front of him to prevent COM from causing injury to him. According to the police internal guideline on the use of force, the appropriate level of force exercised depends on the level of resistance of the subject, the officer's perception of the threat, and the officer's own abilities. In cases of active aggression, it would be justified for the officer to use OC foam and baton, amongst many other methods. Notwithstanding COM's acquittal, the video footage showed that the situation was sufficiently critical to justify the use of baton in accordance with the police guideline.

Regarding Allegation 2, the IPCC noted that apart from the aggressive acts as captured on the video, the police had also sought DoJ's advice prior to laying the charge against COM, indicating that there was sufficient basis to prosecute COM on the evidence available.

Having considered the above, the IPCC was of the view that a definite finding could be reached, and suggested CAPO to revisit the classification of Allegations 1 and 2 accordingly. Subsequently, the two allegations were reclassified as "No Fault".

個案三 Case 3

休班警務人員單憑主觀印象而非實質有力的證據舉報車輛有違規情況

Off-duty police officer filed a Defective Vehicle Report based on subjective impression instead of concrete and strong evidence

指控 Allegation	被投訴人 Complainee(s)	投訴警察課的原本分類 Original classification(s) by CAPO	最終分類 Final classification(s)
1 濫用職權 Unnecessary Use of Authority	總督察 Chief Inspector of Police (CIP)	無法證實 Unsubstantiated	獲證明屬實 Substantiated

個案背景

投訴人在新界駕駛一部高性能車輛（該車輛）。一名休班總督察經過事發地點時聽到該車輛發出噪音，懷疑該車輛的排氣管減聲器有問題或經過改裝，當日就該車輛填寫「欠妥車輛報告」。投訴人其後接獲一份車輛檢驗令，須將該車輛送交檢驗。該車輛經檢驗後並無發現有缺點或經過非法改裝。

投訴人指，該名總督察單憑主觀臆測而無實質及有力證據支持下，便指其車輛有問題。他認為，該名總督察提出「欠妥車輛報告」前，理應先作跟進，如多作查詢或研究，了解該車輛的性能、設計及型號。投訴人不滿總督察主觀認定該車輛不適合在道路上行駛，且要求他將該車輛送交檢驗，指控該名總督察對他的高性能車輛完全沒有認識，認為他提出「欠妥車輛報告」乃屬失當【指控：濫用職權】。

投訴警察課的調查

當與投訴警察課會面時，該名總督察指出該車輛所發出的排氣聲響過高，遠超其他車輛。他憑常理加上自己23年的駕駛經驗，懷疑該車輛的排氣管減聲器有缺陷或經改裝。即使他知道該車輛屬高性能，他仍認為該車輛有可疑，於是填寫「欠妥車輛報告」。

Case background

The Complainant (COM) drove a high performance car (the Vehicle) in the New Territories. An off-duty CIP heard the Vehicle emitting loud noise when he was walking past the material location. Suspecting that the Vehicle's exhaust silencer was defective or had been altered, the CIP completed a "Defective Vehicle Report (DVR)" against the Vehicle on the same day. COM subsequently received a Vehicle Examination Order to have his Vehicle examined. Following examination, the Vehicle was found neither to be defective nor illegally altered.

COM pointed out that the CIP accused his Vehicle of being defective based on his own feeling with no concrete and strong evidence. He opined that the CIP should have taken steps, such as conducting an enquiry or research, to get a better understanding of the performance, design and model of the Vehicle before filing a DVR. Displeased with the CIP's subjective claim that the Vehicle was not roadworthy and that he was required to surrender his Vehicle for examination, COM alleged that the CIP had no knowledge of his high performance car, and that he had inappropriately filed a DVR against his Vehicle [Allegation: Unnecessary Use of Authority].

CAPO's investigation

When interviewed by CAPO, the CIP explained that the noise emitted from the exhaust silencer of the Vehicle was excessive and much louder than other vehicles. Based on his common sense and 23 years of driving experience, he suspected that the exhaust silencer of the Vehicle was defective or altered. Even though he was aware that the Vehicle was a high performance car, he considered the Vehicle suspicious and therefore submitted a DVR.

