

*Issue No. 2 of Reporting Year 2010/11  
(9 September 2010)*

*Office of The Ombudsman, Hong Kong*



***Direct Investigation into Special Education Services for  
Students with Emotional and Behavioural Difficulties***



The Ombudsman has decided to initiate a direct investigation into the administration of special education services for students with emotional and behavioural difficulties.

The investigation will focus on the procedures for admission of such students to special schools and their subsequent re-integration into mainstream education. The background, purpose and scope of this direct investigation is at **Annex A**.

***Direct Investigation into Driving-offence Points System***



The Administration's efforts in 2009 to amend the legislation underpinning the driving-offence points ("DOP") system aimed to plug the loopholes in the service of DOP summonses to drivers who have accumulated 15 or more DOP. However, despite the amendment, drivers can still avoid being disqualified from driving.

The Ombudsman's direct investigation has shown that drivers can still avoid being disqualified from driving by not attending court disqualification hearing. Also, there continues to be little incentive for compliance since the disqualification period is the same for evaders and those who readily comply with summonses and disqualification orders. Although pursuant to the amendment, the Commissioner for Transport ("C for T") can refuse to issue a driving licence to a driver who has failed to appear in court, that has very limited deterrent effect as most driving licences are valid for as long as ten years. We have also noticed that no systematic records have been kept on drivers' DOP and their propensity to be involved in traffic accidents.

We have made five recommendations to the C for T for improvements.

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

## *Direct Investigation into Allocation and Monitoring of Government Land*

The Ombudsman has completed a direct investigation into the Administration's allocation and monitoring of a piece of Government land ("the Site").



The investigation has revealed that the Site was allocated by the New Territories Administration, the forerunner of the Lands Department, to the Education Department ("ED"), the forerunner of the Education Bureau ("EDB"), in 1974 upon ED's request for land for a school sports centre of a certain Association ("the Association"). Since then, the Site has been occupied by the Association.

EDB has nevertheless failed to monitor the use of the Site and shirked its responsibility by refusing to take any action despite the very low usage of the sports centre.

The Ombudsman has made four recommendations to rectify the situation and prevent the occurrence of similar cases in future.

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

### *Enquiries*



For press enquiries, please contact Ms Kathleen CHAN, Senior Manager (External Relations) at 2629 0565 or by email [kathleenchan@omb.gov.hk](mailto:kathleenchan@omb.gov.hk).

**Office of The Ombudsman, Hong Kong**  
**9 September 2010**

*Issue No. 2 of 2010/11*

## **OMBUDSMAN PROBES SPECIAL EDUCATION SERVICES FOR STUDENTS WITH EMOTIONAL AND BEHAVIOURAL DIFFICULTIES**

The Ombudsman, Mr Alan Lai, announced today (9 September 2010) his initiation of a direct investigation into the administration of special education services by the Education Bureau (“EDB”) and the Social Welfare Department (“SWD”) for students with emotional and behavioural difficulties.

Currently, students with moderate to severe emotional and behavioural difficulties are referred to the seven Schools for Social Development (“SSDs”) for transitional schooling to help them tide over their difficulties. By combining the formal school curriculum with tailored counselling services, the SSDs help students strengthen their life skills so that they can resume normal school life. The ultimate objective is to re-integrate them into mainstream education.

Mr Lai said: “Young people are susceptible to emotional and behavioural difficulties. When these get so bad to interfere with a student’s normal schooling, early admission to an SSD can help tremendously to prevent deterioration of the problem and put the student back on the right track.

However, it has come to our attention that students often have to wait long for admission to SSDs.

We will try to find out the cause. We will examine the co-ordination between EDB and SWD in admission of students to SSDs and funding for such schools.”

Mr Lai continued: “Moreover, we understand from professionals in the education field that despite Government’s goal of re-integration, some students have difficulty in returning to mainstream schools even after they have mended their ways. We will, therefore, also study whether EDB is providing sufficient support in this respect.”

This direct investigation will examine the administration of special education services, focusing on the following:

- (a) admission of students to SSDs; and
- (b) subsequent re-integration of students into mainstream education.

