

Complaint Handling Procedures

(Information for Complainant)

Role of the Equal Opportunities Commission (EOC)

The EOC is a statutory body set up to implement the Sex Discrimination Ordinance (SDO), the Family Status Discrimination Ordinance (FSDO), the Disability Discrimination Ordinance (DDO) and the Race Discrimination Ordinance (RDO). The Ordinances render unlawful acts which discriminate against persons on the ground of gender, marital status, pregnancy, family status, disability or race; they also render unlawful acts of sexual harassment, disability / racial harassment and vilification; and empower the EOC to investigate and conciliate complaints relating to any act alleged to be unlawful under the Ordinances.

We are committed to discharge this statutory role in an impartial, fair, just and objective manner. We assume an unbiased stance and are not advocate for either party to the complaint.

For the EOC to deal with a complaint, the subject matter of the complaint must fall within a provision of the Ordinances. It must also relate to an unlawful act that occurred at a time when the legislation was operational. This means that the complaint must come within the jurisdiction of the EOC.

Lodging a Complaint

Complaints of unlawful acts under the SDO, the FSDO, the DDO and / or the RDO must be made to the EOC in writing. These can be made by an aggrieved person or his / her representative and should contain all the relevant details of the alleged unlawful act(s). The complaint can be sent by mail, fax, email, or it may be made in person at the EOC Office.

The EOC acts impartially in handling all complaints. However, complainants who have difficulty formulating their complaints in writing may seek the assistance of the EOC and EOC officers will help persons put their complaints in writing.

Complainants should note that, apart from background or certain personal information, details of the complaint, including the name of the complainant and the allegation made, will be sent to the respondent.

When formulating a complaint in writing, complainants should include –

- personal details and identity card number
- information identifying the respondent(s)
- date(s) when alleged unlawful act(s) occurred
- brief facts of incident
- any information in support of the complaint
- names of witnesses (if any)
- loss or harm experienced

Investigation of a Complaint

The EOC will conduct an investigation into a complaint that falls within its jurisdiction. Once a complaint in writing has been successfully lodged an officer of the EOC will be assigned to conduct the investigation. The EOC will also notify the respondent of the complaint and request a response. The EOC may also write to the complainant seeking further information or clarification of certain points, and may also ask about witnesses or documentary proof that might support the allegation(s).

Witnesses are protected by victimisation provisions contained in the SDO, the FSDO, the DDO and the RDO. The relevant information given by witnesses will be put to the respondent for comment. Similarly, relevant information given by witnesses in support of the respondent will be put to the complainant for comment. This is to ensure that the parties are given the opportunity of responding to the allegation(s) and to points made.

The EOC will conduct the investigation in an objective manner and will act impartially in all complaints. Impartiality does not mean merely being neutral, nor does it mean being disengaged from the process. Due consideration is given to natural justice, parties' right and obligation under the law, respecting the right to rebut and be heard, access to relevant information gathered, procedural fairness and transparency of process, and making known to parties the reasons behind our recommendations. The parties will be kept informed of the outcome of the investigation.

It is the parties' responsibility to maintain contact with the officer handling the case and advise the officer of changes to contact details such as correspondence address or telephone number.

The EOC may decide not to conduct, or to discontinue, an investigation into a complaint if –

- the EOC is satisfied that the act complained of is not unlawful by virtue of a provision of the legislation
- the EOC is of the opinion that the person aggrieved by the act does not desire (or in the case of a representative complaint, none of the persons aggrieved by the act desires) that the investigation be conducted or continued
- a period of more than 12 months has elapsed beginning when the act was done
- the EOC determines, in the case of a representative complaint, that the complaint should not be a representative complaint (in accordance with the relevant rules dealing with representative complaints)
- the EOC is of the opinion that the complaint is frivolous, vexatious, misconceived or lacking in substance

In the event that EOC decides not to conduct an investigation into a complaint after making an assessment, the law requires that the complainant be advised of the decision and the reason(s) for it by letter. However, the respondent will not be notified of the complaint. In the case where the EOC decides to discontinue an investigation after making an assessment, the law requires that the complainant be advised of the decision and the reason(s) for it by letter. The respondent will also be advised of the discontinuance with reason(s) for the EOC's decision by letter.

