

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.

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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.