Consultation Response

Response to the OPSS Consultation for a UK Product Safety Review

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Responses to the Call for Evidence Questions

1. How easy is it to understand the current framework of product safety regulation? What areas, if any, could be simplified or made easier to follow?

The framework of UK regulations and enforcement by OPSS and Trading Standards operate needs to be understood as one part of a wider framework of activities that make up the product safety 'system' that influences the safety of the products that UK consumers but and keep in their homes. Most importantly, standards made by BSI, CEN/CENELEC, ISO or IEC are usually what specify the detailed safety requirements or tests that are applied to determine whether a product meets the more aspirationally expressed requirements in regulations.

Beyond that are a whole range of specifications (eg a BS PAS or CEN TR), codes of practice or traditional manufacturing practices that manufacturers and retailers could be expected to follow where relevant. There are voluntary actions that an individual trader may take as an extra precaution (eg in protective design, internal standards or recalling a product). Finally (but usually setting the highest level of protection) for the purposes of product liability there is safety that persons generally are entitled to expect of a product which (when necessary) is determined in courts by judges on the basis of precedent cases and/or any circumstances of an individual claim that they consider relevant.

Product safety regulation regulatory in every developed economy has grown to be complex – as have the variety of innovative consumer products available and the international chains of supply. It is not easy to understand fully and never will be. Suppliers may understand the framework of regulation, standards and quality control within their sector, but not an unrelated sector. Trading standards may understand the spectrum of regulation but not how the requirements relate to quantitative measures of risk of injury from products or to the civil legal tests of liability for harm of the various parties in the supply chain. Test houses cannot always explain why a particular level or measurement has been set in a standard as providing an adequate level of safety or what harm it is expected to prevent. No one can be certain whether the framework has or has not been successful, overall in decreasing product related injuries in the UK over the last quarter century.

The scientific and accident research-based rationales for many of the existing detailed requirements that were put into product safety standards and regulations before 2000 were generally not recorded in the standards themselves and the committee documents or unpublished reports on which they are based have generally not been digitised. There was a declining need for UK government or industry to maintain professional or academic expertise in these fields as the responsibility for regulation and standards development passed to the European Commission while manufacturing (and subsequently design) of most consumer products passed to the far east and test laboratories were amalgamated into international businesses with facilities increasingly located where the demand was greatest (ie nearer to manufacturing hubs).

UK experts who did understand the hazard-based rationales of requirements in consumer product standards and regulations have now largely retired without having trained a younger generation of specialists to whom that body of knowledge has been passed on by

experience or as readily accessible documentation. The lack of available expertise (not just in the UK but also in Europe) i4s not only a problem when revising standards but also arise in court cases over some issues: questions of injury liability, application of imprecise regulations and appropriate levels of corrective actions.

For Industry generally, it is better to avoid further complication by keeping regulation and standards aligned with the EU (and encourage alignment of European standards to International ISO and IEC standards where the level of safety is not compromised).

For industry, the most difficult areas to understand are products covered solely or partially by GPSR (or overlapping between differently regulated systems in different regulated sectors) – particularly when there is no standard, or it is not harmonised or only covers some aspects of the product.

Rechargeable battery products often sit uncertainly in the framework (as do some non-battery sub-low voltage products that run off a transformer).

Food imitation regulation is not complex but dependent on subjective interpretation. The EU may revise the wording if it is brought into the GPSD revision, but what is really needed is clearer guidance (or a BS standard or a PAS?) for assessing individual products that resemble food or drink - with some background on the risk evidence.

The 1988 Furniture and Furnishings Fire Safety Regulations are difficult to understand because it is illogical: in the extent of its scope and the modification it makes to (now very old) standards.

Hardly any consumers have any notion at all of a framework or of the duties involved in placing a product on the market or the impractically of regulators testing every product. Consumers simply expect products to be safe [see Annex 1]
For those consumers who suffer in accident or are concerned that a product is unsafe, the systems they encounter are neither transparent nor easy to navigate.

2. In what areas, if any, should product safety regulation be strengthened or improved?

Regulation needs to be strengthened and improved:

- to provide **greater transparency about the UK 'product safety regulator' enforcement activity and measures of progress** over time, to all stakeholders (but particularly to politicians, public media and standards makers), encouraging a greater proportion of consumers who have suffered product safety injuries to complain and helping to support them in seeking redress. [see also Q19 +22+25 & Appendix 3 and 6]

- to provide enforcement bodies, commercial buyers, product designers, standards makers and the public with an **accessible knowledge base of harmful incidents and complaints indicating unsafe products** which (by deploying artificial

intelligence) is able to store and analyse any type of record offered to it that describes and/or illustrates products that have been subject to corrective actions, prosecutions or other enforcement actions, injury and incident complaints by consumers, or any other public accounts of injuries (such as in media, academic journals coroners' inquests or fatal accident enquiries). [See Appendix 3 on data]

- to cover, adequately, **digital/software products and content** that are delivered by downloading or used on a website (ie no physical goods are supplied). [Currently the CPA would only cover transmitted software if a court considered it to be a form of "electricity" and the GPSR is unclear whether a product has to be physical.] This could be achieved through the Online Safety Bill and a "Digital Safety First" standard for developing innovative products. This should specifically cover (through regulatory principles expanded by detailed requirements in standards) harm from:

  a) changing the operation or status of a device, appliance or fixture in any way detrimental to the safety or health of the user, other people or animals or damage to property

  b) showing inappropriate content or encouraging interactions by a user that are likely to cause the user psychological or physical harm (including, rewarding addictive interactions, initiation of epileptic seizures by flashing lights, disrupting sleep patterns, causing hearing loss)

  c) advising or encouraging the user to engage in use of physical (or other digital) products in ways dangerous to themselves or others (eg misuse of products such as 'Tide-challenge')

- to cover **online platforms and marketplaces**: These should have the obligations of distributor (under GPSR) and defined as a trader who is party to the contract to supply goods (under the Consumer Rights Act) for goods that can be purchased through the site [see Q9].

- to **re-build enforcement** staff numbers and financial resources for market surveillance, investigation and legal actions. [Trading Standards funding and staffing down halved 2009-18, prosecutions down 72% 2010-15 – "*The UK's Enforcement Gap 2020" – report by Unchecked]*

- to ensure that **the national market that exists for almost all non-food products is enforced nationally** (rather than the post-code lottery of where a company happens to be based or an individual consumer complainant happens to live or shop). While there will always be a need for some locally-based trading standards functions (as for environmental health) most product safety issues should be enforced nationally by officers specialising in product safety.

- to ensure viable career paths for the training and retention of a **UK cadre of independent experts** with a variety of scientific and technical backgrounds able to make forensic investigation of incidents involving products and give opinions to UK courts (criminal and civil) on issues of product safety beyond results of tests in standards. See Q1, Q20, Q25 and Annex 8.

- to **increase max severity of charges and penalties to deterrent levels** appropriate to the offence and the offender – to avoid recourse to penalties designed for other purposes that can only be applied to some offenders [see Q20 and appendix 7.]

- to simplify and speed up the **legal and decision-making framework around corrective actions and recalls** – see Q18.

3. Should regulation be targeted more at the product itself or the manufacturer's systems that produce it? Please explain.

Quality control test methods, sampling systems are generally left to manufacturers and commercial customers due to the potentially large number, dependence on individual design and that many may not be relevant to safety performance. The need for control measures and the allowed tolerances varies so much between products, potential hazards and the expected variability of particular aspects – it would need an additional section or part to be written for each standard.

Generally defects in batches tend to show up as complaints before serious or multiple injuries, or production/batch sample tests against the standard on arrival in UK. However mandatory/standards set quality controls may be justified for specific life-critical aspects of a few products where that aspect is not apparent in normal use. Examples are found in the life-saving function consumer products covered by UNECE Regs (child car seats and motorcycle crash helmets) – which are regulated by DTp but enforced by TS and CPIN sits on the committees. These provide examples of include mandatory batch sampling, destructive testing and independent oversight into a standard because there is no other indication of how a product would perform in its critical function - ie in the event of an accident. Recent cases brought by Cheshire East and Milton Keynes TS illustrate the effort involved in policing quality control requirements in standards.

Since so much production moved out to the Far East there has been a growth of business for independently employed site inspectors but ultimately this paper trail can only be used as a due diligence plea if one sample is found not to meet the standard in market surveillance.

4. How could the current product safety framework do more to support innovation 4 or the supply of new technologies to consumers? Using examples, how could it better anticipate upcoming changes in manufacture and production?

In construction projects the designer would be required to prepare a risk analysis for something that has not yet been built – and in major hazard industries this could be required to be subjected to expert scrutiny. Even so there remains the possibility of unforeseen circumstances wherever there is no experience of novel features. Hardly any consumer-purchased products are likely to pose the equivalent level of community or population risk justifying this scrutiny before a prototype is built or before production samples are tested under controlled conditions.

However there may occasionally be justification (eg for an innovative product that is not adequately covered by existing standards) that type approval be required to include

recording and regulator oversight) of initial user complaints before production is ramped up.

5. What areas of the current regulatory framework could be tailored to create more opportunities for UK innovation and manufacturing?

It is a usually a bad idea to have regulators working too closely with one or two manufacturers (eg to the exclusion of overseas competitors). [I have even seen fatal results from a manufacturer working too closely with an independent test house.] Governments (eg BEIS) can support UK research and innovation. However if innovation is encouraged in the UK (eg by speeding up legal revision or promoting fast-track standards or PAS's – then the market opportunities created should be open to home producers and importers.

It is very difficult to prove mathematically (or by functional safety analyses) that a piece of software is "safe," so traditionally software was not allowed to control safety- the software operated the product within hardware settings of the safety limits and interlocks etc. Most hardware running software is not specified for the most safety critical purposes.

(Draft) PAS 7050 Specification for bringing safe products to market is something innovators generally (and importers of innovative products) should be expected to follow.

A 'Digital Safety First' PAS/standard could also set the equivalent of "essential safety requirements" for physical products and software/content downloadable to interact with products.

6. How well is the conformity assessment system working? What are your experiences of it and of self-assessment?

Some businesses are annoyed that products cannot be certified to comply (fully) with GPSR by an independent body in the same way as sector regulated products. Germany does allow certification to their equivalent of the GPSR (arguably it is a bit like the Kite mark scheme), while France has retained mandatory certification to a regulation covering all childcare products. Effectively the applicable ENs provide presumption of compliance in France just as in the UK but the test houses can use other tests for products or aspects not covered by standards when issuing certificates.

7. Reflecting on the response to the COVID-19 pandemic (as set out in the case 7 study), what changes could be made to help bring safe products to market more quickly?

8. What role should voluntary standards play in product safety? What are the benefits and drawbacks of linking regulation to voluntary standards?

Generally voluntary standards have advantages (for both regulated sectors and GPSR) in that they are far easier to update as technology or designs change (and to correct if they have flaws). Conversely, innovative products that may not meet the standard in all respects may be safer because of features not envisaged when the standard was drafted. A further

advantage is that most product safety standards are now common (and kept in step) across Europe (and for some sectors across wider international markets) which reduces cost and increases opportunities for exports. The longevity of the FFFSR illustrates all the problems that can arise when standards are individually written into national law (even just at the Regulatory level).

However consequence of relying on standards to set detailed requirements is that the responsibility and work involved in creating and updating standards rests not on the shoulders of the UK regulatory body but on the resources of representatives (of industry, consumers and sometimes enforcement representatives) on BSI committees and – more influentially – those sitting on European or International working groups. At the detailed level, these bodies are effectively responsible for far more numerous decisions about what the minimum safety requirements for a particular type of product to be placed on the UK (or other) market than any regulator.

