

Transport Department’s handling of an application for motor cycle learner’s driving licence Investigation Report

The complainant lodged a complaint against the Transport Department (“TD”) with this Office on 2 December 2021.

The Complaint

2. On 26 November 2021, the complainant telephoned the Kowloon Licensing Office (“LO”) under TD to enquire about issues relating to application for learner’s driving licences for motor cycles (“motor cycle LD licence”), and was told that he did not need to produce a motor cycle Road Test (Part C) appointment letter for the application. On 2 December, he went to the Sha Tin LO and approached different counters to submit his application. However, both counter staff told him that his application would be rejected unless he could produce a Road Test (Part C) appointment letter. The complainant considered the requirement unreasonable, as it did not comply with the requirements stipulated in the law, *viz* Section 12A of the Road Traffic (Driving Licences) Regulations (“DL Regulations”) and was different from what the Kowloon LO told him on 26 November over the phone. He further pointed out that a Road Test (Part C) appointment letter was only required of re-applicants for a motor cycle LD licence, as stated in the “Required Documents” section of the application form for a motor cycle LD licence. Such requirement did not apply to first-time applicants.

Our Findings

Relevant Legislation and Procedures for Handling LD Licence Applications

3. Relevant provisions under the DL Regulations (Cap. 374B) include:

12A. Learners’ driving licences for motor cycles and motor tricycles

- (1) A person who wishes to obtain a learner's driving licence in respect of a motor cycle or a motor tricycle shall deliver to the Commissioner (for Transport) ("C for T") an application therefor in a form specified by the Commissioner, signed by the applicant, together with his identity document.
- (2) Paragraphs (2) and (3) of regulation 10 shall apply to an applicant for a learner's driving licence under this regulation to the same extent as those paragraphs apply to an applicant under paragraph (1) of that regulation.
- (3) On receipt of an application under paragraph (1) and of the fee prescribed in the Second Schedule, the Commissioner shall, subject to paragraphs (4) and (5) and regulations 6, 7 and 9¹, issue to the applicant a learner's driving licence in respect of a motor cycle or a motor tricycle, as the case may be, valid for 12 months from the date of issue thereof.
- (4) The Commissioner shall refuse to issue a learner's driving licence in respect of a motor cycle or a motor tricycle unless the applicant has passed, within 2 years prior to the date of his application, Parts A and B of the motor cycle driving test referred to in regulation 12C.
- (5) The Commissioner may refuse to issue a learner's driving licence in respect of a motor cycle or a motor tricycle if the applicant has, during the 12 months immediately preceding his application, been a holder of such a learner's driving licence and during that period—
 - (a) has not applied under regulation 12B to take Part C of a motor cycle driving test; or
 - (b) having so applied to take Part C of a motor cycle

¹ Section 6 of the DL Regulations is about restrictions on issue of driving licences; Section 7 is about age limits; Section 9 is about physical fitness.

driving test, has without reasonable excuse failed to attend for the test on the date and at the time and place notified under regulation 12B.

12B. Application to take a motor cycle driving test

- (2) On receipt of an application under paragraph (1)² and the payment of the fee prescribed in the Second Schedule, the Commissioner shall issue to the applicant a motor cycle driving test form in a form specified by the Commissioner, and as soon as is practicable thereafter, shall notify the applicant of the date, time and place of the motor cycle driving test.

4. Information on the TD website indicated that first-time applicants for a motor cycle LD licence should enrol with a designated driving school for a mandatory training course to acquire the basic knowledge and skills to manoeuvre a motor cycle, and take the Part A (written test) and Part B (competence test) tests. They must then apply for a motor cycle LD licence within two years of passing the Part B (competence test), complete the “Application for Learner’s Driving Licence (private car, light goods vehicle, motor cycle & tricycle)” (“TD555 Form”) and submit it to a licensing office under TD.

Course of Handling the Case

5. TD explained that since the Kowloon LO receives a large number of telephone enquiries every day, the staff who answered the complainant’s call on 26 November 2021 could not recall the details of the conversation. She said that under normal circumstances, she would advise enquirers about LD licence applications to complete the TD555 Form, then submit it to a TD Licensing Office (either in person or by post) together with the documents specified in the “Required documents” section of the TD 555 Form, including an identity document, address proof and a Pass Certificate for Part B (competence test). Considering that the Kowloon LO would transfer the application received to the Driving Test Appointment Office on the same floor, which would immediately

² That section specifies that a person who wishes to submit himself for a motorcycle driving test shall deliver to the C for T his identity document, a certificate of a specific course and a specified application form signed by the applicant.

make an appointment for the Road Test and issue an LD licence and a Road Test appointment letter to the applicant, the TD staff believed that this could possibly be the reason why she did not specifically mention that applicants had to make an appointment for the Road Test first.

6. The Sha Tin LO does not provide services relating to motor cycle driving tests. So, when the complainant applied for a motor cycle LD licence at the Sha Tin LO on 2 December 2021, the staff there had to confirm that he already got a Road Test (Part C) appointment. However, TD's computer record showed that the complainant had not yet been given any such appointment and he failed to produce an appointment letter for the Test. As such, the TD staff could not process his application.

TD's Overall Response and Comments to the Complainant's Allegation

7. TD explained that, unlike learner drivers of other classes of vehicles, learner drivers of motor cycles need not be accompanied by a driving instructor when they learn to manoeuvre a motor cycle on the road. TD reckons that if learner drivers of motor cycles are required to apply for taking the Road Test (Part C) and a motor cycle LD simultaneously, it can ensure that they would have the Road Test as their ultimate goal when they apply for the licence, thereby ensuring road safety and the proper use of the LD licence. The arrangement can also prevent anyone from holding a motor cycle LD licence for a protracted period without making arrangement for the Road Test. TD pointed out that since 1990, applicants for a motor cycle LD licence have been required to make an appointment for the Road Test (Part C) at the same time.

