

## CHAPTER 19

### COMPLAINTS PROCEDURE

#### PART I : GENERAL

19.1 This chapter deals with the procedures for making complaints relating to **any breach or non-compliance of electoral guidelines and the provisions of the EAC (EP) (DC) Reg or the spirit thereof.** The guidelines and regulations seek to ensure the conduct of public elections under the principles of openness, honesty and fairness.

19.2 A complaint against criminal, corrupt or illegal activities may be made direct to the relevant authorities such as the Police or the ICAC. The procedures for making and processing such a complaint are formulated by these authorities, and will not be covered in this chapter.

19.3 The EAC will solemnly handle complaints against any breach of the principles of fairness and equality as set out in the electoral guidelines. Investigation must be conducted in accordance with the principle of procedural fairness and based on factual evidence. The party concerned must be given the opportunity to make representation in defence. In considering whether any conduct is unfair in the absence of contravention of the law, a decision could not be made lightly without careful consideration of all relevant matters and circumstances. Furthermore, while complaints are often received shortly before the polling day, the EAC should not circumvent or compress the established procedure because of the time constraint so as to avoid any unfairness. *[Added in September 2019]*

19.4 If a complaint is substantiated, the EAC may, if necessary, make a censure in a public statement to keep the electors and the public informed of any major occurrences during the election. The EAC may also issue press statements on matters of principle which have attracted widespread public concern in order to set the record straight. *[Added in September 2019]*

## **PART II : TO WHOM A COMPLAINT MAY BE MADE**

19.5 The EAC is an impartial, independent and apolitical body established under the EACO to deal with all matters concerning the conduct of elections including handling election-related complaints. If necessary, the EAC may, set up a **Complaints Committee** consisting of the incumbent EAC members and one or more professionals, who are independent and politically neutral. *[Amended in September 2011 and September 2019]*

19.6 Without limiting the right of a citizen to make a complaint to the Police or the ICAC or other authorities, a complaint for breach of or non-compliance with the electoral guidelines or the provisions of the EAC (EP) (DC) Reg or relating to election matters can be made to any of the following bodies or persons:

- (a) the RO of the relevant constituency appointed by the EAC to deal with electoral arrangements;
- (b) the REO;
- (c) the EAC or its Complaints Committee; or
- (d) the PRO (on the polling day).

*[Amended in September 2012 and September 2019]*

19.7           **It is important to note that** if the complaint is against the conduct, behaviour, or acts of any of the REO staff or any RO, it should be addressed directly to the EAC or its Complaints Committee and the envelope must be marked “CONFIDENTIAL” to ensure that only the EAC or its Complaints Committee receives the complaint.

### **PART III : TIME AND PROCEDURE FOR MAKING COMPLAINT**

19.8           This set of Guidelines deals with election-related activities. Any non-compliances, abuses and irregularities, if can be redressed, should be remedied as soon as practicably possible. It is **imperative** that **all complaints should be made as soon as possible**, as any delay in the making of complaint may affect the effectiveness of the remedial measures and result in the loss of necessary evidence. Therefore, complaints should be lodged **not later than 45 days** after the polling day of the relevant election. *[Amended in September 2012]*

19.9           No specific format or use of a specified complaint form is required for making a complaint. A complaint can be made either orally or in writing. A person who wishes to make an oral complaint can call the EAC Complaints Hotline. *[Amended in September 2012]*

19.10          In each case, the complainant is required to identify himself/herself and provide his/her correspondence address, telephone number or other means of contact. A written complaint must be confirmed by signature. Save where it relates to a matter of minor nature or which requires urgent action, an oral complaint received will be recorded in writing and the complainant will be required to sign the written record afterwards. All

personal particulars of a complainant will be handled in accordance with the PD(P)O. *[Amended in September 2019]*

#### **PART IV : COMPLAINTS INSIDE A POLLING STATION**

19.11 If a person wishes to complain about anything that occurs inside a polling station, he/she should follow the following procedures:

- (a) he/she should direct the complaint to the PRO, the DPRO or an APRO immediately;
- (b) if the matter remains unresolved, or if the complainant still feels aggrieved, or if it is a complaint against the PRO, the DPRO or an APRO, he/she should as soon as possible report the matter to the RO of the relevant constituency of the polling station by calling the telephone number listed in the guide on procedures for handling complaints;
- (c) where the matter is still not resolved by the RO, the complainant should call without any delay the EAC Complaints Hotline to give a brief account of his/her complaint. He/She should then try to collect as much evidence as possible in support of the complaint. As he/she is not allowed to talk to or communicate with any elector inside the polling station, the complainant may need to go outside the polling station to collect the necessary evidence; and
- (d) a member of the EAC or its Complaints Committee or the REO staff will handle the complaint as soon as practicable.