The most persuasive way of influencing the consensus reached by those collections of individuals/stakeholder representatives to make decisions that set a fair balance between risk reduction and economic practicability, is for them to share evidence from trustworthy sources of the precise nature of hazards, risks and – particularly for consumer products – actual user behaviour and accidents. UK representatives on working groups had an exceptional influence on the requirements of the first (and subsequent) editions of many EN consumer product standards by being able to produce for their detailed evidence of accidents that consumers were having with existing products and of research to establish practical tests and performance criteria.

The current representatives striving to maintain those high safety expectations for UK (and other) consumers - as products innovate and standards are adapted or new ones needed – are often unpaid CPIN volunteers (who may be the only representatives on consumer interests on a committee or working group). They therefore have a particularly strong need for access to detailed evidence of consumer accidents and safety concerns in order to play their role in the maintaining and advancing the UK product safety framework.

Currently the role of voluntary standards varies between sector regulations and GPSR. In most Sector Regulations there is a requirement to conform to a harmonised standard or else pay for a type approval by an approved body (who will apply most of the standard requirements anyway). Type approval is hardly ever opted for by producers if simply conforming to the harmonised standard is sufficient.

Under GPSR, however, there is no requirement to conform to a standard (whether or not harmonised) and conformity only offers a presumption of meeting the definition of a safe product. Some businesses are annoyed that products cannot be certified to comply (fully) with GPSR by an independent body in the same way as sector regulated products. [Particularly as this is allowed under German law.]

Conversely, however, in UK Trading Standards can be required to produce other evidence (or expert opinion) to prove that a product that does not conform to a GPSR harmonised standard is unsafe (if the Defendant declines to agree). Furthermore, although generally civil injury liability criteria favour consumers, UK Courts have sometimes taken the view that standards set a level of safety higher than consumers are entitled to expect. [It means the relationship to standards through GPSR (which is criminal law unfamiliar to civil lawyers) has to be carefully argued by the Claimant. [Tesco v Pollard – see Appendix 5]

The idea behind the GPSR use of voluntary standards is that the products not covered by sector regulations generally pose less risk, and so designers should be free to deliver an acceptable level of safety by means or designs that may not have been envisaged when the standard was written, but with no requirement for the producer to make a hazard assessment this leaves the decisions down to courts.

However some changes to GPSR could emphasise the status of voluntary standards (in the UK) in respect of establishing expectations of safety rather than (as at present merely required to be taken into consideration (or conveying a presumption of a safe product wrt the risks addressed in the standard):

GPSR should make clear that voluntary standards (particularly designated ones)

- of protection expected of a safe product (under GPSR) while allowing the development of alternative means of achieving equivalent or better protection by means not envisaged in the standard. [eg simply providing a hazard warning instead of a physical guard would provide a lower level of protection.
- set minimum levels of safety that consumers are entitled to expect for civil claims under Consumer Protection or Consumer Rights Acts

Following Brexit, OPSS also has the opportunity to designating the few standards the EU has (for reasons of jurisdiction rather than safety) not harmonised under GPSD, eg:

BS 8509 for child beds and

BS EN IEC IEEE 82079 standard series for presenting instructions for use of products (from the recent survey– see Appendix 2- it can be estimated that each year something in the order of half a million of UK households suffer medically treated injuries that they considered to have been because a product had poor or insufficient instructions. This was similar to the number injuries than they blamed on a product being unsafe.)

9. What are the key challenges for regulating product safety in online sales? What has worked well in terms of regulation and where are the opportunities?

The current legislation (GPSR and CPA) does not adequately provide for the criminal or civil liability of all aspects of online sales of unsafe physical products and may not apply at all to the supply of products that comprise only downloadable software (with potential to cause injury or mental harm) – see Q5.

The online safety bill (or other legislation) should make amendments to ensure the duties, enforcement powers and consumer rights are the same for digital products and online business as for physical properties and businesses:

-Online platforms and marketplaces should have the obligations of distributor (under GPSR) and defined as a trader who is party to the contract to supply goods (under the Consumer Rights Act) for goods that can be purchased through the site

- definitions of products in the GPSR and CAP should be expanded specifically to cover adequately digital/software products and content that are delivered by downloading or used on a website (ie no physical goods are supplied)

- regulatory principles "essential safety requirements" should be set in Online Safety (and legislation applying to other software delivery methods) and expanded by detailed requirements in "digital safety design" standards to cover harm or unsafe conditions arising from digital software or content including:
  a) changing the operation or status of a device, appliance or fixture in any way detrimental to the safety or health of the user, other people or animals or damage to property
  b) showing inappropriate content or encouraging interactions by a user that are likely to cause the user psychological or physical harm (including, rewarding addictive interactions, initiation of epileptic seizures by flashing lights, disrupting sleep patterns, causing hearing loss)
  c) advising or encouraging the user to engage in use of physical (or other digital) products in ways dangerous to themselves or others (eg misuse of products such as 'Tide-challenge')

12. Have you any insights on whether consumers know what to look out for ensure a product is safe when buying online and /or how to raise safety concerns? How could these processes be made easier or clearer?

Public research by BSI showed that by 1995 the public had already come to believe they had a right to expect products to be safe rather than having to make their own assessment or look for a specific approval mark. Consumers do expect products they buy to be safe "even if misused". See Appendix 1.

It is unlikely that the subsequent rise of online sales has reversed this attitude back towards the "caveat emptor" world of the 1960s or earlier. However, it is also true that consumers rank trusted brand names (on products and of the retailers they buy from) as likely to be better in all quality aspects – including safety. However, if the price is significantly cheaper and a product is not perceived as potentially hazardous then consumers may only take into account the risk of significant financial loss.

Consumers have a range of options (only some of which they will be aware of) for raising safety concerns (wherever a product has been bought). See Appendix 1. Online platforms add another option - which can look attractive as critical reviews on platforms and market sites are more likely to remain visible to other prospective customers than if posted on the site of the retailer or brand owner.

Generally (ie not just for online sales) the UK public needs to have a better known one-stop-shop or 'clearing house' operation for safety concerns more like the US Saferproduct.gov website (but perhaps covering consumer services as well as products). This should be able to guide them to making contact all the relevant interests (retailer, brand, TS or FSA and possibly injury lawyers). This does need to be distinct from the CAB's Consumer Service for which safety accounts for only small percentage of the many types of complaints abuts products and services about which it has to handle calls – although CAB could provide a link from its website.

Similarly online market platforms could provide a link for reporting safety issues relating to a product (akin to buttons for reporting online abuse) and hospital A&E departments offer another opportunity to 'capture' the attention of people who might want to raise a safety concern but are unclear where to send it.

Some sub-groups of consumers take on a sort of 'neighbourhood watch' enforcement role using social media to exchange criticisms without modification by the manufacturer/retailer. While this can be effective in pressuring improvements to a product's safety and/or redress for those affected – but they will only be used by a minority of (often very experienced) customers/users so are less likely to capture safety problems faced by novices.

13. What role should voluntary commitments, such as the Product Safety Pledge, play in consumer protection from unsafe products? Can you share any evidence or experiences of the benefits and drawbacks?

The Product Safety Pledge is between the EU and a few very large internet market platforms – and that it is aimed at stopping withdrawn products re-appearing form another seller but only amounts to 'good intentions'.

Amazon do also have their own "Seller standards" which specify conformity with some regs and standards for some types of products, but they are not as comprehensive as a typical large retailer would set for every type of goods it sells: it is not clear whether Amazon requires evidence of certification in the way retailers usually do (sometimes at three stages including a test in the UK of a final random sample from the first imported batch).

Too many businesses only do what is required by regulation - protecting the more vulnerable consumers should involve ensuring responsible suppliers are not undermined by complying with best practice (at a cost) while the dubious parties in the supply chain gain advantage by not complying. There is an opportunity for a Best Practice Standard, but the principles need to be enforceable by a regulator and individual consumers able to obtain redress for harm as well as simply a refund if the product is unsafe.

Online platforms and marketplaces should have the obligations of distributor (under GPSR) and defined as a trader who is party to the contract to supply goods (under the Consumer Rights Act) for goods that can be purchased through the site.

14. What might a typical product lifecycle look like in the future as we move towards I4 a circular economy? Can you provide examples, including of connected and second-hand products?

Vehicles are surprisingly nearer a circular economy than most products. There is now an internet market in replacement parts from breakers yards – which I have occasionally used. And they are better designed for recycling than they used to be.

However in respect of product safety second-hand sale/use of complete products in the UK is the main concern (a small quadrant of the circle that some materials will go through).

Ideally, they should be returned to the manufacturer and 're-conditioned' (as some digital products are already and IKEA is proposing for its furniture).

Gas cookers can be bought 're-conditioned from small businesses (to replace a style that is no longer made). This market is regulated to a greater extent than plug-in electrical appliances in that only a qualified fitter can connect a gas appliance to a domestic supply. As a minimum, electrical appliances should be required to have a PAT test certificate - but this should not give any presumption of full compliance with regulations.

One of the most efficient reconditioned market is in stair lifts (because they are expensive, and their users tend to have a shorter life expectancy than the product – and no one wants a stair lift left in their home if it is not needed). Again, the complexity of fitting the product means that a qualified person is always going to be employed (and take responsibility for ensuring safety.

There is a potential need for a "preparing 2nd hand products for sale" PAS.

In contrast childcare products (which also tend to be got rid of quickly (and privately because of the space they take up once the child has outgrown them) are unlikely to pass under the eyes of a professional between families. Many of these could be better designed for dis-assembly and re-assembly: loss of correct bolts, harness or instructions have been contributory causes of injuries (including fatalities). Certain standards could require that dis- and re-assembly be made easier (and less prone to loss of critical parts.

15. How can we build in flexibility to the regulatory framework to adjust to changes in product lifecycles and technology, including changes in understanding of risk? How do businesses integrate safety considerations with other aspects of product regulation such as environmental considerations?

Safety v environmental issues is a big problem and there are often compromises made. Longer durability is not desirable in every type of product (eg if newer products are safer or less-carbon emitting).

A general expectation (under GPSR and/or particular standards) should be that all products (wherever possible) should be designed to fail safely irrespective of their expected/actual life or be labelled with one or more "do not use after… warnings" "do not continue to use if … warnings" or if neither is precaution is practicable – (eg for glass items) a general warning of what the product may do unexpectedly and how to deal with this.

16. For how long should responsibility for the safety of the product lie with the manufacturer? What responsibilities should apply to software integral to products, second-hand goods or supply of replacement parts?

If the safety defect is in negligent design and it remains as the producer designed (even if some original parts are replaced with comparable components) then the original producer remains liable for any harm – and for any recall (whether or not there was negligence). [In the US, CPSC required a long-established furniture company to recall a wooden chest it had been making for over a hundred years after the self-locking catch on the lid led to some

fatal (or near-fatal) child suffocation incidents: the company supplied owners with a replacement catch.]

However, injury liability under the CPA is currently limited to ten years from the date the producer supplied a product. While this was originally seen as giving some reciprocal balance in favour of the producer (in exchange for the consumer not having to prove negligence under the CPA) consumers will need to be given some right to bring a claim for injury caused by a defect that does not cause the product to become unsafe until after ten years – provided the defect was nevertheless one that the producer could have detected with the state of science and technology at the time of supply.

Additionally (or alternatively) there needs to be a new type of liability specifically for injuries due to defects that could not be detected at the time of supply but are subsequently discovered by science or individual complaints. This would need to take into account the extent of the producer's attempts to recall affected products after that point in time – ie there would need to be a concept of a defect in corrective actions and/or warnings to consumers who have already purchased the product.

For liability (and recall) of products more generally, however, it must be expected that many suppliers will have ceased trading by the time a product becomes unsafe or any accident occurs, and therefore recall may become the responsibility of Trading Standards while redress for injury will depend on sufficient run-off insurance being in place and/or the victim being able to identify another party to sue. [eg in toxic sofas and the recent breast implants case in France in lieu of a solvent producer or non-invalidated insurance, some victims found sufficient grounds to sue (successfully) a certifying laboratory or advisor for negligence.]

