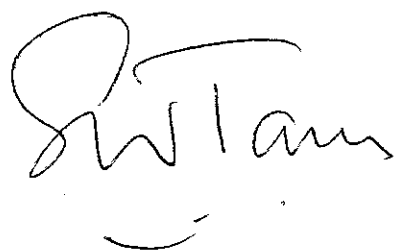


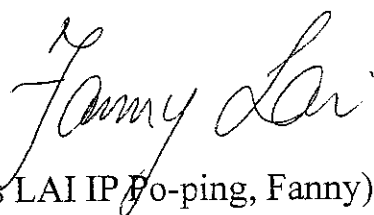
**Report of the Independent Panel of Inquiry
on the Incidents Relating to the
Equal Opportunities Commission**

February 2005

This report is furnished to the Secretary for Home Affairs of the Hong Kong Special Administrative Region Government this 2nd day of February, 2005.

A handwritten signature in black ink, appearing to read 'S W Tam', with a small horizontal stroke below it.

(Professor TAM Sheung-wai)

A handwritten signature in black ink, appearing to read 'Fanny Lai', with a small horizontal stroke below it.

(Mrs LAI IP Po-ping, Fanny)

A handwritten signature in black ink, appearing to read 'WU Ting-yuk', with a small horizontal stroke below it.

(Mr WU Ting-yuk, Anthony)

Legend of Abbreviations

A&FC	Administration & Finance Committee of the Equal Opportunities Commission
AEOCS	Australian Equal Opportunity Commissions
CEO	Chief Executive Officer
CJ	The Chief Justice
DPA	Director of Planning & Administration of the Equal Opportunities Commission
EOC	The Equal Opportunities Commission
HAB	Home Affairs Bureau
HKICPA	Hong Kong Institute of Certified Public Accountants
HRM Review	Human Resources Management Review of the EOC
ICAC	Independent Commission Against Corruption
LA	Legal Assistance
LCC	Legal and Complaints Committee
LSD	Legal Service Division
LegCo	Legislative Council
MAA	Memorandum of Administrative Arrangement
MPS	Master Pay Scale
Organizational Review	The Review of the Role and Organizational and Management Structure of the EOC
SHA	Secretary for Home Affairs
SS	Spencer Stuart
SSPA	Secondary School Places Allocation
TCU	Training & Consultancy Unit

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EXECUTIVE SUMMARY

Executive Summary

Introduction

1. Between October 2003 and December 2003, incidents relating to the Equal Opportunities Commission (EOC) received considerable public attention. At first, the issue centred upon the appointment of Mr Michael WONG as the EOC Chairperson as well as the termination of the appointment of Mr Patrick YU as Director (Operations) of the EOC. As things unfolded, more people and issues were drawn into the incidents. Some rumours about past events resurfaced and were repackaged as fresh allegations against the EOC and various individuals. All these culminated in Mr Wong's decision to resign on 6 November 2003. A magazine article on "six allegations" published shortly after his resignation triggered another round of controversies.

2. Following extensive discussions within LegCo on how best to conduct an inquiry, the LegCo House Committee decided at its meeting on 20 February 2004 to support the appointment of an independent panel of inquiry by the Secretary for Home Affairs (SHA). On 15 May 2004, SHA announced the appointment of an independent panel with the following terms of reference, which were agreed by the LegCo House Committee –

- (a) to inquire into the appointment and termination of the appointment of Mr Patrick YU as Director (Operations) of the EOC and issues related thereto; and
- (b) to inquire into the incidents which have affected the credibility of the EOC and to make recommendations on measures to restore such credibility.

3. The inquiry is in the nature of a fact-finding exercise. Its aim is to provide the fullest possible account of the events, to identify lessons learnt and to recommend measures to restore the credibility of the EOC. The Panel has sought to be independent, impartial and thorough.

4. During the inquiry, the Panel has received written contributions from nine organizations and 49 individuals. It also interviewed 20 individuals and eight representatives from two organizations.

5. In discharging its duties, the Panel is dependent upon the goodwill of all parties concerned because of its non-statutory nature. The Panel has tried to encourage them to voluntarily assist in its tasks. Nevertheless, there have been instances where certain parties have proven less co-operative. Furthermore, some parties have encountered certain constraints in responding to the inquiry. There have also been cases where parties concerned have different recollections of the relevant events. During the course of the inquiry, certain of those who have responded have raised various issues under the Personal Data (Privacy) Ordinance. This report has been prepared in the full knowledge of the legal implications and requirements under the Ordinance.

Overall Observations

6. The community has very high expectations of the EOC. Since its inception in 1996, the EOC has been building up a solid track record in the promotion of equal opportunities. Whilst the events in 2003 have affected the credibility of the EOC, the EOC has continued its good work and taken positive measures to strive for continuous improvement. Concerted efforts are required to restore the credibility of the EOC. With the benefit of the collective wisdom from various sources, the Panel sets out eight conclusions and 70 recommendations in the following paragraphs.

Conclusions

(1) ***The Appointment of Mr Patrick YU as Director (Operations)***

The appointment of Mr Patrick YU as Director (Operations) was in line with the prevailing recruitment practices adopted by the EOC at the time, although there were certain technical irregularities in the appointment exercise.

(2) ***The Termination of the Appointment of Mr Patrick YU***

The termination of the appointment of Mr Patrick YU was properly authorized by a resolution passed by the EOC at its meeting on 18 September 2003. The fact that the dispute between the EOC and Mr Yu was satisfactorily resolved demonstrated that the issue was, in the main, an employment matter that could be amicably settled through the legal channel between the parties concerned.

(3) ***The Appointment of Mr WONG as the EOC Chairperson and Approval for Him to Continue to Receive Pension***

Mr Wong had exercised due diligence in obtaining the necessary approval for the continuation of his monthly pension payments during his term of office as the EOC Chairperson.

(4) ***Handover Arrangements between Chairpersons***

It is desirable to have a smooth handover between the EOC Chairpersons and the handover between Ms Anna WU and Mr Michael WONG could have been done in a more formal and professional manner.

(5) ***Gatherings on 4 November 2003 and 5 November 2003***

The gatherings on 4 and 5 November 2003 were arranged to seek a better understanding of Mr Wong's inclinations and to provide moral support to him at a time of distress and intense pressure. The whole setting was an informal one without any meeting agenda, notes taken or papers drafted. The resignation statement delivered by Mr Wong on 6 November 2003 was written by Mr Wong himself without assistance from those present. It made no reference to allegations against the EOC.

(6) ***The So-called "Six Allegations"***

The so-called six allegations as published in the EastWeek on 12 November 2003 were either unsubstantiated or exaggerated. According to information available to us, none of the five individuals who participated in the gatherings on 4 and 5 November 2003 had seen or read any document containing the "six allegations" before the publication of the article.

(7) ***The Role of the Government***

The community expects the Government to take the lead in upholding the credibility of the EOC. As a matter of policy, the Government should keep the EOC at an arm's length to safeguard its independence, and should be more sensitive and prudent in handling EOC matters.

(8) ***Turning a New Page***

The EOC should be forward looking. It should implement the recommendations of its two recent reviews on organizational structure and human resources management system as soon as possible.

Recommendations

Strengthening the Institutional Framework of the EOC

Guiding Principles

- (1) We **recommend** six core values be adopted as the basis for handling EOC matters. They are: Independence, Pluralism, Good corporate governance, Openness, transparency and communication, Efficient and effective performance, and Accountability.
- (2) We **recommend** that the Government should consider making reference to the Paris Principles* in the appointment to, and the governance of, the EOC.
- (3) We **recommend** that the EOC should be guided by the Paris Principles in performing its functions to the fullest extent permitted by its enabling legislation.

Independence

- (4) We **recommend** that the Government should continue to adhere to the non-interventionist policy and distance itself from the day-to-day operation of the EOC.
- (5) We **recommend** that the Government should give favourable consideration to, and provide assistance in relation to, the EOC's request to join international organizations that are concerned with the elimination of discrimination.
- (6) To maintain the impartiality of the EOC, we **recommend** that the EOC should be a non-partisan body. It is desirable to maintain a balance between different interests and prevent predominance by any single interest group.
- (7) We **recommend** that all EOC Members should be required to uphold the EOC's overall interest, protect the EOC's corporate image and take collective responsibility for the EOC.

*

The Paris Principles are a detailed set of principles for the establishment and operation of national human rights institutions. They were developed at a meeting of representatives of national institutions held in Paris in 1991 and subsequently endorsed by the United Nations (UN) Commission on Human Rights (*Resolution 1992/54 of 3 March 1992*) and the UN General Assembly (*Resolution 48/134 of 20 December 1993, annex*).

Pluralism

- (8) Having regard to the Paris Principles and the local conditions, we **recommend** that the EOC membership should cover a broad spectrum of people.
- (9) We **recommend** that the Commission, as the EOC's governing board, should have Members with financial and legal expertise to enable it to control and account for the use of public resources.
- (10) We **recommend** that EOC Members should continue to be appointed in their personal capacity.
- (11) We **recommend** that, in making appointments to the EOC, the Government may consider inviting the EOC to nominate candidates representing relevant community groups. In doing so, the EOC may invite nominations from various organizations representing community groups for its consideration via a nomination committee before submitting its list of recommendations to the Government.
- (12) We **recommend** that the EOC should broaden its network and enhance its diverse composition by: (a) increasing the number of co-opted members in sub-committees and inviting reputable persons in relevant fields to participate in committee work; and (b) considering the possibility of establishing and expanding the network of stakeholder groups to discuss topical issues of interest.

Corporate Governance

- (13) We **recommend** that the EOC should examine and, where appropriate, implement the guidelines stipulated in "Corporate Governance for Public Bodies – A Basic Framework" published by the Hong Kong Institute of Certified Public Accountants.

The EOC Chairperson

- (14) We **recommend** that the EOC should implement the proposal in its recent Organizational Review to establish a corporate image rather than focusing on the Chairperson.
- (15) We recommend that the posts of EOC Chairperson and the Chief Executive Officer (CEO) should be separated, and that the post of

CEO should be reinstated. It is desirable that the Chairperson be a non-executive position appointed on a part-time basis.

- (16) To allow more flexibility in selecting the most suitable Chairperson for appointment, we **recommend** that consideration should be given to amending the relevant legislation to remove the requirement for the EOC Chairperson to be appointed on a full-time basis.
- (17) We **recommend** that the responsibilities of the Chairperson should be formally defined in writing and such responsibilities should be distinct from those of the CEO.
- (18) We **recommend** that the CEO should be an ex-officio executive member of the Commission. The CEO, if reinstated, should report to the Chairperson and be accountable to the Commission for the performance of the organization and the implementation of the Commission's strategy and policies.
- (19) Pending the consideration of the structural changes recommended above, we **recommend** that the powers and responsibilities of the EOC Chairperson vis-à-vis the Commission should be clearly defined. Specifically, the governing board should reserve strategic and other key matters, such as major decisions in relation to resources and senior appointments, for collective decision-making.
- (20) In making appointment and re-appointment of the EOC Chairperson, we **recommend** that the Government should consider the views as presented in the report about the ideal attributes of the EOC Chairperson.
- (21) We **recommend** that the Government should continue to adopt the merit principle to appoint the most suitable candidate to the EOC having regard to candidates' expertise, experience and integrity as well as the functions of the EOC. The appointment should be free from political considerations.
- (22) We **recommend** that the Government should review the remuneration package of the EOC Chairperson in the context of the overall review of the advisory and statutory boards and committees. The EOC should similarly review the remuneration package of the CEO, if reinstated with an expanded function.

- (23) We **recommend** that, in the context of the overall review of advisory and statutory bodies, the Government may consider the following two suggestions –
- (a) consider the desirability and feasibility of establishing a nominating committee, comprising Government officials and representatives of key stakeholders, to assist in the appointments to the EOC and other major boards and committees. Under this proposal, vacancies are advertised and nominations invited. The candidate will then be submitted to the Chief Executive for consideration and endorsement.
 - (b) The Government should consider following some overseas models whereby the Government will, after each key appointment, issue a press release attaching the appointee's detailed curriculum-vitae to demonstrate that his/her qualifications and experiences are impeccably linked to the work of the EOC and hence eminently qualified for the position.
- (24) Whilst recognizing the need to enhance transparency and accountability in the system for the appointment to the EOC, we **recommend** that the Government should be mindful not to introduce processes that will dampen the wish of capable candidates to contribute to public service and consequently deprive the EOC and Hong Kong of valuable talents.
- (25) To ensure stability and facilitate longer-term planning, we **recommend** that the EOC Chairperson should normally be appointed for a three-year term, renewable once for another term of not exceeding three years.
- (26) We **recommend** that, unless there are unforeseen circumstances, the Government should make a firm decision and announce the appointment, re-appointment or cessation of the appointment of the EOC Chairperson two months before the commencement of the new term.
- (27) We **recommend** that the appointment and re-appointment of EOC Members should, as far as possible, be announced one month before the commencement of the new term.

Handover Arrangements

- (28) Pending further consideration of the proposal to reinstate the position of the CEO, we **recommend** that the EOC should develop and, where appropriate, formalize proper handover arrangements for the Chairpersons.
- (29) To preserve the EOC's independence, We **recommend** that, the handover between EOC Chairpersons should, as far as possible, be conducted by the EOC without external assistance.

The Commission

- (30) We **recommend** that the Government may consider appointing a Deputy Chairperson, who may act as the Chairperson if the Chairperson is absent from Hong Kong or is, for any other reason, unable to act as Chairperson, or if the office is vacant.
- (31) We **recommend** that the EOC may consider designating a spokesperson for specific subjects to enhance public image. Individual Members should refrain from expressing personal views on EOC matters in public.

The Role of EOC Members

- (32) We **recommend** that EOC Members should apprise themselves of their basic legal duties and responsibilities and potential liabilities. These duties should include setting directions, overseeing the organization and monitoring the executive management of the EOC.
- (33) We **recommend** that, as recommended in the EOC's Organizational Review, the EOC should conduct orientation, familiarization visits, induction and refresher training as well as brainstorming sessions on a regular basis for the EOC Members.
- (34) We **recommend** that, whilst EOC Members should not interfere with the day-to-day operation of the EOC, chairpersons of the EOC's functional committees should consider taking a more active role in giving guidance, directions and support to the EOC Office. EOC Members should also give more support by joining at least one functional committee and participating more actively in public education and community relations activities.

- (35) We **recommend** that EOC Members should be apprised of the need to take collective responsibility for the Commission. Once a decision has been made in accordance with proper rules and procedures, EOC Members are expected to support it and protect the corporate identity.

Appointment of EOC Members

- (36) We **recommend** that, in appointing EOC Members, the Government should consider those who possess the following attributes–
- (a) supportive of the principles of equal opportunities;
 - (b) ready and able to devote time and effort to the work of the EOC; and
 - (c) respectable persons who meet a high standard of behaviour.
- (37) We **recommend** that the “six-year rule” should be followed in considering the next round of appointments.
- (38) To avoid a bunching effect and to enhance the continuity of the Commission, we **recommend** that the term of appointment of EOC Members should be staggered in such a way that the term of no more than one-half of the members will expire in the same year.

Standards of Behaviour of the Governing Board

- (39) To maintain public confidence in the EOC, we **recommend** that the EOC should consider promulgating a code of ethical conduct for its members and staff to ensure that they will, at all times, observe the highest standards of conduct and integrity.
- (40) We **recommend** that, in considering appointments to the EOC, the Government should take into account the abilities of possible candidates in meeting certain ethical standard.

Openness, Transparency and Communication

- (41) We **recommend** that the EOC should make an explicit commitment to openness and transparency in all of its main activities, subject only to the need to preserve confidentiality in those specific circumstances where it is proper and appropriate to do so.

- (42) We **recommend** that the EOC may consider implementing the recommendation of the Organizational Review report to reinstate the practice of conducting a press conference after each EOC meeting to enhance the communication with the media.
- (43) We **recommend** that the EOC may consider implementing the recommendation of the Organizational Review report to release the confirmed minutes of the EOC meetings on the Internet for access by members of the public.
- (44) We **recommend** that the EOC should ensure that relevant and sufficient information is provided to the EOC Members in a timely manner to facilitate discussion and decision-making.
- (45) We **recommend** that, as recommended in the EOC's HRM Review, the EOC management should consider consulting staff members so as to identify the most effective means to improve the communication within the EOC Office and between Members and staff of the EOC.

Performance

Performance Management

- (46) We **recommend** that the EOC should implement various recommendations of the EOC's Organizational Review to further improve the EOC's performance.
- (47) We **recommend** that the EOC should follow up on the recommendations of various recent reviews and implement them as appropriate with a view to improving the EOC's performance of its core functions.
- (48) In view of the increasing demand for training and consultancy services, we **recommend** that the EOC should expand such services.

Human Resources

- (49) We **recommend** that the EOC should implement the recommendations of the Human Resources Management Review (HRM Review) as soon as possible.

- (50) We **recommend** that the EOC should further improve the human resources policies to give more recognition and provide more support and training to its staff.
- (51) We **recommend** that the EOC management should, with external assistance where appropriate, take active steps to cultivate a forward-looking, positive and harmonious working environment by improving staff morale and staff relations.
- (52) We **recommend** that the EOC should improve its staff performance management system, cultivate a merit-based culture and give sufficient warnings and signals to under-performed staff so that the eventual decision regarding their termination or non-renewal will not be taken by surprise.
- (53) We **recommend** that, as mentioned in the HRM Review, the EOC should reaffirm the importance of the commitment to equal opportunities as a core competency for staff at all levels. It should recruit and retain staff who subscribe to the belief of equal opportunities. It should provide comprehensive induction programme and regular staff training in this respect.
- (54) We **recommend** that the EOC should improve its grievance handling system.
- (55) We **recommend** that the EOC should enhance its skills in managing the exit of staff. As recommended in the HRM Review, it should provide proper staff training on staff counseling, disciplinary actions and termination of employees.
- (56) We encourage the EOC to continue the secondment arrangements with organizations of similar nature. To ensure that future secondments and consultancies achieve their intended purposes, we **recommend** that the EOC should formulate clearer guidelines, submit regular reports to the relevant functional committee and ensure that the secondees work to a programme for the transfer of skills to local staff.
- (57) We **recommend** that the EOC should encourage the staff to strengthen their social ties by such means as forming staff associations or arranging informal gatherings.

Accountability

- (58) We **recommend** that the EOC should continue to demonstrate its commitment to be accountable to the community.

Equal Opportunities Tribunal

- (59) We **recommend** that the relevant authorities should continue to explore the proposal of establishing an Equal Opportunities Tribunal.

Clear Positioning and Public Perception

Scope of the EOC's Work

- (60) We **recommend** that the EOC should publicize its vision, mission, core values and the scope of its responsibilities with a view to enhancing public understanding of its role and functions.
- (61) We **recommend** that the EOC should consider adopting a focused approach by consolidating itself and seeking to excel in its current statutory functions in terms of depth and quality of work.
- (62) In anticipation of the possibility of expanding the EOC's portfolio to cover legislation against racial discrimination, we **recommend** that the EOC should work closely with the Government to put in place a sound framework for implementation.

Impartiality of the EOC

- (63) We **recommend** that the EOC Commission should discuss and clearly define the meaning of its duty of "impartiality", having regard to international practices and local circumstances. We further **recommend** that the EOC should consider preparing an explicit policy statement on its interpretation.

Conciliation

- (64) In relation to the EOC's complaints handling function, we **recommend** that the EOC should review whether and, if so, what more assistance the EOC Office should and could provide to the complainants to facilitate conciliation and mediation without compromising the EOC's impartial roles.

- (65) We **recommend** that to institutionalize “conciliation” as part of the core function of the EOC, the EOC may consider the possibility of adopting “conciliation rate” as an overall performance indicator for the staff and the EOC as a whole. The EOC should also step up staff training in conciliation and mediation practices.

Public Education and Promotion

- (66) We **recommend** that the EOC should reaffirm that its ultimate objective is to promote social harmony through changing the community’s attitude towards equal opportunities. To this end, it should intensify its research, publicity, public education and training functions whilst continuing its established policy to initiate litigation where appropriate.
- (67) We **recommend** that the EOC should reaffirm its positioning as a “people-oriented” organization in which people always come first. The EOC should promote equal opportunities using easily understandable language.

A Model Institution

- (68) To enable the EOC to develop as a credible public organization with sound principles and processes, we **recommend** that the EOC should, where appropriate and feasible, formalize its rules and procedures in human resource management in its recruitment, appointment, retirement and termination of staff, paying due regard to best practices in the public and private sectors.
- (69) We **recommend** that the EOC should formulate clearer guidelines and procedures on the conduct of the business of the Commission and its Committees.
- (70) We **recommend** that the EOC should enhance its system and enforcement measures for the protection of personal and confidential data.

Final Remarks

7. During the inquiry, we were looking backward in order to look forward. We hope that the incidents chronicled in this report can create something positive – an EOC that is more credible. We also hope that our report will encourage the EOC, the Government and all our fellow citizens to reflect on the lessons learnt and put in place improvements to restore the credibility of the EOC for the benefit of Hong Kong.

REPORT

Chapter 1

Introduction

Incidents Relating to the Equal Opportunities Commission

1.1 Between October 2003 and December 2003, incidents relating to the Equal Opportunities Commission (EOC) received considerable media coverage in numerous headlines, commentaries and reports in newspapers, magazines, radio phone-in programmes and television interviews. These incidents became the focus of attention as evidenced in several Legislative Council (LegCo) questions, one motion debate, five special meetings and three regular meetings of the LegCo Panel on Home Affairs as well as two meetings of the LegCo House Committee.

1.2 At first, the issue centred upon the appointment of Mr Michael WONG as the EOC Chairperson as well as the termination of the appointment of Mr Patrick YU as Director (Operations). As things unfolded, more people and issues were drawn into the incidents, rapidly developing a seemingly straight-forward incident into a whirlwind, hitting not only the EOC but also its former Chairpersons. Some rumours about past events resurfaced and were repackaged as fresh allegations against the EOC, former Chairpersons and Mr Wong. All these culminated in Mr Wong's decision to resign on 6 November 2003. A magazine article on "six allegations" published shortly after his resignation triggered another round of controversies.

Appointment of the Panel

1.3 Following extensive discussions within LegCo on how best to conduct an inquiry, the LegCo House Committee decided at its meeting on 20 February 2004 to support the appointment of an independent panel of inquiry by the Secretary for Home Affairs (SHA).

1.4 On 15 May 2004, SHA appointed the Independent Panel of Inquiry with the following terms of reference, which were agreed by the LegCo House Committee -

- (a) to inquire into the appointment and termination of appointment of Mr Patrick YU as Director (Operations) of the EOC and issues related thereto; and
- (b) to inquire into the incidents which have affected the credibility of the EOC and to make recommendations on measures to restore such credibility.

Scope of the Inquiry

1.5 It became apparent to us from the very beginning that the issues surrounding the incidents relating to the EOC were many and varied. Based on the events and reports about the EOC leading to the setting up of the Panel, we decided to focus on the following areas -

- (a) the appointment and termination of the appointment of Mr Patrick YU as Director (Operations);
- (b) the appointment and resignation of Mr Michael WONG as the EOC Chairperson including, among other things, allegations about Mr Wong and the two private gatherings prior to Mr Wong's resignation on 6 November 2003;
- (c) problems encountered by the EOC as an institution, such as various allegations (including the so-called "six allegations") against the EOC; and
- (d) recommendations on measures to restore the credibility of the EOC.

1.6 Some of the incidents could be traced back to the EOC's inception or Mr Wong's office in the Judiciary. They also touch on institutional issues that have far-reaching ramifications. We anticipate that there may be those who would say that our focus has been too narrow and others who would say that we have cast our net too widely.

Practice and Procedure

1.7 Our inquiry is in the nature of a fact-finding exercise. Our aim has been to provide the fullest possible account of the events surrounding the EOC in late 2003 and to identify lessons learnt. We have sought to be independent, impartial and thorough.

1.8 In pursuing our mandate, we have reviewed all available public documents and media reports on the EOC incidents. We sent 230 invitations to various parties asking for their comments. For parties directly involved in the incidents, we invited them to provide detailed chronologies, information and copies of relevant documents and their recommendations on measures to restore the credibility of the EOC. We also published Chinese and English newspaper advertisements on 26 June 2004, extending an open invitation to all interested parties to send us their views. As part of our fact-finding exercise required our seeking to obtain information from those who were involved, we achieved this by a combination of written inquiries and interviews. We received written contributions from 9 organizations and 49 individuals. We also interviewed 20 individuals and eight representatives from two organizations.

1.9 We would like to express our sincere gratitude to those who have given us their support. (Please see **Annex 1**). Some of them have been very generous with their time and have provided us a lot of information and insight. They are committed to rebuilding the EOC as a sound, credible institution dedicated to the promotion of equal opportunities in Hong Kong. Thanks to their cooperation, the work of the Panel has been relatively smooth in most instances.

1.10 Our special thanks go to the Members and staff of the EOC, in particular, the immediate past EOC Chairperson, Mrs Patricia CHU, whose appointment ceased on 15 December 2004. With the express support of the Commission, the EOC Office has provided us with voluminous documentation including the tape recording of an EOC meeting, internal papers, minutes of meetings, correspondences with relevant individuals and detailed statistics. We also have the privilege of having sight of the reports of two major reviews conducted by the EOC on its overall organization and human resource management. Both reports were accepted by the EOC in December 2004 for further consideration and implementation.

1.11 All the submissions were carefully reviewed and, in many instances, additional information and clarification were requested from respondents. The written submissions, interviews and the wide array of documentation and literature formed the basis of our consideration of the issues involved. During the inquiry, we focused on the facts. All our conclusions and recommendations were based on the facts obtained during the inquiry.

1.12 We are determined to ensure that the inquiry is truly independent and impartial. We have appointed an independent law firm to advise us on matters relating to this inquiry. In accordance with the well-established principles of fairness, parties concerned were given a reasonable opportunity to address and comment on the matters affecting them. We also assured respondents that their submissions would be used only for the purpose of the inquiry.

Constraints

1.13 We have been very conscious of our limitations due to the non-statutory nature of the Panel. Notwithstanding the express support given by LegCo House Committee for SHA to appoint the Independent Panel of Inquiry with the agreed terms of reference, there have been on-going concerns and criticisms about the Panel. Nevertheless, we pressed ahead with our work according to our terms of reference and timetable. We are determined to give our very best within these parameters.

1.14 We are dependent upon the goodwill of all parties concerned. Whilst we cannot compel them to respond to our inquiries or attend interviews, we have tried to encourage them to voluntarily assist us in our tasks. Nevertheless, there have been instances where the parties have proven less co-operative.

1.15 Mr Patrick YU informed us that he felt unable to assist in our inquiry despite his joint statement with the EOC on 27 May 2004 in connection with their settlement that he was fully prepared to co-operate with the Independent Panel of Inquiry on its terms of reference. However, he did provide detailed comments on the extract of the draft report circulated to him for comment during the drafting stage, which we have taken into account in finalizing this report.

1.16 Similarly, former EOC Chairperson Ms Anna WU also informed us that she encountered certain constraints in responding to our inquiry, including -

- (a) She was not supplied by the EOC or given access to material documents that pertained to her;
- (b) She was not given consent by the EOC to use or disclose EOC information that she acquired as Chair of the EOC; and

- (c) She was prohibited by law to disclose details regarding the personal data of individuals.

1.17 She did provide detailed comments on the extract of the draft report circulated to her for comment during the drafting stage, which we have taken into account in finalizing this report.

1.18 This report has been prepared in the full knowledge of the legal implications and requirements under the Personal Data (Privacy) Ordinance.

Lessons Learnt

1.19 At the outset of our work, we were clear that we were looking backward in order to look forward. We hope that the incidents chronicled in this report can create something positive – an EOC that is more credible.

1.20 We approach the task of making recommendations with humility. We have benefited from the collective wisdom delivered to us through written submissions and interviews. We have also reviewed relevant literature locally and overseas. We have made an extensive list of recommendations. We recognize the formidable challenges that lie ahead of the EOC. We hope that our report will encourage the EOC, the Government and our fellow citizens to reflect on the lessons learnt with a view to restoring the credibility of the EOC for the benefit of Hong Kong.

Chapter 2

Appointment of Mr Patrick YU as Director (Operations)

Introduction

2.1 This chapter focuses on the appointment of Mr Patrick YU as Director (Operations) of the EOC. We first outline the background of the EOC to set the scene. We then give an overview of the appointment of Mr Yu, followed by more detailed elaboration and assessment on each of the key events leading to the appointment. On the basis of the materials available to us, we have tried to reconstruct a chronology of events on the incidents relating to the EOC, covering the period from 2001 to 2004. The chronology is at **Annex 2**. There were instances where the parties concerned have different recollections of the events. For clarity, we will highlight the source of the information and comments where appropriate.

The EOC

2.2 The EOC is a body corporate established in 1996 under section 63 of the Sex Discrimination Ordinance (Cap. 480). It currently administers three anti-discrimination Ordinances, namely the Sex Discrimination Ordinance, Disability Discrimination Ordinance and Family Status Discrimination Ordinance¹. It has a governing council, commonly referred to as “the Commission”, comprising a full-time Chairperson and between 4 to 16 members. The membership of the EOC, as at 31 January 2005, is at **Annex 3**. All members are appointed by the Chief Executive. The functions and powers of the EOC are set out in the legislation. The primary duties of the EOC are to -

- (a) work towards the elimination of discrimination, particularly discrimination on grounds of sex, disability and family status;
- (b) encourage persons (involved in any act alleged to be unlawful under the anti-discrimination Ordinances) to effect a settlement by conciliation; and
- (c) keep under review the working of the three anti-discrimination Ordinances and, when so required by the

¹ In the consultation paper “*Legislating Against Racial Discrimination*” issued by the Home Affairs Bureau in September 2004, it is proposed that the EOC should be the body responsible for implementing the proposed legislation against racial discrimination.

Chief Executive or otherwise thinks it necessary, draw up and submit to the Chief Executive proposals to amend the legislation.

2.3 The EOC achieves its mission through the following five key functions, the first of which involves statutory powers and duties -

- (a) complaints handling (i.e. investigation and conciliation);
- (b) public education and promotion;
- (c) training and consultancy;
- (d) policy research; and
- (e) legislation and guidelines.

2.4 The Commission has a wide range of statutory powers including the power to employ staff and determine their terms and conditions. The Commission meets once every three months. It has four committees namely, the Administration and Finance Committee (A&FC), the Legal and Complaints Committee, the Community Participation and Publicity Committee and the Public Education and Research Committee. These committees meet every two to three months and, between meetings, conduct business by circulation of papers.

2.5 The A&FC plays a key role in employment matters. According to its terms of reference, it may set up recruitment boards in relation to staff employed at Master Pay Scale (MPS) Point 45 and above and to approve such recommendations as are made by these boards. It also advises on matters related to further employment or termination of service in relation to staff employed at MPS Point 45 and above².

2.6 As at 31 March 2004, the EOC had a permanent staff establishment of 71. The EOC Office is headed by a full-time Chairperson, remunerated at D8 of the Directorate Pay Scale. There are three divisions (i.e. the Operations Division, the Legal Service Division and the Planning & Administration Division) and three units (i.e. the Policy Support & Research Unit, the Promotion & Education Unit and the Training & Consultancy Unit). Its organizational chart is at **Annex 4**. Before March 2003, there were two operations divisions known as the Disability Division and the Gender Division. The appointment of the Director (Operations) stemmed from the decision to amalgamate the Disability and Gender Divisions into a single Operations Division.

² Please see the caveat in paragraph 2.65.

Overview

2.7 In late 2001, the EOC appointed two external consultants to review the complaints handling procedure and the structure of the EOC. The consultants recommended, among other things, that the two operations divisions be amalgamated into a single Operations Division. The EOC endorsed the recommendation in March 2002 and tasked the A&FC to undertake the recruitment of Director (Operations). With the approval of the A&FC, the EOC Office appointed an executive search firm in November 2002. Recruitment advertisements were placed in two local newspapers. An internal circular was issued on 6 December 2002, inviting applications from staff within one month.

2.8 A total of 70 responses to the recruitment advertisements and two internal applications were received. Together with the candidates identified through the executive search process, the executive search firm had considered over 100 candidates for the Director (Operations) post.

2.9 Following the first round of screening, the search firm presented a short-list to the EOC Chairperson in January 2003. The EOC Chairperson then selected four external candidates from the pool and invited an experienced EOC Member to jointly conduct initial screening interviews. They short-listed three candidates for final interview. One of the two internal applicants was also invited to the final interview. The other internal applicant was not considered further after he tendered his resignation from the EOC in January 2003.

2.10 On 15 March 2003, the Convenor of the A&FC approved the recommendation of the EOC Office regarding the composition of the Selection Panel³. This Selection Panel, comprising the EOC Chairperson and four EOC Members, conducted final interviews on 21 and 22 March 2003. After these interviews, the Selection Panel considered one candidate appointable. Members expressed the wish to interview more candidates before making a firm decision. At that juncture, the former EOC Chairperson, Ms Anna WU, mentioned that she knew of Mr Patrick YU who worked in Northern Ireland. She commented that he was “worth exploring”. In fact, as part of Ms Wu’s efforts to widen the field of suitable candidates, Ms Wu had referred a total of three names⁴ including Mr Patrick YU to the search firm. Two

³ The term “Selection Panel” was used instead of “Recruitment Board”, but was intended to have the same meaning. Sometimes, the two terms were used interchangeably.

⁴ Two of the three referred candidates, when approached, declined to apply.

former EOC Members and one serving member were approached for candidate referrals. On 16 March 2003, the EOC Office suggested the search firm to approach and assess Mr Yu's suitability and interest in taking up the role. The EOC Office forwarded a brief description of Mr Yu's background to the search firm on 18 March 2003. On 19 March 2003, the firm established contact with Mr Yu who provided his curriculum vitae to the firm by e-mail on 22 March 2003. The search firm approached Mr Yu on 24 March 2003 again by telephone and, following a telephone interview, recommended Mr Yu to the Selection Panel. The Selection Panel interviewed Mr Yu on 16 April 2003 through video-conferencing, which was considered the best approach given the SARS outbreak in Hong Kong. The Selection Panel unanimously considered Mr Yu the best choice. He and the other appointable candidate identified in the final interview in March 2003 were asked to undertake psychological tests. The tests were completed on 30 April 2003. The reports were forwarded to the EOC on 9 May 2003.

2.11 By circulation of papers between 16 and 19 May 2003, the Selection Panel endorsed the appointment of Mr Yu as Director (Operations). Two of the Selection Panel members ceased to be EOC Members when their term expired on 20 May 2003. On 21 May 2003, the former EOC Chairperson wrote to Mr Yu, extending an offer of appointment as Director (Operations) subject to two conditions⁵. Mr Yu accepted the offer on 7 June 2003 and advised that he would commence work on 1 November 2003. Between June and August 2003, there were exchanges of communications between the EOC and the search firm on reference checks and academic validation. In parallel, Mr Yu was working out a secondment arrangement with his then employer during his employment with the EOC, and there were correspondences between Mr Yu and the EOC Office on this issue. Amidst these exchanges, the Government announced on 2 July 2003 the appointment of Mr Michael WONG as the EOC Chairperson with effect from 1 August 2003. On 17 July 2003, the EOC issued a press release, announcing the appointment of Mr Patrick YU as Director (Operations).

⁵ For details, please refer to paragraph 2.70.

2.12 In summary, the whole appointment process took about 18 months counting from the completion of the external consultancy in February 2002 to the announcement of Mr Yu's appointment in July 2003.

Key Events

Amalgamation of Two Divisions to Form the Operations Division

Findings

2.13 The Director (Operations) post is a newly created post arising from the decision to amalgamate two divisions to form a single Operations Division. Before amalgamation in March 2003, the former Disability Division concentrated on the Disability Discrimination Ordinance whereas the former Gender Division covered both the Sex Discrimination Ordinance and the Family Status Discrimination Ordinance. Each division was headed by a Director. In September 2001, the EOC endorsed a proposal to directly appoint two external consultants to conduct a structural and management review to identify, report and make recommendations concerning -

- (a) any further improvements to complaints handling procedures in accordance with the objective of effective, consistent, fair, timely and efficient resolution of complaints;
- (b) any changes to the structure of the operations divisions that may promote attainment of those improvements; and
- (c) any consequential changes to other aspects of the EOC's structure that will promote more effective achievement of the Commission's objectives.

2.14 The review was undertaken between July 2001 and February 2002. The consultants submitted a total of 75 recommendations, of which there were 45 recommendations on complaints handling procedures, 15 on the structure of the operations divisions and the remaining 15 on other structural issues.

2.15 The recommendations had direct implications on the recruitment of the Director (Operations). First and foremost, the report recommended that there should be a single Operations Division, headed by a Director of Operations, to handle enquiries and complaints of unlawful discrimination under all ordinances. The report concluded that the organizational structure of two separate operations divisions

performing identical functions was inefficient. This arrangement had ensured a high degree of specialization in complaints handling but at the cost of inconsistency between the two divisions, inflexibility in redeploying resources to meet areas of need and competition between teams that had led to some degree of tension and dysfunction in relationships.

2.16 Secondly, the review found that on the whole, complaints were handled well. There were nonetheless areas for improvement to complaints management. The report stated that the primary responsibility for the EOC's management of complaints should lie with the Director of Operations. The Director should supervise the management of complaints by operations staff including close personal involvement in strategic decisions relating to the more difficult and complex matters. It was evident that the Director (Operations) would be expected to play an important role in handling complaints and conciliation.

2.17 Thirdly, the report recommended that the staff of the Operations Division should not undertake policy and research projects, public education and speaking engagements except for those directly related to the investigation, conciliation and management of complaints. This recommendation emphasized that the Operations Division and the Director (Operations) would need to focus on investigation, conciliation and management of complaints.

2.18 The report was discussed at the EOC meeting on 28 March 2002. During the discussion, the then Chairperson, Ms Anna WU, mentioned that staff in the Operations Division should focus on investigation and conciliation. The Director (Operations) needed to be more hands-on in case management and to supervise more effectively so as to guide colleagues. She considered it better if someone heading up operations had a legal background to bring greater awareness of the legal aspects to the job and to help the people below establish consistent benchmarks. She therefore suggested that open advertisement of the post of Director (Operations) be undertaken and the best person for the job be selected. Incumbent operations directors were welcome to apply for the newly created Director (Operations) post. In ending, she mentioned that the timetable for implementation would be decided once Government's decision was known on whether she would continue to be the EOC Chairperson following the expiry of her contract in August 2002.

2.19 After discussion, the Commission endorsed in principle the comments of the EOC Office on the recommendations of the review and agreed to delegate the implementation details and timetable to the A&FC.

The Panel's Observations

Amalgamation of Two Divisions

2.20 The decision to amalgamate two divisions was supported by sound arguments and was formally endorsed by the Commission. There was overwhelming support for the amalgamation amongst the EOC Chairpersons and Members. They all considered it a sensible move conducive to the efficient and consistent operation of the Operations Division. The consultants' recommendations had charted a very clear path for the future development of the Operations Division. The role of the Director (Operations) was sufficiently clear to facilitate the EOC in selecting the best person for the post. The recommendations also clearly pointed out areas for continuous improvement in handling complaints.

2.21 We note that there were some reservations regarding the merger as it would abandon the focus approach to disability and gender issues. Some staff members expressed concern that they were not consulted or informed of the amalgamation proposal until a late stage.

Open Recruitment

2.22 The decision to conduct open recruitment of Director (Operations) was supported by good management reasons and was endorsed by the EOC. It was intended to be a fair, merit-based approach. Open recruitment enabled the EOC to widen the net and find the most suitable candidate for the post. Existing staff could still apply. However, some staff doubted whether open recruitment was necessary and appropriate. Two directors were heading the two operations divisions and the merger would mean that at least one of them had to leave. Furthermore, it was the EOC's recruitment principle to fill vacancies from within the organization whenever possible. The decision to launch an open recruitment, as opposed to internal redeployment (of the two directors) or internal promotion, did not seem to be consistent with this principle. Some staff members were concerned that their career prospects would be adversely affected.