根據《道路交通條例》(香港法例第374章)的規定，警務人員獲授權親自或安排由他人送達車輛司機或登記車主一份檢驗命令，從而對該車輛進行檢驗，以確定車輛是否符合牌照條件，或是否適宜在道路上行駛。投訴警察課認為，該名總督察認為該車輛的排氣管減聲器發出的聲響過高，因而提出「欠妥車輛報告」的做法合理。雖然檢驗結果不支持總督察對當時該車輛經過非法改裝的懷疑，但他並無作出失實指控，而投訴人在此情況下亦誤解了警務人員的職權。因此，投訴警察課將指控分類為「無法證實」。

監警會的觀察

監警會認為，既然該名總督察的駕駛經驗豐富，理應知道高性能車輛的引擎及排氣管設計特別，自然會發出較大聲響。而當該名總督察在提出「欠妥車輛報告」時只單憑評估，認為有關車輛發出過量聲響而沒有作出調查，此做法實屬不足。此外，根據警方內部指引，警務人員提出「欠妥車輛報告」時，應在其記事冊內詳細記錄事發時間、所觀察到的疑似缺點、相關車輛及駕駛者的資料。然而，該名總督察未有遵照相關警方指引，詳細記錄觀察結果，以支持其提出「欠妥車輛報告」的決定。就此，監警會認為該名總督察提出「欠妥車輛報告」的決定過於草率，因此應將指控分類為「獲證明屬實」。

投訴警察課接納監警會上述意見，將指控由「無法證實」重新分類為「獲證明屬實」，而該名總督察須接受訓誨，但無須將事件記入其分區報告檔案中。

According to the provisions of the Road Traffic Ordinance (CAP 374), police officers are empowered to serve or cause to be served on the driver or registered owner of an examination form for examining a vehicle to ascertain if it follows conditions of its licence or being roadworthy. CAPO considered that it was reasonable for the CIP to file a DVR when he considered the noise emitted from the Vehicle's exhaust silencer was excessively loud. Although the examination result did not support the CIP's suspicion of the Vehicle being illegally modified at that time, the CIP had not made a false accusation while COM had misunderstood police power under the circumstances. Hence, CAPO classified the allegation as "Unsubstantiated".

IPCC's observation

The IPCC was of the view that the CIP as a veteran driver should have realized that the noise level emitted from high performance car would naturally be much higher due to its specially designed engine and exhaust silencer. To file a DVR solely based on his own assessment of excessively loud noise without conducting any enquiry was insufficient. Meanwhile, according to police internal guidelines, a police officer who decides to file a DVR should make a detailed notebook entry by jotting down the time of the incident, the alleged defect observed and the particulars of the vehicle and its driver. However, the CIP had failed to make any detailed record about his observation to support his decision in the filing of the DVR as required by relevant police guidelines. The IPCC opined that the decision of filing a DVR by the CIP had been hastily made and the allegation should be found as "Substantiated".

CAPO accepted the IPCC's view above to reclassify the allegation against the CIP from "Unsubstantiated" to "Substantiated", whereby the CIP was given an advice without Divisional Record File entry.

個案四 Case 4

警務人員在投訴人不同意提早辦理續保手續後 對其出言不遜

Police officer uttered inappropriate remarks towards the Complainant when the Complainant did not accede to the officer's request for answering police bail earlier than scheduled

指控 Allegation		被投訴人 Complainee(s)	投訴警察課的原本分類 Original classification(s) by CAPO	最終分類 Final classification(s)
1	行為不當 Misconduct	偵緝警員 Detective Police Constable (DPC)	無法證實 Unsubstantiated	獲證明屬實 Substantiated

個案背景

投訴人因干犯「非禮」及「妨礙司法公正」罪而被警方拘捕，其後獲准保釋候查。某日，負責調查有關案件的偵緝警員致電投訴人，要求他在原定續保日期前提早往警署辦理續保手續，以便警方可盡快完成檢控投訴人的程序。投訴人回應他的律師只可於原定日期陪同自己前往警署，因此他只可按照原定時間報到。偵緝警員則指，如果投訴人不合作、不同意其要求提早報到，便會於深夜到他家中找他，甚至會將他列入「通緝」名單。當投訴人告知該名偵緝警員電話對話內容已被錄音後，偵緝警員同意他可按原定時間報到。

