監警會通訊 IPCC Newsletter

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監警會與持份者會面
了解他們對投訴警察制度的意見
IPCC met with stakeholders for their opinions about police complaints system

獨立監察警方處理投訴委員會
Independent Police Complaints Council

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監警會與持份者會面 了解他們對投訴警察制度的意見
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自從在2009年6月成為獨立的法定機構後，監警會在《監警會條例》之下的其中一項法定職能是加強公眾對監警會的角色的認識。為履行此新增的法定職能，監警會除了透過不同的渠道向普羅大眾介紹監警會的工作以外，也會針對性地定期和不同的持份者會面，包括警方和其他關注團體，以確保他們可以直接向委員會表達意見。

由於警方是監警會最重要的持份者。因此，委員會有需要不斷和警隊各部門和各階層的代表會面，了解他們執行職務時遇到的困難和他們對投訴制度的意見。這些交流活動有助委員考慮調查報告和提出改善警隊服務的建議。

過去兩年，監警會委員便探訪了各個警區、支援部、警隊的員工協會等。每次的探訪活動均設有交流時段，讓前線警員和委員討論投訴警察的事宜。去年開始監警會委員更應邀出席警隊預防投訴委員會的會議，了解警隊內部預防投訴的措施。此外，委員亦有隨警方服務質素監察部黃福全助理署長到訪各區警署，聆聽前線警員對投訴事宜的意見，以及向他們講解監警會的工作。

除了警隊，監警會亦會主動約見民間的關注團體，或應邀出席會面。去年5月監警會主席便獲邀出席香港教育學院「人文香港」公開講座，談香港的執法體制和警隊專業化。會上，監警會主席和香港人權監察副主席交流警權和人權的問題，亦聆聽市民對警方處理遊行示威的各種意見，監警會在是次活動獲益良多。

Since becoming an independent statutory body in June 2009, the IPCC is tasked by the IPCC Ordinance with a statutory function of promoting the public awareness of the role of the IPCC. To carry out this new statutory function, the IPCC has not only made use of various channels to introduce our work to the public, but also met with different specific stakeholders on a regular basis, including the Police Force and other concerned groups, to ensure that they can directly express their opinions to the Council.

As the Police Force is the most important stakeholder of the IPCC, the Council needs to continually meet with its representatives from various formations and rankings to understand the difficulties they face when they carry out their duties, and to know their opinions about the complaints system. These exchange activities will help the Council Members monitor and review the investigation reports and in making suggestions for service improvement of the Police Force.

Over the past two years, Council Members have visited police formations, the Support Wing and the staff associations of the Police Force. The sharing session during each of the visits allows front-line police officers and Council Members to discuss matters related to complaints against the Police. Starting from 2011, Council Members have been attending meetings by the Force Committees on Complaints Prevention upon request, to gain insight into the internal police procedures in place for complaints prevention. Furthermore, Council Members have accompanied Assistant Commissioner (Service Quality) Wong Fook-chuen to pay visits to different police formations, to listen to the opinions of front-line police officers on complaints and to introduce the work of the Council.

Besides the Police Force, the IPCC also actively meets with civic concerned groups. In May 2011, the Chairman of the IPCC attended a seminar as part of the "Hong Kong Citizens, Institutional and Culture" research project by the Hong Kong Institute of Education. During the seminar, the Council Chairman exchanged ideas with the Vice-Chairman of the Hong Kong Human Rights Monitor on police power and human rights. He also listened to citizens' voice on how the Police handle demonstrations and protests.

同年12月，監警會更主動約見香港人權監察的代表，了解他們對警方處理請願示威活動的意見。香港人權監察的代表根據他們多次的觀察在會上分享示威人士的意見。總的來說，他們認為2005年終審法院在楊美雲及其他人對香港特別行政區一案中，已確定警方有責任協助示威活動的進行。但警方近年在處理這類活動時，卻引起很多爭議。當中包括警方在處理示威活動時的攝錄活動引起示威人士不安、警方涉嫌管制示威活動的表達用具和形式、示威區的設立和措施及遊行路線的安排未能配合示威人士的需要，以及警方在這類活動的武力使用等。

監警會委員關注他們提供的寶貴意見，並呼籲示威人士如有不滿，應主動作出投訴，善用現有的投訴處理機制。現時的情況是示威人士循不同的渠道表達意見，但卻甚少作出正式投訴。監警會要在有正式投訴、有真憑實據的情況下，才能中立持平地審核投訴個案的每項細節，從而客觀地分析事件的情況，積極地與投訴警察課跟進和提出建議。

In December 2011, the IPCC took the initiative to meet with the representatives of the Hong Kong Human Rights Monitor, and to learn more about their opinions on how the Police handle protests and demonstrations. The representatives of the Hong Kong Human Rights Monitor reported protestors' opinions based on numerous observations. On the whole, they believed that in the 2005 Court of Final Appeal case in which Yeung May-wan & Others vs HKSAR, it was established that the Police have the responsibility to facilitate protestors to carry out their activities However, the Police's handling of such events has engendered a number of controversies instead. Such controversies include filming the process of protest which make demonstrators feel uncomfortable; allegedly usurping the tools of expression and means of protests; designating the public activities areas and itinerary of public procession in such a way that the protestors' needs were not met; and the use of force by police officers in this type of events.

