

監警會 通訊

IPCC NEWSLETTER



有關調查刑事案件衍生的投訴個案

Complaint cases generated from crime investigation



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

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有關調查刑事案件衍生的投訴個案

Complaint cases generated from crime investigation

刑事案件的處理和調查涉及不同程序，包括搜集證據、錄取口供、拘捕疑犯、提出檢控等。在監警會審核的投訴個案中，便有指控是涉及警務人員在調查過程中「疏忽職守」，或是在檢控程序中出錯。今期的封面故事將介紹四宗有關調查刑事案件衍生的投訴個案。

The handling and investigation of crime cases involve various procedures, such as collecting evidence, taking cautioned statement, arresting suspects and filing prosecution. Among the complaint cases vetted by the IPCC, some allegations involved “Neglect of Duty” in the course of investigation, while some cases were related to faulty procedures in prosecution. In this issue, the cover story will feature four complaint cases, all arising from criminal investigation.

個案一：三名警員未有妥善調查一宗偷竊案導致未能追查疑犯下落

Case 1 : Three police officers failed to properly investigate a theft case which resulted in failure to track down the suspect

背景

投訴人在超級市場購物期間，發現他放在購物車內的個人物品不翼而飛，遂報警求助。案件交由三名警務人員(被投訴人一至三)負責，被投訴人一為案件主管(督察)，其餘二人為調查員(分別為警長及警員)。由於沒有收到有關個案的調查進展或結果，投訴人於案發約一年後致電查詢。一名督察當時接替被投訴人一的工作，告知投訴人該案件已被終止調查。

投訴人不滿警方的調查手法和結果，遂向投訴警察課投訴。他表示，自己曾檢視超級市場內閉路電視拍攝的片段，從中得知一名疑犯偷走了他的袋後，隨即使用了疑犯自己的超級市

Background

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). The Complainee 1 (COME 1) was the officer in charge of the case (Inspector) whereas the other two officers (COME 2-3) were the investigating officers, i.e. Team Sergeant and Police Constable respectively. About a year after the incident, as the Complainant had not received any update or case result, he then called the Police via phone for enquiry. An Inspector, who was the successor of COMEE 1, told the Complainant that his case had been curtailed.

Dissatisfied with the Police's investigation approach and result, the Complainant lodged a complaint with CAPO. 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



投訴人認為警方可從超級市場積分卡的交易紀錄追查疑犯的下落，而非草草地結束調查。

(照片來源(封面及本頁)：經濟日報)

The Complainant considered that the Police could track down the suspect through the transaction records of the supermarket membership card instead of closing the case hastily.

(Photo Credit (cover and this page): Hong Kong Economic Times)

場積分卡再進行購物，因此認為警方應能循此方向追查疑犯的下落，而非草草地結束調查。他指控被投訴人一至三未有妥善調查案件【指控一：疏忽職守】，以及被投訴人一未有適時向他交代案件的進度和結果【指控二：疏忽職守】。

投訴警察課的調查

有關指控一，被投訴人三在接受投訴警察課調查時表示，他檢視閉路電視時，發現片段未能清楚拍下疑犯的樣貌，僅拍攝到他在收銀處使用超級市場積分卡。此外，被投訴人三向超級市場經理查詢時，得知一張積分卡可由數人共用，而且涉事的超級市場亦未能提供積分卡的交易紀錄及客戶資料。基於上述情況，被投訴人三認為所有可以追查的線索已中斷，遂建議被投訴人一和二終止調查。投訴人一和二認同被投訴人三的觀點，考慮到即使能找到該名疑犯亦難以成功作出檢控，因此二人決定同意終止調查。

經調查後，投訴警察課發現積分卡公司可按積分卡交易的地點和時間從交易紀錄中找出積分卡使用者的個人資料，並提供予警方作調查之用。被投訴人三向投訴警察課表示自己對超級市場積分卡的運作有誤解，故此未有再向積分卡公司作調查及確認疑犯身份。投訴警察課認為被投訴人三在調查中有錯失

believed that the police should use this clue to identify the suspect instead of closing the case hastily. He alleged that COMEEs 1-3 failed to investigate the case properly [Allegation 1: Neglect of Duty], and COMEE 1 failed to update him the case progress and result [Allegation 2: Neglect of Duty].

