

Report No. 46 of the Director of Audit — Chapter 1

COLLECTION OF FINES IMPOSED BY MAGISTRATES' COURTS

Summary

1. A fine is a punishment for an offence or a contravention imposed by a court. The great majority of fines arise from cases heard in Magistrates' Courts. In 2004-05, \$289 million of fines were collected from such cases. As at 31 December 2005, the total amount of fines outstanding was about \$93 million.

2. The Magistrates Ordinance (Cap. 227) has provision for the recovery of overdue fines. If the defaulter is a company, a distress warrant may be issued to bailiffs of the Judiciary Administration's Court Orders Section for recovering the overdue fines by seizure and sale of the goods and chattels of the defaulter. If the defaulter is a natural person, a non-payment warrant may be issued to police officers to bring the defaulter before a magistrate to be dealt with according to the law.

Imposition and settlement of fines

3. ***Issue of notices to offenders.*** Presently, orders to pay fines imposed by magistrates in open court are conveyed orally. The Audit Commission (Audit) considers that, if notices are issued 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. *Audit has recommended that the Judiciary Administrator should consider issuing notices to these offenders.*

Action on overdue fines

4. ***Issue of warrants for offences other than moving offences and parking contraventions.*** For 25 defaulters in an audit sample, Audit's analysis shows 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. For two of the 25 defaulters, it took a long time to issue a warrant due to oversight of the staff of the Judiciary Administration. *Audit has recommended that the*

Judiciary Administrator should closely monitor the progress in processing distress warrants and non-payment warrants.

5. ***Issue of distress warrants for parking contraventions.*** Presently, application for distress warrants relating to parking contraventions will be made when (a) the ownership of the offending vehicle has been transferred; (b) the vehicle licence of the offending vehicle has expired for two years; or (c) the total amount of outstanding fines due from the defaulter has accumulated to over \$50,000. Audit noted that there were cases in which distress warrants were not issued in a timely manner according to these criteria. Effort could be saved if only one distress warrant was issued to cover all the ex parte court orders relating to the same defaulter issued by different Magistrates' Courts. *Audit has recommended that the Department of Justice 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.*

Execution of distress warrants by the Court Orders Section

6. ***Target time on execution.*** A target time on making the first execution attempt of distress warrants can serve as a control measure to ensure that execution attempts are made within a reasonable time. It can also assist in planning and monitoring the staff resources deployed for the execution of distress warrants. In recent years, the time lag between the receipt and the first execution attempt of distress warrants has been shortened. However, there is a risk that the time lag will be prolonged if the caseload increases again. *Audit has recommended that the Judiciary Administrator should consider setting a target time on the execution of distress warrants.*

7. ***Obtaining information from prosecuting departments.*** Where the execution of a distress warrant is unsuccessful, the Judiciary Administration issues a standard memorandum to the prosecuting departments requesting them to provide the current address of the company defaulter. Audit noted that there was generally a long time lag for the Judiciary Administration to receive replies from the prosecuting departments. The Judiciary Administration also did not specifically ask for the business address of the company defaulter where further execution attempts of the distress warrant could be made. *Audit has recommended that the Judiciary Administrator should 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.*

Execution of non-payment warrants by the Hong Kong Police Force

8. ***Timing of apprehension attempts.*** In the audit sample, there were 57 non-payment warrants which were still outstanding at the completion of this audit in December 2005. Audit noted that out of the 27 apprehension attempts of these non-payment warrants, 22 attempts (81%) were made during office hours. Audit considers that it may be more effective for a police officer to attempt apprehension of a defaulter before or after office hours. *Audit has recommended that the Commissioner of Police should explore ways to improve the execution of non-payment warrants.*

9. ***Defaulters with large amounts of outstanding fines.*** 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. 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 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.*

Other issues relating to fines arising from moving offences and parking contraventions

10. ***Court cost for moving offence ex parte court orders.*** 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. In January 1997, this section was repealed when the Costs in Criminal Cases Ordinance (Cap. 492) came into effect. In May 2005, the Department of Justice 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 Hong Kong Police Force has not included court cost in the applications for moving offence ex parte court orders. Audit estimates that the revenue implications amount to about \$0.9 million a month. *Audit has recommended that the Department of Justice should expedite action to introduce the necessary legislative amendments so that court cost can be imposed for moving offence ex parte court orders.*

11. ***Control measures to enforce payment of traffic fines.*** If a company or a person has outstanding traffic fines, the Transport Department will bar the defaulter from using its licensing and vehicle registration services. These control measures 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. The total amount of dishonoured cheque payments for traffic fines during the period 2000-01 to 2005-06 (up to 31 December 2005) was \$4.6 million. *Audit has recommended that the Commissioner for Transport should, in consultation with the Judiciary Administrator, introduce measures to ensure that defaulters cannot use dishonoured cheques to circumvent the control measures. Audit has also recommended that the Judiciary Administrator should consider referring cases of dishonoured cheque payment for traffic fines to the Hong Kong Police Force for investigation and prosecution.*

12. ***Defaulters with large amounts of outstanding parking fines.*** Audit notes that 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. *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 Department of Justice 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

13. The Administration has accepted all the audit recommendations.

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