

# 立法會

## *Legislative Council*

LC Paper No. CB(2)949/19-20(04)

Ref : CB2/PL/CA

### **Panel on Constitutional Affairs**

**Updated background brief prepared by the Legislative Council Secretariat  
for the meeting on 18 May 2020**

**Briefing by the Chairperson of the Equal Opportunities Commission on the  
work of the Equal Opportunities Commission**

### **Purpose**

This paper gives a brief account of the major issues raised by members when the Panel on Constitutional Affairs ("the Panel") received briefings on the work of the Equal Opportunities Commission ("EOC") by its Chairpersons.

### **Background**

2. Established under the Sex Discrimination Ordinance ("SDO") (Cap. 480) on 20 May 1996, EOC is a statutory body responsible for the implementation of SDO, the Disability Discrimination Ordinance (Cap. 487), the Family Status Discrimination Ordinance (Cap. 527) and the Race Discrimination Ordinance (Cap. 602). EOC comprises the Chairperson and up to 16 members. The authority of appointment of the Chairperson and members rests with the Chief Executive who shall determine the remuneration and the terms and conditions of appointment of the Chairperson. Under section 63 of SDO, the Chairperson shall be appointed on a full-time basis whereas other members of EOC may be appointed on a full-time or part-time basis.

3. The post of the Chairperson of EOC, which has the executive responsibility for the overall operation and management of EOC, is pitched at the rank equivalent to Point 8 on the Directorate Pay Scale of the Civil Service. EOC used to have a post of Chief Executive Officer ("CEO") which was pitched at the rank equivalent to Point 3 of the Directorate Pay Scale, but the post was deleted in July 2000. The responsibility of the CEO post was then shared between the Chairperson and the Director (Planning and Administration) of EOC.

4. In Chapter 3 of Report No. 52 of the Director of Audit tabled at the Legislative Council ("LegCo") on 22 April 2009, the Audit Commission has recommended that the Secretary for Constitutional and Mainland Affairs should expedite action to take forward the proposal of separation of the posts of the

Chairperson and CEO of EOC which was recommended both in the report of the Independent Panel of Inquiry on the Incidents Relating to EOC as well as the reports of two internal reviews conducted by EOC. The Administration subsequently decided that the post of CEO at the level of Point 3 of the Directorate Pay Scale should be reinstated to oversee the administrative and operational matters, and to strengthen the governance of EOC. The post of CEO was filled in December 2015 and renamed as Chief Operations Officer.

5. On 22 March 2019, the Government announced the appointment of Mr Ricky CHU Man-kin as the new Chairperson of EOC for a term of three years commencing on 11 April 2019 to succeed Prof Alfred CHAN Cheung-ming, the former EOC Chairperson.

### **Relevant issues raised by the Panel**

6. It has been the established practice for the Chairpersons of EOC to brief the Panel on EOC's work on a regular basis. Mr Ricky CHU Man-kin last briefed the Panel on the work of EOC at the meeting on 20 May 2019.

### **Operation of the Equal Opportunities Commission**

7. Some members expressed concern about the effectiveness of the legal assistance service provided by EOC to complainants. They criticized that the Legal Service Division ("LSD") of EOC rarely arranged lawyers to meet with complainants or aggrieved parties, and it often failed to provide complainants with detailed reasons for rejecting their requests for legal assistance. These members were concerned that a relatively small number of court cases were handled by the in-house lawyers of LSD and a substantial proportion of EOC's legal work was outsourced to lawyers in private practice. They also expressed concern that most of the complaint cases handled by EOC in 2017 were dismissed by EOC as unsubstantiated or left unsettled.

8. Prof Alfred CHAN Cheung-ming, the former EOC Chairperson, explained that EOC's approach in handling complaints was primarily conciliatory, though it was empowered to take legal action should conciliation efforts fail. LSD was responsible for providing legal analysis, including determining whether or not the complaints concerned involved unlawful acts under the four anti-discrimination ordinances, to facilitate decisions to be made on whether or not assistance should be rendered to the applicants. Prof CHAN pointed out that apart from providing legal assistance to the complainants, in-house lawyers of EOC also had to provide legal support for internal operation as well as legal support for organizations in the public/private sectors in drawing up their anti-discrimination guidelines. He stressed that EOC's arrangement of engaging

lawyers in private practice was in the best interest of the complainants or aggrieved parties, as those lawyers might possess the relevant expertise to better represent them in the court.

