

# **CHAPTER 1**

## **Judiciary**

**Department of Justice  
Hong Kong Police Force  
Transport Department**

<b>Collection of fines imposed by Magistrates' Courts</b>
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**Audit Commission  
Hong Kong  
31 March 2006**

*This audit review was carried out under a set of guidelines tabled in the Provisional Legislative Council by the Chairman of the Public Accounts Committee on 11 February 1998. The guidelines were agreed between the Public Accounts Committee and the Director of Audit and accepted by the Government of the Hong Kong Special Administrative Region.*

Report No. 46 of the Director of Audit contains 9 Chapters which are available on our website at <http://www.aud.gov.hk>.

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# COLLECTION OF FINES IMPOSED BY MAGISTRATES' COURTS

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## PART 1: INTRODUCTION

1.1 This PART describes the background to the audit and outlines its objectives and scope.

### Fines imposed by courts

1.2 A fine is a pecuniary penalty under a conviction or a court order. It is a punishment for an offence or a contravention imposed by a court. As shown in Table 1, the great majority of fines arise from cases heard in Magistrates' Courts.

**Table 1**  
**Amount of fines collected**  
**(2002-03 to 2004-05)**

	2002-03		2003-04		2004-05	
	(\$ million)	(%)	(\$ million)	(%)	(\$ million)	(%)
Cases heard in Magistrates' Courts	310	99.7%	281	94.9%	289	98.6%
Cases heard in the District Court and the High Court	1	0.3%	15	5.1%	4	1.4%
<b>Total</b>	<b>311</b>	<b>100%</b>	<b>296</b>	<b>100%</b>	<b>293</b>	<b>100%</b>

*Source: Judiciary records*

1.3 Cases heard in Magistrates' Courts giving rise to fines can be classified as follows:

- (a) **Criminal charge cases.** These cases are initiated by government departments such as the Hong Kong Police Force (Police). In a criminal charge case, the defendant is apprehended and brought to the court by law enforcement departments (e.g. the Police). Such cases include, for example, shoplifting, and operating a vice establishment;

- (b) **Departmental summons cases.** These cases are initiated by government departments which are responsible for enforcing the regulations prescribed by certain ordinances (Note 1). In a departmental summons case, a magistrate's court summons the defendant for hearing on receipt of information of an offence from a prosecuting department; and
- (c) **Ex parte court order cases.** These cases arise when the offender of a fixed penalty offence or contravention (Note 2) neither pays the fixed penalty nor disputes the offence or contravention. A magistrate's court will, on application by the responsible government department, issue an ex parte court order to demand the offender to pay the fixed penalty, an additional penalty (which equals the fixed penalty), and court cost (which is usually of a predetermined amount of \$300 or \$440 – Note 3).

## Payment of fines

1.4 Companies or persons can pay fines at the Accounts Office of the Magistrates' Courts imposing the fines, at the Accounts Office of other Magistrates' Courts, or by post. In making payment, the court case number should be quoted.

1.5 Presently, there are seven Magistrates' Courts (i.e. the Eastern, Fanling, Kowloon City, Kwun Tong, Shatin, Tsuen Wan, and Tuen Mun Magistrates' Courts), each of which has a number of courts and a General Office. The General Office of Magistrates' Courts (hereinafter referred to as General Office) provides support to the courts and carries out administrative and accounting duties, including collection of fines.

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**Note 1:** *These ordinances include, for example, the Public Health and Municipal Services Ordinance (Cap. 132), the Employment Ordinance (Cap. 57), and the Import and Export Ordinance (Cap. 60).*

**Note 2:** *There are three main types of fixed penalty offences or contraventions, namely **parking contraventions** under the Fixed Penalty (Traffic Contraventions) Ordinance (Cap. 237), **moving offences** under the Fixed Penalty (Criminal Proceedings) Ordinance (Cap. 240), and offences under the Fixed Penalty (Public Cleanliness Offences) Ordinance (Cap. 570).*

**Note 3:** *Since May 2005, court cost is not included in the applications for moving offence ex parte court orders (see para. 6.3).*



1.6 The Judiciary Administration (Note 4) operates a computerised Case and Summons Management System (CASEMAN) for managing and processing cases heard in Magistrates' Courts. It records case details, hearing results, and fine payments.

### **Recovery of overdue fines**

1.7 The Magistrates Ordinance (Cap. 227) has provision for the recovery of overdue fines, as follows:

- (a) if the defaulter is a company, it shall be lawful for a magistrate to issue a warrant of distress (hereinafter referred to as distress warrant) on an order for the payment of any sum of money under section 51 of the Ordinance to bailiffs for the purpose of levying on the goods and chattels of the defaulter by distress and sale of the same. The proceeds of sale will be used to settle the overdue fines; and
- (b) if the defaulter is a natural person, a magistrate may issue a warrant for non-payment of fine (hereinafter referred to as non-payment warrant) under section 101A of the Ordinance to police officers for the purpose of apprehending the defaulter and bringing him before a magistrate to be dealt with according to the law.

1.8 For parking contraventions under the Fixed Penalty (Traffic Contraventions) Ordinance (Cap. 237 – hereinafter referred to as parking contraventions), which are civil in nature, the procedures of dealing with overdue fines are slightly different. Irrespective of whether the defaulter is a company or a natural person, a magistrate, on application by the Police in the name of the Secretary for Justice, may issue a distress warrant under section 23 of the Ordinance to recover the overdue fines.

### **Audit review**

1.9 The effective collection of fines is crucial to achieving the important purposes of maintaining the creditability of fines as a sentencing option, enhancing public regard for the administration of justice, and promoting compliance with the law.

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**Note 4:** *The Judiciary Administration is headed by the Judiciary Administrator who assists the Chief Justice in the overall administration of the Judiciary. The Judiciary Administrator is also the Controlling Officer for all public funds expended by the Judiciary.*

1.10 The Audit Commission (Audit) has recently conducted a review to examine the collection of fines imposed by Magistrates' Courts. The review focused on the following areas:

- (a) imposition and settlement of fines (PART 2);
- (b) action on overdue fines (PART 3);
- (c) execution of distress warrants by the Court Orders Section (PART 4);
- (d) execution of non-payment warrants by the Police (PART 5); and
- (e) other issues relating to fines arising from moving offences under the Fixed Penalty (Criminal Proceedings) Ordinance (Cap. 240 – hereinafter referred to as moving offences) and parking contraventions (PART 6).

### **General response from the Administration**

1.11 The **Deputy Director of Public Prosecutions**, Department of Justice agrees with the audit recommendations in general terms.

1.12 The **Commissioner of Police** agrees that the audit recommendations which are related to the Police's purview warrant further examination. He has said that these audit recommendations will require to be studied in turn, in many cases in conjunction with the Judiciary Administrator, in order to determine whether they are feasible for implementation.

### **Acknowledgement**

1.13 Audit would like to acknowledge with gratitude the full cooperation of the staff of the Judiciary Administration, the Department of Justice (D of J), the Police, and the Transport Department during the audit.

## **PART 2: IMPOSITION AND SETTLEMENT OF FINES**

2.1 This PART examines the imposition and the settlement of fines.

### **Imposition of fines**

2.2 After a defendant has been convicted in a hearing, the prosecutor provides the presiding magistrate with information on past similar convictions for determining the sentence. The magistrate may order the defendant to pay a fine, either immediately or within a certain period (e.g. one month). Information on the amount and the due date of the fine is recorded in the case file and captured in the CASEMAN. The General Office keeps track of payment of the fine by reference to the CASEMAN and the case file.

### **Audit observations**

2.3 Presently, orders to pay fines imposed by magistrates in open court are conveyed orally to defendants. The defendants are not informed in writing of the amount of the fine, the payment due date, the payment method, and other payment information. There are two main types of orders: immediate payment orders (the defendant is ordered to pay the fine forthwith), and payment orders (the defendant is not required to pay the fine forthwith but is ordered to pay within a certain period). According to the CASEMAN, immediate payment orders constitute 68% of both types of orders for 2005. For the immediate payment orders, 98% of the payments were made on the same day when the fines were imposed.

2.4 It is pertinent to note that, if a company is convicted and fined in an ex parte hearing (Note 5), the General Office will send a standard letter to the company informing it of the amount of the fine. The letter also states that if the company fails to pay the fine, a distress warrant may be issued. Audit notes that in overseas countries such as the United Kingdom, when a defendant is fined by a court, he will be given a notice informing him of the amount of the fine as well as the payment terms.