Council Members appreciated their invaluable comments, and appealed to the public that they should take the initiative to complain and make good use of the existing police complaints system if there is any discontent. At present demonstrators express their opinions through different channels, but rarely do they lodge a formal complaint. Only when there is a formal complaint and concrete evidences can the IPCC verify every detail of the case in an impartial manner, and actively liaise with Complaints Against Police Office for making recommendations.

新任命的監警會委員（任期2012年1月1日至2013年12月31日）：
Names of newly appointed IPCC Members (1 January 2012 to 31 December 2013):

1. Mr Edwin Cheng Shing-lung	鄭承隆先生
2. Mr Gerard Chung Wai-hung	鍾偉雄先生

再獲任命的監警會委員（任期2012年1月1日至2013年12月31日）：
Names of re-appointed IPCC Members (1 January 2012 to 31 December 2013):

1. Dr Chan Pui-Kwong	陳培光醫生
2. Mr Albert Jinghan Cheng, GBS, MHKIE, JP	鄭經翰先生，GBS，MHKIE，JP

再獲任命的觀察員（任期2012年1月1日至2013年12月31日）：
Names of re-appointed IPCC Observers (1 January 2012 to 31 December 2013):

1. Mr Daniel Cham Ka-hung MH, JP	湛家雄先生，MH，JP
2. Dr Charles Koo Ming-yan, MH	顧明仁博士，MH
3. Dr Michael Tsui Fuk-sun	徐福燊醫生

任期於2011年12月31日屆滿的監警會委員：
Names of retired IPCC Members (term of appointment ends on 31 December 2011):

1. Dr Helena Yuen Chan Suk-yee	阮陳淑怡博士
2. Ms Emily Cheung Mui-seung	張妙嫦女士

最新活動
Recent Activities

監警會在 2011年11月至2012年3月的活動如下：
IPCC's recent activities from November 2011 to March 2012 are listed below:

11月2日　2 November

『監警會通訊』第四期傳媒簡布會
Media Briefing for IPCC Newsletter Issue No. 4

會方推出第四期『監警會通訊』，並於當日舉行傳媒簡布會介紹通訊內容。簡布會當日，監警會翟紹唐主席在秘書長朱敏健先生陪同下，向傳媒朋友講解委員會的最新發展和通訊的內容，並分享一宗投訴警察的真實個案。傳媒反應熱烈，簡布會內容獲廣泛報導。

IPCC released the fourth IPCC Newsletter, and held a media briefing to introduce its contents to the media on the same day. At the briefing, Mr Jat Sew-tong, Chairman of IPCC, together with Secretary-General Mr Ricky Chu, introduced the IPCC's latest development and the newsletter to reporters and shared with them a real case of complaint against the police. The briefing was warmly received and widely reported by the media.

11月8日　8 November

探訪九龍西總區
Visit to the Kowloon West Region

翟紹唐主席、副主席林大輝議員、林志傑醫生、張達明先生、馬恩國律師、陳培光醫生、馬學嘉博士、黃幸怡女士和葉振都先生一同參加了此次活動。九龍西總區代表向委員講解與在該區非華裔人士的聯繫，以及新改建的羈留設施。會後委員和九龍西總區的代表小組交流。

Chairman Mr Jat Sew-tong, Vice-chairman Dr the Hon Lam Tai-fai, Dr Lawrence Lam Chi-kit, Mr Eric Cheung Tat-ming, Mr Lawrence Ma Yan-kwok, Dr Chan Pui-kwong, Dr Carol Ma Hok-ka, Miss Sandy Wong Hang-yee and Mr Adrian Yip Chun-to took part in this visit together. Representatives of the Kowloon West Region delivered a presentation on the communication with non-ethnic Chinese in the region and the newly refurbished detention facilities. After the presentation, Council Members and the representatives of the Kowloon West Region engaged in group exchanges.

12月13日　13 December

出席九龍東總區研究預防投訴警察委員會會議
Attended the Kowloon East Complaints Prevention Committee Meeting

林志傑醫生應邀出席九龍東總區研究預防投訴警察委員會會議。

Dr Lawrence Lam Chi-kit attended the Kowloon East Complaints Prevention Committee Meeting upon invitation.

12月14日　14 December

監警會2010/11工作報告提交立法會
IPCC submitted 2010/11 report to the Legislative Council

副主席李國麟議員代表監警會向立法會提交監警會2010/11工作報告，並在會上向立法會報告監警會在2010/11的工作情況和統計數字。有關監警會2010/11工作報告的詳細內容，請瀏覽http://www.ipcc.gov.hk/report/2010/report2010.pdf

On behalf of the IPCC, Vice-chairman Dr the Hon Joseph Lee Kok-long submitted a report to the Legislative Council on its work in 2010/11. He also reported in the meeting at the Legislative Council the Council's work in 2010/11 and relevant statistics. For details of the IPCC Report 2010/11, please visit http://www.ipcc.gov.hk/report/2010/report2010.pdf

12月19日　19 December

監警會公開會議
IPCC Open Meeting

在是次公開會議上，警方向監警會委員報告投訴警察課投訴調查中央化的安排，以及副總理訪港安排的相關投訴處理進度。當日的會議獲傳媒廣泛報導。

During this open meeting, the Police Force reported to Council Members the arrangements for the centralization of complaints investigation of Reportable Complaints by the CAPO, and the progress of investigation into the complaints in relation to the Vice Premier's visit to Hong Kong. The meeting on that day received wide coverage from the media.

