

LCQ10: Consumer protection

Following is a written reply by the Secretary for Commerce and Economic Development, Mrs Rita Lau, to a question by the Hon Fred Li in the Legislative Council meeting today (December 16):

Question :

Quite a number of members of the public have relayed to me that in the absence of specific regulatory legislation, some beauty care and slimming service operators have often adopted dishonest trade practices to operate their business in recent years. For example, they use advertisements containing misleading information for publicity and lure members of the public into visiting the companies concerned under various excuses and then force them to sign unfair service contracts, etc., by scare tactic. Consumers who have encountered the aforesaid situation often have nowhere to turn to for assistance, and thus their interests are not safeguarded. In this connection, will the Government inform this Council:

(a) given that some members of the trade have proposed that a cooling-off period should be provided in the contracts for beauty care and slimming services, whether the Government has any plan to legislate to require that the contracts concerned must contain a cooling-off period clause, so that consumers may cancel the contracts and unconditionally get back the full amounts paid during the cooling-off period;

(b) whether it has any plan to enact specific legislation to regulate advertisements which promote beauty care and slimming services, so as to prevent consumers from being misled by misrepresented advertisements; and

(c) how it will educate and assist members of the public in protecting their own legitimate interests through existing legislation when procuring beauty care and slimming services?

Reply:

President,

While advocating free and open trade in order to foster a favourable and fair business environment, the Government is also committed to protecting consumer rights and enhancing consumer confidence. We are concerned about unfair sales

practices in the market and are pressing ahead with the review of the current consumer protection legislation. We are examining how the current legislative regime could be strengthened so as to tackle unfair sales practices in a timely and targeted manner.

When formulating legislative amendments, we will strike an appropriate balance between protecting the fair and reasonable rights of consumers and the operational efficiency of business.

My reply to the three parts of the Honourable Member's question is as follows:

(a) We welcome and encourage all industries to voluntarily adopt self-regulating measures that are beneficial to consumers, including the provision of a cooling-off period, in order to win over consumer confidence. As regards whether a cooling-off period should be imposed through legislation, we are examining the feasibility of this suggestion and how to tackle the related implementation issues. As this suggestion amounts to an intervention into contracts concluded based on the free will of two contracting parties, it should be handled carefully. Furthermore, we will consider other measures which could strengthen consumer protection, such as legislative control on misrepresentation, high pressure or other undesirable tactics, which may have an impact on consumers when they conclude contracts.

(b) We are examining the feasibility of making suitable amendments to the Trade Descriptions Ordinance (Cap. 362) to expand its coverage to false or misleading statements made in the course of the supply of services. Beauty care and slimming services will definitely be among the service industries which would be subject to the proposed legislative amendment.

(c) Currently, consumers may take out court action in accordance with relevant laws in respect of contract terms, or on matters relating to the compliance of contractual obligations by service suppliers. The Unconscionable Contracts Ordinance (Cap. 458) empowers the court to refuse to enforce the unconscionable part of a contract. In determining whether a contractual provision is unconscionable, the court may consider whether the contract clause is necessary to protect the legitimate interests of the business, and whether the consumer has been subject to any undue influence, pressure or unfair tactics. Besides, the Supply of Services (Implied Terms) Ordinance (Cap. 457) stipulates that a supplier should provide its service with reasonable care and skill. Where the time for the provision of services is not set out in the contract, the supplier should provide the service within a reasonable time. Consumers may

consider seeking redress under contract law should they consider that a service supplier has not complied fully with any contract term. We note that the arrangements mentioned above are in the realm of private law, and accordingly we are examining whether we can strengthen consumer protection in other aspects.

On consumer education, we consider that enhancing consumer awareness and self-empowerment against unfair sales practices is equally important as legislative oversight. We have launched TV and Radio Announcements in the Public Interests and posters, apprising consumers of the points to note when making pre-payment. A simulated scam case related to the undesirable sales practices adopted by slimming companies has been shown in the Police Magazine to raise consumers' awareness. In addition, in collaboration with the Consumer Council, we have published weekly newspaper columns on undesirable sales practices for 12 consecutive weeks starting from October this year. The Consumer Council also supports our endeavours by regularly disseminating messages on smart consumption and raising consumers' awareness of their rights through the media and the "Choice" magazine. We will continue to co-operate with the Consumer Council, the Police and other organisations (including major chambers of commerce, schools and the media) to step up efforts in this aspect.

Ends/Wednesday, December 16, 2009