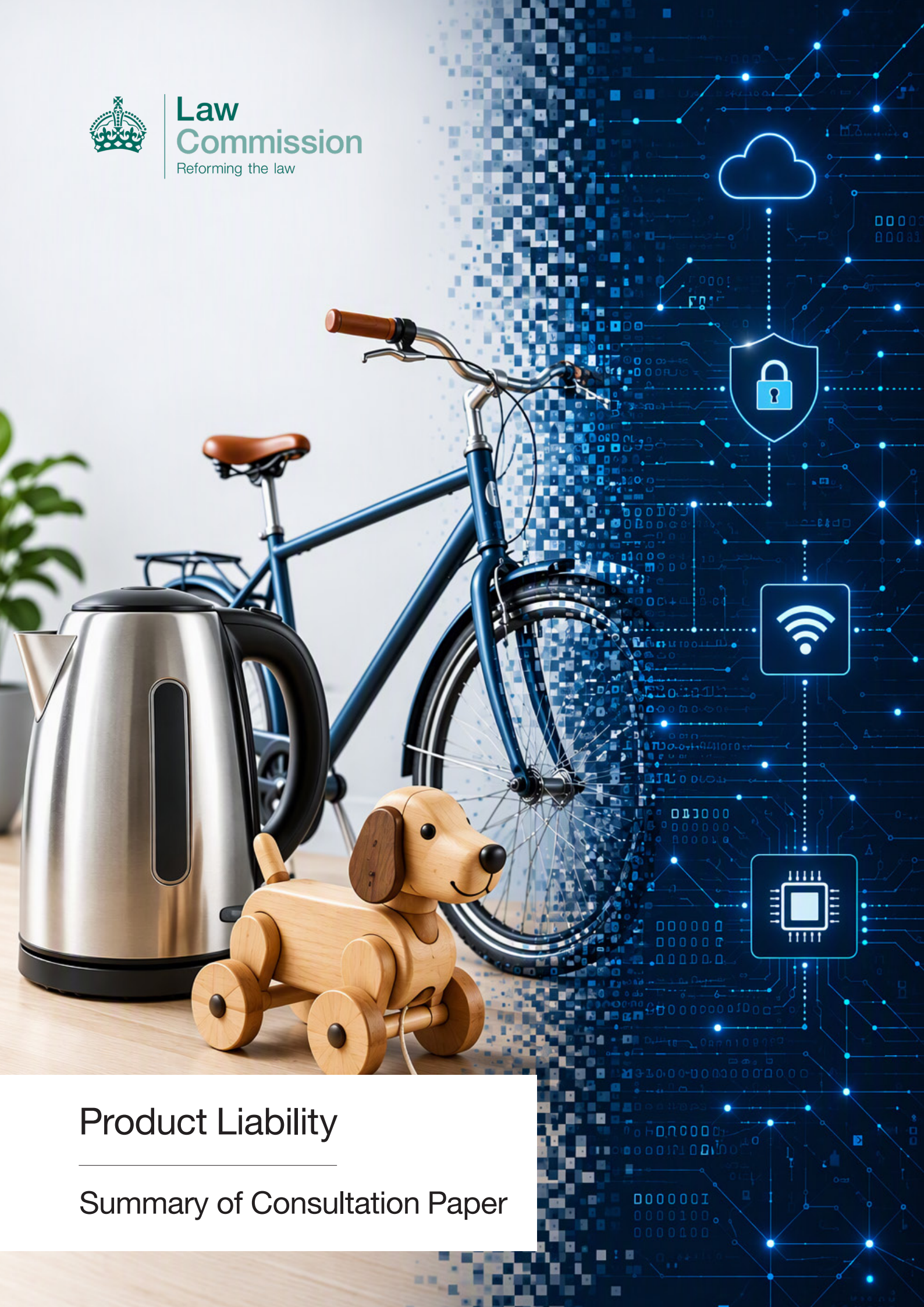




**Law
Commission**
Reforming the law



Product Liability

Summary of Consultation Paper

Product liability: summary of consultation paper

 Who are we?	The Law Commission of England and Wales is an independent body established by statute to make recommendations to Parliament to reform the law.
 What are we doing?	Conducting a public consultation on our provisional proposals to reform product liability law, which governs who may be held liable for damage caused by defective products and how those harmed can obtain compensation.
 Where is the full consultation paper?	It is available on our website at https://lawcom.gov.uk/project/product-liability/ .
 Who do we want to hear from?	We would welcome responses from as many stakeholders as possible, including consumers and consumer groups, industry bodies, and businesses of all sizes involved in the manufacture, design, development, and/or supply of tangible and intangible, including digital, products. We are also interested in hearing from legal academics, law firms, barristers' chambers and practitioners with relevant expertise.
 How do I respond?	Please respond using the online form available at https://consult.justice.gov.uk/law-commission/product-liability/. For other ways to respond, please see https://lawcom.gov.uk/project/product-liability/.
 What is the deadline?	The submission period closes on 14 January 2027.
 What happens next?	After reviewing all consultation responses, we will decide on our final recommendations for law reform, which we will publish in a report late in 2027. It will be for the Government of the day to decide whether to progress our recommendations.

This summary

This summary provides an overview of our consultation paper on product liability. It outlines the existing legal framework, identifies areas where reform may be needed, and highlights the key issues, provisional proposals and consultation questions arising from our review, providing a concise introduction to the project.

All proposals discussed in this summary are provisional and should be understood as such.

For details of how to respond, and to access the full consultation paper, see <https://lawcom.gov.uk/project/product-liability/>.

Introduction to our project

The existing product liability regime in England and Wales dates from the 1980s. It is contained in Part 1 of the Consumer Protection Act 1987 (the “CPA”), which implements the 1985 European Product Liability Directive (the “1985 Directive”). The CPA establishes a strict liability regime under which consumers can claim compensation for personal injury or certain property damage caused by defective products without having to prove fault on the part of the defendant.

The Law Commission has been asked to review the regime and consider what reforms are required to ensure that it remains fit for purpose in the digital age. Our review seeks to support access to redress, enable businesses to manage risk and liability without unduly inhibiting innovation, and promote responsible business practices and consumer confidence. Achieving an appropriate balance between these objectives, particularly in the context of emerging technologies, is a central focus of our review.

The case for reform

The CPA was introduced nearly 40 years ago. Since then, the range of products available to consumers has expanded significantly, particularly with the emergence of digital technologies. The advent of online platforms has also transformed how products are marketed and purchased. The product liability regime has not kept pace with these developments.

In addition, there are questions as to whether the CPA has fully achieved its original aims of providing a clear and straightforward route to compensation. Although reported case law under the CPA is limited, it suggests that claimants may face significant evidential hurdles in proving defect and causation, particularly in complex technical cases.

Against this background, the existing regime may leave injured consumers without adequate protection, create uncertainty for manufacturers and other liable parties as to their potential liability, and expose insurers to unforeseen risks.

The European Union has recently reformed its product liability framework in response to similar challenges, adopting a new product liability directive (the “New Directive”) in 2024.



An overview of the CPA

The CPA's central objective is to provide a strict liability regime which balances consumer protection with support for business, innovation and growth. It seeks to achieve that balance by enabling claimants to obtain compensation for damage caused by a defective product without having to prove fault, while limiting defendants' exposure through a number of specific defences, a limitation period and a ten-year long-stop that extinguishes claims not brought within that period.

