

Complaint Handling Procedures

(Information for Respondent)

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 alleged unlawful act 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 legislation.

Once a Complaint is Lodged

The EOC has a statutory duty to investigate all allegations of unlawful acts or conduct under the SDO, the FSDO, the DDO and / or the RDO, unless they are clearly outside its jurisdiction, and to use its best endeavours to try and settle the complaint by conciliation. Respondents are given every opportunity to provide information to refute the allegations and / or to claim an exception if applicable.

Investigation of a Complaint

The EOC will conduct an investigation into each complaint that falls within its jurisdiction. Respondents will be notified of complaints made against them in writing by an officer of the EOC who has been assigned to conduct the investigation. The name of the complainant will be provided as well as the details of the allegation and the nature of the

complaint. The respondent will then be given the opportunity of responding to the allegations and providing information in support of the response. The response may be provided to the complainant for comments and further clarification from the respondent may be required. The EOC may also ask about witnesses or documentary evidence that support what the respondent has said.

An example of the type of information which a respondent may offer to the EOC in respect of an allegation arising out of employment includes –

- specific response to the alleged unlawful act
- performance appraisal reports
- counselling notes, evidence of warning(s), etc.
- interview summaries, reports
- interview questions
- copy of job advertisement
- duty statement, list of job criteria
- equal opportunity policy, sexual harassment policy
- grievance procedures

The type of information provided to the EOC by a respondent will depend on the nature of the complaint made. Respondents may also provide the EOC with the names of any witnesses who are able to support their story or version of events.

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 complainant for comment. Similarly, relevant information given by witnesses in support of the complainant will be put to the respondent 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 officer conducting the investigation will inform the complainant of the respondent's answers / response to the allegation(s) made and the complainant will be given an opportunity to comment. Where necessary the EOC officer will contact the parties to seek clarification of certain points or to ask for further information. The EOC officer may also ask the parties for documentary proof that supports the allegation(s) or the response thereto and may contact witnesses or third parties that can assist in the investigation.

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.

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 the 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 (if having been informed of the complaint) will also be advised of the discontinuance with reason(s) for the EOC's decision by letter.

SDO/FSDO/DDO/RDO (Investigation and Conciliation) Rules

Under section 5(1) of these Rules, any person may be directed by notice in writing to furnish such information as specified for the purpose of investigation into an act and in endeavouring to settle the matter.

Failure, or refusal, without reasonable excuse to comply with the written notice issued is an offence and may lead to prosecution for which a fine at level 4 (i.e. \$10,001 to \$25,000) may be imposed.

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 complainant 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 urged to observe the principle of confidentiality. Information obtained or exchanged in the course of investigation should not be divulged to the public nor to persons not connected with the complaint, 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. Divulging such information may not be conducive to the investigation and amicable settlement of the matter.

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's complaint handling mechanism to assist parties in resolving the matter quickly through conciliation. Therefore, at the early stage, the EOC may encourage parties concerned to attempt early conciliation if deemed appropriate, to find ways to resolve the dispute quickly without going through the detailed investigation process. During early conciliation, investigation is suspended and is reverted to only if early conciliation is unsuccessful. Full investigation then follows and further conciliation will be suggested if the EOC sees it fit to do so. 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 can 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 amicable settlement.

If 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. Any breach of confidentiality may not be conducive to amicable settlement of the matter. Please note that 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.

Exceptions

The Ordinances contain a number of exceptions which respondents may rely on to show that their acts / conduct are / is not unlawful.

Employers who discriminate on the ground of sex, disability or race may be exempt from the provisions of the SDO and the RDO if they can show that there is a "genuine occupational qualification" that applies to the job in question. Under the DDO, employers may also rely on the defence that a person with a disability cannot fulfil the inherent requirements of a job.

There are also other exceptions under the legislation. A respondent who wishes to be provided with more information about exceptions which may apply in the circumstances should notify the EOC Officer investigating the complaint. It is the responsibility of the respondent to show that an exception applies in his / her case.

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 (Complaint Services) 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.