The Ombudsman welcomes public views on this matter. Comments should reach the Office of The Ombudsman by **8 October 2010**:

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**Office of The Ombudsman**  
**9 September 2010**

## EXECUTIVE SUMMARY

### Direct Investigation Driving-offence Points System

#### Background

The driving-offence points (“DOP”) system was introduced in 1984 under the Road Traffic (Driving-offence Points) Ordinance, Cap. 375 (“the DOP Ordinance”) to deter inappropriate driving behaviour. A driver shall incur DOP when he is convicted in court or becomes liable to a fixed penalty in respect of a traffic offence in the Schedule of the DOP Ordinance. On accumulation of 15 DOP within two years, the driver is liable to be disqualified by the court from driving.

2. In 2008, the media reported that drivers with 15 or more DOP were able to evade court summonses by providing untrue or incomplete addresses to the Transport Department (“TD”) or refusing to acknowledge receipt of the summonses. Without successful delivery of summons, the court could not disqualify such drivers from driving.

3. In February 2009, the Administration proposed to amend the DOP Ordinance to plug the loopholes.

4. Concerned that the Administration still seemed unable to promptly disqualify wilful evaders, The Ombudsman decided to initiate a direct investigation to examine:

- (a) the loopholes in the DOP system;
- (b) the effectiveness of the remedial measures taken by the Administration;  
and
- (c) other measures, if any, for further improvement.

#### The 2009 Amendment

5. The Administration’s legislative amendment (“the 2009 Amendment”) took effect on 29 May 2009. Following the amendment, summonses are served, as before, by ordinary post first. However, if the driver does not appear in court, the summons will be served again by registered post to the driver’s last known address. The summons will be deemed served, even if it is returned undelivered. If the driver still does not appear in court, the court will issue a non-appearance arrest warrant, upon which the Police will step in to make contact with the driver and ask him to surrender to a Police station or to the court. The Commissioner for Transport (“C for T”) has also been empowered to refuse to issue, reissue or renew the driving licence of the driver who has been served a summons and has failed to appear in court for it.

#### The Administration’s Review

6. The Administration reviewed the 2009 Amendment after six months and concluded that it was effective in resolving the evasion problem in the service of summons as most of the drivers concerned had been brought to the court for disqualification hearings.

7. The number of drivers with 15 or more DOP who appeared at first and second hearings had risen from 2,392 (accounting for 83% of summonses issued) in 2008<sup>1</sup> to 2,756 (accounting for 88% of summonses issued) in 2009<sup>2</sup>. The number of non-appearance arrest warrants issued had also increased from 65 (accounting for 2% of summonses issued) in 2008<sup>3</sup> to 358 (accounting for 11% summonses issued) in 2009<sup>4</sup>.

## **Our Observations**

### ***Plugging of Loopholes***

8. After the 2009 Amendment, there remain a considerable number of recalcitrant drivers who do not appear in court for disqualification hearing despite the non-appearance arrest warrants issued against them.

9. As at May 2009, there were 536 recalcitrant drivers to whom summonses could not be served. After the 2009 Amendment, summonses were deemed served to all those drivers. Yet, as at 31 January 2010, 210 of those drivers still had not appeared in court for disqualification hearing even though they had all been issued non-appearance warrants. Despite the 2009 Amendment, they could not be disqualified from driving until they show up for court hearing or their driving licences expire.

### ***No Disincentive for Evasion***

10. There is no provision under the DOP Ordinance for additional penalty on wilful evaders. This is unfair to those drivers who readily accept disqualification.

11. There is also no incentive for compliance, such as acceptance of drivers' plea of guilty and acceptance of disqualification by letter to the court.

### ***Limited Effect of Non-renewal***

12. Through the 2009 Amendment, C for T is empowered 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, most driving licences are valid for as long as ten years. The prospect of non-renewal, therefore, has limited deterrent effect.

### ***Need for Further Streamlining***

13. In the course of our inquiry, TD has reduced the processing time of disqualification cases from 14 to 7 weeks. We commend TD's efforts and consider that TD should continue to monitor and streamline its procedures and practices for efficiency and effectiveness.

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<sup>1</sup> 29 May – 31 December 2008

<sup>2</sup> 29 May (date of enactment of the 2009 Amendment) – 31 December 2009

<sup>3</sup> Same as Footnote 1

<sup>4</sup> Same as Footnote 2

### ***Need for Monitoring***

14. Currently, the statistics maintained by TD on road traffic accidents do not cover the number of accidents involving drivers with 15 or more DOP. Such statistics are necessary for providing timely indication of the effectiveness of the DOP system in deterring inappropriate driving behaviours. TD should liaise closely with the Police with a view to systematically maintaining statistics on traffic accidents involving drivers with DOP and keep the situation under review.

