

Transport Department's handling of the application for postponing a driving test by a candidate under isolation order

Investigation Report

A complainant complained to this Office against the Transport Department ("TD") for mishandling his application for postponing his driving test which he could not attend since he had to comply with the isolation order ("IO") issued by the Department of Health ("DH").

Information Provided by the Complainant

2. According to the complainant, his driving test was scheduled for 12 August 2022. He was unable to attend the test as he was diagnosed with COVID-19 and issued with an IO by DH on 11 August. On 16 August, he applied to TD for postponement of his test. On 18 August and 21 September, TD wrote to inform him that according to its practice, it would allocate end-of-list appointments to candidates after accepting their applications for postponement on medical grounds, but it could not process their applications if their driving test forms would have expired by the new test dates. TD considered the complainant's application to have been made on medical grounds. As test appointments had been scheduled for 7 July 2023 or beyond at the time the complainant submitted his application and that his driving test form would have expired on 23 February 2023, TD could not accept his application.

3. The main points of complaint of this case can be summarised as follows:

- (1) The complainant alleged that TD had unreasonably rejected his application for postponement even he had made it explicit that he was under an IO issued by DH and that he was asymptomatic on the test day. He disagreed with TD's view that his application for postponement was made on medical grounds.
- (2) The complainant alleged that his wife was also unable to attend her driving test scheduled for 12 August 2022 as she was under a quarantine order ("QO"). However, TD accepted his wife's application for postponement and rescheduled her driving test for 9 February 2023. The complainant queried that TD's handling of applications for postponement by candidates under IO and QO was inconsistent and unreasonable.

Our Investigation

4. On 22 September 2022, the complainant lodged a complaint with this Office against TD. On 17 October, this Office initiated an inquiry with TD. Having considered the information provided by TD on this and similar cases, we declared a full investigation into this complaint to TD and the complainant on 13 February 2023. After examining the information obtained, we completed this investigation on 12 April. Our findings follow.

Response from TD

Relevant Legislation

5. Pursuant to the Road Traffic (Driving Licences) Regulations (“the Regulations”), a driving test form (“Test Form”) shall cease to be valid:

- (1) if the holder thereof fails to attend for a driving test on the date and at the time and place notified, **unless**:
 - (a) the holder has given not less than seven days’ notice to the Commissioner of Transport of his inability to attend for such test; or
 - (b) the Commissioner is satisfied that the holder was through circumstances beyond his control unable to attend for such test; or
- (2) on the expiration of 18 months after the date on which it was issued.

6. The above provisions concern the validity period of the Test Form. There are no statutory provisions on how TD should reschedule a new test appointment after accepting an application for postponement. Based on the above provisions, TD has categorised the arrangements for postponement of driving tests into three types. They are summarised as follows.

Handling of Type 1 Applications

7. Candidates can apply for postponement at least seven days before the original test date without specific reasons (“Type 1 Applications”). Once an application is

accepted, TD will cancel the original test appointment and allocate a new test appointment, which is at the end of the appointment list (“end-of-list appointment”) at the time the application is processed, at the original test centre and of the original test type to the candidate. Candidates are not allowed to select a new test date and time. If the Test Form will have expired by the test date because of the postponement, candidates are required to purchase a new Test Form at least 30 calendar days before the new test date.

8. The test slots so released are commonly known as “early appointments”. They are used by TD for repeater early test appointments (**para. 19**) or other needs that require arrangement of earlier test appointments (for example, where TD was unable to conduct a driving test as scheduled due to inclement weather and on-site factors) (**para. 12**). TD pointed out that the number of available early appointments varies from month to month and is very limited. Recently, about 1,000 early appointments were available per month, of which about 800 were used for repeater early test appointments, and the remaining 200 or so for other situations that required an earlier test date.

