

Which?

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Online marketplaces and product safety

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Summary

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.¹ People value the lower prices and wide choice that these marketplaces can offer, but consumer protections have failed to keep pace and fall short of more traditional retailers.

Many people assume that online marketplaces are responsible for ensuring that the products sold on their platforms are safe,² 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. Our survey 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.³ 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.

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. This Wild West of product safety, repeatedly exposed by Which? testing, requires a more proactive approach by the marketplaces and a robust response by regulators to meet consumers' expectations and ensure their safety.

Regulation is needed 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 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. 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.⁴

1 Populus, on behalf of Which?, surveyed 2,104 UK adults online between 25 and 26 September 2019. Data was weighted to be representative of the UK population (aged 18+)

2 Which? consumer forum on online marketplaces and product safety, July 2019

3 Populus, on behalf of Which?, surveyed 2,104 UK adults online between 25 and 26 September 2019. Data was weighted to be representative of the UK population (aged 18+)

4 Online Harms White Paper, HM Government, April 2019

Action needed

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

- 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.
- 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.
- The limits on liability set out in the EU e-Commerce Directive and associated UK regulations need to be reviewed for product safety.
- 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 (eg textiles, clothing, furniture).
- 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.

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

- 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).
- 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.

3. 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.

- 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.
- The UK must maintain and build strong and formalised links with enforcers in other countries to deal with noncompliant products being sold into the UK from online marketplaces based in other jurisdictions.
- 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.

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

- 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.
- 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.

Challenges posed by online marketplaces

People are increasingly buying consumer products through online marketplaces and social media platforms. A recent Which? survey⁵ found:

9 in 10 (91%) have bought consumer goods from an online marketplace – and 60% in the past month.

These types of marketplace are no longer novel ways of shopping; they have become normal practice for millions of people. The protections that people can expect when they buy through more traditional retail outlets or websites have not, however, kept pace with the way that so many people are now shopping – and this includes product safety responsibilities. Although there have been some recent attempts to improve the policy and regulatory framework in which these models operate at EU level, significant gaps in consumer protection remain which must be addressed as the UK reviews consumer protection legislation after EU exit.

Research and testing by Which?, as well as its International Consumer Research and Testing (ICRT) sister organisations, has found a variety of unsafe consumer products being sold to people via different online marketplaces. These include faulty smoke and carbon monoxide alarms, toxic toy slime, ‘killer’ car seats, unsafe USB chargers and flammable children’s Halloween costumes.

Unsafe products have been found on sites based within the EU (such as Amazon Marketplace and eBay) as well as outside the EU (eg AliExpress, based in China, and Wish.com, based in the US and China).

When unsafe products have been identified, they have not always been removed swiftly and, in some cases, have reappeared on the same sites. This reflects a lack of clarity over legal responsibilities for online marketplaces and fulfilment houses linked to them, as well as a complex and challenging consumer enforcement environment.

Three main areas of concern have been raised through our testing and investigations:

- **Preventing unsafe products from going on sale:** The extent to which the current legislative framework is sufficiently dissuasive and appropriately targeted to prevent unsafe products being sold via sellers on online marketplaces, including incentivising appropriate policing by the marketplaces to ensure sellers are compliant.
- **Removing unsafe products from sale:** Whether the current legislative framework and/or internal policies of online marketplaces are robust enough to ensure unsafe products are swiftly removed when they have been identified, do not reappear and that consumers are informed about unsafe products.
- **Appropriate independent oversight and challenge:** Whether the public enforcement system is sufficiently targeted at online marketplaces and provides an effective challenge to sites based within the UK, EU and those originating outside of it.

⁵ Populus, on behalf of Which?, surveyed 2,104 UK adults online between 25 and 26 September 2019. 91% of respondents. Data was weighted to be representative of the UK population (aged 18+)

There is also a wider issue beyond product safety that people may not always be aware of the nature of the transaction and who they are ultimately buying from. An April 2019 Which? survey found that when people were asked whether their most recent purchase was from an individual or a business, 1 in 8 (13%) said they didn't know. It may not always be clear, for example, whether people are buying from a trader or another consumer. If it is from another consumer they are not covered by the same consumer rights.

Marketplace models

There are a number of different models for how online marketplaces operate and for which the legal framework may differ. Our analysis focuses predominantly on new products that are sold from traders to consumers via online marketplaces.

Online marketplaces are sites which act solely as a link between seller and buyer. These sites generate income through hosting product listings but the products may not physically pass through any warehouses owned by the site. The dominant players in this global market include Amazon Marketplace, eBay, AliExpress, Wish.com and Rakuten. They are distinct from online retailers which sell products directly to consumers, products which physically pass through their warehouses or distribution centres.

Fulfilment houses, also called fulfilment service providers, have developed alongside online marketplaces or, in some cases, are provided by them as a service to the listed sellers and are the means by which products are distributed to consumers. They are defined in EU legislation⁶ as 'any natural or legal person offering, in the course of commercial activity, at least two of the following services: warehousing, packaging, addressing and dispatching, without having ownership of the products involved, excluding postal services'. In a Which? September 2019 survey, 48% of online marketplace users thought that when online marketplaces themselves are storing and delivering products on behalf of sellers, they are responsible for ensuring the products they are handling comply with product safety regulations. However, this is not the case.

