



## Summary of Judgment

**Lam Sze Chun (“Applicant”) v The Commissioner of Police, Hong Kong Police Force  
 (“Commissioner”) & The Independent Police Complaints Council (“IPCC”)  
 HCAL 133/2022; [2023] HKCFI 34**

**Decision** : **Application for judicial review allowed**  
**Date of Hearing** : **16 November 2022**  
**Date of Judgment/Decision** : **3 November 2023**

### Background

1. This is the Applicant’s application for judicial review to challenge the alleged failures of the Commissioner and IPCC in handling the Applicant’s alleged “complaint” against the Police.
2. In gist, on 3 March 2021, the Applicant made a crime report to the Police. After having investigated into his case, on 11 March 2021, the Police issued a letter to the Applicant informing him that, having considered all relevant evidence, no one was arrested.
3. On 26 April 2021, the Applicant approached the Reporting Centre of the Complaints Against Police Office (“CAPO”), alleging that the relevant police officer had not handled or investigated his crime report and did not inform him that the case was closed (“CAPO Complaint”). On 20 May 2021, an interview was arranged with the Applicant to ascertain in more details the purpose and nature of his CAPO Complaint.
4. At the interview, the CAPO officer explained the three relevant options to him (i.e. (1) Full Investigation, (2) Informal Resolution, and (3) the “Expression of Dissatisfaction Mechanism” (“EDM”)), planning to follow up with his case according to the approach he would elect. In response, the Applicant expressed that he did not want to complain against any police officer, rather, he wished to have his crime case re-opened for investigation by another team of police officers.
5. Thereafter, the Police heeded the Applicant’s request and accordingly took action to handle his request to re-open his crime case. The Police subsequently reviewed the Applicant’s crime case as requested and eventually, issued a letter to the Applicant on 30 September 2021 informing him the outcome of the review.
6. Also on 30 September 2021, the Applicant submitted a letter to IPCC to complain against CAPO regarding the long response time of CAPO to re-open the case. In October 2021, upon the Applicant’s further request, Police reviewed his crime case for a second time. On 19 October 2021, Police issued a further letter to the Applicant that having reviewed his case, there was no evidence to arrest any person for committing an offence.



7. On 15 November 2021, CAPO was informed by IPCC that the Applicant had approached them expressing grievances about the handling of his case by CAPO.
8. Based on the further information received by Police from IPCC on 18 November 2021, CAPO categorised the Applicant's case as a reportable complaint ("**RC**"), and commenced processing the same as a RC under the Independent Police Complaints Council Ordinance, Cap. 604 ("**IPCCO**").
9. On 9 February 2022, the Applicant commenced the present proceedings. On 23 May 2022, The Honourable Mr Justice Coleman ("**Coleman J**") granted leave to the Applicant to apply for judicial review.

### Issues in dispute

10. The Applicant advanced the following grounds of challenge:-

#### Against both the Commissioner and IPCC

- (1) whether the EDM was illegal and *ultra vires* being "contrary to the two-tier mechanism as provided for in the IPCCO ("**Ground 2**")";
- (2) whether the alleged failure to give reasons for the non-categorization of the case as a RC was contrary to the rules of natural justice and/or irrational ("**Ground 4**")";

#### Against the Commissioner

- (3) whether the alleged failure to categorize the Applicant's case as a RC under section 11 of the IPCCO until 18 November 2021 was an error in law and was irrational ("**Ground 1**")";
- (4) whether the alleged failure to accurately explain to the Applicant the investigation procedures and the status of his case was illegal and contrary to the rules of natural justice ("**Ground 3**")";

#### Against IPCC

- (5) whether 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 and whether IPCC failed to observe, monitor and review the handling and investigation of the CAPO Complaint as a RC until 18 November 2021 ("**Grounds 5 and 6**")"; and
- (1) whether the relaying of information provided by the Applicant to IPCC in respect of the CAPO complaint by IPCC to CAPO was unlawful, being in breach of section 40 of the IPCCO and section 4 of the Personal Data (Privacy) Ordinance (Cap. 486) ("**PDPO**") ("**Ground 7**").



