

IN THE HIGH COURT OF THE
HONG KONG SPECIAL ADMINISTRATIVE REGION
COURT OF FIRST INSTANCE

CONSTITUTIONAL AND ADMINISTRATIVE LAW LIST NO 133 OF 2022

BETWEEN

LAM SZE CHUN

Applicant

and

COMMISSIONER OF POLICE,
HONG KONG POLICE FORCE

1st Respondent

THE INDEPENDENT POLICE
COMPLAINTS COUNCIL

2nd Respondent

Before: Hon Coleman J in Court

Date of Hearing: 16 November 2022

Date of Judgment: 3 November 2023

J U D G M E N T

A. Introduction

1. If it looks like a duck, walks like a duck, and quacks like a duck, it is probably a duck. So it might be thought that if a complainant (such as the Applicant) goes to a complaints office to make a complaint by filling out a complaint form, and his complaint is acknowledged and assigned a complaint number, he probably made a complaint.

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2. However, one question which arises in this case is whether the Applicant nevertheless did not actually make a “complaint”, but – as the Respondents suggest – merely made a “request for service” and/or made an “expression of dissatisfaction”.

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3. Ordinarily, it might be thought that the three phrases in quotes do not denote three different things, but merely different facets of or different ways to describe the same process of complaining. A citizen who thinks that the service he received from a government authority was less than satisfactory might file a complaint against that authority to express his dissatisfaction and to request for – presumably better – service, to remedy the unsatisfactory service he thinks he had originally received. The Applicant in this case certainly made a complaint within the ordinary and natural meaning of that word.

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4. The present judicial review is brought by the Applicant, who was (1) dissatisfied with the way in which the Hong Kong Police Force (“Police”) dealt with his report of a crime, of which he said he was victim, and (2) is dissatisfied with the way in which the subsequent complaints procedures were handled.

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5. By my Decision dated 23 May 2022 [2022] HKCFI 1496, I granted leave to apply for judicial review on only some of the Applicant’s intended challenges, on various grounds of review subsequently refined and which I shall identify below.

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6. At the substantive hearing, the Applicant was represented by Ms Grace Chow of Counsel. The Commissioner of Police (“Commissioner”) was represented by Ms Leona Cheung, acting

A Principal Government Counsel, and Ms Liesl Lai, Government Counsel.
B The Independent Police Complaints Council (“IPCC”) was represented
C by Mr Benjamin Yu SC and Mr Anthony Chan of Counsel (now SC). At
D the conclusion of the hearing, I reserved Judgment.

E 7. This is the Judgment.

F **B. Brief Background**

G 8. In Hong Kong, complaints against police officers or general
H procedure and practices of the Police are dealt with in a ‘two-tier’ system,
I where investigation into complaints is done by the Police (i.e. the first tier)
J under the monitoring or oversight of the IPCC (i.e. the second tier).
K Within the Police, the arm responsible for handling or investigation into
L complaints is the Complaints Against Police Office (“CAPO”).

M 9. The two-tier system has been referred to in recent case law:
N see *Chan Ki Kau v Commissioner of Police* [2020] 5 HKLRD 653 and
O *Lui Chi Hang Hendrick v Independent Police Complaints Council* [2020]
P 1 HKLRD 533. The statute governing the operation of the two-tier
Q system is the Independent Police Complaints Council Ordinance Cap 604
R (“IPCCO”).

S 10. The Applicant reported a suspected computer hacking case
T to the Police on 3 March 2021 (“Crime Report”). In about April 2021,
U he came to know that his case had been closed with no one arrested, but
V he believed that his case was closed without proper investigation. On
26 April 2021, he made a complaint to CAPO (“CAPO Complaint”) against the relevant case officer (“DPC Wong”), and requested for his case to be re-opened.

11. Feeling that CAPO had failed satisfactorily to address his concern, the Applicant then escalated the matter to the IPCC on 30 September 2021, seeking to invoke the IPCC’s monitoring power over the CAPO. But the Applicant was told that the CAPO Complaint was not within the IPCC’s purview because it was not categorized as a “reportable complaint” under the IPCCCO (“Reportable Complaint” or “RC”).

12. Correspondence then ensued between the Applicant and the IPCC as to what is a Reportable Complaint under the IPCCCO and why his CAPO Complaint was not one of them. There then came communication between the IPCC and CAPO which eventually led the latter to categorize the Applicant’s complaint as a Reportable Complaint on 18 November 2021.

13. Central to the Applicant’s case is CAPO’s failure to categorize the CAPO Complaint as a Reportable Complaint until 18 November 2021. The Applicant said CAPO was obliged by section 11 of the IPCCCO to categorize the CAPO Complaint as such when the complaint was first made on 26 April 2021, and thus making it subject to IPCC’s monitoring as would apply to Reportable Complaints.

14. The Applicant said the CAPO Complaint had met all the statutory conditions for the categorization as a Reportable Complaint on 26 April 2021 and the Police “must” categorize it as such under section 11 of the IPCCCO. Section 11 provides (my emphasis):

Subject to sections 10, 12 and 13, a complaint received by the Commissioner must be categorized as a reportable complaint if the complaint—

(a) relates to—

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- (i) the conduct of a member of the police force while on duty or in the execution or purported execution of his duties, whether or not he identified himself as such a member;
- (ii) the conduct of a member of the police force who identified himself as such a member while off duty; or
- (iii) any practice or procedure adopted by the police force;
- (b) is not vexatious or frivolous and is made in good faith;
- (c) is made by or on behalf of a complainant directly affected by the police conduct;
- (d) is made by a person (whether on his own behalf or on behalf of a complainant) who has properly identified himself and provided the Commissioner with a means of contacting him; and
- (e) (if made by a person on behalf of a complainant) is made in accordance with section 15.
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15. Contrary to what might be thought, the Commissioner does not say that any of the conditions under section 11 was not met at any point of time from 26 April 2021 onwards. Instead, it is undisputed that all the conditions under section 11(a) to (e) were met throughout the period from 26 April to 18 November 2021.

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16. Rather, CAPO's case is that the Applicant's CAPO Complaint was not a "complaint" when first made and had not yet become a "complaint" under section 11, until it did on 18 November 2021.

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17. The word "complaint" is not defined in the IPCCO. But it is the Commissioner's position, as set out in §2 of Ms Cheung's written submissions, that:

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Adopting the purposive and contextual approach, ‘complaint’ in s.11 of the IPCCO means “a conveyance of intention to lodge a complaint that will go through the statutory complaints procedures”, as opposed to “any utterance of grievance” or use of the word “complaint” as apparently contended by the Applicant. In other words, a “complaint” is a “complaint” where the person coming forward with it wants to make a “complaint”.

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18. Ms Cheung further submits that the Commissioner is not legally bound to compel all members of the public who have uttered some grievance or use the generic term “complaint” to go through the complaints procedures against their wishes. However, the Applicant of course asserts that he was a person coming forward with a “complaint” he wanted to make, and no question of being forced against his wishes arises.

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19. Nevertheless, CAPO says that the Applicant did not have the requisite intention until about October 2021 and the intention was not conveyed to CAPO until 18 November 2021. Thus the CAPO Complaint did not become a “complaint” until that date. Before that, it is said, the CAPO Complaint – albeit casually or generically referred to as a “complaint” in the contemporaneous documents or correspondence – was treated as a “Request for Service”.

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20. When CAPO treats a case as a Request for Service, it is not seen as a complaint that might be categorized as a Reportable Complaint under section 11, nor would the handling of it be monitored by the IPCC as such. Indeed, neither the Police nor the IPCC suggest that cases characterised as a Request for Service would be monitored by the IPCC in any way. It is undisputed that the CAPO Complaint was not submitted for the IPCC’s review via any process of the established

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A practice between the two entities, and IPCC was unaware of the CAPO
B Complaint until the Applicant knocked on its door on 30 September 2021.
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D 21. The Applicant’s case is that “complaint” in the meaning of
E the IPCCO does not bear the requirement of “a conveyance of intention to
F lodge a complaint that will go through the statutory complaints
G procedure”. The word bears instead its ordinary meaning. The Police,
H in the disguise of statutory interpretation, are attempting to amend
I section 11 by adding an extra statutory condition before a complaint
J could be categorized as a Reportable Complaint.
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L 22. This case requires the determination of what are
M “complaints”, the handling of which is intended by the legislature to be
N governed by the IPCCO. But there is no quarrel amongst the parties that
O if the CAPO Complaint was a “complaint” at the relevant time, then it
P would also be a Reportable Complaint.
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R 23. Whilst I refer to the CAPO Complaint as such in this
S Judgment, the shorthand is not intended to pass comment on the nature of
T the subject matter in the context of the IPCCO. Rather, it is referred to
U as such because, as will be seen below, this was how the Applicant,
V CAPO, IPCC and the Commissioner referred to it in the
contemporaneous correspondence. The word “complaint” is bound to
appear frequently in this Judgment. But, it seems that the parties
obviously now intend different meanings for the same word. In this
Judgment, the meaning I ascribe to “complaint” should be made readily
apparent by the context. But in the absence of any pointer from the
context, it should be understood that the ordinary meaning of “complaint”
is intended.

A **C. The Statutory Monitoring Mechanism under the IPCCO** A

B *C.1 Overview* B

C 24. To construe the meaning of “complaint” in the context of the C
D IPCCO, it is necessary to examine the statutory framework in some detail. D
E As I do so, I shall make some comments, which I take into my later E
F consideration even if I do not repeat the same points later in this F
G judgment. G

H 25. The IPCCO was enacted on 1 June 2009, on which day the H
I IPCC became a statutory body under the IPCCO. The long title of the I
IPCCO reads:

J An Ordinance to incorporate the existing Independent Police J
K Complaints Council; to provide for the Council’s functions in K
L monitoring the handling and investigation of reportable L
reportable complaints by the Commissioner of the Police; to provide for
the Council’s powers relating to its affairs and operation; to
provide for the appointment of observers in relation to
reportable complaints; and to provide for connected matters.

M 26. One may note that – as indicated from both the short title M
N and the long title of the statute – the IPCCO focuses on the monitoring N
O functions of the IPCC sitting as the second-tier supervisor, rather than on O
P how the Police or CAPO investigates into complaints at the first tier. It P
Q concerns “the Council’s functions in monitoring the handling and Q
R investigation of reportable complaints by the Commissioner of the R
Police”, rather than the Police’s handling and investigations into such R
complaints.

S 27. The IPCCO consists of 6 Parts (an original seventh now S
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- (1) Part 1 is headed “Preliminary” and contains sections 1 to 3. Section 1 is the short title. Section 2 is spent. Section 3 is the interpretation section. As said, “complaint” is not given a particular meaning in the interpretation section. However, “complainant” means a person who makes a complaint or a request for review, or where the complaint or request for review is made on behalf of another person, the person on whose behalf the complaint or request for review is made.
- (2) Part 2 is headed “Incorporation of Independent Police Complaints Council” and covers sections 4 to 7. Section 4(3) ensures the IPCC’s independence by stipulating that the IPCC is neither a servant nor an agent of the Government.
- (3) Part 3 is the longest part in the IPCCO. It is headed “Functions of the Council” and covers sections 8 to 32. “Function” is defined as including “a power and a duty” under section 2.
- (4) Part 4 is headed “Observers Scheme” which allows the IPCC to arrange an observer to observe how CAPO investigates into a Reportable Complaint. It covers sections 33 to 38.
- (5) Part 5 is headed “Confidentiality and Protection of Council and its members, etc.” and covers sections 39 to 41.
- (6) Part 6 is headed “Transitional and Savings Provisions”.

C.2 *The IPCC’s Functions and Powers*

28. These are provided in Part 3 and Part 4 of the IPCCO.

29. Part 3 starts with section 8, which provides:

- (1) The functions of the Council are—

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- (a) to observe, monitor and review the handling and investigation of reportable complaints by the Commissioner, and to make recommendations (as the Council considers appropriate) to the Commissioner or the Chief Executive or both of them in respect of the handling or investigation of reportable complaints;
- (b) to monitor actions taken or to be taken in respect of any member of the police force by the Commissioner in connection with reportable complaints, and to advise (as the Council considers appropriate) the Commissioner or the Chief Executive or both of them of its opinion on such actions;
- (c) 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 (as the Council considers appropriate) to the Commissioner or the Chief Executive or both of them in respect of such practice or procedure;
- (d) to review anything submitted to it by the Commissioner pursuant to this Ordinance;
- (e) to promote public awareness of the role of the Council; and
- (f) (without limiting the generality of the foregoing) any function conferred on it by or under this or any other Ordinance.
- (2) The Council may do all such things that are reasonably necessary for, or incidental or conducive to, the performance of its functions under this Ordinance.

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30. Sections 8(1)(a)-(c) governs the IPCC's powers and duties relating to the monitoring of Reportable Complaints. Section 8(1)(a) provides for the powers to monitoring the Police's handling and investigation into Reportable Complaints. Section 8(1)(b) provides powers to monitor how the Police deal with police officers the subjects of the Reportable Complaint. Section 8(1)(c) provides for powers to

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A identify faults or deficiencies in the Police’s practices or procedures as
B might lead to Reportable Complaints.

C 31. Section 8(1)(d) to (f) provides for general functions and
D powers without expressly referencing Reportable Complaints.

E 32. Section 8(2) provides for what might be called ancillary
F powers for those powers already identified. It may enlarge the scope of
G powers already identified by allowing things that are “reasonably
H necessary for, or incidental or conducive to, the performance of its
I functions under this Ordinance”.

J *C.3 Categorization of complaints as RCs and NCs*

K 33. As already apparent from the long title and section 8, the
L categorization of a complaint as a Reportable Complaint is central to the
M IPCC’s statutory monitoring functions/powers under the IPCCO. The
N bulk of the statutory monitoring powers given to, and duties imposed on,
O the IPCC are only applicable to Reportable Complaints.

P 34. After section 8, the remaining sections in Part 3 are divided
Q into 4 Divisions.

R 35. Division 1 is headed “Functions relating to Commissioners’
S categorization of complaints”. The division covers sections 9 to 16.

T 36. Sections 9 to 16 provide as follows:

U **9. Commissioner to submit lists of complaints**
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- (1) The Commissioner must submit to the Council at such intervals, and in such manner, as the Commissioner and the Council may agree—
 - (a) a list of reportable complaints; and
 - (b) a list of notifiable complaints.
- (2) A list submitted under subsection (1)(a) must include a brief description of all reportable complaints that the Commissioner has received since the end of the period covered by the last list so submitted.
- (3) A list submitted under subsection (1)(b) must include—
 - (a) a brief description of all notifiable complaints that the Commissioner has received since the end of the period covered by the last list so submitted;
 - (b) the reasons for categorizing the complaints as notifiable complaints; and
 - (c) in relation to a belated complaint (as defined in section 12(3)) that is not categorized as a reportable complaint solely on the ground that the complaint is not of a serious nature, the reasons supporting that ground.

10. Certain complaints not to be included in lists under section 9(1)

- A list under section 9(1)(a) or (b) must not include a complaint that—
- (a) a person makes in his official capacity as a member of the police force;
 - (b) arises from the issue of a summons and solely relates to the question of whether the summons is validly issued;
 - (c) arises from the issue of any notice for the imposition of a fixed penalty under any enactment and solely relates to the question of whether the notice is validly issued; or
 - (d) a person is empowered to investigate pursuant to any function conferred on the person by any

other Ordinance, except where the complaint relates to police conduct and the power of investigation does not extend to the investigation of that police conduct.

11. Complaints categorized as reportable complaints

Subject to sections 10, 12 and 13, a complaint received by the Commissioner must be categorized as a reportable complaint if the complaint—

- (a) relates to—
 - (i) the conduct of a member of the police force while on duty or in the execution or purported execution of his duties, whether or not he identified himself as such a member;
 - (ii) the conduct of a member of the police force who identified himself as such a member while off duty; or
 - (iii) any practice or procedure adopted by the police force;
- (b) is not vexatious or frivolous and is made in good faith;
- (c) is made by or on behalf of a complainant directly affected by the police conduct;
- (d) is made by a person (whether on his own behalf or on behalf of a complainant) who has properly identified himself and provided the Commissioner with a means of contacting him; and
- (e) (if made by a person on behalf of a complainant) is made in accordance with section 15.

12. Categorization of belated complaints

- (1) Except as provided in subsection (2), a belated complaint must not be categorized as a reportable complaint.
- (2) A belated complaint must be categorized as a reportable complaint if—
 - (a) it is serious in nature; and

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(b) but for subsection (1), it would be categorized as a reportable complaint in accordance with section 11.

(3) In this section, belated complaint (逾期投訴) means a complaint that is made to the Commissioner after the expiration of—

(a) 24 months from the date of the incident giving rise to the complaint; or

(b) (where proceedings relating to the subject matter of the complaint have been commenced in any court, magistracy or statutory tribunal within the period referred to in paragraph (a)) 12 months from the date of the final determination of such proceedings,

whichever is later.

13. Requests for review treated as reportable complaints

(1) Subject to subsection (2), a request for review made to the Commissioner for reviewing the classification of a reportable complaint (the relevant classification) is to be treated as a reportable complaint only if the request for review—

(a) is not vexatious or frivolous;

(b) is made in good faith; and

(c) (if made by a person on behalf of a complainant) is made in accordance with section 15.

(2) A request for review must not seek for the review of a reportable complaint that is classified as “informally resolved”.

(3) On such review, the Commissioner is not required to conduct a fresh or further investigation of any fact or evidence considered in the determination of the relevant classification unless the person who makes the request for review puts forward a point of view on the analysis of that fact or evidence and—

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- (a) the Commissioner did not consider such a point of view in his determination of the relevant classification;
- (b) the point of view, if established after a fresh or further investigation of that fact or evidence, may result in a change of the relevant classification; and
- (c) the consideration of the point of view reasonably requires a fresh or further investigation of that fact or evidence.

14. Complaints categorized as notifiable complaints

A complaint received by the Commissioner must be categorized as a notifiable complaint if it is neither a reportable complaint nor a complaint referred to in section 10.

15. Making complaint or request for review on behalf of complainant

[governs the type persons - minor under 16 or mentally incapacitated person – whose complaint could be made by someone else on their behalves]

16. Reconsideration of categorization by Commissioner

- (1) If the Council considers that a complaint included in a list of notifiable complaints under section 9 should be categorized as a reportable complaint, it may advise the Commissioner of its opinion, and the Commissioner must—
 - (a) have regard to such opinion; and
 - (b) reconsider the categorization of the complaint.
- (2) The Commissioner must, as soon as practicable after the completion of his reconsideration under subsection (1), inform the Council of the outcome of his reconsideration.
- (3) For the purpose of performing the Council’s function under subsection (1), the Council may require the Commissioner to provide—
 - (a) explanations to support the categorization of a complaint as a notifiable complaint;

- (b) in relation to a belated complaint (as defined in section 12(3)) that is not categorized as a reportable complaint solely on the ground that the complaint is not of a serious nature, explanations to support that ground; and
- (c) information or material in support of the explanations.

37. Hence, broadly speaking, the sections in Division 1 could be seen to have two groups or themes:

- (1) The first (sections 10 to 15) governs the categorization of complaints. It can be seen that this important task is entrusted to the Commissioner. But the Commissioner is not given any discretion in the categorization. Rather, sections 10 to 15 clearly stipulate how complaints should be categorized, and mandate – in the language of “must” – what approach the Commissioner is to follow.
- (2) The second (sections 9 and 16) provides for the mechanism by which the IPCC could monitor whether the Commissioner has properly categorized the complaints.

38. In summary, the mechanism for categorization of complaints, as provided for by sections 10 to 15, is as follows:

- (1) Except for complaints of the type described in section 10, all complaints must be categorized as either a Reportable Complaint or a “notifiable complaint” (“Notifiable Complaint” or “NC”). Section 11 mandates what “must” be categorized as a RC. Section 14 then says what is not categorized as a RC “must” be categorized as a NC. In other words, NCs are simply non-RCs.

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- (2) Two features follow. First, the two categories are designed to exhaust all complaints other than those falling within section 10. There does not exist a third category and there is nothing left as would fall outside the two statutory categories. Second, RCs and NCs are exclusive of each other. A complaint can be either a RC or a NC, but not both. These two features are also emphasized by the definition of “categorization” in section 3 – “the categorization by the Commissioner of a complaint as (a) a reportable complaint or (b) a notifiable complaint”.
- (3) Section 10 include complaints which might be thought to be more appropriate to be dealt with within the Police internally (section 10(a)), complaints which could be investigated pursuant to investigative powers given by other ordinances rather than the IPCCO (section 10(d)), or complaints which are legal questions in nature – the validity of a summons or notice for fixed penalty issued (sections 10(b) and (c)).
- (4) By the very design of sections 11 and 14, section 11 is the corner stone of the categorization mechanism under the IPCCO.
- (5) Section 11(a) provides for the content of the complaint as would make that complaint a reportable one. These are complaints concerning (i) a police officer whilst on duty, or (ii) off duty but who identifies himself as a police officer, or (iii) the practice or procedure adopted by the Police.
- (6) Sections 11(b) to (e) then appear to safeguard against potential abuses. Section 11(b) excludes complaints which are frivolous or vexatious or not made in good faith. Section 11(c) excludes complaints not made by or on behalf of a complainant directly affected by police conduct.

Section 11(d) excludes anonymous or uncontactable complainants. Section 11(e) deals with how a complaint could be properly made on behalf of someone who is directly affected by the police conduct.

(7) Section 11 is also expressly made subject to sections 10, 12 and 13.

(8) As already explored above, section 10 excludes certain complaints from going into the categorization process altogether.

(9) Section 12 excludes complaints which would otherwise be categorized as a RC from being categorized as such if (a) it is made belatedly and (b) is not serious in nature. A complaint is made belatedly if it is made 24 months from the date of the incident giving rise to the complaint or 12 months from the final determination of judicial proceedings if the matters are connected to such proceedings.