投訴人隨即作出投訴，指控該名偵緝警員於電話對話中催促他提前報到的手法並不恰當【指控：行為不當】。他並提供了有關電話對話的錄音檔案，以作佐證。

投訴警察課的調查

當與投訴警察課會面時，該名偵緝警員否認指控，並稱他不記得曾否要求投訴人提早報到。同時，他否認電話錄音內的聲音屬於自己，也不知道投訴人於電話錄音中所稱的「X sir」是指何人。然而，該名偵

Case background

The Complainant (COM) was arrested for “Indecent Assault” and “Perverting the Course of Justice” by Police, and was placed on police bail. On another day, COM received a phone call from a DPC who was responsible for the investigation of his case, requiring him to report bail earlier than the original scheduled date, so that Police could press the charge against him as soon as possible. COM replied that he could report bail on the original schedule only, as that was the only date his lawyer was available to accompany him to the police station. The DPC told COM if he was uncooperative and did not accede to his request to report bail earlier, he would go to COM's home late at night to look for him or even put him on the “Wanted” list. After COM told the DPC that their telephone conversation was recorded, the DPC agreed that he could report bail as scheduled.

COM lodged the instant complaint, alleging that the way the DPC had urged him to report bail earlier than scheduled during the telephone conversation was inappropriate [Allegation: Misconduct]. He also provided the audio recordings of the telephone conversation to support his complaint.

CAPO's investigation

When interviewed by CAPO, the DPC denied the allegation and stated that he was unable to recall whether he had asked COM to report bail earlier. He also denied that he was the one speaking on the audio recordings and did not know who COM was referring to when COM addressed the person talking on the phone as “X sir”. Nevertheless, the

緝警員確認他是在調查隊伍中唯一姓「X」的警務人員。

投訴警察課起初因無法證實錄音的真偽，而將指控分類為「無法證實」。

DPC confirmed that he was the only officer in the investigation team with the surname “X”.

CAPO initially classified the allegation as “Unsubstantiated” on the basis that the authenticity of the recordings could not be ascertained.

監警會的觀察

在審視相關案件檔案文件及錄音檔案後，監警會認為有充分、可靠的證據支持投訴人的指控。第一，根據案件檔案文件顯示，於投訴人接獲該偵緝警員電話的同一日，該名偵緝警員的上司曾指示偵緝警員聯絡投訴人詢問其最早可到警署作檢控程序的日期。第二，該名偵緝警員是其隊伍中唯一姓「X」的警務人員，而從所有錄音檔案中可以得知，「X sir」熟悉投訴人案件的詳情及調查進展。因此，投訴人指該名偵緝警員曾在電話中與他對話這一點實屬可信。此外，當投訴人經已解釋原因，並且表示會按照原定日期報到後，該名偵緝警員仍於電話對話中以不當手法催促投訴人提早報到，實為不妥。

基於上述理由，監警會建議將指控重新分類為「獲證明屬實」。投訴警察課接納監警會的意見，將指控重新分類為「獲證明屬實」。該名偵緝警員須接受警告，但無須將事件記入其分區報告檔案中。

IPCC's observation

Having examined the relevant case file documents and the audio recordings concerned, the IPCC was of the view that there was sufficient and reliable evidence to support COM's allegation. First, according to the case file document, on the same date that COM received the DPC's phone call, the DPC's supervisor had instructed the DPC to contact COM and seek his earliest date for charging. Second, the DPC was the only officer on his team with the surname “X”. It transpired from all the audio recordings that “X sir” was conversant with the details and progress of the case in which COM was involved. Therefore, it was, on balance, highly probable COM's version was believable, in that the DPC was the one speaking with him on the phone. Moreover, it was clear that the way the DPC urged COM to report bail early during the telephone conversation was improper, especially when COM had provided explanation and already agreed to report bail on the original scheduled date.

Based on the above reasons, the IPCC recommended that the allegation should be reclassified as “Substantiated”. CAPO subscribed to the IPCC's view and reclassified the allegation as “Substantiated”. The DPC was given a warning without Divisional Record File entry.

