Legal 500
Country Comparative Guides 2026

United Kingdom
Product Liability

Contributor

Jones Day

Nathalie Smyth

Partner, Global Disputes | nsmyth@jonesday.com

Samantha Silver

Partner, Global Disputes | samanthasilver@jonesday.com

Sorcha Whyte

Associate, Global Disputes | swhyte@jonesday.com

Myunghoon ("Hoon") Paik

Associate, Global Disputes | mpaik@jonesday.com

This country-specific Q&A provides an overview of product liability laws and regulations applicable in United Kingdom.

For a full list of jurisdictional Q&As visit **legal500.com/guides**

United Kingdom: Product Liability

1. What are the main causes of action upon which a product liability claim can be brought in your jurisdiction, for example, breach of a statutory regime, breach of contract and/or tort? Please explain whether, for each cause of action, liability for a defective product is fault-based or strict (i.e. if the product is defective, the producer (or another party in the supply chain) is liable even if they were not individually negligent).

Where consumers allege loss and/or damage as a result of a defective product, there are three main avenues for bringing a claim: (1) under the Consumer Protection Act 1987 ("CPA"); (2) in negligence; and (3) contractually.

(1) CPA

The EU Product Liability Directive [85/374/EEC] (PLD) was transposed into UK law through Part 1 of the CPA, which remains retained law post-Brexit. The CPA imposes strict liability – sometimes referred to as 'no fault liability' – for defective products that have caused injury or damage to private property (excluding damage to the product itself).

(2) Negligence

A consumer will need to establish that a defendant (i) owed a duty of care; (ii) breached that duty; and (iii) the breach resulted in injury or property damage. Unlike the CPA, a negligence claim is fault-based.

(3) Contract

Where a consumer entered into a contract with a seller or supplier, the consumer will need to establish that (i) a seller or supplier breached an express or implied term of the contract; and (ii) that breach resulted in loss or damage.

2. What is a 'product' for the purpose of the relevant laws where a cause of action exists? Is 'product' defined in legislation and, if so, does the definition include tangible products only? Is there a distinction between products sold to, or intended to be used by consumers, and those sold for use by businesses?

Section 1(2)(c) of the CPA defines a product as "any goods or electricity and… includes a product which is comprised in another product, whether by virtue of being a component part or raw material or otherwise", with goods further defined in s.45(1) as including "substances, growing crops and things comprised in land by virtue of being attached to it and any ship, aircraft or vehicle".

Whilst typically the definition of a product is considered to relate to tangible products, software, for example, can fall within the definition where such software is incorporated in a tangible product. The CPA does not, however, extend to the provision of services.

The definition of a product has been expanded in Europe under the Product Liability Directive (EU) 2024/2853 ("new PLD"), which came into force on 8 December 2024, to include intangible components, such as software including AI. This addresses long standing debates in the EU as to whether something purely intangible, such as AI, constitutes a service or a product. Whilst the new PLD will not apply to the UK as a whole following Brexit, it may be implemented into the law of Northern Ireland subject to the operation of the Windsor Framework.

3. Who or what entities can bring a claim and for what type(s) of damage? Can a claim be brought on behalf of a deceased person whose death was caused by an allegedly defective product?

The CPA applies to consumer products as well as products used in the workplace.

Section 5(1) of the CPA sets out that damage means death, personal injury, loss of property or damage to property which is for private use, occupation or consumption.

Non-consumers are able to bring claims for death or personal injury, but claims for property damage are restricted to consumers. No claim can be brought for damage to business property or for pure economic loss.

Where an allegedly defective product results in death, a claim can be brought by the personal representatives of the deceased's estate or an eligible dependant under the

Fatal Accidents Act 1976. Where a claim is not already time-barred, a dependant has 3 years of the date of death or the date of knowledge, whichever is the later pursuant to s.12(2) of the Limitation Act 1980.

4. What remedies are available against a defendant found liable for a defective product? Are there any restrictions on the types of loss or damage that can be claimed?

Under the CPA, claimants can claim compensatory damages for personal injury or death caused by a defective product. Compensation is also available for damage to private property, provided the total damage (excluding interest) exceeds £275. There is no upper limit on damages. By virtue of section 5 of the CPA, property damage claims are limited to property ordinarily intended for 'private use, occupation or consumption'. Accordingly, consumers cannot recover compensation for damage to business or commercial property. The CPA excludes liability for loss of or damage to the defective product itself, including where the defect relates to a component that caused damage to the product in which it was comprised.

Punitive or exemplary damages are not recoverable under the CPA.

5. When is a product defective? What must be shown in order to prove defect?

Section 3 of the CPA sets out the relevant test. There is a defect in a product 'if the safety of the product is not such as persons generally are entitled to expect'. As the CPA applies to a huge range of products, from toys to medical devices, this is a flexible test.

Guidance on the application of the test for defect is set out in the caselaw, including Gee & Others v DePuy International Limited [2018] EWHC 1208 (QB) (Gee):

- the test is objective and asks what people generally are entitled to expect, not what the claimant actually expected;
- hindsight plays no part in assessing the 'entitled expectation' of safety, which must be determined as at the date of supply of the product. However, when determining whether the product in fact met that entitled expectation, all relevant information available to date (including post-supply evidence) can be considered; and
- a court is entitled to take into account all the circumstances it considers factually and legally relevant to the evaluation of safety, on a case by case basis. See answer to question 7.

The Supreme Court reinforced the test in Gee in its judgment in Hastings v Finsbury Orthopaedics Ltd and Stryker (UK) Ltd [2022] UKSC 19.

6. Which party bears the burden of proof? Can it be reversed?

A claimant bears the burden of proof and must prove:

1) the product was defective (per s.3 CPA);

2) the damage suffered (death, personal injury, or property damage); and

3) the defect caused the damage.

The burden of proof cannot be reversed under the CPA.

7. What factors might the court consider when assessing whether a product is defective? To what extent might the court account for a breach of regulatory duty, such as a breach of a product safety regulation?

