

(修訂本)
立法會 CB(2)602/17-18(05)號文件
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Society for Community Organization

A former prisoner's experience of the complaint system of the CSD

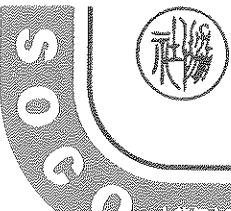
立法會申述 2018-01-04

我是一名釋囚，曾經在赤柱監獄服刑期間，遭到懲教人員兩次毆打、4 次栽贓嫁禍而遭紀律聆訊和懲罰、兩次強迫我作假證供、以及 4 次遭懲教人員教唆指使及包庇縱容犯人襲擊我。第 1 次遭到懲教人員襲擊是在赤柱監獄醫院，遭 1 名醫院的懲教人員用手肘用力壓向我的胸膛，當時該名懲教人員用布簾遮蓋病床襲擊我，以逃避 CCTV 拍攝，並恐嚇我不可以跟人講。第 2 次遭到懲教人員襲擊是在赤柱監獄的飯堂內的茶水房，因為該處沒有 CCTV，當時我被犯人襲擊後，被懲教人員帶到茶水房，我不適倒在地上，有兩名懲教人員進入，其中一人在我背後用右手肘箍頸及用膝撞我的脊骨，另一人在我前面用右手用力扯我前衫猛搖我，令我難以呼吸，二人並用粗口辱罵我咁多事，咁鍾意投訴。我曾向懲教主任作出投訴，但該主任反問我有無人證？有無傷痕可以驗傷？有無 CCTV 錄影佐證？再問我即使報警，是否有足夠證據可以將他們入罪？即使我本次贏了一次將他們入罪，我可能會輸九次，意思是會遭到懲教人員九次的報復！由於我怕會遭到懲教人員的報復，所以只好被迫放棄報警投訴。

我之所以遭到懲教人員毆打、栽贓嫁禍、以及遭犯人襲擊，完全是由於我要向行政長官、保安局、立法會議員、申訴處、懲教署投訴調查組、警方和廉政公署投訴獄方懲教人員官犯黑勾結、知法犯法、徇私枉法和進行違法違規違紀行為、包括栽贓嫁禍和串謀作假口供陷害我入罪、指使和教唆犯人襲擊我、藉此報復我投訴官犯黑勾結；強迫我在犯人陳述書作假口供，迫我訛稱自己的肝病已經好番而不用治療、撕毀我所寫的犯人陳述書以毀滅證據、用粗口辱罵我、毆打我、冬天迫我用冷水洗頭沖涼、剝奪我運動權利、與囚犯串謀經營「收煙洗衫」，即收取犯人香煙才提供應該免費的洗衫服務，令我的衣服得不到清洗、「倒賣犯人餸菜」牟利，即私減犯人的肉類和菜，再賣給其他犯人牟利，令我得不到溫飽。我曾經向懲教人員作出投訴，卻反被懲教人員指責我「阻人（犯人和懲教人員）發財，尤如殺人父母」。

當我作出投訴後，便遭到懲教人員誣衊我寫波欖賭波，藉口搜倉想搜回罪證，後更栽贓嫁禍我藏有違禁品而對我作出紀律檢控和懲罰，即使我被單獨囚禁時仍再次栽贓嫁禍來報復我向太平紳士投訴懲教人員，及後更 4 次教唆指使及包庇縱容犯人襲擊我，目的是報復我投訴懲教人員，破壞懲教人員與有黑勢力犯人的勾結和地下秩序，要威嚇我不可以再投訴，又以群眾壓力來迫我就範，更有懲教人員為了掩飾過錯而強迫我作假口供、竄改紀錄和毀滅證據。

我因為怕被懲教人員報復而曾經不敢作出投訴，但即使我向有關部門作出投訴，最終都是交回懲教署投訴調查組處理，在自己人查自己人、和自己人攬自己人情況下，投訴調查組包庇掩飾自己的罪行，根本沒有作出公平、公正、客觀、全面和獨立的調查，再加上被投訴的懲教人員講大話矢口否認、職員間又不會頂證，在囚犯人怕報復不敢作證，又無 CCTV 和錄音佐證，在紀律聆訊中又串謀作假口供，以致犯人遭到虐待也不敢作出投訴，令在囚人士得不到公平、公正、公義、人道和人性的對待，更剝奪犯人的基本人權和尊嚴。



香港社區組織協會
新聞稿（2017年7月12日）
社協要求懲教署檢討監獄內部投訴機制

(一) 簡介

近日有不少關於在囚人士在監獄或拘留中心內遭受肢體暴力或不公對待，卻未能作出有效投訴的報導，揭示了現時監獄內缺乏行之有效的內部投訴機制。確保羈留環境穩妥、安全、人道是懲教署一直以來的目的，有見及此，社區組織協會（社協）希望強調提高監獄投訴制度的透明度和獨立性的必要性，以達到懲教署「懲」與「教」的抱負。儘管目前有些外部投訴渠道，懲教署的內部投訴機制仍是投訴的最主要和直接渠道。而有效的投訴制度亦能加強對懲教人員的問責、確保囚犯管理的公平性並處理監獄系統中的漏洞及不法行為。

社協參考了懲教處過往三年的年報、現行的投訴機制，以及外國懲教相關部門，如美國¹和澳洲²申訴專員的一般做法，制定了涵蓋整體指導原則和一般可行性的框架，以全面評估目前的監獄投訴機制。除了以上資料外，本會亦分析了44宗本地個案及報告，並就機制結構性和細節上的問題提出針對性的建議（見第三節：問題及建議）。

設置內部投訴制度的主因之一是為了確保囚犯得到公平的待遇。為了確保投訴制度能按原意運行，投訴調查的結果必需要公平公正。以下為幾項可增加調查公平性的指導性原則：

- 無障礙：投訴程序必須清楚和容易明白；投訴者亦應有免於恐懼被報復的權利
- 問責性：機制必須給予投訴者對調查者問責的渠道，從而有效監察懲教人員
- 透明度：公平；制衡各方利益、權利

程序公義：

在調查投訴的過程中，為確保投訴結果的公平性，調查人員應維護程序公義。在調查人員遵循公平、合理的程序時，他們才能作出公平和公正的決定。程序公義重視決策者所使用的程序，而非其實際決策；能達致程序公義需遵從以下原則：

- 公平公正的聆訊（詳情請參閱下文「內部紀律聆訊」小節）
- 沒有偏見
- 充分的證據支持
- 保留對有爭議的事項的提問權

保障在囚人士的權益：

- 信息權：在投訴調查或紀律聆訊時，應向在囚人士提供所有有關自身的負面信息的摘要，以及事先提供所有決定結果的可能性的總結。此外，還應給予足夠的法律諮詢和支持，包括了解自身的權利、法律援助和獲得法律諮詢的機會。
- 答辯權：在作出拒絕或解釋指控的決定、提供其他證據或細節之前，應向在囚人士提供作出書面或口頭的答辯聲明的機會。
- 公正審判權：應請非附屬方作為陪審團或觀察員出席聆訊，以確保聆訊公平公正。應盡可能避免僱用屬方人員，包括監獄長，懲教職員和其他工作人員作為裁判。

¹ Gerald R. Papica, Ed.D. *The Ombudsman's Guide to Fairness*.

² Ombudsman Western Australia (2009). *Guidelines on Conducting Investigations*. Western Australia.

另外，本會曾於六月中旬去信懲教署釐清年報中一些數據，並就現行投訴處理的做法提出疑問，希望得到全面的解釋。但至目前為止仍未收到具體回覆。本會將繼續密切留意。

(二) 香港監獄投訴機制概覽

香港監獄的投訴機制分為內部和對外兩大類：

內部渠道	對外渠道
1) 向懲教署職員提出口頭投訴 2) 通過投訴獨立調查組提出正式書面投訴	1) 向太平紳士提出口頭投訴 2) 向其他外部機構，如警務處、廉政公署和申訴專員公署等作出投訴

根據懲教署過去三年年報³，投訴調查組在三年期間所收到的個案數目為314宗，當中只有3宗投訴最終「證明屬實」，而「無法證實」和「無從追查」的調查則有183宗。本會的案件分析所示，無法證實的原因主要有三：

- 1) 證據不足； 2) 投訴超過了24個月的投訴期限； 3) 投訴內容超越調查組權力範圍

(三) 問題及建議

目前懲教署的政策和做法揭示了現時內部投訴機制的三個主要問題：

- (1) 缺乏問責機制； (2) 缺乏制度性支援； (3) 法律支援不足。

3.1 監獄內部投訴機制之獨立性

問題 #1：太平紳士投訴制度的不足

在二零一五年，太平紳士在巡視監獄期間共接獲115宗投訴⁴，在90個被轉介至懲教署作跟進的投訴當中，有32個再被轉介至投訴調查組。經太平紳士所提出的32個投訴全是涉及職員行為不當及濫用權力⁵的指控，並佔投訴調查組收到的總投訴約百分之十。太平紳士的投訴數字反映出目前的內部機制在處理敏感的投訴的不足，特別是涉及懲教人員行為不當或濫用職權的投訴。因為在囚人士不敢直接向獄方投訴，才經第三者投訴。然而，雖然太平紳士在探訪期間會親自接受在囚人士的投訴，但他們絕少跟進個案⁶，並將多數的投訴轉交給投訴調查組，反映加強內部投訴機制的獨立性和跟進行動的需要。

建議 #1：增設獨立投訴監督員

太平紳士投訴制度反映了設立獨立投訴監督員的需要，從根本改善投訴處理的質素。若然可以直接向投訴調查單位組作出投訴，相信能有更好的跟進和更高的保密性，使得這些投訴能盡快得到有效的解決。

為了確保投訴處理的獨立性，強烈建議聘請非懲教人員的人擔任監督員。監督員亦需要處理在本報告第二部分所指出的主要問題。

監督員應獨立於個別監獄或懲教職員，並監督投訴調查組的工作，例如：調查進度。監督員的主要責任如下：

1. 確保投訴機制的透明度
 - a. 公開重要文件，例如不同投訴渠道的流程和公開有關投訴數字和整體流程的相關報告
2. 管理和監察投訴機制
 - a. 管理所有投訴設施和工具，例如投訴表格
 - b. 保存及保密在囚人士投訴本，紀錄所有口頭投訴

³ Hong Kong Correctional Services. (2016). *2016 Annual Review* (p. 103).

⁴ Justices of the Peace (2015). *2015 Annual Report on Justices of Peace Visits*. HONG KONG.

⁵ Ibid.

⁶ Interviews with ex-inmates show that there is an informal practice of having to let officers know the nature of your complaints before raising them to JPs, or else there will be retribution from staff.