The CPA sets out the core elements of a claim, including what qualifies as a product; who may be held liable; what constitutes a defect; what types of damage are compensable; the available defences; and the applicable limitation and long-stop periods.

Product: The CPA defines "product" as any goods and electricity, including a product that forms part of another product, whether as a component, raw material, or otherwise. Tangible items clearly fall within the definition, but there is uncertainty as to whether it extends to digital technologies, such as software and AI systems. Our provisional proposals would expand the definition of "product" to include software and AI systems (whether delivered on or embedded in a physical medium or supplied digitally), as well as the design components and features of social media and other online platforms. They would also seek to ensure that the definition remains capable of accommodating future technological developments.

Who can be liable: Product liability claims may be brought against producers, own-branders, importers, and, in certain circumstances, suppliers of products who fail to identify the responsible producer, own-brander, importer or their own supplier. Our provisional proposals would expand the range of persons who may be held liable to reflect the new ways in which products are now

marketed and sold, particularly through online platforms and complex supply chains.

Defect: A product is defective if its safety falls below the level that persons are generally entitled to expect. In determining whether that standard is met, all relevant circumstances must be considered, including how the product is marketed, its packaging and instructions, and what might reasonably be expected to be done with it. A product is not deemed defective merely because safer versions are later developed. The broad definition of defect has led to uncertainty and different approaches in the courts. Our provisional proposals would provide clearer and more structured guidance on its application.

Compensable damage: The CPA allows claims for death, personal injury, and certain types of property damage. Claims cannot be brought for pure economic loss, including loss of or damage to the defective product itself. Property damage is only compensable where the property is intended mainly for private use and the value of the loss exceeds £275. Our provisional proposals would clarify the types of damage covered by the CPA, including the extent to which compensation can be obtained for psychiatric harm, and also consider whether existing limitations remain appropriate.

Defences: The CPA provides a range of defences, including where the defect resulted from compliance with legal or regulatory requirements, where the defendant did not supply the product (or did so outside the course of business and without a view to profit), where the defect did not exist at the time of supply, and where the defect could not have been discovered given the state of scientific and technical knowledge at that time. Our provisional proposals consider whether these defences continue to operate fairly, and, where necessary, would adapt them to the challenges posed by digital, connected and iteratively updated products.

Limitation period and long-stop: Claims under the CPA must generally be brought within three years of the later of the date on which the cause of action accrued and the date on which the claimant acquired knowledge of the injury or damage. In addition, a “long-stop” applies to extinguish any right of action ten years after the product was supplied. Our provisional proposals would reset the long-stop period following a substantial modification to a product and extend it to 25 years in cases of latent harm.



AT A GLANCE: OUR KEY PROVISIONAL PROPOSALS

- A broader, future-proof definition of “product” that includes software, AI systems (whether delivered on or embedded in a physical medium or supplied digitally), and the design components and features of social media and other online platforms.
- An expanded definition of “supply”, under which products are treated as supplied irrespective of how they are delivered, including by download or other digital means, together with clarification of liability where products have been substantially modified after supply.
- New categories of potentially liable persons to reflect the increasing complexity of modern supply chains, including fulfilment service providers, online marketplaces and UK authorised representatives.
- A clearer and more structured framework for determining what constitutes “defect”.
- A rebuttable presumption of defect and a risk-sharing mechanism in cases involving exceptional evidential difficulties.
- A new framework for the compensation of psychiatric harm.
- Compensation for damage to property used for mixed private and professional purposes.
- Compensation for destruction and corruption of data.
- The reset of the long-stop period following a substantial modification to a product by a producer and the extension of the long-stop to 25 years in cases of latent harm.

Definition of a “product” under the CPA (Chapter 2)

The current law

The current definition of “product” under the CPA was designed primarily with tangible goods in mind. It does not easily accommodate digital technologies such as software and AI systems that may cause injury or damage. This leaves a potential gap in the regime.

Our provisional proposals for reform

We propose a broader, more future-proof definition of “product”, that includes software and AI systems, however supplied, as well as the design components and features of social media and other online platforms.

Software and AI systems

Software and AI systems are used as tools by individuals to perform a wide range of functions, such as analysing data or, in the case of AI systems, generating content. They often replace or control processes that were previously mechanical, and can give rise to risks of personal injury or property damage. In this respect, they share similarities with physical products.

For these reasons, we propose that software and AI systems should be treated as “products” under the CPA. This should be the case regardless of whether they are delivered on or embedded into a physical product or supplied digitally. Their nature and safety profile do not depend on how they are made available.

The case for such technologies falling within the scope of the CPA is particularly strong given the evidential difficulties they can create for claimants. This is especially true of AI

systems, which can make it very difficult for claimants to establish how and why harm has occurred. These difficulties are compounded by the asymmetry of knowledge between claimant and developer, the latter typically having exclusive insight into the system’s design, training and operation. Establishing fault may therefore be exceptionally challenging. This is precisely the kind of evidential complexity that the CPA’s strict liability regime was introduced to address.

To complement this proposal, we also seek to identify some core features of software and AI systems that would clarify the boundaries of the product liability regime and promote legal certainty. In relation to software, we identify as its core elements both the code or other instructions capable of causing a machine to perform or achieve a particular function, task or result, and the resulting functionality produced when those instructions are executed.

In relation to AI systems, we identify a number of features associated with such systems, including machine operation, the generation of outputs from inputs, autonomy in the production of those outputs, the use of relevant development techniques, and the possibility of self-learning after deployment.

We ask consultees whether these features provide a helpful basis for identifying software and AI systems for the purposes of the CPA, or whether alternative approaches would be preferable as technology continues to evolve.

Open-source software

We are aware of concerns that imposing strict liability on developers of open-source software could discourage collaborative development, innovation and research. These concerns are particularly significant given that open-source software, which is available for others to use, modify and redistribute, typically at no cost to them, is now widespread and forms a

substantial part of the code base of many popular applications.

We do not, however, propose a specific exemption for non-commercial open-source software. This is because the critical question under the CPA is not whether software is open-source, but whether it is supplied in the course of business and/or with a view to profit. Under the existing provisions of the Act, a producer who supplies a product outside the course of business and without a view to profit is not liable under the CPA. Accordingly, developers who make open-source software available on a genuinely non-commercial basis would generally fall outside the regime.

By contrast, open-source software supplied in the course of business and/or with a view to profit would fall within the scope of the CPA, even where users do not pay for it directly. For example, software may be made available free of charge while generating revenue through associated support, maintenance or other services.

Social media and other online platforms

Social media platforms now play a central role in daily life. They are capable of causing harm and the risks that they pose have been recognised by Government, widely discussed in the media, and the subject of litigation in other jurisdictions. The principal piece of legislation governing online safety in relation to online platforms is the Online Safety Act 2023. It requires social media platforms, among other duties, to assess and mitigate the risks associated with illegal content through proportionate measures relating to the design of functionalities, algorithms and other platform features. Its emphasis is therefore on regulation and risk management, rather than on providing individual redress. The Act does not confer on individuals a right to compensation for harm caused by a platform's

design or operation, leaving a potential gap in the law.

Against this background, we propose that the design components and features of social media platforms should be treated as products for the purposes of the CPA, providing individuals with a route to compensation where a defect in those components and features causes harm. Although we focus on social media platforms because of the attention they have attracted, similar considerations apply to other online platforms, such as gaming platforms.

