

# PANORAMIC

# PRODUCT LIABILITY

# 2025

Contributing Editors

Christopher G Campbell, Katie Insogna, Christopher Gismondi, Dani Morrison and Antonious E Sadek

DLA Piper



LEXOLOGY

# Product Liability 2025

Contributing Editors

**Christopher G Campbell, Katie Insogna, Christopher Gismondi, Dani Morrison and Antonious E Sadek**

DLA Piper

---

Panoramic guide (formerly Getting the Deal Through) enabling side-by-side comparison of local insights into the civil litigation system; evidentiary issues and damages; litigation funding, fees and costs; sources of legal framework; limitations and defences; settlement and alternative dispute resolution; jurisdiction analysis; and recent trends.

---

**Generated on: September 10, 2025**

The information contained in this report is indicative only. Law Business Research is not responsible for any actions (or lack thereof) taken as a result of relying on or in any way using information contained in this report and in no event shall be liable for any damages resulting from reliance on or use of this information. Copyright 2006 - 2025 Law Business Research

# United Kingdom - England & Wales

[Emilie Civatte](#), [Ed Gibson](#)

[Kennedys](#)

## Summary

### CIVIL LITIGATION SYSTEM

- The court system
- Judges and juries
- Pleadings and timing
- Pre-filing requirements
- Summary dispositions
- Trials
- Group actions
- Timing

### EVIDENTIARY ISSUES AND DAMAGES

- Pretrial discovery and disclosure
- Evidence
- Expert evidence
- Compensatory damages
- Non-compensatory damages
- Other forms of relief

### LITIGATION FUNDING, FEES AND COSTS

- Legal aid
- Third-party litigation funding
- Contingency fees
- 'Loser pays' rule

### SOURCES OF LAW

- Product liability statutes
- Traditional theories of liability
- Consumer legislation
- Criminal law
- Novel theories
- Product defect
- Defect standard and burden of proof
- Possible respondents
- Causation
- Post-sale duties

## LIMITATIONS AND DEFENCES

- Limitation periods
- State-of-the-art and development risk defence
- Compliance with standards or requirements
- Other defences
- Appeals

## SETTLEMENT AND ALTERNATIVE DISPUTE RESOLUTION

- Settlement
- Alternative dispute resolution

## JURISDICTION ANALYSIS

- Status of product liability law and development
- Product liability litigation milestones and trends
- Climate for litigation
- Efforts to expand product liability or ease claimants' burdens

## UPDATE AND TRENDS

- Emerging trends

## CIVIL LITIGATION SYSTEM

### The court system

#### 1 | What is the structure of the civil court system?

The UK comprises three jurisdictions: England and Wales; Scotland and Northern Ireland. In each, the civil court system has several levels. In England and Wales, the largest jurisdiction, these comprise the following.

##### County courts

County courts deal with most cases in the civil court system, as a first instance court, usually for minor civil issues. District judges handle most of the cases in the county courts. The County Court judiciary must follow the previous decisions of the superior courts, the Supreme Court, Court of Appeal and High Court. They are not bound by their own decisions but may find that they are persuasive. Most county court centres are assigned at least one circuit judge and one district judge. Circuit judges generally hear cases worth over £15,000 or cases that are more complex. They also hear many of the cases worth over £5,000 but not over £15,000.

In the business and property courts, a claim with a value of less than £100,000 will generally be transferred to the county court unless it is required by an enactment to be tried in the High Court.

##### High Court

The High Court usually handles more complex civil cases and appeals from the lower county courts. It comprises three divisions: Chancery, King's Bench and Family. It also contains a number of specialist courts with their own individual areas of work including the Commercial Court, the Administrative Court and the Technology and Construction Court.

##### Court of Appeal

The Court of Appeal is exclusively an appellate court and hears appeals against decisions made in a county court or the High Court. The Court of Appeal is the second most senior court in England and Wales.

##### Supreme Court

The Supreme Court is the highest court and the final UK court of appeal for civil cases for all UK jurisdictions. It hears appeals based on 'arguable points of law of the greatest importance'. Civil cases are typically heard before five law lords (Justices of the Supreme Court). The Scottish case of *Hastings v Finsbury Orthopaedics Limited and Stryker UK Limited* [2022] UKSC 19 (*Hastings*) was the first product liability claim brought pursuant to the [Consumer Protection Act 1987](#) (CPA) to be heard before the Supreme Court in April 2022.

