

A. Introduction

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

- imposition and settlement of fines;
- action on overdue fines;
- execution of distress warrants by the Court Orders Section;
- execution of non-payment warrants by the Hong Kong Police Force (Police); and
- other issues relating to fines arising from moving offences and parking contraventions.

2. The Committee held two public hearings on this subject in May 2006 to receive evidence from witnesses, i.e. the Judiciary Administrator, the Deputy Director of Public Prosecutions, the Acting Commissioner of Police and the Commissioner for Transport, on the findings and observations of the Director of Audit's Report (Audit Report). However, the witnesses had not prepared themselves adequately when attending the hearings and were not able to provide the information sought by the Committee on some of the issues raised. The Committee therefore decided to defer a full report on the subject and allow more time for the Judiciary Administrator, the Department of Justice (D of J), the Police and the Transport Department (TD) to work out how they would implement some of the audit recommendations. As requested by the Committee, the witnesses provided progress reports on the implementation of the various audit recommendations within their respective purview at the end of September 2006.

3. The evidence taken by the Committee at the public hearings and thereafter is set out in the ensuing paragraphs.

B. Imposition and settlement of fines

Audit recommendation in paragraph 2.6 of the Audit Report concerning notice of payment of fines

4. According to paragraphs 2.6 and 2.7 of the Audit Report, the Judiciary Administrator agreed with the audit recommendation concerning issuing notices to offenders who were allowed to pay fines within a period to inform them of the amount and due date of fines as well as the consequences of non-payment. The Committee enquired

about the progress made by the Judiciary Administrator in implementing this recommendation.

5. **Miss Emma LAU Yin-wah, Judiciary Administrator**, said that:

- there were two main types of payment orders made in open court, namely, immediate payment orders (the defendant was ordered to pay the fine forthwith) and payment orders (the defendant was not required to pay the fine forthwith but was ordered to pay within a certain period or to pay by instalments). These two types of orders were conveyed orally to the defendants by Magistrates in open court. Therefore, the defendants should be well aware of the payment details. At present, immediate payment orders constituted about 70% of all payment orders. In most of the cases, payments under the immediate payment orders were made on the same day the fines were imposed; and
- in the light of the audit recommendation, the Judiciary Administration (JA) was designing a written payment notice, which would set out the payment details, for defendants who were not required to pay the fines forthwith. The JA would discuss with all Magistrates' Courts with a view to adopting the same arrangement across the board within the next few months.

6. In her letter of 24 May 2006 in *Appendix 10*, the **Judiciary Administrator** informed the Committee that the JA planned to implement the above audit recommendation on 1 June 2006.

7. In the progress report provided in her letter of 29 September 2006 in *Appendix 11*, the **Judiciary Administrator** informed the Committee that since 1 June 2006, payment notices had been issued to offenders who were allowed time to pay fines or to pay fines by instalments.

Table 2 in paragraph 2.8 of the Audit Report concerning settlement of fines

8. Table 2 in paragraph 2.8 of the Audit Report indicated that there was an upward trend in the number of cases of outstanding payment of fixed penalty fines relating to moving offences and parking contraventions as well as the total outstanding amount of such fines from 2002-2003 to 2005-2006. It appeared to the Committee that the increase in the number of cases and the total outstanding amount between 2004-2005 and 2005-2006 was particularly large when compared to the years 2002-2003 to 2004-2005. The Committee asked:

- whether this was the case and the causes for such a phenomenon; and
- about the number of cases of outstanding payment as well as the total outstanding amount of fixed penalty fines relating to moving offences and parking contraventions due in each year from 2002-2003 to 2005-2006, together with the respective percentages, as at 31 March of the same year.

9. **Mr Benjamin TANG, Director of Audit**, advised the Committee in his letter of 23 May 2006, in *Appendix 12*, that:

- Table 2 showed the extent of settlement of fines as at 31 December 2005, including the number of cases of outstanding payment and the total outstanding amount in respect of fixed penalty fines relating to moving offences and parking contraventions due in each financial year from 2002-2003 to 2005-2006. For those fines due in earlier financial years, a larger percentage of fines would be settled as a result of recovery action taken (e.g. the execution of distress warrants and non-payment warrants) over a longer period. Therefore, as at 31 December 2005, the number of cases of outstanding payment and the total outstanding amount in respect of fines due in each financial year from 2002-2003 to 2005-2006, including those relating to moving offences and parking contraventions, showed an upward trend. To illustrate the point that an increasing percentage of fines would be settled as time went by, an analysis of the settlement of fixed penalty fines relating to moving offences and parking contraventions due within the financial year 2003-2004 was given in Appendix A to his letter; and
- for fixed penalty fines relating to moving offences and parking contraventions due in each financial year from 2002-2003 to 2005-2006, the number of cases of outstanding payment as well as the total outstanding amount of the above fines, together with the respective percentages, as at 31 March of the same financial year was given in Appendix B to his letter.

Figure 1 in paragraph 2.12 of the Audit Report concerning write-offs of fines

10. According to paragraph 2.11 of the Audit Report, there was no time limit on the distress warrants and non-payment warrants. Recovery action would commence if recovery of the outstanding fines in any write-off cases appeared possible at a later date. Figure 1 in paragraph 2.12 revealed that there were no write-off of fines relating to moving offences and parking contraventions in the years 2001-2002 to 2004-2005, whereas the write-off of such fines in 2005-2006 amounted to \$30.5 million. The Committee asked:

- about the reasons for not writing off fines between 2001-2002 and 2004-2005;
- for a breakdown of the \$30.5 million of fines written off in 2005-2006, indicating the number of cases involved in each year from 2002-2003 to 2005-2006 and the reasons for writing off the fines. In addition, of the \$30.5 million, the amount of fines that could be recovered after they had been written off; and
- among the \$30.5 million, the amount that could be recovered in the next few months.

11. **Mr TANG King-shing, Acting Commissioner of Police**¹, said that the reason for not writing off fines between 2001-2002 and 2004-2005 was probably due to the transfer of the power of writing off fines from the Secretary for Financial Services and the Treasury to the Commissioner of Police in 2000. As the Police had now devised the procedures for exercising this delegated power, it would write off fines on an annual basis. He would provide the figures requested by the Committee after the public hearing.

12. The **Commissioner of Police** provided, in Appendix A to his letter of 24 May 2006 in *Appendix 13*, details of the breakdown of the \$30.5 million written off in 2005-2006 as uncollectible fines relating to moving offence and parking contraventions. He also stated that:

- the sum of \$30.5 million covered a total of 28,330 cases for which the notices of fines had originally been issued during the period from April 1996 to March 2000 but payment had remained outstanding in 2005. During the period from April 1996 to March 2000, a total of 7,306,317 fixed penalty tickets had been issued. The 28,330 cases only represented a very small percentage of the fines that should be collected during the period;
- the reason for writing off fines was in line with the government policy and practice to be prudent, for accounting purpose, to write off long outstanding fines for which the chance of recovery was very low; and
- after the debts had been written off, recovery actions would still continue. If there were non-payment warrants or distress warrants in respect of the cases, the warrants would remain valid. According to the latest figures, of the \$30.5 million, a total of \$1.3 million for 1,433 cases had been recovered after they had been written off in 2005. A breakdown of the amount and the number of cases were provided in Appendix A to his letter. The Police would provide updated figures to the Committee in a few months' time.

¹ Mr TANG King-shing took up the appointment as Commissioner of Police on 16 January 2007.

13. Regarding the reasons for not writing off fines between 2001-2002 and 2004-2005, the **Commissioner of Police** stated in the same letter that:

- when the power of writing off fines was transferred to the Police in 2000, the Secretary for Financial Services and the Treasury had already written off the fines which had originally been due in 1995-1996;
- there was no restriction, under Financial Circular No. 6/2000 or any other regulations, on the period of time that an outstanding fine should be considered as non-recoverable and write-off action should be initiated. The Police had not authorised any write-offs during the years 2001-2002 to 2004-2005 because it had adopted a prudent and cautious manner in dealing with outstanding fines. Moreover, it had taken time to establish the procedures and policy for exercising the delegated power to write off fines; and
- in 2005, the Police accepted a lapse of five years to be a reasonable period for acknowledging that the chance of recovering the outstanding fines was low and write-off action should be initiated. It had written off a total of \$30.5 million of outstanding fines originally due in 1996-1997 to 1999-2000. From 2006 onwards, the Police would conduct an annual exercise to write off fines that had been outstanding for more than five years.

14. In the progress report provided in his letter of 30 September 2006 in *Appendix 14*, the **Commissioner of Police** advised the Committee that, of the \$30.5 million of fines written off in 2005-2006, \$0.5 million of fines for 738 cases had been recovered in the past four months. In total, \$1.8 million of fines for 2,171 cases had been recovered so far. The Police would continue to make effort to recover the remaining sum.

15. Noting that there was no time limit on the distress warrants and non-payment warrants, the Committee sought clarification on the following:

- whether a distress warrant or non-payment warrant would lapse after the respective outstanding fine(s) had been written off by the Police; and
- after the Police had written off an outstanding fine, whether the record of such outstanding fine would be deleted from the records used by the TD for the purpose of issuing driving or vehicle licences.