This proposal can be seen as building on our broader proposal that software should be treated as a product under the CPA. The software underpinning social media platforms would also fall within the regime. However, we go further by identifying the specific design components and features that should themselves be treated as products for the purposes of the CPA.

The design components and features of social media platforms that would fall within the CPA would include, but not be limited to:

- algorithms, such as recommender algorithms that curate content shown to users;
- features relating to the presentation of content, such as “infinite scroll” and video autoplay features;
- features governing user interaction, such as the ability to like, share or comment on posts;
- any ephemeral features (where content can be accessed only a limited number of times);
- personal notifications sent to users;
- the tools made available for users to edit or label content, such as content filters;
- the mechanisms allowing or restricting access of users, such as age

verification processes, parental controls and screen-time limits; and

- any reporting mechanisms that allow users to report illegal or harmful content.

These components and features form part of how a social media platform is intentionally designed and developed by its developers, in much the same way as a traditional product is designed and produced. As a result of these design choices, the platform may operate in a manner capable of causing harm and we therefore propose that it should attract liability under the CPA in the same way as any other product. This would make developers potentially liable under the CPA for harm caused by the design of their platforms and the unique features they have built into them.

Our proposal does not engage with, or seek to regulate, a platform's role as a host of user-generated content, nor does it attribute liability to platforms for the substance of third-party material. Instead, it is concerned only with defects in the design or operation of the platform itself. The critical distinction is therefore between content and the platform architecture through which that content is organised, prioritised and delivered. Some design components and features, including recommender systems, necessarily take account of the characteristics of the content they process, as well as user behaviour, predicted engagement and inferred preferences. The key question, however, is whether the alleged defect lies in the platform's design or operation, rather than in the meaning, lawfulness or viewpoint of any particular item of content. In other words, the product liability regime would apply to how the platform is designed and functions, not to the content it carries.

That distinction is also important in the context of the right to freedom of expression under Article 10 of the European Convention on Human Rights, with which we consider our

proposed approach to be compatible for the reasons explained in the consultation paper.

Future-proofing the definition of “product”

To ensure that the CPA remains adaptable as technology evolves, we propose that the definition of “product” should extend to any other thing (digital or otherwise) that is designed or developed to perform a specific function for users, irrespective of how it is supplied or made available. This formulation focuses on the defining characteristics of a product, namely how it is designed to function, while avoiding the rigidity of closed categories.

Pure information

Pure information, by which we mean facts, data, instructions, knowledge, or ideas that are intangible and abstract in nature and do not perform any operational or functional role, is not considered to be a product under the CPA, which is generally taken to exclude intangible items (other than electricity) from its scope.

We consider that the general exclusion of pure information should be retained. This is because pure information lacks a functional role; any harm generally arises only when the information is relied upon, acted upon, or incorporated into another product.

As an exception to the general exclusion of information, we propose that digital manufacturing files, such as those used in 3D printing and computer-controlled manufacturing, should be treated as products for the purposes of the CPA, together with any other functional information necessary to produce a tangible item by enabling the automated control of machinery or tools. This is because this information has an operative function: it is designed to perform a task or exhibit defined features with specific functionality.

We also ask consultees whether there are other categories of information that should fall within the definition of “product” under the CPA, particularly where information is supplied in a form intended to be processed by a computer system or connected product, directly influencing the system’s operation, behaviour, or outputs. This may involve situations in which software developers supply information in the form of code that they intend users to compile, build, or deploy, or the sale of training data for large language models. Given the relative ease with which such information can be used to create or operate products capable of causing harm, we ask consultees’ views on whether it should fall within the CPA’s scope.

Exclusion of services

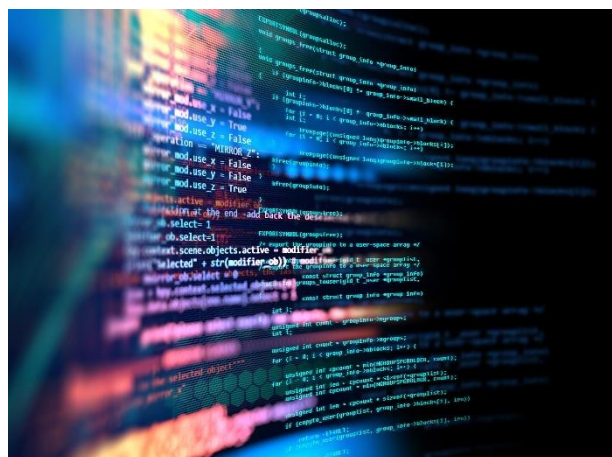
We propose that services should continue to be excluded from the CPA. We further propose that this exclusion should extend to services that are interconnected with a product, or that are required for a product to function. The CPA would therefore not adopt a concept equivalent to the New Directive’s “related service”. In our view, there is no need for such a concept under the Act. A claimant will ordinarily be able to bring a claim in respect of the defective product itself, without needing to pursue the provider of any ancillary service supporting the product. Introducing such a provision would also risk blurring the boundary between products and services, which we consider should remain distinct.

We seek consultees’ views on whether bespoke software that is provided as a service, meaning software that is specifically customised and provided on an ongoing basis for a particular customer (rather than being placed on the market or distributed more widely), should also be excluded.

Definition of “supply”

We make two proposals related to the meaning of supply, which follow from our proposed reforms to the definition of “product”. Under these proposals:

- the definition of supply would be expanded so that a product is treated as supplied regardless of the means of delivery, including where it is provided otherwise than on a physical medium, such as by digital download; and
- the situations constituting supply would be expanded to include circumstances in which products are made available without the user giving any monetary or other consideration for their use, provided they are made available in the course of business and/or with a view to profit. This is intended to capture modern business models in which software, AI systems or online platforms may be made available for free but generate revenue through other means, such as advertising or the use of personal data of users.



Persons liable under the CPA (Chapter 3)

The current law

The CPA provides that the following persons are liable for damage caused by a defective product: the “producer” of the product; an “own-brander”, meaning a person who by putting their name or trade mark on the product has held themselves out to be the producer of the product; and importers of the product into the UK. Suppliers of products can also be liable under the CPA, though they may avoid liability by identifying any of the producer, own-brander, importer or their own supplier on request.

Where more than one person is liable for the same damage, their liability is joint and several. This means that a claimant may bring a claim against any one or more of those persons for the full amount of their loss, choosing which potential defendant to pursue. A defendant who pays more than their share may then seek a contribution from the others.

Our provisional proposals for reform

Our proposals respond to new technologies, the growth of e-commerce and the increasing complexity of modern supply chains. They include expanding the definition of “producer”, clarifying liability in relation to defective components and substantially modified products, and introducing new categories of persons who may be held liable under the CPA.

Definition of producer

Given our proposals to extend the definition of “product” to include software, AI systems and the design components and features of online platforms, we propose expanding the definition

of a “producer” to include the person who developed them.

Producer liability for defective components

Under the CPA as it stands, where the defect lies in a component that is itself a product (hereafter referred to as a “component”), both the producer of the component and the producer of the finished product may be liable. However, components may be integrated into finished products in materially different circumstances, involving varying degrees of producer involvement. The CPA does not distinguish between such circumstances. Modern products are also frequently capable of being interconnected with external components and the CPA does not provide for this circumstance. As a result, the Act does not provide a sufficiently clear framework for determining when the producer of the finished product should, or should not, be liable for defects arising from integrated or interconnected components. This is increasingly important in the context of emerging technologies due to the ease with which products can be interconnected.