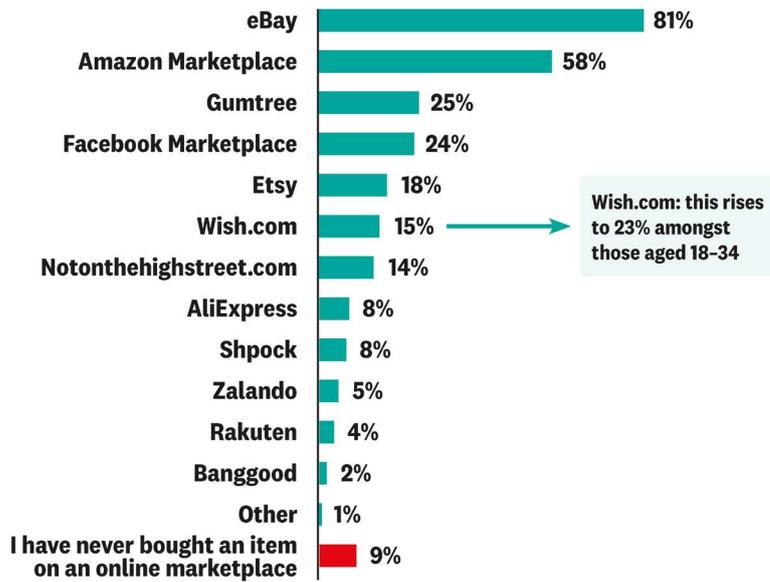
Social media platforms, including Facebook and Instagram, are also increasingly a means by which people can buy and sell products, both new and second-hand and whether from businesses to consumers, or consumer to consumer. Keeping track of these transactions, and who is ultimately responsible for ensuring product safety can therefore be highly complex.

A new approach is critical to ensure that the businesses best positioned to protect consumers are required to do so. Marketplaces and their supply chains also raise new challenges for regulators and require a stronger focus on global enforcement cooperation to ensure compliance with product safety laws.

Which?'s September 2019 survey found that people are buying from a range of marketplaces, with eBay the most common, followed by Amazon Marketplace. Some sites were more popular with younger people. Wish.com, a marketplace run from California and Shanghai, for example, had been used by 15% of people in general – but 23% of 18–34 year olds.

People used online marketplaces to buy a wide range of products: 35% said they purchased items for the home or garden, 23% purchased clothing and other fashion items, 16% bought electrical appliances, 9% toys and other child or baby products, 6% furniture and 5% cosmetics.

Which marketplaces have you purchased from?



Base: Total (2104)

Recurring safety issues

Through product testing and investigations, Which? and its sister consumer organisations have found a range of unsafe consumer products being sold via online marketplaces in recent years.

From the second half of 2018 onwards, Which? tested toy slime,⁷ flammable Halloween costumes,⁸ carbon monoxide alarms⁹ and smoke alarms¹⁰ on sale through Amazon Marketplace and eBay and found numerous unsafe products following British Standards based tests. The websites removed the exact listings immediately when contacted, but within days unsafe alarms were relisted and continue to be sold on eBay. In May 2019, further testing of smoke alarms found that unsafe products were still readily available on eBay and Wish.com.

Which? has also conducted an investigation into unsafe child car seats¹¹ on eBay, Amazon Marketplace and AliExpress, and found examples of products that did not pass the legal requirements to be on sale in the UK and EU. Once again, the sites removed these when contacted but immediately new listings appeared on eBay selling the same type of car seat.

In September 2019, Which? tests found dozens of USB chargers, travel adaptors and power banks listed for sale across Amazon Marketplace, eBay, Wish.com and AliExpress that were unsafe.¹² Nearly three quarters of 33 unbranded or unknown-brand products that Which? purchased from online marketplaces failed electrical safety tests.

The Danish Consumer Council (DCC) has also highlighted problems with unsafe cosmetics sold via online marketplaces. Its researchers ordered 39 different cosmetic products from Wish.com in 2018.¹³ They reported that 21 of these did not have the required ingredient lists. A further product had two

7 [which.co.uk/news/2018/12/hamleys-smyths-and-argos-sell-slimes-containing-chemicals-up-to-four-times-higher-than-eu-safety-limit/](https://www.which.co.uk/news/2018/12/hamleys-smyths-and-argos-sell-slimes-containing-chemicals-up-to-four-times-higher-than-eu-safety-limit/)

8 [which.co.uk/news/2018/10/halloween-kids-costumes-from-bm-and-ebay-fail-flammability-testing/](https://www.which.co.uk/news/2018/10/halloween-kids-costumes-from-bm-and-ebay-fail-flammability-testing/)

9 [press.which.co.uk/whichpressreleases/silent-alarm-unsafe-carbon-monoxide-alarms-found-for-sale-on-amazon-and-ebay/](https://www.press.which.co.uk/whichpressreleases/silent-alarm-unsafe-carbon-monoxide-alarms-found-for-sale-on-amazon-and-ebay/)

10 [which.co.uk/news/2017/08/unsafe-smoke-alarm-revealed-by-new-which-tests/](https://www.which.co.uk/news/2017/08/unsafe-smoke-alarm-revealed-by-new-which-tests/)

11 [press.which.co.uk/whichpressreleases/cheap-and-deadly-which-warning-on-the-killer-car-seats-still-on-sale/](https://www.press.which.co.uk/whichpressreleases/cheap-and-deadly-which-warning-on-the-killer-car-seats-still-on-sale/)

12 [press.which.co.uk/whichpressreleases/power-failure-online-marketplaces-flooded-with-unsafe-electrical-appliances/](https://www.press.which.co.uk/whichpressreleases/power-failure-online-marketplaces-flooded-with-unsafe-electrical-appliances/)

13 <https://ecommercenews.eu/danish-consumer-council-wish-coms-products-violate-eu-law/>

allergenic substances that have been banned in the EU. However, Wish.com did not engage with the DCC, leading the consumer organisation to make an overall recommendation to not purchase personal care products and cosmetics on Wish.com.

Inter-governmental focus

These tests follow on from more overarching work on online product safety by the Organisation for Economic Co-operation and Development (OECD), which has raised concerns about the safety challenges posed by the online sale of consumer products.¹⁴ An OECD online product safety ‘sweep’ conducted in April 2015 and co-ordinated by the Australian Competition and Consumer Commission (ACCC) found, for example, that of the 693 products that were inspected in 17 national jurisdictions for the purpose of detecting banned and recalled products, 68% were problematic. More than half (54%) of the 136 products were noncompliant when inspected for the purpose of detecting products that fail to meet safety standards. The OECD estimated that the level of noncompliance with voluntary or mandatory safety standards was twice as high at a cross-border level, compared with the national level.

