A Report to Advocate Mandatory Cooling-off Period in Hong Kong

19 April 2018
Examples of Unfair Trade Practices
7.13 We consider that using the duration of contract is a more pragmatic yardstick. We propose that mandatory cooling-off periods be imposed on contracts involving goods and/or services with a duration of not less than six months. A six-month timeline is proposed because it allows less scope for circumvention when compared with, say, a 12-month timeline. Transactions of timeshare rights and long-term holiday products, being one of the two types of transactions subject to cooling-off arrangements under our original proposal, will be subsumed under this category. As to the other type of transactions covered by our original proposal, viz. consumer transactions concluded during unsolicited visits to consumers’ homes and places of work, we maintain that these transactions should be subject to cooling-off arrangements irrespective of their contract duration.

Stakeholders’ views:-
• Coverage too wide
• Encourage impulsive purchase behaviour
• Additional costs for businesses
Combating Unfair Trade Practices?

- Strong enforcement actions
- Effective complaint handling
- Strengthen consumer education
- Advocate suitable legislation to increase protection
Focus and Content

• Focus
  – Combating unfair trade practices
  – Providing an opportunity for consumers to inspect products

• Content
  – A review of the application of cooling-off period in Hong Kong and identification of common malpractices
  – An evaluation of the effectiveness of voluntary cooling-off schemes and analysis of the pros and cons of a mandatory cooling-off regime
  – A review of the Mainland and overseas legislations (UK/EU, USA, Australia, Canada, the Mainland and other Asia regions)
  – An exploration of the need to impose a mandatory cooling-off period
  – Recommendations on the scope of application and operational arrangements of a mandatory cooling-off regime
Cooling-off Period

• A cooling-off period is a useful tool to protect consumers by allowing them to cancel a purchase unilaterally and seek refund within a reasonable period of time after the conclusion of a contract.
• Only certain investment products have mandatory cooling-off
• Some industries and individual traders offer voluntary cooling-off period but with varied effectiveness. Examples:-
  – The Hong Kong Federation of Insurers implemented a 21-day cooling-off period for life insurance products
  – The Industry Code of Practice for Telecommunications Service Contracts issued by the Communications Authority stipulates that a cooling-off period of no less than 7 days shall apply to telecommunications service contracts concluded during an unsolicited visit to a consumer’s home
  – The Code of Conduct issued by the Direct Selling Association of Hong Kong Limited requires its member companies and direct sellers to offer a cooling-off period
  – Some retailers or individual traders
In the past 5 years, the number of sales practices related complaints in the beauty, fitness and timeshare industries contributed 63% (3701 cases) of the total cases in the following industries which often involve prepayment, the total amount involved reached $130 million.

<table>
<thead>
<tr>
<th>Year</th>
<th>Beauty services</th>
<th>Fitness clubs</th>
<th>Timeshare</th>
<th>Telecom services</th>
<th>Wedding services</th>
</tr>
</thead>
<tbody>
<tr>
<td>2013</td>
<td>225</td>
<td>268</td>
<td>16</td>
<td>551</td>
<td>13</td>
</tr>
<tr>
<td>2014</td>
<td>407</td>
<td>342</td>
<td>12</td>
<td>516</td>
<td>20</td>
</tr>
<tr>
<td>2015</td>
<td>515</td>
<td>431</td>
<td>14</td>
<td>321</td>
<td>16</td>
</tr>
<tr>
<td>2016</td>
<td>444</td>
<td>328</td>
<td>23</td>
<td>275</td>
<td>29</td>
</tr>
<tr>
<td>2017</td>
<td>373</td>
<td>221</td>
<td>82</td>
<td>409</td>
<td>19</td>
</tr>
<tr>
<td>Total (Share)</td>
<td>1,964 (33%)</td>
<td>1,590 (42%)</td>
<td>147 (79%)</td>
<td>2,072 (9%)</td>
<td>97 (15%)</td>
</tr>
<tr>
<td>Total amount</td>
<td>$65,473,609</td>
<td>$57,497,748</td>
<td>$7,262,273</td>
<td>$2,489,625</td>
<td>$1,672,248</td>
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<tr>
<td>Average amount</td>
<td>$33,337</td>
<td>$36,162</td>
<td>$49,403</td>
<td>$1,202</td>
<td>$17,240</td>
</tr>
</tbody>
</table>
Beauty/Fitness/Timeshare Contracts

• Prepayment
• Large transaction amounts
• Long contract periods
• Timeshare contracts involve overseas properties and business partners and complicated terms

Complainants suffer physical, mental and economic damages. It is a pressing problem.