9. Prof Alfred CHAN Cheung-ming informed members that EOC had embarked on a comprehensive review of its complaint-handling functions since December 2017 to examine the entire process of complaint-handling and providing legal assistance, with a view to maintaining and enhancing the quality of EOC's services. The review was expected to be completed around mid-2018. At the meeting on 14 February 2018, the Panel passed a motion urging the Government to set up an independent committee to review the overall operation of EOC and make improvement recommendations. The Administration's written response to the motion is in **Appendix I**.

10. At the meeting on 20 May 2019, members followed up on the report of the aforementioned review and enquired about its current position. Mr Ricky CHU Man-kin informed members that he was studying the findings and recommendations of the review report, which would be published once ready.<sup>1</sup>

#### Outlawing discrimination on the ground of sexual orientation and gender identity

11. Some members considered that the Administration had not been proactive in eliminating discrimination on the ground of sexual orientation and gender identity, and urged EOC to engage in active discussion with all relevant stakeholders on how the rights of sexual minorities could be protected. They also requested EOC to step up efforts in eliminating some people's misunderstanding that enactment of the legislation against discrimination on grounds of sexual orientation and gender identity would lead to "reverse discrimination".

12. Some members considered that granting marriage rights to transgender persons would have far-reaching implications on the marriage systems and views of different stakeholders other than sexual minority groups should be consulted before EOC formed stances on the issue. Dr York CHOW Yat-ngok, the Chairperson of EOC from 2013 to 2016, considered that Hong Kong should initiate discussion on issues like "same-sex marriage" and "civil unions" in the light of recent developments such as the legalization of same-sex marriage in some overseas jurisdictions.

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<sup>1</sup> Members may wish to note that the Review of the Equal Opportunities Commission Governance, Management Structure and Complaint Handling Process was published in December 2019 and is available on EOC's website ([https://www.eoc.org.hk/EOC/Upload/UserFiles/File/Process\\_Review/EOCs\\_Review\\_Report\\_E.pdf](https://www.eoc.org.hk/EOC/Upload/UserFiles/File/Process_Review/EOCs_Review_Report_E.pdf)).

13. EOC launched the Study on Legislation against Discrimination on the Grounds of Sexual Orientation, Gender Identity and Intersex Status and published the Study Report in January 2016. At its meeting on 15 February 2016, the Panel received a briefing by Dr York CHOW Yat-ngok on the recommendations of the Study Report. He advised that the study commissioned by EOC indicated that the Hong Kong society and the general public were more supportive of legislating against discrimination on the grounds of sexual orientation and gender identity than before. In particular, there was a significant increase of public support for legislating against discrimination on such grounds in the past 10 years from 28.7% to 55.7%. EOC recommended that the Government should consider launching a public consultation exercise with a view to legislating against discrimination on the grounds of sexual orientation, gender identity and intersex status. Some members urged the Administration to introduce legislation against discrimination on the grounds of sexual orientation, gender identity and intersex status, taking into account the findings of the EOC Study Report. Some other members, however, considered that it was equally important to safeguard the freedom of parental choice of children's religious and moral education under Article 18(3) and (4) of the International Covenant on Civil and Political Rights, as well as the freedom of religious belief under Article 32 of the Basic Law. They considered that legislating against discrimination on the ground of sexual orientation might result in "reverse discrimination".

14. At the same Panel meeting, the Chairperson of the former Advisory Group on Eliminating Discrimination against Sexual Minorities ("the Advisory Group"), Professor Fanny CHEUNG Miu-ching, was also invited to brief members on the Report of the Advisory Group. One of the recommendations was that an in-depth study on the experience of legislative and non-legislative measures in other jurisdictions should be conducted and issues to be covered should include the implications of legislation on the freedom of religion. The Administration acknowledged that more people in Hong Kong had expressed support for enacting anti-discrimination legislation to protect sexual minorities in recent years. The Administration advised that it would study both the Advisory Group's report and the Study Report of EOC, and would map out the way forward in consultation with different stakeholders.