8. Regarding the complainant's allegation that TD's requirement did not comply with the law, TD contended that it had to take into account the requirements of Sections 12B(2) and 12A(3) of the DL Regulations in issuing motor cycle LD licences. Requiring a motor cycle learner driver to apply for a relevant LD licence and taking the Road Test (Part C) in tandem can make sure that TD would take practical steps to inform applicants for a motor cycle LD licence (i.e. those who would take the Road Test ultimately) of the arrangements for the driving test.

9. Upon our referral of the complainant's complaint, TD had reviewed the TD555 Form and revised the part on "Required Documents" therein to spell out

related arrangements more clearly to first-time applicants for a motor cycle LD licence, that is, the Road Test (Part C) appointment letter is a required document for the application. Applicants without the appointment letter must submit their application to the Hong Kong LO or the Kowloon LO, which would make related arrangement for the Road Test immediately. Furthermore, TD would distribute a leaflet to candidates who have completed Part B (competence test) explaining the arrangement. TD also planned to review the arrangements for tests relating to motor cycles, including the arrangements for issuing LD licences and would modify the arrangements where necessary.

10. With respect to the handling of enquiries, TD had reminded frontline staff to be patient in order to understand the subject matter and provide accurate information. The Department also apologised to the complainant for the misunderstanding arising from the staff's failure to provide him with comprehensive information.

Our Observations and Comments

11. TD stressed that applicants for a motor cycle LD licence are required to apply for taking the Road Test (Part C) in tandem because motor cycles are different from other classes of vehicles in that learner drivers need not be accompanied by a licensed instructor when they learn to drive a motor cycle on the road. Having considered the implications on road safety, TD deemed it imperative to make sure that applicants for a motor cycle LD licence aim at taking the Road Test (Part C) in the end. This Office accepts TD's explanation. Nevertheless, when answering the complainant's enquiry, the staff at Kowloon LO failed to explain clearly TD's practice in handling first-time applications for a motor cycle LD licence, while Sha Tin LO's refusal to accept applications without a Road Test (Part C) appointment letter differed from Kowloon LO's practice and the old TD555 Form had not specified the Road Test (Part C) appointment letter as a required document. All these confused the complainant and the situation was undesirable. Although TD argued that the requirement had been there since 1990, the old TD555 Form had never listed a Road Test (Part C) appointment letter as a required document before late 2021. In other words, TD had all along failed to state clearly the requirement in the Form. This is obviously inappropriate. We are glad to note that TD has reminded its staff to answer enquiries accurately, adopted the revised TD555 Form and would

distribute a leaflet to candidates who have completed Part B (competence test) to explain the arrangement.

12. The complainant alleged that TD's current practice of requiring applicants to produce a Road Test (Part C) appointment letter did not comply with the powers conferred to the C for T under Section 12A(3) of the DL Regulations to refuse issuance of a motor cycle LD licence. We must point out that interpretation of the law is not an administrative matter subject to our investigation. Our concern is whether TD had effectively explained the related arrangements to the public. That TD should have quoted Section 12(B) of the DL Regulations to support the requirement was indeed perplexing. Actually, Section 31(2) of the Regulation, which relates to the driving test of other classes of vehicles, also requires that the C for T shall "as soon as is practicable notify the applicant of the date, time and place of the driving test"³. However, TD did not require the applicants for a LD licence for other classes of vehicles to apply for taking the Road Test at the same time. As such, TD had to explain why it required applicants to produce a Road Test (Part C) appointment letter in order to ensure that it can actually inform them of the arrangement relating to the driving test. Another point to note is that the old TD555 Form spelt out clearly that a Road Test (Part C) appointment letter was required for people re-applying for an LD licence only, which seemed to be consistent with Section 12A(5) of the DL Regulations. This only fueled the query as to whether TD's requirement of first time LD licence applicants to produce a Road Test (Part C) appointment letter really complies with the law. If TD considers that the Department is obliged to take into account traffic safety in issuing motor cycle LD licences and that the C for T can reject an application under the framework of the Regulations despite such power not having been mentioned in Section 12A(3), then TD should make this point clearly.

13. In light of the above analysis, this Office considers the complaint **partially substantiated**.

³ Section 31(2) of the DL Regulations reads "Subject to paragraphs (3) and (9), on receipt of an application under paragraph (1) and of the fee prescribed in the Second Schedule, the Commissioner shall issue to the applicant a driving test form in a form specified by the Commissioner stating the class of motor vehicle in respect of which the driving test is to be undergone and such requirements as he considers appropriate relating to the gross vehicle weight, dimensions and, construction of and the load to be carried on such vehicle, and, as soon as is practicable thereafter, shall notify the applicant of the date, time and place of the driving test."

TD's Response to Our Comments

14. TD accepted our comments and agreed to strengthen information dissemination relating to the arrangements for applications for motor cycle LD licence. In addition to the improvement measures mentioned in **paragraphs 9 and 10** above, TD would take further follow-up actions:

- (1) revising related information on its website to strengthen information dissemination; and
- (2) asking the driving instruction sector (including private driving schools, trade unions and designated driving schools) to take note of the related arrangements and inform the candidates as appropriate.

Final Remarks

15. We are glad to note that TD has accepted our comments and taken the initiative to adopt other improvement measures.

Office of The Ombudsman
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