The court takes a holistic approach when assessing whether a product is defective, including consideration of:

- the marketing of the product;
- use of any safety mark on the product;
- the product's instructions and warnings; and
- what might reasonably be expected to be done with the product at the time it was supplied.

Whether or not a product met relevant safety regulations will also be a relevant factor. However, it is possible to have a product which does not meet British technical or designated Standards, but the court nonetheless considers it to meet the level of safety the public is entitled to expect (Pollard v Tesco Stores [2006] EWCA Civ 393). Equally, compliance with the relevant safety regulations is not an automatic defence under the CPA per Hickinbottom J in Wilkes v DePuy International Limited [2016] EWHC 3096 (QB).

8. Who can be held liable for damage caused by a defective product? If there is more than one

entity liable, how is liability apportioned?

Under section 2(2) of the CPA, the following entities can be jointly and severally liable for damage caused by a defective product:

- the producer (i.e. the manufacturer) of the product;
- a person who holds himself out as a producer by, e.g. placing his name on the product or using his 'own brand' or trademark;
- the importer into the UK. Following Brexit, the relevant importer is now the entity that imports the product into the UK, rather than into the EU as was previously the case under the pre-Brexit regime.

A supplier of a product can be held liable if it fails to identify one of the above entities within a reasonable time period after receipt of a request for this information by a claimant.

In complex cases, liability may be apportioned between the various entities in the supply chain identified above and may be shaped by contractual indemnities or warranties.

9. What defences are available?

Section 4 of the CPA provides the following defences, which are available once a product is found to be defective. The burden of proof lies on the defendant to establish any defence. Each defence, if successfully made out, operates as a complete defence resulting in no liability (rather than merely reducing damages):

- the defect is attributable to compliance with any requirement of UK or assimilated law (formerly known as 'retained EU law') or obligation post Brexit;
- the defendant did not supply the product;
- the product was not supplied in the course of the defendant's business nor with a view to profit;
- the defect did not exist in the product at the 'relevant time'. For most products, the relevant time is when the product was supplied by the defendant. Section 4(2) provides specific guidance for electricity, where the relevant time is when it was generated;
- the state of scientific and technical knowledge at the time the product was put into circulation was not such that a producer of products of the same description could be expected to have discovered the defect (the 'state of the art' or 'development risks' defence). This defence requires the defect to have been undiscoverable given the state of knowledge at the time, not merely that the particular defendant was unaware of it. The UK has adopted a relatively defendant-friendly interpretation of this defence; and
- where a defendant produced or supplied a component part, the defect was not in that component part but in the subsequent finished product which was wholly attributable to (i) the design of the finished product; or (ii) compliance with the instructions for use provided by the producer of the finished product.

This defence protects component manufacturers where the defect arises from how the finished product was designed or assembled, rather than any fault in the component itself.

10. What is the relevant limitation period(s) for bringing a claim? Does a different limitation period apply to claims brought on behalf of deceased persons?

Under the Consumer Protection Act 1987 (CPA), a claim must be brought within the following limitation periods:

Primary Limitation Period: Three years from the later of:

- the date on which the cause of action accrued (i.e., the date the injury or damage was suffered); or
- the 'date of knowledge', being the date on which the claimant first knew, or could reasonably have been expected to know, of the damage, that it was caused by the defect, and the identity of the defendant (section 14 of the Limitation Act 1980).

The court has discretion under section 33 of the Limitation Act 1980 to disapply the three-year limitation period where it considers it equitable to do so, having regard to all the circumstances of the case.

Longstop period: A claim under the CPA must also be brought within 10 years from the date on which the product was put into circulation, known as the 10-year longstop period. A right of action under the CPA is extinguished after this period.

In Wilson v Beko Plc [2019] EWHC 3362 (QB), the court

confirmed that claimants are not entitled to rely upon section 41 of the CPA (which concerns the commencement of limitation periods) to circumvent the 10-year longstop period.

Deceased Persons: Where a person dies as a result of an allegedly defective product and the action was not already time-barred at the date of death, a dependant may bring a claim under the Fatal Accidents Act 1976. The limitation period is three years from the later of the date of death or the earliest date on which the dependant seeking to bring the claim knew, or it was reasonably practicable for them to know, that:

i. there was a defect in the product;

ii. the injuries of the deceased were caused wholly, or in part, by the defect; and

iii. the defendant was a person who could be held liable under the CPA.

11. To what extent can liability be excluded, if at all?

Section 7 of the CPA expressly prohibits liability being excluded by any contract term, notice or any other provision.

12. Are there any limitations on the territorial scope of claims brought under a strict liability statutory regime?

In Allen & Others v DePuy International Limited [2014] (Allen) (a pre-Brexit decision), it was determined that manufacturers within the European Economic Area (EEA) were not liable under the CPA to consumers suffering injuries outside of the EEA caused by products marketed and supplied outside of the EEA. The judgment left open the question of whether UK manufacturers are liable under the CPA for injuries suffered outside of the UK, but within the EEA.

In Allen, a sample group of claimants from countries outside of the EU (including New Zealand, Australia and South Africa) brought claims against the defendant in respect of allegedly defective metal-on-metal prosthetic hip implants manufactured in England. The claimants argued that English law applied to their claims and that they were entitled to rely upon the CPA, notwithstanding that they did not reside in England and their alleged injuries occurred outside England.

The High Court held that the CPA did not apply because the claims fell outside its territorial scope. The court reasoned that the CPA, which implemented the EU Product Liability Directive, was not intended to provide a remedy to non-EU consumers who suffered damage outside the EEA in relation to products marketed and supplied outside the EEA.

The judgment left open certain questions, including whether UK manufacturers could be liable under the CPA for injuries suffered outside the UK but within the EEA. The claimants were still entitled to pursue claims in England under their local laws; however, a group of New Zealand claimants who did so were ultimately unsuccessful at trial because, under New Zealand's no-fault accident compensation scheme, damages for personal injury are not recoverable through litigation.