2.5 **Audit considers that, if General Offices issue notices to those offenders who are allowed to pay fines within a certain period to remind them of payment of fines and the consequences of non-payment, the settlement rate of the fines may increase.**

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**Note 5:** *For a departmental summons case, if the defendant is a company and does not send an authorised representative to attend the hearing, the hearing may be held ex parte.*

**This could save the effort in issuing and executing distress warrants and non-payment warrants.**

### **Audit recommendation**

2.6        **Audit has *recommended* that the Judiciary Administrator should consider issuing notices to offenders who are allowed to pay fines within a period to inform them of the amount and the due date of fines, and the consequences of non-payment.**

### **Response from the Administration**

2.7        The **Judiciary Administrator** agrees with the audit recommendation.

### **Settlement of fines**

#### ***Extent of settlement of fines***

2.8        Table 2 shows the extent of settlement of fines (including court cost) imposed by Magistrates' Courts as at 31 December 2005. As at that date, the total amount of fines outstanding was about \$93 million.

**Table 2**  
**Extent of settlement of fines as at 31 December 2005**

Period in which fines were due	Number of cases				Amount of fines			
	Due	Settled	Outstanding		Due	Settled	Outstanding	
	(Number)	(Number)	(Number)	(Percentage)	(\$ million)	(\$ million)	(\$ million)	(Percentage)
<b><i>Non-fixed penalty fines</i></b>								
2005-06	120,432	116,731	3,701	3.1%	180.4	172.0	8.4	4.7%
2004-05	157,879	154,955	2,924	1.9%	243.6	234.5	9.1	3.7%
2003-04	150,624	148,902	1,722	1.1%	229.6	224.4	5.2	2.3%
2002-03	169,908	167,574	2,334	1.4%	256.0	249.1	6.9	2.7%
Before April 2002	–	–	227	–	–	–	1.0	–
<b><i>Fixed penalty fines (moving offences and parking contraventions)</i></b>								
2005-06	48,464	34,260	14,204	29.3%	47.3	33.4	13.9	29.4%
2004-05	51,165	42,553	8,612	16.8%	59.1	49.0	10.1	17.1%
2003-04	50,928	45,051	5,877	11.5%	58.0	51.3	6.7	11.6%
2002-03	53,560	48,425	5,135	9.6%	60.6	54.8	5.8	9.6%
Before April 2002	–	–	15,446	–	–	–	19.3	–
<b><i>Fixed penalty fines (public cleanliness offences)</i></b>								
2005-06	3,204	2,137	1,067	33.3%	8.5	5.2	3.3	38.8%
2004-05	3,238	2,611	627	19.4%	8.9	6.9	2.0	22.5%
2003-04	2,140	1,850	290	13.6%	4.5	3.7	0.8	17.8%
2002-03	626	585	41	6.6%	0.9	0.8	0.1	11.1%
<b>Total</b>	–	–	<b>62,207</b>	–	–	–	<b>92.6</b>	–

Source: Judiciary and Police records and Audit analysis

- Remarks:
1. For 2005-06, the figures are up to 31 December 2005 only.
  2. For simplicity of analysis, for those fines due before April 2002, only the figures on outstanding fines are included.
  3. As the Fixed Penalty (Public Cleanliness Offences) Ordinance (Cap. 570) came into effect on 27 May 2002, there were no fines due under this Ordinance before April 2002.

***Write-off of irrecoverable fines***

2.9 When all recovery actions have proved fruitless, the outstanding fines are written off (Note 6). The powers to write off fines are set out in Financial Circular No. 6/2000. Authorised officers of the responsible departments may approve write-off cases other than:

- (a) cases involving fraud or negligence on the part of a public officer, irrespective of the amount of loss;
- (b) cases involving theft or suspected theft of an amount exceeding \$50,000; and
- (c) cases involving other losses of an amount exceeding \$500,000

for which applications for write-offs must be made to the Secretary for Financial Services and the Treasury.

2.10 The responsible departments are required to submit a half-yearly return of such cases to the Secretary for Financial Services and the Treasury, stating briefly the recovery actions taken.

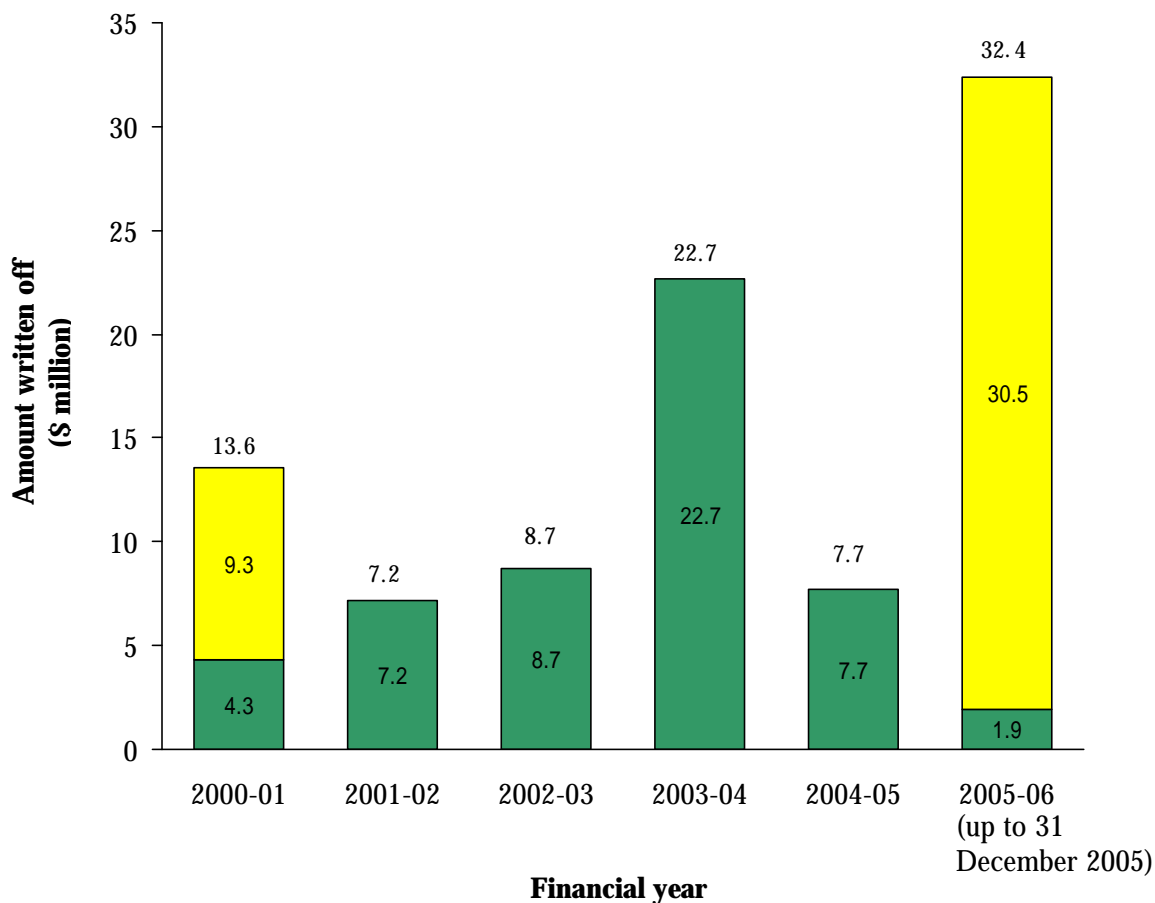
2.11 The General Offices continue to keep track of the collection records of all write-off cases. There is no time limit on the distress warrants and non-payment warrants. Recovery action will commence if recovery of the outstanding fines in any write-off case appears possible at a later date.

2.12 Figure 1 shows the amounts of fines (including court cost) written off during the period 2000-01 to 2005-06.

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**Note 6:** *The Commissioner of Police is responsible for writing off fines arising from moving offences and parking contraventions. The Director of Food and Environmental Hygiene is responsible for writing off fines arising from fixed penalty public cleanliness offences. The Judiciary Administrator is responsible for writing off fines arising from offences other than fixed penalty offences and parking contraventions.*

Figure 1

**Write-offs of fines imposed by Magistrates' Courts**

Legend: ■ Moving offences and parking contraventions  
■ Offences other than moving offences and parking contraventions

Source: *Judiciary and Police records*

**Audit examination of the collection of fines from 40 defaulters**

2.13 Audit has selected a sample of 40 defaulters with outstanding fines as at 30 June 2005 for examination to see whether there is room for improvement in the collection process. Among them, 25 defaulters (Defaulters A1 to A25) had committed offences other than moving offences and parking contraventions. The remaining 15 defaulters (Defaulters B1 to B15) had committed moving offences and parking contraventions. These 40 defaulters are collectively referred to as the audit sample in this audit report. The audit findings arising from the examination of the audit sample are reported in PARTs 3 to 5.

