

DRAFT (Translation)
[This is a draft, please check against oral delivery]

Legislative Council Question No. 1
(Oral Reply)

Asked by : Hon LI Wah-ming

Date of Meeting : 12 June 2002

Replied by : Secretary for Economic
Services

Question :

The Consumer Council ("CC") issued a report entitled Regulating Deceptive, Misleading and Unfair Practices in Consumer Transactions in May last year. In this connection, will the Government inform this Council:

- (a) of the total number of complaints received by CC and the Administration over the past two years concerning deceptive, misleading and unfair trade practices; the number of complainants involved and the number of tourists among them; as well as the follow-up actions taken by CC or the Administration;
- (b) of the follow-up actions it has taken in relation to the above report and the latest progress of such actions; and
- (c) whether it will, as recommended by CC in the report, introduce legislative amendments to the relevant provisions in the Trade Descriptions Ordinance, the Summary Offences Ordinance and the Unconscionable Contracts Ordinance to enhance consumer protection; if so, of the legislative timetable and details of the amendments, if not, the reasons for that?

Reply

Madam President,

My reply to the three parts of the question raised by Hon LI Wah-ming in seriatim is as follows -

- (a) In the past two years, the number of complaints received by the Consumer Council alleging deceptive, misleading and unfair practices in consumer transactions, and the number of complainants and tourists involved, are as follows -

Year	Number of Complaints	Number of Complainants Involved	Number of Tourists Among the Complainants
2000	2,130	2,130	441
2001	1,862	1,862	306
2002 up to May)	1,189	1,189	155
Total	5,181	5,181	902

The above figures include complaints referred to the Consumer Council by other parties. Upon receipt of a complaint, the Consumer Council will normally consider the basis for the complaint and liaise with the company concerned to determine whether the complaint is justified. If the complaint is justified, the Council will try to mediate for a settlement. Where it is suspected that a criminal offence has been

committed, the case will be referred to the law enforcement agencies as appropriate.

Separately, the Government's law enforcement agencies also deal with complaints of the sort. For complaints received by the Hong Kong Police Force (HKPF), the HKPF will investigate and take enforcement actions as appropriate, where there is prima facie evidence of a criminal offence having been committed. The HKPF does not, however, keep separate statistics on cases involving allegations of malpractices in consumer-related transactions.

The Customs and Excise Department (C&ED) is responsible for enforcement of the Trade Descriptions Ordinance. In the past two years, the number of such complaints received by the C&ED, and the number of complainants and tourists involved, are as follows -

Year	Number of Complaints	Number of Complainants Involved	Number of Tourists Among the Complainants
2000	23	23	0
2001	48	48	4
2002 up to May)	6	6	1
Total	77	77	5

Upon receipt of a complaint, the C&ED will assess whether the alleged false trade descriptions are material. If there is prima facie evidence

that an offence has been committed, the Department will investigate and initiate prosecution action as appropriate.

Where no criminal offence is involved, the law enforcement agency will where appropriate refer the complaint to the Consumer Council.

- (b) We adopt a three-pronged approach to address the issues raised in the Consumer Council's report, i.e. promoting good trade practices, stepping up actions against unscrupulous traders, and enhancing consumer education. More specifically, actions taken include the following -

(i) Promoting good trade practices

Inculcating a sense of responsibility and ethics among traders is crucial to addressing the problem. To assist the trade in improving its service standards and developing good practices, the Consumer Council has been organising talks and seminars for practitioners in the retail sector in general, and for those selling electrical appliances, Chinese medicine and dried seafood in particular. Ten such talks were organized in the first five months of 2002. Thanks to the efforts of the Consumer Council and the trade, the number of complaints against Chinese medicine and dried seafood shops, which topped the complaint list in 1999-2000, dropped by nearly 40% in 2000-01.

Meanwhile, the Hong Kong Tourism Board has continued to promote its Quality Tourism Services Scheme, which not only

helps consumers in identifying quality services, but also gives recognition to participating organizations, thus encouraging operators to improve and self-regulate. At present, about 880 organisations with a total of nearly 3000 outlets have joined the Scheme.

We are pleased that various trades, in particular the tourist industry, have responded positively to our calls for developing good trade practices. The Tourist Industry Council of Hong Kong (TIC) has implemented since February 2002 a “100 per cent Refund Guarantee Scheme”. Under this Scheme, travellers who are arranged by their travel agents to purchase goods at registered shops are entitled to a full refund within 14 days if they are not satisfied with their purchases. The Travel Agents (Amendment) Ordinance, which will come into effect in November 2002, further provides that all inbound and outbound travel agents must be licensed, one of the licensing conditions being that the agent must be a member of the TIC, and must comply with codes of conduct promulgated by the TIC. The tourist industry’s support of this Ordinance not only helps to improve its self-regulatory regime, and thereby the quality of its services, but also helps to enhance the protection to inbound tourists who shop in Hong Kong.