Events Following the Decision to Merge the Two Divisions

Findings

2.23 Following the EOC's decision to conduct open recruitment for the Director (Operations) post in March 2002, the EOC Office did not take any follow-up action until October 2002. The recruitment exercise was deferred until there was a decision on whether her contract (which was due to expire on 1 August 2002) would be renewed. The deferment was also intended to tie in with the retirement and contract expiry date of the former directors to avoid a redundancy situation.

2.24 Between March and October 2002, three events took place. First, the former Director (Gender) and Director (Disability), whose last contracts were due to expire in June 2004 and September 2003, gave notice of resignation in May 2002 and January 2003 respectively. Their resignations took effect in August 2002 and April 2003 respectively.

2.25 Secondly, a staff member from a comparable organization in Australia was invited to join the EOC in July 2002 as a consultant to facilitate the merger and improvement in case management. She later became Gender Division Manager with an expanded portfolio covering most executive duties of the Director (Gender) and the Director (Disability) following their successive resignations. Between June and August 2003, she was Acting Director (Operations).

2.26 Thirdly, the Government announced on 29 July 2002 the re-appointment of Ms Anna WU as the EOC Chairperson for one year from 1 August 2002.

The Panel's Observations

2.27 The appointments of the two Directors ended on an amicable and mutually agreed basis. It demonstrated that employment issues could be settled peacefully if parties concerned had the intention to do so.

2.28 The reappointment of Ms Wu as the EOC Chairperson for one more year was announced on 29 July 2002, three days before the expiry of her contract in August 2002. As we will elaborate in Chapter 6, it would be desirable to announce the decision about key appointments much earlier to facilitate better planning.

2.29 The EOC had taken steps to defer the recruitment process until the EOC chairmanship was clear. It appears to be a conscious attempt not to preempt any incoming Chairperson. We consider this a prudent approach.

Responsibilities of the Director (Operations)

Findings

2.30 As stated in the consultancy brief for the executive search firm and the newspaper advertisements, the Director (Operations) should meet the following requirements -

- (a) extensive experience in management at a very senior level with strategic vision, strong leadership and executive ability;
- (b) good understanding of the issues relating to discrimination and equal opportunities; some legal background is desirable;
- (c) knowledge and experience relating to redress and grievance handling⁶;
- (d) outstanding conceptual, analytical, interpersonal and communication skills; and
- (e) excellent command of English and Chinese, proficiency in Putonghua an advantage.

2.31 The Director (Operations) would report to the EOC Chairperson and the main duties were to -

- (a) manage the Operations Division responsible for handling public enquiries and complaints under the relevant legislation;
- (b) formulate operational policies and procedures and making improvements where necessary;
- (c) develop and implement a strategic plan for the Operations Division;
- (d) undertake duties relating to formal investigation and policy research relating to complaints handling; and
- (e) liaise and build networks with stakeholders including

⁶ Regarding the content of the consultancy brief, Ms Anna WU (former EOC Chairperson) specifically added “knowledge and experience relating to redress and grievance handling” to the requirements for the Director (Operations) post.

politicians, senior management of government and non-government organizations on promoting the mission of the EOC.

2.32 In the internal brief of the search firm, it was also mentioned that the suitable candidate should have the following personal profile -

- (a) is mature, with the stature and the ability to work with senior executives in the government and commercial sectors;
- (b) is independent, possesses strong decision-making skills;
- (c) possesses effective relationship management and team skills, is able to adopt a collaborative approach in working with staff and members;
- (d) is professional and is constantly driving for excellence in his/her work; and
- (e) have strategic vision, strong leadership and execution ability.

2.33 The above attributes were eventually incorporated as eight assessment criteria adopted in the final interviews -

- (a) extensive experience in management at very senior level;
- (b) strategic vision and execution ability (possesses strong decision-making skills);
- (c) strong leadership skills (effective at leading, relationship management and team building);
- (d) outstanding conceptual, analytical, interpersonal and communication skills;
- (e) substantial knowledge and experience relating to redress and grievance handling;
- (f) general understanding of the issues relating to discrimination and equal opportunities;
- (g) excellent command of both Chinese and English (Putonghua an advantage); and
- (h) has a wide range of contacts relevant to the EOC.

The Panel's Observations

2.34 We observe unanimity in defining the attributes and duties of the Director (Operations). All parties agreed that the focus of the Operations Division should be on investigation and conciliation, and that the Director (Operations) should have solid experience in handling complaints. All our respondents did not perceive any change in direction with the change in EOC chairmanship. The defined attributes were sufficiently clear for the Selection Panel to identify suitable candidates for the post.

Appointment of an Executive Search Firm

Findings

2.35 In the appointment of the Director (Operations), the EOC engaged an executive search firm. This followed the practice in the recruitment of the Director (Gender) in 1998. On both occasions, the EOC appointed an executive search firm because the posts were very senior and the choice of suitable candidates was expected to be limited. By circulation of papers in October 2002, the A&FC endorsed the engagement of an executive search firm and noted the proposed recruitment timetable.

2.36 The EOC Office duly followed good procurement practices of inviting five firms to submit proposals. Following an evaluation conducted by EOC Office, the EOC selected Spencer Stuart (SS) as its executive search firm for the exercise. According to SS' search plan, which was subsequently incorporated into an agreement with the EOC, SS had to perform a wide array of functions, including -

- (a) to meet with the EOC and people designated by the EOC to review and understand the organization and problems and challenges of the position;
- (b) to identify prospective candidates;
- (c) to screen and evaluate candidate prospects;
- (d) to present the most outstanding candidates to the client;
- (e) to follow up meeting between the EOC and the candidates;
and
- (f) to conduct in-depth reference checks on the finalists.

The Panel's Observations

2.37 We consider it appropriate for the EOC to have appointed an executive search firm in the recruitment of Director (Operations). It was in line with a previous senior level appointment in the EOC. Appointing an executive search firm not only enhanced the pool of candidates but also added an element of professionalism and independence in the selection process. The functions expected of the firm were broadly in line with common business practices. The firm was expected to work closely with the EOC and provide professional inputs in the selection process. In a way, the firm served as a central sieve through which all candidates were sourced and evaluated.

Source of Candidates and Referrals

Findings

2.38 Under the consultancy agreement, the search firm was required to identify suitable candidates in Hong Kong through search and other channels. The firm should shortlist not more than ten and not less than five candidates.

2.39 The search firm and the EOC sourced candidates using a three-pronged approach. The firm placed advertisements in two local newspapers in December 2002 without an application deadline. The EOC Chairperson issued a memo to staff, inviting internal applications by 31 December 2002. The firm also conducted executive search, including through referrals.

2.40 Referrals were made through informal contacts and word of mouth. There was no formal communication with EOC Members seeking referrals. The former EOC Chairperson, Ms Anna WU, suggested the firm to approach a few current and past EOC Members who might be in a position to suggest names. Ms Wu referred three external candidates (including Mr Patrick YU) and the EOC Office passed two internal applications to the firm for consideration. Ms Anna WU and a number of EOC officers met with Mr Yu in a sharing session on equal opportunities in 2002 when Mr Yu was visiting Hong Kong.

The Panel's Observations

2.41 For senior positions of a highly specialized nature, referral could be a very useful tool in sourcing suitable candidates. It would be desirable if all EOC Members were invited to participate.

Initial Screening

Findings

2.42 In the appointment of Director (Operations), initial screening was conducted before the formation of the Selection Panel for the final interview. The executive search firm screened all 70 respondents to advertisements and other external candidates identified through searches. The firm then submitted a short-list of candidates to the former EOC Chairperson, Ms Wu, who selected four candidates from the pool. Finally, Ms Wu invited an experienced EOC member, who later became the Chairperson of the Selection Panel, to jointly conduct an interview. They selected three out of the four candidates for the final interview. The internal candidate was invited to proceed to the final interview without having to go through the initial screening process. According to Ms Wu's recollection, the A&FC had unanimously approved procedures for the recruitment exercise which did not call for reference back to it.

The Panel's Observations

2.43 The EOC did not have any standard procedures on initial screening. The A&FC was neither informed nor consulted specifically for conducting the initial screening. However, it was a common understanding that the search firm would assist in the initial screening process and eventually the A&FC would be asked to set up a recruitment board to consider the candidates. The search firm provided professional input and played a key role in the process. Given that the attributes of the Director (Operations) had already been clearly defined at that stage, it was not difficult to assess the suitability of candidates based on these agreed criteria. It would be prudent for the EOC Office to keep the A&FC informed of developments to improve transparency.

The Setting up of the Selection Panel

Findings

2.44 Subject to the caveat mentioned in paragraph 2.65(c), the A&FC had the power to set up recruitment boards in relation to staff employed at MPS Point 45 and above and to approve such recommendations as were made by these boards. According to the EOC Office, it did not have any standard practice concerning the establishment of recruitment boards. Generally speaking, the Chairperson would ascertain the availability of EOC Members for assisting in a recruitment exercise and then form a recruitment board. The board would normally comprise A&FC members and non-A&FC members.

2.45 In the case of the Director (Operations) post, a Selection Panel⁷ comprising five EOC Members, including the former EOC Chairperson, was set up. The composition was proposed by Ms Wu, the then Chairperson, in consultation with the Director (Planning and Administration) (DPA). According to Ms Wu, she had in mind diversity and representativeness in proposing members of the Selection Panel.

2.46 In a letter of 23 October 2002 to A&FC members seeking the A&FC's approval for the proposed recruitment procedures for the post of Director (Operations), it was mentioned that the A&FC would be requested to set up a recruitment board and to approve its recommendations. It was reiterated at the A&FC meeting on 18 November 2002 that the A&FC would be requested to set up a recruitment board to interview the short-listed candidates. Other than the above two occasions, matters concerning the appointment of Director (Operations) and Mr Yu were not mentioned, discussed or endorsed by the A&FC in any of its regular meetings or papers circulated before the announcement of Mr Yu's appointment in July 2003. On 12 March 2003, DPA wrote to the Convenor of the A&FC, seeking approval for the composition of the Selection Panel. The Convenor indicated his approval by a return slip dated 15 March 2003. There was no document showing that the Convenor had the delegated authority to exercise powers on behalf of the A&FC.

⁷ The five-member Selection Panel comprised Mr Peter YEUNG as Chairman, and Prof Stevenson FUNG, Dr HUNG Suet-lin, Dr Joseph KWOK and Ms Anna WU as members. The term of appointment of Dr Hung and Professor Fung as EOC Members expired on 20 May 2003 whereas the appointment of Ms Wu as EOC Chairperson ended in August 2003.

2.47 There were no formal terms of reference for the Selection Panel (nor had there been any for past appointments). It was simply understood that the objective was to select the most suitable person for the job. Selection Panel members were given a folder containing the duty list of the Director (Operations) and assessment forms at the time of the interviews. According to Ms Wu, established practice was followed in the appointment of Mr Patrick YU.

The Panel's Observations

2.48 As noted above, A&FC as a committee was not specifically involved in the appointment of the Selection Panel. It was therefore understandable that some A&FC members had subsequently expressed doubts about the status and deliberation of the Selection Panel. The EOC Office should be more vigilant in following the proper procedures in future recruitment exercises.

Deliberation and Recommendation of the Selection Panel

Findings

Deliberation of the Selection Panel

2.49 The Selection Panel discussed the requirements and core competencies of the new post-holder before, during and after the interviews. During the interview, members adopted a standard interview assessment form containing eight selection criteria⁸ with equal weighting.

2.50 The Selection Panel interviewed four candidates (including three external candidates and one internal applicant) on 21 and 22 March 2003. Each interview lasted about an hour. Each member had ample opportunity and time to ask questions during the interview. Members did most of the questioning whereas Ms Wu would only add a few remarks towards the end or after the interview. The decision of the Selection Panel was unanimous.

2.51 While the Selection Panel could identify an appointable candidate on completion of the final interview on 22 March 2003, members expressed the wish to interview more candidates before making a firm decision. At that juncture, Ms Wu mentioned that she knew of a person known as Mr Patrick YU, who was working in Northern Ireland. She considered Mr Yu worth exploring. The Selection Panel therefore

⁸ Please refer to paragraph 2.33.

agreed to ask the search firm to ascertain Mr Yu's interest and suitability before taking the matter further.

2.52 In fact, the EOC Office contacted the search firm on 16 March 2003 and suggested that it should approach and assess Mr Patrick YU's suitability and interest in taking up the job. According to Ms Wu's recollection, there were concerns that the short-listed candidates might not be sufficiently strong in view of the complex nature of the work. This led her to consider the possibility of adding further names for the executive search firm to consider and to recommend to the Selection Panel where appropriate. In response to the firm's request for more information and acting on the instruction of Ms Wu, DPA sent brief information on Mr Yu to the search firm on 18 March 2003. On 19 March 2003, the firm established contact with Mr Yu who provided his curriculum-vitae to the firm by e-mail on 22 March 2003. The firm conducted a telephone interview with Mr Yu on 24 March 2003. Having ascertained Mr Yu's interest and suitability, the firm submitted a report to the EOC Office on 24 March 2003, recommending Mr Yu for the final interview. With the Selection Panel's agreement, arrangements were made to interview Mr Yu on 16 April 2003 through video-conferencing because of the SARS outbreak in Hong Kong.

2.53 Like previous interviews, the interview with Mr Yu lasted about an hour. From the interviews, the Selection Panel identified Mr Yu to be the most suitable candidate whilst another candidate was also appointable. The Selection Panel did not meet again after the interview on 16 April 2003.

Declaration of Interest and/or Knowledge

2.54 The EOC does not have any written policy on whether staff or EOC Members can refer candidates for consideration of employment. The EOC has adopted the "one-tier" system on declaration of conflict of interest as drawn up by the Independent Commission Against Corruption (ICAC). When a member (including the chairman) of a public board has a potential conflict of interest in a matter, he should make full disclosure of his interest. The basic principle is that members' advice should be disinterested and impartial and it is the responsibility of each member to judge and decide if the situation warrants a declaration. Potential conflict of interest includes the situations where "some friendships which might be so close as to warrant declaration in order to avoid situations where an objective observer might believe a member's advice to have been influenced by the closeness of the association."

2.55 During the deliberation of the Selection Panel, there was no express requirement for members to declare any interest in and/or knowledge of the candidates being interviewed. Notwithstanding the absence of this requirement, Ms Anna WU, former EOC Chairperson, did make known to Selection Panel members that she knew Mr Patrick YU, but that he was only an acquaintance.

The Panel's Observations

Deliberation of the Selection Panel

2.56 Leaving aside the fact that the Selection Panel was not appointed by A&FC, the Selection Panel functioned independently and professionally. The Selection Panel comprised five EOC Members (including the former EOC Chairperson), representing almost one-third of the Commission. Among the Selection Panel members, there were A&FC members and non-A&FC members from the academic, social welfare and corporate sectors. The Selection Panel was, by any measure, sufficiently representative. Mr Peter YEUNG, Chairman of the Selection Panel, is a very experienced EOC member with a strong human resource management background and abundant experience in similar selection panels for the recruitment of senior staff in the EOC since 1996. Since June 2003, he has been Chairman of the A&FC. Other members of the Selection Panel were long-serving EOC Members who were reputable professionals in their own fields. The Selection Panel members dedicated a lot of their valuable time and efforts to this recruitment exercise.

2.57 The appointment of a representative Selection Panel was in line with good practices. The collective wisdom and assessment of the Selection Panel should be able to moderate subjective judgment on the part of any individuals. The Selection Panel adopted a standard assessment form with clear marking schemes with reference to relevant attributes expected of the post-holder. Each member was given ample opportunity to make his or her independent judgment on an equal footing. The assessment forms indicated that members' views were unanimous. Based on the above findings, we have reasons to believe that the Selection Panel performed its function dutifully, thoroughly, independently and professionally.

Declaration of Interest and/or Knowledge

2.58 The Selection Panel did not consider Ms Wu's relationship with Mr Yu should require her to refrain from participating in the selection interviews. The search firm also served a professional function in vetting all candidates and referrals. The referral of Mr Yu by Ms Wu, and Ms Wu's participation in the selection interview, did not affect the credibility and independence of this recruitment exercise. It may be advisable for the EOC to stipulate clearer guidelines on referrals and declaration of interests in future recruitment exercises.

Late Referrals

2.59 We note some concerns about the appropriateness for the Selection Panel to have considered Mr Patrick YU, who was a "late" referral and was approached by the executive search firm only in late March. In fact, there was no application deadline for external candidates. The search firm generally viewed the executive search as an on-going process until such time when a hiring decision was made or when the client organization instructed the firm to stop the process. In this recruitment exercise, the executive search firm interviewed 11 potential candidates (including Mr Yu) after submitting the short-list to the EOC Office in January 2003. The Selection Panel had maximum flexibility in considering the suitability of any candidates at any stage until the completion of the whole exercise.

Second Round of Recruitment

2.60 There were suggestions that the Selection Panel should have arranged a second round of advertisement if they had not found a suitable candidate. In fact, the Selection Panel had already identified an appointable candidate after the final interviews in March 2003 although its members wished to ascertain if there were more suitable candidates. The need for a second round of advertisement was never discussed.

Approval of Appointment

Findings

2.61 After the final interviews in April 2003, the two finalists were asked to undergo executive assessment tests on the candidates' psychological profile to ascertain their suitability for the post. These tests were completed in 30 April 2003, and the reports were forwarded to

the EOC Office on 9 May 2003. On 16 May 2003, the EOC Office circulated a letter to members of the Selection Panel, seeking their confirmation that the Commission could proceed to make an offer to Mr Patrick YU. All members confirmed their agreement by 19 May 2003.

2.62 On 21 May 2003, Ms Anna WU, former EOC Chairperson, wrote to Mr Patrick YU, extending an offer of appointment as Director (Operations) subject to two conditions⁹. Mr Yu accepted the offer on 7 June 2003 and advised that he would commence work on 1 November 2003.

2.63 The Selection Panel did not meet again after 26 April 2003. The Selection Panel Report was prepared by the DPA as the Selection Panel Secretary, recommended by Ms Wu and endorsed by Chairman of the Selection Panel on 19 June 2003. Three members of the Selection Panel did not sign the report. In fact, two members ceased to be EOC Members on 20 May 2003. The report was filed for internal record within the EOC, and was not presented to the A&FC or the EOC for endorsement or information.

2.64 Neither the A&FC nor the Commission was involved in the approval of the appointment of Mr Yu. At the EOC meeting on 19 June 2003, Ms Wu reported that the Selection Panel had identified a suitable candidate for the post of Director (Operations) with substantial experience in equal opportunities and human rights gained from overseas, but the name of the candidate was not mentioned. According to Ms Wu, she expected that members would be further informed later. Such information was supplied in the advance copy of the press release on 17 July 2003, announcing Mr Yu's appointment as Director (Operations).

2.65 At the EOC meeting on 18 March 2004, the EOC Office informed the Commission, among other things, that it was discovered that -

- (a) A&FC could not sub-delegate the power of appointment to the Selection Panel.
- (b) The Selection Panel was technically acting outside its capacity in approving the appointment of Mr Patrick YU.

⁹ For details, please refer to paragraph 2.70.

- (c) The written delegations from the EOC to the A&FC had either been overlooked or had gone missing.
- (d) Further inspection of files revealed that a similar incident occurred in respect of the appointment of the former Director (Gender) by the Selection Panel in 1998.

The Panel's Observations

2.66 Whilst the EOC's understanding in late 2003 was that Mr Patrick YU had been properly appointed according to its normal procedures, as stated in paragraph 2.65, the approval process seemed to have certain technical irregularities. Subsequent to the EOC meeting on 18 March 2004, the EOC endorsed a new delegation instrument with no retrospective effect.

2.67 The EOC Office explained that similar practices had been adopted for recruitment exercises in the past. The appointment of Mr Patrick YU was in line with the prevailing recruitment practices adopted by the EOC at the time.

2.68 We consider that the Selection Panel had acted in good faith. The Selection Panel had, quite rightly and reasonably, relied on the EOC Office to ensure that all applicable rules and procedures were followed. It transpired that some Selection Panel members were under the impression that the approval of the A&FC or the Commission would somehow be sought before confirming the offer of appointment. The fact that the Selection Panel's recommendation was not submitted to the A&FC for endorsement left something to be desired. Although the end results might turn out to be the same if proper procedures had been followed, the EOC Office should have been more vigilant in complying with proper procedures.

2.69 The Chairperson's report at the EOC meeting on 19 June 2003 was not intended to seek the endorsement of the EOC for the appointment. It was not necessary to do so as such power had already been delegated to the A&FC.

Reference Checks and Qualification Verification

Findings

2.70 On 21 May 2003, Ms Anna WU wrote to Mr Patrick YU,

extending an offer of appointment as Director (Operations) subject to two conditions, namely, satisfactory references obtained from but not limited to his past and present employers and his being able to take up the appointment on a date mutually agreed by him and the EOC Office. The search firm was responsible for the reference checks and qualifications verification, and there were exchanges of correspondences between the EOC Office and the firm between May and August 2003.

2.71 In an e-mail dated 25 June 2003 to the search firm, DPA, who also served as the Selection Panel Secretary, wrote that “Anna will also speak with Patrick this afternoon and will ask him to provide one or two more referees from Northern Ireland, in addition to his current Chairman. Will provide details for you to follow up once I hear from Anna.” On 30 June 2003, the search firm forwarded the first reference report to DPA containing four references. The firm remarked that “For further referees, I have got your message and Patrick has informed me that he is currently contacting them. Will keep you posted.”

2.72 On 2 July 2003, the search firm wrote to DPA -

“Patrick has 2 further referees in mind but feels that this is a sensitive time for us to approach the 2 refereesHowever, he felt that it might be better for us to approach them in October, after the AGM. This is because his departure is not yet widely known and he is thus concerned that approaching these referees will result in discomfort.”

2.73 On the same day, DPA replied -

“My view is that we can still make the announcement [of the appointment of Mr Patrick Yu as Director (Operations)] in July and information from the other two referees can wait. I’ll get hold of Anna who is now on leave and get her endorsement and get back to you.”

2.74 According to DPA, he spoke with Ms Wu and obtained her verbal agreement. According to Ms Wu’s recollection, the references forwarded by the search firm to the EOC were considered satisfactory. The additional references requested were not a condition of the offer. They were for the record and could be used in future. An appointment like this would be for an initial period of six months only, at which time a decision would have to be made whether to convert it into a three-year agreement. The appointment of Mr Yu as Director (Operations) was

announced on 17 July 2003. On 15 August 2003, the executive search firm submitted the second reference report with two further references as requested earlier.

2.75 As regards academic verification, the firm conducted the verification in early May and informed the EOC verbally on 14 June 2003 that all of the academic qualifications of Mr Yu had been verified. On 4 August 2003, the executive search firm, in response to the EOC Office's explicit request, submitted a written report on the academic verification on Mr Patrick YU.

The Panel's Observations

2.76 Ms Wu specifically requested two additional references, which were provided on 15 August 2003. Whilst the reference check was generally considered a procedural formality and that the first reference report already covered four references including references from Mr Yu's employers, the two additional references had not been received before the announcement of Mr Yu's appointment on 17 July 2003.

Secondment Arrangement with Mr Patrick YU's Employer

Findings

2.77 After Mr Yu's acceptance of the offer on 7 June 2003, there were correspondences between the EOC Office and Mr Yu regarding a proposed secondment arrangement with Mr Yu's employer during Mr Yu's employment with the EOC. On 17 July 2003, Ms Wu wrote to Mr Yu, stating, among other things, that "the EOC is aware of your secondment arrangement with your current employer during your term of employment with us". According to Ms Wu, it is unfortunate that the word "secondment" has been used. There was no "secondment" arrangement in this case. At no time did the EOC enter into any agreement with Mr Yu's employer. The correct term in this case should be "leave of absence". A similar arrangement was made for another senior EOC appointee prior to Ms Wu becoming the Chairperson.

The Panel's Observations

2.78 Normally, a secondment arrangement is made between the seconded's employer and a sponsoring organization that receives the seconded's service during a specified period of time. During the secondment, the seconded continues to be the employee of the original employer rather than that of the sponsoring organization. Based on available records, it is unclear whether the secondment arrangement proposed by Mr Yu was in line with the above-mentioned ordinary meaning of "secondment". It would seem more prudent for the EOC to have clarified this issue with parties concerned before taking the matter further.

Announcement of the Appointment of Mr Patrick YU as Director (Operations)

Findings

2.79 The EOC does not have any standard procedures or guidelines governing the announcements of senior appointments. The EOC has only once made an announcement on the appointment of its Chief Executive in September 1999. No announcement was made in respect of other directorate appointments.

2.80 At the EOC meeting on 19 June 2003, Ms Wu informed Members that the appointment of Director (Operations) would be announced to staff and the public in the near future. Written records indicated that, before Ms Wu went on duty visit and leave in June, she had already asked her colleague to start drafting the press release in consultation with Mr Yu and planning for an announcement in July. At that time, Ms Wu had yet to be informed of the Government's decision not to renew her appointment. According to Ms Wu, the post to which Mr Yu was appointed had been vacant for some time. The post having been filled, and the EOC having been informed in June 2003, it was simply a matter of good administration that it be announced as soon as possible.

2.81 Ms Wu wished to announce the appointment in July 2003 to give it maximum impact in view of Mr Yu's background in racial discrimination and Government's announcement in June 2003 about its intention to legislate against racial discrimination. Ms Wu's wish was clear in an e-mail dated 24 June 2003 from DPA to Mr Yu regarding Mr Yu's decision to resign from the Northern Ireland Human Rights Commission -

“I spoke with Anna and she fully appreciates your decision to resign. Anna will be away from Hong Kong until mid-July. As the HK Government has already announced its intention to legislate against race and you have a very relevant background in this area, we feel that it would be useful to make the announcement when she comes back in the week commencing 14 July. It would also be beneficial to include your appointment as Commissioner for the Northern Ireland Human Rights Commission in the announcement. Anna therefore asked whether you are able to hold off your resignation until the announcement. Please advise.”

2.82 On 2 July 2003, the Chief Executive of the HKSAR (the Chief Executive) announced the appointment of Mr Michael WONG to succeed Ms Anna WU as the EOC Chairperson with effect from 1 August 2003. In early July 2003, Mr Wong asked the EOC Office to arrange a courtesy visit to Ms Wu. The press statement on Mr Yu's appointment was issued on 17 July 2003, upon Ms Wu's return from leave. An advance copy of the press release was sent to EOC Members and Mr Michael WONG on the same day.

The Panel's Observations

2.83 We appreciate that Ms Wu wished to issue a press release on Mr Yu's appointment as it would raise the profile of the EOC in the emerging area of anti-racial discrimination. There was already a plan to make the public announcement in June before Ms Wu learned about the appointment of Mr Michael WONG as the EOC Chairperson. As Mr Yu's employment would not commence until November 2003, it might be desirable to defer the announcement until the new Chairperson took office.

Chapter 3

Termination of the Appointment of Mr Patrick YU as Director (Operations)

Introduction

3.1 This chapter deals with the termination of the appointment of Mr Patrick YU as Director (Operations) of the EOC. It begins with an overview of the reasons and process of termination, followed by an elaboration of our findings and observations on each key event. The termination process was intertwined with the appointment and resignation of Mr Michael WONG as the Chairperson of the EOC, a topic to be covered by Chapter 4. We would like to point out that this chapter contains a lot of views and comments expressed by individuals. We will identify the sources where appropriate. Their presence in this report serves to illustrate our findings, and should not, in any way, be interpreted as the Panel's views or its endorsement of these views.

Overview

3.2 The termination of Mr Yu's contract was the result of a combination of events and factors. The starting point was an article in the South China Morning Post (SCMP) on 18 July 2003, one day after the announcement of Mr Yu's appointment as Director (Operations) of the EOC. A series of discussions and events took place between 1 August 2003 and 18 September 2003, culminating in a decision to terminate Mr Yu's contract. The idea of termination stemmed from Mr Wong's doubts about the suitability of Mr Yu for the Director (Operations) post and for the EOC. Mr Wong had the following specific concerns¹⁰ -

- (a) Mr Yu did not fully appreciate what the role of Director (Operations) entailed, particularly in view of the press interview published in the SCMP.
- (b) Mr Wong was concerned about Mr Yu's lack of judgment and demeanor towards him and the EOC as reflected in the press interview.

¹⁰ These concerns were mentioned in two letters dated 3 and 5 November 2003 from Mr Michael WONG, former EOC Chairperson, to HAB and LegCo Panel on Home Affairs, and subsequently summarized in a letter dated 25 March 2004 from the EOC's external legal adviser to Mr Patrick YU's lawyers.

- (c) According to the feedback from the EOC staff, Mr Yu showed little interest in discussing operational issues during his visit to the EOC between 28 July and 1 August 2003.
- (d) Mr Wong wanted to ensure that the new Director (Operations) was someone who could perform the role as well as work harmoniously with him, EOC Members and staff. Mr Wong did not consider that Mr Yu fulfilled this requirement.
- (e) After reviewing Mr Yu's written summary of his experience in handling investigations and complaints, Mr Wong had serious doubts on Mr Yu's ability to address the EOC's operational needs and to focus on investigation and conciliation.

3.3 Mr Wong also took into account the practical needs of the EOC. He formed the view that, for the following reasons, termination of Mr Yu's contract should be considered -

- (a) In Mr Wong's view, there was no longer any urgency for a new Director (Operations) as the amalgamation of the Gender Division and Disability Division had already been completed before he assumed chairmanship.
- (b) There were sufficient talents within the EOC to take up the position of Director (Operations).
- (c) Serving senior staff members should, as far as possible, be given acting opportunities within the EOC to test their suitability for substantive appointment, should there be such vacancies. It would not only save costs but also boost staff morale and gave them incentives to work even harder.
- (d) It would be better to allow some room for him as the new Chairperson to consider whether to conduct recruitment.

3.4 The following events took place between late July and 18 September 2003 -

- (a) Between 28 July 2003 and 1 August 2003, Mr Yu visited the EOC Office. Mr Wong met with him on 1 August 2003.
- (b) On the instructions of Mr Wong, DPA wrote to Mr Yu on 15 August 2003, requesting a summary of his experience in handling investigations and complaints. Mr Yu provided such a written summary on 22 August 2003.
- (c) Mr Wong met with the senior staff of the EOC in August and

early September 2003. Mr Wong was informed of the discussions and meetings between Mr Yu and senior colleagues during Mr Yu's visit.

- (d) In September 2003, Mr Wong sounded out a few EOC Members on the idea of terminating the appointment of Mr Patrick YU. These Members expressed understanding and support.
- (e) In early September 2003, Mr Wong asked DPA to explore with Mr Yu the possibility of his not coming to Hong Kong. DPA contacted Mr Yu to this effect on 3 September 2003. During the conversation, Mr Yu expressed some difficulty but mentioned that he would consider 12 months' salary plus cash allowance to settle the matter amicably. (Please see paragraph 3.30.) He then went on to say that he might consider settling the matter for at least six months' salary plus allowance. DPA reported to Mr Wong accordingly. On 16 September 2003, DPA, acting on Mr Wong's instructions, informed Mr Yu that the EOC might be prepared to pay him two months' salary plus cash allowance. Mr Yu replied that he would need to consider the offer and would get back to the EOC.
- (f) On 17 September 2003, the EOC received a letter from Mr Yu's lawyers, claiming that there was a breach of contract by the EOC and that they had instructions to issue proceedings for damages for breach of contract, defamation, etc. against the EOC and Mr Wong personally.

3.5 At the EOC meeting on 18 September 2003, Mr Wong raised the issue about the suitability of Mr Yu for employment with the EOC. EOC Members discussed the matter at length for 45 minutes and passed a resolution to give the Chairperson full authority to handle Mr Yu's contract. On 20 September 2003, the EOC Office issued a letter to Mr Yu's lawyers, informing Mr Yu that the EOC Chairperson and Members had formed the view that Mr Yu was not a suitable employee for the EOC. The letter also reiterated the original verbal offer of two months' salary plus allowance as compensation.

3.6 On 23 October 2003, Mr Yu held a press conference in Hong Kong and claimed that he had been unreasonably dismissed and that this was a serious breach of contract. Subsequently there was extensive media coverage on the termination of Mr Yu's appointment and incidents relating to the EOC Chairperson and the EOC. On 6 November 2003, Mr Wong resigned.

3.7 With instructions from the Commission, the EOC Office wrote to Mr Yu's lawyers on 13 November 2003 to ascertain Mr Yu's intentions and to indicate that the EOC was prepared to settle the matter amicably. Between mid-November 2003 and April 2004, there were a series of discussions within the Commission and exchanges of correspondences between the EOC Office and Mr Yu. Following extensive discussions within LegCo on how best to conduct an inquiry into the EOC incidents, the LegCo House Committee expressed support on 20 February 2004 for SHA to appoint an independent panel of inquiry with the agreed terms of reference. The Independent Panel was appointed on 15 May 2004. In the meantime, DPA received a phone call from Mr Yu on 16 April 2004, saying that he would like to settle the matter with the EOC before the commencement of the inquiry by the Independent Panel. After several exchanges of correspondences, the EOC and Mr Yu settled the case with an agreed ex-gratia payment to Mr Yu. They issued a joint statement on 27 May 2004, announcing that they had reached a settlement of the issues related to Mr Yu's contract, and the matter was satisfactorily resolved. We will elaborate on each of the key events mentioned above and set out our observations in the following paragraphs.

Key Events

Mr Yu's Media Interviews in July 2003

Findings

3.8 On 18 July 2003, a day after the EOC's announcement of Mr Yu's appointment as Director (Operations), SCMP and Ming Pao reported an interview with Mr Yu. The SCMP article mentioned, among other things, that -

“Outgoing equal opportunity commission chief Anna Wu Hung-yuk has hired a director of operations with a strong track record in human rights law, in one of her last acts before she is replaced at the end of [July 2003]. Patrick Yu Chung-yin, a former Commissioner of the Northern Ireland

Human Rights Commission, told the South China Morning Post that he would uphold the integrity and mission of the equal opportunities body when he takes up the post in November [2003]Mr Yu has been closely involved in racism and ethnic minority issues in Ireland, and is expected to play an important role in advising the government in these areas. As director of operations division in Hong Kong, he will oversee complaints based on both the gender and discrimination laws, but also hope to play a role in advising on the enactment of anti-racism law.”

3.9 Mr Yu was quoted as saying that -

“I must praise the Hong Kong government for heeding the United Nations and agreeing to an act in racism law and I am keen to see Hong Kong follow the international standard and set up a human rights commission. I think my experience in drafting a single bill [on anti-discrimination laws] will be very useful for Hong Kong, too, but I need to sense the situation there before making any recommendation.”

3.10 Based on information provided by the EOC staff, the EOC’s press office received several media enquiries on contacting Mr Yu for interview after the press announcement on 17 July 2003. The EOC Office informed the reporters that Mr Yu was then on vacation and the EOC could not contact him either. No EOC staff had been involved in handling the media interview for Mr Yu. According to Mr Patrick YU, the press interviews were arranged by the then Chair and her office.

3.11 The SCMP article was one of the factors prompting Mr Wong to reconsider the suitability of Mr Yu for appointment as Director (Operations).¹¹ Mr Wong considered Mr Yu’s remarks inappropriate for a number of reasons. First, Mr Yu’s remarks were not commensurate with his obligations and responsibilities as Director (Operations) or as an employee of the EOC. Secondly, the mention of involvement in the enactment of anti-racism law was outside the scope of his authority as Director (Operations) and suggested a lack of appreciation of what the post entailed. Thirdly, the fact that Mr Yu made such public comments without first consulting the Commission or the incoming Chairperson also

¹¹ The SCMP article was one of the reasons cited by Mr Michael WONG at the EOC meeting on 18 September 2003 to demonstrate Mr Wong’s doubt about the suitability of Mr Yu for the Director (Operations) post. It was also reiterated in the letter of 20 September 2003 from the EOC Legal Adviser to Mr Yu.

reflected disrespect towards EOC Members and the Chairperson. In Mr Wong's view, the article suggested that the EOC would be involved in anti-racism legislation and human rights legislation. This deviated from Mr Wong's plan to focus on the three pieces of anti-discrimination legislation at that stage.

3.12 As part of our fact-finding efforts, we have attempted to seek clarification from Mr Yu and the relevant newspapers on the background of the interview and Mr Yu's comment on whether the press report accurately reflected the content of the interview. Mr Yu informed us that he disputed some of the material facts relating to him, particularly paragraphs 3.16 to 3.21. He commented that certain remarks were prejudicial statements. His views, if available, are presented in relevant parts of this report.

The Panel's Observations

3.13 The EOC did not have any written guidelines governing how the staff should handle the media, including the acceptance of press interviews. The understanding was that the EOC staff should direct all media enquiries and requests for interviews to the EOC press officers for co-ordination.

3.14 The two newspaper articles only received moderate attention. Many EOC Members were not aware of the articles until Mr Wong drew them to their attention. There were mixed views. Some did not show great concern. Some considered it more prudent for a new employee to familiarize oneself with the work and culture of the organization before accepting interviews.

Events in July and August 2003

Findings

Discussion between Ms Anna WU and Mr Michael WONG about the Appointment of Mr Patrick YU

3.15 According to Mr Wong, he tried to make an appointment to meet with Ms Wu, the outgoing Chairperson, as soon as his appointment as the EOC Chairperson was announced. Apart from being courteous, Mr Wong wanted to learn from Ms Wu as much as possible about the EOC before he formally took up chairmanship. Furthermore, he also knew from informal sources that Mr Patrick YU was going to be

appointed Director (Operations) and he was anxious to understand from and discuss this matter with Ms Wu before any final decision was to be made.

Mr Yu's Visit to EOC Office between 28 July and 1 August 2003

3.16 Mr Yu visited the EOC Office between 28 July 2003 and 1 August 2003. The visit was planned by Ms Wu in early June 2003 and sponsored by the EOC. It was intended to allow Mr Yu to familiarize with the EOC's staff and work, and particularly to meet the outgoing and incoming Chairpersons as well as the Acting Director (Operations). No itinerary was planned for Mr Yu, other than on the first day when he was to meet with the EOC management team and be given a short briefing on their areas of work. Mr Yu subsequently met members of the management team individually in the following days.

Meeting between Mr Wong and Mr Yu on 1 August 2003

3.17 On DPA's initiative, Mr Wong met with Mr Yu on 1 August 2003. This was Mr Wong's first day in office as the EOC Chairperson and the last day of Mr Yu's visit to the EOC. The meeting started at around 5:00 pm and the duration was brief. DPA was also present. According to Mr Wong, he asked Mr Yu directly whether he knew the nature of his new job and the kind of work he would be expected to do. Mr Wong also expressed his concerns over the remarks made in the SCMP interview. He did not consider them appropriate comments by an employee who had not yet commenced employment. Mr Wong was concerned with Mr Yu's lack of judgment and poor demeanour towards him and the EOC. In his view, EOC directors had not given press interviews about the role they would personally play, let alone mentioned that they would be responsible for "upholding the integrity of the EOC".

3.18 He informed Mr Yu that it was important for him to understand the true nature of his work. As Chairperson of the EOC, he expected full co-operation from Mr Yu. He reminded Mr Yu that Mr Yu was not the Chairperson and he himself was and would be the Chairperson for the next three years. If there was any conflict between them, then it would be difficult for them to work together for the benefit of the public, and Mr Yu would then be the first one to go, and not Mr Wong. At the end of the meeting, Mr Wong asked Mr Yu to think carefully about the appointment and reconsider whether the job was suitable for him. The whole meeting lasted for less than 15 minutes.

3.19 According to Mr Wong, he did not express in any way that he did not want Mr Yu to take up his appointment in November 2003. At the time of that meeting, Mr Wong had not even considered fully whether Mr Yu was suitable for the post of Director (Operations). That was why he had to meet Mr Yu and to find out whether he was fully aware of what was expected of him as Director (Operations). With hindsight, Mr Wong commented that he should have used more gentle language, but the manner in which he spoke was not meant to be offensive.