12月20日　20 December




監警會2010/11工作報告傳媒聚餐及與香港人權監察會面

IPCC Report 2010/11 Media Luncheon and Meeting with Hong Kong Human Rights Monitor

為向傳媒朋友講解監警會2010/11工作報告的內容，翟紹唐主席和秘書長朱敏健先生主持是次簡布會。會後翟紹唐主席聯同副主席林大輝議員、副主席石禮謙議員、林志傑醫生、張達明先生、鄭經翰先生、劉玉娟女士、黃碧雲博士和葉振都先生，和傳媒代表一同午膳交流。

傳媒聚餐後翟紹唐主席、副主席李國麟議員、林志傑醫生、張達明先生、方敏生女士、劉玉娟女士和黃碧雲博士一同和香港人權監察代表會面。

To introduce the contents of the IPCC Report 2010/11, Chairman Mr Jat Sew-tong and Secretary-General Mr Ricky Chu Man-kin hosted a media briefing for launching the IPCC Report. After the briefing, Chairman Mr Jat Sew-tong, Vice-chairman Dr the Hon Lam Tai-fai, Vice-chairman the Hon Abraham Shek Lai-him, Dr Lawrence Lam Chi-kit, Mr Eric Cheung Tat-ming, Mr Albert Jinghan Cheng, Ms Noeline Lau Yuk-kuen, Dr Helena Wong Pik-wan and Mr Adrian Yip Chun-to, had lunch with the reporters.

After the luncheon, Chairman Mr Jat Sew-Tong, Vice-chairman Dr the Hon Joseph Lee Kok-long, Dr Lawrence Lam Chi-kit, Mr Eric Cheung Tat-ming, Ms Christine Fang Meng-sang, Ms Noeline Lau Yuk-kuen and Dr Helena Wong Pik-wan met with the Hong Kong Human Rights Monitor.

3月2日　2 March

監警會公開會議
IPCC Open Meeting

在是次公開會議上，監警會委員繼續跟進副總理訪港安排的相關投訴處理進度，當日的會議獲傳媒廣泛報導。

In this open meeting, IPCC Members continued to follow up the progress of investigation into the complaints in relation to the Vice Premier's visit to Hong Kong. The meeting on that day received wide coverage from the media.

警隊及廉署精英出任監警會副秘書長

我很榮幸能夠出任監警會副秘書長一職。相信我的背景和過往累積的經驗，必定有助我勝任此職務。

我對警隊的工作及文化有廣泛的認識。家父是刑事偵緝警長，我的童年住在警察宿舍，亦在多家警署渡過了不少時光。在1981至1987年，我曾效力警隊，擔任警務督察，隨後往美國哥倫比亞大學進修。我在1995年回港，並加入了廉政公署工作，躍升至首席調查主任。現在加入監警會，接任這個充滿挑戰的崗位。

很高興能在四份之一個世紀以後，再為警隊服務。在處理和審視每個投訴警察個案的過程中，我們要找出警察處事方式和工作程序中的不足之處，藉此改善警隊的服務質素。近年警隊的服務質素確實改進了不少，公眾對警隊的服務質素亦予以厚望。憑藉過往的執法和調查經驗，以及對警隊工作和文化的認識，我會努力協助監警會及警隊維持一個公平、有效及具透明度的投訴警察制度。

作者：梅達明先生於2012年1月獲委任為監警會副秘書長。

Senior Police and ICAC officer appointed as IPCC Deputy Secretary-General

I am proud and honoured to take up the post of Deputy Secretary-General of IPCC. My background and experience have culminated in helping me serve in this capacity.

I have extensive knowledge of police work and culture. Being the son of a Detective Sergeant, I grew up living in police married quarters, in several police stations. From 1981 to 1987, I served the Police Force as an Inspector of Police. I then studied at Columbia University in the United States. I joined the Independent Commission Against Corruption in 1995, and was promoted to Principal Investigator, before leaving to take up this challenging role with IPCC.

I am glad that after a quarter of a century, I still have the opportunity to contribute to improving the Police Force service quality, by reviewing the handling and investigation of each police complaint case and identifying deficiencies in police practices and procedures. The Police Force has improved significantly in recent years, and is held in high regard by the public. I am committed to using my law enforcement and investigation experience as well as my knowledge of police work and culture to help IPCC and the Police Force to maintain a fair, effective and transparent police complaints system.

Author: Mr Daniel Mui was appointed as Deputy Secretary-General of IPCC in January 2012.

