

The Audit Commission ("Audit") conducted a review of the efforts made by the Customs and Excise Department ("C&ED"), the Office of the Communications Authority ("OFCA") and the Consumer Council ("CC") to protect consumer interests.

2. Hon Steven HO declared that he was a member of CC.

3. The Government has safeguarded the legitimate interests of consumers through various channels, both local residents and visitors alike. In 2016-2017, C&ED deployed 246 staff and spent \$121.2 million to enforce four consumer protection Ordinances, namely, the Trade Descriptions Ordinance (Cap. 362) ("TDO"), the Weights and Measures Ordinance (Cap. 68) ("WMO"), the Consumer Goods Safety Ordinance (Cap. 456) ("CGSO") and the Toys and Children's Products Safety Ordinance (Cap. 424) ("TCPSO"). OFCA is supporting the Communication Authority to enforce TDO in relation to the provision of licensed telecommunications or broadcasting services. As at 31 October 2017, OFCA deployed 38 staff to carry out the enforcement work among other duties. While CC is not a law enforcement agency and does not possess the power of investigation or adjudication, it handles complaints¹ by means of conciliation, organizes consumer education activities, disseminates consumer information and renders advice to consumers. In 2016-2017, CC received recurrent subventions of \$115.4 million from the Government and its establishment as at 31 March 2017 stood at 150 staff.

4. The Committee noted the following findings from the Director of Audit's Report:

- from July 2013 to December 2017, the prosecution rate for services (3% for OFCA and 6% for C&ED) were lower than that for goods (27%). While OFCA considered it more difficult to collect sufficient evidence against misconduct relating to services, C&ED advised that other factors (e.g. complainants' withdrawal of their complaints) would also affect the prosecution rates;

¹ CC only handles complaints on immovable property, goods and services purchased from traders by individual consumers for private use or consumption. Complaints involving private transactions between individuals not in the course of business or goods and services supplied by the Government fall outside CC's scope of work.

- before October 2014, C&ED would open a case file for detailed investigation from the beginning when a complaint was assessed as actionable. In October 2014, C&ED changed its filing practice and would only open a case file for detailed investigation when there was reasonable ground to suspect that an offence had been committed and to take enforcement actions. As a result, the number of detailed investigation cases decreased from 1 363 cases in the 34 months from July 2013 to April 2016 (averaging 40 cases per month) to 211 cases in the 20 months from May 2016 to December 2017 (averaging 11 cases per month);
- from September 2014 to September 2017, CC had shared 12 413 pieces of unfair trade practice information with C&ED via the computer system interface, but the interface had not been used for referral of complaint cases between C&ED and CC;
- based on C&ED's computer records of 2 960 investigations completed from July 2013 to 2 November 2017, Audit found that the Intellectual Property Investigation Bureau² of C&ED had taken more than one year to close 1 532 (52%) investigation case files, up to 3.8 years in the longest case;
- in 2016, 12 of 45 goods-related urgent complaint cases and 39 of 72 CGSO or TCPSO-related urgent complaint cases did not meet the time target for commencing investigation within 24 hours upon receipt of the complaints. According to C&ED, the above 51 cases (i.e. 12+39) had been misclassified as urgent;
- of the 4 990 completed investigation cases for complaints conducted by the Trade Descriptions Investigation Bureau³ of C&ED between July 2013 and December 2017, 1 946 (39%) cases could not meet the time standards, among which 309 cases with enforcement actions taken had exceeded their respective time standards by more than 90 days.

² The Intellectual Property Investigation Bureau is responsible for the enforcement of TDO in relation to the supply of services and specified types of goods (notably ginseng, dried seafood and mobile phones which may involve syndicate crimes) while the enforcement responsibility for other goods rests with the Trade Descriptions Investigation Bureau.

³ The Trade Descriptions Investigation Bureau will take enforcement actions on cases where there is reasonable suspicion that an offence has been committed under TDO. Case officers have to complete investigation within four months for cases not resulting in enforcement actions and six months for cases with enforcement actions taken (both counting from commencement of the investigations) or one month before the time limit for legal proceeding, whichever is the earlier.

