

## **Chapter 2**

### **Appointment of Mr Patrick YU as Director (Operations)**

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#### **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 Ordinance<sup>1</sup>. 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

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<sup>1</sup> 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 above<sup>2</sup>.

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.

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<sup>2</sup> 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 Panel<sup>3</sup>. 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 names<sup>4</sup> including Mr Patrick YU to the search firm. Two

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<sup>3</sup> 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.

<sup>4</sup> 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 conditions<sup>5</sup>. 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).

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<sup>5</sup> 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 handling<sup>6</sup>;
- (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

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<sup>6</sup> 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 Panel<sup>7</sup> 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.

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<sup>7</sup> 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 criteria<sup>8</sup> 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

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<sup>8</sup> 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 conditions<sup>9</sup>. 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.

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<sup>9</sup> 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 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.”

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 secondee's employer and a sponsoring organization that receives the secondee's service during a specified period of time. During the secondment, the secondee 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.