We propose that where a defective component is integrated into or interconnected with a finished product within the control of the producer of the finished product, then both the producer of the finished product and the producer of the component should potentially be liable under the CPA. On the other hand, where a defective component is integrated into or interconnected with a producer’s finished product outside of their control, only the producer of the component should potentially be liable under the CPA.

Substantial modifications of a product

The CPA is currently unclear as to who is liable where a product has been substantially

modified after supply, and what amounts to a substantial modification. In particular, it does not distinguish between a product that has simply been repaired and one that has been altered to such an extent that it effectively becomes a new product. The issue is especially significant for emerging technologies, which can more easily interact with other products or be modified by persons other than the original developer, as compared to tangible products.

We propose criteria for determining what should constitute a “substantial modification”. In our view, this occurs where a person alters the product’s original performance, purpose or type, and, as a result, either changes what persons generally are entitled to expect of the product or the nature or level of risk associated with it. We do not consider an AI system’s ordinary self-learning would satisfy these criteria.

In terms of the allocation of liability, we propose that where a product is substantially modified within the original producer’s control, the original producer should remain liable for the damage caused by the modified product, rather than the person who carried out the modification. By contrast, where a product is substantially modified outside the original producer’s control, liability should depend on whether the modified product is commercially supplied. If it is, that person should be liable for the damage caused by the modified product as its producer; if it is not, they should not be liable for such damage.

In either case, where the defect in the modified product arose outside the original producer’s control, the original producer would have a defence and would not be liable under the CPA.

New categories of liable persons

We propose introducing several new categories of potentially liable persons under

the CPA: fulfilment service providers, “core participants” and UK authorised representatives. This is intended to address the increasing complexity of modern, globalised supply chains and the rise of e-commerce.



Fulfilment service providers

This new category would capture entities that provide services such as warehousing, packaging and dispatching of products. Such entities often play a significant role in facilitating access to the UK market for products from other countries, particularly where products are sold online.

We propose that a fulfilment service provider should be liable under the CPA, but only where a UK producer, own-brand, importer, or UK authorised representative of any of those persons, cannot be identified. This seeks to ensure that claimants have access to a potential defendant within the UK, while recognising that other categories of liable person will ordinarily be more appropriate defendants where they can be identified.

We propose that a fulfilment service provider should be any person offering, in the course of their business, at least two of the following services: warehousing, packaging, addressing, and dispatching of a product, in each case without having ownership of that product, and excluding postal services, parcel delivery services and freight transport services. This aims to capture the core elements of a

fulfilment service provider's role in facilitating access to the UK market. Any entities that only provide minor services should be excluded.

“Core participants”, including online marketplaces

Due to the growth of e-commerce, consumers are increasingly buying products from online sellers and marketplaces. We consider that online marketplaces should be liable in certain circumstances for the products sold on their platforms. However, as online marketplaces may evolve and novel operators acting in a similar way may emerge, we do not propose a fixed definition of an “online marketplace”.

Instead, we identify their core attributes that, in our view, justify imposing liability and propose that the CPA should apply to entities exhibiting those attributes under a new category, which we refer to as “core participants”.

We propose that a person should be a core participant where they (or a controlled entity):

1. played a significant role in bringing a product to the UK market;
2. benefited financially from doing so; and
3. had direct or indirect control or decisive influence over the product's manufacturing or distribution process, but
4. are not a producer, own-brander, importer, fulfilment service provider, or UK authorised representative of any such person.

The inclusion of controlled entities is intended to reflect the commercial reality that, within a corporate group made up of several related but legally distinct entities, responsibility for different aspects of the group's operations may be divided between those entities.

We propose that a “core participant” should be liable under the CPA, but only where a UK

producer, own-brander, importer, fulfilment service provider, or UK authorised representative of any of those persons, cannot be identified. As with our proposal regarding fulfilment service providers, this seeks to ensure that claimants can bring a claim against a potential defendant within the UK. At the same time, it recognises that liability should ordinarily rest with other categories of liable persons where they can be identified.



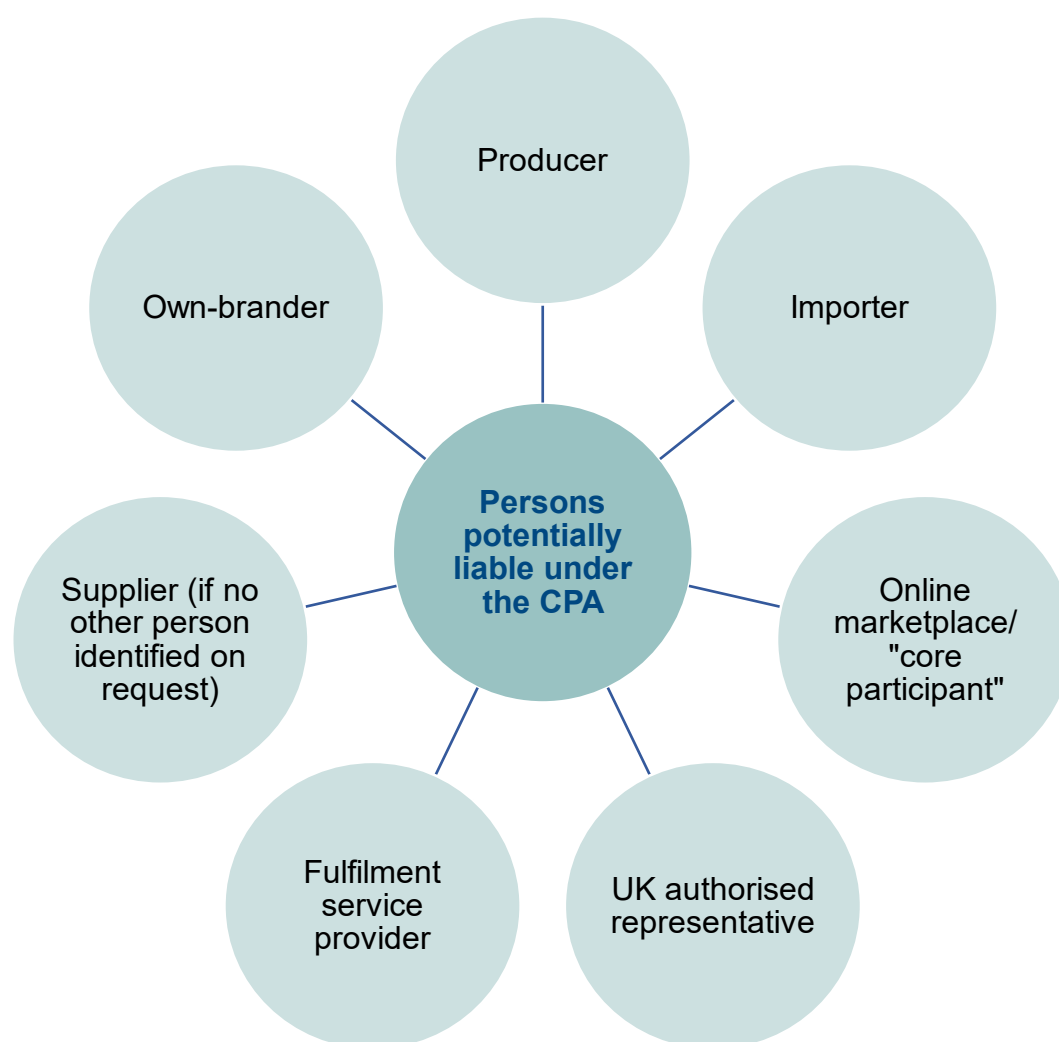
UK authorised representatives

One of the original policy aims of the CPA was to impose liability on importers, so that claimants could identify a potential defendant within the UK and avoid difficulties with pursuing a claim outside the jurisdiction. Our proposals to extend liability to fulfilment service providers and online marketplaces (core participants) seek to further this objective.