- c. 保存及保密在囚人士投訴本，紀錄所有口頭投訴
- d. 保存在囚人士移動紀錄簿冊（MMR）⁷
- e. 在監獄進行定期實地考察，監督有關投訴和公平政策的實施情況
- f. 在調查期間定期檢查投訴人和證人，以確保在提出申訴和調查期間不會有懲教人員進行不當行為以阻嚇投訴人和證人作供

3. 改善監獄投訴公平性的長遠計畫

- a. 改善懲教人員的培訓，促進培訓的公平和多樣性，其中包括情感控制和人權保護的方面
- b. 制定和監察建議的執行情況
- c. 設計和管理行動，更好地告知和教育囚犯他們的投訴權和投訴相關流程

3.2 評估內部投訴機制

根據受訪者經驗，在監獄提出投訴的主要方式是向懲教人員提出口頭投訴及向投訴調查組提出正式投訴。但是，這兩個渠道均缺乏保密性。

問題 #2.1：被報復的機會

如個案的情況所示，在囚人士們可能會因為害怕受到報復，而不敢投訴。報復的形式包括以延長刑罰、身體威脅和對不當行為進行指控。

問題 #2.2：投訴表格

在囚人士必須親自透過懲教人員向投訴調查組提出正式投訴，大大減低了投訴的保密性。當投訴人提交投訴時，往往會被懲教人員詢問有關投訴，甚至恐嚇投訴人，阻止投訴。

建議：#2：設置保密投訴亭

參考愛爾蘭的建議，當投訴職員行為不當，整個投訴調查將進入「保密程序」⁸。保密投訴亭為在囚人士提供保密平台。他們可以在保密區域索取表格和提出投訴。投訴亭應該設置在在囚人士日常活動的地方，方便他們作出投訴。投訴亭由監督員管理和監督。另外，所有投訴需要用的工具，例如，投訴表格、文具和信封都應該設置在投訴亭。

3.3 投訴處理

所有投訴均按「監獄規則」⁹（第234A章）和「懲教署投訴處理手冊」¹⁰處理。低嚴重性的投訴通常由懲教人員處理，而涉及懲教人員不當行為或投訴機制結構性的問題的重大投訴則由投訴調查組跟進。投訴亦可轉交予其他部門或外部機構，如警方或廉政公署作進一步調查。（投訴處理流程請參閱附件（二））

問題 #3：缺乏透明度

懲教署現行做法，例如懲教署就投訴處理所使用的「投訴處理手冊」等指引並沒有公開。與此同時，懲教署署長在年報中提到的建議，只有刊登在懲教署的內部系統中，公眾則無法獲得這些建議，亦無法知道投訴執行進度。

建議 #3：公開投訴處理程序及表格文件

為了提高透明度，應當公開以下文件和做法：

1. 懲教署投訴處理手冊
2. 目前的投訴處理做法，包括投訴人和被投訴人的隔離措施

⁷ Moving Muster Record is a record recording the movement of persons in custody to or from a specific location of the institution

⁸ *Making a Complaint.* (2015). *Offenders Families Helpline.* Retrieved 5 June 2017, from <http://www.offendersfamilieshelpline.org/index.php/making-a-complaint/>

⁹ 1969 “prison rules”(2017). Hong Kong.

¹⁰ The “Complaints Handling Manual” is not publicly available. SoCO has requested a copy for reference from CSD but has yet to hear back.

3. 由懲教署長認可建議的執行進展報告
 4. 由懲教署長認可建議的執行進展報告
- 此外，投訴調查報告應以合理的費用¹¹向投訴人提供。

問題 #4：不合理投訴時限

投訴期限是24個月，投訴必須在事件發生的24個月內提出，投訴調查組才會處理。不過，由於害怕受到報復，許多在囚人士只會在出刑前一段時間和出刑後才提出投訴。24個月投訴限期是監獄中不必要的司法障礙。

建議 #4：延長投訴時限

由於24個月的投訴時限限制了在囚人士的投訴權利，建議懲教署及相關部門重新檢視投訴期限，制定一個最好的方案。但社協認為懲教署應從根本解決問題，完善整個制度，令在囚人士不受外部因素影響，可立刻向署方投訴其不滿之事項。

問題 #5：投訴者及證人保護的不足

正如幾宗個案研究所反映的，投訴者和證人均沒有受到適當的保護，當中有涉及對懲教人員或其他在囚人士行為不當的投訴。基於投訴的敏感性，投訴者和證人可能會受到口頭威脅和虐待，引致投訴者終止投訴和或阻止證人作供。在監獄等封閉環境中，缺乏可靠的隔離政策，是對投訴者的巨大威懾，亦間接令到懲教人員利用和濫用該制度。

建議 #5：引入投訴者及證人保護機制

投訴者及證人（如適用）應當受到適當的保護，免受有關各方或懲教人員報復。建議 #1所提及的獨立監督員應定期監督保護措施的實行進度，並在保護期期間（接受投訴到調查結果及上訴期完結）定期探訪投訴者和證人，以確保其安全。在涉及懲教人員行為不當或濫用權力的案件中，應有隔離被投訴者與投訴者或證人的措施¹²，以確保雙方的安全。若有任何人士在保護期期間試圖違規，應當作妨礙司法公正處置。

3.4 投訴調查

問題 #6：紀錄存檔的不足

從調查報告分析可知，缺乏系統性的紀錄保存是導致調查困難的主要原因之一。

1. 證人保護
 - a. 現階段懲教署並沒有任何公開的證人保護措施，與釋囚的面談亦反映證人有可能受到他人的威嚇而不敢作證。
2. 物證（一）：在囚人士移動紀錄簿冊（MMR）
 - a. 在囚人士移動紀錄簿冊紀錄了在囚人士在監獄的流動紀錄，能有效的驗證口供的真確性，能幫助調查。可是，基於在囚人士移動紀錄簿冊不是官方正式文件，因此沒有得到有系統性的保護¹³。
3. 物證（二）：閉路電視政策
 - a. 現時閉路電視覆蓋範圍有限，某些倉房和面談室均未被覆蓋，導致在未被覆蓋的範圍作案則無法證實。

¹¹ From experience, the administrative fees for obtaining investigation reports are exorbitantly high (around HKD\$700 for 6 reports). SoCO has filed a complaint with the PCPD about these fees that are hindering access to critical personal information.

¹² For instance, changing the complainant's resident block assignment, which includes his working unit and cell assignments.

¹³ "Moving Muster Record" is not classified as an official record under departmental rules and regulations. Hence, there are neither orders governing the retention period of such record nor information recording the disposal of it.

- b. 目前監獄中的閉路電視系統沒有錄音功能，令蒐證加倍困難，尤其是言語攻擊等類型的投訴難以單憑影像作實。
- c. 閉路電視紀錄只保存過去三個月的紀錄，而投訴期限為24個月。因此，三個月的保存期是不合理的。

建議 #6: 建立統一紀錄存檔系統

為了促進投訴調查的進度和有效地蒐證，應建立有系統的紀錄保存。

1. 證人保護：詳情請見建議 #5
2. 物證（一）：在囚人士移動紀錄簿冊
 - a. 在囚人士在監獄的流動紀錄應該納入官方正式文件，使其能有系統性的保護。
3. 物證（二）：閉路電視政策
 - a. 應增加閉路電視的覆蓋面，盡可能多覆蓋監獄中的非私人地帶。同時應採用具備錄音功能的閉路電視系統。至於要保存長度，應長於或至少等於有效投訴期。閉路電視錄像應該隨時可以作為內部聆訊和投訴調查的證據，所有證據均被視為保密文件。
4. 物證（三）：在囚人士投訴本
 - a. 記錄所有口頭上的非正式投訴，以更有效地記錄，審查和跟蹤調查進展情況。只有在監督員的監督下，獨立投訴調查人員才可以翻閱此「投訴本」。每宗投訴應包含以下內容
 - i. 投訴人的姓名或身份證明文件、投訴的性質、投訴參與方及調查結果

3.5 內部紀律聆訊

問題 #7：缺乏公正性

由於紀律聆訊的判罰大多涉及加長刑期和獨立囚禁等，多被在囚人士視為阻嚇投訴的方法之一。因此，紀律聆訊的公正性直接影響囚犯對不公之事作投訴的意欲。此外，若投訴是和紀律檢控之事件有關，投訴調查將與該聆訊一併處理，投訴調查亦會隨即終止。所以，內部聆訊亦同樣應受到獨立的監察。現時的紀律聆訊在多方面均缺乏公正性，不僅沒有滿足在上述的評估框架概述的規則，甚至在正常期望之下：

- 聆訊判決人為懲教人員，難免會有偏幫的成分，大大減低聆訊的公平性。更嚴重的是，整個聆訊只有懲教人員出席，沒有獨立人士在場以確保判決的公平性。
- 被告無法得到完整的聆訊錄音紀錄，因而無法與抄本作出比較。

建議 #7：增加內部紀律聆訊的獨立性

聆訊應增設固定位置讓獨立於懲教處的人士出席、甚至審理聆訊，以避免對懲教人員的偏見判斷和偏袒。在資料方面，應向控辯雙方提供雙方的證據，並提供聆訊後果的摘要，同時，懲教署應應投訴人要求提供聆訊的完整錄音和抄本。

問題 #8：缺乏足夠法律支援

被告沒有絕對權利（absolute right）得到任何法律諮詢或支持，也沒有機會尋求外部法律援助。被告需要得到懲教署批准才可以尋求法律支持。正如一案件反映，被告甚至被拒絕提供法律援助。這使得被告處於不利地位，對聆訊的公正性產生不利影響。

建議 #8：保障在囚人士的法律權利

被告的法律權利應該得到尊重。無論是監獄內部或外部，懲教署均應提供足夠機會予被告以獲得法律顧問。署方亦應向被告提供有關獲得法律援助指引和渠道，以確保他們得到應有的權利。除了尋求法律諮詢和協助之外，在被告的要求下，應提供必要的法律文件，如供詞等。

3.6 監獄投訴機制結構

問題 #9：缺乏投訴轉介機制

雖然囚犯可以向外部機構投訴，但大多數外部投訴最終都會轉交給獨立投訴調查組進行調查。由於目前缺乏轉介機制，大多投訴經過多番轉介後，均超過了獨立調查組制定的24個月有效投訴期，最終無法受理。

建議 #9：建立自動投訴轉介機制

為了更有效率地處理不同性質的投訴，懲教署應建立一個有效的自動投訴轉介制度，從而處理涉及不同政府部門，如警務處、廉政公署及申訴專員的投訴。這個轉介機制應包括：

- 跨部門的合作渠道：如互通的投訴資料庫，以促進不同部門在處理投訴時的溝通和工作效率
- 不同部門的權限指南：建立明確的指引，使懲教署能夠迅速把因權力範圍所限不能處理的投訴轉交其他部門。同時，亦使投訴人更了解他們的投訴處理方式。
- 建立投訴轉介期限：例如：涉及刑事因素的投訴應儘快轉交警方處理

(四) 總結

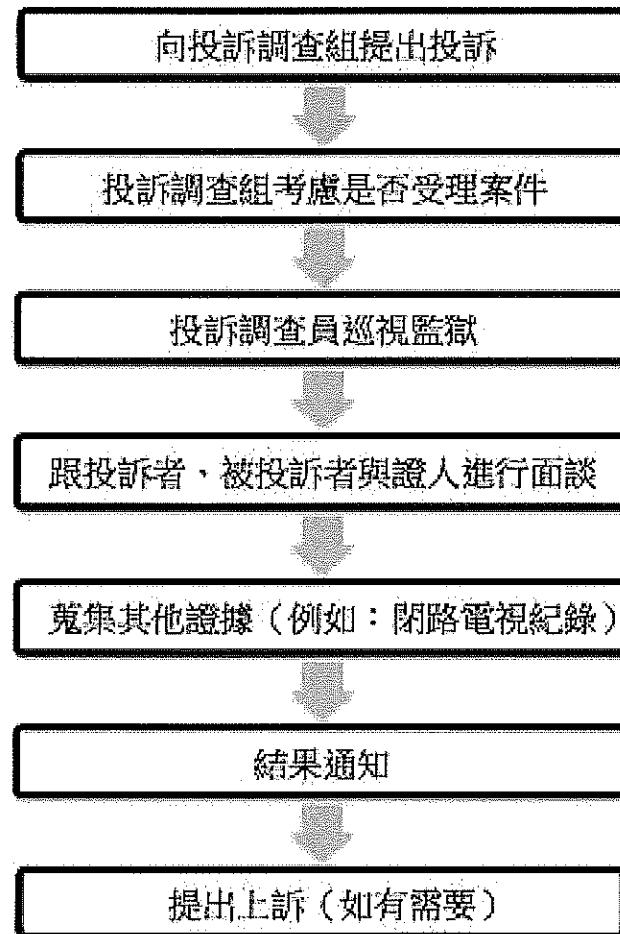
本會希望懲教署能仔細考慮本會所提出的建議，並與本會會面討論如何完善投訴機制。同時，希望相關部門能就著本報告給予回覆，期望能跟保安局以及申訴專員公署會面。