15. At the policy briefing cum meeting on 16 December 2019, members noted that the study on the experience of other jurisdictions on eliminating discrimination against sexual minorities by legislative and administrative measures was near completion and the draft report was being prepared. Some members urged the Administration to conduct public consultation on the proposal to enact legislation to prohibit discrimination on grounds of sexual orientation and gender identity. These members asked how the Administration

would take forward the relevant legislative exercise. The Administration advised that in the current social and political climate, it would be more pragmatic and practicable to establish a communication platform to facilitate discussion with stakeholders and implement feasible anti-discrimination proposals based on the findings of the study. Stakeholders holding different views on the issue would be invited to join the communication platform.

### Anti-Sexual Harassment Campaign

16. Some members expressed concern that the problem of sexual harassment remained serious and enquired about the latest progress of EOC's Anti-Sexual Harassment Campaign ("the Campaign"), particularly in respect of the education and sports sectors as well as the disciplined services. Members also enquired how the Campaign would cater for the needs of people of diverse race.

17. According to EOC, the Campaign had been implemented since 2012. EOC had been encouraging schools to develop guidelines on the formulation of policies for preventing sexual harassment, by collaborating with the Education Bureau to conduct workshops and seminars to school principals and discipline masters/mistresses. The proportion of schools having developed such guidelines had risen from around half in 2014 to over 90% in 2018. The policies on preventing sexual harassment formulated by schools under the guidelines would also cover the appointments of agents such as contract coaches and instructors. At the Panel's request, EOC provided supplementary information on the progress of the Anti-Sexual Harassment Campaign in March 2018 (LC Paper No. CB(2)1126/17-18(01)). When the Panel received a briefing by Mr Ricky CHU Man-kin on 20 May 2019, members were informed that EOC planned to set up a dedicated anti-sexual harassment unit to conduct holistic review of the current legal protection regime against sexual harassment, and to identify the gaps in the current anti-discrimination ordinances and recommend legislative amendments where appropriate. Moreover, the dedicated unit would provide a one-stop platform (including advice on provisions of the law, options of lodging complaints and seeking redress, referral to therapeutic and counseling services, and self-help resources) to those affected by sexual harassment. To cater for the needs of individuals of diverse race who were affected by sexual harassment, EOC would consider providing interpretation services and manning the platform with staff who had undergone cultural sensitivity training.

### Funding support from the Government

18. At the Panel meeting on 19 April 2017, members expressed concern about the adequacy of the Government's allocation of resources to EOC to cover its rental and operating expenditures arising from inflation. The Administration advised that there had been an increase in the annual subvention to EOC. In

addition, in 2017-2018, the Administration had included a one-off funding support of \$9.5 million in the proposed subvention for EOC's proposed office relocation and fitting-out work. At the same meeting, the Panel passed a motion urging the Administration to strengthen its support for the work of EOC, and requesting expeditious provision of adequate financial resources for EOC's Ethnic Minorities Unit. The Administration's response to the motion is in LC Paper No. CB(2)1495/16-17(01).

19. At the Panel meeting on 20 May 2019, some members noted with concern that EOC was facing the perpetual risk of running into deficit as the rental of the current EOC office premises was expected to increase when its leasing contract was due for renewal in August 2020. Members enquired whether the Administration would consider providing a permanent office for EOC.

20. The Administration advised that additional funding had been earmarked in the 2019-2020 Budget to increase the annual subvention to EOC to cover the additional operating expenditures arising from inflation. The Administration undertook that it would keep in view the rental increase of EOC's office premises and seek additional funding resources where necessary. The Administration further advised that with nearly \$20 million spent on EOC's recent office relocation and fitting-out work, the Administration would need to be prudent in considering the idea of providing a permanent office for EOC at this juncture.

### **Recent developments**

21. Dr Hon Priscilla LEUNG wrote to the Panel Chairman on 28 February 2020 proposing to invite the Chairperson of EOC to a meeting to explain the role of EOC (LC Paper No. CB(2)649/19-20(01)). EOC's written response to Dr LEUNG's letter was issued to members on 7 April 2020 vide LC Paper No. CB(2)801/19-20(01).

22. The Chairperson of EOC will brief the Panel on the work of EOC at the next meeting on 18 May 2020.

### **Relevant papers**

23. A list of relevant papers which are available on the LegCo website is in **Appendix II**.

**Panel on Constitutional Affairs**  
**Motion passed under agenda item V**  
**“Briefing by the Chairperson of the Equal Opportunities Commission”**  
**at the meeting on 14 February 2018**

While the Equal Opportunities Commission (“EOC”) is the only statutory body in Hong Kong responsible for promoting and administering affairs relating to equal opportunities, the legal assistance offered by EOC to members of the public over the years has been on the low side, cases involving court proceedings have been rare, a substantial proportion of its legal work has been outsourced, and the administration of EOC is chaotic. Given the aforesaid situation, this Panel urges the Government to set up an independent committee to review the overall operation of EOC and make improvement recommendations, with its membership being drawn from people with anti-discrimination work experience in the legal and academic sectors and in various community groups.