### **Conclusion and Recommendations**

15. We commend the Administration for promptly devising measures in response to community concern over the loopholes in the DOP system and for expediently reducing the processing time for disqualification. The 2009 Amendment reflects the Administration's commitment to tackling the problems. However, the Administration has not arrived at a complete solution to the problems relating to evasion of law enforcement.

16. We cannot over-emphasise the importance of the rights of citizens to road safety. Tougher measures against offenders are called for if there is evidence that the current scheme allows drivers posing a threat to road safety to slip through.

17. The Ombudsman recommends that the Administration:

- (a) consider legislation to empower the court to impose a longer disqualification period on evidence of any deliberate attempt by drivers to frustrate law enforcement;
- (b) consider accepting drivers' guilty plea by letter to the court in the same spirit as the fixed penalty system;
- (c) consider empowering C for T to refuse issue and renewal of other licences, such as vehicle licences, to any driver who evades court attendance or Police arrest;

18. The Ombudsman also recommends that TD:

- (d) streamline its procedures and practices to further shorten the disqualification process; and
- (e) systematically maintain and regularly analyse statistics on drivers with DOP, including related accidents, with a view to identifying problems in the DOP system for review and early remedy.

**Office of the Ombudsman  
September 2010**

## EXECUTIVE SUMMARY

### Direct Investigation on Allocation and Monitoring of Government Land

#### Background and Ambit

In the course of investigating a complaint in 2008, this Office noted an apparent lack of monitoring by the Administration over the use of a piece of Government land (“the Site”) by a sports association (“the Association”). After a preliminary inquiry, The Ombudsman declared in June 2009 a direct investigation to examine:

- (a) the award of the use of the Site to the Association; and
- (b) the monitoring of the use of the Site by the Education Bureau (“EDB”) and the Lands Department (“Lands D”).

2. The Education Department (“ED”) and the New Territories Administration (“NTA”) were the forerunners of EDB and Lands D respectively insofar as this case is concerned.

#### Facts of Case

3. Our investigation has revealed the following:
  - (a) The Association was formed in the 1960s under the Societies Ordinance.
  - (b) In 1974, the Director of Education (“D of E”) was appointed to the Executive Committee of the Association.
  - (c) On 19 August 1974, D of E wrote to the District Officer concerned of NTA stating that “ED would like to obtain a lot of land ... for the purpose of establishing an outdoor education centre for schools primarily”.
  - (d) On 23 December 1974, the Secretary for the New Territories replied to D of E that “allocation of the site shown coloured pink on the attached plan (i.e. the Site) ... is now made subject to the enclosed Engineering Conditions (for Government Projects)”. The Association was named under the caption of the Engineering Conditions.
  - (e) In 1974 and 1978, the Association obtained two grants of \$500,000 and \$110,000 respectively from the then Governor’s Special Fund for the construction of an activity centre and an extension to the centre on the Site.

- (f) In October 1976, D of E applied to the Deputy Financial Secretary (“DFS”) for a subvention of \$25,000 per annum to the Association for maintenance and operation of the centre. DFS rejected the application on the ground that the activities were not subvention-worthy.
- (g) In December 1976, D of E sought DFS’ approval to pay rent to the Association at \$1,500 per month for using part of the Association’s accommodation on the Site. The fact that D of E himself was the allocatee of the Site was not mentioned in his application.
- (h) In February 1977, D of E’s application was approved. Thereafter, the rent was adjusted from time to time according to the advice of the Ratings and Valuation Department. However, no written lease agreement between ED/EDB and the Association was made. The lease was terminated in 2004 when EDB ceased to use the Site. The total rental paid over the years amounted to \$1.8 million.
- (i) In 1992, D of E was appointed ex-officio member of the Executive Committee of the Association.
- (j) During 2000 to 2006, the number of participants in the Association’s activities per year was as follows:

<b>Year</b>	<b>Number of Participants</b>
2000	175
2001	215
2002	175
2003	280
2004	204
2005	128
2006	120

- (k) In 2007, with the Association ceasing its activities, the number of participants dropped to zero.
- (l) In February 2007, the Police temporarily removed the Association from the list of societies.
- (m) In October 2007, the Association resumed its activities.
- (n) In 2008, the Association was incorporated as a limited company.
- (o) Between 2006 and 2008, EDB and Lands D had a dispute over which department should be responsible for taking action on the under-utilised Site. EDB argued that as Lands D was the sole competent authority to decide whether the Site should continue to be

used by the Association, it should contact the Association direct to get back the Site.