CAPO's investigation

Regarding Allegation 1, when interviewed by CAPO during complaint investigation, COMEE 3 claimed that he reviewed the CCTV footage and found that it did not capture the face of the suspect clearly but only the use of the membership card by the suspect at the cashier. In addition, COMEE 3 was informed by the manager of the supermarket that one membership card account can be used by several persons and the supermarket could not provide transaction records and customer information of the membership cards. Based on the above situation, COMEE 3 considered that the lines of investigation had been exhausted and made recommendation to COMEEs 1-2 for curtailment of the case. Both of them agreed with COMEE 3's views, as they considered that even if the card user at the material time could be identified, the chance of a successful prosecution was low. Therefore, they agreed to curtail the investigation.

After investigation, 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 and provide relevant information to the police for investigation purpose. COMEE 3 told CAPO that he misunderstood the operation of the supermarket's membership card and hence failed to further investigate and confirm the suspect's identity from the membership card company. CAPO considered that COMEE 3, who failed to investigate the case

並提供了錯誤的資料誤導被投訴人一和二，他應為此負責，因此將針對被投訴人三的指控一分類為「獲證明屬實」，並向他作出訓諭而無須將事件記入其分區報告檔案中。相反，由於被投訴人一僅在警隊工作四年，年資尚淺，而且他和被投訴人二均被誤導，故建議將針對二人的指控一分類為「無法證明屬實」。

至於指控二，根據警方檔案紀錄，被投訴人一在個案終止調查後曾寄信通知投訴人有關調查結果，過程中並無延誤，因此投訴警察課將指控二分類為「並無過錯」。

監警會的觀察

監警會認同投訴警察課對指控二的分類，但不同意投訴警察課對指控一的分類。監警會認為，作為被投訴人三的上司，被投訴人一和二有責任指導他，因此二人應對個案負上相同責任。再者，被投訴人一在警隊工作已有數載並為督察職級，經驗非淺，而且年資長短並不可作為他錯誤決定終止調查的藉口。被投訴人一作為案件主管，最基本和最重要的工作是小心核實所有調查證據，例如他應向積分卡公司查證積分卡計劃的實質運作及警方索取積分卡交易紀錄及個人資料的流程。假如他能妥善及謹慎地處理有關個案，給予適當的督導給被投訴人二和三，並嘗試追查所有線索，便很大機會可以追查到疑犯的下落。

至於被投訴人二，他是一名擁有逾二十年經驗的資深警務人員，理應知道當時仍有可以追查的線索。不過，他卻以積分卡可由數人共用為由而認定難以追查疑犯身份並同意終止調查。監警會認為被投訴人二根本未有盡責從各方搜證，便妄下判斷，實有草率之嫌。監警會認為被投訴人二同樣未有妥善處理投訴人的案件。

基於上述原因，監警會建議將針對被投訴人一和二指控一重新分類為「獲證明屬實」。投訴警察課最終接納上述建議，將針對三人的指控一均重新分類為「獲證明屬實」，並對他們作出訓諭但無須記入其分區報告檔案中。

properly and had subsequently misled COMEEs 1-2, should bear the main responsibility. Therefore, CAPO classified the allegation 1 against COMEE 3 as “Substantiated” and he would be given an advice without Divisional Record File (DRF) entry. 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, allegation 1 against COMEEs 1-2 should be classified as “Unsubstantiated”.

Regarding Allegation 2, according to the record of police documents, COMEE 1 had issued an investigation result letter to the Complainant after the case was curtailed and no delay was found during the process. Therefore, CAPO classified the allegation 2 as “No Fault”.

IPCC's observation

IPCC agreed with CAPO's classifications on allegations 2, but disagreed with its classification on allegation 1. IPCC opined that COMEEs 1-2, who were supervisors to COMEE 3, should provide proper guidance to him and thus should bear equal responsibilities for the case. Considering COMEE 1 has already served the Force for several years and was in the rank of Inspector, he should have adequate experience. Moreover, his short service could not be a valid excuse to exonerate his negligence in making a wrong decision to curtail the case prematurely. Being the officer in charge of the case, it was basic and essential for COMEE 1 to conduct some background check on the available evidence, such as checking the actual operation of the membership card programme and how the transaction records and personal data could be obtained from the membership card company. If he had handled the case in a proper manner, provided appropriate guidance to COMEEs 2-3, and tried to exhaust all lines of enquiry, the chance of tracking down the suspect would be higher.