Moved by: Dr Hon Fernando CHEUNG

**Response of the Constitutional and Mainland Affairs Bureau**

The Equal Opportunities Commission (EOC) has all along been working towards improvement of services and enhancement of efficiency. In the light of feedback from the society and service users, the EOC set up a Review Panel in September 2017 comprising three EOC members (i.e. Dr Maggie KOONG, Dr Trisha LEAHY and Mr Mohan DATWANI) who possess experience in the fields of law or management, in order to steer and oversee two reviews as set out below:

**(a) Process Review of Complaint Handling and Legal Assistance Functions**

2. The review of complaint handling and legal assistance functions mainly considers whether the EOC’s current process could assist service users effectively. The review will take into account past feedback on complaints handling and legal assistance services, including views from service users, legislative councilors, NGOs and the community.

3. The EOC expects that the review report will offer concrete suggestions and recommendations on improvement measures in various aspects, including analyses on the efficiency and effectiveness of the procedures and the organisation of Complaint Services Division and Legal Service Division, the future work direction of the two divisions, necessary changes to the internal

operational procedures, manpower resources and budgetary requirements. The objective of the review is to further improve the relevant services.

4. To enhance the credibility of the process review, the EOC has invited an ex-High Court Judge to provide high level independent opinion to the Review Panel on a pro bono basis.

(b) Management Structure/Governance Review

5. In 2015, the EOC revamped its management structure, involving the re-alignment of the work of different divisions, the re-ranking of certain senior posts and the reinstatement of the Chief Operations Officer post. The review will assess the effectiveness of the new structure and whether further enhancement is required. The review will also cover governance issues.

6. The EOC expects that the two review reports will be completed by mid-2018. The Constitutional and Mainland Affairs Bureau (CMAB) will seek updates on the progress of the two aforementioned reviews from the EOC at appropriate junctures, and to maintain liaison with the EOC on the support required to follow up on the recommendations.

7. While appointing members to the EOC, the Government has strived to cover a good mix of expertise and representatives from various sectors, including women, persons with disability, ethnic minorities, employers and employees, social services, legal professionals, accounting professionals, academics and education, as well as the community at large, with a view to ensuring that the composition of members could broadly reflect the view points and opinions of the community, thereby facilitating the discharge of the EOC's statutory functions. CMAB takes the view that it is not necessary to separately set up an independent committee at this juncture to review the operation of the EOC.

**Constitutional and Mainland Affairs Bureau  
March 2018**



**Relevant documents on briefing by  
the Chairperson of the Equal Opportunities Commission  
on the work of the Equal Opportunities Commission**

Committee	Date of meeting	Paper
Panel on Constitutional Affairs	17.6.2013 (Item IV)	<a href="#">Agenda</a> <a href="#">Minutes</a>
	23.4.2014 (Item IV)	<a href="#">Agenda</a> <a href="#">Minutes</a>
	16.3.2015 (Item IV)	<a href="#">Agenda</a> <a href="#">Minutes</a>
	20.7.2015 (Item III)	<a href="#">Agenda</a> <a href="#">Minutes</a>
	15.2.2016 (Item IV)	<a href="#">Agenda</a> <a href="#">Minutes</a>
	20.6.2016 (Item III)	<a href="#">Agenda</a> <a href="#">Minutes</a>
	20.3.2017 (Item IV)	<a href="#">Agenda</a> <a href="#">Minutes</a>
	19.4.2017 (Item V)	<a href="#">Agenda</a> <a href="#">Minutes</a>
	15.5.2017 (Item V)	<a href="#">Agenda</a> <a href="#">Minutes</a>
	14.2.2018 (Item V)	<a href="#">Agenda</a> <a href="#">Minutes</a>
	20.5.2019 (Item IV)	<a href="#">Agenda</a> <a href="#">Minutes</a>
	16.12.2019 (Item IV)	<a href="#">Agenda</a> <a href="#">Minutes</a>