



Equal Opportunities Commission's Written Response

In relation to the question about “the use of the prescribed form” asked by Dr. Hon Fernando Cheung Chiu-hung and Hon Dennis Kwok Wing-hang in the Panel on Constitutional Affairs meeting on 18 May 2020, responses from the Equal Opportunities Commission are as follows:

- 1) The use of the Prescribed Form is stipulated in section 83 of the Sex Discrimination Ordinance, as well as its corresponding provisions in other three anti-discrimination ordinances, which confer powers to the EOC and / or an aggrieved person to question a respondent, and for the latter to respond. Such provision was adopted from the anti-discrimination legislation in the United Kingdom. However, it is noted that the corresponding provision in the Equality Act 2010 of the United Kingdom had been repealed in April 2014.
- 2) In Hong Kong, most of the aggrieved persons in a discrimination case would first lodge a complaint with the EOC, who would then commence investigation into the complaint. Whereas in the United Kingdom, our counterpart does not have the same investigative power as we do, hence aggrieved persons there have to rely on the Prescribed Form provision to initiate action against the respondent(s). Suffice to say, the Prescribed Form provision has much more practical usage in the United Kingdom than in Hong Kong because of the above-stated reasons.
- 3) The EOC is always mindful of reviewing the need of putting the Prescribed Form provision in use by discussing this matter from time to time in the Legal & Complaint Committee meetings, more recently in 2008, 2012 and 2017 respectively. So far the EOC still holds the view that it is not necessary to put the Prescribed Form in practical use, as the EOC's statutory power of investigation, conciliation, and granting legal assistance etc. are sufficient and effective enough in addressing the needs of an aggrieved person.
- 4) On 13 December 2019, the EOC has published its Process Review Report in which, among others, we have adopted the recommendation

that the EOC should be more readily to use its powers under the anti-discrimination laws to obtain information and evidence from respondent(s) and / or third parties, i.e. by using our power as stipulated in section 5 of the Sex Discrimination (Investigation and Conciliation) Rules Cap.480B to issue statutory notice to require a respondent and / or a third party to furnish information, and that failure in complying with the statutory notice so issued without reasonable excuse may render the respondent and / or third party criminally liable.

- 5) In December 2019, the EOC's Legal & Complaints Committee has again discussed the issue of using the Prescribed Form, and that the conclusion remains the same as there is no change in circumstances.
- 6) The EOC is conscious to always keep this issue alive for review, and would not hesitate to put it into practical use once circumstances so warrant.

Equal Opportunities Commission
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