

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 EP (RRE) Reg or the spirit thereof.** The guidelines and regulations seek to ensure the conduct of public elections under the principles of openness, fairness and honesty.

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 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 received 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.

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 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.

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. The EAC may, for the purpose of dealing with complaints, set up a **Complaints Committee** consisting of 3 EAC members and 1 or more professionals, who are independent and politically neutral.

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 EP (RRE) Reg or relating to election matters can be made to any of the following bodies or persons:

- (a) the RO of the relevant Rural Area 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).

19.7 **Important:** If the complaint is against the conduct, behaviour, or acts of any of the HAD/DO/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 letter.

PART III : TIME AND PROCEDURE FOR MAKING COMPLAINT

19.8 The guidelines herein deal 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 are made as soon as possible**, as delay in the making of complaint may result in the futility of the remedial measures and the loss of necessary evidence. Therefore, complaints should be lodged **not later than 45 days** after the polling day of the relevant election.

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.

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 **treated in strict confidence**.

PART IV : COMPLAINTS INSIDE A POLLING STATION

19.11 If a person has a complaint 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 Deputy PRO or an Assistant PRO immediately;

- (b) if the matter remains unresolved, or if the complainant still feels aggrieved, or if it is a complaint against 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 Rural Area of the polling station by calling the telephone number listed in the guide on procedures for complaint;
- (c) where the matter is still not resolved by the RO, the complainant should without any delay call the EAC Complaints Hotline to report his/her complaint in brief. He/She should then try to collect as much evidence as possible in support of the complaint. As talking to or communication with any elector is not allowed 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 an officer of the REO 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) and any other complaints and enquiries relating to the particulars of an elector's data should be recorded by the PRO or his/her Deputy PRO or Assistant PRO.

PART V : THE PROCESSING OF COMPLAINTS

19.13 The DHA, ROs and PROs are obliged under s 87 of the EP (RRE) Reg to report irregularities to the EAC or its Complaints Committee. By the guidelines herein, 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, the REO or the HAD, 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 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.

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 [s6(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 to address 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 complained of (see various chapters in the 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].

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, completion of investigation for all complaints may take some time.

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 3 months of the conclusion of the election. [S 8(1) and (2) of the EACO]

**PART VII : OBLIGATIONS OF THE DIRECTOR OF HOME
AFFAIRS, THE RETURNING OFFICERS, THE
PRESIDING OFFICERS AND THE CHIEF
ELECTORAL OFFICER**

19.19 The DHA, ROs, PROs 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.

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 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].