Handling of Type 2 Applications

9. If candidates are through circumstances **beyond their control** unable to attend for the tests, and they cannot apply for postponement seven days in advance, they are required to apply to TD for postponement within one month from their original test dates (“Type 2 Applications”). TD explained that illness (medical grounds), breakdown of motor vehicle used for the test or other unforeseeable reasons, etc., can normally be accepted as circumstances beyond the control of candidates. TD will examine the reasons and supporting documents submitted by the candidates to decide whether to accept their applications.

10. Upon accepting an application, TD will allocate an end-of-list appointment to the candidate as the new test appointment. However, the application will not be accepted if the candidate’s Test Form will have expired by the new test date. TD will advise the applicant in writing to purchase a new Test Form and a new test appointment (i.e. an end-of-list appointment at the time of purchasing the new Test Form) will be allocated then. In addition, after accepting the application for postponement and allocating an end-of-list appointment, TD will still consider applications for an earlier test date on a case-by-case basis from candidates with specific reasons (such as prolonged absence from Hong Kong for business trip or education) and supporting documents.

11. TD normally needs to release the repeater early test appointments seven days or more in advance for booking, or to notify candidates who need to arrange early test appointments (**para. 8**). As Type 2 Applications are usually made at less than seven days' notice or even after the original test date, TD is unable to reallocate the test slots released to other candidates.

Handling of Type 3 Postponements

12. If TD is unable to conduct a driving test as scheduled due to inclement weather, or if the candidate has already shown up for the test but the test is cancelled due to special reasons (such as traffic accident not caused by the candidate after the candidate started to drive) ("Type 3 Postponement"), the candidate need not apply for postponement. TD will reschedule the test as soon as possible, generally for a suitable date around one month from the original date as far as possible (depending on the expiry date of the candidate's Test Form). TD said that tests are rescheduled subject to the availability of vacant slots and the number of candidates affected.

Handling of Applications for Postponement from Candidates Under IO or QO

13. Between May and September 2022, TD received about 340 applications for postponement of driving tests from candidates under IO or QO issued by the Centre for Health Protection ("CHP"). All these applications were made with less than seven days' notice or even after the original test date. The candidates were required to submit applications together with supporting documents within one month from the test date for TD's approval.

IO

14. Applications for test postponement due to COVID-19 infection and compliance with IO were regarded by TD as applications due to illness (medical grounds) and handled in the same way as that for Type 2 applications. Upon accepting an application, TD would allocate an end-of-list appointment as the new test appointment for the candidate. However, the application would not be accepted if the candidate's Test Form would have expired by the new test date (**para. 10**).

QO

15. During the fifth wave of COVID-19, the number of infections soared. TD received a large number of applications for postponement from candidates under QO (i.e. who were not infected themselves). Considering that both IO and QO were issued by CHP under the prevention of disease legislation related to health, TD adopted a **uniform** approach between May and August 2022 (“the Initial Period”) in handling applications for postponement due to the need to comply with IO and QO, i.e. all applications were regarded as applications made on medical grounds (circumstances beyond the candidates’ control) and processed in the same way as that for Type 2 Applications (**paras. 10 and 14**).

16. At that time, TD received a large number of enquiries and complaints from candidates under QO about its handling of their applications for postponement. Many candidates stressed that their applications should not be regarded as applications made “due to illness (medical grounds)”, and argued over the phone with TD’s frontline staff about whether QO amounted to “due to illness (medical grounds)”.

17. In September 2022, TD reviewed its handling of applications for postponement due to QO. Given that IO and QO were issued in different circumstances, the exceptional circumstances of the epidemic, and that these candidates under QO were not ill (and thus should have been able to attend the tests) but were barred from attending to comply with the QOs, TD exercised discretion to make “special arrangements”, where practicable, from the perspective of putting forth a feasible solution for tackling the exceptional circumstances of the epidemic. Under the “special arrangements”, candidates who applied for postponement due to QO were allocated earlier test appointments (with waiting time about half of that of end-of-list appointments) and allowed to purchase new Test Forms at least 30 calendar days before the new test dates if their Test Forms would have expired by the new test dates. The “special arrangements” were also applicable to similar applications submitted during the Initial Period. Accordingly, TD informed the applicants concerned of the “special arrangements” and took follow-up actions.