Of 1 151 and 744 completed investigations on CGSO-and TCPSO-related cases respectively conducted by the Consumer Protection Bureau⁴ of C&ED from 2013 to September 2017, 646 (56%) and 486 (65%) cases could not meet the time standards in completing investigations, 52% and 62% respectively of those cases with enforcement actions taken were delayed for over 90 days;

- Audit analysed the results of 6 740 CGSO-related, 7 371 TCPSO-related and 8 073 WMO-related spot checks conducted from 2013 to 2017 and discovered that:
 - (a) in 5% of the CGSO-related spot checks and 29% of the TCPSO-related spot checks, the target shops were found to have been vacated/closed or not having sufficient quantity of the target products for sample testing;
 - (b) from April 2013 to September 2017, the Consumer Protection Bureau of C&ED only conducted 37 spot checks on online sales of CGSO and TCPSO-related products, averaging eight checks a year compared to some 2 800 spot checks a year on retail shops; and
 - (c) the detection rate of suspected offences under WMO-related spot checks decreased from 5.1% in 2013 to 0.5% in 2017;
- of the 25 039 complaints received in 2016-2017, CC resolved about 74% pursuable cases. According to the naming guidelines issued by CC,⁵ if one new complaint was lodged against a trader during the six-month observation period, the naming mechanism would be triggered off. However, only one of the seven traders on the observation list in 2017 was named and reprimanded. Despite new complaints had been lodged against the remaining six traders during the six-month observation periods, the naming mechanism was not triggered off. The naming guidelines did not set out any procedure to identify traders with repeated undesirable trade practices;

⁴ The Consumer Protection Bureau is responsible for enforcing CGSO and TCPSO against unsafe goods, and WMO against short weights and measures. Internal time standards are set for completing: (a) CGSO and TCPSO-related investigations within four months for cases not resulting in enforcement actions and six months for cases with enforcement actions taken; and (b) within three and four months respectively for WMO-related investigations.

⁵ The guidelines set out the considerations for naming and public reprimand, and the procedures for taking such actions.

- Audit's analysis of 2 526 complaints received by CC from January 2012 to September 2017 which were in progress as at 17 November 2017 revealed that 396 (16%) cases had been outstanding for almost three years or more;
- the sale of CHOICE magazine⁶ had dropped by 23% from an average of 27 428 copies a month in 2009-2010 to 21 033 a month in 2016-2017. The online version of the magazine also had a slow pick-up rate; and
- from November 2012 to October 2017, OFCA received a total of 2 382 applications under the Customer Complaint Settlement Scheme⁷ ("CCSS"), of which 703 cases were accepted as eligible for referral to the CCSS Agent. However, 333 (47%) of the 703 accepted cases were settled before referral to the CCSS Agent and the utilization of the CCSS Agent only represented about 18.5% of its full capacity.

5. The Committee did not hold any public hearing on this subject. Instead, it asked for written responses regarding the implementation of TDO, CCSS and the naming and public reprimand against unscrupulous traders; the enforcement work against unfair trade practices and unsafe goods, and short weights and measures; the case referral and information exchange system between OFCA and CC; and the revamp project of CHOICE magazine. The consolidated replies from **Secretary for Commerce and Economic Development, Commissioner of Customs and Excise and Director-General of Communications**, and the replies from **Chief Executive of Consumer Council** are in *Appendices 4* and *5* respectively.

6. The Committee wishes to be kept informed of the progress made in implementing the various recommendations made by Audit.

⁶ According to CC, CHOICE magazine plays a vital role in assisting consumers to make astute choices and make purchases in a safe, informed and responsible manner.

⁷ To address issues of billing disputes in the telecommunications services, OFCA has implemented CCSS, a voluntary mediation scheme, to help resolve billing disputes in deadlock between the telecommunications service providers and their customers.