(10) Section 13 clarifies that a complaint about the “classification” of a complaint is also itself a RC. Classification is, broadly speaking, defined under section 3 as the various possible results that could flow from the investigation of a RC.

(11) Lastly, whilst the legislature went into great length on categorization of complaints into RCs and CNs, they did not think it necessary to define what would amount to a complaint that has to go through the categorization process, except by the criteria set out in section 11. In other words, it is those criteria which identify what is and what is not a reportable complaint.

39. The RCs and NCs as categorized by the Police are then subject to the IPCC's monitoring via the submission of RC lists and NC lists under sections 9:

(1) Section 9(1) provides that the Commissioner "must" submit to the IPCC (a) a list of RCs and (b) a list of NCs, at intervals and in the manner agreed between them. The Commissioner is required to provide to the IPCC a brief description of the RCs and NCs on the lists. Section 9(3)(b) requires the provision of reasons for categorizing some complaints as NCs. Section 9(3)(c) requires the provision of reasons for not categorizing a belated complaint as an RC on the ground of being not serious in nature. It is of note that reasons for categorization are only required for complaints categorized as NCs, no reasons being required for categorizing as RCs.

(2) Section 16 provides that the IPCC can advise the Commissioner that a complaint included in the NC list should be categorized as a RC instead, and the Commissioner must reconsider the categorization having regard to the IPCC's opinion. Section 16(3)(a)-(b) enables the IPCC to ask the Commissioner to provide explanations as to why a NC is categorized as such. There is no such power in respect of a RC. "Explanations" of categorization also appears to be something distinctive from and perhaps on top of "reasons" of categorization which are also only required for NCs under section 9. Apparently both explanations and reasons are meant to facilitate the IPCC to form a view on whether an NC is properly categorized as such.

40. The importance of categorization is underlined by the Legislature’s consistent choice in using the mandatory “must” in referring to the categorization of RCs and NCs under sections 11 and 14, as well as in the submission of the RC list and NC list to the IPCC under section 9.

41. A complaint must be categorized by the Commissioner, and the categorization is subject to oversight and review by the IPCC.

C.4 IPCC’s monitoring powers over RCs

42. The RC categorization is indeed crucial because the IPCC’s monitoring powers, as provided in Division 2 and Division 3 of Part 3, are only targeted at RCs.

43. The starting point is to note that an investigation of a RC by the Commissioner should lead to a “classification”. Section 3 of the IPCCO gives the meaning of “classification” as follows:

classification (分類) means the classification after investigation by the Commissioner of a reportable complaint as one that is—

- (a) substantiated (獲證明屬實);
- (b) substantiated other than reported (未經舉報但證明屬實);
- (c) not fully substantiated (無法完全證明屬實);
- (d) unsubstantiated (無法證實);
- (e) false (虛假不確);
- (f) no fault (並無過錯);
- (g) withdrawn (投訴撤回);
- (h) not pursuable (無法追查);
- (i) curtailed (終止調查);

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- (j) informally resolved (透過簡便方式解決); or
- (k) of such other description as agreed between the Council and the Commissioner (監警會與處長議定的其他類別).
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44. Monitoring RCs appears to be mainly exercised through the investigation reports submitted by the Commissioner. These are provided for in Division 2 of Part 3 (comprising sections 17 to 21):

- (1) Section 17(1) provides that the Commissioner “must” submit an investigation report of a RC to the IPCC, as soon as practicable after completing the investigation.
- (2) Section 17(2) mandates the inclusion of the following content in the report: a summary of the investigation, the finding of facts and evidence relating to the complaints, the classification of the investigation results of the complaints and the reasons for the classification, the action taken by the Commissioner in connection with the complaint, and other information as the Commission may think fit or agree with the IPCC.
- (3) Section 17(3) mandates that an investigation report on a RC classified as informally resolved must contain certain information, and must explain the reasons for resolving the complaint by informal resolution.
- (4) Section 18 provides that if the investigation of a RC is not completed within 6 months from the date of receipt of the complaint, the Commissioner “must” submit an interim report at an interval of every 6 months until the completion of the investigation.
- (5) Section 19 provides that the IPCC could make its recommendations related to: the classification of the RC; the

Commissioner’ handling or investigation of the RC; the fault or deficiency of the practice or procedures of the Commissioner; the action to be taken in respect of a police officer; etc.

(6) It is important to note that the time within which the report is to be provided under section 17 starts from the date when the complaint is made – not from some later date on which the Commissioner takes the view that a complaint which should be categorized has been made.

(7) Section 20 provides that the IPCC could interview persons who may be able to provide information or assistance relating to the investigation report already submitted. For interim reports which are submitted before the completion of investigation, the IPCC could only conduct interview with the consent of the Commissioner.

(8) Section 21 provides that the IPCC must make a record of interview for every interview conducted under section 20.

45. It may also be noted that:

(1) Whilst it is provided in section 19 that the IPCC could make recommendation to the Commissioner, it is not provided that the Commissioner “must” accede to or consider the recommendations made by the IPCC. But section 19(3) provides that the IPCC could submit its opinion or recommendations to the Chief Executive for his consideration, presumably a route the IPCC may resort to if it feels that its concerns could not be addressed between itself and the Police.

(2) The monitoring or oversight exercised by the IPCC after the submission of investigation reports is by nature *ex post facto*

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the investigative actions already taken by the Commissioner and recorded in the reports.

46. In relation to specific RCs, the IPCC may require the Commissioner to provide information relating to a RC, to investigate into a RC, to investigate into a request for review when the request was made within 30 days after a complainant was notified of the classification result, to attend interviews conducted by the Commissioner at any time without prior appointment and to observe the collection of evidence, and to require an explanation for the actions taken by the Commissioner in connection with a RC: see sections 22, 23, 25 and 26.

47. Section 24(1) also requires the Commissioner to notify the complainant of the investigation result, by telling him the classification of the RC and the reasons for the classification. Section 24(2) provides that when the complainant requests a review of the classification, a duty to notify the complainant of the review result is imposed on the IPCC.

48. The IPCC may also require the Commissioner to submit statistics of the types of conduct of police officers that have led to RCs. The Commissioner is required to consult the IPCC on any proposed new order or manual of the Police relating to handling or investigation of RCs: see sections 27-28.

49. Part 4 provides for the “Observers’ Scheme”. The Secretary for Security may appoint persons he thinks fit to be an observer (“IPCC Observer”) to assist the IPCC to observe the manner in which the Commissioner handles or investigates RCs: see sections 33-24. The

observers may attend interviews or collection of evidence in respect of a RC, either on a surprise or pre-arranged basis: see section 37.

50. Surprise observation is made possible by section 36 which requires the Commissioner to notify the IPCC of the interview or collection of evidence in advance insofar as practicable. If advance notification was not given, the Commissioner is required to give written notification and provide an explanation as soon as practicable after the collection of evidence has taken place.

C.5 A summary of IPCC's role at the second tier under the IPCCO

51. As said, the IPCCO centres around the IPCC's functions, powers and duties as an observer, reviewer and monitor sitting at the second tier of the complaints handling system. The combined effects of Division 2 (on categorization of complaints) and Divisions 3 and 4 (on IPCC's monitoring powers over RCs) are the following:

- (1) Except those excluded by section 10, all complaints are subject to the IPCC's monitoring.
- (2) This is achieved by the categorization of all complaints (except those falling within section 10) as either a RC or a NC, and then mandating the Commissioner to submit lists of RCs and lists of NCs for the IPCC's review at agreed intervals.
- (3) Being categorized as a RC is of cardinal importance since the bulk of the IPCC's monitoring powers are only applicable to RCs. The IPCCO provides mechanism for the IPCC to review if a RC has been inappropriately categorized as a NC, and to request the Commissioner's reconsideration when appropriate.

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- (4) The categorization system is sceptical towards the NC categorization. This is apparent from the fact that an NC categorization is subject to the extra requirement of “reasons for categorization”, and the IPCC is endowed with the extra powers to seek further explanations for categorization as NCs.
- (5) Insofar as the content or nature of the complaint is concerned, section 11 only aims to weed out frivolous or vexatious complaints, or those made in bad faith. The IPCCO makes no distinction between a minor complaint or a serious complaint, except when the complaint is made belatedly. Loosely speaking, the result is that all complaints, minor or major, made against police officers or the Police’s practice will be categorized as RCs as long as they are not subjects of abuse.
- (6) Whilst the IPCC does not conduct investigation by itself, it has a wide range of powers to monitor the Commissioners’ handling and investigation into RCs. The Commissioner is mandated to submit to the IPCC RC lists and NC lists, as well as investigation reports for RCs. Flowing from these submissions, the IPCC can request the Commissioner to investigate into RCs, to review the Commissioner’s handling and investigations into RCs and the investigation results reached as shown in the reports, and to request for further information and explanations. The IPCC is not bound to accept what the Commissioner puts in investigation reports because section 20(1) enables the IPCC to interview any person for the purpose of facilitating the IPCC’s consideration of the reports. It can also observe the Commissioner’s collection of evidence on a surprise basis.

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(7) But the IPCC’s monitoring powers are procedural and advisory in nature. It can make recommendations (rather than orders or directions) to the Commissioner pertaining to various aspects of the handling and investigation of RCs. The IPCCO does not require the Commissioner to obey or execute those recommendations. But the IPCC has the option of escalating matters to the Chief Executive.

C.6 CAPO’s role at the first tier under the IPCCO

52. As indicated, the IPCCO provides very little guidance on how CAPO may conduct its investigation at the first tier, or whether investigation should be conducted at all. There are no express provisions mandating the Police to investigate into NCs. There are also no express provisions directly stipulating for the Police to investigate into RCs.

53. The most relevant provisions as might shed light on CAPO’s handling or investigation into RCs are to be found in section 3 and section 17.

54. “Classification” is defined in section 3 (see above). The following is of note or can be inferred from the list of classifications provided under section 3:

- (1) Classifications are only applicable to RCs.
- (2) Classification is expected to be reached “after investigation”. As will be seen below, section 17 would suggest that investigation is to be done to RCs generally except for those which are “informally resolved”.

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(3) Classifications (a) to (f) (“substantiated”, “substantiated other than reported”, “not fully substantiated”, “unsubstantiated”, “false”, and “no fault”) entail an ultimate finding of factual or fault-based allegations made against the police officer at the conclusion of the investigation process.

(4) Classifications (g) to (j) (“withdrawn”, “not pursuable”, “curtailed” and “informally resolved”) suggest that the IPCCO does not envisage all investigations to be pursued until a definite conclusion on the factual or fault-based allegations which could be made.

(5) Some RCs may be “withdrawn” (presumably by the complainants).

(6) Some investigations may be determined to be “not pursuable”. It is not clear from the IPCCO as to the likely reasons rendering the RC not pursuable. But it may relate to the lack of evidence, difficulties in locating the relevant witnesses, refusal of complainant to offer assistance in subsequent stage, etc.

(7) Some investigations may be “curtailed” – the language itself perhaps suggesting that the investigation is curtailed at the direction of the Commissioner. The language entails an investigation which has begun but is ordered to be ended when the RC has not been withdrawn by the complainant and is still pursuable. The IPCCO does not stipulate the reasons to curtail an investigation.

(8) Some investigations may be “informally resolved”.

55. The list of possible classifications mainly tells us the possible result that might be reached by an investigation. It does not inform what might constitute an investigation into RCs generally. Nor

does it dictate the investigative steps as might be necessary before any of the specific classifications could be properly reached.

56. Section 17, which provides for the content the Commissioner must include in the investigation reports to be submitted to the IPCC, may shed some light on the nature of “investigation” as expected for RCs. Sections 17(1) to 17(3) are reproduced below:

- (1) The Commissioner must, as soon as practicable after completing the investigation of a reportable complaint, submit to the Council an investigation report.
- (2) Subject to subsection (3), an investigation report submitted under subsection (1) must contain—
 - (a) a summary of the investigation;
 - (b) a finding of facts in relation to the complaint and the evidence in support of the finding;
 - (c) the classification of the complaint, and the reasons for the classification;
 - (d) an account of the action taken or to be taken by the Commissioner in connection with the complaint;
 - (e) such information as the Commissioner thinks necessary; and
 - (f) such other information as the Commissioner and the Council may agree.
- (3) An investigation report on a reportable complaint classified as informally resolved must—
 - (a) contain—
 - (i) a summary of the process of informal resolution of the complaint;
 - (ii) an account of the incident giving rise to the complaint as described by the complainant;
 - (iii) (if the complainee is identified) an account of the incident giving rise to the

complaint as described by the
complainee;

(iv) an account of the action taken or to be
taken by the Commissioner in
connection with the complaint;

(v) such information as the Commissioner
thinks necessary; and

(vi) such other information as the
Commissioner and the Council may
agree; and

(b) explain the reasons for resolving the complaint
by informal resolution.

57. Section 17(2) and section 17(3) suggest:

(1) All RCs except those resolved by “informal resolution”
 (“簡便方式”) have to be investigated. Thus, the content of
the investigation reports includes “a summary of the
investigation”: section 17(2)(a).

(2) An “investigation” entails a fact-finding process based on
evidence. Thus the content also has to include “a finding of
facts in relation to the complaint and the evidence in support
of the finding”: section 17(2)(b).

(3) RCs classified as “informally resolved” are resolved by
informal resolution rather than by investigation. Therefore,
in contrast to other RCs, the requirement for a summary of
investigation is substituted by “a summary of the process of
informal resolution”: section 17(3)(i). The requirement for
a finding of facts with supporting evidence is substituted by
the complainant and the subject of complaint’s respective
accounts of the incident giving rise to the complaint,
section 17(3)(a)(ii)-(iii). Informal resolution does not entail
a fact-finding process and does not aim at resolving

conflicting factual accounts as between the complainant and the subject of complaint.

58. Other than the above, there is no guidance on how an “informal resolution” or an “investigation” otherwise applicable to all RCs is to be conducted.

59. Indeed, section 28 of the IPPCO envisages that the details of the handling or investigation process are left to be devised by the Commissioner in consultation with the IPCC. Those matters are to be governed by the Police’s internal guidelines and manual (rather than by statutory provisions under the IPCCO). Section 28 provides: -

- (1) The Commissioner must consult the Council on—
 - (a) any proposed new order or manual of the police force that relates to the handling or investigation of reportable complaints; or
 - (b) any significant amendment proposed to be made to—
 - (i) the police general orders made under section 46 of the Police Force Ordinance (Cap. 232);
 - (ii) the headquarter orders issued under section 47 of that Ordinance;
 - (iii) the Hong Kong Police Force Procedures Manual; or
 - (iv) any other orders or manuals of the police force, in so far as the amendment relates to the handling or investigation of reportable complaints.
- (2) For the purposes of subsection (1)(b), an amendment is significant if it materially changes—
 - (a) the meaning or interpretation of; or
 - (b) the procedures to be followed under, any provision of the order or manual of the police force.

A 60. As a matter of fact, the Commissioner did issue a manual in
B consultation with the IPCC known as the “Complaints Manual” pursuant
C to section 28. Chapter 4 of the manual is headed “Investigation of
D Reportable Complaints”. The body of that chapter occupies more than
E 30 pages in closely printed English in font size 10. The bulk of it covers
F investigation into RCs generally and the remaining part covers “Informal
G Resolution”. The content clearly indicates that the part on investigation
H is devised to provide detailed guidance for investigation into RCs
I generally, as referred to in the IPCCO. This investigation process is
J referred to in the Police’s evidence as “Full Investigation”. The part on
K “Informal Resolution” is to provide guidance on how RCs classified as
L informally resolved should be processed. The Court is not informed as
M to when the Complaints Manual was first published or when it came into
N its current shape. But presumably it was published after the IPCCO
O came into force in 2009. It was also subject to some major amendments,
P e.g. the adding of Chapter 15 – on the Expression of Dissatisfaction
Q Mechanism – in the 2010s (see below).

R 61. Putting the first tier and the second tier together, it can be
S seen that under the current statutory regime, the Police are given almost
T no statutory restrictions on how they should handle or investigate a
U Complaint at the first tier. Whilst the IPCC, as the second tier monitor,
V is given a wide range of monitoring power over what was done at the
investigative stage, the powers are procedural and advisory in nature.
Perhaps to give some teeth to the statutory monitoring powers of the
IPCC, all complaints (except those under section 10) are made to submit
to the IPCC’s review via a binary RC/NC categorization system and the
submission of RC lists and NC lists. The categorization mechanism also
favours RC categorization which are subject to more monitoring powers.

D. The “Complaints” Handling System as Operated by CAPO

D.1 What is a complaint to which the IPCCO applies?

62. Central to this dispute is what is a “complaint” that must be processed in accordance with the statutory monitoring mechanism under the IPCCO. By the affirmation of Chief Inspector Ma Chi Wai Alan (“CIP Ma”) dated 16 September 2022, the Commissioner explains what CAPO will treat as a complaint under the IPCCO.

63. It is said that CAPO handles a large number of matters with different natures, and not all of them are complaints. Some are, for example, specific requests regarding the Police service which the persons are receiving or have received. Whilst, as practical convenient short hand, CAPO officers commonly refer to persons who make reports to CAPO as “complainants”, and the reports as “complaints”, “cases”, “requests” and/or “complaint cases”, the use of such words is generic and does not denote the “nature” of the cases.

64. Hence, the question arises, among these cases of different “nature”, as to what are considered by CAPO to be “complaints” under the IPCCO.

65. At §9(3), CIP Ma said:

Complaints of misconduct or allegation of crime against police officers, to which formal procedures pursuant [the IPCCO] apply (“Complaints”)

66. At §13(2) (emphasis in original):

The procedures for handling a Complaint: For a Complaint meeting the requirements of a reportable complaint under s.11

A of the IPCCCO (“**Reportable Complaint**”), there are two
B options for the person to choose from, namely: “**Full
Investigation**” option or an “**Informal Resolution**” option
C (“collectively, “**Complaints Procedures**”):

D [then the processes of Full Investigation and Informal
E Resolution as set out in the Complaints Manual are
F summarized]

G 67. At §14 (my emphasis):

H As regards the nature of the matters, CAPO would make
I inquiries with the person and ascertain his wish. The intention
J of the member of the public for making a report to CAPO is of
K paramount consideration. Going through the Complaints
L Procedures comes with personal time and costs for the
M complainant ... and not all persons who approach CAPO wish
to go through the same (and hence not all persons wish to make
a Complaint) having regard to the nature of the matter in
question and their personal needs and preferences. CAPO
duly respects the personal wish of the person. Where the
person approaches CAPO with a grievance and opts to go
through the Complaints Procedures (see 13(2) above), i.e. make
a Complaint, where the Complaint meets the requirements
under s. 11 of the IPCCCO for a Reportable Complaint, CAPO
would accordingly process the matter as a Reportable
Complaint pursuant to the procedures under the IPCCCO,
applying the option which the person elects (“Full
Investigation” or “Informal Resolution”)

N 68. Summarising §§9(3), 13(2) and 14 of CIP Ma’s affirmation,
O CAPO’s evidence in answer to the question of what is a complaint or a
P RC within the meaning of the IPCCCO is this:

- Q (1) A grievance only becomes a “complaint” in the meaning of
R the IPCCCO if the complainant intends to go through with
S either the Full Investigation or the Informal Resolution.
T (2) If a grievance meets the conditions under section 11, it will
U become a RC.
V

(3) The consequence of becoming a RC is that that Full Investigation or Informal Resolution will be applied to process the grievance.

(4) In other words, Full Investigation or Informal resolution will only be applied if the complainant wants them to be applied.

D.2 The three “options” available for handling complaints

69. It may be helpful to comment here that the above description of when a complaint becomes a “complaint” appears to put the cart before the horse. There is the correct recognition that a complaint which meets the requirements of a reportable complaint under section 11 should be categorized as a RC, which leads to one of two ways it can be addressed. But, at the same time, it is suggested that there is actually no need for either route to be followed if the complainant somehow indicates – “elects” – that he does not really want to make a RC which goes through either route. So, it is said, even though a complaint is one which falls for categorization as a RC, it can nevertheless first be not categorized as such, at the election of the complainant.

70. Hence, the identification of three “options” for dealing with complaints are the following.

D.3 The first two “options”

71. In the Complaints Manual (which is an internal document not disclosed to the public) and in publicly available material issued by CAPO known as “Complaints Against Police Officer – a Guide for Complaints” (“Complaints Guide”), three options are provided to address complaints: (1) Full Investigation, (2) Informal Resolution, and (3) the

Express of Dissatisfaction Mechanism (“EDM”). It may be noted that both documents refer to “complaints” – with a small letter “c” – without giving that a particular definition.

72. Full Investigation and Informal Resolution are set out in some detail at Chapter 4 of the Complaints Manual:

- (1) Full Investigation or Informal Resolution is applicable for complaints categorized as RCs under section 11.
- (2) Full Investigation is a fact-finding process. The police officer subject of the complaint is obliged to give statements upon CAPO’s request. Other witnesses may also be invited to provide evidence. The forms of evidence collection are wide-ranging, including taking of statements, conducting video recorded interviews, collecting medical reports or other documentary evidence, conducting identification parade, arranging for examination by forensic pathologist or medical officer, etc, as appropriate.
- (3) Information Resolution is more a conciliation process rather than a fact-finding process. The Complaints Manual sets out how the conciliation is to be done and who should act as the conciliator.
- (4) Both Full Investigation and Informal Resolution are subject to IPCC’s monitoring in the manner as required by the IPCCO, e.g. the submission of RC lists and NC lists, investigation reports, etc.
- (5) The Complaints Manual also sets out more detail to supplement the monitoring mechanism already provided in the IPCCO. For example, the manual sets out the interval at which the RC lists and NC lists are to be submitted:

weekly and monthly respectively. Template forms for such lists are also provided. The various types of classification are further elaborated, e.g. “not pursuable” is said to be so due to the complainant’s failure to pursue the complaint and refusal to offer assistance; officers are instructed to properly record a complainant’s withdrawal to prevent future disputes, etc.