Following Brexit, the position is less certain. The CPA remains in force as retained EU law, but the UK is no longer part of the EEA. It is unclear whether the territorial scope of the CPA is now limited to damage suffered in the UK alone, or whether it extends to damage suffered elsewhere. Similarly, it is uncertain whether the product must be marketed and/or supplied outside the UK (or, arguably, outside the former EEA) for the claim to fall outside the scope of the CPA. These questions have not been revisited by the courts since Brexit and remain open.

13. What does a claimant need to prove to successfully bring a claim in negligence?

The tort of negligence in product liability claims derives from the seminal case of Donoghue v Stevenson [1932] AC 562, which established that manufacturers owe a duty of care to the ultimate consumers of their products. A claimant must show, on the balance of probabilities, that:

- the defendant owed the claimant a duty of care. In product liability cases, manufacturers, distributors and suppliers generally owe a duty of care to those who may foreseeably be affected by their products;
- the defendant breached that duty by failing to meet the standard of a reasonable manufacturer, distributor or supplier in the same position. Relevant factors include compliance with industry standards, the nature and magnitude of the risk, and the practicability of precautions;
- the breach caused the alleged loss or damage. The claimant must establish both factual causation (the “but for” test-that the damage would not have occurred but for the defendant's breach) and legal causation (that

the damage was not too remote); and
- the loss was of a type that was reasonably foreseeable. Recoverable losses typically include personal injury and damage to property other than the defective product itself. Pure economic loss is generally not recoverable in negligence.

Establishing a breach of duty requires an examination of the defendant's conduct, making negligence claims inherently more challenging than claims under the CPA. Whereas the CPA imposes strict liability (requiring only proof of defect, damage and causation), negligence requires proof of fault on the part of the defendant. Consequently, claimants often pursue both causes of action to maximise their prospects of success.

14. In what circumstances might a claimant bring a claim in negligence?

A claimant may bring a negligence claim alongside, or as an alternative to, a claim under the CPA in order to maximise the prospects of success. There are several strategic reasons for pursuing both causes of action: negligence is not subject to the 10-year longstop limitation that applies under the CPA, and negligence claims may allow for the recovery of certain heads of damage (such as damage to the defective product itself) that are excluded under the CPA. A negligence claim may be brought by:

- a consumer who purchased the product directly;
- a person who uses the product, whether or not they purchased it; or
- a third-party bystander who is injured by the product, provided they were within the class of persons to whom a duty of care was owed.

Such a claim may be brought against any party in the supply chain who owes a duty of care, including manufacturers, distributors, suppliers and retailers. In Donoghue v Stevenson, the House of Lords established that manufacturers owe a duty of care to all persons who can reasonably be expected to be affected by their products. Subsequent case law has extended this principle to other parties in the distribution chain.

Negligence may arise at various stages of the product lifecycle. Examples of circumstances giving rise to a negligence claim include:

- design defects: a failure to exercise reasonable care during the design process, including inadequate risk assessment, failure to consider foreseeable misuse, or failure to conduct appropriate testing before production;
- manufacturing defects: a failure to implement or maintain adequate quality control processes during production, resulting in individual units departing from the intended design;
- failure to warn: a failure to provide adequate warnings or instructions regarding the safe use of the product, including risks that may not be obvious to the ordinary consumer; and
- post-sale duties: a failure to take reasonable steps once a defect or danger becomes known, including issuing product recalls, safety alerts or remedial communications to consumers.

15. What remedies are available? Are punitive damages available?

The primary objective of damages in negligence claims is to restore the claimant to the position they would have been in had the negligence not occurred. This is known as the compensatory principle.

Compensatory damages are recoverable for losses which are a direct and reasonably foreseeable consequence of the defendant's negligence. These are typically divided into:

- general damages: these are awarded for non-pecuniary losses that cannot be precisely quantified, including pain, suffering and loss of amenity (PSLA). The Judicial College Guidelines for the Assessment of General Damages in Personal Injury Cases provides guidance on appropriate awards; and
- special damages: these are awarded for quantifiable financial losses, including past and future loss of earnings, medical expenses, care costs, and other out-of-pocket expenses incurred as a result of the injury.

Pure economic loss (i.e. financial loss not consequent upon physical injury or property damage) is generally not recoverable in negligence claims. Similarly, damages for damage to the defective product itself are typically not recoverable in tort.

Provisional damages may be awarded where there is a chance that, at some definite or indefinite time in the future, the claimant will develop a serious disease or suffer a serious deterioration in their physical or mental condition as a result of the defendant's negligence. This

allows the claimant to return to court for further damages if the anticipated deterioration occurs.

Punitive (or exemplary) damages are not generally available in negligence claims. However, in exceptional circumstances, they may be awarded where the defendant's conduct was calculated to make a profit that would exceed any compensatory damages payable. Such awards are rare in product liability cases and would require evidence of particularly egregious conduct by the defendant.

16. If there are multiple tortfeasors, how is liability apportioned? Can a claimant bring contribution proceedings?

Where multiple parties are liable for the same damage, their liability is joint and several. This means the claimant may recover the full amount of damages from any one defendant, regardless of that defendant's proportionate share of fault, allowing claimants to pursue the most solvent defendant. A defendant who has paid more than their proportionate share may bring contribution proceedings against any other tortfeasor. Contribution is assessed on a "just and equitable" basis, having regard to each party's responsibility for the damage.

17. Are there any defences available?

For tortious claims, a defendant will often look to show that an element of the claim has not been established, such as there being no causal link between the breach of duty and the alleged injury or loss.

Common law defences are also available, including:

- contributory negligence: where a claimant's actions contributed towards the loss suffered (e.g., ignoring product warnings or misusing the product), damages may be reduced by a percentage reflecting the claimant's share of responsibility; and
- voluntary assumption of risk: where a claimant knew of, and accepted, the risks of a product.