附件(一) 參考案例

陳先生（化名）向投訴調查組投訴某職員行為不當，強迫他填寫內容失實虛假的陳述書。覆診當天，陳先生被安排以甲類犯人之囚車外出覆診，但根據以往兩次乘搭甲類犯人之囚車的經歷，他均會感到身體不適，因而拒絕外診。根據獄方一般程序，陳先生會被安排會見獄方醫護人員並解釋原因，然後陳先生需要填寫一份陳述書解釋拒絕外出覆診的原因。於是，陳先生根據自己實際情況寫出了第一份陳述書。有關職員閱讀後，則不同意他的寫法：「你不能這樣寫，你要按照我的意思寫！重新再寫一份！」。及後，陳先生在非自願和被逼之下寫了第二份陳述書（該陳述書內容指陳先生因覺得自己病情已好轉而拒絕覆診）。職員收了第二份陳述書並提交於獄方，第一份則由陳先生自行保管。

在接到陳先生投訴後，投訴調查組分別向當天在場職員和在囚人士取證。所有職員一致性表示過程中沒有違反程序，亦沒有看見其他職員強迫陳先生填寫內容虛假失實的陳述書。而其他在囚人士則表示因為時間久遠而未能重拾記憶，亦無法提供有用的手供。在物證方面，調查報告則顯示調查組沒有就當天情況而翻看閉路電視紀錄。另外，從獄方紀錄所見，由於陳先生提交的第一份陳述書不被接納，陳先生當天最終只提交了一份陳述書（即為第二份陳述書）；調查組亦沒有就陳先生投訴時所提交的第一份陳述書作深入調查從而證實其真確性。最重要的是，本案的被投訴人在調查組接獲投訴前已離職，調查組亦因兩次去信被投訴人均沒有得到正面回覆，最終無法收集被投訴人的證供而把案件判定為「無法追查」。

附件（二）投訴處理流程



**Society for Community Organization
Hong Kong**

Report on Improving the
Internal Complaints Mechanism in Prisons

July 2017

Introduction

Recent news reports on alleged physical abuses of inmates by prison or detention center staff have put the issues of prison conditions and treatment of inmates in the limelight. While enhancing the treatment of incarcerated persons remains an issue that demands attention from prison authorities, Society for Community Organization (SoCO) wants to stress the importance of improving the transparency and independence of prison complaints systems--especially the Correctional Services Department's (CSD) internal complaints mechanism, which remains the main channel for complaints-making despite a number of external channels that are currently in place--as an effective complaints system would be vital in holding prison staff accountable, ensuring fairness in the treatment of inmates, and tackling loopholes and any malpractices in the prison system.

Methodology

SoCO has referenced domestic, foreign, and international standards and practices of prison complaints handling, as well as conducted research into 44 complaint cases and investigation reports issued by the CSD, in order to evaluate current practices of prison complaints-making in Hong Kong. In addition, SoCO has reached out to the CSD in mid-June to clarify statistics and progress reports listed in their recent annual review and inquire about their current practices, such as policies for isolating complaints and complainants in cases involving serious staff misconduct; SoCO has yet to hear back from the CSD.

A comprehensive framework consisting of three main guiding principles and other guidelines addressing specific aspects of the complaints handling process has been developed to evaluate current practices and devise relevant recommendations for CSD.

Section 1: Evaluation Framework

The evaluation of the current complaints system and development of relevant recommendations were done with reference to an evaluation framework. This framework was devised from international and domestic guidelines for complaints handling, complaints investigation, and the handling of matters specific to the closed prison setting, such as guidelines for internal disciplinary hearing for prisoners charged with misconduct. With an emphasis on the principles of accessibility, accountability, and transparency, such framework serves as a model that is on par with international standards with elements specific to Hong Kong. Current practices reflected in case studies, as well as SoCO's policy recommendations, are compared against the principles and guidelines illustrated in this framework to check if they help , in theory and in practice, to promote justice and fairness in the complaints system and in prisons.

<p>General Guiding Principles</p> <p>The internal complaints system is in place largely to ensure inmates are receiving fair treatment. To ensure that the complaints system is effectively performing what it was intended for, complaints decisions would need to be impartial and fair. The principles on the left would make the system more accessible and transparent so to ensure a fair complaints outcome and fair treatment of inmates. These principles should be honored in all parts and procedures of the prison internal complaints system, which includes the filing, handling, and investigation of complaints.</p>	<p><u>Accessibility</u></p> <p>Complaints-making procedures should be concise and comprehensible, while information about the complaints process should be easily obtainable. Aside from increasing physical ease in lodging complaints, such as by removing possible language barriers for illiterate or non-Chinese speaking inmates, it is imperative to ensure that prisoners are free from the fear of retribution when filing complaints, especially complaints against prison officers or other staff members.</p> <p><u>Accountability</u></p> <p>An effective complaints system should be able to hold prison officers and staff accountable for their actions and behaviors. In order to maintain an effective complaints mechanism, it is important to hold complaints investigation units accountable for assuring the quality of the complaints services. Accountability is needed on both sides--investigators should be responsible for keeping an eye on prison staff to ensure that officers perform their duties of maintaining justice in prisons and do not abuse their power.</p> <p><u>Transparency and Fairness</u></p> <p>As prisons are closed systems and are mainly governed by their own unique sets of rules and regulations, prison officers are given substantial authority over the inmates. Transparency, especially with regards to the complaints system, is therefore critical in introducing checks and balances to the existing system. External authorities and the public should be able to monitor whether fairness is upheld by officers in prisons, while complainants (who are mainly inmates) should be able to obtain sufficient information about the complaints procedures and progress to ensure a fair and efficient investigation of their complaints.</p>
<p>Complaints Investigation Procedures</p> <p>At the core of complaints-handling is the investigation of complaints. To ensure complaints outcomes are fair -- especially in the case where the decisions could negatively affect a party's interests -- procedural fairness should be</p>	<p>Key components of complaints investigation should include⁴:</p> <ol style="list-style-type: none"> 1. Acknowledging the complaint 2. Developing an investigation plan 3. Formal notification of the complaint and seeking a response 4. Providing preliminary findings 5. Final outcome 6. System improvement recommendations

⁴Ombudsman Western Australia (2009). *Guidelines on Conducting Investigations*. Western Australia.

<p>upheld, for when investigators follow fair procedures, it is more likely that a correct and fair decision is reached¹. Procedural fairness² puts the focus on procedures used by decision-makers instead of the actual outcome of the decision. The main guiding rules of procedural fairness include³</p> <ul style="list-style-type: none"> (a) a hearing appropriate to the circumstances (please see sub-section “Internal Disciplinary Hearings” below for details), (b) lack of bias, (c) evidence to support a decision, and (d) inquiry into matters in dispute 	<p>It is worth mentioning that the CSD has done decently well in following these steps and ensuring procedural fairness is upheld. In addition to these procedures, it is also important to have a follow-up mechanism tracking the implementation progress of improvement recommendations and preventing the recurrence of incidents leading to complaints.</p>
<p>Internal Disciplinary Hearings Internal disciplinary hearings are held when inmates are charged with misconduct. At these hearings, the concerned inmate could face penalty such as wage deduction, extension of sentences, and solitary confinement⁵. Aside from complaints about the lack of impartiality of these hearings, threats of misconduct charges and disciplinary punishment⁶ as a form of retribution is often the main deterrent to complaints-lodging. Thus, the independence of internal hearings serves as the last frontier preserving the justice of the complaints system.</p>	<p>The following list includes key rules to be observed in internal hearings and is not exhaustive. When following these guidelines or devising new policies, it is important to bear in mind the principles mentioned above.</p> <p><u>Hearing Rule and Right of Information</u> Defendants should be provided with a summary of all negative information against them, as well as a summary of all possible decisions beforehand. In addition, they should be given sufficient legal counsel and support, including being informed of his rights, legal aid, and obtaining legal advice.</p> <p><u>Right of Reply</u> Defendants should be provided with an opportunity to make a written or oral statement of reply before a decision is made to deny or explain allegations, provide other evidence or details, or present an innocent explanation</p>

¹ Ombudsman SA (2012). *An audit of prisoner complaint handling in the South Australian Department for Correctional Services*. Australia.

² Ombudsman Western Australia (2009). *Guidelines on Conducting Investigations*. Western Australia.

³ Ombudsman SA (2012). *An audit of prisoner complaint handling in the South Australian Department for Correctional Services*. Australia.

⁵ From interview with ex-inmates

⁶ From interview with ex-inmates

Unbiased judgments

Non-affiliated parties should be present at hearings as either jury or observers to ensure the hearing is fair. The employment of affiliated persons, including prison directors, officers, and other staff, as judges should be avoided if possible.

Application to Other Parts of the Mechanism

The important concepts of **right of information**, **right of reply**, and **unbiased judgement** also apply to other components of the complaints handling mechanism, especially in complaints handling, investigation, and final decision-making.

Section 2: A Detailed Look into Hong Kong's Prison Complaints System: Problems and Solutions

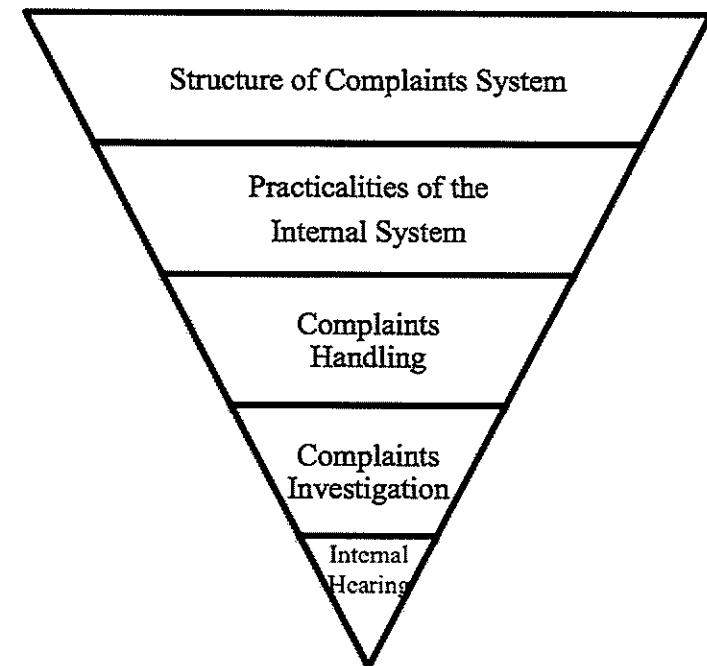
Hong Kong's prison complaints system consists of both internal channels within the prison system and channels external to the prison institution. Internal channels

⁷ include (a) making verbal complaints staff members of CSD and (b) filing formal complaints through the Complaints Investigation Unit (CIU) -- the main unit within the CSD in charge of complaint handling, investigation, and appeals. External channels include (a) making verbal complaints with visiting Justices of the Peace (JP), who will then refer the complaints to the CIU, and (b) making complaints in writing to external institutions, including the police, Independent Commission Against Corruption, and the Office of the Ombudsman, at the complainant's own discretion.