警隊常規和程序改善建議

RECOMMENDED IMPROVEMENTS TO POLICE PRACTICES AND PROCEDURES

為履行《監警會條例》第8條(1)(c)的職能，監警會於審核須匯報投訴時，若發現警隊常規或程序有任何缺失或不足之處，會適時向警方提出可行的改善建議。其後，監警會會透過「調查報告通過後的跟進工作事項」及與投訴警察課舉行的季度聯席會議，監察警方實施改善建議的進度，以進一步提升警隊的服務質素。

監警會於報告期內向警方提出了23項改善建議。這些建議不僅與投訴個案及提升警方服務質素有關，更與市民的日常生活息息相關，例如（一）改善交通意外和解的記錄程序；（二）改善「電話騷擾」投訴調查的通訊紀錄申請程序；以及（三）加失竊八達通卡的調查程序。

以下是改善建議及相關投訴個案的示例。

To discharge the function under section 8(1)(c) of the IPCCO, the IPCC makes timely and practical recommendations to the Police whenever it identifies any fault or deficiency in the Police practices or procedures while vetting the Reportable Complaint reports. The IPCC will then monitor implementation status of the improvement-related matters by the Police via the “Post-endorsement Issues Follow-up” and quarterly Joint Meetings with CAPO, with a view to enhancing Police’s service quality.

During the reporting period, the IPCC made 23 improvement recommendations to the Police. These recommendations were not merely correlated with complaint cases and enhancement of the Police service quality, but also closely linked to the daily life of members of the public, including: (1) enhancement in the procedures in making records of traffic-related private settlements; (2) enhancement in checking phone call records relating to “telephone nuisance” complaint investigations; and (3) expediting the process of checks relating to lost Octopus cards.

Below are examples of improvement recommendations illustrated by related complaint cases.



1 改善交通意外和解的記錄程序

警隊在交通執法方面發揮重要作用。在香港，若小型交通事故不涉及人身傷害且損毀程度輕微，涉事司機可選擇私下和解，在雙方同意下自行解決問題，而非互相起訴。在此情況下，警務人員會在其記事冊內記錄有關細節。不過，涉事雙方不一定要在警察記事冊上簽名確認。倘若他們改變主意，在離開現場後決定追究，便可能會引起糾紛，並導致在現場處理個案的警務人員遭到投訴。

在一宗涉及輕微交通意外的投訴個案中，一輛輕型貨車與的士碰撞，一名警員趕赴現場處理事故並向兩名司機問話。由於無人受傷，該警員把事故列為「不涉及傷亡的交通意外」。根據其警察記事冊，兩名司機向他表示雙方車輛在警員到達前曾經移動，而二人就事故同意和解，無需警方協助。數日後，的士司機因最終未能與貨車司機（即投訴人）達成和解協議，遂要求警方介入調查這宗意外。經調查後，投訴人遭票控「不小心駕駛」。審訊期間，投訴人向的士司機指出，雙方車輛在警員到達前沒有移動，而此說法與警察記事冊的紀錄有所抵觸。鑑於的士司機無法清楚回憶意外細節和雙方車輛在警員到達前後的確實位置，故此投訴人最終被判無罪。

在法庭裁決後，投訴人作出投訴指該警員錯誤記錄輕型貨車和的士在警員到達前曾經移動。就雙方車輛的最終位置，鑑於沒有足夠證據確定兩名司機在現場向警員的陳述，投訴警察課遂於調查後把指控列為「無法證實」。

監警會在審核投訴警察課的調查報告時，留意到在不涉及傷亡的交通意外個案中，如雙方同意即場和解，《交通程序手冊》只要求負責警員建議涉事司機交換資料，並在其記事冊內記錄相同資料。有時候，當事人會就事發經過達成共識，或由其中一方承認過失。然而，《交通程序手冊》未有列明負責警員需要求涉事雙方在警察記事冊上簽署確認雙方版本及和解協議。倘若雙方在離開現場後改變和解決定，隨後便有機會就事發經過提出爭議，甚或否定在現場所供認的事情。一旦雙方出現分歧，更可能導致負責警員被投訴未有在現場準確記錄情況，而上述投訴個案便是一例。另一方面，監警會注意到在處理不涉及交通的一般糾紛個案時，如雙方同意和解，《警察程序手冊》訂明負責警員需要