## Audit observations

### *Provision of management information by CASEMAN*

2.14 The major computerised system involved in the collection of fines is the Judiciary Administration's CASEMAN. This system provides useful information for planning, directing and monitoring the collection of fines. The information includes, for example, the settlement rate of fines, and the number and amount of outstanding distress warrants and non-payment warrants. **Audit notes that presently, such information is not provided on a regular basis to the management of the initiating departments concerned (see para. 1.3). Audit considers that there is scope for the Judiciary Administration to provide relevant management information to the initiating departments so that all parties concerned may make better use of the CASEMAN information.**

### *Performance monitoring and reporting*

2.15 Performance indicators serve two important purposes. Internally, they assist in monitoring performance. Externally, they report accountability. In respect of the collection of fines, useful performance indicators can be devised based on the settlement rate of fines, and the amount and age breakdown of outstanding fines. **Audit considers that there is a need to enhance performance monitoring and reporting in respect of the collection of fines.**

## Audit recommendations

2.16 **Audit has recommended that the Judiciary Administrator should, in consultation with the initiating departments (see para. 1.3), consider ways to make better use of the CASEMAN for the provision of information to manage the collection of fines.**

2.17 **Audit has recommended that the Judiciary Administrator and the D of J should consider ways to enhance performance monitoring and reporting in respect of the collection of fines.**

## Response from the Administration

2.18 The **Judiciary Administrator** agrees with the audit recommendations mentioned in paragraphs 2.16 and 2.17.

2.19 The **Deputy Director of Public Prosecutions**, Department of Justice has no objection to the audit recommendations mentioned in paragraphs 2.16 and 2.17.



## **PART 3: ACTION ON OVERDUE FINES**

3.1 This PART examines the various courses of action taken by the General Offices and the Police on overdue fines.

### **Issue of warrants**

#### ***Offences other than moving offences and parking contraventions***

3.2 For offences other than moving offences and parking contraventions, when the fines become overdue, the General Offices adopt the following procedures for the issue of distress warrants and non-payment warrants:

- (a) the CASEMAN generates, on a daily basis, distress warrants and non-payment warrants for fines which have been overdue for 14 days. The warrants are delivered to the General Office of the Magistrates' Courts which have imposed the fines;
- (b) on receipt of the warrants, the General Office retrieves the relevant case files. After checking that the fines are still outstanding, the General Office will pass the case files together with the warrants to the responsible magistrates who have dealt with the cases for consideration; and
- (c) after consideration, the magistrate may approve the warrants. For **non-payment warrants**, the General Office will deliver the approved warrants to the police office located at the Magistrates' Courts. These warrants will finally be delivered to the police division concerned for action according to the addresses of the defaulters. For **distress warrants**, the General Office will deliver the approved warrants to the regional offices of the Court Orders Section of the Judiciary Administration (hereinafter referred to as the Court Orders Section) which will take action on the warrants.

#### ***Parking contraventions***

3.3 The procedures for the issue of distress warrants relating to parking contraventions are as follows:

- (a) the Police, in the name of the Secretary for Justice, sends a "Notice of Intention to Apply for Warrant of Distress" to the defaulter, together with details of the outstanding ex parte court orders. The defaulter is given one month to settle the fixed penalty and court cost;

- (b) after one month, the Police will check whether the defaulter has paid the fixed penalty and court cost; and
- (c) if the fixed penalty and court cost remain outstanding, the Police will inform the D of J about this. The D of J will then file an application to the Magistrates' Courts for the issue of a distress warrant.

3.4 Presently, the criteria for applying for distress warrants relating to parking contraventions are as follows:

- (a) the ownership of the offending vehicle has been transferred;
- (b) the vehicle licence of the offending vehicle has expired for two years (Note 7); or
- (c) the total amount of outstanding fixed penalty and court cost due from the defaulter has accumulated to over \$50,000.

### ***Moving offences***

3.5 For moving offences, the procedures for the issue of distress warrants and non-payment warrants are similar to those mentioned in paragraph 3.2. However, there is an additional criterion that the CASEMAN will generate a warrant only when the total amount of outstanding fixed penalty and court cost due from a defaulter has exceeded \$1,500.

### **Audit observations**

#### ***Time lag in issuing warrants for offences other than moving offences and parking contraventions***

3.6 Audit performed an analysis of the time taken for the issue of distress warrants and non-payment warrants, for the 25 defaulters (Defaulters A1 to A25 in the audit sample) who had committed offences other than moving offences and parking contraventions. The results of the analysis (see Table 3) show that there was an average time lag of 23 days between the due date of the fine and the date when a warrant was issued (excluding the

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**Note 7:** *The Commissioner for Transport will usually de-register a vehicle when its licence has expired for two years. Therefore, barring the renewal of the vehicle licence is not effective in making the defaulter pay the outstanding fixed penalty and court cost.*

two cases which took a long time to issue a warrant after the fines were overdue – see para. 3.7).

**Table 3**

**Time lag between the due date of the fine and the issue of a warrant for offences other than moving offences and parking contraventions (Defaulters A1 to A25 in the audit sample)**

<b>Time lag</b>	<b>Number of warrants</b>
Less than 21 days	45
21 to 40 days	79
41 to 100 days	1
More than 100 days	1
<b>Total</b>	<b>126</b>

*Source: Judiciary records and Audit analysis*

3.7 Audit noted that for two cases, it took a long time to issue a warrant after the fines were overdue. In one case (Defaulter A10), the distress warrant was approved 67 days after the due date of the fine. In another case (Defaulter A20), the non-payment warrant was approved 117 days after the due date of the fine. As informed by the General Offices concerned, the delay in both cases was due to oversight of their staff.

3.8 **In order to facilitate the prompt issue of warrants, Audit considers that there is a need for the Judiciary Administration to consider reviewing the 14-day grace period (see para. 3.2(a)) to see if it could be shortened and to monitor closely the progress of the processing of the warrants by the General Offices.** For example, a control register may be used to keep track of the distress warrants and non-payment warrants from the date they are received to the date they are despatched to the Court Orders Section and the Police for action. A target may also be set on the time allowed for the submission of cases to magistrates for consideration.

***Issue of multiple distress warrants for parking contraventions to the same defaulter***

3.9 For the same defaulter, very often, several applications for distress warrants for parking contraventions are made to different Magistrates' Courts which have issued the related ex parte court orders. Presently, three Magistrates' Courts are designated for handling moving offences and parking contraventions (i.e. the Eastern, Kowloon City and Shatin Magistrates' Courts). Therefore, three applications can be made for the same defaulter. A typical case (Defaulter B2) is shown in Appendix A to illustrate the issue of multiple distress warrants.

3.10 Effort could be saved if only one distress warrant is issued to cover all the ex parte court orders relating to the same defaulter issued by different Magistrates' Courts. According to the D of J, changes may have to be made to the CASEMAN if the process for application of distress warrants is to be redesigned. **Audit considers that there is a need for the D of J, in consultation with the Police and the Judiciary Administration, to consider reducing the applications for multiple distress warrants in respect of the same defaulter.**

***Need to review the criteria for the issue of distress warrants relating to parking contraventions***

3.11 Audit noted that there were cases in which distress warrants for parking contraventions were not issued in a timely manner according to the existing criteria. In one case (Defaulter B3), a distress warrant was issued two years after the expiry of the vehicle licence of the offending vehicle. By that time, the defaulter, a company, had already been dissolved. The fixed penalty and court cost could not be recovered. Details of the case are shown in Appendix B.

3.12 For Defaulter B2 (see Appendix A), distress warrants were issued 20 months after he had committed the first parking contravention, when the total amount of outstanding fixed penalty and court cost had accumulated to over \$50,000. As at 31 December 2005, the fixed penalty and court cost were still outstanding.

