

CHAPTER 21

COMPLAINTS PROCEDURE

PART I : GENERAL

21.1 The EAC is responsible for handling election-related complaints. This chapter sets out the procedures for making complaints regarding any **breach or non-compliance with the provisions of the electoral legislation and the guidelines or the spirit of them**, and the arrangements for the EAC to process such complaints. The EAC may set up a **Complaints Committee** to handle complaints, members of which consisting of current EAC members and one or more independent and politically impartial professionals.

21.2 The EAC ensures that the complaint-handling process complies with the principles of procedural justice and bases on pragmatic approach. The party concerned must be given the opportunity to defend themselves, and the established procedures will not be circumvented or compressed because of time constraints.

21.3 If a complaint is substantiated, the EAC may, depending on the circumstance, issue a public **reprimand** or **censure** against the party involved to enable the public be informed of the major occurrences during the election. The EAC may also, if necessary, issue press statements on matters of principle which have attracted widespread public concern in order to set the record straight.

21.4 A complaint against criminal, corrupt, or illegal activities may be lodged directly to HKPF or ICAC. The EAC will also refer complaints possibly involving such activities to HKPF or ICAC for handling⁶².

PART II : COMPLAINT CHANNELS

21.5 Without restricting the right of a citizen to lodge a complaint to HKPF, ICAC, or other authorities, an election-related complaint can be lodged to one of the following bodies or persons:

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

NOTE :

If the complaint is against the conduct, behavior, or actions of the RO or REO officers, it must be submitted directly to the EAC or its Complaints Committee.

⁶² Under s 58(2) of the PD(P)O, personal data are exempt from the provisions of Data Protection Principle 3 where the use of the data is for the purposes referred to in subsection (1), including the prevention or detection of crimes, and the prevention, preclusion, or remedying (including punishment) of unlawful or seriously improper conduct, dishonesty, or malpractice by any person.

PART III : DEADLINE AND PROCEDURE FOR LODGING COMPLAINTS

21.6 Complaints must be lodged within the complaints-handling period⁶³ of the election concerned. This is to ensure timely remedial measures can be taken, and proper investigations and follow-up actions can be taken while evidence is still available.

21.7 A complaint can be lodged either orally or in writing. An oral complaint can be lodged by calling the EAC Complaints Hotline. A written complaint can be submitted by post, email, or fax. In order to handle complaints more effectively, the EAC recommends the complainant uses the designated complaint form available on the EAC website (www.eac.hk).

21.8 The complainant should identify himself and provide his correspondence address, email address, phone number, or other means of communication. Failure to do so may prevent the EAC from notifying the complainant of the investigation outcomes. The EAC will record oral complaints in writing and the complainant must confirm the written record. Complainants' personal data will be handled in accordance with the PD(P)O.

⁶³ Generally, the complaints-handling period of an election begins from the start of the nomination period and ends on the 45 days after the polling day.

PART IV : COMPLAINTS INSIDE A POLLING STATION

21.9 To lodge a complaint about what happened inside a polling station, the complainant should follow the following procedures:

- (a) lodge the complaint immediately to the PRO, the Deputy PRO, or an Assistant PRO;
- (b) if the complainant considers the complaint is not resolved, or still feels aggrieved at the outcome of the complaint, or if complainees are the PRO, the Deputy PRO, or an Assistant PRO, the complainant may lodge the complaint to the RO of the relevant constituency of the polling station. The phone number of the RO is listed in the guide on procedures for handling complaints displayed inside the polling station; and
- (c) if the complainant considers the matter is still not resolved by the RO, he should without any delay call the EAC Complaints Hotline. The complainant should provide as much relevant evidence as possible in order to substantiate the complaint. As the complainant is not allowed to talk to or communicate with any elector/AR inside the polling station, the complainant may need to go outside the polling station to gather necessary evidence. The EAC Complaints Hotline number is listed in the guide on procedures for handling complaints displayed inside the polling station.

21.10 The PRO or his/her Deputy PRO, or Assistant PRO will record complaints mentioned in paras. 21.9(a) and (b) of this Chapter.

PART V : HANDLING OF COMPLAINTS

21.11 The EAC or its Complaints Committee, the RO of the relevant constituency, the REO, and the PROs will process complaints as soon as practicable.

21.12 The CEO, ROs, and PROs are obliged to report irregularities in elections, polling, or counting to the EAC or its Complaints Committee. 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, all complaints 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. The EAC or its Complaints Committee may seek additional information or comments from the relevant RO or the REO, if necessary. [S 101 of the EAC (EP) (LC) Reg]

21.13 The EAC or its Complaints Committee, the RO, or the REO 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 complaint or statement. If the complainant is unable to

provide further information, or refuse to be interviewed or make the statutory declaration, the EAC or its Complaints Committee, the RO, or the REO may not be able to take further action on the complaint.

21.14 If a complaint is substantiated, appropriate action(s) will be taken, including one or more of the following:

- (a) take remedial measures in response to the complaint, such as the removal of EAs in breach of the guidelines;
- (b) after making a reasonable effort to contact the relevant person(s) and giving the relevant person(s) a reasonable opportunity to give explanations, issue a warning to the relevant person(s) regarding matter under complaint, and, where necessary, take immediate rectification action;
- (c) after making a reasonable effort to contact the relevant person(s) and giving the relevant person(s) a reasonable opportunity to make representations, issue a public **reprimand** or **censure** against the acts or omissions and the relevant person(s) ; and
- (d) with or without comments, refer the complaint to the ICAC, the Secretary for Justice, or HKPF for further action such as prosecution of the culprit.

[Ss 5(e) and 6(4) of the EACO]

21.15 The EAC or its Complaints Committee will notify the complainant in writing of its decision, including provision of explanations for unsubstantiated complaints. As each complaint must be examined in detail, the EAC and/or other authorities will take time to handle all complaints.

PART VI : ELECTORAL AFFAIRS COMMISSION'S REPORT ON COMPLAINTS

21.16 Unless otherwise required by law, 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. [Ss 8(1) and (2) of the EACO]

PART VII : SANCTIONS FOR FALSE COMPLAINTS

21.17 If a person knowingly makes a false complaint and gives false information to the EAC or its Complaints Committee, the RO, or the REO, knowing that such complaint and information will be referred to the ICAC or HKPF, the person concerned will be guilty of the relevant offence. If a person knowingly and willfully makes to the EAC or its Complaints Committee, the RO or the REO a statement false in a material particular in a statutory declaration, the person concerned will similarly be guilty of the relevant offence and will be liable to a fine and to imprisonment for two years. [S 36 of the Crimes Ordinance]

21.18 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 at level 4 (\$25,000) and to imprisonment for 1 year. Similarly, making a false report or providing false information, statements, or accusations to mislead a Police officer is guilty of an offence and will be liable to a fine at level 1 (\$2,000) and to imprisonment for 6 months. [S 13B of the ICAC Ordinance (Cap. 204) and s 64 of the Police Force Ordinance (Cap. 232)]