As an experienced officer who served the Force for 20 years, COMEE 2 should be able to identify that the lines of enquiry had not been exhausted at the material time. However, he believed it would be difficult to track down the identity of the suspect and agreed to curtail the investigation on the grounds that there could be more than one user for one membership card account. The IPCC considered that COMEE 2 drew the conclusion hastily before trying his best to collect all the available evidence. Thus, the IPCC was of the view that COMEE 2 also failed to handle the case properly.

Based on the above reasons, the IPCC recommended that the allegation 1 against COMEEs 1-2 should be re-classified as “Substantiated”. CAPO accepted the above recommendations and re-classified the allegation 1 against three officers as “Substantiated”. Three COMEEs were given advices without DRF entry.

個案二：調查刑事毀壞案件所衍生的投訴

Case 2 : Complaint stemmed from the investigation of a criminal damage case



投訴人投訴一名警務人員未有調查清楚，便於賓館內將她拘捕。

(照片來源：經濟日報)

The Complainant alleged that a police officer arrested her in a guesthouse without investigating the case properly.

(Photo Credit: Hong Kong Economic Times)

背景

投訴人與其弟因母親的賓館業權而爭執。期間，投訴人的丈夫威脅殺死投訴人的弟弟，其弟感威脅於是報警。警察到場調查後拘捕了投訴人的丈夫。投訴人為此情緒激動，更以鐵枝破壞賓館的洗衣房門。投訴人的弟弟於是再次報警。接報到場的三名警務人員以刑事毀壞罪名拘捕投訴人。在拘捕過程中，投訴人要求與母親見面，但被拒絕。投訴人就此投訴該三名警務人員(被投訴人一至三)【指控一：疏忽職守】。此外，投訴人亦指控被投訴人一未有於現場調查清楚，只聽信其弟的片面之詞便將她拘捕【指控二：疏忽職守】。

Background

The Complainant had an argument with her brother about the ownership of their mother's guesthouse. During the dispute, the Complainant's husband threatened to kill his brother-in-law. Complainant's brother felt threatened and called the Police. After investigation, the Complainant's husband was arrested by the police officers who arrived at the scene. The Complainant became emotional at this point and used an iron pole to break a laundry room door in the guesthouse. The Complainant's brother called the Police again. Three police officers attended the scene for inquiries and arrested the Complainant for "Criminal Damage". During the arrest, the Complainant requested to meet her mother but the request was rejected. The Complainant thus filed a complaint against the three police officers (Complainees 1 to 3) [Allegation 1: Neglect of Duty]. Subsequently, the Complainant also alleged that Complainee 1 (COME 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].

投訴警察課的調查

經全面調查後，投訴警察課認為負責案件的警務人員考慮到投訴人母親有可能成為案中的控方證人，為確保投訴人母親的安全，以防投訴人因情緒不穩而令事件惡化，或令投訴人有機會騷擾案中證人，即其母親，從而妨礙調查工作，故決定拒絕讓投訴人與其母親見面。投訴警察課認同以上觀點，遂將指控一分類為「並無過錯」。

至於指控二，投訴警察課在調查後發現：(i) 現場有兩名員工(證人)目睹投訴人破壞洗衣房門；(ii) 投訴人聲稱擁有賓館股權，惟未能提供任何證明文件。在警誡下，她辯稱擁有洗衣房的使用權，但未獲發鎖匙才以工具撬開洗衣房門，造成損壞；及(iii) 被投訴人一曾要求投訴人的弟弟聯絡賓館東主，亦即投訴人的母親到場協助調查。投訴人母親當時曾表示堅決追究事件。基於以上證據，該課認為被投訴人一在經過全面調查後才對投訴人作出拘捕，並非單靠投訴人弟弟的一面之詞，行動實屬合理，因此將該指控同樣分類為「並無過錯」。