Wider investigations

Citizens Advice has analysed complaints about online marketplaces that were reported via its network of bureaux, and found that the most common problems reported by consumers related to faulty goods or goods that went faulty shortly after sale (25% of the complaints about eight of the largest online marketplaces made between 1 July 2017 and 20 June 2018).¹⁵

Electrical Safety First has also highlighted problems with counterfeit and unsafe products, with online marketplaces identified as a particular route by which these counterfeits were sold. Its testing of counterfeit Apple chargers¹⁶ found that 98% of the products failed one or more electrical safety tests. In many cases, the chargers were at risk of overheating, catching fire or delivering a potentially lethal electric shock.

Trade associations have also raised concerns about the lack of policing of online marketplaces. The British Toy and Hobby Association (BTHA)¹⁷ has raised concerns about the extent to which unsafe toys are being sold through online marketplaces. In August 2018 the BTHA bought 200 toys from three of the largest online marketplaces and concluded that 58% failed to conform with toy safety regulations. Issues included lack of traceability warnings, counterfeit copies of genuine products and lack of warning markings. 22% had serious failures that could threaten the physical safety of children such as small parts in toys for under 3s, easily removable button-cell batteries and overly powerful magnets.

14 Online product safety – trends and challenges, OECD digital economy papers no. 261, OECD, 2016

15 National Consumer Week 2018: Online marketplaces scoping research, Citizens Advice

16 electricalsafetyfirst.org.uk/media/1119/counterfeit-and-imitation-apple-chargers.pdf

17 British Toy and Hobby Association (BTHA) White Paper, 20 June 2019

Emerging themes

From Which?'s own tests and these other investigations, there are clear areas of concern about unsafe products on online marketplaces:

- Safety concerns apply across a wide range of products offered on marketplaces, with products aimed at children of particular concern.
- This is a market-wide issue as unsafe products have been found across a range of marketplaces and product types.
- While consumer organisation tests are repeatedly picking up these safety issues, unsafe products are not being identified and dealt with by routine monitoring by marketplaces, or through market surveillance by public authorities.
- Unsafe products on online marketplaces raise particular enforcement challenges as it applies to sites based outside the EU, such as AliExpress, as well as sites based in the UK/EU, such as Amazon Marketplace and eBay.

Current protections and gaps

The role and nature of online marketplace sales is not adequately reflected in current product safety laws. Under the **General Product Safety Regulations 2005**¹⁸ (GPSR), which implement the EU General Product Safety Directive in the UK, there are clear legal responsibilities that apply to producers. The definition of producers includes own-brand producers, and importers where the manufacturer is not based in the UK. Regulations also set out more specific safety requirements for certain consumer products (eg cosmetics, electrical equipment and toys).

Under the cross-cutting GPSR, no producer shall place a product on the market unless the product is a safe product. The following can currently be taken into account to demonstrate compliance with this safety requirement:

- any voluntary national standard of the UK giving effect to a European standard
- other national standards drawn up in the UK
- recommendations of the European Commission setting guidelines on product safety assessment
- product safety codes of good practice in the sector concerned
- the state of the art and technology, and
- reasonable consumer expectations concerning safety.

The legislation is underpinned by the precautionary principle. The Regulations also place requirements on distributors. These are professionals in the supply chain whose activity does not affect the safety properties of a product and so covers retailers and wholesalers who have to act with due care in order to help ensure compliance with safety requirements.

There are also requirements relating to removal of unsafe products from sale.

A ‘due diligence’ defence is included within the legislation. This means that it is a defence to show that the person accused of an offence ‘took all reasonable steps and exercised all due diligence to avoid committing the offence.’

Online marketplaces are not included within these responsibilities. They currently have no legal responsibility for overseeing the safety of the products that are available via sellers on their sites, as the seller is the distributor and may also be the producer.

As some marketplaces can trade under their own name (eg Amazon) as well as in the role of a marketplace (eg Amazon Marketplace), consumers are not always aware of this distinction.

Fulfilment houses have evolved along with online sales, as they store products, package them and ship them to customers on behalf of sellers. These businesses can vary from global operators (eg online marketplaces that also offer fulfilment services) to very small businesses. The extent of their current legal responsibility depends on the range of activities they undertake. They have no legal responsibility for product safety unless they modify the structure, composition or presentation of the product in a way that affects the safety properties of the product and therefore would be considered a producer – or if they have received a mandate to act on behalf of the manufacturer.

It is possible they may be considered a distributor depending on the scope of their activity.¹⁹ EU legislation has recently been agreed which will place new obligations specifically on fulfilment houses (see below) with the intention of clarifying their responsibilities.

More generally in relation to online sales, the **Electronic Commerce (EC Directive) Regulations 2002**, which implemented the EU Electronic Commerce Directive 2000,²⁰ set out basic requirements on mandatory consumer information, steps to follow in online contracting and rules on commercial communications. But the Directive explicitly exempts intermediaries such as online marketplaces from liability for the content they manage if once they are aware of the illegal nature of the hosted content, they remove it or disable access to it 'expeditiously'.

There are therefore limited requirements on online marketplaces to proactively prevent potentially unsafe products from going on sale, or to over-see that products being sold on their platforms are safe.

Removal and recall

The e-Commerce Directive therefore covers the extent to which online marketplaces are responsible for illegal content on their sites. They are not liable if they act expeditiously to remove or disable access to the information after being made aware of it. But there is no time limit specified for what is expeditious.