危機過後 茁壯成長
Growing from strength to strength after a crisis

擔任監警會委員的六年，確實是我一次難忘的經驗。我在2006年1月加入警監會(監警會前身)，在成為委員後不久，警監會便發生了互聯網資料外洩事件。在這事件發生之前，警監會主要是在幕後默默審閱警察投訴的調查報告。站在前台與公眾溝通向來不是警監會的強項，警監會亦沒有和傳媒及公眾打交道的經驗。為應付當時的資料外洩事件，警監會 必須積極和公眾聯繫，並要投放許多人力和資源應付這些突如其來的工作，這情況難免會妨礙到警監會的日常運作。

我認為那段時間是警監會最艱難的時期。縱然如此，該次事件也促使警監會求變，讓我們了解到警監會以往默默在幕後埋頭苦幹的處事方式已經不合時宜。作為公帑資助的機構，我們的工作要向公眾負責，與普羅大眾聯繫實屬我們的責任。此外，我們的工作除了審核和監察警方處理投訴的調查報告外，亦須要被賦予法定的權力，向警方提出建議，來預防投訴個案的發生。在2008年，經過立法會一連串的激烈辯論之後，上述的部分問題終於在《監警會條例》通過時得以解決。警監會的中文名稱亦正式改為監警會。

《監警會條例》在2009年6月正式生效，《監警會條例》進一步界定投訴警察制度的兩層架構，清晰地闡明了監警會的角色及職責，有助監警會更有效地處理警察投訴等要務。在投訴警察制度的兩層架構下，投訴警察課負責處理投訴及投訴調查的工作，而監警會則負責監察及審核有關的投訴調查報告，確保所有個案均以公平、公正的方式處理。監警會亦有權就預防警察投訴事宜，向行政長官及警務處處長提出相關建議。監警會亦需要加強公眾對監警會角色的認識。這些職能已在《監警會條例》中詳細說明。

我有幸見證了監警會過去六年來的進程及發展。相信在主席及其他委員的帶領下，監警會將會繼續茁壯成長， 為社會作出更多貢獻。

作者：阮陳淑怡博士於2006年1月1日獲委任為獨立監察警方處理投訴委員會（監警會） 委員；服務委員會六年後，在2011年12月31日正式榮休。

My six-year tenure as an IPCC Member was an unforgettable experience. I joined the Council in January 2006. Shortly after that, the Council faced a major crisis involving the leakage of data on the Internet. Before this incident, the IPCC had been working always behind the scenes, reviewing the reports of police complaint investigations. Engaging the public was not a priority and the Council had no experience in dealing with the media and the public. However, handling this incident required the Council to proactively communicate with the public. We had to devote a lot of effort and resources to this matter, which unavoidably hindered our routine work.

I would say those were the most challenging days for the IPCC. However, this crisis also offered an opportunity to strengthen the Council. It made us aware that our previous approach in handling the IPCC's work was no longer sufficient. As a publicly funded body, we must be accountable to and proactively engage the public. We realized that we needed to be empowered with the authority to make suggestions to the Police to prevent complaints in addition to simply reviewing and monitoring their complaint investigation reports. Some of these issues were resolved by the enactment of the IPCC Ordinance in 2008 after a lively and vigorous debate in the Legislative Council.

The IPCC Ordinance, which went into effect in June 2009, clarified the IPCC's role and responsibility and allowed it to more actively handle police complaints by better defining Hong Kong's two-tier police complaints system. Under this system, the Complaints Against Police Office is responsible for handling complaints and investigations while the IPCC is responsible for reviewing and monitoring complaint investigation reports to ensure all complaints are handled in a fair and just manner. The Council is also empowered to make suggestions to the Chief Executive and the Commissioner of Police for the prevention of police complaints, as well as to promote public awareness of the role of the Council. These functions are now clearly stated in the IPCC Ordinance.

I am glad to see the progress and development of the Council over the past six years. Under the leadership of the Chairman and the current Members, I trust the Council will continue to grow from strength to strength and make significant contribution to the community.

Author: Dr Helena Yuen Chan Suk-yee was appointed as an IPCC Member on 1 January 2006. She retired on 31 December 2011 after serving the Council for six years.

匿名投訴只「知會」不審核
IPCC will be notified but not scrutinize anonymous complaints

「點解監警會唔理我個投訴？」

每年市民向投訴警察課作出達5,000宗投訴中，四分之一會被列為「須知會投訴」，即是毋須向監警會報告、只須簡單知會，此安排常引起公眾疑問。監警會解釋，市民投訴被視作「須知會投訴」而不獲監警會審核，一般是因投訴不符《監警會條例》要求。

警方投訴警察課處理的投訴中，只有約四分之三會列作「須匯報投訴」並作完整調查報告，然後交監警會審核；其餘的「須知會投訴」，則只須知會監警會而不用報告。監警會解釋，四種情況下，市民的投訴會視作「須知會投訴」，包括：

1）匿名投訴

2）並非受到警方行為直接影響者所提出的投訴

3）瑣碎無聊或無理取鬧而且不是真誠作出的投訴

4）有關休班警務人員在非執行職務的情況下的投訴

舉例說，若市民匿名投訴警察濫權、或投訴稱見到警員對某第三者不禮貌、又或投訴「整街都有違例泊車，為何警員只抄一兩架車的牌， 卻不抄其他？」，監警會一般不會審核有關投訴。不過也有例外，例如若受害人因傷亡、疾病、智障等不能親身投訴，亦可簽授權書讓他人代為投訴。

那是否意味警方有可能藉著把嚴重投訴「降格」成須知會投訴，以避開監警會審核？

監警會強調，即使被列作「須知會投訴」，警方也須每月向監警會呈交有關投訴的案件詳情及列為「須知會投訴」的理由，監警會會留意當中有否漏網個案。

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'Why doesn't the IPCC process my complaint?'