Product liability cases in England and Wales are, in first instance, heard in either the High Court or the county court. This depends on the 'track' to which the particular case is assigned. Judges allocate defended claims to one of three procedural tracks at an early stage based on certain factors relating to the value and complexity of the claim. The four tracks are the:

- multi track: claims can be heard in either the High Court or the county court; however, claims worth less than £100,000 that have been commenced in the High Court are generally transferred to a county court unless there is a specific reason for them to be tried in the High Court;
- intermediate track: these are typically heard in the county court – the value of the claims assigned to this track are generally between £25,000 and £100,000;
- fast track: these are typically heard in the county court – the value and complexity of the claims assigned to this track are low (not more than £25,000); and
- small claims track: these are typically heard in the county court – the value and complexity of the claims assigned to this track are very low (generally below £10,000).

**Law stated - 1 July 2025**

## Judges and juries

### 2 | What is the role of the judge in civil proceedings and what is the role of the jury?

The UK has an adversarial legal system under which representatives from each party take opposing positions to investigate their own cases, call their own evidence and argue their case before a judge.

The judge's role is to uphold principles of fairness and equality and to remain neutral until they give judgment. Judges are responsible for the following:

- they determine the facts;
- they interpret the law ;
- they apply the law to the facts of the case;
- they decide the outcome; and
- they give a detailed reasoned judgment.

Judges also ensure that cases are conducted in accordance with the procedural rules for the jurisdiction.

In England and Wales, the Civil Procedure Rules 1998 (CPR) lay down the rules of civil procedure aimed at achieving efficiency and cost management. The rules also set down how the progress of the case is managed, and encourage parties to cooperate with each other to narrow issues in dispute and consider alternative dispute resolution mechanisms, if appropriate.

Outside of criminal trials, juries are only used in exceptional cases, such as libel and slander. They are not used in product liability cases.

**Law stated - 1 July 2025**

## Pleadings and timing

- 3** | What are the basic pleadings filed with the court to institute, prosecute and defend the product liability action and what is the sequence and timing for filing them?

The CPR govern procedure in England and Wales and are supplemented by a number of mandatory 'pre-action protocols' that lay down guidelines for parties to follow before commencing proceedings.

There is no specific protocol for product liability cases, so the parties must follow the Practice Direction for Pre-Action Conduct and Protocols. The Pre-Action Protocol for Personal Injury Claims is likely to apply in product liability claims involving personal injury.

Broadly, the pre-action protocols require claimants to send a 'letter of claim' containing a clear summary of the facts of the case, and an indication of any injuries suffered or loss incurred. The letter of claim should provide sufficient information for the defendant to investigate their potential liability. The defendant normally has 21 days to acknowledge receipt and provide a preliminary response; and up to three months to provide a full response either admitting or denying liability. Where this is not practicable, the court may, in some cases, extend the deadline; it is also possible for the parties to agree more time should be allowed. If there is no response or the defendant denies liability, the claimant is entitled to commence proceedings by filing and serving a claim form and particulars of claim on the defendant. A defence must then be filed by the defendant within 14 days (or 28 days if an acknowledgement of service is filed within 14 days), responding to each allegation. Extensions of time may be requested by the parties, if required; extensions of time of 28 days maximum can be agreed by the parties without seeking permission from the court.

**Law stated - 1 July 2025**

## Pre-filing requirements

- 4** | Are there any pre-filing requirements that must be satisfied before a formal lawsuit may be commenced by the product liability claimant?

Under the CPR and the pre-action protocols, before proceedings are commenced, litigants are expected to participate in pre-action exchanges of correspondence and, in some cases, pre-action disclosure or the provision of expert evidence. However, while failure to comply with the pre-action protocols before issuing proceedings may result in costs sanctions, it does not affect a party's right to issue proceedings. In product liability cases brought in England and Wales, there is no requirement for parties to participate in mediation, although the parties are encouraged to cooperate and resolve the case, or narrow down

the issues, as early as possible with a view to avoiding litigation, in accordance with the CPR's overriding objective.

