

## Submission from Which?

Public Accounts Committee: Call for evidence

# Protecting consumers from unsafe products

## Summary

1. Which? welcomes this opportunity to submit evidence to the Public Accounts Committee on protecting consumers from unsafe products, following publication of the recent National Audit Office (NAO) report on the Office for Product Safety and Standards (OPSS) and the current product safety regime. We broadly agree with the recommendations made by the NAO and would like to highlight the following priority areas for action.
2. The fundamental principles that underpin the product safety regime are still appropriate, including business responsibilities for placing safe products on the market, and the precautionary principle that requires regulators to put the safety of consumers first. But the regime is failing consumers and leaving them unnecessarily exposed to unsafe products in some key areas, most notably because the regulatory framework has not kept pace with market developments, particularly the growth of online marketplaces and because the enforcement regime is too weak and fragmented.
3. The NAO report recommends that the OPSS use the ongoing product safety review<sup>1</sup> to consider the tools and regulations that they will need to effectively regulate products sold online. In order to protect consumers the government should make online marketplaces legally responsible for the safety of all products sold through their platforms, including products sold by third party sellers. Marketplaces should also be made responsible for the *security* of connected products to ensure consumers are not exposed to hacking.
4. The creation of the OPSS was an important step forward in improving the product safety regime, but we have had concerns, also set out by the NAO, that the OPSS is not sufficiently proactive. To ensure the OPSS can act decisively to protect consumers it should be made an independent statutory body at arms length from the government with a clear focus on consumer safety. As noted in the NAO report, action is also needed to address the fragmented product safety system to ensure better allocation of resources, skills and expertise between the OPSS and trading standards to support compliance and effective oversight.
5. The current product safety framework places considerable reliance on safety assessments carried out by companies working with a complex web of mandatory regulations and voluntary standards. The OPSS should review this framework with the aim of creating greater clarity about the requirements that products should meet to ensure consumer safety and more effective independent oversight so that consumers can have confidence that businesses are fulfilling their responsibilities.

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<sup>1</sup> [UK Product Safety Review: call for evidence](#), Office for Product Safety and Standards, 2021.

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6. Consumer confidence supports innovation, however regulations have generally been slow to respond to new developments in consumer markets, increasing the risk of safety incidents that damage trust and confidence. The OPSS should develop a strategy for responding to innovation including better use of market data, and engagement with government, external processes, and consumers to understand new developments.

### **Assessing the success of product safety regulation in influencing stakeholders to prevent product safety risks from materialising**

7. Consumers generally expect products that are sold in the UK to be safe, however tests conducted by Which? regularly identify safety issues with products for sale in UK markets.

#### *Online marketplaces*

8. Which? tests and investigations<sup>2</sup> have found large numbers of unsafe products for sale through online marketplaces, including products that are subject to warnings or recall notices. These products have included children's toys and car seats, smoke alarms, USB chargers and power banks. In addition, when platforms are notified about an unsafe product it can take an unacceptable length of time for the product to be removed from the site and the same products often reappear with slightly different descriptions or sold by a different third party seller.
9. Consumers are poorly protected by current requirements, particularly where the sellers listed on platforms may be based outside the UK. Voluntary pledges made by some marketplaces have not been effective in addressing these issues. Online marketplaces should be made legally responsible for the safety of all products sold through their platforms including products sold by a third party seller, along with a defence of due diligence. Online marketplaces should also be required to remove unsafe products within 24 hours of a notification, inform consumers of safety issues and any action needed, and ensure that third party sellers carry out recalls effectively.
10. Consumers make extensive use of reviews and ratings to assess the quality of products sold online and tend to assume good quality products are also safe. However, research conducted by Which? has shown that many online reviews are fake and were purchased by the seller, do not relate to the specific product advertised or were manipulated by the sellers offering incentives. The CMA is currently investigating online reviews.<sup>3</sup>