Unfair trade practices
– Prolonged and tiring sales pitches
– Keeping consumer’s personal belongings
– Unauthorised transactions
– Adding purchases without consent
– Undisclosed terms
– Present attractive offers which were not realised
– Encourage consumers to borrow loans
What consumers want?

• Justice - prosecuting unscrupulous traders
  – High standard of proof in criminal proceedings
  – Time taken for investigation and prosecution
  – Reliance on the accuracy and precision of the consumer’s evidence
  – Investigation may be affected by settlement between the parties

• To cancel the contract and mitigate their monetary loss

Mandatory cooling-off period can satisfy the call from consumers to cancel the contract when facing unfair trade practices
Limitations of Voluntary Cooling-off

- Relies on the initiative and self-discipline of the industries and traders
  - Unscrupulous traders will not participate but continue to cause harm to consumers
  - Requires the presence of a representative and a credible trade association to establish and manage a voluntary cooling-off scheme

- Traders have different terms and conditions, consumers could hardly compare. Consumers are unknowingly bound. For example:
  - Cooling-off period of only 24 hours
  - No cancellation after commencement of services
  - No cancellation after acceptance of gifts
  - Substantial administrative fee charged upon cancellation
Pros and Cons of a Mandatory Cooling-off Period

- Deter unfair trade practices, enhance consumer protection
- Improve trader’s reputation
- Increase consumer confidence, boost sales
- Reduce cost and time for handling consumer complaints

- Undermine freedom of contract
- Increased cost
- Abuse by consumers
- Disputes relating to the coverage and operational arrangements

Learning from experiences, and adopting a pragmatic approach, the Council considers necessary to legislate a mandatory cooling-off regime to enhance consumer protection.
Mainland & Overseas Experiences (1)

- Most jurisdictions have established mandatory cooling-off regimes

<table>
<thead>
<tr>
<th></th>
<th>Distance</th>
<th>Unsolicited/Off-premises</th>
<th>Timeshare</th>
<th>Fitness</th>
<th>Online shopping</th>
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</thead>
<tbody>
<tr>
<td>Mainland</td>
<td>✓</td>
<td>#</td>
<td>#</td>
<td>#</td>
<td>✓</td>
</tr>
<tr>
<td>Taiwan</td>
<td>✓</td>
<td>✓</td>
<td>#</td>
<td>#</td>
<td>✓</td>
</tr>
<tr>
<td>Singapore</td>
<td>X</td>
<td>✓</td>
<td>✓</td>
<td>#</td>
<td>X</td>
</tr>
<tr>
<td>South Korea</td>
<td>✓</td>
<td>✓</td>
<td>#</td>
<td>#</td>
<td>✓</td>
</tr>
<tr>
<td>EU</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>#</td>
<td>✓</td>
</tr>
<tr>
<td>UK</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>#</td>
<td>✓</td>
</tr>
<tr>
<td>Australia (Federal)</td>
<td>✓</td>
<td>✓ (telemarketing only)</td>
<td>✓</td>
<td>✓</td>
<td>✓ (Queensland)</td>
</tr>
<tr>
<td>USA (Federal)</td>
<td>X</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓ (New York)</td>
</tr>
<tr>
<td>Canada (Federal)</td>
<td>X</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓ (Ontario)</td>
</tr>
</tbody>
</table>

