



### Introduction

#### The Problem with Online Sales of Electrical Products

Whilst the online sale of electrical products offers advantages in terms of greater choice and improved value for consumers, there are also a number of potential safety and consumer rights related issues. As the online retail sector of the economy grows year-on-year, these problems have become of increasing concern to consumers, manufacturers, retailers and enforcement bodies.

**In order to obtain a more strategic view of the issues and so help inform potential solutions, the All-Party Parliamentary Group on Home Electrical Safety conducted a short consultation with its stakeholders into attitudes towards the issue and sought suggestions on how to improve the current environment.**

This issue has been of key interest for the APPG in recent months and the Group as a whole is of the opinion that much more needs to be done to deal with this problem. The discussions the APPG has had with the large online marketplace companies has to date not proven as productive in securing effective change as hoped. Therefore, key stakeholders were asked questions to enable the APPG to determine the appropriate action and strategic direction for change for the immediate future.

The following document compiles the responses received.

#### Executive Summary

Based upon the contributions received in response to the call for evidence, the APPG Home Electrical Safety concludes:

- A. Online marketplaces are enabling the sale of counterfeit and substandard electrical products with little effective oversight or transparency, to the detriment of the public. **Legislation should be introduced to 1. Ensure online market places take responsibility for what is being sold on their sites. Their sellers must be clearly identifiable and accountable (i.e. whether they are a private seller or business and their geographic location) and 2. Introduce a legal responsibility on online marketplaces to remove counterfeit and unsafe products as soon as possible and cooperate fully with enforcement agencies.**
- B. Enforcement agencies on the whole have sufficient powers, but need the resources to properly enforce them. **Government should ensure that all enforcement is adequately funded and reverse funding cuts where necessary, particularly post Brexit.**
- C. There needs to be improved co-operation and information sharing between different tiers of enforcement and with online marketplaces. Jurisdictional limits and the reach that different tiers of enforcement bodies have is insufficiently clear and a barrier to effective enforcement. **The OPSS should be given the task of co-ordinating and improving interaction between enforcement agencies and online marketplaces.**
- D. Online marketplaces benefit from the UK's product safety regime, and so should contribute towards its operation, similar to other industries. **The UK Government should consider how online marketplaces could help contribute to enforcement and should lead conversations with major marketplaces on this issue.**
- E. Consumer education must be improved and is key to reducing the risk from counterfeit and substandard electrical products. **The UK Government should work with stakeholders to ensure greater consumer awareness through national advertising campaigns.**



### Questions and Responses

#### 1. What do you believe are the current problems with online sales of electrical goods?

A number of respondents believe that counterfeit and substandard electrical goods are being openly sold without sufficient regulation. The main problems with the online sale of electrical goods are that unsafe counterfeit / substandard electrical products are commonplace and advertising is misleading. Counterfeit and substandard electrical items are produced cheaply, often failing to meet safety standards and have shorter lifespans than legitimate products. Counterfeit electrical products often either do not have safety critical components, or have them replaced with poor quality substitutes, **putting the consumer at risk of electrical shocks, injuries, and fires.**

Imported electrical items sold online to UK consumers are not subject to adequate scrutiny to determine whether they are counterfeit or safe to use. In general, products may not be tested to European/ British Standards before they are offered for sale via online marketplaces and so the consumer cannot determine whether products are safe to purchase and use. Overall there is a lack of regulation regarding the listing of goods, with no controls over who can offer a product for sale.

Determining jurisdiction - which agency has the powers and responsibility to deal with problem traders - has been repeatedly identified as a key problem by contributors. Determining the correct enforcement or surveillance body is a barrier to effective enforcement of the existing regulations. Both the prevalence of non-UK sellers of counterfeit or unsafe products and the legal status of fulfilment houses are impediments to enforcement agencies. If a seller is based overseas the action that UK regulators can take is severely limited.

Another issue related to the jurisdictional problem is that those bodies best placed to deal with problem traders may be unable to identify them without support from larger bodies. For example, local authority Trading Standards will be able to deal with an online seller of unsafe/counterfeit items based in their area, but only if they have consistent and effective methods of identifying the seller. A national body could have a consistent and prolonged programme of monitoring to identify such sellers, and when they are identified they can refer the matter to the local service under a service level agreement.