Each year, the Complaints Against Police Office (CAPO) receives up to 5,000 complaints against the Police. Around a quarter of these complaints are classified as 'notifiable complaints" and IPCC will simply be notified of such categorization, and investigation reports of these complaints do not required to be submitted to the IPCC. This arrangement always invites public queries regarding police complaint handling procedures. In response to these queries, the IPCC explains that, complaints lodged by general public which are classified as "notifiable complaints", may not be scrutinized by the IPCC because they do not meet the requirements as set out in the IPCC Ordinance.

Out of the total number of complaints handled by the CAPO, only around three-quarters are classified as 'reportable complaints', and the investigation reports of these complaints will be submitted to the IPCC for scrutiny. The remainder of complaint cases are classified as 'notifiable complaints'. For "notifiable complaints", IPCC will only be notified of such categorization, and investigation reports of these complaints will not be received. Complaints may be categorized as 'notifiable complaints' and therefore outside the IPCC's purview because of the following reasons:

1）The complaint was lodged anonymously

2）The complaint was lodged by a person who was not directly affected

3）The complaint is deemed to be vexatious or frivolous and not in good faith

4）The complaint was made against an off-duty police officer who has not exercised any of his duties

For example, if a citizen makes anonymous complaint concerning the Police's unnecessary use of authority; a third party complains a police officer's impoliteness to another person; or when a street is full of illegally parked vehicles, and a police officer ticketed some but not all of the vehicles. All these complaints will be categorized as "notifiable complaints". In general, all these "notifiable complaints" will not be scrutinized by IPCC with some exceptional situations. These exceptions arise when a complainant is unable to lodge a complaint due to death, physical or mental illness. For the latter, the complainant may sign an authorization form nominating a third party to lodge the complaint on his or her behalf.

Does this mean that the Police can possibly downgrade some serious complaints as "notifiable complaints" to avoid the IPCC"s scrutiny?

The IPCC stresses that although the CAPO is not obligated to submit a full investigation report of 'notifiable complaints' for IPCC's scrutiny, the Police are still required to provide case details and the rationale why the complaint case has been categorized as 'notifiable complaint' to the IPCC on a monthly basis. This allows the IPCC to maintain a watchful eye for any cases which may slip through.

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真實投訴個案
Real Complaint Case

個案重點

此個案顯示了以證據為基礎的警察投訴處理手法非常重要及富有效率。儘管投訴人撤回投訴，調查仍繼續進行，監警會審慎、嚴謹地審閱投訴警察課的調查報告，確保個案得以公平及公正地處理。

在此個案中，投訴人為一名14歲的男童，在警方到訪其學校調查毒品販賣事宜之時，受到警察不恰當的對待。男童母親遂代表男童投訴三名涉嫌「行為不當」的警員。經調查後，投訴警察課建議將指控列為「無法完全證明屬實」。但在監警會的質詢後，投訴警察課將指控改為「獲證明屬實」。個案中的警長在沒有取得學校協助，安排男童的家長或監護人在場的情況下，向有關學生進行查問，此舉違反了《警務處程序手冊》的內容細則。在監警會的質詢後，原來列為「旁支事項」的疏忽指控改為「未經舉報但證明屬實」的「疏忽職守」。

詳細個案

在2009年5月，一名警長及兩名警員A和B就有關危險藥物的線報到訪一所中學進行問話調查，而涉嫌的三名學生中亦包括當時14歲的男童。於當日下午約3時，男童接到學校工友通知，需前往校務處見訓導主任。到達校務處時，男童從訓導主任口中得悉數名警員希望與他對話。男童及後隨著警員A 來到一間有玻璃牆的房間，而警長和警員B亦已在該房間等候。甫進入房間，男童即被警員A要求把書包裡的所有物品清空放到桌上。其後，警員A再搜查他的個人物品。

於問話過程中，警長和警員B被指向男童使用粗鄙語言用字 (指控1：粗言穢語) 及恐嚇男童 (指控2：恐嚇)。警長亦涉嫌命令男童在其面前站直身子，張開雙臂；再將兩張紙巾放到男童向上的掌心之上。男童被警告若紙巾掉下來，他將會被揍打。及後，警員B涉嫌要求男童蹲下身子，坐在「無影櫈」。蹲下身子約廿分鐘後，警員B 再著男童一邊捏住耳朵，一邊繼續保持蹲下來的姿勢 (指控3：行為不當)。

Highlights of the Case

This case demonstrates the importance and effectiveness of an evidence-based approach for police complaints handling. Despite the complainant's withdrawal of the complaint case, the investigation continued and the CAPO report was examined in a meticulous and careful manner to ensure that the case was handled justly and fairly.