18. TD considered that there was a clear distinction between candidates under IO and QO, who were diagnosed with COVID-19 and not infected respectively. Hence, it was able to explain why the “special arrangements” were made to candidates. TD reckoned itself to have adhered to uniform and fair approaches in handling applications for postponement from candidates under IO and QO respectively.

Repeater Early Test Appointment

19. To make good use of the vacant test slots released by candidates who postponed or temporarily cancelled their driving tests (**para. 8**), TD introduced the Repeater Early Test Appointment Booking Service (“RETAS”) in 2013. Repeaters are provided with an option of booking an early appointment in addition to an end-of-list appointment when purchasing a new Test Form. As the number of vacant test slots released by candidates who postponed or temporarily cancelled their driving tests varies from day to day and is very limited, RETAS is only a supplementary service. In late March 2023, a balloting system was introduced to allocate the repeater early test appointments and replace the former “first-come-first-served” arrangement.

20. To sum up, applications for postponement of driving test are made for various reasons. TD emphasised that it had all along handled such applications in accordance with the established mechanism aforesaid, so as to maintain fairness in test scheduling and balance the interests of candidates as a whole.

The Complainant’s Case

Complaint Point (1): Unreasonably Rejecting the Complainant’s Application for Postponement and Considering that His Application Was Made on Medical Grounds

21. TD said that it received the complainant’s written application for postponement on 18 August 2022. The complainant submitted that he was unable to attend the driving test on 12 August as he was a confirmed infection case and had to undergo isolation on that day. The complainant requested that TD reschedule the test for the same year. At that time, TD adopted a uniform approach in handling applications for postponement due to IO and QO. In its reply to the complainant on the same day, TD stated that the complainant had “applied for postponement on medical grounds”. According to the prevailing handling procedures, TD would allocate end-of-list appointments to candidates as the new test appointments upon accepting their applications for postponement (including those on medical grounds). Since end-of-list appointments had been scheduled for 7 July 2023 or beyond at the time the complainant submitted his application, and that the complainant’s Test Form would have expired on 23 February 2023 and could not be used to take driving test on or after that date, TD was unable to accept the complainant’s application. If the complainant wished to take the test, he had to purchase a new Test Form.

22. In an email to TD on 7 September, the complainant stated that he was asymptomatic despite having been diagnosed with COVID-19, and that he could not attend the test only because he complied with the IO. On 21 September, TD informed the complainant in writing that since “his application for postponement was made on medical grounds”, his application was handled in the same way as that for similar applications at that time.

23. TD further explained to this Office that it had to consider all objective evidence in processing applications for postponement. When complaining to this Office, the complainant also stated that he was diagnosed with COVID-19 on 11 August 2022. TD was unable to change its decision of rejecting the complainant’s application in the light of his latest statement.

Complaint Point (2): Being Inconsistent and Unreasonable in Handling Applications for Postponement from Candidates under IO and QO

24. In its reply of 21 September 2022 to the complainant (**para. 22**), TD explained its handling of the complainant’s application for postponement due to IO and those of others due to QO. Having reviewed the applications for postponement at that time, TD considered that it could exercise discretion to allocate early appointments to the candidates under QO.

Our Comments

Complaint Point (1): Unreasonably Rejecting the Complainant’s Application for Postponement and Considering that His Application Was Made on Medical Grounds

25. TD has categorised the applications for test postponement and formulated ways of handling based on the stipulations about the validity period of Test Form in the Regulations. Pursuant to the Regulations, a Test Form will cease to be valid if its holder fails to attend the test as notified, unless the Commissioner has been given not less than seven days’ notice or is satisfied that the holder was unable to attend through circumstances **beyond his control (para. 5(1)(b))**.