Investigation Confidentiality

The EOC will use the information and materials obtained in the course of investigation for the handling of the complaint and not for other purpose. Relevant information and materials may be provided to the respondent and to witnesses for comment but will not be disclosed to the public or to persons not connected with the investigation of the complaint.

Parties to the complaint are reminded to observe the principle of confidentiality. Information obtained or exchanged in the course of investigation should not be divulged to other persons and can only be used for the purposes of the EOC's investigation or any subsequent legal proceedings under the SDO, the FSDO, the DDO and the RDO. There is an implied undertaking by the parties not to use such information for other

purposes. Any breach of confidentiality or the implied undertaking is inappropriate and not conducive to amicable settlement of the matter. In addition, the party in breach may incur legal liability or lead to contravention of the Personal Data (Privacy) Ordinance.

Should the case be brought to court as parties are not able to come to terms in conciliation, information and materials gathered during the investigation could be admissible in court proceedings.

Conciliation

It is the primary objective of the EOC to attempt to use its best endeavours to effect a settlement between the complainant and the respondent by way of conciliation. For the purposes of conciliation, officers of the EOC will not act as advocates for either side but as communication facilitators. The role of the conciliation officer is to assist both parties to examine the issues that led to the complaint, identify any points of agreement and arrive at a solution in an attempt to resolve the complaint.

The advantage of conciliation is its relative speed in comparison with other forms of redress. It usually involves fewer people and makes it easier to ensure confidentiality. Conciliation by the EOC is free and therefore there should be little or no cost to the parties.

Submission to conciliation by both parties is entirely voluntary, although the EOC does have the power to call a compulsory conciliation conference. However, the EOC cannot compel the parties to reach an agreement. Nor does the EOC direct or suggest the terms of any agreement. These are negotiable between the parties.

Should a mutual agreement be reached, the terms of the agreement will be reduced to writing and signed by the parties. The conciliation agreement is binding and conclusive of the parties' agreement. Settlements are varied and may include an apology, compensation or the carrying out of certain actions. The EOC will assist the parties to try and achieve an amicable settlement.

If a settlement cannot be reached, other forms of assistance, including legal assistance, may be available from the EOC to a complainant who applies for it. The EOC will assess each application individually and provide appropriate assistance or advice to the complainant as it thinks fit.

Conciliation Confidentiality

Any information received by a conciliator in the course of attempting to reach a settlement of a complaint is confidential and may not be disclosed except with the consent of the person who gave the information. Such information is not admissible in court proceedings.

Other Remedies

Under the SDO, the FSDO, the DDO and the RDO, complainants may also institute civil proceedings in the District Court. This can be done in addition, or as an alternative, to lodging a complaint with the EOC.

Please note that under the four Ordinances the District Court shall not consider a claim unless proceedings in respect of the claim are instituted before the end of the period of 24 months beginning when the act complained of was done. Nevertheless, the District Court may consider any claim or application which is out of time if, in all the circumstances of the case, it considers that it is just and equitable to do so. For the purpose of determining the period within which proceedings may be brought, where an act to which the claim relates was the subject of a complaint lodged to the EOC, then the period that elapsed between the date when the complaint was lodged and the date when conciliation was concluded shall be disregarded.

Personal Data

All personal data submitted will only be used for the purpose of the Commission carrying out its statutory functions. Data subjects have the right to request access to and correction of their personal data submitted in connection with this complaint. Any formal request for access and/or correction of personal data under the Personal Data (Privacy) Ordinance should be submitted in writing to the Director (Planning and Administration) of the Commission. The personal data submitted may be transferred to parties who will be involved in the processing of the complaint. The information provided might also be disclosed to agencies who are authorised to receive information relating to law enforcement.