(6) The Complaints Manual further provides that Informal Resolution is only applicable to “minor allegations”. A list of “minor complaints” is set out at Chapter 2-03. They are allegations against police officers of the following nature: use of offensive/abusive language, impoliteness/rudeness/improper manner, misunderstanding of police procedure and/or law, unnecessary delay and/or inconvenience, neglect of duty, and other minor forms of conduct.

D.4 The third “option”: the EDM

73. The third option is the EDM.

74. Both the Commissioner and the IPCC have filed affidavit evidence on the EDM. The genesis of the EDM has been described in some detail by the Secretary-General of the IPCC. That evidence might be summarised broadly as follows (without descending into the detail of the various discussions held within or involving the IPCC).

75. EDM is an administrative measure, implemented in 2015 with a view to improving the efficiency of the system in dealing with minor grievances. It focuses on addressing the dissatisfaction of a person who may have a grievance and may express dissatisfaction

A relating to the conduct of a police officer, or any practice or procedure
B adopted by the Police, that is minor in nature, where the person elects not
C necessarily to resort to a full investigation by CAPO. It is up to the
D person with the grievance whether to opt for EDM, provided the matter is
E minor in nature. Even where that option is taken, the person can always
F revert to lodging a formal complaint in respect of the same matter. The
G adoption of EDM as an administrative measure does not change the
H two-tier system under the IPCCO.

76. As the view was taken that the substantial number of minor
H complaint cases undergoing the same investigation procedures is that of
I serious complaint cases required much time and resources, there was
J room to streamline the investigation procedures with a view to better
K utilising limited existing resources. However, the implementation of the
L informal resolution procedure had not been to the total satisfaction of all
M stakeholders. Further, many minor complaints ultimately were not fully
N investigated by CAPO.

77. As a result, various discussions took place as to
N implementing a way of dealing with a new category of expressions of
O dissatisfaction, which might be introduced before a person's grievance
P was registered as a RC and entered the complaint handling system. In
Q other words, the suggestion was that the option of the expression of
R dissatisfaction would be an alternative to going through the formal
S complaint process.

78. In 2013, a report was prepared on the proposed EDM. But,
T I note that it appears to have been recognised there that the EDM was
U outside the IPCC purview. The report expressly noted that EDM should
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A not be employed after a case has been categorised as RC/NC (even at the
B complainant's explicit request), and that RC and NC are well defined in
C the IPCCO and strictly governed by both the IPCCO and the Complaints
D Manual. Hence, once a complaint case has been categorised as RC/NC
E it has already entered "the rigid legal regime of complaint handling" so
F that it would then "be inappropriate to interrupt the case by adopting the
EDM which is not provided in the existing legal framework.

G 79. As summarised by the Secretary-General, various matters
H taken into account during the various discussions included:

- I (1) There were occasions when complainant's only wish to
J express their dissatisfaction is over some police procedure or
K action, but did not wish to make a formal complaint
L necessitating a full investigation, or did not want to go
M through or be involved with a full investigation.
- N (2) Many complainants actually just wanted a simple apology, or
O for the complainees's supervisor to be apprised of the matter
P in view of a full investigation of their complaints.
- Q (3) The EDM would streamline the complaints handling process
R by excluding cases, where it was not the complainant's wish
S to pursue as RC or NC.
- T (4) Because Informal Resolution is not informal in real practice,
U as it is bound by certain procedures and conditions, the
V subjects of complaints, i.e. the complainees would have a
lower incentive to compromise when a complaint is handled
by Informal Resolution as compared with EDM.
- (5) It is undesirable to register all cases indiscriminately as
formal complaints at the outset.

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(6) Overseas research suggested the level of satisfaction for a complainant might be lower from full investigation (even if the allegation is found substantiated) than from his case being resolved through an EDM-type of process.

(7) The decision of “registering as an EDM” must be made by the complainant, instead of a determination by police officers.

(8) If a complainant chooses EDM, the case would not be regarded as a formal complaint. However, the complainant retains the right to lodge a formal complaint after all. The enhanced mechanism must not deprive a citizen of his existing right to lodge a complaint, or create obstacles to prevent him from doing so. Rather, the emphasis is on genuinely streamlining procedures and providing more alternatives.

(9) One of the main objectives of the EDM is to listen to a complainant’s grievance and identify room for improvement, rather than to penalize the officers concerned. Both police officers and members of the public would have incentives to resolve cases by way of EDM.

(10) Care must be taken to ensure that the implementation of EDM would not lead to further complaints.

80. In passing, I note, in particular, that the fifth point above is on its face contrary to the legislative intention clear from the IPCCO that all cases are to be registered and categorized as complaints under the IPCCO. To suggest that “it is undesirable to register all cases indiscriminately” seems – at least at first blush – to counter the stated legislative desire. Further there is the introduction of a distinction between a “formal complaint” and some other form of complaint, and the

A use of the word “indiscriminately” introduces a tendentious element if it
B suggests that the legislative choice was somehow not deliberate.

C 81. Mr Eric Cheung, a legally-qualified member of the IPCC
D also gave evidence that during the discussions and considerations of the
E EDM, he paid particular attention to the functions, powers and operations
F of the IPCC under the IPCCO, seeking to ensure that the introduction of
the EDM was *intra vires*. He also stated, amongst other things, that:

G (1) His experience of monitoring complaint cases classified as
H “withdrawn” or “not pursuable” show that it was not
I uncommon for a complainant to choose to withdraw or not
J to pursue the complaint because (Mr Cheung suggests)
K he/she had actually wished to have his/her dissatisfaction
grievances addressed without going through the formal
complaint process.

L (2) Because of a considerable surge in the number of complaints
M in 2009 compared to 2008, it was necessary to come up with
N a more efficient and satisfactory way of handling especially
O minor complaints. Hence, the EDM was explored as a
measure that would enable the IPCC to utilise its resources
more efficiently in the performance of its functions under the
IPCCO.

P (3) Greater satisfaction tended to come from less formal
Q resolution of allegations, rather than by full investigation
with allegations found substantiated.

R (4) The EDM was an additional option outside the formal
S complaint procedure, allowing persons to express
T dissatisfaction or to apprise a senior police officer of an issue,
U so that the senior officer could clear up a misunderstanding
or resolve matters or identify room for improvement in
V

A service delivery or professional standards. The relevant formation commander would be apprised of the matter and take whatever action he or she deemed necessary from a service improvement perspective.

(5) It was recognised that if a citizen chose to opt for the EDM, it would not be treated as a formal complaint under the IPCCO and the IPCC would have no statutory power or function to observe, monitor and review the handling of it in the same way as in the case of a RC.

(6) Hence care was taken to ensure that the EDM did not deprive a member of the public of the right to lodge a complaint under the IPCCO and the person could always opt to file a complaint under the two-tier complaint system and retain to the normal complaint system during or after conclusion of the EDM.

(7) Under the procedure agreed with CAPO on the handling of EDM cases, CAPO must submit a Monthly EDM Return and Monthly Return of EDM Cases Reverted to RC for IPCC's consideration. There would, therefore be some oversight, which would help the IPCC to check whether the EDM was implemented properly according to the agreed protocol and achieved its intended purposes.

(8) That might better assist the IPCC to perform its function under section 8(1)(c) in identifying any fault or deficiency in police practice or procedure that has led to or might lead to Reportable Complaints.

(9) The introduction of the EDM as a measure to deal with minor complaints was reasonably necessary for, and incidental and conducive to, the performance of the functions of the IPCC. Its introduction would not

detrimentally affect the right of a complainant under the IPCCO, but would likely lead to an overall better satisfaction and more efficient handling of complaints in general and minor complaints in particular.

82. The EDM was officially implemented by CAPO in January 2015.

83. Chapter 15 of the Complaints Manual is dedicated to the EDM. In summary:

- (1) The EDM is an alternative option for handling a complaint alongside Full Investigation and Informal Resolution.
- (2) A complainant has to opt for the EDM prior to categorizing the complaint as RC/NC: see Complaints Manual, at Chapter 15-02 §3.
- (3) It is recognized by the IPCC that if the complainant opts for the EDM, the grievance would not be treated as a “complaint” under the IPCCO and the IPCC would not have the same statutory powers to observe, monitor and review the handling of the complaint in the same way as a RC. An example for such difference in monitoring powers is that for RCs, CAPO is required to submit investigation reports to the IPCC under section 17. This provision is of course not applicable to EDM cases which would not be categorized as RCs.
- (4) Thus, opting for the EDM would have the effect of taking outside the statutory regime a complaint which would otherwise fall within the regime.

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(5) It is only suitable if the complaints are of a minor nature. The list of minor allegations suitable for the EDM are provided in the Complaints Manual. It is the same list for those which could be processed via Informal Resolution. Thus, what could be processed via the EDM could also be processed via Full Investigation or Informal Resolution at the complainant's choice. But complaints not falling within the minor allegation list could only be processed via Full Investigation.

(6) At the operational level, the Complaints Manual outlines how a complainant could opt for the EDM. Upon receiving a complaint, CAPO would consider whether it is suitable for the EDM before the complaint is categorized as a RC or NC. Once CAPO considers that the complaint is suitable for the EDM, the investigating officer would contact the complainant and introduce to him the three options of dealing with the complaint by either playing audio recorded preamble or reading out the relevant information to him.

(7) The complainant must then opt for the EDM within 14 working days. If the complainant does not opt for the EDM before the expiry of the 14 days, his complaint will be processed in accordance with the statutory regime and will be categorized accordingly.

(8) The EDM process must be finished in two calendar months.

(9) After the EDM process is completed, the complainant will be informed of the result and actions taken or to be taken.

(10) If the complainant is not satisfied with the result of the EDM, he or she can still opt to lodge a formal complaint under the IPCCO if it is still within 24 months from the incident giving rise to the complaint.

(11) The complainant, indeed, can opt to go back to the formal complaint procedures under the IPCCCO at any time. CAPO has also provided some statistics where complainants initially opted for EDM but later reverted back to the statutory route. From 2015/16 to 2021/22, there were 53 EDM cases which were changed to RCs at the complainant's request.

(12) The EDM is also subject to the IPCC's monitoring, in the manner provided in the Complaints Manual. The monitoring mechanism is by agreement (as agreed by IPCC and the Commissioner and set out in the Complaints Manual) rather than mandated by the IPCCCO.

(13) CAPO will submit to the IPCC: (a) a monthly EDM return, (b) a bi-annual return of allegations based on the nature of allegations; (c) a monthly return of 12-month rolling list of resolved EDM cases; (d) a bi-annual return of breakdown of EDM cases by district, and (e) a bi-annual return of breakdown on EDM cases by action taken.

(14) IPCC may then issue queries on EDM returns submitted by CAPO, to which CAPO shall reply diligently and expeditiously but in any event within 14 days upon receipt of queries.

84. The introduction of the options to the complainant will essentially follow the following wording read to the complainant, or which may also be given by audio recording:

Now please permit me to use a little time to tell you the three methods to be used in handling this complaint, which include 1) "Full Investigation" option; 2) "Informal Resolution"; and option 3) "Expression of Dissatisfaction" option.

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- The first option is called “Full Investigation”, meaning a detailed statement will be taken from you based on your complaint. If it is necessary, we will conduct a search at the scene to see if any independent witness saw the event or to check whether any CCTVs recorded the said event. Afterwards, we will take a statement from the complainee, and asked them to explain the contents of the complaint. Lastly, we will group all the information, and write a report to the Independent Police Complaints Council for their approval.
- The second option is called “Informal Resolution”. The practice is that one of our chief inspector-level officers from the Complaints Against Police Office will approach the complainant. “Approach” could mean speaking in person or through telephone. That chief inspector is responsible for recording the dissatisfactions from the complainant against the complainee, and later he/she will write a report and submit it to IPCC. Afterwards, that chief inspector will summon the complainee, and depending on the contents of the complaint, to rebuke, provide recommendation to, or advise the complainee, in order to elevate and improve the quality of service.
- The third option is “Expression of Dissatisfaction”. If the aforementioned two ways are not what you want, do not accord with your wish, you can opt for expressing dissatisfaction. We would write a report and directly submitted to the complainee’s superior. This superior is usually a chief superintendent or senior superintendent. After reviewing the report by the superior, he/she would officially summon and meet with the complainee, and depending on the contents of the complaint, rebuke or advise the complainee, in order to elevate and improve quality of service.

85. It might be noted that whilst the first two options do identify submission of a report to the IPCC whereas the third option does not, it might not be immediately obvious to the person hearing this explanation that the third option being offered is outside the statutory regime providing for the two-tier system.

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D.5 Request for Services

86. Despite the description of the three “options”, there is now suggested to be a further alternative.

87. In the 6-month period prior to 18 November 2021, CAPO had treated the CAPO Complaint as a Request for Service.

88. The existence of this group of cases or channels to handle cases received by CAPO was only revealed when the Commissioner filed first round affidavit evidence after leave was granted in May 2022, but before the amendment hearing on 29 September 2022. It was not offered to the Applicant as one of the options to resolve his CAPO Complaint. Apparently nor was the Applicant aware of this option.

89. In CIP Ma’s affirmation, it is said that Requests for Service are amongst the various non-complaint matters handled by CAPO. At §9(1), Requests for Services is defined as:

Specific requests to CAPO regarding Police services which the person is receiving/has received from other police formations (e.g. the person wishes to obtain updates on the case progress from the crime investigation team, requests the case investigation officer to contact him/her, or requests for a review of the outcome of a criminal investigation.)

90. A Request for Service is outside the statutory mechanism under the IPCCO. Nor is it provided for in details in the Complaints Manual like the EDM. CIP Ma’s evidence seems to suggest that Requests for Service are not complaints – in the general sense of the word – at all, and are on a different plane from those handled via the statutory regime or the EDM.

A 91. The Court is not provided with any documentation on the
B handling mechanism for a Request for Service at CAPO's level. But in
C in CIP Ma's affirmation, it is said that for a request to review a crime
D investigation, CAPO will immediately refer the request to the relevant
E Police formation. That formation will then reconsider the case and it is
F for the reviewing officer (rather than CAPO) to decide if the case
G warrants further investigation and action. CAPO will take note of the
H progress and record the action taken in its own file.

I 92. There is also no documentation on how Requests for Service
J are monitored by the IPCC, if at all. Nor is this covered in the affidavit
K evidence of the Police or the IPCC. Indeed, despite repeated attempts
L by this Court to seek confirmation from Ms Cheung and Mr Yu at the oral
M hearing, there is no confirmation that Requests for Service are submitted
N for monitoring in any manner.

O 93. The only documentation drawn to my attention regarding
P Requests for Service is some excerpts in Chapter 3 of the Complaints
Q Manual. This chapter sets out how a complaint should be recorded in
R the Case Management and Investigation System ("CMIS") of CAPO.
S Apparently, complaints will be recorded as "RN" cases in the CMIS and
T they will be categorized as RCs or NCs. Matters which are not
U complaints under the IPCCO will be entered as an "RN(MIS)". RN
V stands for "reference number" and MIS stands for miscellaneous.

94. At Chapter 3-06, §1 states:

On receipt of a complaint at the CAPO Reporting Centre, the
DO [duty officer] will enter details of complaint in an RN in
CMIS as a 'Reportable Complaint' or a 'Notifiable Complaint'
(for categorization – see Chapter 2 of this Manual), and then

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passed to the appropriate CIP CAPO Team through the respective SP CAPO Region.

95. Chapter 3-06-01 is headed "CAPO RN(MIS) Cases". There are two types of cases which will be entered as a RN(MIS). The first type is complaints which contains major ambiguities and requires further enquiries before categorization. After proper enquiries, a recommendation will be made on whether the case should be entered as a RC instead.

96. The second type is meant to be true miscellaneous cases. They include complaints directed against other government staff rather than members of the Police, complaints directed against contractors engaged by the Police who also are not members of the Police, complaints which by section 10 are excluded, and complaints arising from disciplinary hearings: see §§6-9. At §10, it states:

10. Other than the above complaint-related matters, any report which is not a complaint made to CAPO are entered in an RN(MIS) in CMIS. In particular, an RN(MIS) will be opened under the following circumstances -

- (a) Cases are referred by CSD but the prisoner has stated on the CSD Assault Report Form that he does not wish to make a complaint against the Police as mentioned in 3-06(6)(d) above;
- (b) A member of the public makes an enquiry or expresses dissatisfaction;
- (c) A member of the public who expresses dissatisfaction does not wish to lodge a complaint but wants the Formation Commander of the concerned police officers to be apprised of the matter.
- (d) A member of the public requests for review of a crime or miscellaneous investigation in which he/she is a concerned party; or

(e) As directed by SSP [Senior Superintendent]
CAPO.

97. CIP Ma's emphasis was on §10(d) which refers to a request for review of crime as one of the miscellaneous cases which should be recorded as a RN(MIS) case.

E. Applicant's dealings with CAPO & IPCC

E.1 Dealings with CAPO

98. The Applicant made his living by trading stocks on online trading platforms. On 3 March 2021, he visited the Wan Chai Police Station ("WCH Station") to report a suspected hacking in his personal computer by which trading information was stolen from his computer. DPC Wong was the officer in charge of the case and who took a statement from the Applicant on the same day.

99. Either through a letter dated 11 March 2021 or the Applicant's physical visit to WCH Station, the Applicant came to know that his Crime Report was concluded with no one arrested.

100. On 26 April 2021, unhappy with the investigation result, he went to CAPO to make the CAPO Complaint against DPC Wong. A standard form titled "First Information of Complaints Against the Police Report", i.e. Pol. 964, was filled out on that day. DPC Wong was identified as the police officer against whom the complaint was made by rank and number. The complaint stated in Pol. 964 was (the original is in Chinese):

。。。案件在無任何調查下結案，亦無通知投訴人。因此，
投訴人作出投訴他們無處理其案件及無作出通知案件完結。

...the case has been closed without any investigation, and without notifying the complainant of the same. Therefore, the complainant complained that they had not handled his case and had not been given notice of the closing of the case.

101. CAPO issued the Applicant a letter dated the same day to acknowledge receipt of the CAPO Complaint. The letter was in Chinese:

你曾於 2021 年 4 月 26 日提出投訴。本課已把有關投訴記錄在案（檔號為 CAPO HKI RN 21000451）。

You have made a complaint on 26 April 2021. This Office has recorded the relevant complaint (under file No. CAPO HKI RN 21000451).

102. From 3 May 2021 onwards, Sergeant Ng Chau Wah (“Sergeant Ng”) had been assigned to handle the CAPO Complaint. She logged her actions relating to the CAPO Complaint from 3 May 2021 to 24 January 2022 in a chronological manner in an “Investigation Report” which was produced and signed by her.

103. The first line of the Investigation Report reads “*Date/How received: COM lodged the complaint to CAPO RC in person on 2021-4-26*”. Then the Applicant is identified as the COM, i.e. the complainant and DPC Wong is identified as the COMEE, i.e. complaine.

104. Then under the heading “brief summary”, Sergeant Ng summarized the case as followed:

On 2021-03-03, COM made a report to Wan Chai Police Station that he suspected someone had hacked his computer (‘RPI’ icw WH RN 21007273). The case was referred to COMEE for further investigation. On 2021-04-23, COM went to Wan Chai Police Station for enquiry of the case progress. COMEE informed COM that the case was curtailed with no further action. On 2021-4-26, COM lodged the

A instant complaint alleging that COMEE had failed to
B investigate his case properly and takeover the case for
investigation.

C 105. The Investigation Report then recorded that Sergeant Ng was
D unable to reach the Applicant by phone in the two weeks after
E 26 April 2021. Therefore, a letter dated 13 May 2021 was sent to urge
him to contact CAPO. The letter said (original in Chinese):

F 你曾於 2021 年 4 月 26 日提出投訴警隊成員。案件檔號為
G CAPO HKI RN 21000451。

H 本課港島區辦事處現正調查你的投訴。請你撥電[號碼]與
[吳警長]聯絡，以便本課安排間錄取你的投訴的全部詳情。

I You have made a complaint against a member of Police Force
J on 26 April 2021. The case file no. is CAPO
HKI RN 21000451.

K The Hong Kong Island branch of this Office is investigating
L into your complaint. Please contact [Sergeant Ng] at [this
number] to enable this Office to obtain the full details of your
complaint.

M 106. Sergeant Ng said the word “complaint” in the letter was used
N as a generic term and does not denote the nature of the CAPO Complaint.

O 107. Then there came two interviews with CAPO, on
P 20 May 2021 and 31 May 2021 (“the 20 May Interview” and the “31 May
Q Interview”), upon which CAPO said the Applicant evinced the intention
not to lodge a “Complaint” – with a capital C.

R 108. Sergeant Ng described the 20 May Interview as an “initial
S interview” where she tried to ascertain the nature of the CAPO Complaint.
T No witness statement was taken but Sergeant Ng recorded the interview
U in her “Investigation Report”. The entry next to 20 May 2021 sets out
what the Applicant said in the interview. He described his Crime Report

A and recounted how he came to know that his Crime Report had already
B been closed when he visited WCH Station on 23 April 2021:

C 負責調查呢單案個亞 SIR 同我講，單案已經 CLOSE，無嘢
D 可以再做，但我覺得員警系有做過嘢，有採取行動，不過無
E 同我講。其實我依家只想重新啟動我單案件進行覆檢，唔系
想投訴任何警務人員，同埋想轉過另外一個案件調查員幫我
調查，同埋再約你地 CAPO 嘅調查員幫我擺份詳細口供。

F The police officer responsible for my case told me that the case
G had already been closed and nothing further could be done.
H But I believed the Police had actually done something and
I taken some actions but they did not tell me. Actually, now, I
only want to re-open my case for review, not to complain
against any Police officer, and I want to have another
investigation officer to investigate my case, and to have further
appointment with you CAPO investigator(s) to make a detailed
statement.