1 Enhancement in the procedures in making records of traffic-related private settlements

The Police play a vital role in traffic enforcement. In Hong Kong, for minor traffic accidents when there are no personal injuries and damages are minor, drivers may opt for private settlement where both parties agree to resolve the matter amicably without suing each other. In such cases, Police officers will jot down the details of the accidents in their notebooks for record purposes. However, it is not necessary for the parties involved in these accidents to sign on the Police notebooks for confirmation. Should they change their minds and decide to pursue the cases after leaving the scenes, disputes may arise leading to complaints against the officers handling the cases on the spot.

In a complaint case involving a minor traffic accident between a light goods vehicle (LGV) and a taxi, a Police Constable (PC) attended the scene to handle the accident and made enquiries with both drivers. Since no one was injured in the accident, the PC classified the accident as “Traffic Accident Damage Only (TADO)”. According to his notebook record, both drivers told him that their vehicles had moved prior to Police arrival and both parties agreed to settle the case amongst themselves so no Police assistance would be required. A few days later, however, the taxi driver requested an investigation into the accident because he and the LGV driver, i.e. the Complainant, were unable to reach a settlement agreement in the end. After investigation, the Complainant was summonsed for “Careless Driving”. At the trial, the Complainant put to the taxi driver that both vehicles had not moved before Police arrival, which contradicted the PC’s notebook record. Eventually, the Complainant was acquitted after trial as the taxi driver could not recall clearly the details of the accident and the exact position of the two vehicles before and after Police arrival.

Subsequent to the court case, the Complainant lodged a complaint alleging that the PC had made an inaccurate record that both the LGV and the taxi had moved prior to Police arrival. CAPO, after investigation, classified it as “Unsubstantiated” for there was insufficient evidence to ascertain what exactly both drivers had told the PC at the scene about the final positions of the two vehicles.

Upon review of CAPO’s investigation report, the IPCC observed that in the handling of TADO cases where the parties agreed to settle at the scene, Traffic Procedures Manual (TPM) simply requires the handling officers to advise the drivers involved to exchange their particulars and make entries in their notebooks to record the same information. Sometimes these parties may have agreed on how the incidents occurred or make certain admissions as to who are at fault. Nevertheless, the TPM does not require the handling officers to invite parties involved to sign on the Police notebooks to confirm both sides’ versions and their settlement agreements. If the parties changed their minds about settling the matters after leaving the scenes, they might subsequently raise disputes over what happened or even deny any admissions made at the scene. Moreover, such disagreements could lead to complaints against the handling officers for allegedly making inaccurate records at the scene, which was what had happened in the above complaint case. However, the IPCC also noticed that for non-traffic general dispute cases where the parties involved agree to settle,

求涉事雙方在警察記事冊上簽名，確認有關事件的和解協議。

為避免涉事司機在事發現場的陳述及和解意向受到質疑，監警會建議投訴警察課考慮要求在「不涉及傷亡的交通意外」中同意和解的涉事司機，於警察記事冊上簽署核實，即與《警察程序手冊》處理不涉及交通的一般糾紛個案所訂定的程序一致。警方接納監警會的建議，同意改善「不涉及傷亡的交通意外」個案的處理流程，並對《交通程序手冊》作出相應修訂。

事實上，在香港路面行駛的私家車逾600,000輛，僅2018年便發生了超過15,935宗交通事故，其中88.8%為輕微事故（資料來源：香港警務處交通總部《二零一八年交通報告》）。完善的指引不單有助前線警務人員執行職務，在長遠而言更可提升警隊的效率和服務質素。

FPM does require the handling officers to invite the parties to sign on the Police notebooks to confirm their settlement agreements on the incidents.

To avoid the involved drivers' versions of events given at the scene and their intentions to settle the incidents being questioned, the IPCC recommended CAPO to consider requiring the involved drivers who agreed to settle in TADO cases to sign on the Police notebooks for confirmation, in alignment with the procedures as set out in FPM for non-traffic general dispute cases. The IPCC considered that the suggested enhancement of Police procedures would help find out what had happened in the incidents in case any party kept pursuing the matters with the Police again in the future. The Police adopted the IPCC's recommendation by agreeing to enhance the handling procedures of TADO cases and to revise the TPM accordingly.