We encourage other trades to draw up relevant codes of practice to boost the confidence of their customers.

(ii) Stepping up actions against unscrupulous traders

Work in this area includes vigilant enforcement by the relevant agencies and naming of shops by the Consumer Council. Through a series of enforcement actions, the HKPF and the C&ED have tackled cases relating to deceptive or misleading trade practices. Following the publication of the Consumer Council's report in question, the HKPF has initiated "under cover" actions at audio-visual shops in Tsim Sha Tsui, arrested and prosecuted various persons concerned. In 2001, the C&ED initiated 25 prosecutions against false trade descriptions.

Separately, the Consumer Council keeps a close watch on trade practices and would, if necessary, name the shops involved in malpractices to heighten consumers' awareness. The naming also serves as a deterrent for other traders.

(iii) Enhancing consumer education

We firmly believe that "empowering" consumers so that they could exercise their rights and make their choices is fundamental to safeguarding their interests. Hence, in tackling the problems about malpractices, we have been liaising with the relevant organizations, such as the Consumer Council and the Hong Kong Tourism Board, to promote consumer education. We support the Consumer Council in organising talks on consumer rights for various target groups, such as the elderly and the new arrivals to Hong Kong, who are the more vulnerable targets of malpractices.

In 2001-02, the Consumer Council organized more than 180 consumer education talks, of which some 40 were targeted at the elderly and the new arrivals.

The Hong Kong Tourism Board also contributes to consumer education by publishing shopping guides and other consumer education leaflets for tourists. As from this year, the Board has been proactive in distributing such information to tourists at border control points and at their visitors' service and information centres.

- (c) In addition to the above actions, we have also examined those recommendations in the Consumer Council's report proposing legislative amendments. We have, in consultation with the Department of Justice, the HKPF and the C&ED, examined these proposals to see whether the amendments are necessary, whether they can effectively curb malpractices and whether they may have adverse effects affecting public interest.

(i) Whether the amendments are necessary

We note that some of the malpractices which the proposed legislative amendments aim to tackle can in fact be dealt with under existing legislative provisions, hence additional legislative measures may not be required at this stage. For instance, the report proposes amending the Unconscionable Contracts Ordinance, to include misleading representation and "bait and switch" tactics in the list of matters that the court may consider in determining

whether a contract is unconscionable. Similar provisions already exist in the Ordinance : section 6(1)(d) provides that the courts may take into consideration “whether any undue influence or pressure was exerted on, or any unfair tactics were used against” the consumer. This Ordinance was applied when the Small Claims Tribunal recently considered a case on “time-share” contract. Another example is the proposal to make “the use of physical force” an offence under the Summary Offence Ordinance. In fact, “common assault”, “criminal intimidation” or “obtaining property by deception” are already criminal offences. The HKPF will take enforcement actions as appropriate, and prosecutions had been initiated in the past. Two cases heard/ to be heard in this month relate to deceptive acts in consumer transactions.

(ii) Whether the amendments will be effective

We have reservation about the effectiveness of some other proposals. The report recommends stating certain actions as an offence under the Summary Offence Ordinance on the grounds that it would be easier to bring about prosecution. The fact of the matter is that the standard and burden of proof required are the same irrespective of whether the offences are summary or indictable. The proposed legislative amendments would not, therefore, be more effective in dealing with malpractices in the trade. The law enforcement agencies will continue to enforce the law and review their operations to tackle more effectively the issues identified in the Consumer Council’s report.

(iii) Whether the amendments will have adverse implications

We are also mindful of possible adverse impact on the business environment if we over-regulate. Take for instance, the report proposes that the definition of “false description” in the Trade Descriptions Ordinance be expanded to cover false description of services. However, descriptions of service quality, such as “comfortable”, “speedy”, etc., often involve subjective judgment. Loosely-defined provisions in the law are not only confusing for law enforcement purposes, but also create uncertainties for the trades, and may even stifle creativity in the advertising sector. In view of the current economic situation, these issues need to be carefully considered.

Having considered the foregoing, we are of the view that we should pursue positive and effective measures, such as strengthening consumer education and promoting good practices by the trade, in dealing with malpractices. We will continue to work closely with the Consumer Council and the Hong Kong Tourist Board to safeguard the interests of consumers.

Thank you, Madam President.

Economic Services Bureau
12 June 2002