The evaluation of the current system and devisement of recommendations are organized under 6 different sections as illustrated in the graph on the right, with an additional section on improving the relative structural independence of the internal system. The analysis of current policies and practices have revealed 3 main problems of the internal complaints systems, which deterred prisoners from making complaints:

1. **Lack of mechanisms ensuring compliance with rules and regulations**, which leads to the lack of accountability, as reflected by the lack of a proactive body overseeing prison staff compliance and the relative partiality of internal hearings.
2. **Lack of institutional support for complaint-making and processing**: the current system (a) lacks transparency in terms of procedures and decision-making criteria of complaints investigations, (b) lacks an efficient referral mechanism to direct cases out of the CSD's purview to relevant external institutions, and (c) has yet to update its policies to realistically reflect the needs of inmates, such as the need for an extension of the 24-month period of viable complaints.
3. **Lack of legal support and counsel**, especially in relation to incarcerated persons' rights before and during complaints investigations and/or internal hearings and obtaining additional information related to complaints without fearing retribution from staff, which often includes being put on disciplinary report.⁶

Recommendations are developed with a focus on tackling these three main issues and will be summarized in Section 3 of the Press Release.



⁷ Security Bureau. (2004). *Mechanism for Handling Complaints from Persons Serving Sentences* (pp. 1-4).

STATUS QUO	PROBLEMS	RECOMMENDATIONS
<p>1. Independence of the Internal System</p> <p>The Justices of the Peace (JP) complaints system shows an intersection between the strictly internal complaints mechanism and external channels. While JPs take complaints from inmates in-person during their prison visits -- often in front of prison officers⁸ -- they refer a huge majority of those complaints back to the CIU for investigation and rarely follow up with individual complaints, as there exists no mechanism or guidelines holding them responsible for following-up or investigating complaints. In 2015, JPs have received 115 complaints during their visits⁹, with around 90 of them referred to the CSD. Out of the 90 referred cases, 32 of them involve serious allegations, such as staff misconduct and abuses of power¹⁰, and thus were directed to the CIU for further investigation. These serious complaints referred by JPs made up around 10% of all complaints received by CIU that year.</p>	<p>1. Inefficient Justices of the Peace (JP) System</p> <p>The heavy use of the JP channel in making complaints, especially ones involving staff misconduct, reflects a lack of confidence in the current internal system in tackling more sensitive complaints, especially those involving staff mistreatment or abuses of power. These complaints would have been more effectively resolved if they were made directly to the CIU, which is supposed to be an independent complaints investigation unit, for better follow-up, higher confidentiality, and authority to oversee staff behaviors.</p>	<p>#1: Introduce an Independent Equity Officer [Improving accountability of complaints investigators and system, transparency of the system, and protection of prisoners' rights]</p> <p>The JP system shows the need for an independent party serving as the point-person for complaints within the prison system. While the final goal of improving the prison complaints system is to introduce a supplementary and external body overseeing complaints handling and quality assurance of the prison system, it is important to begin by introducing a certain level of independence in the current internal mechanism.</p> <p>As such, it is strongly recommended that a non-affiliated person to be appointed as the Chief Equity Officer within the CSD or even CSD's Quality Assurance Unit to specifically handle issues related to complaints and equity in prisons. The Chief Equity Officer will ideally addresses the main problems of non-compliance and lack of institutional support identified at the beginning of Section 2 by introducing an independent and proactive regulatory body within the internal prison quality assurance</p>

⁸ Interviews with ex-inmates show that there is an informal practice of having to let officers know the nature of your complaints before raising them to JPs, or else there will be retribution from staff.

⁹ Justices of the Peace (2015). *2015 Annual Report on Justices of Peace Visits*. HONG KONG.

¹⁰ Ibid.

		<p>structure.</p> <p>The Equity Officer should be structurally independent of individual prisons and/or prison staff and assume a supervisory role over the CIU. The main roles and responsibilities of the Equity Officer should include, and are not limited to, the following:</p> <ul style="list-style-type: none"> (a) ensures the transparency of the complaints system by <ul style="list-style-type: none"> (i) publicizing important documents such as the flow of different complaints channels, and (ii) publishing regular reports on prison complaints statistics and the overall progress of upholding equity in prisons (b) manages and oversees all complaints mechanisms by <ul style="list-style-type: none"> (i) managing all complaints facilities, such as the sufficient provision of complaints form, (ii) maintaining a confidential prisoner's complaints book recording down all verbal complaints made to officers for better record-keeping, (iii) maintaining a moving muster record¹¹, and (iv) making regular physical visits in prisons to supervise the implementation of policies
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¹¹ Moving Muster Record is a record recording the movement of persons in custody to or from a specific location of the institution

		<p>related to complaints and equity, as well as take in confidential complaints as necessary</p> <p>(v) checking in regularly with complainants and witnesses to ensure no staff misconduct occurs during the time when complaints are being filed and investigated</p> <p>(c) promotes equity and fairness in prisons in the long-term by</p> <ul style="list-style-type: none"> (i) handling the equity and diversity aspect of prison officers' training, which includes components on emotional intelligence and human rights, (ii) developing and monitoring the implementation of recommendations for continuous improvement, (iii) designing and managing initiatives that better inform and educate inmates about their rights to complaints and the relevant processes.
<p><u>2. Accessing the Internal Complaints System</u></p> <p>The main ways of making complaints while in prison, as indicated by experience, are through verbal complaints filed with officers and formal complaints made to the CIU. However, both channels are lacking in confidentiality and deter inmates from complaining by putting complainants into a difficult position where</p>	<p>2.1 Fear of Retribution</p> <p>As shown in the cases, inmates are deterred from complaining as they are likely to face retribution -- some in the form of a lengthening of sentence and others physical threatening and imposition of charges for misconduct.</p> <p>2.2 Access to Complaints Forms</p>	<p>#2: Introduce Confidential Complaint Boxes [Improving accessibility and confidentiality of the complaints system]</p> <p>Complaints boxes that allow complainants to access forms, make complaints, and submit complaints in a confidential area should be made available at various locations around</p>

one's physical safety is at risk¹².

Case Study 1: Mr. B

Mr. B was deterred from making complaints in reception centers as he was at the time awaiting his sentence and feared making complaints would mean retribution from staff and a lengthening of his sentence (he feared being put on disciplinary report for charges imposed on him by staff, which would be heard at internal CSD hearings and could affect his final sentencing).

Case Study 2: Mr. C

Mr. C mentioned that he was considered a "troublemaker" in the prison. Since there was no separation measures between the complainant and complainee (officers in these cases), the staff treated him badly and put an eye on him. He was threatened and warned by the officers about the possible retrIBUTions of complaining (such as lengthened sentences). Also, he stated that external complaints channels were not confidential enough, even though documents are sealed in envelopes, as he would be questioned by officers repeatedly about the nature and content if his complaints.

In order to lodge a formal complaint with the CIU, inmates have to reach out to staff personally for forms to write down their request, as there are no physical forms or ways to access the CIU without having to get past CSD staff. And while complaints are meant to be confidential, complainants are often questioned repeatedly, or even threatened, by staff when they are submitting their complaints, which heavily deters them from complaining in the future.

prisons where inmates can access daily, such as on the landing of each accommodation unit. These boxes, supervised and attended to by the Chief Equity Officer, should be opened at least on each weekday and materials necessary to make a complaint, such as the forms, pens, and envelopes, should always be available to all inmates without having to contact prison staff to ensure confidentiality. These recommendations are devised with reference to ideas by researchers in Ireland¹³, whose suggestion also included a "confidential access procedure" for complaints about prison staff.

¹² Includes physical and verbal abuses or threatening by officers.

¹³ *Making a Complaint*. (2015). *Offenders Families Helpline*. Retrieved 5 June 2017, from <http://www.offendersfamilieshelpline.org/index.php/making-a-complaint/>

<p>Complaints-Handling</p> <p>All complaints are handled according to Prison Rules (Chapter 234A)¹⁴ and CSD's Complaints Handling Manual¹⁵. Minor complaints are usually handled individually by prison staff while major complaints involving misconduct of staff are supposedly followed up by the CIU. Complaints may also be referred to other departments or external organizations, such as the Police or ICAC, for further investigations.</p> <p>Case Study: Mr. D</p> <p>The 24-month limit was one of the major reasons of rejection among Mr. D's complaints. Mr. D said that the limit was not stated clearly in posters posted up in prisons. Moreover, since witnesses and complainants are not sufficiently protected from possible retribution from staff, both parties are deterred from making or supporting complaints claims, leading to the lack of evidence for further complaints investigation or decision-making.</p> <p>Number of cases citing “exceeded 24-month complaints period” as reason for termination of investigation: 4 out of 44 cases (9%)</p>	<p>Lack of transparency</p> <p>Current practices and guidelines, such as the Complaints Handling Manual, used by the CSD regarding complaints-handling are not publicly available. At the same time, CSD's recommendations for systemic improvement suggested by the Commissioner mentioned in the annual report are only available in CSD's internal systems and the public have no way of accessing those recommendations, or at least be informed of the progress of implementations.</p>	<p>#3: Publicize Procedures and Forms [Improving transparency of procedures]</p> <p>For the purpose of checks and balances, the following documents and policies should be made public for better transparency:</p> <ul style="list-style-type: none"> (a) CSD's manual and current practices on complaints-handling, which include separation policies of complainants and complainees (b) Progress of implementing endorsed recommendations. <p>In addition, complaints investigation reports should be accessible to complainants at a reasonable cost¹⁶.</p>
	<p>Unrealistic Valid Complaints Period</p> <p>Only complaints made within 24 months of the incident's occurrence will be considered by the CIU, however, due to fear of retribution, many complainants do not submit their complaints until after or shortly before their release from prisons. The 24-month limit is then an unnecessary barrier to the promotion of justice in prisons.</p>	<p>#4: Extend the Valid Complaints Period [Improving accessibility of the system]</p> <p>While a valid complaints period that is too extended will be a challenge to evidence collection and the investigation of complaints, the current 24-month limit shows to be a hindrance to the pursuit of fairness in prisons, as prisoners are prone to delay their complaints due to fear of retribution, and the current time limit should be reviewed. However, SoCO recognizes that the root problem lies not with the 24-month limit but the lack of protective</p>

¹⁴ 1969“prison rules”(2017). Hong Kong.

¹⁵ The “Complaints Handling Manual” is not publicly available. SoCO has requested a copy for reference from CSD but has yet to hear back.

¹⁶ From experience, the administrative fees for obtaining investigation reports are exorbitantly high (around HKD\$700 for 6 reports). SoCO has filed a complaint with the PCPD about these fees that are hindering access to critical personal information.

