

We use and come into contact with many products every day. Not all of these products can be 100% safe but we expect them to be reasonably safe. Product liability is the area of law that gives the consumer the right to sue if they are injured by a dangerous product. Under English Law, a person injured by a product had two legal routes through which to sue for compensation.

- If the injured party bought, hired or leased the product, they could claim for breach of contract. These rights are laid down in legislation like the Sales of Goods Act 1979 (as amended by the Sale and Supply of Goods to Consumers Regulations 2002). If the product falls short of the contractual expectation, that is enough, no proof of fault is needed. The seller is liable: even if they could not have checked the product before sale, this is strict liability. The problem with this approach is only the two parties in the contract can sue and be sued. The retailer pays the compensation and then has to attempt to sue their suppliers.
- For an injured party not involved in the contract, there is no contractual remedy. This person has to use the law of Tort and before the Consumer Protection Act 1987, this meant using the tort of negligence. So an injured party could sue anyone they thought at fault, but they had to prove there was a lack of reasonable care. Proving fault was a difficult process and often led to high legal costs. This resulted in injured people not getting compensation.

This changed when Part 1 of the Consumer Protection Act 1987 was introduced to bring the requirements of the Product Liability Directive into UK Law. The Consumer Protection Act removed the need for an injured consumer to prove the product manufacturer was negligent. This made the manufacturer strictly liable for the damage caused by their product. The Act also allows anyone injured by a defective product to sue the manufacturer, even if the injured party didn't buy the product themselves.

An injured person can take action against producers, manufacturers and processors. Those businesses involved in packaging are not affected unless the packaging has altered the characteristics of the product. An injured person can also sue the business that first imported the product into the European Community. They can also sue suppliers who put their own branding on products to make it look like they have manufactured them. Wholesalers and retailers are not liable unless they cannot identify who the manufacturer or importer of the product is. Liability is joint and several so an injured party can sue more than



one defendant. There are no contract terms that can exclude liability under the Act.

Liability applies to all consumer goods, goods used in the workplace and foodstuffs. Liability also extends to building materials, components and raw materials. If a finished product contains a defective component, both the component manufacturer and the finished product manufacturer are liable. If a product design or software is defective, it is the producer of the product, not the design or software consultant, who is liable.

A defective product is one where the safety of the product is not what a person would generally expect. This does not relate to poor quality alone. When considering a defective product a court will look at the marketing and instructions for the product as well as when it was supplied and what it was to be expected to be used for.

Under the Act, legal action can be taken for death, personal injury or damage to private property and the plaintiff must prove that on the balance of probabilities, the defective product caused the damage or injury. Action must be taken within three years of the date of injury or when the plaintiff knew they had a claim. A claim cannot be made if the product was supplied more than 10 years ago. A producer has six defences to such an allegation:



- He did not supply the product, maybe it was stolen
- The state of scientific and technical knowledge at the time did not allow the producer to identify the defect - the development risks defence
- The defect was the inevitable result of complying with a legal requirement
- The defect was not in the product at the time it was supplied
- The product was not supplied in the course of a business e.g. it was donated to a charity sale
- The producer of a component must prove the defect was caused by a defective specification which was given to him by the producer of the finished product.

To meet their obligations under this legislation, a business should review its management procedure with a specific emphasis on design, manufacture, presentation and marketing to ensure product safety. A quality assurance management approach should also be utilised. The business should also check if there are any specific regulations or safety standards for its particular product range. Contractual arrangements with suppliers and customers should be reviewed, as should the record keeping policy and procedures for the business.