J 109. Sergeant Ng said, having heard his complaint, she assumed
K that he would like to make a “Complaint” under the IPCCO or to express
L his dissatisfaction against DPC Wong. It was not disputed that during
M the 20 May Interview, Sergeant Ng did explain to the Applicant that he
N was free to choose amongst Full Investigation, Informal Resolution or
O EDM. Sergeant Ng focused on the sentence where the Applicant said he
did not want to complain against any police officer. She said that was
the Applicant’s response towards the three options offered to him.

P 110. There were disputes between Sergeant Ng and the Applicant
Q as to what the former had explained about the EDM in the 20 May
R Interview. Sergeant Ng’s affirmation makes references to the CIP Ma’s
S affirmation to the effect that she had explained that opting for the EDM
T would mean that the Applicant’s complaint would not be treated as a
U “Complaint” under the IPCCO. But the Applicant said it was his
V understanding that no matter which amongst the three options he would

A choose, his complaint would be a formal complaint. It was never
B explained to him, either during the 20 May Interview or at any other
C times, that EDM was only for those who do not wish to make a complaint
D and utilize the statutory procedures.

E 111. On the next day, the Applicant attended CAPO in person to
F submit a handwritten letter addressing Sergeant Ng. It is fair to say that
G the focus of the letter is on how Crime Report could be re-opened and
H how the investigation should be done. In English translation, it reads:

H In relation to the meeting on 20 May 2021, I would first like to
I thank the Police for arranging to re-open the case of
J WCH RN 2100 7273, and to assign another police officer to be
K responsible for the same.

J Given the nature of the case and my previous experience, I
K wish the Police could consider the following arrangements:

- K 1. Arranged to police officers, who are of the same rank
L but report to different direct supervisors, to re-open the
M case;
- M 2. The two police officers shall not have direct or indirect
N relationship with the previous responsible police officer
O or the Wan Chai Police Station;
- O 3. The two new police officers should have sufficient
P knowledge about matters concerning computers, and are
Q not active in the trade of stocks in Hong Kong and in
R foreign countries.

P I hope the Hong Kong Police could consider and make special
Q arrangements, in which discussion may ensue in the meeting on
R 31 May 2021.

Q Thank you for the service of the Hong Kong Police all along.

R 112. The detailed statement the Applicant requested during the
S 20 May Interview was eventually taken during the 31 May Interview.
T That statement is three pages long and in closely typed or handwritten
U
V

A Chinese. The beginning paragraphs were pre-typed before the
B interview:

C 今日我自願協助警課調查一宗投訴員警案件，檔案編號為
D CAPO HKI RN 19000451[sic]，我系該案件嘅投訴人。投訴
E 員警課港島辦事處第一隊警長[吳警長]已向本人解釋該課
嘅調查程式同呢項投訴嘅背景資料、香港法例第 604 章
《獨立監察警方處理投訴委員會條例》。...

F Today, I came voluntarily to assist CAPO on a complaint
G against the police case, case file no. CAPO
H HKI RN 19000451[sic]. I am the complainant in that case.
Sergeant Ng from the CAPO office of the Hong Kong Island
branch has explained to me the investigation procedures of
their office and the background information of this complaint,
and the “Independent Police Complaints Council Ordinance”,
Cap 604...

I 113. The body of the statement is in the Question and Answer
J format. There are only two Questions and Answers. The first question
K asks the Applicant to explain the details of his complaint (“請你講述一下
L 投訴詳情”). The answer is in tightly handwritten Chinese, spreading to
M about two full pages in length and with no spacing between lines. Most
N of it was devoted to describing his Crime Report. He then repeated his
O dealings with DPC Wong and the WCH Station and how he came to
know that his Crime Report had already been closed. Towards the end:

P 當日，黃 SIR 就同我講我單 CASE 已經查完，CLOSED 咗，
Q 無結果。當時我好擔心 CID 系有調查到我單非法入侵電腦
CASE，但調查咗嘢無同我講，懷疑佢地有所隱瞞，由於我
呢單 CASE 比較敏感，我好驚 CID 同事會獲取到啲資料去
買股票，所以我先決定作出投訴。

R On that day, WPC Wong told me that the investigation of my
S case has been closed with no result. I was worried that CID
has indeed investigated into my unlawful hacking into
T computer case. But I suspect that they did not disclose to me
U what they had obtained from the investigation. My case is
sensitive. I was worried that CID colleagues might use the
information they obtained to buy stocks. Therefore, I decided
to lodge a complaint.

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114. Sergeant Ng heavily relies on Question 2 and Answer 2:

問 (二): 林先生, 你對呢份口供有無任何補充?

答 (二): 其實我只系想 CID 重開返呢單 ‘非法入侵電腦’ 案件去調查同覆核。我絕對唔想利用你地嗰三個投訴方式向員警作出投訴。另外, 如果我單 CASE 重開調查, 我要求另外一隊 CID 去調查, 因為我唔想再接觸之前幫我調查嗰隊同嗰隊啲同事。...

Question: Mr Lam, do you have anything to supplement to this statement?

Answer: Actually, I only want CID to re-open this “unlawful intrusion of computer” case, to investigate and review. I absolutely do not want to use your three complaint methods to make a complaint to the Police. Also, if my case is re-opened, I want to request another team of CID to do the investigation, because I do not want to get in touch with the team which helped investigate my case before...

115. In Sergeant Ng’s affidavit evidence, she said in the 20 May Interview and the 31 May Interview, the Applicant had clearly expressed his intention that he only wanted to make a request for his Crime Report to be re-opened and reviewed.

116. The Applicant’s evidence is that whilst his priority was to have his Crime Report re-opened, he understood that that could only be achieved through the formal complaint process by CAPO. Again, whilst the three options were offered to him again during the 31 May Interview, it was never explained to him that EDM was only for those who do not wish to make a formal complaint or utilize the statutory procedures. He also said that it was never his understanding that CAPO serves functions other than receiving official complaints against police officers. The Applicant said he did not make his choice during the 31 May Interview. He was told that he had three months to make his choice.

A 117. It is not disputed that “Request for Service” was never
B offered to the Applicant as one of the options to handle his CAPO
C Complaint.

D 118. Sergeant Ng recorded the 31 May Interview in her
E Investigation Report. The relevant entry contains no references to
F “request for services”, “Requests for Services” or that the Applicant had
G opted not to use Full Investigation, Informal Resolution or the EDM.
H Rather, in Sergeant Ng’s very own words, she summarized the 31 May
Interview as followed (emphasis in original):

I Taken statement with COM at CAPO RC Interview Room 2.
COM made following allegation against COMEE:-

J **[Allegation – Neglect of Duty]**

K COM alleged that COMEE failed to investigate his case
properly.

L 119. The references to “Allegation – Neglect of Duty” and the
M “failure to investigate a case properly” is directly taken from Chapter 2 of
N the Complaints Manual. Chapter 2 deals with categorization of
O complaints into RCs and NCs. Ch. 2-03 sets a list of “*allegations*
P *[which] can be made against a member of the police force in the form of*
Q *a complaint from a member of the public” (my emphasis). “Neglect of*
R *Duty” is one of the allegations on the list. Neglect of Duty is said to*
S *include a police officer being alleged of having failed to properly*
T *investigate a case. The other allegations on the list include failure to*
U *follow police procedures, use of offensive language, impoliteness,*
V *rudeness, misconduct in handling members of the public, wrongful use of*
police powers, behaving in manners which make a citizen feel threatened,
fabrication of evidence, assaulting citizens, or committing criminal
offences.

A 120. Chapter 2-03 then goes on to set out as among the list of
B allegations provided what could be considered as minor complaints.
C That list has already been canvassed above. The Chapter goes on to
D remind investigation officers that they should adhere to the list of
E allegations as outlined in the Complaints Manual and any “re-definition”
F of the allegations is to be noted in the investigation report and related
minutes.

G 121. Returning to the CAPO’s dealings with the Applicant, he
H visited CAPO and met with Sergeant Ng again on 28 June 2021. The
I Applicant said he confirmed verbally with Sergeant Ng that he would opt
J for the EDM and he believed his choice was noted by Sergeant Ng.
K This was disputed by Sergeant Ng. On the same day, the Applicant also
requested CAPO to send one or two police officers to accompany him to
take his second Covid-19 vaccination which was rejected by Sergeant Ng.

L 122. Sergeant Ng referred the Applicant’s CAPO Complaint to
M the WCH Station, culminating in two letters dated 30 September 2021
N and 19 October 2021 respectively, informing the Applicant that his Crime
O Report had been reviewed but there was insufficient evidence to arrest
anyone.

P *E.2 Escalation to Security Bureau and Police Headquarters in*
Q *August 2021*

R 123. The Applicant was obviously not happy about how CAPO
S handled his CAPO Complaint. By two separate letters both dated
T 10 August 2021, he complained about how CAPO handled his CAPO
U Complaint to the Security Bureau and the Police Headquarters,
V addressing the Commissioner directly.

124. By letter dated 20 August 2021, the Security Bureau said that complaints against the police are handled by CAPO and the IPCC under Hong Kong’s two tier system and it is bound by law not to interfere. At the end of the letter, it is noted:

With regard to the matter mentioned in your letter, we note that you have lodged a complaint to the CAPO. Your letter has been referred to the Police for reference and action deem appropriate.

125. The Police Headquarters replied by letter dated 24 August:

I refer to your letter to the Commissioner of Police dated 10th August 2021 in connection with a complaint case under the reference of CAPO HKI RN 21000451. Your inquiry has been forwarded to the Complaints Against Police Office (CAPO) for handling and follow-up.

Team H1b CAPO HKI is now handling your request. You will be notified of the case progress and outcome in due course.

[Then the Applicant was urged to contact Sergeant Ng].

126. It is noted that similar to CAPO’s correspondence with the Applicant, the Security Bureau and the Police Headquarters also referred to the Applicant’s CAPO Complaint as a “complaint”. Security Bureau indeed referred to the situation as that the Applicant “had lodged a complaint”.

E.3 Escalation to IPCC on 30 September 2021

127. The Applicant remained dissatisfied with how CAPO handled his CAPO Complaint. He further escalated the matter to the IPCC on 30 September 2021, which was followed by frequent communications with or in person visits to the IPCC in October and November 2021.

A 128. On 30 September 2021, the Applicant attended the IPCC
B office – as put in the IPCC’s affidavit evidence – to “express his
C dissatisfaction against CAPO office in relation to their handling of his
D case with a reference number CAPO HKI RN 21000451”. The IPCC
E staff member – a Mr Lam – who received the Applicant filled in an
F “Enquiry Log” to record this encounter. The log was originally in
Chinese and under the heading of “Message” it reads:

G 該先生主要表示投訴時 CAPO 曾答應過佢會通知負責佢本
H 個案既警員為佢重開 FILE 調查, 但至今仍無任何回復進展。

I That mister mainly said that when he made complaint to CAPO,
J CAPO promised him to inform the officer in charge of his case
K to re-open his file for investigation. But there has been no
L reply or progress yet.

J 129. On the same day, he also submitted to CAPO a handwritten
K letter. The letter reads:

L I am hereby writing to complain CAPO due to performance of
M case number: CAPO HKI RN 21000451. The long response
time of CAPO to re-open the original case leads extremely
inconvenience to complainant daily life.

N 130. Although a CAPO RN reference was provided, the IPCC
O found that the CAPO Complaint was not on any lists submitted to it for
P review by CAPO. Enquiry was then made with CAPO on
Q 4 October 2021. The incident was described in the IPCC’s evidence as
follows:

R As the Applicant’s visit to the IPCC’s office and the 30 Sep
S Letter related to a case lodged by the Applicant with CAPO, the
T IPCC Secretariat checked the RC list, NC list and the Monthly
U EDM Return, but found that his case was not on these lists.
V The IPCC Secretariat (Ms Aster Li, Manager (Corporate
Services) then on 4 Oct 2021 contacted CAPO via telephone
and understood from CAPO that the Applicant’s case was being

handled by CAPO but CAPO has no yet categorized his case as a RC or NC, or put under the EDM Procedures.

131. It is not stated in the affirmation if IPCC had asked about or was informed about the reason why the CAPO Complaint was not yet categorized nor put under the EDM. Nor did the IPCC state that it was informed that the CAPO Complaint was handled as a Request for Service.

132. Having enquired with CAPO, the IPCC replied to the Applicant by letter dated 8 October 2021. The IPCC explained that under the two-tier police complaint system in Hong Kong, CAPO is responsible for the handling, classification and investigation of complaints against the Police, and IPCC's role is to observe, monitor and review the handling and investigations of RCs conducted by CAPO. IPCO further stated:

With respect to your complaint cases (CAPO HKIRN 21000451) mentioned in your letter, we noted from CAPO that it was not categorized as Reportable Complaint. Should you have any enquiries in relation to your complaint cases, please contact CAPO direct for assistance [and two numbers were given].

133. On 15 October 2021, the Applicant again showed up at the IPCC's office and requested to meet with the IPCC officer the author of the 8 October 2021 letter to discuss his CAPO Complaint. The officer was unavailable to meet him.

134. By letter dated 19 October 2021, the Applicant wrote to IPCC to complain about CAPO's failure to categorize his CAPO Complaint as a RC and expressed his concerns about the two-tier mechanism. The Applicant enclosed various documents to this letter, including CAPO's 26 April 2021 letter acknowledging receipt of his

CAPO Compliant and his statement taken during the 31 May Interview.
Part of the letter itself read as follows:

I, as complainant of cases at CAPO & IPCC, am hereby writing to raise concern over CAPO & IPCC with reference to CAPO complaint case [ref number] and IPCC case [ref number] respectively.

1. CAPO independence and impartiality

CAPO did not classify the case (CAPO HKI RN 21000451) as a Reportable Complaint. The impartiality of this classification remains questionable – Hong Kong Police statutory duty to investigate “Access to computer with criminal or dishonest intent” & “theft & burglary”; as well as Hong Kong Police behaves unprofessionally to handle criminal case (with grounds)

CAPO sacrificed its independent responsibility to officially handle, manage the CAPO case (CAPO HKI RN 21000451). Instead Wan Chai Police Station CID took a role indirectly to notice me the cases were closed. (CAPO HKI RN 21000451 & WCHRN 21007273) (written letter dated on 30 SEP 2021). This approach casts serious concern on the work relationship between CAPO and Wan Chai CID.

Without consent on my written request – one request: reopen the case (WCHRN 21007273) at another Police Station (not at Wan Chai) (written letter sent to CAPO on 21 MAY 2021) fulfillment status, it was absolutely inappropriate to send the case (WCHRN 21007273) back to Wan Chai Police Station CID for review due to potential conflict of interest. ...

In sum, CAPO demonstrated poor performance in the context of quality, attitude and integrity that highly impacted the independence & impartiality to uphold its statutory responsibility.

2. The two-tier police complaint system issue

I would like to express deep worry in regard to existence of practical governance mechanism in handling a case of duty breach at CAPO under the two-tier police complaint system. The fact is I strongly cast doubt on CAPO work ethics according to the mentioned situations, however, IPCC keeps solely rely on CAPO work due to statutory system. The

written reply from IPCC Secretary-General (letter dated on 8 OCT 2021) definitely created anxiety to me. What if CAPO truly misbehaves? Do I live in a society where police behaviours are practically unable to be overseen?

135. There followed: further correspondence between the Applicant and WCH Station, where the Applicant was informed that his Crime Report revealed insufficient evidence to arrest anyone; further correspondence between CAPO and the Applicant where the Applicant was informed that his CAPO Complaint was referred to WCH Station for consideration; and further correspondence between IPCC and the Applicant where the Applicant was informed that since his complaint was not categorized as a RC, he should contact CAPO directly.

136. In a letter dated 2 November 2021 issued by the Applicant to the IPCC, he again complained about how CAPO handled his CAPO Complaint and questioned the categorization of his complaint – not as a RC. A lot of documents relating to the Applicant’s CAPO Complaint, including the statement for the 31 May Interview, was enclosed. The letter raised the following specific questions:

I would like to seek double confirmation of my CAPO case (Ref.: CAPO HKI RN 21000451) latest status as well is to question the case categorisation mechanism at CAPO.

- Is the mentioned CAPO case still under investigation?
- Which circumstances lead CAPO case classified as Reportable Complaint from IPCC standpoint?

137. In a letter dated 12 November 2021 issued by the IPCC to the Applicant, it is stated:

According to section 11 of the IPCC Ordinance, “Reportable Complaints” refer to complaints lodged by members of the

A public that are not vexatious or frivolous and are made in good
B faith, and are pertinent to the conduct of police officers while
C on duty or police officers who identify themselves as such
while off duty. The complaint should be made by or on behalf
of a person directly affected by police misconduct.

D [Then the two-tier mechanism is explained]. If you have any
E queries in relation to the progress of your case (Ref CAPO
HKIRN 21000451) and the classification, please contact
CAPO directly for assistance.

F If you wish to relay your provided information to CAPO for
their appropriate action via IPCC, your written consent within
G 10 working days is much appreciated.

H 138. On 15 November 2021, the Applicant attended the private
I office of the IPCC Chairman (rather than the official address of the IPCC)
J and requested to meet her in person. According to the IPCC, the
Chairman did not meet him because she was otherwise engaged.

K 139. The evidence of IPCC and Sergeant Ng is that, on the same
L day, the IPCC Secretariat informed CAPO that the Applicant had visited
M the IPCC Chairman's private office to express grievances about the
handling of his CAPO Complaint by CAPO.

N 140. Sergeant Ng said that was what had alerted her to check with
O the Applicant as to his current wishes or intention in handling the CAPO
P Complaint.

Q 141. On 16 November 2021, Sergeant Ng, together with a Senior
R Inspector Tse ("SIP Tse"), located the Applicant on the street near his
S residential address ("16 Nov Incident"). Ng said it was because she had
T tried to reach the Applicant by phone twice but in vain. CAPO said they
U invited the Applicant for an interview which the Applicant declined, but
V he did not object to a "quick chat". The Applicant said he was unhappy

A that his Crime Report was not re-opened despite his having lodged a
B complaint with CAPO. SIP Tse set out this incident in some detail in his
C Investigation Report. He recorded at one point that he assured the
D Applicant that “*CAPO investigation was still ongoing*” at that stage and
E asked him what his request was other than re-opening of his crime case.

F 142. On 17 November 2021, the Applicant again attended at the
G private office of the Chairman. The IPCC then arranged for three IPCC
H Vetting Officers (Lam, Law and Lui) to attend the Chairman’s office to
I meet the applicant (“17 Nov Meeting”). The parties do not fully agree
J on what transpired in the meeting. IPCC’s evidence is that the Vetting
K Officers told the Applicant that he had to confirm with CAPO that he
L wanted to lodge a formal complaint for CAPO to proceed with the
M investigation and that he had to give a statement to start off the complaint
N investigation. The Applicant’s evidence was that the Vetting Officers
O did not explain to him why his complaint was not categorized as a RC
P and why he had to take another statement when he had already done so on
Q 31 May 2021. In any event, the possibility of attending a CAPO
R interview in the presence of an IPCC Observer was raised and the
S Applicant agreed, resulting in the 24 Nov Interview as defined below.

T 143. On the same day as the 17 Nov Meeting, the IPCC informed
U CAPO that the Applicant was not satisfied with CAPO’s handling of his
V complaint and he wished to have a video-recorded interview with CAPO
in the presence of an IPCC Observer. The IPCC also sent a memo to
CAPO (“17 Nov Memo”), enclosing the Applicant’s three letters to them
dated 30 September 2021, 19 October 2021 and 2 November 2021.

A 144. On 18 November 2021, the Applicant visited the IPCC office
B again to submit a letter to recap what transpired in the 17 Nov Meeting,
C including confirming the 24 Nov Interview and for IPCC to arrange an
D observer to attend that interview. The IPCC faxed the same letter to
E CAPO on the same day. Sergeant Ng said it was the fact the Applicant
F opted to have a CAPO interview with an IPCC observer which led her to
G conclude that his “updated intention” was to go through the complaint
H procedures applicable to a RC, because the Observer Scheme is only
I applicable to RCs.

H 145. On the same day – 18 November 2021 – CAPO treated the
I Applicant’s CAPO Complaint as a complaint under the IPCCCO and
J categorized it a RC.

K 146. There were further dealings between the Applicant and the
L IPCC, by way of visit or letters, on 22 and 23 November 2022. In the
M letter dated 23 November 2022, the Applicant protested against the
N IPCC’s relaying of information about his CAPO Complaint to CAPO.
O The Applicant specifically asked why his non-closed CAPO case was
P classified as not a Reportable Complaint from the IPCC standpoint, when
the IPCC replies only stated the IPCCCO and guideline official statements
without addressing his concerns or answering his questions directly.

Q 147. On 24 November 2021, the Applicant attended a video
R recorded interview with CAPO in the presence of an IPCC observer
S (“24 Nov Interview”).

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A 148. By letter dated 26 November 2021 (“26 Nov Letter”), the
B IPCC wrote to the Applicant apparently to put on record its position that
C the relaying of information to CAPO was authorized by CAPO:

D After issuing the letter to you dated 12 November 2021, we
E noted from the Complaints Against Police Office (CAPO) that
F the captioned case has been re-categorized as a Reportable
G Complaint and CAPO has initiated an investigation into the
H complaint. In addition, in your meeting with IPCC staff on
I 17 November 2021, you agreed that your complaints be
J followed up by CAPO for investigation. In response to your
K request, we have asked CAPO for an urgent arrangement of
L interview, your information was therefore relayed to them for
M the purpose of contributing to a full investigation into your case.
N In this connection, an interview was conducted between you
O and CAPO on 24 November 2021 in the presence of an IPCC
P Observer.

J 149. The Applicant said this letter does not accurately reflect what
K happened during the 24 Nov Interview. He never agreed for the IPCC to
L follow up with CAPO about his complaint against CAPO and he never
M consented for the IPCC to relay information provided by him to CAPO.