---

**Department of Justice’s Summary of the Court’s rulings**

(full text of the judgment at [https://legalref.judiciary.hk/doc/judg/word/vetted/other/en/2022/HCAL000133A\\_2022.doc](https://legalref.judiciary.hk/doc/judg/word/vetted/other/en/2022/HCAL000133A_2022.doc))

**Ground 1: Failure to categorize as RC (§§178-244)**

11. The IPCCO mandates a specific statutory mechanism by which complaints must go through, especially RCs. The law is not optional but coercive and must be obeyed. The Commissioner’s approach has the effect of making the IPCCO option and hollows out the compulsory nature of the IPCCO, and the intended supervision at the second tier, i.e. IPCC. The ordinary meaning of “complaint” applies in section 11 and in the IPCCO generally. His Lordship rejected the Commissioner’s contention that the relevant intention (i.e. the intention to go through statutory procedures/Full Investigation or Informal Resolution) of the complainant is a necessary element to make a complaint a “complaint” in the context of the IPCCO. The Commissioner **erred in law** in not categorizing the CAPO Complaint as a RC on and from 26 April to 18 November 2021: §§178-207. Ground 1 is established.

**Ground 2: Whether the EDM is *ultra vires* the IPCCO (§§245-279)**

12. His Lordship accepted that the operation of EDM would have the consequence of removing a complaint from the statutory mechanism which would otherwise be applicable by insulating the complaint from the categorization process mandated by section 11. The EDM is *ultra vires* section 11 of the IPCCO: §§248-255.

13. Further, in view of the existence of section 11 prohibiting or at least impliedly precluding the effects sought to be brought about by the EDM, section 8(1)(c) (which provides for powers to identify faults or deficiencies in the Police’s practices or procedures) and section 8(2) (which provides for ancillary powers by allowing things that are “reasonably necessary for, or incidental or conducive to, the performance of its functions” under the IPCCO) cannot be construed as empowering the implementation of the EDM: §§272-279.

14. Although His Lordship saw the potential value in EDM, but it is either within the powers granted by the IPCCO or it is not, and that is a ‘hard-edged’ question: §277. If the rationale for the introduction of the EDM is correct, 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. Ground 2 is established.

**Ground 3: CAPO’s failure to explain proper procedures (§§280-292)**

15. Given His Lordship’s findings 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: §§283-291. Ground 3 is established.

Ground 4: Reasons for non-categorization as RC (§§293-304)

16. His Lordship considered that the Applicant's real complaint is the failure to have categorised his complaint as a RC. The giving or not giving of reasons for that failure is largely beside the point. The delay in categorization also does not give rise to any particular duty to give reasons for the previous non-categorization: §303. Ground 4 is not established.

Grounds 5 and 6: IPCC's duties in the process (§§305-315)

17. His Lordship found that section 16 is only triggered upon a list of RCs being submitted to IPCC. The CAPO Complaint was not on any such lists until 23 November 2021. The language of section 16 clearly suggests that the IPCC's advice is supposed to be made only upon a categorization already made by CAPO. Section 16 cannot be invoked before a categorization has been made by CAPO and submitted to the IPCC for review: §§305-309.
18. His Lordship said that since the fault or deficiency (section 8(1)(c)) concerns the meaning of "complaint" under the IPCCO, this is not a single incident but systemic in nature. However, His Lordship did not consider that the Applicant's arguments can make good Ground 5 or Ground 6: §§312-315. Grounds 5 and 6 are not established.

Ground 7: IPCC's duty of confidentiality (§§316-334)

19. His Lordship found that the Applicant had not impliedly consented to or should be taken as having consented to the relaying of the concerned information contained in three letters provided by the Applicant to the IPCC in respect of his CAPO Complaint to CAPO: §§321-329.
20. His Lordship also rejected that IPCC could rely on the exception provided by section 40(2)(a) of the IPCCO (which provides for disclosure that is necessary for the performance of the IPCC's functions) since it was not necessary on the facts for achieving the performance of the IPCC's functions under the IPCCO: §§330-331. Ground 7 is established.

**Court's Disposition**

21. His Lordship allowed the Applicant's application for judicial review with costs and granted declarations that:-
- (1) the failure of CAPO to categorize the CAPO Complaint as a RC under section 11 of the IPCCO until 18 November 2021 was unlawful;
  - (2) the Commissioner failed to discharge its statutory duties in that he: failed to



- (a) fully and accurately to explain to the Applicant the investigation procedures; (b) categorize the CAPO Complaint as a RC; (c) duly handle and investigate the CAPO Complaint under the two-tier mechanism; and (d) keep the Applicant fully informed throughout the investigation;
- (3) the EDM is illegal/*ultra vires* being contrary to the mandated two-tier mechanism as provided for under the IPCCO;
- (4) the relaying of information by the IPCC to CAPO was contrary to section 40 of the IPCCO.

**Civil Division**  
**Department of Justice**  
**3 November 2023**