

LCQ13: Statutory cooling-off period for beauty and fitness services consumer contracts

Following is a question by the Hon Shiu Ka-fai and a written reply by the Secretary for Commerce and Economic Development, Mr Edward Yau, in the Legislative Council today (December 4):

Question:

Early this year, the Government launched a three-month public consultation exercise on a proposal for a statutory cooling-off period for consumer contracts, including those relating to beauty services. As revealed by the findings of a questionnaire survey released in May this year, nearly half of the beauty companies intended to close their business once the statutory cooling-off period is implemented. Notwithstanding that many industries have languished due to the movement of opposition to the proposed legislative amendments which erupted in June this year, the Government plans to introduce into this Council a bill to put in place a statutory cooling-off period for beauty services consumer contracts, with a view to passing it in the current legislative session. In this connection, will the Government inform this Council:

- (1) whether it has assessed if, at the present stage, the enactment of legislation to put in place a statutory cooling-off period for beauty services consumer contracts will put the beauty service industry in the doldrums; if it has assessed, of the outcome; if not, the reasons for that;
- (2) of the number of complaints about unfair trade practices received by the Customs and Excise Department (C&ED) since the amended Trade Descriptions Ordinance (Cap. 362) came into operation in July 2013; among such cases, the respective numbers of those the investigation of which was completed, and those in which the persons concerned were prosecuted and convicted (with a tabulated breakdown by trade);
- (3) of the number of complaints involving suspected aggressive commercial practices (ACP) received by C&ED in each of the past five years (with a tabulated breakdown by trade);
- (4) as the relevant public consultation paper has pointed out that investigation of ACP cases has been difficult for C&ED, of the staffing establishment of C&ED officers responsible for the relevant work and the procedure they are required to follow at present;
- (5) as the Government has pointed out in the consultation paper that it appreciates that most traders in the beauty service industry are honest businessmen, whether the Government has assessed in detail if the

implementation of a statutory cooling-off period applicable to the entire beauty service industry is a proportionate means to crack down on a handful of black sheep; if it has assessed, of the details; if not, the reasons for that;

(6) as the beauty service industry has suggested that it is not necessary to implement a cooling-off period by way of legislation, and instead provisions on cooling-off periods may be added, on a voluntary basis, to beauty services consumer contracts (e.g. providing for a partial refund of money to consumers under specified circumstances and the mediation arrangements in the event of contractual disputes), whether the Government has studied the suggestion; if so, of the details; if not, the reasons for that; and

(7) since the Government knows that providing consumers with a statutory right, by way of legislation, to cancel contracts unilaterally may make them less cautious in making transaction decisions, thereby giving rise to moral hazards, coupled with the fact that the administrative fees charged by the traders may not be sufficient to offset the costs incurred by them due to cancellation of contracts by consumers, of the reasons why the Government still proposes to introduce a statutory cooling-off period by way of legislation, forcing numerous honest businessmen to bear the heavy burden brought about by the additional costs?

Reply:

President,

My reply to the seven parts of the question is as follows:

(1), (5), (6) and (7) The Government is committed to protecting the legitimate rights of consumers. We seek to put in place an effective, transparent and just regime under which both consumers and businesses can trade fairly.

Given the seriousness of complaints concerning aggressive commercial practices (ACP) involving beauty and fitness services in recent years, and considering the views from various sectors of the community, including the Legislative Council (LegCo) Panel on Economic Development and the Consumer Council (the Council), the Commerce and Economic Development Bureau conducted a public consultation from January to April 2019 on the proposed statutory cooling-off period for beauty and fitness services consumer contracts.

As mentioned in the public consultation document, it is expected that the implementation of a cooling-off period might increase the administrative costs of traders, particularly for non-cash payments, which may generate expenses such as the time and staff costs arising from refund processing and the transaction fees payable to credit card merchant acquirers, etc. Hence, the Government proposed in the public consultation document that a trader would be allowed to deduct an administrative fee of up to three per cent of the transaction amount if a consumer made a one-off payment by non-cash means, or up to five per cent of the transaction amount for payment by non-

cash instalment payment plans, to recover part of the costs. The proposed level of administrative fee will have an effect of discouraging abuse of the cooling-off period but may not completely offset all of the traders' costs arising from contract cancellation, thereby also providing incentives for traders to improve their sales practices. In addition, a consumer would need to pay the relevant cost if some of the services had been received prior to contract cancellation. When drafting the legislation, the Government will strive to make the relevant provisions as clear as possible, and to provide a sample contract cancellation form so as to facilitate compliance by traders.