M ***F. Grounds of Review***

N 150. Ms Chow, on behalf of the Applicant, formulated seven
O grounds of reviews:

- P (1) Ground 1: The Commissioner erred in law and/or acted
Q irrationally in not categorizing the CAPO Complaint as a RC
R on 26 April 2021.
- S (2) Ground 2: The EDM devised by the Commissioner and the
T IPCC is illegal / *ultra vires* being contrary to the two-tier
U mechanism as provided for in the IPCCO.
- V (3) Ground 3: Having received the CAPO Complaint, the failure
by the CAPO to accurately explain to the Applicant the

investigation procedures, handle and investigate the CAPO Complaint as a RC and keep the Applicant informed was illegal and contrary to the rules of natural justice.

(4) Ground 4: Failure by CAPO and the IPCC to give reasons for the non-categorization of the CAPO Complaint as a RC was contrary to the rules of natural justice and/or irrational.

(5) Ground 5: The IPCC erred in law and failed to discharge its statutory duties under sections 8(1) and 16 of the IPCCO to advise the Commissioner that the CAPO Complaint ought to be categorized and investigated as a RC.

(6) Ground 6: As a result of its failure to identify that the CAPO Complaint had not been categorized as a RC and to advise the Commissioner that he should reconsider categorization of the CAPO Complaint, the IPCC failed to observe, monitor and review the handling and investigation of the CAPO Complaint until 18 November 2021 in breach of its statutory duty under section 8(1)(a) of the IPCCO.

(7) Ground 7: The relaying of information (provided by the Applicant to the IPCC in respect of the CAPO Complaint) by the IPCC to CAPO was unlawful being in breach of section 40 of IPCCO and section 4 of PDPO.

G The Application to Amend the Form 86

G.1 Background to amendments

151. Before turning to the merits of the grounds of review, I should explain my reasoning for allowing the Applicant's application to amend his Form 86.

152. The Applicant originally acted in person and his Form 86 filed on 9 February 2022 was homemade. I subsequently had the benefit of an Initial Response filed on behalf of the Commissioner, and a Reply to the Initial Response filed by the Applicant, who was then still acting in person. By my decision dated 23 May 2022 [2022] HKCFI 1496 (“Leave Decision”), I gave leave to apply for judicial review on the papers, by reference to three of the ‘decisions’ the Applicant had sought to challenge.

153. After the granting of leave, the Applicant successfully obtained legal aid and was represented Ms Chow. Ms Chow sought to amend the Applicant’s Form 86, but some proposed amendments were opposed by the Police and the IPCC. The Applicant’s amendment summons was heard by me on 29 September 2022. The parties were represented by the same set of advocates as in the substantive hearing. At the end of the hearing, I allowed the Applicant’s amendment summons.

154. The opposition to the amendment centred around Ground 2 (“the EDM Ground”) – jointly opposed by both the Commissioner and the IPCC – and Ground 3 (“the Failure to Explain Procedures Ground”) – which only concerns and was opposed by the Commissioner.

155. In the Leave Decision, I granted leave for Decisions 8, 11 and 14 (amongst the 17 decisions identified by the Applicant in his Form 86 at the leave stage). The relevant decisions for Grounds 2 and 3 are Decisions 8 and 14. The following was my summary of Decisions 8 and 11 in the Leave Decision:

(1) Decision 8: The decision not to categorize his CAPO Complaint as a RC until November 2021. His complaint should have been at all times categorized as such under section 11 of the IPCCO and been supervised throughout the entire complaint process.

(2) Decision 14: CAPO and the IPCC did not explain the re-categorization of his CAPO Complaint to RC, and failing to give reasons.

156. I can deal with the opposition to Ground 2 and Ground 3 in turn.

G.2 Ground 2 – the EDM Ground

157. The arguments advanced by Ms Cheung and Mr Yu in opposing the inclusion of Ground 2 were broadly similar. There were two strands to their argument. The first was that the EDM Ground is not within the leave granted because it is unrelated to Decisions 8 or 14. Thus, the inclusion of the EDM Ground is not an effort to identify in more precise and legal terms the points for which I have already granted leave, but an attempt to raise a new challenge.

158. References were made to the well-known warnings against too readily allowing an applicant to raise new challenges by amending the Form 86 after leave was granted, as issued by Litton PJ in *Lau Kong Yung v Director of Immigration* [1999] 3 HKLRD 778 and Stock J in *Hong Kong Aircrew Officer Association v Director of Civil Aviation* (HCAL 51/1999, 28 October 1999).

A 159. Flowing from the first strand, their second strand is that the
B Applicant should not be allowed to raise the new EDM challenge because
C it is hypothetical and academic. On the facts, the EDM was never
D applied to the Applicant. There was no factual basis giving rise to a
E challenge to the EDM. The legality of the EDM was never a live issue
F between the parties and it had no bearing on the Applicant's central theme
G of the case. They reminded this Court that the courts have no
H jurisdiction to decide on points of law or principles when there are no
I facts giving rise to the points the courts try to decide, citing *Chit Fai*
J *Motors v Commissioner for Transport* [2004] 1 HKC 465.

I 160. As I indicated at the oral hearing, the arguments advanced by
J Ms Cheung and Mr Yu impressed me as attempts to overturn the leave,
K which I had already granted rather than as efforts of showing why a
L systemic challenge against the EDM was not within the leave.

L 161. The Leave Decision does cover the EDM. At §36 of the
M Leave Decision, I said:

N Decisions 8 and 14 together seem to me to raise the question
O about the proper categorization of the CAPO Complaint –
P including perhaps as to the legality of the EDM and its
Q relationship with the two-tier mechanism provided for in the
R IPCCO.

Q 162. At the leave stage, the Commissioner's account was that the
R three mechanisms – Full Investigation, Informal Resolution and EDM –
S were offered to the Applicant but he did not want to use of any of the
T three mechanisms to complain against the Police. The Applicant's
U evidence at the leave stage – albeit provided in his reply to the initial
V response – was that he opted for the EDM, which was noted down by
CAPO. My inference at that stage was that, before 18 November 2021,

A since the CAPO Complaint was neither categorized as a RC nor
B processed under the statutory regime then it must have been otherwise
C characterized and processed through some other channels outside the
D statutory regime. The only other channel known to the Court at that
E stage was the EDM, thus my comments on the legality of the EDM and
its relationship with the statutory mechanism under the IPCCO.

F 163. Ms Cheung said my comment on the legality of the EDM in
G §36 was qualified by the “perhaps” and now with the benefit of the
H further evidence filed by the Commissioner post leave, we know that
I before 18 November 2021 the CAPO Complaint was handled as a
J Request for Service rather than through the EDM. Both Ms Cheung and
K Mr Yu said that the central theme canvassed in Decision 8 and
L Decision 14 is the failure to categorize the Applicant’s CAPO Complaint
as a RC until 18 November 2021, and that failure had nothing to do with
the existence of the EDM.

M 164. The arguments were that the Leave Decision, which clearly
N refers to the legality of the EDM, was premised on the wrong factual
O assumption that EDM was applied to the Applicant. Had the Court
P possessed the correct facts from the start, leave should have never been
granted to cover the EDM.

Q 165. Mr Yu put it slightly differently. He said I had confined the
R leave granted to the three decisions, namely Decisions 8, 11, and 14.
S Whilst I did not confine the leave granted to any particular grounds,
T obviously the Leave Decision should only cover grounds which are
U reasonably arguable to support those three decisions rather than allowing
V whatever grounds which the Applicant might put forward. Again, this

A reflected Mr Yu's position being that the legality of the EDM is not
B reasonably arguable and thus leave should not have been granted to cover
C it from the start.

D 166. As said, I do not agree that the Leave Decision does not
E cover the legality of EDM. Nor do I agree that the Leave Decision
F should not have covered the EDM on the basis that (a) there are no facts
G before the Court capable of putting the EDM at issue or that (b) the
H legality of the EDM was not canvassed in the central theme of the
Applicant's original Form 86.

I 167. Ms Cheung and Mr Yu SC submitted – correctly in my view
J – that the central theme canvassed by Decision 8 and Decision 14 is
K CAPO's failure to categorize the Applicant's CAPO Complaint as a RC
L from April 2021 to 18 November 2021. Ms Chow would not quarrel
M with that. She herself has framed that as her Ground 1. But from there
N Mr Yu said that there is no causal connection between the alleged
O incorrect categorization and the existence of the EDM. The EDM was
P not the reason for the delay in categorizing the complaint as a RC. The
CAPO Complaint was not processed through the EDM before its
Q categorization as a RC on 18 November 2021. Mr Yu's submission is, in
R other words, that Ground 2 – the EDM ground – is not connected to
S Ground 1 or Decisions 8 and 14.

R 168. I disagree. It is convenient to reproduce the first paragraph
S of Decision 8 as summarized by me in the Leave Decision:

T The decision not to categorize his CAPO Complaint as a
U Reportable Complaint until November 2021. The applicant
V said his complaint should have been at all times categorized as
such under section 11 of the Independent Police Complaints

A Council Ordinance Cap 604 (“IPCCO”), and it should have
B been supervised throughout the entire complaint process.

C 169. What is canvassed in the second sentence – that the CAPO
D Complaint must, at all times, be categorized and supervised by the IPCC
E as a RC under the IPCC – is described by Ms Chow as the central theme
F of the Applicant’s case. Any attempt to process the CAPO Complaint
G outside the statutory regime, either through the EDM or any other
H mechanisms, is contrary to the IPCCO and is thus unlawful.

I 170. Indeed, at one point both Ms Cheung (in the oral hearing)
J and Mr Yu (in the written submissions) also described the Applicant’s
K central theme as that the CAPO Complaint had not been properly handled.
L The Applicant’s case is that proper handling entails processing the CAPO
M Complaint through, and only through, the statutory regime. The logical
N corollary is that any attempt to process it outside the statutory regime,
O through EDM or otherwise, is unlawful. It is readily apparent that in the
P Applicant’s case, Ground 1 and Ground 2 are linked. Ms Chow’s
Q submission if accepted for Ground 1 would equally advance her Ground 2.
R For this reason alone, I agreed with Ms Chow that it is appropriate for the
S Court to deal with both Ground 1 and Ground 2 together in these
T proceedings.

U 171. I also disagreed that the necessary facts to put the legality of
V the EDM at issue is that the EDM has been applied to the Applicant – as
Ms Cheung and Mr Yu suggested. In my view, it is sufficient that EDM
was offered to the Applicant as one of the possible mechanisms to process
the CAPO Complaint. The EDM Ground is neither hypothetical nor
academic.

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G.3 *Ground 3 – Failure to Explain Procedures*

172. This can be dealt with swiftly. Opposition to including Ground 3 was only raised by the Commissioner.

173. In brief, Ms Cheung said:

- (1) Ground 3 is outside the Decisions 8, 11 or 14 for which leave had been granted.
- (2) In the event that the Applicant now seeks leave on this point, leave should not be granted. Ground 3 is not reasonably arguable because CAPO had duly explained to the Applicant the three available options to handle his complaint and the relevant procedures.
- (3) This ground only concerns the intermediate or procedural step which does not give rise to any substantive consequence and is not a decision of a decisive nature. Such decision is not a proper subject of judicial review, citing *Financial Secretary v Wong* (2003) 6 HKCFAR 476.

174. Ms Chow said Ground 3 naturally follows from Ground 1 and Ground 2, both of which concern the CAPO's failure to process his CAPO Complaint in accordance with the statutory mechanism. The issue arises as to whether there was a duty on CAPO to explain accurately to the Applicant how his complaint would be handled and keep him informed throughout.

175. I agreed with Ms Chow. Whilst not expressly identified in the three decisions for which leave has been granted, the materials filed by the Applicant before leave, including his correspondence with the IPPCO, clearly identify his confusion as to how his complaint was treated.

A He questioned why his CAPO Complaint was not treated as a RC under
B the IPCCO. As Ms Chow pointed out, the Applicant was never told that
C opting for the EDM would lead to his complaint not being treated as a
D complaint under the IPCCO and thus not triggering the statutory
E mechanism and the IPCC's monitoring in the manner as required for RCs.
F Ground 3 is within the central theme, is reasonably arguable and was not
G raised out of time.

G 176. I also agree with Ms Chow that Ground 3 does not concern
H an intermediate step. Implicit in this Ground is both a systemic and a
I factual challenge: whether there exists some duty on the part of
J Commissioner (as delegated to CAPO) to explain the proper procedures;
K what the scope of such duty is, and whether such duty has been breached
L in the instant case. At least the systemic aspect is clearly not an
M intermediate step which would lead to a final decision at some point.

L 177. The fact specific aspect may meet heads-on with the courts'
M general reluctance to entertain intermediate step challenges. But I agree
N with Ms Chow that even this aspect is not an intermediate step which
O would be finalized at some point in the future and is thus premature to be
P raised at this stage. She said the challenge does not concern the
Q substantive investigation result of the Applicant's CAPO Complaint
R which would be delivered by CAPO at some point in the future. More
S importantly, in my view, is the fact that the procedural challenge is
T collateral to CAPO's failure to categorize the CAPO Complaint as a RC
U from April to 18 November 2021. It is neither Ms Cheung nor Mr Yu's
V position that the eventual categorization as a RC on 18 November 2021
could serve as a complete answer to this judicial review. The proper

subject to be scrutinized in this application is CAPO’s handling of the CAPO Complaint during that 6-month period.

H. Ground 1: Failure to Categorize as RC

H.1 Commissioner’s interpretation of “complaint” under the IPCCO

178. Ground 1 turns on the proper construction of the word “complaint” under section 11 of the IPCCO.

179. It can be seen from the examination of the IPCCO above that the statutory regime starts with the categorization of a complaint into either a RC or a NC. The RC categorization will then trigger a range of monitoring powers given to the IPCC over how the Police handle those complaints.

180. If the CAPO Complaint was a complaint within the meaning of the IPCCO even before 18 November 2021, CAPO would have been obliged by section 11 to categorize it as such, and CAPO’s failure to categorize it as such in that 6 months’ period would have been in breach of the IPCCO.

181. I have traversed CIP Ma’s evidence as to what will be treated as a complaint within the meaning of the IPCCO, and be handled as such. As I have summarized above, CAPO’s position is that if the complainant wishes to handle his grievance via Full Investigation or Informal Resolution, it will then become a “complaint” within the meaning of the IPCCO and be handled by either of those two options.

A 182. I have already referred to Ms Cheung’s construction or
B interpretation of “complaint” offered in her written submissions, namely
C that adopting the purposive and contextual approach, “complaint” in
D section 11 of the IPCCO means “a conveyance of intention to lodge a
E complaint that will go through the statutory complaints procedure”.
F This is neither a statutory definition, nor a dictionary definition of
G “complaint”. Ms Cheung said it is a technical meaning which could be
gathered by adopting a purposive and contextual approach towards the
IPCCO.

H 183. It is not entirely clear what are the procedures the
I Commissioner says a complainant has to intend to go through, in order to
J make his ‘grievance’ a “complaint”. By CIP Ma’s evidence, the
K Commissioner pin-pointed the relevant procedures as Full Investigation
L or Informal Resolution, then defined in the evidence as “Complaints
M Procedures”. But those two things seem to me to be simply the result of
N a complaint being categorized as a RC, as that categorisation would then
O lead to either a Full Investigation or Informal Resolution. It is either
P circular or meaningless to say that a person makes a “complaint” when he
intends that it is dealt with under the procedures which would follow it
being categorized as a RC – not least when the person making the
complaint does not do the categorisation (see further, below).

Q 184. Ms Cheung qualified “complaints procedures” with the word
R “statutory”. She did not expressly define what are the statutory
S complaints procedures to which she was referring. But her submissions
T were obviously made on the premise that the “statutory complaints
U procedures” would include Full Investigation and Informal Resolution,
V

A but also extend to the procedures connected with the IPCC's monitoring
B functions at the second tier.

C 185. It seems to me that Ms Cheung's construction of the term
D "complaint" is fraught with difficulties.

E 186. The starting point must be the wider context that the
F legislature has intended a two-tier mechanism, which seeks to ensure
G appropriate supervision and oversight second tier of the management of
H complaints by the first tier. By tying the statutory mechanism to the
I complainant's "intention" – ignoring for the moment how that intention is
J to be assessed, and by whom – Ms Cheung's interpretation in effect
K allows a complaint to be taken out of the statutory mechanism which
L would otherwise be applicable.

M 187. Indeed, CAPO suggests that the statutory mechanisms will
N apply only if the complainant "intends" that they shall apply – though it
O might be thought that the word "intends" could be replaced by "wishes",
P "chooses", "opts for" or any other words denoting the complainant's
Q willingness. The suggestion is that a complaint is only a complaint
R because the complainant wants it to be a complaint, and the statutory
S mechanism or the IPCC's monitoring functions are only triggered
T because the complainant wants them to be triggered.

U 188. This is, at least in wider context, unlikely. The purpose of
V determining whether a grievance handled by CAPO is a "complaint" in
the IPCCCO (and thus a "RC", in the present case) is to determine if the
statutory mechanism mandated by the statute will apply, and the IPCC's
monitoring powers will be triggered.

A 189. The IPCCO mandates a specific statutory mechanism by
B which complaints must go through, especially RCs. The law is not
C optional. The law is coercive and must be obeyed. Yet, CAPO's
D approach has the effect of making the IPCCO optional. Despite a
E grievance satisfying all the conditions under section 11 which would
F otherwise be categorized as a RC, the RC categorization and the ensuing
G statutory consequence can simply be avoided if it is thought that the
H complainant does not really have the intention that his complaint should
I be categorised and dealt with accordingly. This approach hollows out
J the compulsory nature of the IPCCO, and the intended supervision at the
K second tier.

L 190. There are frequent references in the Commissioner's
M evidence and Ms Cheung's submissions that the Commissioner cannot
N "compel" a person to make a complaint if he does not intend to make a
O complaint. Emphasis is put on respecting the complainant's "intention"
P or "wish". But, first, that gives rise to potential problems as to who
Q identifies the relevant "intention", because it almost necessarily must be
R the CAPO officer who records or manages the complaint. That would
S leave identifying whether there is the relevant "intention" or not to the
T subjective interpretation of that officer, which may depend upon the
U myriad ways in which an individual complainant may express his
V complaint.

191. Further, the relevant intention must be that of the legislature
when it created the statutory regime. It is not paternalistic to accept –
and to require – that a complainant who makes a complaint to CAPO
thereby subjects himself and his complaint to the statutory regime. If a
grievance is a "complaint" within the meaning intended by the legislature,

A then it is a complaint and the statutory consequence applicable to a
B complaint ensues. Once that regime is triggered by the making of a
C complaint, the subjective intention of the complainant, the Commissioner
D or the IPCC are all irrelevant. Their intention cannot change the
E meaning of “complaint” as intended by the legislature. They are all
subjects of the law, rather than its draughtsman.

F 192. Ms Cheung sought to read the intention of the complainant
G into the meaning of “complaint” by referring to the phrase “make a
H complaint” – with an emphasis on the verb “make” – as used in the
I IPCCO. “Make a complaint” or “making a complaint” are used in
J section 15 and section 40. Ms Cheung said “make a complaint” denotes
K some “active intention” on the part of the person making the complaint.
L But, to my mind, “make” is only one of the usual verbs used in
conjunction with the noun complaint, similar to “lodging” or “filing” a
M complaint. There is no substantive difference – not least as regards
N intention – between saying “he complained” and “he made a complaint”.

O 193. Ms Cheung also sought to contrast “making a complaint”
P with “receiving a complaint”. But, I think the two phrases are simply
Q two sides of the same action rather than two contrasting actions. In any
R event, both the making side and the receiving side of the action is referred
S to in the IPCCO. Indeed, section 11 – the very section under
T interpretation – refers to “a complaint received by the Commissioner”
U rather than “a person makes a complaint”. So does section 14. I
V cannot see how using “make” or “receive” as the verb can change the
meaning or nature of “complaint”.

A 194. If what Ms Cheung meant is that the action of making a
B complaint has to be initiated from the complainant rather than being
C compelled by the Commissioner, that must be right. But I cannot see
D how this can advance her argument. In the instant case, the Applicant
E went to the Report Centre of CAPO on 26 April 2021 to fill in Pol. 964,
F i.e. the “First Information of Complaints Against the Police Report”. It
G has never been alleged that such actions were done by the Applicant other
H than of his own volition. He was not compelled by the Commissioner or
I anyone in taking those actions. Nor was he compelled to take the
J various actions from April to November 2021 in escalating his CAPO
K Complaint to various entities. The Applicant has chosen to make a
L complaint, and he has gone to the clearly appropriately named complaints
M office in order to do so. He would thus be subject to the whatever
N requirements the legislature has seen fit to lay once a complaint has been
O made.

L 195. Ms Cheung also argued that reading the complainant’s
M “intention” into “complaint” is necessary, or otherwise those seeking to
N register their grievances against the Police would be forced to go through
O complex statutory complaints procedures under the IPCCCO. Ms Cheung
P said that could not be intended by the legislature.

P 196. That view is based on a false premise.

Q 197. First, as submitted by Ms Chow, the statutory regime
R governed by the IPCCCO does not compel a complainant to pursue a
S complaint until the very end once a complaint has been made. The
T legislature has envisaged a wide range of possible outcomes or end-points
U after a complaint has been made and categorized as a RC. This is
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apparent from the list of classifications as the result of RC investigations. Amongst the possible results are “withdrawn”, “not pursuable”.

198. Indeed, both the Commissioner and the IPCC are well alive to these possibilities. Chapter 4-03 of the Complaints Manual is headed “Withdrawn and Not Pursuable Complaints”. In the manual, care is taken to ensure that case officers would not subsequently face allegations that the complainant was persuaded or pressurized to withdraw his or her RC. Also covered in that chapter are the actions the case officer has to undertake when a complainant fails to pursue the RC and refuses to offer assistance. Plainly, the statutory mechanism envisages the complainant can ‘exit’ the investigation process anytime he wishes.

