

# **EXECUTIVE SUMMARY**

## **Direct Investigation Driving-offence Points System**

### **Background**

The driving-offence points (“DOP”) system was introduced in 1984 under the Road Traffic (Driving-offence Points) Ordinance, Cap. 375 (“the DOP Ordinance”) to deter inappropriate driving behaviour. A driver shall incur DOP when he is convicted in court or becomes liable to a fixed penalty in respect of a traffic offence in the Schedule of the DOP Ordinance. On accumulation of 15 DOP within two years, the driver is liable to be disqualified by the court from driving.

2. In 2008, the media reported that drivers with 15 or more DOP were able to evade court summonses by providing untrue or incomplete addresses to the Transport Department (“TD”) or refusing to acknowledge receipt of the summonses. Without successful delivery of summons, the court could not disqualify such drivers from driving.

3. In February 2009, the Administration proposed to amend the DOP Ordinance to plug the loopholes.

4. Concerned that the Administration still seemed unable to promptly disqualify wilful evaders, The Ombudsman decided to initiate a direct investigation to examine:

- (a) the loopholes in the DOP system;
- (b) the effectiveness of the remedial measures taken by the Administration;  
and
- (c) other measures, if any, for further improvement.

### **The 2009 Amendment**

5. The Administration’s legislative amendment (“the 2009 Amendment”) took effect on 29 May 2009. Following the amendment, summonses are served, as before, by ordinary post first. However, if the driver does not appear in court, the summons will be served again by registered post to the driver’s last known address. The summons will be deemed served, even if it is returned undelivered. If the driver still does not appear in court, the court will issue a non-appearance arrest warrant, upon which the Police will step in to make contact with the driver and ask him to surrender to a Police station or to the court. The Commissioner for Transport (“C for T”) has also been empowered to refuse to issue, reissue or renew the driving licence of the driver who has been served a summons and has failed to appear in court for it.

### **The Administration’s Review**

6. The Administration reviewed the 2009 Amendment after six months and concluded that it was effective in resolving the evasion problem in the service of summons as most of the drivers concerned had been brought to the court for disqualification hearings.

7. The number of drivers with 15 or more DOP who appeared at first and second hearings had risen from 2,392 (accounting for 83% of summonses issued) in 2008<sup>1</sup> to 2,756 (accounting for 88% of summonses issued) in 2009<sup>2</sup>. The number of non-appearance arrest warrants issued had also increased from 65 (accounting for 2% of summonses issued) in 2008<sup>3</sup> to 358 (accounting for 11% summonses issued) in 2009<sup>4</sup>.

## **Our Observations**

### ***Plugging of Loopholes***

8. After the 2009 Amendment, there remain a considerable number of recalcitrant drivers who do not appear in court for disqualification hearing despite the non-appearance arrest warrants issued against them.

9. As at May 2009, there were 536 recalcitrant drivers to whom summonses could not be served. After the 2009 Amendment, summonses were deemed served to all those drivers. Yet, as at 31 January 2010, 210 of those drivers still had not appeared in court for disqualification hearing even though they had all been issued non-appearance warrants. Despite the 2009 Amendment, they could not be disqualified from driving until they show up for court hearing or their driving licences expire.

### ***No Disincentive for Evasion***

10. There is no provision under the DOP Ordinance for additional penalty on wilful evaders. This is unfair to those drivers who readily accept disqualification.

11. There is also no incentive for compliance, such as acceptance of drivers' plea of guilty and acceptance of disqualification by letter to the court.

### ***Limited Effect of Non-renewal***

12. Through the 2009 Amendment, C for T is empowered to refuse renewal of a driving licence where the driver has been served a summons under the DOP system and failed to appear in court for it. However, most driving licences are valid for as long as ten years. The prospect of non-renewal, therefore, has limited deterrent effect.

### ***Need for Further Streamlining***

13. In the course of our inquiry, TD has reduced the processing time of disqualification cases from 14 to 7 weeks. We commend TD's efforts and consider that TD should continue to monitor and streamline its procedures and practices for efficiency and effectiveness.

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<sup>1</sup> 29 May – 31 December 2008

<sup>2</sup> 29 May (date of enactment of the 2009 Amendment) – 31 December 2009

<sup>3</sup> Same as Footnote 1

<sup>4</sup> Same as Footnote 2

### ***Need for Monitoring***

14. Currently, the statistics maintained by TD on road traffic accidents do not cover the number of accidents involving drivers with 15 or more DOP. Such statistics are necessary for providing timely indication of the effectiveness of the DOP system in deterring inappropriate driving behaviours. TD should liaise closely with the Police with a view to systematically maintaining statistics on traffic accidents involving drivers with DOP and keep the situation under review.

### **Conclusion and Recommendations**

15. We commend the Administration for promptly devising measures in response to community concern over the loopholes in the DOP system and for expediently reducing the processing time for disqualification. The 2009 Amendment reflects the Administration's commitment to tackling the problems. However, the Administration has not arrived at a complete solution to the problems relating to evasion of law enforcement.

16. We cannot over-emphasise the importance of the rights of citizens to road safety. Tougher measures against offenders are called for if there is evidence that the current scheme allows drivers posing a threat to road safety to slip through.

17. The Ombudsman recommends that the Administration:

- (a) consider legislation to empower the court to impose a longer disqualification period on evidence of any deliberate attempt by drivers to frustrate law enforcement;
- (b) consider accepting drivers' guilty plea by letter to the court in the same spirit as the fixed penalty system;
- (c) consider empowering C for T to refuse issue and renewal of other licences, such as vehicle licences, to any driver who evades court attendance or Police arrest;

18. The Ombudsman also recommends that TD:

- (d) streamline its procedures and practices to further shorten the disqualification process; and
- (e) systematically maintain and regularly analyse statistics on drivers with DOP, including related accidents, with a view to identifying problems in the DOP system for review and early remedy.