18. What is the relevant limitation period(s) for bringing a claim?

- The relevant limitation periods are set out in The Limitation Act 1980: For claims involving personal injury, three years from the date the damage occurred or from the date of knowledge (whichever is later). Under section 14 of the Limitation Act 1980, the "date of knowledge" is the date on which the claimant first knew: (i) that the injury was significant; (ii) that it was attributable in whole or in part to the act or omission alleged to constitute negligence; (iii) the identity of the defendant; and (iv) if relevant, the identity of any other person whose act or omission caused the defendant's liability. The court has discretion under section 33 to disapply the limitation period where it would be equitable to do so;
- For claims not involving personal injury, six years from the date on which the damage occurred, or three years from the date of knowledge for claims concerning latent damage.

19. To what extent can liability be excluded, if at all?

Liability for death or personal injury arising from negligence cannot be excluded.

Liability for other types of loss or damage resulting from negligence can be excluded, including property damage, but such exclusions or limitations on liability must meet the requirement of reasonableness pursuant to the Unfair Contract Terms Act 1977 (UCTA).

20. Do the laws governing contractual liability provide for any implied terms that could impose liability where the product that is the subject of the contract is defective or does not comply with the terms of sale?

Yes. UK law provides for several implied terms that can impose liability where a product is defective or fails to comply with the terms of sale. The applicable statutory regime depends on whether the contract is between a business and a consumer (B2C) or between businesses (B2B).

Consumer Contracts (B2C): Consumer Rights Act 2015 (CRA)

The CRA consolidates and updates the law on consumer rights in relation to the supply of goods, services and digital content. Under the CRA, goods supplied to a consumer under a contract must comply with the following implied terms:

- satisfactory quality: goods should not be faulty or damaged upon receipt;

- fitness for a particular purpose: Where the consumer makes known to the trader (expressly or by implication) any particular purpose for which the goods are being acquired, the goods must be reasonably fit for that purpose, whether or not that is a purpose for which goods of that kind are usually supplied. This implied term does not apply where the circumstances show that the consumer did not rely, or it was unreasonable to rely, on the skill or judgment of the trader; and
- goods to match description: Where goods are sold by description, the goods must match that description. Where the goods are displayed or made available for examination, it is not sufficient that they match the description if they do not also match any sample or model that was examined.

21. What remedies are available, and from whom?

Where a breach of contract is established, the claimant's remedies lie against the immediate contracting party, typically the supplier or retailer of the defective product. The claimant cannot bring a contractual claim directly against the manufacturer unless there is a direct contractual relationship. The remedies available depend on whether the contract is governed by the Consumer Rights Act 2015 (CRA) (for B2C contracts) or the Sale of Goods Act 1979 (SGA) (for B2B contracts).

Consumer Contracts (B2C): Consumer Rights Act 2015

The CRA provides consumers with a tiered system of remedies where goods fail to meet the statutory implied terms (satisfactory quality, fitness for purpose, or correspondence with description):

- short-term right to reject: Within 30 days of delivery (or such longer period as the parties may agree), the consumer has the right to reject the goods and obtain a full refund;
- right to repair or replacement: After the initial 30-day period, the consumer may request repair or replacement. The trader must carry out the remedy within a reasonable time and without significant inconvenience to the consumer;
- specific Performance: the supplier or retailer may be ordered to perform a contractual obligation;
- final right to reject or price reduction: If repair or replacement is not possible or is not carried out within a reasonable time, the consumer may exercise the 'final right to reject' (for a refund, subject to a deduction for use) or claim an appropriate price reduction; and
- damages: The consumer may also claim damages for losses arising from the breach, provided such losses were reasonably foreseeable.

Business Contracts (B2B): Sale of Goods Act 1979 (SGA)

For B2B contracts governed by the SGA, the following remedies are available:

- right to reject: Where the seller breaches a condition (such as the implied terms as to satisfactory quality or fitness for purpose), the buyer may reject the goods and treat the contract as repudiated. This right may be lost if the buyer has 'accepted' the goods within the meaning of section 35 of the SGA;
- damages: Where the buyer has accepted the goods or the breach is only of a warranty, the buyer may claim damages but cannot reject. The measure of damages is typically the difference between the value of the goods delivered and their value had they conformed to the contract; and
- specific performance: The court has discretion to order specific performance where the goods are specific or ascertained, although this remedy is rarely granted where damages would be adequate.

It should be noted that a supplier or retailer found liable for breach of contract may seek to recover its losses from the manufacturer or other parties further up the supply chain through contractual indemnities or warranties contained in their own supply agreements.

22. What damages are available to consumers and businesses in the event of a contractual breach? Are punitive damages available?

The primary objective of contractual damages is to place the innocent party in the position they would have been in had the contract been properly performed. Damages can be awarded for:

- economic losses, such as loss of income or profit;
- property damage caused by the defective product; and

- non-pecuniary losses (such as damages for pain, suffering and loss of amenity) arising from death or personal injury caused by the defective product, where such losses were reasonably foreseeable at the time of contracting; and
- the claimant must take reasonable steps to mitigate their loss. Any failure to do so may result in a reduction in the damages awarded.

Punitive damages are not available in respect of claims for breach of contract.

23. To what extent can liability be excluded, if at all?

The extent to which liability for breach of contract can be excluded depends on whether the contract is a consumer contract (B2C) or a business-to-business contract (B2B), and the type of loss in question.

Consumer Contracts (B2C): Consumer Rights Act 2015

In B2C contracts, the contractual terms cannot exclude or limit liability for death or personal injury arising from negligence. Similarly, contractual terms cannot exclude or limit liability for death, personal injury or damage to private property caused by a defective product.

Business-to-Business Contracts (B2B): Unfair Contract Terms Act 1977 (UCTA)

In B2B contracts, liability cannot be limited or excluded for personal injury or death arising from negligence, but other loss or damage resulting from negligence or breach of contract, can be excluded or limited, providing such terms are compatible with the reasonableness requirement pursuant to UCTA.

