

(Translation)

2012 Legislative Council Election
(Date of Election: 9 September 2012)

District Council (second) Functional Constituency

Electoral Affairs Commission

Public Censure Issued against Ms Peck Wan-kam Pamela
for
Breaching the Guidelines on Election-related Activities in respect of the Legislative
Council Election

Complaint

The Returning Officer (“RO”) for the District Council (second) Functional Constituency (“DC(second)FC”) has reported to the Electoral Affairs Commission (“EAC”) that she has received since 6 August 2012 numerous complaints against Ms Peck Wan-kam Pamela, a candidate of the Constituency, about the misuse of candidate number ‘3’, rather than the candidate number ‘803’ allocated to her, in her election advertisements (“EAs”) suspected to have misled electors. Despite repeated requests made by the RO in different ways (including by phone or in writing) for the immediate rectification actions and a serious warning issued by the RO on 28 August 2012 against her for breaching the guidelines as set out in paragraph 8.11 of the Guidelines on Election-related Activities in respect of the Legislative Council Election (“Guidelines”), Ms Peck has failed to comply with the RO’s request in fully rectifying her EAs with the incorrect candidate number ‘3’ within the prescribed deadline.

Background

2. As most of the Geographical Constituency (“GC”) electors are also electors of the new DC(second)FC, it may cause inconvenience to or confuse them if both GCs and the DC(second)FC are referred to by the same numbering sequence starting from 1 and followed by 2, 3 and 4 ... In this connection, a new numbering system for the lists of

candidates for the DC(second)FC has been adopted, with the number for the lists of candidates starting from 801 and followed by 802, 803 and 804...

3. At the meeting chaired by the RO immediately after the briefing session for candidates on 3 August 2012, the respective candidate number and the designate spots for the display of EAs for each list of candidates contesting in the DC(second)FC were determined through the drawing of lots. The candidate number allocated to Ms Peck was '803'.

Course of Incident

4. Starting from 6 August 2012, the RO has received continuously complaints against Ms Peck about the misuse of candidate number '3' in her EAs suspected to have misled electors. These complaints were found substantiated upon investigation. Apart from contacting Ms Peck by phone, the RO requested her in writing on 8 August 2012 for immediate rectification actions. In her letter of 9 August 2012 to the RO, Ms Peck explained that she did not intend to mislead electors by using the candidate number '3' in her EAs and the mistake was wholly due to the misunderstanding of her Election Agent. Ms Peck indicated in the aforesaid letter that the situation was expected to be rectified by noon on 10 August 2012.

5. However, the RO continued to receive complaints against Ms Peck as her EAs were still found to show the incorrect candidate number '3'. After investigation, the RO found the complaints substantiated and wrote to Ms Peck the second time on 16 August 2012 requesting her to rectify the situation immediately.

6. Notwithstanding that Ms Peck had been requested in writing twice to take immediate rectification actions, the RO noted that not all her EAs had been rectified. Three more complaints were received during the period between 24 and 27 August 2012 about the incorrect candidate number '3' still being shown on her EAs at various locations. Under the circumstances, the RO issued a further letter on 28 August 2012 requesting Ms Peck to complete the rectification actions before 30 August 2012. In that letter, the RO pointed out that, after careful consideration of the complaints, her explanations given via the letter of 9 August 2012 were not sufficiently convincing to exculpate her. The RO hence issued a serious warning against Ms Peck for her breaching the guidelines as set out in paragraph 8.11 of the Guidelines which stipulates that "a candidate must ensure the correctness and accuracy of all factual statements in his EAs". The RO also informed Ms

Peck that the case had been referred to the EAC Complaints Committee for consideration of further action.

7. The RO sent staff to conduct site visits in the territory on 31 August 2012. It was found that there were still over 120 EAs of Ms Peck without being rectified (i.e. the incorrect candidate number of '3' being shown on the EAs). Although more than 3 weeks had lapsed after the first letter issued by the RO on 8 August 2012 to Ms Peck and her indication in the letter of 9 August 2012 to make good the situation by noon on 10 August 2012, Ms Peck had failed to complete the rectification actions. Ms Peck continued to blatantly breach the guidelines as set out in paragraph 8.11 of the Guidelines by failing to make a genuine effort to rectify the mistake within a reasonable period of time and ignoring the RO's request for rectification.

