

## CHAPTER 20

### COMPLAINTS PROCEDURE

#### PART I : GENERAL

20.1 This chapter deals with the procedure for making complaints relating to **any breach of or non-compliance with the Guidelines and the EP (CEE) Reg or the spirit of them** which are for ensuring that elections are conducted honestly, fairly and openly.

20.2 A complaint against criminal, illegal or corrupt 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.

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

20.3 The EAC is an independent, apolitical and neutral 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 judges of the District Court or High Court for the purpose of dealing with complaints.

20.4 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 EP (CEE) Reg or Guidelines or relating to election matters can be made to one of the following bodies or persons:

- (a) the RO appointed by the EAC to deal with electoral arrangements;
- (b) the REO; or
- (c) the EAC or its Complaints Committee.

20.5 **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**

20.6 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. No complaint received **later than 45 days** after the date of the relevant election will be entertained.

20.7 No specified or specific form is required for making a complaint. A complaint can be made either orally or in writing, either in Chinese or in English. A person who wishes to make an oral complaint can call the REO Complaints Hotline.

20.8 In each case, the complainant is required to identify himself and provide his identity document number, address, telephone number and 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**.

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

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

- (a) he should direct his 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 complaint is directed at the PRO, the Deputy PRO or an Assistant PRO, he should as soon as possible report the matter to the RO 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 Complaints Hotline of the REO to report his complaint by giving a gist thereof. He should then try to obtain as much evidence as possible in order to substantiate his complaint. As he is not allowed to talk to or communicate with any elector inside the polling station, he may need to go outside the polling station to obtain necessary evidence.

- (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 the polling station (together with telephone numbers of the RO and the REO Complaints Hotline) will be available for inspection inside the polling station.

20.10 The PRO or his Deputy or Assistant PRO must record any complaint mentioned in paras. 20.9(a) and (b) and any other complaints and enquiries concerning an elector's data.

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

20.11 The PRO, RO and the CEO are obliged under s 79 of the EP (CEE) 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 RO or the REO, if necessary.

20.12 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 complaint or statement. If the further information required is not provided by the complainant or if he 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.

20.13 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 [see s 6(3) of the EACO].

20.14 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 election advertisements 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 a reasonable opportunity to give explanations. Where necessary, immediate rectification action against complaints proven 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 or persons complained of [see various chapters in these Guidelines] after making a reasonable effort to contact the person or persons and giving him 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].

20.15 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.

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

20.16 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 REGISTRATION AND ELECTORAL OFFICE**

20.17 The RO, PRO and the REO 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**

20.18 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 punishable by \$20,000 and 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 commits an offence punishable by imprisonment for 2 years and a fine [s 36 of the Crimes Ordinance (Cap 200)].