Four leading marketplaces signed a voluntary pledge that expands on this on 25 June 2018. Alibaba (for AliExpress), Amazon, eBay and Rakuten – France signed a commitment for faster removal of dangerous products sold on their online marketplaces. The Pledge specifies that products notified by national authorities should be removed within two working days and within five working days when the notification comes from a consumer. The European Commission published a progress report on the Pledge in July 2019, which indicated that on average across the four marketplaces, 87.36% of identified product listings were removed within two working days based on government notices provided to their established single contact points – and 92.04% within two days when identified through public recall websites, such as EU Safety Gate. The results are not, however, broken down by marketplace.

The progress report also concluded that all four marketplaces had procedures in place allowing customers to notify them of dangerous product listings, but that these differed from one company to another. Three of the companies were reported to have taken actions to provide information or training to sellers on compliance with product safety legal requirements – but one had not taken any steps to do this. The report also states that all of the marketplaces have introduced measures aimed at preventing the reappearance of dangerous product listings that have been removed. In July 2019, the French online marketplace Cdiscount also signed up to the Pledge.

Which? research suggests that this voluntary commitment is too limited. Despite extensive publicity around unsafe car seats being sold on eBay, for example, new listings for similar seats quickly reappeared on the marketplace, despite initially being removed after Which? highlighted safety concerns. This has also been the case with unsafe smoke alarms available on eBay and Wish.com. The Pledge also does not include the many online marketplaces people may use, as reflected in our survey findings (above).

¹⁹ European Commission notice on the market surveillance of products sold online, Official Journal of the European Union, C250/1, 1.8.2017

²⁰ Directive 2000/31/EC on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on electronic commerce).

Market surveillance authorities across Europe²¹ have also stressed the need for active cooperation by online marketplaces where the supplier of a product is not doing enough to recall a product – including for example, contacting the buyers directly so that it is clear to them that they need to stop using a product or advising them on how to reimburse or replace it. Our September survey found that 8 in 10 (79%) people assume online marketplaces are already involved with recalling unsafe items – and an even larger majority (90%) thought they should be.

Recent legal developments

The EU has recently agreed additional legislation intended to clarify responsibilities for market surveillance and compliance. Under the new Regulation on Market Surveillance and Compliance of Products, which will come into effect in 2021, depending on what the UK decides to do after EU exit, there will be limited additional requirements intended to respond to issues raised by online marketplaces. These requirements, however, only apply to products that are covered by specific legislation and not to all those products that fall under the more general GPSR.

Fulfilment houses have been included in the group of economic operators, along with importers and distributors, which are subject to obligations. These obligations cover verification of conformity and ensuring technical documentation can be made available to authorities upon request; informing the authorities if there is reason to believe that a product presents a risk and co-operating with market surveillance authorities, including taking corrective actions to remedy any cases of noncompliance (or mitigate the risks) when requested or at their own initiative.

In recognition of the increased significance of online marketplaces based outside the EU, manufacturers who are not present in the EU must also appoint an authorised representative who will give information to market surveillance authorities when requested and has to act in case of danger, including carrying out product recalls. This is to ensure that there is a point of contact responsible for compliance where there is no importer or distributor.

Online marketplaces or ‘online interfaces’ as they are described in the legislation are, however, not included as an economic operator. The Regulation explicitly states that in line with the e-Commerce Directive *‘hosting service providers should not be held liable as long as they do not have actual knowledge of illegal activity or information and are not aware of the facts or circumstances from which the illegal activity or information is apparent’*.

Transparency improvements

Another EU Directive²² on better enforcement and modernisation of EU consumer protection rules (the so called Omnibus Directive) was adopted in 2019, but it is unclear how it will be applied in the UK after EU exit.

The Directive requires online marketplaces to inform consumers of whether the third party (supplier) offering goods, services or digital content is a trader or non-trader. When the supplier offering the goods, services or digital content declares its status as a non-trader, online marketplaces will have to provide a short statement that EU consumer rights do not therefore apply. Consumers will also have to be informed of how the obligations related to the contract are shared between the third party and the online marketplace. This is, however, reliant on self-declaration and so needs to be effectively overseen to ensure that people can trust this information.

21 emota.eu/media/1499/prosafe-intervention-emota-20180904.pdf

22 europarl.europa.eu/doceo/document/A-8-2019-0029-AM-111-111_EN.pdf

Current state of protection

The existing requirements, as well as the new legislation that has been adopted, if this continues to apply in the UK after EU exit, will therefore mean overall that:

- Online marketplaces are required to remove unsafe products from their sites once they become aware of them. There is no legal limit for how quickly they need to do this in order to avoid liability – other than ‘expeditiously’.
- From 2021, manufacturers who are based outside the EU will also be required to appoint an authorised representative as a point of contact for market surveillance authorities for products that fall under sector-specific legislation (eg toys, cosmetics, electrical equipment).
- Where a fulfilment house is involved, they will be obliged to ensure that any of these consumer products that they handle conform with EU legislation and to demonstrate this conformity when requested by market surveillance authorities (from 2021). They must inform the authorities when a problem is found and take immediate corrective action when a safety issue is identified.
- Online marketplaces will have to make it clear to consumers from 2022 whether they are buying from a trader or non-trader (ie another consumer).

This therefore strengthens requirements on fulfilment houses, but means that online marketplaces will still legally only have requirements placed on them to respond when informed about unsafe products, rather than to proactively take steps to prevent them being sold on their sites. The new requirements in relation to fulfilment houses do not extend to consumer products that fall under the wider ‘catch all’ GPSR rather than sector-specific legislation (eg clothing and furniture).

Action by marketplaces

Which?’s discussions with some of the main online marketplaces, as well as the local authorities that work with them to ensure compliance, have highlighted that while some of the marketplaces are implementing policies to restrict certain unsafe products from being sold on their sites, their approach is largely a reactive one. This is reflected by the approach set out in the Pledge which focuses on removing unsafe products once they have been identified, rather than pro-actively trying to identify and prevent unsafe products being offered for sale by their suppliers.

