

## LCQ6: Protection of consumers' rights of online shoppers

Following is a question by the Hon Andrew Wan and a written reply by the Secretary for Commerce and Economic Development, Mr Edward Yau, in the Legislative Council today (June 3):

Question:

Regarding the protection of the consumers' rights and interests of people who purchase goods and services online (online shopping), will the Government inform this Council:

(1) of the respective numbers of complaints about online shopping received by the Consumer Council and the Customs and Excise Department (C&ED) in each of the past five years and between January and May this year, with a breakdown by spending category (i.e. goods and services) and traders' place of registration;

(2) of the number of pursuable cases among the complaints mentioned in (1), with a breakdown by spending category and the action taken by the authorities (e.g. conciliation and institution of prosecutions);

(3) as the Government indicated in May 2018 that the Police, when handling online fraud cases involving places outside Hong Kong, would seek co-operation with the relevant law enforcement agencies outside Hong Kong as necessary, and C&ED might demand those websites found to have committed contraventions to remove the relevant contents or hyperlinks, and conduct joint operations with the law enforcement agencies outside Hong Kong, whether the Government has assessed the effectiveness of such actions, and of the new measures in place to combat online fraud cases;

(4) whether it will, by making reference to the practices adopted by economies such as Canada, the United Kingdom, the European Union and the South Korea, enact legislation to regulate online shopping by stipulating that traders must prepare contracts and provide a cooling-off period for transactions, and provide consumers with accurate descriptions of services and goods as well as contact methods;

(5) whether it will study the enactment of legislation to introduce connected lender liability, i.e. based on the principle that in case of a breach of contract of a trader, the party who co-operates with the trader by offering lending is required to bear the legal liability jointly, thus allowing all consumers who have paid by credit cards to, in the event of closing down of business of a trader, lodge claims to the card issuers directly without the need of resorting to the winding-up process which has a little chance of success; and

(6) as the Government indicated in April 2019 that a cross-sector Working Group established by the Department of Justice carried on studying and considering the Report on Class Actions published by the Law Reform Commission in May 2012, and that the content of the Working Group's study at this stage mainly focused on considering the Report's recommendation on introducing class action in Hong Kong starting with consumer cases, of the progress of the relevant study?

Reply:

President,

Having consulted the Department of Justice (DoJ), the Customs and Excise Department (C&ED), and the Consumer Council (the Council), our reply to the six parts of the question is as follows:

(1) The number of online shopping complaints related to suspected violation of the Trade Descriptions Ordinance (Cap. 362) received by C&ED in the past five years and the first four months of this year is as follows:

	2015	2016	2017	2018	2019	2020 (January to April)
Goods	255	544	1 115	1 250	775	1 191
Services	41	42	112	311	224	283
Total	296	586	1 227	1 561	999	1 474

The number of online shopping complaints received by the Council in the past five years and the first four months of this year is as follows:

	2015	2016	2017	2018	2019	2020 (January to April)
Goods	1 392	1 586	1 815	2 439	2 231	2 005
Services	2 076	1 622	2 125	2 544	2 333	2 649
Total	3 468	3 208	3 940	4 983	4 564	4 654

Due to time constraints, the complaint statistics of May 2020 are not yet available. In addition, C&ED and the Council do not maintain separate statistics on the place of registration of traders.

(2) The breakdown of online shopping complaints related to suspected violation of the Trade Descriptions Ordinance received by C&ED is as follows:

	2015	2016	2017	2018	2019	2020 (January to April)
<b>Goods</b>						
Number of Investigation	3	12	5	8	8	0
Number of Warning/ Advisory Letter	0	0	0	2	1	0
Number of Prosecution	1	9	4	2	3	0
Number of Undertaking Secured	0	1	0	0	0	0
<b>Services</b>						
Number of Investigation	0	2	1	1	0	0
Number of Prosecution	0	0	0	1	0	0

The breakdown of online shopping complaints received by the Council is as follows:

	2015	2016	2017	2018	2019	2020 (January to April)
<b>Goods</b>						
Number of Pursuable Case	758	905	1 051	1 365	1 347	1 681
Successfully Resolved	582	691	696	947	797	938
<b>Services</b>						
Number of Pursuable Case	1 482	1 031	1 453	1 498	1 573	2 017
Successfully Resolved	1 202	792	1 089	980	1 045	1 282

(3) C&ED is committed to combating online unfair trade practices. If local or overseas websites are found to be conducting illegal activities, C&ED may demand such websites to remove the relevant contents or links. Depending on the circumstances, joint operations with overseas enforcement agencies will also be mounted as and when required. C&ED will review the effectiveness of

its enforcement actions from time to time, and will continue to monitor different types of illegal online activities by using advanced tools for evidence collection and investigation, and initiate follow-up actions and prosecutions where appropriate.

(4) The rights of online shoppers are currently protected by various laws in Hong Kong. The Sale of Goods Ordinance (Cap. 26), Control of Exemption Clauses Ordinance (Cap. 71), the Supply of Services (Implied Terms) Ordinance (Cap. 457) and the Unconscionable Contracts Ordinance (Cap. 458) all regulate contracts related to transactions, for example by stipulating implied conditions in the contract of sale of goods, including that the goods supplied are of merchantable quality and that a buyer has the right to reject defective goods unless he or she has a reasonable opportunity to examine the goods; a supplier of a service is obliged to carry out the service with reasonable care and skill and within a reasonable time; and the courts are empowered to refuse to enforce, or to revise unconscionable terms in consumer contracts for the sale of goods or supply of services etc.

In addition, the Trade Descriptions Ordinance prohibits common unfair trade practices, including false trade descriptions and misleading omissions, and is applicable to both online and physical traders. The Government will continue to keep a close watch on the development of online platforms and review the relevant laws as necessary for the protection of consumer rights.

As for the provision of cooling-off period, the Government considers that priority should be accorded to stipulating a statutory cooling-off period for sectors that give rise to more complaints involving large amount of payment and deployment of aggressive sales tactics. Comparatively, it is unlikely for online shopping to involve aggressive sales tactics. In fact, in territories where e-commerce is booming, such as the United States, Australia and Singapore, there is no legislation requiring traders to provide cooling-off periods to online shoppers. Moreover, the use of online transactions is increasingly common in various sectors. Implementing an online shopping cooling-off period will have a comprehensive impact on the business operation of various sectors. As such, the Government has no plan to implement a statutory cooling-off period for online shopping contracts.

(5) In general, in the event that a merchant goes out of business and is unable to provide services or goods, consumers who made credit card payments may request card-issuing institutions to assist in making application for refund of the payments through the chargeback protection mechanism of credit card associations. As for connected lender liability, given its complex nature and involvement of stakeholders in many various sectors and different policy areas, caution is required in its consideration.

(6) The cross-sector Working Group established by DoJ to study and consider the recommendations set out in the Law Reform Commission's Report on Class Actions has, since its inception in December 2012 to date, held 29 meetings. In the meantime, the sub-committee set up to assist the Working Group in resolving the technical issues arising from its discussions has held 33 meetings since its formation in April 2014. The most recent Working Group

meeting was just held in May 2020. The Working Group's study involves technical issues in law and policy considerations, etc. Given that the issues being studied by the Working Group are wide-ranging and interrelated, more time is required to sort them out. Upon completion of the study, the Working Group will put forward its recommendations for the Government to consider and map out the way forward.