16. **Mr Blake D M Hancock, Chief Superintendent (Traffic) of the Hong Kong Police Force**, stated that:

- a warrant would not be automatically withdrawn after the outstanding fines had been written off. It would only be withdrawn if there was evidence that it could not be executed or if the defaulter had passed away; and
- after an outstanding fine had been written off, the record of such outstanding fine would not be automatically deleted from the Case and Summons Management System (CASEMAN), a system where the TD relied on in the processing of driving and vehicle licensing applications. As such, the TD would still be able to identify the defaulter from the information available on the CASEMAN when he/she approached the TD for such applications.

Audit recommendations in paragraph 2.16 of the Audit Report concerning the CASEMAN and paragraph 2.17 concerning performance monitoring and reporting

17. The Committee noted from paragraphs 2.14 to 2.19 of the Audit Report that the major computerised system involved in the collection of fines was the CASEMAN operated by the JA. This system provided useful information for the planning, directing and monitoring of the collection of fines. The information included the settlement rate of fines as well as the number and amount of outstanding distress warrants and non-payment warrants. The Judiciary Administrator agreed with the audit recommendation in paragraph 2.16 to consider ways, in consultation with the initiating departments, to make better use of the CASEMAN for the provision of information to manage the collection of fines. The Judiciary Administrator also agreed with the audit recommendation in paragraph 2.17 to consider ways to enhance performance monitoring and reporting in respect of the collection of fines.

18. In response to the Committee's enquiry about the progress made in implementing the above audit recommendations, the **Judiciary Administrator** said at the public hearing that discussions with the relevant departments on the matters would start very soon. The implementation timetable would depend on the complexity of the new requirements put forward by the departments and the changes that needed to be made to the CASEMAN.

19. The Committee requested the Judiciary Administrator to expedite the discussions with the relevant departments and provide a progress report on the implementation of the two audit recommendations in three months' time.

20. In the progress reports provided in her letters of 29 September 2006 and 15 January 2007 (in *Appendix 15*), the **Judiciary Administrator** informed the Committee that:

- regarding the audit recommendation in paragraph 2.16 of the Audit Report, as the responsibility of collecting outstanding fines rested primarily with the respective government prosecuting agencies, the JA would not comment on what better ways might be taken by them to manage the collection of fines. However, the JA operated the CASEMAN for managing and processing cases heard in Magistrates' Courts, and was prepared to provide such relevant information to the prosecuting departments and agencies on request;
- the JA had met with the CASEMAN user departments and agencies, requesting them to propose ways to make better use of the CASEMAN and to set out their requirements. Out of the 31 CASEMAN users, nine had suggested ways to make use of the CASEMAN information. A list of the nine users was provided in the Annex to her letter. In summary, these users had requested the JA to generate regular reports to them on outstanding fines and warrants;
- the JA had examined the feasibility of making enhancements to the CASEMAN so as to generate the reports requested by the nine users, and had found such enhancements feasible. The JA had provided these users with the relevant information in relation to their respective summonses, as at 2 January 2007. Such information would continue to be provided on a quarterly basis; and
- as regards the audit recommendation in paragraph 2.17 of the Audit Report, the JA had introduced performance indicators since 1 September 2006 in enhancing performance monitoring and reporting on the collection of fines. Target completion times were set on:
 - (a) submitting warrants to Magistrates for action within seven working days upon receipt of the same;
 - (b) forwarding the warrants to the Court Orders Section of the JA for execution within three working days after signing of the same by the Magistrates;
 - (c) requesting further information from initiating prosecuting agencies after unsuccessful execution attempts within seven working days upon the Magistrates' directions; and
 - (d) making further attempts after supply of additional information within seven working days upon the Magistrates' directions.

21. On the audit recommendation in paragraph 2.17 of the Audit Report, **Mr John Richard Reading, Deputy Director of Public Prosecutions**, supplemented in the progress report provided in his letter of 5 October 2006, in *Appendix 16*, that:

- the effective role of D of J staff was to appear in Court, when instructions were received from the Police, after the time and date had already been fixed by the Court; and
- similarly, when distress warrants were sought in respect of penalties for non-moving offences, the role of D of J staff was to appear in Court on the date and at the time specified in the instructions from the Police.

C. Action on overdue fines

Audit recommendation in paragraph 3.16(a) of the Audit Report concerning the 14-day grace period for the generation of distress warrants and non-payment warrants

22. The Committee noted from paragraphs 3.2(a), 3.16(a) and 3.19 of the Audit Report that, for offences other than moving offences and parking contraventions, the CASEMAN generated distress warrants and non-payment warrants for fines which had been overdue for 14 days. The Judiciary Administrator had agreed to consider the audit recommendation to shorten the 14-day grace period. The Committee enquired about the progress made in implementing the recommendation.

23. The **Judiciary Administrator** replied at the public hearing that the JA intended to complete a comprehensive review, within three months, of the 14-day grace period for the generation of distress warrants and non-payment warrants. Therefore, she was not able to inform the Committee at this stage whether and when the audit recommendation would be implemented.

24. In response to the Committee's request, the **Judiciary Administrator** provided the following further information in her letter of 24 May 2006:

- the JA had just started the review. In conducting the review, reference was made to the payment patterns of the fines in question. After the public hearing, the JA had produced some initial data on the payment patterns of fines in respect of offences other than moving and parking contraventions for the period from 1 April 2005 to 31 March 2006. The payment pattern was provided in the Annex to her letter. The preliminary findings were:
 - (a) of a total of 157,351 such cases for the period from April 2005 to March 2006, fines in 141,354 cases (90%) had been paid on or before the due date of payment. In other words, fines in 15,997 cases (10%) had not been paid on or before the due date;

- (b) of the 15,997 cases in which fines had not been paid on or before the due date, fines in 12,318 cases (77%) had been paid on or before the 14th day after the due date; and
 - (c) of the remaining 3,679 cases with outstanding payment, fines in 1402 cases (i.e. a further 9% of the 15,997 cases) had been paid on or before the 23rd day after the due date, which was the average lead time between the due date of the fine and the date on which a warrant was issued as indicated in paragraph 3.6 of the Audit Report; and
- the JA intended to collect similar data on the payment patterns of the fines in question for two more periods covering 1 April 2003 to 31 March 2004 and 1 April 2004 to 31 March 2005, and other relevant dates if appropriate, to facilitate a more comprehensive review in this regard. The JA intended to complete the review within three months.

25. In the progress report provided in her letter of 29 September 2006, the **Judiciary Administrator** advised the Committee that:

- the JA had reviewed the payment patterns of the defaulters of 2003-2004, 2004-2005 and 2005-2006 to assist it in assessing the possible benefit of the proposed shortening of the 14-day period. The findings were:
 - (a) out of 152,734 cases from April 2003 to March 2004, fines in 89% of the cases (135,299 cases) had been paid on or before the due dates. Out of the remaining 17,435 late payment cases, fines in 66% (11,485 cases) had been paid before the expiry of the 14-day period after the due dates;
 - (b) out of 161,004 cases from April 2004 to March 2005, fines in 88% of the cases (141,695 cases) had been paid on or before the due dates. Out of the remaining 19,309 late payment cases, fines in 63% (12,211 cases) had been paid before the expiry of the 14-day period after the due dates; and
 - (c) out of 157,351 cases from April 2005 to March 2006, fines in 90% of the cases (141,354 cases) had been paid on or before the due dates. Out of the remaining 15,997 late payment cases, fines in 77% (12,318 cases) had been paid before the expiry of the 14-day period after the due dates; and
- in the light of the payment patterns of the fines for the period from April 2003 to March 2006, the JA was of the view that the 14-day grace period between the due dates of fines and the generation of distress warrants and non-payment warrants by the CASEMAN should be maintained since a majority of defendants who had not paid the fines on or before the due date had paid up

during the 14-day grace period. The JA would, however, keep under review the payment patterns on an annual basis to see if there were grounds for shortening the grace period should there be significant changes to the payment patterns.

Audit recommendation in paragraph 3.16(b) of the Audit Report concerning the progress of the General Offices in processing distress warrants and non-payment warrants

26. The Committee noted from paragraphs 3.8, 3.16(b) and 3.19 of the Audit Report that the Judiciary Administrator had agreed with the audit recommendation that the JA should closely monitor the progress of the General Offices of Magistrates' Courts 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. The Committee enquired about the progress made in implementing this audit recommendation.

27. The **Judiciary Administrator** responded at the public hearing that measures, adopting information technology as far as possible, would be explored to enhance the monitoring of the progress in processing distress warrants and non-payment warrants.

28. In the progress report provided in her letter of 29 September 2006, the **Judiciary Administrator** said that the JA had reviewed the distress warrants processing progress and set a target time for submission of appropriate cases to Magistrates for consideration since 1 September 2006.