3.13 **Audit considers that for parking contraventions, distress warrants should be issued in a timely manner so as to increase the recovery rate of outstanding fixed penalty and court cost. There is a need for the D of J and the Police to consider reviewing the existing criteria for application of distress warrants.**

***Need to review the criteria for the  
issue of warrants relating to moving offences***

3.14 Because of the additional criterion that warrants are issued only when the total amount of outstanding fines has exceeded \$1,500 (see para. 3.5), warrants for moving offences are not issued in a timely manner. In one case, the defaulter (Defaulter B12) committed a moving offence and did not settle the fixed penalty and court cost. A non-payment warrant was not issued because the total outstanding amount was less than \$1,500. Eleven months after the first offence, he committed another moving offence and also did not settle the fixed penalty and court cost. As the total outstanding amount had exceeded \$1,500, two non-payment warrants were issued. The outstanding fixed penalty and court cost were subsequently settled.

3.15 **Audit could not ascertain the rationale for establishing the threshold of \$1,500 for issuing warrants in respect of moving offences. Audit considers that there is a need to review this threshold.**

**Audit recommendations**

3.16 **Audit has recommended that the Judiciary Administrator should:**

- (a) **for offences other than moving offences and parking contraventions, keep under review and, where appropriate, consider shortening the 14-day grace period between the due date of fines and the generation of distress warrants and non-payment warrants by the CASEMAN; and**
- (b) **closely monitor the progress of the General Offices in processing distress warrants and non-payment warrants (e.g. setting a target on the time allowed for the submission of cases to magistrates for consideration).**

3.17 **Audit has recommended that for parking contraventions, the D of J should:**

- (a) **in consultation with the Commissioner of Police, consider reviewing the existing criteria for application of distress warrants; and**
- (b) **in consultation with the Commissioner of Police and the Judiciary Administrator, consider redesigning the process for application of distress warrants in order to avoid multiple applications for distress warrants in respect of the same defaulter in different Magistrates' Courts.**

3.18 **Audit has recommended that the Commissioner of Police should review whether it is necessary to maintain the existing requirement that for moving offences, the total outstanding amount of fixed penalty and court cost due from a defaulter must exceed \$1,500 before applying for a warrant.**

### **Response from the Administration**

3.19 The **Judiciary Administrator** agrees with the audit recommendations mentioned in paragraph 3.16.

3.20 The **Deputy Director of Public Prosecutions**, Department of Justice agrees with the audit recommendations mentioned in paragraph 3.17 in general terms. He has said that:

- (a) whether it is technically possible to reprogramme the CASEMAN, so that all ex parte court orders made against one defaulter can be combined in one distress warrant, irrespective of the magistrate's court at which the order was made, is something that may need to be explored; and
- (b) different conditions for payment may be imposed in different orders at different magistrates' courts on different days. If distress warrants are to be issued in a more timely manner, as recommended by Audit, it may not be possible to combine the details of more than one order in the same distress warrant.

3.21 The **Commissioner of Police** has said that the Police has no strong views about the proposed review mentioned in paragraph 3.18. He has also said that:

- (a) a change of the existing threshold of \$1,500 for issuing warrants in respect of moving offences would have consequent implications on the workload of several departments; and
- (b) the Police is willing to take part in the review of this threshold with other parties concerned if it is agreed by them.

## **PART 4: EXECUTION OF DISTRESS WARRANTS BY THE COURT ORDERS SECTION**

4.1 This PART examines the Court Orders Section's performance in the execution of distress warrants to recover outstanding fines.

### **Court Orders Section**

4.2 After the approval of distress warrants by magistrates, the General Offices forward them to the regional offices of the Court Orders Section for taking action (i.e. attempting to execute the distress warrants at the defaulters' addresses). The Court Orders Section has four regional offices responsible for executing distress warrants (i.e. one in Hong Kong, one in Kowloon, and two in the New Territories). Distress warrants are delivered to regional offices according to the defaulters' addresses.

4.3 The Court Orders Section is part of the Judiciary Administration. It is mainly responsible for executing writs and warrants and servicing summonses and other legal documents. Of the different kinds of writs and warrants executed by the Section, about 25% are distress warrants. Among the distress warrants, about 20% are related to moving offences and parking contraventions. As at 31 December 2005, the Court Orders Section had 48 bailiffs in all ranks, 40 bailiff assistants and 17 possession guards. Bailiffs are responsible for executing writs and warrants while bailiff assistants are responsible for servicing summonses. The estimated annual staff cost of the Court Orders Section is \$41 million in 2005-06. The estimated annual staff cost for executing distress warrants is about \$8 million.

### **Execution of distress warrants**

4.4 In executing a distress warrant, a bailiff will seize the goods and chattels of the defaulter to the limit that the value of the seized items will cover the outstanding fines and the cost of seizure (i.e. the bailiff's travelling expenses, the possession guards' service fee, and the auctioneer's expenses). The defaulter is allowed a period of five working days to pay the outstanding fines and the cost of seizure. If the defaulter does not do so, the seized items will be sold by public auction. The sales proceeds will be used to settle the outstanding fines and the cost of seizure.

4.5 The execution of distress warrants may be unsuccessful for the following reasons:

- (a) the door of the premises is locked and nobody responds to the bailiff's calls;

- (b) the bailiff is satisfied that no such defaulter is trading or residing at the premises;
- (c) the bailiff is satisfied that no goods and chattels belonging to the defaulter are available for seizure; and
- (d) the bailiff finds that the goods and chattels are of insufficient value to cover the cost of seizure.

***Warrants relating to offences other than parking contraventions***

4.6 When the execution of a distress warrant relating to offences other than parking contraventions is unsuccessful, the Court Orders Section will inform the General Office concerned. The General Office will in turn seek additional information from the prosecuting department, e.g. whether the company has another address and whether it has been/is being wound up. If there is another address, the General Office will provide this information to the Court Orders Section for attempting another execution.

***Warrants relating to parking contraventions***

4.7 When the execution of a distress warrant relating to parking contraventions is unsuccessful, the Court Orders Section will inform both the General Office concerned and the Police. The Police will try to find out additional information about the defaulter. If there is another address, the Police will provide this information to the Court Orders Section for attempting another execution.

**Outstanding distress warrants**

4.8 Table 4 shows the position of outstanding distress warrants as at 31 December 2005. Audit noted that a large number of distress warrants were outstanding as at 31 December 2005 notwithstanding that attempts had been made for their execution.



Table 4

## Distress warrants outstanding as at 31 December 2005

Financial year	Number of warrants				Amount of fines involved			
	Issued	Executed/ cancelled/ withdrawn (Note)	Outstanding		For warrants issued	For warrants executed/ cancelled/ withdrawn (Note)	For warrants outstanding	
	(Number)	(Number)	(Number)	(Percentage)	(\$ million)	(\$ million)	(\$ million)	(Percentage)
<b>Non-fixed penalty fines</b>								
2005-06	2,104	594	1,510	72%	10.0	3.0	7.0	70%
2004-05	3,231	992	2,239	69%	16.1	5.9	10.2	63%
2003-04	2,221	768	1,453	65%	9.0	3.2	5.8	64%
2002-03	2,784	803	1,981	71%	12.5	4.4	8.1	65%
<b>Sub-total</b>	<b>10,340</b>	<b>3,157</b>	<b>7,183</b>	<b>69%</b>	<b>47.6</b>	<b>16.5</b>	<b>31.1</b>	<b>65%</b>
<b>Fixed penalty fines (moving offences and parking contraventions)</b>								
2005-06	556	124	432	78%	2.7	0.6	2.1	78%
2004-05	784	334	450	57%	4.5	1.8	2.7	60%
2003-04	1,028	451	577	56%	6.1	2.9	3.2	52%
2002-03	879	493	386	44%	5.2	2.9	2.3	44%
<b>Sub-total</b>	<b>3,247</b>	<b>1,402</b>	<b>1,845</b>	<b>57%</b>	<b>18.5</b>	<b>8.2</b>	<b>10.3</b>	<b>56%</b>
<b>Total</b>	<b>13,587</b>	<b>4,559</b>	<b>9,028</b>	<b>66%</b>	<b>66.1</b>	<b>24.7</b>	<b>41.4</b>	<b>63%</b>

Source: Judiciary records and Audit analysis

Note: Warrants can be cancelled before execution if defaulters have paid the fines. Warrants can be withdrawn if defaulters have been dissolved (for companies), or have deceased (for persons).

Remarks: For 2005-06, the figures are up to 31 December 2005 only.

4.9 A significant amount of fines is due from a small number of persistent defaulters with more than five outstanding distress warrants. Details are shown in Table 5.