199. In any event, the statutory mechanism imposed by the IPCCO does not mandate any complex investigation procedures for the handling of a complaint. The Commissioner’s evidence covers in some detail the various investigation procedures that may be involved in a Full Investigation (or even Informal Resolution). But neither the Full Investigation nor that of Informal Resolution are provided for or mandated by the IPCCO. As already identified above, the IPCCO focuses on the IPCC’s monitoring power at the second tier, rather than CAPO’s investigation or handling of complaints at the first tier. The IPCCO does not mandate any particular (supposedly time-consuming) investigative steps relating to written statements, medical reports, ID parade, video tapes, exhibits, record check, and so on. These are investigation procedures which the Commissioner had seen fit to implement in consultation with the IPCC pursuant to the discretion mainly given to the Commissioner under the two-tier system.

A 200. If it is considered that the procedures of Full Investigation or
B of Informal Resolution would deter members of the public from filing
C complaints against the Police, obviously it is up to the Police and the
D IPCC to amend the investigation framework, as long as the resulting
E investigation framework would not contradict the overall statutory
F mechanism expressly provided in the IPCCO. In any event, even under
G the current investigation framework, it is not the case that every RC must
H go through all the possible investigative steps listed in the Complaints
Manual. Obviously, the investigative steps appropriate for every RC
will turn on the individual circumstances of each complaint.

I 201. There is a further difficulty with the Commission's offered
J interpretation of what constitutes a "complaint". As stated, the IPCCO
K mainly operates at the second tier. What is triggered by a RC
L categorization is a range of monitoring powers exercisable by the IPCC
M over the Police's handling of the complaint. It is unlikely that the
N legislature intended to tie the IPCC's monitoring functions at the second
O tier to the complainant's own choice of or intention as to the
P investigation procedures to be gone through at the first tier, when (1) the
Q investigation at the first tier is not the focus of IPCCO; (2) the IPCCO
R does not mandate any particular investigation procedures at the first tier;
S (3) the investigation procedures are left to be devised by the
T Commissioner and the IPCC; (4) the investigation procedures adopted do
U not have legal force and are subject to be amended by the Commissioner
V and the IPCC from time to time; (5) mandating a complainant to follow
the statutory mechanism, as properly understood, does not necessarily
result in compelling him to go through till the very end all the (only
potentially) complex and time-consuming investigative steps devised by
CAPO in consultation of the IPCC at first tier; and (6) it is unreasonable

A to expect a lay complainant to understand the intricacies resulting from
B CAPO's actual operation and, thus, it is impossible for the complainant to
C make an informed choice unless CAPO would explain to him the ensuing
D consequence on the IPCC's monitoring depending on his choice.

E 202. Nor could I see how the reference to the purposive and
F contextual approach could assist Ms Cheung. Rather, the purpose and
G context of the IPCCO would suggest that the legislature intends the word
H "complaint" to bear its ordinary meaning, and does not intend to narrow
I the scope of what may constitute a complaint by ascribing to it a technical
J meaning which has not expressly spelt out.

K 203. The focus of the IPCCO is on empowering the IPCC to
L monitor complaints, especially RCs, handled or investigated by the Police.
M Care has been taken to ensure all complaints, except those falling within
N section 10, will be categorized as either a RC or an NC and thus be
O submitted for the IPCC's review on the RC lists or the NC lists. As
P explained above, the categorization system also seems to favour
Q categorization as RCs, the subject of the bulk of the IPCC's monitoring
R powers.

S 204. Casting the net wide for "complaints" or RCs protects
T complainants, rather than burdens them – as Ms Cheung sought to portray.
U This is because a wide net first tier helps to engage the IPCC's
V monitoring functions at the second tier over more cases handled by
CAPO. This would not create extra burden for the complainant because
he is not the one being subject to the IPCC's monitoring power. Rather,
the complainant would benefit from having the handling of his case
overseen by the IPCC.

A 205. Yet, CAPO's offered interpretation has the potential effect of
B greatly reducing what is caught in the net originally cast by the legislature.
C CAPO's interpretation suggests that there is another filter other than
D section 10 which would prevent what would otherwise be reviewable by
E the IPCC from being reviewed by the IPCC. That consequence is
F significant, and given that fact, it would be expected that if that had been
G the intention of the legislature, it would have expressly and clearly set it
H out in the statute. Yet, Ms Cheung said such a significant consequence
I could be achieved by ascribing to the word "complaint" a meaning which
J she admits to be technical and which the legislature did not think it
K necessary to spell it out. This is not just highly unlikely, and I agree
L with Ms Chow that Ms Cheung's reading of "complaint" would require
M legislative amendment rather than be found by a process of legislative
N interpretation.

L 206. I reject Ms Cheung's reading of "complaint" in the IPCCO.
M The ordinary meaning of "complaint" applies in section 11 and in the
N IPCCO generally.

O *H.2 Whether the CAPO Complaint should have been categorized as a
P RC from April to 18 November 2021*

P 207. Given I have decided that the relevant intention of the
Q complainant, put forward by the Commissioner, is not a necessary
R element to make a complaint a "complaint", that should be the end of the
S matter. CAPO did later categorize the CAPO Complaint as RC on
T 18 November 2021 thus must have started treating it as a "complaint" on
U that date. As said, CAPO does not dispute that all the conditions under
V section 11 were in fact satisfied at all times, and the relevant "intention"
was the only element said to missing until 18 November 2021. If the

A relevant intention is not required, it logically follows that the CAPO
B Complaint has always been a “complaint” and also a “RC” under
C section 11.

D 208. But even if I accepted the interpretation offered by
E Ms Cheung, it does not appear that CAPO’s actions from April 2021 to
F 18 November 2021 could be consistently explained by reference to that
G interpretation. Indeed, CAPO has failed to put forward any coherent
H theory to explain its treatment of the CAPO Complaint during that
6 months’ period.

I 209. Ms Cheung said she would divide that 6 months into
J 4 periods, apparently by reference to the Applicant’s demonstrated
K “intention” during that period: (1) from 26 April 2021 to 20 May 2021;
L (2) from 20 May 2021 to October 2021; (3) from October 2021 to
15 November 2021; and (4) from 15 November 2021 onwards.

M *H.2.1 1st period: 26 April 2021 to 20 May 2021*

N 210. Ms Cheung said in this period CAPO had just received an
O initial report and fully intended to pursue the CAPO Complaint as a
P complaint under the IPCCO. CAPO was simply trying to confirm if the
Q Applicant indeed intended to make a complaint. She said the
information provided by the Applicant in the First Information of
Complaints Against the Police Report, or Pol. 964, was very brief.

R 211. But being brief or detailed is beside the point. The question
S is whether the Pol.964 contained sufficient information for CAPO to tell
T that what was contained in that form was a complaint. The Pol. 964
U identified that the Applicant was dissatisfied with DPC Wong’s handling
V

A of his Crime Report because he closed the Crime Report without
B investigation and without notifying the Applicant.

C 212. By reference to the terms of section 11 of the IPCCO:
D

E (1) The Applicant's complaint did not fall within section 10, and
F so was not excluded from categorisation under section 11.

G (2) The Applicant's complaint was not made belatedly, and so
H was not subject to section 12.

I (3) The Applicant's complaint was not a request for review of a
J previous classification, and so was not subject to section 13.

K (4) The Applicant's complaint related to the conduct of a
L member of the police force while on duty.

M (5) The Applicant's complaint was not vexatious or frivolous,
N and was made in good faith.

O (6) The Applicant had properly identified himself and provided
P the Commissioner with a means of contacting him.

Q (7) Hence, the Commissioner had all the information which both
R enabled and required categorization.

S (8) Further, on that information, the Applicant's complaint
T "must be categorized as a reportable complaint".

U 213. I asked Ms Cheung what further information was missing
V which had prevented CAPO from seeing what was contained in the
Pol. 964 as a complaint. Ms Cheung said that the missing information
was the Applicant's intention. But to say so is simply circular, and also
ignores the fact that some other or additional form of "intention" is not a
fact or piece of information required for the mandatory categorization
process.

A 214. The further difficulty with Ms Cheung’s case is that the
B verbatim statements which were so heavily relied upon by CAPO as
C evidence reflecting the Applicant’s true intention emerged only during the
D 20 May Interview and the 31 May Interview. It can be recalled that
E Sergeant Ng noted down in verbatim fashion that the Applicant said
F “*Actually, now, I only want to re-open my case for review, not to complain*
G *against any Police officer*” in the 20 May Interview and “*I absolutely do*
H *not want to use your three complaint mechanisms to make a complaint to*
I *the Police*” in the 31 May Interview.

H 215. Leaving aside for the moment how those two individual
I sentences should be viewed in context, from 26 April 2021 to
J 20 May 2021 CAPO or Sergeant Ng simply could not have relied on what
K had not yet been said at that time to evaluate the Applicant’s intention.
L During this one month or so, the only information possessed by CAPO
M was what the Applicant had identified in the Pol.964.

M 216. Indeed, when Sergeant Ng was assigned the case on
N 3 May 2021, she herself summarized the CAPO Complaint at the first
O page of her Investigation Report as “*COM lodged the instant complaint*
P *alleging that COMEE had failed to investigate his case properly and*
Q *takeover the case for investigation*”. The COM was identified as the
R Applicant, and the COMEE was DPC Wong. As submitted by Ms Chow,
S it is inexplicable why CAPO should not have treated the CAPO
T Complaint as a complaint and categorized it as a RC there and then, based
U on the information on the Pol. 964 – even if it were later to form the view
V that the complaint had been withdrawn.

A 217. Ms Cheung resorted to section 70 of the Interpretation and
B General Clauses Ordinance Cap 1 which provides:

C Where no time is prescribed or allowed within which any thing
D shall be done, such thing shall be done without unreasonable
delay, and as often as due occasion arises.

E 218. Ms Cheung said that since section 11 does not prescribe a
F time within which CAPO should categorize a complaint, CAPO should
G be given reasonable time to do it. Of course, implicit in her reliance on
H section 70 is a concession that the CAPO Complaint was a “complaint”
I under section 11 as soon as the Pol.964 was filled out in the CAPO’s
Report Centre on 26 April 2021. Thus, as Ms Chow said, it should have
J been categorized as a RC under section 11 there and then.

K 219. I do not agree that Ms Cheung could justify the
L non-categorization of the CAPO Complaint during this period by relying
M on section 70 of Cap 1. Section 70 of Cap 1 requires a statutorily
N required act to be done “without unreasonable delay”. Whether the
O delay is reasonable or not depends on the period of delay and the reason
P for the delay. In CAPO’s case, there was about one month of
Q non-categorization. One month was not insubstantial when CAPO is
R required to submit an investigation report within 6 months from receipt of
the complaint under section 18(1). 14 days is the time within which a
S complainant must opt for the EDM or his complaint will proceed to the
T formal statutory route and be categorized as provided in the Complaints
U Manual.

V 220. The stated reason for delay was that CAPO wanted to
ascertain the true intention of the Applicant. That reason was plainly
unacceptable. That one month was prejudicial to the Applicant since his

A CAPO Complaint could have been but was not investigated into. CAPO
B did not suggest that there were any ambiguities calling for a
C re-confirmation of intention/preference. Indeed, the Complaints Manual
D provided a complaint the nature of which is ambiguous should be
E recorded as a RN(MIS) first and be subject to monthly review pending
confirmation. But the CAPO Complaint was a given a RN reference.

F 221. It may be that CAPO was looking for something to reverse
G the clear intention already expressed, as possibly shown from
H Sergeant Ng's subsequent conduct on 20 May and 31 May 2021 in
I offering as an option to the Applicant the EDM – the application of which
J would avoid categorization in CAPO's practice. The time taken was not
K in preparation of the statutory duty to be done or simply laying in idleness,
L but to see if things would develop in such a direction that the statutory
reasons.

M 222. Even if I accept Ms Cheung's interpretation of "complaint"
N (which I do not), there is no reason for CAPO not to categorize the CAPO
Complaint as a RC from 26 April to 20 May 2021.

O 223. Ms Cheung said it would make no practical difference for
P the complaint to be first categorized as RC on 26 April 2021 but only to
Q be withdrawn or removed from this categorization on 20 May 2021. But
R it would. In that situation, the CAPO Complaint would first appear on
S the weekly RC lists submitted for the IPCC's review in April and then be
T classified as withdrawn in May. The number of RCs filed against the
U Police in the statistics would increase by one. On the other hand,
V CAPO's actual handling would entail that the CAPO Complaint would

A never been categorized as RC or be submitted for the IPCC’s review
B (putting aside the Applicant’s escalation to the IPCC in September).
C

D *H.2.2 2nd period: 20 May 2021 to October 2021*
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F 224. The 20 May Interview and the 31 May Interview have been
G covered in some detail above.
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I 225. Ms Cheung focused on the two sentences said by the
J Applicant during these two interviews and suggested that this was a
K period where the Applicant expressed his intention loud and clear in that
L he did not want to make a complaint and only wanted to re-open
M investigation into his Crime Report.
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O 226. But this was not how Sergeant Ng summarized the 31 May
P Interview in her own words in the Investigation Report. She recorded
Q that the Applicant made an allegation of failure to investigate his case
R properly. She identified the allegation as “Neglect of Duty” – a
S description directly taken from the list of allegations provided in
T Chapter 2 of the Complaints Manual on “Categorization of Complaints”.
U

V 227. Even if an intention to proceed with Full Investigation or
Informal Resolution is needed to make the CAPO Complaint a complaint,
what transpired during this period was at most equivocal. The Applicant
had been pursuing his CAPO Complaint relentlessly. In the 20 May
Interview and correspondence, he made clear his intention to attend the
further 31 May Interview. He frequented CAPO. He escalated his
CAPO Complaint to both the Security Bureau and Police Headquarters in
August 2021, and then to the IPCC in September 2021. In all the
correspondence he described his CAPO Complaint as a complaint, and so

A did the Security Bureau, the Police Headquarters and the IPCC. One
B would expect when there was confusion as to what the Applicant truly
C intended, clarification should be made with him. But this had not been
D done. As already noted, the CAPO Complaint was never designated as a
RN(MIS), calling for clarification on any ambiguities.

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F 228. Sergeant Ng's evidence is that she had fully explained the
three available options (Full Investigation, Informal Resolution and EDM)
G to the Applicant during the 20 May Interview and again on the 31 May
H Interview. In that case, applying the Complaints Manual, since the
Applicant did not opt for the EDM within 14 days (on Sergeant Ng's
I evidence), the CAPO Complaint should have been categorized as a RC
J either on 4 June 2021 or on 14 June 2021. There was no explanation
why this did not happen.

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L 229. CAPO's treatment towards the CAPO Complaint during this
period could not be satisfactorily explained by Ms Cheung's construction
M of "complaint". CAPO's treatment was also inconsistent and incoherent
N with its own investigation framework as set out in the Complaints
Manual.

O
P *H.2.3 3rd & 4th Periods: October 2021 to 15 November 2021, then
15 November 2021 onwards*

Q 230. Ms Cheung said the 3rd period was when the Applicant
R started to have a change of mind about making a complaint but did not
S inform CAPO about his change of mind. The 4th Period was when that a
change of mind was conveyed to the IPCC.

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A 231. For the 3rd period, it can be recalled that the IPCC was the
B first one to raise the issue as to the Applicant's CAPO Complaint not
C being categorized as a Reportable Complaint, by letter dated
D 8 October 2021. There followed letters from the Applicant on
E 19 October 2021 and 2 November 2021 questioning why his CAPO
Complaint was not a RC and what would constitute a RC.

F 232. For the 4th period, Sergeant Ng said it was the IPCC's telling
G her about the Applicant's visit to the IPCC's office on 15 November
H which had triggered her to reconsider the Applicant's intention.
I Eventually, it was the Applicant's agreement to have an interview with
J CAPO in the presence of an IPCC observer under the Observer Scheme
K which led her to the conclusion that the Applicant intended to make a
L "complaint".

M 233. Ms Cheung's narrative was that there was a change of
N intention on the part of the Applicant during these two periods. But it is
O unclear exactly what intention Ms Cheung said the Applicant had
P changed as would lead to a change in the nature of his CAPO Complaint.
Q CIP Ma's evidence is that a grievance would only be treated as a
R "complaint" only if the Applicant intended to go through Full
Investigation or Informal Resolution. During the 3rd and the 4th period,
S the Applicant did not express any change of preference on the
T investigation procedures he wanted CAPO to undertake at the first-tier
U investigation level.

V 234. What was new during this period was the Applicant's
attempts to invoke the IPCC's monitoring power over CAPO. The
proposed interview with an IPCC Observer is one of the IPCC's

A monitoring powers given by the IPCCO. If there was any change of
B intention, it was a change pertaining to the monitoring of his CAPO
C Complaint at the second tier, rather than how his complaint should be
D investigated at the first tier. It is of note that Ms Cheung submit in clear
E terms that the “statutory complaints procedures” that a complainant has to
F intend to go through in order to make a complaint a “complaint” included
the IPCC’s monitoring process at the second tier.

G 235. Further, it does not seem to me that there was a real change
H of intention in the 3rd and the 4th periods. Attempts to invoke the IPCC’s
I monitoring powers under the IPCCO could not be said to show a change
J of intention on the Applicant’s part. It was not that he refused for his
K case to be monitored by the IPCC in the 1st and the 2nd periods but then
L sought to engage the IPCC in the 3rd and the 4th period. The IPCC
M simply did not come into play in the initial periods. Indeed, his
N invitation and exhortation to the IPCC to use its powers seems to be more
consistent with the Applicant always having had the intention that his
complaint was being dealt with under the statutory regime which gave the
IPCC those powers.

O 236. As an aside, the events which occurred in these two periods
P serve to highlight the weakness of the Commission’s construction of
Q “complaints” under the IPCCO, already canvassed above. CAPO’s
R approach is to put the cart before the horse. The Observers Scheme is
S one of the IPCC’s monitoring power which would be triggered by the RC
T categorization. Yet, Ms Cheung suggested that it was the Applicant’s
U request to engage the Observers Scheme which would turn the CAPO
V Complaint into a RC, by first turning it into a “complaint”.

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H.3 Requests for Service

237. One theme running through Ms Cheung’s submission is that the Applicant’s focus had always been on requesting for the re-opening of his Crime Report, rather than complaining against DP Wong for his failure to investigate the Crime Report properly. This is why the CAPO Complaint was treated as a Request for Service rather than a “complaint” from April to 18 November 2021.

238. However, there is no inherent inconsistency between complaining against the officer’s unsatisfactory service and a request for the remedy to put right the unsatisfactory service already provided. A complainant may seek both, and perhaps even with a focus on the remedy rather than expressing one’s dissatisfaction. Indeed, I suppose it might not be unusual for a complainant to say something along the lines that he does not really want to get the subject police officer into trouble, he just wants the police to do the job properly.

239. Ms Cheung agreed that a person could make a complaint whilst requesting service for the complaint to be remedied at the same time. As a matter of fact, on 18 November 2021, CAPO did treat the CAPO Complaint as a complaint and categorize it as a RC. The Applicant frankly admitted that having his Crime Report re-opened was his primary concern. But it was not the CAPO’s case that the Applicant no longer made the same request from 18 November 2021. Plainly, from that date onwards, CAPO must have accepted that the Applicant made a complaint under the IPCCO in parallel to requesting for re-opening of his Crime Report.

A 240. But Ms Cheung said for the 6 months before
B 18 November 2021, a complaint could not exist in parallel with a Request
C for Service because the Applicant clearly expressed his intention that he
D did not want to complain – again referring to the two sentences uttered in
E the 20 May Interview and the 31 May Interview. Viewed in context, it is
F clear those two sentences stood as the exception rather than the norm.
G Contemporaneous documents produced by the Applicant during that
H 6-month period revealed that he almost invariably referred to himself as a
I complainant and his case lodged with CAPO as a complaint. As well
J are seeking the remedy for it, the Applicant was plainly making what
K would ordinarily be regarded as a complaint giving rise to the need for
L that remedy.

J 241. Whilst it is now said that the CAPO Complaint had been
K treated as and handled as a Request for Service, the Court has not been
L informed when the CAPO Complaint was characterized in that way. No
M contemporaneous document recording such a characterization was
N produced. Nor is there any documentation showing the protocol for
O handling Requests for Service.

O 242. The instruction in the Complaints Manual to revert a
P complaint back to Full Investigation or Informal Resolution in the
Q absence of an option for the EDM within 14 days would suggest that the
R three options are the only available procedures for handling a complaint.
S Yet, said that there is a fourth option – those complaints which are
T handled as a Request for Service. The interplay between Requests for
U Service with the other three options – Full Investigation, Informal
V Resolution and EDM – has never been explained. This is so
notwithstanding that the other three options were all offered to the

A Applicant by Sergeant Ng and (on CAPO's own case) could all be applied
B to handling the CAPO Complaint had the Applicant opted for any of
C them.

D 243. Ground 1 is established. The Commissioner erred in law in
E not categorizing the CAPO Complaint as a RC on and from 26 April to
F 18 November 2021.

G 244. Since I have accepted Ms Chow's argument on error of law,
H there is no need for me to consider her alternative argument based on
I irrationality, save to comment that – at least on the day the complaint was
J lodged, with all the material permitting its categorization – it would seem
irrational not to have treated it as a RC.

K ***I. Ground 2: Whether the EDM is ultra vires the IPCCO***

L ***1.1 Introduction***

M 245. Most illegality arguments that come before this Court are
N premised on the lack of specific empowering provisions for the impugned
O actions. In that case, one would expect the authority to justify the
P legality of their actions by referring to some general powers in the statute
which are said to be wide enough to cover the impugned actions.

Q 246. However, Ms Chow's case is not just that there is a lack of
R specific empowering provisions for the EDM. Rather, her case is that
S the EDM is actually prohibited by section 11, which mandates
T compulsory categorization of complaints as RCs upon the meeting of
U relevant conditions. To address this argument effectively, the
V Commissioner and the IPCC must first explain why EDM does not

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contravene section 11 before attempting to offer any general statutory powers as might be wide enough to cover the EDM. If the EDM is ruled to be in contravention of or prohibited by a specific provision, it is unlikely that it could be saved by some general powers which contain no reference to it at all. This is as much the application of principles of statutory construction as of common sense. I will return to this below.

