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Office of The Ombudsman*



*Direct Investigation Report
Procedures for Approval of Loan Applications and
Recovery of Debts under the Non-means-tested Loan Scheme*



An investigation conducted by The Ombudsman has found that over the past three academic years, there were 11,000 to 13,000 default cases under the Non-means-tested Loan Scheme of the Working Family and Student Financial Assistance Agency (“WFSFAA”), with the total amount in default consistently at a high level (at some points accumulating up to \$200 million). In particular, the Extended Non-means-tested Loan Scheme (“the Extended Scheme”), which covers an extensive range of education programmes, recorded the most serious default problem, accounting for nearly 70% of all the default cases under the Loan Scheme, with the amount in default standing at about \$100 million each year. Also, the Extended Scheme cases involved longer default periods and larger overdue amounts. The Ombudsman urges WFSFAA to devise suitable measures to reduce the credit risk of the Extended Scheme.

The Ombudsman also urges WFSFAA to further explore and implement as soon as possible the measure of forwarding negative credit data of the more serious loan defaulters to credit reference agencies in order to increase deterrent effect against loan default.

The executive summary of the investigation report is at **Annex 1**.

***Direct Investigation Report
Education Bureau's Non-disclosure of
Teachers' Registration Status***

The Ombudsman's direct investigation found that the Education Bureau ("EDB")'s non-disclosure of its list of registered teachers ("the List") for public inspection, though lawful, shows disregard of schools', students' and their parents' vital interests and right to know. The Ombudsman considers that EDB should, under the broad principle of open and transparent public administration, strive to open up the List for public information.



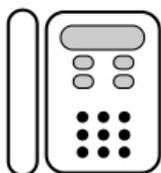
The investigation also found that it may not amount to a breach of the Personal Data (Privacy) Ordinance if EDB is to let relevant parents and schools know only whether individual teachers are registered.

The Ombudsman urges EDB to:

- (1) conduct an extensive public consultation exercise or opinion poll to confirm the public's aspirations for disclosure of the List; if the results indicate wide public demand for disclosure of the List, EDB should expeditiously consider amending the relevant procedures and legislation to implement the measure; and
- (2) consider adopting a more lenient approach in considering requests made by those whose vital interests are affected (e.g. parents of students and schools seeking to employ teachers) to check the registration status of individual teachers.

The executive summary of the investigation report is at **Annex 2**.

Enquiries



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**Office of The Ombudsman
24 March 2015**

**Procedures for Approval of Loan Applications and Recovery of Debts
under the Non-means-tested Loan Scheme
Executive Summary of Direct Investigation Report**

Background

The Non-means-tested Loan Scheme (“the Loan Scheme”) of the Working Family and Student Financial Assistance Agency (“WFSFAA”) aims at providing financial assistance to those students who are unwilling to undergo or fail to pass the income and assets assessment of WFSFAA’s Tertiary Student Finance Scheme – Publicly-funded Programmes (“the Finance Scheme”).

2. There are three schemes under the Loan Scheme to cater for the needs of different categories of students, namely:

- (1) Non-means-tested Loan Scheme for Full-time Tertiary Students (“the Full-time Tertiary Students Scheme”) for full-time students pursuing publicly-funded tertiary programmes;
- (2) Non-means-tested Loan Scheme for Post-secondary Students (“the Post-secondary Students Scheme”) for students pursuing full-time accredited self-financing post-secondary programmes offered by various institutions; and
- (3) Extended Non-means-tested Loan Scheme (“the Extended Scheme”) for students pursuing specified part-time or full-time post-secondary/continuing and professional education courses.