Case 1 cited in paragraph 3.12 and Appendix A of the Audit Report concerning the issue of multiple distress warrants

29. The Committee noted from paragraph 3.12 of the Audit Report that, for Defaulter B2 mentioned in Case 1 (see Appendix A of the Audit Report), distress warrants were issued 20 months after the defaulter had committed the first parking contravention, when the total amount of outstanding fixed penalty and court cost had accumulated to over \$50,000. The Committee asked:

- why distress warrants had not been issued earlier; and
- whether the outstanding fixed penalty and court cost of over \$50,000 due from Defaulter B2 had been recovered; if not, the reasons for that.

30. The **Acting Commissioner of Police** and the **Judiciary Administrator** did not have the requested information on hand. They undertook to provide the relevant details to the Committee after the public hearing.

31. The **Commissioner of Police** provided the following information in his letter of 24 May 2006:

- Case 1 met neither the criterion mentioned in paragraph 3.4(a) of the Audit Report that the ownership of the offending vehicle had been transferred nor the criterion in paragraph 3.4(b) of the Report that the vehicle licence of the offending vehicle had expired for two years. It was the criterion in paragraph 3.4(c) of the Report, i.e. the total amount of outstanding fixed penalty and court cost due from the defaulter had accumulated to over \$50,000, which triggered the mechanism for the issue of distress warrants to the defaulter; and
- the first ex parte court order had been issued against the defaulter on 20 January 2003 for parking contraventions committed in October 2002. Additional ex parte court orders had been issued to him thereafter for subsequent tickets. On 29 March 2004, the 45th to 48th ex parte court orders had been issued simultaneously against the defaulter. The 47th application triggered a distress warrant when the total amount of outstanding fixed penalty and court cost due from him had accumulated to over \$50,000. The 48th ticket had then followed the same legal process. As a result, two distress warrants had been issued against the defaulter on 9 June 2004 and 11 June 2004 respectively.

32. The **Judiciary Administrator** advised in her letter of 24 May 2006 that:

- as these parking contravention cases were civil in nature, applications for execution of distress warrants were made to the Magistrates' Courts by the D of J on behalf of the Police. The bailiffs had made three attempts at two different addresses to execute the five distress warrants on Defaulter B2 between September 2004 and January 2005. In all three attempts, the doors of the two premises were locked and the attempts were regarded as unsuccessful. The court had directed, on 13 January 2005, to stay the execution; and
- the fixed penalty and court cost payable by Defaulter B2 were still outstanding, according to the information in the CASEMAN as at 23 May 2006.

Audit recommendation in paragraph 3.17(a) of the Audit Report concerning the criteria for application of distress warrants

33. According to paragraphs 3.13 and 3.17(a), Audit considered 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. The D of J should, in

consultation with the Police, consider reviewing the existing criteria for application of distress warrants. The Committee asked about the progress made in implementing the audit recommendation.

34. The **Acting Commissioner of Police** said at the public hearing that as the existing criteria for application of distress warrants had been in use for a long time, it was opportune to carry out a review to see if any of the criteria should be revised with a view to improving the recovery rate of outstanding fines. The Police had just started the review of the matter with the D of J.

35. In response to the Committee's enquiry about the direction of the review, the **Commissioner of Police** advised in his letter of 24 May 2006 that:

- under the present mechanism, the most effective means to enforce payment of outstanding parking fines was the TD's control in refusing renewal of annual vehicle licence under the defaulter's name. In the majority of cases, after the defaulters had been informed of their outstanding fines when applying for renewal of licences in the TD, they would pay the fines to the Judiciary so that they could renew their licences;
- in cases where defaulters failed to settle the outstanding fines, the fines would be accumulated and distress warrants would be issued when any one of the criteria for applying distress warrants was met. Currently, the criteria for applying distress warrants relating to parking contravention were as follows:
 - (a) the ownership of the offending vehicle had been transferred (i.e. the criterion in paragraph 3.4(a) of the Audit Report);
 - (b) the vehicle licence of the offending vehicle had expired for two years (i.e. the criterion in paragraph 3.4(b) of the Audit Report); or
 - (c) the total amount of outstanding fixed penalty and court cost due from the defaulter had accumulated to over \$50,000 (i.e. the criterion in paragraph 3.4(c) of the Audit Report);
- under criterion (b), if the defaulter did not renew the vehicle licence of the offending vehicle, outstanding fixed penalty and court cost would accumulate for more than two years before application of distress warrants. After consultation with the D of J and the TD, the Police had proposed that criterion (b) be revised from when "the vehicle licence of the offending vehicle had expired for two years" to "as soon as the vehicle licence expired". With such revision, all cases of outstanding parking fines should be addressed upon expiry of the defaulters' vehicle licences; and

- regarding criterion (c), a review of the existing threshold of \$50,000 would be conducted pending more statistics and information about the impact on the number of warrants if the threshold were to be revised. The following points would be taken into consideration in reviewing the threshold:
 - (a) under the current rate of parking fines of \$320, in case of non-payment, an ex parte court order of \$1,080 (i.e. \$320 (fine) + \$320 (penalty) + \$440 (court cost)) would be issued to the defaulter. With the existing threshold of \$50,000, a distress warrant would be issued to a defaulter when a total of 47 court orders of parking fines had been issued on him/her. The review would consider whether the threshold was set at too high a level. At present, there were only a few cases in a year of which the warrants were issued because of this criterion. The majority of warrants (about 500 to 600 annually) were issued when they met either criterion (a) or criterion (b);
 - (b) since vehicle licences had to be renewed annually, it might not be cost-effective to issue distress warrants to defaulters with a relatively small amount of fines, knowing that most defaulters would pay the outstanding fines upon their renewal of vehicle licences in the TD; and
 - (c) the purpose of criterion (c) should be restricted to tackling really serious cases which warranted earlier recovery actions before the expiry of the defaulters' vehicle licences. It was, therefore, reasonable to set the threshold at a relatively high level.

36. In the progress reports provided in his letters of 30 September 2006 and 15 January 2007 (in *Appendix 17*), the **Commissioner of Police** informed the Committee that:

Criterion (b)

- system modification of the CASEMAN was not required. The TD was in the process of upgrading its computer system from VALID III to VALID IV. The modification required of the TD's system could only be made after the full development of the VALID IV project in August 2007;
- the Police would continue to discuss with the D of J, the JA and the TD the implementation details for the revision of criterion (b), with a view to implementing the change after August 2007;

Criterion (c)

- under the present mechanism, the TD would refuse renewal of annual vehicle licence under the name of the defaulter with outstanding parking fines. As such, most defaulters, after their applications for renewal of licences had been refused by the TD, would pay the outstanding parking fines to the Judiciary so that they could have their licences renewed in the TD. Taking into consideration this effective means of collecting outstanding parking fines, the estimated costs of executing distress warrants by the JA and the workload of the Police in processing the warrants, the Police was of the view that it would not be cost-effective to issue a distress warrant for only a small amount of fine. The Police thus proposed that the threshold be revised from \$50,000 to \$5,000. With the proposed threshold of \$5,000, a distress warrant would be issued to a defaulter when a total of five court orders of \$1,080 each (i.e. \$320 (fine) + \$320 (penalty) + \$440 (court cost)) had been issued on him/her;
- based on the figures as at 20 December 2006, there were about 630 defaulters with outstanding parking fines between \$5,000 and \$50,000 and, if the threshold were lowered to \$5,000, distress warrants had to be issued to them. Both the D of J and the JA had no objection to the proposed threshold;
- same as criterion (b), system modification of the CASEMAN was not required, but the modification required of the TD's system could only be made after the full development of the VALID IV project in August 2007; and
- the Police would continue to discuss with the D of J, the JA and the TD the implementation details for setting the new threshold, with a view to implementing the change after August 2007.

Audit recommendation in paragraph 3.18 of the Audit Report concerning the threshold of \$1,500 for issuing warrants relating to moving offences

37. The Committee noted from paragraphs 3.5, 3.14 and 3.18 of the Audit Report that, for moving offences, the procedures for issuing distress warrants and non-payment warrants were similar to those for offences other than moving offences and parking contraventions. However, there was an additional criterion that the CASEMAN would generate a warrant only when the total amount of outstanding fixed penalty and court cost due from a defaulter had exceeded \$1,500. Because of the additional criterion, warrants for moving offences were not issued in a timely manner. To improve the situation, Audit recommended that the Commissioner of Police should review whether it was necessary to maintain the existing threshold of \$1,500. The Committee asked:

- whether the \$1,500 threshold was the only criterion for issuing warrants in respect of moving offences;

- about the rationale for setting the threshold for issuing warrants relating to moving offences at \$1,500;
- given that one of the criteria for application of distress warrants relating to parking contraventions was “the total amount of outstanding fixed penalty and court cost due from the defaulter had accumulated to over \$50,000”, why there was such a great difference between the two thresholds, i.e. \$1,500 and the \$50,000; and
- about the timing and direction of the review regarding the \$1,500 threshold.