**Table 5**  
**Defaulters with outstanding distress warrants**  
**as at 31 December 2005**

Number of outstanding distress warrants per defaulter	Number of defaulters	Amount of fines	
		(\$ million)	(Percentage)
<i>Non-fixed penalty fines</i>			
Five or less	8,832	64.6	79%
More than five	234	17.6	21%
<i>Fixed penalty fines (moving offences and parking contraventions)</i>			
Five or less	6,580	48.8	77%
More than five	222	14.8	23%

Source: Judiciary records and Audit analysis

### **Audit observations**

4.10 Of the 40 defaulters in the audit sample (see para. 2.13), there are 25 defaulters for whom 214 distress warrants had been issued. Audit has examined the process of execution of these 214 distress warrants to see whether there is room for improvement. The audit findings are reported in paragraphs 4.11 to 4.17 and 4.20 to 4.23.

### ***Cost of execution of distress warrants***

4.11 Execution of distress warrants involves cost, the major portion of which is the staff costs of bailiffs and possession guards. In response to Audit's enquiry, the Judiciary Administration advised that no costing exercise on the execution of distress warrants had been carried out.

4.12 **Audit considers that there is a need for the Judiciary Administration to ascertain the cost of execution of distress warrants.** Such costing information should include, for example, the average cost of a visit performed by a bailiff and the average cost of a seizure conducted. This costing information would be useful for the Judiciary Administration's management in assessing the cost-effectiveness of the work of bailiffs.

***Promptness in execution of distress warrants***

4.13 Of the 214 distress warrants issued for the 25 defaulters (see para. 4.10), execution attempts were made in respect of 130 warrants (attempts were not made in respect of the other 84 warrants because the defaulters concerned were liquidated, bankrupt, or untraceable). Table 6 shows an analysis of the time lag (i.e. the time between the receipt of warrants by the Court Orders Section and the first execution attempt) in respect of the execution of these 130 warrants.

**Table 6**  
**Time lag in respect of the execution**  
**of 130 distress warrants in the audit sample**

<b>Year in which distress warrants were received by the Court Orders Section</b>	<b>Distress warrants executed</b>	<b>Average time lag</b>
	<b>(Number)</b>	<b>(Number of days)</b>
2005	12	9
2004	51	30
2003	10	24
2002	39	55
2001	18	139
<b>Overall</b>	<b>130</b>	<b>50</b>

Source: Judiciary records and Audit analysis

4.14 Timely attempts to execute a distress warrant improve the rate of successful execution. In recent years, the time lag between the receipt and the first execution attempt of distress warrants has been shortened. According to the Court Orders Section, this was due to a decrease in caseload. However, there is a risk that the time lag will be prolonged if the caseload increases again. **In Audit's view, there is a need for the Judiciary Administration to consider setting a target time on making the first execution attempt. This target can serve as a control measure to ensure the execution of distress warrants within a reasonable time. It can also assist in planning and monitoring the staff resources deployed for the execution of distress warrants.**

***Time lag in obtaining information  
from prosecuting departments***

4.15 Where the execution of a distress warrant is unsuccessful, it may be necessary to enquire of the prosecuting department for additional information (e.g. whether the company defaulter has another address and whether it has been/is being wound up). There were nine cases in the audit sample where the General Offices had to seek additional information about the company defaulters from the prosecuting departments. Table 7 shows that for these nine cases, there was generally a long time lag for the General Offices to receive replies from the prosecuting departments. **Audit considers that it is reasonable to expect that the prosecuting departments should respond promptly to the General Offices on the additional information requested. There is a need for the General offices to follow up with the prosecuting departments in case the replies are not received within a reasonable time.**

**Table 7****Time taken to obtain information from prosecuting departments  
in respect of nine defaulters in the audit sample**

<b>Defaulter</b>	<b>Number of days taken to receive a reply from the prosecuting department</b>
Defaulter A8	1,080 (Note)
Defaulter A7	316
Defaulter A12	112
Defaulter A15	101
Defaulter A9	75
Defaulter A14	59
Defaulter A11	41
Defaulter A10	22
Defaulter A3	3

*Source: Judiciary records and Audit analysis*

*Note: The prosecuting department had not yet replied to the General Office at the completion of this audit in December 2005.*

**Need to execute distress warrants at places  
where defaulters conduct business**

4.16 In Case 3 (relating to Defaulter A8 in the audit sample), the Court Orders Section could not execute the distress warrants because the defaulter did not conduct business at its registered address. Details of the case are shown in Appendix C. Audit notes that generally:

- (a) a distress warrant relating to a company defaulter is executed at its registered address, which may be the address of an accountant/solicitor firm or the residential address of a director/owner of the company defaulter. There are no

goods and chattels belonging to the company defaulter available for seizure at the registered address; and

- (b) at the same time, the company defaulter may be conducting business at another address. The prosecuting department may know this place, based on its intelligence or information obtainable from the Business Registration Office of the Inland Revenue Department. However, the General Office does not ascertain from the prosecuting department the address where the company is conducting business.

4.17 **Audit notes that the General Offices issue a standard memorandum to the prosecuting departments requesting them to provide further information on the “present/new/updated address” of the company defaulter when the execution of a distress warrant is unsuccessful. However, it is not clear whether the “present/new/updated address” of the company is identical to the business address. Audit considers that, where the execution of a distress warrant relating to a company defaulter has been unsuccessful, the General Offices need to ask the prosecuting department specifically whether the company defaulter has another address where it is conducting business.**

#### **Audit recommendations**

4.18 **Audit has *recommended* that the Judiciary Administrator should:**

- (a) **estimate the cost of execution of distress warrants for assessing the cost-effectiveness of the work of bailiffs;**
- (b) **consider setting a target time on the execution of distress warrants by bailiffs, particularly the target time of the first attempts; and**
- (c) **where the execution of a distress warrant relating to a company defaulter has been unsuccessful, require the General Offices to:**
  - (i) **specify clearly in the memorandum to the prosecuting departments that they should provide the current business address of the company defaulter within a reasonable time; and**
  - (ii) **forward the information obtained from the prosecuting departments to the Court Orders Section for further attempt of the execution of the distress warrant at the address where the company defaulter is conducting business.**

#### **Response from the Administration**

4.19 The **Judiciary Administrator** agrees with the audit recommendations.

### Deployment of possession guards for the execution of distress warrants

4.20 After a distress warrant has been executed, possession guards are deployed to watch over the seized items to ensure that such items will not be tampered with or removed unlawfully.

4.21 When a bailiff visits the address of a defaulter to attempt the execution of a distress warrant, he is accompanied by a possession guard if the distress warrant relates to offences other than parking contraventions. If the distress warrant relates to parking contraventions, the bailiff will not be accompanied by a possession guard. According to the Court Orders Section, this practice is adopted because, according to its experience, the probability of conducting a seizure is smaller for distress warrants relating to parking contraventions.

### Audit observations

4.22 Audit has examined the feasibility of adopting the practice that a bailiff does not need to be accompanied by a possession guard when attempting to execute distress warrants relating to offences other than parking contraventions. Audit has analysed the success rates of execution attempts of distress warrants. The results of Audit's analysis are summarised in Table 8.

**Table 8**

#### **Success rates of execution attempts of distress warrants (October 2004 to September 2005)**

<b>Types of distress warrants</b>	<b>Number of attempts made (a)</b>	<b>Number of successful attempts (b)</b>	<b>Success rate of attempts (c) = (b)/(a) × 100%</b>
Offences other than parking contraventions	5,017	417	8%
Parking contraventions	1,718	33	2%
<b>Overall</b>	<b>6,735</b>	<b>450</b>	<b>7%</b>

Source: Judiciary records and Audit analysis

4.23 As can be seen from Table 8, the success rate of execution attempts of 8% for distress warrants relating to offences other than parking contraventions was higher than that of 2% for distress warrants relating to parking contraventions. However, among the successful attempts for the former category, the great majority (Note 8) were in fact attempts where the bailiff successfully collected the outstanding fines without conducting a seizure. **In Audit's view, in the execution of a distress warrant relating to offences other than parking contraventions, it may not be necessary for the bailiff to be accompanied by a possession guard. If a seizure is considered necessary, the Court Orders Section can, on the bailiff's request, send possession guards to the defaulter's address.**

### **Audit recommendation**

4.24 **Audit has *recommended* that the Judiciary Administrator should review the existing practice that a bailiff is accompanied by a possession guard when attempting the execution of distress warrants relating to offences other than parking contraventions.**

### **Response from the Administration**

4.25 The **Judiciary Administrator** agrees with the audit recommendation.

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**Note 8:** *Audit performed an analysis of 60 successful attempts in August and September 2005 for distress warrants relating to offences other than parking contraventions. For 58 (or 97%) of the attempts, the bailiff successfully collected the outstanding fines without conducting a seizure. For the remaining two attempts, the bailiff conducted a seizure to recover the outstanding fines.*



## **PART 5: EXECUTION OF NON-PAYMENT WARRANTS BY THE POLICE**

5.1 This PART examines the Police's performance in the execution of non-payment warrants to recover outstanding fines.

### **Issue of non-payment warrants**

5.2 After the approval of non-payment warrants by magistrates, the General Offices forward them to the police offices located at the Magistrates' Courts. The warrants are then delivered to the Criminal Records Bureau (CRB) or the Central Traffic Prosecutions Division (CTPD) of the Police. The CTPD keeps track of non-payment warrants arising from traffic-related offences. The CRB keeps track of those warrants arising from offences not relating to traffic. Both the CRB and the CTPD deliver non-payment warrants to police divisions for execution according to the defaulter's address indicated in the non-payment warrants.