		<p>measures preventing retribution from staff, and a systemic reform addressing this fear should thus be pursued in the long term.</p>
	<p>Poor Protection of Complainants and Witnesses As reflected by several case studies, inmates complaining about staff misbehavior or other inmates' misconduct do not receive protection from complainants despite being threatened and abused verbally, nor do witnesses receive such protection. In closed settings like prisons, the lack of reliable separation policies protecting complainants and witnesses from possible aggression from the complainant(s) is a huge deterrent to complaints and encourage CSD staff to take advantage of and abuse the system.</p>	<p>#5: Mandate Protective Measures for Complainants and Witnesses [Improving accessibility of the system]</p> <p>Complainants and witnesses, if any, should be protected from possible retribution by parties involved or prison staff. An independent committee, ideally led by the Chief Equity Officer, should oversee the protection system and check-in regularly with the complainants and witnesses to ensure their safety during the protection period, which is effective from the receipt of the complaint to the end of the investigation result appeal period. There should be additional punishment for staff violation and aggression towards complainants and witnesses during the protection period as such actions can be considered a perversion of the course of justice. As for cases involving staff misconduct and abuses of power, a physical separation of the complainants and witnesses from the complainant(s) should be enforced, for instance changing the complainant's resident block assignment, which includes his working unit and cell assignments, so to ensure the safety of both the complainants and complainants.</p>

Complaints Investigation

Complaints received by the CIU entailing the Unit's investigation go through the following investigation processes:

File complaint with CIU

CIU decides whether to take the case

Investigators make visits to prisons

Interview complainant, complainee, and witnesses

Collect other evidences (e.g. CCTV recordings)

Notification of results

Submit appeal (if needed)

With reference to the three-year statistics from the Annual Review¹⁷ of cases received by the CIU, out of the 314 cases entailing CIU investigation, only 3 cases were ultimately

Insufficient Record-keeping

As identified from various complaints investigation reports, investigations are often hindered by difficulties in collecting evidence, which are caused by the lack of systematic record-keeping in the following aspects:

(a) Witness protection: witnesses in complaints cases currently do not receive protection from threats from complainants, which deters some of them from giving testimonies for the investigation. Please see Recommendation #5: Mandate Protective Measures for Complainants and Witnesses for details of the recommendation.

(b) Physical Evidence: Moving Muster Record (MMR)

- The MMR is a record of the movement of persons in custody to or from a specific location of the institution, which is a useful record for investigations, for example for verifying the validity of testimonies. However, the MMR is not systematically documented as “it was not an official document”¹⁸

(c) Physical Evidence: CCTV Policies

- Not including private areas such

#6: Establish Systems for Record-keeping

[Improving accountability and transparency]

Systematic record-keeping structures should be established to better facilitate complaints investigation. For witness protection policies, please refer to **Recommendation #5: Mandate Protective Measures for Complainants and Witnesses**. As for physical evidence:

(a) MMR: a full record of the movements of persons in custody between different CSD facilities should be kept updated

(b) Prisoners' Complaints Book: a record of all verbal, “informal” complaints should be kept for better record-keeping, review, and tracking of investigation progress. This Complaints Book should only be accessible to independent investigators under the supervision of the Chief Equity Officer. Each entry should contain the following:

- (i) Name or identification of the complainant
- (ii) Nature of the complaint
- (iii) Parties involved
- (iv) Investigation outcome

(c) CCTV: coverage of CCTV should be reviewed to cover as much of the non-private areas in prisons as possible, while CCTV systems with voice-

¹⁷ Hong Kong Correctional Services. (2016). *2016 Annual Review* (p. 103).

¹⁸ “Moving Muster Record” is not classified as an official record under departmental rules and regulations. Hence, there are neither orders governing the retention period of such record nor information recording the disposal of it.

<p>deemed substantiated, while 183 of them are either unsubstantiated or not pursuable. Major reasons cited for the unsubstantiated or non-pursuable complaints, as identified from 44 case studies, were (a) a lack of evidence, (b) expiration of the 24-month valid complaints period, and (c) the complaints being out of the CSD and CIU's purview, which only covers inmate-staff interaction and structural issues of the CSD.</p> <p>Case: Mr. E</p> <p>Complaints could not be proved "substantiated" without the support of physical evidence. However, in Mr. E's case where he complained about an officer's refusal to let him attend his regular physical exercises, the crucial Moving Muster Record (MMR) was said to be disposed as they are not official documents. Moreover, requests to check the relevant CCTV recordings were rejected due to the limited recording period (3 months) of prison CCTVs. As a result, Mr. E's complaints were found "unsubstantiated" due to the lack of support of physical evidence, reflecting a serious lack of record-keeping on CSD's part.</p>	<p>as washrooms, CCTVs currently do not cover all other areas of prisons, meaning that incidents could happen in corners not reachable by CCTVs</p> <ul style="list-style-type: none"> • Current CCTV systems in prisons do not have voice-recording functions, making the collection of evidence more difficult; moreover, only basing the investigation on visual images, verbal abuses, which are a major component of complaints, are not taken into account in investigations • CCTVs in prisons only have records from the past 3 months, which is unreasonable given that the current valid complaints period is 24 months long. 	<p>recording functions should be adopted. As for the length of recordings to be kept, they should be longer than, or at least equal to, the length of the valid complaints period, which is 24 months at the moment. CCTV recordings should always be readily available as evidence for internal hearings and complaints investigations, all of which will be confidential.</p>
<p><u>Internal Disciplinary Hearings</u></p> <p>Case: Mr. F</p> <p>Mr. F claimed to be charged with misconduct and faced disciplinary hearing as an alleged retribution for his frequent complaints against prison officers. Before his hearing, Mr. F was</p>	<p><i>Internal hearings and the Complaints System</i></p> <p>It is important to note that disciplinary charges, which could entail wage cuts, solitary confinement, and lengthening of sentences, are often used as a form of retribution for complaints-making, especially complaints against staff members. Thus, the lack of</p>	<p>#7: Improving Independency of Hearings [Improving accountability, transparency, and fairness of the system]</p> <p>Independent non-officials should be present in or even judge the hearings to avoid biased judgements and favouritism towards the staff. In</p>

not offered any opportunities to sought legal assistance; even when he asked officers for ways to apply for legal aid, he was immediately rejected as officers claimed that internal hearings in prisons do not qualify for legal aid. Moreover, information of evidence that could be against Mr. F -- testimonies of officers -- were not available to him before the hearing. Without professional legal knowledge and sufficient opportunity to fully understand his situation and rights, Mr. F attended a hearing that was, at the time¹⁹, judged by the concerned prison's director. There were no independent, non-affiliated individuals at the hearing who could ensure the impartiality of the hearing. Full recordings of the hearing was also not available; the transcript provided by CSD afterwards was allegedly missing important details in favor of Mr. F that were mentioned during the cross-examination.

impartiality of internal hearings is one of the major deterrents to complaints-making within prisons. Moreso, complaints related the incident heard at the hearing will be **dealt with along with the disciplinary charge**, meaning that complaints investigations will be curtailed if a hearing ensued, and the hearing proceedings will substitute for the complaints investigation process. Thus, it is **crucial that internal disciplinary hearings are held to the same, if not higher, standards** used to ensure the independency and fairness of the complaints investigation process.

Lack of Impartiality

The internal disciplinary hearing was sufficiently lacking in impartiality in multiple aspects, not only under the rules governing over internal hearings outlined in the Evaluation Framework, but also under normal expectations:

- The defendant was not given any information of negative evidence against him nor was he informed of the possible decisions he might receive before the hearing, which is **in violation of the hearing rule and his right of information**
- The person(s) judging the hearings are prison directors who are directly affiliated with the concerned prisons and officers; even worse, the only persons present at the hearing are officers, and

terms of information, all parties involved should be given **information of negative evidence against them and a summary of possible decisions**, while **full recordings and transcripts** of the hearing should be available upon request.

¹⁹ After a judicial review decision, internal disciplinary hearings are now judged by the superintendent from another prison.

	<p>there are no independent persons at the hearing who could ensure that the judgements are unbiased</p> <ul style="list-style-type: none"> • Full recordings of the hearing were not available for a comparison against the transcript, which was only given to and not confirmed by the defendant after the hearing 	
	<p>Lack of Legal Support The defendant was not given any legal counsel or support by the institution, nor was him offered any opportunities to seek external legal assistance. As reflected by the case, the defendant was even denied legal help when he asked for it. This puts the defendant in a disadvantaged position and negatively affects the impartiality of the hearings.</p>	<p>#8: Protecting the Right to Counsel [Improving transparency and fairness] Defendant's right to counsel should be honored. Defendants should be given sufficient opportunities to access legal counsel, either within the prison system or externally. Such information on the channels of getting legal counsel and guidelines for obtaining legal aid should be easily obtainable to the defendant. In addition to seeking legal advice and assistance, provision of necessary legal documents, such as testimonies, should be available to defendants, at least on their requests.</p>
<p><u>Structure of the Complaints System</u></p> <p><i>Case Study: Mr. A</i> Complaint cases that involve criminal behavior are out of CSD's purview. Therefore, CSD would not handle it directly but would recommend referring it to the Police or other external bodies. However, in cases where external bodies determine that the case does not fit in their purview either, they will usually</p>	<p>Absence of a Referral Mechanism While inmates can complain to external institutions, at times such access can be limited and complaints cannot be made until after the 24-month valid complaints period has expired, as illustrated by Mr. F's case. In addition, most external complaints are ultimately referred back to the CIU for investigation, which reflects the inefficiency of the current referral mechanism--if any exists--in sorting complaints into the most</p>	<p>#9: Introduce Complaints Referral Mechanisms [Improving accountability] To better attend to complaints of different nature, an effective complaints referral system involving different governmental departments is necessary. Such referral mechanism should include (a) cross-departmental channels built</p>

<p>forward the case back to the CIU. The back-and-forth referral is not only inefficient, but also drags the complaints investigation beyond the 24-month valid complaints limit, making further investigation in the CIU after rounds of referral impossible.</p> <p><i>Number of cases citing “out of purview” as reason for termination of investigation:</i> 6 out of 44 cases (13.6 percent)</p>	<p>relevant department for further investigation.</p>	<p>especially for communication and cooperation on matters related to complaints handling. An example of these channels of communication include an online database accessible by different departments like the ICAC, police, and CSD, built especially for case referral both by CSD to other departments and from other departments back to CSD as appropriate;</p> <p>(b) clear and easily obtainable guidelines on the purviews of different departments in terms of complaints-handling, so that the CSD can quickly forward complaints that it cannot handle to other departments and that complainants are better informed of how their complaints are handled; and</p> <p>(c) a time limit for complaints referral to take place, especially for cases involving criminal behaviors, which should be referred to the police as soon as possible.</p>
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Section 3: Summary of Recommendations

Independence of the Internal Complaints System

#1: Introduce an Independent Equity Officer

[Improving accountability of complaints investigators and system, transparency of the system, and protection of prisoners' rights]

The JP system shows the need for an independent party serving as the point-person for complaints within the prison system. While the final goal of improving the prison complaints system is to introduce a supplementary and external body overseeing complaints handling and quality assurance of the prison system, it is important to begin by introducing a certain level of independence in the current internal mechanism.