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<sup>2</sup> [Two-thirds of the 250 products tested from Amazon Marketplace, AliExpress, eBay and Wish fail safety tests](#), Which? Feb 2020

<sup>3</sup> [CMA investigates misleading online reviews](#), Competition and Markets Authority, 2020

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### *The product safety regime more generally*

11. Products that do not have specific product safety requirements fall under the General Product Safety Regulations and companies can choose whether to use a voluntary standard to assess their product (if one is available) or a process they have developed themselves to demonstrate compliance. This category covers a wide range of products from articles for use with children, to cooking utensils and clothing.
12. The lack of clear requirements can make it difficult for companies to understand what requirements they should follow and, if the product is new, the company may not have the knowledge or skills to devise an appropriate test. The OPSS should review the system to ensure that companies have clarity about the safety requirements that products must meet.
13. Products that pose a greater risk (such as toys, electrical goods and cosmetics) have to meet additional requirements set out in sector-specific legislation and companies may be required to self certify the product, with the level of independent testing dependent on the level of risk, but in most cases it will be the companies' responsibility. This places considerable responsibility on the manufacturer of the product and requires an effective system of market surveillance and oversight to ensure companies are complying with requirements (see 16 and 17 below).
14. Following the UK's departure from the EU, the OPSS has the opportunity to ensure that there is a more robust risk assessment process to underpin the product safety framework. The process should draw on appropriate expertise to identify new and emerging risks, as well as assure consumers that when risks are identified, there is an independent process for determining the appropriate intervention. There should be effective mechanisms for engaging the public in decision-making so that the approach reflects public perceptions of risk. The OPSS should publish detailed reports from the assessments to support consumer trust in the product safety regime, as well as business understanding.

### **The ability of the OPSS and Trading Standards to identify and address safety issues quickly when they arise, to minimise harm to consumers**

15. Product safety issues are increasingly national and international and require a proactive central authority that can deliver a strategic approach to market surveillance and enforcement, however we are concerned that the OPSS has been too reticent in using the powers available to them. For example, despite faulty Whirlpool tumble dryers being linked to over 750 fires, it took a sustained campaign from Which? and the threat of a judicial review for a full recall to be announced.
16. We strongly support the NAO finding that the current product safety regime is heavily fragmented and reliant on under-resourced local authority Trading Standards Services.<sup>4</sup> Which? recognises that the OPSS has provided additional training and advice to Trading Standards officers however this is unlikely to have overcome the limitations created by the small size of teams, competing priorities and cuts in local

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<sup>4</sup> Paragraph 3.11-3.14 Protecting Consumers from Unsafe Products, NAO, 2021.

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authority funding that have resulted in a more reactive approach and product safety activities being deprioritised.<sup>5</sup> The government should consider reforms to ensure better accountability and distribution of resources within the product safety regime.

17. As highlighted in the NAO report, an intelligence led approach to product safety requires much better use of data to target market surveillance and other interventions. The OPSS must ensure it has systems to collect, analyse and share data across the product safety regime including collection and analysis of injury data, market data about new products, and better collection and sharing of data about investigations and cases conducted by Trading Standards.
18. Primary Authority Partnerships (PAPs) are agreed between a company and a local authority to ensure the company receives consistent advice on issues under Trading Standards' remit, including product safety. These agreements can place considerable responsibilities on local authorities, for example one local authority has more than 70 PAPs with large international and national companies.<sup>6</sup> There is also a risk that PAPs may create a conflict of interest if concerns that require enforcement action are raised about a company that the local authority has been responsible for advising. To mitigate these risks, PAPs should be reviewed on a regular basis with the option of a national authority taking over if a review identifies areas of concern. Consideration should also be given to requiring companies over a set size to have agreements with a central authority rather than a local authority.
19. The government should also review the enforcement powers available to the OPSS and Trading Standards to ensure they have sufficient powers to hold companies to account. In particular the necessity of bringing legal cases to enforce some actions can create a barrier to effective enforcement.
20. The OPSS should be more transparent about its work including the investigations it is conducting. This would help to inform businesses about OPSS priorities and improve engagement. Recent improvements to transparency made at the Competition and Markets Authority could provide a model for improvements at the OPSS.
21. International cooperation is increasingly important to support product safety in the UK. To support information sharing and enforcement cooperation, the UK should seek to reestablish cooperation with European partners and seek agreements with new partners through trade negotiations and international organisations such as the OECD and the UN Conference on Trade and Development.
22. Following the UK's departure from the EU and the growth in cross border ecommerce, effective border controls have become a critically important area for product safety. Challenges include the need to check products that would previously have been imported as part of the EU single market as well as small packages containing items purchased by consumers shopping online. The OPSS has been