We propose that the CPA go further by imposing liability also on the UK authorised representative of a producer, own-brander, importer, fulfilment service provider, or core participant where such persons are established outside the UK. A “UK authorised representative” for these purposes would mean any person established in the UK and authorised to act on behalf of such a person in relation to the product, including for regulatory, compliance, enforcement, product-related, and market-access functions.

Suppliers

We consider that the CPA's existing approach to supplier liability should be retained, so that a supplier is liable only where it fails to identify another person against whom proceedings could be brought. In light of our proposal to expand the categories of persons who may be liable under the CPA, we propose corresponding amendments to the supplier liability provisions. A supplier would avoid liability by identifying a person within the expanded list, provided that, where that person is not the supplier's own supplier, they are established in the UK and are identified in accordance with a prescribed order of priority.



Defect and causation under the CPA (Chapter 4)

Definition of defect

The current law

Under the CPA, a producer or another potentially liable party is strictly liable for any damage caused wholly or partly by a defect in a product. A product is defective “if the safety of the product is not such as persons generally are entitled to expect”. The CPA provides a non-exhaustive list of circumstances that the courts must consider in determining the level of safety that persons are entitled to expect, including the manner in which the product has been marketed, the product’s appearance, instructions or warnings, reasonable use, and time of supply.

The definition of defect is broad and general, allowing the regime to operate across a wide and evolving range of products. However, the breadth of the definition can also generate confusion, inconsistency in its application, and uncertainty, particularly in technically complex cases. This can require parties and the courts to expend significant time and resources determining how the entitled level of safety should be assessed, which increases the cost and unpredictability of such claims.

These difficulties are likely to become more pronounced in the context of products with digital elements. Many such products operate in opaque, technically complex ways that are not readily understood by the public. Their complexity is compounded by the fact that they can be modified remotely, for example through software updates, making their performance programmable and capable of change over time. This increases the difficulty of identifying and evaluating the entitled level of safety.

Our provisional proposals for reform

Our proposals seek to preserve the flexibility of the definition of defect, thereby allowing it to adapt to a wide and evolving range of products, while providing clearer and more structured guidance on its application. We propose that this is achieved in three ways.

1. By providing a non-exhaustive list of principles for assessing whether the safety of a product is not such as persons generally are entitled to expect and therefore whether the product is defective.
2. By supplementing and updating the list of circumstances that shall be considered by the courts when determining whether the safety of a product is not such as persons generally are entitled to expect.
3. By clarifying and elaborating the stated purpose of the CPA.

Non-exhaustive list of principles for assessing the entitled level of safety

We propose that the CPA should include a non-exhaustive list of principles for assessing whether a product has met the entitled level of safety. A product would be defective for the purposes of the CPA if any one of the principles is satisfied. The proposed principles are drawn from domestic case law and the case law of other jurisdictions where comparable tests for establishing defect have been applied. Under these principles, the safety of a product would not be such as persons are entitled to expect where:

- **Normal and reasonably expected use:** the product, when used in a manner that could be reasonably expected, caused damage beyond that which was ordinarily and inherently associated with such use.
- **Provision of information:** the product carried a risk of damage, and insufficient

information was provided to enable persons to make a decision as to whether to accept that risk.

- **Instructions and warnings to avoid harm:** the product carried a risk of damage that could be avoided and adequate instructions or warnings as to how that risk might be avoided were not provided.
- **Presentation of risk:** any warning or information provided in respect of a risk of damage posed by the product did not accurately and clearly convey the nature and seriousness of that risk, and/or downplayed or obscured it.
- **Avoidability of risk at the time of supply:** the risk of damage posed by the product at the time of supply could reasonably (taking into account the cost and feasibility of doing so) have been eliminated or materially reduced, without compromising the product's benefits, and it was not.
- **Relationship between risks and benefits:** the risk of damage posed by the product is not proportionate to, and justified by, the benefits which the product provides, unless that risk of damage is so well known by the public at large as to be considered socially acceptable.
- **Comparison with available alternatives:** the product, at the time of supply, posed a materially greater risk of damage than other products then available which would have provided comparable or greater benefits.

These principles would not replace the overarching question posed by the statutory test, which is whether the safety of a product is not such as persons generally are entitled to expect. Rather, they would articulate and give more concrete expression to the test, guiding its application and providing claimants with a clearer route to establishing that a product's safety was not such as persons generally are

entitled to expect. A claimant would be able to rely on one or more of the principles in support of that contention.

We invite consultees' views on whether, to maintain the overall balance of interests which the regime seeks to achieve, a defendant should ever be able to avoid liability under our new principles (beyond the means of doing so that already exist under the regime) and, if so, what requirements, if any, they should be required to meet to do so.

Additional “relevant circumstances”

To maintain the flexibility of the definition of defect, we propose preserving the courts' ability to assess defect by reference to all relevant circumstances. In our view, this remains essential to ensure the regime can adapt to emerging technologies and novel risks. However, we propose supplementing the framework by updating existing and specifying additional circumstances to be taken into account when determining whether a product is defective.

The updated and additional circumstances we propose consist of:

- the product's presentation and characteristics, including its marketing, packaging, labelling, design, instructions and warnings;
- the needs of the product's intended users;
- whether a product intended to prevent damage fulfils that purpose;
- the product's ability to learn or acquire new features after supply;
- the reasonably foreseeable effects of interaction with other products, including through interconnection;
- relevant cybersecurity guidance, standards and legal requirements;

- the timing of supply or, where control is retained, the point at which the product left the producer's control; and
- the extent of the producer's control after supply, including their ability to modify the product by software update, upgrade or otherwise, to address risks of harm. This means that the question of whether updates or upgrades have been or could have been provided may be relevant to the assessment of whether the product is defective.

The CPA currently provides that there is no requirement to infer a product is defective only because a product which is supplied later is safer. To preserve the operation of this provision in relation to digital products which can be modified after they have been supplied, we propose that a product should not be regarded as defective solely because another product which was supplied or modified later is safer.

The purpose of the CPA

The current law

The CPA does not contain an express statement of purpose. Instead, section 1 of the CPA states that the Act implements the 1985 Directive and must be interpreted accordingly. Clarifying the purpose of the regime would assist the courts and parties in applying and interpreting its provisions more consistently.

Our provisional proposals for reform

We propose that the purpose of the CPA's product liability regime should be updated through three core propositions:

1. that the CPA establishes a regime of liability for defective products designed to secure a fair apportionment of the risks inherent in products by combining strict liability with safeguards for

businesses, including specific defences designed to avoid unduly inhibiting innovation and productivity;

2. that the regime achieves this by allocating those risks, so far as appropriate, to those who create, control, or benefit from them, and by ensuring that persons who suffer damage can obtain effective compensation without needing to prove fault; and
3. that the regime seeks, where consistent with that fair allocation of risk, to mitigate evidential difficulties that might otherwise undermine its operation.