A copy of the guide on procedures for handling complaints at a polling station (together with telephone numbers of the relevant RO(s) and the EAC Complaints Hotline) will be displayed inside each polling station.

19.12 Any complaint mentioned in para. 19.11(a) and (b) above and any other complaints and enquiries relating to the particulars of an elector should be recorded by the PRO or his/her DPRO or APRO.

## **PART V : THE PROCESSING OF COMPLAINTS**

19.13 The CEO, ROs and PROs are obliged under s 101 of the EAC (EP) (DC) Reg to report irregularities to the EAC or its Complaints Committee. In accordance with this set of Guidelines, they are also required to report all complaints received by them to the EAC or its Complaints Committee. Except where a complaint is of a minor nature or the RO has been delegated with the authority to deal with it, any complaint received by the RO or the REO will be forwarded to the EAC or its Complaints Committee together with comments and all relevant information relating to the complaint. When the EAC or its Complaints Committee receives a complaint, it may seek additional information and comments from the relevant RO or the REO, if necessary.

19.14 The EAC or its Complaints Committee, the RO or the REO (if authorised by the EAC or its Complaints Committee), may seek further information on the complaint from the complainant or may arrange interviews with the complainant in order to seek clarification or evidence. The complainant may be required to make a statutory declaration stating that the complaint or statement is true and correct. If the complainant fails to provide the required information, or refuses to be interviewed or to make the statutory declaration, the EAC or its Complaints Committee, the RO or the REO may or may not take further action on the complaint.

19.15 All bona fide complaints will be processed and considered by the RO who has been delegated with the necessary authority or by the EAC or its Complaints Committee as soon as reasonably practicable, taking into account the merits of the complaint with all the information and evidence gathered. [S 6(3) of the EACO]

19.16 Where a complaint is substantiated, a decision will be made on the appropriate course to be taken, including one or more of the following:

- (a) take remedial measures concerning the complaint, such as the removal of EAs displayed in breach of the guidelines in that regard;
- (b) issue to the relevant person a warning on the matter under complaint after making a reasonable effort to contact the person and giving him/her a reasonable opportunity to give explanations. Where necessary, immediate rectification action against a complaint substantiated on the spot should be taken without delay;
- (c) publish a public statement of reprimand or censure against the acts or omissions and the person being complained of (see various chapters in this set of Guidelines) after making a reasonable effort to contact the person and giving him/her a reasonable opportunity to make representations [s 6(4) of the EACO];
- (d) with or without comments, refer the matter to the ICAC for investigation and/or further action [s 5(e) of the EACO]; and
- (e) with or without comments, refer the matter to the Secretary for

Justice or the Police for further action such as prosecution of the suspected person [s 5(e) of the EACO].

*[Amended in September 2007]*

19.17 The EAC or its Complaints Committee will also notify the complainant in writing of its decision, and an explanation if the decision is that the complaint is not substantiated. It is common that a large number of complaints are received during the election period. As each complaint requires detailed investigation, it may take time to complete investigations into all complaints. *[Amended in September 2007, September 2015 and September 2019]*

## **PART VI : ELECTORAL AFFAIRS COMMISSION'S REPORT ON COMPLAINTS**

19.18 The EAC is required to report to the CE on any complaint made to it in connection with an election within three months of the conclusion of the election. [S 8(1) and (2) of the EACO]

## **PART VII : OBLIGATIONS OF THE RETURNING OFFICER, THE PRESIDING OFFICER AND THE CHIEF ELECTORAL OFFICER**

19.19 The RO(s), the PRO(s) and the CEO are required to report as soon as practicable to the EAC or its Complaints Committee (in writing or otherwise as circumstances may demand) on any complaints received by them and on any occurrence which they consider to be a material irregularity relating to an election, a poll or a count. *[Amended in September 2012]*

## **PART VIII : SANCTION FOR FALSE COMPLAINT**

19.20 Any person who knowingly makes or causes to be made to an ICAC officer a false report of the commission of any offence or misleads such an officer by giving false information or by making false statements or accusations commits an offence and will be liable to a fine at level 4 (\$25,000) and to imprisonment for 1 year [s 13B of the ICAC Ordinance (Cap 204)]. Likewise, an offence is committed where a false report is made or false information is given to a police officer [s 64 of the Police Force Ordinance (Cap 232)]. It is also an offence for a person to make a false complaint and give false information to the EAC or its Complaints Committee knowing that the EAC or its Complaints Committee will refer or direct such complaint and information to the ICAC or the Police. If a person knowingly and wilfully makes a false statement on a particular material matter in a statutory declaration submitted to the EAC or its Complaints Committee, the RO or the REO, he/she commits an offence and will be liable to a fine and to imprisonment for 2 years [s 36 of the Crimes Ordinance]. *[Amended in September 2007 and September 2023]*