In this complaint case, the complainant was a 14 year-old boy who felt aggrieved at being ill-treated by the Police during a drug trafficking investigation at his school. His mother lodged the complaint on behalf of the boy against the three police officers involved for "Misconduct". After investigation, CAPO recommended that one allegation be classified as "Not Fully Substantiated". Following IPCC's queries, however, CAPO reclassified the allegation as "Substantiated". The failure of the Sergeant to seek assistance from the school to arrange for a parent or guardian of the boy to be present during the interview violated the Force Procedures Manual. Following the IPCC's inquiries, this act of negligence was reclassified to a "Substantiated Other Than Reported" count of "Neglect of Duty" from the original "Outwith" matter.

Details of the Case

In May 2009, a Sergeant and two Police Constables (A and B) visited a secondary school to conduct enquires in response to a dangerous drug intelligence report targeting at three suspect students including the boy who was 14 year-old at that time. At around 15:00 hours on that day, the boy was informed by a janitor to report to the Discipline Master at the school office. Upon arrival, he was told by the Discipline Master that some police officers would like to talk to him. The boy then followed Police Constable A to a room with a clear glass front wall, where the Sergeant and Police Constable B were waiting for him. Upon entering the room, the boy was told by Police Constable A to empty the contents of his schoolbag onto a desk after which Police Constable A checked his belongings.

During questioning, the Sergeant and Police Constable B were alleged to have used foul language towards the boy (allegation 1: Offensive Language) and threatened him (allegation 2: Threat). The Sergeant also allegedly ordered the boy to stand up straight and extend his arms in front of him; the Sergeant then placed two pieces of tissue paper onto his upturned palms. The boy was then warned that he would be beaten if he dropped the tissues. After this, Police Constable B was alleged to have requested the boy to squat and to sit on an 'invisible chair'. After squatting for about 20 minutes, Police Constable B then asked the boy to grip his ears while squatting (allegation 3: Misconduct).

就在此時，一名女教師路經這房間，並看到男童站在三名警員前手捏耳朵。在這名女教師的轉告下，男童的班主任走到此房間外，自行觀察5至10秒。那時，男童正站直身子，於身體前方張開交叉的雙臂。他亦發現男童的掌心握著些東西，而男童看似受到屈辱。該女教師和班主任接著到校務處了解事件情況。其後，女教師折返房外，看見男童仍然站在同一位置上，雙臂於身體前方完全張開，掌心向上並放著兩張紙巾。不過，由於房間的玻璃門關上了，女教師和班主任沒法聽見房內的對話。

約15分鐘後，警員將男童帶回校務處，再由學校工友領到課堂繼續上課。於該課堂上，男童哭泣並告訴該課堂老師事情始末。接著男童致電其母親訴說事件，其母立即前來學校了解。兩日後，男童母親代表男童投訴這三名警員。

在提出投訴約一年後，男童及其母親決定不再花時間在此案上，遂撤回投訴。即使投訴人撤回投訴，投訴警察課仍繼續調查此個案，因為此個案仍存有部分的獨立證明 (來自女教師及男童班主任的獨立證明) ，顯示此個案或有可能被列為「獲證明屬實」或「無法完全證明屬實」。

經調查後，因證據不足和三名警員的堅決否認，投訴警察課將指控1及指控2列作「無法證實」。就指控3而言，三名警員聲稱沒有懲罰男童，其行為是男童自發，而非依從他們的指示所作出的。而兩名目擊者(女教師及男童的班主任)的證詞，卻未能確定案發當日房內所發生的事，投訴警察課因而判斷男童所述的版本較可信，因為：

At this juncture, a female teacher passing the room was reported to have seen the boy standing in front of the three police officers while pinching his ears. After being informed by the female teacher of what she had seen, the boy's class teacher observed himself outside the room for another 5 to 10 seconds. At that time, the boy was seen standing still with both arms extended cross-shaped away from his body. He also noticed that there was something in the boy's palms, and that the boy looked aggrieved. The female teacher and the class teacher then went to the school office to enquire about the incident. After making an enquiry, the female teacher returned to the room to find the boy still standing on the same spot with his arms fully extended away from his body and his palms facing up holding two pieces of tissue paper. However, as the glass door of the room was shut, both the female teacher and the class teacher were unable to hear the conversation inside the room.

After around 15 minutes, the police officers took the boy back to the school office, from which he was led by a janitor to rejoin his class. During that class, the boy cried and told the teacher of that class what had happened. The boy then telephoned his mother to inform her of the incident, after which his mother came immediately to the school to meet him. Two days later, the boy's mother lodged a complaint against the three police officers on the boy's behalf.

About one year after the complaint was lodged, the boy and his mother decided to withdraw the complaint to avoid wasting time on the matter. Despite the complainant's withdrawal however, CAPO continued to investigate the case as there remained some independent evidence (based upon the statements taken from the female teacher and the boy's class teacher) to indicate that the complaint could possibly be classified as 'Substantiated' or 'Not Fully Substantiated'.