Proving defect and causation

The current law

In addition to establishing that a product is defective, the claimant must prove, on the balance of probabilities, that the defect caused, wholly or partly, the damage complained of ("causation").

The CPA does not specify how a claimant is to discharge the burden of proving defect and causation, leaving the issue to the courts. Case law indicates that claimants are not required to establish why the product failed or the cause of the lack of safety that constitutes the defect.

In practice, however, proving defect and causation can be challenging in technically complex claims. Claimants have at times relied on arguments resembling those advanced in negligence, which can require extensive technical investigation and competing expert evidence, increasing both the cost and unpredictability of proceedings.

Case law shows that these difficulties persist under the CPA. Stakeholders have identified challenges arising from the cost and limited availability of experts, difficulties in analysing

technical disclosure, and the imbalance of technical knowledge and resources between claimants and producers. These concerns are likely to become more acute as products increasingly incorporate digital and AI-driven technologies.



Our provisional proposals for reform

In our view, these issues support the case for reform, provided that any reform does not impose disproportionate burdens on defendants or disturb the balance of interests underpinning the regime.

Rebuttable presumptions of fact

We consider introducing rebuttable presumptions in certain circumstances in relation to factual issues relevant to proving defect and/or causation. Such presumptions would arise where the claimant can show that an asymmetry of information exists in the defendant's favour and that it would be fair for the defendant to bear the burden of rebutting the presumption.

The presumptions would be confined to the factual issues concerned rather than determining defect or causation as a whole. By applying only where it is fair for the defendant to bear the burden of proving the factual issue, they are intended to address evidential difficulties without unduly favouring claimants or upsetting the overall balance of the regime.

We recognise however that the use of presumptions may in practice introduce additional complexity to proceedings. We ask consultees for their views on whether this approach would in fact assist claimants in establishing defect and causation, and whether it would do so without unduly tipping the balance in favour of claimants.

A rebuttable presumption of defect and sharing of the burden of risk

There are cases where the available evidence is insufficient to determine whether a product is defective, not merely because the claimant has failed to discharge the burden of proof, but because the relevant evidence does not exist or cannot be obtained. In such cases, the claim will fail and the loss will fall entirely on the claimant.

We do not consider this outcome fair where the defendant has created and profited from the risk, particularly where the absence of evidence is attributable, at least in part, to the defendant's conduct, for example where a product is withdrawn before sufficient data emerges.

Such cases are likely to become more frequent as increasingly complex and opaque technologies, including AI systems, become more widespread and their operation more difficult to understand and explain.

To address the exceptional evidential difficulties a claimant faces in such cases, we propose introducing a rebuttable presumption of defect. The presumption would arise subject to strict thresholds, applying only where the claimant can satisfy the court that it is arguable that the product is defective; that the facts relied on are not fanciful; that the claimant faces exceptional evidential difficulties due to the limited availability of evidence; and that the risk of harm is not so widely known as to be socially accepted.

If these criteria are met, the defendant would then elect either to assume the burden of rebutting the presumption of defect or accept the alleged defect.

If the defendant elects to accept the alleged defect, the court would allocate the risk between them, provided that the claimant establishes damage and causation and no defence applies. The starting point would be an award of 50% of the damages that would have been recoverable had defect been established. The court could adjust that award to reflect the extent to which an ordinary consumer in the claimant's position could reasonably have understood and accepted the risk, and the extent to which the claimant's own conduct contributed to the harm.

If the defendant elects to rebut the presumption and fails to do so, we propose that damages should be assessed as if defect had been proven, provided that the claimant establishes damage and causation and no defence applies. No sharing mechanism would apply.



Damage giving rise to liability (Chapter 5)

The current law

Under the CPA, a producer or other liable party is strictly liable for any damage caused wholly or partly by a defect in a product. “Damage” for these purposes means death, personal injury, and loss of or damage to property (including land), although it excludes damage to the defective product itself.

The CPA defines personal injury broadly to include any disease and any impairment of a person’s physical or mental condition. By contrast, liability for property damage arises only where the property is of a type ordinarily intended for private use and was mainly being used for such private purposes at the time of the loss. No award is made where the value of the property damage does not exceed £275.

Our provisional proposals for reform

Our proposals address several important gaps and areas of uncertainty regarding what constitutes damage under the CPA, which have arisen from developments in case law and advances in technology.

Personal injury

Minimum threshold of harm

Given the breadth of the CPA’s definition of “personal injury” and the absence of judicial consideration of it, it is unclear whether liability arises for any impairment of a person’s physical or mental condition, or whether a minimum threshold of material harm must be satisfied. We propose that the CPA should adopt the same position as that developed in the context of negligence claims, such that a minimum threshold of material harm must be

met before a claim for personal injury may be brought.

Measures taken to avert a risk of future personal injury

We also propose that pecuniary and non-pecuniary losses incurred in taking necessary measures to avert a risk of personal injury posed by a defective product should constitute compensable damage under the CPA. In our view, the public should not be expected to run a risk of personal injury where necessary measures are available to avert that risk, nor denied compensation for the losses incurred in taking such measures. On the contrary, the law should incentivise proactive behaviour that prevents harm from occurring.

Psychiatric harm

We expect questions concerning the recoverability of damages for psychiatric harm to become increasingly significant in light of harms that may arise from modern and emerging technologies, such as social media platforms. The definition of personal injury under the CPA encompasses psychiatric harm, but the circumstances in which it is compensable remain uncertain.

To address this uncertainty, we propose a framework for the compensation of psychiatric harm under the CPA that incorporates some control mechanisms drawn from the law of negligence. We consider the position of “direct victims”, whose physical and/or psychiatric harm is directly caused by a defective product, and “indirect victims”, whose psychiatric harm arises from the physical and/or psychiatric harm suffered by, or the physical imperilment, or the death of, a direct victim as a result of a defective product.

Direct victims

We propose different criteria for the compensation of psychiatric harm depending on whether the harm results from physical

injury or physical imperilment, or occurs in the absence of either.

Where psychiatric harm results from physical injury or physical imperilment caused by the defective product, we propose that psychiatric harm should be compensable under the CPA when it amounts to a medically “recognised” or “recognisable” psychiatric illness.

Where psychiatric harm is the sole injury, suffered in the absence of any physical injury or physical imperilment, we propose an additional criterion for recoverability. As in other cases, it must amount to a medically “recognised” or “recognisable” psychiatric illness. In addition, having regard to all the relevant circumstances, the harm must fall within the natural range of reactions of a person of ordinary fortitude. This requirement serves to exclude claims that fall outside the ordinary spectrum of human responses and thereby operates to prevent excessive liability.

Indirect victims

Psychiatric harm suffered by indirect victims arises as a result of the physical and/or psychiatric injury, the physical imperilment, or the death of a direct victim caused by a defective product. For example, a parent might suffer psychiatric harm if a defective toy physically injures their child, or if a defective digital product, such as a chatbot or social media platform, causes the child to develop a psychiatric condition. The CPA is silent on whether, and if so in what circumstances, indirect victim damages are compensable, and there is no domestic case law on the point.

We consider that indirect victims should, in principle, be permitted to claim for psychiatric harm, subject to appropriate limitations. We propose three criteria for recoverability under the CPA.