There is no legal assumption that there is only one producer for each product GPSR specifically includes "preconditioners" of products as a producer. The liability part of the CPA does not specifically mention reconditioning (though it has been argued that they are included), but it does allow for there to have been more than one producer and requires the time when the product was supplied the producer to another party to be taken into account.

For connected products ongoing design updates should be maintained for periods proportional to the installed base and when it comes to and end user information on risks and use should be easily available to all. If the producer has the power to disable or lock-out the product remotely, a minimum guaranteed use period should be made clear at point of sale.

Replacement parts – specifications and supply should be made available to all beyond 'end of sale' of the product so independent 3rd parties can offer consumers choice of agent to repair. Those from the manufacturer or OEM would be the same product and not change the hazard analysis – but the use of pattern parts (eg 3-D printed) would open up the question as where product liability lies.

17. How is enforcement of product safety changing in light of new products (e.g., connected devices, 3D printed) and new ways of distributing products (e- commerce, sharing economy)? What are the greatest challenges?

Home 3-D printing is unlikely to become a major priority safety concern unless it starts being mass-marketed as a way to set up a home business. [Even then the major losers will be the self-employed makers who only make a financial loss.]

Obviously, the machines and digital 'patterns' should come with warning, but is this so different to occasional need for enforcement action on home-made toys, cots or child clothing 50 years ago – or more recently craft markets and boot-sales?

However local 3-D printing shops with more powerful printers (possible using metal) offering to 'copy' broken components without any knowledge or responsibility for how they are used may need regulation. (Maintenance workshops within organisations are already doing this for their own use.)

18. How well does the current system for corrective action and recalls system work? How could the regulatory framework better support it?

Trading Standards powers to seize goods or order them to be taken off the market appear to be used swiftly, but notices to warn (potential or previous purchasers) have usually relied on voluntary warnings being issued by companies while powers to order a recall have only been used a couple of times resulting in long delays if the company does not quickly agree to a voluntary recall. All this time TS is barred by the Enterprise Act from giving any information to the public (eg incidents or complaints consumers have reported) that the company has not agreed to (or what has appeared in the media. [See Q19 and Appendix 6.]

The UK law around recalls (in GPSR) has proved difficult for trading standards to operate since these powers were first given to them in 2000, with the biggest cause of timidity on TS's behalf has been the producers statutory right to request arbitration and still challenge the order in Court. The US system is much better (and quicker at getting recalls announced). Again the power to order a recall is rarely exercised by the US enforcement agency (CPSC) but legally it has to approve the wording of all voluntary recall notices issues by producers (while they are under time limits for informing CPSC of a defect and issuing a recall). [See Appendix 4.]

A separate part of the problem with recall (and to a lesser extent other corrective actions) is that the European Commission recommends that decisions on corrective action (by suppliers and/or enforcement agencies) should be based on a risk assessment, and it has set out a (non-mandatory) procedure for making these assessments. There are two problems with the practice (rather than the principle) of this approach: inadequate data leading to subjective guesses of numbers and the 'output' gradations of risk having no basis in research or direct relation to what level of corrective action is appropriate. The consequence is that the staff of suppliers and TS have lengthy written arguments about which (very dodgy) figures each has put into their models when what they should both be envisaging is the nature and method of implementing corrective actions.

Brexit offers the opportunity for the UK to abandon use of the EU risk assessment model in decisions on corrective actions altogether and simply discuss the appropriate corrective action.

Finally there remains a problem of traders, landlords and the public generally being able to check what products have been recalled. On the US saferproducts.gov website it is easy to search (by product type or words) every recall since CPSC was set up in the 1970s (and to including or exclude online complaints in the same search). On the UK's equivalent site (operated by the Chartered Treading Standards Institute) there is no categorisation (not even into food and non-food) and it was only recently that it became possible to search back more than a few months. Moreover only the last two years reliably covered both voluntary recalls and RAPEX notifications. The EU's RAPEX webpage is better categorised, easier to search and kept a complete historic record (back to 2004). However, the only complete records or statistics of UK recalls (for consumer products except food, medical and vehicles) continue to be those produced (over various periods) by commercial or charitable bodies.

The UK regulator must establish a database of recalled products that meets the operational needs of TS, retailers and online market platforms, landlords and the public to check (in sophisticated ways) for products that they own or are considering buying. Recall information should also be available to search through the general repository or product safety complaints and incidents (see Appendix 3 and Q2).

To raise public and industry awareness, OPSS and local enforcement authorities should be under a duty to report statistical analyses of trends within recalls to Parliament - and publish them online annually – along with statistical analyses of other corrective and enforcement actions (prosecutions and seizures) and consumer safety complaints. (See Q19 and appendix 6)

19. When it comes to product enforcement, how well does the system deliver transparency and confidence while maintaining confidentiality? Please explain.

Lack of transparency affects most aspects of the current system (See appendix 6). In order to provide:

greater recognition of who the UK 'product safety regulator' is,

transparency about enforcement activity and measures of progress over time, and

encouraging more consumers to report product injuries and safety concerns

the following failings in transparency all need to be addressed:

Inability to contact Trading Standards directly

TS unable to give complainants much feedback on the issue. Often none.

No cumulative public knowledge of what products consumers have complained about.

Lack of listings or statistics on enforcement actions

Long delays in warning public of products causing concern.

Standards committees have no access to complaints or notification of safety concerns.

Lack of performance statistics in statutory reports to Parliament (and failure make reports at all)

Lack of statistics or historic listings of recalls (except for ones reported to RAPEX)

Failure to monitor fatal accidents in any way.

OPSS and TS lack a public profile as the UK product safety enforcement agency.

The US product enforcement system operated by CPSC has a much higher public recognition – to a large extent because of its greater transparency on all the above aspects. Nevertheless, the US Congress currently has before it a "Sunshine in Product Safety Act" aimed at removing the last legislative restrictions on CPSC disclosing to the public safety concerns it has been notified about.

Here in the UK there is a far greater need of a legislative blaze of light to remove legal and technological constraints on transparency about product safety issues and improve enforcement through greater public awareness, consumer self-help and political oversight. The major black hole is that created in 2002 by Part 9 of the Enterprise Act, which effectively prevents TS (or Government) warning consumers about the safety concerns they have (or complaints they are investigating, or market surveillance) mentioning named models or brands of products without the company's agreement, voluntary announcement or disclosure in a public court hearing. Prior to 2002 Government Ministers made were able to make rapid decisions to issue public warnings about products when advised by the (then). Consumer Safety Unit

Restoring public faith in product safety enforcement in the UK requires new legislation to relax the Enterprise Act's blanket Official-Secrets-like restrictions on OPSS where there is a plausible reason for concern over the safety of a product, to permit:

a) official public warnings and

b) responsible mutual sharing of incident descriptions and safety defects with other stakeholder's bodies and individuals with a legitimate interest.

20. What toolkit of enforcement duties and powers is needed for effective enforcement now and in the future? Do enforcement authorities have the right tools they need, including data availability, to do the job?

Duties, powers and tools:

Trading Standards powers to seize goods or order them to be taken off the market appear to be used swiftly, but notices to warn (potential or previous purchasers) have usually relied

on voluntary warnings being issued by companies while powers to order a recall have only been used a couple of times resulting in long delays if the company does not quickly agree to a voluntary recall.

On recalls, the US system is much quicker to act on information. There needs to be more willingness by enforcement to act quickly and decisively when this is warranted by their own analysis. Only OPSS is likely to have staff resources to develop the expertise in risk assessment to make these decisions (as well as having the financial resources to risk losing a court case). The EU risk assessment system is not scientific and relies on guessing numbers without any reference back to statistical evidence from past incidents. Acceptable risk wrt products is not a straightforward subject to study or understand but a more consistent – if pragmatic – approach to product recalls could be developed.

The arbitration system for recalls demonstrated that it was not fit for purpose when resorted to in 2018 [Cheshire E Council v Quads Inn] and must be scrapped from the GPSR (leaving the right to appeal to a Court).

OPSS should have the power to dictate wording of recall and warning notices that suppliers send or publicly announce to owners of the affected products (as CPSC has in the US).

Courts and penalties:

The time to get a case before the Courts is far too long nowadays [eg a Milton Keynes case that ended in 2019 took three years]. This has since been made worse by COVID and lack of court capacity generally).

Smaller authorities are risk adverse as cost of losing a court case (or appeal against a notice) would significantly impact financial resources. Whenever products have been on sale to consumers in more than one local authority area, the handling of corrective action and/or prosecutions should be a national responsibility – both to ensure consistency for industry and to ensure the enforcement body is not more lenient with large corporations (able to deploy greater technical expertise and/or financial resources) than smaller businesses facing bankruptcy over seizure of a single product line.

In respect of penalties, neither Trading Standards nor OPSS has any power to impose financial penalties (unlike many other regulators). The powers to fine or imprison offenders are exercised by the Courts (usually magistrates) following being found guilty beyond reasonable doubt. The scale of fines available in the UK seems to have been set with market trader and corner shops in mind and has never been appropriate for multinational mass production (although the costs of recalls can amount to a more proportionate penalty). OPSS or BEIS did express the intention to draft legislation allowing the imposition of fines or civil penalties that would pose more of a deterrent, but no proposals have appeared.

For comparison, CPSC (through US courts) can impose civil penalties of millions of dollars simply for delay and misrepresentation in reporting safety defects to the agency. [This is separate from the multi-million punitive damages that US juries can impose on suppliers in injury compensation claims.]

Data availability

OPSS and TS need to be able to assemble more weight of data of incidents and complaints to support swift action and encourage Defendants to agree corrective actions or guilty pleas.

Currently the only searchable resource of injury and consumer complaint data available to OPSS and TS is the CDW database operated for them by CAB, which is recording annually under 7000 consumer incidents or safety concerns about products (excluding food, medical and transport) while the results of a household survey suggest the number of medically treated injuries that consumers blame on an unsafe product is may be of the order of a hundred times this. [See evidence Appendix 2.] The last HASS data (for 2002) also suggests that the number of injuries of potential interest for product safety reasons (enforcement, injury liability or design/standard/ regulatory improvement of hazard protection) is of the order of a few hundred thousand a year.

The consequence of no one body having knowledge of more than 1 in 10 1 in 30 or 1 in 100 consumer experiences is that the time that passes before a repeating pattern of events become clear is longer - inversely proportional to the sample captured. The actual length of time will depend on the number products supplied and whether the hazard become apparent soon to everyone (eg toxic sofas) or only after accumulated running time and a particular user operation (eg moving an item of furniture to another room). So for some defects it may be twelve months instead of two or 3 years instead of 1 before a need (or urgency of need) for corrective action is flagged up in the available data. Examples of overlong delays in action in the UK include Hotpoint tumble dryers, Maclaren buggy hinges [see Appendix 1] and window blind cords (over 30 unconnected deaths between1970 and 2008 before any effective corrective action begun in the UK).

Some of the reasons why consumers are not reporting more product safety concerns through the CAB helpline are explained in Appendix 1, but there is overall lack of transparency of the regulatory system [See appendix 6] and the fact that it does not meet consumers' needs if they are trying to obtain redress for injuries [see appendix 5]. Ultimately, OPSS should not expect to be able to persuade every injured consumer of the benefit of reporting a product injury to TS or CAB if the consumer expects to get a better outcome by contacting the supplier, the media or an injury lawyer. The way to get the most comprehensive database to support product safety improvement is to create a resource where all interested parties can share the descriptive details of incidents (stripped of details identifying the individuals involved).

The need is not just to be able to search consumer complaint data but also sources recording incidents in other ways: inquests, fire brigade data, media reports, published research studies and scientific journal articles.

As with HASS and CDW when they were each set up, a system better suited to today's needs will only be achieved by using today's cutting-edge technology – not just consumer's smart phones but also artificial intelligence methods to handle of the variety and uncategorised

narrative nature of the raw data. [See Appendix 3 for more extensive analysis of data needs and proposals for meeting them.]