(#) Not aware of
<table>
<thead>
<tr>
<th>Country</th>
<th>Duration</th>
<th>Minimum transaction</th>
<th>Cancellation method</th>
<th>Return</th>
<th>Refund</th>
<th>Refund method</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mainland</td>
<td>7 days</td>
<td>-</td>
<td>-</td>
<td>7 days</td>
<td>15 days</td>
<td>Same as payment method</td>
</tr>
<tr>
<td>Taiwan</td>
<td>7 days</td>
<td>-</td>
<td>Written</td>
<td>15 days</td>
<td>15 days</td>
<td>-</td>
</tr>
<tr>
<td>Singapore</td>
<td>5 days (excluding Fri, Sat &amp; Sun)</td>
<td>SGD$50</td>
<td>Written</td>
<td>After refund</td>
<td>60 days</td>
<td>-</td>
</tr>
<tr>
<td>South Korea</td>
<td>7-14 days</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>3 business days</td>
<td>-</td>
</tr>
<tr>
<td>EU</td>
<td>14 days</td>
<td>-</td>
<td>Oral/Written</td>
<td>14 days</td>
<td>14 days</td>
<td>Same as payment method</td>
</tr>
<tr>
<td>UK</td>
<td>14 days</td>
<td>£42</td>
<td>Oral/Written</td>
<td>14 days</td>
<td>14 days</td>
<td>Same as payment method</td>
</tr>
<tr>
<td>Australia (Federal)</td>
<td>10 business days</td>
<td>AUD$100</td>
<td>Oral/Written</td>
<td>Reasonable time</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>USA (Federal)</td>
<td>3 business days</td>
<td>US$25-130</td>
<td>Written</td>
<td>20 days</td>
<td>10 business days</td>
<td>-</td>
</tr>
<tr>
<td>Canada (Federal)</td>
<td>10 days</td>
<td>CAD$50</td>
<td>Oral/Written</td>
<td>After refund</td>
<td>15 days</td>
<td>-</td>
</tr>
</tbody>
</table>

(-) Not expressly provided in the relevant legislation
Mainland & Overseas Experiences (3)

• In all jurisdictions:
  – Cooling-off period covers goods and services (subject to minimum transaction requirements in some jurisdictions)
  – Traders allowed to receive consumer payment during cooling-off period (except Australia and Singapore)
  – Consumers have to pay compensation for mishandling of goods (except the USA, Mainland and Taiwan where it is not expressly provided in the legislation)
  – No administrative fee on cancellation (except Mainland where traders are allowed to deduct a fee for credit card transactions)
  – No waiver or curtailment of the cooling-off right is allowed

• In the UK and Mainland, traders should reimburse the consumer using the same payment method as the consumer used in the purchase transaction
• No uniform practices for the return of goods. In the UK, Singapore and Mainland, consumers have to bear the cost of return
• In the UK, Australia, Canada and Singapore, ancillary contracts will be terminated/cancelled upon cancellation of the main contract
Key Principles - Introducing Mandatory Cooling-off Period

Pragmatic and addressing local circumstances
Respect freedom of contract
Deter unfair trade practices
Mitigate impact on business operations
Fair and reasonable
Feasible and sustainable
Recommendation on Scope of Application

1. Unsolicited off-premises contracts
2. Distance contracts
3. Timeshare contracts
4. Fitness services contracts
5. Beauty services contracts
Unsolicited Off-premises Contracts - Coverage

• Unsolicited transactions concluded away from traders’ business premises

• Psychologically unprepared, more difficult to make informed decision

• Business premises
  – Examples: retail shops, temporary shops in shopping malls and booths in exhibitions, e.g. Wedding Expos and Book Fairs

• Not business premises
  – Examples: consumer’s home, roller display banners set up on the street
Unsolicited Off-premises Contracts - Examples

- A consumer transaction concluded during an uninvited visit to the consumer’s home or workplace.

- A consumer receives a “cold call” from a direct seller and permits its representative to make a home visit for product demonstration. The consumer purchases the product during the home visit.

- Contracts concluded at the trader’s business premises immediately after an uninvited approach by the trader’s representative in the street.
Distance Contracts - Coverage

• Consumer transactions negotiated and concluded by distance communications

• Includes mail order, telephone and fax (excludes online shopping)

• Whole process must be conducted by distance communications
Timeshare Contracts

• By reference to the relevant UK legislation, mandatory cooling-off period for timeshare contracts with a duration of over 1 year

Fitness Services and Beauty Services Contracts

• Mandatory cooling-off period for contracts with a duration of not less than 6 months or involving prepayment
• The following contracts should be exempted:
  – Financial services (banking, credit, insurance);
  – Property transactions (the sale of immovable property and tenancies);
  – Passenger transport services (flight/train/bus/ferry tickets);
  – Professional services (legal services, accounting services, and healthcare services such as plastic surgery and physiotherapy);
  – Utility services (supply of gas, electricity and water); and
  – Public services provided by the Government and public bodies.
• The following transactions should also be exempted:
  – Purchases involving not more than $500;
  – Custom-made goods;
  – Food and drinks;
  – Books and magazines;
  – Goods received sealed for health protection or hygiene reasons once unsealed;
  – Sealed audio, video and software products once unsealed;
  – Audio, video, computer software or other digital content products which are not supplied on a tangible medium;
  – Supply of accommodation, catering or vehicle rental services, transportation and leisure activities if the contract provides for a specific date of performance;
  – Urgent household repairs;
  – Fully performed service; and
  – One-off fitness services or beauty services with specific date of performance
E-commerce