24. Are there any defences available?

Unlike claims under the Consumer Protection Act 1987 or in negligence, there are no specific statutory defences to a claim for breach of contract. However, a defendant may resist or reduce liability on several grounds:

- causation: Even if a breach is established, the defendant may argue that the breach did not cause the claimant's loss. The claimant must prove that the loss flowed from the breach and was not attributable to other intervening factors;
- failure to mitigate: The defendant may argue that the claimant failed to take reasonable steps to mitigate their loss. A claimant cannot recover losses that could reasonably have been avoided. For example, if a consumer could have obtained a replacement product at a lower cost but chose a more expensive alternative, the recoverable damages may be reduced;
- exclusion or limitation clauses: In B2B contracts, the defendant may rely on contractual terms that exclude or limit liability, provided such terms satisfy the requirement of reasonableness under the Unfair Contract Terms Act 1977. In consumer contracts, such clauses are generally unenforceable;
- limitation periods: A defendant may argue that the claim is time-barred. The standard limitation period for breach of contract is six years from the date of breach (section 5, Limitation Act 1980). For contracts executed as deeds, the limitation period is twelve years (section 8, Limitation Act 1980);
- denial of breach: The defendant may deny that a breach of contract occurred. For example, the defendant may argue that the goods supplied were of satisfactory quality or fit for purpose, or that any defect fell within acceptable tolerances or was disclosed to the buyer prior to sale.

25. Please summarise the rules governing the disclosure of documents in product liability claims and outline the types of documents that are typically disclosed.

Disclosure in civil proceedings in England and Wales is governed by Part 31 of the Civil Procedure Rules (CPR). The rules applicable to a particular case depend on the court and track to which the claim is allocated.

Multi-Track Claims (High Court and County Court)

For multi-track claims (which will include the majority of product liability claims of any significant value), the default position is ‘standard disclosure’ under CPR 31.6. Standard disclosure requires each party to disclose documents in their control:

- on which they rely;
- which adversely affect their own case or another party's case, or which support another party's case; and
- which they are required to disclose by a relevant practice direction.

The court has discretion to make orders for disclosure that are more or less extensive than standard disclosure. For example, the court may order specific disclosure of particular documents or categories of documents, or may limit or dispense with standard disclosure in appropriate cases (e.g. less complex or lower value claims). The parties may also agree in writing to modify the extent of disclosure, subject to the court's approval.

Pre-action disclosure may be ordered under CPR 31.16 where the applicant and respondent are likely to be parties to subsequent proceedings, disclosure is desirable to dispose fairly of the anticipated proceedings or to save costs, and the documents sought would fall within standard disclosure. Pre-action disclosure can be particularly useful in product liability claims to enable a prospective claimant to assess the merits of their case before incurring the costs of issuing proceedings.

The duty of disclosure is a continuing obligation that persists until proceedings are concluded. If a party becomes aware of additional disclosable documents after providing initial disclosure, they must notify the other parties and provide further disclosure forthwith.

The types of documents that are typically disclosed in product liability claims include:

- design and development files, including documents relating to product research, risk assessments, prototyping, testing and validation;
- manufacturing and quality control records, including batch records, inspection reports and deviation reports;
- regulatory submissions and approvals, including documents evidencing conformity with relevant safety standards, CE/UKCA marking documentation and communications with regulatory authorities;
- product labelling, warnings and instructions for use;
- post-market surveillance records, including complaints, adverse event reports, field safety corrective actions and recall documentation;
- supply chain documentation, including documents evidencing the date of supply, distribution records and traceability data; and
- expert reports and internal analyses relating to the product's safety or the potential cause of alleged defects.

Relevance and Proportionality

Documents are only disclosable if they are relevant to the issues in the case. Relevance is determined by reference to the pleaded issues and the applicable test under the relevant disclosure regime. The court will also consider proportionality when making disclosure orders, balancing the likely benefit of disclosure against the cost and burden of providing it.

Manufacturers and suppliers of products that are subject to product liability claims should implement document retention policies and preserve relevant documents and information from the outset of any dispute or potential claim. Failure to preserve documents may result in adverse inferences being drawn and, in serious cases, sanctions for contempt of court.

Note that if a claim is issued in the Business and Property Courts, a more onerous disclosure regime applies.

26. How are product liability claims usually funded? Is third party litigation funding permitted in your jurisdiction and, if so, is it regulated?

Product liability claims in England and Wales may be funded through a variety of mechanisms:

Private Funding

Claimants may fund their claims privately, bearing their own legal costs and disbursements. However, given the complexity and expense of product liability litigation, private funding is often impractical for individual consumers.

Conditional Fee Agreements (CFAs)

CFAs (commonly known as ‘no win, no fee' agreements) allow claimants to pursue claims without paying their solicitors' fees upfront. Under a CFA, the solicitor agrees to act on the basis that no fees are payable if the claim is unsuccessful, but if successful, the solicitor is entitled to their standard fees plus a ‘success fee' (a percentage uplift of up to 100% of the base costs). Following the reforms introduced by LASPO , success fees in personal injury cases are no longer recoverable from the defendant and must be paid by the claimant from their damages (subject to a cap of 25% of damages for pain, suffering and loss of amenity).

Damages-Based Agreements (DBAs)

DBAs are contingency fee arrangements under which the solicitor's fee is calculated as a percentage of the damages recovered. In personal injury cases, the maximum fee is capped at 25% of the damages (excluding damages for future care and loss). DBAs have

been permitted in England and Wales since 2013 but remain relatively uncommon in practice due to regulatory complexity and commercial uncertainties.

ATE Legal Expenses Insurance

ATE insurance is taken out after a dispute has arisen to cover the risk of adverse costs if the claim is unsuccessful. ATE premiums in personal injury cases are no longer recoverable from the defendant following the LASPO reforms, although an exception applies to clinical negligence claims in respect of the cost of expert reports on liability and causation.

Third Party Litigation Funding (TPLF)

TPLF involves an independent third-party funder agreeing to finance all or part of a claim in return for a share of the damages recovered if the claim is successful. If the claim is unsuccessful, the funder typically bears the costs it has funded and may also be liable for adverse costs orders. TPLF has become increasingly common in group litigation and high-value product liability claims.

TPLF is permitted in England and Wales, although certain arrangements may be unenforceable if they are contrary to public policy. The courts have traditionally scrutinised:

- the extent to which the funder exercises control over the conduct of the litigation;
- whether the funder's return is disproportionate to the risk undertaken; and
- whether the arrangement facilitates access to justice.

