

Legislative Council Panel on Constitutional Affairs

**The Roles, Functions and Complaint-handling Procedures of
the Equal Opportunities Commission**

Purpose

1. This paper explains the roles of the Equal Opportunities Commission (“EOC”), and its functions under the Sex Discrimination Ordinance (“SDO”)(Cap. 480), the Disability Discrimination Ordinance (“DDO”) (Cap. 487), the Family Status Discrimination Ordinance (Cap. 527) and the Race Discrimination Ordinance (“RDO”) (Cap. 602), including the handling of discrimination complaints, advocacy and education work.

EOC’s Statutory Functions

2. The EOC is an independent statutory body established under the SDO. It started operation in 1996 and has been enforcing the four anti-discrimination ordinances in Hong Kong. The statutory functions of the EOC are to work towards the elimination of discrimination on the grounds of sex, marital status, pregnancy, disability, family status and race; to eliminate sexual harassment, and harassment and vilification on the grounds of disability and race; and to promote equality of opportunities between men and women, between persons with and without a disability, and irrespective of family status and race.

3. To fulfil its statutory functions, the EOC undertakes a wide range of work, including:

Law enforcement

- (i) Investigate complaints lodged under the anti-discrimination legislation and encourage settlement by conciliation between parties in dispute;
- (ii) Undertake self-initiated investigation into situations and issues giving rise to discrimination concerns, and conduct formal investigation into policies when needed to combat systemic discrimination;
- (iii) Provide legal assistance, including assistance in initiating proceedings, to aggrieved persons in appropriate cases;
- (iv) Review the implementation of the legislation and make recommendations on reforms to enhance the legislation;

Advocacy and education

- (v) Conduct research studies on different topics to understand the trends of discrimination in society, and make recommendations on public policies and measures;
- (vi) Enhance the public's knowledge of the anti-discrimination legislation through education and training courses;
- (vii) Partner with organisations from different sectors to develop equal opportunities policies and good practices, especially measures in the workplace; and
- (viii) Widely promulgate values of equal opportunities through different communication channels, and engage the public to combat discrimination through events and activities.

Complaint-handling Procedures

4. The main function of the EOC is to handle complaints about unlawful acts lodged by the public under the anti-discrimination ordinances. Anyone who believes that he/she has experienced discrimination, harassment or vilification specified in the anti-discrimination ordinances may lodge a complaint with the EOC in writing. The EOC is committed to adopting a victim-centric approach,

while adhering to the principles of fairness and impartiality in handling the complaint.

5. Upon receipt of complaints from the public, the EOC will handle the matter according to established procedures and the law. The EOC will classify the case according to internal operating procedures, and ascertain if the case falls within the scope of the anti-discrimination ordinances and the jurisdiction of the EOC. Once a case has been classified as a complaint, an officer of the EOC will be assigned to conduct an investigation. The EOC will notify the respondent of the complaint and request a response. The EOC may also write to the complainant seeking further information or clarification of certain points, and may ask for witnesses or documentary proof that may support the allegations. The EOC adheres to the principle of confidentiality and on a need-to-know basis in handling all complaints. It will not disclose details of individual complaints to unrelated third parties or the public, or comment on details of individual cases.

6. Under the anti-discrimination ordinances, the EOC has to encourage parties involved in the complaints to reach a settlement by conciliation. As prescribed in section 64(1)(d) of the SDO, the EOC shall “in the case of any act alleged to be unlawful by virtue of this Ordinance, encourage persons who are concerned with the matter to which the act relates to effect a settlement of the matter by conciliation, whether under section 84 or otherwise”. Conciliation is completely voluntary. In case of failure, the complainant can apply to the EOC for legal assistance to institute proceedings and conduct litigation.

7. Since its operation from September 1996, the EOC has remained committed and dedicated to handling enquiries and complaints from the public in accordance with the functions and powers conferred by the anti-discrimination legislation. Striving to render assistance to the public wherever possible, it has never turned away members of the public who wish to lodge complaints. From September 1996 to the end of 2019, the

EOC received a total of 17 963 complaints. It has secured over HKD 89.30 million and about HKD 35.43 million of monetary compensation for victims of discrimination through conciliation and legal assistance respectively.

Advocacy and Education

8. Apart from carrying out investigation, facilitating conciliation and providing legal assistance in respect of discrimination complaints, the EOC has also been working on policy advocacy, research, publicity and education. In addition, effort is made to enhance the liaison with stakeholders and partners in order to promote the core values of equal opportunities. As prescribed in the anti-discrimination legislation¹, the EOC may undertake any research and educational activities which appear to the EOC necessary or expedient for the performance of its functions.