監警會的觀察

監警會同意投訴警察課對兩項指控的分類，並認為投訴人可能因不了解警方調查案件的程序而產生誤會，繼而引致投訴。在類似個案，警務人員在處理家庭糾紛所衍生的案件時，涉案人士或被捕人士一般情緒較激動而未能理解警方處理方法。監警會認為警務人員若能於事後再向涉案人士清楚解釋其責任及權利，則可避免誤會，及減少因誤解警方工作而衍生的投訴。

CAPO's investigation

After thorough investigation, CAPO opined that COMEEs 1-3 have considered that the Complainant's mother might later become a prosecution witness. For safety concern of the Complainant's mother, it was reasonable for them to refuse Complainant's meeting request to prevent the emotionally unstable Complainant from further escalating the incident and to prevent her from affecting the investigation work by interfering with Complainant's mother who would be the witness of the case. CAPO agreed with the considerations mentioned above and classified Allegation 1 as "No Fault".

As for Allegation 2, CAPO has conducted investigation and found that: (i) two guesthouse workers (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. Under caution, the Complainant argued that she had the right to use the laundry room but was not offered the key. She had to use a tool to pry open the laundry door, which caused the damage; and (iii) COMEE 1 had requested the Complainant's brother to contact the guesthouse owner, i.e. the Complainant's mother to assist in the investigation at the scene. The Complainant's mother insisted to pursue the incident at the material time. Based on the above evidence, CAPO was of the view that CAPO considered that COMEE 1 arrested the Complainant after thorough investigation and the arrest was not based entirely on the version given by the Complainant's brother. The arrest action was justified. Therefore, CAPO classified the allegation as "No Fault".

IPCC's observation

The IPCC agreed with CAPO's classifications of the two allegations and considered that the Complainant might have misunderstood the police investigation procedure while she lodged the complaint. In many cases which stemmed from family disputes, persons involved in and those who were arrested during the incidents were likely to be emotionally unstable and unable to comprehend the police's procedures. The IPCC opined that if the police officers could clearly state to the persons involved in these cases their rights and responsibilities afterwards, similar misunderstandings and relevant complaints might be reduced.

個案三：案件主管未有在法定檢控時限內提出起訴

Case 3 : Officer-in-charge of a case failed to file prosecution within the statutory time bar



投訴人投訴一名警務人員未有在法定檢控時限內起訴被告。

(設計圖片)

The Complainant alleged that a police officer failed to prosecute the Defendant within the statutory time bar.

(Illustration)

背景

一名女教師(投訴人)報案指在校內淋浴期間遭一名男教師(被告)偷窺。經調查後，案件主管(被投訴人)根據律政司的建議，以「遊蕩」罪起訴被告。然而，被投訴人安排被告出席法庭聆訊的日期超出了六個月的法定檢控時限。被投訴人發現錯誤時，由於法定檢控時限已過，結果案件須撤銷，被告亦在無條件下獲釋。

投訴人得悉上述情況後，隨即作出投訴，指控被投訴人未有在法定檢控時限內起訴被告【指控：疏忽職守】。

Background

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 (Complainee) charged the Defendant with one count of “Loitering” based on the advice from the Department of Justice. The Complainee (COMEE), however, arranged the Defendant to appear in court on a day after the six-month statutory time bar. When the COMEE realized the mistake, the statutory time bar had already passed. The case had to be dropped and the Defendant was released unconditionally.

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].

投訴警察課的調查

投訴人其後表示，她只希望被投訴人的上司知悉事件，藉以提升警隊服務質素，因此決定撤回投訴。

與此同時，被投訴人所屬單位認為其疏忽職守的指控，表面證據成立，故需採取紀律覆檢。

投訴警察課考慮了投訴人的決定和被投訴人所屬單位的安排後，把投訴指控分類為「投訴撤回」。

監警會的觀察

監警會對該課的分類有保留。鑑於本個案的指控性質嚴重，加上指控已有表面證據支持，故有必要進行全面調查，進一步考慮指控是否屬實。投訴警察課接納監警會的建議，經全面調查後，指控分類最終由「投訴撤回」改為「獲證明屬實」，被投訴人須接受紀律覆檢。

就本投訴個案，會方特別提出兩個值得注意的方面。第一，即使投訴人選擇撤回投訴，其個案並不一定列作「投訴撤回」。監警會同樣會審視這類個案，並在有需要時要求投訴警察課進行全面調查，確保投訴人沒有受到任何不恰當的影響而撤回投訴，以及警方能從個案中汲取教訓，採取相應的補救行動。

第二，在刑事案件中，法定檢控時限是非常重要的。會方建議警方透過不同途徑，提醒警務人員務必注意相關時限，確保所有刑事案件均得到適時及適當的處理。

CAPO's investigation

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 Formation, CAPO classified the allegation as "Withdrawn".