3.20 Mr Yu mentioned in his press statement on 23 October 2003 that Mr Wong had clearly indicated his wish for Mr Yu not to commence employment, and that Mr Wong would also revise the duty list of Director (Operations). Based on information provided to the Panel, there has not been any attempt to revise the duty list of Director (Operations) after the meeting between Mr Wong and Mr Yu. According to Mr Wong, he asked Mr Yu to reconsider whether the job was suitable for him. Mr Yu also remarked that Mr Wong had mentioned “Your appointment is pre-empting my appointment.” However, neither Mr Wong nor DPA, who was also present, recalled Mr Wong having made such a remark.

Written Summary of Mr Yu’s Experience

3.21 According to Mr Wong, it was after some initial reservations and hesitation that he decided to call for a written summary of Mr Yu’s experience in handling investigations and complaints. He wanted to make sure that Mr Yu was suitable for the job. This was also within the authority of the EOC Chairperson. He believed that by then he already had sufficient knowledge of the work and operational needs of the division. What he perceived to be necessary and important for the Director (Operations) post was good, solid and practical experience in investigation and conciliation. Acting upon instruction, DPA sent an e-mail to Mr Yu on 15 August 2003. Mr Yu provided such written summary on 22 August 2003. In Mr Wong’s view, while Mr Yu was sufficiently qualified academically and was occupying a senior position in his organization, Mr Yu’s role was more administrative than operational. Whilst Mr Yu had solid experience in drafting anti-racial laws and represented his organizations in conferences and meetings, he was only occasionally involved in helping with settling disputes. His experience in investigation and conciliation was not sufficiently impressive for the post of Director (Operations). Mr Patrick YU disagreed with this view. He mentioned that his experience as outlined in his written summary to Mr Wong showed his front-line experience (both in Hong Kong and in Northern Ireland) and the two Commissions (one as chair of the legal

committee and the other as a member of legal committee with statutory responsibilities in connection with complaints and legal assistance). To Mr Yu, this issue reflects Mr Wong's prejudicial view on him and in his opinion shows Mr Wong's lack of experience in the equality field.

Mr Wong's Meeting with Senior Staff

3.22 After Mr Wong became the EOC Chairperson, he discussed staff matters and other EOC business with senior staff from time to time. Following these meetings, he was convinced that the focus of the new Operations Division should be on investigation and conciliation, and that there was a lot of work required to be done in respect of the EOC's complaints handling function.

3.23 According to information provided by Mr Wong and senior staff of the EOC, Mr Wong was informed that Mr Yu had only held one or two brief discussions with the Acting Director (Operations) towards the end of his one-week visit, and that Mr Yu did not allow sufficient time to meet with the Legal Adviser to discuss operational issues between the two divisions.

Mr Wong's Initial Observation

3.24 Mr Wong discovered that the EOC had had three operational directors in the previous six years, and a Chief Executive who resigned after less than six months in the post. He wanted to ensure that the new Director (Operations) was someone who could fulfill the role as well as work harmoniously with him, EOC Members and staff. He was concerned that the high profile Mr Yu displayed in the media interview contrasted sharply with his plan of a low-key and low-profile administration based on solid work. He had the feeling that Mr Yu might have misconceived his role in the EOC.

3.25 According to Mr Wong, after having served as the EOC Chairperson for a month and having acquainted himself with the EOC staff, he was satisfied that there was sufficient talent within the Commission to take up the position and be able to do the work properly. He believed that serving senior staff members within the EOC should, as far as possible, be given opportunities to act in higher positions if there were vacancies. It would not only save costs but also boost staff morale and give them incentive to work even harder.

3.26 He did not see any urgency in filling the post of Director

(Operations) as the merger had been completed sometime before he arrived, and there had been no change in operational needs since then.

The Panel's Observations

3.27 Mr Wong's decision to seek the termination of Mr Yu's contract was not based on the occurrence of any single incident. He had gone through a fact-finding exercise before seeking the termination of Mr Yu's contract.

Exploratory Attempts before the EOC Meeting on 18 September 2003

Findings

3.28 Mr Wong informed us that it was at the beginning of September 2003 that he decided to seek the EOC's authorization to terminate Mr Yu's contract. He examined the legal position. Mr Wong's understanding was that it would be legal for the EOC to terminate Mr Yu's contract with an offer of compensation. Similar to the provisions in the Employment Ordinance¹², the employment contract between the EOC and Mr Yu provided, among other things, that -

- (a) During the first month of the trial period, the employer may terminate the employee's service at any time without notice or payment in lieu.
- (b) After the first month but before the completion of the trial period, the employer may terminate the employee's service by giving one month's notice in writing or by paying to the employee one month's salary in lieu of notice.
- (c) For an employee who has passed the trial period or who has been appointed without the requirement to serve a trial period, his/her service may be terminated by the employer by giving him/her a minimum of three months' notice or by paying him/her three month's salary in lieu of notice.

3.29 Mr Wong asked DPA to explore with Mr Yu the possibility of his going back to his original post and to see whether the matter relating to

¹² Section 6(3A) of the Employment Ordinance (Cap. 57) provides that, where it has been expressly agreed that the employment is on probation and the contract makes provision for the length of notice required for its termination, the contract may be terminated by either party at any time during the first month of employment without notice or payment in lieu, notwithstanding the length of notice provided for in the contract.

his contract could be amicably resolved, rather than having Mr Yu leave his job and family in Northern Ireland, come to Hong Kong, and then have his employment terminated later. According to DPA, he contacted Mr Yu on 3 September 2003 by telephone and the main points of discussion were as follows -

- (a) Mr Yu said that his organization had already arranged for someone to act in his position and it would be difficult for him to go back to his original position.
- (b) Mr Yu mentioned he would consider 12 months' salary (plus cash allowance) as compensation to settle the matter amicably. He then went on to say he might consider settling the matter for at least six months' salary (plus cash allowance).
- (c) Mr Yu said that what the EOC was considering was an anticipatory breach of contract.
- (d) DPA told Mr Yu that it might be difficult to consider six months' salary (plus cash allowance) as compensation. He explained that according to the terms of EOC employment contracts, when a person had started working with EOC, compensation for termination of service without notice by either the employer or employee would be a maximum of three months' salary. Moreover, during the first month of the trial period, there would be no compensation and between the second and the sixth month, compensation would be one month's salary.
- (e) DPA told Mr Yu that he would convey the conversation to Mr Wong and inform him of Mr Yu's request for compensation.

3.30 Mr Yu disputed the facts provided by DPA as presented in paragraph 3.29, in particular the reference to the 12 months' salary.

3.31 On 5 September 2003, Mr Wong asked DPA to further explore the issue of settlement with Mr Yu, and to find out if Mr Yu would be prepared to accept two months' salary (plus cash allowance) as compensation if the contract were terminated. On 16 September 2003, DPA contacted Mr Yu who said that he would consider the offer of two months' payment and get back to him.

3.32 Mr Wong also explored the issue with a few EOC Members. In the first few weeks of September, Mr Wong met with some EOC

Members on several occasions. He expressed his observations and reservations about the suitability of Mr Yu for the post of Director (Operations), and briefly sounded out Members' views on the possibility of terminating Mr Yu's contract. In addition, Mr Wong approached the Chairman and a member of the Selection Panel and indicated his intention to seek the EOC's endorsement to terminate Mr Yu's contract at the coming EOC meeting. The Selection Panel Chairman, who was also the A&FC Convenor, expressed his understanding and support.

3.33 The above exploratory attempts were relatively uneventful until 17 September 2003. Mr Wong, as the EOC Chairperson, received a letter from Mr Yu's lawyers, claiming that there had been a breach of contract by the EOC. Mr Yu's lawyers advised that they had instructions to issue proceedings for damages for breach of contract, breaches of the Bill of Rights and defamation of character against the EOC and Mr Wong personally. They added that unless they received a proposal to settle Mr Yu's claim within seven days they would issue proceedings without notice. After receiving the letter, Mr Wong discussed with the EOC's Legal Adviser and DPA.

The Panel's Observations

3.34 We consider it understandable for Mr Wong to have made a series of exploratory attempts such as checking the legal position, ascertaining Mr Yu's initial responses and sounding out a few EOC Members before seeking the EOC's authority. There were comments on the appropriateness for Mr Wong to discuss with Mr Yu about the possibility of his returning to his previous job without first obtaining the endorsement of the EOC. In his written submission, Mr Wong put forward three reasons for doing so. First, it was necessary for him to have sufficient information including Mr Yu's initial response before presenting his proposal to the full Commission. Secondly, the Commission was not due to meet until 18 September 2003. Thirdly, it was part of his duties and inherent powers as the Chairperson to start making exploratory enquiries. We consider that it would be preferable for Mr Wong to inform the EOC of the outcome of these exploratory enquiries to facilitate the Commission in making the decision at the meeting.

The EOC Meeting on 18 September 2003

Findings

3.35 On 18 September 2003, Mr Wong chaired his first EOC meeting since his appointment as the EOC Chairperson. Only one member was absent. Of the fifteen members present, eight members were appointed to the EOC in 2003 and four attended the EOC meeting for the first time. The meeting had a full agenda. The discussion about the suitability of Mr Yu for the Director (Operations) post was discussed under “Any Other Business”, and it lasted for 45 minutes.

3.36 As one EOC Member had to leave early, Mr Wong proceeded to “Any Other Business” so that every member had an opportunity to express views. An EOC Member brought up the issue of the recruitment of Director (Operations). Mr Wong informed Members that Mr Patrick YU had been appointed new Director (Operations) and would commence appointment on 1 November 2003.

3.37 At the outset, Mr Wong said in no uncertain terms that he had reservations about the suitability of Mr Yu as Director (Operations). His views are summarized below -

- (a) He indicated concern about an article published in SCMP on 18 July 2003. Mr Yu’s comments in the article were not related to his job duties. His comment about upholding the integrity of the EOC was not his responsibility but that of Members. Mr Wong said that Mr Yu’s responsibilities should be conducting investigations and handling complaints.
- (b) Mr Wong had asked Mr Yu to provide a written summary of his experience in handling complaints and investigation. After reviewing the information, he did not consider Mr Yu to have much experience in these areas.
- (c) Mr Wong expressed the view that Mr Yu was behaving like the Chairman of the EOC, and Mr Wong did not know how to deal with him. It would not be desirable to have internal power strife between him and Mr Yu.

3.38 Mr Wong then asked Members to give him authority to handle Mr Yu’s contract. He added that he had already discussed the matter with one member, who agreed. He then sought the EOC’s authorization to terminate Mr Yu’s contract.

3.39 During the 45 minutes of discussion, one member explicitly said that he found it difficult to agree to rescind the contract with Mr Yu before he arrived as he was properly and legally appointed. This member left the meeting without voting. Other than this member, there was no objection to the proposal of terminating the contract with Mr Yu. Some members explicitly expressed support for Mr Wong, for the following reasons -

- (a) Acknowledging that the Chairperson was a full-time chair, Members should respect him and give more room for him to select his team members and handle matters relating to his subordinate staff.
- (b) The EOC should work as a team, and Members should support the Chairperson's request to give him authority to deal with Mr Yu's contract.
- (c) From labour relations angle, team work was important to ensure the efficient and harmonious operation of the EOC. It would not be in the interest of the EOC to have tension and internal strife at senior level. If the Chairperson felt strongly that he would not be able to work with the new appointee, it would be best if he be given authority to handle the contract sooner rather than later.
- (d) From the perspective of personnel management, recruitment and termination were two different processes. It was not uncommon to withdraw or terminate an appointment if there were changes in direction and work. If the EOC's direction had changed, the Chairperson should be given authority to handle employment issues lawfully.
- (e) Termination of Mr Yu's contract was legally possible. It would be reasonable and fair to terminate the contract if the Chairperson had new objectives and goals.

3.40 During the discussion, some members enquired about the procedures for the appointment of Mr Yu. Members were advised that the A&FC had the delegated authority to appoint employees at MPS Point 45 and above, and the understanding was that Mr Yu was properly interviewed, selected and appointed¹³.

¹³ Please also refer to paragraphs 2.65 to 2.69. Upon a subsequent discovery, the EOC was informed that the Selection Panel was technically acting beyond its capacity as the appointment was made by the Selection Panel which did not have such authority. It was also noted that, at the time of the appointment, the relevant delegation instrument to the A&FC was missing.

3.41 A few members stressed the importance of having strong justifications for terminating Mr Yu's contract, particularly because Mr Yu had not commenced employment. The EOC should ensure that actions were lawful, reasonable and rational. Many members expressed views on how best to handle the termination. These views included the following -

- (a) Members discussed whether it would be better to handle Mr Yu's contract before or after he commenced employment. Some members said that early termination would be fairer and more considerate. If the inclination was to terminate his appointment someday somehow, it would be better to do it before Mr Yu took all the time and effort to relocate his family to Hong Kong and was later asked to leave. Furthermore, early termination would avoid the possibility of conflicts within the EOC.
- (b) A member supported the Chairperson to handle the case, but suggested that the Chairperson could talk to Mr Yu first, explore options and then revert to the EOC for a decision. However, another member pointed out that Mr Yu would commence duty on 1 November 2003 and there would not be sufficient time if the Chairperson had to report back to the Commission. It was therefore suggested that authority be given to the Chairperson to make a final decision.
- (c) The EOC should formulate a strategy to handle media enquiries irrespective of whether the actions involved terminating Mr Yu's contract or not.

3.42 After discussion, Mr Wong once again requested Members to give him authority to handle Mr Yu's contract. A member moved the motion giving the Chair full powers to handle Mr Yu's contract. The motion was seconded. Mr Wong asked whether there were any objections. No objections were raised by any members present. The resolution was passed unanimously.

3.43 Mr Patrick YU submitted that Mr Wong was in breach of the contract before the meeting on 18 September 2003. In his opinion, Mr Wong had dismissed him prior to the Board meeting on 18 September 2003. The meeting was basically to "rubber stamp" Mr Wong's wrong-doing and in particular it was not in accordance with good governance. There was no formal agenda to discuss this important issue

and no notification was given to the Commission of his lawyer's letter of 17 September 2003.

The Panel's Observations

3.44 After Mr Patrick YU's press conference on 23 October 2003, there were extensive media reports on what were discussed and agreed at the EOC meeting on 18 September 2003. On 24 October 2003, the EOC issued a press release, stating that "the EOC had extensively discussed issues relating to Mr Yu's contract and the Chairman of the Commission was given full powers by Members to handle Mr Yu's contract. Members of the EOC fully supported the action taken by the Chairman." However, two EOC Members were subsequently quoted by the media as saying that the EOC did not make a decision to terminate Mr Yu's employment. One member was also cited as commenting that she personally did not endorse the decision to terminate Mr Yu's employment. These reports cast doubt on the legality and appropriateness of the decision and the decision-making process because they suggested that -

- (a) The EOC did not authorize Mr Wong to terminate Mr Yu's contract.
- (b) The EOC expected Mr Wong to explore options and revert to the EOC before making a final decision.
- (c) The item was discussed under "Any Other Business" without any discussion paper.
- (d) Before the EOC meeting, Mr Wong had already started discussion and negotiation with Mr Yu on the possibility of his going back to his original position.
- (e) Mr Wong did not disclose a letter from Mr Yu's lawyers, which claimed that the EOC's action would constitute a fundamental breach of contract and that Mr Yu would issue proceedings for damages against the EOC and Mr Wong personally.
- (f) Eight EOC Members and the Chairperson were newly appointed in 2003. Four members and the Chairperson attended the EOC meeting on 18 September 2003 for the first time, and were not familiar with the procedures.

3.45 In an attempt to find out the true picture, we listened to the tape recording of the 45-minute discussion, examined the minutes of meeting and cross-checked them with the detailed summary of discussions submitted to the LegCo Panel on Home Affairs in November 2003. We also collected views through written submissions and interviews.

Did the EOC Authorize Mr Wong to Terminate Mr Yu's Contract?

3.46 We conclude that the EOC gave Mr Wong the authority to handle Mr Yu's contract, including termination. The motion was unanimously passed by the EOC and was properly constituted. The fact that one member subsequently expressed dissent should not affect the legality of the resolution. EOC Members should be aware that in giving the Chairperson the power to handle the contract, such powers were intended to cover "termination". The wording of the resolution was exactly the same as Mr Wong requested at the outset.

Differences in Interpretation

3.47 Two EOC Members¹⁴ were quoted as saying that the EOC did not specifically endorse a decision to terminate Mr Yu's contract. Another member informed us that she did not believe that she was agreeing to terminate Mr Yu's employment immediately, and she expected Mr Wong to handle the matter, including the option of termination, in a reasonable, rational and lawful manner. Other members believed that they had given clear, unequivocal and absolute authority to Mr Wong to handle Mr Yu's contract, including termination and ancillary negotiation relating thereto.

3.48 There were comments that Mr Wong was expected to explore various options and report back to the EOC before making the final decision to terminate Mr Yu's contract. At the meeting, it was pointed out that the Commission only met once every three months and Mr Yu's contract would commence in November 2003 before the next EOC meeting. It was therefore suggested that full authority be given to the Chairperson to handle Mr Yu's contract. After some discussion, the resolution was passed without any condition to require the Chair to revert to the EOC for a final decision.

¹⁴ As recorded in the post-meeting note of the EOC meeting on 18 September 2003, "an EOC Member who was present at the above meeting wrote to EOC on 27 October 2003 that she did not understand there was a decision to dismiss Mr Yu at the meeting and did not agree with the decision to terminate Mr Yu's employment".

3.49 Whilst it is technically correct to say that the wording of the resolution did not specifically refer to “termination”, we observe that the resolution was passed with the understanding to terminate Mr Yu’s contract. We were also advised by one member that the wording of the resolution was intended to be sufficiently broad to give the Chairman full authority and maximum flexibility to handle the contract (including termination) and settle contractual matters without having to revert to the Commission for directions.

Non-disclosure of the Letter of 17 September 2003 from Mr Yu’s Lawyer and Exploratory Attempts before the Meeting

3.50 Before the EOC meeting on 18 September 2003, Members were not informed of the discussions between the EOC Office and Mr Yu and the letter dated 17 September 2003 from Mr Yu’s lawyers. However, we were advised during interviews with some EOC Members that the disclosure of these enquiries and the letter of 17 September 2003 would not have any material effect on the resolution. Nevertheless, it would be desirable for the EOC Chairperson to share such information with EOC Members to facilitate members in making decisions.

Discussion under “Any Other Business” without any Discussion Papers

3.51 There were comments that the discussion about Mr Yu’s contract was not a formal discussion because it was raised under “Any Other Business” without any paper or copy of the SCMP article. In fact, the EOC does not have formal procedures on how such matters should be dealt with. It is the normal practice to discuss confidential or sensitive matters about senior staff appointments under “Any Other Business” because of the need for confidentiality at that stage. The discussion about the suitability of Mr Yu lasted for 45 minutes and a resolution was passed unanimously.

Termination of Mr Yu’s Contract Shortly after His Appointment

3.52 The two EOC Members involved in the Selection Panel remained convinced that Mr Yu was the best candidate among the interviewees in terms of his knowledge of, expertise in and commitment to equal opportunities and human rights issues. Nevertheless, they also appreciated that organizational success depended on both the calibre of individuals and the inter-personal dynamics of the team. Acknowledging that Mr Wong had very strong views about the suitability of Mr Yu for the Director (Operations) post, both Members respected

Mr Wong's judgment and expressed their full support for Mr Wong. After all, recruitment and termination were two distinct processes. In the interest of ensuring that the EOC had a strong and harmonious team to achieve its organizational objectives, both Members supported the resolution to give Mr Wong authority to handle Mr Yu's contract, including termination.

Many New EOC Members Unaware of Procedures

3.53 It is noteworthy that the Chairperson and eight members were appointed in 2003. The Chairperson and four members attended the EOC meeting for the first time on 18 September 2003. Apart from the Chair who was full-time, others might be less conversant with the operation and procedures of the Commission at that time. However, there were no signs that any new members felt inhibited to speak up. All members had solid record of public service. They were given ample opportunity to comment. Knowing that a member had to leave the meeting early, Mr Wong deliberately advanced the discussion of this item to ensure that every member had a chance to comment should he or she so wished. Indeed, many members expressed their views at the meeting. The 45-minute discussion was detailed and thorough.

Conclusion

3.54 In view of the foregoing arguments, we conclude that the decision to terminate Mr Yu's contract was properly authorized. It was backed by a resolution passed by the EOC to give the Chairperson full authority to handle Mr Yu's contract. The resolution was passed unanimously without any objection from any members present at the time of voting, and was therefore properly constituted. The wording of the resolution was sufficiently broad to empower the Chairperson to terminate Mr Yu's contract. There was no requirement for Mr Wong to revert to the EOC before the actual act of termination.

3.55 The Commission did not specifically discuss the possible implications of terminating Mr Yu's contract on the credibility and the public image of the EOC. A few members added words of caution about the sensitivity of the issues and the need to handle the matter carefully. Most members were under the impression that the issue was primarily an employment issue.

Developments between 18 September and 22 October 2003

Findings

3.56 Following the EOC meeting on 18 September 2003, the EOC issued a letter on 20 September 2003 to Mr Yu's lawyers to the effect that Mr Yu's comments published in the press were not commensurate with his obligations and responsibilities as Director (Operations) or as an employee of the EOC and suggested a distinct lack of appreciation of the job duties and disrespect towards EOC Members and Mr Wong. The letter also stated that EOC Members and Mr Wong had formed the view that Mr Yu was not a suitable employee for the EOC and that DPA had already discussed with Mr Yu the possibility of offering him two months' salary plus cash allowance in settlement of any claim. After this letter, there were no further written or verbal exchanges between the EOC and Mr Yu or his lawyers until November 2003.

The Panel's Observations

3.57 The month following the EOC meeting on 18 September 2003 was relatively uneventful. The EOC Office seemed to proceed on the basis that the matter was primarily an employment issue and action was in hand to settle the matter through legal means. Pending a response from Mr Yu, the EOC Office did not inform Members of the prior discussions with Mr Yu and developments subsequent to the meeting. With hindsight, had the EOC Office kept EOC Members posted of developments, they would not have been caught unprepared by Mr Yu's press conference on 23 October 2003.

Developments between 23 October 2003 and End December 2003

Findings

3.58 On 23 October 2003, Mr Yu held a press conference in Hong Kong, claiming that Mr Wong had unreasonably dismissed him and that this was a serious breach of contract between the EOC and Mr Yu. Mr Yu demanded an open explanation from Mr Wong on the decision to terminate his appointment. He commented that Mr Wong's act was arbitrary, high-handed and contrary to the principles of natural justice. The press conference was widely reported in the media.

3.59 In response to media enquiries, the EOC issued a statement on 23 October 2003, confirming that it had terminated the contract with

Mr Yu. The matter was then in the hands of lawyers. As there might be legal proceedings, it was inappropriate to make comments at that stage.

3.60 On 24 October 2003, the EOC issued another press statement, stating that “in relation to Mr Yu's contract with the EOC, the matter was extensively discussed among Members at the EOC meeting. Having discussed the matter, the Chairman of the Commission was given full powers by Members to handle Mr Yu's contract. Members of the EOC fully support the action taken by the Chairman.” The draft press release was faxed to EOC Members for comment before issue, although not all of them were able to read and comment on the draft in time. Some requested Mr Wong to arrange an urgent meeting to brief them on the development. Mr Wong had originally planned a meeting on 5 November 2003, which was subsequently postponed. Mr Wong resigned on 6 November 2003.

3.61 In the two weeks following Mr Yu's press conference on 23 October 2003, media reports on the EOC-related issues expanded almost exponentially in terms of number and scope. The issue quickly branched out from the termination of Mr Yu's contract to issues surrounding Mr Wong and his family. During that period, some EOC Members and former EOC Members were quoted as giving inconsistent remarks as to whether the appointment and termination of the appointment of Mr Yu was properly authorized.

The Panel's Observations

3.62 Both the EOC Office and EOC Members seemed to be caught unprepared by Mr Yu's press conference. Some EOC Members were puzzled to see an internal employment matter, which should normally be settled through the legal channel, attracting public attention. As Members were unaware of the developments after the EOC meeting in September, they were not sufficiently informed to respond to the media in one voice.

3.63 With hindsight, a higher degree of transparency could have equipped members and the community with the facts and hence curtailed the proliferation of speculations about these incidents. Had the EOC decided to make public the minutes or the tape recording of the EOC meeting on 18 September 2003, the EOC might have been able to clear the air that the Commission had indeed passed a resolution to give the EOC Chairperson full authority to handle Mr Yu's contract, including termination. The EOC would have had an opportunity to present its side

of the picture so that the community would have a balanced view. As we will elaborate in Chapter 6, we **recommend** that the EOC should take positive steps to enhance transparency in its operation and deliberation so as to prevent the recurrence of similar incidents. The EOC Chairperson should share as much information as possible with EOC Members to facilitate discussions at the EOC meetings. Likewise, the EOC should enhance its transparency vis-à-vis the community.

3.64 Certain EOC Members were reported to have given inconsistent remarks. We **recommend** that the EOC should introduce a spokesperson system whereby the Chairperson or designated Members would represent the EOC in answering enquiries on designated subjects. Individual Members should refrain from expressing personal views on EOC matters in the public. This would ensure that the EOC would have a unified image and a unified voice.

3.65 We also **recommend** that the EOC should consider the possibility of asking Members to take collective responsibility for decisions taken by the Commission. Given that EOC Members represent a diverse community, differences in opinions are inevitable. However, the EOC should seek to be an exemplar in embracing unity in diversity. Once the Commission has made a decision, all Members should respect it and stand by it.

Settlement of the Dispute with Mr Patrick YU

Findings

3.66 On 13 November 2003, the EOC Office wrote to Mr Yu's lawyers to ascertain his intentions and to indicate that the EOC was prepared to settle the matter amicably. On 26 November 2003, Mr Yu's lawyers advised that Mr Yu was seeking compensation of three years' salary plus cash allowance and an apology. On 18 December 2003, the EOC, through its legal representative, wrote to Mr Yu's lawyers reiterating the EOC's offer of two months' salary plus cash allowance. Mr Yu's lawyers responded in January 2004.

3.67 On 20 February 2004, the LegCo House Committee expressed support for SHA to appoint an independent panel of inquiry with the agreed terms of reference. In the meantime, the EOC and Mr Yu continued to exchange correspondences on the legal issues and the question of compensation ranging from two months' to three years' salaries. On 16 April 2003, Mr Yu rang DPA and said, among other

things, that he would like to settle his demand for compensation with the EOC as soon as possible before the commencement of the inquiry by the Independent Panel. He would be willing to settle the matter on receiving compensation from the EOC. SHA announced the appointment of the Independent Panel on 15 May 2004.

3.68 Following a series of negotiations and exchanges, the EOC and Mr Yu reached a settlement in May 2004 and agreed on the payment of an ex-gratia lump sum payment to Mr Yu, without admission of liability, as a full and final settlement of all claims against the EOC and its Members. The EOC and Mr Yu issued a joint statement on 27 May 2004, stating that -

“The EOC and Mr Patrick YU have reached a settlement on the issues related to Mr Yu’s contract, and the matter is now satisfactorily resolved. The successful settlement resulted from amicable discussions, and both parties have agreed to maintain confidentiality on the nature and content of the settlement. The Commission and Mr Yu are fully prepared to co-operate with the Independent Panel of Inquiry on its terms of reference.”

The Panel’s Observations

3.69 It has always been the EOC’s intention to have an early settlement. It is the responsibility of the EOC to promote the spirit of conciliation and settlement. The fact that the dispute between the EOC and Mr Yu was satisfactorily resolved demonstrated that the issue was, in the main, an employment issue and the matter could be amicably settled upon compensation being agreed through the legal channel between the parties concerned if they so wished.

Chapter 4

Incidents Affecting the Credibility of the EOC

Introduction

4.1 The second part of our mandate is to inquire into “the incidents which have affected the credibility of the EOC and to make recommendations on measures to restore such credibility”. It became apparent to us from the very beginning that these incidents and issues were many and varied. Taking into account the events and reports about the EOC leading to the appointment of the Panel, we decided to focus on two main areas, namely, incidents surrounding the appointment and resignation of Mr Michael WONG as the EOC Chairperson and problems encountered by the EOC as an institution. This chapter focuses on the first issue.

4.2 Some of the controversies about Mr Wong’s appointment as the EOC Chairperson touched upon events during Mr Wong’s office in the Judiciary. Consistent with the fundamental constitutional principles of the separation of powers and of the independence of the Judiciary as enshrined in the Basic Law, the scope of our inquiry only covers incidents insofar as the EOC is concerned. We have therefore confined our inquiry to matters having direct relevance to the EOC, and would not comment on matters that should more appropriately be dealt with by the Judiciary.

Overview

4.3 On 2 July 2003, the Government announced the appointment of Mr Michael WONG, a retired Justice of Appeal, to succeed Ms Anna WU as the EOC Chairperson for a term of three years from 1 August 2003. The appointment of Mr Wong, by and large, appeared uneventful until 20 October 2003, three days before Mr Patrick YU convened a press conference on the termination of his contract. Media coverage on Mr Wong, his family and incidents relating to the EOC began to snowball through a combination of local and entertainment news in newspapers, magazines, radio phone-in programmes and TV talk shows. The reports surrounding Mr Wong centred around four allegations -

- (a) Mr Wong was given special approval to continue to receive pension while serving as the full-time EOC Chairperson. The first newspaper report appeared on 20 October 2003.

There were numerous follow-up media reports, commentaries, a LegCo question on 22 October and discussions at the LegCo Panel on Home Affairs.

- (b) Mr Wong resided in a flat given to his daughter by a local businessman. The first media coverage appeared on 29 October 2003, followed by extensive media coverage on Mr Wong and his family.
- (c) A few years before Mr Wong's appointment as the EOC Chairperson, he accepted four air tickets given to his daughter as a gift by a local businessman without notifying the Judiciary.
- (d) Mr Wong faxed an extract of an internal document of the EOC to the media, indicating that Mr Patrick YU was referred to the executive search firm by Ms Anna WU. Incidentally, the extract also included the names of candidates short-listed for the final interview for the Director (Operations) post.

4.4 The above issues were intertwined with the reports on the termination of Mr Yu's contract. On 6 November, Mr Wong convened a press conference to announce his resignation. He tendered his resignation to the Chief Executive who accepted it on the same day.

4.5 Mr Wong's resignation did not put an end to the controversies surrounding the EOC. On 12 November 2003, a local magazine published a feature article on the so-called "Six Allegations"¹⁵ against the EOC and Ms Anna WU, a former EOC Chairperson, alleging that the Government and EOC Members were involved in drafting a confidential document containing these allegations during a private meeting in the night before Mr Wong's resignation. It was revealed that two gatherings were held on 4 and 5 November 2003 involving SHA, Mr Wong and two to three other individuals.

4.6 LegCo expressed concern about the incidents relating to the EOC and held extensive discussions, including -

¹⁵ The article was published in Chinese. The title is "砌胡紅玉 「六宗罪」"

- (a) a LegCo question on 22 October 2003 on Mr Wong's request to continue to receive pension whilst serving as the EOC Chairperson;
- (b) a LegCo question on 19 November 2003 on the termination of Mr Yu's contract;
- (c) a LegCo question on 19 November 2003 on the leakage of the EOC's internal confidential documents;
- (d) a motion debate on 26 November 2003 on the credibility of the EOC; and
- (e) five special meetings and three regular meetings of LegCo Panel on Home Affairs and two meetings of the House Committee.

4.7 On 18 May 2004, SHA announced the reappointment of seven EOC Members whose term exceeded six years.

Key Events

Non-renewal of Ms Wu's Appointment as EOC Chairperson

Findings

4.8 Having served the EOC as the Chairperson for a term of three years, Ms Anna WU was re-appointed for one year from 1 August 2002. On 2 July 2003, the Government announced the appointment of Mr Michael WONG to succeed Ms Wu for three years with effect from 1 August 2003.

The Panel's Observations

4.9 By the time Ms Wu's term expired on 1 August 2003, she had already served as the EOC Chairperson for four years and as an EOC Member for seven years. She is the longest serving Chairperson of the EOC since its establishment. Ms Wu's achievement in promoting equal opportunities in Hong Kong is well recognized and highly appreciated locally and internationally.

4.10 The appointment of a new Chairperson was in accordance with the letter and spirit of the law. Under the Sex Discrimination Ordinance, the term of appointment of the EOC Chairperson should not exceed five years but there is no minimum period of a term of office. A reasonable turnover from time to time would help inject fresh impetus into the EOC in achieving its mission. We will comment on the system and criteria for the appointment of the EOC Chairperson in Chapter 6.

The Appointment of Mr Wong as the EOC Chairperson and Approval for Him to Continue to Receive Pension

Findings

4.11 It was always the Government's intention to identify the most suitable candidate for appointment as the EOC Chairperson. In considering the appointment of the EOC Chairperson for a new term commencing in August 2003, SHA consulted a number of people. According to Mr Andrew LIAO, SHA requested him to enquire if Mr Michael WONG, a retired Justice of Appeal with ample experience serving disability organizations, would be willing to accept the appointment as the EOC Chairperson. At around the end of May 2003, SHA informed his colleagues in HAB that the Chief Executive was considering appointing Mr Wong as the EOC Chairperson.

4.12 When SHA approached Mr Wong on the possibility of appointing him as the EOC Chairperson, Mr Wong had retired from the Judiciary for more than a year. He was the Chairman of the Administrative Appeals Board and a non-executive director of a listed company, both of which were part-time positions, but with remuneration. According to Mr Wong, he was enjoying his retirement life, and was reluctant to take up full-time employment again. When Mr Wong subsequently agreed in principle to accept the appointment as the EOC Chairperson, two HAB officers met him to go through the basic terms and conditions for the position. After being informed by HAB staff that approval would be required, Mr Wong requested that approval be sought for him to continue to receive his pension during his term of office as the EOC Chairperson. HAB was sympathetic and considered Mr Wong's request as an appropriate case to be considered for exemption.

4.13 On 12 June 2003, SHA wrote to the Chief Executive, seeking approval for the appointment of Mr Wong. In his submission, SHA wrote -

“Being a retired Justice of Appeal of the Court of Appeal of the High Court, Mr Wong is highly reputable and widely respected. His strong legal background makes him most qualified for overseeing the work of the EOC, i.e. to implement the Sex Discrimination Ordinance, the Disability Discrimination Ordinance and the Family Status Discrimination Ordinance. Mr Wong has a proven track record in promoting equal opportunities for the disabled and has good connection with rehabilitation group as he has served as the Chairman of the Hong Kong Society for Rehabilitation and the Vice President of New Life Psychiatric Rehabilitation Association. In view of the above, Mr Wong is an ideal candidate for the position.”

4.14 The submission also informed the Chief Executive that Mr Wong had requested to continue to receive his pension during his term of office as the Chairperson of the EOC and that the HAB would try to resolve the matter. On 27 June 2003, the Chief Executive formally approved the recommendation to appoint Mr Wong as the EOC Chairperson.

4.15 Whilst seeking the Chief Executive’s approval of Mr Wong’s appointment, SHA informed the Chief Justice (CJ) by telephone on 17 June 2003 that the Administration would like to appoint Mr Wong as the EOC Chairperson, that Mr Wong wished to continue to receive his pension after appointment and that he would be applying to the CJ for permission. On the advice of the HAB, Mr Wong wrote to the CJ on 19 June 2003 to seek his approval. His letter stated that -

“I have been approached by Dr. Patrick HO of the Administration to take up the post of Chairman of the Equal Opportunities Commission with effect from 1 August 2003. I told Dr Ho that I would be reluctant to return to full time work from retirement unless I could be allowed to retain my monthly pension which is the fruit of many years hard labour that I have just begun to enjoy. The Administration is sympathetic and accepts my request subject to your agreement. I am writing to you to seek your approval under the Pension Benefits (Judicial Officers) Ordinance (a) to take up the appointment of Chairman of the Equal Opportunities Commission, and (b) to continue to receive my monthly pension without interruption.”

4.16 In connection with Mr Wong's application, the Judiciary reviewed the matter as to who should be regarded in law as the authority under s.28(1) of the Pension Benefits (Judicial Officers) Ordinance (Cap. 401). Pension benefits of retired judges and judicial officers are governed by the Pension Benefits (Judicial Officers) Ordinance, Cap. 401¹⁶. Two sections of the Ordinance may be applicable in cases where retired judges and judicial officers take up employment after retirement -

- (a) Under s.34(1), the Chief Executive may direct pension suspension if a person takes up employment that is principally carried on in Hong Kong, within two years after his retirement and without prior permission of the Chief Executive. The authority in this section has been delegated to the CJ, and the Chief Executive as the delegator also retains the power.
- (b) Under s.28(1), pension payment may be suspended if a person is re-appointed to the public service or appointed to a gazetted subvented organization¹⁷. The Civil Service has similar statutory provisions, and there are two exceptions under which pension would not be suspended¹⁸. Section 28(1) is ambiguous as to who should in law be regarded as the approving authority.

4.17 Having reviewed the matter, the Judiciary concluded that the better view was that the discretion under s.28(1) was vested with the Chief Executive. Such discretion has not been delegated to the CJ. It was consistent with the Administration's view that the discretion under equivalent statutory provisions for the Civil Service was vested with the Chief Executive¹⁹. In his reply to Mr Wong on 26 June 2003, the CJ stated that -

“As both section 28(1) and section 34(1) may be applicable, it

¹⁶ Where the retired judges and judicial officers were/are under the Old Pension Scheme, their pension benefits are governed by the Pension Ordinance (Cap. 89). In practice, pension benefits of most serving judges and judicial officers are not under the Old Pension Scheme and are governed by the Pension Benefits (Judicial Officers) Ordinance (Cap. 401).

¹⁷ No subvented organization has so far been gazetted by the Chief Executive.

¹⁸ For details, please refer to the paper for the LegCo Panel on Public Service “*Pension suspension policy for retired civil servants*” (LC Paper No. CB(1)/296/03-04(03)), which mentions two exceptions to the pension suspension policy. They are (a) civil servants appointed as principal officials under the accountability system; and (b) part-time (i.e. not more than 24 hours per week) and short-term employment (i.e. not more than three months).

¹⁹ For details, please refer to Question 11 of the LegCo at its sitting on 12 November 2003.

is my view that the Chief Executive is the proper authority to consider your request for approval.

- (a) As the Chief Executive and only the Chief Executive can consider the matter under s.28(1), it is only the Chief Executive who can consider your application comprehensively under both provisions.
- (b) In view of (a) and having regard to the standing of the post of Chairman of the Equal Opportunities Commission, it is appropriate for the Chief Executive to deal with your case under s.34(1), notwithstanding the delegation to me under that section.”

4.18 When the CJ’s advice was made known to SHA, SHA wrote to the Chief Executive on 27 June 2003, stating that -

“Section 34 of the Pensions Benefits (Judicial Officers) Ordinance stipulates that any judicial officer seeking to become an employee within two years of retirement shall have his pension suspended unless with your approval. As Mr Wong’s pre-retirement leave ended on 9 December 2001, this section would apply. Section 28 of the same Ordinance stipulates that pension may be suspended if a judicial officer is re-appointed to certain subvented organizations (EOC being one of those organizations).

Mr Wong has requested special consideration be given not to suspend his pension. Given that Mr Wong is considered the most suitable candidate for this appointment and that I have tried my best to persuade him to take up this full time post while he is enjoying his retirement, I recommend that approval be given for him to (a) take up the appointment of the Chairperson of the EOC within two years of his retirement pursuant to section 34 of the Ordinance; and (b) continue to receive his pension during his term of office with the EOC.”

4.19 On 29 June 2003, the Chief Executive formally approved SHA’s recommendations. The appointment of Mr Wong was announced on 2 July 2003. On 3 July 2003, SHA issued a letter to Mr Wong, informing him that the Chief Executive had given him permission to take up appointment as Chairperson with effect from 1 August 2003 and to continue receiving his pension. A copy of the letter was sent to the CJ for information.

The Panel's Observations

4.20 Mr Wong had exercised due diligence in seeking the necessary approval for the continuation of his pension payments, first from the CJ and later from the Chief Executive through SHA.