247. Ms Chow naturally began her analysis with and focused on section 11. Ms Cheung and Mr Yu, perhaps also naturally, began their analysis with and focused on section 8 which is said to contain the general powers as might be wide enough to cover the EDM. Because of what I said in the introductory marks above, I think logically the Court's analysis must begin with section 11. I do that as a convenient way of considering the relevant sections, although I bear in mind that statutory construction is an iterative process and each section has to be read in view of all the other sections in the Ordinance.

1.2 Is the EDM ultra vires section 11?

248. Ms Chow said the EDM is *ultra vires* section 11. It is undisputed, and it is indeed expressly provided in the Complaints Manual, that the offering of the EDM as an option to the complainant and his opting for the EDM must occur before categorization of complaints. The operation of EDM would thus have the consequence of removing a complaint from the statutory mechanism which would otherwise be applicable. This is achieved by insulating the complaint from the categorization process mandated by section 11.

249. Ms Chow thus said the operation of the EDM is plainly *ultra vires* section 11, which imposes on the Commissioner a mandatory

A duty to categorize complaints. The submission is that where something
B is expressly required, failing to do what is expressly required (or doing
C the opposite) must be expressly prohibited.

D 250. Ms Cheung said this ignores the basic position that, by
E definition, for the EDM to apply, the complainant must be taken to be not
F making a “complaint” within the meaning of section 11. But this goes
G back to Ms Cheung submissions under Ground 1 that a complaint is only
H a “complaint” under section 11 if the complainant intends to go through
I statutory procedures/Full Investigation or Informal Resolution. I have
J already rejected this argument as a matter of statutory construction above.
K Indeed, what is impossible to ignore is that even CAPO recognizes that
L what could go through the EDM could also go through Full Investigation
M or Informal Resolution. The subject matter remains exactly the same.

N 251. Mr Yu’s reply on section 11 is broadly similar to Ms Cheung,
O albeit slightly differently presented. Mr Yu said section 11 must be
P construed in the context of the whole statute as a purposive unity in its
Q appropriate legal and social setting. The adoption of a measure (i.e. the
R EDM) which allows a complainant to decide whether he wishes to
S embark upon the process of a formal complaint under the IPCCO must be
T conducive to the IPCC’s functions. He said section 11 cannot stand in
U the way of that construction. Any argument that the Commissioner or
V CAPO must compel a person to go through the entire process against
their wishes just because he or she might have entered the CAPO office is
wholly unattractive.

252. He relied on section 18(1) of the Small Claims Tribunal
Ordinance Cap 338 which provides that “the tribunal shall determine a

A claim and make such award or order thereon as it thinks fit as soon as
B possible after the conclusion of the hearing of the claim.” He said it
C would be extraordinary to read the word “shall” in that section as
D meaning that the tribunal must compel the claimant to proceed with his
E claim once the claim form has been filed and that the tribunal has no
F incidental power to explore whether there could be other form of dispute
resolution mechanism.

G 253. To me, this argument is premised on an incorrect
H understanding about the statutory mechanism imposed by the IPCCO.
I This much feared unattractive outcome would not result from
J categorization. As already canvassed above, the complainant of a RC
K can withdraw his complaint or refuse to pursue the complaint. I have
L already pointed out above that Mr Cheung has noted in his evidence that
M those two outcomes are not uncommon. Nor does the IPCCO impose
any time-consuming investigative steps that the complainant of a RC
must go through at the first tier. What steps may be appropriate depend
on the nature of the complaint.

N 254. Mr Yu further said the EDM does not abrogate the
O Commissioner’s duty under section 11 to categorize as a RC a complaint
P that satisfies the relevant statutory requirements “including that there
Q must be person making a relevant complaint and CAPO receiving the
R same”. I suppose by “a person making a relevant complaint and CAPO
S receiving the same” he referred to the idea that the complainant must
T intend to go through the formal statutory procedures. If so, in substance,
U Mr Yu attempted to read into the section 11 the same requirement as
V Ms Cheung did – though it seems that he did not try to achieve this by
expressly tying this requirement to the meaning of “complaint”. He

A might also be suggesting that a complaint must be “relevant” for the
B purpose of section 11 and “relevancy” comes from the complainant’s
C intending to go through the statutory procedures. In any event, there is
D not much difference in substance from Ms Cheung’s argument. I have
E already rejected that argument.

F 255. At this point of the analysis, it can be seen that the EDM is
G *ultra vires* section 11 because it does abrogate the Commissioner’s duty
H to categorize complaints.

H *1.3 Is the EDM intra vires section 8(1)(a), 8(1)(c), 8(2) and section 28*

I 256. Ms Cheung said the EDM is *intra vires* section 8(1)(c) read
J in conjunction with section 8(2). Mr Yu relied on sections 8(1)(a) and
K 8(1)(c) each read in conjunction with 8(2). (Mr Yu also referred to
L section 28 in the written submissions.) They both said the general
M powers given to the Commissioner/IPCC under these sections are wide
N enough to cover the EDM.

O 257. During the hearing, Mr Yu did not pursue section 28 with
P any enthusiasm (which section empowers the Commissioner in
Q consultation with the IPCC to make orders and manuals to guide its
R investigation into RCs). Obviously, the fact that the EDM had been set
S out in the Complaints Manual by the Police and the IPCC would not
T cloak them with powers to implement the EDM, if such power is not
U already given by the IPCCO. It seems to me that section 28 is
V irrelevant.

T 258. I will focus on sections 8(1)(a), 8(1)(c) and 8(2) below.

A 259. Section 8 has been set out in full above. In gist,
B section 8(1)(a) empowers the IPCC to observe, monitor and review the
C handling of RCs by the Commissioner and to make recommendations.
D Section 8(1)(c) empowers the IPCC to identify any fault or deficiency in
E any practice or procedure adopted by the Police that has led to or might
F lead to RCs. Section 8(2) enables the IPCC “to do all such things that
G are reasonably necessary for, or incidental or conducive to, the
H performance of its functions under this this ordinance”.

I 260. Section 8(1)(a) is only relied upon by the IPCC. Mr Yu
J referred to *Lui Chi Hang Hendrick v Independent Police Complaints*
K *Council* [2020] 1 HKLRD 533. In that case, there was a challenge to the
L IPCC’s decision to conduct a study with a view to getting an overall or
M board picture of the public order events of 2019 in anticipation of a
N cascade of incoming complaints arising from those events. The study is
O not an investigation of any individual RCs, does not involve any
P investigation conducted by the IPCC into any of the RCs, and would not
Q reach any findings or conclusions in relation to any RCs. The applicant
R asserted that the IPCC had acted *ultra vires* the IPCCCO for it had no such
S power to conduct such a study. Keith Yeung J held that the IPCC had
T acted *intra vires* under section 8(2) because the study was purposively
U and contextually related to the IPCC’s functions under sections 8(1)(a)
V and 8(1)(b).

261. Keith Yeung J said the legislature intended to confer the
IPCC with wide and general powers under section 8(2). He noted that
the parameters chosen to confine the scope of ancillary powers given by
section 8(2) – “reasonably necessary for, or incidental or conducive to” –

A are words of the widest import. He contrasted them with section 40(1)
B of Cap 1, where the parameter chosen is “reasonably necessary”.

C 262. Whilst the study did not pertain to any RCs, Keith Yeung J
D held that the IPCC could invoke the powers under section 8(2) in
E anticipation of the large number of RCs to be received from CAPO and to
F obtain an overall or broad picture with the view to use it to assist and
G facilitate the consideration of investigation reports to be received in the
H future, so that they would be reviewed effectively and in the proper
context and that appropriate questions could be asked.

I 263. Having reviewed various authorities, Keith Yeung J gathered
J a number of principles. In the authorities reviewed, he noted or made
reference to the points that:

- K (1) The rather strong adjective “necessary” is properly to be
L regarded in context as meaning something which can
M reasonably be characterised as tied to achieving the primary
purpose.
- N (2) When a main purpose is expressed, things which are
O incidental to it and which may reasonably and properly be
P done – and against which there is no express prohibition to
Q be found – may and ought *prima facie* to follow from the
authority for effectuating the main purpose by proper and
general means.
- R (3) The courts do not think narrowly, but bear in mind the public
S nature of the obligations of a statutory body and the
T requirements of the community, taking a liberal view of the
U power under consideration.
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(4) The powers under section 8(2), though conferred by words of the widest import, are not without limits.

(5) Those powers are firstly confined to the performance of the IPCC's functions under the IPCCO – where “functions” embraces all the functions, duties and powers of the IPCC, being the sum total of the activities entrusted to it by the legislature.

(6) The second limit is that the exercise of powers cannot be too far removed from the discharge of the functions concerned.

264. In his conclusion, at §473, Keith Yeung J stated that the doctrine of *ultra vires* ought to be reasonably understood and applied. Unless expressly prohibited, what may fairly be regarded as incidental to, or consequential upon, those things which the legislature has authorised, ought not to be held by judicial construction to be *ultra vires*.

265. Riding on Keith Yeung J's finding, Mr Yu submitted that even “preparatory” or “precautionary” steps taken before a complaint is launched or before a complaint is categorized as a RC could be purposively and contextually related to the function to be discharged under section 8(1)(a) and thus be *intra vires* section 8(2).

266. This argument will only work only if the EDM comprises preparatory or precautionary steps pertaining to the IPCC's discharge of its functions on observing, monitoring and reviewing RCs. But this is plainly wrong as a matter of fact. By design, opting for the EDM means that what would otherwise be treated as a complaint and potentially categorized as a RC would no longer be treated as such. The EDM does not prepare the IPCC to better discharge its duty in monitoring RCs.

A Rather, it stops the IPCC’s monitoring duty from being triggered at all, by
B treating complaints as non-complaints and by preventing complaints from
C being categorized as RCs.

D 267. Section 8(1)(c) read in conjunction with section 8(2) is relied
E upon by both Ms Cheung and Mr Yu. Ms Cheung said that the IPCC’s
F functions under section 8(1)(c) – identifying faults or deficiency in in
G Police’s practice as might lead to RCs – is separate and independent from
H section 8(1)(a) or section 8(1)(b) or the existence or investigation of a RC,
citing *Hendrick Lui* at §85.

I 268. There appears to be two types of fault or deficiency in the
J Police’s practice or procedure which are said to be identified or addressed
through the operation of the EDM.

K 269. The first type is the fault and deficiency to be found in the
L Police’s complaints handling procedures. As noted above, the IPCC has
M put forward substantial evidence in this regard. For example, Mr Eric
N Cheung, a former IPCC Council member involved in the development of
O the EDM, has deposed that from his experience of monitoring the
P handling of RCs, “withdrawn” or “not pursuable” cases arose partly
Q because the complainants were reluctant to follow through the
R investigation procedures. The exponential rise in case numbers in about
S 2009 was also straining the IPCC’s resources. In summary, CAPO
T and/or IPCC’s evidence is that the implementation of the EDM improves
U the complaints handling system against police by increasing the
V efficiency in the deployment of resources and the handling of complaints
as a whole by the IPCC.

A 270. In reply, Ms Chow said the handling of complaints is
B required by law as the statutory procedure flowing from a RC
C categorization. The IPCC and CAPO cannot possibly identify what is
D required by the law to be a “fault” or “deficiency”. To put it more
E bluntly, IPCC and CAPO cannot be heard to say that they will not comply
F with the law which requires categorizing all complaints – even when the
G complaint is minor and the complainant might not wish to follow through
H the statutory procedures – on the basis that it is too time consuming or
I that they do not have sufficient resources to do so. I agree.

H 271. Ms Cheung also submitted that cases handled through the
I EDM may also lead to the identification of faults or deficiencies in the
J Police’s practice or procedures. Cases processed through the EDM
K could enable the Police to receive timely feedback with a view to
L improving their service, procedures and practices to avoid incidents
M which may lead to future RCs. That may be right, but the same can and
N should be said of those complaints which are categorized and dealt with
O as RCs. Surely one of the purposes of the RC procedure is to enable
P feedback with a view to improving their service, procedures and practices
Q to avoid incidents which may lead to future RCs.

P 272. I see some force in the argument that in view of Keith
Q Yeung J’s rulings in *Lui Chi Hang Hendrick* – and focusing only on
R section 8(2) – the implementation of the EDM falls within the wide
S import of section 8(2) read together with section 8(1)(c). However, as
T noted in the introductory remarks of this section, Ms Chow’s *vires*
U challenge is not just that there is a lack of express powers for the EDM
V but, rather, that the EDM is in contravention of section 11.

A 273. However, I have already found that the EDM is in
B contravention of the express provision in section 11. In the
C circumstances, section 8(1)(a) and 8(2) must be read in light of
D section 11.

E 274. In *R (Justice for Health Ltd) v Secretary of State for Health*
F [2016] EWHC 2338, the Court construed the scope of ancillary powers
G conferred by section 2 of the National Health Service Act 2006 which
H provides:

H General power. The Secretary of State the Board or a clinical
I commissioning group may do anything which is calculated to
facilitate, or is conducive or incidental to, the discharge of any
function conferred on that person by this Act

J 275. The following principles stated at §§103-105 are instructive
K for present purposes:

L 103. First, Section 2 is an ancillary power; it comes into play
M to plug gaps and lacunas. Therefore, if there is an
N express power to do something then that express power
O should be used rather than the fall-back power in
P section 2. This is in accordance with the standard
Q principle of statutory interpretation (“generalibus
R specialia derogant”) that where the literal or express
S meaning of an enactment covers a situation for which
specific provision is made then it is presumed that the
situation was intended to be dealt with by the specific
provision (see generally Bennion on Statutory
Interpretation, 6th edition, page [1038] section [355]).
Whenever section 2 is prayed in aid, the first question
should therefore be: Does the Secretary of State have an
express power which he has chosen not to exercise? If
he does (and he has not) then he cannot use section 2. If
however the answer to this question is negative (there is
no express power) then the second inherent limitation
comes into play.

T 104. The second limitation is that there should be nothing in
U the legislation which expressly or impliedly precludes
the exercise by the Secretary of State of a power to act.
For instance, if (hypothetically) there was a provision
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which conferred upon a body or person an “exclusive” right to do something or if it were said that “only” a certain person could perform a particular action or exercise a particular power then this would necessarily preclude the Secretary of State from using section 2 to act in relation to the subject matter in question.

105. The third limitation is that any resort to section 2 must in any event be grounded in the discharge of one of the functions of the Secretary of State under the NHSA 2006. That which the Secretary of State seeks to do must be “calculated to facilitate” the discharge of that function and/or be “conducive” to the discharge of that function and/or be “incidental” to such discharge. The power must thus be referable to a function of the Secretary of State identified under the Act. The concept of “functions” is defined to include all of the powers and duties of the Secretary of State (cf section 275 NHSA 2006). The “functions” of the Secretary of State for the purpose of section 2 include in relation to the setting of terms and conditions of employment.

276. Thus, in view of the existence of an express power (i.e. section 11) prohibiting – at the very least impliedly precluding – the effects sought to be brought about by the EDM, section 8(1)(c) read together with section 8(2) cannot be construed as being wide enough to empower the implementation of the EDM.

277. Of course, I see the potential value in a system such as the EDM. But it is either within the powers granted by the IPCCO or it is not, and that is a ‘hard-edged’ question. I have held that it is not. There are numerous reasons why the legislature may have required all complaints to be categorized, and hence dealt with under the statutory regime, which include (but are not necessarily limited to):

- (1) certainty, meaning that all parties to the complaint process will know what process is being pursued at all times under the statutory two-tier regime;

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- (2) uniformity, in that all complaints will follow a uniform process – rather than a process which may change depending on a perceived ‘election’ and any other perceived change of mind;
- (3) transparency of dealing with all complaints with second tier oversight;
- (4) the ability to keep proper statistics of the full number, nature and classification of complaints – where there is an obvious difference, for example, between (a) a complaint which is not treated as a complaint and (b) a complaint which is categorized as a RC but later classified as withdrawn;
- (5) the timely classification of complaints (against the statutory requirement for that to happen as soon as possible, and in any event ordinarily within 6 months) – which may be hindered if there is a potential delay in categorization, which may lead to the failure to preserve evidence or the inability to contact relevant witnesses due to lapse of time, and which may risk compromising the fair resolution of the complaint.

278. If the rationale for the introduction of the EDM is correct, it seems to me that it is necessary for there to be a legislative amendment to put such a mechanism on a proper statutory footing within or as an additional facet to the existing statutory regime. On that basis, there would then be a clear route for a citizen to understand and be able to make a truly informed decision as to whether his complaint is to be dealt with under a system with statutory oversight from a second tier, or not.

279. Ground 2 is established.

J. Ground 3: CAPO's Failure to Explain Proper Procedures

280. Ms Chow said that, upon the receipt of the CAPO Complaint, there was imposed on CAPO a duty to act fairly which would require CAPO to explain to the Applicant the proper investigation procedures and to keep him informed about the progress of his case. Ms Chow said this duty is rooted in natural justice. In the absence of an express statutory requirement, this duty would be readily implied by the Court. Ms Cheung did not contest that there was a general duty to act fairly, but she said the duty had already been discharged by CAPO in the circumstances.

281. Whilst not put by Ms Chow quite in such words, her objection goes further than that CAPO did not inform the Applicant about such matters. Rather, her objection is that CAPO had misinformed or had misrepresented to the Applicant the true picture of the situation. Ms Chow said CAPO has breached this duty in two ways. First, Sergeant Ng offered and explained to the Applicant the EDM as one of the investigation procedures that could be applied to the CAPO Complaint, alongside Full Investigation and Informal Resolution. So, if the Court finds that the EDM is *ultra vires*, it follows that the Commissioner had not correctly explained the investigation procedures to the Applicant.

282. Ms Cheung relied on her submissions that the EDM is *intra vires* the IPCCO.

283. I have already found that the EDM is *ultra vires*. It follows that CAPO had failed to explain to the Applicant the proper procedures applicable to the CAPO Complaint.

A 284. Second, Ms Chow said that Applicant was never informed
B that CAPO did not considered or handled the CAPO Complaint as a
C “complaint”. Rather, the CAPO Complaint was treated as a Request for
D Service and was not investigated as a complaint by CAPO.

E 285. Ms Chow drew the Court’s attention to two
F contemporaneous documents. In the 13 May 2021 letter issued by
G CAPO, the Applicant was informed that “the Hong Kong Island branch of
H this Office is investigating into your complaint”. In SIP Tse’s own
I account of the 16 Nov Incident, as recorded in his Investigation Report, he
J “assured the Applicant that CAPO investigation was still ongoing at this
K stage”.

L 286. Ms Cheung said that the Applicant knew that what he filed
M with CAPO was a Request for Service and fairness does not require
N CAPO to inform the Applicant what he already knew. Ms Cheung
O reiterated that the Applicant had clearly expressed all along that what he
P wanted was to re-open his Crime Report rather than making a complaint.
Q In any event, she also relied on two letters issued by CAPO (dated
R 24 August 2021 and 18 October 2021) and two letters issued by the
S WCH Station (dated 30 September 2021 and 19 October 2021) in which
T the CAPO Complaint was referred to as “a request for review” (originally
U in Chinese “要求覆核”).

V 287. I think Ms Cheung’s submission is misdirected, for two
reasons. First, looking at all the correspondence between CAPO and the
Applicant as a whole, it is undisputable that the CAPO Complaint has
been consistently referred to as a “complaint” or a “complaint case” by
CAPO. I have already canvassed the contemporaneous document above.

A The fact that Ms Cheung was able to single out two occasions where
B “request for review” were also used is far from sufficient to displace
C “complaint” which appeared in much higher frequency.

D 288. More importantly, without further elaboration, a layman like
E the Applicant would naturally read terms like “complaint” and “request”
F in their ordinary meanings. It seems to me unlikely that a layman would
G read the reference to “a request for review” as entailing that the CAPO
H Complaint has been removed from the statutory mechanism under the
I IPCCO altogether, or from the monitoring purview of the IPCC. That
J was the Applicant’s true objection.

K 289. That objection cannot be answered by pointing to some
L scattered reference to “request for review” when this term had never been
M presented to the Applicant as a special term with the consequence CAPO
N now says it would entail.

O 290. Indeed, a layman would likely not understand a “request for
P review” and a “complaint” to be mutually exclusive, still less having the
Q consequences as CAPO said it would. Even CAPO itself saw no
R difficulty in putting the two terms together. In the letter dated
S 18 October 2021 (which is among the correspondence relied on by
T Ms Cheung to make good her submission), CAPO said (my emphasis):

Q I refer to my previous letter dated 2021-08-24 in connection
R with a complaint case under the reference CAPO
S HKI RN 2100451.

S Your request for review of your report under the reference
T WCH RN 21007273 has been referred to Wan Chai District for
U their consideration...

291. I am satisfied that CAPO had failed to explain (if not misrepresented) to the Applicant the proper procedures and/or to keep him informed of the progress of his CAPO Complaint.

292. Ground 3 is established.

K. Ground 4: Reasons for Non-categorization as RC

293. At the forefront of this ground is not the categorization of the complaint and the failure to give reasons on 18 November 2021. Rather, it is the non-categorization in the 6 months prior to 18 November 2021. This ground is directed against both the IPCC and CAPO.

294. Ms Chow accepted that there is no general duty in common law that reasons should be given for administrative decisions. But she said fairness requires that reasons should be given in the circumstances of the present case. She emphasised that there is a general trend in case law encouraging the giving of reasons and the many advantages of imposing a duty to give reasons. She cited *Stefan v GMC* [1999] 1 LWR 1293 at 1300F-1301B; *Oakley v South Cambridgeshire District Council* [2017] 1 LWR 3765 at §§30-33; *R v Civil Service Appeal Board ex pu Cunningham* [1991] 4 All ER 310; and *Osmond v Public Service Board* [1984] 3 NWLR 447.