There is, however, a lot of variation between the models used by the marketplaces and their approaches, and it is difficult to assess how they compare. In general:

- online marketplaces will generally have some form of ‘on boarding’ process for sellers where they agree to adhere to certain conditions (eg not to sell products that are recalled or unsafe). There may be some checks made at this point.
- intelligence about any safety issues will come from a range of sources including market surveillance authorities, product recall alerts (eg Safety Gate or RAPEX), customer feedback or reviews and consumer organisations.
- marketplaces will monitor listings in order to identify and remove any recalled products – although the extent of this varies.
- sellers may have restrictions placed on them or be suspended from the marketplace if they are caught relisting unsafe products.
- marketplaces will generally require their sellers to contact their buyers to make them aware of a safety issue or to recall an item – and may do some form of checks of this.

Across all marketplaces, there is a failure to take a sufficiently proactive approach to product safety. There is too often a ‘whack a mole’ approach where filters may be updated to restrict dangerous products that have been identified, but which can then be circumvented by suppliers through minor changes to descriptions in product listings.

Voluntary guidance

The OECD has published guidance to help ensure the safety of products sold via online marketplaces. The guidance includes the following relevant safety messages for online platforms/ marketplaces:

- **Identify and remove unsafe products found on your platform.** Conduct regular audits on your platform and explore the use of new technologies to detect and remove unsafe products. Consult domestic and international databases identifying recalled products, such as OECD GlobalRecalls portal. Put in place measures to act against the reappearance of such unsafe products.
- **Promote product safety compliance on your platform.** Invite sellers to visit government websites which describe product safety regulations and to subscribe to their website alerts. Disseminate information to sellers about product safety regulations in markets they sell in. Make safety information easily accessible, even when it is viewed in a mobile or tablet.
- **Make sellers' contact details visible.** Enhance transparency on the true identity of the seller and make his or her contact details available for consumers to manage any queries and complaints.
- **Cooperate with product safety authorities.** Work cooperatively with authorities in local and foreign jurisdictions to help protect consumers from unsafe products.

If followed, this guidance would ensure a much higher level of consumer protection, but it is not legally binding.

Experience from other jurisdictions

A recent case involving Amazon in the US shows how marketplaces may have different policies and level of checks, and therefore levels of consumer protection, across the different countries in which they operate. Amazon.com was found to be selling children's school materials (pencil cases, backpacks, lunchboxes, book covers, bracelets and necklaces) which contained levels of toxic metals above what is legally permitted. As a result, Amazon entered into a nationwide legally binding agreement to block the sale of children's schools supplies and jewellery on Amazon.com without lab reports and other proof from the sellers that the products are not toxic.²³ This applies to Amazon and to sellers on its marketplace.

The details of the agreement, issued by the Attorney General of King's County Superior Court (in Seattle) are that: *'Amazon also will require all current sellers of these children's products nationwide to provide certifications and lab testing from an accredited lab showing that their products are safe...These corporate reforms apply nationwide to all products of this type sold on Amazon.com, including those sourced from retail vendors (where Amazon is the seller of record) or sold by third-party marketplace sellers (where Amazon is not the seller of record)'*. Amazon has also recently issued a chemicals policy in the US as part of its Code for suppliers,²⁴ however, this has not been incorporated into its UK Code.

A recent ruling in Philadelphia's 3rd US Circuit Court of Appeals also suggested that Amazon Marketplace could be held responsible for unsafe products sold via its sellers. The case was brought by a woman who claimed that she was blinded in one eye when a retractable dog lead broke off, recoiled, and hit her in the face. This had been bought from a third-party seller on Amazon's website. The seller had removed itself from the platform and was not able to be contacted. In the ruling, the Judge said that Amazon could be liable in part because the way that it operates *'enables third-party vendors to conceal themselves from the customer, leaving customers injured by defective products with no direct recourse to the third-party vendor.'* This case will now go back to the lower court.

23 atg.wa.gov/news/news-releases/ag-ferguson-amazon-must-remove-toxic-school-supplies-kid-s-jewelry-marketplace

24 aboutamazon.com/sustainability/responsible-sourcing

Consumer expectations

Which?'s consumer research has shown that the current legal responsibilities do not fit with consumer expectations of the level of checks that are in place when they buy from online marketplaces.

Which? ran an online forum of 32 members of the public who had previously used an online marketplace to purchase a new item from a trader. The research was conducted between 24 June and 3 July 2019. The purpose was to understand consumer attitudes to, and expectations of, online marketplaces in relation to product safety in greater depth, building on the survey set out above. The respondents came from across the UK, were a mix of genders and ages and used a variety of EU and non-EU based online marketplaces. The majority of people who took part had made a purchase from an online marketplace within the past three months. During the research current responsibilities for product safety were explained.

We also conducted surveys with people representative of the general UK population who shopped on online marketplaces in April and September 2019.

The research uncovered the following findings:

- **A normal way to shop.** People see many benefits from shopping through online marketplaces and don't generally view them as a different mode of shopping with different consumer rights and safety implications to more traditional retail outlets or websites. **Two thirds (69%) say that low-cost products are the main benefit of buying from them, followed by access to a wide range of products (64%). Those who buy from a non-UK or EU based marketplace are more likely to say low-cost products are a benefit (82%).**

'The benefits are that you have such a huge choice online. You can buy just about anything you could ever want. You can read all the reviews from other people and this is really helpful. The only drawback that I can see is that you can't actually see, touch and feel the items that you want to buy. This could result in having to return something, which can be a bit annoying, but I do feel that the benefits outweigh the drawbacks'.

Female, 65+, North West

- **High levels of trust.** Trust in an online marketplace is often linked to perceptions of its brand, returns policy and customer service. If these were seen to be efficient and fair, participants trusted the marketplace more. **The main drawbacks people stated were the inability to see or try an item before buying it (50%), the possibility of buying counterfeit goods (45%) and items arriving that are different to the description or listing (44%).**

'When it comes to sites like Amazon that are very well known, I have absolutely no problem buying from them, even if the product I'm ordering seems like it might be a risky bet in terms of quality, because I know Amazon has policies and systems in place that'll make it easy for me to get a refund if there's any kind of problem'.