4.21 The Chief Executive had acted within his authority in approving Mr Wong's case. In his response to Hon Albert HO Chun-yan's question at LegCo²⁰, SHA mentioned that -

“The exercise of the power [to suspend payment of pension] is discretionary rather than obligatory. In fact, it has been the Government's policy to exercise the discretionary power to suspend payment of monthly pension to judicial officers who have retired under the Pensions Ordinance or the Pensions Benefits (Judicial Officers) Ordinance and re-appointed to the public service. The criteria for suspension of payment of pension are not set out in the Ordinances. The Chief Executive may consider whether to exercise the discretionary power according to the circumstances of individual cases.”

4.22 SHA added that -

“In appointing [Mr Michael WONG as the EOC Chairperson], we have taken into account that he has to withdraw from his retirement and resign from various offices in the public and private sectors in order to devote himself to work full-time for the EOC and to serve the community. After careful consideration of all factors, the Chief Executive considered [Mr Wong] the most suitable candidate and decided to accept his request for not suspending payment of his pension.”

Allegations about Acceptance of Gifts by Mr Michael WONG

Findings

4.23 In late October and early November 2003, there were media reports, alleging that Mr Wong had accepted gifts (i.e. residence and air tickets) from a local businessman either directly or through his daughter.

²⁰ Please refer to Question 5 of the LegCo at the sitting on 22 October 2003.

Residence

4.24 According to information provided by Mr Wong and Miss Rosaline WONG, Miss Wong was the owner of the property in question, and Mr Wong did not have, and had never had, any proprietary or beneficial interest in the property. The property was purchased in 1998 by Miss Wong through a company.

4.25 In 1999, Mr Wong underwent a cancer surgery. In order to take better care of her parents, Miss Wong repeatedly requested Mr Wong to move to her flat. In around September 1999, Mr and Mrs Wong moved into the residence. While staying with Miss Wong, Mr Wong either paid or contributed to household expenses.

Air Tickets

4.26 There were media reports alleging that Mr Wong had received air tickets from a local businessman a few years before his appointment as the EOC Chairperson. The alleged events took place when Mr Wong was in the Judiciary. Both Mr Wong and Miss Wong confirmed that Mr Wong had never accepted any air-tickets or gifts from the local businessman either directly or through her. In Mr Wong's view, the media coverage on the air tickets was taken out of context, and was a distortion of the conversation between him and the reporter.

Responses of Parties Concerned

4.27 The local businessman in question issued a press statement on 29 October 2003 and held a press conference on 30 October 2003, denying having given Mr Wong any gifts. On 30 October 2003, the Judiciary responded to media enquiries, stating that -

“Regarding circumstances under which judges and judicial officers can accept gifts, the Prevention of Bribery Ordinance (Cap. 201) and the Acceptance of Advantages (Governor's Permission) Notice 1992 are applicable to judges and judicial officers. Unless allowed by relevant provisions, judges and judicial officers are required to seek permission for receiving gifts. Under the Acceptance of Advantages (Governor's Permission) Notice 1992, Government employees are permitted to solicit or accept from a relation any gift (whether of money or otherwise), any discount, any loan of money or any air, sea or overland passage. “Relation” includes child.

There are no provisions governing receipts of personal gifts by their children. During this short period of time, the Judiciary has checked the record for the ten years prior to Mr Wong's retirement. During this ten years' period, Mr Wong did not seek any permission for receiving air tickets as giftsAs far as can be ascertained by the Judiciary, Mr Wong had not heard any cases concerning the local businessman, companies under his name or his employer."

4.28 On 3 November 2003, the Judiciary issued another statement that -

"The Judiciary has viewed with concern the allegation in the media that Mr Wong, a retired judge, had when holding office accepted as a gift of air tickets from a businessman. The acceptance of gifts by judges is governed by section 3 of the Prevention of Bribery Ordinance (Cap. 201) and the Acceptance of Advantages Notice 1992. The Judiciary notes that according to reports in the media -

- (i) The allegation apparently arose from something which Mr Wong had allegedly said in a media interview;
- (ii) the allegation has been denied by the businessman in question and also by Mr Wong's daughter who said it was a gift from her; and
- (iii) the allegation has been reported by members of the public to the ICAC for investigation.

In view of the legal position as regards retired judges and noting that according to media reports, the allegation has been reported to the ICAC for investigation, the Judiciary does not consider it appropriate at present to initiate an inquiry into the matter."

The Panel's Observations

4.29 Whilst the personal affairs of Mr Wong and his family should not have any bearing on the EOC, as things unfolded, these private matters unfortunately became intertwined with the appointment of Mr Wong as the EOC Chairperson and his involvement in the termination of Mr Patrick YU as Director (Operations) of the EOC. The alleged events

took place when Mr Wong was in the Judiciary and there are well-established rules governing the acceptance of advantages by judges. According to media reports, the allegation has been reported to the ICAC for investigation. We therefore do not consider it appropriate to make further comment.

Allegation about Disclosure of an Internal Document by Mr Wong

Findings

4.30 On 1 November 2003, a newspaper report alleged that Mr Wong had disclosed a confidential document to the media. According to Mr Wong, during the conversation with a reporter on 28 October 2003, they talked about the former EOC Chairperson Ms Anna WU and what she told the media in relation to Mr Patrick YU. According to Mr Wong's understanding, Ms Anna WU was quoted as saying²¹ that she did not know Mr Yu before the recruitment exercise and that she had not given his particulars to the head-hunter prior to the recruitment. The reporter asked and Mr Wong told her that he had a note prepared for him by his staff that showed the contrary. The reporter then asked whether she could have a copy. Mr Wong told her that he would let her have a copy only provided that the newspaper would not print the document and would not disclose the source of information. She promised and Mr Wong sent her an extract. He did so because he thought and believed at that time that he should not allow a wrong statement to pass unchecked and unchallenged.

The Panel's Observations

4.31 The document in question was a note prepared by the EOC Office for Mr Wong on the sequence of events relating to the recruitment of Director (Operations). We have access to the original document and note that it was unclassified. The document is an internal EOC document and not a government document and is therefore not governed by the Official Secrets Ordinance.

4.32 Whilst Mr Wong's intention was to clarify misunderstanding, it would be advisable not to disclose documents containing sensitive information to outsiders, albeit an unclassified document.

²¹ According to Ms Anna WU, she had disclosed at all relevant stages the fact that she had met Mr Yu before his recruitment.

Handover Arrangements between Chairpersons

Findings

4.33 According to Mr Wong, as soon as his appointment was announced, he tried to make an appointment to meet Ms Anna WU, the outgoing Chairperson, at the earliest opportunity. Mr Wong considered it a matter of courtesy for him to meet Ms Wu in person. He also felt that he was expected to find out and learn from her as much as possible about the EOC before he assumed chairmanship on 1 August 2003. Furthermore, Mr Wong already heard unconfirmed news that Mr Patrick YU was going to be appointed Director (Operations) and Mr Wong was anxious to understand from and discuss with Ms Wu about this matter before any final decision was to be made²².

4.34 In relation to the handover arrangements between Ms Wu and Mr Wong as the EOC Chairperson, parties concerned have different recollections. According to Mr Wong and DPA, Mr Wong informed DPA in early July 2003 that he would like to pay Ms Wu a courtesy visit. Noting that Ms Wu was on leave and would not be back until 17 July 2003, Mr Wong then asked to make an appointment with Ms Wu on 18 July 2003. When DPA conveyed Mr Wong's request, Ms Wu mentioned that she would be very busy within the first few days after her return to the office and suggested that they could meet on 21 July 2003. DPA informed Mr Wong accordingly and Mr Wong agreed. Ms Wu informed DPA upon her return on 17 July 2003 that it was not possible to meet Mr Wong on 21 July and that she would contact Mr Wong when she was free. DPA informed Mr Wong accordingly on 17 July 2003. According to Ms Wu, she has checked her diary and noted that she had continuous meetings on 21 July 2003 from mid-morning onwards, meetings which had been fixed in advance. In the circumstances, it was highly unlikely that there would have been an additional meeting with Mr Wong, scheduled on the day. She also asked DPA to send Mr Wong an advance copy of the press release on the appointment of Mr Patrick YU on 17 July 2003.

4.35 According to Mr Wong, he made no further requests to see Ms Wu as he had the feeling that she did not want to see him. He was shocked to learn that the appointment of Mr Yu as Director (Operations)

²² On 21 May 2003, the then ^{EOC} Chairperson wrote to Mr Patrick YU, extending an offer of appointment subject to two conditions. Mr Yu accepted the offer on 7 June 2003. For details, please refer to paragraphs 2.11 and 2.62.

was announced on 17 July 2003, the very day that Ms Wu returned. He felt that it was most discourteous of the outgoing chairperson to have done so. He thought that she could have at least informed him of such an appointment as she was aware that he had been trying to make an appointment to see her since early July.

4.36 According to Ms Wu, she made three attempts to call Mr Wong on 18 July 2003. She finally reached Mr Wong and spoke to him on the third attempt. Ms Wu started by outlining the proposed timetable on briefings and meetings with EOC staff members. She invited Mr Wong to a meeting on 28 July and offered to hold a joint press conference with Mr Wong on 30 July 2003. She also extended an invitation to him for a meal. According to Ms Wu, Mr Wong agreed to a meeting on 28 July but according to Mr Wong, he declined Ms Wu's invitation. On 21 July or 22 July 2003, DPA, at the request of Ms Wu, contacted Mr Wong on the arrangements for his visit to the EOC office on 28 July. Mr Wong informed DPA that he would not have the time to come. DPA informed Ms Wu accordingly. Ms Wu asked DPA to send briefing materials to Mr Wong.

4.37 According to Ms Wu, the meeting was fixed for late July 2003 because Ms Wu returned from leave only in the middle of the month and was very busy on return. Further, Mr Patrick YU would be visiting the EOC at the end of the month and it was obviously appropriate for Mr Wong to meet him. Perhaps most important, five division heads within the EOC needed to prepare briefing papers for Ms Wu's review prior to meeting Mr Wong.

4.38 According to Mr Wong, he asked Ms Wu during the telephone conversation why she had done such a thing to him (meaning the announcement of the appointment of Mr Patrick YU) without even letting him know first. "Why was it done in such a hurry?" he asked. Mr Wong then reasoned with Ms Wu that he was the person who would be responsible for running the EOC for the next three years as Chairperson while her term of office would expire in only a few days. He was the one who would have to work closely with Mr Yu.

4.39 There were different recollections on the references to “funerals”, which were widely reported in the media. According to Ms Wu, Mr Wong mentioned that she was walking into “her funeral” whereas he was coming in for three years. He asked why she was pre-empting him, referring to the appointment of the Director (Operations). According to her letter of 22 July 2003 to Mr Wong, Ms Wu was extremely offended by these remarks. Nonetheless, Mr Wong provided her with an apology which she accepted. According to Mr Wong’s recollection, however, he did not mention “walking into her funeral”. Instead, he was referring to the proposed joint press conference as “going to his funeral”. Upon hearing his concerns about the announcement of Mr Yu’s appointment, Ms Wu apologized and tried to explain. Mr Wong told her that he did not accept her apology and there was no point for her to apologize since she had already made the announcement.

4.40 On 22 July 2003, Ms Wu issued a letter to Mr Wong, stating that -

- (a) She was taken aback by Mr Wong’s response. She considered it a very vituperative attack on her, impugning her integrity and professionalism.
- (b) The recruitment exercise for the Director (Operations) commenced in late 2002 and was completed in May 2003, several months before she was made aware of Mr Wong’s appointment. During the period, five candidates, including Mr Patrick YU, were interviewed by a panel of five comprising herself and four EOC Members. Mr Yu was selected unanimously. The announcement of his appointment was planned for release upon her return to Hong Kong in mid-July. The EOC Office provided Mr Wong with a copy of the statement at the earliest opportunity.
- (c) Mr Wong indicated that he did not think the announcement needed to be so high profile. Only two newspapers reported on Mr Yu’s appointment. She could not control what coverage newspapers gave to him or what they wrote about him. Mr Patrick YU was appointed because he happened to be the best person for the job, with very relevant experience and background. He was appointed to serve the needs of the Commission, not to pre-empt Mr Wong. She hoped Mr Wong had a clearer picture surrounding his appointment and that he would not allow these misunderstandings to influence his judgment.

4.41 To Mr Wong, it was a matter of deep regret for him that there was no smooth transition in the handing over of the post of chairperson from Ms Wu to him. He felt that he was forced to a corner and had no choice. He tried every effort to meet Ms Wu because he wanted everything to go smoothly. He was hoping that Ms Wu, as the former EOC Chairperson, would share her experiences so that he would have a better understanding of the Commission. However, despite his repeated requests, she did not want to see him until almost the last day of her term in office. As the new Chairperson of the EOC, he did not feel very welcomed by the outgoing Chairperson. To Ms Wu, she believed she had made serious attempts to ensure a smooth handover. She provided briefing materials to Mr Wong, and offered a meeting, briefing and attendance at a joint press conference but Mr Wong declined her offers.

The Panel's Observations

4.42 Handover arrangements between Chairpersons depend on individual chairpersons since they are not built into the system. We consider a smooth handover desirable for the EOC because an outgoing Chairperson is handing over both the Chair and the administration of the EOC to an incoming Chairperson. The handover should be done in a more formal and professional manner. It was regrettable that such handover arrangements between Ms Wu and Mr Wong did not take place. As EOC Chairpersons were reputable community leaders, they should be trusted to handle the handover without external assistance. The handover process would have been smoother had the appointment of the new EOC Chairperson been announced earlier. This aspect will be covered in greater detail in Chapter 6.

Gatherings on 4 November 2003 and 5 November 2003

Findings

Meeting on 4 November 2003

4.43 In the morning of 4 November 2003, SHA discussed with Mr Andrew LIAO regarding unfavourable media coverage on the EOC, and expressed his wish to meet with Mr Wong. As Mr Liao was then otherwise engaged, he asked Ms Priscilla WONG, a practising barrister and an EOC Member, to arrange a gathering. In late afternoon that day, Mr Wong, SHA, Mr Andrew LIAO and Ms Priscilla WONG gathered at Ms Priscilla WONG's Chambers. During the discussions, SHA and

Mr Liao expressed concerns and words of comfort to Mr Wong. There were times when they were just facing each other and found themselves speechless. Mr Wong informed them that the most responsible and honourable thing for him to do as Chairperson of the EOC and head of his family was to resign from the post. Upon hearing this, SHA asked Mr Wong to consider his decision carefully before any final decision was made. They parted company shortly afterwards. Ms Priscilla WONG did not participate in the discussion as she spent most of the time either attending to her own business or serving the guests.

Meeting on 5 November 2003

4.44 As far as the meeting on 5 November 2003 is concerned, two of the participants of the gathering, Mr Andrew LIAO and Ms Priscilla WONG, have informed us that the gathering is currently the subject of court proceedings initiated by them. On grounds of “sub judice”, they are not at liberty to comment on the gathering.

4.45 According to SHA, he was informed by the HAB staff in the morning of 5 November 2003 that Mr Wong had cancelled²³ an EOC meeting originally scheduled for that day and this had given rise to speculations. He felt he had the duty to understand the situation. In order to have a better understanding of the situation, SHA asked Ms Priscilla WONG to arrange another gathering on that day. According to Mr Liao, SHA requested him to join SHA in meeting with Mr Wong. In addition to the four people who attended the gathering on 4 November, Dr Raymond WU was also invited to join the gathering as he was an EOC Member, and had known Mr Wong for a long time.

4.46 SHA, Mr Liao, Dr Wu, Ms Wong and Mr Wong gathered at Ms Priscilla WONG’s Chambers in late evening on 5 November 2003. The gathering took place in Ms Wong’s private office inside the Chambers. According to Mr Wong, he was very tired, distressed and depressed. Before the gathering, he was trying to cope with the effects of a magazine article about him and his family. As a result, the gathering was a somewhat solemn one. SHA, Mr Liao and Dr Wu had all noticed his state of distress and depression, and they could only express their sympathy. Mr Wong was concerned that the media reports were hurting his family. He informed them that he would make a

²³ The EOC Chairperson issued a notice on 4 November 2003, informing Members of his decision to postpone the meeting originally scheduled for 5 November 2003. SHA became aware of the notice in the morning of 5 November 2003.

statement about his resignation on the following day (i.e. 6 November 2003). Upon hearing this, there was a moment of silence. After a while, Mr Wong was tired and sat down on a settee. Dr Wu tried to comfort him and sat next to him. They started talking to each other and paid no attention to SHA and Mr Liao. Dr Wu asked Mr Wong if he required assistance in drafting a resignation speech since he was so exhausted. Mr Wong thanked him and said that it would not be necessary as he had already prepared a draft and all it needed was a little touch-up and polish.

4.47 According to SHA, when Mr Wong and Dr Wu started discussion about the internal affairs of the EOC and the content of the resignation speech, he felt that it would be better if he should not be present. He then left the private office and met Mr Liao in other parts of the Chambers. Mr Liao had left the private office earlier. Both of them then left the Chambers and found their way to the washroom on another floor as the washroom on that floor was out of service.²⁴ They left the Chambers for 10 to 15 minutes. When they returned to the Chambers, SHA made a few phone calls in the outer office whilst Mr Liao chatted with Ms Wong and attended to his personal business in another private office in the Chambers. SHA and Mr Liao did not return to Ms Wong's private office until some time later. During that period, Ms Wong went back occasionally to her private office and saw Dr Wu talking with Mr Wong, both sitting on a settee.

4.48 In the meantime, Dr Wu and Mr Wong continued their discussion. According to Mr Wong, during the rest of the gathering, he only talked to Dr Wu except when they bid farewell towards the end. They discussed generally about a number of matters in relation to the EOC. As a veteran member of the EOC, Dr Wu was worried about the future of the organization and asked Mr Wong if he would consider outlining some problems and areas for improvement for his successor to follow up. Mr Wong mentioned that the EOC had already appointed two advisers to look into the matter and they were expected to follow up closely. In the ensuing discussion, they talked about the work of the EOC including its efficiency and staff morale. Mr Wong remembered having stressed to Dr Wu the importance of setting up an independent equal opportunities tribunal with judicial power of adjudication to deal with complaints which could not be settled after conciliation. Mr Wong

²⁴ As confirmed by Hongkong Land, the toilets on the floor on which Ms Wong's Chambers was located were under renovation on 5 November 2003. Alternative toilets were on two floors below, and were accessible by staircase and lifts.

asked Dr Wu to pursue this vigorously in the Commission, as this would, in Mr Wong's views, be in the best interest of the community. Mr Wong and Dr Wu also talked about old times. They knew each other in the 1960s when they were serving together as committee members of the New Life Psychiatric Rehabilitation Association.

4.49 According to SHA, when SHA and Mr Liao returned to the private office, the discussion between Mr Wong and Dr Wu was coming to an end. Mr Wong and Dr Wu were talking about the EOC's internal affairs but SHA did not participate in the discussion. He was unable to comprehend fully the context of the discussion as he had left the room for some time, and the only thing he could do was to offer a few words of comfort. According to Mr Liao, he was not familiar with the details of the EOC's operation, and he did not attend to any specific discussion on the EOC's internal matters. According to Ms Wong, she did not participate in the discussion as she had to attend to her personal business from time to time. Eventually, all the five participants re-assembled at Ms Wong's private office to bid farewell. Mr Wong left and other participants left shortly afterwards.

Were Any Documents Drafted During the Gatherings?

4.50 According to information available to us, no drafting was conducted during any of the gatherings. None of the five relevant individuals had seen or read any document containing the so-called "six allegations" before the publication of the article in the EastWeek. SHA and his HAB colleagues had checked with all the staff within HAB who had dealings with the EOC, and ascertained that no document was drafted by anyone from HAB as alleged.

4.51 The resignation statement delivered by Mr Wong on 6 November 2003 was written by Mr Wong himself without outside assistance. The statement made no reference to allegations against the EOC including the so-called "six allegations". Mr Wong did not mention any problems facing the EOC or any allegations against it.

The Panel's Observations

4.52 The fact that the gatherings were held in private just before Mr Wong's resignation understandably arouse attention. However, having regard to the circumstances of the case, it was not unreasonable to arrange private gatherings rather than formal official meetings. They were essentially private in nature. As the Principal Official responsible

for the EOC, SHA felt obliged to understand the situation and plan for the future. It is arguable that official exchanges should best be left with the well-established channels of communications between the HAB and the EOC. In this case, SHA wished to handle the matter in a sensitive and humane manner. Taking into account the distress and agony Mr Wong and his family went through, a private gathering would be appropriate for Mr Wong to ventilate his feelings and views.

4.53 The whole setting was an informal one without meeting agenda, notes taken or papers drafted. After Mr Wong had made clear his intention to resign, and all of them had expressed words of comfort, only Dr Wu continued to engage in conversations with Mr Wong throughout the rest of the gathering.

4.54 Furthermore, judging by the level of details in the article on “six allegations”, it would not have been possible for anyone present at the gathering to have drafted such an article.

Resignation of Mr Michael Wong

Findings

4.55 On 4 November 2003, the EOC Office notified Members of Mr Wong’s decision to postpone the EOC meeting scheduled for 5 November, which was originally convened to brief members on the matter relating to the termination of Mr Patrick YU’s appointment and to prepare for attendance at the LegCo Panel on Home Affairs scheduled for 7 November. On 6 November 2003, Mr Wong tendered a letter of resignation to the Chief Executive, who, on the same day accepted his resignation. He also convened a press conference and delivered the following resignation statement, which was prepared by himself without the assistance of the EOC staff -

“My family, friends and I have been deeply troubled by the recent unfounded accusations against me in the media which are serious personal attacks on me and my family.

Hong Kong is a civilized society governed by the rule of law. No citizen should be tried in public by a media which does not have a full understanding of the incident. But in the past two weeks, my family and I have had to endure, every day, unfair criticism by the media, and I can hardly withstand such a co-ordinated attack by all the press in Hong Kong

single-handedly. Today I deeply feel the destructive power of the media.

I have chosen to remain silent in the past two weeks because I have faith in the spirit of the rule of law. This row solely stemmed from the rescinding of an employment contract signed with EOC. However, I believe any reasonable person should have realized by now that there are ulterior motives behind the recent developments.

A press media has even published reports which are untrue and taken out of context to arouse public sentiment. I wish to reiterate that I have instructed my lawyer to look into these unfair and untrue reports. I reserve the right to take legal action to do myself justice.

I have a clear conscience in this incident. Nevertheless, I will not attend the LegCo meeting tomorrow, not because I want to avoid being questioned, but because at the last moment I suddenly find that I do not have the support that I deserve. I am extremely disappointed. The feeling of being deserted in the end has made me doubt whether I should persevere. I have therefore made the above-mentioned decision [to resign].

The discerning public will clearly understand that this row is actually a political struggle, and to me, it is even political persecution. As the EOC Chairperson, I had the responsibility to make improvements to areas which were less than perfect. I was duty bound to do so even if it would make some people unhappy. I can take it if only my reputation is at stake. However, I do not wish to see my family being subjected to attacks as well. Nor do I wish to see that my good will to serve the community has caused serious harm to my family. I have therefore decided to resign. Should this cause any inconvenience to any party, it is to my most unwilling regret.”

The Panel's Observations

4.56 By the time of his resignation, Mr Wong had only served as the EOC Chairperson for slightly more than three months. During his term of office, he had taken positive steps to initiate a review at the macro level and introduce measures to improve the EOC's operation. These initiatives are conducive to the development of the EOC.

Chapter 5

Problems Encountered by the EOC

Introduction

5.1 Chapter 4 deals with the appointment and resignation of Mr Michael WONG. This chapter focuses on problems encountered by the EOC that have impaired its credibility. These problems broadly cover allegations against the EOC and the EOC's operational issues. As indicated in the media reports and written submissions to the Panel, there is a unanimous view that these problems have an adverse impact on the public perception of the EOC. If they are not properly addressed, they will continue to impact negatively on staff morale and the EOC's credibility. Against this background, we consider it appropriate to present some facts and observations in relation to the substantive issues of the allegations, in the hope that the facts will clear the air where there are false or misleading reports, or identify areas for improvement where there are legitimate concerns.

Overview

Allegations against the EOC

5.2 The most widely reported allegation against the EOC was the article on "Six Allegations" published in EastWeek on 12 November 2003²⁵. The so-called "six allegations" were not independent of allegations against the EOC, mostly anonymous ones, over the years. Between 1996 and 2004, the EOC received 79 complaints, 23 being anonymous ones, against the EOC or individuals related to the EOC. Details are set out in Table 5.1.

²⁵ The article was published in Chinese. The title is "砌胡紅玉 「六宗罪」".

Table 5.1:

Number of complaints against the EOC or individuals related to the EOC between 1996 and 2004

	Names given and persons identified				Anonymous (Sources based on what the senders claimed themselves to be or the guesses of the EOC's Office)				Total
	Staff/ Ex-staff	Clients	Others	Sub- Total	Staff/ Ex-staff	Clients	Others	Sub- total	
1996	-	-	-	-	-	-	-	-	-
1997	-	1	-	1	-	-	-	-	1
1998	2	7	-	9	8	-	1	9	18
1999	6	8	-	14	5	-	1	6	20
2000	-	3	-	3	2	-	-	2	5
2001	-	5	-	5	-	-	-	-	5
2002	-	8	-	8	1	-	-	1	9
2003	1	8	-	9	1	1	-	2	11
2004	2	5	-	7	3	-	-	3	10
Total	11	45	-	56	20	1	2	23	79

Source: the EOC Office

5.3 These allegations and complaints centered on internal management issues such as staffing and operations. Sometimes, they were directed against the management or specific individuals in the management team. These allegations were supported by specific details, which would normally be inaccessible by outsiders. On more than one occasion, the authors claimed to have access to confidential documents leaked by insiders. The article on “six allegations” shared the common features identified above. It was alleged that there was a draft document setting out the following six allegations against the EOC -

- (a) unchecked expansion of the EOC and hiring friends and relatives;
- (b) dismissal of many employees as a result of internal disputes;
- (c) too many legal proceedings and unsuccessful lawsuits;
- (d) manipulation of complaint figures;
- (e) offering favours to lawyer friends; and
- (f) unauthorized disclosure of personal data.

5.4 The article aroused controversies not only because of the so-called “smear campaign” against the EOC and a former EOC Chairperson, Ms Anna WU, but also because it suggested serious flaws in the internal operation of the EOC.

The EOC’ s Response

Findings

5.5 When the article was published on 12 November 2003, Mr Michael WONG, former EOC Chairperson, had already resigned. There was a vacuum in leadership as there was neither a deputy chairperson nor a senior EOC staff acting as the policy and executive head pending the appointment of a new chairperson. The EOC had neither a contingency plan nor a media policy to handle matters of a controversial and urgent nature. At that juncture, some EOC management staff were concerned that the rumours spreading in the community would damage the EOC’ s image and undermine their work. Whilst waiting for the appointment of a new Chairperson, the EOC management team took the initiative to review facts, figures and issues within the EOC’ s operation and presented an information paper to the EOC.

5.6 The paper was discussed at the EOC meeting on 4 December 2003 under “Any Other Business”. Members were invited to note the information and decide whether the EOC should make clarifications in the media. Whilst a member commented that the EOC had the responsibility of refuting false reports by the media, other members had different views -

- (a) Members had not been involved in the daily operation of the EOC, it might be inappropriate for them to speak to the media on behalf of the EOC using the information in the paper. It was therefore suggested that all media enquiries should be dealt with by the EOC’ s public relations staff.
- (b) Very often, responses by concerned parties did not help to clarify the issue, and the matter might get even worse.
- (c) It was not necessary to answer the media on each rumour, because there were hundreds of rumours spreading on the internet, making it impossible for the EOC to respond to each one of them.

5.7 After discussion, the Commission noted the contents of the paper but decided not to release the information as a response to the media. The Commission also agreed that the document should be kept in confidence. Since then, the EOC has neither conducted any investigation nor held further discussion on the allegations. Nevertheless, during the EOC's annual press briefing in February 2004, the immediate past EOC Chairperson Mrs Patricia CHU, took the opportunity to present some facts and figures, which indirectly clarified some of the issues mentioned in the allegations.

The Panel's Observations

5.8 There were mixed views on whether the EOC should have issued a formal response to the media based on the paper prepared by the management team. Some thought that the EOC should have done so to refute the allegations and contain the damage to the EOC's credibility. Others appreciated the limitations within which the EOC was operating at that juncture -

- (a) There was a vacuum in leadership in the Commission and the EOC administration, and the EOC was expecting the announcement of a new Chairperson any time.
- (b) EOC Members were not involved in the daily operation of the EOC. Furthermore, eight of the sixteen EOC Members were newly appointed in 2003. They did not have sufficient knowledge of the operation of the EOC to comment on the internal operation. The rapid development of the incidents in late 2003 aggravated the situation, making it even more difficult and sensitive for them to comment on the case.
- (c) There was no formal investigation involving independent EOC Members. They were not in a position to assess whether the facts and figures presented in the paper had adequately addressed the concerns raised in the allegations.

5.9 In a similar incident when the EOC indeed issued a legal letter to rebut allegations in a magazine article in September 2002, the magazine simply did not publish the letter or issue any apology or corrigendum.

5.10 Building on the information in the paper prepared by the management team for the EOC meeting on 4 December 2003 and based on further inputs from the EOC Office, we will present the facts and figures in response to the six allegations in the following paragraphs.

We will first recapitulate the allegations in the article²⁶ and then set out our findings and observations.

Six Allegations and Other Operational Problems

First Allegation – Unchecked Expansion of the EOC and Hiring of Friends and Relatives

Allegation

5.11 The first allegation mentioned in the article was about the rapid expansion of the EOC. It was alleged that the unchecked expansion of the EOC during the tenure of Ms Anna WU, a former Chairperson, resulted in a sharp increase in expenditure. On the one hand, she deleted the post of Chief Executive and took up the duties herself. On the other hand, she created more than 20 posts of different ranks and brought in a number of overseas consultants. Staff dared not speak out and they did not trust one another. As a result, the EOC had an extremely high turnover of staff in the past few years. Owing to the high turnover rate, the EOC had to conduct frequent recruitment exercises during the tenure of Ms Wu. However, more often than not, the posts were not filled by open recruitment or internal promotion, but through internal referral, i.e. friends and relatives were recommended for the jobs.

Findings

Staffing and Finance

5.12 As at 31 March 2004, the EOC had 71 permanent staff, representing an 8% increase over 66 staff in 1997. There were short-term positions, ranging from one in 1996 to 13 positions in 2002. During the same period, the workload of the EOC had increased. The scope of the EOC's work was broadened to cover the Family Status Discrimination Ordinance in 1997. The number of complaints and enquiries doubled from 495 and 6605 in 1997 to 1 032 and 13 626 in 2003 respectively. Applications for legal assistance soared by thirteen times from five in 1997 to 71 in 2003. The EOC also ventured into new areas of work in 2002 by establishing the Training and Consultancy Unit.

²⁶ The article was written in Chinese. The text quoted in this report is the English translation of relevant extract of the article. The allegations are recapitulated under the heading "Allegation", and they are included in this report for the sole purpose of providing the context for the presentation of facts and analysis.

5.13 In June 2000, the post of Chief Executive was deleted²⁷ following the resignation of the post-holder in May 2000. This decision was endorsed by the Commission to revise the organizational structure with a view to streamlining the EOC's operation and to providing better support for the EOC's vision and mission. The EOC Chairperson became more involved in the operational matters and responsible for the EOC's overall administration and management. The savings of \$2.4 million were redeployed to other areas including the upgrading of the DPA post and the setting up of the Training & Consultancy Unit.

Table 5.2:

The staffing and financial situation of the EOC between 1997 and 2004

For the year ending on 31 March	1997	1998	1999	2000	2001	2002	2003	2004	2004 vs. 1997
Staff									
Establishment	66	68	68	70	69	72	71	71	8%
Change	--	3%	0	3%	-1%	4%	-1%	0	
Strength									
Established post	63	67	68	64	67	71	70	65	3%
Short-term post ⁽¹⁾	1	2	5	4	10	13	12	8	700%
Total	64	69	73	68	77	84	82	73	14%
Change	--	8%	6%	-7%	13%	9%	-2%	-11%	--
Funding									Total
Government subvention (\$m)	36 ⁽²⁾	63	69	94	86	81	78	77	584
Change			10%	36%	-9%	-6%	-4%	-1%	--

Source: the EOC Office

Notes:

(1) "Short-term post" does not include secondees.

(2) The operation of the EOC commenced on 20 September 1996. The first fiscal year 1996-97 covered about six months only.

5.14 Government recurrent subvention for the EOC was \$63.4 million in 1997-98. It peaked at \$94.1 million in 1999-2000 and had since dropped by 17% to \$77.5 million in 2003-04. The EOC also embarked on fee-charging services and has accumulated a healthy surplus of \$28.8 million since 1996.

²⁷ According to the minutes of the EOC meeting on 21 June 2000, Members endorsed the recommendation not to replace the Chief Executive post. The post was deleted and savings were redeployed within the EOC.

Table 5.3:

Funding and expenditure of the EOC between 1997 and 2004

For the year ending on 31 March	1997	1998	1999	2000	2001	2002	2003	2004
Government subvention⁽¹⁾								
Subvention (\$m)	36 ⁽⁴⁾	63	69	94	86	81	78	77
Change over previous year ⁽²⁾			10%	36%	-9%	-6%	-4%	-1%
Expenditure								
Staff salaries (\$m)	19.2	42.4	35.0	37.5	39.2	42.5	44.0	39.5
Staff gratuity and benefits, etc		-	10.4	32.6	22.2	17.4	17.1	14.8
Staff unutilized leave (\$m)							1.6	0.2
<i>Sub-total</i>	19.2	42.4	45.4	70.1	61.4	59.9	62.7	54.5
Change over previous year		121%	7%	54%	-12%	-2%	5%	-13%
Legal fees ⁽³⁾ (\$m)		0.078	0.297	2.5	5.6	1.9	6.1	0.8
Publicity and education (\$m)	5.6	8.6	7.6	5.4	6.1	3.6	5.6	3.4
Rent and rates (\$m)	4.1	5.1	6.9	6.3	5.7	5.8	5.4	5.5
<i>Total⁽⁶⁾</i>	35.8	64.4	66.3	88.6	87.8	75.4	83.5	68.3
Change over previous year		80%	3%	34%	-1%	-14%	11%	-18%
Surplus (\$m)	0.1		3.4	6.4		8.3 ⁽⁵⁾		10.6

Source: the EOC Office

Notes:

- (1) Apart from Government subvention, which is the EOC's major source of income, the EOC also has interest income, sundry income and reimbursement of costs from legal litigation, which are not detailed in this table.
- (2) The considerable increase in 1999-2000 is attributable to the lump sum gratuity subvention of \$15.6m received in 1999-2000 when most staff's first 3-year contracts were completed. From 2000-01 onwards, the Government provides gratuity subvention on a monthly basis.
- (3) This item refers to the amount of legal assistance for complainants, and it does not include EOC's legal expenses in lawsuits against the EOC by former staff. The latter amount was \$8.98 million, of which \$3.31 million was charged to the Legal Litigation Reserve.
- (4) The operation of the EOC commenced on 20 September 1996. The first fiscal year 1996-97 covered about six months only.
- (5) The Government allowed the EOC to retain \$8.2 million, which was transferred to the EOC's Legal Litigation Reserve and General Reserve. The remaining \$75,000 was returned to the Government.
- (6) They are grand totals, and include miscellaneous expenditure not indicated in the table.

Recruitment

5.15 According to its recruitment procedures, the EOC's intention is to fill vacancies from within the organization whenever possible and initiate external recruitment only if the vacancy cannot be filled from within the EOC. Aspiring to be a role model, the EOC sets out in its human resource management manual the principle to select an eminently suitable candidate regardless of sex, pregnancy, disabilities and family status, race, colour, religion, age, national origin, citizenship and sexual orientation.

5.16 The EOC recruits suitably qualified candidates in three ways -

- (a) internal recruitment through vacancy notice and selection interviews;
- (b) external recruitment through advertisements or for senior appointments through executive search firms; and
- (c) infrequently through review of unsolicited applications/enquiries if recruitment is extremely urgent and recruitment difficulties have been encountered in the recent past.

Secondments and Consultancies

5.17 As the Australian equal opportunities legislation is the closest to Hong Kong's, the EOC has arrangements with two Australian Equal Opportunity Commissions (AEOCS) on secondment. These placements seek to make use of skills and expertise not available in Hong Kong or to undertake tasks in newly developed areas or of urgent nature. Under these arrangements, the EOC has sent eight staff on short-term overseas placements. It also engaged seven AEOCS commissioners/staff and one consultant from the Human Rights Commission of New Zealand through short-term secondments or consultancy. All except two placements were temporary, ranging from a few weeks to a few months. According to the EOC, AEOCS normally solicit intent and openly select from their staff and then recommend eminently suitable staff for the EOC's consideration.

5.18 Whilst placements are intended to be short-term, two placements turned out to be relatively long-term appointments. The first one was an experienced staff from the AEOCS who was engaged as a training consultant. He later helped establish and head the TCU. He joined the EOC in April 2000 on a one-year contract. His contract was subsequently renewed three times until he left in October 2004. The

second secondee was invited to facilitate the implementation of the merger of two operations divisions and improvement in case management. In July 2002, she joined the EOC as Consultant. She later became Gender Division Manager with an expanded portfolio covering most executive duties of the Director (Gender) and the Director (Disability) following their successive resignations. Between June and August 2003, she was Acting Director (Operations).

5.19 Apart from hiring staff and external consultants, the EOC runs a summer student programme and placement/internship scheme. The EOC may solicit applications through local universities. It may also consider open enquiries, unsolicited applications, referrals and recommendations. The EOC also engages persons for volunteer work from time to time. Persons with a relevant background in equal opportunities or human rights or have a strong interest in these areas will be given priority. Referral is possible. Since 1996, the EOC has had four summer students and nine volunteers.

The Panel's Observations

Staffing and Finance

5.20 Overall speaking, the increase in the EOC's permanent staff establishment was modest and gradual. The increase in short-term posts was also reasonable, given that these positions were only temporary and that the EOC's workload had increased significantly during the same period. On finances, Government recurrent subvention for the EOC had in fact decreased from \$94 million in 1999-2000 to \$78 million in 2003-04. Expenditure on staff salaries remained broadly the same over the years, although the expenses on staff gratuity and benefits experienced a surge in 1999-2000 when the first batch of three-year contracts expired.

Recruitment

5.21 Overall speaking, the EOC's recruitment procedures were similar to those of major public bodies. The Panel has not examined each case to check whether these procedures have been duly complied with. The EOC's recent human resources management review noted allegations about the existence of favouritism. During the course of our inquiry, there appears to be a lingering feeling amongst certain staff members about the possibility of favouritism in filling vacancies, granting training opportunities and handling performance management. To demonstrate that the procedures and their actual implementation are transparent and

fair, we **recommend** that the EOC should keep these procedures under constant review and promulgate clearer guidelines among all staff.

Secondments and Consultancies

5.22 There are merits in introducing secondment with organizations of similar nature as it will allow cross-fertilization of ideas and enable the EOC to benefit from the wealth of experience of jurisdictions that are more advanced in the development of equal opportunities. Nevertheless, we notice some concerns on these secondments and consultancies, particularly the process and manner of their appointment -

- (a) Under the present system, the appointments and renewal of appointments of secondees, irrespective of salary and seniority, are approved by the EOC Chairperson whereas the appointments and re-appointments of senior permanent staff (MPS point 45 and above) have to be approved by the A&FC.
- (b) There were two occasions where secondees were first engaged as consultants but subsequently performed executive or statutory functions.
- (c) There is no formal secondment policy in the EOC. It is advisable to enhance the communication with the staff concerning secondment policies and practices and the secondees' interface with staff with a view to cultivating team spirit within the EOC.
- (d) As the secondment or short-term appointments sought to transfer knowledge and skills not available to the EOC, the EOC should have a clear programme to achieve this goal, as highlighted in the consultancy report on complaints handling²⁸—

“Officers who are not permanent residents of Hong Kong are recruited on the basis that they have the expertise that the Commission requires but that is not available locally. They may be particularly useful in assisting the Commission to develop new areas of activity or new ways of working. They are recruited for two purposes: to make their expertise available to the Commission and to transfer that expertise to the Commission staff and other relevant Hong Kong residents.

