

## **Legislative Council Panel on Security**

### **Report from the Independent Police Complaints Council**

#### **Purpose**

This paper reports on the salient areas of work of the Independent Police Complaints Council (IPCC) since its establishment as a statutory body on 1 June 2009.

#### **Background**

2. The IPCC Ordinance (IPCCO) (Cap. 604) came into operation on 1 June 2009. It sets out in clear terms the functions and powers of IPCC. It also provides, inter alia, for a definition of reportable complaints (under s11), makes clear what must be contained in investigation reports (under s17) and interim investigation reports (under s18), IPCC's power to conduct interviews (under s20), and the need for prior notification of interviews and collection of evidence (under s36). The implementation of IPCCO has brought changes to the approach in which reportable complaints are dealt with and the way IPCC conducts its work, which are further elaborated below.

#### **Categorisation of complaints**

3. Under IPCCO, complaints against police are categorised into three categories by virtue of sections 10, 11, and 14 – “reportable complaints” under section 11 in respect of which Police needs to submit the investigation reports to IPCC, “notifiable complaints” under section 14 in respect of which Police only needs to submit a list to IPCC, and specified types of complaints under section 10 which need not be submitted to IPCC. IPCC's focus is primarily on reportable complaints.

4. Under section 11 of IPCCO, a reportable complaint is one which is not vexatious or frivolous, made in good faith by or on behalf of a person directly affected by the police conduct. After implementation of IPCCO, there has been some discussion between IPCC and the Complaints Against Police Office (CAPO) as to what constitutes “directly affected” and “vexatious or frivolous”.

5. Prior to the implementation of IPCCO, CAPO treated most complaints of non-enforcement action on the part of police officers as non-reportable

complaints (non-reportable complaints have been renamed as notifiable complaints upon implementation of IPCCO) on the ground that the complainants should not be the aggrieved party and therefore not directly affected. The same practice was adopted after the implementation of IPCCO. IPCC considers that the effect of the police action should be taken into account in determining whether or not a complainant is “directly affected” by the police conduct. IPCC is of the view that the categorisation of each case should be examined on a case-by-case basis. In most cases, CAPO has accepted the views of IPCC and re-categorised individual complaints from notifiable complaints to reportable complaints.

6. Complaints that are vexatious or frivolous and/ or not made in good faith would not be categorised as reportable complaints. Since there is no definition laid down in IPCCO as to what “vexatious or frivolous” means, we apply the natural and ordinary meaning of these words, which is the same approach as that applied in civil proceedings. While some complaints are clearly “vexatious or frivolous” (for example in one case, a complainant complained against a police officer for failing to take action against a male wearing a pair of low-cut jeans exposing the upper part of his hips; and in another case, a complainant complained against a police officer for looking at him while he was driving), others would call for more detailed examination. Again IPCC is of the view that each case depends on its own facts and should be examined on its own merits. We carefully scrutinise the list of notifiable complaints provided by CAPO monthly to ensure that all complaints which should be categorised as reportable complaints are indeed so categorised and the investigation results of which come under IPCC’s vetting.

## **Vetting of reportable complaints**

### *Finding of facts*

7. Section 17(2) of IPCCO sets out the content items in each investigation report on reportable complaint. Among other things, each report must contain “a finding of facts in relation to the complaint and the evidence in support of the finding”<sup>1</sup>. In the past, there was no such requirement. When investigating complaints, Police would have to obtain the versions of complainant(s) and complaine(s) on their account of the incident. When there were conflicting accounts and in the absence of independent witness or corroborative evidence, complaints would very often be classified as “Unsubstantiated”. Witnesses who were acquainted with the complainant(s) or complaine(s) would not be treated as independent witnesses and their evidence would rarely be given much weight. As

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<sup>1</sup> Section 17(2)(b) of IPCCO.

a result, many allegations were classified as Unsubstantiated<sup>2</sup>.

8. In the light of the requirement under section 17(2) of IPCCO, IPCC has requested CAPO to make a conscious attempt to establish finding of facts by analysing the available evidence, the weight that should be attached to the evidence, the statements provided by complainant(s) and complaine(s), the inherent probability (or improbability) of the versions given by the different parties, corroboration (if any) in their versions given, their credibility and reliability, as well as any other relevant circumstances. IPCC's vetting of the investigation results has also been made on this basis. As a result of such efforts, there has been a noticeable decrease in the number of Unsubstantiated allegations. In 2008, 65% (i.e. 754 out of 1 159) fully investigated allegations endorsed by IPCC were classified as Unsubstantiated. In 2009, 50% (i.e. 597 out of 1 194) fully investigated allegations endorsed by IPCC were classified as Unsubstantiated. At the same time, we see an increase in the number of allegations classified as Substantiated<sup>3</sup>/ Not Fully Substantiated<sup>4</sup>/ Substantiated Other Than Reported<sup>5</sup> (from 11.0% in 2008 to 14.2% in 2009), No Fault<sup>6</sup> (from 8.5% in 2008 to 17.3% in 2009) and False<sup>7</sup> (from 15.4% in 2008 to 18.6% in 2009).

### Interim reports

9. Section 18 of IPCCO requires Police to submit an interim report to IPCC if investigation of a reportable complaint is not completed within 6 months or such shorter period as may be agreed. Interim reports must contain a summary of the progress of the investigation and explain the reasons for not being able to complete the investigation within 6 months.

10. Prior to the implementation of IPCCO, interim reports were not always submitted in time, and sometimes did not contain much information to enable IPCC to assess whether or not there had been any unreasonable delay in the investigation. Following the implementation of IPCCO, Police has complied with the statutory requirement on submission of interim reports and has also beefed up

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<sup>2</sup> An allegation is classified as "Unsubstantiated" where there is insufficient evidence to support the allegation made by the complainant.

<sup>3</sup> An allegation is classified as "Substantiated" where there is sufficient reliable evidence to support the allegation made by the complainant.

