

LCQ15: Regulation of food delivery online platforms

Following is a question by the Hon Cheung Kwok-kwan and a written reply by the Secretary for Food and Health, Professor Sophia Chan, in the Legislative Council today (May 4):

Question:

Amid the epidemic, many members of the public stay home to fight the epidemic and reduce dining out, resulting in the rapid development of food delivery online platforms (such platforms). However, the Consumer Council indicated in February this year that the number of complaints relating to such platforms had surged sharply by more than five times from 2019 to 2021, and such complaints were mainly about delays in meal delivery, cancellation of delivery, etc. In this connection, will the Government inform this Council:

(1) of the number of complaints relating to such platforms received by the Government in each of the past three years, with a breakdown by type of cases;

(2) whether it has examined, for the food ordered through such platforms, the respective legal liabilities of such platforms as well as the restaurants and the meal delivery couriers involved when food safety problems arise due to delays in meal delivery;

(3) of the government department currently responsible for regulating the food safety of the food delivered through such platforms; and

(4) as it is learnt that currently the websites of a majority of such platforms contain limitation of liability clauses, rendering it difficult for customers to seek reasonable compensation for situations like such platforms' delay in or cancellation of delivery and missing orders, whether the Government will study the establishment of a mechanism for regulating such platforms, so as to protect the rights and interests of consumers; if so, of the details; if not, the reasons for that?

Reply:

President,

Food safety and consumers' rights are currently protected by various laws in Hong Kong. In consultation with the Commerce and Economic Development Bureau, our consolidated reply to the various parts of the question on online food delivery platforms is as follows:

E-commerce activities such as online platform operations have been

gaining popularity amid the COVID-19 epidemic. In the past three years, the number of complaints against online food delivery platforms received by the Food and Environmental Hygiene Department (FEHD) and the Customs and Excise Department respectively in relation to food safety and common unfair trade practices, e.g. false trade descriptions and misleading omissions, regulated by the Trade Descriptions Ordinance (Cap. 362) are as follows:

| Year | 2019 | 2020 | 2021 | Total |
|--|------|------|------|-------|
| Number of complaints concerning food safety | 9 | 69 | 164 | 242 |
| Number of complaints concerning the Trade Descriptions Ordinance | 17 | 20 | 77 | 114 |

Under section 54 of the Public Health and Municipal Services Ordinance (Cap. 132), all food for sale for human consumption in Hong Kong, whether imported or locally produced, must be fit for human consumption. Offenders are subject to a maximum fine of \$50,000 and imprisonment for six months upon conviction. Moreover, section 52 of the Ordinance stipulates that any person who sells to the prejudice of a purchaser any food which is not of the nature, or not of the substance, or not of the quality, of the food demanded by the purchaser shall be guilty of an offence. The maximum penalty is a fine of \$10,000 and three months' imprisonment. Regarding the above food safety complaints, the follow-up actions taken by the FEHD included instituting prosecutions under the Ordinance against the operators of the food premises involved in two respective cases concerning foreign substances in food with sufficient evidence. The persons connected with these cases were convicted.

In addition, according to the Food Business Regulation (Cap. 132X), "food business" generally means any trade or business for the purpose of which a person engages in the handling of food. These trades or businesses shall apply to the FEHD for the relevant food business licences having regard to their actual operation and business modes. At present, licensed food premises providing takeaway and food delivery services (including online food sale) have to comply with the relevant licensing conditions, including those relating to food containers, food storage and temperatures for food delivery, in order to ensure food safety and public health. If licensed food premises are found breaching the licensing conditions, the FEHD will take appropriate actions, which include issuing warnings and considering cancelling the licences of food premises in persistent breach of the relevant licensing conditions.

The Centre for Food Safety of the FEHD has issued a reminder on the points to note about food delivery amid the COVID-19 epidemic to major local online food delivery service providers, urging them to maintain cleanliness and hygiene and ensure proper temperature control for delivered foods to ensure food safety.

As food delivery operations of online platforms are becoming more

popular, the FEHD plans to make it clear under the existing licensing regime that the licensee of a food premises shall ensure that the foods delivered for him by an online platform or a delivery service contractor meet the requirements of the relevant licensing conditions. These include ensuring that takeaway and delivered foods are stored at a safe and proper temperature at all times and kept free from tampering during transportation to reduce the risk of cross-contamination. The FEHD will formulate the detailed arrangements of the plan later on so as to further ensure food safety.

Meanwhile, existing laws in Hong Kong impose controls on contracts relating to consumer transactions. For instance, section 7(1) of the Control of Exemption Clauses Ordinance (Cap. 71) stipulates that a person cannot by reference to any contract term or any notice given to persons generally or particular persons, exclude or restrict his liability for death or personal injury resulting from negligence. In addition, section 5 of the Supply of Services (Implied Terms) Ordinance (Cap. 457) provides that where the supplier is acting in the course of a business, the supplier shall carry out the service with reasonable care and skill; section 8(1) stipulates that if a party to a contract is a consumer, the other party cannot, by reference to any contract term, exclude or restrict any of his liability arising under the contract by virtue of that Ordinance. Depending on the actual circumstances of the cases concerned (including contract terms), consumers may lodge claims under contract law and/or any other relevant laws.

On the other hand, consumers may also seek assistance from the Consumer Council (the Council). The Council acts as a conciliator in handling disputes between consumers and traders. It assists traders and complainants to resolve their disputes, for instance, by trying to contact the traders with a view to helping both parties reach a mutually satisfactory settlement through conciliation.