It is suggested that there is a lack of consumer information about general product safety or how the public can check if products are genuine. Counterfeiters may be taking advantage of such a perceived lack of consumer awareness by creating fake websites which have a similar appearance to those of genuine brands. This is done in an attempt to sell counterfeit products directly to the unsuspecting consumer. Such websites may also be harvesting consumer payment and personal identification information for further criminal activity.

The majority of counterfeit electrical products are thought to be initially purchased through Chinese based marketplaces and then shipped via courier into the EU. It was noted that the shipping industry, which transports the majority of these products, can be particularly difficult to engage with. After entering the European market these products are then offered for sale on local online platforms such as EBay and Amazon and also increasingly through social media.

For the consumer, whilst many of these marketplaces are able to provide remedies when dealing with missing products or those that are not as described, their solutions do not address non-compliant products. Further, the existing processes resolve the problem for one purchaser at a time whilst not addressing the overall issue.

In a series of written questions to the department for Business, Enterprise and Industrial Strategy (BEIS) the Government was asked what assessment has been made of the impact of counterfeit and substandard goods

# The All-Party Parliamentary Group on Home Electrical Safety

## The Sale of Electrical Products Online



on the UK economy. In response the Government stated that at present no data estimating the cost to the economy of counterfeit or substandard electrical products is held by the department<sup>1</sup>.

The Anti-Counterfeiting Group (ACG) will be releasing a report relevant to this matter, based upon the outcomes of the Anti-Illicit Crime and Counterfeiting Workshop. At the time of this document's publication it was not publically available.

### **Summary – Respondents believe that:**

- Online marketplaces are selling counterfeit and substandard electrical products with little oversight or awareness.
- A lack of clarity regarding the limits of powers and responsibilities hinders effective enforcement.
- There is limited remedy for consumers affected by counterfeit products.
- Consumer education requires improvement.
- The marketplaces are insufficiently transparent on the origins of products and locations of the traders registered on their platforms.

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<sup>1</sup> <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2019-01-29/214119/>



### 2. What more powers would you welcome to regulate online sales, and deter sales of counterfeit / substandard electrical goods?

A number of respondents stated that broadly the existing legislation is believed to be sufficient and that the major issue facing enforcement is that of available resources. In particular, increased funding and checks at ports would be welcomed, and there needs to be better international co-ordination of market surveillance activities.

Whilst the legislation currently in force is considered sufficient, the time and money it takes to deal with each infringer for a local authority is considerable. Further, it is often the case that as soon as a seller is dealt with, they reappear under a different name and continue trading, or other unscrupulous sellers take their place.

Giving enforcement bodies the power to instruct online sales platforms to suspend or ban a trader would be welcomed and could form part of a new legal responsibility placed upon these platforms. Presently complaints and removal requests are considered to be treated as a matter of cooperation, rather than an obligation.

More statutory regulation on fulfilment houses that are utilised by some marketplace platforms would also do much to control the goods that they take in and out.

As raised in the responses to question one, a key issue is not a lack of power but jurisdictional – that of where exactly responsibilities and powers end. **As the majority of counterfeit and unsafe electrical products originate outside of the UK, effective enforcement requires international co-operation.**

It is therefore proposed that new protective measures supporting brands and consumers are required. This can only be achieved from a collaborative effort of brands, marketplaces, regulators and consumers. Consumers can play a part in this by reporting fake goods and not turning a blind eye because of the cheap prices of the products.

Several online marketplaces have taken some action to protect manufacturers and retailers. Amazon enables brands to register their logo and IP to make counterfeit products more easily recognisable, and also operates a “brand gating” scheme, where certain brands cannot be sold on their platforms unless the seller produces receipts from the brand owners and a letter confirming authority to sell. Ebay runs a system called Authenticate, where purchasers can pay a third party expert to verify authenticity of a product before purchase, and Alibaba monitors and automatically takes down listings of counterfeit products. Contributors point out that these platforms have vast amounts of data and significant resources at their disposal. If they employed the technology to better understand the problem and shared that intelligence with their counterparts, this could have a positive effect on the success of enforcement.

Consumers should be advised (where possible) of how to check if their product is counterfeit, and online sellers of new products should routinely make a declaration that the products are genuine and not subject to a recall or safety notice. The Office for Product Safety and Standards (OPSS) and Trading Standards could raise public awareness about any successful prosecutions or actions against rogue sellers and highlight the risks of buying such products.

The National Audit Office report ‘Protecting consumers from scams, unfair trading and unsafe goods’ was published in December 2016<sup>2</sup>. Key facts in the report included a 56% reduction in Trading Standards officers since 2009 and a 46% reduction in nominal budgets for local authority Trading Standards services since 2011.