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<sup>5</sup> "The Impact of local authority Trading Standards in challenging times", John Raine, Catherine Mangan and Peter Watt, Birmingham University, March 2015 [online] (accessed 1 February 2018)

<sup>6</sup> [Primary Authority Register Hertfordshire County Council](#)

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given responsibility for these issues and is supporting National Trading Standards with additional resources. Making online marketplaces responsible for the safety of all products sold through their platforms will help to address the number of unsafe items entering the UK in small packages, however establishing effective border systems will remain a major challenge that must be addressed.

### **The ability of the regulatory framework to adapt to change and protect consumers from emerging product safety risks**

23. Consumer confidence supports innovation, however regulations have generally been slow to respond to new developments in consumer markets, increasing the risk of safety incidents that damage confidence. The OPSS should develop a strategy, including the use of market data, and engagement with government and external processes, and consumers to understand new developments. This should include recruiting the skills and networks needed to understand changes and respond. The Product Security and Telecommunications Infrastructure Bill that addresses the security of connected products is an example of how the UK can be a world leader in supporting innovation by protecting consumers.
24. As noted in the NAO report,<sup>7</sup> better and earlier engagement with consumers will improve understanding of consumers' adoption of new products and how consumers use these products. Critically it will also support the OPSS in finding the most appropriate regulatory approach given the level of risk involved.
25. The government has announced their intention to address the security of connected products through a Product Security and Telecommunications Infrastructure (PSTI) Bill that will require manufacturers to ensure devices have unique passwords, and provide security updates, and a public point of contact to make it simpler for anyone to report a vulnerability. This will help to protect consumers from risks resulting from the hacking of connected products, including risks to physical safety. The government should ensure this legislation is aligned with product safety, including making online marketplaces legally responsible for the safety and *security* of all products that are sold on their platform.
26. Digital innovation in consumer products presents a number of challenges, for example the safety of a product can be affected by a software update, or a product can be hacked, resulting in physical harm. Although software embedded in products is covered in regulations, greater clarity is needed in relation to software that is made available separately from the product. The security of data is being addressed under the PSTI bill (see 24 above), however issues such as the length of time for which a company is responsible for providing security updates is not included.
27. The transition to a low carbon economy will require significant changes in consumer markets, including improvements in the durability of products, greater reuse and recycling of products and materials, and new business models to support these developments. There are a number of potential safety issues resulting from these changes as products will be kept for longer periods of time, there will be greater use

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<sup>7</sup> Paragraph 2.11, Protecting Consumers from Unsafe Products, NAO, 2021.

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of new or recycled materials in manufacturing, and products will be leased, lent or resold to consumers. The OPSS should closely monitor and effectively respond to these changes to protect consumers from safety risks and maintain confidence in these necessary changes.

## **Which? June 2021**

### **About Which?**

Which? is the UK's consumer champion. As an organisation we're not for profit - a powerful force for good, here to make life simpler, fairer and safer for everyone. We're the independent consumer voice that provides impartial advice, investigates, holds businesses to account and works with policymakers to make change happen. We fund our work mainly through member subscriptions, we're not influenced by third parties and we buy all the products that we test.