<sup>4</sup> An allegation is classified as "Not Fully Substantiated" where there is some reliable evidence to support the allegation made by the complainant, but insufficient to fully substantiate the complaint.

<sup>5</sup> An allegation is classified as "Substantiated Other Than Reported" where matters other than the original allegations but which are closely associated with the complaint itself and have a major impact on the investigation have been identified and are found to be substantiated.

<sup>6</sup> An allegation is classified as "No Fault" where the allegation is made either because of misinterpretation of the facts or misunderstanding, or when there is sufficient reliable evidence showing that the actions of the officer concerned were fair and reasonable in the circumstances, done in good faith or conformed to police regulations and orders.

<sup>7</sup> An allegation is classified as "False" where there is sufficient reliable evidence to indicate that the allegation made by the complainant is untrue, be it a complaint with clear malicious intent or a complaint which is not based upon genuine conviction or sincere belief but with no element of malice.

the contents in interim reports to facilitate easier understanding and monitoring by IPCC. The interim reports now set out in more detail the enquiries that have been conducted by the Police, CAPO's reasons for not being able to complete the investigations within six months, the outstanding actions, and the anticipated timeframe for completing the investigations.

### Interviews conducted

11. For the purpose of considering an investigation report, IPCC may interview any person who is or may be able to provide information or other assistance to the Council in relation to the report. IPCCO provides IPCC the power to interview any persons, though we cannot compel any person to attend an interview with us. Pursuant to sections 20 and 21 of IPCCO, IPCC has reviewed and revised the procedural guidelines on the conduct of interviews by IPCC. Specifically, the requirement in respect of declaration of interest is included, and the internal procedures on how interviews should be handled are set out more clearly in the revised guidelines.

12. Although the IPCC Interview Scheme was introduced in 1994, very few interviews were conducted. In the six years from 2003 to 2008, no interviews were conducted.

13. Following incorporation, we have reinvigorated the scheme. In 2009, IPCC invited eight persons for interviews. These comprise four complainants and four police officers involved in five complaint cases. Two complainants and one police officer (a witness)<sup>8</sup> declined to attend the interview<sup>9</sup> and interviews with the other five persons were held. These interviews have proved useful in allowing IPCC to clarify directly with complainants and complainees certain points relating to the complaints.

14. In the first five months of 2010, IPCC has invited another six persons for interview – one complainant and five police officers involved in two complaint cases.

### Observations conducted

15. Apart from the Interview Scheme, we have also reinvigorated the Observers Scheme. Under the Scheme, Observers can observe any interviews with complainants, complainees, or witnesses, or any collection of evidence conducted

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<sup>8</sup> A police officer (a witness) declined to attend the interview but after interviewing the complainee of the same case, IPCC was satisfied with the investigation results and did not feel it necessary to interview the police witness any further.

<sup>9</sup> Two other police officers also declined initially but following further explanation of the scheme to them, they subsequently agreed to attend the interviews.

in the course of complaint investigation. In the light of provisions in IPCCO, we have revised the guidelines for Observers (at Annex 1) and the Observers' Report Form (at Annex 2). The Secretary for Security has also appointed more Observers – from 70 Observers at end of 2007 to 84 Observers at end of 2008 and further to 90 Observers at end of 2009. To further improve the Scheme, since August 2008, the Security Bureau has required that all newly appointed or re-appointed Observers to conduct at least four observations a year. Furthermore, to facilitate the conduct of observations which can be carried out on a pre-arranged basis or a surprise basis, CAPO has agreed, as far as practicable, to notify IPCC at least 48 hours in advance of any impending interview or collection of evidence.

16. Section 36 of IPCCO requires the Police to notify IPCC of impending interviews/ collection of evidence in so far as practicable. With the new statutory requirement, there has been a marked increase in the number of notifications received – from 2 147 notifications in 2007 to 2 541 notifications in 2008, and further to 7 544 in 2009 and 1 821 in the first quarter of 2010. At the same time, the Police has also provided us more advance notice of impending interviews/ collection of evidence. The percentage of notifications received with at least 48 hours' notice has increased from 50% in the last six months of 2008<sup>10</sup> to 77% in the first six months of 2009, to 83% in the last six months of 2009, and further to 90% in the first quarter of 2010.

17. The above measures, together with greater participation from IPCC Members<sup>11</sup> and Observers, have led to a significant increase in the number of observations conducted. In 2007, 263 (0 surprised + 263 scheduled) observations were conducted; in 2008, 548 (51 surprised + 497 scheduled) observations were conducted; in 2009, 1 808 (331 surprised + 1 477 scheduled) observations were conducted; and in the first quarter of 2010, 426 (110 surprised + 316 scheduled) observations were conducted. Compared with 2007, the number of observations conducted in 2009 represented a more than six-fold increase. In percentage terms, there was also an increase – in 2007, of the notifications received, IPCC Members and Observers observed 12.2% of the interviews/ collection of evidence. This increased to 21.6% in 2008 and further to 24.0% in 2009 and 23.4% in the first quarter of 2010.

### Monitoring of follow-up actions

18. With a view to facilitating monitoring on follow-up action on cases where allegations are found substantiated, the criminal and disciplinary checklist (sample at Annex 3) submitted by the Police quarterly has been revised. The list sets out a gist of the complaint, the latest position of the case, and the actions

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<sup>10</sup> We do not have any statistics before July 2008.

<sup>11</sup> Under section 25 of IPCCO, IPCC Members may also attend interviews and observe the collection of evidence by the Police.

taken or to be taken in respect of any member of the Police Force in connection with reportable complaints.

### **Practices that might cause complaints**

19. Under section 8(1)(c) of IPCCO, one of the functions of IPCC is to identify any fault or deficiency in any practice or procedure adopted by the police force that has led to or might lead to reportable complaints, and to make recommendations in respect of such practice or procedure. In the light of this, IPCC has not confined its work to examining investigation reports and has taken a more proactive role looking into police policies or practices which have led to or might lead to reportable complaints. Over the past year, IPCC has looked into Police operations and procedures on setting up of roadblocks, guidelines on policing public order events, policy and practice on operation and maintenance of the police CCTV system, and retention and timely seizure of CCTV recordings for complaint investigation purpose. The discussion took place at the open part of the Joint IPCC/ CAPO meetings and the public (and media) were welcome to observe the discussion.