After investigation, CAPO classified allegations 1 and 2 as "Unsubstantiated" owning to insufficient evidence to support the allegations and the denial of the three police officers. For allegation 3, however, the three police officers claimed that the boy acted independent of their instruction and was not punished by them. While the testimonies of the two witnesses (the female teacher and the boy's class teacher) failed to confirm with absolute certainty what happened inside the room on that day, CAPO judged that the boy's version of events was more reliable as:

(i) 在事件發生後，他立即向老師和母親訴說此事。

(ii) 警長聲稱他曾於同日晚上向上司匯報男童的行為，但其上司卻否認該說法。

(iii) 就處理調查報告上的指控，警長和警員A所述的內容出現分歧和矛盾。

有見及此，投訴警察課在沒有足夠證據證明指控屬實的情況下，遂將指控3列為「無法完全證明屬實」。

此外，投訴警察課就警長沒有取得學校協助，安排男童的家長或監護人在場的情況下向有關學生進行查問之指控列為「旁支事項」。而該行為亦已違反《警務處程序手冊》有關為未成年人士落口供的安排。

監警會就指控3及投訴警察課對警長疏忽行為列作「旁支事項」的做法有所保留。就指控3而言，監警會觀察到下列情況：

(i) 根據兩名老師的證詞，男童的確曾捏著耳朵及曾在掌心放著紙巾。男童在要求作出所述的動作時，面露委屈受辱之情。

(ii) 男童受到三名警員不恰當的對待時已盡早向母親和老師作出投訴。他在母親在場時所作出的事件陳述，和及後他的投訴供詞內容一致。

(iii) 若男童有意圖捏造事件誣告三名警員，應該不會只作出捏著耳朵、張開雙臂等不會扣成傷害的動作來作出惡意指控。

(iv) 該三名警員聲稱訓導主任因急事離開房間後，他們並沒有向男童問話，反之只是討論區內打擊毒品的策略措施。監警會認為該說法有違常識，警員不應在涉嫌於校內販賣毒品的男童前討論該等事情。

(i) He complained to his teacher and mother immediately after the incident.

(ii) The Sergeant claimed that he had reported the boy's actions to his supervisor that same evening, something which his supervisor denied.

(iii) There were conflicting versions of events given by the Sergeant and Police Constable A regarding the handling of the investigation report which had a bearing on the concerned allegation.

In view of the above, CAPO classified allegation 3 as "Not Fully Substantiated" concluding that there was insufficient evidence to fully substantiate this allegation.

In addition, CAPO also registered an 'Outwith' matter against the Sergeant who failed to seek assistance from the school to arrange for a parent or guardian of the boy to be present during the interview. This act of negligence was not in compliance with the Force Procedures Manual regarding statement taking arrangement with minors.

IPCC had reservations regarding the classification of allegation 3 as well as CAPO's registration of the Sergeant's negligence as an "Outwith" matter. Regarding allegation 3, IPCC had the following observation:

(i) Based on the statements of the two teachers, there was no dispute that the boy had pinched his ears and held tissues on his palm. The boy also looked aggrieved when being placed in the said postures.

(ii) The boy made an early complaint about being ill-treated by the three police officers to his mother and his teacher. What he alleged in the presence of his mother when lodging this complaint was consistent with his version subsequently given in his complaint statement.

(iii) If the boy had intended to frame the three police officers, it would be very unlikely for him to hold postures such as gripping his ears and extending his arms which could cause no injuries to corroborate his "malicious" accusations against the three police officers.

(iv) The three police officers claimed that when the Discipline Master left for some urgent matter, they did not start an interview with the boy, and instead simply discussed some anti-drug strategies in the district. The IPCC considered that it defied common sense for the police officers to discuss this matter in the presence of the boy who was a suspect of drug-trafficking at school.

(v) 該三名警員解釋他們曾詢問男童其家長會否陪同他回答警員的問話查詢，男童卻突然哭泣、捏著耳朵，並哀求他們不要告訴其母。接著，男童又要求三名警員上前揍打他，在其身體前方張開雙臂，掌心握著紙巾。因三名警員聲稱訓導主任不在場下，他們沒有向男童就毒品買賣一事展開問話，監警會認為男童在這情況下，不會如指控中所述的方式來懲罰自己，因而該說法不大可能發生。

(vi) 警員A和警員B表示他們曾著男童停止自我懲罰的行為，來避免別人懷疑警方行為不當。若果警員希望保持清白，他們應該把男童該等不正常的行為，以及警員勸阻他停止等對話統統寫進警員記事簿裡。

(vii) 警長的版本是他曾向上司作出口頭報告，亦著警員A準備一份詳細的調查報告來取代較早前欠缺詳細內容的調查報告。但他未能提供可信的解釋為何從未看過警員A準備之電腦列印的調查報告。相反，警員A的版本就稱警長曾指示他不需在調查報告記錄過多的細節，因此他便以較精簡的電腦列印的調查報告來取代原先手寫較詳盡的調查報告。警員A陳述的版本和調查過程中發現的紀錄吻合。這亦解釋到警長的上司為何對男童的奇怪行為全不知情，直至接到有關投訴才知悉 (因她只閱讀電腦列印的調查報告)。在這件事情上，警員A 和警長上司的證詞比較可信，而警長向警員A所述的調查報告指示，進一步加強男童對警員在問話過程中，曾以不恰當行為對待他的可信性。

(v) The three police officers explained that when they asked the boy whether his parents could come to accompany him during the police interview, the boy suddenly cried, gripped his ears and begged them not to tell his mother. He then asked the three police officers to beat him, and extended his arms away from his body while holding the tissues in his palms. As the three police officers claimed that they had not yet questioned the boy about his involvement in drug-trafficking during the absence of the Discipline Master, the IPCC considered it highly improbable that under the circumstances the boy would punish himself in the manner alleged.