- Value of e-commerce sales in HK equivalent to 5.3% ($448 billion) of the total business receipts, far lower than other regions

<table>
<thead>
<tr>
<th>Industry</th>
<th>5-yr total (2013-17)</th>
<th>Share of complaints re online shopping</th>
</tr>
</thead>
<tbody>
<tr>
<td>Travel matters/Hotels</td>
<td>5,507</td>
<td>29%</td>
</tr>
<tr>
<td>Telecom services/equipment</td>
<td>3,353</td>
<td>17%</td>
</tr>
<tr>
<td>Computer products</td>
<td>1,377</td>
<td>7%</td>
</tr>
<tr>
<td>Clothing &amp; apparel</td>
<td>1,166</td>
<td>6%</td>
</tr>
<tr>
<td>Personal care products</td>
<td>931</td>
<td>5%</td>
</tr>
<tr>
<td>Food and entertainment services</td>
<td>850</td>
<td>4%</td>
</tr>
<tr>
<td>Beauty/fitness/hairdressing</td>
<td>687</td>
<td>4%</td>
</tr>
<tr>
<td>Electrical appliances</td>
<td>585</td>
<td>3%</td>
</tr>
<tr>
<td>Storage &amp; courier services</td>
<td>578</td>
<td>3%</td>
</tr>
<tr>
<td>Food and drink</td>
<td>485</td>
<td>3%</td>
</tr>
</tbody>
</table>

Online Shopping 14% (19,240 cases)

Council’s Complaints Statistics (2013-17)

<table>
<thead>
<tr>
<th>Nature of complaints</th>
<th>5-yr total (2013-17)</th>
<th>Share of complaints re online shopping</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sales practice</td>
<td>3,223</td>
<td>17%</td>
</tr>
<tr>
<td>Delayed delivery</td>
<td>6,025</td>
<td>31%</td>
</tr>
<tr>
<td>Price/charge dispute</td>
<td>3,258</td>
<td>17%</td>
</tr>
<tr>
<td>Service quality</td>
<td>2,523</td>
<td>13%</td>
</tr>
<tr>
<td>Product quality</td>
<td>1,340</td>
<td>7%</td>
</tr>
<tr>
<td>Contract variation/termination</td>
<td>1,014</td>
<td>5%</td>
</tr>
<tr>
<td>Wrong model</td>
<td>339</td>
<td>2%</td>
</tr>
<tr>
<td>Suspect counterfeit goods</td>
<td>281</td>
<td>1%</td>
</tr>
<tr>
<td>Gifts/Discounted goods</td>
<td>270</td>
<td>1%</td>
</tr>
<tr>
<td>Expired product</td>
<td>234</td>
<td>1%</td>
</tr>
</tbody>
</table>

Overall complaints (138,411 cases)
Should Cooling-off Period be introduced for E-commerce?

Support

• Consumers can check the goods and cancel the purchase if the goods do not meet expectations
• Boost consumer confidence and foster development of e-commerce
• Available in EU/UK, South Korea, Mainland China, Taiwan and Latin American countries; also a focus for consumer protection worldwide

Oppose

• High satisfaction level*, no imminent need for regulation
• Increase operational costs, especially for SMEs
• Competition will bring about voluntary cooling-off period
• No legal definition of “online purchase”; its cross-border nature also bring enforcement problems

The Council expects that the community needs more time to deliberate on the needs and the costs & benefits of a cooling-off period for e-commerce

(*) Consumer Council’s online retail study report (2016)
Proposed Operational Arrangements

• Duration of cooling-off period
• Information requirement
• Exercise of cancellation right
• Refund arrangements
• Return of goods
• Ancillary contracts
• Curtailment of cancellation right
• Enforcement
Duration of Cooling-off Period

- Not less than 7 days
- Goods – after the date of delivery of goods to consumers
- Services – after the date of transaction

