

# **Report to the Tyne and Wear Trading Standards Joint Committee**

**13 February 2020**

## **Which? Policy Paper: Online Marketplaces and Product Safety, November 2019**

---

**Anneliese Hutchinson, Service Director, Economy, Innovation and Growth,  
Gateshead Council**

---

### **Purpose of the report**

To update the Committee on the publication by Which? of the Policy Paper entitled “Online Marketplaces and Product Safety” in November 2019.

### **Summary**

1. Research and testing by Which? regularly finds large numbers of unsafe consumer products being sold via sellers on online marketplaces, ranging from smoke alarms to child car seats. Online marketplaces have become a common way for millions of shoppers to buy online from an expanding pool of global sellers: 9 in 10 (91%) people have bought consumer goods this way. Consumers value the lower prices and wide choice that these marketplaces can offer, but it is the view taken by Which? That consumer protections have failed to keep pace and fall short of more traditional retailers.
2. Many people assume that online marketplaces are responsible for ensuring that the products sold on their platforms are safe, removing unsafe products from sale and notifying customers when something goes wrong. But this is not the case – legally it is the sellers that consumers largely have to rely on to assure safety.
3. The survey carried out by Which? of online marketplace shoppers in September 2019, found that only 21% were aware that online marketplaces have no legal responsibility for overseeing product safety on their sites. Online marketplaces, which include Amazon Marketplace, Facebook Marketplace, eBay and wish.com, for example, are exempt from liability unless they are aware of illegal content. This leaves consumers vulnerable, particularly when many of the sellers and products originate outside the UK. 70% of marketplace users think the law needs changing so that marketplaces are legally responsible.
4. Some marketplaces have voluntary commitments and internal policies focused on product safety, but these are largely reactive, limited in scope and vary depending on the company. Which? Takes the view that this ‘Wild West of product safety’, requires a more proactive approach by the marketplaces and a robust response by regulators to meet consumers’ expectations and ensure their safety.
5. Which? Takes the view that regulation is required to strengthen the legal responsibilities of online marketplaces and ensure that public authorities have

adequate powers, tools and resources to require action from marketplaces when consumers are put at risk. The organisation also takes the view that the voluntary nature of current checks by marketplaces fails to recognise their role as the primary interface for consumers with the technical, as well as commercial, ability to hold their suppliers to account for consumer safety.

6. Which? Takes the view that clearer government guidance is needed while this legislation is being drafted and implemented, in line with the Codes of Practice envisaged in the Online Harms White Paper.

### **Actions needed**

#### **Online marketplaces should be required to ensure that consumer products offered for sale by sellers on their sites are safe.**

7. The general safety requirement, that applies to economic operators, including producers, importers and distributors (including retailers), in the General Product Safety Regulations 2005 (GPSR) and sector-specific product safety legislation should also apply to online marketplaces along with a defence if they exercised all due diligence.
8. As part of this, online marketplaces should enhance their checks before including sellers on their sites, so that evidence of compliance with safety requirements is a condition of their listing as well as ensuring that products and their manufacturer are clearly identifiable.
9. The limits on liability set out in the EU e-Commerce Directive and associated UK regulations need to be reviewed for product safety.
10. The safety requirement recently adopted by EU legislation for fulfilment service providers for sector-specific product safety legislation should be applied in the UK and extended to cover other consumer products that fall under the GPSR (e.g. textiles, clothing, furniture).
11. The requirement for manufacturers based outside of the EU to appoint an authorised representative with responsibility for compliance must also be extended to other high-risk products that fall under the GPSR – and continue in the UK after EU exit.

#### **The actions that are required by online marketplaces when unsafe products are identified should be clarified.**

12. Online marketplaces should be required to respond within 24 hours and remove unsafe products once they are identified (for example through the EU's RAPEX, other rapid alert systems or by consumer organisations).
13. Online marketplaces should also be required to inform consumers of safety issues and any action needed, to ensure that their suppliers carry out recalls effectively and to prevent recalled products from being listed again.

#### **Enforcement officers should be equipped with appropriate powers, resources, investigatory skills and intelligence to police online marketplaces and platforms and the supply networks that underpin them.**

14. The Office for Product Safety and Standards (OPSS), which should become an independent regulator, must take a lead on oversight of online marketplaces and co-ordinate action across relevant bodies, including Trading Standards, HMRC and postal services to ensure more effective border controls.
15. The UK must maintain and build strong and formalised links with enforcers in other countries to deal with non-compliant products being sold into the UK from online marketplaces based in other jurisdictions.
16. More generally, it needs to be easier for public enforcers to trace online traders so that they can intervene when needed. This should include an obligation for marketplaces to ensure that traders listed on their sites are registered as a business and to provide details to the OPSS or relevant local authority of the online seller.

**There should be greater transparency obligations so that consumers are clear who they are buying from.**

17. UK law should place a requirement on online marketplaces to make it clear to people whether they are buying from a trader, rather than another consumer, and implement recently adopted EU law that requires this after EU exit.
18. Online marketplaces that also trade directly with consumers as their own brand should make sure that it is clear to people when they are buying from a seller who is a different trader.

### **Recommendation**

19. The Committee is asked to note the information as contained within the report.