**Law stated - 1 July 2025**

## Summary dispositions

### 5 | Are mechanisms available to the parties to seek resolution of a case before a full hearing on the merits?

CPR 24 sets out the procedure for summary judgment, which is a procedural mechanism by which the court can quickly and efficiently determine an entire claim or an issue in dispute in appropriate circumstances. A party can make an application to the court for summary judgment or the court can use its case management powers provided under CPR 3 to make an order for summary judgment on its own volition. The court will grant summary judgment in circumstances where it considers the claim or the defence, or some of the issues therein, have no real prospect of success and there is no other compelling reason why the case should be disposed of at trial.

Alternatively, a court can exercise its case management powers under CPR 3.4 to strike out part, or all, of a party's statement of case on the grounds set out in CPR 3.4(2):

- that the statement of case discloses no reasonable grounds for bringing or defending the claim;
- that the statement of case is an abuse of the court's process or is otherwise likely to obstruct the just disposal of the proceedings; or
- that there has been a failure to comply with a rule, practice direction or court order.

A party can no longer rely on a statement of case that has been struck out.

**Law stated - 1 July 2025**

## Trials

### 6 | What is the basic trial structure?

Parties are required to file pre-action trial checklist to enable the court to consider whether to set any further directions regarding the trial. The CPR require parties to agree a trial timetable ahead of the trial or this will be set by the judge at a case management conference. Depending on the complexity of the claim, a trial can be listed for one day or several weeks and will generally proceed on consecutive days. Case management powers enable the court to hold a trial of preliminary issues or a 'split trial' of liability and quantum if that may promote early or cost-effective resolution.

Each party will usually make written and oral opening and closing submissions. Before a trial, each party will have filed their 'evidence in chief' by way of witness statements and



expert evidence. The trial will often involve oral evidence from both parties' witnesses, who will then be cross-examined by the opposing party.

In England and Wales, legal representatives comprise barristers and solicitors. Solicitors are instructed directly by the claimant or defendant and are responsible for the management of the case and communication with the opposing party. Barristers (also known as counsel) are instructed by the solicitors to undertake the advocacy role and provide specialist knowledge on points of law.

Most civil trials are public and it is common for the media to attend high-profile proceedings.

**Law stated - 1 July 2025**

## Group actions

**7** | Are there class, group or other collective action mechanisms available to product liability claimants? Can such actions be brought by representative bodies?

In England and Wales, group actions may be brought using either formal or informal mechanisms.

A Group Litigation Order (GLO) has been the most commonly used formal mechanism for product liability-related group actions to date, enabling the management of multiple claims that give rise to common or related issues of fact or law. The following applies:

- claimants must 'opt in' to be part of the GLO proceedings;
- there will be a trial of issues that are common to all claims;
- lead cases can be used to allow the parties to put common issues into context; and
- judgment will be binding on all parties to the GLO.

A 'representative action' may be brought by one or more claimants on behalf of an unnamed group of persons who have the 'same interest'. Representative actions can operate on an 'opt in' or 'opt-out' basis. Judgment is binding on all those represented. This procedure has been rarely used due to the strict interpretation and limited scope of the 'same interest' requirement.

That strict interpretation was altered by the UK Supreme Court in [Lloyd v Google \[2021\]](#) UKSC 50, which considered the use of the representative action procedure in the context of a data privacy action. While the High Court's decision in [Commission Recovery Ltd v Marks & Clerk \[2023\]](#) EWHC 398 (Comm), upheld by the Court of Appeal in January 2024, indicated that the courts may be willing to take a more flexible approach, subsequent judgments have taken a stricter view of the requirements for a representative action (see for example [Prismall v Google UK Ltd \[2024\]](#) EWCA Civ 1516 and [Wirral Council v Indivior plc \[2025\]](#) EWCA Civ 40). Therefore, for the time being, GLOs are likely to remain the most commonly used procedure for product liability-related group actions.

The courts may also manage groups of claims informally. For example, one or a number of test cases may be advanced to trial while remaining cases are stayed. Although the decision in a test case is not binding on parties to the other claims, the intention is to

decide common issues that can assist parties to resolve remaining claims without further litigation.

Law stated - 1 July 2025

## Timing

- 8 | How long does it typically take a product liability action to get to the trial stage and what is the duration of a trial?

