

LCQ3: Protection of consumers' rights

Following is a question by the Hon Tam Heung-man and a reply by the Secretary for Economic Development and Labour, Mr Stephen Ip, in the Legislative Council today (November 8):

Question:

Regarding the protection of consumers' rights and interests, will the Government inform this Council whether it will:

- (a) consider reviewing the existing legislation on consumers' rights and interests, with a view to stepping up efforts to combat unscrupulous business practices;
- (b) amend the Sale of Goods Ordinance and the Trade Descriptions Ordinance, so as to bring within their ambits such matters as services, online auctions, making false or misleading statements in the sale and purchase of flats; and
- (c) consider conferring on the Consumer Council, in dealing with consumers' complaints, the statutory power to order the persons concerned to provide information?

Reply:

Madam President,

In considering the general issue of whether to prepare new legislation to protect consumers' rights and interests, the Government would consider –

- (i) the extent to which legislation already exists to protect consumers;
- (ii) whether legislation is the most appropriate approach to dealing with a particular problem; and
- (iii) the potential impact of the proposed legislation on business and consumers.

With these general points in mind, I would answer the three parts of the question as follows.

(a) There is currently a considerable body of legislation in place that has the aim, either entirely or in part of safeguarding the interests of consumers. For example –

(i) the Trade Descriptions Ordinance (Cap.362), which prohibits false trade descriptions, false marks and misstatements in respect of goods provided in the course of trade;

(ii) the Weights and Measures Ordinance (Cap.68), which contains provisions with respect to units and standards of measurement and weighing or measuring equipment used for trade and to regulate trade transactions regarding goods supplied by weight or measure;

(iii) the Unconscionable Contracts Ordinance(Cap. 458), which empowers the courts to refuse to enforce, or to revise unconscionable terms in consumer contracts for the sale of goods or supply of services;

(iv) the Supply of Services (Implied Terms) Ordinance (Cap.457), which stipulates that a supplier of a service is obliged to carry out the service with reasonable care and skill and within a reasonable time; and

(v) the Sale of Goods Ordinance (Cap.26), which provides that where a seller sells goods in the course of a business, there are implied conditions in the relevant contract of sale, such as 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.

To complement this legislation, we further adopt a three-pronged approach to tackling and raising awareness of unscrupulous business practices by: promoting good trade practices, taking action against unscrupulous traders, and enhancing consumer education. Specifically, in promoting good trade practices, we support the Consumer Council in its efforts to educate business sectors, for example through regular forums and seminars and the drawing up of codes of practice. In addition, 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 organisations.

As regards action against unscrupulous traders, the Police and the Customs &

Excise Department carry out regular enforcement campaigns. In addition, the Consumer Council keeps a close watch on trade practices and, if appropriate, names the shops involved in malpractices to heighten consumers' awareness.

As for enhancing consumer education, we believe that educating consumers so that they can exercise their rights and make sound choices is fundamental to safeguarding their interests. We liaise closely with the relevant organisations, such as the Consumer Council and the Hong Kong Tourism Board, and support their efforts to promote consumer education.

Nonetheless, we would continue to review the situation and should specific malpractices arise, which require the enactment of new consumer protection law, we would not hesitate to develop appropriate proposals for further consultation and discussion.

(b) The Government's primary objectives in consumer protection policy are to ensure that the products procured by consumers are safe, the quality of the products is in accordance with their reasonable expectations, and the terms of sale are fair.

As for the specific matters mentioned in the question, various existing legislation is in place to deal with diverse problems that may arise. In relation to services, as mentioned in part (a) above, the Supply of Services (Implied Terms) Ordinance (Cap.457) stipulates that a supplier of a service is obliged to carry out the service with reasonable care and skill and within a reasonable time. Consumers may take civil action if they are not satisfied that the supply of services has been properly carried out.

With regard to online auctions, it should be noted that the issue in question is still essentially the sale of goods. Hence, the current legislation for consumer protection would still apply to these goods. For example, the Trade Descriptions Ordinance (Cap.362) is also applicable to combat the unscrupulous supply of goods, whether this is done online or through other means, provided that the wrongdoer supplies goods bearing a false trade description or a forged trademark.

As for the sale of flats, if a property is sold by means of fraudulent behaviour or misrepresentation, then the seller may be criminally liable under the Theft Ordinance (Cap. 210) or under common law for breach of contract. If estate agents are found to have made false or misleading statements, the Estate Agents Authority will take

disciplinary action under the Estate Agents Ordinance (Cap. 511) against the concerned estate agents.

(c) The functions of the Consumer Council, as set out under section 4 of the Consumer Council Ordinance (Cap.216), are, amongst other things, to protect and promote the interests of consumers of goods and services and purchasers, mortgagors and lessees of immovable property by –

(i) collecting, receiving and disseminating information concerning goods, services and immovable property;

(ii) receiving and examining complaints by and giving advice to consumers of goods and services and purchasers, mortgagors and lessees of immovable property;

(iii) taking such action as it thinks justified by information in its possession, including tendering advice to the Government or to any public officer; and

(iv) encouraging business and professional associations to establish codes of practice to regulate the activities of their members.

In resolving complaints with pursuable grounds, the Council frequently acts as a mediator between consumers and the traders concerned. Figures provided by the Consumer Council indicate that over 90% of complaint cases are resolved through mediation. Given the Consumer Council's major role as a mediator, a statutory power to order the provision of information may not be essential to its work. This notwithstanding, we are prepared to keep an open mind and review the situation if future developments show that the community considers that this is the direction we should explore.

In many other cases, the Council provides support and advice to consumers so that they can take action through the courts, under the existing consumer legislation mentioned above.

It should also be noted that, as the major enforcement agency for consumer legislation, the Customs and Excise Department has appropriate investigation powers, including the power to authorise the search of premises, seize goods or require the testing of products.

Thank you.

Ends/Wednesday, November 8, 2006

Issued at HKT 12:35