²⁸ This is extracted from “*Report of a Review of Complaint Handling and Related Matters*” published in February 2002 by two external consultants engaged by the EOC.

For these purposes to be realized, the Commission needs to ensure that the persons recruited have the expertise that it requires and that they work to a program for the transfer of skills and their phased replacement with local staff. In general at this stage of its development, the Commission should require only short-term support from overseas experts.”

5.23 We encourage the EOC to continue the secondment arrangements with organizations of similar nature. To ensure that future secondments and consultancies achieve their intended purposes, we **recommend** that -

- (a) The EOC should formulate clear guidelines on the engagement of consultants and secondees. The guidelines should cover the objectives, operation and the interface with the EOC staff.
- (b) The EOC Office should submit regular reports to the A&FC²⁹ on the engagement of consultants and secondees so that the A&FC can have a full picture of the staffing support of the EOC.
- (c) In line with the recommendation in paragraph 5.22(d) above, the EOC should ensure that the persons recruited have the expertise that it requires and that they work to a programme for the transfer of skills and their phased replacement with local staff.

5.24 As regards the engagement of summer students, interns and volunteers, the procedures are, understandably, less formal. We **recommend** that the EOC should keep these procedures under constant review and promulgate clearer guidelines so as to preserve the integrity and credibility of the EOC.

Second Allegation - Internal Disputes Leading to the Dismissal of Ten Employees

Allegation

5.25 The second allegation in the article was that there were serious internal disputes in the EOC. It was alleged that some former employees

²⁹ For details on the role and functions of the A&FC, please refer to paragraph 2.5.

of the EOC had lodged complaints against the EOC about their being dismissed unreasonably. Some of them even initiated legal action against the EOC. Since the establishment of the EOC, more than 10 staff members in the Legal Service Division, the Planning and Administration Division and the Operations Division had been dismissed or forced to leave. Two of them took legal action against the EOC while others sought redress through other avenues.

Findings

Staff Turnover

5.26 Among the 70 staff who left the EOC between 1996 and 2004, there were 48 resignations, termination of 11 contracts and non-renewal of 11 contracts. Details are set out in Table 5.4.

Table 5.4:

Staff establishment, strength and attrition from 1997 to 2004

For the year ending on 31 March	1997 ⁽²⁾	1998	1999	2000	2001	2002	2003	2004	2004 vs. 1997
Establishment	66	68	68	70	69	72	71	71	8%
Strength (total)	64	69	73	68	77	84	82	73	14%
Staff Leaving the EOC									Total
Termination by employer	1	3	0	1	3	3	0	0	11
Non-renewal of contract ⁽¹⁾	0	0	0	6	2	0	1	2	11
Resignation	3	10	2	2	7	8	5	11	48
Total	4	13	2	9	12	11	6	13	70
<i>Percentage of total strength</i>	6%	19%	3%	13%	16%	13%	7%	18%	

Source: the EOC Office

Notes:

- (1) Non-renewal of contract means all departure cases upon expiry of contract including new contract offered but not accepted.
- (2) Operation of EOC commenced on 20 September 1996. The first fiscal year 1996-97 covered about 6 months only.

5.27 According to the EOC Office, four out of the 11 cases were terminated within the probation period. Of all the 11 cases, the terminated staff concerned had either been warned, counseled or advised on work deficiencies and necessary improvements prior to termination of their employment. The EOC has established guidelines on the authority and procedures for the termination of staff. The authority for the termination of staff at MPS Point 45 or above is vested with the A&FC. For the rest of the staff, the authority is vested with the EOC Chairperson.

5.28 Two former EOC employees instituted legal proceedings against the EOC. The first case related to non-renewal of contract. The employee sued the Commission, a former EOC Chairperson and some EOC staff for disability discrimination and harassment. The court ruled in favour of the EOC. In the second case, the decision to terminate this employee's contract and the actual termination took place during the tenure of the first EOC Chairperson. The trial is pending.

Staff Relations and Morale

5.29 Based on the written submissions and interviews with staff, we were given to understand that the working environment of the EOC was not very harmonious. Its staff has a diverse background. It also has overseas consultants and secondees whose terms of employment range from a few weeks to a few years. When the staff first joined the EOC, the equality of opportunities was a novel concept in Hong Kong. They had their own vision, mission, values and background. According to Ms Anna WU, former Chairperson, team building exercises and staff events were organized specifically with a view to fostering a harmonious and effective working environment. There was once a staff club, but was dissolved due to insufficient support from the staff and the management. In the recent review of EOC's human resource management policies, procedures and practices (HRM Review), the Review Committee notes that there is a lack of trust amongst management and staff, and amongst colleagues.

The Panel's Observations

5.30 Given that the EOC is a relatively new organization tasked to perform specialized statutory functions hitherto uncommon in Hong Kong, a turnover rate of 3% to 19% is understandable. Staff members need to ascertain whether the job nature matches their expectation and skills. At the same time, the EOC needs to constantly review the staffing structure

and the attributes expected of the staff to ensure that the EOC is capable of meeting the organizational objectives and the changing needs of the community. The present arrangements of having three-year renewable contracts allow both the staff and the EOC the flexibility to review the appointment periodically, although there are concerns that the system of fixed-term contract does not provide sufficient job security.

5.31 In order to enable the EOC to achieve its mission and vision for the benefit of Hong Kong as a whole, the EOC should enjoy the full rights and responsibilities of an ordinary employer to make employment decisions, including non-renewal of contracts and termination of appointments. The EOC should adopt a merit-based system to select and retain only those employees who have the commitment, knowledge and skills to contribute to the EOC's organizational goals. In the HRM Review, it was recommended that EOC management should ensure that the intake subscribe to the belief of equal opportunities.

5.32 The EOC is expected to exercise its discretion on termination and non-renewals in a just and fair manner. The affected parties should be given due process to redress their grievances, if any. Up to December 2004, the EOC has spent \$9.13 million in defending itself in two lawsuits initiated by two former employees. The EOC has not made any attempt to conciliate and settle with the former staff³⁰. It is conceivable that the cost could have been reduced had the EOC adopted a more sensitive approach in handling termination and non-renewal of staff. After all, the EOC should strive to be a model employer who acts not only lawfully but also reasonably and rationally. In this connection, we **recommend** that -

- (a) The EOC should improve its staff performance management system, cultivate a merit-based culture and give sufficient warnings and signals to under-performed staff so that the eventual decision regarding their termination or non-renewal will not be taken by surprise.

³⁰ The Legal Adviser of the EOC explained that the EOC was obliged to encourage conciliation and settlement when handling its statutory complaints functions. However, this approach did not apply to the two lawsuits, which were not complaints lodged under the anti-discrimination legislation. According to Ms Wu, during her tenure as Chair, the litigation was dealt with in accordance with independent legal advice.

- (b) As mentioned in the HRM Review, the EOC should reaffirm the importance of the commitment to equal opportunities as a core competency for staff at all levels. It should recruit and retain staff who subscribe to the belief of equal opportunities. It should provide comprehensive induction programme and regular staff training in this respect.
- (c) The EOC should improve its grievance handling system.
- (d) The EOC should enhance its skills in managing the exit of staff. For instance, as recommended in the HRM Review, it should provide proper training on staff counseling, disciplinary actions and termination of employees.
- (e) The EOC should take positive steps to cultivate team spirit within the EOC.

Third Allegation – Too Many Legal Proceedings and Many Cases Were Lost

Allegation

5.33 The third allegation in the article was that the EOC deliberately encouraged complainants to institute legal proceedings, resulting in a surge in legal costs. However, many of these lawsuits were unsuccessful. One of the missions of the EOC was to clear up misunderstanding and encourage conciliation through education. However, the EOC, under the management of Ms Wu, deviated from this course by encouraging complainants to initiate legal proceedings. Over the years, many cases were taken to court and the legal costs which were paid out of the public purse were substantial. Yet many of these litigation cases were either unsuccessful or could not proceed further. By encouraging the complainants to take the cases to court, this not only caused a waste of resources, but also led to social polarization.

Findings

Handling Complaints

5.34 There have been conscious efforts to institutionalize “conciliation” into the EOC’s complaints handling operation. First, it is a statutory requirement for the EOC to conduct an investigation into the complaint and endeavour, by conciliation, to settle the matter. Secondly, the EOC’s manual on internal operating procedures also states that it is

incumbent upon the EOC to endeavour to conciliate.³¹ The manual further sets out three objectives of conciliation -

- (a) to assist both parties to understand the facts and circumstances of the case;
- (b) to identify forms of redress or settlement satisfactory to both parties; and
- (c) to reach an amicable settlement.

5.35 Thirdly, the EOC introduced a system of “early conciliation” in 1998 whereby parties to the complaint were encouraged to enter into conciliation before starting the formal investigation. This measure sought to facilitate parties in resolving the matter as soon as possible, and had been formalized in the internal manual.

5.36 Fourthly, it is only when conciliation fails will the EOC consider granting legal assistance under normal circumstances. However, the EOC is obliged to consider all applications for legal assistance and exercise its discretion having regard to the statutory right of all complainants to resort to legal action. In the light of the above institutional arrangements, it is a sweeping statement to say that the EOC encourages litigations rather than conciliation.

5.37 Statistics show that most complaints received by the EOC were settled without legal action. Since its establishment and up to end December 2004, the EOC had received 6 367 complaints, of which 3 375 (53%) were related to the Sex Discrimination Ordinance, 2 778 (44%) related to Disability Discrimination Ordinance and the remaining 214 (3%) related to Family Status Discrimination Ordinance. Of these complaints, 5 395 cases were lodged by individual complainants for investigation and conciliation. Among them, 516 (9%) were settled through “early resolution” whereby the cases were resolved before investigation by parties concerned themselves through their own initiatives or alternative channels such as the Labour Tribunal and internal grievance mechanisms. 2 420 cases (44%) were discontinued pursuant to statutory provisions. The EOC made conciliation attempts on 2 389 cases (43%), of which 1 452 (61%) were successful whereas 937 (39%) were unsuccessful.

³¹ Section 4.1.2 of the EOC Manual on Internal Operating Procedures (September 2003) states that “the responsibility of the EOC is a two-fold one, involving the process of investigation and the process of conciliation. It is incumbent upon the EOC to investigate. It is also incumbent upon it to endeavour to conciliate.”

Investigation work on 210 cases (4%) continued whereas investigation on five cases could not be pursued further for various reasons.

Table 5.5:

Percentages of complaints concluded through conciliation and settlement

Distribution of Cases	1997	1998	1999	2000	2001	2002	2003	2004	1997-2004	
									%	No.
Early resolution	14%	10%	5%	3%	7%	11%	3%	2%	9%	516
Discontinued	16%	20%	22%	20%	33%	33%	37%	36%	44%	2,420
Conciliation attempted	23%	32%	36%	32%	13%	39%	36%	38%	43%	2,389
Investigation not pursuable	0	0	0	0	0.1%	0.1%	0	0	0	5
<i>Sub-total</i>	52%	62%	63%	56%	53%	82%	76%	76%	96%	5,330
Under investigation as at end of period	48%	38%	37%	44%	47%	18%	24%	24%	4%	210
Conciliation successful	74%	65%	62%	61%	67%	61%	53%	61%	61%	1,452
Conciliation not successful	26%	35%	38%	39%	33%	39%	47%	39%	39%	937

Source: the EOC Office

5.38 Another batch of 833 cases did not involve a complainant but were either identified by, or reported to, the EOC for follow-up action. Among these cases, 629 (76%) of these cases were resolved, 183 (22%) did not require further action and only 18 (2%) involved consequential legal action.

Application for Legal Assistance

5.39 Applications for legal assistance (LA) have to be vetted and approved by the Legal and Complaints Committee (LCC), an EOC sub-committee made up of EOC Members. As shown in Table 5.6, the EOC granted legal assistance for 126 cases (42%) out of 300 applications between 1997 and 2004. Whilst the number of approved LA applications soared from three cases in 1997 to 71 in 2003, the ratio of approved LA cases as a percentage of total LA applications in fact decreased from 60% in 1997 to 32% in 2003.

Table 5.6:

Percentage of LA cases received and approved

	1997	1998	1999	2000	2001	2002	2003	2004	Total
Legal Assistance (LA) applications									
<i>Received</i>	5	19	21	41	33	60	71	51	300
<i>Approved</i>	3	9	10	26	15	12	23	28	126
<i>Approval rate %</i>	60%	47%	48%	63%	45%	20%	32%	55%	42%

Source: the EOC Office

5.40 The EOC made ongoing attempts to settle the case before or during legal proceedings. Of the 126 LA cases, 31 (25%) were terminated when the applicants withdrew their applications or when the requisite legal advice had been tendered. Fifty-four cases (43%) were settled.

Table 5.7:

Percentage of LA applications terminated and settled

	1997	1998	1999	2000	2001	2002	2003	2004	Total
Approved LA cases	3	9	10	26	15	12	23	28	126
Total LA cases being processed *	3	11	18	33	38	26	35	30	
Termination									
<i>Number</i>	0	1	4	4	6	1	11	4	31
<i>%</i>	0%	9%	22%	12%	16%	4%	31%	13%	25%
Settlement of LA cases before or after legal proceedings									
<i>Number</i>	0	1	2	3	5	13	11	19	54
<i>%</i>	0%	9%	11%	9%	13%	50%	31%	63%	43%

Source: the EOC Office

* The figure includes newly approved cases and cases brought forward from previous years.

5.41 In terms of court action, the EOC issued 36 writs³² between 1997 and 2004. Excluding the ten writs which are under processing as at 31 December 2004, 15 (58%) of the remaining 26 court cases were settled before trial and 11 cases were concluded. The EOC was successful on nine out of the 11 cases, recording a success rate of 82%. Only two cases were dismissed, and they related to sexual harassment cases in which there were no witnesses.

³² In terms of court action, the number is calculated with reference to the number of writs issued. One writ may cover several LA applications against the same respondent involving essentially the same basic facts.

Table 5.8:

LA cases involving court action

	1997	1998	1999	2000	2001	2002	2003	2004	Total
Writs issued	1	1	6	4	6	6	3	9	36
Court cases handled in the year*	1	2	8	9	12	13	10	14	
Court cases settled before trial	0	0	1	0	1	5	5	3	15
% of settlement	0%	0%	13%	0%	8%	38%	50%	21%	42%
Court cases concluded	0	0	2	3	4	1	1	0	11
Successful court cases upon trial	0	0	2	3	2	1	1	0	9
Success rate	-	-	100%	100%	50%	100%	100%	-	82%

Source: the EOC Office

* The figure includes new writs issued and court cases brought forward from previous years.

The Panel's Observations

5.42 The above findings show that the third allegation is unfounded. The EOC has a built-in mechanism to encourage conciliation, and the EOC achieves an overall conciliation rate of 61%³³. It should be noted that the success of conciliation attempts is not entirely within the EOC's control. Nevertheless, the overall conciliation rate will be enhanced through staff training in conciliation and mediation skills. We **recommend** that -

- (a) To further institutionalize “conciliation” as part of the core function of the EOC, the EOC may consider the possibility of adopting “conciliation rate” as a performance indicator for the staff and the EOC as a whole.
- (b) The EOC should step up staff training in conciliation and mediation practices.

5.43 The EOC has a clear, independent and established mechanism to vet and approve LA applications. Whilst there was an increase in the absolute number of legally-assisted cases, the percentage of approved

³³ The conciliation rates varied from year to year. The success rates were 74% in 1997, 65% in 1998, 62% in 1999, 61% in 2000, 67% in 2001, 61% in 2002, 53% in 2003 and 61% in 2004.

application had been declining. For the 11 concluded court cases, the EOC also achieved a remarkable success rate of 82%. Viewed in this light, the EOC is not as litigious as depicted in some media reports. Nevertheless, EOC court cases tend to attract media attention. In particular, the landmark case where the EOC successfully challenged the Secondary School Places Allocation (SSPA) system remains highly controversial, as some people are not convinced that the legal challenge is the most appropriate way to handle the matter. The fact that the EOC won the case has not changed this perception. Without doubt, this case has made a lasting impression in the minds of the community. However, in fairness to the EOC, irrespective of our stance on the SSPA case, we should not allow this high profile court case to overshadow the EOC's ongoing efforts in facilitating conciliation.

The Fourth Allegation - Manipulating Statistics to Exaggerate the Numbers of Complaints

Allegation

5.44 The fourth allegation in the article was that the EOC was suspected of manipulating statistics in order to exaggerate the numbers of complaints. It was alleged that during her four years' tenure of office, Ms Wu encouraged the EOC staff to push up the complaint figures by persuading complainants to split one single case into several separate cases. Such practice amounted to fabricating the figures. Under such circumstances, the complaint figures published by the EOC every year could hardly reflect the actual situation. By pushing up the complaint figures, the EOC could bid more resources. Similarly, by exaggerating the seriousness of discrimination, the EOC could urge employers to join its fee-charging courses, which could serve as a ground of defence in complaint cases. However, this dealt a severe blow to the employers of small and medium enterprises and directly affected the investment environment of Hong Kong.

Findings

Counting Rules

5.45 Handling complaints is one of the EOC's core duties. It is important to count complaints in an appropriate way to facilitate accurate performance measurement, proper reporting, appropriate follow-up action and research. There has been considerable discussion within the EOC about how best to record complaint figures. Theoretically, a person may

lodge complaints against different respondents (e.g. the persons directly involved in the unlawful act and their respective companies) for different unlawful acts (e.g. unfavourable treatment and victimization) on different grounds (e.g. gender, disability or family status). Broadly speaking, the EOC has adopted three different methods at various stages of its history -

- (a) ***Based on the number of complainants.*** At first, the EOC recorded the number of complaints based on the number of complainants. For instance, where a sexual harassment case involves two harassers in the same organization, it is counted as one complaint.
- (b) ***Based on the number of respondents.*** At one stage, the EOC decided to count the number of complaints based on the number of respondents. For instance, where a sexual harassment case involves two harassers in the same organization, it is counted as three complaints (i.e. the first harasser, the second harasser and the employer who has vicarious liability).
- (c) ***Based on the number of allegations.*** With effect from January 2003, the EOC started to standardize the practice in case counting and “opening” of complaints based on the number of respondents and allegations. For instance, where a sexual harassment case involves two harassers in the same organization, it is counted as four complaints (i.e. the first harasser, the second harasser, the employer who has vicarious liability for the first harasser and the employer who has vicarious liability for the second harasser). Another example is a pregnant woman who may file five complaints if she complains against her employer and the company (being vicariously liable) for unfavourable treatment under sex discrimination (because of her gender), disability discrimination (because of her sickness arising from her pregnancy) and family status (if there are hints that she needs more time to take care of her family). An internal EOC document mentions that the new system of counting complaints will allow the Commission to “capture the largest pool”.

5.46 According to Ms Anna WU, there are different reasons for the counting method. One administrative reason was to ensure that when one aspect was resolved, officers did not forget that there remained “live”

aspects. Another administrative reason was that multi-party complaints involved greater complexity and time allocation and counting methods should reflect this element particularly when it came to allocation of workloads to different officers. Another reason is statistical - a multi-party complaint might be resolved in more than one way, i.e. conciliated in one aspect and discontinued in another. Counting the aspects separately facilitated recording the different modes of analysis of the nature of the complaints, success and failure rates of conciliation and discontinuations, etc. It would also facilitate comparison to be made with statistics from other jurisdictions. Furthermore, there are three Ordinances involved and where a multi-party complaint relates to more than one of them, the counting method must enable this to be reflected in statistics. There were also legal reasons for this method of counting. The EOC had legal advice to the effect that each complaint must be registered and clearly identified. Apart from being obvious good sense, this would avoid arguments with complainants over what their complaints were and whether the EOC had fulfilled its obligations under the law. Furthermore there were time limits to be observed and these could be different with regard to the different aspects of a multi-party dispute. In addition, separate recording of the different aspects of a multi-party dispute facilitated identification of the need for legal assistance.

5.47 The underlying reason for the third counting method is also set out in an EOC internal paper -

“The EOC cannot subvert or undermine complainants’ wishes to pursue their rights. Alternative Dispute Resolution (ADR), as a mode of resolving disputes, is a process largely directed by the person bringing the complaint. How a complaint is framed must be decided by the complainant, after being properly informed of their rights under the law. This is how the process is designed to operate. Any suggestion that such an approach persuades complainants to make more complaints completely misunderstands the administration of a statutory ADR process by an administrative statutory body.”

Coercing Employers to Receive Training

5.48 The EOC established its Training and Consultancy Unit (TCU) in 2001, as part of its efforts to launch educational activities to promote equal opportunities and eliminate discrimination. Given that 80% of the complaints received by the EOC are related to discrimination in the

workplace, the EOC has developed training programmes for employers and employees. The TCU provides free training on the law and complaint process, free training kits for small and medium enterprises and fee-paying training and consultancy services. Between 2001 and June 2004, there were 451 training workshops conducted or confirmed and 23 special training projects. The training workshop fee is \$550 per person, and the EOC has generated a fee income of \$1.42 million. The demand for such services is increasing. Starting in September 2002, the TCU also handles requests for consultancy services from human resource personnel about their company policies and assists in the review of equal opportunities policies on a fee-charging basis. These training and consultancy services are not tied with the EOC's complaint handling functions. Similar services are provided in the market, targeting businesses and organizations seeking training to demonstrate that they have taken the necessary steps to discharge their vicarious liability should they in the future be the subject of complaint before the EOC. The EOC service is intended to offer a choice to these organizations.

The Panel's Observations

5.49 The fourth allegation is basically unsubstantiated. The three counting methods reflect different perspectives and objectives. There is no absolute right or wrong. In the interest of conciliation, the primary goal of complaint handling is to heal the relationship between parties. The more the people and issues are drawn into the dispute, the more difficult it will be to disentangle these issues and reach settlement. A smaller number of focused complaints will have a definite advantage over multiple complaints. On the other hand, some people may consider it necessary to provide the complainants with comprehensive information and a full range of options available for the complainants to make their own choices about what action they may take. There is always a fine line between providing comprehensive information to the complainants to make informed decisions on the one hand and proactively steering the complainants to register multiple complaints on the other. Given a choice, complainants are inclined to go for the maximum number of complaints. An underlying issue is what role the EOC should play in handling complaints. Should it be an impartial honest broker between the complainant and the respondent? Or should it stand on the side of the complainant and advocate on his/her behalf to secure the maximum options available to redress his/her grievances? This is an issue that

requires detailed research³⁴ and we will return to this subject in Chapter 6.

5.50 As shown in the Table 5.9, a complainant, on average, lodged 1.4 complaints to the EOC in 2000. This ratio peaked at 1.9 in 2001 and dropped to 1.3 in 2004. The ratio of complaint per respondent has been relatively stable at 1.1 and 1.2.

Table 5.9:

Number of complaints, complainants and respondents (cases for investigation and conciliation)

	2000	2001	2002	2003	2004	1997-2004
No. of complaints	686	1,622	757	915	566	4,546
No. of complainants	494	873	430	497	445	2,739
No. of respondents	647	1,524	651	777	533	4,149
No. of complaints per complainant	1.4	1.9	1.8	1.8	1.3	1.7
No. of complaints per respondent	1.1	1.1	1.2	1.1	1.1	1.1

Source: the EOC Office

5.51 To enable the public and stakeholders to have a full picture, it would be preferable for the EOC to indicate not only the number of complaints but also the number of complainants and the number of respondents. This will also facilitate comparison with the EOC's performance in previous years as well as the performance of comparable organizations in Hong Kong and in the region. We are pleased to note that the EOC will present these figures in greater detail in its coming annual report. According to Ms Anna WU, she asked for the figures to be set out in that manner but was not in a position to complete the implementation during her tenure.

5.52 There is no evidence showing that the complaint figures have any direct bearing on the amount of government resources allocated to the EOC and individual divisions. Given the unique circumstances relating to the EOC's counting rule, the number of complaint cases should not be relied upon as the only indicator to measure the EOC's workload.

³⁴ The subject is discussed in a recent research. See Petersen C.J., *Conflicting Expectations and the Role of Alternative Dispute Resolution in Hong Kong Anti-Discrimination Law, Enforcing Equal Opportunities in Hong Kong: An Evaluation of Conciliation and Other Enforcement Powers of the EOC*. The University of Hong Kong, Hong Kong, Centre for Comparative and Public Law, 2003, also available at the website: [www.hku.hk/ccpl/pub/conferences/documents/14062003a-Carole Petersen.pdf](http://www.hku.hk/ccpl/pub/conferences/documents/14062003a-Carole%20Petersen.pdf)

5.53 As regards the training and consultancy services, the EOC does not have statutory power to require employers to attend training. There is no evidence of any correlation between the complaint figures and the demand for training courses. A fee of \$550 for training workshop can hardly be described as prohibitive or having an adverse impact on Hong Kong's investment environment. We observe that training and consultancy services are increasingly popular preventive measures to eliminate discrimination. We **recommend** that the EOC should expand such services to the community at large. After all, prevention is better than cure! We also welcome the EOC's initiative to introduce fee-paying services to meet market demand. The fee income will not only increase the resources available to the EOC to further its mission and objectives but also prevent any abuses in using the services.

The Fifth Allegation - Suspected of Offering Favours to Lawyer Friends

Allegation

5.54 The fifth allegation in the article was about the EOC's lack of a proper mechanism for outsourcing litigation cases, which might have involved abuses and favouritism. It was alleged that although the EOC had a Legal Adviser (remunerated at D2 level in the Directorate Pay Scale), three lawyers and an officer in its legal division, it had outsourced most cases to local or overseas lawyers. Only in less than seven cases did the EOC initiate proceedings by itself, and even in these cases, outside legal service had to be sought. Despite this, the EOC repeatedly criticized the Government for not providing sufficient fund for litigation. Indeed, the EOC failed to make full use of its existing manpower resources and to put in place an effective outsourcing mechanism.

Findings

5.55 According to the EOC's policy, the Legal Service Division (LSD) handles all legally assisted cases in terms of advice and preparation work up to the trial stage. LSD lawyers also appear in court as counsel unless they do not have a right of audience or their current work commitments do not permit them to do so. The approval of the Legal and Complaints Committee (LCC) has to be sought for the instruction of external counsels. Under such circumstances, the LSD plays the solicitorial role, both in preparation for trial and during trial as instructor to the counsel.

5.56 Since 1996, the EOC has handled 30 court cases and concluded 25 cases. LSD handled the solicitorial work in all cases. Nine cases involved external counsels to do the appearance work, three of which were related to matters that the EOC lawyers did not have a right of audience. For the remaining six cases which the EOC lawyers had a right of audience but in which external counsels were briefed, prior consent of the LCC was obtained. The following is a summary of the six cases -

- (a) **Case One.** An external senior counsel was engaged for the first sexual harassment case given the sensitivity of the subject matter.
- (b) **Case Two.** An external junior counsel was briefed because the client received an anonymous letter containing allegations against some LSD staff. The counsel was identified through referral and word of mouth, and the EOC staff did not have any knowledge of him before the first brief. The EOC has since engaged his service again.
- (c) **Case Three.** An external expert was engaged in this case involving six clients who all resided outside Hong Kong. The engagement was made because of the volume of work and the desirability of obtaining expertise in the subject.
- (d) **Case Four.** One senior counsel and one junior counsel were briefed in a case related to the recruitment policy of the disciplined services because of the sensitivity of the issue concerned and the absence of authoritative cases elsewhere on the issue.
- (e) **Case Five.** The subject matter of the fifth case was similar to Case Four. The same junior counsel for Case Four was engaged in this case.
- (f) **Case Six.** An external counsel was briefed when it became apparent that this case (with legal assistance from the EOC) would be consolidated with a case funded by the Legal Aid Department and outside the EOC's jurisdiction. It was considered more appropriate to have the same counsel to appear before the court.

5.57 Unlike the Legal Aid Department, the EOC does not have a "panel" of counsels to whom it pays a fixed fee scale. The EOC identifies the external counsel through word of mouth and review of track

record. It adopts the following criteria -

- (a) Does the counsel have any relevant expertise?
- (b) Does the counsel have any special skills/ability/experience that would benefit the case?
- (c) Has the counsel done any similar work for the EOC (or similar body)?
- (d) Will the counsel be able to represent the interests of the client and the interests of the EOC in carrying out its statutory duties?

5.58 The EOC also highlights the following considerations in engaging external counsels -

- (a) The equal opportunities legislation is relatively new in Hong Kong. The EOC wants to try out various counsels to see if they are competent in respect of EOC cases.
- (b) To the EOC, it is not just about “winning” the case for the plaintiff. The EOC cases are often taken on a “strategic” basis, and have an educative role to enable the EOC to eliminate discrimination and promote equality of opportunity. The fees charged by the counsel should not be the only consideration.
- (c) Invariably, the EOC is looking for lawyers who are not only excellent in terms of experience, knowledge and practical skills but also sensitive in helping the clients and handling the subject matter.

The Panel’s Observations

5.59 The EOC has a sound mechanism, involving its LCC, in determining when to instruct an external counsel. The system for selecting the external counsel in legally assisted cases or engaging external legal adviser in other cases is less than clear. Two external lawyers were engaged on more than one occasion on the basis of their experience and expertise. Having accumulated more than seven years of practical experience, the EOC is now in a better position to refine the system for the procurement of external legal service to enhance its transparency and fairness.

The Sixth Allegation - Unlawfully disclosing Personal Data

Allegation

5.60 It was alleged that during her tenure, Ms Anna WU, in the name of research, handed over the entire files of complaint cases to outsiders on many occasions without obtaining the approval of the relevant complainants, respondents and other parties concerned. They would never know that their data had been disclosed to outsiders without their authorization. Worse still, the parties concerned in certain cases were actually working in the same organization or even acquainted with those who took part in the research. The disclosure of confidential information contravened the Personal Data (Privacy) Ordinance.

Findings

5.61 The allegation is apparently related to a research study that assessed the expectations and the role of alternative dispute resolution in Hong Kong's anti-discrimination law. The study relied on three main sources of data, namely, data obtained from a sample of 451 complaints filed with the EOC, interviews with complainants, respondents or their representatives who were willing to participate in such interviews, and finally interviews with relevant EOC officers³⁵. In mid-2001, the EOC passed 451 complaint files to a researcher. The EOC did not obtain the prior authorization from the relevant individuals. However, the EOC had never had a complaint about parties being contacted by researchers. The EOC Office also obtained a detailed confidentiality undertaking from the University in question.

5.62 As part of its statutory functions, the EOC may participate in academic research. The Personal Data (Privacy) Ordinance recognizes the need for bodies such as the EOC to engage in research. The Ordinance exempts personal data used for preparing statistics or carrying out research, where the data is not used for other purposes and the results do not identify the individuals or organizations. If there is any suspected breach of rules under the Personal Data (Privacy) Ordinance, the aggrieved party may seek the assistance of the Privacy Commissioner. In conducting research, the EOC should ensure that necessary steps are taken to protect the privacy and data of persons involved.

³⁵ Please see the conference paper mentioned in Footnote 34.

The Panel's Observations

5.63 There is a well-established statutory mechanism to handle complaints relating to disclosure of personal data. The EOC has procedures on data protection. Given that the EOC is entrusted with sensitive personal data on a daily basis, it is important that the EOC should constantly review its policies and practices on data protection and enforce these practices with rigour, whether in its daily operation or in the pursuit of other noble causes such as research.

Other Allegations

Findings

5.64 Apart from the six allegations, there have been a few media reports containing detailed allegations against the EOC and some of its staff members. Like the “six allegations”, these reports centre upon internal issues such as staffing and operations. Some of these reports suggest the existence of favouritism, abuses and power struggle within the EOC. A careful examination of the so-called “six allegations” indicates that those allegations are not fresh allegations against the EOC. Most of them already appeared in previous media reports, magazine articles and anonymous letters, but were repackaged and reproduced in the article with an added connection with Mr Wong's resignation.

The Panel's Observations

5.65 The fact that the allegations resurface time and again is undesirable. A lay person cannot distinguish whether and when rumours have been allowed to masquerade as facts. The meticulous details of the half truths and rumours in the media reports seem to impress and confuse readers as credible information.

Security of Information and Documents

Findings

5.66 Apart from various allegations, the EOC is plagued by leakage of internal documents containing confidential or sensitive information to the media. Some even clearly show a copy of the confidential documents. There are at least five incidents of serious leakages -

Date of report	Summary of report
August 2003	An employer of a complainant accused the EOC of breaching the confidentiality of a complaint case by arranging a media interview with the complainant.
October 2003	An extract of an internal document was faxed to the media, indicating that Mr Patrick YU's name was referred to the executive search firm. Incidentally, the document also included the names of candidates short-listed for the final interviews for the post of Director (Operations).
October 2003	A newspaper disclosed an internal document showing an explanation given by the Legal Advisor of the EOC on how a staff member was appointed.
February 2004	A newspaper reported on the discussion of the Legal and Complaints Committee regarding a legal assistance application on a SARS-related complaint case.
July 2004	An internal document regarding the EOC Office's response to a magazine article was published.

5.67 In April 2004, the EOC Office appointed an investigatory team, comprising two independent EOC Members and the Director of Planning and Administration, to find out the source of the leak in one of the above cases and to recommend courses of action to be taken against those responsible for the leak. The team was also tasked to review the existing policy and procedures concerning office security, management and protection of confidential information and to recommend if improvements are necessary. As part of the review, the team requested the Independent Commission Against Corruption (ICAC) to conduct a review on the EOC's handling of confidential information and documentary control. The team had endorsed the ICAC's recommendations in principle and would discuss whether and how they should be adopted for implementation. These recommendations covered, among other things, the handling of confidential information, means to heighten the alertness of the EOC Members and staff, periodic stock checks of confidential files, etc. The EOC Office is also exploring the possibility of proposing legislative changes to make the leakage of confidential information a criminal offence.

The Panel's Observations

5.68 The above-mentioned leakages reflect a lack of sensitivity and respect towards the persons involved. They also undermine the credibility of the EOC. These serious breaches require immediate and high-profile action. We applaud the EOC's efforts in conducting investigation in this area. We **recommend** that the EOC should examine and, where appropriate, implement the recommendations of the ICAC and the review team as soon as possible.

Overall Observations and Recommendations

5.69 The so-called "six allegations" were not independent of previous allegations, mostly anonymous ones, against the EOC over the years. These allegations were not fresh allegations against the EOC. Most of them already appeared in previous media reports and anonymous letters, but were repackaged and reproduced in the article with an added connection to Mr Wong's resignation. As explained in paragraphs 5.11 to 5.63, the allegations were either unsubstantiated or exaggerated.

5.70 Negative reports have, to varying degree, undermined the credibility of the EOC and damaged staff morale. The EOC should not allow the situation to go unchecked, lest both the EOC and its staff would continue to be a victim of false and misleading information. Perceptions, once formed, are difficult to alter; reputation, once impaired, is difficult to restore.

5.71 To date, the EOC has not been able to obtain concrete evidence about the source of the allegations or leakage. Judging by the level of details in the reports, the source is likely to be insiders or people close to insiders. They may have arisen from different sources at different times.

5.72 We are pleased to note that the EOC, in the spirit of continuous improvement, has recently completed the HRM Review and an overall organizational review. These reviews not only provide excellent expert advice but also serve as a healing process through which the staff can ventilate their feelings and share their concerns. There is a lot of wisdom in the reports. If the recommendations are implemented, it will go a long way to address some of the long-standing issues facing the EOC and enhance the effectiveness of the EOC as an institution. We **recommend** that the EOC should examine the recommendations of the HRM Review and, where appropriate, adopt for implementation as soon as possible.

5.73 We further **recommend** that -

- (a) The EOC should formulate and promulgate a media policy to enable it to respond promptly to the media, particularly in face of reports having negative impact on its credibility.
- (b) The EOC should identify the source of leakages, if possible.
- (c) As a deterrent against possible leakages in the future, the EOC should demonstrate its resolve to crack down on leakages by issuing periodic reminders to alert EOC Members and staff in the proper handling of sensitive or confidential information, strengthening the record management system and imposing hefty penalties on breaches. In this connection, the EOC should, as soon as possible, examine and implement the recommendations of the ICAC and the review team where appropriate and practicable. In particular, the EOC should consider the possibility and desirability of making it a statutory offence to disclose confidential information and personal data in the custody of the EOC along the lines of similar provisions applicable to other statutory agencies.

Chapter 6

Credibility of the EOC and Institutional Issues

Introduction

6.1 We have presented the incidents affecting the credibility of the EOC in Chapters 4 and 5. This chapter continues to deal with our second term of reference by giving an overall review of the impact of the events in 2003 on the EOC's credibility and recommending measures to enhance such credibility through strengthening the EOC as an institution. The credibility and the future of the EOC should not hinge on a single event or person. As with other public bodies, the EOC needs a sound institutional framework with proper corporate governance, clearly articulated vision and mission, a strong team of capable and dedicated staff, an extensive support network and a cordial relationship with its stakeholders and the community at large.

Credibility of the EOC

Credibility of the EOC after the Events in 2003

6.2 What happened in the latter part of 2003 dealt a severe blow to the image of the EOC. Media reports seemed to depict an EOC troubled by various governance, human resources, management and operational issues. The EOC was portrayed as an organization in which its members and staff were engaged from time to time in open criticisms or personal attacks in public.

6.3 After the spate of events in 2003, the EOC front-line staff were faced with severe criticisms and distrust. Some of the EOC's clients began to doubt the EOC's ability to set its house in order. The EOC could no longer pride itself as an exemplary employer who adopted fair and non-discriminatory employment practices.

6.4 Despite the gloomy picture painted above, it would be unfair to conclude that the EOC is no longer a credible organization after the incidents in 2003. In fact, the EOC has been building up a solid track record since its inception in 1996, and its good work continues notwithstanding the events in late 2003.

6.5 It has been suggested that the significant drop in the number of complaints in 2004 points to the loss of public confidence in the EOC. However, this suggestion is open to interpretation. First, we cannot

compare the annual figures without qualification. The number of complaints in 2001 to 2003 experienced a sudden upsurge following the judicial review of the Secondary School Place Allocation (SSPA) System and the outbreak of SARS. Discounting these special factors, the complaint figures are more evenly distributed. Please see Table 6.1 below.

Table 6.1:
Number of complaint cases

	2000	2001	2002	2003	2004
No. of complainants (all cases)	494	873	430	497	445
No. of complaints	686	1,622	757	915	566
• Cases relating to SSPA and SARS	-	812	38	81	-
• Other cases	686	810	719	834	566
No. of respondents (all cases)	647	1,524	651	777	533
No. of complaints					
• per complainant	1.4	1.9	1.8	1.8	1.3
• per respondent	1.1	1.1	1.2	1.1	1.1

Source: the EOC Office

6.6 Secondly, as explained in paragraphs 5.44 to 5.53, the counting rule has been adjusted. The number of complainants has not dropped by the same magnitude as the decrease in the number of complaints.

6.7 Thirdly, there are inherent problems in adopting the number of complaints as an indicator of public confidence in the EOC. The EOC's ongoing public education, publicity and proactive preventive measures should be able to cultivate respect towards equal opportunities and hence eliminate discriminatory practices. They also equip people with the skills to handle the matters by themselves in an amicable fashion, thereby reducing the number of complaints. On the other hand, these measures may arouse public awareness of the rights and responsibilities under the anti-discrimination legislation and alert people of the channels available for complaints. These different views show that there may be no direct correlation between the complaint figures and the credibility of the EOC.

6.8 In fact, there are positive signs that the EOC enjoys considerable recognition and support in the local and international community.

- (a) ***Survey on Public Perception 2003.*** According to the survey report ³⁶ published in early 2004 regarding an independent survey to assess public awareness and perception of the EOC, there was a marked increase in the awareness of the EOC and its work in 2003, when compared with 1998, as shown below.

	<u>1998</u>	<u>2003</u>
• Could name the EOC as the organization responsible for promoting equal opportunities	26.2%	48.4%
• Heard of the EOC	86.7%	92.7%
• Fairly clear about the EOC's work	7.9%	13.4%

- (b) ***Requests for the EOC's training and consultancy service.*** The number of requests for the EOC's training and consultancy services in 2004 was 281, far exceeding the 131 requests in 2003.
- (c) ***Reputation of the EOC in the regional context.*** The EOC was invited to join the Asia Pacific Forum of National Human Rights Institutions as an Associate member. The feedback from the Forum seemed to suggest that the Hong Kong EOC enjoyed a good reputation regionally and internationally.
- (d) ***Legislation against racial discrimination.*** In the Consultation Paper on "Legislating against Racial Discriminations"³⁷, it was proposed that the EOC should be responsible for the administration of the proposed legislation against racial discrimination. This is arguably, an indicator of confidence in the EOC's capability in administering anti-discrimination ordinances.