3. The Loan Scheme involves huge amounts of money. Taking the 2013/14 academic year as an example, the total amount of loans granted under the scheme was as much as \$1.3 billion, while the total amount in default now reached an accumulative total of \$170 million. The situation attracts concern. Some members of the public had complained to this Office, alleging that WFSFAA was lax in its debt recovery action against loan borrowers such that the indemnifiers, as guarantors for the borrowers, were inflicted with the burden of paying the accumulated interest and the associated legal fees. In addition, media reports had revealed the following two problems:

- (1) some people allegedly had their identity stolen and used to play indemnifier in loan applications; and
- (2) the staff/agents of some education institutions conspired with loan applicants/indemnifiers/witnesses to obtain loans by fraud using false information and documents.

4. In view of the above, The Ombudsman conducted a direct investigation to examine the procedures for approval of loan applications and recovery of debts under the Loan Scheme, with a view to identifying inadequacies.

Our Findings

Failure to Properly Manage the Scheme More Prone to Loan Default

5. Among the three schemes under the Loan Scheme, the Extended Scheme involves higher management risks and has the most serious problem of default on loan repayment. That is partly due to the fact that the scheme covers an extensive range of education institutions and courses.

6. Statistics of the 2011/12 to 2013/2014 academic years show the following:

- (1) Of all the default cases under the Loan Scheme, about 70% were under the Extended Scheme. Also, the amount in default under the Extended Scheme persistently accounted for more than half of the total overdue amount, standing at about \$100 million per year throughout the period.
- (2) During the 2013/14 academic year, 5,115 (68.81%) of the 7,434 cases with the longest default period (over 12 months) were under the Extended Scheme.
- (3) During the same academic year, 870 (40.88%) of the 2,128 cases involving the largest overdue amounts (over \$100,000) were under the Extended Scheme.

7. Quite a few of the loan borrowers under the Extended Scheme are in fact in employment and hence able to repay their loans. And yet the scheme has recorded such a serious default problem. WFSFAA should face this problem squarely by devising measures to reduce the credit risk of the Extended Scheme. We understand that such measures will to some extent impose extra restrictions on loan applicants' continuing learning. However, WFSFAA indeed has the duty to strike a balance between encouragement of continuing learning and protection of public funds from abuse.

Lack of Effective Deterrent Measures

8. Under the current system, loan defaulters are only asked to repay their debt with interest (their obligation anyway) together with an administrative charge. The deterrent effect is very weak.

9. We note that WFSFAA has once considered forwarding the negative credit data of the more serious defaulters to credit reference agencies for greater deterrent

effect. If such a measure is to be implemented, WFSFAA will give loan applicants clear prior notice of the measure and ask them to sign for consent.

10. For the following reasons, we strongly support in principle WFSFAA's implementation of the above measure for greater deterrence:

- (1) It is a long established and lawful practice that private financial institutions would forward the negative credit data of their loan defaulters to credit reference agencies. WFSFAA's function of granting loans to students is no different in nature from the business of private financial institutions in advancing credit to borrowers. The deterrent measure proposed by WFSFAA would only be in line with the practice of private financial institutions and would not be unfair to student defaulters.
- (2) We understand that once a negative credit record of default on loan repayment is registered in a credit database, it will to some extent affect the future credit applications by the person concerned to banks or other financial institutions. When loan borrowers under the Loan Scheme of WFSFAA are aware of such a possible consequence, they will think twice before defaulting on repayment.
- (3) The granting of non-means-tested loans to students under the WFSFAA Loan Scheme is indeed very generous. We do not consider it harsh at all for WFSFAA to require loan applicants to give consent to WFSFAA to forward their negative credit data to credit reference agencies in the event of their default on repayment.

11. We hope that WFSFAA could secure the agreement of the Privacy Commissioner for Personal Data ("PCPD"), so that the proposed deterrent measure can be put into effect.

Failure to Fully Verify Indemnifiers' Intention

12. Applicants under the Loan Scheme are not subject to any income and assets assessment, nor are they required to provide any assets as collateral. The credit risk is rather high. If the borrowers intentionally default on repayment of the loans or become insolvent, Government can only resort to recovering the debts from their indemnifiers.