The opinion was given that the Government’s response has not kept pace with the growth in online consumer fraud and that the loss of resource and the downsizing of services has led to increased fragmentation in coverage, particularly at the local level. This has also decreased the ability to support national issues.

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<sup>2</sup> <https://www.nao.org.uk/report/protecting-consumers-from-scams-unfair-trading-and-unsafe-goods/>

# The All-Party Parliamentary Group on Home Electrical Safety

## The Sale of Electrical Products Online



The Society of Chief Officers of Trading Standards in Scotland (SCOTSS) published the 2017 workforce survey on 4<sup>th</sup> September that year<sup>3</sup>. This report also highlighted a reduction in effective capacity, and an anticipated staffing crisis in the near future due to an ageing staff and lack of recruitment and training.

Responding to a written question on this topic, the responsible minister stated that “the Government believes the existing legislative framework is robust and enables the appropriate action to be taken against online platforms and retail sites that allow sales of counterfeit and substandard electrical goods.” There are no plans at present to introduce further regulation in this area<sup>4</sup>.

### Summary – Respondents believe that:

- Enforcement bodies are insufficiently resourced.
- Clear protective measures for both brands and consumers are needed.
- Jurisdiction is a major issue for effective enforcement.

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<sup>3</sup> <http://scotss.org/files/workforce2017.pdf>

<sup>4</sup> <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2019-01-29/214116/>



### 3. How should sales on online platforms be better enforced? Who should do this work?

Responders overall said they wanted to see Trading Standards supported by the OPSS and a dedicated central enforcement resource to monitor and enforce non-compliance. Trading Standards or the OPSS would be a logical choice to carry out enforcement against rogue online platforms, and Trading Standards should be empowered to pursue such cases. It is considered to be a question of finances, exacerbated by a fragmentation of Trading Standards Services meaning no one service is big or co-ordinated enough to tackle the issues affecting the large marketplaces.

**There is a role for improved intelligence sharing.** Local trading standards services will have a wealth of invaluable information, the regional teams have their own intelligence resource and nationally there are the National Intelligence Teams. Additionally, there are other national bodies with intelligence such as the UK IPO, National Crime Agency, police services and the Office for Product Safety and Standards. These national organisations need to share intelligence effectively as this will efficiently and correctly identify the most appropriate response.

Adoption of the Intelligence Operating Model (IOM) could offer a solution, where each threat is assessed and dealt with by the appropriate level of enforcement. Local threats would be dealt with by local Trading Standards Services, regional threats by the Regional Investigations Teams and any national level problems handled by the National Trading Standards Teams.

Local Trading Standards teams hold a wealth of information and have regional intelligence resources along with access to the National Intelligence Team. Industry provides intelligence via the UK IPO to which Trading Standards has access, but this system needs to be streamlined and **relevant intelligence should be provided directly to the local Trading Standards Service** for where the trader in question is located.

Consideration should also be given to the online marketplaces supporting enforcement efforts, as other commercial enterprises contribute successfully to the enforcement activity that their businesses require, such as rail operators and football clubs.

#### **In Summary – Respondents believe that:**

- Intelligence sharing needs to be improved.
- The OPSS should support local enforcement with dedicated centralised monitoring.
- Online marketplaces should support and contribute to enforcement.



### 4. Should there be more powers to help improve consumer protection in these areas?

As in previous questions this was regarded as **an issue of resources rather than powers**. One respondent stated that they considered it would take between £500,000 and £1,000,000 in order to legally challenge one of the major marketplaces. Better enforcement is also a matter of the lack of staffing resources, not legislation.

Transparency is key for the consumer to be able to make an informed decision. To this end, each listing should require the seller's full verifiable details, against whom enforcers can take action and consumers can assert their legal rights. Platforms could insist that large-scale sellers have to be registered for the collection of VAT and provide registered office addresses if applicable.

If steps such as this are not taken, platforms should be required to assume responsibility for their role in facilitating this activity. Further, platforms should be made liable for sales of unsafe or counterfeit products in cases where the sellers are based outside of the UK and do not engage with enforcement agencies and cannot be legally pursued.

There is also the ongoing need for **consumer education** in what to look for to avoid purchasing unsafe and counterfeit goods. There are sufficient legislative requirements existing for the provision of pre-contract information to consumers in order for them to make informed choices, cancellation rights and restitution for non-compliant goods. If marketplaces and selling platforms did not host sellers who failed to provide this information, this would go some way to improving consumer protection.