38. The **Acting Commissioner of Police** said at the public hearing that the \$1,500 threshold had been in place for a long time. He did not know the rationale for establishing such a threshold. The Police would take the lead to conduct a review of the threshold of \$1,500. In reviewing the threshold, the cost implication would be taken into consideration. He supplemented, in his letter of 24 May 2006, that:

Whether the \$1,500 threshold was the only criterion

- such threshold was the only criterion for issuing warrants in respect of moving offences;

Reasons for the great difference between the two thresholds

- the Police could not trace the history about the setting of the two thresholds. Audit’s review also could not ascertain which department(s) had established such thresholds and the basis of them. There might be a number of considerations contributing to the difference between the two thresholds. One of the considerations could be the difference in the process and cost of recovery actions for the two categories of fines. Moreover, the thresholds might be set for different purposes in the process of recovery actions;

(a) *For distress warrants with threshold of \$50,000 relating to parking contraventions*

- (i) in executing a distress warrant relating to parking contraventions, a bailiff of the Judiciary would seize the goods and chattels of the defaulter at the latter’s address to the limit that the value of the seized items would cover the outstanding fines and the cost of seizure. The defaulter would be allowed to pay the outstanding fines and the cost of seizure within five days. Otherwise, the seized items would be sold by public auction. The sales proceeds would be used to settle the outstanding fines and the cost of seizure; and

- (ii) under the present mechanism, the major means to enforce payment of outstanding parking fines was the TD's control in refusing renewal of annual vehicle licence under the defaulter's name. Since vehicle licences had to be renewed annually, it was definitely the most economical way to recover the outstanding parking fines upon expiry of the vehicle licences. It was reasonable to guess that the threshold of \$50,000 was purposely set at a high level to screen only those really serious cases that warranted earlier actions before the renewal of the licences; and
- (b) *For non-payment warrants with threshold of \$1,500 relating to moving offences*
- (i) for non-payment warrants relating to moving offences, the Police would take actions to arrest the defaulter. Upon the arrest of the defaulter, he/she would normally be bailed to appear in Court; and
 - (ii) fines for moving offences were imposed on the drivers and the TD would refuse the renewal of driving licences of the defaulters. However, driving licences would normally be renewed every 10 years, the control on renewal would not be an effective means for recovering the outstanding fines. For this reason, the major means of recovery action was the issuance of non-payment warrants. As such, the threshold for issuing non-payment warrants was set at a relatively low level justifiable by cost-effectiveness of the recovery actions;

Timing and direction of the review regarding the \$1,500 threshold

- currently, the majority of the moving offence tickets issued were in the category of \$450. In case of non-payment, upon issue of an ex parte court order, the amount of penalty could be up to \$1,340 (i.e. \$450 (fine) + \$450 (penalty) + plus \$440 (court cost if applicable)). With the present threshold of \$1,500, for penalty tickets of \$450 or below, non-payment warrants would only be issued on offenders with two outstanding court orders. Whereas for penalty tickets of over \$450, non-payment warrants might be issued on offenders with one outstanding court order; and
- it was possible to consider removing the existing threshold of \$1,500, which would result in non-payment warrant being issued for every outstanding case of fines relating to moving offences. However, there would be implication on resources and cost-effectiveness. The Police would, in consultation with the D of J, review the existing criterion of issuing non-payment warrants relating to moving offences.

39. In the progress report provided in his letter of 30 September 2006, the **Commissioner of Police** informed the Committee that:

- after careful consideration, the Police was of the view that the existing threshold of \$1,500 could be removed;
- system modification of the CASEMAN was not required, but the modification required of the TD's system could only be made after the full development of the VALID IV project in August 2007; and
- the Police would continue to discuss with the D of J, the JA and the TD the implementation details for the removal of the threshold, with a view to implementing the change after August 2007.

Audit recommendation in paragraph 3.17(b) of the Audit Report concerning multiple applications for distress warrants

40. Paragraph 3.9 of the Audit Report revealed that, for the same defaulter, several applications for distress warrants for parking contraventions were very often made to different Magistrates' Courts which had issued the related ex parte court orders. At present, three Magistrates' Courts were designated for handling moving offences and parking contraventions. Therefore, three applications could be made for the same defaulter. In paragraph 3.17(b) of the Report, Audit recommended that the D of J should, 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. The Committee enquired about the progress made in this regard and the changes that needed to be made to the CASEMAN if the process for application of distress warrants were to be redesigned.

41. The **Acting Commissioner of Police** said at the public hearing that the Police would start discussions with the D of J and the JA very soon to see how the audit recommendation could be taken forward. During the process, they would, among other things, identify what changes to the CASEMAN would be required if the recommendation were to be adopted.

42. The **Deputy Director of Public Prosecutions** informed the Committee in his letters of 5 October 2006 and 6 December 2006 (in *Appendix 18*) that:

- in regard to the limited role played by the D of J in the process, the D of J's present complement of staff would be in a position to deal with any variations in the procedure, whether that involved reducing the number of courts at which warrants were issued, or whether it involved an increase in the number of warrants to be issued because of a lowering in the present threshold; and

- after discussions among the D of J, the Police and the JA, the D of J had proposed that applications for such warrants be made at the designated court of the area in which the defaulter's registered address was located, irrespective of the court at which the order for payment was made. As such, all applications for distress warrants in respect of the same defaulter would be made at the same court, i.e. the court nearest to the defaulter's place of abode.

D. Execution of distress warrants by the Court Orders Section

Paragraph 4.15 of the Audit Report concerning time lag in obtaining information from prosecuting departments

43. The Committee noted from paragraph 4.15 of the Audit Report that, where the execution of a distress warrant was unsuccessful, it might be necessary to enquire of the prosecuting department for additional information, e.g. whether the company defaulter had another address and whether it had been/was being wound up. There were nine cases in the audit sample where the General Offices of Magistrates' Courts had to seek additional information about the company defaulters from the prosecuting departments. For these nine cases, there was generally a long time lag for the General Offices to receive replies from the prosecuting departments. Audit considered that there was a need for the General Offices to follow up with the prosecuting departments in case the replies were not received within a reasonable time. The Committee asked how the JA would take forward this recommendation.

44. The **Judiciary Administrator** said at the public hearing that she shared Audit's view and would follow up the matter with the prosecuting departments. In response to the Committee's further enquiry as to when the General Offices would put the proposed course of action into practice, the **Judiciary Administrator** stated, in her letter of 24 May 2006, that:

- on the time lag in receiving information from the prosecuting departments, the JA noted that it was stated in paragraph 4.15 of the Audit Report that "Audit considers that it is reasonable to expect that the prosecuting departments should respond promptly to the General Offices on the additional information requested.". The JA agreed with this view; and
- it was, however, noted that Audit had also stated in the same paragraph that "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.". The JA would consult the major prosecuting departments with a view to devising practicable measures to enable that prompt responses would be provided to the General Offices. The JA aimed to complete this within three months.

45. In the progress report provided in her letter of 29 September 2006, the **Judiciary Administrator** said that the JA agreed with Audit that the prosecuting departments/agencies should respond promptly to requests, and urged that this point should be made to the prosecuting departments/agencies. As far as the JA was concerned, it would follow up with the prosecuting departments/agencies if replies were not received after two months from the date of the request for additional information.

Audit recommendation in paragraph 4.18(a) of the Audit Report concerning cost of execution of distress warrants

46. The Committee noted from paragraphs 4.11, 4.12 and 4.18(a) of the Audit Report that execution of distress warrants involved cost, the major portion of which was the staff costs of bailiffs and possession guards. As costing information would be useful for the JA's management in assessing the cost-effectiveness of the work of bailiffs, Audit recommended that the Judiciary Administrator should estimate the cost of execution of distress warrants for assessing the cost-effectiveness of the work of bailiffs.

47. In response to the Committee's enquiry about the action taken by the JA in respect of the above audit recommendation, the **Judiciary Administrator** said, in her letter of 24 May 2006, that the JA aimed to complete an estimate of the cost of execution of distress warrants within six months.

48. In her letter of 4 December 2006 in *Appendix 19*, the **Judiciary Administrator** stated that the JA had completed the costing exercise. As regards a visit performed by a bailiff for the purpose of executing a distress warrant for which no seizure was made, the average cost was about \$394. In the case for which a seizure was made, the average cost was about \$513.

Audit recommendation in paragraph 4.18(b) of the Audit Report concerning target time on execution of distress warrants

49. The Committee noted from paragraphs 4.14 and 4.18(b) of the Audit Report that timely attempts to execute a distress warrant would improve the rate of successful execution. Therefore, Audit recommended that the Judiciary Administrator should consider setting a target time on the execution of distress warrants by bailiffs, particularly the target time of the first attempts. This target could serve as a control measure to ensure the execution of distress warrants within a reasonable time. It could also assist in the planning and monitoring of the staff resources deployed for the execution of distress warrants.

50. In response to the Committee's enquiry about the plan of the JA in taking forward the above audit recommendation, the **Judiciary Administrator** said, in her letter of 24 May 2006, that the JA would consider setting a target time, within three months, on the execution of distress warrants by the bailiffs, particularly the target time of the first attempt.