Female, 18–24, South West

- **Safety is assumed.** People generally assume that products they buy, whether online or on the high street, are safe. When asked about the drawbacks of using online marketplaces, only 33% say the possibility of buying unsafe products. Younger consumers are least likely to say that product safety issues are a potential drawback (27% of 18–34 year olds think this, compared with 40% of people aged over 55).

‘I assume – probably wrongly – that the goods I buy are safe, simply because they are not from a bricks-and-mortar source doesn’t make any difference. Obviously checks are made [on products]; the EU rules are very strict on that. So I wouldn’t think twice about buying from a reputable source on the high street or online’.

Male, 45–54, South East

- **Little impact on decisions.** Assessing the safety of a product is not an important factor when purchasing items on online marketplaces. Our September survey found that the main reason people don’t mention safety issues as a possible drawback from shopping this way was because they only buy from sellers that they think are trustworthy. A quarter (25%) said that they didn’t think there were safety issues for the types of products they buy. 18% think that there is a very small chance you could get an unsafe product, but don’t see it as a real risk. Food and electrical items are the exceptions, with some people claiming they stick to well-known brands when buying these items.

‘It does depend on the product... but if it’s something that might harm or injure myself or my family then safety is really important. I’m particularly wary with anything that has the potential to catch fire or anything I might eat’.

Female, 45–54, West Midlands

- **Role of reviews.** Consumer reviews play an important role in helping people assess the safety of a product for sale on an online marketplace. A number of positive reviews signifies that the product is good quality, and therefore safe. 91% of online marketplace users think that ‘good customer reviews’ are an important attribute when buying an item on an online marketplace. Just 1 in 10 (10%) say that they are not important when buying from an online marketplace. When asked what they look out for in reviews, the most common answers were about the quality of the item and the accuracy of the description. Half of respondents (49%) in our September survey said that good customer reviews would reassure them about safety.

‘I religiously read the reviews and these, rather than anything else, convince me that I am purchasing genuine products’.

Female, 55–64, South East

- **Surprise at limited responsibilities.** People who took part in our online forum were surprised that there were not more responsibilities placed on the online marketplaces, as compared with the sellers. Many people assume online marketplaces are already involved in product safety checks and the recall of unsafe items – 59% wrongly assume online marketplaces had either sole or joint responsibility for ensuring products for sale on their sites meet safety requirements.

‘The discussion today makes me feel very stupid as I don’t know anything about the journey or checks. I buy a lot from Amazon and eBay and do know that their goods come from all over the world... I don’t know for sure but I imagine they must have to go through a lot of safety checks, although I don’t know how or where this is done’.

Female, 55–64, East Midlands

'I'm really surprised to learn that Amazon has no responsibility (yet) for the safety of products it fulfils from its warehouse. It's also kind of a surprise to me that the sellers are the ones legally responsible, although it does make sense they'd have at least some responsibility'.

Female, 18–24, South West

- **Support for stronger controls.** When current responsibilities were set out, participants in Which?'s online forum thought that the current legislative landscape was not working well enough to protect people when they are buying items on online marketplaces and needs improvement. 70% of online marketplace users surveyed also thought that that legislation should change so that online marketplaces have a legal responsibility for overseeing the safety of products available on their sites. There is also strong support for online marketplaces to have to take down illegal/unsafe items within 24 hours of being alerted, with 85% of online marketplace users supporting this. Only 9% of online marketplace users are happy with the current situation and don't want marketplaces to take more responsibility for ensuring safety.

'I thought I was quite clued up when it came to online purchasing. I thought as long as I read the reviews and stuck to branded names I couldn't go wrong. I assumed that buying from a huge marketplace such as Amazon, I would be protected if things went wrong and was surprised to learn how they are not accountable if this happens'.

Female, 55–64, South East

Challenge and enforcement

A robust legal framework that clarifies responsibilities in line with these expectations is clearly needed, however it is essential that this is supported with effective compliance and enforcement by public authorities. Sales via online marketplaces can, however, raise challenges and policing the system can be even more complex when the sites are based outside national jurisdictions.

In the UK, most responsibility falls to trading standards departments within local authorities. Which?'s report '*Creating a successful enforcement system for UK consumers*', published in February 2019, highlighted the strain that local authority trading standards services are under, calling for a much stronger, independent, centralised enforcement body that could put consumer interests first.

National co-ordination has been strengthened by the establishment of the Office for Product Safety and Standards (OPSS) within the Department for Business, Energy and Industrial Strategy (BEIS) but this has yet to demonstrate that it can take a more proactive approach to product safety challenges and that it is prepared to stand up for consumer protection.

Successive government administrations have also heavily promoted primary authority partnerships (PAPs) between businesses and local authorities, where the business receives tailored, assured advice from one local authority. In the case of Amazon, this is Hertfordshire Trading Standards. For eBay, it is Westminster City Council. There is also an e-crime National Trading Standards (NTS) team, hosted by North Yorkshire County Council, which co-ordinates national activity. Primary authority, however, does not help with those marketplaces or platforms that are based outside of the UK or EU, such as Wish.com. The OPSS is currently looking at online sales and has taken over the lead on this from NTS.

In its Strategy²⁵ it committed that '*Working alongside primary authorities, [OPSS] will strengthen oversight of significant manufacturers, including those producing white goods and electrical goods, importers and distributors, including online platforms.*' It has also committed to '*examine supply chains and routes to market to ensure that products can be intercepted quickly and efficiently, including those distributed through online sales.*' It has a project on fulfilment houses and is scoping out business models with the aim of reviewing any gaps in legal responsibilities.