20. During the course of examining investigation reports, IPCC has also raised with CAPO a number of areas relating to Police practice and procedures where review might be called for. These include the need for proper record in Police notebooks when exercising police powers, guidelines on when arrest should be effected, arrangements on handling detainees upon change of shift, etc. IPCC will continue to follow up with Police on results of their reviews.

### **Reaching out**

21. Under section 8(1)(e) of IPCCO, one function of IPCC is to promote public awareness of the role of the Council. In the light of this, statutory IPCC has stepped up efforts to reach out to different groups:

#### *Meeting with concern groups*

22. IPCC met four sex workers' concern groups, namely Zi Teng, JJJ Association, Action for Reach Out, and Midnight Blue in December 2009. The groups shared with IPCC their concern on abuse of police power during operations and their views on the police complaints system. IPCC in turn took the opportunity to explain to them the role of IPCC as well as the Observers Scheme. IPCC publications including leaflets on the Observers Scheme were passed to the groups for distribution to their members.

### Forum with frontline officers

23. With a view to enhancing understanding among frontline police officers of IPCC's work and at the same time, IPCC's understanding of the difficulties and challenges facing frontline police officers, we have visited three regional headquarters and held three forums with frontline police officers from these regions in November 2009, March and May 2010. These forums provided useful opportunity for both sides to have a better understanding of each other's work. These forums will continue in the following year with other regions.

### Talks

24. Apart from forums, IPCC Members delivered a talk to some 200 new recruits at the Police College in September 2009 and also spoke at a seminar in November 2009 to share with Police middle management issues of concern to IPCC and Police.

## **Administrative arrangements**

### Financial resources

25. In connection with the establishment of statutory IPCC, three additional staff were recruited through additional financial provision from the Administration. This enabled the creation of an additional case vetting team comprising one Senior Vetting Officer and one Vetting Officer, and the employment of a Senior Manager to handle IPCC's accounting and general support work which was previously undertaken by government departments.

26. The creation of an additional case vetting team was intended to provide additional hands to clear the backlog of cases and speed up the processing time. However, the unforeseen and sharp increase in caseload particularly since the latter half of 2009 has strained our limited resources and undermined our ability to speed up the processing time. In 2008, a monthly average of 211 new investigation reports were received from CAPO. In the first six months of 2009, a monthly average of 195 new investigation reports were received but this figure jumped to 338 reports in the second half of 2009, representing a 73.3% increase compared with the monthly average in the preceding six months. In the first quarter of 2010, the monthly average further shot to 343 reports. This, coupled with the increased work arising from reinvigoration of the Observers Scheme and the Interview Scheme, has generated pressure on our limited staffing resources. As a temporary measure, we have re-deployed resources internally to deal with the increase in workload. We are now undertaking a critical review of our resources requirement and will bid for necessary additional resources.

27. Based on the complaints endorsed by IPCC in 2009, the average time taken to complete scrutiny of a minor complaint<sup>12</sup> is about 2.4 months, and that of a serious complaint<sup>13</sup> is 5.4 months. However there are about 6% particularly complicated cases which have taken a long time (over two years) to process. This is not satisfactory and we are looking for ways to see how this could be improved.

28. Apart from undertaking a critical review of our resources, one area we are looking into, in conjunction with CAPO, is whether there could be more efficient ways to deal with complaints, particularly minor complaints, so that resources could be used more cost-effectively. In 2009, Police registered 4 257 reportable complaints. Of these, the main allegation in 2 112 cases (49.6%) was Neglect of Duty and in 1 282 cases (30.1%) Misconduct/ Improper manner/ Offensive language. While these complaints should be properly looked into, IPCC is concerned that they would divert resources away from the more serious complaints. IPCC and CAPO have therefore set up a joint working group in May 2010 to examine whether and how minor complaints could be more efficiently handled.

### Staffing arrangements

29. When statutory IPCC was established on 1 June 2009, of the 28 posts, 20 were filled by seconded civil servants and 8 by non-civil service contract staff. As at end May 2010, of the 28 posts<sup>14</sup>, 12 were filled by seconded civil servants and 16 by IPCC employees. It is our intention to replace all seconded civil servants by IPCC employees within three years of establishment of the statutory body, i.e. no later than end May 2012. The exact pace of phasing out seconded civil servants would have to hinge on whether or not suitable candidates could be identified from the recruitment exercises and the wastage rate.

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<sup>12</sup> A minor complaint refers to a complaint involving the following types of allegations: Impoliteness, Offensive Language, Rudeness, Misconduct, Neglect of Duty and Police Procedures.

<sup>13</sup> A serious complaint refers to a complaint involving the following types of allegations: Criminal Offence, Assault, Fabrication of Evidence, Threat and Unnecessary Use of Authority.

<sup>14</sup> In addition to the 28 posts, IPCC has also temporarily retained an Executive Officer I to help clear the backlog of cases.



## **Guidance Note for IPCC Observers**

### **INTRODUCTION**

The Observers Scheme was introduced in April 1996 with the purpose of enhancing the Independent Police Complaints Council (IPCC)'s monitoring function in the police complaints system. This has subsequently been written into the statute and is now provided for in sections 25 and 33-38, and Schedule 2 of the Independent Police Complaints Council Ordinance (IPCCO).

2. Under section 34 of IPCCO, the function of an Observer is to assist the IPCC to observe, in accordance with the provisions in Part 4, the manner in which the Commissioner of Police (CP) handles or investigates reportable complaints. Through observations, Observers advise IPCC whether or not relevant parts of the investigation process are conducted fairly and impartially, and whether any irregularities are detected. Observers thus play an important role in ensuring that investigations into reportable complaints against members of the police force are conducted properly, impartially, and thoroughly. Under section 25 of IPCCO, IPCC Members may likewise observe the Police's handling and investigation of reportable complaints.