IPCC's observation

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, a full investigation was therefore warranted in this case in order to further consider if the allegation should be substantiated. CAPO agreed with the IPCC's recommendation. A full investigation was conducted and the allegation was eventually reclassified from "Withdrawn" to "Substantiated". The Complainee was subject to Disciplinary Review.

There are two noteworthy points in this complaint case. Firstly, where 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 and that any lessons learnt from the cases will be captured and appropriate remedial actions will be taken by the Police accordingly.

Secondly, statutory time bar is of utmost importance for handling criminal cases. The IPCC recommended the Police to remind officers to pay special attention to such time bar via various means so as to ascertain that all criminal cases are processed in a timely and proper manner.

個案四：四名警員在未有搜查令或投訴人的同意下入屋搜查

Case 4 : Four police officers conducted a house search without search warrant or Complainant's consent



監警會建議警方與政府化驗所加強合作，為懷疑危險藥物進行緊急初步檢驗。

(資料相片)

The IPCC recommended the Police to enhance their collaboration with the Government Laboratory to conduct urgent preliminary examinations on suspected dangerous drugs.

(Illustration)

背景

一名市民向警方舉報一名可疑男子用腳踢其鄰居的大門。被投訴人一至四(一名警長及三名警員)到場調查，發現涉事的單位門鎖曾遭破壞，而投訴人正於屋內。投訴人在警員要求下打開鐵閘讓他們進入屋內調查。投訴人向警員解釋他是屋主的朋友，屋主當時正住院。投訴人表示屋主讓他暫住於單位內已有數月，並只能出示該單位的鐵閘鎖匙。警員經查證確認屋主正留院，不過未能直接聯絡屋主跟進投訴人的說法。

由於仍對投訴人有所懷疑，加上大門亦有損毀，被投訴人決定向其進行搜身及於單位內作出搜查。經搜查屋內衣櫃及梳化上的一個手提袋，警方發現手提袋內藏有一袋可疑白色粉末和一把彈弓刀。就此，警方以「刑事毀壞」、「管有危險藥物」和「管

Background

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 (Complainees 1-4) responded to the scene and found that the door lock to the flat was damaged and the Complainant was inside the unit. Upon request from the police officers, the Complainant opened the iron gate to let them enter for investigation. The Complainant explained to the police officers that he was a friend of the owner of the flat who was currently hospitalised. He stated that the owner 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 only. After inquiry, the police officers confirmed that the owner of the flat was indeed hospitalised. However, they were not able to speak to the owner directly to follow up on the Complainant's version.

Since they still had doubt about the Complainant, in addition to the damage of the main door, the Complainees (COMEES) decided to conduct search on the Complainant and in the flat. After searching in a wardrobe in the flat and a tote bag on the sofa, 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

有違禁武器」三項罪名拘捕投訴人，並向其落案起訴及將案件提堂。於庭上，法官將案件押後，以等候政府化驗師對白色粉末及彈弓刀的化驗結果。期間投訴人需還押懲教署看管。

六星期後，化驗結果證實該袋白色粉末並沒有任何危險藥物的成份。此外，警方亦聯絡上屋主證實投訴人所說。在審視案件後，警方只繼續起訴「管有違禁武器」這項罪行。投訴人於庭上不承認控罪。審訊中，法官批評警方當日並未有搜查令搜屋。而警方當時並未以任何足以支持搜屋的控罪拘捕投訴人，故不適合引用警權在屋內搜查證據。就此，法官認為警方當日入屋搜查的行動並不合法，所檢取的彈弓刀亦不能成為有效之證物。因此，投訴人被判無罪釋放。

