PCP0005

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1. About Electrical Safety First

Electrical Safety First is a safety charity dedicated to reducing the number of deaths, injuries and accidents caused by electricity. We campaign on behalf of consumers to improve safety regulation. We work hard to raise awareness of electrical risk in the home. We work with Government, NGOs and Industry as the leading campaigning charity and technical authority on electrical safety.

2. Overview

Electrical Safety First welcomed the creation of the Office for Product Safety and Standards (OPSS) in 2018[i]. The creation of a national regulator for product safety allows for better national coordination of enforcement measures; creates a centralised body, which in turn leads to efficiencies; and enables a proportionate response to actors with a large market share – such as, online marketplaces.

However, OPSS needs to have sufficient enforcement powers that are supported by a robust regulatory and legislative framework. Most particularly, the regulatory framework needs to be updated to allow OPSS to take suitable action against online marketplaces, as appropriate.

Similarly, the role and relationship of OPSS with Trading Standards services needs to be clearly defined. In particular, the threshold for when OPSS will intervene and take responsibility for a product safety issue (as the national regulator) needs to be clarified.

This submission should be read in conjunction with Electrical Safety First's reports, "Online Marketplaces: The Need for Change", "Online Marketplaces: The Evidence and Impact" and Electrical Safety First's response to the Home Affairs Select Committee Inquiry.

3. Does product safety regulation successfully influence consumers, businesses, and other stakeholders to prevent product safety risks from materialising?

3.1. Traditional Retailers and Manufacturers

In general, the product safety regulatory framework in the UK is effective, where enforced. In addition, the current framework of product safety regulation is relatively easy to follow, in the context of large corporate organisations but less so for SMEs and microbusinesses. This framework serves consumers well in traditional shopping contexts i.e., the high street. In general, the product safety framework is also supported by traditional retailers and manufacturers.

3.2. Online Marketplaces

Online marketplaces are not recognised as actors within the supply chain nor are they accountable to market surveillance authorities for products sold on their platform by a third-party seller. As such, there is no regulatory or legal requirement for these platforms to prevent product safety risks from these products materialising. It should be noted that the vast majority of products sold on online marketplaces are from third party sellers.

Online marketplaces view themselves as "virtual landlords" with no responsibility for product safety and hold the view that individual (third-party) sellers should be responsible for ensuring product safety.

In addition, where unsafe products are identified, there is no obligation on online marketplaces to remove these products from sale. For instance, following an investigation conducted with BBC Watchdog, products remained listed on Wish.com despite being identified as unsafe[ii]. Product safety is reliant on the proactivity and good-will of online marketplaces. This places consumers at risk.

On this basis, the product safety framework does not successfully influence online marketplaces to prevent product safety risks from materialising.

3.3. Consumers

The product safety framework is complex and inaccessible for consumers. Very few consumers understand the protections that the product safety framework provides them.

For instance, consumers assume that the products sold on online marketplaces are safe; 92.23% of consumers believe that electrical products sold on online marketplaces are safe[iii]. However, research by OPSS found that 62.5% of electrical goods on online marketplaces were noncompliant, with 23% being unsafe[iv].

Consumers' assumption that products sold on online marketplaces are safe is the result of a high level of trust in online marketplaces. Indeed, consumer research by Electrical Safety First found that 20% of consumers believed that if an online marketplace became aware that a product being sold was subject to a recall or safety notice, the online marketplace would contact anybody who had purchased the good[v] . This is not the case.

This illustrates a broader issue: consumers do not understand how the product safety framework applies to online marketplaces. In fact, consumers assume that online marketplaces are responsible for ensuring product safety when this is not case. The high level of trust that consumers have in online marketplaces means that consumers are unwittingly placing themselves at risk.

This is evidenced by consumer research conducted for Electrical Safety First. This research found that nearly ¼ of all consumers had bought a counterfeit (and potentially unsafe) product when shopping online[vi].

4. Can the Office for Product Safety and Standards and Trading Standards services identify and address safety issues quickly when they arise, to minimise harm to consumers?

4.1. Data Sharing

To identify safety issues quickly, there is a need for better pooling and sharing of data and intelligence in an international context. If OPSS worked collaboratively with different product safety authorities across the EU and globally, this would ensure product safety issues were identified quickly and would act to minimise harm.

Of note, given the UK is no longer a part of the EU, the UK is no longer part of the EU's SafetyGate and so has lost some of the benefits of cross-national data sharing. For instance, recall notifications on SafetyGate by non-EU countries are not automatically shared with UK authorities. This is a regression in standards since the UK left the EU and is placing consumers at risk.

4.2. Recalls

It is crucial that OPSS responds quickly to recall issues as they arise. However, at present, the average recall success rate is low – estimated at 10-20%. This is largely due to issues surrounding poor traceability.

Nonetheless, there are several measures that OPSS should take to improve their capacity to identify and address recall issues. For instance, there is a need to provide more information about the product and manufacturer/importer on the public product recall database. This would allow consumers to identify if their product is recalled and then take appropriate steps.

OPSS should also review PAS 7100 (the Code of Practice for product recalls) to ensure that it remains fit for purpose. The review should seek to confirm that GDPR does not inhibit traceability to consumers; relatedly, the length of time for data to be held needs to reflect life of product. There also needs to be broader and more sustained promotion of PAS 7100.