51. In the progress report provided in her letter of 29 September 2006, the **Judiciary Administrator** informed the Committee that the JA accepted the audit recommendation. With effect from 1 September 2006, the JA had set a target time of 10 working days for making the first attempt of execution of distress warrants after receipt of the warrants by the Court Orders Section.

Audit recommendation in paragraph 4.18(c) of the Audit Report concerning the need to execute distress warrants at places where defaulters was conducting business

52. The Committee noted from paragraph 4.17 of the Audit Report that the General Offices of Magistrates' Courts issued 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 was unsuccessful. However, it was not clear whether the "present/new/updated address" of the company was identical to the business address. In paragraph 4.18(c) of the Report, Audit recommended that, where the execution of a distress warrant relating to a company defaulter had been unsuccessful, the Judiciary Administrator should require the General Offices to:

- 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
- 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 was conducting business.

53. In response to the Committee's enquiry about the JA's plan in following up the recommendation, the **Judiciary Administrator** stated, in her letter of 24 May 2006, that the JA had implemented the recommendations regarding the refinement of wording used in the memorandum issued to the prosecuting departments.

54. In the progress report provided in her letter of 29 September 2006, the **Judiciary Administrator** advised that:

- the current memorandum to the prosecuting departments had been revised since 1 June 2006 to specify clearly the provision of the current business address of the company defaulter; and

- the JA agreed to take follow-up action after receipt of further information from the prosecuting departments on further execution attempts but, as a prerequisite, such further attempts had to be made in accordance with the Magistrates' directions, if any.

Audit recommendation in paragraph 4.24 of the Audit Report concerning deployment of possession guards for execution of distress warrants

55. The Committee noted from paragraphs 4.22 and 4.23 of the Audit Report that Audit had examined the feasibility of adopting the practice that a bailiff did not need to be accompanied by a possession guard when attempting to execute distress warrants relating to offences other than parking contraventions. The results of Audit's analysis suggested that, in the execution of a distress warrant relating to offences other than parking contraventions, it might not be necessary for the bailiff to be accompanied by a possession guard. Hence, Audit recommended in paragraph 4.24 of the Report that the Judiciary Administrator should review the existing practice.

56. In response to the Committee's enquiry on the feasibility of the audit recommendation, the **Judiciary Administrator** said at the public hearing that the JA agreed to review the existing practice in the light of operational experience and the circumstances of individual cases. It would report the progress to the Committee in a few months' time.

57. In the progress report provided in her letter of 29 September 2006, the **Judiciary Administrator** stated that the JA had reviewed the practice and decided that a bailiff would not be accompanied by a possession guard in normal circumstances when attempting the execution of such warrants. The revised practice had come into operation since 3 July 2006.

Table 8 in paragraph 4.22 of the Audit Report concerning success rate of execution attempts of distress warrants

58. Table 8 in paragraph 4.22 of the Audit Report indicated that 6,735 attempts had been made to execute distress warrants relating to parking contraventions and offences other than parking contraventions. The success rate of execution attempts of distress warrants relating to parking contraventions was only 2%. The Committee asked:

- under what circumstances the execution of a distress warrant relating to parking contravention would be considered unsuccessful, e.g. the number of attempts that had to be made before the execution was regarded as unsuccessful;
- the number of cases involved in the 6,735 execution attempts; and

- the reasons for the unsuccessful execution attempts of distress warrants relating to parking contraventions.

59. The **Judiciary Administrator** said at the public hearing that she would provide the information after the hearing. The **Judiciary Administrator's** letter of 24 May 2006 provided the following details:

- the circumstances under which the execution of a distress warrant relating to parking contraventions was considered unsuccessful were:
 - (a) the door of the premises was locked and nobody responded to the bailiff's calls;
 - (b) the bailiff was satisfied that no such defaulter was trading or residing at the premises;
 - (c) the bailiff was satisfied that no goods and chattels belonging to the defaulter were available for seizure; and
 - (d) the bailiff found that the goods and chattels were of insufficient value to cover the cost of seizure;
- if the first attempt was unsuccessful, the applicant (in this case the Police) would be informed of the execution result. A second or further attempt would be made upon receiving further request and/or information from the Police;
- the 6,735 execution attempts involved 4,751 cases; and
- the reasons for the unsuccessful execution attempts of distress warrant relating to parking contraventions were mainly those set out in (a) to (d) above.

E. Execution of non-payment warrants by the Police

Audit recommendation in paragraph 5.17 of the Audit Report concerning Immigration Department (ImmD)'s watch list

60. The Committee noted from paragraphs 5.15 to 5.17 of the Audit Report that, as at 31 December 2005, there were 236 defaulters for each of whom five or more warrants had been issued and whose outstanding fines totalled \$2.9 million. Audit considered that an effective measure for the execution of non-payment warrants was to place the names of the defaulters concerned on the ImmD's watch list. This measure could be especially effective for apprehending defaulters who had large amounts of outstanding fines and could not be

located by other means. Audit recommended that the Commissioner of Police should, in consultation with the Director of Immigration, consider the feasibility of placing on the ImmD's watch list the names of those defaulters for whom non-payment warrants had been issued and who had large amounts of outstanding fines.

61. The Committee also noted the Director of Immigration's response in paragraph 5.19 of the Audit Report that the ImmD stood ready to join hands with the relevant parties in implementing the audit recommendation.

62. The Committee asked, in the ImmD's view, how the audit recommendation could be implemented. The **Director of Immigration** replied in his letter of 24 May 2006, in *Appendix 20*, that:

- the ImmD was prepared, upon request of the Police, to intercept payment defaulters of serious cases at control points and quickly hand them over to the Police; and
- the ImmD was also prepared to accept legislative amendments to the prescribed Form 29 [warrant for apprehension issued under section 101A(1)(b) of the Magistrates Ordinance] to have the apprehension power extended to immigration officers at control points for handing the defaulters over to police officers for follow-up action.

63. The Committee also noted the Commissioner of Police's response to the audit recommendation, in paragraph 5.18(a) of the Audit Report, that the current agreement between the Police and the ImmD was to include only persons wanted for an arrestable offence in the ImmD's watch list for stop and arrest action. The non-payment of fines was not normally regarded as an arrestable offence and was not within the current ambit for inclusion in the watch list.

64. In response to the Committee's enquiry on the feasibility of implementing the audit recommendation, the **Acting Commissioner of Police** said at the public hearing that notwithstanding the above agreement, the Police would conduct a review, in consultation with the ImmD and the D of J, to see if certain categories of defaulters, e.g. those with a large number of warrants and/or with large amounts of outstanding fines, should be placed on the ImmD's watch list, having regard to the practice of other government departments, e.g. the Inland Revenue Department. He undertook to provide the Committee with details of the review in a few months' time.

65. The **Commissioner of Police** supplemented in his letter of 24 May 2006 that the Police was in the process of consulting the D of J and the ImmD on the following issues:

- the propriety of the definition of serious cases of payment defaulters;
- the setting of the threshold, whether it should be determined by the number of warrants or the total amount of fines, to trigger the mechanism;
- the legal basis to include only those exceeding the threshold in the watch list;
- the proportionality of the suggested measure on human rights consideration; and
- other issues, such as resource implication, management of control points and acceptance by the public.

66. In his letters of 30 September 2006 and 15 January 2007, the **Commissioner of Police** informed the Committee of the following progress:

- according to the D of J's advice, a warrant for non-payment of fines did not prohibit the subject of the warrant from leaving Hong Kong. As such, the ImmD could not refuse a person who was the subject of such a warrant departure clearance if he held a valid travel document. Nevertheless, the ImmD had the administrative power to include any person, such as the subject of a non-payment warrant, in a watch list and might intercept him/her at a control point and asked him/her to wait for the Police for the execution of the warrant;
- the ImmD had proposed to include defaulters with five or more non-payment warrants in a watch list. The Police shared the ImmD's view that defaulters having five or more non-payment warrants were worthy of particular actions when the Police's consistent efforts to arrest them by other means had been unfruitful and the chances to recover the outstanding fines were slim. The Police was also of the view that it would be appropriate to include only defaulters having five or more non-payment warrants in the watch list at the initial stage of implementation, taking into account freedom of travel and the likely inconvenience imposed on the defaulters. The Police would review the arrangement after it had been implemented for 12 months; and
- the views of all Police Districts where the immigration control points were located had been sought on the proposed measure. The Police was now working out the operational procedures with the ImmD. It was estimated that the operational procedures would be devised before end of March 2007.

Audit recommendation in paragraph 5.12 of the Audit Report concerning ways to improve execution of non-payment warrants

67. According to paragraphs 5.7 and 5.8 of the Audit Report, of the 40 defaulters in the audit sample, there were eight defaulters for whom 57 non-payment warrants had been issued and were still outstanding as at 31 December 2005. Of the 27 apprehension attempts at the defaulters' addresses, 22 (81%) were made during office hours. Of the five second apprehension attempts at the defaulters' addresses, four (80%) were made during the same period as the first attempts. In paragraph 5.12 of the Report, Audit recommended that the Commissioner of Police should explore ways to improve the execution of non-payment warrants. These might include the following measures:

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

68. The Committee also noted the response of the Commissioner of Police to the above audit recommendation, in paragraph 5.13(a) of the Audit Report, that in cases where the initial attempts were 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. In this connection, the Committee requested to be provided with:

- more information relating to the Police's execution of outstanding non-payment warrants, in particular for those cases where five or more warrants had been issued against the same defaulter; and
- the timing of the execution attempts carried out by the Police and the success rates of attempts carried out in different periods of a day.