Regarding the suggestion that the beauty industry may offer cooling-off period on a voluntary basis, the Government has made reference to the experience of the Council in encouraging traders to offer voluntary cooling-off period over the years, and considers it unlikely to be feasible. The Council formed a task force comprising many representatives from the beauty trade and published the "Beauty Industry Code of Practice" in June 2006, which included a recommendation to provide a cooling-off period. However, the Council is not aware of any quantitative data in respect of the implementation of the recommendation by the trade. The Council considers that unscrupulous traders who deliberately deploy aggressive sales tactics would unlikely offer any cooling-off period to consumers. For those traders who do offer cooling-off period, some may impose certain terms and conditions in the contracts to make contract cancellation difficult (for example, a cooling-off period of only 24 hours; consumers losing the right to cancel contracts after either commencement of services or acceptance of gifts; and substantial cancellation fee). Furthermore, according to the Council's experience, in an industry that has many traders with wide variances in scale and without powerful trade associations, it would be extremely difficult to reach an agreement on a uniform implementation of any voluntary cooling-off period arrangement. The Government considers that the experience shared and concerns raised by the Council should not be taken lightly.

In fact, the impact of the statutory cooling-off period on the relevant trades mainly depends on the number of consumers who would ultimately cancel their contracts. For honest businessmen in general, most of the consumers who purchase services out of genuine need would not cancel contracts merely because of the implementation of the statutory cooling-off period. On the contrary, the statutory cooling-off period can enhance consumer confidence and may benefit the relevant trades.

During the public consultation period, members of the public and the trades have put forward many valuable comments on legislating for a cooling-off period. The Government is studying and consolidating the comments, with a view to publishing the public consultation report and introducing the relevant bill into LegCo in early 2020, when LegCo can consider and scrutinise the legislative proposal and details of the bill.

(2) The figures in respect of the Customs and Excise Department's (C&ED) enforcement actions against the six types of prohibited unfair trade practices (Note 1) since the commencement of the amended Trade Descriptions Ordinance (Cap. 362) (the Ordinance) in July 2013 and up to October 2019 are

as follows:

	Number of complaints received	Number of cases with investigations completed	Number of cases with prosecutions completed	Number of cases convicted
Food and beverage (Goods)	5 425	235	60	53
Fitness and yoga (Services)	3 703	84	4	4
Electrical and electronic goods (Goods)	3 505	336	144	140
Ginseng and dried seafood/ pharmacy and Chinese medicines (Goods)	2 894	291	95	85
Travel (Services)	2 590	93	5	5
Beauty and hairdressing (Services)	2 393	115	17	12
Supermarket, department store and convenience shop (Goods)	2 041	74	12	12
Furniture, renovation and interior design (Goods)	1 724	15	1	1
Broadcasting and telecommunications (Goods)	1 450	2	0	0
Education (Services)	1 046	52	6	5
Others	20 217	526	112	105
Total	46 988	1823	456	422

(3) The number of ACP complaints received by C&ED in the past five years is as follows:

	2014	2015	2016	2017	2018	January to October 2019	Total
Fitness and yoga (Services)	45	112	75	37	202	437	908

Beauty and hairdressing (Services)	57	103	84	75	43	39	401
Travel (Services)	12	8	14	30	55	28	147
Jewellery and watches (Goods)	0	9	5	2	3	4	23
Ginseng and dried seafood/pharmacy and Chinese medicines (Goods)	8	3	0	1	0	2	14
Investment and finance (Services)	6	3	1	0	1	1	12
Food and beverage (Goods)	5	1	0	2	0	1	9
Electrical and electronic goods (Goods)	5	0	1	0	0	1	7
Furniture, renovation and interior design (Goods)	3	1	2	0	1	0	7
Beauty and hairdressing products (Goods)	2	1	1	0	0	0	4
Others	8	13	8	4	7	23	63
Total	151	254	191	151	312	536	1 595

(4) As the principal enforcement agency of the Ordinance, C&ED attaches great importance to the enforcement work and has been adopting a multi-pronged strategy comprising stringent enforcement, compliance promotion as well as public education and publicity.

Currently, there are 227 officers in the establishment of C&ED responsible for the enforcement of the Ordinance. These include the 37 additional posts created in 2019-20 to enhance C&ED's capacity to enforce the Ordinance, enabling the department to handle complaints, investigations and enforcement work in respect of unfair trade practices more effectively.

C&ED has been proactive in handling the reports of cases received and following up with their investigations. Upon receipt of a report of case involving the Ordinance, C&ED will consolidate the information available and conduct preliminary assessment and classification so as to determine whether the case warrants further investigation. After conducting in-depth investigation and gathering evidence in respect of a case, C&ED will take appropriate enforcement actions on the basis of the facts and evidence of the case and consult the Department of Justice to determine whether there is sufficient evidence for prosecution.

Note 1: The six types of unfair trade practices are false trade descriptions, misleading omissions, ACP, bait advertising, bait-and-switch and wrongly

accepting payment.