1. The indirect victim must suffer a medically “recognised” or “recognisable” psychiatric illness consequent upon the injury, physical

imperilment, or the death of the direct victim caused by a defective product.

2. The harm suffered by the indirect victim must fall within the natural range of reactions of a person of ordinary fortitude, having regard to all the relevant circumstances.
3. The indirect victim must have a “close tie of love and affection” with the direct victim. This requirement serves to keep the liability exposure of defendants within manageable and proportionate bounds, by limiting the class of persons who may claim in respect of a defective product.

Psychiatric harm, digital products and freedom of expression

We recognise that particular care is required where psychiatric harm is alleged to have resulted from the operation of a digital product in circumstances involving the receipt of information or ideas. We address this matter in our consultation paper, including relevant considerations in relation to the right to freedom of expression under Article 10 of the European Convention on Human Rights.



Property damage

Mixed-use property

At present, the CPA allows recovery for loss of or damage to property only where the property is used mainly for private purposes. We consider that this approach requires reassessment in light of the increasing prevalence of property used for both private and professional purposes, including in the context of flexible and home-working arrangements.

We propose that the CPA should recognise any loss of or damage to property as compensable damage, subject to an exclusion for property that was used exclusively for professional purposes at the time it was lost or damaged. However, if the property was used for mixed private and professional purposes at the time it was lost or damaged, the award of damages should be reduced to reflect the extent of the property's professional use.



Destruction and corruption of data

The CPA does not expressly address compensation for the destruction or corruption of data. In the nearly four decades since its enactment, however, data has assumed increasing economic and practical significance. From the perspective of claimants, damage to data may produce consequences that are equivalent to, or even more serious than, those associated with damage to tangible property.

We propose that the CPA should recognise destruction and corruption of data (as distinct from data leaks or breaches of data protection rules) as compensable damage, unless the data is used exclusively for professional purposes. If the data was used for mixed purposes at the time it was destroyed or corrupted, the award of damages should be reduced to reflect the extent of the data's professional use.

We also ask an exploratory question seeking consultees' views on whether loss of access to data held on or accessed via a product should be recognised as compensable damage under the CPA where that data is not used exclusively for professional purposes, given that it may have practical consequences similar to those of the destruction or corruption of data.

Other proposals

We propose that the existing exclusion of liability for damage to the defective product itself should also cover situations in which the damage is caused by a defective component that has been integrated into or interconnected with that product by that product's producer (or within their control). This would ensure that the exclusion continues to operate coherently in relation to modern digital products that can be updated post-supply.

We also propose that the CPA should be amended to remove the lower threshold for property damage of £275. While the threshold protects liable parties from claims that may be regarded as trivial, it excludes recovery for claims that are otherwise valid and may complicate proceedings by requiring claimants to pursue alternative causes of action. It therefore allocates to injured parties risks that should properly lie with defendants, who are typically better placed to absorb and distribute them.

Defences and long-stop (Chapter 6)

Defences

The current law

The CPA provides various defences to defendants facing claims brought under the Act, including where: (i) the defendant did not supply the product to another; (ii) the defect did not exist at the “relevant time” (generally, when the product was supplied); and (iii) the state of scientific and technical knowledge at the time the product was supplied meant that the defect could not be discovered (commonly referred to as the “development risks defence”).

The defences, together with the limitation and long-stop periods discussed below, are intended to support the CPA’s central objective of balancing interests to achieve a fair apportionment of risk: providing consumers with effective protection where defective products cause harm, while ensuring that producers and other defendants are not overexposed to liability, which may inhibit innovation and productivity.

Our provisional proposals for reform

Our proposals address whether the existing defences continue to operate fairly, with particular regard to the challenges posed by digital and connected products, especially where they are capable of being iteratively updated.

No supply to another

The CPA provides a defence where the defendant did not at any time supply the product to another. The intention behind this defence is to prevent liability arising before the

defendant has chosen to expose others to the product. However, uncertainty can arise where a product is not supplied directly to another person but is instead used by a service provider in delivering a service. For example, a medical service provider may use a product that it has produced for its own purposes when providing treatment to a patient. If that product is defective and causes harm, it is unclear whether the provider can rely on the defence that it did not supply the product to another person.

We propose that this defence should not be available where a defective product is used in the provision of commercial or publicly funded services and causes harm in that context. This would ensure that liability cannot be avoided simply because the product was used internally by the service provider rather than supplied to another person.

This approach would ensure consistent protection for those harmed by defective products. It would also mean that individuals receiving publicly funded services, including NHS treatment, would have access to the same protection under the CPA as those receiving equivalent services in the private sector.

Defects arising after supply

The CPA also provides a defence where the defect did not exist in the product at the “relevant time”, which is generally the time of supply.

This defence is appropriate for traditional tangible products, over which a producer will usually lose control at the point of supply. However, it does not adequately account for products that can be modified after supply, including modern products such as smartphones that receive regular software updates to maintain and improve their performance.

In such cases, a producer may cause a product to become defective after it has been supplied, for example by introducing a faulty software update or by failing to provide an update necessary to address a safety risk. As the defect arose after the product was supplied, a defendant could rely on the defence in its current form. In our view, that outcome is unsatisfactory.

We therefore propose that a defendant should not be able to rely on the defence that the defect did not exist in the product at the relevant time if they caused the product to become defective after that time. This would include circumstances in which the producer modifies the product, integrates or interconnects a component with it, authorises or consents to a third party doing so as part of the producer's product offering, or fails to provide necessary software updates or upgrades. We consider that this approach preserves the original purpose of the defence by protecting defendants from liability only in respect of defects that arise outside their control.



Development risks defence

The development risks defence protects a defendant where the state of scientific and technical knowledge was, at the “relevant time” (generally, when the product was supplied), not such that a producer of similar products might be expected to discover the defect while the product was under their control. It reflects difficulties in anticipating the long-term effects

of technically innovative products and the belief that producers should not be liable for dangers that were genuinely unforeseeable.

At the same time, the defence is controversial. It has been suggested that it unduly favours defendants by reintroducing considerations of fault into what is otherwise a strict liability regime. The European Commission has allowed derogations from the defence and several EU Member States have excluded its application in relation to certain products. Some stakeholders have called for the defence to be removed, while others have expressed strong support for it.

We consider that the development risks defence should be retained and should apply to all products and industries. There is little evidence to suggest that it has been used extensively to prevent worthy claims. We also recognise that other aspects of our proposals extend the scope of liability for businesses, and the defence plays an important role in balancing business confidence and innovation with consumer protection. We do, however, propose that the defence be updated in two respects.

First, to resolve uncertainty in the interpretation of the defence, we propose that the relevant question should be whether the state of accessible scientific and technical knowledge, assessed *objectively*, was such as to allow the defect to be discovered. The defence should not depend on what a producer of products of the same description as the product in question might be expected to have discovered, as the CPA currently provides. In so doing, the current formulation appears to shift the inquiry away from the state of knowledge itself and towards the reasonableness of the conduct of the producer, which is difficult to reconcile with a strict liability regime.