## **Our Observations**

### ***Shirking of Responsibility***

4. EDB argued that “the District Office (of NTA) and the Association were well aware of the fact that the Site was actually allocated to (the Association) using the technical means of Government Land Allocation (“GLA”) ... to effect an administrative convenience”. In support of this argument, EDB referred to the caption of the Engineering Conditions (**para. 3(d)**) and the direct contacts between the Association and the District Office on matters pertaining to the use of the Site.

5. Lands D retorted that under Government’s land policy, allocation of Government land to Government departments is by GLA, and that to non-government organisations by Short Term Tenancy or Private Treaty Grant. For unallocated Government land, Lands D is responsible for its administration. For Government land allocated by GLA, the allocatee Government department will take over the role of Lands D in managing the Government land. In the case under consideration, the Site was allocated not to the Association, but to ED.

6. Having examined the submissions by EDB and Lands D, we find EDB’s argument unconvincing. ED’s request to NTA for land and NTA’s allocation of the Site to ED in 1974 were stated in unequivocal language and documented on file (**paras. 3(c) and (d)**). The allocation conformed with the prevailing land policy (**para. 5**). The caption of the Engineering Conditions (**para. 3(d)**) and the direct contacts between NTA and the Association are no evidence that the Site was allocated by NTA to the Association direct. We, therefore, find ED, and now EDB, to be the allocatee of the Site.

7. As the allocatee of the Site, EDB should have readily accepted responsibility for the Site, when approached by Lands D in 2006. However, EDB had acted otherwise (**paras. 3(o) and 4**). Its response fell short of the standard required of an accountable Government department.

8. If “the technical means of GLA” had, as alleged, been used “to effect an administrative convenience” for awarding the Site to the Association (**para. 4**), that would have been an abuse of GLA and a serious act of maladministration.

### ***Lack of Monitoring***

9. EDB claimed to have “supervised” the Association, for the sake of promoting school sports activities, by collecting from it yearly figures of activities for conducting curriculum review and responding to enquiries relating to student learning in physical education, and advising it to stop its activities upon learning that it had been temporarily removed from the list of societies (**para. 3(I)**). After the Association’s resumption of activities (**para. 3(m)**), EDB sought agreement for its officers to visit the Association twice a year, and for the Association to provide EDB with yearly figures of activities, notes of annual general meetings, and notices of change of office-bearers.

10. We consider that EDB, as the allocatee of the Site and ex-officio member of the Executive Committee of the Association (**paras. 3(d) and (i)**), should have done more than just collecting statistics and paying infrequent visits under the notion of promoting school sports

activities. If EDB had exercised due care and diligence, it would have noticed that the Site was seriously under-utilised (**paras. 3(j) and (k)**) and taken early and appropriate remedial action, for example, discontinuing the use of the Site by the Association and returning it to Lands D. At the very least, it should have worked out proper arrangements with the Association for monitoring and appraisal to ensure that the Bureau's policy support to the Association continued to be justified.

11. It was reasonable of Lands D to expect EDB, the allocatee of the Site, to account for its use. When Lands D questioned the usage of the Site, it checked that with EDB and considered the need for reallocating the Site to other users. Lands D has thus duly discharged its duty.

### ***Payment of Rent***

12. We find it absurd that ED had to pay rent to the Association for using part of the Site, of which the Department itself was the allocatee. We are also baffled by the lack of a written agreement between ED/EDB and the Association for leasing the premises (**para. 3(h)**).

### **Recommendations**

13. The Ombudsman recommends that:

- (a) **EDB** keep a close watch over the use of the Site by the Association to ensure that the agreed aims and objectives are achieved;
- (b) **EDB** make proper arrangements (including setting of standards) for monitoring and appraising the activities of the Association;
- (c) **EDB** discontinue the use of the Site by the Association in case of under-utilisation or abuse, and return it to Lands D; and
- (d) **Lands D**, in consultation with all bureaux/departments, examine whether any similar cases exist and rectify any anomalies as soon as possible.

**Office of The Ombudsman**  
**September 2010**