The PACCAR Decision

In R (on the application of PACCAR Inc) v Competition Appeal Tribunal [2023] UKSC 28 (PACCAR), the Supreme Court held that litigation funding agreements (LFAs) under which the funder's return is calculated as a percentage of damages recovered are 'damages-based agreements' within the meaning of the Courts and Legal Services Act 1990. As a result, such LFAs must comply with the DBA Regulations 2013, failing which they are unenforceable. This decision created significant uncertainty in the litigation funding market, as many existing LFAs do not comply with the DBA Regulations.

In response, funders have restructured their agreements to provide for returns calculated other than as a percentage of damages (e.g. multiples of the amount funded). The Government has indicated its intention to legislate to reverse the effect of the PACCAR decision, with such legislation potentially having retrospective effect, but at the time of writing, no such legislation has been enacted.

Regulation of TPLF

TPLF is not subject to statutory regulation in England and Wales. However, the industry operates under a voluntary self-regulatory framework administered by the Association of Litigation Funders (ALF). Members of the ALF are required to comply with:

- the ALF Code of Conduct for Litigation Funders, which sets out standards of practice and behaviour including capital adequacy requirements; and
- the ALF Complaints Procedure, which provides a mechanism for funded parties to raise complaints against member funders.

Membership of the ALF is voluntary and not all litigation funders operating in England and Wales are members.

Civil Justice Council (CJC) Review

On 23 June 2025, the Civil Justice Council's Litigation Funding Working Group published its final report following an extensive consultation. The report makes a number of significant recommendations:

- reversal of PACCAR: The CJC recommends that legislation be passed to reverse the effects of the Supreme Court's decision in R (PACCAR) v Competition Appeal Tribunal [2023] UKSC 28, thereby enabling funders to be remunerated based on a percentage of damages recovered;
- no statutory cap on funder returns: The CJC does not recommend imposing a statutory cap on the returns that funders may receive;
- costs recovery: In exceptional cases, funded litigants should be permitted to recover funding costs from their opponents. Funders should continue to be potentially liable for third-party adverse costs orders;
- disclosure: The name of the funder and the source of funds should be disclosed to the court and the parties, although disclosure of funding terms should not be the norm;
- 'Light touch' statutory regulation: All forms of litigation funding (apart from funding of arbitral proceedings) should be subject to 'light touch' statutory regulation, including case-specific capital adequacy requirements, application of anti-money laundering regulations to litigation funders, and codification of the prohibition on funders

directly or indirectly controlling the conduct or settlement of litigation. The CJC considers that these requirements obviate the need for security for costs against a funder that has complied with capital adequacy requirements and has suitable ATE insurance in place;
- enhanced regulation for group actions and consumer claims: Additional protections are recommended for group actions and consumer claims, including court approval of funding terms (including whether the funder's return is fair, just and reasonable), a requirement for the funded party to receive clear and transparent information about funding terms and independent legal advice from King's Counsel, certification that the funded party was not approached by the funder or lawyers to pursue the claim, mandatory costs budgeting for all funded group actions, and a requirement for ATE insurance with robust anti-avoidance endorsements.

If implemented, the CJC's recommendations would reshape the litigation funding landscape in England and Wales, with the intention of enhancing access to justice while addressing concerns about the effectiveness of the current self-regulatory approach.

27. Can a successful party recover its costs from a losing party? Can lawyers charge a percentage uplift on their costs?

The general rule in England and Wales is that costs follow the event, meaning the unsuccessful party is ordinarily required to pay the reasonable costs of the successful party. However, the court retains a broad discretion under CPR 44.2 to make a different order, having regard to factors such as the parties' conduct and whether a party has succeeded on part of their case.

Lawyers can charge their clients a percentage uplift on their fees, commonly referred to as a 'success fee', under a Conditional Fee Agreement (CFA). The success fee balances against the risk of not being paid if the case is unsuccessful, and is capped at 100% of the base costs.

However, following the Jackson reforms, which took effect on 1 April 2013, lawyers cannot recover success fees and After-the-Event (ATE) insurance premiums from an opposing party in most civil claims. In personal injury claims where funding arrangements were entered into after this date:

- a successful claimant can no longer recover success fees, ATE premiums or other funding arrangement costs from the defendant; and
- any success fee payable is deducted from the claimant's damages and is capped at 25% of general damages for pain, suffering and loss of amenity and past financial losses, with damages for future care and loss ring-fenced from the cap.

Qualified One-Way Costs Shifting (QOCS) applies to personal injury claims and claims under the Fatal Accidents Act 1976 commenced after 1 April 2013. QOCS protects claimants from having to pay the defendant's costs if they lose, save where:

- the claim is struck out as disclosing no reasonable grounds for bringing the proceedings;
- the claim is struck out as an abuse of the court's process; or
- the court finds that the claim is fundamentally dishonest in relation to the primary claim or a related claim.

Additionally, following amendments to CPR 44.14 which apply to claims commenced on or after 6 April 2023, defendants can now enforce adverse costs orders against a claimant up to the aggregate value of any damages, interest and costs recovered by the claimant in the proceedings (including any settlement). This closes a previous loophole where claimants could avoid costs liability by accepting pre-action offers.

28. Can product liability claims be brought by way of a group or class action procedure? If so, please outline the mechanisms available and whether they provide for an 'opt-in' or 'opt-out' procedure. Which mechanism(s) is most commonly used for product liability claims?