Legitimate sellers should provide information on Declarations of Conformities for electrical goods and supply the relevant certificates with products to provide assurance to consumers that the product has been correctly risk assessed against all the relevant standards applicable.

The definition of 'distributor' in Regulation 2 of the General Product Safety Regulations 2005 should be invoked to place a requirement on online sales platforms to assume some responsibility for the unsafe goods which are offered for supply via their platforms.

#### **Summary – Respondents believe that:**

- Transparency must be improved – sellers must be identifiable, locatable and accountable.
- Online marketplaces should be required to assume more responsibility for sales hosted on their platforms.
- Consumer education on how to purchase safely online should be improved.



### 5. How should private sales of electrical goods be regulated “online” and “offline”?

Several respondents did not believe there to be a need for regulation in respect of private sales between two parties but it must be clear at the point of sale that it is a private sale. If any seller receives a counterfeit product, they should have a legal obligation to inform Trading Standards. Contributors think that too many sellers are turning a blind eye to substandard electrical products being sent back by the customer by simply replacing the item.

In respect of genuine private sales it was suggested that the sale of any counterfeit or unsafe products may constitute a breach of contract in civil law. There is difficulty with private sales as there is a need to prove that the seller is “in business” or acting as part of a trade or business for the appropriate legislation to have any effect. This would appear to be a loophole regarding second-hand goods purchased from individuals (rather than retailers), which may affect how a consumer is able to seek redress. Consideration should be given to addressing this loophole, and there also needs to be clear public information and awareness around these consumer rights.

In order to separate businesses from private sellers, separate and clearly differentiated forums or marketplaces for business and private sellers were suggested, as these could then be more easily regulated in different ways.

#### Respondents believe that:

- It must be clear at point of sale whether the seller is a business or an individual.
- Upon receipt of a counterfeit product sellers must inform Trading Standards.
- There needs to be improved public awareness regarding consumer rights.





### 6. Should online sales platforms fund better regulation? If so, how?

Responses to this question from stakeholders were mostly in favour of the sales platforms funding any proposed regulation and associated enforcement activity, with either an online trading tax, a levy on each individual online transaction or a general increased taxation rate on the platforms as a whole being suggested.

The idea of a levy, in the form of a regulation licence to operate in the UK, was suggested as being worthy of serious further consideration.

However, a number of concerns were raised. Implementation could be difficult as there would be the risk of the same non-compliance issues affecting 'bricks and mortar' sellers.

There was a concern that if these selling platforms were to fund better regulation through taxation or similar measures they could pass this cost directly or indirectly on to the consumer. Additionally, the question of funding better regulation may create some issues for local authorities

It would be far better for online marketplaces to ensure they have sufficient resources to ensure that the sellers on those platforms are compliant in respect of pre-contractual information. Marketplaces should also ensure that there is intelligence sharing with enforcement bodies and effective partnership working to ensure speedy resolutions to both single consumer issues and the seller at large.

There is a key need to improve partnership working with online selling platforms, and in particular to educate them on the seriousness of the risks posed by counterfeit and unsafe electrical products.

It was suggested that being seen by the public to co-operate with enforcement and associated bodies on these issues will benefit the sales platforms by improving public sentiment towards them.

The concept of a fighting fund by Government was raised. This would help enable enforcement bodies to pursue high profile cases against those big platforms which facilitate the greatest number of sales of unsafe electrical products. Doing so would help demonstrate that enforcement in the UK is proactive and not afraid to pursue and punish wrongdoing or negligence which places the public at risk.

#### Summary – Respondents believe that:

- Online marketplaces should contribute towards regulation and enforcement.
- Partnership and cooperation between enforcement bodies and online marketplaces should be promoted.
- A fighting fund or similar support from central government to enable action to be taken against online platforms should be considered.

#### Contributors

The APPG recognises with thanks those persons and organisations who have contributed, including:

- **Paul Bannister – North Lanarkshire Trading Standards, responding in a personal capacity**
- **Welsh Heads of Trading Standards**
- **Judith Peacock – Dixons Carphone**
- **Welsh LGA, Newport Council**
- **Conair**
- **Rhondda Cynon Taf Trading Standards**
- **London Fire Brigade**
- **Electrical Safety First**
- **Chartered Trading Standards Institute**
- **The Anti-Counterfeiting Group (ACG)**