(vi) Both Police Constables A and B claimed that they had asked the boy to stop his act of self-punishment so as not to raise suspicion of police misconduct. If the police officers had wanted to come clean and set the record straight, they should have recorded the unusual behavior of the boy as well as their advice to him in their police notebooks.

(vii) The Sergeant's version about his verbal report to his supervisor and his instructions to Police Constable A to prepare an investigation report with more details to replace the earlier version without the details was uncorroborated by the versions of events as told by both Police Constable A and his supervisor. He also failed to offer a convincing explanation as to why he had never seen the computer-printed investigation report prepared by Police Constable A in the subject file. On the contrary, Police Constable A's claim that the Sergeant had instructed him not to record any unnecessary details in the investigation report, and hence a simpler and computer-printed investigation report was prepared to replace the original one which was more detailed and hand-written, was corroborated by the records found in the course of complaint investigation. It also explained why the Sergeant's supervisor had no knowledge of the boy's strange behavior until the complaint was brought to her attention (as she only had sight of the computer-printed investigation report). In this respect, the testimonies of Police Constable A and the Sergeant's supervisor were more credible and the said instruction by the Sergeant to Police Constable A concerning the investigation report recording further reinforced the boy's accusation that the police officers had ill-treated him during their encounter.

在衡量過以上種種情況後，監警會認為男童的供詞較為可信。警員聲稱男童自願地作出自我懲罰，不理會他們指示的版本，並不太可能發生，而此版本與警長向警員A所述的調查報告紀錄之事也存在著矛盾。故此，除非投訴警察課能提供新的證據，支持本來的決定，監警會認為指控3應改列為「獲證明屬實」。

有關「旁支事項」，監警會認為警長除了沒有尋求協助，安排男童的家長或監護人在場下進行面談問話之外，他亦沒有依從《警務處程序手冊》的細則，在抵達學校時向訓導主任述說情況，讓訓導老師和其任命的老師(《警務處程序手冊》所要求) 在整個面談問話過程中陪同投訴男童進行。

警長解釋訓導主任在他們向男童問話查詢開始前，因急事必須先行離開，因此他亦無法向訓導主任解說其職責，這說法並不可接受。因警長沒法作出以上安排，導致男童須獨自面對三名警員，最後引致此投訴事件。監警會認為應把警長的行為列為「未經舉報但證明屬實」的「疏忽職守」，而非「旁支事項」。

經監警會質詢後，投訴警察課同意監警會觀察所得，總結以平衡機會率而言，有足夠可靠的證據支持指控3。故此，該指控被改為「獲證明屬實」。而投訴警察課亦將警長沒有依從《警務處程序手冊》細則的「旁支事項」改為「未經舉報但證明屬實」的「疏忽職守」。

監警會通過這宗個案的調查結果。

In view of the above, the IPCC considered the boy's version is more credible while the police officers' claim that the boy punished himself voluntarily and independent of their instructions as inherently improbable and incompatible with the Sergeant's subsequent instruction to Police Constable A regarding the investigation report recording. As such, unless CAPO could produce new evidence to support its original classification, the IPCC considered that allegation 3 should be reclassified as "Substantiated".

Regarding the "Outwith" matter, the IPCC considered that in addition to the Sergeant's failure to seek assistance from school to arrange the presence of the student's parents or guardian during the interview, he had also failed to make possible efforts to ensure strict compliance with the Force Procedures Manual by not briefing the Discipline Master immediately upon their arrival at the school that the head teacher and his nominee (as required by the Force Procedures Manual) should accompany the complainant for the duration of the interview.

The Sergeant's explanation that the Discipline Master was in a hurry to leave at the outset of the boy's interview and hence he had no time to inform the Discipline Master of his role was totally unacceptable, as the Sergeant's failure in the above two respects resulted in the boy facing the police officers alone thereby leading tothe complaint. As such the IPCC considered a "Substantiated Other Than Reported" count of "Neglect of Duty" instead of an "Outwith" matter should be registered against the Sergeant.

After IPCC's queries, CAPO subscribed to IPCC's views and concluded that based upon the balance of probability, there was sufficient reliable evidence to support allegation 3. As a result this allegation was reclassified as "Substantiated". CAPO also reclassified the Sergeant's failure to comply with the Force Procedures Manual from an "Outwith" matter to "Substantiated Other Than Reported" count of "Neglect of Duty".

IPCC endorsed the investigation findings of this case.