Considerations
- Follow international practices
- Minimise the risk of devaluation or damage of products during cooling-off period
- Reasonableness to consumers and traders
• Traders must provide the following information to consumers in writing before completion of transaction:
  – Product description, transaction amount, payment method and delivery arrangements
  – Trader’s identity, contact information (address, phone and fax number, email address, etc)
  – Cancellation form containing details of the cancellation right, procedures and roles and responsibilities
  – Fees to be incurred upon cancellation of contracts, including administrative fee, express delivery charge, compensation for mishandling of goods, and charging mechanism for service used
  – Complaint channel and policy
• In the case of distance contracts, if traders are unable to provide the information in details due to constraints of time or communication methods, they can choose the appropriate means of disclosure with guiding principle that consumers are given sufficient time to consider. For instance:

  – Advise consumers to read its website

  – Email the information and the cancellation form to consumers
• If traders fail to inform consumers of their cancellation right, cooling-off period will not commence until consumers receive such information, subject to a limit of 3 months from the date of the transaction.

• If traders fail to disclose the fees to be incurred upon cancellation of contracts, consumers would not be liable for such fees.

• In case of disputes, it is for the traders to prove that the information disclosure requirement has been complied with.
Exercise of Cancellation Right

- Consumers should effect cancellation of the contract within the cooling-off period in writing.
- Consumers should keep record to prove proper exercise of cancellation right in case of disputes.
- Traders should provide standard cancellation form in either Chinese or English for easy access by consumers.
- If traders fail to provide a cancellation form, consumers can use the standard form prescribed by legislation.
- Delivery in person, by post, fax or email.
Refund Arrangements (1)

• **Time limit**
  – Goods: 14 days from the day after receipt of the returned goods
  – Services: 14 days from the day after exercise of cancellation right

• **Refund method**
  – Unless otherwise agreed, refund should be made using the same payment method as the consumer used in the purchase transaction

• **Credit card transaction**
  – Traders should instruct banks/acquirers to cancel transaction and make refund within 14 days

• **Traders are allowed to complete transaction and accept payment during cooling-off period**
Refund Arrangements (2)

- If proper disclosure is made prior to the conclusion of the transaction, traders are allowed to make the following deductions from the refund:
  - If the consumer paid by way of credit card, an administration fee of not more than 3% of the credit card transaction value
  - Express delivery charge (if opted for by the consumer)
  - A reasonable amount of compensation caused by the mishandling of goods by the consumer. The amount depends on the circumstances. In case of disputes, can resolve by mediation or conciliation
  - Value of service used. The amount should be in proportion to the full contract price
Refund Arrangements (3)

• What is mishandling?
  – Beyond what might be reasonably allowed for inspection in a shop

• How to calculate reasonable compensation?
  – Depends on circumstances
  – For example: severity of damage, repair cost, presence of secondary market and price

• Example:
  A consumer uses a vacuum cleaner repeatedly to clean his home during cooling-off period
Return of goods

• Time limit and method
  – Consumers should return the goods as soon as practicable and within 14 days after cancellation
  – Consumers can choose the method of return, e.g. by post, courier or in person

• Who will bear the cost of return?
  – The Consumers
  – Can reduce abuse and disputes
Ancillary Contracts (1)

• A contract that relates to the main contract; can be between a consumer and the main contract trader or a third party as arranged by the trader; but not between a consumer and a third party without the involvement of the main contract trader

• Common Examples:
  – Credit card instalment payment plan (IPP)
  – Extended or additional maintenance service
• If the consumer cancels a main contract within the cooling-off period, any ancillary contracts should be terminated automatically

• Consumers shall bear administrative fee (not more than 3% of the credit card transaction value) and value of service used

• Disclosure of fees before signing contract

• Refund to be made by the payee
Curtailment/Waiver of Cancellation Right

• No waiver, curtailment or restriction is allowed

• Prevent consumers from being misled or pressurised into waiving their rights

• In line with general practices of other jurisdictions
Enforcement & Penalty

• Establish/appoint a designated public body/authority as the enforcement body

• A civil compliance-based mechanism

• The enforcement body can seek undertakings from traders to stop or refrain traders from continuing a breach of the law

• If necessary, the enforcement body can apply to the court for injunction

• Failure to comply with a court order constitutes contempt of court which could attract fine or imprisonment

• Consumers can take out civil action to recover compensation for loss suffered as a result of the trader’s failure to comply with the law
Conclusion

• Unfair trade practices are detrimental to consumer interests

• Voluntary cooling-off periods are subject to different terms & conditions; effectiveness is questionable

• Imminent need for mandatory cooling-off period exists

• Call for consensus and concerted effort to enhance consumer protection!