9. The EOC fully appreciates that discrimination and prejudice usually stem from entrenched stereotypes or fragmented and distorted information. To eliminate discrimination and promote equality, it is imperative to change the public's established perceptions. In this connection, the EOC carries out a wide variety of studies and researches every year with a view to understanding the trends of discrimination and identifying the social, economic and other factors which have shaped the public perception and discriminatory attitudes. The EOC also disseminates information to the public through large-scale public events and various media platforms. These initiatives are aimed at enhancing the public's understanding of equal opportunities, including the provisions of the ordinances and promotion of good practices, and advising the public to practise the principles of equal opportunities both at work and in daily life.

¹ Section 65(1) of the SDO

10. Meanwhile, the EOC has been keeping an eye on the situation of discrimination in Hong Kong, including the discrimination issues arising from demographic change such as ageing, and equality issues of public concern. Depending on the individual circumstances and needs, the EOC will take appropriate action to broaden the knowledge of the public about such issues and the anti-discrimination legislation, such as by issuing statements and responses, contributing feature articles to newspapers and arranging media interviews. Examples are:

- (i) In May 2018, the EOC issued a statement in response to residents' opposition to the setting up of an Integrated Community Centre for Mental Wellness (ICCMW) at Mei Lam Estate in Shatin², hoping to allay the community's concern and appealing to the community to cast aside the "not in my backyard" mentality and accept the proposed siting of the ICCMW.
- (ii) In November 2013, the EOC issued a statement to express its concern over the abusive and derogatory remarks, made on the Internet and through other public channels, by some members of the community in relation to a fierce typhoon disaster in the Philippines³. Apart from pointing out that the remarks were extremely inappropriate, the EOC also explained the applicable provisions of the anti-discriminatory ordinances.

These statements and articles were not aimed at targeting any specific complaints, but instead were issued in response to the phenomenon or situation of discrimination in society or to media enquiries in a timely manner. In addition to dissuading the public from performing discriminatory acts or making discriminatory remarks, the EOC also

² Press release titled "The EOC urges the public to accept the siting of Integrated Community Centres for Mental Wellness" issued on 2 May 2018

³ Press release titled "The EOC Condemns Racially Derogatory Remarks Made on the Internet" issued on 13 November 2013

elaborated on the anti-discrimination legislation as an effort to educate the public.

COVID-19

11. The outbreak of COVID-19 in the past few months in Hong Kong has triggered different types of discrimination in the online world and various segments of society, which have aroused widespread media and public concern. From 17 February to 31 March 2020, the EOC received a total of 1 236 enquiries and 214 complaints related to the pandemic. Among them were complaints against a hotel which refused to receive guests from Hong Kong and the Mainland China, against another hotel for refusing to admit medical staff, and against restaurants which turned away customers from the Mainland China.

12. The EOC has been closely monitoring the situation. While handling the related enquiries and complaints, it issued press releases and feature articles, and arranged television and radio interviews in the light of the development of the pandemic and public concern. Between February and early April 2020, the EOC issued four press releases in response to media enquiries and published eight feature articles in the print and online media. Besides urging the public to refrain from making discriminatory remarks and performing discriminatory acts, these materials also served to clarify the application of the anti-discrimination ordinances so as to avoid unnecessary misunderstandings. This is in line with the EOC's usual practice. Annex A sets out the major types of enquiries and complaints received by the EOC and its follow-up action.

13. Subsequent to the confirmed case of COVID-19 involving a police officer, a number of netizens gloated over the incident and even made cursing remarks against the patient and other police officers, leading to questions from the media and public about the definition and application of “disability vilification”. The EOC therefore issued statements on 25 and 28 February 2020. As usual, the EOC did not

comment on the details of individual complaints. As a matter of fact, the EOC pointed out clearly in the two statements that anyone who feels that, or believes that, he/she has been subject to discrimination or vilification can contact the EOC for assistance. As such, it is untrue to say that the EOC made premature conclusions on the complaints or breached the complaint-handling procedures. In sum, the purposes of issuing the statements were:

- (i) To call on the public to refrain from making such inappropriate remarks;
- (ii) To clarify the definitions of “disability vilification” and “serious disability vilification” under the DDO; and
- (iii) To appeal to those who have been, or believe that they have been, subject to disability discrimination, vilification or serious vilification to contact the EOC directly to make an enquiry or complaint.