Secondly, we propose changes to the operation of the defence where a producer

retains an ongoing role in the product's safety after the "relevant time" (generally, the time of supply), for example through modifications or software updates. In particular we propose that where the producer causes the product to become defective after the time of supply, whether by modifying the product or integrating or interconnecting a component with it, the state of scientific and technical knowledge should be assessed at the time the product became defective, rather than at the time of supply. Similarly, where the producer causes the product to become (or remain) defective after the time of supply by failing to provide software updates or upgrades, the state of scientific and technical knowledge should be assessed at the time the product became (or remained) defective.



The long-stop period

The current law

The CPA generally requires that claims be brought within three years of the later of either the date on which the damage arose or the date on which the claimant acquired the relevant knowledge of the damage ("limitation period"). Alongside this, the regime provides that a claimant has 10 years from the "relevant time" to bring their claim, generally the time of supply. This is known as the "long-stop" period.

Our provisional proposals for reform

We have identified two issues which warrant consideration in relation to the operation of the long-stop period.

The long-stop period: products that are modified

Currently, the long-stop period runs from the date at which the defective product was supplied. However, the post-supply modification of products, including through software updates and upgrades, may introduce new risks of harm that were not present in the product at the time of supply. The long-stop does not take this into account and might therefore operate unfairly to prevent a claim.

We propose, therefore, that, where a product is substantially modified after supply, the 10-year long-stop period should reset. If a product is substantially modified within the original producer's control, time should restart from the date when the modified product is made available. If the product is substantially modified by a person outside the original producer's control, time for the original producer should remain uninterrupted and time for the modifier should start from the date when they supply the modified product in the course of their business and/or with a view to profit.

Our proposed concept of substantial modification is predicated on some positive action taken by a person (whether within or outside the original producer's control). As already noted above, we consider that "substantial modification" would not capture an AI system's ordinary self-learning.

The long-stop period: latent injuries

A latent personal injury is one that manifests some time after an accident or event. As

symptoms emerge only later, an individual may not know that they have been harmed.

Under the current law, the 10-year long-stop period applies equally to latent personal injuries and other personal injury claims. This means that an individual who suffers a latent personal injury may have only a short period in which to initiate proceedings. Where an injury comes to light more than 10 years after supply, it will not be possible to bring a claim.

Stakeholders have raised concerns that this position creates unfairness for some claimants, who are left without a claim under the CPA. On the other hand, claims brought many years after supply may be difficult to defend, as evidence may no longer be available.

To balance these competing interests, we propose that the 10-year long-stop period be extended to 25 years for latent personal injury claims, but only where it was not possible for the claimant to initiate proceedings within the initial 10-year period due to the latent nature of the injury. This would ensure that a claimant benefits from the extension only where it is truly necessary. We propose criteria for determining whether an individual had sufficient information, such that they should have pursued a product liability claim within 10 years.



Practical issues with suing defendants (Chapter 7)

Substitution of parties outside the long-stop period

Stakeholders have raised concerns that claimants may struggle to identify the correct person to sue under the CPA, particularly where products are manufactured by companies within complex group structures. Where it is unclear which entity is the producer, a claimant may issue proceedings against the wrong company and later seek to substitute the correct defendant. Difficulties arise where proceedings are commenced within the long-stop period, but the application for substitution is made only after that period has expired.

The current law

The substitution of a party after the expiry of the long-stop period under the CPA is governed by section 35 of the Limitation Act 1980, which gives the courts discretion to allow such a substitution where certain conditions are met. However, the extent to which section 35 can affect the operation of the long-stop period has previously been limited by case law from the Court of Justice of the EU, which determined that a claimant generally cannot substitute the original manufacturer after the expiry of the long-stop period where the original claim was brought against a different person. This approach no longer binds the courts in England and Wales.

Our provisional proposals for reform

We propose that a court should have the power to substitute a defendant after the expiry of the long-stop period where the claimant

satisfies the requirements in section 35 of the Limitation Act 1980. These requirements should be treated as satisfied where the claimant has identified the defendant by the correct description in the circumstances of the case but used the wrong name.

We further propose that, where a claimant has sued the wrong company within a group and the correct defendant is another entity within the same group, the court should ordinarily permit substitution, unless it would be inequitable to do so.

Inability of defendants to satisfy claims

A claimant may be unable to recover damages under the CPA where the defendant is insolvent or is otherwise unable to meet the claim. This is particularly problematic where the defendant is a large multi-national company with assets split between different group entities with varying levels of product liability insurance. In such cases, the group entity that manufactures the product, and is therefore the defendant in product liability proceedings, may be asset poor and unable to meet a successful claim, leaving a claimant without any meaningful redress under the CPA.

We recognise that these issues are not unique to product liability claims under the CPA but arise more broadly wherever a defendant is unable to satisfy a claim. A number of potential mechanisms could mitigate this risk, including reforms to corporate governance for companies approaching insolvency; piercing the corporate veil; accessory liability in tort; enterprise liability; and rights of an injured person to claim against the insurer of the defendant where they have product liability insurance.

However, we do not consider that extending these mechanisms would be appropriate within this project. Each raises wider issues, which

require detailed and context-specific analysis beyond product liability. We therefore conclude that consideration of such reforms falls outside the scope of our Terms of Reference.

Bringing claims against defendants based outside the jurisdiction

Our proposals relating to the persons liable under the CPA are intended to ensure that, where possible, there will be a potential defendant within this jurisdiction against whom a claim under the CPA can be brought. In some cases, however, the only potential defendant may be based overseas. This may arise, for example, where a claimant purchases a product directly from an overseas supplier. In such cases, the general rules of private international law will determine issues related to jurisdiction and applicable law of the claim. As this issue falls outside the scope of our Terms of Reference, we do not make any proposals for reform in this area.



Assessing the impact of reform and concluding questions (Chapter 8)

Economic impact

To assess our proposed reforms, we need to understand the potential impacts of both the current law and our proposals. This evidence will influence the development of our final recommendations and assist the Government in assessing them with a view to implementation.

We therefore seek consultees' views and request that they provide us with any evidence they have on the economic impact of the current law as well as our proposals for reform. We are particularly interested in evidence of monetisable costs and benefits, but where that is not possible, we are grateful for any qualitative insights that consultees can offer.

Equality impact

To assess the benefits of reform, we must also consider whether our proposals could have disparate impacts on particular groups, including those linked to the protected characteristics set out in the Equality Act 2010. A disparate impact may be either disproportionately negative or disproportionately positive.

We invite consultees to tell us if they believe or have evidence or data to suggest that any of the reforms that we propose could result in advantages or disadvantages to certain groups or based on certain characteristics (with particular attention to age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, and sexual orientation).

Territorial application

As the Law Commission of England and Wales, our recommendations for reform only apply to England and Wales. However, the CPA applies in England, Wales and Scotland. The same regime, albeit under a separate piece of legislation, also applies in Northern Ireland. Our review, and the recommendations we make, are therefore potentially relevant to Scotland and Northern Ireland.

We invite consultees to provide us with any information they have about the impact of our proposals in Wales, Scotland or Northern Ireland. This could include jurisdiction-specific issues that should be taken into account if reforms are implemented, or, in the case of Scotland or Northern Ireland, the impact if reforms implemented in England and Wales were not extended to those jurisdictions. We are particularly interested in hearing about the potential impacts on businesses if product liability laws were to differ between different UK jurisdictions.

Other areas of reform

We make a wide range of proposals to amend the law of product liability. We recognise, however, that there may be issues that we have not yet identified and we invite consultees to tell us whether there are any other ways in which the product liability regime might be improved.

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