Best practice standards

✓	Ensure there is a good product safety policy integrated into the business and a management system that has ISO 9001 accreditation. Nominate a director who is responsible for product safety.
✓	Analyse quality control data to identify the cause of problems and complaints. Take positive steps to reduce the product failure rate once causes are identified.
✓	Check all incoming and out going goods are of appropriate quality and document inspections.
✓	Provide formal job specific training on product safety and quality to tie in with the ISO 9001 system.
✓	Ensure sub contractors also receive training on quality assurance.
✓	Keep training up to date with legal changes, document training provision and ensure refresher training is provided along with monitoring and review of the training process.
✓	Ensure that packaging complies with all legal requirements. The packaging should not contaminate or damage the product or those handling the product, it should however suitably protect the product.
✓	Have a formal system that keeps records relevant to product safety for at least 10 years. Also retain records on products that are not now manufactured but may still be in the market.
✓	Have a formal quality inspection process and ensure inspectors are adequately trained. The process should form part of the ISO 9001 system and analysis of results should be reported to the Board.
✓	Set Company objectives for product quality and safety and measure performance against the objectives on a regular basis.
✓	Get labelling, marketing statements and instructions approved by a legal expert to ensure they comply with legal requirements. Also ensure that instructions and user manuals are easy to follow. If translations are required, use an appropriately qualified person to make the translation.
✓	If your business designs products, produce a formal design management process. This process should include end use and misuse risk assessment, a safety checklist, a review of past product complaints and failures and a design review process. Exert robust control over the use of sub contract designers, including the use of appropriate insurance and hold harmless arrangements.
✓	Develop a formal system for handling complaints that includes detailed investigations of problems to identify the cause and empathetic communications with complainants.

Legal requirements

The general safety requirements under Section 10 of the Consumer Protection Act 1987 have been replaced by the General Product Safety Regulations 1994, with more updates provided by the General Product Safety Regulations 2005. The Act requires consultation with businesses on making regulations that apply to specific products like prams and pushchairs. These Regulations will not override more specific Regulations that also require product safety. They also introduce a presumption that the general safety requirement is met if the product conforms to a voluntary European Standard.

The Regulations apply to all UK suppliers of products used by consumers. Suppliers may be producers or distributors. Producers include manufacturers, those who put their brand name on an item, those who repair and recondition and other persons who are in the supply chain and may affect the safety of the product. If the manufacturer is not in the European Community, his representative or importer in the Community will be classed as the producer. A distributor is any person in the supply chain who does not affect the safety of the product and this includes retailers and wholesalers.

The Regulations require producers and distributors to supply products that are safe and undertake activities if necessary to ensure the product remains safe throughout its foreseeable period of use. They must provide relevant information and warnings with the product and keep informed on any particular risks. The amount of action needed will vary depending on the product and the supplier only need act within the limits of its activity.

The Regulations now require the competent authorities (normally the local authority) for a product to be notified by the supplier if they realise a product that is unsafe has been distributed. They must also state what action they have taken to remedy the situation.

A producer must provide relevant information to enable consumers to assess the inherent risks in a product throughout its life if the risk is not immediately obvious to the user. For example, this may be instructions on what personal protective equipment users should wear. Dependent on the product, other actions to ensure safety may be needed, e.g. product recall from the supply chain, investigating complaints, sample testing products and ensuring batch identification marks are present on products and packaging.

A distributor must act with due care to ensure the products he supplies are safe. If he knows a product is dangerous, he must not supply it. He must also keep documentation so as to trace the origin of unsafe products. For small businesses the documentation needed to support Inland Revenue and VAT requirements should be sufficient. Records can be electronic and they must be stored for the expected life of the product. Distributors should also monitor the safety of the products they supply, this could mean passing safety information from the producer to the consumer or passing safety complaints the other way.

Guidance and useful information

- The Consumer Protection Act 1987 - www.legislation.gov.uk/ukpga/1987/43
- Consumer Rights - www.gov.uk/consumer-protection-rights and www.citizensadvice.org.uk/consumer

Further information

For more information please visit: www.QBEurope.com/rs or email us on RS@uk.qbe.com

Disclaimer

This publication has been produced by QBE Insurance (Europe) Ltd (QIEL). QIEL is a company member of the QBE Insurance Group. Readership of this publication does not create an insurer-client, or other business or legal relationship.

This publication provides information about the law to help you to understand and manage risk within your organisation.

For full details of the disclaimer surrounding this publication please visit

www.QBEurope.com/legal/publication-disclaimer.asp

QBE Insurance Group

Plantation Place 30 Fenchurch Street London EC3M 3BD
tel +44 (0)20 7105 4000 www.QBEurope.com

5248CC/RiskManagementStandards/ProductLiability/September2015
QBE Insurance (Europe) Limited, QBE Re (Europe) Limited and QBE Underwriting Limited, all of which are authorised by the Prudential Regulation Authority and regulated by the Financial Conduct Authority and the Prudential Regulation Authority, are part of QBE European Operations, a division of the QBE Insurance group.

Made possible by