### **Execution of non-payment warrants**

5.3 On receipt of a non-payment warrant, a police division will send a standard letter to the defaulter, advising him to call at the office of the police division. The non-payment warrant is executed when the defaulter shows up at the police office. On execution, an appointment for the defaulter to appear in a magistrate's court is made and the defaulter is released on bail. The amount of the bail (indicated in the non-payment warrant) is not less than the amount of outstanding fine. If the defaulter does not call at the police office, the police division will send a police officer to apprehend the defaulter at the address indicated in the non-payment warrant.

5.4 If, after several attempts, a defaulter still cannot be found at the address indicated in the non-payment warrant, the police division will try to find out whether he has other addresses. The police division will seek information from other government departments such as the Housing Department, the Immigration Department and the Transport Department. The police division may make enquiries with utilities and telecommunication companies. Besides, for persons subject to non-payment warrants, their particulars are entered into the Police's list of wanted persons. When these persons are intercepted by police officers, they will be apprehended after the police officers have made enquiries of the list.

### **Outstanding non-payment warrants**

5.5 Table 9 shows the position of outstanding non-payment warrants as at 31 December 2005. Audit noted that a large number of non-payment warrants were outstanding as at 31 December 2005 notwithstanding that attempts had been made for their execution.

Table 9

## Non-payment warrants outstanding as at 31 December 2005

Financial year	Number of warrants				Amount of fines involved			
	Issued	Executed/ cancelled/ withdrawn (Note)	Outstanding		For warrants issued	For warrants executed/ cancelled/ withdrawn (Note)	For warrants outstanding	
	(Number)	(Number)	(Number)	(Percentage)	(\$ million)	(\$ million)	(\$ million)	(Percentage)
Non-fixed penalty fines								
2005-06	5,682	4,344	1,338	24%	7.9	5.7	2.2	28%
2004-05	7,021	6,621	400	6%	10.4	9.5	0.9	9%
2003-04	6,838	6,622	216	3%	9.0	8.5	0.5	6%
2002-03	7,060	6,784	276	4%	9.1	8.6	0.5	5%
Sub-total	26,601	24,371	2,230	8%	36.4	32.3	4.1	11%
Fixed penalty fines (moving offences)								
2005-06	6,102	3,570	2,532	41%	6.5	3.9	2.6	40%
2004-05	6,889	6,243	646	9%	8.7	7.9	0.8	9%
2003-04	7,161	6,828	333	5%	9.0	8.6	0.4	4%
2002-03	8,438	8,102	336	4%	10.6	10.2	0.4	4%
Sub-total	28,590	24,743	3,847	13%	34.8	30.6	4.2	12%
Fixed penalty fines (public cleanliness offences)								
2005-06	1,900	992	908	48%	5.9	3.0	2.9	49%
2004-05	2,182	1,616	566	26%	6.8	5.0	1.8	26%
2003-04	1,568	1,321	247	16%	3.5	2.8	0.7	20%
2002-03	436	400	36	8%	0.7	0.6	0.1	14%
Sub-total	6,086	4,329	1,757	29%	16.9	11.4	5.5	33%
Total	61,277	53,443	7,834	13%	88.1	74.3	13.8	16%

Source: Judiciary records and Audit analysis

Note: Warrants can be cancelled before execution if defaulters have paid the fines. Warrants can be withdrawn if defaulters have deceased.

Remarks: For 2005-06, the figures are up to 31 December 2005 only.

5.6 A significant amount of fines is due from a small number of persistent defaulters with more than five outstanding non-payment warrants. Details are shown in Table 10.

**Table 10**  
**Defaulters with outstanding non-payment warrants**  
**as at 31 December 2005**

Number of outstanding non-payment warrants per defaulter	Number of defaulters	Amount of fines	
		(\$ million)	(Percentage)
Non-fixed penalty fines			
Five or less	3,223	8.6	92%
More than five	16	0.7	8%
Fixed penalty fines (moving offences)			
Five or less	2,031	4.8	73%
More than five	142	1.8	27%
Fixed penalty fines (public cleanliness offences)			
Five or less	1,842	5.8	100%
More than five	—	—	—

Source: Judiciary records and Audit analysis

### **Audit observations**

5.7 Of the 40 defaulters in the audit sample (see para. 2.13), there were 8 defaulters for whom 57 non-payment warrants had been issued and were still outstanding at the completion of this audit in December 2005. Audit has examined the process of execution of these 57 non-payment warrants to see whether there is room for improvement. The audit findings are reported in paragraphs 5.8 to 5.11 and 5.14 to 5.16.

***Attempts to apprehend defaulters***

5.8 Execution of the 57 non-payment warrants involved 11 police divisions. Audit noted that:

- (a) of the 27 apprehension attempts at the defaulters' addresses, 22 attempts (81%) were made during office hours; and
- (b) of the 5 second apprehension attempts at the defaulters' addresses (after unsuccessful first attempts), 4 attempts (80%) were made during the same period (i.e. during or outside office hours) as the first attempts.

5.9 **Audit considers that it may be more effective for a police officer to attempt apprehension of a defaulter before or after office hours because the probability of locating him could be higher. There may also be a need for the Police to vary the timing of the second apprehension attempt, particularly if the first attempt had been made during office hours and was unsuccessful.**

***Action to find addresses of defaulters***

5.10 If a defaulter cannot be located at the address indicated in the non-payment warrant, the police division will try to find out whether the defaulter has other addresses by enquiring of other government departments and utilities companies. Audit noted that, in making such enquiries, only 1 out of the 11 police divisions concerned made use of a checklist of government departments and utilities companies which could provide such information.

5.11 **Audit considers that such a checklist is useful in reminding the responsible divisional police officers from whom they can obtain information about the addresses of defaulters. The checklist is also useful for their supervisors in reviewing the work done in locating defaulters.**

**Audit recommendation**

5.12 **Audit has recommended that the Commissioner of Police should explore ways to improve the execution of non-payment warrants. These may include, for example, the following measures:**

- (a) **asking police officers to call at the addresses of defaulters, before and after office hours; and**
- (b) **drawing up a checklist for use by police divisions for making enquiries of the addresses of defaulters.**

### **Response from the Administration**

5.13 The **Commissioner of Police** supports in principle the audit recommendation. He has said that:

- (a) the police officer responsible for warrant duties in a police station usually works office hours. Upon receiving the warrants, he would conduct various background checks and make initial attempts to execute the warrants. As such, most initial attempts are made during office hours. In cases where the initial attempts are unsuccessful, the warrants would be referred to the Patrol Sub-units and their apprehension attempts would not be limited to any period of a day; and
- (b) the police divisions currently operate their own management systems in the execution of non-payment warrants. The recommended measure of drawing up a standard checklist for use by all police divisions in their enquiries of the addresses of defaulters is certainly an area that can be examined further.

### **Defaulters with large amounts of outstanding fines**

5.14 The Police can, with the consent of the Immigration Department, place wanted persons (e.g. those connected with serious offences) on the Immigration Department's watch list. When these persons enter immigration control points at the border, they will be stopped and handed over to police officers. Presently, persons who are subject to non-payment warrants are not placed on the watch list.

### **Audit observations**

5.15 Audit's analysis of defaulters with outstanding non-payment warrants as at 31 December 2005 indicates that there were 236 defaulters for each of whom five or more warrants have been issued and whose outstanding fines totalled \$2.9 million (see Table 11).