Indeed, there are over 600,000 private vehicles running on the roads in Hong Kong, and in 2018 alone there were more than 15,935 traffic accidents, of which 88.8 percent were minor ones (Source: Traffic Report 2018, Traffic Branch Headquarters, Hong Kong Police Force). An enhanced guideline will not only greatly facilitate the frontline police officers in performing their duties but also enhance their efficiency and service quality of the Police in the long run.

2 改善「電話騷擾」投訴調查的通訊紀錄申請程序

相信不少人也曾間中收到騷擾電話。假若騷擾電話變得頻繁且引起不必要的滋擾，部分人或會向警方尋求協助。

在調查一宗「電話騷擾」個案期間，投訴人授權警方查閱其手提電話的來電紀錄，以確定騷擾電話的來電者身分，不過投訴人卻提供了一個錯誤的電話號碼予警方調查，約一個月後才更正號碼，而投訴人亦未能提供正確電話號碼的網絡服務供應商（供應商）名稱。由於通訊事務管理局辦公室（通訊辦）的號碼計劃列載所有供應商的電話號碼紀錄，因此負責警員按照警方現行常規，向通訊辦作出查詢。然而，通訊辦需依靠供應商主動提供最新資料，故此所提供的紀錄並非定期更新。最終，通訊辦在七個月後才向負責調查的警務人員提供相關的供應商名稱，但卻發現通話資料紀錄僅會保留兩個月。在缺乏其他線索的情況下，警方不得不終止對投訴人個案的調查。

雖然負責警員已按程序查詢通話紀錄，但監警會認為調查受阻出於兩大原因：（一）通訊辦的號碼計劃未有包含最新資訊；及（二）供應商回覆通訊紀錄的查詢未有訂定明確時限。為免查詢紀錄不成功／有所延誤，並預防日後出現同類型的投訴，監警會建議警方研究不同的補救措施，檢視電話紀錄查詢的過程，並與前線警員分享本個案，提醒他們密切跟進查詢通話紀錄的申請狀況。

就此，警方表示中央通訊聯絡組會繼續與供應商保持溝通，以縮短查詢通話紀錄的處理時間。在預防投訴方面，警方應提醒前線警務人員盡力識別現時和之前的供應商（例如：要求資料提供者／受害人提供手提電話服務賬單，上方列明供應商的細節），藉以避免在調查過程中出現不必要的延誤；若通話紀錄查詢在六星期內仍未解決，則應直接向中央通訊聯絡組發送電郵提醒。

2 Enhancement in checking phone call records relating to “telephone nuisance” complaint investigations

It is a common experience for people to receive nuisance calls at some time or other. Where such nuisance calls become extremely frequent and cause unwanted disturbance, some people may seek help from the Police.

In the investigation of a “Telephone Nuisance” report, although the Complainant authorised the Police to conduct a call record check for incoming calls of his own mobile phone so as to ascertain the identity of the nuisance call maker(s), he failed to provide an accurate phone number and only provided the correct phone number after about one month. Neither did the Complainant provide the name of the telephone network service operator for the correct phone number. In accordance with prevailing Police practices, the handling officer conducted a check with the Numbering Plan issued by the Office of the Communications Authority (OFCA), which showed records of the telephone network service operators of all telephone numbers. However, the record provided by OFCA had not been updated regularly as it was dependent on whether telephone network service operators would take the initiative to provide updated information. Eventually, OFCA provided the investigation officer the right name of the service operator after seven months but the call records were only kept for two months. Without further leads, the inquiry of Complainant’s case had to stop.

Though the handling officer had followed the proper procedures in conducting the call record check, the IPCC noted that the investigation had been hindered due to two problems: (a) OFCA’s Numbering Plan did not contain the most updated information; and (b) there was no clear time requirement for telephone network service operators to return a call record check request. To avoid unsuccessful / delay in record retrieval, and to prevent similar complaints in the future, the IPCC recommended the Police to explore various remedial measures to review the process of call record checks, and that the case in question be shared with frontline officers to remind them of the importance of closely monitoring the return of their call record check requests.