13. WFSFAA could approach indemnifiers by **telephone** or **interview** to verify their intention to act as indemnifiers as well as the loan amounts against which they agree to indemnify. However, in practice, WFSFAA contacts just a small percentage of the indemnifiers by telephone or interview:

- (1) **Telephone:** For the loan applications under the Full-time-Tertiary

Students Scheme and the Post-secondary Students Scheme, WFSFAA randomly selects only 10% and 5% respectively of the indemnifiers and contacts them by telephone.

- (2) **Interview:** WFSFAA telephones nearly all indemnifiers under the Extended Scheme. But because of staff constraint, WFSFAA interviews only a small percentage of those indemnifiers. In the 2012/13 academic year, only 16 indemnifiers were invited to interview; after we had expressed concern, the number of indemnifiers interviewed in the 2013/14 academic year rose to 391, which was still a small number. The numbers of indemnifiers interviewed, represented a scanty 0.21% and 5.42% of the numbers of applications received in those two years.

14. WFSFAA's efforts in verification with indemnifiers are clearly inadequate.

Need to Ensure Careful Vetting

15. The database in WFSFAA's computer system contains the data of each Loan Scheme/Finance Scheme account. Staff can extract information from such data and then check whether a loan applicant/indemnifier is the loan applicant/indemnifier of other Loan Scheme/Finance Scheme accounts and whether he/she has ever been a defaulter or a defaulter's indemnifier, thereby identifying cases of higher management risks. It can be seen that the checking process is not fully computerised and part of the process is performed manually. As a result, human errors are possible. We consider that WFSFAA should fully computerise the checking process and in the interim closely supervise staff to ensure that they carry out the checking conscientiously.

Recommendations

16. In the light of the above findings, The Ombudsman urges WFSFAA to:
 - (1) devise measures to reduce the credit risk of the Extended Scheme, such as suitably limiting the number of courses that a loan borrower may take and the number of loan applications that he/she may make in any academic year;
 - (2) further deliberate with PCPD, with a view to implementing as soon as possible the measure of forwarding the negative credit data of the more serious defaulters to credit reference agencies in order to increase deterrence against loan default;
 - (3) deploy or increase staff to raise the percentage of indemnifiers contacted by telephone and interview, so as to reduce credit risks;
 - (4) consider fully computerising its process of checking loan

applicants/indemnifiers in order to ensure effective vetting of loan applications; and

- (5) before full computerisation of the process, supervise staff closely to ensure that they conscientiously check whether loan applicants/indemnifiers are playing multiple roles and whether they have ever been defaulters or defaulters' indemnifiers.

Office of The Ombudsman
March 2015

Executive Summary

Direct Investigation into Education Bureau's Non-disclosure of Teachers' Registration Status

Background

The Education Bureau (“EDB”) currently rejects all requests from the public for access to the list of registered teachers (“the List”) on grounds of protecting the teachers’ privacy. However, this Office notes from media reports that certain parents’ associations and some teachers’ organisations have commented that EDB should open up the List for public inspection. The Ombudsman, therefore, conducted a direct investigation into EDB’s handling of public requests for information on teachers’ registration status, with a view to identifying room for improvement.

Our Findings

2. The findings of the investigation are as follows.

Teacher Registration System

3. Under the Education Ordinance (“EO”), any person who intends to teach in a school must first apply to EDB for teacher registration. Accordingly, EDB holds the List.

EDB's Reasons for Refusal to Release Information on Teachers' Registration Status

4. EDB gives the following reasons for its refusal to disclose the List or information on individual teachers’ registration status:
 - (1) According to Principle 3 of the Data Protection Principles under the Personal Data (Privacy) Ordinance (“PDPO”), personal data shall only be used for the purpose stated at the time of data collection, unless the consent of the data subject has been given. EDB considers that disclosure of teachers’ registration status is not in line with the original purposes for which such information was collected.
 - (2) The EO does not empower EDB to disclose information on teachers’ registration status.
 - (3) There is already a system under which EDB and schools can adequately guard against the employment or continued employment of people who are not fit or proper as teachers in schools.