³⁶ In 1998, the EOC conducted a survey on public awareness and perception of the EOC, its publicity programme and related anti-discrimination ordinances. To facilitate gauging the trend in public awareness, the EOC engaged ACNielsen to conduct another survey in 2003.

³⁷ Please refer to the consultation paper on "Legislating against Racial Discrimination" issued by HAB in September 2004.

Efforts taken by the EOC in Enhancing its Credibility

6.9 Since 2003, the EOC has been putting in extra efforts in enhancing its credibility by conducting two parallel reviews.

6.10 The first review focused on the EOC's role as well as its organizational and management structure (The Organizational Review). The idea of the review was proposed by Mr Michael WONG, former Chairperson, and endorsed by the Commission in September 2003. The Commission appointed two advisers³⁸ to carry out the review. In the context of the three anti-discrimination legislation, the review team was tasked to -

- (a) consider the EOC's role, policy direction, strategy and emphasis in carrying out its statutory functions and in meeting the expectations of the community, taking into account the culture, tradition and values of Hong Kong;
- (b) look into how equal opportunities (EO) are practised globally with particular reference to the Asian region for reference and possible adoption in Hong Kong;
- (c) explore ways and means on how to develop and improve ties with relevant local organizations and EO or equivalent bodies in the Mainland for the advancement of equal opportunities;
- (d) carry out an examination of the present organization and management structure of the EOC with the aim that focuses on improving the efficiency and effectiveness of the EOC in achieving its vision and mission. The exercise covered but was not limited to the priority, strategy, process, organization structure, resource allocation, performance measures and skills needs in the six functional areas of Operations (complaints handling), Legal Service, Policy Support & Research, Training & Consultancy, Promotion & Education and Planning & Administration; and
- (e) provide recommendations for consideration by the Chairperson for approval of the Commission.

³⁸ In September 2003, the EOC approved the appointment of Mrs Patricia CHU, BBS and Prof Nelson CHOW, JP as advisors to the EOC Chairperson. With the resignation of Mr Michael WONG on 6 November 2003 and the subsequent appointment of Mrs Patricia CHU as the EOC Chairperson with effect from 15 December 2003, Mrs Laura LING was appointed advisor in place of Mrs Chu in December 2003.

6.11 The Organizational Review commenced in September 2003 and was completed in July 2004. During the review, the review team conducted researches on equal opportunities practices in Asian and other countries. It also collected the views of EOC Members, EOC staff and stakeholders through briefings, focus group meetings, surveys, discussions and written submissions. At the meeting on 2 December 2004, the EOC agreed that the Report on the Organizational Review be accepted for further consideration by the Commission. This report contained 37 recommendations in the following areas -

- (a) Vision, mission and core values;
- (b) Communications and public education;
- (c) Complaints handling and legal assistance;
- (d) Establishing an Equal Opportunities Tribunal;
- (e) Performance measures; and
- (f) Corporate governance and organizational structure.

6.12 The second review is about the EOC's major human resource management policies, procedures and practices (HRM Review) including -

- (a) recruitment, selection, appointment, promotion and posting;
- (b) training and development;
- (c) discipline and termination of employment;
- (d) performance assessment;
- (e) staff grievances and handling of complaints against staff;
- (f) communication; and
- (g) manpower planning.

6.13 The HRM Review was steered by a review committee³⁹ appointed by the Commission. The review commenced in April 2004 and was completed in September 2004. During the review, the

³⁹ The review committee comprised Mr K S YEUNG, JP, as its chairperson and Prof Yuk-shee CHAN, JP and Ms Nora YAU, JP as its members.

committee had extensive discussions with EOC Members and staff. At its meeting on 2 December 2004, the EOC agreed that the report on HRM Review be accepted and referred to the A&FC for advice on whether the recommendations and comments should be followed up and adopted.

Concerted Efforts Required to Restore the Credibility of the EOC

6.14 Whilst the EOC has taken positive steps, concerted efforts are required to restore the credibility of the EOC. Besides EOC Members and staff, the Government, legislators, non-government organizations, the media and the community at large all have a role to play. With the benefit of the collective wisdom channeled to us through written submissions and interviews, we venture to suggest two major directions to achieve this goal. First, we should strengthen the institutional framework and governance of the EOC having regard to the Paris Principles⁴⁰ and good practices in the public and private sectors. Secondly, the EOC should have a clear positioning.

Strengthening the Governance of the EOC

Guiding Principles

6.15 We **recommend** to rebuild the credibility of the EOC based on the following guiding principles -

- (a) The Government should consider making reference to the Paris Principles, copy at **Annex 6**, in the appointment to, and the governance of, the EOC.
- (b) The following core values, as embodied in the Paris Principles and general good organizational practices, should form the basis for the interface between the Government and the EOC, as well as the operation of the EOC -
 - Independence;
 - Pluralism;
 - Good corporate governance ;
 - Openness, transparency and communication;
 - Efficient and effective performance; and
 - Accountability.

⁴⁰ Please refer to paragraphs 6.16 to 6.18 and **Annex 6**.

Paris Principles

6.16 The Paris Principles are a detailed set of principles for the establishment and operation of national human rights institutions ⁴¹. The applicability of the Paris Principles to the EOC has received some attention ⁴² in LegCo. In his reply to a Member's question on 12 November 2003, SHA stated that -

“The Paris Principles relate to the status and functioning of national institutions for the promotion and protection of human rights. The EOC is not such an institution, in that it is not national, and it does not have a broad mandate in respect of all forms of discrimination....While the Paris Principles do not strictly apply to the EOC, we believe that we have largely conformed with the Paris Principles relating to the appointment of members to these national institutions and the composition of such institutions. The relevant principles also require guarantees of independence and pluralism.”

6.17 Since the Paris Principles are regarded as the international good practices for the establishment and operation of national institutions for the promotion of human rights, it has been suggested that the Government take them into account in its interface with the EOC. Whilst acknowledging that the Principles do not strictly apply to the EOC, we **recommend** that the Government should consider making reference to the Paris Principles in making appointments to the EOC and refining its governance. It can demonstrate the Government's commitment to follow international good practices.

⁴¹ The Paris Principles were developed at a meeting of representatives of national institutions held in Paris in 1991 and subsequently endorsed by the UN Commission on Human Rights (*Resolution 1992/54 of 3 March 1992*) and the UN General Assembly (*Resolution 48/134 of 20 December 1993, annex*). For details, please see [Annex 6](#).

⁴² For instance, LegCo touched on this issue during the motion debate on the independence of statutory organizations handling public complaints on 21 May 2003 and Question 3 of the LegCo at its sitting on 12 November 2003.

6.18 We further **recommend** that the EOC should likewise be guided by the Paris Principles in performing its functions to the fullest extent permitted by its enabling legislation. For instance -

- (a) It should freely consider any questions falling within its portfolio, whether they are submitted by the Government or taken up by it without referral to a higher authority, on the proposal of its members or of any petitioner. Specifically, the EOC should continue to present submissions to LegCo on issues within its portfolio. It may initiate and conduct research and promulgate its research findings. It may conduct direct investigation into matters within its jurisdiction.
- (b) It may hear any person and obtain any information and any documents necessary for assessing situations falling within its competence.
- (c) It may address public opinion directly or through the media, particularly in order to publicize its opinions and recommendations. Indeed, the EOC should make the best use of its website to communicate and publicize its views.
- (d) It may maintain consultation with the other bodies, whether jurisdictional or otherwise, responsible for the promotion and protection of human rights. The EOC may, for instance, strengthen its network with local, regional or international bodies of similar nature.
- (e) It may develop relations with non-government organizations.
- (f) It may hear and consider complaints and petitions concerning individual situation. In so doing, the EOC should be able to seek amicable settlement through conciliation, inform the complainants of their rights, including the remedies available to them, hear complaints or refer them to other competent authorities, and make recommendations to the competent authority. This complaints handling function is now a core function of the EOC, and the EOC should improve its capabilities in performing this function.

Independence

Importance of an Independent EOC

6.19 Independence is pivotal to the EOC's credibility. Since the EOC is a complaints-handling body, it is looked upon not only as an arbitrator between two private parties but also a watchdog of the Government. In performing its duty to handle complaints and enforce the anti-discrimination legislation, the EOC serves an important role as the guardian of an open and caring civil society. Its success hinges on whether it is endowed with the mandate, powers and institutional arrangements for it to perform its functions in an independent and impartial manner. The essence of independence is that the EOC should be entitled to freedom of action in managing its affairs within the restraints of the laws of Hong Kong. The EOC must be permitted to exercise all of its enforcement powers – not only conciliation but also litigation and formal investigations – without fear or favour. The EOC must be, and be seen to be, independent of the Government. Likewise, it should be non-partisan and free from the dominance of political or interest groups.

The EOC's Independence from the Government

6.20 At present, there are institutional safeguards to ensure the EOC's independence vis-à-vis the Government -

- (a) ***Legislation.*** The EOC is an independent statutory body with its powers and functions clearly stipulated in the legislation. The law states that no public officer can be appointed as EOC Members. The law contains comprehensive provisions to safeguard the EOC's full autonomy over the management of its affairs. It possesses the legal capacity to sue and to be sued. It may establish committees, acquire and hold property, enter into contract, determine its terms and conditions of service and appoint its own staff. The independent status is fortified by the provision stating clearly that the EOC is not a servant or agent of the Government.
- (b) ***Memorandum of Administrative Arrangement (MAA).*** The relationship between the EOC and the Government is governed by an MAA and a Supplementary MAA signed in 1997 and 1998 respectively. As stated in the MAA, its provisions are founded on the principle that the EOC should have autonomy and flexibility in utilizing its funds as is

compatible with the provisions of the anti-discrimination Ordinances and general subvention guidelines. The EOC is autonomous in the management and control of its activities.

6.21 The fact that the EOC is an independent statutory body places Hong Kong among the most advanced system in this region. According to the comparison between the EOC practices in Hong Kong and in selected Asian countries/regions, which was conducted during the EOC's recent Organizational Review, most countries use government agencies, instead of an independent equality commission, as the institutional machinery for promoting equality.

6.22 On several occasions ⁴³, after the spate of incidents relating to the EOC, SHA has made public statements to reaffirm the non-interventionist policy towards the EOC. Under this policy, the Government distances itself from the daily operation of the EOC and confine its role to the following three areas -

- (a) to appoint the Chairperson and members of the EOC;
- (b) to ensure that the necessary funding is provided to the EOC for it to carry out its proper functions; and
- (c) to consider the EOC's advice relating to three anti-discrimination ordinances including proposals on legislative amendments.

6.23 The EOC has been dutifully performing its function as the watchdog of the Government through handling complaints against the Government bureaux and departments. Details are set out at Table 6.2.

⁴³ For details, please refer to the LegCo motion debate on the credibility of the EOC on 26 November 2003, the oral LegCo question on controversies surrounding the EOC on 12 November 2003 and the special meeting of the LegCo Panel on Home Affairs on 14 November 2003.

Table 6.2:

Number of complaints against the Government bureaux and departments between 2001 and 2004

	2001	2002	2003	2004
Complaints against Government bureaux/ departments for investigation	496	155	119	70
After deducting SSPA cases	89	137	118	70
Conciliated ⁽¹⁾	27	195	41	27
Concluded ⁽¹⁾	286	374	152	90
Complaints against Government bureaux/departments for follow-up action ⁽²⁾	6	7	25	2

Source: the EOC Office

Notes

(1) including cases brought forward from previous years

(2) cases without a complainant or identified by the Commission to follow up on the issues.

6.24 The EOC enjoys a high degree of autonomy and its independence is enshrined by law. There appears to be concerns that the Government can, if it so wishes, undermine the EOC's independence through the control over finance and appointment.

6.25 As regards finance, the EOC has accumulated a healthy surplus of \$28.8 million when the Government is facing a budget deficit. (For details, please refer to paragraph 5.14). Whilst this may be attributable to the EOC's prudential financial management, it also reflects the Government's readiness to provide adequate resources to the EOC to perform its functions. Such independence does not exclude the EOC from the public scrutiny to ensure proper use of the taxpayers' money.

6.26 As regards the EOC's appointments, we share the view that the appointment system can be refined to demonstrate more clearly the Government's respect for the EOC's independence. We will elaborate this in the context of enhancing the corporate governance of the EOC. (Please see paragraphs 6.35 to 6.66.)

6.27 The community expects the Government to take the lead in upholding the credibility of the EOC. The Government should keep the EOC at an arm's length to safeguard its independence. The Government should be more sensitive and prudent in handling matters relating to the EOC, particularly in making appointments. We **recommend** that the Government should continue to adhere to the non-interventionist policy and distance itself from the day-to-day operation.

6.28 We **recommend** that the Government should give favourable consideration to, and provide assistance in relation to the EOC's request to join relevant international organizations. Under the Sex Discrimination Ordinance, the EOC may, with the prior approval of the Chief Executive, become a member of or affiliate to any international body concerned with (whether in whole or in part) the elimination of discrimination.

The EOC's Independence from Political Influence

6.29 To maintain the impartiality of the EOC, we **recommend** that the EOC should be a non-partisan body. It is desirable to maintain a balance between different interests and prevent predominance by any single interest group. We further **recommend** that all EOC Members should be required to uphold the EOC's overall interest. Members should not allow their own interests, or those of their affiliated groups, to take precedence over the interests of the EOC.

Pluralism

6.30 As an organization dedicated to promoting equal opportunities regardless of differences in gender, abilities and family status, the EOC should treasure pluralism as one of its core values. The EOC should be representative of the community including those under-privileged groups protected by the anti-discrimination legislation currently administered by the EOC. It is expected to listen to different views and balance different interests. Having regard to the Paris Principles and the local conditions, we **recommend** that EOC Membership should cover a broad spectrum of people, including -

- (a) members representing various communities protected by the anti-discrimination ordinances administered by the EOC;
- (b) members from the academia, religious field as well as legal, medical, accounting, media or other professions;
- (c) members with knowledge of, or experience in, non-government organizations involved in the development of equal opportunities and efforts to combat discrimination;
- (d) members with knowledge of, or experience in, trade unions or employees' associations;

- (e) members representing the employers in the private and public sectors; and
- (f) a Legislative Councillor.

6.31 We are mindful that the Commission is the EOC's governing body responsible for controlling, and accounting for, the use of public resources and the smooth functioning of the EOC. We therefore **recommend** that the Commission should have Members with financial and legal expertise. Furthermore, to ensure that the EOC remains a non-partisan organization, we **recommend** that Members should be appointed in their personal capacity.

6.32 Since the EOC maintains close ties with the community groups protected by the anti-discrimination ordinances, the EOC is in the best position to identify the best candidates to represent these communities. We **recommend** that the Government should invite the EOC to submit nominations for this category for consideration. The EOC should first invite nominations from various organizations for its consideration via a nomination committee before submitting its recommendations to the Government.

6.33 Apart from achieving pluralism at the Commission level, we **recommend** that the EOC should broaden its network by -

- (a) increasing the number of co-opted members in sub-committees and inviting outstanding representatives in relevant fields to participate in committee work; and
- (b) considering the possibility of establishing and expanding the network of stakeholder groups to discuss topical issues of interest. In Melbourne, Australia, for instance, reference groups and focus groups are set up to gauge the views of specific target groups on draft codes of practice and other publications before release.

6.34 These proposals will bring the stakeholders into the EOC and vice versa. The EOC can tap the wealth of talents and gain rapport.

Good Corporate Governance

Corporate Governance for Public Bodies

6.35 The independence of the EOC should go hand in hand with good corporate governance to enable it to operate in an efficient, effective and

accountable manner. In May 2004, the Hong Kong Institute of Certified Public Accountants (HKICPA) published “Corporate Governance for Public Bodies – A Basic Framework”⁴⁴ (the Basic Framework). This document provides a useful guide for a public organization like the EOC in refining its governance. We **recommend** that the EOC should examine and implement the guidelines as appropriate.

The EOC Chairperson

Role of the EOC Chairperson

6.36 A core issue of the EOC’s organizational structure is the role of the Chairperson. We observe an apparent over-reliance on the EOC Chairperson as the source of directions and the cornerstone of success. This tendency is understandable given the concentration of power in the full-time executive chairperson. However, this is an unhealthy phenomenon that needs to be changed if the EOC is to mature into a public organization with good corporate governance. In accordance with the law and good practices, the governing board rather than the Chairperson alone should be responsible for the stewardship of the EOC. The recent “Organizational Review” conducted by the EOC recommends that the EOC should establish a corporate image rather than focusing on the Chairperson. We **recommend** that this proposal be adopted for implementation.

Full-time Executive Chairperson

6.37 At present, the law provides that the EOC Chairperson should be appointed on a full-time basis. He or she cannot engage in any occupation for reward or hold any other office of profit without the specific approval of the Chief Executive. We are advised that this requirement was stipulated with reference to the prevailing practices in public organizations when the EOC was established. Following the deletion of the post of the Chief Executive Officer (CEO) in 2000, the EOC Chairperson also assumes the functions of the CEO. In effect, the Chairperson is both the policy and the executive head of the EOC.

6.38 The EOC’s recent Organizational Review recommends that the EOC should reinstate the post of CEO. We share the same view. We **recommend** that, for the following reasons, the posts of Chairperson and

⁴⁴ The soft copy of the document is available at HKICPA’s website (http://www.hkicpa.org.hk/publications/corporategovernanceguides/eframework_guide.pdf)

CEO should be separated, and that the Chairperson should ideally be a non-executive function -

- (a) As mentioned in HKICPA's Basic Framework, this proposal will strengthen the structural checks and balances within the EOC.
- (b) Since the establishment of the EOC, various public organizations have already modernized their governance structure. Out of the 17 non-departmental public bodies⁴⁵, only the EOC has a full-time executive Chairperson. The others all have a part-time Chairperson and a full-time CEO. Regarding other categories of public bodies, the Government has recently presented a proposal to the LegCo Panel on Financial Services to improve the governance structure of the Securities and Futures Commission (SFC) such that the SFC is governed by a non-executive chairperson while the executive arm is headed by a chief executive officer.⁴⁶
- (c) From a practical angle, Chairperson and CEO perform different functions and require different attributes. It is difficult, if not impossible, for a single person to have the vision, mission and leadership to give broad policy steer possessing at the same instance a strong executive ability to oversee the day-to-day operation of the institution. Furthermore, the CEO normally has to stay in the organization for a reasonably long period to ensure continuity whereas it is preferable to have a regular turnover of the chairmanship to allow injection of fresh ideas from time to time.

6.39 There are merits for the EOC Chairperson to be a non-executive position. A non-executive Chairperson will be relieved from day-to-day executive responsibilities and be suitably detached from the executive arm in order to discharge his/her supervisory functions effectively. Furthermore, a non-executive Chairperson would keep the EOC organizational structure lean and cost-effective, and avoid overlapping responsibilities between an executive chairman and a CEO. Indeed, the latter was one of the grounds for the EOC's decision to delete the CEO post in 2000.

⁴⁵ According to Government's classification of advisory and statutory bodies, the EOC is classified as a "non-departmental public body".

⁴⁶ For details, please refer to Paper for LegCo Panel on Financial Services "*Securities and Futures (Amendment) Bill 2004*" LC Paper No. CB(1)177/04-05(01).

6.40 It is noteworthy that a “non-executive” chairperson is not the same as a “part-time” chairperson. The Chairperson is expected to spend as much time as needed to fulfill the role and responsibilities of a Chairperson. Nevertheless, it will widen the pool of candidates for appointment as the EOC Chairperson if he/she is not mandated to work on a full-time basis. There are distinguished community leaders who have the passion for, and knowledge of, equal opportunities but are unable to work full-time in the EOC because of other commitments. The requirement for the Chairperson to be appointed on a full-time basis would deprive the EOC of these talents. We therefore **recommend** that the EOC Chairperson should be a non-executive position appointed on a part-time basis. Consideration should be given to amending the relevant legislation to remove the requirement for the EOC Chairperson to be appointed on a full-time basis.

Division of Responsibilities between Chairperson and CEO

6.41 We **recommend** that there should be clear separation of responsibilities between the Chairperson and CEO. The responsibilities of the chairperson should be formally defined in writing. As the Chairperson of the governing board and of the whole organization, he or she should strengthen the capability of the governing board in overseeing the effective operation of the EOC. The chairperson’s role includes -

- (a) providing leadership to the governing board;
- (b) facilitating board members to make a full contribution to the board’s affairs, including ensuring that they are fully briefed on the terms of their appointment and on their duties and responsibilities;
- (c) ensuring that there is an effective process of review of the performance of individual Members and of the governing board as a whole;
- (d) ensuring that key issues are discussed by the board in a timely manner, that the board has adequate support and is provided with all the necessary information on which to base decisions;
- (e) ensuring that the board takes proper account of statutory and other requirements and makes decisions based on a full consideration of all relevant issues;

- (f) ensuring that the governing board meets regularly and that minutes of meetings accurately record decisions taken, interests declared and, where appropriate the views of individual board members; and
- (g) ensuring that the organization communicates effectively with its stakeholders at regular intervals.

6.42 The Chairperson, as leader of the Commission, should be responsible for the strategy, directions and networking both internationally and locally. On the other hand, the CEO would be in charge of the smooth functioning of the EOC. We **recommend** that the CEO should be an ex-officio executive member of the Commission. The CEO, if reinstated, should have line responsibility for all aspects of executive management. He or she should report to the Chairperson and be accountable to the Commission for the performance of the organization and the implementation of the Commission's strategy and policies.

Division of Responsibilities between Chairperson and the Commission

6.43 Pending the consideration of the structural change recommended above, we **recommend** that the powers and responsibilities of the EOC Chairperson vis-à-vis the Commission should be clearly defined. Specifically, the governing board should reserve strategic and other key matters, such as major decisions in relation to resources and senior appointments, for collective decision-making.

Ideal Attributes of the EOC Chairperson

6.44 During the inquiry, we notice an intense longing for a capable, charismatic leader who can lead the EOC in the years to come. The expectations are extremely high. In fact, it would be unrealistic to identify a single candidate who embodies all the above features and abilities. The EOC must rely on team work. We have received the following comments -

- (a) The EOC needs different EOC Chairpersons at different stages of its development. Regular changes in chairmanship are healthy and necessary. It has been suggested to us that what the EOC needs at this juncture is a stabilizing force to set the EOC administration in order, cultivate harmony in the board and among the staff, and take forward the recommendations arising from various reviews.

- (b) To ensure the sustainable development of the EOC, the EOC cannot rely on the EOC Chairperson alone. The EOC, particularly the Chairperson, must focus on institutional issues and nurture the EOC under the collective leadership of a pluralistic and capable governing board and with the co-operation of a strong team of staff.
- (c) As the spiritual leader of the EOC, the EOC Chairperson is expected to be a distinguished community leader who possesses the following attributes–
- strong commitment to promoting equal opportunities and building an inclusive, barrier-free and harmonious society;
 - a clear vision and the ability and readiness to articulate the vision;
 - a solid track record of community service, particularly in promoting equal opportunities;
 - good reputation as a leader of integrity;
 - courage to pursue worthy cause without fear or favour;
 - an open mind and an open heart to embrace diversity; and
 - strong leadership, particularly in steering a diverse governing board.
- (d) If the Chairperson continues to remain an executive position, he/she must have proven experience in senior management.
- (e) Legal qualification is preferable but not absolutely essential for the EOC Chairperson. It is also desirable for the Chairperson to have an international outlook and good communication skills so as to project a positive image of the EOC and Hong Kong in the local and international arena.

6.45 We **recommend** that the above views be considered in the future appointment and re-appointment of the EOC Chairperson. There is general agreement that the Government should continue to adopt the “merit principle” to appoint the most suitable candidate to the EOC having regard to candidates’ expertise, experience and integrity as well as the functions of the EOC. We would like to add that, there is also a strong expectation that the appointment of the EOC Chairperson should be free from political considerations.

Remuneration of the EOC Chairperson and CEO

6.46 If the above proposed changes in the role and responsibilities of the EOC Chairperson are to be pursued, the Government would need to assess the implications on the remuneration of the Chairperson and the CEO of the EOC. At present, the EOC Chairperson's package is fixed by Government and pegged to D8 of the Directorate Pay Scale of the Civil Service. The EOC's CEO, a post deleted in 2000, was originally pegged to D3 of the Directorate Pay Scale. We understand that the Government's overall review of the system of advisory and statutory body also covers the remuneration package for non-official members of the Government Boards and Committees. We **recommend** that the Government should review the remuneration package of the EOC Chairperson in that context. Similarly, the EOC should also review the remuneration of the CEO, if reinstated accordingly. We should add that the remuneration package of the EOC's head should be commensurate with his/her changing responsibilities and powers, and should be based on sound principles of comparability and reasonableness.

Appointment Process

6.47 The community is not only concerned about who is appointed but also how he/she is appointed. In the case of the EOC, its first Chairperson was identified through an open recruitment, which was considered the best channel to find people with the right caliber to open up a new era of equal opportunities. The other four Chairpersons were directly appointed. The second and fourth Chairpersons were Members of the EOC before assuming chairmanship. The third Chairperson was a retired Justice of Appeal. The newly appointed chairperson formerly headed the Privacy Commission, another independent statutory body.

6.48 Direct appointment is commonly adopted in other advisory boards and committees. Some respondents support the present system. Others are advocating greater transparency and accountability in the appointment to the EOC and appointments in general. In this connection, we note the following suggestions -

- (a) The Government should consider the desirability and feasibility of establishing a nominating committee, comprising Government officials and representatives of key stakeholders, to assist in the appointments to the EOC and other major boards and committees. Under this proposal,

vacancies are advertised and nominations invited. After careful examination, the committee will submit a list of candidates to the Chief Executive for consideration and endorsement.

- (b) The Government should consider following some overseas models whereby the Government will, after each key appointment, issue a press release attaching the appointee's detailed curriculum-vitae to demonstrate that his/her qualifications and experiences are impeccably linked to the work of the EOC and hence eminently qualified for the position.

6.49 Whilst recognizing the need to enhance transparency and accountability in appointments to the EOC, we should be mindful not to introduce processes that will dampen the wish of capable candidates to contribute to public service and consequently deprive these bodies and Hong Kong of valuable talents. At present, the Government is conducting an overall review of the system of advisory and statutory bodies. The review covers, among other things, measures to enhance the accountability, openness and transparency of the system. We **recommend** that the Government should take into account the above suggestions in considering the appointments to the EOC in that context. As the EOC also serves as a watchdog of the Government, the demand for transparency and accountability is understandably higher for the EOC.

Term of Appointment

6.50 Under the Sex Discrimination Ordinance, the EOC Chairperson is appointed for a term not exceeding five years. The general view is that the current provision is reasonable. To ensure stability and facilitate longer-term planning, we **recommend** that the EOC Chairperson should normally be appointed for a three-year term, renewable once for another term of not exceeding three years. A regular turnover will facilitate the injection of new ideas and fresh impetus into the EOC. If, however, the EOC Chairperson is also the CEO, the term should be reasonably long to ensure continuity.

Timing for the Announcement of Appointments

6.51 There is a general concern about the short notice and apparent delay in the announcement of appointments to the EOC. The re-appointment of Ms Anna WU in 2002 was not announced until a few

days before the expiry of the contract. Similarly, the appointments of EOC Members in 2003 and 2004 were announced shortly before commencement of the new term. The recent appointment of the new EOC Chairperson seems to follow similar lines.

6.52 We are advised that the Government has an early warning system to alert relevant bureaux/departments of the expiry dates of appointments to public boards and committees six months beforehand. This system provides a timely reminder to relevant bureaux to process appointments and re-appointments. In the case of the EOC, there is no deadline either in the law or the contract by which discussions should be held with the EOC Chairperson on re-appointment or otherwise, although the contract of the EOC Chairperson provides that the Chief Executive may renew the contract with the Chairperson three months prior to the expiry of his/her current term of appointment. Many consider that the short notice and delays in the announcement of the appointments may create an unsettling atmosphere and may hinder the EOC's ability to plan ahead.

6.53 We **recommend** that, unless there are unforeseen circumstances and overriding considerations to the contrary -

- (a) The Government should make a firm decision and announce the appointment, re-appointment or cessation of the appointment of the EOC Chairperson two months before the commencement of the new term; and
- (b) For EOC Members, the appointment and re-appointment should, as far as possible, be announced one month before the commencement of the new term.

Handover Arrangements

6.54 Given that the EOC Chairperson is currently not only the chair of the governing board but also the head of the executive arm, it is desirable that there should be a smooth handover between the outgoing and incoming Chairpersons. We **recommend** that, pending the implementation of the proposal to reinstate the position of the CEO -

- (a) The EOC should develop and, where appropriate, formalize proper handover arrangements for the Chairpersons.
- (b) To preserve the EOC's independence, the handover should, as far as possible, be conducted by the EOC. The Government should keep the EOC at an arm's length except to assist in

building rapport and network. It would be inappropriate for the Government to give any directions or signal to the incoming Chairpersons on the day-to-day operation of the EOC.

Governing Board and EOC Members

Enhancing the Leadership of the Board

6.55 The law provides that the EOC shall comprise a Chairperson and between four and 16 members. The current size is considered reasonable having regard to the need to ensure pluralism on the one hand and efficiency on the other. There may be scope for a moderate expansion in view of the possibility of an increased portfolio for the EOC. To strengthen collective leadership, we **recommend** that -

- (a) The Government may consider appointing a Deputy Chairperson, who may act as the Chairperson if the Chairperson is absent from Hong Kong or is, for any other reason, unable to act as Chairperson, or if the office is vacant; and
- (b) The EOC may consider designating a spokesperson for specific subjects, as detailed in paragraph 3.67.

6.56 The first suggestion is consistent with similar arrangements for public bodies such as university governing councils. The EOC's experience following the resignation of Mr Michael WONG underlines the importance of avoiding a vacuum in leadership that will potentially paralyse the EOC's function. This proposed sharing of responsibilities will also move away from over-reliance on the Chairperson.

6.57 The second suggestion is particularly important for a diverse board like the EOC. It is a further measure to share responsibilities among EOC Members. A spokesperson will enhance public image and achieve unity in diversity. Under normal circumstances, the Chairperson or the Deputy Chairperson should be the spokesperson on key issues. Other Members may also be designated spokesperson for specific topics based on their expertise and experience.

Recognizing the Role of EOC Members

6.58 EOC Members are non-executive members of the governing board. Their basic legal duties and responsibilities towards the EOC should be defined clearly.

6.59 Given the apparent dependence on the EOC Chairperson in the past, some EOC Members might not have fully comprehended their duties and responsibilities as enshrined in the law. Some perceived themselves as advisers rather than non-executive directors of the board. We **recommend** that -

- (a) EOC Members should apprise themselves of their basic legal duties and responsibilities and potential liabilities. These duties should include setting directions, overseeing the organization and monitoring the executive management of the EOC.
- (b) As recommended in the EOC's Organizational Review, the EOC should conduct orientation, familiarization visits, induction and refresher training as well as brainstorming sessions on a regular basis for EOC Members. The training will also enable EOC Members to reflect upon the mission and vision of the EOC, their statutory roles and duties as well as ways to contribute fully to the Commission. Moreover, these sessions will also help cultivate trust, team spirit and harmony among EOC Members from diverse background.
- (c) Whilst the Commission should not interfere with the day-to-day operation of the EOC, chairpersons of the EOC's functional committees should consider taking a more active role in giving guidance, directions and support to the EOC Office. Members should give more support by joining at least one functional committee and participating more actively in public education and community relations activities.
- (d) As mentioned in paragraph 3.68, EOC Members should be apprised of the need to take collective responsibility for the Commission. Once a decision has been made in accordance with proper rules and procedures, EOC Members are expected to support it and protect the corporate identity.

Appointment of EOC Members

6.60 In appointing EOC Members, we **recommend** that the Government should consider those who possess the following attributes -

- (a) supportive of the principles of equal opportunities;
- (b) ready and able to devote time and effort to the work of the EOC; and
- (c) respectable persons who meet a high standard of behaviour
(See paragraphs 6.65 to 6.66).

6.61 We note that the re-appointment of EOC Members whose term exceeded six years in 2004 has aroused some concerns. There were calls for appointing an entirely new board (irrespective of the performance of individual EOC Members) in order to give the EOC a fresh start and a new look.

6.62 In this connection, we applaud EOC Members for their contribution to the EOC during this trying period. EOC Members, who are all volunteers, have to shoulder an exceptionally onerous burden. They have been working diligently in the various reviews undertaken by the EOC.

6.63 There is a lot of wisdom in the so-called “six-year rule” (i.e. a non-official member of an advisory or statutory body should not serve more than six years in any one capacity). Whilst these rules are intended to be guiding principles, they are honoured as good practices that should apply unless there are overriding considerations to the contrary. We **recommend** that the six-year rule should be followed in considering the next round of re-appointments.

6.64 To avoid a bunching effect and to enhance the continuity of the Commission, we **recommend** that the term of appointment of EOC Members should be staggered in such a way that the term of no more than one-half of the Members will expire in the same year.

Behaviour of the Governing Board

6.65 As highlighted in HKICPA's Basic Framework, good corporate governance is not only founded on systems and processes but also dependent upon the individuals that implement them. Various studies⁴⁷ identified key personal qualities expected of people taking up senior positions in public service. These qualities, referred to as the "Seven Principles of Public Life" are Selflessness, Integrity, Objectivity, Accountability, Openness, Honesty and Leadership. Details are at **Annex 7**. They underline the importance for members of the governing board to observe the highest standards of conduct and serve as role models for those within the organization.

6.66 To maintain public confidence in the EOC and to preserve its dignity and standing, we **recommend** that the EOC should consider promulgating a code of ethical conduct for its members and staff to ensure that they will, at all times, observe the highest standards of conduct and integrity. This could involve adapting or simply adopting an existing code. There should be mechanisms for recognizing and dealing with conflicts of interest (as mentioned in paragraph 2.58). We also **recommend** that the Government should consider these principles in making appointments to the EOC.

Openness, Transparency and Communication

6.67 Openness and transparency are fundamental principles of good corporate governance⁴⁸. The lack of transparency may engender suspicions and speculations in the community, within the Commission and among the EOC staff, undermining the credibility and efficiency of the EOC. There have been increasing calls for transparency. As highlighted in the EOC's recent Organizational Review report, some concerned groups have requested the EOC to hold open meetings and allow documents to be fully accessible. Having regard to the EOC's Organizational Review Report and HKICPA's Basic Framework, we **recommend** that -

⁴⁷ In the field of public sector corporate governance, the Committee on Standards in Public Life ("Nolan Committee"), which was established in the United Kingdom in 1994, has identified the key personal qualities required of governing board members as well as senior management of public sector bodies. Other works include the report issued by the International Federation of Accountants (IFAC) entitled "*Governance in the Public Sector: A Governing Body Perspective*". HKICPA has drawn on the IFAC study in preparing the "Basic Framework".

⁴⁸ The report of the Cadbury Committee has identified three commonly accepted fundamental principles of good governance. They are – Openness, Integrity and Accountability.

- (a) the EOC should make an explicit commitment to openness and transparency in all of its main activities, subject only to the need to preserve confidentiality in those specific circumstances where it is proper and appropriate to do so.
- (b) The EOC may consider implementing the recommendation of the Organizational Review report to reinstate the practice of conducting a press conference after each EOC meeting to enhance the communication with the media.
- (c) The EOC may consider implementing the recommendation of the Organizational Review report to release the confirmed minutes of the EOC meetings on the Internet for access by members of the public.
- (d) At the Commission level, the EOC must ensure that relevant and sufficient information must be provided to EOC Members in a timely manner to facilitate discussion and decision-making.
- (e) As recommended in the EOC's HRM Review, the EOC management should consider consulting staff members so as to identify the most effective means to improve the communication within the EOC Office and between EOC Members and the EOC staff. The HRM Review notes that the lack of communication is common across all levels in the EOC.

6.68 Specifically, consideration should be given to -

- (a) making available information on significant areas of policy and practice to all the staff, such as procurement, recruitment, complaints handling and training; and
- (b) putting in place procedures for employees to voice their concerns or complaints about maladministration, breaches of the law or ethical concerns, in a supportive environment where they will be protected from reprisals. These should include clear channels for raising concerns with line management up to the CEO, the Chairperson and governing board members.

Efficient and Effective Performance

6.69 The EOC needs power, resources and people to perform its functions in a fair, effective and efficient manner. As far as resources are concerned, we note that the EOC has accumulated a healthy surplus. We are unaware of any suggestions of insufficient resources for the smooth operation of the EOC. To enable the EOC to deliver the results that meet public expectations, the EOC needs to strengthen its performance measurement and its human resources.

Performance Management

6.70 Whilst recognizing that the EOC's performance is generally considered effective, the EOC's Organizational Review recommends among other things that, in the spirit of continuous improvement, the EOC should -

- (a) review the service standards and targets in the current performance pledge to ensure quality service;
- (b) develop a strategic corporate plan for a three to five year term to provide a framework for respective functional division/unit to develop their annual work plan; and
- (c) draw up a more structured self-evaluation plan, including conducting a regular and structured survey, say every three years, on the public perception of the EOC's work and customer satisfaction.

6.71 We support these recommendations and **recommend** that the EOC should implement these proposals as soon as possible.

6.72 Over the years, the EOC has conducted various reviews to improve the EOC's performance of its core functions. Two major studies on the EOC's complaint handling work and related matters were conducted by two external consultants and the Centre for Comparative and Public Law of the Faculty of Law, University of Hong Kong respectively over the past few years. The recent Organizational Review also suggests measures to enhance the EOC's performance in public education, training, research and legal assistance. We **recommend** that the EOC should follow up on the recommendations and implement them as soon as possible.

Human Resources

6.73 The EOC delivers its services for people and by people. The efficient operation of the EOC hinges on the availability of a strong, dedicated and capable team of staff members and a sound human resource management (HRM) system. The appointment and termination of the appointment of Mr Patrick YU as Director (Operations) unveiled room for improvement in the HRM policies and procedures. The various allegations against the EOC over the years also reflected internal discontent in certain quarters. Against this background, the EOC conducted the HRM Review in 2004. We **recommend** that the EOC should implement the recommendations as soon as possible.

6.74 As mentioned in Chapter 5, we appreciate that the EOC staff, particularly those in the Operations Division, have to face intense pressure. Their clients have invariably tried alternative means but failed before they approach the EOC Office. They may be frustrated, angry and hostile. On the other hand, the respondents do not believe that they have breached the law and are therefore equally dissatisfied. The sentiment can easily be transferred to the complaint officers. Settlement is never pleasing to either party. The EOC is not an easy environment to work in. We **recommend** that the EOC should further improve its human resources policies to give more recognition and provide more support and training to its staff.

6.75 As mentioned in the HRM Review, we note that the EOC staff have diverse background and there are small circles and sub-culture within the EOC. This phenomenon is not desirable in a people-oriented organization dedicated to embracing diversity and promoting conciliation. We **recommend** that the EOC management should, with external assistance where appropriate, take active steps to cultivate a forward-looking, positive and harmonious working environment by improving staff morale and staff relations.

6.76 Looking into the future, we **recommend** that -

- (a) The EOC should improve its staff performance management system, cultivate a merit-based culture and give sufficient warnings and signals to under-performed staff so that the eventual decision regarding their termination or non-renewal will not be taken by surprise.
- (b) As mentioned in the HRM Review, the EOC should reaffirm the importance of the commitment to equal opportunities as a

core competency for staff at all levels. It should recruit and retain staff who subscribe to the belief of equal opportunities. It should provide comprehensive induction programme and regular staff training in this respect.

- (c) The EOC should improve its grievance handling system.
- (d) The EOC should enhance its skills in managing the exit of staff. As recommended in the HRM Review, it should provide proper training on staff counseling, disciplinary actions and termination of employees.
- (e) The EOC should ensure that its HRM policies and practices are fair and transparent.
- (f) The EOC should encourage the staff to strengthen the social ties by such means as forming staff associations and arranging social gatherings.