In response, the Police affirmed that their Central Telecommunication Liaison Unit (CTLU) would continue to liaise with network service operators in order to shorten the processing time for call record check requests. From the complaint prevention perspective, frontline officers would be reminded to make full efforts to identify the current and preceding network service operators (such as asking the Informants / Victims to provide their mobile phone service bills where details of their network service operators were clearly stated) to avoid undue delay in the process of inquiry; and to issue e-mail reminders direct to CTLU if the call record remains outstanding after six weeks.

3 加快失竊八達通卡的調查程序

不少香港市民經常使用八達通卡，而在調查盜用八達通卡的個案方面，警方設有專責聯絡組負責向八達通卡有限公司（八達通卡公司）取得八達通卡交易紀錄，過程中需向八達通卡公司出示搜查令。警方會追查疑犯使用被竊八達通卡消費的地點，再檢取相關店舖的閉路電視錄像，從而識別疑犯身分。然而，監警會從一些投訴個案中觀察到，警方和八達通卡公司完成紀錄申請通常需時數星期至數個月不等，由於閉路電視錄像的保留期一般相對較短，因而減低了成功檢取錄像證據的機會。

在兩宗投訴個案中，投訴人均丟失個人八達通卡，後來八達通卡公司通知他們，二人的八達通卡被身分不明的人士盜用，並在不同商店中進行交易。然而，調查人員未能盡早向八達通卡公司取得交易紀錄，以確切找出疑犯盜用八達通卡消費的商店位置。即使警方後來前往有關商店查詢，有可能捕捉到疑犯外貌的閉路電視證據亦因時間久遠而被刪除。由於缺乏閉路電視證據，警方無法識別疑犯，兩宗個案均需終止調查。兩名投訴人亦無法追討損失。

在其中一宗個案，一名女偵緝警員一開始未有向八達通卡公司申請交易紀錄，而是指示投訴人自行向八達通卡公司查詢。然而，八達通卡公司僅向投訴人提供有限資料，當中並不包括有關商店的確切位置。該警員於是直接向八達通卡公司申請交易紀錄，但正確做法是透過專責聯絡組提交申請。由於程序出錯，她需要經專責聯絡組再次提交申請。此舉導致調查不必要地拖延了兩個月。當八達通卡公司向該警員提供交易紀錄，相關閉路電視錄像已被刪除。

在另一投訴個案中，一名偵緝高級警員透過專責聯絡組申請索取交易紀錄，但他未有盡快申請搜查令，最終花上一個多月才備妥並從法庭取得搜查令。當他從八達通卡公司取得商店資料，相關商店的閉路電視錄像已被刪除。事實上，如果該警員能謹慎行事並及時申請搜查令，八達通卡公司仍可在一個月內向警方提供有關商店的確實位置。在此情況下，警方可聯絡其中兩家商店，從而獲取可能捕捉到疑犯外貌的閉路電視錄像。

3 Expediting the process of checks relating to lost Octopus cards

The Octopus card is the wallet staple of almost every Hongkonger. When investigating cases relating to the fraudulent use of Octopus cards, the Police have a dedicated liaison unit to deal with all requests for Octopus card transaction records with Octopus Cards Limited (OCL) and a search warrant is required to present to OCL. By tracing the points of consumption where suspects may have used the stolen Octopus cards, the Police will then secure the CCTV footage from the shops concerned with a view to identifying the suspects. Nevertheless, the IPCC observed from some complaint cases that the usual time taken by the Police and OCL to complete each request for transaction records varies from a couple of weeks to a few months which consequentially reduces the chance of successful retrieval of CCTV footage evidence as its retention period is relatively short in general.

In two complaint cases, both Complainants lost their personalised Octopus cards and later learnt from OCL that their cards had been used by unknown persons for fraudulent transactions at different retail shops. However, the investigating officers failed to seize the earliest opportunity to obtain from OCL the transaction records that would help reveal the exact locations of the retail shops where the suspects had made purchases by the stolen cards. When the Police subsequently approached the retail shops concerned for enquiry, the CCTV evidence that might capture the images of suspects was no longer available for it was already erased due to time lapse. Without the assistance of the CCTV evidence, the Police could not identify the suspects and both cases were curtailed. None of the Complainants could recover their losses.

