

Annex

No.	Recommendations made in the Independent Report by Professor Anselmo Reyes, a retired High Court Judge	Response from EOC's Review Panel	Progress
1	<p>The EOC requires all complainants to attempt what is now called “early conciliation,” and such process should normally be completed within 2 to 3 months of the making of the complaint. Where this “early conciliation” fails, the EOC should straightaway proceed to considering whether and (if so) in what form, it should grant legal assistance to a complainant. To facilitate this change in operating procedure, it is suggested that what is now known as “early conciliation” should simply be renamed as “conciliation”.</p>	<p>This has been addressed in the discussions in paragraphs 7.5 – 7.6 of the Report.</p>	<p>The Review Panel has finished studying this issue and has made the decision as stated in the left column.</p>
2	<p>Routine use should be made of Rule 5 (as found in the subsidiary legislation to the anti-discrimination statutes) during the conciliation process.</p>	<p>This was also recommended by the Review Panel and has already been implemented (Chapter 5 of the Report).</p>	<p>The EOC has implemented the recommendation.</p>
3	<p>Following the failure of conciliation (formerly early conciliation), save in cases that plainly are outside of the EOC's remit or are frivolous, vexatious, misconceived or lacking in substance, limited legal assistance should normally be granted to a complainant to enable the EOC to perform one or more of these functions: (a) providing initial advice to an aggrieved person on the strengths and weaknesses of a complaint; (b) developing a plan in conjunction with an aggrieved person for bringing a complaint to court (including the degree of investigation required, the evidence to be gathered through such investigation, and the timetable to be followed); and, (c) in light of the results of the detailed investigation to be carried out, assessing in conjunction with the aggrieved person the legal merits, the strength of the evidence, and the likely outcome of any court proceedings.</p>	<p>This has been addressed in the discussions in paragraphs 7.5 – 7.6 of the Report.</p>	<p>The Review Panel has finished studying this issue and has made the decision as stated in the left column.</p>

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4	Conciliation (including preliminary investigation) should be undertaken by a Complaint Services Division ("CSD") officer.	This is the current practice.	The EOC has been adopting this practice.
5	If conciliation fails, the initial limited legal assistance to be provided (that is, giving preliminary advice on a complaint, carrying out detailed investigation and evidence-gathering, and assessing in light of investigation results whether there is a case for going to trial) could be undertaken by a team of officers drawn from CSD and Legal Service Division ("LSD"). In simple cases, a single person can perform all the functions of this initial legal assistance. Otherwise, it is suggested (albeit not as an inflexible rule) that there be 2 officers in a team, one drawn from CSD, the other from LSD.	The EOC will study this recommendation.	The EOC is planning to arrange for officers from LSD to strengthen the provision of legal advice to officers from CSD with a view to helping both the complainant and respondent.
6	The EOC will need to ensure that Chinese walls are in place to prevent a CSD officer who has acted as conciliator on a complaint from later having anything to do with the detailed investigation and legal assessment of that same complaint. One way to achieve this is to implement a rule that, where an officer from one CSD sub-division has acted in a conciliation, only a CSD officer from the other sub-division can be part of a team tasked with the detailed investigation and legal assessment of the relevant complaint.	The EOC will study this recommendation.	In 2019/20, the conciliation success rate for complaint cases was about 70%. The EOC is of the view that the current practice has not had any adverse impacts on investigation and conciliation.
7	In most cases, the EOC should target making a decision on whether or not to grant full legal assistance for the purposes of bringing a case to court within 6 months from the failure of conciliation.	The Legal and Complaints Committee ("LCC") determines the issue, and there are currently strict timelines in place. This suggestion will be considered.	At present, the EOC will inform the applicant of legal assistance within 3 months upon receipt of his/her application whether legal assistance will be granted or not.

