

CHAPTER 21

COMPLAINTS PROCEDURE

PART I : GENERAL

21.1 This chapter deals with the procedure for making complaints relating to **any breach or non-compliance of the Guidelines and the provisions of the EAC (EP) (LC) Reg or the spirit of them** which are for conducting public elections under the principles of openness, fairness and honesty.

21.2 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 will be handled by these authorities, and are not covered by this chapter.

21.3 The EAC will solemnly handle complaints against any breach of the fair and equality principle as set out in the election guidelines. Investigation must be conducted in accordance with the principle of procedural fairness and be 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 made shortly before the polling day, the EAC cannot circumvent or compress the established procedure because of the time constraint so as to avoid any unfairness.

[Added in June 2020]

21.4 If the complaint is substantiated, the EAC may, if necessary, make a censure in a public statement to enable the electors/ARs and the public be informed of the 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 June 2020]*

PART II : TO WHOM A COMPLAINT MAY BE MADE

21.5 The EAC is an impartial, independent and apolitical body established by the EACO to deal with all matters concerning the conduct of elections including handling election-related complaints. The EAC may, if necessary, set up a **Complaints Committee** consisting of its 3 members and 1 or more professionals, who are independent and politically impartial, for the purpose of dealing with complaints. *[Amended in June 2012 and June 2020]*

21.6 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 Guidelines or the provisions of the EAC (EP) (LC) Reg or relating to election matters can be made to one 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 June 2012 and June 2020]

21.7 **Caution:** if the complaint is against the conduct, behaviour, or acts of any of the REO officers or the RO personally, it should be addressed to the EAC or its Complaints Committee and marked “CONFIDENTIAL” in order to ensure that only the EAC or its Complaints Committee will receive it.

PART III : TIME AND PROCEDURE FOR MAKING COMPLAINT

21.8 The Guidelines deal with election-related activities, and any non-compliances, abuses and irregularities that can be redressed should be remedied as soon as practicably possible. It is **imperative** that **all complaints should be made as soon as possible**, for any delay in the making of complaint may result in remedial measures being useless or futile and necessary evidence being lost. Therefore, complaints should be lodged **not later than 45 days** after the date of the relevant election. *[Amended in June 2012]*

21.9 No specified or specific 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 June 2012]*

21.10 In each case, the complainant is required to identify himself/herself and provide his/her correspondence address, telephone number or other means of communication. A written complaint must be signed. 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 **treated in strict confidence**. *[Amended in June 2016 and June 2020]*

PART IV : COMPLAINTS INSIDE A POLLING STATION

21.11 If a person has any complaint about whatever happens inside the polling station, he/she should follow the following procedures:

- (a) he/she should direct his/her complaint to the PRO, the Deputy PRO or an Assistant PRO immediately;
- (b) if the matter is not resolved, or if the complainant still feels aggrieved or if his/her complaint is directed at the PRO, the Deputy PRO or an Assistant PRO, he/she should as soon as possible report the matter to the RO of the relevant constituency of the polling station by using the telephone number appearing in the guide on procedures for complaint;
- (c) where the matter is still not resolved by the RO, the complainant should without any delay telephone the EAC Complaints Hotline to report his/her complaint by giving a gist thereof. He/She should then try to obtain as much evidence as possible in order to substantiate his/her complaint. As he/she is not allowed to talk to or communicate with any elector/AR inside the polling station, he/she may need to go outside the polling station to obtain necessary evidence; and
- (d) a member of the EAC or its Complaints Committee or an officer of the REO will handle the complaint as soon as practicable.

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

21.12 The PRO or his/her Deputy PRO or Assistant PRO must record any complaint mentioned in para. 21.11(a) and (b) and any other complaints and enquiries concerning an elector/AR's data.

PART V : THE PROCESSING OF COMPLAINT

21.13 The CEO, the ROs and the PROs are obliged under s 101 of the EAC (EP) (LC) Reg to report irregularities to the EAC or its Complaints Committee. By these 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 with comments and all the 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.

21.14 The EAC or its Complaints Committee, the RO or the REO (when they are so 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 for the truth and correctness of his/her complaint or statement. If the further information required is not provided by the complainant or if he/she 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.

21.15 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].

21.16 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 against the matter complained of, 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 complaints proven on the spot should be taken without delay; *[Amended in October 2007]*
- (c) publish a public statement of reprimand or censure against the acts or omissions and the person or persons complained of (see various chapters in the Guidelines) after making a reasonable effort to contact the person or persons and giving him/her or them 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 culprit [s 5(e) of the EACO].

21.17 The EAC or its Complaints Committee will also notify the complainant in writing of its decision, and if the decision is that the complaint is not substantiated, it will also give reasons. It is common that a large number of complaints are received during the election period. As each complaint will be examined in detail, the investigation of all complaints may take some time to complete. *[Amended in June 2016]*

PART VI : ELECTORAL AFFAIRS COMMISSION'S REPORT ON COMPLAINTS

21.18 The EAC is required to report to the CE on any complaint made to it in connection with an election within 3 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

21.19 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, poll or count. *[Amended in June 2012]*

PART VIII : SANCTION FOR FALSE COMPLAINT

21.20 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 is guilty of an offence and will be liable to a fine of \$20,000 and to imprisonment for 1 year [s 13B of the ICAC Ordinance (Cap 204)]. A similar offence is committed where a false report is made or false information given to a police officer [s 64 of the Police Force Ordinance (Cap 232)]. If a person knowingly makes a false complaint and gives 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, the person concerned will similarly be guilty of the relevant offence. If a person knowingly and wilfully makes to the EAC or its Complaints Committee, the RO or the REO a statement false in a material particular and such a statement is in a statutory declaration, 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 October 2007]