Another type of a knowledge base that OPSS needs to have available – as both an internal and external human resource is expertise in what for want of a better description might be called the science of consumer accident epidemiology and prevention – an understanding of child and adult behaviour and injury risks, accident data sources human factors in products design, forensic investigation of accident causes and conducting product user research. Training and career opportunities (academic, commercial, public sector and consulting) have effectively disappeared in the UK in the last 20 years. (See appendix 8.)

21. How could greater use of technology and innovation support more effective, business friendly enforcement and compliance?

Greater use of technology and innovation should be used to support more effective enforcement by sharing more evidence about product hazards and complaints, but business is unlikely to see this as more friendly. More product specific centralised guidance on compliance with GPSR might be helpful to businesses, but as argued earlier, over-friendliness with an enforcement authority is not something that should be encouraged where the authority has no power to certify a product as complying.

As in 22, use of AI technology is needed to build a database of product safety data depository that can be shared by all stakeholders – including business (current traders and innovating designers), standards makers, consumers seeking redress and their lawyers. The system needs to be friendly to all users but the effectiveness bonus for enforcement and regulation is that parties in dispute are more likely to come to an agreement if they are all able to look at and examine the same shared source of information.

To address the physical and health hazards likely to be posed in future by software, downloadable/on-line service products and IoT devices (see Q 2, 4 and 5) it is likely to be necessary to develop a more interactive technological database of safety issues, producers' fixes and enforcement methods ie warnings or notices being delivered through the particular product to the user. This should sensibly also cover security and privacy risks posed by the products – and the security of the system itself would be a threat needing to be continually monitored.

22. When it comes to product liability, do consumers have the right tools and information to take action on their own behalf? Please explain.

Obtaining redress for injured individual consumers is dependent on a victim's ability and willingness, ultimately, to take a producer (or retailer in some cases) to the Civil courts for financial compensation (if this cannot be agreed out of court). In principle the average consumer should now have better chance of receiving a just outcome without risking financial ruin than at than at the end of the last century whether for minor injury or property damage or life changing disability and whether it was an isolated event or shared by hundreds of other users of the same product.

In practice, however, they currently need to be prepared for it to be part of their life for longer than they could ever image, and – preferably have some luck in:

-the willingness of the Defendant - or their insurer - to make a reasonable offer quickly rather than rack up legal costs

-where they happen initially go for advice/support and/or are advised to go next

-being able to find evidence of similar cases and/or be joined in an existing claim

-there existing an independent expert witness familiar with product safety cases and experienced in the disputed technical issues and standards

-having a claim that is not disproportionately small compared to the likely costs of investigation or going to court

- having judges at management hearings keeping the likely costs proportionate to the claim

Going through a contested product injury claim is often a long and anxious experience for consumers unused to involvement with the law - the number of fraudulent or disingenuous claims is either very small or sifted out by solicitors who only get paid for cases they win. In my experience individual consumers pursue them only if a) their lives have been so changed they need substantial financial compensation or b) they see the products involved still on sale with the same risks despite having reported this to the manufacturer (and perhaps trading standards) and this is the only way they can see to try to protect/alert other users.

The biggest influences on consumers action following a product-related injury have been the "liability without fault" provisions in the 1987 Consumer Protections Act/EU Product Liability Directive (which swung the burden proof in the public's favour) and allowing no-win-no-fee contracts with solicitors in England and Wales civil courts from about 2000 (which – together with the subsequent "one-way cost shifting" and judicial case management - removed the worst imbalances in financial risk that had existed for all but the poorest claimants). Permitting group actions was also offered a major advantage to victims of minor injuries from mass-produced product defects. It has been only rarely used in practice so far for product safety issues, although the largest group action in UK (concerning chemical burns from sofas) and a recent one in France (concerning breast implants) did demonstrate the potential.

Nevertheless, producers (or their insurers) often defend claims (often based on defences that apply in tort but not under CPA or CRA) – at which point (if not earlier) courts usually require the Claimant' solicitors to have the product and other evidence examined by an appropriate independent expert who will then write an opinion on the product involved in the injury (which may – for example – have a random manufacturing defect rather than a defect in design). Defendant lawyers may also still attempt to exhaust the Claimant's financial resources by requesting ever more complex investigations. Judges are now supposed to manage cases to keep costs proportionate to the value of damages claimed but this is often overrun.

23. Does the current framework adequately protect all people in society, including vulnerable groups and those with particular needs? And could it be improved?

Generally those who are poor in financial and time resources will be more at risk of harm from products (and most other types of accident/ill health), through using older or cheaper or second-hand products in less protective and more chaotic environments. However the design of products is made safer, those people will be benefit later than wealthier families.

Apart from the effect of poverty, other groups that are vulnerable or have particular needs of products may be disadvantaged by lack of access but not necessarily at any greater risk of product injury. Disability aids are regulated as medical devices and therefore subject to more formal technical file/risk assessment requirements than products sold under GPSR.

The one disability most likely to increase risk is any difficult in reading instructions and warnings for a product (which are the ways some risks will have been addressed. Two steps that could help reduce this are: 1) information supplied on or with the product to conform to minimum recommended sizes in the 82079-1 standard for information for use, and 2) the information should also be required to be available from the producer's website in formats that the user can convert to larger text and/or speech. [There is a growing trend for product instructions to be available in online catalogues to assist consumer choice.]

Design of one product to fit or suit all is not always an achievable aim (eg clothing)

People with allergies to particular chemical triggers are more difficult to protect. Cosmetics are probably the most potentially harmful sector (after food). Currently the only protection a is for the consumer to read through a list of ingredients (often in very small print), but perhaps in future scanning bar code on the product could allow the consumer's mobile phone to check the ingredients on the manufacturer's site against their personal allergies.

Vulnerable people are possibly less up to a fight and would need greater support in seeking redress.

24. Are there any examples of, or issues where, the impact of regulation is different for people from different groups in society?

The worst outcome is if the effect of regulation is to price the compliant products out of reach of people who then resort to much less safe alternative ways of meeting essential needs (eg using a product intended for a different purpose or DIY solutions). However individual product safety regulations rarely have a significant effect of this sort (rather than the ongoing effect of poorer households using older or cheaper models) – and there will also be a drag effect of older people preferring to continue to use items and technology they are familiar with and have learned to use safely.

25. How can we ensure the processes for consumer recourse are accessible to all kinds of consumer?

The current processes of consumer redress – and evidence of problems with them – are described in Appendix 5.

Civil claims can play a role in making products on sale safer – beyond (or faster than) what may be able to be achieved by enforcement agencies (or upgrading standards). One example of this was the Maclaren buggy finger trap issue (during unfolding) in 2009-10. [See Appendix 1]. This was an example where the producer and TS received only one complaint (over several years) until the UK press reported a pattern of similar complaints having led to a recall in the USA, and dozens of UK families realised that incidents their children had experienced were not isolated ones.

OPSS and trading standards should therefore be more helpful to individual injury claimants – as playing an important role in the protection of consumers generally. A critical need is for more consumers to be encouraged to report product safety incidents and concerns by making the system itself more encouraging and useful to the individual 'victim'. In particular, complainants should be able to:

have an interactive on-line experience (as they have learned to navigate and expect with retailers, government and the NHS) where they can describe what happened in their own words and photos.
see whether there have been similar experiences there have been with the same products {Me-too re-assurance} [by sharing anonymised data between
Be guided to send their complaint to each of the relevant parties.

For the reasons given to Q1, it could soon become impossible for solicitors to find expert witnesses who are both independent and have relevant expertise – and that this is something OPSS should be worried about. However for injured consumers with small value injury claims against manufacturers (allocated to the Court's "small claims track") is already almost impossible to get an expert opinion due to the limits on 'costs' they can claim from the defendant (only if they win!) while the Court rules for what experts need to cover in their reports (for all tracks) have increased the work required.

Consumers should expect the enforcement authorities to be able to provide assistance in obtaining redress – with assistance being proportionate to the specific consumers need. One way trading standards could help individual complainants is to commission (more routinely than at present) a relevant test or examination of the complainant's own product by an independent laboratory or expert who would then be able to provide the consumer with a report or opinion they could use in court in a civil claim. (Perhaps in addition to having an as-purchased sample tested).

It would also assist injury claimants if GPSR was amended to emphasise the status of voluntary standards (in the UK) in respect of establishing expectations <u>minimum levels</u> of safety (though not necessarily dictating the means of protection) that consumers are entitled to expect for civil claims under Consumer Protection or Consumer Rights Acts rather than (as at present) it being open to lawyers to argue how much standards need to be taken into consideration in establishing expectations. [See Tesco v Pollard described in Appendix 5] Alternatively it might be possible to establish this by financially supporting taking a suitable legal test case to appeal to appeal.

APPENDICIES

1) Ordinary consumer understanding and expectations

The product liability section of the 1987 CPA (transcribing the Prod Liability Directive) gives consumers a right to compensation for harm/loss due a product not having "the safety that persons generally are entitled to expect" (when it was produced) - in principle this is a backstop intentionally heavily weighted in the consumer's favour (as justified in the Directive's preamble and one or two UK legal precedents) – beyond any mandatory requirements – and not necessarily dependant on existing standards (moreover, due diligence is no defence under CPA and the standard of proof is civil – ie balance of probability rather than criminal – beyond reasonable doubt). At that level consumers (and injury solicitors!) do expect all products to be safe (at least when new) but at a more practical level probably would accept that humans, control systems and regulation will never be perfect in preventing any product that might cause injury getting to market (or older products being less safe than newer ones while standards are always playing catch-up).

Nevertheless, many consumers do not report product injuries (or do not pursue them) because they do not know how, or do not expect it will do any good or assume their experience was an isolated unforeseeable event. The 2009-10 Maclaren buggy hinge story illustrates several aspects. [Consumer Focus Report 2010] Maclaren had been using the same design of hinge for years on many models of buggy each of which had been independently certified as conforming to the BS/EN standard but by September 2009 Maclaren and TS were only aware of one finger injury in the UK. Meanwhile, however, a dozen fingertip amputations in the USA had been reported to CPSC prompting it to issue public warning and Maclaren to offer owners a protective cover for the hinge (effectively a voluntary 'recall'). Initially the company did not announce a similar recall in Europe but coverage in the UK press prompted many more parents to report (to a variety of media and organisations) that their children had experienced similar injuries in the past. By November Maclaren had voluntarily announced a similar 'recall' offer of protective covers in the UK and was including them with new sales. In the end some 40 families eventually received modest compensation (£2500-10000 each) through a joint claim, several buggy manufacturers subsequently modified their hinge designs and the requirement in BS EN standard was clarified.

In fact, what consumers (and many stakeholders) do not realise is that with the exception of fatal accidents and fires no product injury or safety concern experienced in use of a consumer product will be recorded unless a consumer reports it someone who can do something about it. This is unlike most other regulatory systems (road traffic, workplace, transportation, education, medicine and social care) where there is a statutory duty on someone (usually in authority) to investigate incidents, make a record (and often enter it into a larger database). Almost uniquely, in product safety the professionals all depend on individual members of the public making contact to even be aware of a safety issue and providing sufficient details of the product and the event to be able to take any type of action (whether that be by design modification, warning, recall, enforcement or revision of a standard).

To get the system to work the public must be aware of there being a system for product safety, the importance to it of ordinary people's experience to its functioning and must be able to find out what to do when they experience a product they think is unsafe. Preferably consumers should be able to name – or at least recognise a name for the system, body or website they are trying to find.

Googling *'how to report unsafe product*' includes the following results:

- A government guide says you should report it to Citizens Advice (or Advice Direct Scotland), which may refer it on to your local Trading Standards office

- However, a Citizens Advice page initially seems to suggest you should report it to Trading Standards directly (you have to scroll further down the page to find out that you should contact Citizens Advice to report it to Trading Standards).