- (4) Disclosure of information on teachers' registration status may lead to the following problems: lawsuits; indirect disclosure of teachers' employment status; and public misunderstanding that some school employees (such as non-teaching staff who are anyway not required to register with EDB) are "unlicensed teachers".

Our Comments

EDB should explore how to make teachers' professional status open and transparent

5. In refusing to disclose the List for public inspection, EDB is acting in accordance with the law.

6. Nevertheless, the aim of the teacher registration system is to ensure that schools employ only teachers who have acquired the necessary professional status to provide proper education with quality assurance to students. Whether teachers are registered is indeed of interests to all schools, students and parents. Therefore, we consider that based on the broad principle of open and transparent public administration, EDB should respect the public's right to access such information and strive to open up the List.

7. Moreover, EDB's current system cannot completely prevent people who are not fit and proper from being employed as school teachers. One cannot rule out the failure of some schools to follow EDB's requirements or advice. For example:

- when there is a shortage of teachers, some schools may employ people they know but who are not registered with EDB, as temporary teachers for the sake of convenience;
- some schools may choose not to report to EDB cases of crime or misconduct involving their teachers to avoid bringing the schools into disrepute, in which case EDB would have no basis to consider de-registering the teachers in question.

The best way, therefore, is to open up the List so that the public can help monitor teachers and report suspicious cases to further safeguard public interest.

8. As regards the concerns raised by EDB and opposition of some people to disclosure of the List (e.g. that: teachers have not given consent for EDB to disclose their personal data; the public may further request disclosure of teachers' other information; and disclosure of the List may cause public misunderstanding that some school employees are "unlicensed teachers"), we believe that those problems are not insurmountable. Besides, such concerns are no good reason for denying the public of their right to information.

9. Moreover, while EDB understands the reservations of some members of the profession about disclosure of the List, it has neglected the views of the public at large, particularly those of parents. In fact, some have already pointed out that currently many other professions in Hong Kong (including medical practitioners, lawyers and social workers) do make their lists of registered members open for public inspection. Hence, keeping the identity of registered teachers secret is unwarranted. EDB, therefore, should conduct an extensive public consultation exercise or opinion poll to confirm the public's aspirations; then consider what to do next as to how to open up the List.

EDB should adopt a more accommodating approach in considering information requests made by those whose vital interests are affected

10. According to the relevant provisions of Principle 3 of the Data Protection Principles under the PDPO and the view offered by the Office of the Privacy Commissioner for Personal Data indicated, EDB's disclosure of only the registration status of a teacher to individual persons may not amount to a breach of the PDPO, so long as the purpose of such disclosure is directly related to the purposes for which the information was to be used at the time the information was collected.

11. The registration status of a teacher certainly concerns vital interests of the students' parents and the school which intends to employ the teacher. Requests made by those parents/school authorities to access the information on teachers' registration status are reasonable. Disclosure of such information by EDB to them could be deemed as directly related to the original purposes of collecting such data (which include teacher registration system and provision of education services). Therefore, it may not amount to a breach of the PDPO if EDB is to disclose information on the teachers' registration status under these circumstances.

12. In the light of the above, we consider it imperative for EDB to review its current practice relating to handling requests from individuals and schools to access information on the registration status of individual teachers. If requests of the individuals / organisations are related to their vital interests, EDB should adopt a more accommodating approach in considering such requests.

Recommendations

13. The Ombudsman urges EDB to:

- (1) review its current practice relating to handling of requests from individuals / organisations to access information on the registration status of individual teachers, with a view to adopting a more accommodating approach in considering requests made by those whose vital interests are affected; and

- (2) conduct an extensive public consultation exercise or opinion poll to confirm the public's aspirations for disclosure of the List; if the results indicate wide public demand for disclosure, EDB should expeditiously consider amending the relevant procedures and legislation to implement the measure.

**Office of The Ombudsman
March 2015**