案件審訊完結後，投訴人向投訴警察課指控被投訴人二在單位的廚房內檢取一袋鷹粟粉，便懷疑是海洛英，拘捕他管有危險藥物【指控一：捏造證據】。此外，投訴人亦指被投訴人一至四向他查問時不禮貌【指控二：不禮貌】。

投訴警察課的調查

有關指控一及二，投訴警察課曾嘗試聯絡投訴人以錄取口供及跟進投訴，但投訴人並無回應投訴警察課。基於現有證據未能對指控作出肯定的結論，該課遂將兩個指控分類為「無法追查」。

監警會的觀察

監警會同意投訴警察課對指控一和二的分類。不過，監警會對於四名被投訴人處理案件的手法，尤其是他們在不合法的情況下在投訴人的單位內進行搜查有所保留。因此，監警會建議投訴警察課對四名被投訴人新增一項「未經舉報但證明屬實」的「濫用職權」指控。

of Dangerous Drugs (PDD)” and “Possession of Prohibited Weapon (POPW)”. When it was brought to court, the Judge adjourned the case pending the examination results of the suspected white powder and the spring loaded knife by Government Chemist. During this period, the Complainant was remanded in custody of the Correctional Services Department.

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. The Complainant pleaded not guilty in court. During the trial, the Judge criticized the Police for conducting a search of the flat without a warrant. He stated that the Police did not arrest the Complainant for any offence which called for police power to look for evidence in the flat. In this connection, the Judge 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's investigation

Regarding Allegations 1 and 2, 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 to CAPO's requests. Since the available evidence did not point to any definite findings, CAPO classified both allegations as “Not Pursuable”.

IPCC's observation

The IPCC agreed with CAPO's classifications on allegation 1 and 2. However, IPCC had reservations on the action taken by COMEEs 1-4 when handling the case. Particularly, the search in the Complainant's flat was not legal. Therefore, the IPCC considered that CAPO should register a new “Substantiated Other Than Reported (SOTR)” count of “Unnecessary Use of Authority (UUOA)” against COMEEs 1-4.

投訴警察課回覆監警會時指，被投訴人的搜查行動並無不當之處：(i)四名警務人員接報到場後發現涉事單位的門有所損壞，因此有理由相信投訴人干犯了罪行如企圖爆竊；(ii)雖然投訴人曾經表示單位業主與他相識，並讓他住在單位內已有數月，不過由於警方未能即時找到業主查證，加上他當時行為鬼祟，不能排除他進入單位進行不法行為的可能，四名警員亦有必要對投訴人進行搜身，以確認他沒有管有任何爆竊工具；(iii)由於向法院申請搜查令需時，投訴人可能已逃走，四名警員需馬上行動，在投訴人的單位內進行搜查。

監警會不同意投訴警察課的理據。監警會認為四名警員當時是因刑事毀壞到單位調查而非爆竊，投訴人亦已盡最大努力向警方解釋在單位內的原因。而當時投訴人亦能提供單位的鎖匙，警方認為投訴人有爆竊之嫌的說法實屬牽強。另外，在大多數情況下，若警方需在私人單位內進行搜查時，必需事先得到屋主或有關住客同意。如未獲同意，警方便需向法院申請搜查令。但警方在這宗案件中並未有依照合適程序便在有關單位內進行搜查，實有不當之處。因此，監警會認為投訴警察課應對四名被投訴人新增一項「未經舉報但證明屬實」的「濫用職權」指控，並要求和投訴警察課召開工作層面會議討論投訴個案。

經討論後，監警會和投訴警察課同意被投訴人一為當日現場最高級的長官，以他的工作經驗，他不應該容許及命令下屬在未有事先獲得同意或搜查令的情況下搜查有關單位，因此，他應對個案失誤負上最大責任。投訴警察課同意向被投訴人一新增一項「未經舉報但證明屬實」的「濫用職權」指控，並對他作出訓喻但無須記入其分區報告檔案中。

CAPO opined in their reply to IPCC that there was no impropriety in the search actions taken by the COMEEs on the ground that (i) the four police officers arrived at the scene and found that the door to the flat was damaged. It was reasonable to believe that the Complainant had committed an offence, such as "Burglary"; (ii) though the Complainant claimed that the owner of the flat knew him and had given him permission to live in the flat for a few months, the police could not get in touch with the flat owner at the material time to confirm the Complainant's claim. There was a possibility that he entered the flat for unlawful purpose as he acted furtively. It was also necessary for the four police officers to conduct a search on the Complainant to ensure he did not possess any article for burglary; and (iii) since applying for a warrant from court would take time and might give the Complainant an opportunity to escape, the four police officers must take immediate action to search the Complainant's flat.