### **TYPES OF OBSERVATIONS**

3. IPCC Members and Observers can observe:
- (a) an interview conducted by the Police in respect of a reportable complaint; and
  - (b) any collection of evidence conducted by the Police in the investigation of a reportable complaint<sup>1</sup>.
4. A reportable complaint refers to a complaint categorized as a reportable complaint in accordance with section 11 of IPCCO, or a request for review made to CP under section 13 of IPCCO.
5. Some reportable complaints which are of a relatively minor nature (e.g. impoliteness, use of offensive language and neglect of duty) may be resolved by way of Informal Resolution (IR). The IR procedures provide for a system of conciliation in order to resolve minor complaints, which would otherwise

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<sup>1</sup> s.37(1) of IPCCO

require a full investigation, promptly. If a complainant agrees to resolve his complaint through IR, an interview with the complainant(s) and the complaine(s) will be arranged to obtain their respective versions of the event, which led to the complaint. The complainant will be contacted by an inspectorate officer. Following this, a conciliating officer at the rank of Chief Inspector or above will conduct an IR interview. An IR interview can be conducted by way of interview in person or telephone interview.

6. Apart from IR interviews, non-IR interviews will be conducted for reportable complaints which require full investigation. Non-IR interviews are normally conducted in person. The contents of the interview are recorded in the form of a written statement or by video recording by an investigating officer of the complaint case concerned. A non-IR interview with a complaine(s) should be conducted by an officer at least one rank senior to the complaine(s).

7. Collection of evidence refers to any act carried out by the Police in the course of investigation with a view to obtaining evidence. The most common type of collection of evidence is scene visit with the objective of locating possible witnesses, finding possible evidence (e.g. tapes of closed circuit television, blood stain, etc.), assisting the investigating officer to re-construct the events which led to the complaint, assisting in corroborating the statements of any party to a complaint and checking the physical layout of the scene. Collection of evidence also includes identification parades conducted in the course of complaint investigation.

8. IPCC Members and Observers are at liberty to observe any of the activities mentioned in paragraph 3 above which form an integral part of the complaint investigation process. IPCC Members and Observers may observe such activities with or without prior appointment. In other words, IPCC Members and Observers can conduct surprise observations without alerting the Police in advance.

## **POINTS TO NOTE**

### **Declaration of Interest**

9. As IPCC Members and Observers play a crucial role in monitoring the conduct of complaint investigations by the Police, it is important that IPCC Members and Observers themselves act, and are seen to act, in an impartial manner. Section 37(3) of IPCCO therefore provides that if an IPCC Member or Observer has an interest (whether directly or indirectly) in a reportable complaint in respect of which an interview or collection of evidence is

conducted by CP, the IPCC Member or Observer must not attend the interview or observe the collection of evidence. Section 37(4) of IPCCO further provides that if, during the interview or collection of evidence, it comes to the knowledge of the IPCC Member or Observer that he has an interest (whether directly or indirectly) in the reportable complaint, he must:

- (a) in the case of an interview, disclose the nature of his interest to the police officer who is designated by CP to conduct the interview, and the person who is being interviewed;
- (b) in the case of collection of evidence, disclose the nature of his interest to the police officer who is designated by CP to conduct the collection of evidence, and (if applicable) the person from whom evidence is being collected;
- (c) withdraw from the interview or observation of the collection of evidence (as the case may be); and
- (d) report the nature of his interest to the IPCC.

10. “Interest” that need to be declared includes the following:

- (a) persons involved in the complaint case are immediate family members<sup>2</sup> of the IPCC Member or Observer (see also paragraph 12 below)
- (b) if persons involved in the complaint case, though not immediate family members, are related to the IPCC Member or Observer by blood or by marriage, e.g. cousins, nephews, nieces, in-laws;
- (c) if the IPCC Member or Observer has business dealings with the persons involved in the complaint case;
- (d) if persons involved in the complaint case are friends, colleagues, or relatives of the IPCC Member or Observer.

11. It is not possible to list out all situations where IPCC Members and Observers needs to declare their interest. Each case differs and need to be decided on its own merits. IPCC Members and Observers should judge for themselves whether the interest is such as to give an ordinary member of the public the impression that the IPCC Member or Observer might be biased in any

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<sup>2</sup> Immediate family members are those related by blood or law, and also include step-children, step-parents and step-brothers and step-sisters.

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12. With effect from 1 August 2008, immediate family members (see footnote 2) of members of the Police Force will not be appointed as IPCC observers. Consistent with this requirement, all IPCC Members and Observers appointed or reappointed on or after 1 August 2008 are required to notify the Secretary for Security (S for S) immediately should any of their immediate family member(s) become a member of the police force during the period of their appointment as Observers.

13. Also, under section 33 of IPCCO, a person who holds an office of emolument, whether permanent or temporary, in a Government bureau or department, or was a member of the police force (including the Hong Kong Police Force and the Hong Kong Auxiliary Police Force) is not eligible for appointment as an Observer. Observers should immediately notify S for S should he become such an officer.

#### Neutrality

14. To ensure that all investigations into complaints against the Police are conducted in a fair and impartial manner, IPCC Member or Observers should not interfere with the conduct of interviews/scene visits, e.g. by posing questions to the interviewer/interviewee, initiating discussion, expressing personal views or displaying any other mode of behaviour deemed inappropriate in the circumstances.

#### Confidentiality

15. To comply with the requirements of the Personal Data (Privacy) Ordinance (PD(P)O), IPCC Members and Observers are required to keep all information acquired in the course of observations confidential. Information so obtained should not be released to any other party except IPCC.