Table 11

**Analysis of defaulters with outstanding non-payment warrants  
as at 31 December 2005**

<b>Number of outstanding non-payment warrants per defaulter</b>	<b>Number of defaulters</b>	<b>Amount of outstanding fines</b>	<b>Average amount of outstanding fines per defaulter</b>
	<b>(a)</b>	<b>(b)</b>	<b>(c) = (b) ÷ (a)</b>
		<b>(\$'000)</b>	<b>(\$)</b>
1	5,116	12,932	2,528
2	1,471	3,710	2,522
3	284	1,247	4,391
4	147	884	6,014
5	78	434	5,564
More than 5	158	2,494	15,785
	$\left. \begin{array}{l} 78 \\ 158 \end{array} \right\} 236$	$\left. \begin{array}{l} 434 \\ 2,494 \end{array} \right\} 2,928$	$\left. \begin{array}{l} 5,564 \\ 15,785 \end{array} \right\} 12,407$
<b>Overall</b>	<b>7,254</b>	<b>21,701</b>	<b>2,992</b>

Source: Judiciary records

5.16 **Audit considers that an effective measure for the execution of non-payment warrants is to place the names of the defaulters concerned on the Immigration Department's watch list. This measure could be especially effective for apprehending defaulters who have large amounts of outstanding fines and cannot be located by other means.**

### **Audit recommendation**

5.17 **Audit has recommended that the Commissioner of Police should, in consultation with the Director of Immigration, consider the feasibility of placing on the Immigration Department's watch list the names of those defaulters for whom**

**non-payment warrants have been issued and who have large amounts of outstanding fines.**

### **Response from the Administration**

5.18 The **Commissioner of Police** has said that:

- (a) currently, the agreement reached between the Police and the Immigration Department is to include only persons wanted for an arrestable offence, with or without an arrest warrant, in the Immigration Department's watch list for stop and arrest action. The non-payment of fine is not normally regarded as an arrestable offence and is not within the current ambit for inclusion in the watch list; and
- (b) while agreeing that a person who defies a court order repeatedly and incurs a substantial amount of fines must be properly and solemnly dealt with, the Police has to work out with the stakeholder departments an appropriate strategy that is feasible for implementation.

5.19 The **Director of Immigration** has said that the Immigration Department stands ready to join hands with relevant parties concerned in implementing the audit recommendation provided that:

- (a) only serious cases of payment defaulters (say, those with five or more non-payment warrants) are to be targeted for interception to avoid jeopardising smooth passenger traffic at immigration control points; and
- (b) the Police must be able to effect the arrest of these defaulters shortly after being informed of their interception, because immigration officers are not empowered to arrest or detain them.

## **PART 6: OTHER ISSUES RELATING TO FINES ARISING FROM MOVING OFFENCES AND PARKING CONTRAVENTIONS**

6.1 This PART examines some issues relating to the collection of fines arising from moving offences and parking contraventions.

### **Court cost for ex parte court orders**

6.2 Before January 1997, the authority to impose court cost for moving offence ex parte court orders was derived from section 69 of the Magistrates Ordinance. When the offender of a moving offence neither paid the fixed penalty nor disputed the offence, the Police, on behalf of the D of J, would apply for an ex parte court order. This court order demanded the offender to pay the fixed penalty, an additional penalty, and the court cost.

6.3 In January 1997, section 69 of the Magistrates Ordinance was repealed when the Costs in Criminal Cases Ordinance (Cap. 492) came into effect to cover court cost in criminal cases. **In May 2005, upon a query made by a magistrate, the D of J opined that the Costs in Criminal Cases Ordinance did not provide the authority to impose court cost for moving offence ex parte court orders.** As a result, since May 2005, the Police has not included court cost in the applications for moving offence ex parte court orders.

### **Audit observations**

6.4 In response to Audit's enquiry, in November 2005, the D of J advised that:

- (a) in May 2005, the D of J advised that following the repeal of section 69 of the Magistrates Ordinance, a magistrate no longer had the power to award costs under section 3A of the Fixed Penalty (Criminal Proceedings) Ordinance (Note 9);
- (b) orders (to pay court cost) made under section 3A of the Fixed Penalty (Criminal Proceedings) Ordinance during the period January 1997 to May 2005 were ultra vires, i.e. made without legal authority;

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**Note 9:** *For parking contraventions under the Fixed Penalty (Traffic Contraventions) Ordinance, section 22(2)(a) of the Ordinance provides the authority to impose court cost for ex parte court orders made under the Ordinance. For offences under the Fixed Penalty (Public Cleanliness Offences) Ordinance, section 8(1) of the Ordinance provides the authority to impose court cost for ex parte court orders made under the Ordinance.*



- (c) it was considering amending section 11 of the Costs in Criminal Cases Ordinance (this provision replaced section 69 of the Magistrates Ordinance although in different terms) to enable costs to be awarded under section 3A of the Fixed Penalty (Criminal Proceedings) Ordinance; and
- (d) it planned to pursue legislative amendment, if feasible.

6.5 Audit notes that, on average, about 2,000 moving offence ex parte court orders were issued a month in 2004-05. On this basis, Audit estimates that the revenue implications of not collecting the court cost amount to about \$0.9 million a month.

6.6 **Audit considers that there is a need for the D of J to expedite action to introduce the necessary legislative amendments for the imposition of court cost for moving offence ex parte court orders.**

### **Audit recommendation**

6.7 **Audit has recommended that the D of J should expedite action to introduce the necessary legislative amendments so that court cost can be imposed for moving offence ex parte court orders.**

### **Response from the Administration**

6.8 The **Deputy Director of Public Prosecutions**, Department of Justice agrees with the audit recommendation in general terms. He has said that:

- (a) endeavours will be made to expedite the amendment to the Costs in Criminal Cases Ordinance, to facilitate orders for costs in respect of orders made under section 3A of the Fixed Penalty (Criminal Proceedings) Ordinance; and
- (b) like all legislative amendments, it will take time to traverse through the legislative process.

### **Control measures to enforce payment of traffic fines**

6.9 If a company or a person has outstanding traffic fines, the Transport Department will refuse to:

- (a) issue or renew the driving licence of the defaulter;

- (b) issue or renew the vehicle licence of any vehicle registered under the defaulter's name; and
- (c) transfer the ownership of any vehicle registered under the defaulter's name.

### Audit observations

6.10 The control measures mentioned in paragraph 6.9 help to enforce payment of outstanding traffic fines. However, Audit noted that there were cases where defaulters used dishonoured cheques to circumvent the control measures. A typical case (Case 4) is described below for illustration.

#### Case 4

#### **A defaulter used a dishonoured cheque to circumvent the Transport Department's control measures (position as at 31 December 2005)**

Date	Event
May to June 2005	The Kowloon City Magistrates' Courts issued ex parte court orders to a person, who had committed 41 parking contraventions and moving offences and did not pay the fines.
5 July 2005	The person presented a cheque of \$38,200 to the Accounts Office of the Kowloon City Magistrates' Courts to settle the outstanding fines. He was given an official receipt.  He presented the receipt to a licensing office of the Transport Department as the evidence of payment of the fines and proceeded with the transfer of ownership of a vehicle registered under his name. The ownership of the vehicle was transferred.
7 July 2005	The cheque was dishonoured. The General Office of the Kowloon City Magistrates' Courts tried to contact the defaulter again but in vain. Distress and non-payment warrants were subsequently issued.
31 December 2005	At the completion of this audit, the fines remained outstanding.

Source: Judiciary and Police records

6.11 In another case (Case 5), the defaulter repeatedly used dishonoured cheques to circumvent the control measures. During the period June 2001 to May 2005, in eight instances, the defaulter used dishonoured cheques to pay traffic fines so that he could perform vehicle licensing/transfer transactions. Details of this case are shown in Appendix D.