The IPCC disagreed with CAPO's argument. The IPCC opined that the four police officers arrived at the scene to investigate in a criminal damage offence instead of a burglary case. The Complainant did his utmost to explain to the police officers his reason to be in the flat. At that time, the Complainant also presented the key to the flat as a proof. Therefore, it was a bit far-fetched for the Police to suspect the Complainant as a burglar. In most cases, when the Police must 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 an SOTR count of UUOA against COMEEs 1-4, and requested for a working level meeting with CAPO to discuss this complaint case.

After deliberation, both the IPCC and CAPO agreed that COMEE 1 was the highest-ranking officer at the scene that day. Considering his work experience, he should not allow and order his subordinates to conduct the search without prior consent or a search warrant. Therefore, COMEE 1 should be held accountable for this mistake. As agreed by CAPO, an SOTR count of UUOA had been registered against COMEE 1, who was given advices without Divisional Record File (DRF) entry.

另外，監警會認為該個案亦突顯了現時調查同類案件檢驗懷疑毒品的程序有改善空間。投訴人因涉嫌「管有危險藥物」、「刑事毀壞」和「管有違禁武器」被拘捕，加上沒有固定居所而不准保釋及後還押，歷時超過六個星期，以等候政府化驗師證實該懷疑白色粉末是否毒品及檢驗有關違禁武器，情況並不理想。雖然拘留是對嫌疑人人身自由限制的臨時措施，但檢驗證實檢獲的白色粉末並非毒品，投訴人被羈留六個星期，可能造成程序上的不公義。為防止同類事件發生，監警會與投訴警察課多次開會討論優化程序，並針對警方的程序作出改善建議，其中包括建議警方與政府化驗所密切合作，為懷疑危險藥物進行緊急初步檢驗，盡快釐清所檢獲的證物是否涉及危險藥品，以避免拘留嫌疑人過長時間。警方同意加強警務人員在處理類似個案時的培訓，並提醒他們與政府化驗所通力合作，務求盡快獲得初步測試結果。

雖然檢測證物是否屬於毒品並非本次投訴個案中的指控，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，均會適時向警方提出改善建議。監警會秘書處會透過「調查報告通過後的跟進工作事項」，與投訴警察課跟進改善的相關事宜。委員會亦會在季度聯席會議上，與警方討論改善建議的實施進度，確保警方作出妥善的跟進，進一步提升警隊的服務質素。

In addition, the IPCC opined this case also highlighted that, during investigation of similar cases, there is room for improvement in the examination of suspected dangerous drugs. The Complainant was arrested for allegedly “PDD”, “Criminal Damage” and “POPW” and kept in custody with bail refused (since he had no fixed residence) for six weeks before the Government Chemist confirmed whether the suspected white powder contained any dangerous drugs and examined the prohibited weapon. The situation was considered unsatisfactory. Detention is a measure where freedom of the suspect will be temporarily restricted. The examination later proved that the white powder did not contain any dangerous drugs. The Complainant was deprived of his liberty for six weeks which might lead to procedural injustice. In order to prevent the occurrence of similar incidents, the IPCC had met with CAPO on several occasions to discuss possible optimisation measures. During these meetings, the IPCC has recommended improvements to the police procedures, which included recommending the Police to work closely with the Government Laboratory to conduct urgent preliminary examinations for 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.

Though the examination of whether the exhibits contained dangerous drugs or not was not one of the allegations in this complaint case, to discharge the function under section 8(1)(c) of the IPCCCO, 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 IPCC Secretariat will monitor improvement-related matters via “Post-endorsement Issues Follow-up” with CAPO. The Council will also discuss the implementation progress of the recommended improvements at quarterly Joint Meetings with the Police to ensure their proper follow-up with a view to further enhance the service quality of the Police.