### **FOCUS OF OBSERVATION**

#### For observations on interviews

16. Ideally, an interviewee should be allowed to talk about the incident in his own words first, then followed by subsequent questions by the interviewer to clarify his version. As far as practicable, the statement should be recorded in the words of the interviewee. Having said that, an interviewer may ask the complainant interviewee to summarise his allegations or grievance so that the

complaint investigator can be apprised of the complainant's precise complaints against the police. The interviewee should be given the opportunity to read (or alternatively to be read to him by the interviewer) the statement and be provided the opportunity to make alteration, deletion or addition to the statement. If the interviewee refuses to sign on the statement, the interviewer should ascertain the reasons and record them in the statement. The interviewee should be provided with a copy of his statement.

17. For IR interviews, the conciliating officer should unambiguously inform the complainant that there will be no review procedures once the complaint is resolved by IR. There needs no assumption of guilt/liability on the part of the Police and no disciplinary action will be taken against the officer(s) concerned. If a complainant does not agree to resolve his complaint by IR, the conciliating officer should stop the IR and inform the complainant that his complaint will be fully investigated.

18. When conducting observations on interviews, IPCC Members and Observers are requested to pay special attention to the following points:

- Fairness : whether the interviewer allows the interviewee to state his account of the incident freely and without any pressure or inducement to change his version of the account;
- Impartiality : whether the questions posed to the interviewee are neutral, unbiased, unprejudiced and without preconceived views;
- Thoroughness : whether the interviewer has invited the interviewee to state all details of the incident; whether all ambiguities/discrepancies are clarified;
- Use of skills/techniques : whether the flow of questions posed by the interviewer is logical and facilitates the interviewee to provide answers succinctly and coherently; whether the interviewer is able to help the interviewee to recall, present and/or clarify the facts when the latter has difficulties in doing so; whether the interviewer is able to enlist the cooperation of the interviewee;
- Politeness : whether the interviewer has rendered proper courtesy in posing questions to the interviewee;
- Cooperation of interviewee : whether the interviewee is willing to answer reasonable questions from the interviewer;

- Privacy : whether the interviewee has been afforded a reasonable degree of privacy in the interview (An interview should be conducted in an interview room free from interference of other uninterested parties. Nevertheless, whether an interview is to be conducted behind closed door is a matter of personal preference of the interviewee.);
- Language : whether the interview is conducted in the mother tongue of the interviewee (An interview should be conducted in the mother tongue of the interviewee unless he prefers to use another language. If he chooses to use another language, then his decision and reasons should be recorded. An interpreter's service should be obtained to record any statement in the language and dialect used by the interviewee.);
- Ranking (only applicable to interviews with complainees) : whether the interview is conducted by an officer at least one rank senior to the complainee. Information of which can also be accessed via Police Internet: [www.police.gov.hk/ppp\\_en/01\\_about\\_us/os\\_chart.html](http://www.police.gov.hk/ppp_en/01_about_us/os_chart.html); and
- Presence of accompanying adult (only applicable to interviews with minors and mentally handicapped/disordered persons) : whether the interviewee is accompanied by an appropriate adult.

[(1) Children and young persons under the age of 16 years should be interviewed only in the presence of a parent or guardian. In their absence, an appropriate adult may accompany him. An appropriate adult is a person over 18 years old, of the same sex and who may have an interest in the welfare of the child or young person but who is neither a police officer nor a civilian employed by the Police.

(2) A mentally handicapped person or a person appearing to be suffering from mental disorder should be interviewed only in the presence of one of the following appropriate adults: (i) a relative, guardian or other person responsible for his care or custody; (ii) someone who has experience of dealing with mentally handicapped or mentally disordered persons but who is not a police officer nor employed by the Police; or (iii) failing either of the above, some other responsible adult who is not a police officer nor employed by the Police.

(3) A hearing-impaired person should be interviewed in the presence of a sign language interpreter.]

For observations on collection of evidence

19. When conducting observations on scene visits, IPCC Members and Observers are requested to pay special attention to the following points:

- Fairness : whether the complaint investigators have non-discriminatorily collated all possible evidence during the scene visits;
- Impartiality : whether the investigating officer is neutral, unbiased, unprejudiced and without preconceived views;
- Thoroughness : whether the investigating officer is able to locate all possible witnesses/collect all possible evidence/check all relevant physical layouts of the scene;
- Use of skills/techniques : whether the investigating officer is able to use his professional skills to locate possible witnesses/find possible evidence so as to re-construct the events which led to the complaint or that may assist in corroborating or refuting the statements of any party to the complaint; and
- Politeness : whether the investigating officer has rendered proper courtesy in the process.

**OPERATIONAL PROCEDURES**

20. The key operational procedures are set out below:

Before Observation

- (a) In so far as practicable, the Police must notify IPCC before any interview or collection of evidence is conducted<sup>3</sup>. Such notification should set out:
- the nature of the allegations contained in the reportable complaint;
  - the date, time and place of the interview or collection of evidence and the form in which it will be conducted; and
  - the particulars of the interviewee and the interviewer<sup>4</sup>.

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<sup>3</sup> s.36(1) of IPCCO

<sup>4</sup> s.36(2) of IPCCO

- (b) IPCC Secretariat will retrieve the brief on the case (Pol. 138) compiled by the Police, if available.
- (c) IPCC Secretariat will fax out the notification and the Pol. 138 (if available) to relevant IPCC Members and Observers (i.e. IPCC Members and Observers on the duty roster as well as IPCC Members and Observers who have indicated their intention to conduct observations year-round) as soon as practicable.
- (d) If IPCC Members and Observers intend to attend, they should first ascertain whether or not they have an interest (whether directly or indirectly) in the case. If they have an interest, they should not conduct the observation, as stipulated in section 37(3) of IPCCO.
- (e) If parking facilities are required or if there are any other special requests, IPCC Members and Observers who wish to attend a scheduled interview may notify the IPCC Secretariat (Mr LEUNG Wing-tong at 2862 8202) who will in turn notify the responsible complaint investigator/conciliating officer. The complaint investigator/conciliating officer will then liaise with the IPCC Member and Observer on the parking facility/special request direct.
- (f) If, for any reason, the date, time or venue of the interview/scene visit is changed, the complaint investigator/conciliating officer is required to notify the IPCC Secretariat who will then inform IPCC Members and Observers concerned immediately.
- (g) IPCC Members and Observers who have notified the IPCC Secretariat that he will conduct an observation, but are subsequently unable to attend should notify the IPCC Secretariat as soon as possible.