Citizens Advice would not be the first point of call most people would consider in relation to product safety (I think that people tend to think of CA as a place to go to if eg you have employment issues). I also think it is a bit off-putting from a consumer perspective to read that Citizens Advice MAY report the issue to your local trading standards, which MAY investigate further. But consumers want to know that it will at least record centrally and taken note of - they want to know that if they take action, it will have an effect.

OPSS is not a body consumers could name, and it has negligible public or media recognition as being a regulator – compared, say, to the UK's Food Standards Agency, to CPSC in the USA or to OPSS's predecessor the Consumer Safety Unit from 1980 to 2002. It is true that product safety was much more frequently on the media's agenda in the 1980s and 90s than now (even before Covid19 and Brexit displaced most other issues), but when news issues do arise the media needs to be able to put questions to the "person that consumers' taxes pay to protect their safety". In CSU's time this was usually the relevant Minister, but for an arm's length agency or commission it would the – in in relation to enforcement decision or advice to consumer – be the chief executive or chair (as with the CPSC in the USA). If OPSS is intended to be a regulator operating at arm's length from politics then its leader(s) will need to be seen and heard by the public more often for its name, role and advice to be recognised by consumers.

2) Evidence of Extent of experiencing unsafe products and complaining about them

There have been very few attempts to measure how often consumers experience an accident, incident or some other reason for having a safety concern about a product they have bought. However, in March 2021, the European Commission published statistics from a consumer survey it conducted in 2019 and 2020 which asked 50,000 respondents questions about: injuries from 8 categories of products - and what the respondent blamed as the cause. Despite the imminence of Brexit, this included (and published separate results for) responses from the UK. [European Commission Key Consumer Data "Product Safety Market Monitoring Results" - https://ec.europa.eu/info/sites/info/files/product-safety-mms20-ppt_en.pdf]

The report's tables all express the results as percentages of households in the sample (or of sub-categories), but from these it is possible to estimate total figures for all UK households - ie the whole UK population (or similarly for EU states). Then taking into account the time periods respondents were asked about and the proportions that required medical treatment to adjust these to estimated annual injuries where respondents said the product involved was unsafe. See Appendix 9.

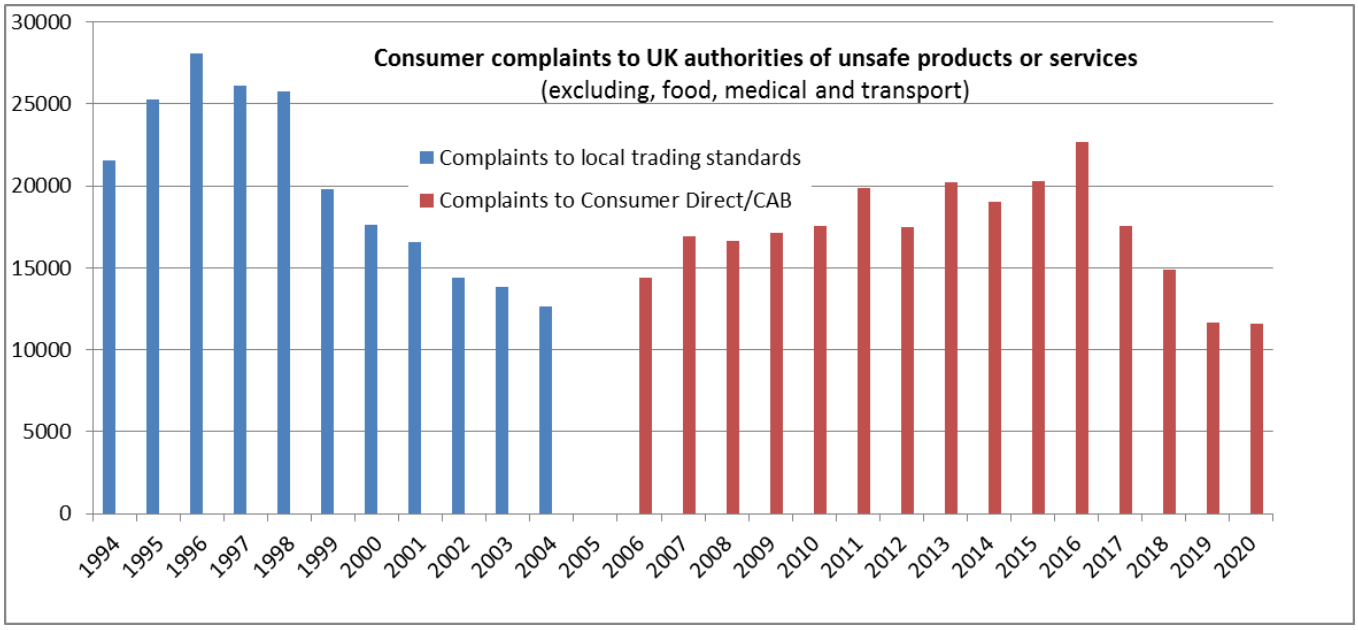
[There are reasons to be cautious about such survey figures: eg it is unlikely that the UK sample was more than about 5000 (and maybe less) which means no more than about 1000 remembered injuries involving products. Secondly, all household surveys of accidents suffer from biases of several types that are not corrected by weighting for social class, say. Thirdly, memory of minor injuries is poor while more serious injuries tend to be reported although they occurred outside the time frame.]

Nevertheless, this suggests there may have been in the order of 6 million injuries annually in the UK involving consumer products in the studies seven categories (except cars) of which about 1 million need medical treatment. Overall this is around the same order of magnitude as the 1.7 million that was being estimated for hospital injuries involving those seven categories of product from HASS data 20 years ago (out of 2.7 million total home accident A&E attendances a year).

Very crudely, the respondents blamed a third of these accidents on each of: the physical product ("because it was unsafe"), the instructions ("because it had no or poor instructions") and the user ("because it was not used correctly or carefully enough"). However the largest of these thirds was (always) the instructions. Taking only the proportions in each category where the respondent considers the product itself unsafe and only the proportions that required medical treatment, the annual number of people requiring medical treatment in the UK in 2019 – 2020 because (in their view) of an unsafe product in one of those seven categories could be expected to have been about 350,000.

However the number of safety complaints made to TS (through CAB's service and recorded on CDW) about products in those categories in 2020 was just 3751 – ie about 1 in every hundred medically treated injuries blamed on an unsafe product. [For individual product categories it ranges from 1 in 30 to 1 in 1000.]

Moreover, 2020 was not an exceptional year for the Consumer Advice line: the total number of product safety complaints recorded on CDW had halved between 2016 and 2019. [The 2020 figure of 6909 was, however the lowest number of safety complaints to TS in the 25 years for which data is available.



Based on the EU household survey the number of consumers having reason to complain about an unsafe product (across all categories except food medical and transport) should be of the order of a quarter to half a million, but under ten thousand are being captured on the current national database.

Responses to the survey questions found a roughly similar number of injuries were blamed on a product having poor or insufficient instructions as were blamed on it being unsafe, and a roughly similar number on the product not having been used correctly or carefully enough. Respondents appear to have indicated two of the three causes contributed to some injuries, but the totals show that the overlap would not substantially alter the estimated numbers.

3) Data Needs

One common factor frustrating what could be done to improve product safety – by OPSS, trading standards, UK standards makers trying to influence European and International working group colleagues, consumer organisations and individual consumers – is the lack of a "go-to" shared resource of evidence of safety defects and hazards in consumer products.

Except for products tested by Trading Standards at entry ports or during market surveillance visits to retailers (and very occasional referrals from Coroners or police investigations), the vast majority of safety issues are first likely to come to the attention of consumers who have purchased the product and suffered an injury or near-miss incident. From the evidence in Appendix 2, the current official database of consumer product safety complaints CAB's CDW is capturing only 1 in every hundred medically treated injuries that consumers blame on safety defects in a consumer product or its instructions.

There are several reasons for the low reporting of product injuries or safety concerns, but one is the doubt of any benefit to the complainant in return: unlike Regulators with an ombudsman function, trading standards can often do little to help an individual consumer who complains to get compensation from a supplier – and cannot put them in touch with

other complainants. Moreover, there is wider issue of lack of transparency and visibility to the public (see appendix 6): other consumers do not get to hear of the reported incidents and so do not realise that others may be suffering similar injuries. Even those motivated to warn or protect others from injuries like their own are faced with a range of other possible places to complain (brand owner, retailer, online marketplace, published or social media and civil legal claims none of which, individually, is likely to have a very wide reach to the public or impact in generating corrective action.

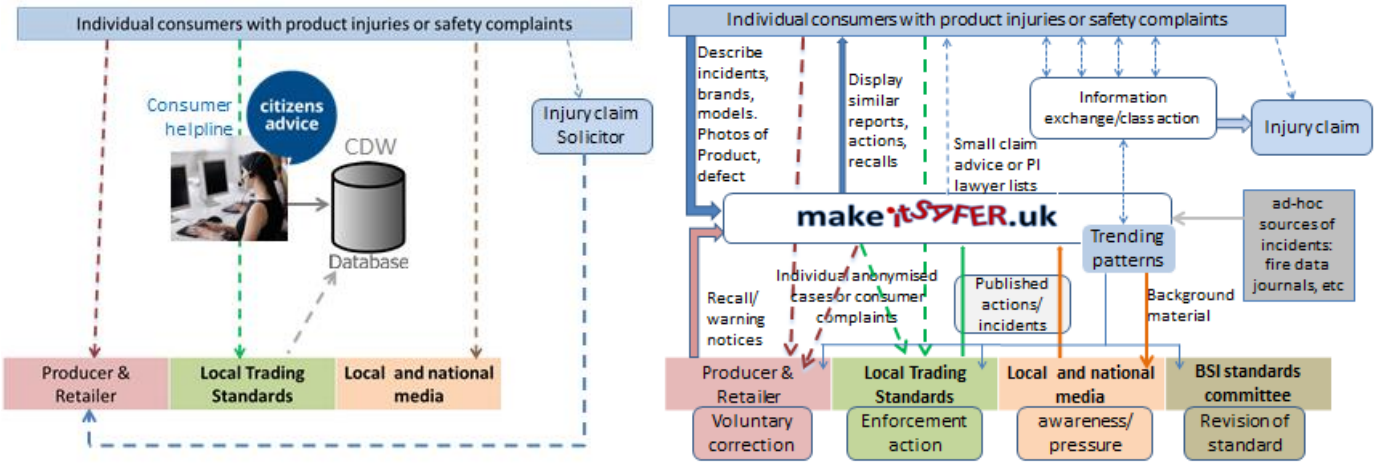
What is needed is a shared repository of product safety complaints open to consumers, trading standards and all stakeholders. This needs to be operated as a public data trust to overcome restrictions on Government disclosure about commercial issues in the Enterprise Act (see appendix 6). Moreover, Governments are always under pressure to collect data in a way that will produce representative 'official' statistics (complete counts, or structured samples, error/duplicate checking trends – and certainly not combining reports from different types of sources. A charitable foundation would not be subject to the same expectations of producing statistics and could concentrate on holding detailed narrative and photographic records of individual incidents that will be more useful for the purposes of enforcement, corrective actions, product liability and improving the design of products and requirements of standards.

To handle information entered directly by consumers alongside a variety of materials from other sources (eg press reports) this would necessitate a much more loosely categorised system than traditional survey/registration databases such as HASS [which had been pioneering in demonstrating the value of narratives]. Details of individual would need to be anonymised while keeping the possibility of authorising contact requests for specific research or legal purposes.

Hospital A&E departments should still be considered as being useful places to "capture" some of the small minority of their patients who will have accounts of unsafe products to contribute. However, to obtain a useful level of incident and product information the opportunity needs to be focused on attracting their attention and establishing means and permission for further contact after they are back at home. The information medical staff themselves record is unlikely to be of sufficient detail and immediately becomes subject to medical confidentiality rules.

