

以證據為基礎仔細審視投訴個案

Meticulous Evidence Based Approach in Examining a Complaint Case

個案重點 Highlights of the Case

		被投訴人 Complainee(s)	投訴警察課原來分類 Original Classification(s) by CAPO	最後分類 Final Classification(s)
1	捏造證據 Fabrication of Evidence	一名高級警員 A Senior Police Constable	無法完全證明屬實 Not Fully Substantiated	獲證明屬實 Substantiated
2	疏忽職守 Neglect of Duty		未經舉報但證明屬實 Substantiated Other Than Reported	無(指控刪除) Nil (Allegation Deleted)

此個案反映監警會在面對「捏造證據」這等嚴重指控時，如何以證據為基礎作出仔細審視。經監警會查詢後，指控分類改為「獲證明屬實」。此個案是一個突出的例子，顯示出「無合理疑點」（用於刑事檢控），和「相對可能性衡量」（用於民事訴訟和紀律聆訊，以及投訴調查），兩種舉證標準的分別。

一名高級警員拘捕投訴人在火葬場「盜竊」，並為他錄取警誡供詞。及後投訴人投訴該名高級警員，指控包括該名高級警員涉嫌捏造警誡供詞的內容。據投訴警察課的調查證實，該名高級警員曾修改警誡供詞，但科學鑑證未能確定修改是否在投訴人簽署警誡供詞後才加上。徵詢法律意見後，警方認為無法證實個案無合理疑點，所以決定不起訴該名高級警員。投訴警察課認為當時的證據可靠，但未足以確鑿證實指控，故把「捏造證據」指控分類為「無法完全證明屬實」。監警會卻認為依據「相對可能性衡量」舉證標準，現有的證據已足夠並具說服力，指控應分類為「獲證實屬實」。投訴警察課認同監警會的見解，而該名高級警員則需接受紀律覆核。

This case illustrates the meticulous evidence-based approach adopted by the IPCC in examining a serious allegation of “Fabrication of Evidence” which was eventually found to be “Substantiated” after IPCC queries. This case also serves as a striking example in demonstrating the difference between the two standards of proof, i.e. “beyond reasonable doubt” (used in criminal proceedings) and “balance of probability” (used in civil proceedings and disciplinary hearings as well as complaint investigations).

The complainant had been arrested for “Theft” in a crematorium by a Senior Police Constable, who took a cautioned statement from him. Subsequently, the complainant made a complaint against the Senior Police Constable, alleging, among other things, that the Senior Police Constable had fabricated the content of the cautioned statement. A CAPO investigation confirmed there had been alterations on the cautioned statement by the Senior Police Constable, but a subsequent forensic examination could not determine whether the alterations had been done after the complainant had signed the cautioned statement. Moreover, after seeking legal advice, the Senior Police Constable was not prosecuted because it was considered that the case could not be proved beyond reasonable doubt. CAPO, therefore, classified the “Fabrication of Evidence” allegation as “Not Fully Substantiated”, since it was considered that the available evidence was reliable but insufficient to conclusively prove the allegation. However, it is the IPCC’s view that, by applying the standard of proof of “on the balance of probability”, the available evidence was sufficient and cogent to prove the allegation, which should thus be classified as “Substantiated”. CAPO subscribed to the IPCC’s views and the Senior Police Constable was to be subject to a Disciplinary Review.

個案背景

在2010年，一名火葬場經理見到一些骨灰龕被損毀而報警。經調查後發現其中一個龕位內有物件遺失，案件被列為「盜竊」。從火葬場的閉路電視片段看到一名貌似投訴人的男子在案發時進入火葬場。其後一名高級警員就該「盜竊」案拘捕投訴人，並為投訴人錄取警誡供詞。案件交由分區調查隊跟進，而投訴人當日獲准保釋。警方在徵詢法律意見後，投訴人最後獲無條件釋放。

投訴人隨即向投訴警察課投訴，其中包括指控該名高級警員捏造其警誡供詞內容，在他不知情或未同意下於其供詞加入「偷嘢」，由否認控罪「我無嘢講，我淨係去過火葬場啫」，改為承認控罪「我無嘢講，我淨係去過火葬場偷嘢」。**[指控一：捏造證據]**

投訴警察課的調查

投訴警察課的調查顯示，投訴人和高級警員雙方均有在警誡供詞上簽署確認內容。可是，把「啫」字改為「偷嘢」兩字，這項修改旁邊並沒有投訴人的加簽。當投訴警察課查問時，高級警員堅持是在投訴人在場的情況下作出修改，只是忘記要求投訴人加簽而已。

投訴警察課其後把警誡供詞交給政府化驗師進行科學鑑證。鑑證結果為化驗師不能辨析「偷嘢」二字是否在投訴人簽署警誡供詞後才加上。投訴警察課遂尋求法律意見，以權衡證據是否足以就改動警誡供詞向該名高級警員提出刑事檢控。在諮詢法律意見後，認為未必可以在法庭上證明案件毫無疑點，所以決定不起訴該名高級警員。

根據法證報告和法律諮詢，投訴警察課認為有證據顯示該名高級警員捏造警誡供詞內容，但證據未夠充份。故投訴警察課建議把指控一分類

Case Background

In 2010, a manager of a crematorium found some niches broken and made a report to the Police. After investigation, it was found that something inside one of the niches was missing. The case was then classified as "Theft". In addition, CCTV footage of the subject crematorium had captured a male who resembled the complainant entering the crematorium at the time of the offence. Later, a Senior Police Constable arrested the complainant for "Theft" and took a cautioned statement from him. The case was then referred to the district investigation team for follow-up and the complainant was released on police bail that same day. Eventually, the complainant was released unconditionally after the Police sought legal advice.