#### On the Day of Observation

- (h) Upon arrival at the relevant police formation/scene, IPCC Members and Observers should approach the complaint investigator/conciliating officer and produce the IPCC Members' and Observer's identity card for verification.
- (i) For observation on interviews, the IPCC Members or Observers will then be ushered to the interview venue.
- (j) The complaint investigator/conciliating officer will brief the IPCC Member



or Observer on details of the case. The IPCC Member or Observer has right of access to all papers and exhibits contained in the CAPO file and may ask the complaint investigator/conciliating officer to clarify any points pertinent to the case prior to the interview/scene visit.

- (k) The IPCC Member or Observer will then proceed to observe the relevant process, taking note of the points in paragraphs 18 and 19 above.
- (l) If, during the interview or collection of evidence, it comes to the knowledge of the IPCC Member or Observer that he has an interest (whether directly or indirectly) in the case, he must disclose the nature of his interest, withdraw from the observation, and report the nature of his interest to IPCC by completing and returning the “IPCC Observer’s Report on Observation” to the Secretariat, as provided for under section 37(4) of IPCCO and recapitulated in paragraph 9 above.
- (m) In case two or more IPCC Members and/or Observers turn up for the same observation, they may observe at the same time.
- (n) The complaint investigator/conciliating officer will explain the IPCC Observers Scheme as provided under the IPCCO to the interviewee in the presence of the IPCC Member or Observer. IPCC Members or Observers have the right to be present at an interview. An interviewee could not refuse the presence of an IPCC Member or Observer.
- (o) The presence of the IPCC Member or Observer is to be included in the statement and the IR report. If the IPCC Member or Observer withdraws from the observation before the statement-taking is completed, the complaint investigator will record the time of the withdrawal in the statement. In the case of IR interviews conducted in person, the IPCC Member or Observer and the interviewee will be invited to sign on an “Informal Resolution Interview Form”.

#### After Observation

- (p) After making an observation, the IPCC Member or Observer is required to complete an “IPCC Observer’s Report on Observation” and return it to the IPCC as soon as possible.
- (q) IPCC will examine the report and pass it to CAPO for follow-up action.
- (r) The IPCC Member or Observer will be apprised of the comments of or follow-up actions taken/to be taken by the Police, if any, in response to his

report.

- (s) As a token of appreciation and to cover the travelling expenses incurred by Observers in conducting observations (other than IPCC Members who receive a monthly honorarium), a non-taxable travelling allowance at \$193 per attendance will be paid on a reimbursement basis. Payment of the travelling allowance, in the form of crossed cheques, will normally be effected within three weeks of IPCC Secretariat's receipt of the Observer's Report on Observation. Observers may also opt to receive the travelling allowance by direct payment to their bank accounts.

Arrangements during tropical cyclones or rainstorms

21. All interviews/scene visits will be cancelled if it is known that a No. 8 or higher Tropical Cyclone Warning Signal or a Black Rainstorm Warning will be issued soon as well as during the period when No. 8 or higher Tropical Cyclone Warning Signal or Black Rainstorm Warning is in force.

Independent Police Complaints Council Secretariat  
May 2010

**IPCC Observer’s Report on Observation**

1. **Case Reference :** CAPO RN

2. **Type of case:** Informal Resolution(IR) case  Non-IR case

3. **Details of Observation :** Date \_\_\_\_\_  
 Time \_\_\_\_\_  
 Place \_\_\_\_\_

4. **Type of Observation :**  
 Scheduled Observation  Surprise Observation   
 Face-to-face Interview  Telephone Interview   
 Complainant  (Name: \_\_\_\_\_)  
 Complainee  (Name: \_\_\_\_\_)  
 COM/COMEE/COM’s Witness/COMEE’s Witness/Witness located by the  
 Police\* (Name: \_\_\_\_\_)   
 Site Visit   
 Others (\_\_\_\_\_)

5. **Please indicate if you have observed the whole Interview/Site Visit\* or attended the whole Briefing/Observation :**

Yes   
 No, but sufficient to make a judgement/comments   
 Time of withdrawal: \_\_\_\_\_  
 No, insufficient to make a judgement/comments   
 Time of withdrawal: \_\_\_\_\_

6. **Name of complaint investigator/Conciliating Officer\* and his rank :** \_\_\_\_\_

7. **Assessment of interview/site visit/briefing (Please tick as appropriate)**

(a) On Interview

	<u>Satisfactory</u>	<u>Unsatisfactory</u>
(i) Fairness	_____	_____
(ii) Impartiality	_____	_____
(iii) Thoroughness	_____	_____
(iv) Use of skills/techniques	_____	_____
(v) Politeness	_____	_____
(vi) Co-operation of interviewee	_____	_____

(b) On Site Visit

	<u>Satisfactory</u>	<u>Unsatisfactory</u>
(i) Fairness	_____	_____
(ii) Impartiality	_____	_____
(iii) Thoroughness	_____	_____
(iv) Use of skills/techniques	_____	_____
(v) Politeness	_____	_____

(c) On Briefing by complaint investigator/Conciliating Officer

	<u>Satisfactory</u>	<u>Unsatisfactory</u>
(i) Impartiality	_____	_____
(ii) Succinctness	_____	_____
(iii) Clarity	_____	_____
(iv) Use of explanatory aids/ reference materials and files	_____	_____

8. If any of the ratings is found to be unsatisfactory, please give your reasons (please use supplementary sheets if necessary) :

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9. If there are any irregularities detected in respect of the interview/site visit, please state the particulars of the irregularities (please use supplementary sheets if necessary):