In addition, whilst legislation is clear around the requirement to take corrective action, there is no regulatory requirement on the level of corrective action that needs to be taken or on the results that need to be achieved. PAS 7100 provides guidance, but without enforcement on recall effectiveness there are few incentives for companies to improve recall rates, other than for brand reputation purposes. Through detailing the level of corrective action required in regulation there would be an improvement in the recall success rate.

Furthermore, product traceability from the point of sale is not required under current legislation. Altering the legislation to encourage a more proactive approach, such as requiring a system for tracing products from the point of sale would better protect consumers from risks.

4.3. Whirlpool Recall

The recall of Whirlpool is a good example to illustrate OPSS and Trading Standards services ability to respond quickly. Initially, the response and coordination of the Whirlpool recall fell to Whirlpool's Primary Authority Partnership, Peterborough Trading Standards service. This authority was not equipped to coordinate a large-scale recall and protect consumers.

As such, it was positive when OPPS intervened and assumed responsibility for coordinating the recall. Once OPSS intervened they acted to minimise harm to consumers. This includes the creation of a centralised recall database. However, there needs to be better resourcing of Trading Standards services to allow these services to respond effectively and quickly.

Importantly, this case demonstrates the need for clarity surrounding OPSS role. OPSS is the national regulator for all consumer products, except for vehicles, medicines, and food[vii]. Yet the relationship between OPSS and Trading Standards services is unclear. For example, it is not clear when OPSS will intervene as a national regulator. Clarity on the role of OPSS (in relation to Trading Standards services) will help to ensure that regulators are able to respond quickly to product safety issues when they arise.

4.4. Online Sales

Regarding online marketplaces, there is a growing concern that Trading Standards services are not equipped to respond to the increase and very different nature of online shopping. For instance, enforcement action is not proportionate to the size of online marketplaces nor the volume of sales that occur on these platforms.

Additionally, whilst the localised nature of Trading Standards services (and Primary Authority Partnerships) is appropriate for high street retail, there is a question of its appropriateness in regulating e-commerce and online marketplaces. Specifically, enforcement authorities need to be equipped to respond to transactions within a global context. Where a seller is operating from abroad, for instance, it is almost impossible for a Trading Standards department to act against that seller.

5. Is the regulatory framework able to adapt to social, political, and technological changes and protect consumers from emerging product safety risks?

5.1. Technology

The increasing popularity of smart (or connected) technology creates new opportunities to protect consumers from new and emerging safety risks. For instance, there is the opportunity for smart technology to self-monitor (condition monitor) and alert the consumer and/or manufacturer where a product safety risk arises. This would reduce accidents associated with faulty products, acting to protect consumers.

Relatedly, there is an opportunity for smart technology to improve traceability and recall effectiveness. For instance, smart technology could automatically notify consumers if their product is subject to a recall. Similarly, requirements or options for registration of connected technology at the point of sale would increase traceability and recall effectiveness.

The regulatory framework needs to be more adaptable and encourage manufacturers and retailers to be proactive in exploiting the positive product safety benefits of connected technology.

5.2. Online marketplaces

The most significant technological change affecting the product safety framework is the growth in e-commerce and m-commerce (conducted on a mobile phone). This has resulted in an increase in consumers shopping on online marketplaces.

These new models of trade, particularly online marketplaces, have led to a “blurring of boundaries” between different actors in the supply chain. This means that there is no longer clarity on who is responsible for ensuring product safety.

For instance, under the current framework, if a consumer purchases a good on an online marketplace which is shipped from abroad, the consumer is seen, by law, as the importer. This creates an issue as no one in the supply chain is accountable to market surveillance authorities.

Online marketplaces are not recognised as actors in the supply chain and have no responsibility for ensuring product safety nor are they accountable to market surveillance authorities.

As such, the regulatory framework is outdated and does not account for modern day supply chains. This means that whilst consumers are protected on the high street, they are not protected on online marketplaces. On this basis, the regulatory framework has not been able to adapt to the technological changes that have occurred.

The traditional framework of actors within the supply chain needs to be updated to account for transactions that occur on online marketplaces. It needs to be clear who is responsible for ensuring the product safety of goods sold on online marketplaces.

5.3. Coronavirus

The social changes associated with the Covid-19 pandemic have accelerated the increase in shopping on online marketplaces. In particular, the closure of high street retail during lockdowns has resulted in consumers moving towards online marketplaces. This is not anticipated to change, and as such, it is crucial that there is a regulatory framework that protects consumers, regardless of whether they are shopping on the high street or via an online marketplace.

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[i] https://www.gov.uk/government/organisations/office-for-product-safety-and-standards/about
[ii] https://www.bbc.co.uk/news/technology-55934656
[iii] Censuswide survey conducted on behalf of Electrical Safety First in October 2020.
[iv] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/941095/opss-delivery-report-2019-2020-annex-product-safety.pdf
[v] Censuswide survey conducted on behalf of Electrical Safety First in October 2020.
[vi] Censuswide survey conducted on behalf of Electrical Safety First.
[vii] https://www.gov.uk/government/organisations/office-for-product-safety-and-standards/about