Accountability

6.77 As a public organization, the EOC must reaffirm its commitment to be accountable to the community. We **recommend** that the EOC should continue to demonstrate its accountability by -

- (a) furnishing an annual report, a statement of accounts and the auditor's report on the statement to the Chief Secretary for Administration who shall cause the same to be tabled in LegCo;
- (b) subjecting itself to the scrutiny of the Director of Audit as to whether it has complied with the principle of economy, efficiency and effectiveness in the use of its resources; and
- (c) complying with the subvention guidelines and submitting regular reports.

Equal Opportunities Tribunal

6.78 We note a proposal to establish an Equal Opportunities Tribunal to provide a relatively inexpensive and user-friendly alternative dispute resolution mechanism in the area of equal opportunities. We understand that a Working Group composing of Members and staff of the EOC, members of the Judiciary and other relevant parties is formed to study this proposal. We **recommend** that relevant authorities should continue to explore the proposal with a view to identifying the best way to promote and protect equal opportunities.

Clear Positioning and Public Perception

6.79 In addition to strengthening the EOC's governance, the EOC should also address some longer-term issues. The EOC should have a clear positioning which should be communicated to the public.

Scope of the EOC's Work

6.80 For a young organization like the EOC, its top priority should be to establish a good track record and to develop itself into an institution of excellence. It is advisable to set priorities and map out medium to long term plans. We are pleased to note that the EOC has taken the initiative to conduct the Organizational Review. At the EOC meeting on 2 December 2004, it endorsed a revised set of vision, mission and core values as recommended in the Organizational Review. Please see **Annex 6**. To enhance public understanding of the role and functions of the EOC, we **recommend** that the EOC should publicize its vision, mission and core values as well as the scope of its responsibilities.

6.81 We further **recommend** that -

- (a) The EOC should consider adopting a focused approach by consolidating itself and seeking to excel in its current statutory functions in terms of depth and quality of work.
- (b) In anticipation of the possibility of expanding the EOC's portfolio to cover legislation against racial discrimination⁴⁹, the EOC should work closely with the Government in putting in place a sound framework for implementation.

Impartiality of the EOC

6.82 The EOC is a "regulator" in enforcing legislation through warnings or prosecution. It is also a "mediator" when handling complaints between two private parties. Last but not least, it is an "advocate" in promoting equal opportunities through education and publicity. Role conflict is a natural outcome of the EOC's multi-faceted functions. There is no firewall between these functions (nor should

⁴⁹ In the consultation paper on "*Legislating against Racial Discrimination*" issued by the HAB in September 2004, it was proposed that the EOC should be the body responsible for implementing the proposed legislation against racial discrimination.

there be) and it is not always easy to differentiate these roles. It is understandable that there is a lingering sense of uncertainty even among some of the EOC staff and Members as to whether and when they should be an “advocate” or a neutral party.

6.83 Whilst some people expect the EOC to be their “advocate” and champion their cause, there is a risk that the EOC may undermine its credibility if it is biased in handling complaints. To many people, the EOC should be an honest broker balancing the interests of different sectors of the community. The EOC should serve as a bridge through which different interest groups could communicate their concerns and settle their differences, firstly through amicable means and, failing that, through legal channels. It is suggested that the EOC Commission should discuss and clearly define the meaning of the duty of impartiality⁵⁰, having regard to international practices and the local circumstances. We support this suggestion and we **recommend** that the EOC should consider preparing (and publicizing on its website and in other materials) an explicit policy statement⁵¹ on its interpretation of “impartiality”. We are pleased to note that the EOC’s recent Organizational Review also makes similar recommendations.

Conciliation

6.84 At the operational level, some complainants are disappointed at (i) the EOC’s approach to investigation and conciliation (which, in their view, places too much of a burden on individual complainants); (ii) the very nature of conciliation and the absence of a “judgment”; and (iii) the neutral role played by the EOC officers and the apparent hesitation or even reluctance to advise complainants on the strengths and weaknesses of their complaints.

⁵⁰ Please refer to the conference paper mentioned in Footnote 34.

⁵¹ In the case of the Australian Human Rights and Equal Opportunities Commission (HREOC), the considered view, having regard to the Australian situation, was to adopt a more proactive approach. The Commission published the following statement on its website (http://www.hreoc.gov.au/complaints_information/publications/alternative.html) – “HREOC is of the view that power differentials between parties in the context of anti-discrimination and human rights disputes must be considered and addressed if the process is to be just and fair and that intervention to enable a fair and just process is central to the achievement of fair and just outcomes. The Commission’s legislation supports the positive intervention of the conciliator to ensure that a party is not significantly disadvantaged in proceedings and to assist the parties to participate on equal terms. Ensuring a fair and just process requires moving beyond notions of formal equality as clearly treating unequals equally will exacerbate rather than ameliorate party disadvantage.....This interventionist approach to enable substantive equality of process does not constitute a breach of conciliator impartiality or neutrality. Neutrality can be seen to involve not only a requirement to be aware of and restrain from imposing personal bias on the process but also a requirement to act positively to maintain equality of process.”

6.85 There are obvious merits in encouraging conciliation, particularly if our ultimate objective is to cultivate a harmonious society. We **recommend** that the EOC should review whether and what more assistance should and could be provided to the complainants to facilitate conciliation and mediation without compromising its “impartial” roles. The proposal to set up an Equal Opportunities Tribunal is also a possible channel to handle cases that cannot be resolved by conciliation.

Public Education and Promotion

6.86 Some people expect the EOC to devote more efforts to education and publicity and less on litigation, so as to promote a harmonious society that embraces diversity. We **recommend** that -

- (a) The EOC should reaffirm that its ultimate objective is to promote social harmony through changing the community’s attitude towards equal opportunities. To this end, it should intensify its research, publicity, public education and training functions whilst continuing its established policy to initiate litigation where appropriate.
- (b) The EOC should also reaffirm its positioning as a “people-oriented” organization in which people always come first. Anti-discrimination legislation is its servant rather than its master in the pursuit of a pluralistic, tolerant and harmonious society. The EOC should seek to cultivate a society where people embrace equal opportunities not for fear of breaching the law but because of their genuine respect for equal opportunities. Furthermore, the EOC should promote equal opportunities to the general public using easily understandable language.

A Model Institution

6.87 As its name implies, the EOC is looked upon as an icon of fairness, symbol of integrity and defender of equality. As in the case of the Judiciary, the EOC is expected to adjudicate disputes between citizens and the Government as well as between citizens. The EOC should be fair and impartial in discharging its duties. The EOC has to strike a balance between allowing flexibility and ensuring due processes. On balance, we **recommend** that, in the interest of developing the EOC as a credible institution with sound principles and processes -

- (a) The EOC should, where appropriate and feasible, formalize its rules and procedures in human resource management, particularly in its recruitment, appointment, retirement and termination of staff, paying due regard to best practices in the public and private sectors. The EOC should promulgate these guidelines and provide training to staff at all levels to ensure compliance.
- (b) The EOC should formulate clearer guidelines and procedures on the conduct of the business of the Commission and its Committees.
- (c) The EOC should, with the assistance of external agencies such as the Independent Commission Against Corruption (ICAC) and Privacy Commission where appropriate, review and improve the system for the storage and handling of confidential documents and personal data.

Conclusion

6.88 In making the above recommendations, we have been guided by what happened, and by the views and the vision conveyed to us through written submissions and interviews during the inquiry. We hope that these recommendations will provide some food for thought for the Government and the EOC in its endeavour to restore the credibility of the EOC. Some of our suggestions are short-term measures that can be implemented shortly whereas others may entail careful examination of the policy and legal implications. We trust the relevant authorities will examine them, alongside the various reviews undertaken by the EOC in recent years.

Chapter 7

Conclusions and Recommendations

Introduction

7.1 We now draw together the strands from previous chapters. We should emphasize that our conclusions and recommendations are made with the benefit of hindsight. One thing is crystal clear to us: the community has very high expectations of the EOC. For those of us who genuinely care about the EOC, we must allow history to take care of itself and move on. It is time for us to ensure that lessons will be learnt and improvements put in place for the future.

Conclusions

Conclusion One

The Appointment of Mr Patrick YU as Director (Operations)

7.2 The appointment of Mr Patrick YU as Director (Operations) was in line with the prevailing recruitment practices adopted by the EOC at the time. The appointment process featured some good recruitment practices, for instance–

- (a) An executive search firm was engaged to broaden the pool of candidates and add an element of professionalism in the selection process. (*Paragraph 2.37*)
- (b) The attributes and duties of the Director (Operations) were clearly defined and fully incorporated in the assessment process. (*Paragraph 2.34*)
- (c) The recruitment involved a representative Selection Panel comprising experienced EOC Members who performed their function dutifully, independently and professionally. (*Paragraphs 2.56 to 2.57*)

7.3 Whilst it was the EOC's understanding in late 2003 that Mr Patrick YU had been properly appointed according to its normal procedures, as noted by the EOC at its meeting on 18 March 2004, the approval process seemed to have certain technical irregularities as set out below–

- (a) The Selection Panel was technically acting outside its capacity in the appointment of Mr Patrick YU because it did not have such power of appointment. The A&FC could not sub-delegate this power of appointment to the Selection Panel.
- (b) The written delegations from the EOC to the A&FC regarding the authority for senior staff appointment had either been overlooked or had gone missing.

7.4 Further inspection of files by the EOC revealed that a similar incident occurred in respect of a senior appointment in 1998. It was also noted that the Selection Panel was approved by the A&FC Convenor, but was not endorsed by the A&FC as a committee. (*Paragraphs 2.46, 2.48, 2.65 and 2.66*)

7.5 We appreciate that Ms Anna WU wished to announce Mr Yu's appointment as it would raise the profile of the EOC in the emerging area of anti-racial discrimination. There was already a plan to make the public announcement in June before Ms Wu learned about the appointment of Mr Michael WONG as the EOC Chairperson. As Mr Yu's employment would not commence until November 2003, it might be desirable to defer the announcement until the new Chairperson took office. (*Paragraph 2.83*)

Conclusion Two

The Termination of the Appointment of Mr Patrick YU

7.6 The termination of the appointment of Mr Patrick YU was properly authorized by a resolution passed by the EOC at its meeting on 18 September 2003—

- (a) The resolution was passed unanimously without any objection from any members present at the time of voting, and was therefore properly constituted.
- (b) The resolution was passed after a 45-minute discussion on the legality, rationality and reasonableness of the termination of Mr Yu's contract. The focus of the discussion was on how best to handle the termination of Mr Patrick YU's contract.
- (c) The resolution authorized "the EOC Chairperson to handle the contract with Mr Yu". It is evident from the tape recording of the Council meeting that the resolution was to authorize the Chairperson to handle the termination of the contract with Mr Yu.

- (d) The resolution was passed without any request for Mr Wong to revert to the EOC before the actual act of termination.

(Paragraphs 3.46 to 3.55)

7.7 Mr Michael WONG and the EOC Office should have informed EOC Members at the meeting on 18 September 2003 regarding prior discussions with Mr Yu about the termination of his contract and a letter from Mr Yu's lawyers indicating that he might take legal action against the EOC for breach of contract. Whilst such information might not have affected the EOC's decision to pass a resolution to authorize Mr Wong to handle the contract, it would have facilitated Members' discussions at the EOC meeting. Similarly, the EOC Office should have kept Members informed of subsequent developments. *(Paragraphs 3.50, 3.57 and 3.62)*

7.8 The fact that the dispute between the EOC and Mr Yu was satisfactorily resolved demonstrated that the issue was, in the main, an employment matter that could be amicably settled through the legal channel between the parties concerned if they so wished. *(Paragraph 3.69)*

Conclusion Three

The Appointment of Mr WONG as the EOC Chairperson and Approval for Him to Continue to Receive Pension

7.9 Mr Wong had exercised due diligence in seeking the necessary approval for the continuation of his pension payments, first from the Chief Justice and later from the Chief Executive through the Secretary for Home Affairs. The Chief Executive had acted within his authority in approving Mr Wong's case. *(Paragraphs 4.20 and 4.21)*

7.10 The allegations about Mr Wong's acceptance of gifts referred to incidents that allegedly took place when Mr Wong was in the Judiciary. There are well-established rules governing the acceptance of advantages by judges and judicial officers. *(Paragraph 4.29)*

Conclusion Four

Handover Arrangements between Chairpersons

7.11 It is desirable to have a smooth handover between the EOC Chairpersons because they are the policy and executive head of the EOC under the present system. The handover should and could have been done in a more formal and professional manner. It is regrettable that such arrangements between Ms Wu and Mr Wong did not take place. *(Paragraph 4.42)*

Conclusion Five

Gatherings on 4 November 2003 and 5 November 2003

7.12 The gatherings on 4 and 5 November 2003 were arranged to seek a better understanding of Mr Wong's inclinations and provide moral support to Mr Wong at a time of distress and intense pressure. The whole setting was an informal one without any meeting agenda, notes taken or papers drafted.

7.13 The resignation statement delivered by Mr Wong on 6 November 2003 was written by Mr Wong himself without assistance from those present. It made no reference to allegations against the EOC. *(Paragraphs 4.51 to 4.53)*

Conclusion Six

The So-called "Six Allegations"

7.14 As detailed in Chapter 5 of this report, the so-called six allegations as published in the EastWeek on 12 November 2003 were either unsubstantiated or exaggerated.

7.15 These "six allegations" were not independent of previous allegations, mostly anonymous ones, against the EOC over the years. Most of them already appeared in previous media reports, magazine articles and anonymous letters. The EOC tried but failed to identify the source of these allegations. They were repackaged and reproduced in the article with an added connection to Mr Wong's resignation. *(Paragraphs 5.69 and 5.71)*

7.16 According to information available to us, none of the five individuals who attended the gatherings on 4 and 5 November 2003 had seen or read any document containing the “six allegations” before the publication of the article. (*Paragraph 4.50*)

Conclusion Seven

The Role of the Government

7.17 The community expects the Government to take the lead in upholding the credibility of the EOC. As a matter of policy, the Government should keep the EOC at an arm’s length to safeguard its independence. The Government should be more sensitive and prudent in handling matters relating to the EOC, particularly in making appointments. (*Paragraph 6.27*)

Conclusion Eight

Turning a New Page

7.18 In the spirit of continuous improvement, the EOC has recently completed an overall review of its role and organizational structure as well as a review on its human resources management system. These reviews have provided an excellent framework for the EOC to address some of the issues it faces and to enhance its effectiveness as an institution. (*Paragraphs 6.9 to 6.13*)

Recommendations

7.19 Concerted efforts are required to restore the credibility of the EOC. With the benefit of the collective wisdom from various sources, we propose the following 70 recommendations.

Strengthening the Institutional Framework of the EOC

Guiding Principles

Recommendation 1 We **recommend** the following core values, as embodied in the Paris Principles and good organizational practices, should form the basis for the interface between the Government and the EOC, as well as the operation of the EOC -

- (a) Independence;
- (b) Pluralism;
- (c) Good corporate governance ;
- (d) Openness, transparency and communication;
- (e) Efficient and effective performance; and
- (f) Accountability.

(Paragraph 6.15(b))

Recommendation 2 We **recommend** that the Government should consider making reference to the Paris Principles, copy at **Annex 6**, in the appointment to, and the governance of, the EOC. *(Paragraphs 6.15(a) and 6.17)*

Recommendation 3 We **recommend** that the EOC should be guided by the Paris Principles in performing its functions to the fullest extent permitted by its enabling legislation. *(Paragraph 6.18)*

Independence

Recommendation 4 We **recommend** that the Government should continue to adhere to the non-interventionist policy and distance itself from the day-to-day operation of the EOC. *(Paragraph 6.27)*

Recommendation 5 We **recommend** that the Government should give favourable consideration to, and provide assistance in relation to, the EOC's request to join international organizations that are concerned with the elimination of discrimination. *(Paragraph 6.28)*

Recommendation 6 To maintain the impartiality of the EOC, we **recommend** that the EOC should be a non-partisan body. It is desirable to maintain a balance between different interests and prevent predominance by any single interest group. *(Paragraph 6.29)*

Recommendation 7 We further **recommend** that all EOC Members, including those nominated by community groups, should be required to uphold the EOC's overall interest. (*Paragraph 6.29*)

Pluralism

Recommendation 8 Having regard to the Paris Principles and the local conditions, we **recommend** that EOC membership should cover a broad spectrum of people, including -

- (a) members representing the communities protected by the anti-discrimination ordinances administered by the EOC;
- (b) members from the academia, religious field as well as legal, medical, accounting, media or other professions;
- (c) members with knowledge of, or experience in, non-governmental organizations involved in the development of equal opportunities and efforts to combat discrimination;
- (d) members with knowledge of, or experience in, trade unions or employees' associations;
- (e) members representing the employers in the private and public sectors; and
- (f) a Legislative Councillor.

(*Paragraph 6.30*)

Recommendation 9 We **recommend** that the Commission, as the EOC's governing board, should have Members with financial and legal expertise to enable it to control and account for the use of public resources. (*Paragraph 6.31*)

Recommendation 10 We **recommend** that Members should continue to be appointed in their personal capacity. (*Paragraph 6.31*)

Recommendation 11 We **recommend** that, in making appointments to the EOC, the Government may consider inviting the EOC to nominate candidates representing relevant community groups. In doing so, the EOC may invite nominations from various organizations representing community groups for its consideration via a nomination committee before submitting its list of recommendations to the Government for appointment to the EOC. (*Paragraph 6.32*)

Recommendation 12 We **recommend** that the EOC should broaden its network and enhance its diverse composition by -

- (a) increasing the number of co-opted members in sub-committees and inviting reputable persons in relevant fields to participate in committee work; and
- (b) considering the possibility of establishing and expanding the network of stakeholder groups to discuss topical issues of interest.

(*Paragraph 6.33*)

Corporate Governance

Corporate Governance for Public Bodies

Recommendation 13 We **recommend** that the EOC should examine and, where appropriate, implement the guidelines stipulated in “Corporate Governance for Public Bodies – A Basic Framework” published by the Hong Kong Institute of Certified Public Accountants (HKICPA). (*Paragraph 6.35*)

The EOC Chairperson

Recommendation 14 We **recommend** that the EOC should implement the proposal in its recent “Organizational Review” to establish a corporate image rather than focusing on the Chairperson. (*Paragraph 6.36*)

Recommendation 15 We **recommend** that the posts of EOC Chairperson and the Chief Executive Officer (CEO) should be separated,

and that the post of CEO should be reinstated. It is desirable that the Chairperson be a non-executive position appointed on a part-time basis. (*Paragraphs 6.37 to 6.40*)

Recommendation 16 To allow more flexibility in selecting the most suitable Chairperson for appointment, we **recommend** that consideration may be given to amending the relevant legislation to remove the requirement for the EOC Chairperson to be appointed on a full-time basis. (*Paragraph 6.40*)

Recommendation 17 We **recommend** that the responsibilities of the Chairperson should be formally defined in writing and such responsibilities should be distinct from those of the CEO. (*Paragraph 6.41*)

Recommendation 18 We **recommend** that the CEO should be an ex-officio executive member of the Commission. The CEO, if reinstated, should have line responsibility for all aspects of executive management. He or she should report to the Chairperson and be accountable to the Commission for the performance of the organization and the implementation of the Commission's strategy and policies. (*Paragraph 6.42*)

Recommendation 19 Pending the consideration of the structural changes recommended above, we **recommend** that the powers and responsibilities of the EOC Chairperson vis-à-vis the Commission should be clearly defined. Specifically, the governing board should reserve strategic and other key matters, such as major decisions in relation to resources and senior appointments, for collective decision-making. (*Paragraph 6.43*)

Recommendation 20 In making appointment and re-appointment of the EOC Chairperson, we **recommend** that the Government should note the views as presented in paragraph 6.44 about the ideal attributes of the EOC Chairperson. (*Paragraph 6.44*)

Recommendation 21 We **recommend** that the Government should continue to adopt the "merit principle" to appoint the most suitable

candidate as the EOC Chairperson having regard to candidates' expertise, experience and integrity as well as the functions of the EOC. The appointment should be free from political considerations. (*Paragraph 6.45*)

Recommendation 22 We **recommend** that the Government should review the remuneration package of the EOC Chairperson in the context of the overall review of the advisory and statutory boards and committees. The EOC should similarly review the remuneration package of the CEO, if reinstated with an expanded function. (*Paragraph 6.46*)

Recommendation 23 We **recommend** that, in the context of the overall review of advisory and statutory bodies in Hong Kong, the Government should consider the following two suggestions -

- (a) consider the desirability and feasibility of establishing a nominating committee, comprising Government officials and representatives of key stakeholders, to assist in the appointments to the EOC and other major boards and committees. Under this proposal, vacancies are advertised and nominations invited. The candidate will then be submitted to the Chief Executive for consideration and endorsement.
- (b) The Government should consider following some overseas models whereby the Government will, after each key appointment, issue a press release attaching the appointee's detailed curriculum-vitae to demonstrate that his/her qualifications and experiences are impeccably linked to the work of the EOC and hence eminently qualified for the position.

(*Paragraph 6.48*)

Recommendation 24 Whilst recognizing the need to enhance transparency and accountability in the system for the appointment to the EOC, we **recommend** that the Government should be mindful not to introduce processes that will dampen the wish of capable candidates to contribute to public service and consequently deprive the EOC and Hong Kong of valuable talents. (*Paragraph 6.49*)

Recommendation 25 To ensure stability and facilitate longer-term planning, we **recommend** that the EOC Chairperson should normally be appointed for a three-year term, renewable once for another term of not exceeding three years. (*Paragraph 6.50*)

Recommendation 26 We **recommend** that, unless there are unforeseen circumstances and overriding considerations to the contrary, the Government should make a firm decision and announce the appointment, re-appointment or cessation of the appointment of the EOC Chairperson two months before the commencement of the new term. (*Paragraph 6.53*)

Recommendation 27 We **recommend** that the appointment and re-appointment or EOC Members should, as far as possible, be announced one month before the commencement of the new term. (*Paragraph 6.53*)

Handover Arrangements

Recommendation 28 Pending further consideration of the proposal to reinstate the position of the CEO, we **recommend** that the EOC should develop and, where appropriate, formalize proper handover arrangements for the Chairpersons. (*Paragraph 6.54*)

Recommendation 29 To preserve the EOC's independence, We **recommend** that, the handover between EOC Chairpersons should, as far as possible, be conducted by the EOC. The Government should keep the EOC at an arm's length except to assist in building rapport and network. It would be inappropriate for the Government to give any directions or signal to the incoming Chairpersons on the day-to-day operation of the EOC. (*Paragraph 6.54*)

The Commission

Recommendation 30 To enhance collective leadership, we **recommend** that the Government may consider appointing a Deputy Chairperson, who may act as the Chairperson if the Chairperson is absent from Hong Kong or is, for any other reason, unable to act as Chairperson, or if the office is vacant. (*Paragraph 6.55*)

Recommendation 31 We **recommend** that the EOC may consider designating a spokesperson for specific subjects to enhance public image and achieve unity in diversity. Individual Members should refrain from expressing personal views on EOC matters in public. (*Paragraphs 3.64 and 6.55*)

The Role of EOC Members

Recommendation 32 We **recommend** that EOC Members should apprise themselves of their basic legal duties and responsibilities and potential liabilities. These duties should include setting directions, overseeing the organization and monitoring the executive management of the EOC. (*Paragraph 6.59(a)*)

Recommendation 33 We **recommend** that, as recommended in the EOC's Organizational Review, the EOC should conduct orientation, familiarization visits, induction and refresher training as well as brainstorming sessions on a regular basis for EOC Members. (*Paragraph 6.59(b)*)

Recommendation 34 We **recommend** that, whilst the Commission should not interfere with the day-to-day operation of the EOC, chairpersons of the EOC's functional committees should consider taking a more active role in giving guidance, directions and support to the EOC Office. EOC Members should also give more support by joining at least one functional committee and participating more actively in public education and community relations activities. (*Paragraph 6.59(c)*)

Recommendation 35 We **recommend** that EOC Members should be apprised of the need to take collective responsibility for the Commission. Once a decision has been made in accordance with proper rules and procedures, EOC Members are expected to support it and protect the corporate identity. (*Paragraph 3.65 and 6.59(d)*)

Appointment of EOC Members

Recommendation 36 We **recommend** that, in appointing EOC Members, the Government should consider those who possess the following attributes -

- (a) supportive of the principles of equal opportunities;
- (b) ready and able to devote time and effort to the work of the EOC; and
- (c) respectable persons who meet a high standard of behaviour (see paragraphs 6.65 to 6.66)

(*Paragraph 6.60*)

Recommendation 37 We **recommend** that the “six-year rule” should be followed in considering the next round of appointments. (*Paragraph 6.63*)

Recommendation 38 To avoid a bunching effect and to enhance the continuity of the Commission, we **recommend** that the term of appointment of EOC Members should be staggered in such a way that the term of no more than one-half of the members will expire in the same year. (*Paragraph 6.64*)

Standards of Behaviour of the Governing Board

Recommendation 39 To maintain public confidence in the EOC and to preserve its dignity and standing, we **recommend** that the EOC should consider promulgating a code of ethical conduct for its Members and staff to ensure that they will, at all times, observe the highest standards of conduct and integrity. (*Paragraph 6.66*)

Recommendation 40 We **recommend** that, in considering appointments to the EOC, the Government should take into account the abilities of possible candidates in meeting certain ethical standard. (*Paragraph 6.66*)

Openness, Transparency and Communication

Recommendation 41 We **recommend** that the EOC should make an explicit commitment to openness and transparency in all of its main activities, subject only to the need to preserve confidentiality in those specific circumstances where it is proper and appropriate to do so. (*Paragraph 6.67(a)*)

Recommendation 42 We **recommend** that the EOC may consider implementing the recommendation of the Organizational Review report to reinstate the practice of conducting a press conference after each EOC meeting to enhance the communication with the media. (*Paragraph 6.67(b)*)

Recommendation 43 We **recommend** that the EOC may consider implementing the recommendation of the Organizational Review report to release the confirmed minutes of the EOC meetings on the Internet for access by members of the public. (*Paragraph 6.67(c)*)

Recommendation 44 We **recommend** that the EOC should ensure that relevant and sufficient information is provided to EOC Members in a timely manner to facilitate discussion and decision-making. (*Paragraph 6.67(d)*)

Recommendation 45 We **recommend** that, as recommended in the EOC's HRM Review, the EOC management should consider consulting staff members so as to identify the most effective means to improve the communication within the EOC Office and between Members and staff of the EOC. Specifically, consideration should be given to -

- (a) publishing and making available information on significant areas of policy and practice, such as procurement, recruitment, complaints handling and training; and

- (b) putting in place procedures for employees to voice their concerns or complaints about maladministration, breaches of the law or ethical concerns, in a supportive environment where they will be protected from reprisals. These should include clear channels for raising concerns with line management up to the CEO, Chairperson and governing board members.

(Paragraphs 6.67(e) and 6.68)

Performance

Performance Management

Recommendation 46 We **recommend** that the EOC should implement the following recommendations in the EOC's Organizational Review to further improve the EOC's performance -

- (a) to review the service standards and targets in the current performance pledge to ensure quality service;
- (b) to develop a strategic corporate plan for a three to five year term to provide a framework for respective functional division/unit to develop their annual work plan; and
- (c) to draw up a more structured self-evaluation plan, including conducting a regular and structured survey, say every three years, on the public perception of the EOC's work and customer satisfaction.

(Paragraphs 6.70 and 6.71)

Recommendation 47 We **recommend** that the EOC should follow up on the recommendations of various previous reviews and implement them as appropriate with a view to improving the EOC's performance of its core functions. *(Paragraph 6.72)*

Recommendation 48 In view of the increasing demand for training and consultancy services, we **recommend** that the EOC should expand such services. *(Paragraph 5.52)*

Human Resources

Recommendation 49 We **recommend** that the EOC should implement the recommendations of the HRM Review as soon as possible. (*Paragraph 6.73*)

Recommendation 50 We **recommend** that the EOC should further improve the human resources policies to give more recognition and provide more support and training to its staff. (*Paragraph 6.74*)

Recommendation 51 We **recommend** that the EOC management should, with external assistance where appropriate, take active steps to cultivate a forward-looking, positive and harmonious working environment by improving staff morale and staff relations. (*Paragraph 6.75*)

Recommendation 52 We **recommend** that the EOC should improve its staff performance management system, cultivate a merit-based culture and give sufficient warnings and signals to under-performed staff so that the eventual decision regarding their termination or non-renewal will not be taken by surprise. (*Paragraph 6.76(a)*)

Recommendation 53 We **recommend** that, as mentioned in the HRM Review, the EOC should reaffirm the importance of the commitment to equal opportunities as a core competency for staff at all levels. It should recruit and retain staff who subscribe to the belief of equal opportunities. It should provide comprehensive induction programme and regular staff training in this respect. (*Paragraph 6.76(b)*)

Recommendation 54 We **recommend** that the EOC should improve its grievance handling system. (*Paragraph 6.76(c)*)

Recommendation 55 We **recommend** that the EOC should enhance its skills in managing the exit of staff. For instance, as recommended in the HRM Review, it should provide proper staff training on staff counseling, disciplinary actions and termination of employees. (*Paragraph 6.76(d)*)

Recommendation 56 We encourage the EOC to continue the secondment arrangements with organizations of similar nature. To ensure that future secondments and consultancies achieve their intended purposes, we **recommend** that -

- (a) The EOC should formulate clear guidelines on the engagement of consultants and secondees. The guidelines should cover the objectives, operation and the interface with the EOC staff.
- (b) The EOC Office should submit regular reports to the A&FC on the engagement of consultants and secondees so that the A&FC can have a full picture of the staffing support of the EOC.
- (c) The EOC should ensure that the persons recruited have the expertise that it requires and that they work to a programme for the transfer of skills and their phased replacement with local staff.

(Paragraph 5.23)

Recommendation 57 We **recommend** that the EOC should encourage the staff to strengthen their social ties by forming staff associations and arranging informal gatherings. *(Paragraph 6.76(f))*

Accountability

Recommendation 58 To reaffirm its commitment to be accountable to the community, we **recommend** that the EOC should continue to demonstrate its accountability by -

- (a) furnishing an annual report, a statement of accounts and the auditor's report on the statement to the Chief Secretary for Administration who shall cause the same to be tabled in LegCo;
- (b) subjecting itself to the scrutiny of the Director of Audit as to whether it has complied with the principle of economy, efficiency and effectiveness in the use of its resources; and
- (c) complying with the subvention guidelines and submitting regular reports.

(Paragraph 6.77)

Equal Opportunities Tribunal

Recommendation 59 We **recommend** that the relevant authorities should continue to explore the proposal of establishing an Equal Opportunities Tribunal.

(Paragraph 6.78)

Clear Positioning and Public Perception

Scope of the EOC's Work

Recommendation 60 We **recommend** that the EOC should publicize its vision, mission, core values and the scope of its responsibilities with a view to enhancing public understanding of its role and functions.
(Paragraph 6.80)

Recommendation 61 We **recommend** that the EOC should consider adopting a focused approach by consolidating itself and seeking to excel in its current statutory functions in terms of depth and quality of work.
(Paragraph 6.81(a))

Recommendation 62 In anticipation of the possibility of expanding the EOC's portfolio to cover legislation against racial discrimination, we **recommend** that the EOC should work closely with the Government to put in place a sound framework for implementation. *(Paragraph 6.81(b))*

Impartiality of the EOC

Recommendation 63 We **recommend** that the EOC Commission should discuss and clearly define the meaning of its duty of "impartiality", having regard to international practices and local circumstances. We further **recommend** that the EOC may consider preparing an explicit policy statement on its interpretation. *(Paragraph 6.83)*

Conciliation

Recommendation 64 In relation to the EOC's complaints handling function, we **recommend** that the EOC should review whether and, if so, what more assistance the EOC Office should and could provide to the complainants to facilitate conciliation and mediation without compromising the EOC's impartial roles. (*Paragraph 6.85*)

Recommendation 65 We **recommend** that to institutionalize "conciliation" as part of the core function of the EOC, the EOC should consider the possibility of adopting "conciliation rate" as an overall performance indicator for the staff and the EOC as a whole. We further **recommend** that the EOC should step up staff training in conciliation and mediation practices. (*Paragraph 5.42*)

Public Education and Promotion

Recommendation 66 We **recommend** that the EOC should reaffirm that its ultimate objective is to promote social harmony through changing the community's attitude towards equal opportunities. To this end, it should intensify its research, publicity, public education and training functions whilst continuing its established policy to initiate litigation where appropriate. (*Paragraph 6.86(a)*)

Recommendation 67 We **recommend** that the EOC should reaffirm its positioning as a "people-oriented" organization in which people always come first. Anti-discrimination legislation is its servant rather than its master in the pursuit of a pluralistic, tolerant and harmonious society. The EOC should seek to cultivate a society where people embrace equal opportunities not for fear of breaching the law but because of their genuine respect for equal opportunities. Furthermore, the EOC should promote equal opportunities using easily understandable language. (*Paragraph 6.86(b)*)

A Model Institution

Recommendation 68 To enable the EOC to develop as a credible public organization with sound principles and processes, we **recommend** that the EOC should, where appropriate and feasible, formalize its rules

and procedures in human resource management in its recruitment, appointment, retirement and termination of staff, paying due regard to best practices in the public and private sectors. Specifically -

- (a) The EOC should stipulate and keep under review guidelines on referrals and declaration of interests in recruitment exercises, the engagement of external consultants and secondees, as well as the engagement of summer students, interns and volunteers.
- (b) The EOC must ensure that its HRM policies and practices are fair and transparent.
- (c) The EOC should promulgate these guidelines and provide training to staff at all levels to ensure compliance.

(Paragraphs 2.58, 5.23(a), 5.24, 6.76(e) and 6.87(a))

Recommendation 69 We **recommend** that the EOC should formulate clearer guidelines and procedures on the conduct of the business of the Commission and its Committees. *(Paragraph 6.87(b))*

Recommendation 70 For the EOC to maintain its credibility as a complaints handling body, the EOC should handle personal data in a prudent and legal manner. We **recommend** that -

- (a) The EOC should constantly review its policies and practices on data protection and enforce them with rigour.
- (b) The EOC should, as far as practicable, identify the source of previous leakages.
- (c) As a deterrent against possible leakages in the future, the EOC should demonstrate its resolve to crack down on leakages by issuing periodic reminders to EOC Members and staff, strengthening the record management system and imposing hefty penalties on breaches.
- (d) The EOC should formulate and promulgate a media policy to enable it to respond promptly to the media, particularly in face of reports having negative impact on its credibility.
- (e) The EOC should, with the assistance of external agencies such as the Independent Commission Against Corruption (ICAC) and Privacy Commission where appropriate, review and improve the system for the storage and handling of

confidential documents and personal data. In particular, the EOC should consider the possibility and desirability of making it a statutory offence to disclose confidential information and personal data in the custody of the EOC along the lines of similar provisions applicable to other statutory agencies.

(Paragraphs 5.63 and 5.73)

ANNEXES

Acknowledgements

The Independent Panel of Inquiry on the Incidents Relating to the Equal Opportunities Commission expresses its sincere thanks to those who provided contributions and/or met the Panel during the inquiry. The following organizations and individuals have given consent to being acknowledged in this report.

(A) For Written Contributions and Interviews

(a) Former EOC Chairpersons

- Mrs Patricia CHU, BBS, JP
- Mr Michael WONG, GBS

(b) EOC Members

- Ms CHAN Yu
- Dr Joseph KWOK Kin-fun, JP
- Mr Peter YEUNG Kong-hing, BBS, JP

(c) Former EOC Member

- Professor Stevenson FUNG Hon-yuen, BBS

(d) EOC Staff

- Mr Josiah CHOK
- Mr Ferrick CHU
- Mr Joseph LI Siu-kwai

(e) Home Affairs Bureau

- Dr Patrick HO Chi-ping, JP
Secretary for Home Affairs
- Mr Stephen FISHER, JP
Deputy Secretary for Home Affairs

(f) Non-government Organizations

Civil Human Rights Front

- Mr CHONG Yiu-kwong
- Mr FAN Lap-hin
- Miss Raees BAIG
- Miss CHOI Wing-sze
- Mr MAK Tak-ching

Society for Community Organization

- Mr HO Hei-wah, BBS
- Mr TSOI Yiu-cheong
- Mr WONG Chi-yuen

(g) Others

- The Hon Andrew LIAO, SBS, SC, JP

(B) For Interviews

EOC Members

- Dr Raymond WU Wai-yung, GBS, JP
- Professor Nelson CHOW Wing-sun, SBS, JP

(C) For Written Contributions

(a) Legislative Council Member

- The Hon Audrey Eu Yuet-mee, SC, JP

(b) Former EOC Chairperson

- Dr Fanny CHEUNG Mui-ching

(c) EOC Members

- Mr John Robertson BUDGE, SBS, JP
- Ms Gloria CHANG
- Ms KO Po-ling
- Mrs LAM PEI Yu-dja, Peggy, GBS, JP
- Ms WONG Pui-sze, Priscilla
- Mr YEUNG Kwok-ki, Anthony
- Ms YU Sau-chu, Jessie

(d) Former EOC Members

- Mr Charles LEE Yeh-kwong, GBS, JP
- Dr Dennis SUN Tai-lun, BBS

(e) Former EOC Staff

- Mr Frederick TONG

(f) Home Affairs Bureau

- Ms Shelley LEE, JP
Permanent Secretary for Home Affairs
- Mrs Hedy CHU
Principal Assistant Secretary

(g) Judiciary

- Mr Wilfred TSUI
Judiciary Administrator

(h) Non-Government Organizations

- Christian Action
- Hong Kong PHAB Association
- Kowloon Women's Organisations Federation
- Hong Kong Association for Specific Learning Disabilities
- Hong Kong Federation of Women
- Rehabilitation Alliance Hong Kong
- Women's Coalition Equal Opportunities

(i) Others

- Hong Kong Land
- Spencer Stuart & Associates (HK) Ltd.
- Miss Rosaline WONG

Apart from the above, there are also 15 individuals who have not given consent to being acknowledged in this report.

We would also like to express our gratitude to the secretariat headed by Ms Michelle LI, and assisted by Mr Paul WONG, Mrs Beatrice LEUNG and Mrs Ada LAI. Without their support, this report would not have been completed on time.

Chronology of Major Events

Date	Events
September 2001	The Equal Opportunities Commission (EOC) endorsed a proposal to engage two external consultants to conduct a management and structural review of the complaints handling and related matters of the EOC.
February 2002	The consultants completed the review and recommended, among other things, amalgamation of the Gender Division and Disability Division into one operational division.
28.3.2002	The EOC endorsed: (a) the amalgamation of the Gender and Disability Divisions; (b) the creation of a new Operations Division; (c) open recruitment for the new post of Director (Operations); and (d) the Administration and Finance Committee (A&FC) should follow up on the implementation of the above.
12.5.2002	The Director of Gender Division tendered her resignation.
8.7.2002	An external consultant was seconded from Australia to assist in the amalgamation of the two operational divisions and to review existing operational procedures and practices.
31.8.2002	The Director (Gender) left the EOC's employment. Her responsibilities and duties were largely taken over by the external consultant whose title was re-designated as "Gender Division Manager" (GDM).
23.10.2002	The Director (Planning & Administration) (DPA) wrote to members of A&FC, seeking approval for the proposed recruitment procedure (including the engagement of an executive search firm to assist in identifying suitable candidates for the Director (Operations) post). The letter also mentioned that, <i>"In accordance with its terms of reference, A&FC will also be requested to set up a recruitment board for this post and to approve its recommendation in due course."</i>
27.11.2002	The EOC appointed an executive search firm. The post was advertised externally and the EOC invited internal applications. The executive search firm coordinated all applications.
January 2003	The executive search firm forwarded CVs of initially short-listed candidates to the EOC Office for consideration. The then EOC Chairperson (Ms Anna WU) screened candidates from the short-list.