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10. Please specify any other comments and recommendations relating to your observation (please use supplementary sheets if necessary):

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11. Please specify any comments or recommendations relating to the Observers Scheme (please use supplementary sheets if necessary):

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12. The undersigned hereby declare that#

- I have no interest (whether directly or indirectly) in the above case.
- I have interest in the above case and I have disclosed the nature of interest to the police officer at Item 6 above and the person(s) who is being interviewed/the person(s) from whom evidence is being collected\*. I have therefore withdrawn from the interview/site visit\*. I hereby report the nature of my interest to the IPCC which is detailed below (please use supplementary sheets if necessary):

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Signature : \_\_\_\_\_  
Name : \_\_\_\_\_  
Date : \_\_\_\_\_

\* Delete and tick  whichever appropriate

# Examples of interest that may need to be declared:

- (a) if persons involved in the complaint case are immediate family members<sup>1</sup> of the IPCC Member or Observer; or
- (b) if persons involved in the complaint case, though not an immediate family members, are related to the IPCC Member or Observer by blood or by marriage, e.g. cousins, nephews, nieces, in-laws;
- (c) if the IPCC Member or Observer has business dealings with the persons involved in the complaint case;
- (d) if persons involved in the complaint case are friends, colleagues, or relatives of the IPCC Member or Observer.

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<sup>1</sup> Immediate family members are those related by blood or law, and also include step-children, step-parents and step-brothers and step-sisters.

## **Criminal and Disciplinary Checklist**

Part (A) -Disciplinary matters arising from endorsed CAPO cases. It contains a synopsis of the cases, actions to be taken (advice, warning, minor offence record, defaulter, and etc), and details of the officers concerned.

Part (B) - Criminal matters arising from endorsed CAPO cases. It contains a synopsis of the cases, the criminal charges and details of the officers concerned.

Part (C) - Disciplinary/criminal matters arising from pre-endorsed CAPO cases. It contains a synopsis of the cases, disciplinary / criminal actions to be taken (advice, warning, minor offence record, defaulter, charged and etc), and details of the officers to be disciplined/charged.

Part (D) - Individual police officers who have fallen into the “review of complaint record” category<sup>1</sup>. The purpose of a review of a police officer’s complaint record is, as a management tool, to identify possible problem areas affecting individual police officers which can then be brought to the attention of the respective Formation Commanders for their information and consideration of appropriate remedial action.

### **Note 1**

In accordance with the Force Procedure Manual 26-16, ‘Review of Complaints Record Category’ means that the officer has within the preceding three years:

- (a) four or more complaints (excluding complaints classified as ‘Informal Resolution’, ‘False’, ‘No Fault’ and ‘Curtailed’) and at least one of them is classified as ‘Substantiated/Substantiated other than Reported’ or ‘Not Fully Substantiated’; or
- (b) four or more complaints (excluding complaints classified as ‘Informal Resolution’, ‘False’, ‘No Fault’ and ‘Curtailed’) and two of them are classified as ‘Unsubstantiated’; or
- (c) two ‘Substantiated/Substantiated other than Reported’ or ‘Not Fully Substantiated’ complaints.

Abbreviations used in the Checklist:

CAPO	-	Complaints Against Police Office
CIP/WCIP	-	Chief Inspector /Woman Chief Inspector
CM	-	Complaints Manual
COM	-	Complainant
COMEE	-	Complainee
CP	-	Commissioner of Police
CRR		Complaint Report Register
CSP/WCSP	-	Chief Superintendent/Woman Chief Superintendent
DIP/DWIP	-	Detective Inspector/Detective Woman Inspector
DIT	-	District Investigation Team
DPC/DWPC	-	Detective Police Constable/Detective Woman Police Constable
DRF	-	Divisional Record File
DSGT/DWSGT	-	Detective Sergeant/Detective Woman Sergeant
DSIP/DWSIP	-	Detective Senior Inspector/Detective Woman Senior Inspector
DSSGT/DWSSGT	-	Detective Station Sergeant/Detective Woman Station Sergeant
FPM	-	Force Procedure Manual
IP/WIP	-	Inspector/Woman Inspector
NFA	-	No Further Action
PC/WPC	-	Police Constable/Woman Police Constable
PGO	-	Police General Order
PLA	-	Police Legal Advisor
Pol.138		Police Form 138 – Complaint Report Register
PM	-	Police Manual
SGT/WSGT	-	Sergeant/Woman Sergeant
SIP/WSIP	-	Senior Inspector/Woman Senior Inspector
SP/WSP	-	Superintendent/Woman Superintendent
SSGT/WSSGT	-	Station Sergeant/Woman Station Sergeant
SSP/WSSP	-	Senior Superintendent/Woman Senior Superintendent
TPM	-	Traffic Procedure Manual

CAPO CHECKLIST  
(Disciplinary Matters)  
[POST IPCC ENDORSEMENT]

Part 'A' up to endorsement batch as at yyyy-mm-dd

Note - "N.F.A." denotes that the item will be deleted in the next return.

Item	CRR / Date of registering the complaint as reportable complaint	Date of Endorsement/Review	Officers concerned	Gist of Complaint	Proposed Action/Action Taken
1	H-09XXXX yyyy-mm-dd	Investigation result endorsed by IPCC on yyyy-mm-dd	SSGT A XX XX-XX of XX District	COMEE ticketed COM for a traffic offence. He wrongly recorded the E-payment number of the fixed penalty ticket.	<u>Substantiated</u> <ul style="list-style-type: none"> <li>To be advised without DRF entry to complete fixed penalty ticket more prudently in future.</li> <li>File to Formation on yyyy-mm-dd for follow-up action.</li> </ul>
2	H-09XXXX yyyy-mm-dd	Investigation result endorsed by IPCC on yyyy-mm-dd	IP B XX XX-XX of XX District (Not a Complainee – Officer-in-charge of the case)	COM's son made a report of 'Theft' and police allegedly failed to keep COM posted of the case progress.	<u>Substantiated Other Than Reported</u> <ul style="list-style-type: none"> <li>To be advised without DRF entry for failing to ensure the accuracy of the mailing address in the letter to COM.</li> <li>File will be forwarded to Formation for follow-up action.</li> </ul>
3	NT-09XXXX yyyy-mm-dd	Investigation result endorsed by IPCC on yyyy-mm-dd	SGT C XX XX-XX of XX District	COM made a traffic complaint via 999 and COMEE answered the call. COMEE told COM that his traffic complaint would be transferred to an appropriate unit for follow-up enquiry but he failed to do so.	<u>Substantiated</u> <ul style="list-style-type: none"> <li>To be warned without DRF entry to properly transfer case to appropriate unit for investigation in future.</li> <li>File will be forwarded to Formation for follow-up action.</li> </ul>