69. The **Commissioner of Police** provided the following supplementary information in his letter of 24 May 2006:

- of the eight defaulters for whom 57 non-payment warrants had been issued, two defaulters had been arrested and a total of 19 warrants had been executed. Repeated attempts in different periods of the day had been made to locate the six other defaulters at their last known addresses but was to no avail. Further enquiries had been made to check if they had other addresses. Their particulars had also been entered into the Police's list of wanted persons. The Police's actions to locate the six defaulters were ongoing;

- the Police did not keep statistics relating to the timing of the execution attempts carried out by the Police and the success rates of attempts carried out in different periods of a day. Alternatively, the Police had conducted a data sampling exercise on the successful execution of 2,830 non-payment warrants relating to traffic offences on 1,495 defaulters between February and April 2006, so as to study the rates of successful execution in different periods of a day. The findings were in Appendix B to his letter;
- during the period, a total of 1,495 defaulters were arrested. Warrants of 894 defaulters (59.8%) were executed between 0900 and 1700 hours; warrants of 350 defaulters (23.4%) were executed between 1700 and 2400 hours; and warrants of 251 defaulters (16.8%) were executed between 2400 and 0900 hours; and
- of the 1,495 defaulters, 68 defaulters had five or more warrants. Statistics of these defaulters were similar to the overall figures. Among these 68 defaulters, warrants of 32 defaulters (47%) were executed between 0900 and 1700 hours; warrants of 21 defaulters (30.9%) were executed between 1700 and 2400 hours; and warrants of 15 defaulters (22.1%) were executed between 2400 and 0900 hours.

70. In the progress report provided in his letter of 30 September 2006, the **Commissioner of Police** advised that:

- all police officers performing warrant execution duties had been reminded of the practical need to conduct visits outside regular office hours with a view to increasing the success rate of executing the warrants; and
- a standard checklist for warrant execution had been introduced for use in all police divisions to standardise the actions of warrant execution as well as facilitating the Divisional management in monitoring the actions that had been taken and the timing when the attempts had been made. The Police Headquarters would check to ensure that the procedures for warrant execution had been properly followed.

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

Audit recommendation in paragraph 6.7 of the Audit Report concerning court cost for ex parte court orders

71. The Committee noted from paragraphs 6.4 and 6.5 of the Audit Report that the D of J had advised in May 2005 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 (the Ordinance). Orders (to pay court cost) made under section 3A of the Ordinance during the period January 1997 to May 2005 were ultra vires. The D of J 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 Ordinance. Audit's findings revealed that, on average, about 2,000 moving offence ex parte court orders were issued a month in 2004-2005. On this basis, it was estimated that the revenue implications of not collecting the court cost amounted to about \$0.9 million a month. In paragraph 6.7 of the Report, Audit recommended that the D of J should expedite action to introduce the necessary legislative amendments so that court cost could be imposed for moving offence ex parte court orders.

72. In response to the Committee's enquiry about the progress made in introducing the necessary legislative amendments, the **Deputy Director of Public Prosecutions** said at the public hearing that the D of J was in the process of drafting the legislative amendments.

73. In the progress report provided in his letter of 5 October 2006, the **Deputy Director of Public Prosecutions** advised that the proposed legislation to empower Magistrates to award costs when making orders under section 3A and 3B of the Fixed Penalty (Criminal Proceedings) Ordinance (Cap. 240) would be included in an Omnibus Bill, which was expected to be presented to the Legislative Council within the 2006-2007 session.

Audit recommendations in paragraphs 6.13(a), 6.13(b) and 6.14 of the Audit Report concerning the use of dishonoured cheques to circumvent the TD's control measures

74. Case 5 cited in paragraph 6.11 of the Audit Report revealed that a defaulter had repeatedly used dishonoured cheques to circumvent the TD's control measures. During the period June 2001 to May 2005, the defaulter had used dishonoured cheques in eight instances to pay traffic fines so that he could perform vehicle licensing/transfer transactions. Audit recommended in paragraph 6.13(b) of the Audit Report that the Commissioner for Transport should consider taking action against those defaulters who had renewed their driving or vehicle licences by using dishonoured cheques to pay traffic fines. The Committee:

- asked if the defaulter mentioned in Case 5 was a company or a person;
- requested for a chronology of the defaulter's payment records, which should indicate whether he/she had settled the outstanding payments after the respective cheques had been dishonoured, as well as the defaulter's vehicle licensing/transfer transactions;

- asked about the reasons why the defaulter could perform vehicle licensing/transfer transactions despite his successive non-payment of outstanding fines; and
- asked the TD to seek legal advice on whether the driving or vehicle licences issued to a defaulter could be voided if it was proved that the licence(s) had been obtained by means of dishonoured cheques.

75. **Mr Alan WONG Chi-kong, Commissioner for Transport**, said at the public hearing and in his letter of 24 May 2006, in *Appendix 21*, that:

- the TD and the JA had searched the relevant records and the findings were as follows:
 - (a) the defaulter was of the same person;
 - (b) a chronology of the defaulter's payment records and vehicle licensing/transfer transactions was provided in the Annex to his letter; and
 - (c) the defaulter had made cheque/cash payment to settle the outstanding traffic fines on or before the date he applied for transfer of ownership of vehicle or renewal of vehicle licence. At the time the defaulter applied for vehicle/driving licence renewal/transactions, he might have shown the receipt issued by the Magistrates' Court as proof of settlement of traffic fines or the computer system indicated that the outstanding fines were paid; and
- as to whether the Commissioner for Transport could void the vehicle/driving licence issued to a defaulter who had settled the traffic fines by a dishonoured cheque, the legal advice was that the fact that the cheque issued by the defaulter was not honoured did not affect the validity of the driving/vehicle licence. As the Commissioner had acted lawfully in issuing/renewing the vehicle/driving licence, the licence could not be void or invalid under the law.

76. In view of the severity of Case 5, it appeared to the Committee that the case should be referred to the relevant departments for investigation. The Committee asked:

- whether the JA had ever referred cases of dishonoured cheque payment for traffic fines to the Police for investigation and prosecution; and
- whether the referral of Case 5 had been done and to which department; if not, the reasons for that.

77. The **Judiciary Administrator** replied at the public hearing and in her letter of 24 May 2006 that:

- according to the information contained in the CASEMAN, the defaulter of Case 5 had made two payments on 12 May 2005 and 1 December 2005 respectively. All the outstanding fines concerned had been settled; and
- the JA had not referred cases of dishonoured cheque payment for traffic fines to the Police for investigation and prosecution. However, the General Office of Magistrates' Courts had been keeping the Police informed of cases involving dishonoured cheque payment for traffic fines.

78. In the progress report provided in her letter of 29 September 2006, the **Judiciary Administrator** stated that:

- the JA maintained that criminal investigations and prosecutions were matters for the Police. That said, the JA would ensure that cases of dishonoured cheques would be referred to the Police in accordance with their criteria; and
- the JA would provide the Police with pertinent information on the incidents of dishonoured cheques and the outstanding traffic fines concerned. Such information would be copied to the TD which would inform the Police whether a vehicle licensing/transfer transaction had taken place after the purported payment.

79. The Committee asked about the action that would be/had been taken by the TD in implementing the audit recommendation in paragraph 6.13(a) of the Audit Report that the Commissioner for Transport should, in consultation with the Judiciary Administrator, introduce measures to ensure that defaulters could not use dishonoured cheques to circumvent the control measures that barred them from using the TD's licensing and vehicle registration services.

80. The **Commissioner for Transport** said at the public hearing that the TD agreed with the audit recommendation, and would review the existing practice in the next few months with a view to ensuring that defaulters could not use dishonoured cheques to circumvent the TD's control measures.

81. In his letters of 29 September 2006 in *Appendix 22* and 15 January 2007 in *Appendix 23*, the **Commissioner for Transport** informed the Committee that:

- he had reviewed the workflow in handling applications from persons who used cheques to settle outstanding traffic fines and then obtained licensing and vehicle registration services from the TD;

- a new arrangement had been implemented on 27 November 2006, under which licensing applications from applicants who chose to settle their traffic fines by cheques would be processed after seven working days in order to allow sufficient lead time for clearance of cheque payments;
- the new arrangement was made known to the public through press release and posting of notice at TD's licensing offices and the Account Offices of Magistrates' Courts. This arrangement had been working well and was generally accepted by the public; and
- the TD believed that, with the implementation of the new arrangement, defaulters would no longer be able to use dishonoured cheques to circumvent the control measures and obtain driving or vehicle licences from the TD.