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8	EOC officers should regularly take part in capacity-building workshops and seminars, covering matters such as sensitivity to the subtle psychological dynamics that may be in play where there are power or other imbalances between the parties to a conciliation; techniques for dealing with difficult complainants; advising lay persons; the conduct of investigations; working as a team; etc.	The Review Panel agrees and views this as inherent in a victim-centric approach.	The EOC is in the process of implementing this recommendation.
9	The EOC should seriously consider the possibility of LSD officers providing specific legal advice to complainants even during the conciliation stage.	The Review Panel agrees with the general principle that complainants should have earlier access to one of the EOC's legal team. The form and purpose of this access has been dealt with in Chapter 5 of the Report.	The EOC is planning to arrange for officers from LSD to strengthen the provision of legal advice to officers from CSD with a view to helping both the complainant and respondent.
10	The EOC should bear in mind that a sizeable number of cases are unlikely to be clear-cut. Thus, the LCC should be cautious about refusing legal assistance for court proceedings merely because a case has less than a 50% chance of success. A case with significantly less than a 50% chance of success may nonetheless enable the court to give guidelines, even if <i>obiter</i> , on substantive areas of discrimination law or on best practices for institutions to follow in order to eliminate discrimination.	The Review Panel agrees and notes that it is already the practice that the LCC considers legal and policy perspectives in arriving at its decisions.	LCC has adopted this practice.
11	It should be a normal expectation that the LCC decides whether to grant full assistance within 9 to 12 months of a complaint being made or of a specific enquiry being classified as a complaint.	This EOC will study this recommendation.	At present, the EOC will inform the applicant of legal assistance within 3 months upon receipt of his/her application whether legal assistance will be granted or not.

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12	The LCC should continue its practice of giving reasons for any refusal of full legal assistance. It will not normally be enough merely to issue a terse statement that a complaint lacks legal or evidentiary merit and no principle of importance is involved. Reasons can be succinct, but they should convey the gist of the considerations that the LCC has taken into account.	This would amount to waiver of LCC's privilege and the whole file, adverse to the victim may open up to a respondent should the victim pursue legal actions using other avenues. This may have unintended consequences, and the matter is best left for consideration on a case-by-case basis.	The Review Panel has finished studying this issue and has made the decision as stated in the left column.
13	The EOC should have a formal system of review whereby a complainant (say) puts in a request for reconsideration (with supporting materials) within 2 weeks of a refusal of legal assistance and the LCC reconsiders its decision within 2 weeks thereafter. There should not be a protracted series of reviews by the LCC of a decision to refuse legal assistance, merely because a complainant with little merit in her or his complaint does not accept the same.	This is the current position.	The EOC has been adopting this practice.
14	The EOC should have a transparent procedure for the appointment of lawyers from whom legal opinions are sought to assist in the decision whether to grant or refuse legal assistance. Transparency might include maintaining a public roster of solicitors and barristers qualified to advise on anti-discrimination law. There might be a requirement that lawyers on the roster undergo a specified number of capacity-building activity-hours (continuing professional development) annually to keep abreast of the latest thinking and developments in anti-discrimination law and practice. Appointments to advise should normally be in accordance with the roster, save in special instances where deviations from the roster may be warranted. Fees for advising on EOC	Unlike the Legal Aid Department, the overall caseload of the EOC does not call for a large scale briefing-out system requiring significant administration or under statutory framework. There is an internal panel. This could be considered to be made public with consent of the persons involved. The LCC considers individual	The EOC's LSD officers will provide legal advice to all assisted persons who are granted legal assistance. Assistance from external counsel is needed only in a small number of cases.