CAPO CHECKLIST  
(Criminal Matters)  
[POST IPCC ENDORSEMENT]

Part 'B' up to yyyy-mm-dd

Note - "N.F.A." denotes that the item will be deleted in the next return.

Item	CRR / Date of registering the complaint as reportable complaint	Date of Endorsement	Officers concerned	Gist of Complaint	Action Taken	Remarks
1	NT-05XXXX yyyy-mm-dd	Investigation result endorsed by IPCC on yyyy-mm-dd	Ex-WPC A XX XX-XX of XX DIST	COM's niece was arrested for theft on yyyy-mm-dd in XX area and COM was summoned to XX Police Station to act as guardian. COMEE was the arresting officer who cautioned COM's niece in an interview room in the presence of COM. COM later alleged that COMEE had stolen \$3,000 from her wallet which was left in the interview room when she left the room to make a telephone call at the report room.	<ul style="list-style-type: none"> <li>• This officer was charged with 'Theft' and was convicted of the offence. She was sentenced to XX months' imprisonment on yyyy-mm-dd.</li> <li>• The officer was dismissed on yyyy-mm-dd.</li> </ul>	The Formation Commander was formally informed of the result of investigation on yyyy-mm-dd. N.F.A.



CAPO CHECKLIST  
(Disciplinary/Criminal Matters)  
[PRE IPCC ENDORSEMENT]

Part 'C' up to yyyy-mm-dd

Note - "N.F.A" denotes that the item will be deleted in the next return.

Item	CRR / Date of registering the complaint as reportable complaint	Officers concerned	Gist of Complaint	Action Taken	Remarks
1	K-07XXXX yyyy-mm-dd.	DSPC A XX XX-XX of XX District	COM and her boyfriend were involved in a fight with their neighbours and both parties were arrested for 'Fighting in a Public Place'. COM made a number of allegations of negligence and misconduct against the officers involved in the arrest and case investigation.	<ul style="list-style-type: none"> <li>Disciplinary proceeding is to be taken against the investigation officer who was found to have neglected his duties by failing to take a further statement from COM and her boyfriend upon requests and failing to administer a caution on COM before putting questions to her in accordance with the Rules and Directions for the Questioning of Suspects and the Taking of Statements.</li> </ul>	<p>Two counts of 'Neglect of Duty' were recommended.</p> <p>Disciplinary L/M to SSP of XX District on yyyy-mm-dd.</p> <p>File submitted to IPCC on yyyy-mm-dd.</p> <p>Investigation result and classification of allegation(s) pending IPCC's endorsement.</p>
2	K-08XXXX yyyy-mm-dd	SIP B XX XX-XX of XX District	COM and her family members were arrested for 'Criminal Damage' and 'Common Assault'. Upon investigation, COM was released unconditionally. COM allegedly COMEE detained her in the Police Station unnecessarily.	<ul style="list-style-type: none"> <li>Disciplinary proceeding is to be taken against COMEE for unnecessarily detained COM for about XX hours during which no investigation was conducted on COM.</li> </ul>	<p>One count of 'Unnecessary Use of Authority' was recommended.</p> <p>Disciplinary L/M to DC XX District on yyyy-mm-dd.</p> <p>COMEE was issued a 'Minor Offence Report' by ADC CRM XX District on yyyy-mm-dd.</p> <p>IPCC raised a query on yyyy-mm-dd. File to CIP Team 4 CAPO K on yyyy-mm-dd.</p>

**CAPO CHECKLIST**  
(Review of complainees complaint records)

Part 'D' up to batch yyyy-mm-dd

Item No.	CRR No. (the most recent case)	Endorsed by IPCC (the most recent case)	Officer Concerned	Complaint Record Year/Allegation/Result	Result
1	K-09XXXX	yyyy-mm-dd	PC A XX XX-XX of XX District	<p>K07XXXX - Misconduct and Improper Manner/ Withdrawn</p> <p>K07XXXX - Misconduct and Improper Manner/ Not Pursuable</p> <p>K07XXXX - Assault/ Unsubstantiated</p> <p>- Misconduct and Improper Manner/ Unsubstantiated</p> <p>K08XXXX - Neglect of Duty/ Unsubstantiated</p> <p>- Neglect of Duty/ No Fault</p> <p>- Unnecessary Use of Authority/ Unsubstantiated</p>	Reviewed by IP DIT2 of XX District. COMEE has been reminded of importance of maintaining a high standard of service, professionalism and police image towards members of the public at all times.
2	H-09XXX	yyyy-mm-dd	SPC B XX XX-XX of XX District	<p>H07XXXX - Unnecessary Use of Authority/ Unsubstantiated</p> <p>- Misconduct and Improper Manner/ Unsubstantiated</p> <p>H08XXXX - Misconduct and Improper Manner/ Unsubstantiated</p> <p>H08XXXX - Misconduct and Improper Manner/ Not Pursuable</p> <p>H09XXXX - Misconduct and Improper Manner/ Unsubstantiated Misconduct and Improper Manner/ Unsubstantiated</p>	Reviewed by IP DIT4 of XX District. COMEE has been reminded of importance of maintaining a high standard of service, professionalism and police image towards members of the public at all times.