

LCQ15: Combating unfair trade practices

Following is a question by the Hon Chan Kin-por and a written reply by the Secretary for Commerce and Economic Development, Mr Algernon Yau, in the Legislative Council today (November 8):

Question:

Regarding combating unfair trade practices, will the Government inform this Council:

(1) whether it knows the number of complaints about unfair trade practices received by the Consumer Council (CC) in the past three years, together with a breakdown and percentage by trade practice;

(2) whether it knows the number of complaints about the pre-payment mode of consumption received by the CC in the past three years and the total amount of money involved, together with a breakdown by industry (including the beauty and fitness industries);

(3) of the corresponding measures taken in the past three years by the Government to combat unfair trade practices, and whether it has assessed the effectiveness of such measures; and

(4) given that the Commerce and Economic Development Bureau launched a three-month public consultation in 2019 to solicit views on the proposal to implement a statutory cooling-off period through legislation to regulate beauty and fitness services consumer contracts, but the relevant work was affected by factors such as the social environment and the economic situation at the time, whether the authorities will, after assessing the current social environment and economic situation, expeditiously review the relevant proposal; if so, of the specific work and timetable; if not, the reasons for that?

Reply:

President,

Currently, various laws in Hong Kong protect consumers' rights and interests. Among others, the Trade Descriptions Ordinance (Cap. 362) (the Ordinance) prohibits traders from subjecting consumers to certain unfair trade practices, including false trade descriptions, misleading omissions, aggressive commercial practices, bait advertising, bait-and-switch and wrongly accepting payment. The Ordinance covers goods and services, and is applicable to the trade practices of both physical and online traders. Traders who contravene the relevant provisions of the Ordinance are liable to a maximum penalty of imprisonment for five years and a fine of \$500,000.

The Customs and Excise Department (C&ED) is the principal enforcement agency of the Ordinance.

In addition, the Consumer Council (Council) endeavours to study and promote the protection of consumers' rights and interests, and carries out its statutory functions in accordance with the Consumer Council Ordinance (Cap. 216), including receiving and examining complaints concerning goods and services from consumers and giving advice to them.

The numbers of complaints received by the Council in the past three financial years, categorised by the unfair trade practices prohibited under the Ordinance, and the respective percentages (a number in brackets is the percentage of the number of complaints of a certain category as compared to the total number of complaints received in that financial year) are set out in the table below:

Category (Note)	2020-21	2021-22	2022-23
False trade descriptions	1 092 (66.5%)	1 005 (61.2%)	824 (58.0%)
Misleading omissions	224 (13.6%)	236 (14.4%)	207 (14.6%)
Aggressive commercial practices	182 (11.1%)	157 (9.6%)	135 (9.5%)
Bait advertising	21 (1.3%)	31 (1.9%)	65 (4.6%)
Bait-and-switch	14 (0.9%)	19 (1.2%)	54 (3.8%)
Wrongly accepting payment	109 (6.6%)	193 (11.8%)	135 (9.5%)
Total	1 642 (100%)	1 641 (100%)	1 420 (100%)

The Council does not compile breakdowns of the statistics based on the criterion of whether or not a complaint involves pre-paid mode of consumption.

As the principal enforcement agency of the Ordinance, the C&ED adopts a three-pronged approach to combat unfair trade practices. Among others, the C&ED is given the authority to conduct criminal investigations into and prosecutions on unfair trade practices, with a view to combatting non-compliant conducts at source. These, coupled with the sentences imposed by the court, cause deterrent effects on unscrupulous traders. In addition, the C&ED also carries out compliance promotion and conducts publicity and public education in collaboration with the Council, so as to promote regulatory compliance among traders and the concept of "smart consumption" among

consumers.

During the period from 2020 to the end of September 2023, the C&ED mounted six special operations to combat unfair trade practices. A total of 40 004 complaints received by the C&ED and other cases proactively developed by the C&ED were consolidated into 444 detailed investigation cases (more than one complaint may be involved in certain cases). During the above period, the C&ED had completed the investigation of 470 cases, and had:

(i) issued warning or advisory letters to the traders and sales staff concerned in 73 cases, urging them to comply with the relevant statutory requirements; and

(ii) completed 276 prosecution cases, among which 251 were convicted cases, representing a successful prosecution rate of over 90 per cent and covering different sectors. The court imposed imprisonment in 77 cases (39 persons were imposed imprisonment, including 31 persons subject to immediate custodial sentence and eight subject to suspended sentence), with the maximum term of imprisonment of 27 months. The court also imposed fines in 154 cases, with the amount ranging from \$500 to \$160,000.

The case with a term of imprisonment of 27 months abovementioned is the one with the heaviest prison sentence so far. The case concerned the staff of a fitness centre having engaged in aggressive commercial practices in the course of selling fitness service contracts, with the victims suffering losses of over \$820 000 in total.

On compliance promotion, by proactive visits to different industries and conducting briefings, the C&ED provides traders with advice and guidance on the legal requirements under the Ordinance as well as measures that should be taken for complying with the Ordinance. Among others, the C&ED held a total of 77 outreach talks, seminars and meetings for various industries during the above period.

On publicity and public education, the C&ED, in collaboration with the Council, launches extensive publicity and education programmes, so as to raise consumers' awareness of unfair trade practices, promote the concept of "smart consumption" and also promote good practices among traders. Among others, in the past three financial years, the C&ED arranged personnel to conduct patrols and distribute promotional leaflets at shopping hotspots during festive seasons, with a view to strengthening travellers' understanding of unfair trade practices and the ways and channels to seek assistance from the C&ED. The C&ED also published tips on "smart consumption" and promotional videos on its official social media accounts, including those on the platforms of Douyin and WeChat, to promote the key points about "smart consumption" to consumers.

In the past three financial years, the Council received a total of 89 793 complaints, and facilitated in the conciliation of 63 462 pursuable cases among the above complaints. The Council does not have the breakdowns of the complaints by categories.

The Government notes that unfair trade practices involving pre-paid mode of consumption is a matter of concern in society, in particular those that concern the trade practices of fitness centres and beauty parlours, including the use of aggressive tactics to sell services that involve large amount of pre-payments. In this regard, the Government launched a three-month public consultation in 2019 to solicit views on the proposal to stipulate a statutory cooling-off period for beauty and fitness services consumer contracts through legislation. However, shortly after the completion of the public consultation, there have been drastic changes in the social environment, economic situation and consumption sentiment since the second half of 2019. As Hong Kong has only started resuming normalcy in full this year, enterprises (especially small and medium enterprises) are still facing various challenges in their operations. We will continue to, having regard to the prevailing circumstances including the economic situation and relevant complaint and enforcement statistics, critically review the relevant proposal before deciding the way forward.

Meanwhile, the enforcement agencies will continue to spare no efforts in enforcing the Ordinance and combatting common unfair trade practices at source. The Government will also continue to closely review the trend of unfair trade practices, so as to formulate appropriate strategies in protecting consumers' rights and interests.

Note: The categorisation is by the unfair trade practices prohibited under the Ordinance. If a complaint involved more than one category of unfair trade practice, it would be counted towards the most relevant category.