Table 13 in paragraph 6.19 of the Audit Report concerning defaulters with outstanding parking fines

82. Table 13 in paragraph 6.19 of the Audit Report revealed that, as at 31 December 2005, there were 4,679 defaulters who had outstanding parking fines of over \$2,000. Among these 4,679 defaulters, there were 77 who each had outstanding parking fines of over \$100,000. The Committee asked:

- about the reasons why the 77 defaulters had such a large amount of outstanding parking fines; and
- whether their outstanding parking fines were accumulated over a long period of time and, if so, the periods of time taken to accumulate to this amount.

83. The **Commissioner of Police** stated in his letter of 19 June 2006, in *Appendix 24*, that:

- a copy of the table summarising the details of the 74 defaulters who had outstanding parking fines of over \$100,000 as at 12 June 2006 was in Appendix A to his letter. As for the reasons for these defaulters to have accumulated such a large amount of outstanding fines, the Police's observations were as follows:
 - (a) in majority of the cases, the defaulters had taken only one year or a period within two calendar years to accumulate such a large amount of fines and abruptly no additional fines had been accumulated thereafter. Given that under the present mechanism, the TD would refuse renewal of annual vehicle licences under a person's name if he had outstanding fines, it was reasonable to believe that the defaulters had contravened

numerous parking offences and received a large number of fixed penalty tickets during the one-year period when their annual vehicle licences were still valid. Since the defaulters were unable to renew their vehicle licences, no more fines had been accumulated after the expiry of their licences;

- (b) the majority of the cases met neither criterion (a) that the ownership of the offending vehicle had been transferred nor criterion (b) that the vehicle licence of the offending vehicle had expired for two years. It could be inferred that it was criterion (c) that the total amount of outstanding fines had accumulated to over \$50,000 to trigger the mechanism for the issue of distress warrants to the defaulters. Although distress warrants had already been issued when the total amount of fines was over \$50,000, the defaulters could still drive their vehicles and receive more and more fixed penalty tickets before their vehicle licences expired. This explained why a number of distress warrants had been issued on the defaulters; and
 - (c) since the majority of the distress warrants on the defaulters had not been successfully executed by the Bailiff Office, a large amount of outstanding fines had been accumulated as the number of court orders and unexecuted distress warrants on the defaulters piled up;
- based on the further information provided by the JA and the Police's records, he had looked into the cases of the seven most serious defaulters (defaulter nos. 32, 36, 37, 46, 47, 70 and 72 referred to in Appendix A) who each had more than \$300,000 outstanding fines, with a view to obtaining more evidence to substantiate the above observations of the Police. The findings were summarised at Appendix B to his letter. It was worth noting that:
- (a) for six out of the seven defaulters, all fixed penalty tickets were issued during the one-year period when their vehicle licences were still valid and each of them had only one vehicle. Only one defaulter (defaulter no. 37) had a small portion of fixed penalty tickets that were issued within one month after the expiry of the vehicle licences of his two vehicles;
 - (b) for all seven defaulters, it was criterion (c) that the total amount of outstanding fines had accumulated to over \$50,000 to trigger the mechanism for the issue of the first distress warrant when their vehicle licences were still valid; and
 - (c) all distress warrants on the seven defaulters were unsuccessfully executed;

- the above findings corroborated the Police's observations; and
- the proposed revision of criterion (b) from when "the vehicle licence of the offending vehicle had expired for two years" to "as soon as the vehicle licence expired" would not be an effective measure against these serious defaulters as distress warrants had already been issued on them when their vehicle licences were still valid. For criterion (c), a reduction of the threshold of \$50,000 would trigger the mechanism for the issue of distress warrants to the defaulters at an earlier stage. However, the deterrent effect on these serious defaulters should not be significant as they could still drive their vehicles and receive more and more fixed penalty tickets before their vehicle licences expired. He believed that any changes to the existing criteria for application of distress warrants could not effectively reduce the large amount of outstanding fines imposed by courts in these cases if the success rate of the execution of distress warrants by the Bailiff Office remained at the present level.

84. The **Acting Judiciary Administrator** said in her letter of 4 July 2006, in **Appendix 25**, that the JA had examined the results of executing the distress warrants by bailiffs against the seven most serious defaulters referred to in the Commissioner of Police's letter of 19 June 2006. The JA's findings and observations on each of the seven cases were provided in the attachment to her letter.

Audit recommendation in paragraph 6.22 of the Audit Report concerning seizure of vehicles to recover outstanding fines

85. The Committee noted from paragraphs 6.20 and 6.22 of the Audit Report that, in the execution of writs of fieri facias, bailiffs had carried out seizure of vehicles belonging to the judgment debtors. Audit recommended that for cases where vehicle owners had large amounts of outstanding parking fines and for whom distress warrants had been issued, the D of J should, in consultation with the Court Orders Section, consider seizing their vehicles so as to recover the outstanding fines. The Committee asked whether the Judiciary Administrator would:

- implement the audit recommendation to seize defaulters' vehicles where the situation warranted; and
- consider outsourcing the execution of distress warrants relating to parking contraventions, especially those cases involving seizure of the defaulters' vehicles; if not, why not.

86. The **Judiciary Administrator** replied at the hearing and in her letter of 24 May 2006 that:

- in executing distress warrants relating to parking contraventions, the bailiffs could seize the defaulters' vehicles if the applicant, i.e. the Police, would provide:
 - (a) proof from the vehicle registration records of the TD that the vehicles were properties of the defaulters;
 - (b) information on the location of the defaulters' vehicles; and
 - (c) the necessary resources to carry out a seizure; and
- the bailiffs could effectively carry out a seizure if the above means and resources were provided. The JA would, therefore, not consider outsourcing this function.

G. The Committee's view on the work of the Judiciary Administrator and relevant departments in the collection of fines

87. While the Judiciary Administrator and relevant departments had/would put in place measures to address the problems identified by Audit which fell within their respective purview, the Committee was concerned that at present no department was responsible for coordinating the efforts of various departments in collecting fines. As a matter of fact, it appeared to the Committee that some of the problems revealed by Audit were attributable to the lack of effective coordination and communication among the Judiciary Administrator and relevant departments, resulting in a loss of public money. The Committee had therefore written to the Chief Secretary for Administration drawing his attention to this problem and requesting him to designate a bureau or department to oversee and coordinate the efforts of the Judiciary Administrator and relevant departments in the collection of fines.

88. The **Chief Secretary for Administration** replied in his letter of 15 November 2006, in *Appendix 26*, that:

- the Judiciary Administrator and relevant departments had accepted all the audit recommendations and started or planned for their implementation. The Administration believed that, following implementation of the recommendations, communication and coordination among the departments concerned should improve. There was thus no need for devising a specific arrangement or mechanism for coordinating the collection of fines; and

- that said, the Administration did appreciate the need for regular reviews to track implementation of the recommendations of Audit and the Public Accounts Committee, assess the effectiveness of the improvement measures and identify room or further measures for improvement. To this end, the Financial Services and the Treasury Bureau would coordinate the necessary reviews amongst the Judiciary Administrator and relevant departments.

H. Conclusions and recommendations

89. The Committee:

- expresses dissatisfaction that the Judiciary Administrator, Acting Commissioner of Police, Commissioner for Transport and Deputy Director of Public Prosecutions, who attended the public hearings on this subject in May 2006, had not prepared themselves adequately when attending the hearings and were not able to provide the information sought by the Committee on some of the issues raised. As a result, the Committee's consideration of the relevant Director of Audit's Report (Audit Report) was delayed;
- considers that some of the problems relating to the collection of fines revealed in the Audit Report were attributable to the lack of effective coordination and communication among the departments concerned, resulting in a loss of public money;
- notes the Chief Secretary for Administration's view that there is no need to devise a specific arrangement or mechanism for coordinating the collection of fines imposed by Magistrates' Courts. Instead, the Financial Services and the Treasury Bureau (FSTB) will coordinate amongst the Judiciary Administrator and relevant departments regular reviews to track the implementation of the recommendations of the Audit Commission and the Public Accounts Committee concerning collection of fines, assess the effectiveness of the improvement measures and identify room or further measures for improvement;
- strongly urges that:
 - (a) the FSTB should coordinate with the Judiciary Administrator and relevant departments to conduct a review in one year's time to assess the effectiveness of the measures for improving the collection of fines; and
 - (b) apart from the regular reviews coordinated by the FSTB, the Chief Secretary for Administration should designate an existing bureau or department to oversee and coordinate the efforts of the Judiciary Administrator and relevant departments in the collection of fines;

Imposition and settlement of fines

- expresses serious concern that:
 - (a) where orders to pay fines are imposed by magistrates in open court, defendants are not informed in writing of the amount of the fine, the payment due date, the payment method, and other payment information; and
 - (b) information for planning, directing and monitoring the collection of fines is not provided on a regular basis to the management of the initiating departments concerned;
- notes that:
 - (a) since 1 June 2006, the Judiciary Administration has implemented a new measure that payment notices are issued to offenders who are allowed time to pay fines or to pay fines by instalments;
 - (b) after consulting the users of the Case and Summons Management System (CASEMAN), nine users have requested the Judiciary Administration to provide them with regular information on default payments. The Judiciary Administration has provided these users with relevant information in relation to their respective summonses and will continue to provide such information on a quarterly basis; and
 - (c) in response to the audit recommendation in paragraph 2.17 of the Audit Report, the Judiciary Administration has introduced performance indicators since 1 September 2006 to enhance performance monitoring and reporting on the collection of fines;