6.12 During this audit, Audit visited the General Offices of four Magistrates' Courts. In all these General Offices, cases of dishonoured cheque payments for traffic fines were noted. As shown in Table 12, the total amount of such dishonoured cheque payments during the period 2000-01 to 2005-06 was \$4.6 million. **Audit considers that there is a need to plug this loophole.**

**Table 12**

**Dishonoured cheque payments for traffic fines  
(2000-01 to 2005-06)**

<b>Financial year</b>	<b>Amount (\$'000)</b>
2000-01	935
2001-02	1,174
2002-03	1,017
2003-04	618
2004-05	483
2005-06 (up to 31 December 2005)	327
<b>Total</b>	<b>4,554</b>

*Source: Judiciary records*

## Audit recommendations

- 6.13      **Audit has *recommended* that the Commissioner for Transport should:**
- (a)      **in consultation with the Judiciary Administrator, introduce measures to ensure that defaulters cannot use dishonoured cheques to circumvent the control measures that bar them from using the Transport Department's licensing and vehicle registration services; and**
  - (b)      **consider taking action against those defaulters who have renewed their driving or vehicle licences by using dishonoured cheques to pay traffic fines.**
- 6.14      **Audit has *recommended* that the Judiciary Administrator should consider referring cases of dishonoured cheque payment for traffic fines to the Police for investigation and prosecution.**

## Response from the Administration

- 6.15      The **Commissioner for Transport** agrees with the audit recommendations mentioned in paragraph 6.13. He has said that he will consider:
- (a)      introducing measures in consultation with the Judiciary Administrator; and
  - (b)      the need to take action against defaulters.
- 6.16      The **Judiciary Administrator** agrees with the audit recommendation mentioned in paragraph 6.14.
- 6.17      The **Commissioner of Police** has said that, regarding the audit recommendation mentioned in paragraph 6.14:
- (a)      only cases with real evidence to indicate the commission of an offence or offences resulting from dishonoured cheques should be referred to the Police for investigation; and
  - (b)      such cases include, for example, repeated or obvious incidents where the defaulter has circumvented the law, or incidents where strong evidence of deception is surfaced in the course of recovery action.

## Defaulters with large amounts of outstanding fines

6.18 Some vehicle owners repeatedly commit parking contraventions and ignore the payment of fines. They have large amounts of outstanding fines. Table 13 shows that there were 4,679 defaulters each with more than \$2,000 outstanding parking fines as at 31 December 2005.

6.19 Under section 23 of the Fixed Penalty (Traffic Contraventions) Ordinance, on application by the Police in the name of the Secretary for Justice, distress warrants are issued to recover outstanding fines arising from parking contraventions, irrespective of whether the defaulter is a company or a natural person.

**Table 13**  
**Defaulters with outstanding parking fines**  
**as at 31 December 2005**

Amount of outstanding parking fines per defaulter	Number of defaulters	Amount of outstanding parking fines (\$'000)
\$2,000 or below	1,867	1,828
\$2,001 – \$5,000	2,380	6,924
\$5,001 – \$20,000	1,622	15,877
\$20,001 – \$60,000	507	16,909
\$60,001 – \$100,000	93	7,138
Over \$100,000	77	13,710
<b>Total</b>	<b>4,679</b>	<b>60,558</b>
	<b>6,546</b>	<b>62,386</b>

Source: Judiciary records and Audit analysis

## Audit observations

6.20 Audit notes that in the execution of writs of fieri facias (the equivalent of distress warrants in civil cases), bailiffs have carried out seizure of vehicles belonging to the judgment debtors. For vehicle owners who have large amounts of outstanding parking fines, one means of recovering the outstanding fines is to seize their vehicles. It is pertinent to note that:

- (a) the vehicle registration records of the Transport Department provide proof that the vehicles are properties of the defaulters. Bailiffs can seize the vehicles under the authority of distress warrants; and
- (b) in overseas countries such as the United Kingdom, seizure of vehicles is used as a means to recover outstanding fines.

6.21 According to the Court Orders Section, it needs to have the means to locate the defaulters' vehicles and the necessary resources to carry out a seizure. **Audit considers that in the light of its deterrent effect and cost-effectiveness, seizure of vehicles should be considered in the execution of distress warrants relating to parking contraventions.**

## Audit recommendation

6.22 Audit has *recommended* that, for cases where vehicle owners have large amounts of outstanding parking fines and for whom distress warrants have been issued, the D of J should, in consultation with the Court Orders Section of the Judiciary Administration, consider seizing their vehicles so as to recover the outstanding fines.

## Response from the Administration

6.23 The **Deputy Director of Public Prosecutions**, Department of Justice agrees with the audit recommendation in general terms.

**Case 1**

**Issue of multiple distress warrants  
20 months after the first parking contravention  
(position as at 31 December 2005)**

<b>Date</b>	<b>Event</b>
October 2002 to February 2004	The vehicle owner, a person (Defaulter B2), committed 53 parking contraventions.
January 2003 to May 2004	Ex parte court orders were issued for the parking contraventions. By March 2004, the total amount of outstanding fixed penalty and court cost of the first 48 ex parte court orders had accumulated to \$51,840, exceeding the limit of \$50,000 for the issue of distress warrants.
June 2004	Twenty months after the first parking contravention, the Kowloon City and Shatin Magistrates' Courts issued two distress warrants to recover the fixed penalty and court cost of the first 48 ex parte court orders.
July to August 2004	The Kowloon City and Shatin Magistrates' Courts issued three more distress warrants to recover the fixed penalty and court cost of the remaining 5 ex parte court orders.
December 2005	The fixed penalty and court cost of the 53 ex parte court orders remained outstanding.

*Source: Judiciary and Police records*

**Case 2**

**A distress warrant was not issued in time  
(position as at 31 December 2005)**

<b>Date</b>	<b>Event</b>
September to November 2002	The vehicle owner, a company (Defaulter B3), committed 26 parking contraventions. It failed to pay the fixed penalty and court cost which amounted to \$28,080.
December 2002	The vehicle licence of the offending vehicle expired.
February 2005	A distress warrant was issued to recover the outstanding fixed penalty and court cost, according to the criterion that the vehicle licence had expired for two years.
April 2005	A bailiff could not locate the company at its address registered with the Transport Department. The Police subsequently discovered that the company had already been dissolved in May 2004.
December 2005	The fixed penalty and court cost due by the company remained outstanding.
<p><b><i>Audit comments:</i></b></p> <p><b><i>The distress warrant was issued two years after the expiry of the vehicle licence of the offending vehicle. As the company had already been dissolved, the fixed penalty and court cost could not be recovered.</i></b></p>	

Source: Judiciary and Police records



**Case 3**

**A General Office did not enquire of the prosecuting department  
for the business address of a company defaulter  
(position as at 31 December 2005)**

<b>Date</b>	<b>Event</b>
27.9.2002	The company (Defaulter A8) was convicted of operating an unlicensed restaurant from 4.4.2002 to 1.5.2002 in contravention of the Public Health and Municipal Services Ordinance (Cap. 132). It was fined \$53,180, to be paid by 14.11.2002.
15.11.2002	The company was convicted of operating an unlicensed restaurant from 2.5.2002 to 30.5.2002 and from 8.7.2002 to 15.7.2002. It was fined \$106,140, to be paid by 13.12.2002.
13.12.2002	A bailiff visited the registered address of the company in an office building to attempt the execution of the distress warrant arising from the conviction on 27.9.2002. The bailiff found that the premises were occupied by another company and was informed that the defaulter only used the premises for correspondence.
11.1.2003	A bailiff visited the same registered address of the company to attempt the execution of the distress warrants arising from the convictions on 15.11.2002. The bailiff found that the premises were occupied by another company.
31.12.2005	The fines due by the company remained outstanding.
<p><b><i>Audit comments:</i></b></p> <p><b><i>According to the information stated in the summonses, the company defaulter operated a restaurant at another address. When the execution of the distress warrants at the registered address was unsuccessful, the General Office did not enquire of the prosecuting department whether the company defaulter was still operating the restaurant. Had this been done, the distress warrants could have been executed at the defaulter's restaurant.</i></b></p>	

Source: Judiciary records

**Case 5**

**A defaulter repeatedly used dishonoured cheques  
to circumvent the Transport Department's control measures**

<b>Date of payment</b>	<b>Amount of dishonoured cheque</b>	<b>Transaction(s) subsequently performed</b>
June 2001	\$8,640	Transferred in Vehicle 1
October 2001	\$10,800	Transferred out Vehicle 1
February 2002	\$14,040	Renewed the vehicle licence of Vehicle 2
September 2002	\$14,040	Transferred in Vehicle 3
May 2003	\$17,280	Transferred out Vehicle 4 Renewed the vehicle licence of Vehicle 5
November 2003	\$17,280	Renewed the vehicle licence of Vehicle 3
January 2005	\$15,120	Transferred out Vehicle 3 Transferred in Vehicles 6 and 7
May 2005	\$17,280	Transferred out Vehicle 6

*Source: Judiciary and Police records*

**Acronyms and abbreviations**

Audit	Audit Commission
CASEMAN	Case and Summons Management System
CRB	Criminal Records Bureau
CTPD	Central Traffic Prosecutions Division
D of J	Department of Justice
Police	Hong Kong Police Force