Yes. In England and Wales, claimants may bring product liability group actions using formal mechanisms under the Civil Procedure Rules (CPR) or through informal case management procedures:

a. Group Litigation Orders (GLOs) (CPR 19.21-19.24): GLOs are the most commonly used formal mechanism for product liability group actions. The court may make a GLO where there are multiple claims giving rise to common or related issues of fact or law (known as 'GLO issues'). GLOs operate on an 'opt-in' basis, requiring claimants to issue proceedings and register on the group register maintained by the court. A lead solicitor is

typically appointed to coordinate the litigation. Common issues are determined at a trial, with the judgment binding on all parties on the register. GLOs are particularly suited to product liability claims as they accommodate individual causation and quantum assessments whilst efficiently determining common issues such as defect and breach of duty. Examples of recent product liability GLOs are discussed in question 29 below.

b. Representative Actions (CPR 19.8): A representative action' permits one or more claimants to bring proceedings on behalf of all persons with the 'same interest' in a claim. This mechanism operates on an 'opt-out' basis, meaning that all persons falling within the defined class are automatically included unless they expressly opt out. Judgment binds the entire represented class. However, the strict judicial interpretation of the 'same interest' requirement has significantly limited the utility of this procedure for product liability claims, which typically require individualised assessment of causation and damage.

The narrow scope of the 'same interest' test was affirmed by the UK Supreme Court in Lloyd v Google LLC [2021] UKSC 50, a data privacy claim where uniform per capita damages were rejected. Similarly, in Prismall v Google UK Ltd [2023] EWHC 1169 (KB), the court struck out a representative action brought on behalf of 1.6 million individuals whose medical records were allegedly misused by DeepMind, holding that the 'same interest' requirement was not satisfied as each claimant needed to establish individual damage or distress. These decisions demonstrate why representative actions remain unsuitable for product liability claims requiring individualised assessment of causation, loss and damage.

The limitations of representative actions were recently reaffirmed by the Court of Appeal in Commission Recovery Ltd v Marks & Clerk LLP [2024] EWCA Civ 9, a securities claim where the court rejected a 'bifurcated' approach (determining liability collectively, with individual causation and quantum to follow). The court held that bifurcation would deprive the court of case management powers to strike out unmeritorious claims and was not necessary to facilitate access to justice. This further confirms that representative actions are unlikely to be a viable mechanism for product liability group litigation in England and Wales.

c. Informal case management: Absent a GLO, courts may use their general case management powers to coordinate related claims. Common approaches include selecting lead or test cases to determine issues common to multiple claims, with other proceedings stayed pending the outcome. Whilst less structured than a GLO, this approach offers flexibility and may be appropriate where the number of claims is smaller or the common issues are more limited. Sometimes this approach is referred to as a "GLO Lite".

In summary, GLOs and bespoke case management remain the predominant mechanism for product liability group actions in England and Wales due to their flexibility in accommodating claims requiring individual assessment of causation and quantum whilst efficiently resolving common issues. Representative actions, whilst theoretically providing a broader opt-out mechanism, are effectively unavailable for product liability claims due to the restrictive 'same interest' requirement.

29. Please provide details of any new significant product liability cases in your jurisdiction in the last 12 months.

Product liability litigation in England and Wales continues to develop, with several significant cases and GLOs progressing through the courts at present. Claims cover a range of sectors, including pharmaceuticals, cosmetics, medical devices and automotives, with an increasing interest in mass tort claims.

In particular the English courts have issued numerous GLOs against a number of vehicle manufacturers in NOx Emissions Group Litigation concerning allegations of 'defeat devices' used to manipulate emissions testing.

Hastings v Finsbury Orthopaedics Ltd [2022] UKSC 19 remains the leading UK Supreme Court authority on product liability under the CPA. The case concerned a metal-on-metal hip replacement and affirmed the approach to 'defect' established in Wilkes v DePuy International Ltd [2016] EWHC 3096 (QB) and Gee v DePuy International Ltd [2018] EWHC 1208 (QB), namely that the test focuses on whether the product meets the standard of safety that persons generally are entitled to expect.

30. Are there any policy proposals and/or regulatory and legal developments that could impact the current product liability framework, particularly given the advancements in new technologies and increasing focus on the circular economy?

Yes. There are several significant policy and regulatory

developments that may impact the product liability framework in England and Wales:

In September 2025, the Law Commission commenced substantive work on a review of the product liability regime under Part 1 of the Consumer Protection Act 1987 (CPA). This is a significant development, as it has been nearly 40 years since the CPA was introduced. The Law Commission has noted that whilst the regime aimed to strike a balance between providing consumers with a straightforward route to compensation and supporting business innovation, there are concerns that the legislation has not kept pace with developments in digital technology and changes to how consumers purchase products through online platforms.

EU Product Liability Directive Reform

At EU level, the revised Product Liability Directive (PLD) entered into force on 8 December 2024, replacing the original 1985 Directive. The new PLD aims to address the risks and challenges posed by the digital age, modern supply chains and the circular economy. Key changes include an expanded definition of 'product' to encompass software and AI systems, new provisions on liability for online platforms, disclosure obligations to assist claimants in obtaining evidence, and rebuttable presumptions of defect and/or causation in certain circumstances. These changes are likely to make it easier for EU claimants to successfully pursue product liability claims, particularly in cases involving new technologies.

Although the UK is no longer bound by EU law, the EU reforms may influence the direction of any future UK reform and will be relevant for UK businesses placing products on the EU and UK markets.

UK Product Regulation and Metrology Act 2025 Bill

The Product Regulation and Metrology Act 2025, empowers the Secretary of State to make regulations concerning product safety and metrology. Whilst the Bill makes reference to the possible repeal of certain parts of the CPA, it does not specifically address Part 1 of the CPA which governs product liability, though this may now be addressed through the Law Commission's review.

31. What trends are likely to impact upon product liability litigation in the future?

Product safety law is anticipated to feature more prominently in UK product liability litigation over the coming years. Under the CPA, whether a product is 'defective' turns on the level of safety persons are generally entitled to expect, taking all circumstances into account. As a result, evidence of non compliance with product safety obligations, and the scale and timing of corrective actions, is increasingly likely to be pleaded as probative of defect and causation in both individual claims and collective proceedings.

In that context, upcoming product regulatory reforms that expand duties across supply chains (including online marketplaces) and strengthen market surveillance and enforcement powers are set to elevate regulatory compliance expectations, making these issues a central focus in pleadings, disclosure and expert evidence.