Action on overdue fines

- expresses serious concern that:
 - (a) there was an average time lag of 23 days between the due date of the fine and the date when a warrant for offences other than moving offences and parking contraventions was issued;
 - (b) for the same defaulter, several applications for distress warrants for parking contraventions are very often made to different Magistrates' Courts which have issued the related ex parte court orders;
 - (c) there were cases in which distress warrants for parking contraventions were not issued in a timely manner according to the existing criteria; and

(d) because of the additional criterion that warrants relating to moving offences are issued only when the total amount of outstanding fines has exceeded \$1,500, warrants of this kind are not issued in a timely manner;

- notes that:

(a) after reviewing the payment patterns of the fines for the period from April 2003 to March 2006, the Judiciary Administration considers that the 14-day grace period between the due dates of fines and the generation of warrants by the CASEMAN should be maintained. It will keep under review the payment patterns on an annual basis to see if there are grounds for shortening the grace period should there be significant changes to the patterns;

(b) the Judiciary Administrator has reviewed the processing of warrants and set a target time for submission of appropriate cases to Magistrates for consideration since 1 September 2006;

(c) after discussions among the Department of Justice, the Hong Kong Police Force (Police) and the Judiciary Administration regarding the audit recommendation in paragraph 3.17(b) of the Audit Report concerning multiple applications for distress warrants, the Department of Justice has proposed that applications for such warrants be made at the designated court of the area in which the defaulter's registered address is located, irrespective of the court at which the order for payment was made. As such, all applications for distress warrants in respect of the same defaulter will be made at the same court, i.e. the court nearest to his place of abode;

(d) regarding the criteria for application of distress warrants relating to parking contraventions:

(i) the Commissioner of Police has agreed to revise the criterion from when "the vehicle licence of the offending vehicle has expired for two years" to "as soon as the vehicle licence expires". The change is expected to be implemented after August 2007; and

(ii) the Police, the Department of Justice and the Judiciary Administration have agreed to revise the existing threshold from \$50,000 to \$5,000. The change is expected to be implemented after August 2007; and

(e) the Commissioner of Police has agreed to remove the existing threshold of \$1,500 for the issue of warrants relating to moving offences. The change is expected to be implemented after August 2007;

Execution of distress warrants by the Court Orders Section

- expresses serious concern:
 - (a) a large number of distress warrants were outstanding as at 31 December 2005 notwithstanding that attempts had been made for their execution;
 - (b) a significant amount of fines is due from a small number of persistent defaulters with more than five outstanding distress warrants;
 - (c) no costing exercise on the execution of distress warrants had been carried out;
 - (d) while the time lag between the receipt and the first execution attempt of distress warrants has been shortened due to a decrease in caseload, there is a risk that the time lag will be prolonged if the caseload increases again; and
 - (e) where the execution of a distress warrant relating to a company defaulter has been unsuccessful, there was generally a long time lag for the General Offices of Magistrates' Courts to receive replies on additional information about the defaulter from the prosecuting departments;
- notes that the Judiciary Administration:
 - (a) has completed a costing exercise on the execution of distress warrants in November 2006;
 - (b) has set a target of 10 working days for making the first attempt of the execution of distress warrants after receipt of the warrants by the Court Orders Section with effect from 1 September 2006; and
 - (c) will follow up with the prosecuting departments concerned if replies are not received after two months from the date of the request for additional information about defaulters. It will also take follow-up action after receipt of additional information on further execution attempts from the prosecuting departments in accordance with the Magistrates' directions, if any;
- strongly urges:
 - (a) the prosecuting departments to respond promptly to the General Offices of Magistrates' Courts on the requests for additional information about defaulters; and

- (b) the Judiciary Administrator to ensure that the General Offices will promptly follow up with the prosecuting departments concerned if replies are not received and after receipt of additional information on further execution attempts;

Execution of non-payment warrants by the Police

- expresses serious concern that:
 - (a) a large number of non-payment warrants were outstanding as at 31 December 2005 notwithstanding that attempts had been made for their execution;
 - (b) a significant amount of fines is due from a small number of persistent defaulters with more than five outstanding non-payment warrants; and
 - (c) in making enquiries about the addresses of defaulters, only one out of the 11 police divisions concerned made use of a checklist of government departments and utilities companies which could provide such information;
- notes that:
 - (a) the Commissioner of Police:
 - (i) has reminded all police officers performing warrant execution duties of the need to conduct visits outside regular office hours with a view to increasing the success rate of executing the warrants; and
 - (ii) has introduced a standard checklist for warrant execution for use in all police divisions to standardise the actions of warrant execution as well as facilitating the Divisional management in monitoring the actions that have been taken and the timing of the attempts made; and
 - (b) the Director of Immigration has agreed to include defaulters with five or more non-payment warrants in the Immigration Department (ImmD)'s watch list and intercept them at the control points for action by the Police. The Police is now working out the operational procedures with the ImmD. It is estimated that the operational procedures will be devised before end of March 2007;

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

- expresses dismay that:
 - (a) on average, about 2,000 moving offence ex parte court orders were issued a month in 2004-2005, and the estimated revenue implications of not collecting the court cost amount to about \$0.9 million a month;
 - (b) there were cases where defaulters used dishonoured cheques to circumvent the control measures implemented by the Transport Department to enforce payment of outstanding traffic fines;
 - (c) the total amount of dishonoured cheque payments for traffic fines during the period 2000-2001 to 2005-2006 (up to 31 December 2005) was \$4.6 million; and
 - (d) there were about 4,700 vehicle owners who repeatedly committed parking contraventions and ignored the payment of fines, each with more than \$2,000 outstanding parking fines as at 31 December 2005;

- notes that:
 - (a) the proposed legislation to empower Magistrates to award costs when making orders under section 3A and 3B of the Fixed Penalty (Criminal Proceedings) Ordinance (Cap. 240) will be included in an Omnibus Bill, which is expected to be presented to the Legislative Council within the 2006-2007 session;
 - (b) the Commissioner for Transport has reviewed the workflow in handling applications from persons who use cheques to settle outstanding traffic fines and then obtain licensing and vehicle registration services from the Transport Department. A new arrangement was implemented on 27 November 2006, under which licensing applications from applicants who choose to settle their traffic fines by cheques will be processed after seven working days in order to allow sufficient lead time for clearance of cheque payments; and
 - (c) the Judiciary Administrator will ensure that cases of dishonoured cheques will be referred to the Police in accordance with the latter's criteria. The Judiciary Administration will provide the Police with pertinent information on the incidents of dishonoured cheques and the outstanding traffic fines concerned, and copy such information to the Transport Department;

- strongly urges the Judiciary Administrator, in cases where the defaulters are vehicle owners who have large amounts of outstanding parking fines, to proactively use seizure of the defaulters' vehicles as a means of recovering the outstanding fines; and

Follow-up actions

- wishes to be kept informed of:
 - (a) the outcome of the review on the effectiveness of the measures for improving the collection of fines, which should be supported by quantitative information showing the actual improvements made;
 - (b) the decision of the Chief Secretary for Administration regarding the designation of an existing bureau or department to oversee and coordinate the efforts of the Judiciary Administrator and relevant departments in the collection of fines;
 - (c) the progress made in implementing the proposal concerning multiple applications for distress warrants in respect of the same defaulter;
 - (d) regarding the criteria for application of distress warrants relating to parking contraventions, the progress made by the Police in changing from when “the vehicle licence of the offending vehicle has expired for two years” to “as soon as the vehicle licence expires”, and adjusting downwards the existing threshold from \$50,000 to \$5,000;
 - (e) the progress made by the Police in removing the existing threshold of \$1,500 for the issue of warrants relating to moving offences;
 - (f) the actions taken by the prosecuting departments to ensure that they will respond promptly to the General Offices of Magistrates' Courts on the requests for additional information about defaulters;
 - (g) the actions taken by the Judiciary Administrator to ensure that the General Offices will promptly follow up with the prosecuting departments concerned if replies are not received and after receipt of additional information on further execution attempts;
 - (h) the progress made in implementing the arrangement to include defaulters with five or more non-payment warrants in the ImmD's watch list and intercept them at the control points for action by the Police, and the result of the review on the arrangement after it has been implemented for 12 months;

- (i) the progress made in introducing into the Legislative Council the Omnibus Bill which will include the proposed legislation to empower Magistrates to award costs when making orders under section 3A and 3B of the Fixed Penalty (Criminal Proceedings) Ordinance (Cap. 240); and
- (j) the measures adopted by the Judiciary Administrator, in cases where the defaulters are vehicle owners who have large amounts of outstanding parking fines, to ensure that seizure of the defaulters' vehicles is proactively used as a means of recovering the outstanding fines.