This system would need to be design and operated and monitored by using artificial intelligence – both to interact with consumers providing the raw data, to analyse it into fuzzy categories and to search for patterns of similarities in products, hazards and events that simple word searching would not bring up. This is ambitious in policy and data usage – but well within the capabilities of the UK's IT and AI skill base. Moreover it can be divided into independent sub-projects that would each add to current resources of data. Together they could put the UK back to having the most comprehensive, technically sophisticated and open injury monitoring system anywhere in the world.

What we have now in the UK and what we need to develop



Fatal accidents are in almost every way a different part of the knowledge resource that UK product safety regulation should have. Not least because when there are deaths in the media due to a particular product or cause politicians (and the media) will expect OPSS to know whether this is a scenario that has occurred before (and how often). Moreover, every unexpected death in the UK is officially investigated (though not by the same process in each of the four nations) so a narrative account will be officially recorded by the state without a consumer making a complaint or voluntarily reporting it.

For speed of OPSS awareness of a death nothing will beat the news media (unless trading standards are involved in a case from the start by the investigating police). Media monitoring (particularly for articles on local newspaper websites) is therefore an essential (and cheap) method of accumulating raw narrative accounts of a good proportion of product-related fatalities as soon as possible. RoSPA have been doing this for decades to produce detailed annual statistics of drownings. It is more difficult to set catch-all search criteria to capture product-related deaths but, in any case the press coverage of fatalities at home is not necessarily comprehensive. Some product-related deaths never get reported, the product/defect descriptions are often insufficiently detailed and press reports will not all reliably be identified by a generalised regular internet search (as distinct from a retrospective search for deaths involving a particular product.)

Reliably comprehensive fatal accident data from official registrations is only ever available in the longer term (a year or two in arears) and obtaining the detail require negotiating access to data from the national statistical agencies and building relationships with the coroners, procurators fiscal and their officers (in the same way as access to hospital data depends on developing relationships with their staff- but with the added problem that many coroners will only deal with one product related death in their tenure). The few cases on the public systems intended to flag up safety issues in fatal accidents (Corners Reg 28* reports and Scottish fatal accident inquiries) are used very inconsistency by the individual judicial officers. [Previously “Rule 43” reports.]

When CSU operated a database of fatal product accidents (“HADD”) in the 1980s and 90s, the main source of narrative detail was copies of draft death registration entry forms. The narrative details have been routinely digitised by ONS for over twenty years, but (like the old forms) are subject to confidentiality rules. Generally even anonymised data is only made available to medically available for analysis to qualified medics for a retrospective

study approved by an academic ethical committee. However Government Departments (which would include OPSS) are still able to request sub-sets of data without this requirement.

Only limited information about product involvement from ONS registrations [e.g. not all products mentioned, no detail of brand/type, insufficient description of causes], but they have the advantage of being a comprehensive listing of fatal accidental home and leisure accidents in any one year – categorised by type of external cause – and a route to track to the more detailed information that may have appeared in media reports of an inquest and/or information contained in Coroners' files [ie in Coroners' "Inquisition" document, technical reports and sometimes witness statements]. Government Departments can request copies of documents from Coroners when needed for a special study, but this takes time and clerical effort.

The majority of fatal home and leisure accidents are likely to have been simple falls and trips which will not have involved products at all (although statistics for each category should be publically available). The most obvious cases where the additional level of detail obtainable is worthwhile seeking out (for product safety purposes) are electrocutions, where technical details are usually required in order to understand what happened and why. Other categories of external cause cases where regular tracing back to media reports of inquests or Coroner's information are likely to be include:

1. Choking on foreign body [to note size and shape]
2. Other suffocations [for brands and dimensions]
3. Accidents involving powered equipment [for brand/model]
4. Accidents involving toys and leisure items [media interest]
5. Poisonings [non-medical, ?children only] [for child resistant closures]

In Scotland few home and leisure fatalities are investigated in public (by a Fatal Accident Enquiry), but they are registered and categorised by the General Register Office (the national statistics body) and in principle could be tracked back to witness statements in the files of the local Procurator Fiscal (employed by the Crown Office) who investigated the death.

Politically, it might be difficult to require details of product injury deaths from Scotland - and Northern Ireland (which has Coroner and Statistical systems similar to but separate from England & Wales). However, this is an area where voluntary collation of product deaths from as large a population as possible is in everyone's interest – given that consumers are all using the same range (and brands) of products. The number of product-related deaths in the UK is thankfully small but this can pose difficulties in spotting patterns and foreseeing risks [as mentioned above for window blind cords].

A general awareness of types of fatalities reported in other countries is therefore an additional area of important intelligence to have. CPSC in the US has the largest and most comprehensive product-related death database [covering a population the size of the EU] but media and academic reports of product deaths in Australia and Canada are also worth searching for in research studies. [Each of these countries had recognised the need to take action over window blind cords many years before the UK.]

4) Taking decisive remedial action

Trading Standards do have powers to take or order some swift protective actions. As far as I am aware, the powers to seize goods or order them to be taken off the market are used swiftly.

Notices to warn (potential or previous purchasers) have usually relied on voluntary warnings being issued by companies (with the threat of a notice if they do not). However carrying out the threat to issue a notice was delayed by Peterborough trading standards for over a year (until 2017) in relation to the Whirlpool tumble driers fire risks (and had to be prompted by Which? taking court action against Peterborough). This case was one of the main factors leading to BEIS establishing OPSS (who issued a recall notice to Whirlpool in 2019).

The UK law around recalls (in GPSR) has proved difficult for trading standards to operate since these powers were first given to them in 2005. While the positive effect was that the numbers of voluntary recalls suddenly shot up TS were very reluctant to express any opinion or judgement on what form of recall was appropriate and what measure of 'success' was adequate. (It is even uncertain whether the legislation includes repairing or disabling products in a consumer's home as "recalls" - or only actions requiring the return of the product to the manufacturer.) In my experience, however, the biggest cause of timidity on TS's behalf has been the producers statutory right to request arbitration. As far as I am aware this procedure remained untested for 12 years - by which time the Chartered Institute of Arbitrators had no process in place to appoint a suitable Arbitrator. (The one who was eventually appointed had no experience of the legislation or product safety but decided he did not need to hear any expert evidence.) Again, there was a delay of about a year before purchasers heard that they might have defective products while lawyers argued and the arbitration hearing was followed by the company exercising its right to appeal the notice in the Magistrates Court.

Part of the problem with recall (and to a lesser extent other corrective actions) is that the European Commission recommends that decisions on corrective action (by suppliers and/or enforcement agencies) should be based on a risk assessment, and it has set out a (non-mandatory) procedure for making these assessments. There are two problems with the practice (rather than the principle) of this approach:

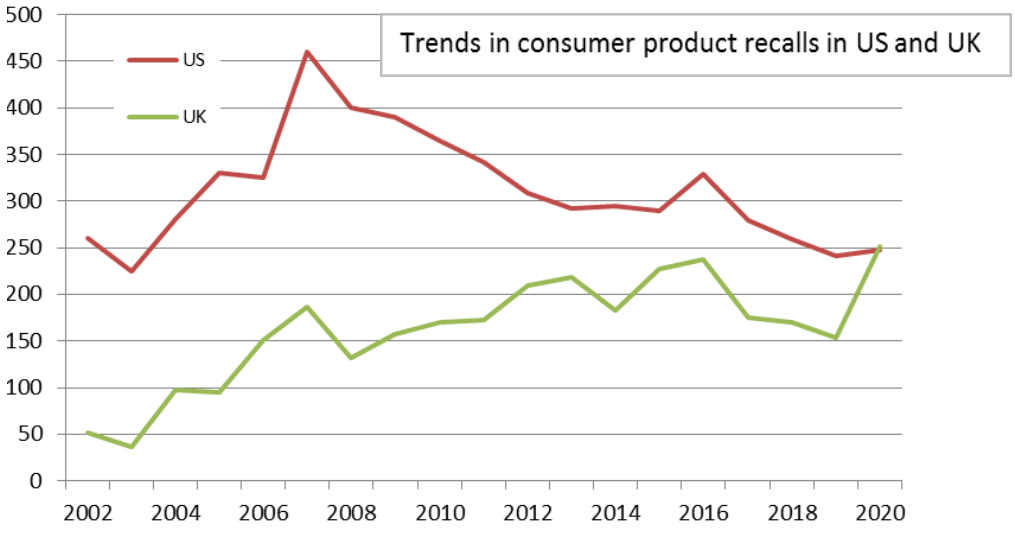
> In most cases (eg a fairly new product) there is inadequate (or no) incident data for anyone to make a quantitative risk assessment according to the recommended model (or any other) – so subjective numerical assessments have to be made (usually by people with little experience of thinking of risk in orders of magnitude).
>
> Secondly, the models 'output' gradations of risk (minor to severe in orders of magnitude) have no basis in research (or reasoning) and – more importantly - do not directly prescribe a specific corrective action.

The consequence –in my experience – is that the staff of suppliers and TS have lengthy written arguments about which (very dodgy) figures each has put into their models when what they should both be envisaging is the nature and method of implementing corrective actions. Differences of opinion will still be subjective, but the differences will be more clearly subjective and the consequences (for each side) of the choice between a compromise (and use of legislative powers) much clearer in top management's minds.

One opportunity arising from Brexit would be for the UK to abandon use of the EU risk assessment model in decisions on corrective actions altogether as (so far as I am aware) it is not required by any UK Regulations on enforcement and does not affect adherence to common standards for the safety of the products themselves. [EU risk assessments might still need to be made for exchanges of information with EU enforcement bodies – eg RAPEX notifications]

Experience shows the US system is much better (and quicker) at getting recalls announced. Again the power to order a recall is rarely exercise by the US enforcement agency (CPSC) but legally it has to approve the wording of all voluntary recall notices issues by producers (while they are under time limits for informing CPSC of a defect and issuing a recall). The Bednest bed-side crib and Maclaren buggy hinge are just two examples of UK-made products only being recalled in the UK after recalls were announced in the US and/or Canada.

Statistically, the UK overtook the US in number of (non-food) recalls announced on its website in 2020. However a large amount of the recent increase has been associated with small batches of unbranded goods inspected at customs or being sold online by small/micro traders. Unfortunately, the number of notices now being posted (five a week on average) makes it practically impossible for consumers (or even traders) to check whether a product they are offered has been under recall in the last few years.



5) Redress for individual consumers

Unlike some other industry regulators, (eg for utilities, financial services or competitions and markets?) neither OPSS nor local TS can make decisions on the validity of individual consumer complaints - or group/class complaints - or order companies to make redress (actual or financial) in respect of compensation for harm. Redress for injured individual consumers is dependent on a victim's ability and willingness, ultimately, to take a producer (or retailer in some cases) to the Civil courts for financial compensation (if this cannot be agreed out of court). This has got easier in some ways but is now becoming more difficult.

The biggest influences on consumers action following a product-related injury have been the "liability without fault" provisions in the 1987 Consumer Protections Act/EU Product Liability Directive (which swung the burden proof in the public's favour) and allowing no-win-no-fee contracts with solicitors in England and Wales civil courts from about 2000 (which – together with the subsequent "one-way cost shifting" and judicial case management - removed the worst imbalances in financial risk that had existed for all but the poorest claimants). Permitting group actions was also offered a major advantage to victims of minor injuries from mass-produced product defects. It has been only rarely used in practice so far for product safety issues, although the largest group action in UK (concerning chemical burns from sofas) did demonstrate the potential.

The claimant does not have to show that a product which caused them injury failed to meet the statutory requirements of safety (although, of course would usually strengthen their claim) simply that "*the safety of the product was not such as persons generally were entitled to expect*" – which the Courts have tended to interpret as higher in some respects than the minimum requirements to place it on the market. Nevertheless, producers (or their insurers) often defend claims on grounds that that lawyers are familiar with from other injury liability law but are not applicable under the CPA (eg a defence of due diligence).