As such, it is strongly recommended that a non-affiliated person is to be appointed as the Chief Equity Officer within the CSD or even CSD's Quality Assurance Unit to **specifically handle issues related to complaints and equity in prisons**. The Chief Equity Officer will ideally addresses the main problems of non-compliance and lack of institutional support identified at the beginning of Section 2 by introducing an **independent and proactive** regulatory body within the internal prison quality assurance structure.

The Equity Officer should be structurally independent of individual prisons and/or prison staff and assume a supervisory role over the CIU. The main roles and responsibilities of the Equity Officer should include, and are not limited to, the following:

- (a) ensures the transparency of the complaints system by
 - (i) publicizing important documents such as the flow of different complaints channels, and
 - (ii) publishing regular reports on prison complaints statistics and the overall progress of upholding equity in prisons
- (b) manages and oversees all complaints mechanisms by
 - (i) managing all complaints facilities, such as the sufficient provision of complaints form,
 - (ii) maintaining a confidential prisoner's complaints book recording down all verbal complaints made to officers for better record-keeping,
 - (iii) maintaining a moving muster record, and
 - (iv) making regular physical visits in prisons to supervise the implementation of policies related to complaints and equity, as well as take in confidential complaints as necessary
 - (v) checking in regularly with complainants and witnesses to ensure no staff misconduct occurs during the time when complaints are being filed and investigated
- (c) promotes equity and fairness in prisons in the long-term by
 - (i) handling the equity and diversity aspect of prison officers' training, which includes components on emotional intelligence and human rights,
 - (ii) developing and monitoring the implementation of recommendations for continuous improvement,
 - (iii) designing and managing initiatives that better inform and educate inmates about their rights to complaints and the relevant processes.

Accessing the Internal Complaints System

#2: Introduce Confidential Complaint Boxes [Improving accessibility and confidentiality of the complaints system]

Complaints boxes that allow complainants to access forms, make complaints, and submit complaints in a confidential area should be made available at various locations around prisons where inmates can access daily, such as on the landing of each accommodation unit. These boxes, supervised and attended to by the Chief Equity Officer, should be opened at least on each weekday and materials necessary to make a complaint, such as the forms, pens, and envelopes, should always be available to all inmates without having to contact prison staff to ensure confidentiality. These recommendations are devised with reference to ideas by researchers in Ireland, whose suggestion also included a “confidential access procedure” for complaints about prison staff.

Complaints-Handling

#3: Publicize Procedures and Forms [Improving transparency of procedures]

For the purpose of checks and balances, the following documents and policies should be made public for better transparency:

- (a) CSD's manual and current practices on complaints-handling, which include separation policies of complainants and complainees
- (b) Progress of implementing endorsed recommendations.

In addition, complaints investigation reports should be accessible to complainants at a reasonable cost.

#4: Extend the Valid Complaints Period [Improving accessibility of the system]

While a valid complaints period that is too extended will be a challenge to evidence collection and the investigation of complaints, the current 24-month limit shows to be a hindrance to the pursuit of fairness in prisons, as prisoners are prone to delay their complaints due to fear of retribution, and the **current time limit should be reviewed**. However, SoCO recognizes that the root problem lies not with the 24-month limit but the lack of protective measures preventing retribution from staff, and a systemic reform addressing this fear should thus be pursued in the long term.

#5: Mandate Protective Measures for Complainants and Witnesses [Improving accessibility of the system]

Complainants and witnesses, if any, should be protected from possible retribution by parties involved or prison staff. An independent committee, ideally led by the Chief Equity Officer, should oversee the protection system and **check-in regularly with the complainants and witnesses** to ensure their safety during the protection period, which is **effective from the receipt of the complaint to the end of the investigation result appeal period**. There should be **additional punishment** for staff violation and aggression towards complainants and witnesses during the protection period as such actions can be considered a **perversion of the course of justice**. As for cases involving staff misconduct

and abuses of power, a physical separation of the complainants and witnesses from the complainee(s) should be enforced, for instance changing the complainant's resident block assignment, which includes his working unit and cell assignments, so to ensure the safety of both the complainants and complainees.

Complaints Investigation

#6: Establish Systems for Record-keeping [Improving accountability and transparency]

Systematic record-keeping structures should be established to better facilitate complaints investigation. For witness protection policies, please refer to **Recommendation #5: Mandate Protective Measures for Complainants and Witnesses**. As for physical evidence:

- (a) MMR: a full record of the movements of persons in custody between different CSD facilities should be kept updated
- (b) Prisoners' Complaints Book: a record of all verbal, "informal" complaints should be kept for better record-keeping, review, and tracking of investigation progress. This Complaints Book should only be accessible to independent investigators under the supervision of the Chief Equity Officer. Each entry should contain the following:
 - (i) Name or identification of the complainant
 - (ii) Nature of the complaint
 - (iii) Parties involved
 - (iv) Investigation outcome
- (c) CCTV: coverage of CCTV should be reviewed to cover as much of the non-private areas in prisons as possible, while CCTV systems with voice-recording functions should be adopted. As for the length of recordings to be kept, they should be longer than, or at least equal to, the length of the valid complaints period, which is 24 months at the moment. CCTV recordings should always be readily available as evidence for internal hearings and complaints investigations, all of which will be confidential.

Internal Disciplinary Hearings

#7: Improving Independency of Hearings [Improving accountability, transparency, and fairness of the system]

Independent non-officials should be present in or even judge the hearings to avoid biased judgements and favouritism towards the staff. In terms of information, all parties involved should be given **information of negative evidence against them and a summary of possible decisions**, while **full recordings and transcripts** of the hearing should be available upon request.

#8: Protecting the Right to Counsel [Improving transparency and fairness]

Defendant's right to counsel should be honored. Defendants should be given sufficient opportunities to **access legal counsel, either within the prison system or externally**. Such information on the channels of getting legal counsel and guidelines for obtaining legal aid should be easily obtainable to the defendant. In addition to seeking legal advice and

assistance, **provision of necessary legal documents**, such as testimonies, should be available to defendants, at least on their requests.

Structure of the Prison Complaints System

#9: Introduce Complaints Referral Mechanisms [Improving accountability]

To better attend to complaints of different nature, an effective complaints referral system involving different governmental departments is necessary. Such referral mechanism should include

- (a) **cross-departmental channels** built especially for communication and cooperation on matters related to complaints handling. An example of these channels of communication include an online database accessible by different departments like the ICAC, police, and CSD, built especially for case referral both by CSD to other departments and from other departments back to CSD as appropriate;
- (b) **clear and easily obtainable guidelines on the purviews** of different departments in terms of complaints-handling, so that the CSD can quickly forward complaints that it cannot handle to other departments and that complainants are better informed of how their complaints are handled; and
- (c) a **time limit** for complaints referral to take place, especially for cases involving criminal behaviors, which should be referred to the police as soon as possible.

Section 4: Conclusion

SoCO looks forward to future meetings with the Correctional Services Department to discuss recommendations suggested in this press release and other ideas to improve the internal complaints system. SoCO also welcomes responses from other relevant departments, such as the Security Bureau and the Office of the Ombudsman, on these recommendations.

Appendix 1: Case Study

Mr. C made a complaint to CIU about an incident of staff misconduct: an officer (Officer A) forced him to fabricate a submission explaining why he did not make the scheduled visit to the hospital. On the day of the pre-scheduled medical visit, Mr. C discovered that he was arranged to make the visit on a “category-A” security bus. From his own experience, Mr. C claimed that he will get dizzy and unwell if traveling on that type of bus, thus, he asked to change the bus or else he would opt to miss the visit.

According to CSD guidelines, inmates missing these medical visits for any reasons will need to meet with a Medical Officer and explain their reasoning behind missing the visit, as well as ensure they are informed of the possible consequences of missing those medical checks. In addition, inmates will have to write a submission explaining the reason for absence. Therefore, Mr. C wrote the first submission based on the reasons mentioned above.

However, after Officer A read Mr. C’s original submission, Officer A immediately told Mr. C that he cannot write like that and has to rewrite according to Officer A’s intentions. Then, Mr. C involuntarily rewrote his submission under Officer A’s coercion. The second submission, which stated that Mr. C opted out of the scheduled medical visit because he thinks that he has recovered and will not need the visit, was ultimately accepted by CSD officers and submitted to relevant prison authorities. The hard copy of the first submission was kept by Mr. C.

After the receipt of Mr. C’s complaint, the CIU met with the relevant officers and prisoners present that day for testimonies. All officers unanimously testified that there was no violation of rules during the submission-writing process, and that they have not seen any other staff coercing Mr. C to fabricate a submission that day. As for the prisoners, all testified that they could not recall what happened that day due to the lapse of time.

As for physical evidence, no CCTV records have been referenced or mentioned in the complaints investigation report, nor has the first submission been consulted for the purpose of references and validation of Mr. C’s claims. More importantly, the complainee (Officer A) left CSD before the receipt of the complaint, and the CIU has done nothing other than sending the complainee double-registered mail twice asking for his version of the incident. Ultimately, due to the absence of the complainee’s response to CIU’s letters and hence the lack of crucial testimony, the complaint was classified as “not pursuable” and the case was closed.

Appendix 2: Standards Governing Over Prison Complaints Mechanisms

Excerpts of relevant legislation and standards for prison complaints-handling and investigation

Hong Kong

Nature of Standards		Rules and Regulations
Hong Kong	Legislation	<p>CAP 234A Prison Rules (Section 95): Duty as to reports and complaints</p> <p>(1)The Superintendent shall hear daily all reports at such hours as may be most convenient.</p> <p>(2)The Superintendent shall ensure that every prisoner having a complaint to make or a request to prefer to him shall have ample facilities for so doing, and he shall take all the necessary steps to redress all grievances so far as is possible.</p>
	Internal Guidelines	Correctional Services Department Complaints Handling Manual (not publicly available)

International and Foreign Standards

Region	Nature	Relevant Legislation, Guidelines, or Best Practices
International	International Standards	<p>United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)</p> <p>Rule 36: Discipline and order shall be maintained with no more restriction than is necessary to ensure safe custody, the secure operation of the prison and a well ordered community life.</p>
	Best Practice	<p>Rule 54: Upon admission, every prisoner shall be promptly provided with written information about:</p> <ul style="list-style-type: none"> a) The prison law and applicable prison regulations; b) His or her rights, including authorized methods of seeking information, access to legal advice, including