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	cases might be at a standard hourly rate with the number of hours capped to a pre-agreed maximum.	appointments on a case-by-case basis.	
15	As a matter of principle, where legal assistance is refused on the basis of external legal advice, complainants should be entitled to sight of instructions to counsel and counsel's opinion.	This has been dealt with above. For the benefit of complainants, EOC always provides sufficient reason for its decisions in line with what is required under the law.	The Review Panel has finished studying this issue and has made the decision as stated in the left column.
16	Decisions on whether or not to grant legal assistance should continue to be the responsibility of the LCC, rather than being delegated to the chairperson. However, depending on the volume of cases in which legal assistance is being considered, the LCC should be prepared to meet more frequently, even weekly or fortnightly, in order to ensure that decisions on legal assistance are made in timely and efficient manner.	The EOC has delegated the LCC with the relevant powers. The EOC Chairperson is not the decision maker. Papers are circulated when necessary to meet Key Performance Indicator deadlines and the LCC also meets as necessary and in general every two months.	The Review Panel has finished studying this issue and has made the decision as stated in the left column.
17	The EOC should adopt an internal guideline of fully responding to an enquiry, either disposing of the matter or elevating it into a complaint, within 4 weeks. In exceptional circumstances where, for one reason or another, it is not possible to resolve an enquiry within a standard of 4 weeks, the enquiry should be carefully monitored by the Chief Operations Officer, ideally on a weekly basis, to ensure that it does not drag on longer than necessary. As much as possible, all information needed to classify an enquiry as a complaint should be requested from the enquirer within the 4-week period.	The Review Panel notes that the Internal Operating Procedures Manual guidelines are now strictly adhered to and monitored.	The EOC generally is able to fully respond to an enquiry within 4 weeks.

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18	The information required for the purposes of deciding whether to upgrade a matter from an enquiry to a complaint, should be kept to a minimum in the first instance. The information requested might perhaps be little more than the following: by whom a wrong was allegedly done; when and where the wrong is said to have been perpetrated; how the wrong is said to have been committed; and what relief is being sought.	The Review Panel notes that this is the position, and relevant enhancements have been made as outlined in Chapter 5 of the Report.	The EOC has adopted this practice.
19	The EOC should monitor whether it would or would not be appropriate for a CSD officer handling an enquiry also to act as conciliator.	The Review Panel agrees that this can be considered.	In 2019/20, the conciliation success rate for complaint cases was about 70%. The EOC is of the view that the current practice has not had any adverse impacts on investigation and conciliation.
20	The government should consider increasing the head count at the EOC by one or two junior officers above present full strength level, with a view (among others) to alleviating the workload on existing staff and enabling more SIIs to take place.	This will be considered by the EOC following the conclusion of the Process Review.	The EOC will make reasonable efforts to secure an increase.
21	A CSD officer who has conducted an abortive conciliation should refrain from communicating anything about the conciliation (apart from the fact that it failed) to anyone else.	The Review Panel agrees and notes that the matter is privileged and the EOC works under a confidential environment.	The EOC has adopted this practice.
22	Greater use be made of Rule 7, including the payment by the EOC of taxi fares, to enable complainants and respondents to attend at the EOC's premises for face-to-face conferences at mutually convenient times.	The Review Panel agrees this matter can be considered.	The EOC will make use of Rule 7 when necessary.

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23	There should be greater transparency and rigour in the appointment of the chairperson, board members, and the members of the LCC. To make the job of chairperson more attractive to the exceptional persons being sought for that post, a chairperson's tenure should be increased from 3 to 6 years.	The Review Panel has dealt with the issue of the Chairperson's appointment under Chapter 2 of the Report. The Review Panel Members observe that appointment of the Chairperson is entirely the prerogative of the Chief Executive of HKSAR, which should not be fettered in any respect, as otherwise, that would be inconsistent with the exercise of discretion.	The Review Panel has finished studying this issue and has made the decision as stated in the left column.
24	The EOC's case management system should be upgraded and made more user-friendly.	The Review Panel agrees that this matter could be considered.	The EOC is in the process of upgrading the system.
25	In deciding whether to grant full legal assistance, the LCC should also bear in mind the financial situation of the respondent (especially if the respondent is an individual or Micro, Small and Medium Enterprises) and the potential for moral hazard. Nor should the EOC lose sight of the need to adhere to due process in any dealings with respondents.	The Review Panel agrees and notes that the EOC considers the merits and policy considerations of each case through the LCC which has been delegated with the decision-making authority. A victim-centric approach considers the legal rights of both the Complainant and Respondent.	LCC has adopted this practice.