At this point (if not earlier) courts usually require the Claimant' solicitors to have the product and other evidence examined by an appropriate independent expert who will then write an opinion on the product involved in the injury (which may – for example – have a random manufacturing effect rather than a defect in design).
Initially experts (and lawyers) tended to assume that if a product did not meet a relevant safety standard in respect of a protecting against the hazard that caused the injury, then the case would be straightforward, but one case that reached the Court of Appeal has been cited as denying consumers this assurance. In the course of giving judgment in the Court of Appeal in the case of *Tesco v Pollard* [2006 EWCA CIV 393] Lord Justice Laws addressed the question of the relevance of non-mandatory product safety standards to whether there was a breach of statutory duty under the Consumer Protection Act 1987. He rejected any idea that a direct relationship should exist, describing this submission as "*… an attempt to confer on purchasers and users of everyday products a right to sue the product's producers as if there were a contractual warranty as to the safety standard to which the product had been designed. It is quite impossible to get such a result out of the terms of the 1987 Act*."

This case concerned a child-resistant cap on a bottle of dishwasher powder. It was not in dispute that the cap in question fell well below the manufacturer's own specification for torque (unscrewing force) in a key production quality monitoring test and could not have met the performance requirements of the British and European standard for child resistant closures. On the other hand the product carried no claim of such compliance. The county court judge had concluded that use of a cap of this type *"gave rise to an expectation that it would at least have the qualities expected of a standard CRC*", but in Lord Justice Laws's judgement in the Appeal Court - the public were only "*entitled to expect that the bottle would be more difficult to open than if it had an ordinary screw top*."

Several legal commentators described this judgement as a retrogressive application of an old-school consumer expectations test, and other articles pointed out that the significance

of the General Product Safety Regulations had not been argued by the Claimant's lawyers. Nevertheless expert witnesses and claimant lawyers currently need sometimes to take care to set out a precise (and often tortuous) path to argue that an injury liability claimant was entitled to expect a product they bought to meet a particular safety requirement in a voluntary British Standard applying to that type of product.

It would therefore assist injury claimants if GPSR was amended to emphasise the status of voluntary standards (in the UK) in respect of establishing expectations minimum levels of safety (though not necessarily dictating the means of protection) that consumers are entitled to expect for civil claims under Consumer Protection or Consumer Rights Acts. Alternatively it might be possible to establish this by financially supporting taking a suitable legal test case to appeal to appeal.

In principle it should also be possible for a consumer to make a claim for injury through the small claims track without engaging a lawyer – but Courts deal with such claims so rarely that they will still require the complainant to get an expert opinion. Since the rules they must follow are the same as for any EW investigation and report, the cost estimate is likely to be disproportionate to (or even exceed) the amount being claimed in compensation.

Going through a contested product injury claim is often a long and anxious experience for consumers unused to involvement with the law - the number of fraudulent or disingenuous claims is either very small or sifted out by solicitors who only get paid for cases they win. In my experience individual consumers pursue them only if a) their lives have been so changed they need substantial financial compensation or b) they see the products involved still on sale with the same risks despite having reported this to the manufacturer (and perhaps trading standards) and this is the only way they can see to try to protect/alert other users.

It is surprisingly rare that consumer injury claims and enforcement authority actions both lead to a court case – even if the consumer has been in contact with trading standards (eg a prosecution or recall notice is unlikely to succeed if a test-purchased sample is found to meet the standard – see Maclaren buggy hinge example)

Civil claims can therefore play a role in making products on sale safer – beyond (or faster than) what may be able to be achieved by enforcement agencies (or upgrading standards). OPSS and trading standards should be more helpful to individual injury claimants – as playing an important role in the protection of consumers generally.

Part 9 of the 2002 Enterprise Act placed restrictions on all public bodies disclosing information about businesses (including their products) that were not already in the public sphere (restrictions that did not apply when I worked in the Consumer Safety Unit). However that legislation does not apply to cases in the Citizen's Advice Bureau's CDW – to which all trading standards departments (and OPSS) have direct access, but the public and media do not. Trading standards would therefore not be breaching the Act by providing complainants with descriptions of previously recorded similar complaints and injuries (without identifiable details of those other complainants).

More helpfully in practice, however, could be if trading standards could commission a relevant test or examination of the complainant's product by an independent laboratory or expert who would then be able to provide the consumer with a report or opinion they could use in court in a civil claim. [Disclosure in this way for prescribed civil proceedings was

specifically permitted by an amendment of the Act in 2006 adding section 241A]. Without this it could soon become impossible for solicitors to find expert witnesses who are both independent and have relevant expertise while for injured consumers with small value injury claims against manufacturers (allocated to the Court's "small claims track") it is already almost impossible to get an expert opinion due to the limits on 'costs' they can claim from the defendant (if they win).

6) Transparency/visibility/recognition

Once a consumer has reported a product safety issue to TS via the CAB helpline (Consumer Service) they may or may not get much feedback. (See Guardian 12/5/2021*) In fact unless TS takes their product for testing there will be nothing TS can tell them about their investigation unless (and until) there is a public announcement (by the company or in the event of a trial). Neither the complainant nor the public will be told how many complaints have been made about a product or the results of testing samples TS has taken. Complainants who are victims of product injuries have the role of witnesses in a potential criminal trial (but - unlike victims of police-investigated crimes - without a witness liaison officer). (*https://www.theguardian.com/commentisfree/2021/may/12/laws-protect-scams-enforcement-gutted)

In contrast, the equivalent complaint system in the USA (saferproducts.gov) lists all complaints with the product named but the complainant remaining anonymous [The Company has the right to add a response – which often invites the consumer to contact them directly]. The US system allowed complaints to be posted online by the consumer themselves (with photos of the product) from its inception, but the CAB's website only facilitated an online form for complaints as a result of COVID: until then all callers had to have their account of the safety issue written down by a call centre handler.

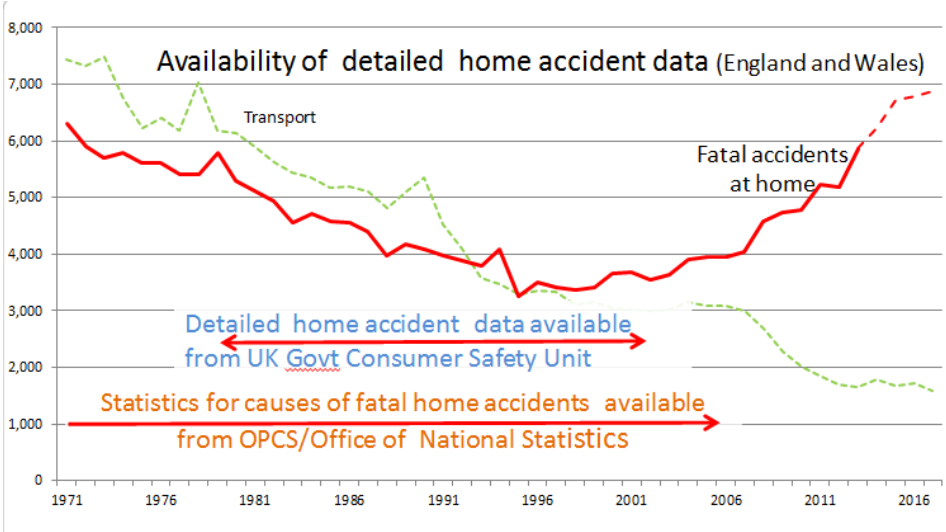
The saferproducts.gov site allows the public to search for complaints or recalls relating to a product or category [as far back as the records exist]. A Freedom of Information request has to be made to CAB for consumers or media to obtain descriptions of any complaints, and in the UK there is no equivalent searchable database of recalls going back more than a year and no official statistics for annual numbers of recalls or complaints. The EU's RAPEX site does allow public searches and analysis of UK enforcement actions notified to the Commission {back to the start of RAPEX], but these never included all voluntary recalls.

Part 9 of the 2002 Enterprise Act has effectively prevented TS (or Government) warning consumers about the safety concerns they have (or complaints they are investigating) about have (through complaints or sampling) named models or brands of products without the company's agreement, voluntary announcement or a Court judgement.

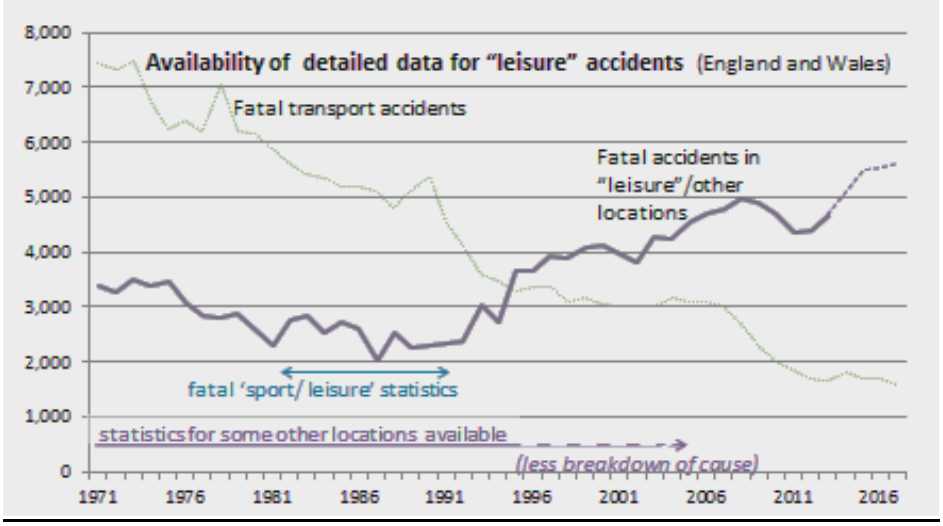
Even in the event of a judgement or court order there is no public repository where the public or elected politicians can search the products or businesses involved or see national statistics. While individual TSAs may report the actions they have taken to their local authorities the only legal requirements for nationally collated picture of activity are section 42 of the Consumer Protection Act 1987 and Regulation 32 of the General Product Safety Regulations 2005 which (like predecessor legislation) demand five yearly (ie "quinquennial") reports be made to Parliament by the Government. However the last published breakdown of data on UK enforcement and market surveillance data relates to 2012, and appeared in the 2015 publication by the House of Commons of the "quinquennial report" to parliament

made mandatory. Even here the data is incomplete and inconsistent over the 5 years (Apr2008-Mar 2013) it purports to cover. (The last period 5-year for which General Product Safety prosecutions numbers were published was 1998-2003.) As yet no "quinquennial report" has been published for Apr 2013-Mar2018 – and nothing related to it appeared as a target in OPSS's delivery plan for 2018-19 or their 2019 delivery report.