The European Commission issued a notice on the market surveillance of products sold online in 2017.²⁶ This was intended to contribute to a better understanding of EU product legislation and a more uniform and coherent application of that legislation for products sold online. This recognised the challenges, particularly where the economic operator is based outside the EU, but stated that Member States do have the ability to block webpages offering dangerous or noncompliant products, if they need to.²⁷ It encouraged cooperation with authorities in other jurisdictions, as well as with Customs to control shipments of products at the border.

25 [gov.uk/government/news/new-strategy-launched-to-keep-consumers-safe-and-protect-businesses-that-do-the-right-thing](https://www.gov.uk/government/news/new-strategy-launched-to-keep-consumers-safe-and-protect-businesses-that-do-the-right-thing)

26 Commission notice on the market surveillance of products sold online, European Commission, Official Journal of the European Union, 1.8.2017

27 European Commission notice on the market surveillance of products sold online, Official Journal of the European Union, C250/1, 1.8.2017

The EU Market Surveillance and Compliance Regulation was intended to strengthen the system and also stresses the importance of public authorities being able to require unsafe products to be removed from platforms: *‘In cases where there is a risk of serious and irreparable harm to end-users due to noncompliance, market surveillance authorities should be able to take measures, where duly justified and proportionate and where there are no other means available to prevent or mitigate such harm, including, where necessary, requiring the removal of content from the online interface or display a warning....’*

Intelligence sharing and co-operation between market surveillance authorities is particularly important in order to deal with cross-border sales and address safety concerns which are outside national jurisdictions. The EU has two main systems, the Information and Communication System for Market Surveillance (ICSMS) which enables sharing of information between authorities and RAPEX. The European Commission has proposed upgrading these systems and enhancing the information that is exchanged through them, including from national customs authorities.

As the UK leaves the EU, it is unclear what access it will have to these systems and to mechanisms for reciprocal co-operation and enforcement action.

International cooperation

Online marketplaces raise challenges for market surveillance and enforcement authorities because their sales are cross-border and therefore will cut across national jurisdictions. International collaboration and cooperation is therefore important.

The EU, US and China have established a tripartite initiative for co-operation on product safety and meet every two years. It is important that the UK continues to be part of this once it has left the EU. At the last joint Summit in 2018, there was a focus on product safety issues raised by online marketplaces²⁸ and the voluntary pledge. A joint statement was published which stressed that: *‘The participants view, as essential, enhanced collaboration between third-party platforms and public authorities responsible for product safety, as well as continued efforts by the platforms to help ensure that only safe products are offered by their sellers’*. The three parties also committed to co-operate in enforcement on major product safety matters.

Recent developments

The new EU Regulation on Market Surveillance and Compliance, if still implemented in the UK by 2021, will improve intelligence sharing between public authorities. It includes an article on international cooperation to exchange data about dangerous products, provided it is based on reciprocity and confidentiality will be ensured. The legislation also strengthens traceability and accountability in the supply chain by requiring the full name and address of the manufacturer to be indicated on the product.

Market surveillance authorities would also have new tools such as the right to carry out mystery shopping under a hidden identity (as this is not possible in all EU Member States) and to require information service providers to take off certain online content if unsafe products are sold through these channels.

The Directive on better enforcement and modernisation of EU consumer protection rules also brings in additional transparency requirements.²⁹ These are to inform people using online marketplaces about the main parameters determining ranking of offers, and whether they enter into a contract with a trader or a non-trader, such as another consumer.

28 ec.europa.eu/info/sites/info/files/jointstatementasofjune_20-all_comments_en_and_cn_with_liu_edits_clean_ve_.pdf

29 europa.eu/european_council/document/A-8-2019-0029-AM-111-111_EN.pdf

Broader trade and policy initiatives

There are potential opportunities to address issues relating to the safety of products sold through marketplaces through broader trade and policy initiatives that are looking at the nature of trade and content on online marketplaces in a much wider sense.

E-commerce trade negotiations

A group of interested countries is pursuing work on a multilateral e-commerce agreement through the World Trade Organisation (WTO).³⁰ The scope of these negotiations is still to be defined. It is primarily focused on facilitating trade, but there is an opportunity to ensure that product safety responsibilities are integrated, along with broader consumer rights, helping to promote a more responsible approach and greater international collaboration. This is a key test of the WTO system and an opportunity to develop an agreement relevant to the evolving nature of cross-border trade where existing agreements, including those relating to plant and animal health (the Sanitary and Phytosanitary (SPS) Agreement) or wider standards through the Technical Barriers to Trade (TBT) agreement may be superseded.

Broader online harms

The Online Harms White Paper³¹ proposes to extend responsibilities of online platforms, including a duty of care on social media companies to take reasonable steps to keep their users safe and tackle illegal and harmful activity on their services. It aims to promote a culture of continuous improvement among companies, and encourage them to develop and share new technological solutions rather than complying with minimum requirements. The White Paper sets out plans for a new regulatory framework which will increase the responsibility of online services in a way that is compatible with the EU's e-Commerce Directive (where liability for illegal content is limited unless the company is aware of the existence of illegal content, and fails to remove it from their services in good time).

A new regulator may be created to enforce the new duty through Codes of Practice that it will develop. The regulator will assess whether companies have fulfilled their duty of care by reference to relevant Codes and compliance with the company's own terms and conditions. Failure to meet these obligations may result in enforcement action by the regulator. There will also be a strong focus on transparency. The regulator will have the power to require annual transparency reports from companies in scope, outlining the prevalence of harmful content on their platforms and what measures they are taking to address it.

This therefore provides an opportunity to give greater attention to product safety risks – and to adopt a similar approach in terms of responsibilities, by ensuring that online marketplaces identify and remove products that have potential to cause harm.