The EOC hopes to reiterate that the above statements and the comments therein were not made against any specific cases as lodged by any specific persons. The EOC’s explanations on the law do not amount to comments or conclusions about individual cases, and should not be construed as such. This initiative is completely consistent with its statutory functions and established practice.

Way Forward

14. With the continuous spread of COVID-19, xenophobia, racism, discrimination and even hate speech have emerged in Hong Kong and also other places all over the world. To tackle the discrimination problems in Hong Kong, the EOC will adopt a multi-pronged approach of enforcement, advocacy and education. In respect of the discrimination faced by Chinese Mainlanders and new immigrants, the EOC made a submission on Discrimination Law Review to the Government as early as March 2016, and recommended to amend the RDO to include

discrimination on grounds of nationality, citizenship and residency status. In the light of the enquiries and complaints arising from the COVID-19 pandemic, the EOC will analyse and consolidate the information on the enquiries and complaints, and make submissions together with legislative amendment proposals to the Government for consideration. On enforcement, the EOC will continue to investigate complaints diligently in accordance with the law, and conduct overall assessment of the situation so as to counter and even eliminate the discriminatory acts. Meanwhile, the EOC will step up efforts in public education to raise the public's awareness on anti-discrimination legislation and equality. Furthermore, the EOC notices that there are comments about the inadequacy of the existing four anti-discrimination ordinances in addressing the discrimination issues that emerged out of the pandemic, leading to calls for expanding the scope of the ordinances. In this respect, the EOC hopes to listen to more views and opinions of stakeholders including legislators.

15. The EOC's vision is to create a pluralistic and inclusive society free of discrimination. As Hong Kong braces for severe challenges, the EOC will continue to perform its statutory functions in a steadfast manner, and closely monitor the development of COVID-19 with a view to taking appropriate actions in the light of the actual situation and needs.

Equal Opportunities Commission
March 2020

Annex A

Major Types of Enquiries and Complaints Received by the EOC
Related to COVID-19

Major enquiries and complaints	Number	Follow-up action: enquiry and complaint handling	Follow-up action: advocacy and education
Complaints against a hotel for not receiving guests from Hong Kong and the Mainland China	65	Already responded to enquirers or complainants. Explained to them the relevant provisions of the anti-discrimination legislation and invited aggrieved parties, if any, to contact the EOC direct.*	Statements and feature articles issued, and media interviews conducted to call on the public to refrain from performing discriminatory acts and to explain the application of the anti-discrimination legislation.
Complaints against a hotel for refusing admission of medical staff	65	Already responded to enquirers or complainants. Explained to them the relevant provisions of the anti-discrimination legislation and invited aggrieved parties, if any, to contact the EOC direct.*	Statements and feature articles issued, and media interviews conducted to call on the public to refrain from performing discriminatory acts and to explain the application of the anti-discrimination legislation.

Major enquiries and complaints	Number	Follow-up action: enquiry and complaint handling	Follow-up action: advocacy and education
Complaints against different restaurants for receiving only Hong Kong people but not people from the Mainland China	62	<p>Contacted one of the restaurants to explain the provisions of the anti-discrimination legislation and advise it to refrain from performing discriminatory acts.</p> <p>Already responded to enquirers or complainants.*</p>	Statements and feature articles issued, and media interviews conducted to call on the public to refrain from performing discriminatory acts and to explain the application of the anti-discrimination legislation.
Complaints against the Hong Kong Government for denying entry to Koreans who are non-local residents	11	<p>Already responded to enquirers or complainants. Explained to them the relevant provisions of the anti-discrimination legislation and invited aggrieved parties, if any, to contact the EOC direct.*</p>	
Complaints against the Chief Executive's policy of requiring all travellers to Hong Kong (apart from those coming from Mainland China, Taiwan and Macao) to be isolated for 14 days, which violates the RDO and DDO	830	<p>Already responded to over 680 enquirers or complainants. Replies will be made to others in sequence.*</p>	

Major enquiries and complaints	Number	Follow-up action: enquiry and complaint handling	Follow-up action: advocacy and education
Complaints against a restaurant for only receiving Hong Kong people but not people from the Mainland China.	14	In the course of replying to the enquirers and complainants.*	

*Note: Since a large majority of the complaints were lodged by the general public rather than the aggrieved parties, the EOC did not conduct investigation into the complaints or arrange for conciliation between the complainants and respondents. Nevertheless, the EOC would look into the enquiries and complaints, and contact the related parties if needed to explain the provisions of the anti-discrimination ordinances and advise them to refrain from conducting the discriminatory acts.