

A NEW PRODUCT RECALL DATABASE IN THE UK – REVOLUTIONISING PRODUCT RECALL ACTION?

On 24 June 2016, the UK Retail Ombudsman (“Ombudsman”) launched a new Central Product Recall Database for electrical products in the UK. Billed as “*the UK’s first central register of electrical appliances*”, the new Database, “[UK Recall](#)”, aims to address some of the most commonly reported shortcomings of the current UK recall system.

In conjunction with the launch of the new Database, the Ombudsman has also called for a change in the present law, which would require manufacturers to act more quickly when potential safety issues arise.

This bulletin examines the impact of such changes on manufacturers and retailers supplying products in the UK.

Does the UK need a new Central Recall Database?

With consumers regularly failing to engage with manufacturers’ requests to register their products post-sale, traceability of potentially unsafe products remains one of the principal hurdles for manufacturers when undertaking recall action. Organisations such as the Association of Manufacturers of Domestic Appliances have introduced on-line portals in an attempt to encourage consumers to register their goods directly with the manufacturer, but with limited success. The Recall Ombudsman views UK Recall as a quick and easy way to collate consumers’ contact details, so potential safety issues with electrical products can be addressed more swiftly than is currently the case and consumers can search for details of recalls in one central place.

How will the new “UK Recall” Database work?

The Ombudsman has called on consumers to engage with the new Database by logging basic information about the electrical products they have purchased, as well as their own contact details. The Ombudsman intends to use this information to act quickly and contact consumers should a safety issue arise. Automatic alerts will be sent to consumers by the Ombudsman, rather than consumers having to wait for a manufacturer to contact them or check for themselves whether their product is affected. The UK’s Chief Ombudsman, Dean Dunham,

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is clear about his new role, recently stating: *“when there is a problem, we will go out in automated measures and tell people very quickly what the problem is”*.

By registering with UK Recall, consumers’ details will also be entered on the product manufacturer’s own database. However, little detail has been given as to how (or whether) the Ombudsman intends to work with manufacturers before making contact with consumers or what information the Ombudsman will impart. In the usual course of a recall, it is for manufacturers to pursue an appropriate corrective action programme that is acceptable to the regulator, in terms of nature, form and timing. How the Ombudsman intends to fit into this process is unclear, albeit it is suggested that the Ombudsman will use the manufacturers’ own recall notices and safety alerts to contact consumers.

It may be that, ultimately, product manufacturers will use the new Database in much the same way as motor vehicle manufacturers currently use details held by the UK Driver and Vehicle Licensing Agency (“DVLA”). Vehicle recalls commonly yield a much higher recall response rate than other consumer product recalls, as vehicles can be easily traced to their owners via information held by the DVLA. It is conceivable that, ultimately, UK Recall will be used more as an address book tool for manufacturers, rather than for the Ombudsman to take autonomous action in notifying consumers of recalls. Of course, the mandatory nature of vehicle registration in the UK means that the DVLA holds details of drivers of all vehicles on the UK roads. However, the extent to which the Ombudsman’s address book will contain a comprehensive list of purchasers of all consumer electrical products in the UK remains to be seen.

What is the scope of the “UK Recall” Database?

The scope of products that the new Database covers is limited. It currently only allows registration of domestic electrical appliances. This focus is not surprising given the number of recent high-profile fire incidents involving electrical household products in the UK.

Nevertheless, the most commonly recalled products – toys – remain outside the scope of the Database, as does the second most recalled item category – clothing, textiles and fashion items. It is possible that the Database could be extended to toys, but extending it to cover clothing, textiles and fashion items seems unlikely.

Are manufacturers and retailers obliged to input details into the “UK Recall” Database?

The success or failure of this initiative is data dependent. The initial proposal by the Ombudsman called for retailers to engage with the Database. It was unclear whether the ultimate aim was for retailers to collect consumer contact information and products details at the point of sale. In any event, no such initiative appears to have been pursued. It is likely that the administrative burden and associated costs for retailers would have been a key factor in considering the viability of such an approach. If additional contact details are not to be collected at the point of sale by retailers, one may question how the Database will be more effective than the current system of manufacturers requesting customers to register their product directly with them post-sale. Indeed, making the new Database visible to consumers may well present a challenge in itself.

Action by manufacturers – a new legal obligation?

Calls are also being made by the Ombudsman for a change in the law, requiring swifter action to be taken by manufacturers to address safety issues, in particular when repairs are to be undertaken.

The Chief Ombudsman considers that there should be a formal timetable which sets a deadline by which manufacturers are obliged to reach out to consumers to carry out repairs. Dunham considers that: *“There must be tighter laws. Manufacturers must be called to account [...]. If something goes wrong, they have a duty to put their hand in their pocket, get more staff in, get more people on the road...”*.

In reality, responsible manufacturers do just that: the financial implications of carrying out a recall, whilst often significant, are secondary to ensuring that potential safety issues are addressed and consumers kept safe. What Dunham does not appear to consider – and what is a common problem for manufacturers – is the ability to source or manufacture replacement parts. Under the current system, it is usual for regulators and manufacturers to agree to a timetable for corrective action. Every product is different and poses its own challenges in terms of availability of spare parts and qualified engineers. Regulators take these challenges into account and work with manufacturers to implement a realistic corrective action plan and timetable. If the corrective action being undertaken by the manufacturer is unsatisfactory or insufficient, then the regulator can issue a recall notice of its own accord in any event.

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Shook lawyers have a wealth of experience in helping clients navigate complicated e-discovery, legal privilege, data privacy and protection, and document management matters. We routinely handle cross-border document preservation, collection and production matters for multinational companies.

When businesses invest in a market and the regulations, laws or rules of civil procedure subsequently change—sometimes on short notice—the shift can negatively affect their operations. In many countries, it is becoming easier to bring claims against manufacturers in relation to the use of their products. And for manufacturers of certain consumer products, regulators are seeking to restrict exposure to, and use of, their brands. Shook lawyers have helped businesses proactively engage in public debates to protect both a company's brand investment and consumer base.



A change in the law is unlikely to make any significant impact on current recall practices and the time by which products are repaired or replaced.

The current recall context

These developments take place alongside the recent publication of the [Lynn Faulds Wood Review on the UK consumer product recall system](#). Announced by the UK government in March 2015, the aim of the Lynn Faulds Wood review was to examine the effectiveness of the enforcement of consumer product recalls in the UK and the effectiveness of recalls themselves. Whilst the introduction of UK Recall does not contradict Fauld Wood's overall recommendations to improve the UK recall system, there is no mention of the Database and how it may support the recommendations made in the review.

Furthermore, the recommendations of Faulds Wood and the Ombudsman's requests for new legal obligations for businesses come at a time of great political and legal flux in the UK. Coupled with the government's general approach to deregulation, new mandatory and potentially costly legal obligations on manufacturers seem unlikely.