In one case, the Woman Detective Police Constable (WDPC) did not make the request to OCL for the transaction records in the first place, but simply asked the Complainant to approach OCL for details. However, OCL only provided limited information to the Complainant, which did not include the exact locations of the retail shops concerned. The WDPC herself then applied the transaction records with OCL direct without being aware that she should have done so via the dedicated liaison unit. Given the incorrect procedures, she was required to re-apply the information via the dedicated liaison unit. This caused unnecessary delay of two months for the investigation. By the time that OCL released the transaction records to the WDPC, the relevant CCTV footages of the retail shops concerned were no longer available.

In another case, when the Detective Senior Police Constable (DSPC) made the request for transaction records via the dedicated liaison unit, he failed to apply for the search warrant as soon as possible but spent over one month to prepare and obtain the search warrant from the court. Eventually, when the DSPC obtained the details of the retail shops from OCL, the relevant CCTV footages of the shops had already been overwritten. Indeed, had the DSPC exercised his due diligence to apply the search warrant in a timely manner, it was still possible that OCL could have provided the exact locations of the concerned shops to Police within one month. In that case, Police would have been able to contact two of the shops for obtaining the CCTV footage which might capture the image of the suspect.

綜觀上述個案，監警會尤其關注警方在現行協議下向八達通卡公司索取八達通卡交易紀錄的成效。一般而言，八達通卡公司需時三星期為警方準備交易紀錄。加上警方申請搜查令和其他行政工作所需時間，整個交易紀錄申請過程通常要六至九個星期才能完成。由於普通商店保留錄像的期限較短，這無疑會降低檢取閉路電視證據的成功率。警方亦會因此無法取得關鍵罪證，且無法識別盜用八達通卡的疑犯身分，而警方的處理方式也可能招致投訴。

在偵查罪案及預防投訴的角度來看，監警會建議警方研究對策，精簡警方與八達通卡公司之間的現行程序，並在長遠方面加快流程，以縮短取得八達通卡交易紀錄所需的時間，提升刑事案件調查的效率。此外，監警會建議警方提醒所有參與調查的警務人員嚴格遵守既定程序，及時透過警方的專責聯絡組向八達通卡公司取得交易紀錄，並且審慎和迅速地申請搜查令。

警方接納監警會的建議，並與八達通卡公司商討。八達通卡公司承諾作出協助，並加快處理程序。警方亦提醒警務人員向八達通卡公司索取交易紀錄時，務必嚴格遵照正確程序，以免對調查造成不必要的延誤。就此，監警會將繼續跟進警方及八達通卡公司之間的程序檢討進度。

From the above, the IPCC is concerned about the effectiveness of obtaining Octopus card transaction records under the existing protocol between the Police and OCL. In general, OCL requires three weeks to prepare the transaction records to Police. Coupled with the time taken by Police to apply for the search warrant and other administrative works, it normally takes six to nine weeks to complete the entire process of obtaining the transaction records and this would inevitably reduce the chance of successful retrieval of CCTV evidence as the retention period of the footage by general retail shops is relatively short. As a result, the key evidence of crime could not be secured and the suspects using the stolen Octopus cards would not be identified. This may also lead to complaints against the Police's handling.

From the perspectives of detection of crime and complaint prevention, the IPCC recommended the Police to explore ways to streamline the current procedures between the Police and OCL and expedite the process in the long run, so as to reduce the time required for obtaining Octopus card transaction records for a more efficient and effective crime investigation. Moreover, the IPCC also advised the Police to remind all investigating officers to strictly follow the established procedures to obtain transaction records from OCL through the Police's dedicated liaison unit without delay and to process the search warrant in a prudent and expeditious manner.

Accepting the IPCC's recommendations, the Police discussed with OCL, who undertook to assist and speed up their handling process. The Police have also reminded their officers of the importance of the strict compliance with the proper procedures in requesting transaction records from OCL so as to avoid any undue delay caused to the investigation. The IPCC will continue to monitor the progress of review on the procedures taken by the Police and OCL in this regard.