

Urgent – by fax

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DATE 日期： 17 April 2009

Ms Joanne Mak
Clerk to Bills Committee
Legislative Council
Legislative Council Building
8 Jackson Road
Central
Hong Kong

Dear Ms Mak,

**Bills Committee on Road Traffic (Driving-offence Points)
(Amendment) Bill 2009**

Thank you for your letter of 3 April 2009 which seeks our views on the captioned Bill.

Our preliminary views are contained in the annexed paper entitled “Background to The Ombudsman’s Direct Investigation on Administration of Driving-offence Points System”. We should stress that this is only meant to be food for thoughts for the Bills Committee and the Administration. The views therein certainly do not represent the eventual findings from our investigation.

Best regards,

Yours sincerely,

(Tony Ma)
for The Ombudsman

c.c. Secretary for Transport and Housing (Attn: Mr Alan Chu) }
Commissioner for Transport (Attn: Ms Lui Ying) } By fax

**Response to
Bills Committee's Invitation for Views
on Road Traffic (Driving-offence Points)
(Amendment) Bill 2009**

**Background to The Ombudsman's Direct Investigation
on Administration of Driving-offence Points System**

This paper provides the background to The Ombudsman's decision to initiate a direct investigation on the administration of the Driving-offence Points ("DOP") system. The investigation is now underway and we emphasise that ideas are still being explored and developed with the parties concerned. It would, therefore, be premature and inappropriate to infer from this paper the eventual findings from the investigation.

Background

2. In June 2008, it came to the notice of The Ombudsman through media reports that loopholes in the DOP system could result in drivers with 15 or more DOP continuing to hold driving licences and drive on the road, thereby frustrating law enforcement and endangering other road users. The Ombudsman, therefore, raised questions with the Transport Department ("TD") and closely followed the Administration's efforts to rectify the situation. In the event, The Ombudsman decided on 19 March 2009 to initiate a direct investigation to examine the issue further.

3. In coming to the above decision, The Ombudsman had particularly taken into account the following information from TD:

- (a) As at June 2008, some 740 drivers have incurred 15 or more DOP but can still be driving, as summonses cannot be served on them. Between April and June 2008, 12 or 1.6% of these drivers were involved in traffic accidents causing casualties. This percentage is significantly higher than the 0.3% of all driving licence holders involved in accidents¹.

¹ Between April and June 2008, 5,749 out of the 1,757,000 holders of full driving licence were involved in traffic accidents.

- (b) The rate of successful disqualification within 12 months of drivers who have accumulated 15 DOP has steadily decreased, from 97% in 2004 to 86% in 2008.
- (c) The time gap between the conviction of a driver of a traffic offence leading to the accumulation of 15 or more DOP and the actual disqualification of the driver is at least three months.

Crucial Considerations

4. For good administration and protection of the fundamental rights of citizens to road safety and to life and limb, we consider it necessary to:

- (a) remove, or substantially reduce, the incentive for drivers to evade summons and/or to provide incomplete or inaccurate addresses to TD in the first place;
- (b) minimise the time gap between a driver's accumulation of 15 or more DOP and his actual disqualification from driving; and
- (c) sharpen the DOP system, so that those who set out to frustrate law enforcement will not enjoy any advantage over those who abide by the law.

The Administration's Proposals

5. In an attempt to plug the loopholes, the Administration introduced the Road Traffic (Driving-offence Points)(Amendment) Bill 2009 into the Legislative Council on 4 February 2009 *viz*:

- (a) to provide for service of summons by registered post to be "deemed" to have been satisfactorily delivered; and
- (b) to empower the Commissioner for Transport ("C for T") to refuse renewal of a driving licence, if the driver has been

served a summons under the DOP system and has failed to appear in Court for it; but

- (c) to stipulate that the Court shall not disqualify a driver in his absence.

6. Our preliminary inquiries with TD indicate that these proposals, especially (c) above, still would not effectively address the problem of the driver with excess DOP continuing to drive and pose a risk to road users. Evidently, the “incentive” for evasion of law enforcement and the long lapse between accumulation of excess DOP and disqualification remain.

A Matter of Balance

7. We firmly endorse the **right to fair hearing** for the driver, but this should be balanced against **fundamental citizens’ rights** to road safety and to life and limb.

8. In this connection, TD should take reference from other jurisdictions with DOP systems and from other local bodies with demerit points systems. With these other local bodies, the general practice is usually for disqualification to take effect from a current date subject to the right of the party affected seeking and getting a hearing.

Removing Incentives

9. The Administration’s proposal is to restrict the Court disqualifying a driver only in his presence. This leaves room for those bent on circumventing the system: so long as a driver manages to evade Court attendance and Police arrest, he can avoid disqualification and continue to endanger other road users until the expiry of his driving licence.

10. The Administration has proposed empowering C for T to refuse renewal of a driving licence where the driver has been served a summons under the DOP system and failed to appear in Court for it. However, many -- if not most -- driving licences are valid for ten years. The offender could, therefore, continue to be a threat to other road users for a very long time.

11. In the spirit of the Administration's principles and logic, a more effective way of "encouraging" such drivers to attend court may be to empower C for T to refuse issue and renewal of **all** licences, permits and certificates to any driver who evades Court attendance and Police arrest. We note, for example, that vehicle licences are renewable only every 12 months. This would provide more disincentives for the offender to evade attending court. Some may see this as affecting the rights of those who are connected one way or another to the driver (for example, those who uses a vehicle registered in the driver's name). However, the simple truth is that the choice rests with the driver himself.

Ideas for Exploring with TD

12. In the light of the above, we urge TD to consider:

- (a) reversing the onus of action, such that disqualification would take effect upon a driver accumulating 15 DOP by service of a statutory notice, with a reasonable grace period for his appeal or for hearing by a Magistrate with or without his presence after physical or "deemed" service of summons;
- (b) empowering the Magistrate to impose a longer disqualification period if there is evidence of deliberate attempts to frustrate law enforcement;
- (c) providing ready channels for drivers to check their DOP status *via* dedicated enquiry hotline and website; and
- (d) empowering C for T to refuse issue and renewal of all licences, permits and certificates to any driver who evades Court attendance and Police arrest.

Timeline for Disqualification

13. Currently, it takes at least three months from the traffic offence culminating in 15 or more DOP to actual disqualification. The timelines of the Administration's proposed procedures do not make for marked improvement. We will be exploring with TD possible ways of streamlining procedures.

Incentive for Compliance

14. A further idea worth exploring is that of fixed penalty: those who do not dispute a disqualification order will not be running a risk of a higher penalty being awarded by the Court. Present data show that 74% of the disqualification orders in 2008 were made for the minimum of three months (for first-time offenders) and 26% for six months (for repeat offenders).

Concluding Remarks

15. The DOP system is for promoting road safety. Citizens have a right to protection from dangerous drivers.

16. The above ideas are not exhaustive. Discussion with TD is ongoing.

The Ombudsman

17 April 2009