

Loss Prevention Standards

Product Liabilities for Retailers

Introduction

A product you have sold could cause injury to the purchaser or another user, or damage to their property. In such circumstances it is possible that you, the shop owner, could face a claim for damages and compensation from the purchaser or user. You should protect yourself by employing a robust risk management approach and taking out Products Liability Insurance.

Note: This guidance does not cover the sale of food – the risks are similar but the situation involves different legislation and a different approach to managing the risks.

Products Liability Insurance

Retailers face the risk of a claim under the Consumer Protection Act 1987 (CPA) if a product has caused injury, or damage to people's property.

Products liability insurance provides protection, covering the costs of defending claims and paying any compensation that may be agreed or awarded by a court. In some circumstances you could also face prosecution for breaches of product safety legislation. Whilst insurance will cover the costs of defending such an action, you cannot insure against any fines that may result.

There is no legal requirement to have products liability insurance, however, without such cover one claim could put you out of business. Products liability insurance is usually purchased as part of a package that includes public liability insurance. Such insurance is usually purchased via your insurance broker whose role is to advise you on what insurance you need, in respect of the type and level of cover. Brokers will also assist you in obtaining insurance from a suitable and financially stable insurance company.

It is still important to try to prevent liability claims even if you have insurance.

Accidents and the subsequent publicity surrounding a claim may result in damage to your reputation and loss of customers, with long-term financial consequences for your business. Such costs are not recoverable as part of a products liability policy.

Legal Duties - CPA

Prior to the introduction of the CPA, there existed a common law right to sue for injury or damage caused by a product. The CPA established a new legal right allowing anyone who had been injured (or suffered damage to their property) by a defective product to bring an action for damages. The aim of the legislation was to make it easier and fairer for the injured person to secure compensation.

The main provisions of the CPA are:

- The introduction of strict liability, removing the need for the injured person(s) to prove negligence
- The injured person(s) can sue anyone in the supply chain, for example the Producer or Manufacturer, the Own Brander, the Importer, etc. However, in the majority of cases the consumer will sue the person who sold them the product
- Retailers may be able to avoid liability if they can prove that they didn't alter or modify the product, and if they are able to identify other people in the supply chain. Retailers may only face liability if they are unable to identify any of the other persons in the supply chain
- Enforcing bodies can seize goods, issue notices prohibiting the sale of goods and apply for an Order allowing them to seize and destroy goods. They can also force the implementation of a product recall campaign
- The establishing of a common approach to product liability across the European Community



Minimising Your Liabilities

As a retailer your liabilities under the CPA are limited, provided you can identify your suppliers. However, there are a number of steps you need to take in order to minimise your liabilities, as follows:

- Ensure that you purchase your stock from a reputable supplier
- Keep good records so that you can quickly identify the supplier or manufacturer if you receive a claim
- Consider whether you want (or need) to carry out assembly, maintenance or pre-delivery inspections. Such work may only serve to increase your liabilities (see below)
- Importing of goods can increase your liabilities. Whilst there is little problem with imports from other EU countries, the situation is more complex if you import from outside the EU, e.g. toys from the Far East. The act of importing into the EU means that you take on the responsibilities of the manufacturer
- The assessment and control of the risks to customers requires a risk assessment to be carried out. The risks will differ from business to business and be dependent upon the type of product(s) sold. The exact precautions will be evident from a risk assessment

Assembly, Servicing and Working on Products

The risk of being involved in a products liability claim is increased if you carry out any form of assembly or pre-delivery inspection, or if you undertake maintenance or servicing. If you carry out such activities then you must ensure that those employees who complete this work are trained and competent. You may need to collect and retain more records.

What to do When an Accident Occurs or Claim is Made

If a customer suffers an accident it is prudent to take suitable steps to reduce the impact. Express concern, apologise and provide whatever reassurance is appropriate. However, do not admit liability or make comments such as: *'it is all our fault'* or *'this is the xth time this has happened'*.

Replacement of the product may also be a wise move and should not be regarded as an admission of liability. If you do replace the product, keep the alleged faulty/dangerous item for inspection.

If you receive correspondence from the customer or a solicitor acting on their behalf forward it to your broker immediately.

Commence a search of your records. Identify when you received the particular product that it is alleged caused the accident or injury, and also identify the supplier or wholesaler and the batch of products involved.

It may be necessary to consider getting in touch with other customers to reduce the risk of further accident/injury. This is called a product recall but it may be wise to get in touch with the supplier/manufacturer before taking such action. Other retailers may be affected and it is possible that the manufacturer may wish to coordinate the recall.

Defending a Claim

After a claim has been made, your insurer will take over the handling of the incident and deal with any correspondence. Their first step will be to try and 'pass on' the claim to the suppliers, the wholesaler or distributor or, ideally the manufacturer. In order to do this your insurer will need detailed records of deliveries you have received, dates, quantities, etc.

Key Action Steps

- Undertake risk assessments of your products and business
- Identify who could be harmed and how
- Identify the measures you need to take to minimise any risks
- Ensure that you minimise any risks arising from activities such as assembly or servicing
- Establish robust procedures for recording relevant information about deliveries and sales
- Ensure all accidents involving customers are recorded

Additional Information

- [GOV.UK – Guidance on Product Safety for Manufacturers](#)
- [National Trading Standards](#)
- [UK Recall Notice – Product Safety Recalls for the United Kingdom](#)
- Consumer Protection Act 1987



Further risk management information can be obtained from [Aviva Risk Management Solutions](#)

Please Note

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