295. She set out the various advantages of a duty to give reasons set out in the case law: (a) assisting in seeing if a reviewable or appealable error has occurred, (b) adding legitimacy to the decision, (c) providing a disincentive for arbitrariness, (d) encouraging intellectual discipline, (e) providing guidance for future cases, and (f) increasing public confidence in the decision-making process.

A 296. In this case, Ms Chow said that given that CAPO lacks true
B independence and impartiality from the Hong Kong Police Force,
C imposing a duty to give reasons enhances public confidence in CAPO.
D Obviously, this advantage points to imposing such a duty on CAPO
E generally rather than specifically to the particular facts of this instant
case.

F 297. Further, she said that without the giving of reasons there was
G no way to know what the Commissioner had directed his mind to and
H whether the decision is lawful. In the present case, the Applicant was
I never told that his CAPO Complaint was not categorized as a RC, still
J less the reasons for non-categorization. It was only when the IPCC
K refused to engage with him on the basis that the CAPO Complaint was
L not a RC in October 2021 that his attention was drawn to that fact.
M Whilst his persistent pursuit to understand from the IPCC why his CAPO
N Complaint was not categorized as such eventually led to a RC
O categorization in November 2021, he was never informed, either by
P CAPO or the IPCC as to the change of course. Reasons for
Q non-categorization from April to 18 November 2021 were indeed only
given after the present judicial review proceedings were instituted.
Ms Chow submitted that in the circumstances it was procedurally unfair
for the Applicant not to be given the reasons of the non-categorization
before 18 November 2021 or the categorization thereafter. This point is
specific to the factual development of this case.

R 298. Ms Cheung emphasised that there is no general duty to give
S reasons. In the absence of a statutory duty to give reasons, it is up to the
T party arguing that reasons should be given to show that it would
U otherwise be unfair: see *Immigration Tribunal v Lau Tak Pui* [1992]
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A 1 HKLRD 371. She drew attention to the fact that section 24 of the
B IPCCO only requires the Applicant be informed of the results of the
C investigation (as denoted by the classification), but there is no provision
D imposing a duty to inform the complainant of the categorization of his
E complaints. She said the question boils down to whether there was any
F unfairness arising from the Applicant's not being giving reasons for the
non-categorization or categorization.

G 299. Ms Cheung, echoing her main theme, also said that the
H non-categorization was a result of the Applicant's own choice and
I declared intention in pursuing a Request for Service rather than
J complaining against DPC Wong. Thus, he should know full well why
K his CAPO was not categorized before 18 November 2021. In the same
L vein, Ms Cheung said post 18 November 2021, the characterization of the
M CAPO Complaint as a complaint and then categorization as a RC was "an
accession" to the Applicant's "updated wish". Therefore, fairness would
not require CAPO to give reasons for either the non-categorization before
18 November 2021 or the categorization thereafter.

N 300. This reply again assumes that a layman complainant would
O know how to translate "complaint" or "request for review/re-opening"
P into the statutory mechanism under the IPCCO. It seems to me that this
Q assumption is unreasonable, given that most lay persons may not have
R heard about the IPCCO or how RCs function in the statutory monitoring
system, still less in the way as understood or operated by CAPO.

S 301. Mr Yu, on behalf of the IPCC, submitted that there was no
T duty for the IPCC to give reasons for the non-categorization of the CAPO
U Complaint before 18 November 2021. He first submitted that there is no
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A duty on the IPCC to give reasons. He said (a) there is no general duty to
B give reason; (b) the duty to categorization was imposed on the
C Commissioner rather than on the IPCC and thus it is difficult to see why
D the IPCC should be the entity to give reasons even if such duty existed;
E (c) given that the categorization eventually occurred on
F 18 November 2021, the real complaint of the Applicant was the delay in
G categorization and mere fact that there was delay could not give rise to a
H duty to explain the delay.

302. He then submitted that even if the IPCC was under a duty to
I give reasons (which he denied), it is difficult to see how such a failure
J could or should lead to any relief: (a) the Applicant had pleaded no
K prejudice arising from the failure to give reasons; (b) the Applicant
L acknowledged that reasons for the non-categorization was eventually
M given to him through these proceedings; (c) quashing a decision for
N failure to give reasons would be an over-reaction especially when reasons
had already been given, citing *Hong Kong Canadian International
Hospital Foundation v Secretary for Justice* (unreported,
HCAL 131/2006, 4 May 2007), at §100.

303. I agree with Mr Yu that the Applicant's real complaint is the
O failure to have categorised his complaint as a RC. The giving or not
P giving of reasons for that failure seems to me to be largely beside the
Q point. I also agree that the delay in categorization does not give rise to
R any particular duty to give reasons for the previous non-categorization.
In short, the reasons challenge adds nothing to the other challenges.

304. In the circumstances, Ground 4 fails.

L. Grounds 5 & 6: IPCC's Duties in the Process

305. Ground 5 alleges that the IPCC was in breach of its statutory duty imposed by sections 8(1) and 16 to advise the CAPO that it should categorize the CAPO Complaint as a RC. Ground 6 alleges that because of the IPCC's failure to advise as to the CAPO's failure to categorize, the IPCC failed to observe, monitor and review the handling and investigation of the CAPO Complaint as a RC until 18 November 2021. Since Ground 6 flows from Ground 5, I will deal with them together.

306. As said, the two statutory provisions relied upon by Ms Chow to make good her submissions under Ground 5 are section 8(1) and section 16. I shall take them in reverse order.

307. Ms Chow said that ensuring proper categorization of RCs is not only a duty for CAPO but of the IPCC as well. Section 16(1) requires the IPCC to consider the list of RCs and list of NCs submitted to it by CAPO and to advise CAPO its opinion on the categorization. CAPO must reconsider the categorization after having been advised. Section 16(3) enables the IPCC to ask CAPO to explain why a complaint is categorized as an NC or why a belated complaint is considered to be not of a serious nature such that it is also categorized as an NC.

308. In reply, Mr Yu highlighted that section 16 is only triggered upon a list of NCs or a list of RCs being submitted to the IPCC. The CAPO Complaint was not on any such lists until 23 November 2021 when it was included in the list of RCs. I agree. The statutory monitoring mechanism is carefully designed, with the power to invoke at each step clearly delineated. The mechanism starts with the categorization of complaints into RCs and NCs under section 11 then the

A submission of such RCs and NCs as categorized by the Commissioner to
B the IPCC under section 9. The language of section 16 clearly suggests
C that the IPCC’s advice is supposed to be made only upon a categorization
D already made by CAPO. Section 16 cannot be invoked before a
E categorization has been made by CAPO and submitted to the IPCC for
review.

F 309. However, the fact that a RC categorization is necessary to
G trigger the IPCC’s monitoring powers may prove a double-edged sword.
H I have already rejected Ms Cheung’s submission that inherent in the word
I “complaint” in the context of the IPPCO would require the complainant
J to have conveyed an intention to go through the “statutory complaint
K procedures”. I have agreed with Ms Chow that is an attempt to impose
L an additional requirement which runs afoul of section 11. This is a
M fault/deficiency in the complaints handling system operated by CAPO
N and that the IPCC is under a duty to identify the same pursuant to
O section 8(1)(c).

P 310. Mr Yu said that section 8(1)(c) concerns systemic issue
Q rather than fault or deficiency in individual cases. He said the alleged
R failure in the instance case – that the IPCC had failed to advise CAPO
S that the CAPO Complaint should be categorized as a RC – is a fault or
T deficiency in the Applicant’s individual case, rather than a systemic
U challenge. Thus, section 8(1)(c) is not engaged.

V 311. I disagree. Since the fault or deficiency concerns the
meaning of “complaint” under the IPCCCO, this is of course not a single
incident but is systemic in nature. CAPO is bound to apply the same
definition of “complaint” across the board. As evident in the affidavit

A evidence filed by CAPO, the Applicant’s CAPO Complaint is not the only
B one cast outside the scope of being a “complaint”, resulting from its own
C definition. Every individual would naturally focus on his or her own
D case, but occasions may arise where the fault/deficiency demonstrated in
E an individual case is indeed systemic in nature. This is plainly one of
those occasions.

F 312. Nevertheless, it seems to me that section 8(1)(c) is looking at
G any fault or deficiency in any practice or procedure adopted by the police
H force that has led to or might lead to reportable complaints, but not at a
I fault or deficiency in the handling of Reportable Complaints itself.

J 313. I recognize that the IPCC must have been made aware of a
K ‘problem’ with the handling of the CAPO Complaint at the latest by
L October 2021. On September 2021, the IPCC had been given the
M reference number of the CAPO Complaint but found that it was
N completely “off the radar” (to use Ms Chow’s words): it was not on the
O RC lists, NC lists, or the monthly EDM returns. Upon enquiry with
P CAPO on 4 October 2021, CAPO said that the CAPO Complaint was
Q handled by them and had not yet been categorized. By the attachments
R to the Applicant’s letter dated 19 October 2021, the IPCC would have
S known that the CAPO Complaint was filed on 26 April 2021– and thus
T had been “handled” by CAPO for more than 6 months without its being
U put on any of the lists. This ought to have sounded the alarm for the
V IPCC when in its very own understanding there were only three options
(Full Investigation, Informal Resolution and EDM) which could be used
for handling a complaint and that the failure to opt for the EDM within
14 days would lead to the complaint being categorized under section 11.
IPCC was faced with a complaint which had apparently been in limbo for

A more than 6 months, when the time limit set for categorization is 14 days
B and the statutory requirement for submission of investigation report is
C 6 months.

D 314. It might also be noted that language of “not yet categorized”
E in CAPO’s reply to the IPCC tends to suggest that the CAPO Complaint
F was pending categorization and would be categorized – as opposed to the
G suggestion now that the matter was not a “complaint” at all and therefore
H it was not going to be categorized. According to the Complaints Manual,
I complaints pending categorization should be assigned as RN(MIS) but a
RN reference was given to the CAPO Complaint. This is another reason
for the alarm to have sounded.

J 315. However, none of those points seem to me to make good
K either Ground 5 or Ground 6 as put forward. Therefore, both fail.

L ***M. Ground 7: IPCC’s Duty of Confidentiality***

M 316. The Applicant’s case is that the IPCC’s relaying of
N information (provided by the Applicant to the IPCC in respect of his
O CAPO Complaint) to CAPO was unlawful, being in breach of section 40
P of the IPCCO and section 4 of the Personal Data (Privacy) Ordinance
Cap 486 (“PDPO”).

Q 317. It is important to look first at the exact information said to
R have been improperly disclosed. The information is contained in a
S memo dated 17 November 2021 (“17 Nov Memo”) issued by the IPCC to
CAPO. The memo reads:

T **CAPO HKI RN 21000451**
U
V

IPCC received the enclosed letters dated 30/09/2021, 19/10/2021 and 02/11/2021 from COM expressing his dissatisfaction about the handling of the captioned case and questioning the grounds of CAPO on his case classification [categorization]

2. Please refer to the following letters for your necessary action and we shall be grateful if you could notify us the progress of the case. Thank you.

318. The three letters were all issued by the Applicant to the IPCC. These letters have all been canvassed above. To re-cap, in the 30 September 2021 letter, the Applicant complained against CAPO for the “long lapse of time [taken by] the CAPO to re-open [his Crime Report]”. In the 19 October 2021 letter, he raised concern about the independence and impartiality of the CAPO and the two-tier police complaint system. He said that there were “loopholes in the existing framework”. In the 2 November 2021 letter, he questioned the categorization mechanism at CAPO and asked for the circumstances which would lead to a RC categorization and enquired about the latest status of his CAPO Complaint. To be fair, it should also be pointed out that a substantial part of the latter two letters was spent on his request for his Crime Report to be re-opened.

319. Turning to section 40 of the IPCCO, it provides:

- (1) Except in the circumstances provided for in subsection (2), a specified person must not disclose any protected information.
- (2) Subsection (1) does not prevent a specified person from disclosing any protected information if the disclosure is necessary—
 - (a) for the performance of his functions under this Ordinance;

A			A
B	(b)	for the purpose of reporting evidence of any crime or any suspected crime to such authority as he considers appropriate;	B
C	(c)	for the purpose of complying with—	C
D	(i)	an order of a court; or	D
E	(ii)	a requirement in or made under an enactment or any other law,	E
F		in relation to any criminal, civil or disciplinary proceedings; or	F
G	(d)	for the purpose of complying with a data access request made under section 18 of the Personal Data (Privacy) Ordinance (Cap. 486).	G
H	(3)	For the avoidance of doubt, in making a disclosure under subsection (2)(a), the Council may disclose to the public—	H
I	(a)	the facts of any disagreement between the Council and the Commissioner on the findings or classification of a reportable complaint; or	I
J	(b)	its opinion on the action taken or to be taken in respect of a member of the police force by the Commissioner in connection with a reportable complaint.	J
K			K
L			L
M	(4)	Subject to subsection (5), subsection (2)(a) does not authorize the disclosure of the identity of—	M
N	(a)	any complainant;	N
O	(b)	any member of the police force whose conduct is the subject of a complaint; or	O
P	(c)	any person who assists or has assisted the Commissioner in the handling or investigation of a complaint.	P
Q			Q
R	(5)	A disclosure of any identity referred to in subsection (4)(a), (b) or (c) may be made pursuant to subsection (2)(a) if the disclosure is made to—	R
S	(a)	a specified person as defined in section 39 (other than paragraph (f) of that definition);	S
T	(b)	the complainant;	T
U			U
V			V

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- (c) a person who has written authorization from the complainant—
 - (i) to make a complaint or request for review on behalf of the complainant (as provided in section 15); or
 - (ii) to handle in the complainant’s stead the complaint or request for review made by the complainant;
- (d) the Commissioner;
- (e) a person who assists or has assisted the Commissioner in the handling or investigation of a complaint;
- (f) a person whom the Council invites to an interview pursuant to section 20 or any person who is present at an interview in accordance with that section; or
- (g) the Chief Executive

320. It is not disputed that that the 17 Nov Memo amounts to a disclosure *prima facie* prohibited by section 40(1). The question arises whether the IPCC can rely on any of the exceptions under section 40(2). The complainant’s consent or the relaying being requested/authorized is not among the exceptions listed under section 40(2). But, sensibly, both sides seemed to have approached the matter on the basis that that could function as one of the exceptions too. The IPCC also said (1) it was done with the Applicant’s implied consent, and (2) in any event, it can rely on the exceptions provided by sections 40(2)(a), 40(5)(d) - (e).

321. Whether the Applicant had consented to the disclosure or requested for the relaying of information is a factual question.

322. The Applicant’s affidavit evidence is that he had not consented to the passing on of the three letters to CAPO on

A 17 November 2021. Ms Chow further relied on the nature of the letters.
B Ms Chow said that, given the Applicant's demonstrating in the three
C letters his lack of faith in CAPO, it is nonsensical to construe those letters
D as requesting the IPCC to follow-up the CAPO Complaint with CAPO.
E Nor, she said, would it be logical to suggest that, given that the Applicant
F made a complaint against CAPO to the IPCC, he would have wished for
G the three letters to be relayed to the CAPO. Further, the Applicant's
H conduct after 17 November 2021 also clearly pointed to his position that
I he had not consented to the passing on of the letters. It was not disputed
J that he questioned the IPCC for its justification to refer his case to CAPO
without his written consent, on his visit to the IPCC officer on
22 November 2021. By his letter dated 23 November 2021, he also put
on record that IPCC had never obtained his written consent.

K 323. Ms Chow also pointed to the IPCC's own letter dated
L 12 November 2021 asking for the Applicant's written consent within
M 10 days if he wished for the IPCC to provide information to the CAPO.
N She said this letter suggested that the IPCC at that time could not have
O understood the Applicant as having already given consent or otherwise it
P would not ask for consent. The Applicant in his 23 November 2021 also
referred to this letter and said that there was "autonomous case
information relay" despite the IPCC not receiving the written consent it
requested in the 12 November 2021 letter.

Q 324. It is of note that the IPCC did not assert that the Applicant
R had consented or had indeed requested for the passing on of the three
S letters. What was said is that the forwarding of the three letters was
T done with the Applicant's "implied consent" or that he "expected" or
U "wanted" the IPCC to disclose such information to the CAPO, so that
V

A CAPO would proceed with categorization and processing of his CAPO
B Complaint.

C 325. Mr Yu relied upon an internal meeting minute authored by
D one of Vetting Officers, Mr Law, who met with the Applicant on
E 17 November 2021. There, he recorded that the Applicant had agreed to
F “follow the established protocol and approach CAPO to officially lodge
G his complaint in detail”. He also recorded the Applicant had agreed to
H have an interview with CAPO in the presence of an IPCC observer.
I Mr Yu said the Applicant’s primary grievance was that CAPO did not
J follow up or handle his CAPO Complaint, and he wanted the IPCC to
disclose the information to CAPO so it could proceed with handling his
CAPO Complaint.

K 326. What transpired at the 17 Nov Meeting remains somewhat
L obscure. It remains perplexing why it would appear as if a CAPO
M interview in the presence of an IPCC observer had been agreed at the
N 17 Nov Meeting. The IPCC’s monitoring power under the Observers
O Scheme is only applicable to a RC but from the IPCC’s perspective as of
P 17 November 2021 (1) the CAPO Complaint was still not on any of the
Q lists, (2) the IPCC’s position taken at the hearing would suggest it was not
R even a “complaint” by that time, and (3) the CAPO Complaint was in fact
S not categorized as a RC by that time.

T 327. In any event, even the Applicant had agreed to “follow the
U established protocol”, to “lodge his complaint with CAPO in detail”, to
V set up the 24 Nov Meeting and to get IPCC involved in some way, all of
these could be done without forwarding the three letters and without, for

A example, informing CAPO that the Applicant questioned the
B categorization of his complaint.

C 328. I also agree with Ms Chow that simply because the
D Applicant questioned the whereabouts of the three letters during the
E 24 Nov Interview, that could not be taken as his consent for the
F forwarding of the letters. His questions only suggested that he had
G already known about the passing on of the letters by that time. By letter
H dated 23 November 2021, one day before the 24 Nov Interview, he had
I already put on record his dissatisfaction about the passing on of the
J letters.

K 329. I do not agree that the Applicant had impliedly consented to
L or should be taken as having consented to the forwarding of the three
M letters.

N 330. Mr Yu said that the IPCC could rely on the exception
O provided by section 40(2)(a) because the disclosure is necessary for the
P performance of the IPCC's functions under the IPCCO. The functions
Q identified by Mr Yu are to be found in section 8(1)(a), read together with
R section 8(2). Relying on Keith Yeung J's remarks in *Hendrick Lui*, he
S said disclosing information contained in the three letters for the purpose
T of requesting CAPO to follow up with the complaint with necessary
U action was plainly within section 8(1)(a) reading in conjunction with
V section 8(2).

331. I agree that the purpose for which the 17 Nov Memo with
the three letters were relayed to CAPO could fall within IPCC's power
and function under section 40(2)(a). However, the trigger for the

A exception under 40(2)(a) is that disclosure is “necessary” – as in
B necessary for the performance of the IPCC’s functions. As said, the
C IPCC could have facilitated what was said to be sought by the Applicant
D without forwarding the three letters. Thus, while the purpose the IPCC
E sought to achieve fell within its proper function under the IPCCO, it was
not necessary for achieving that purpose to forward the three letters.

F 332. On that basis, and to that extent, Ground 7 is established.

G 333. Separately, section 4 of the PDPO could be disposed of
H quickly. As submitted by Mr Yu, a complaint for breach of the PDPO
I ought to have been made to the Privacy Commissioner under section 37
J or to have been litigated by commencing proceedings in the District
K Court under section 66(4). Judicial review is a remedy of last resort and
L the Applicant could not pursue a breach of the PDPO without first
M exhausting those statutory remedies: see *G v Lam Kui Po William* [2020]
5 HKC 37 at §§44-46.

N 334. That the Applicant has apparently made a complaint to the
O Privacy Commissioner only emphasizes this point.

P ***N. Conclusion on Grounds and Relief***

Q 335. I have found Grounds 1, 2, 3 and 7 established, as explained
R above.

S 336. On that basis, I grant the following relief:

- T (1) A declaration that the failure of CAPO to categorize the
U CAPO Complaint, made to it by the Applicant against the
V police officer on 26 April 2021, as a Reportable Complaint

under section 11 of the IPCCO until 18 November 2021 was unlawful.

(2) A declaration that upon the making of the CAPO Complaint, the Commissioner failed to discharge its statutory duties in that he:

(a) failed fully and accurately to explain to the Applicant the investigation procedures;

(b) failed to categorize the CAPO Complaint as a Reportable Complaint;

(c) failed duly to handle and investigate the CAPO Complaint under the two-tier mechanism; and

(d) failed to keep the Applicant fully informed throughout the investigation.

(3) A declaration that the “expression of Dissatisfaction Mechanism” as devised and operated by the Commissioner and/or CAPO is illegal/*ultra vires* being contrary to the mandated two-tier mechanism as provided for under the IPCCO.

(4) A Declaration that the relaying of information (which had been provided by the Applicant to the IPCC concerning the CAPO Complaint) by the IPCC to CAPO was contrary to section 40 of the IPCCO.

337. For the avoidance of doubt, I would not in the exercise of my discretion grant any further relief.

338. Despite the fact that some of the Grounds of review put forward have failed, I see no reason why the costs should not follow the overall event, in that I have found several Grounds to be established and

A granted the appropriate consequential relief. So I order the Applicant's
B costs to be paid by the Respondents. The Applicant's own costs shall be
C taxed in accordance with the Legal Aid regulations.

D
E
F (Russell Coleman)
G Judge of the Court of First Instance
High Court

H Ms Grace Chow, instructed by Daly & Associates, for the applicant

I Ms Leona Cheung, Principal Government Counsel (Ag.), and Ms Liesl
J Lai, Government Counsel, of the Department of Justice, for the
1st respondent

K Mr Benjamin Yu, SC and Mr Anthony Chan, instructed by Grandall
L Zimmern Law Firm, for the 2nd respondent

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