The complainant had lodged the instant complaint with CAPO, alleging among other things that the Senior Police Constable had fabricated the content of his cautioned statement by adding the words 「偷嘢」 (to steal) to the statement (which had changed his denial of guilt 「我無嘢講，我淨係去過火葬場啫」 (I have nothing to say, I only went to the crematorium) to an admission 「我無嘢講，我淨係去過火葬場偷嘢」 (I have nothing to say, I only went to the crematorium to steal) without his knowledge and consent.

[Allegation 1: Fabrication of Evidence]

CAPO's Investigation

CAPO's investigation revealed that both the complainant and the Senior Police Constable had signed on the cautioned statement to confirm its content. However, the Chinese characters 「偷嘢」 had been overwritten on the Chinese character 「啫」, and this alteration was not counter-signed by the complainant. When questioned by CAPO, the Senior Police Constable insisted that the alteration was made in the presence of the complainant, and that he had simply forgotten to ask the complainant to counter-sign.

CAPO then requested the Government Chemist to conduct a forensic examination on the cautioned statement. After examination, the Government Chemist could not determine whether the Chinese characters 「偷嘢」 had been written after the complainant had appended his signature to the cautioned statement. CAPO also sought legal advice regarding the weight of evidence for a criminal prosecution against the Senior Police Constable for his act of altering the statement. Subsequently, no charge was laid against the Senior Police Constable as it was considered that the prosecution might not be able to prove the case beyond reasonable doubt in court.

In light of the forensic report and the legal advice, CAPO considered that there was some, but not sufficient, evidence to prove that the

為「無法完全證明屬實」。

有關修改供詞後沒有要求投訴人加簽一事，投訴警察課認為該名高級警員違反了警察程序手冊的規定，因此加入一項「疏忽職守」的指控，並分類為「未經指控但證明屬實」。**[指控二：疏忽職守]**

監警會的觀察

經審視個案文件後，監警會意識到儘管：(a) 政府化驗師的報告不能確定警誡供詞內該項修改的時間；以及(b) 律政署因證據不是毫無疑點，而決定不對該名高級警察作刑事起訴。但就投訴調查而言，應以「相對可能性衡量」為舉證標準，因此仍然有足夠證據證明指控。監警會以民事標準，認為投訴警察課調查所得證據，即(i) 在高級警員的記事簿上，投訴人曾在需簽署的地方簽名，而涉事的詞語沒有投訴人的加簽，顯然是事後添加的；(ii) 該修改明顯把整句供詞的意思由否認轉為承認；(iii) 身為有經驗的警務人員，該名高級警員只獲疑犯在記事簿內記項末端簽署，而沒有要求在一項對刑事責任有重要影響的修改加簽；以及(iv) 經修改後，句子變得不合情理，句子前段「我無嘢講，」顯然與後半段「我淨係去過火葬場偷嘢」不協調——這足以證明警員不正當地修改投訴人的供詞，由否認控罪轉為承認的可能性很大。因此指控一應重新分類為「獲證明屬實」。

投訴警察課最終同意監警會的見解，並把指控一分類由「無法完全證明屬實」改為「獲證明屬實」。由於指控一已獲證明屬實，指控二則變得與指控一的結論矛盾，故投訴警察課刪除指控二。投訴警察課更建議對該名高級警員進行紀律覆核。

監警會通過這宗個案的調查結果。

Senior Police Constable had fabricated the content of the cautioned statement. CAPO thus proposed classifying Allegation 1 as “Not Fully Substantiated”.

Regarding the act of overwriting as well as the omission to secure the complainant’s counter-signature for the alteration, CAPO considered that the Senior Police Constable had contravened the relevant provisions in the Police Manual and thus registered a separate count of “Substantiated Other Than Report ” allegation of “Neglect of Duty” against him. **[Allegation 2: Neglect of Duty]**

IPCC’s Observation

Upon examining the case documentation, the IPCC was of the view that, notwithstanding that (a) the Government Chemist’s report was inconclusive as to when the alteration was made; and (b) the Department of Justice decided not to lay criminal charges against the Senior Police Constable because the case could not be proven “beyond reasonable doubt”, there remained sufficient evidence to prove the allegation in the context of a complaint investigation as the correct standard of proof to be adopted should be “on the balance of probability”. Applying the civil standard, the IPCC considered that the available evidence revealed from CAPO’s investigation, i.e. (i) the material wording in the Senior Police Constable’s notebook, was clearly overwritten without countersigning by the complainant who had after all signed the relevant notebook entry; (ii) the fact that the alteration had clearly changed the meaning of the whole sentence from one of denial to one of admission; (iii) that the Senior Police Constable, as an experienced police officer, had only obtained the suspect’s signature at the end of the notebook entry but not the alteration which was so materially significant as far as criminal liability was concerned; and (iv) the sentence was awkward after the alteration as the first half of it 「我無嘢講，」 (I have nothing to say) was obviously inconsistent with the second half 「我淨係去過火葬場偷嘢」 (I only went to the crematorium to steal) — was more than sufficient to prove, on a preponderance of probability, that the Senior Police Constable had improperly altered the complainant’s cautioned statement from a denial to an admission. Hence, Allegation 1 should be re-classified as “Substantiated”.

CAPO eventually agreed with the IPCC’s view and re-classified Allegation 1 from “Not Fully Substantiated” to “Substantiated”. Since the registration of Allegation 2 would be contradictory to the rationale of the substantiation of Allegation 1, CAPO therefore deleted Allegation 2. CAPO also recommended initiating a Disciplinary Review against the Senior Police Constable.

The IPCC endorsed CAPO’s findings in this case.