It has also been reported that the EU is working on a broader Digital Services Act, also intended to look at online harms, and which would replace the e-Commerce Directive.³²

30 [wto.org/english/tratop_e/ecom_e/ecom_e.htm](https://www.wto.org/english/tratop_e/ecom_e/ecom_e.htm)

31 Online Harms White Paper, HM Government, April 2019

32 EU draws up sweeping rules to curb illegal online content, Financial Times, 24th July 2019

Conclusions and recommendations

Consumers currently don't have enough protection when buying products from online marketplaces. The number and range of unsafe products that are available for sale on them demonstrates this. While suppliers are ultimately responsible for ensuring that their products comply with product safety law and standards, online marketplaces need to take greater responsibility for ensuring that the products offered for sale on their sites are safe. They also need to ensure that unsafe products are swiftly removed, and do not reappear, once they have been identified.

Regulation is needed to clarify these responsibilities, addressing the gaps in the current framework and ensuring that public authorities have adequate powers and tools to require action when consumers are put at risk. As the UK leaves the EU, it will be transferring EU legislation into UK law. This should be used as an opportunity to ensure that protections set out in the current legislation are enhanced.

Clearer government guidance should clarify what is required while this is being drafted and implemented, in line with the Code of Practice approach set out in the Online Harms White Paper.

As many online marketplaces are based outside UK jurisdictions, international cooperation will be important, along with more effective border controls, to prevent unsafe products being delivered direct to peoples' homes.

People also need to have a clearer understanding of who they are buying from, particularly where there is potential to misunderstand whether the product is being offered for sale by a trader or another consumer.

Preventing unsafe products from going on sale

The current legal framework, even with recent revisions that have still to come into effect, fails to address the extent to which consumers now interact with online marketplaces. While some marketplaces have instigated policies and systems to address safety to some extent, these are very variable. The voluntary nature of these checks also 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.

Our consumer research suggests that people already expect that the marketplaces do have some responsibility:

'Even if they're not actually directly selling the product, they're making money off the merchants on their site, so I think they have a responsibility to be the front line for making sure the products are safe – maybe not doing the checks themselves, but at least verifying the right checks have been done. I don't think a lot of people realise they actually have no legal responsibility.'

Female, 18–24, South West.

Online marketplaces therefore need to have a specific responsibility for ensuring consumer product safety, alongside other economic operators currently specified in legislation. This will help ensure that they proactively take steps to ensure that their suppliers understand product safety obligations

and that they prevent unsafe products from going on sale. This requirement should be accompanied by a due diligence defence permitted in the General Product Safety Regulations.

Fulfilment houses or centres have an important role in ensuring that products are delivered to consumers. They have already had stricter requirements placed on them for ensuring safety and cooperating with public authorities through the EU Regulation on Market Surveillance and Compliance of Products. But this has still to be implemented in the UK and does not cover all consumer products.

Recommendation 1

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

- 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.
- 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.
- The limits on liability set out in the EU e-Commerce Directive and associated UK regulations need to be reviewed for product safety.
- The safety requirement recently adopted by EU legislation for fulfilment service providers for sector-specific product safety legislation should be extended to cover other consumer products that fall under the GPSR.
- The requirement for manufacturers based outside the EU to appoint a legal representative with responsibility for compliance must also be extended to other high risk products that fall under the GPSR (eg textiles and clothing, furniture) – and continue in the UK after EU exit.

Removing unsafe products from sale

There should be a requirement on online marketplaces to ensure that they remove any unsafe products they become aware of as swiftly as possible, in line with the expectations expressed in Which?'s consumer research:

'I think in this day and age of fast moving digital presence a 24 hour target [for removing unsafe products] is the very least I would expect from such big companies.'

Male, 35–44, North West

Although 'expeditious' removal of noncompliant products is a requirement under the e-Commerce Directive, no timeframe is specified. Online marketplaces also need to be held accountable for ensuring that people are told about any safety issues and action needed as a result, as well as ensuring that the suppliers on their platform recall unsafe products when they have been identified. They also need to ensure they have systems in place to prevent noncompliant products reappearing on their sites.

'I think the marketplace needs to be the main point of contact [for recalling unsafe products], as the one operating the site and lending their brand to the products – consumers are much more likely to remember the product they bought as coming from the marketplace (Wish.com for example) than remember the name of a third-party seller, and are more likely to pay attention to contact from them on their order I think'.

Female, 18–24, South West

Recommendation 2

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

- 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).
- 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.

Appropriate independent oversight and challenge

The public enforcement system needs to be able to keep pace with the way that online marketplaces trade and how the goods provided through them reach consumers, including when products come directly to people from outside the EU. This includes having a more coordinated and proactive approach that brings together a range of skills, expertise and intelligence. Enforcement officers need to be equipped with appropriate investigatory skills in order to effectively police online marketplaces and platforms and the supply networks that underpin them. Co-operation is also needed between all border agencies and other bodies that have an important role in 'policing' supply chains.

It is essential that the UK has strong links with enforcers in other countries and that there are memoranda of understanding (MoUs) in place to help deal with noncompliant products being sold into the UK from online marketplaces based in other jurisdictions. This includes ensuring on-going cooperation with EU market surveillance authorities after the UK leaves the EU and as part of the EU, US, China tripartite initiative on product safety.

Recommendation 3

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.

- 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.
- The UK must maintain and build strong and formalised links with enforcers in other countries to deal with noncompliant products being sold into the UK from online marketplaces based in other jurisdictions.
- 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.

Improved transparency

If consumers are buying direct from other consumers, rather than from other traders, they are not covered by the protections described. However, Which?'s consumer research has shown that people cannot easily tell who they are buying from and may mistake another consumer for a trader.

'What we (consumers) need is a clearer indication on these platforms from whom you're buying from, where they are based and if the seller is selling direct to you without the involvement of the platform.

A simple box or a panel on the marketplace detailing all this information would suffice.'

Male, 55–64, Eastern

Recently adopted EU legislation will make it a requirement for online marketplaces to make this clear. It is important that these obligations are implemented in the UK after EU exit.

Recommendation 4

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

- 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.
- 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.

Which?

Which?, 2 Marylebone Road,
London NW1 4DF
Phone +44 (0)20 7770 7000
Fax +44 (0)20 7770 7600