The Product Regulation and Metrology Act 2025

The Product Regulation and Metrology Act 2025 (PRAM) which came into force in July 2025 creates a modernised and flexible framework for product regulation and enforcement in the UK. It enables the relevant Secretary of State to update cross cutting product safety requirements at pace, respond to technological change, and target duties on actors beyond traditional manufacturers and importers. Several features of the PRAM are particularly likely to influence future product litigation strategies and exposure.

Online marketplaces

The PRAM introduces the ability to impose duties on online marketplaces and other intermediaries, enabling regulations to require these actors to support market surveillance and enforcement activities where they facilitate product supplies without assuming traditional producer responsibilities. The PRAM also allows the definition of 'online marketplaces' to be amended through secondary legislation, ensuring the framework can respond to evolving platform models.

These expanded obligations are likely to be relied upon by claimants as indicative of the level of safety the public is entitled to expect, while defendants can expect heightened documentary requirements relating to product listing controls, notice and action procedures and product recall or withdrawal protocols.

Higher-risk sectors

The PRAM strengthens the regulatory approach to hazards by establishing a more robust horizontal framework. It is expected that existing sector-specific product safety regulations will be further enhanced to address higher risk sectors and emerging technologies, with the potential for new sector-specific product safety

regulations to be introduced where required. These sector specific product safety regulations may impose more granular obligations on economic operators, including prescribing or restricting certain actions and setting detailed requirements for testing, labelling and marking.

Following Brexit, many sector-specific product safety regulations have been retained but are increasingly subject to UK specific adaptation, resulting in elevated compliance expectations across supply chains. These developments increase the exposure of potential defendants to claims, as omissions or departures from sector-specific requirements, including matters relating to the adequacy and scope of corrective actions or conformity assessments, can more readily be characterised as safety shortfalls.

Alignment with EU regimes

Alignment with EU requirements continues to play an important role in the UK product safety framework. Although Great Britain is no longer bound by the EU product safety regimes (with Northern Ireland remaining subject to EU rules under the Northern Ireland Protocol and the Windsor Framework), the PRAM allows UK product regulations to specify that a product requirement is treated as satisfied where the corresponding requirement under relevant EU law is met. In addition, CE marking remains recognised indefinitely for a wide range of consumer products.

Together, these mechanisms reflect a gradual post Brexit statutory recognition of EU product safety rules and technical standards, and enable the UK regime to incorporate international and EU developments where appropriate.

Main regimes to watch and how they shift litigation risk

The UK product safety system is built on a combination of legislation, technical standards, regulatory oversight and government guidance, all of which work together to ensure that only safe products are placed on the market. This framework has developed over many years and now imposes clear responsibilities on manufacturers, importers and distributors, supported where required by independent testing and ongoing monitoring of products already in circulation. Regulatory authorities also maintain market surveillance functions to identify risks, require testing and coordinate corrective action when safety concerns arise.

UK General Product Safety Regulations 2005

The principal horizontal framework for non-food consumer products remains the UK General Product Safety Regulations 2005 (UK GPSR), which apply in Great Britain (with Northern Ireland subject to the EU General Product Safety Regulation (EU) 2023/988). The UK GPSR place obligations on economic operators to ensure that only safe products are supplied, to provide appropriate warnings and instructions, to notify the relevant regulator when a product presents a risk and to take suitable corrective action when safety concerns arise.

These duties will increasingly operate alongside the powers introduced by the PRAM, which may be used to amend, update or replace elements of the existing system as the framework evolves. Evidence of non-compliance, including corrective action decisions, risk assessments and regulatory notifications, is assuming a more prominent role in product liability claims as parties examine whether regulatory obligations have been met.

Product Security and Telecommunications Infrastructure Act 2022 and the Product Security and Telecommunications Infrastructure (Security Requirements for Relevant Connectable Products) Regulations 2023

Manufacturers, importers and distributors of connectable consumer products must comply with the duties set out in the Product Security and Telecommunications Infrastructure Act 2022 (PSTI) and the associated 2023 Regulations, including requirements relating to the statement of compliance and security measures that restrict default passwords, mandate clear vulnerability disclosure routes and require transparency on minimum security update periods. These obligations operate alongside broader expectations of security by design and post market software support.

Product liability risk is increasing in this area, as the PRAM expressly recognises software as a component of a product and allows regulators to introduce safety requirements for software and other digital elements. This significantly expands the circumstances in which software performance, digital security controls and update management processes may be assessed in a safety context.

Consequently, failures in configuration, patching or security labelling may be characterised as safety deficiencies capable of supporting defect allegations, particularly for Internet of Things products and other technologies that rely on advanced software or AI.

Sector-specific product safety regulations

Sector specific product safety regulations play a central

role in defining the detailed pre market obligations that apply to products that are governed by specific regulatory requirements. Regulations applying to products such as machinery, toys, electrical equipment and cosmetics impose tailored safety obligations at the design and manufacturing stages, such as conformity assessment procedures, adherence to the applicable technical standards, preparation of technical documentation or the application of the appropriate marking. These obligations form part of a structured pre market assurance process intended to demonstrate that a product meets the essential safety requirements before it is placed on the market

Compliance with these sector specific regulations is increasingly significant in product claims, as departures from prescribed testing, documentation or conformity processes can be advanced as evidence of a safety shortfall. In practice, failures to satisfy pre-market assessment duties, to follow relevant standards or to apply the required marking may strengthen arguments that a product did not meet the level of safety that the public is entitled to expect. As regulatory frameworks evolve, adherence to sector specific requirements is therefore becoming an important focus in defect allegations and related litigation.

Practical litigation implications

Taken together, these developments could mean that product safety compliance is placed at the centre of UK product liability claims.

The views and opinions set forth herein are the personal views or opinions of the authors; they do not necessarily reflect views or opinions of the law firm with which they are associated.

Contributors

Nathalie Smyth
Partner, Global Disputes
nsmyth@jonesday.com

Samantha Silver
Partner, Global Disputes
samanthasilver@jonesday.com

Sorcha Whyte
Associate, Global Disputes
swhyte@jonesday.com

Myunghoon ("Hoon") Paik
Associate, Global Disputes
mpaik@jonesday.com