Date	Events
22.1. 2003	The Director of Disability Division tendered his resignation. His responsibilities and duties were gradually taken over by GDM thereafter.
February 2003	The then EOC Chairperson (Ms Anna WU) invited an EOC member to jointly conduct the initial screening interviews. DPA was present at the interviews, as was a representative from the executive search firm. Four external candidates were interviewed, and three were recommended to go to the final interviews.
12.3.2003	DPA wrote to the Convenor of the A&FC, and sought approval for the composition of the Selection Panel, comprising the then EOC Chairperson (Ms Anna WU) and four EOC Members.
15.3.2003	The Convenor of the A&FC indicated his approval for the composition of the Selection Panel in a return slip.
16.3.2003	The EOC Office asked the executive search firm to approach Mr Patrick YU and assess his suitability and interest in taking up the post.
18.3.2003	In response to the request of the executive search firm, and on the instructions of the then Chairperson (Ms Anna WU), DPA forwarded brief information on Mr Yu and his contact address to the executive search firm for follow up.
19.3.2003	The executive search firm established contact with Mr Yu.
21.3.2003 to 22.3.2003	<p>The Selection Panel interviewed four candidates including the three candidates recommended to proceed to final interview and one internal candidate.</p> <p>Members agreed that one candidate would be appointable. Members also expressed the wish to interview more candidates before making a final decision. The then EOC Chairperson (Ms Anna WU) mentioned that Mr Patrick Yu, who was working in Northern Ireland, was “worth exploring”. The Selection Panel agreed that the search firm should ascertain Mr Yu’s interest and suitability.</p>
24.3.2003	The executive search firm interviewed Mr Yu over the telephone and subsequently recommended him for a further interview by the Selection Panel.
24.3.2003	The Disability Division and Gender Division were officially merged to form the Operations Division.
16.4.2003	Mr Yu was interviewed by the Selection Panel through video-conferencing. The Selection Panel considered Mr Yu the most

Date	Events
	suitable candidate and another finalist also “appointable”. The Selection Panel did not meet again after 16 April 2003.
22.4.2003	The Director (Disability) left the EOC’s employment.
25.4.2003	Mr Yu and the other finalist took part in a psychological profiling exercise. The tests were completed on 30 April 2003. The test results were forwarded to the EOC Office on 9 May 2003.
Early 2003	The Secretary for Home Affairs (SHA) requested Mr Andrew LIAO to enquire if Mr Michael WONG might be willing to take up the appointment as the EOC Chairperson. Mr Liao made the enquiries and relayed Mr Wong’s replies to SHA.
16.5.2003	DPA circulated a letter to members of the Selection Panel, seeking confirmation that based on the results of the interviews and the psychological profiling exercise, the Commission could proceed to make an offer to Mr Yu; and that if Mr Yu declined, the offer would then be made to the other candidate.
19.5.2003	All members of the Selection Panel had confirmed agreement to the arrangements set out in the letter circulated by DPA on 16 May 2003.
20.5.2003	The term of appointment of six EOC Members, including two Selection Panel members expired.
20.5.2003	DPA requested the executive search firm to obtain references from Mr Yu’s present and past employers.
21.5.2003	The then EOC Chairperson (Ms Anna WU) wrote to Mr Yu, extending an offer of appointment as Director (Operations) subject to satisfactory references obtained from but not limited to his past and present employers, and his being able to take up the appointment on a date mutually agreed by him and the EOC Office.
End May 2003	SHA informed officers in the Home Affairs Bureau (HAB) that the Chief Executive (CE) was considering appointing Mr Michael WONG as the EOC Chairperson.
June 2003	SHA and two HAB officers met Mr Wong and discussed the basic terms and conditions for the post of EOC Chairperson. Mr Wong requested to continue to receive his monthly pension during his term of service as the EOC Chairperson.
7.6.2003	Mr Yu accepted EOC’s offer of appointment and advised that he would commence work on 1 November 2003.
12.6.2003	SHA sought CE’s approval for appointment of Mr Wong,

Date	Events
	indicating that Mr Wong had requested to continue to receive his pension and SHA would try to resolve the matter.
14.6.2003	The executive search firm informed EOC Office verbally that the academic qualifications of Mr Yu had all been verified.
17.6.2003	SHA informed the Chief Justice (CJ) by phone that: (a) the Administration would like to appoint Mr Wong as the EOC Chairperson; and (b) Mr Wong had requested to continue to receive his pension and would be applying to CJ for permission.
19.6.2003	The Selection Panel Report on the recruitment of Director (Operations) was signed by Mr Peter YEUNG, Ms Anna WU and DPA respectively as the Chairperson, member and secretary to the Selection Panel. The report was subsequently filed for record.
19.6.2003	At the EOC meeting, the then Chairperson (Ms Anna WU) informed Members that a suitable candidate (without mentioning the name) had been identified for the post of Director (Operations) who would report for duty on 1 November 2003. She added that <i>“the appointment of Director (Operations) would be announced to staff and the public in the near future”</i> .
19.6.2003	Mr Wong wrote to CJ to seek his approval under the Pension Benefits (Judicial Officers) Ordinance: (a) to take up the appointment of the EOC Chairperson; and (b) to continue to receive his monthly pension without interruption.
23.6.2003	The Consultant/GDM was appointed to act as Director (Operations) and assumed full responsibilities of the head of the new division.
24.6.2003	In relation to the announcement of Mr Yu’s appointment with the EOC, DPA emailed Mr Yu and said <i>“Anna will be away from Hong Kong until mid July. As the HK Government has already announced its intention to legislate against race and you have a very relevant background in this area, we feel that it would be useful to make the announcement when she comes back in the week commencing 14 July. It would also be beneficial to include your appointment as Commissioner for the Northern Ireland Human Rights Commission in the announcement. Anna therefore asked whether you are able to hold off your resignation until the announcement? Please advise”</i>
25.6.2003	In exchanging emails with the executive search firm on reference checks, DPA said that <i>“Anna will also speak with</i>

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	<i>Patrick this afternoon and will ask him to provide one or two more referees from Northern Ireland, in addition to his current Chairman. Will provide details for you to follow up once I hear from Anna."</i>
26.6.2003	CJ sent a written reply to Mr Wong and advised, among other things, that it would be appropriate for CE to deal with his case. The letter was copied to SHA.
26.6.2003 to 27.6.2003	HAB was informed of CE's approval of the appointment of Mr Wong as the EOC Chairperson on 26 June 2003 and CE formally approved the appointment on 27 June 2003.
27.6.2003	On receipt of a copy of CJ's letter to Mr Wong, SHA sought CE's approval for Mr Wong: (a) to take up the appointment of the EOC Chairperson; and (b) to continue to receive his pension during his term of office with the EOC.
28.6.2003 to 29.6.2003	On 28 June 2003, HAB was informed of CE's approval of the recommendation not to suspend the pension of Mr Wong during his term of office as the EOC Chairperson. CE formally approved this recommendation on 29 June 2003.
30.6.2003	The executive search firm forwarded a report to DPA on four referees. The consultant said that <i>"For further referees, I have got your message and Patrick has informed me that he is currently contacting them. Will keep you posted."</i>
2.7.2003	The Government announced (a) the appointment of Mr Wong as the EOC Chairperson for a period of three years with effect from 1 August 2003 and (b) the appointment of Mrs Patricia CHU and Prof Nelson CHOW as new members of the EOC effective from 1 August 2003.
2.7.2003	<p>The executive search firm wrote to DPA, <i>"Patrick has 2 further referees in mind but feels that this is a sensitive time for us to approach the 2 referees.....However, he felt that it might be better for us to approach them in October, after the AGM. This is because his departure is not yet widely known and he is thus concerned that approaching these referees will result in discomfort."</i></p> <p>DPA wrote back, <i>"My view is that we can still make the announcement in July and information from the other two referees can wait. I'll get hold of Anna who is now on leave and get her endorsement and get back to you."</i></p>
Early July 2003	Mr Wong phoned DPA and said he would like to pay Ms Wu a courtesy visit as soon as possible. DPA informed him that

Date	Events
	<p>Ms Wu was on holiday overseas and would be back in the office on 17 July 2003. Mr Wong asked DPA if he could meet her on 18 July and DPA said he would let Ms Wu know of Mr Wong's request and get back to him.</p> <p>DPA subsequently contacted Mr Wong and advised him that Ms Wu could meet him on 21 July 2003.</p>
17.7.2003	<p>The then EOC Chairperson (Ms Anna WU) returned to office after duty visit and leave. The EOC issued a press release, announcing the appointment of Mr Patrick YU as the Director (Operations). An advance copy of the press release was sent to the EOC Members and Mr Michael WONG as Chairperson Designate.</p> <p>Mr Wong subsequently received a call from DPA saying that Ms Wu could not see him on 21 July 2003, but that she would contact him herself when she was free.</p>
17.7.2003	<p>In response to a request of Mr Yu for written confirmation on specific issues, the then EOC Chairperson (Ms Anna WU) wrote to Mr Yu confirming, among other things, that the EOC was aware of Mr Yu's secondment arrangement with his current employer, the Northern Ireland Council for the Ethnic Minorities, during his term of employment with the EOC.</p>
18.7.2003	<p>A press interview with Mr Yu on his appointment to the post of Director (Operations), EOC was published in SCMP and Ming Pao.</p>
18.7.2003	<p>Ms Anna WU and Mr Michael WONG had a telephone discussion about possible handover arrangements. However, they had different recollections of the details of their conversation.</p>
28.7.2003 to 1.8.2003	<p>A familiarization visit to the EOC Office was arranged for Mr Yu.</p>
1.8.2003	<p>Mr Wong commenced his appointment as the EOC Chairperson.</p>
1.8.2003	<p>Mr Wong met with Mr Yu in his office in the presence of DPA.</p>
Early August 2003	<p>According to Mr Wong, he met with senior managers in the EOC and noted the needs of the Operations Division and the senior managers' comments on Mr Yu during his visit to the EOC.</p>
4.8.2003	<p>The executive search firm submitted a report on the verification of Mr Yu's academic qualifications in May and June 2003.</p>
15.8.2003	<p>Upon the request of Mr Wong, DPA asked Mr Yu for a written summary of his experience in handling investigation and</p>

Date	Events
	complaints.
15.8.2003	The executive search firm submitted a second reference report on two additional referees to EOC, as requested earlier by the former EOC Chairperson (Ms Anna WU).
22.8.2003	Mr Yu provided a written summary of his experience in handling investigations and complaints.
22.8.2003	Mr Wong asked DPA to explore with Mr Yu the possibility of his going back to his original post and to see whether the matter relating to his contract could be amicably resolved, rather than having Mr Yu leave his job and family in Northern Ireland, come to Hong Kong, and then have his contract terminated.
3.9.2003	<p>DPA contacted Mr Yu on the telephone.</p> <ul style="list-style-type: none"> • Mr Yu said it would be difficult for him to go back to his job with his then employer. He would consider a compensation to settle the matter amicably. What EOC was considering was an anticipatory breach of contract. • DPA told Mr Yu that it might be difficult to consider six months' salary (plus cash allowance) as compensation as requested by Mr Yu. He told Mr Yu that he would convey the conversation to Mr Wong and inform him of Mr Yu's request for compensation.
5.9.2003	Mr Wong discussed with the Selection Panel Chairperson (Mr Peter YEUNG) about his reservations over Mr Yu's suitability for the post of Director (Operations). He informed Mr Yeung that he was considering recommending the termination of Mr Yu's contract of employment. Mr Yeung understood Mr Wong's concerns and expressed support.
5.9.2003	Mr Wong asked DPA to further explore the issue of settlement with Mr Yu, and to find out if Mr Yu would be prepared to accept two months' salary (plus cash allowance) as compensation if the contract were terminated.
16.9.2003	DPA contacted Mr Yu and subsequently advised Mr Wong that Mr Yu said he would consider the offer of two months' payment and get back to him.
17.9.2003	The EOC received a letter from Mr Yu's lawyers, claiming that: (a) there had been a breach of contract by the EOC; (b) they had instructions to issue proceedings for damages for breach of contract, breaches of the Bill of Rights and defamation of character against the EOC and Mr Wong personally; and (c) unless they received a proposal to settle Mr Yu's claim

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	within seven days, they would issue proceedings without notice.
18.9.2003	At the EOC meeting, Mr Wong raised the issue about the suitability of Mr Yu for the Director (Operations) post and requested the Commission to give him full authority to handle Mr Yu's contract. Having deliberated for 45 minutes, the meeting passed a resolution without any objection from any member present for voting that Mr Wong should be given full power to handle Mr Yu's contract of employment.
18.9.2003	The EOC endorsed the appointment of two advisers to the Chairperson to carry out a review of the role and organizational and management structure of the EOC.
20.9.2003	The EOC Office issued a letter to Mr Yu's solicitors, mentioning, among other things, that EOC Members and Mr Wong had formed the view that their client was not a suitable employee for the EOC and reiterating the earlier suggestion of offering him two months' salary plus cash allowance in settlement of any claim.
20.10.2003	It was reported in the press for the first time that Mr Wong continued to receive a monthly pension while taking up full-time employment as the EOC Chairperson.
22.10.2003	SHA replied to an oral LegCo question on the approval for Mr Wong to continue to receive pension during his office as the EOC Chairperson.
23.10.2003	Mr Yu held a press conference in Hong Kong, claiming that Mr Wong had unreasonably dismissed him and that this was a serious breach of contract.
24.10.2003	The EOC Office issued a statement that the EOC had given the Chairperson full power to handle Mr Yu's employment contract, and Members were in full support of the Chairperson's decision to terminate the appointment of Mr Yu.
25.10.2003	Some newspapers reported dissenting views of EOC Members on whether the EOC Chairperson (Mr Michael WONG) was authorized to terminate Mr Yu's appointment.
29.10.2003	A newspaper report mentioned that Mr Wong admitted during a recent interview that a local businessman had given his daughter a flat (in which he was residing) and four air-tickets to his family as gifts.
29.10.2003	A newspaper report mentioned that according to an internal EOC document, the former Chairperson (Ms Anna WU) gave Mr Yu's particulars to the executive search firm for

Date	Events
	consideration as a candidate for the Director (Operations) post.
29.10.2003	The LegCo Panel on Home Affairs decided to hold a special meeting to examine the issues relating to the EOC.
29.10.2003	The local businessman issued a press statement denying having given Mr Wong any gifts.
30.10.2003	The local businessman convened a press conference, denying having given any air-ticket to Mr Wong.
30.10.2003	The Judiciary issued a set of responses to media enquiries regarding approval for judges and judicial officers to accept gifts and to continue to receive pension after retirement while taking up other positions.
31.10.2003	Miss Rosaline WONG, Mr Wong's daughter, issued a statement refuting allegations against Mr Wong and the report on Mr Wong's interview with a newspaper.
1.11.2003	It was reported in the press that a complaint had been lodged with ICAC against Mr Wong regarding his acceptance of air tickets.
1.11.2003	A newspaper refuted Ms Rosaline WONG's statement and alleged that Mr Wong supplied a confidential document to the newspaper.
3.11.2003	Mr Wong announced that he would attend the special meeting of the LegCo Panel on Home Affairs on 7 November 2003.
3.11.2003	The Judiciary issued a statement that they would not launch an investigation at that stage as the matter was reportedly being handled by ICAC.
4.11.2003	During a discussion in the morning between Mr Liao and SHA, SHA expressed his wish to meet Mr Michael WONG. As Mr Liao was otherwise engaged, he asked Ms Priscilla WONG to arrange the gathering.
4.11.2003	In the afternoon, the EOC Chairperson notified EOC members by fax that the special meeting scheduled for 5 November 2003 was postponed.
4.11.2003	In late afternoon, SHA, Mr Liao, Mr Wong and Ms Priscilla WONG met in Ms Wong's Chambers. Mr Wong indicated his intention to resign.
5.11.2003	In connection with the special meeting of the LegCo Panel on Home Affairs to be held on 7 November 2003, Mr Wong and DPA each provided a chronology of events relating to the

Date	Events
	appointment and termination of appointment of Mr Yu to the Panel.
5.11.2003	<p>In the morning, it came to SHA's attention that the EOC Chairperson had "cancelled" the EOC meeting originally scheduled for that day. He would like to ascertain Mr Wong's intention. He therefore asked Ms Priscilla WONG to arrange another gathering with Mr Wong.</p> <p>In the evening, SHA, Mr Wong, Ms Wong and Mr Liao gathered at Ms Wong's Chambers. SHA also invited Dr Raymond WU to join them. Mr Wong mentioned that he would announce his resignation on the following day (6 November 2003).</p>
6.11.2003	Mr Wong tendered his resignation which was accepted by CE on the same day. He also read out a statement in a press conference to announce his resignation.
6.11.2003	Mr Liao issued a press statement rebutting the allegations in a newspaper about the gathering of 5 November 2003.
6.11.2003	Ms Wu issued a statement explaining the background leading to the recruitment of Mr Patrick YU as Director (Operations) and the other changes she had introduced to improve the services of the EOC.
7.11.2003	The LegCo Panel on Home Affairs convened its first special meeting on the EOC incidents. Deputy Secretary for Home Affairs attended the meeting. Mr Wong and Ms Wu had been invited but both declined to attend.
11.11.2003	The EastWeek released its issue dated 12 November 2003, with an article containing "six allegations" against the EOC and its former EOC Chairperson Ms Anna WU. The article also alleged that the allegations were based on a document drafted at the meeting on 5 November 2003 involving Mr Wong, SHA and EOC Members.
12.11.2003	SHA replied to an oral question at LegCo on the application of the "Paris Principles" to the EOC.
12.11.2003	The EOC convened a special meeting to prepare for the meeting of the LegCo Panel on Home Affairs on 14 November 2003.
12.11.2003	Ms Wu issued a statement to the LegCo Panel on Home Affairs refuting the "six allegations", alleging that it was a smear campaign against her. She reiterated that the recruitment of Mr Yu followed established procedures.
12.11.2003	Mr Wong wrote to LegCo Panel on Home Affairs saying that he

Date	Events
	would not attend the Panel meeting on 14 November 2003 but would provide a written submission.
13.11.2003	The EOC Office wrote to Mr Yu's lawyers to find out what his intentions were and to indicate that the EOC was prepared to settle the matter amicably.
14.11.2003	Mr Wong provided a written statement to the LegCo Panel on Home Affairs.
14.11.2003	The LegCo Panel on Home Affairs convened its second special meeting on the EOC incidents, attended by SHA, two HAB staff, Ms Anna WU, five EOC members and two EOC staff.
17.11.2003	Mr Andrew LIAO issued his second statement rebutting allegations in a newspaper about the gathering of 5 November 2003 without first verifying the fact.
19.11.2003	SHA replied to an oral question at LegCo on the termination of Mr Patrick YU's contract by EOC.
19.11.2003	SHA replied to an oral question at LegCo on the leakage of EOC's confidential documents and the gathering on 5 November 2003.
20.11.2003	Ms Priscilla WONG issued a statement regarding the gatherings on 4 November 2003 and 5 November 2003.
26.11.2003	Mr Yu's lawyers informed the EOC that Mr Yu was seeking compensation of three years' salary plus cash allowance and an apology.
26.11.2003	SHA responded to a LegCo motion on the credibility of the EOC.
4.12.2003	The EOC convened a special meeting and decided, among other things, not to release an information paper prepared by the EOC Office in response to some of the allegations reported in the East Week Magazine of 12 November 2003.
8.12.2003	The Government announced the appointment of Mrs Patricia CHU as Chairperson/EOC for a year with effect from 15 December 2003.
9.12.2003	The LegCo Panel on Home Affairs convened its third special meeting, attended by the EOC Chairperson (Designate), SHA and other HAB staff.
18.12.2003	The EOC's legal representative wrote to Mr Yu's lawyers, reiterating the EOC's offer of payment to settle the case.

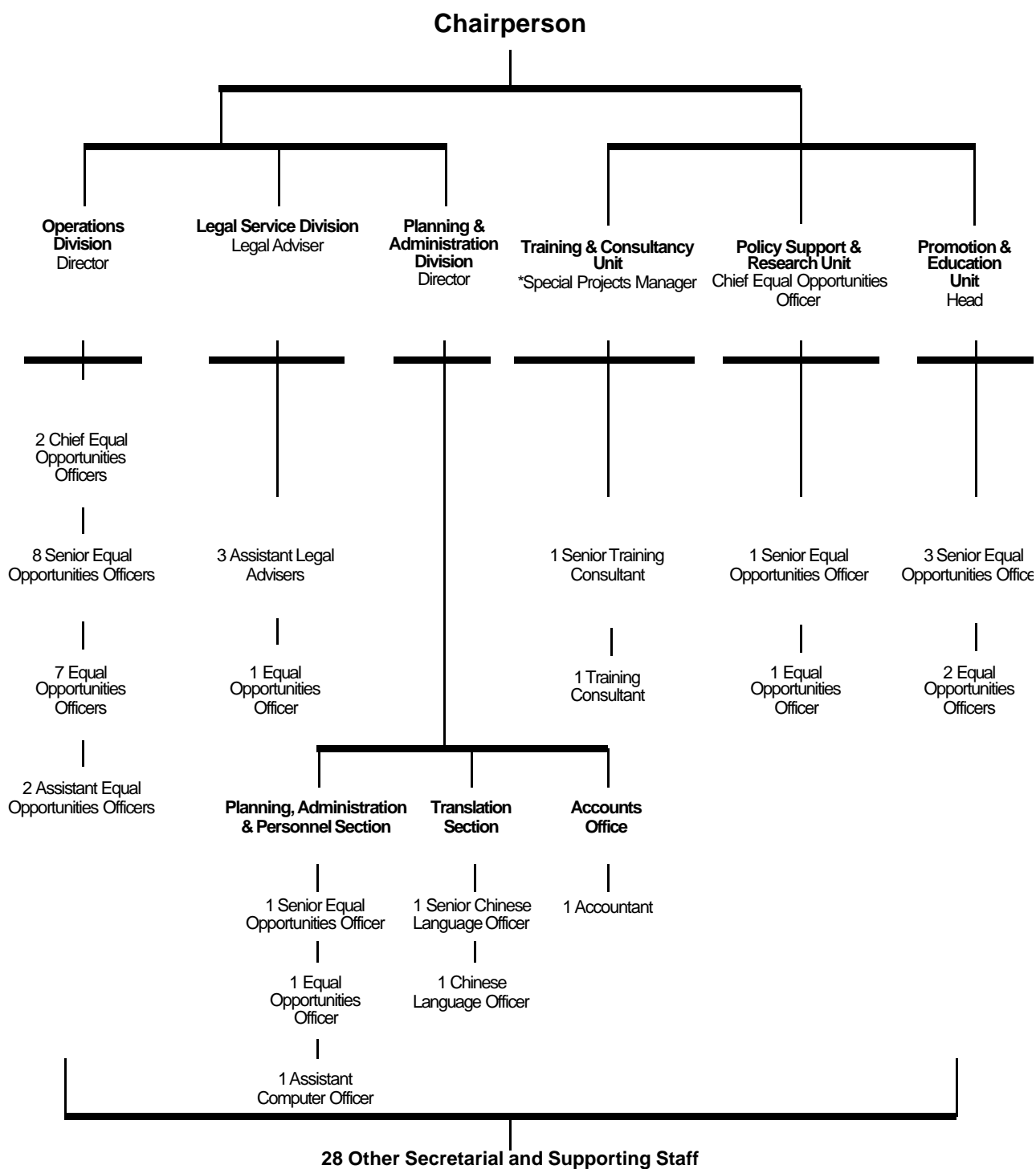
Date	Events
9 and 19.1.2004	Mr Yu's lawyer wrote back and rang EOC's legal representative to discuss their client's claims.
9.1.2004	As it was the Administration's decision then not to appoint a commission of inquiry, the LegCo Panel on Home Affairs recommended the setting up of a select committee to inquire into the processes of appointment and termination of appointment of Mr Patrick YU, and the circumstances surrounding the resignation of Mr Michael WONG.
10.1.2004	The EOC decided that a review of its major human resource management (HRM) policies, procedures and practices should be conducted.
14.1.2004	At its fourth special meeting, the LegCo Panel on Home Affairs discussed the terms of reference of the proposed select committee to be set up to inquire into the incidents which had affected the credibility of the EOC and related issues.
29.1.2004	At its fifth special meeting, the LegCo Panel on Home Affairs agreed on the terms of reference and size of the proposed select committee and decided to submit the proposal to the House Committee on 13 February 2004.
13.2.2004	Pending the Administration's response on whether it would appoint an independent committee or panel of inquiry, the LegCo House Committee decided to defer making a decision on the proposal to appoint a select committee to inquire into the incidents relating to the EOC.
19.2.2004	SHA informed LegCo House Committee that he would appoint an independent panel of inquiry to look into the incidents relating to the EOC.
20.2.2004	The LegCo House Committee supported the appointment of an independent panel of inquiry by SHA with the agreed terms of reference.
23.3.2004	The EOC's legal representative wrote back to Mr Yu's lawyers strongly refuting their allegations. Nevertheless, it was indicated that the EOC was prepared to reopen its offer to Mr Yu of a payment in full and final settlement of his claim against the EOC and /or any party for whom the EOC might be vicariously liable.
24.3.2004	The EOC decided to set up a review team comprising two EOC Members and DPA to tackle the problem of leakage of confidential information to the media.

Date	Events
16.4.2004	Mr Yu rang DPA and said, among other things, that:- <ul style="list-style-type: none"> • He would like to settle his demand for compensation with EOC as soon as possible before the commencement of the inquiry by the Independent Panel of Inquiry; and • It was his preference to settle the matter amicably and not to take legal action to resolve the matter.
April 2004 to 19.5.2004	There were exchanges of correspondence between the lawyers of the two parties; and between Mr Yu and DPA regarding the wording of the settlement agreement.
15.5.2004	SHA announced the appointment of the Independent Panel of Inquiry (IPI) on the Incidents Relating to the EOC.
18.5.2004	The Government announced the re-appointment of incumbent EOC members, who had served for more than six years, for one year with effect from 20 May 2004.
25.5.2004	The EOC and Mr Yu signed the settlement agreement.
27.5.2004	The EOC and Mr Yu issued a joint press statement, stating that they had reached agreement and they would fully co-operate with the IPI on its terms of reference.
July 2004	The EOC's Review of the Role and Organizational and Management Structure of the Commission (the Organizational Review) was completed.
September 2004	The Review of the EOC's HRM Policies, Procedures and Practices (the HRM Review) was completed.
2.12.2004	The EOC accepted the report of the Organizational Review and the HRM Review for further consideration and implementation.
15.12.2004	Mrs Patricia CHU ceased to be the EOC Chairperson following the expiry of her one-year contract on 15 December 2004. She also resigned from the EOC membership on the same day.
15.12.2004	The Government announced the appointment of Mr Raymond TANG as the EOC Chairperson for a term of five years with effect from 12 January 2005.

Membership of the EOC
(as at 31 January 2005)

	<u>Terms of Appointment</u>	
	<u>From</u>	<u>To</u>
<u>Chairperson</u>		
Mr Raymond TANG Yee-bong	12.1.2005	11.1.2010
<u>Members</u>		
Mr John Robertson BUDGE, SBS, JP	20.5.1998	19.5.2005
Ms CHAN Yu	20.5.2003	19.5.2005
Ms Gloria CHANG	20.5.2003	19.5.2005
Prof CHOW Wing-sun, Nelson, SBS, JP	1.8.2003	31.7.2005
Ms KO Po-ling	20.12.1999	19.5.2005
Dr KWOK Kin-fun, Joseph, JP	20.5.1997	19.5.2005
Mrs LAM PEI Yu-dja, Peggy, GBS, JP	20.5.1996	19.5.2005
Prof LAW Japhet Sebastian	20.5.2003	19.5.2005
The Hon LI Fung-ying, BBS, JP	20.5.1996	19.5.2005
Mrs LING LAU Yuet-fun, Laura	20.5.2003	19.5.2005
Ms WONG Pui-sze, Priscilla	20.5.2003	19.5.2005
Dr WU Wai-yung, Raymond, GBS, JP	20.5.1996	19.5.2005
Mr YEUNG Kong-hing, Peter, BBS, JP	20.5.1996	19.5.2005
Mr YEUNG Kwok-ki, Anthony	20.5.2003	19.5.2005
Ms YU Sau-chu, Jessie	20.5.1998	19.5.2005
<u>Co-opted Members</u>		
Mr CHAN Yun-kan		
Ms LAI Sau-ling		

Organizational Structure of the Equal Opportunities Commission
(as at 31 March 2004)



Notes:

1. Total number of staff including those under establishment and others on short-term renewable contract is 79 (excluding EOC Chairperson).
 2. Total number of staff under establishment is 71 (as shown above).
 3. Total number of staff on short-term renewable contract is 8.
- * Secondee from the Equal Opportunity Commission Victoria, Australia.

Vision, Mission and Core Values of the EOC

Vision

The EOC will foster, in partnership with the community, an environment where there is no barrier to equal opportunities and no discrimination, for the benefit of Hong Kong.

Mission

It is our mission to:

- perform statutory duties under the anti-discrimination legislation (currently the SDO, DDO and FSDO)
- promote awareness, understanding and acceptance of diversity and equal opportunities and provide education to prevent discrimination
- provide access to redress for discrimination

Core Values

We adopt the **Core Values** to achieve our vision and mission:

- Equality
- Fairness
- Integrity
- Sensitivity
- Energy
- Efficiency
- Transparency
- Independence
- Accountability

Paris Principles

A/RES/48/134
85th plenary meeting
20 December 1993

National institutions for the promotion and protection of human rights

The General Assembly,

Recalling the relevant resolutions concerning national institutions for the protection and promotion of human rights, notably its resolutions 41/129 of 4 December 1986 and 46/124 of 17 December 1991 and Commission on Human Rights resolutions 1987/40 of 10 March 1987, 1988/72 of 10 March 1988, 1989/52 of 7 March 1989, 1990/73 of 7 March 1990, 1991/27 of 5 March 1991 and 1992/54 of 3 March 1992, and taking note of Commission resolution 1993/55 of 9 March 1993,

Emphasizing the importance of the Universal Declaration of Human Rights, the International Covenants on Human Rights and other international instruments for promoting respect for and observance of human rights and fundamental freedoms,

Affirming that priority should be accorded to the development of appropriate arrangements at the national level to ensure the effective implementation of international human rights standards,

Convinced of the significant role that institutions at the national level can play in promoting and protecting human rights and fundamental freedoms and in developing and enhancing public awareness of those rights and freedoms,

Recognizing that the United Nations can play a catalytic role in assisting the development of national institutions by acting as a clearing-house for the exchange of information and experience,

Mindful in this regard of the guidelines on the structure and functioning of national and local institutions for the promotion and protection of human rights endorsed by the General Assembly in its resolution 33/46 of 14 December 1978,

Welcoming the growing interest shown worldwide in the creation and strengthening of national institutions, expressed during the Regional Meeting for Africa of the World Conference on Human Rights, held at Tunis from 2 to 6 November 1992, the Regional Meeting for Latin America and the Caribbean, held at San Jose from 18 to 22 January 1993, the Regional Meeting for Asia, held at Bangkok from 29 March to 2 April 1993, the Commonwealth Workshop on National Human Rights Institutions, held at Ottawa from 30 September to 2 October 1992 and the Workshop for the Asia and Pacific Region on Human Rights Issues, held at Jakarta from 26 to 28 January 1993, and manifested in the decisions announced recently by several Member States to establish national institutions for the promotion and protection of human rights,

Bearing in mind the Vienna Declaration and Programme of Action, in which the World Conference on Human Rights reaffirmed the important and constructive role played by national institutions for the promotion and protection of human rights, in particular in their advisory capacity to the competent authorities, their role in remedying human rights violations, in the dissemination of human rights information and in education in human rights,

Noting the diverse approaches adopted throughout the world for the promotion and protection of human rights at the national level, emphasizing the universality, indivisibility and interdependence of all human rights, and emphasizing and recognizing the value of such approaches to promoting universal respect for and observance of human rights and fundamental freedoms,

1. Takes note with satisfaction of the updated report of the Secretary-General, prepared in accordance with General Assembly resolution 46/124 of 17 December 1991;
2. Reaffirms the importance of developing, in accordance with national legislation, effective national institutions for the promotion and

protection of human rights and of ensuring the pluralism of their membership and their independence;

3. Encourages Member States to establish or, where they already exist, to strengthen national institutions for the promotion and protection of human rights and to incorporate those elements in national development plans;
4. Encourages national institutions for the promotion and protection of human rights established by Member States to prevent and combat all violations of human rights as enumerated in the Vienna Declaration and Programme of Action and relevant international instruments;
5. Requests the Centre for Human Rights of the Secretariat to continue its efforts to enhance cooperation between the United Nations and national institutions, particularly in the field of advisory services and technical assistance and of information and education, including within the framework of the World Public Information Campaign for Human Rights;
6. Also requests the Centre for Human Rights to establish, upon the request of States concerned, United Nations centres for human rights documentation and training and to do so on the basis of established procedures for the use of available resources within the United Nations Voluntary Fund or Advisory Services and Technical Assistance in the Field of Human Rights;
7. Requests the Secretary-General to respond favourably to requests from Member States for assistance in the establishment and strengthening of national institutions for the promotion and protection of human rights as part of the programme of advisory services and technical cooperation in the field of human rights, as well as national centres for human rights documentation and training;
8. Encourages all Member States to take appropriate steps to promote the exchange of information and experience concerning the establishment and effective operation of such national institutions;

9. Affirms the role of national institutions as agencies for the dissemination of human rights materials and for other public information activities, prepared or organized under the auspices of the United Nations;
10. Welcomes the organization under the auspices of the Centre for Human Rights of a follow-up meeting at Tunis in December 1993 with a view, in particular, to examining ways and means of promoting technical assistance for the cooperation and strengthening of national institutions and to continuing to examine all issues relating to the question of national institutions;
11. Welcomes also the Principles relating to the status of national institutions, annexed to the present resolution;
12. Encourages the establishment and strengthening of national institutions having regard to those principles and recognizing that it is the right of each State to choose the framework that is best suited to its particular needs at the national level;
13. Requests the Secretary-General to report to the General Assembly at its fiftieth session on the implementation of the present resolution.

Principles Relating to the Status of National Institutions

Competence and Responsibilities

1. A national institution shall be vested with competence to promote and protect human rights.
2. A national institution shall be given as broad a mandate as possible, which shall be clearly set forth in a constitutional or legislative text, specifying its composition and its sphere of competence.
3. A national institution shall, inter alia, have the following responsibilities:
 - (a) To submit to the Government, Parliament and any other competent body, on an advisory basis either at the request of the authorities concerned or through the exercise of its power to hear a matter without higher referral, opinions, recommendations, proposals and reports on any matters concerning the promotion and protection of human rights; the national institution may decide to publicize them; these opinions, recommendations, proposals and reports, as well as any prerogative of the national institution, shall relate to the following areas:
 - (i) Any legislative or administrative provisions, as well as provisions relating to judicial organizations, intended to preserve and extend the protection of human rights; in that connection, the national institution shall examine the legislation and administrative provisions in force, as well as bills and proposals, and shall make such recommendations as it deems appropriate in order to ensure that these provisions conform to the fundamental principles of human rights; it shall, if necessary, recommend the adoption of new legislation, the amendment of legislation in force and the adoption or amendment of administrative measures;

- (ii) Any situation of violation of human rights which it decides to take up;
 - (iii) The preparation of reports on the national situation with regard to human rights in general, and on more specific matters;
 - (iv) Drawing the attention of the Government to situations in any part of the country where human rights are violated and making proposals to it for initiatives to put an end to such situations and, where necessary, expressing an opinion on the positions and reactions of the Government;
- (b) To promote and ensure the harmonization of national legislation regulations and practices with the international human rights instruments to which the State is a party, and their effective implementation;
 - (c) To encourage ratification of the above-mentioned instruments or accession to those instruments, and to ensure their implementation;
 - (d) To contribute to the reports which States are required to submit to United Nations bodies and committees, and to regional institutions, pursuant to their treaty obligations and, where necessary, to express an opinion on the subject, with due respect for their independence;
 - (e) To cooperate with the United Nations and any other organization in the United Nations system, the regional institutions and the national institutions of other countries that are competent in the areas of the promotion and protection of human rights;
 - (f) To assist in the formulation of programmes for the teaching of, and research into, human rights and to take part in their execution in schools, universities and professional circles;

- (g) To publicize human rights and efforts to combat all forms of discrimination, in particular racial discrimination, by increasing public awareness, especially through information and education and by making use of all press organs.

Composition and guarantees of independence and pluralism

4. The composition of the national institution and the appointment of its members, whether by means of an election or otherwise, shall be established in accordance with a procedure which affords all necessary guarantees to ensure the pluralist representation of the social forces (of civilian society) involved in the promotion and protection of human rights, particularly by powers which will enable effective cooperation to be established with, or through the presence of, representatives of:
 - (a) Non-governmental organizations responsible for human rights and efforts to combat racial discrimination, trade unions, concerned social and professional organizations, for example, associations of lawyers, doctors, journalists and eminent scientists;
 - (b) Trends in philosophical or religious thought;
 - (c) Universities and qualified experts;
 - (d) Parliament;
 - (e) Government departments (if these are included, their representatives should participate in the deliberations only in an advisory capacity).
5. The national institution shall have an infrastructure which is suited to the smooth conduct of its activities, in particular adequate funding. The purpose of this funding should be to enable it to have its own staff and premises, in order to be independent of the Government and not be subject to financial control which might affect its independence.

6. In order to ensure a stable mandate for the members of the national institution, without which there can be no real independence, their appointment shall be effected by an official act which shall establish the specific duration of the mandate. This mandate may be renewable, provided that the pluralism of the institution's membership is ensured.

Methods of operation

Within the framework of its operation, the national institution shall:

- (a) Freely consider any questions falling within its competence, whether they are submitted by the Government or taken up by it without referral to a higher authority, on the proposal of its members or of any petitioner;
- (b) Hear any person and obtain any information and any documents necessary for assessing situations falling within its competence;
- (c) Address public opinion directly or through any press organ, particularly in order to publicize its opinions and recommendations;
- (d) Meet on a regular basis and whenever necessary in the presence of all its members after they have been duly convened;
- (e) Establish working groups from among its members as necessary, and set up local or regional sections to assist it in discharging its functions;
- (f) Maintain consultation with the other bodies, whether jurisdictional or otherwise, responsible for the promotion and protection of human rights (in particular ombudsmen, mediators and similar institutions);
- (g) In view of the fundamental role played by the non-governmental organizations in expanding the work of the national institutions, develop relations with the non-governmental organizations devoted to promoting and

protecting human rights, to economic and social development, to combating racism, to protecting particularly vulnerable groups (especially children, migrant workers, refugees, physically and mentally disabled persons) or to specialized areas.

Additional principles concerning the status of commissions with quasi-judicial competence

A national institution may be authorized to hear and consider complaints and petitions concerning individual situations. Cases may be brought before it by individuals, their representatives, third parties, non-governmental organizations, associations of trade unions or any other representative organizations. In such circumstances, and without prejudice to the principles stated above concerning the other powers of the commissions, the functions entrusted to them may be based on the following principles:

- (a) Seeking an amicable settlement through conciliation or, within the limits prescribed by the law, through binding decisions or, where necessary, on the basis of confidentiality;
- (b) Informing the party who filed the petition of his rights, in particular the remedies available to him, and promoting his access to them;
- (c) Hearing any complaints or petitions or transmitting them to any other competent authority within the limits prescribed by the law;
- (d) Making recommendations to the competent authorities, especially by proposing amendments or reforms of the laws, regulations and administrative practices, especially if they have created the difficulties encountered by the persons filing the petitions in order to assert their rights.

The Seven Principles of Public Life

- Selflessness:** Holders of public office should take decisions solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family, or their friends.
- Integrity:** Holders of public office should not place themselves under any financial or other obligation to outside individuals or organizations that might influence them in the performance of their official duties.
- Objectivity:** In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.
- Accountability:** Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.
- Openness:** Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.
- Honesty:** Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.
- Leadership:** Holders of public office should promote and support these principles by leadership and example.

[Extracted from the “First Report of the Committee on Standards of Public Life”, UK May 1995]