		<p>through legal aid schemes, and procedures for making requests or complaints;</p> <ul style="list-style-type: none"> c) His or her obligations, including applicable disciplinary sanctions; and d) All other matters necessary to enable the prisoner to adapt himself or herself to the life of the prison. <p>Rule 56:</p> <ol style="list-style-type: none"> 1. Every prisoner shall have the opportunity each day to make requests or complaints to the prison director or the prison staff member authorized to represent him or her. 2. It shall be possible to make requests or complaints to the inspector of prisons during his or her inspections. The prisoner shall have the opportunity to talk to the inspector or any other inspecting officer freely and in full confidentiality, without the director or other members of the staff being present. 3. Every prisoner shall be allowed to make a request or complaint regarding his or her treatment, without censorship as to substance, to the central prison administration and to the judicial or other competent authorities, including those vested with reviewing or remedial power. 4. The rights under paragraphs 1 to 3 of this rule shall extend to the legal adviser of the prisoner. In those cases where neither the prisoner nor his or her legal adviser has the possibility of exercising such rights, a member of the prisoner's family or any other person who has knowledge of the case may do so. <p>Rule 57:</p> <ol style="list-style-type: none"> 1. Every request or complaint shall be promptly dealt with and replied to without delay. If the request or complaint is rejected, or in the event of undue delay, the complainant shall be entitled to bring it before a judicial or other authority. 2. Safeguards shall be in place to ensure that prisoners can make requests or complaints safely and, if so requested by the complainant, in a confidential manner. A prisoner or other person mentioned in paragraph 4 of rule 56 must not be exposed to any risk of retaliation, intimidation or other negative consequences as a result of having submitted a request or complaint. 3. Allegations of torture or other cruel, inhuman or degrading treatment or punishment of prisoners shall be dealt with immediately and shall result in a prompt and impartial investigation conducted by an independent national authority in accordance with paragraphs 1 and 2 of rule 71.
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		<p>Rule 83</p> <ol style="list-style-type: none"> 1. There shall be a twofold system for regular inspections of prisons and penal services: <ol style="list-style-type: none"> a. Internal or administrative inspections conducted by the central prison administration; b. External inspections conducted by a body independent of the prison administration, which may include competent international or regional bodies. 2. In both cases, the objective of the inspections shall be to ensure that prisons are managed in accordance with existing laws, regulations, policies and procedures, with a view to bringing about the objectives of penal and correctional services, and that the rights of prisoners are protected. <p>Rule 84</p> <ol style="list-style-type: none"> 1. Inspectors shall have the authority: <ol style="list-style-type: none"> a. To access all information on the numbers of prisoners and places and locations of detention, as well as all information relevant to the treatment of prisoners, including their records and conditions of detention; b. To freely choose which prisons to visit, including by making unannounced visits at their own initiative, and which prisoners to interview; c. To conduct private and fully confidential interviews with prisoners and prison staff in the course of their visits; d. To make recommendations to the prison administration and other competent authorities. 2. External inspection teams shall be composed of qualified and experienced inspectors appointed by a competent authority and shall encompass healthcare professionals. Due regard shall be given to balanced gender representation. <p><u>Body of principles for the protection of all persons under any form of detention or imprisonment</u></p> <p>Principle 33</p> <ol style="list-style-type: none"> 1. A detained or imprisoned person or his counsel shall have the right to make a request or complaint regarding his treatment, in particular in case of torture or other cruel, inhuman or degrading treatment, to the authorities responsible for the administration of the place of detention and to higher authorities and, when necessary, to appropriate authorities vested with reviewing or remedial powers. 2. In those cases where neither the detained or imprisoned person nor his counsel has the possibility to exercise his rights under paragraph 1 of the present principle, a member of the family of the detained or
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		<p>imprisoned person or any other person who has knowledge of the case may exercise such rights.</p> <ol style="list-style-type: none"> 3. Confidentiality concerning the request or complaint shall be maintained if so requested by the complainant. 4. Every request or complaint shall be promptly dealt with and replied to without undue delay. If the request or complaint is rejected or, in case of inordinate delay, the complainant shall be entitled to bring it before a judicial or other authority. Neither the detained or imprisoned person nor any complainant under paragraph 1 of the present principle shall suffer prejudice for making a request or complaint.
Europe	Guidelines and Best Practice	<p><u>European Prison Rules</u></p> <p>Rule 70.1 Prisoners, individually or as a group, shall have ample opportunity to make requests or complaints to the director of the prison or to any other competent authority.</p> <p>Rule 70.2 If mediation seems appropriate this should be tried first.</p> <p>Rule 70.3 If a request is denied or a complaint is rejected, reasons shall be provided to the prisoner and the prisoner shall have the right to appeal to an independent authority.</p> <p>Rule 70.4 Prisoners shall not be punished because of having made a request or lodged a complaint.</p> <p>Rule 70.5 The competent authority shall take into account any written complaints from relatives of a prisoner when they have reason to believe that a prisoner's rights have been violated.</p> <p>Rule 70.6 No complaint by a legal representative or organisation concerned with the welfare of prisoners may be brought on behalf of a prisoner if the prisoner concerned does not consent to it being brought.</p> <p>Rule 70.7 Prisoners are entitled to seek legal advice about complaints and appeals procedures and to legal assistance when the interests of justice require.</p>
United Kingdom		<p><u>Prison Service Order 2510: Prisoner's Requests and Complaints Procedure</u></p> <p>Chapter 3: The Applications System</p> <p>Establishments may find it helpful to provide a written application form for prisoners to use to make requests, alongside the oral application process.</p>

		<p>Chapter 4: Principles underlying the formal complaints</p> <p>The complaints procedures set out in Chapters 5 -18 of this Order are based on the following ten principles:</p> <ol style="list-style-type: none"> 1. Openness 2. Simplicity 3. Ease of access 4. Timeliness 5. Fairness 6. Responding at an appropriate level 7. Confidentiality 8. Appropriate redress 9. Freedom from penalty 10. Use of the system to provide management information <p>Chapter 5: The complainants co-ordinator, the complaints clerk and the designated officer(s)</p> <ul style="list-style-type: none"> • It is mandatory for the duties of one manager at principal officer or above in each establishment to include those of complaints co-ordinator. • It is essential for the effective operation of the complaints procedures that the complaints co-ordinator takes active steps to ensure that the system works effectively. • There must be at least one complaints clerk in each establishment, responsible for registering complaints and logging subsequent stages, allocating completed forms to the appropriate member of staff for reply, chasing up outstanding cases and compiling monthly statistics. • At least one other member of the administrative staff must understand the complaints system and be able to cover for the complaints clerk in his or her absence. • There must be a “designated officer” or officers responsible for emptying the boxes for the receipt of completed complaints forms on each wing and passing the forms either to the complaints clerk or directly to staff for reply. <p>Chapter 6: Submitting a complaint</p> <ul style="list-style-type: none"> • Prescribed complaint forms, for ordinary complaints, appeals, confidential access complaints and appeals against adjudications must be used.
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		<ul style="list-style-type: none"> ● Complaint forms must be made freely available to prisoners on the wing. ● If a prisoner feels that his or her concerns can only be met by a formal written complaint, then no obstacles must be placed in his or her way. ● There must be at least one locked box on each wing or in each residential area into which prisoners deposit completed complaints forms, so that every prisoner has easy access to a box. ● The boxes must be located in a prominent position, but not directly outside wing offices. ● Prisoners with learning or literacy difficulties, or whose first language is not English, should be provided with assistance to enable them to make a complaint if they wish. <p>Chapter 11: Complaints about Members of Staff</p> <p>The normal procedure for making complaints against staff is by means of a complaint form, but any written allegation against a member of staff must be investigated.</p> <ul style="list-style-type: none"> ● Where a prisoner makes an oral allegation of misconduct by a member of staff, in the hearing of another member of staff or a member of the Board of Visitors, the prisoner should be encouraged to put the allegation in writing on a complaint form. ● Even if a prisoner declines to put an allegation in writing, the member of staff or member of the Board of Visitors to whose attention the allegation has been brought should nevertheless still make a note of the allegation and pass it to the appropriate manager or senior manager to consider whether the allegation should be investigated. ● Where it is alleged that a member of staff has committed an assault, the alleged victim must be examined by a Medical Officer as soon as possible and the outcome recorded. ● If a governing governor or Area Manager considers that there is evidence that a criminal offence may have been committed by a member of staff, the Discipline Policy Team in Personnel Management Group must be consulted by telephone without delay. ● A prisoner who has made an allegation against a member of staff which, on investigation, has been deemed to be unfounded should be given a written warning not to repeat the allegation, followed where necessary by a formal order.
USA	Best Practice	<p><u>Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas</u></p> <p>Principle V: Due process of Law</p> <p>All persons deprived of liberty shall have the right, exercised by themselves or by others, to present a simple, prompt, and effective recourse before the competent, independent, and impartial authorities, against acts or</p>

		<p>omissions that violate or threaten to violate their human rights. In particular, persons deprived of liberty shall have the right to lodge complaints or claims about acts of torture, prison violence, corporal punishment, cruel, inhuman, or degrading treatment or punishment, as well as concerning prison or internment conditions, the lack of appropriate medical or psychological care, and of adequate food.</p> <p>Principle VII: Petition and response</p> <p>Persons deprived of liberty shall have the right of individual and collective petition and the right to a response before judicial, administrative, or other authorities. This right may be exercised by third parties or organizations, in accordance with the law. This right comprises, amongst others, the right to lodge petitions, claims, or complaints before the competent authorities, and to receive a prompt response within a reasonable time. It also comprises the right to opportunely request and receive information concerning their procedural status and the remaining time of deprivation of liberty, if applicable. Persons deprived of liberty shall also have the right to lodge communications, petitions or complaints with the national human rights institutions; with the Inter-American Commission on Human Rights; and with the other competent international bodies, in conformity with the requirements established by domestic law and international law.</p>
Australia	Guidelines	<p><u>Australian Complaint Handling Standard & 2004 Standard Guidelines for Corrections in Australia</u></p> <p>The Australian Complaint Handling Standard and the Standard Guidelines for Corrections in Australia outline a set of guiding principles for best practice complaint management. In simple terms, the principles relate to a commitment from agencies to establish and maintain a complaints management system that is accessible, efficient, fair and accountable.</p> <p>The Australian Complaint Handling Standard is widely recognised as setting the benchmark for best practice complaints handling in organisations. It outlines nine guiding principles underlying best practice complaints management. They are: visibility, accessibility, responsiveness, objectivity, (free of) charges, confidentiality, customer-focused approach, accountability and continual improvement.</p> <p>The Standard Guidelines for Corrections in Australia recommend that each Australian state and territory ‘must continue to develop its own range of relevant legislative, policy and performance standards that can be expected to be amended from time to time to reflect best practice and community demands...’.</p> <p>They provide the basis for a prison based complaints handling system that is accessible, fair, efficient and</p>

		<p>accountable. In addressing the requirement for effective prison complaint management policies and procedures, the guidelines specify that:</p> <ul style="list-style-type: none"> • Prisoners should be informed of the procedures for making complaints at the prison and through external grievance resolution authorities. • Requests and complaints by prisoners are to be able to be made at any time and shall be handled promptly and effectively by the prison. • Prisoner complaints or grievances that are not resolved by the prison should be submitted to an authority external to the prison for an independent assessment and determination. Prisoners should be informed about these external resolution processes in the prisoner's own language where practicable, and provided with the means for making complaints to an external authority in a confidential manner.
Ireland	Best Practice	<p><u>Guidance on Best Practice relating to Prisoners' Complaints and Prison Discipline</u></p> <p>4.11 Protocols should be put in place to ensure that prison officers against whom allegations of ill-treatment have been made are not left in positions where they are in contact with the prisoner making the complaint during the period of the investigation.</p> <p>4.12 No matter what complaints procedure is in place a dedicated person or persons should be appointed in each prison whose duty it is to assist prisoners in making complaints. These people should be independent in that they should not be involved in any way with either the prisoner making the complaint or the persons complained of.</p>
Africa	Guidelines and Best Practice	<p><u>Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa</u></p> <p>Clause 22: Torture and other cruel, inhuman or degrading treatment or punishment and other serious human rights violations in police custody and pretrial detention</p> <p>a) All persons deprived of their liberty shall have the right to lodge a complaint with a competent, independent and impartial authority with a mandate to conduct prompt and thorough investigations in a manner consistent with the Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa.</p> <p>Clause 37: Complaints mechanisms</p> <p>a) States shall establish, and make known, internal and independent complaints mechanisms for persons in police custody and pretrial detention.</p>