26. Regarding the complainant’s application for postponement due to IO, TD explained that it could not accept his application because end-of-list appointments had been scheduled for 7 July 2023 or beyond at the time his application was made, and the complainant’s light goods vehicle Test Form would have expired on 23 February 2023,

i.e. he was not allowed to use the Test Form to take driving test on or after 23 February 2023 (**para. 21**). This Office considers TD's handling of the complainant's application proper as its way of handling was same as that for other Type 2 Applications.

27. The complainant was dissatisfied with TD for considering that his application for postponement was made on medical grounds. Having examined TD's explanation (**para. 23**), this Office considers TD not entirely unreasonable to have done so given that the complainant was confirmed to have been infected. However, this Office notes that the key point for the handling of such applications under the Regulations is on whether the holder "was through circumstances beyond his control unable to attend for such test". There was no need for TD to define whether the candidate "had applied for postponement on medical grounds". Moreover, the description "application for postponement on medical grounds" could not accurately apply to the circumstances of different candidates (such as those under QO), which had thus caused unnecessary misunderstanding or disputes.

28. Had the complainant been allocated an early appointment for his new test appointment, he might have been able to take the test before the expiry of his Test Form. TD explained that early appointments are very limited and will not be allocated to applicants for postponement at present. This Office considers that under the current circumstances, it is pragmatic for TD to allocate end-of-list appointments to candidates of both Type 1 and Type 2 Applications. Nevertheless, the waiting time for an end-of-list appointment is rather long at present (for example, when the complainant applied for postponement in August 2022, the end-of-list appointment at that time was nearly one year later in July 2023). As a result, candidates are not only required to wait for a long time, but also aggrieved for having to purchase Test Forms again because the new test dates will likely fall beyond the expiry dates of the Test Forms. The issue involves the overall waiting time for driving tests, how to allocate different types of test appointments effectively and fairly, etc., which are outside the scope of this investigation. This Office will keep a close watch on whether the issue should be further examined.

29. Based on the analysis in **paragraphs 25 to 28**, this Office considers **Complaint Point (1)** unsubstantiated but there were other inadequacies on the part of TD.

Complaint Point (2): Being Inconsistent and Unreasonable in Handling Applications for Postponement from Candidates under IO and QO

30. This Office considers that candidates being barred from going out on the test date due to IO or QO are in circumstances beyond their control. During the Initial Period, TD's **uniform** approach of handling applications for postponement due to IO and QO as if both of them were Type 2 Applications (see **para. 10**) was justified and reasonable.

31. TD subsequently reviewed the applications for postponement due to QO. It asserted that the "special arrangements" were made to address the exceptional circumstances of the epidemic as the candidates concerned were not ill but were barred from attending their tests to comply with QO (**para. 17**). In our view, despite that there was a clear distinction between illness and the need to comply with QO, both circumstances were beyond the control of the candidates. TD made the "special arrangements" on the grounds that the candidates under QO were not ill. However, it could not explain clearly why the candidates under QO deserved the "special arrangements" more than those who were ill, those under IO included, and so it could deviate from its usual practice for processing Type 2 Applications in its handling of applications for postponement by candidates under QO. This Office notes TD's response that it had adhered to uniform and fair approaches in handling applications for postponement from the candidates under IO or QO respectively (**para. 18**). But we consider that this is not the point. The point is TD has failed to clearly account for the discrepancy in its handling of applications from the two groups of candidates. TD told us that it would learn from the experience and make appropriate arrangements to safeguard the interests of candidates as a whole in case similar situations arise in future. It would also take care to properly explain to candidates its arrangements and the results of the candidates' applications for postponement in future. This Office considers **Complaint Point (2)** substantiated.

Conclusion

32. Overall, this Office considers this complaint partially substantiated.

Recommendations

33. This Office recommends that TD:

- (1) review the current approval criteria for Type 2 Applications to ensure that such applications will be handled in a fair manner (**para. 31**); and
- (2) review the content of its written reply to Type 2 Applications to avoid misunderstanding and provide proper explanation (**paras. 27 and 31**).

Office of The Ombudsman

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