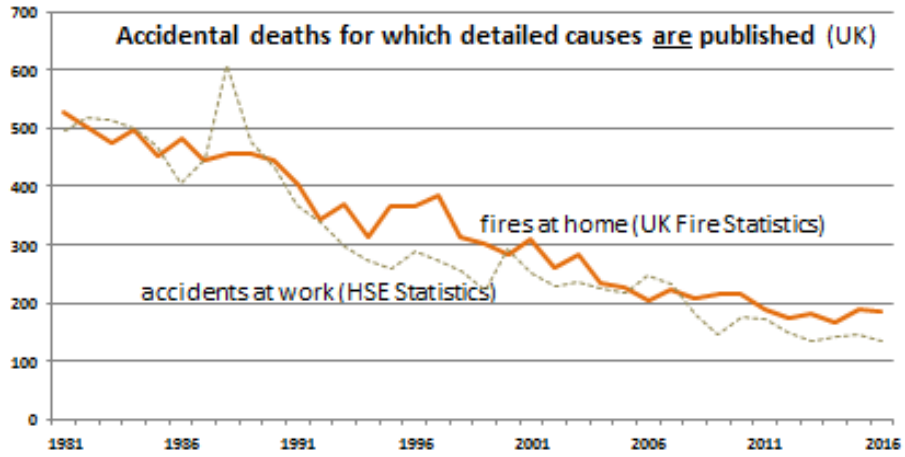
When it comes to health and safety, transparency is more than a matter of responding to freedom of information requests or PQs when someone asks – simply keeping safety issues in the public awareness can have a positive effect on injury prevention about safety as an ongoing issue can have a negative influence. More worryingly a detrimental effect on safety can be associated with the absence of transparency for example: there being no recognisable regulator, no published reports, no available government statistics, and no monitoring or scrutiny of how enforcement – or the country as a whole – is doing. This is demonstrated by divergence in trends between fatal transport accidents and fatal home accidents over the last 20 years as public visibility of non-transport safety issues declined:



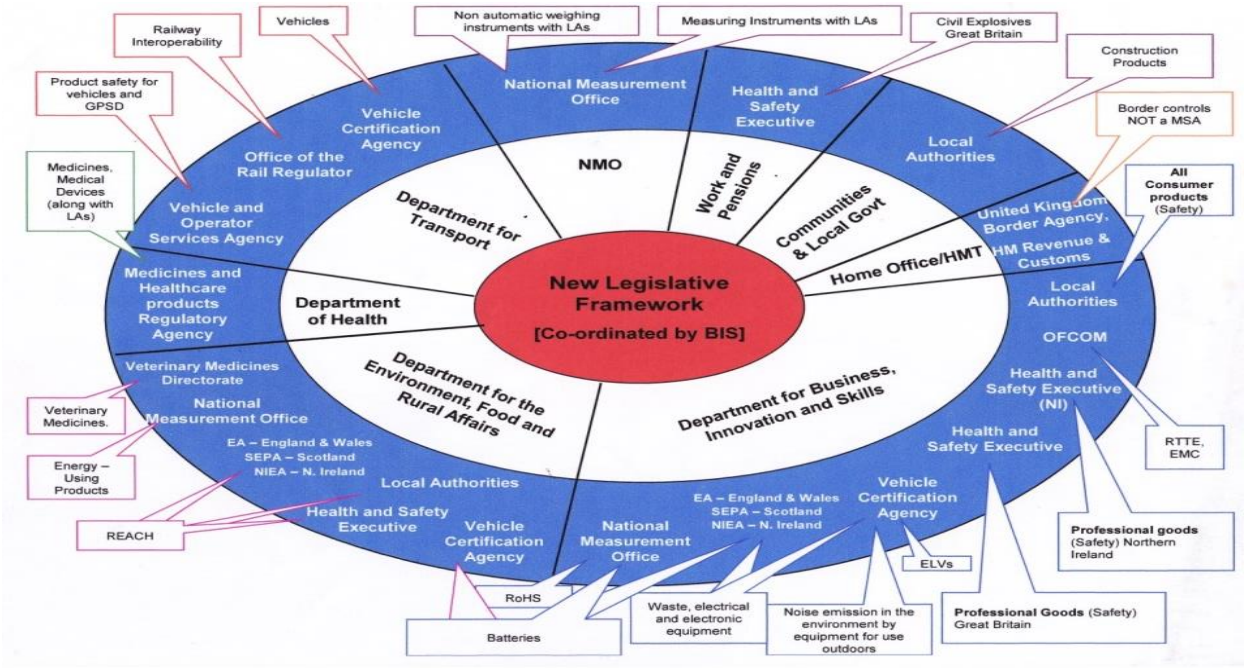
Similarly, other fatal non-transport accidents rose as ONS published less detail about them:



- except where some other agency was recording and publishing details:



Any regulator has to work hard to be publicly recognised among the host of other regulatory agencies who have roles wrt to various products:



7) Penalties

As an example of the inadequacy of penalties, in October 2018 Craig Williams was given a 3-year prison sentence for making and selling bespoke children's beds (which did not meet safety standards) one of which had caused the death of a baby. It was an extreme case of claiming compliance with standards he had never read and ignoring a TS warning to desist supplying beds. However this severity of sentence was only possible by charging him with an offence under health and safety at work legislation (and possibly because he pleaded guilty) – had he imported the products rather than making them in the UK (as most brands do) that legislation could not have been used.

Another example of adopting ill-suited legislation to overcome the low penalties was the recent use of Proceeds of Crime legislation to impose financial penalties - to the value of profits from selling unsafe products *. This is a wrong-headed route to achieving higher

penalties – which risk being suppressed on appeal and/or subjecting the system to ridicule in Parliament and the media. In principle this simply appears to add a proportionate (more financially punitive) penalty for a party who is convicted of exercising less than due diligence in supplying unsafe goods, but a quirk of this legislation is that penalties can be ordered against other parties in the chain who may have profited but have not been charged with any offence (let alone been found guilty beyond reasonable doubt or balance of probability). There is a criterion that a Court must find that they have been "living a criminal lifestyle" but to my knowledge at least one popular brand owner has already been ordered to pay such penalty when one of their suppliers was convicted – on minimal warning and hearing of evidence. If OPSS had any involvement (or gave any advice) in this case, it should at least make public its future policy on use of Proceeds of Crime in product safety enforcement. [*https://www.localgovernmentlawyer.co.uk/regulatory-and-enforcement/406-regulatory-news/41596-retail-chain-and-distributor-ordered-to-pay-580k-over-sale-of-unsafe-baby-and-child-car-seats]

8) Independent expertise

As noted in response to Q8, OPSS needs to have available – as both an internal and external human resource is expertise in the science of consumer accident epidemiology and prevention – an understanding of child and adult behaviour and injury risks, accident data sources human factors in products design, forensic investigation of accident causes and conducting product user research.

The more academic side of this concerns familiarity with accident statistics, concepts and measures of risk experience of the problems of research and wide reading of published research. The less conventionally academic side is an accumulation of experience through reading and analysing accounts of accidents – individually and in samples – to identify patterns (particularly of consumer behaviour or defects in design) and from this developing the ability to foresee the potential for accidents in similar circumstances with different types of products or environments.

In in the 1980s and 90s, academics worked (and trained students) in these areas at the Institute of Consumer Ergonomics at Loughborough University and a smaller group in Nottingham University. At this time also, *Which?* the Building Research Establishment and the Furniture Industry Research Association each had active research laboratories. Additionally, product safety experts were employed by RoSPA and the Child Accident Prevention Trust and individual medics (usually trauma or paediatric specialists) became experts in certain product injury prevention aspects through research and campaigning outside their hospital duties. Additionally, the research and technical staff positions in CSU were a training ground for a succession of civil service scientists and engineers with no previous accident background, for new graduates and for a turnover of students on secondment. Many stayed active in the product safety field beyond after leaving those posts but hardly any remain active now.

All of these training and career opportunities for nurturing/passing on this body of intelligence have since closed down – along with most of those in UK commercial industries (in consumer product design and manufacturing and product testing laboratories). Even archived data and published research reports from these bodies are disappearing or

becoming impossible for anyone new to access. The accumulated human intelligence (or 'wisdom) about product injuries, preventive measures – plus the methods (and limitations) of research and statistics- in which the UK once excelled – is not being passed on to OPSS's current staff and its availability to future generations is hanging by a thread.

This matters not just for OPSS having on-tap internal expert advice but also because both enforcement of general product safety regulations and consumers getting compensation for product injuries often depend on the prosecution or complainant being able to obtain an independent expert opinion to set against the defence arguments put forward by a producer's internal technical staff. (See Q 20 and Q 25) If there is no one credibly able to claim relevant (not necessarily identical) weight of expertise, then many prosecutions and valid claims will fail. Furthermore, some child protection decisions by family and criminal courts will be inadequately informed.

Training and career opportunities (academic, commercial, public sector and consulting) have effectively disappeared in the UK in the last 20 years, while relying on such expert witness cases for a sustainable income is risky – and expecting anyone to invest in it as a career is currently unrealistic.

9) Calculations from EU household survey results

Calculations from figures in Eu Comm Product Safety Market Survey 2020											
	United Kingdom										
		new car	household appliance	electronic product	clothing/ footwear	prods for children	cosmetics	house/garden maint prods	furniture/ furnishings	Any (except car)	Any inc car
over recent years:		3	2	1	1	3	1	2	1		
Someone in hhold harmed by a prod you purchased											
...because it was unsafe		3%	2%	1%	2%	1%	1%	1%	1%	9%	12%
...because it had no or poor instructions		2%	2%	1%	3%	2%	1%	1%	2%	12%	14%
... because itwas not used correstly or carefully enough		3%	2%	2%	1%	2%	1%	2%	2%	12%	15%
											0%
- for any reason		8%	4%	4%	6%	3%	3%	3%	4%	27%	35%
											0%
A prod you purchased was recalled on safety grounds		4%	4%	4%	2%	2%	1%	3%	3%	19%	23%
adjusted to one year											
Someone in hhold harmed by a prod you purchased		new car	household appliance	electronic product	clothing/ footwear	prods for children	cosmetics	house/garden maint prods	furniture/ furnishings	Any (except car)	Any inc car
...because it was unsafe		*1.0%*	*1.0%*	*1.0%*	*2.0%*	*0.3%*	*1.0%*	*0.5%*	*1.0%*	*6.8%*	*7.8%*
...because it had no or poor instructions		*0.7%*	*1.0%*	*1.0%*	*3.0%*	*0.7%*	*1.0%*	*0.5%*	*2.0%*	*9.2%*	*9.8%*
... because itwas not used correstly or carefully enough		*1.0%*	*1.0%*	*2.0%*	*1.0%*	*0.7%*	*1.0%*	*1.0%*	*2.0%*	*8.7%*	*9.7%*
										0.0%	*0.0%*
- for any reason		*2.7%*	*2.0%*	*4.0%*	*6.0%*	*1.0%*	*3.0%*	*1.5%*	*4.0%*	*21.5%*	*24.2%*
A prod you purchased was recalled on safety grounds		*1.3%*	*2.0%*	*4.0%*	*2.0%*	*0.7%*	*1.0%*	*1.5%*	*3.0%*	*14.2%*	*15.5%*
total for all households	28	million									
Someone in hhold harmed by a prod you purchased		new car	household appliance	electronic product	clothing/ footwear	prods for children	cosmetics	house/garden maint prods	furniture/ furnishings	Any (except car)	Any inc car
...because it was unsafe		278,000	278,000	278,000	556,000	92,667	278,000	139,000	278,000	1,899,667	2,177,667
...because it had no or poor instructions		185,333	278,000	278,000	834,000	185,333	278,000	139,000	556,000	2,548,333	2,733,667
... because itwas not used correstly or carefully enough		278,000	278,000	556,000	278,000	185,333	278,000	278,000	556,000	2,409,333	2,687,333
- for any reason		741,333	556,000	1,112,000	1,668,000	278,000	834,000	417,000	1,112,000	5,977,000	6,718,333
A prod you purchased was recalled on safety grounds		370,667	556,000	1,112,000	556,000	185,333	278,000	417,000	834,000	3,938,333	4,309,000
likley to require med treatment		new car	household appliance	electronic product	clothing/ footwear	prods for children	cosmetics	house/garden maint prods	furniture/ furnishings	Any (except car)	Any inc car
	%	34%	14%	11%	25%	15%	24%	14%	15%		
Someone in hhold harmed by a prod you purchased											
...because it was unsafe		94,520	38,920	30,580	139,000	13,900	66,720	19,460	41,700	350,280	444,800
...because it had no or poor instructions		63,013	38,920	30,580	208,500	27,800	66,720	19,460	83,400	475,380	538,393
... because itwas not used correstly or carefully enough		94,520	38,920	61,160	69,500	27,800	66,720	38,920	83,400	386,420	480,940
- for any reason		252,053	77,840	122,320	417,000	41,700	200,160	58,380	166,800	1,084,200	1,336,253
Product safety complaints to TS (2020 figures)		200	1246	240	136	462	363	214	1090	3,751	3,951
TS complaints:EU survey =1 in		***473***	***31***	***127***	***1022***	***30***	***184***	***91***	***38***	***93***	***113***