		<ul style="list-style-type: none">b) Access to complaints mechanisms shall be guaranteed for all persons in police custody and pretrial detention, without fear of reprisals or punishment.c) Detainees shall have the right, and be provided with the facilities, to consult freely and in full confidentiality with complaints mechanisms, subject to reasonable conditions to ensure security and good order in the place of detention.d) There shall be thorough, prompt and impartial investigations of all complaints and, where they are well-founded, appropriate remedial action shall be taken without delay.
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Society for Community Organization
News clippings 12 July 2017 about complaints mechanism in the CSD

香港 01 港聞 2017-07-12

港聞

懲教署過去 3 年投訴僅 1% 獲證實 釋囚斥人員互相包庇 追究艱難

撰文： 邱靖汶

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最近接連有電影、報道講述青少年犯在懲教院所內不為人知、被虐打的生活，再有身患肝病的釋囚道出自己的遭遇。他聲稱自己曾遭延誤治療、毆打，甚至勸退他投訴，遭對方恐嚇「贏咗一次，不過以後點捱？」，故直斥現時懲教署「自己人查自己人」的投訴制度，根本未能處理及保護投訴人。社區組織協會亦指過去3年逾300宗投訴，僅3宗獲證明屬實，其餘大部分是「無法追查」，故認為制度須檢討現行制度。

懲教事務職員協會指，投訴機制行之有效，認為指控對懲教工作不公平，促請相關人士若知道違法行為，應盡快報警。

陳先生斥懲教人員互相包庇，在囚人士難以成功投訴人員的違規行為。（鍾偉德攝）

「出冊」不久的陳先生（化名）曾是赤柱監獄度過人生數個年頭，見盡懲教署職員值規時各種懷疑違規、違法。患有肝病的他在囚期間要定期要運送到外面醫院覆診，不過兩年多前院所為他錯誤安排運載甲類犯（最高保安級別）密封囚車，身為丙類犯的陳先生知道該囚車會害他又暈又嘔，拒絕登車。一位見習懲教主任就陳先生拒絕登車，命令他聲明已完全康復毋須覆診，致他斷藥及延誤治療，「一唔食藥肝病毒升到天文數字。」

只懲不教，其身不正點教化人？處理投訴咁卑鄙，好難教導公義。

更生人士陳先生



陳先生稱坐過運送甲類犯囚車覆診，坐在密封小格內沿途似般仔般搖得又暈又嘔，又問「葉繼歡都係甲級犯，咁點解我要同另一個甲級犯一架車？」（資料圖片）

相關文章

[【虐囚指控·來稿】前青年犯回應管浩鳴：請你不要再探訪囚犯了](#)

[【虐囚指控】教士常巡監 未聞少年犯被打 管浩鳴：指控有點誇張](#)

[【片】前懲教反思錄：我們的矛盾 在於要教化，但沒法不懲罰](#)

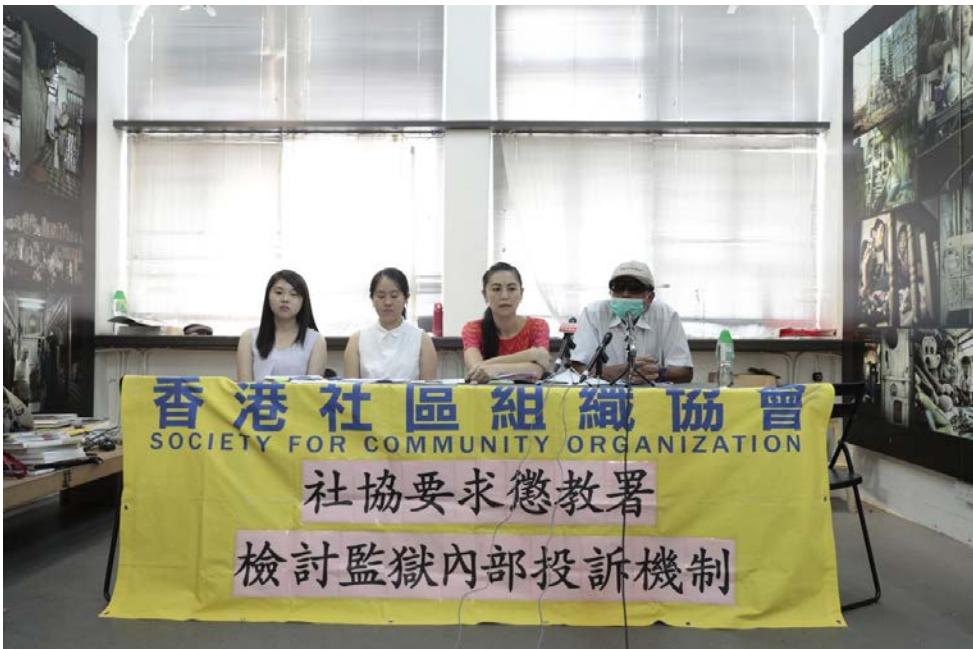


陳先生於赤柱監獄服刑時見盡懲教人員互相包庇技倆。(資料圖片)

內部調查欠透明 有錯不認其身不正

陳先生向署方舉報，惟內部的投訴調查組到獄中求證，不論其他懲教員或囚犯均稱未知有違規情況，投查組也沒有翻查監獄閉路電視片段。他相信被指控的主任經高層勸退離職，而投訴組最後因未聯絡上被投訴人以「無法追查」結案。

「四道牆入面佢（懲教）最大！大部分人怕報復唔敢投訴，我係忍無可忍。」他曾就不公違規向行政長官、太平紳士舉報，卻在獄內被警告「問仲要坐幾耐，贏咗一次，不過以後點捱。」他聲稱之後更被兩名獄方人員帶到無閉路電視的茶水房毆打，又被誣蔑私藏違禁品要紀律聆訊及加刑。監獄內盡是要面對過錯、承擔法律責任的犯人，陳先生不禁質疑懲教人員互相包庇的「文化」，有錯不認怎能教化犯人。



社協提出多項建議，期望增加懲教署處理獄內投訴透明度，提升在囚人士的基本權利。（鍾偉德攝）

投訴懲教署 3 年僅 3 宗成立

據懲教署年報於過去 3 年，完成調查及批簽結果的 314 個案中，僅 3 宗「屬實」證明人員有錯失；183 宗卻因「證據不足」、「投訴超出時限」、「內容超越調查權力範圍」等原因而「無法追查」。

儘管懲教署為在囚人士提供多個接收投訴的渠道，包括向巡視的太平紳士投訴，但個案往往交回署方內部投訴調查組跟進調查，產生「自己人查自己人」觀感。社協發表報告，建議懲教署增設獨立監察員確保調查透明、加強在投訴時保密工作避免令囚犯擔憂被報復而不敢投訴，署方更應延長閉路電視片段、保護投訴人，為囚犯移動冊的存檔時限，令投訴調查有足夠物證追查等共 9 項建議。

懲教事務職員協會回應指，懲教署的投訴機制行之有效，亦有投訴委員會審核投訴的調查結果，認為有關指控對懲教署人員的工作不公平，又促請相關人士若知道違法行為，應盡快報警。

投訴懲教署職員涉濫權 赤柱釋囚遭恐嚇：俾你贏一次以後點？

建立時間 (HKT): 0712 14:58



適中字型

陳先生（右）

較大字型

一名出獄不久的前囚犯投訴，於赤柱監獄服刑數年期間，眼見職員濫用職權，他亦一直被虐打、被報復，「懲教係有懲無教」，他曾去信懲教署署長及調查組作出 70 多項投訴，惟最終因「無法追查」而申訴無門。香港社區組織協會指，監獄內部投訴機制欠缺問責制度、缺乏制度先支援、及法律支援不足。

陳生（化名）指控懲教署職員毆打囚犯及以粗言穢語辱罵囚犯的現象普遍，亦縱容其他囚犯欺凌他，「拉我去冇閉路電視影到喺茶水房毆打我，毆打後叫我唔好亂講說話，亦都唔會打到有傷痕，令你無法驗傷」。陳生向調查組投訴，惟職員對他說，「你仲要坐幾耐，你今次投訴贏咗一次，以後點算」，陳生指在囚期間對懲教署內部投訴只會「贏一次輸十次」，因為懲教署職員會報復並向囚犯作出紀律懲罰，陳生亦因投訴被多次扣除假期。

陳生續指在囚期間患病覆診，他被安排以甲類囚犯的囚車外出，過往他兩次乘搭此囚車皆感到身體不適而拒絕外診，根據一般程序，陳生會被安排會見獄方的醫護人員，並填寫一份陳述書解釋拒絕外診的原因。不過，當日懲教署職員閱畢陳述書後跟他說，「你不能這樣寫，你要按照我的意思寫！重新再寫一份！」並要求陳生於陳述書指出因自己病情好轉而拒絕覆診，強迫他填寫內容失實的虛假陳述書。陳生

其後作出投訴，但因當日在場的四至五名職員皆否認過程有違反程序，而當日其他在囚人士又表明已忘記事件，調查組亦沒有翻看閉路電視紀錄，最終相關調查不了了之，被定為「無法追查」。

香港社區組織協會指，根據懲教署過往三年年報，投訴調查組共收到 314 宗投訴個案，當中只有 3 宗投訴「證明屬實」，「無法證實」及「無法追查」則有 183 宗。協會指現時投訴機制欠缺透明度，及投訴期只有 24 個月時間太短，記錄存檔不足及內部紀律聆訊欠缺公正性，對作出投訴的囚犯未有公平對待。

懲教事務職員協會回應指，對有人根據懲教署數字作出一系列推測，是對懲教署人員不公平，認為若任何人發現有任何涉嫌違法行為，應立即報警求助，交由警方跟進調查。

懲教署表示，社協提及的個案，投訴調查組曾接收相類似的投訴，事件仍在調查當中。該署稱，一向非常重視及會公平處理任何人士的投訴，不論在囚人士或刑釋人士，如因所獲待遇感到受屈，可選擇經署內外不同途徑提出申訴或表達不滿。在囚人士可向院所管方、到院所巡視的懲教署總部首長級人員，或懲教署投訴調查組提出投訴。他們亦可向巡獄太平紳士、立法會議員、申訴專員、法定機構、其他執法部門或政府政策局以至相關持份者等投訴，署方會作出配合及提供協助。

懲教署又指，所有在囚人士被收納於懲教院所時，均會獲安排參加啟導班，期間職員會向他們講述各種申訴權利及途徑。他們亦可從獲派發的「在囚人士須知」小冊子（共提供 27 種語言）及各院所內設置於不同位置的電子服務站，得悉各投訴渠道的詳細資料。所有院所的當眼地方均張貼有關投訴的通告。

懲教署投訴委員會是由部門 1 名獨立於紀律人員編制的首長級丙級政務官擔任主席，該委員會成員包括 1 名懲教署助理署長、4 名懲教署高級人員及 1 名懲教署司鐸。該署不時檢討和優化處理投訴的機制，務求提升部門處理投訴的透明度和公信力，以達致公開、公平和公正的目標。剛於去年 8 月成立的投訴上訴委員會，由熟悉懲教運作的社會持份者組成，現時 10 位委員都是太平紳士。該委員會負責處理投訴的覆檢工作及就投訴人對投訴委員會審議結果的上訴作最終檢視。

蘋果日報 2017 年 07 月 12 日

<https://hk.news.appledaily.com/local/realtime/article/20170712/56945603>