Representation from the Candidate

8. Before publishing a public censure against Ms Peck, the EAC has invited her to make representation under Section 6(4) of the EAC Ordinance (Cap. 541) as to why she should not be censured. In her representation, Ms Peck explained that not all her EAs with incorrect candidate number had been rectified as her efforts in this regard were constrained by the limited manpower of her election office and the inability of her contractor to rectify the EAs concerned. Ms Peck also pointed out that, there were cases where some rectified EAs had been willfully damaged. Ms Peck considered that electors had not been misled and no false/misleading statement was involved since all her EAs had borne the name of her contesting constituency, i.e. DC(second)FC. Ms Peck further pointed out that she should not be singled out for public censure because she alleged that the same situation of misusing candidate number was also found in other functional constituencies. Moreover, Ms Peck put part of the blame for her mistake on the confusion caused by the lot-drawing arrangement for allocation of candidate numbers and designated spots at the meeting chaired by the RO on 3 August 2012.

Investigation Results and Justifications

9. The evidence gathered by the EAC reveals the following:
- (a) As mentioned in paragraph 1 above, the complaints against Ms Peck for the misuse of candidate number in her EAs were found substantiated upon investigation by the RO.

- (b) Notwithstanding the repeated requests made by the RO for immediate rectification actions, Ms Peck did not take action earnestly to correct her mistake within a reasonable period of time.
- (c) After careful consideration of the complaints and the information provided by the RO, the EAC considered that there was a need to censure Ms Peck and, in accordance with Section 6(4) of the EAC Ordinance (Cap. 541), provide her with an opportunity to make representation before the EAC proceeded to publish a censure against her.
- (d) In her representation as detailed in paragraph 8 above, the EAC considered her explanations not sufficiently convincing to exculpate her. Firstly, as set out in paragraph 2 above, most of the GC electors are also electors of the new DC(second)FC and it may cause confusion or misunderstanding to electors when both GCs and the DC(second)FC are referred to by the same numbering sequence. As this is the first time the DC(second)FC has been incorporated into the Legislation Council Election and among all GCs and FCs, the DC(second)FC has the largest number of electors, there is a genuine need to avoid any possible confusion or misunderstanding to electors. The large number of complaints received by the RO since early August 2012 (20 cases so far) has clearly indicated that the misuse of candidate number '3' by Ms Peck in her EAs has already caused considerable confusion to electors. As regards the allegation made by Ms Peck that similar misuse of candidate was found in other FCs, the EAC and the RO considered that the situations of DC(second)FC and other FCs are not comparable and noted that no complaints relating to other FCs in this regard had been received. A candidate list of DC(second)FC has been allocated around 1,200 designated spots to display EAs (banners) as compared with only about 150 designated spots for a traditional FC candidate. Bearing in mind that the number of electors of the DC(second)FC, which is a single constituency covering the whole territory, is enormous and that most of the electors overlap with those of the GCs, the impact will be more far-reaching if there is misuse of candidate number in the DC(second)FC. As revealed by the RO, in the evening when the candidate numbers were determined after lots-drawing, the candidate numbers were displayed at a whiteboard for the scrutiny of the candidates and the media and the relevant record clearly shows that the candidate number allocated to Ms Peck was '803'.

- (e) In her representation, Ms Peck made various excuses about her mistake and showed no intention to fully correct her mistake.

Censure

10. The EAC is most disappointed that notwithstanding the repeated requests made by the RO, Ms Peck made no genuine effort all along to rectify her EAs with incorrect candidate number within a reasonable period of time. It is unforgivable that Ms Peck continued to blatantly breach the Guidelines and ignore the RO's requests for rectification. The EAC considers her attitude regrettable and that she should be publicly censured. The EAC would also take the opportunity to make it clear to electors that the candidate number allocated to Ms Peck is '803'.

(Signed)

(Barnabas W Fung)
Chairman
Electoral Affairs Commission

7 September 2012