This depends on a variety of factors, including the complexity of the issues in dispute, the amount of evidence to be prepared and disclosed and the conduct of each party. While the CPR place great emphasis on settlement before trial, a complex claim can take years to reach trial. A relatively straightforward claim might be expected to progress to trial within eight months following issuing of proceedings.

The landmark product liability case of [Colin Gee & Others v DePuy International Limited](#) [2018] (a GLO case) took four years to reach trial. The trial itself, which involved 20 individual witnesses of fact and expert witnesses in 11 disciplines, lasted 14 weeks.

Law stated - 1 July 2025

## EVIDENTIARY ISSUES AND DAMAGES

### Pretrial discovery and disclosure

- 9 | What is the nature and extent of pretrial preservation and disclosure of documents and other evidence? Are there any avenues for pretrial discovery?

#### Pretrial preservation

Broad document preservation obligations are imposed on parties to proceedings, including product liability matters. Practice Direction 31B, paragraph 7, provides that once litigation has been contemplated by the parties, the parties must ensure that all potentially disclosable documents are preserved. This includes hard-copy documents and electronic documents such as email and other electronic communications, word processed documents and databases. It is required that the parties preserve past, current and future documents. There can be far reaching consequences in the event of a failure to comply with these requirements.

#### Pre-action disclosure

Parties may also make applications for pre-action discovery if:

- the applicant and respondent are likely to be parties to subsequent proceedings;
- if proceedings were issued, the respondent's duty of disclosure would extend to the documents sought; and

- pre-action disclosure is desirable to dispose fairly of any anticipated proceedings, to assist the parties resolve the dispute without proceedings, or save costs.

#### Disclosure during proceedings

It is a requirement in almost all proceedings for parties to disclose relevant documents. The extent of the disclosure obligations upon the parties depends on the value and complexity of the matter. A number of different 'models' are set out at CPR 31.5(7). Parties attempt to agree the extent of disclosure with any agreement subject to the court's approval. In the absence of agreement, the court will decide.

Standard disclosure (CPR 31.6) requires the disclosure of all documents upon which a party relies as well as those that adversely impact its own case, adversely impact the other party's case or supports the other party's case.

**Law stated - 1 July 2025**

### 10 | What is the general timing of serving and responding to pretrial discovery?

#### Pre-action disclosure

By its nature an application for pre-action disclosure must be made before proceedings have started. An application may be made under CPR 23 and must be 'made as soon as it appears necessary or desirable to make it'.

It is required that a copy of the application notice is served as soon as possible after filing and at minimum three days before the court addresses the application unless otherwise stated in a rule or court order.

A respondent can try to challenge the court's jurisdiction to make the order or highlight weaknesses in the applicant's main claim. If the respondent wants to rely on unserved evidence, they should serve this as soon as possible and follow any court directions.

#### Disclosure

Disclosure is the first stage of proceedings after the exchange of pleadings and the case management conference (CMC) at which the court sets down directions for the steps to be taken by the parties to trial. The length of time allowed for the disclosure process will depend on the amount of documents that exist and may be disclosable and the complexity of the matter but it is usually in the region of one to three months from the CMC.

**Law stated - 1 July 2025**

### 11 | Are there any procedural rules to bear in mind before engaging in a pretrial discovery dispute?

Pre-action disclosure applications are not always 'necessary or appropriate'. It is considered an 'exception rather than the rule' as it is 'particularly invasive'. An applicant would therefore need to consider if (1) disclosure would actually assist in resolving the dispute swiftly or (2) the documents the subject of the application are fundamental to grasp the applicant's chances of success.

**Law stated - 1 July 2025**

## Evidence

- 12** | How is evidence presented in the courtroom and how is the evidence cross-examined by the opposing party?

Factual and expert evidence must generally be written, in the form of a witness statement for lay witnesses and in the form of a report for experts, unless the court directs otherwise. In certain circumstances, and with the court's permission, parties can put forward written questions to the experts or witnesses, including to other parties' experts or witnesses. Oral evidence of experts or witnesses where no statement or report has been served can be relied upon only with the permission of the court (CPR 32.10 and 35.13). It is not possible for the parties to adduce and rely on evidence from experts without obtaining the court's permission first (CPR 35.4). Experts may be required to meet and produce a joint statement setting out areas of agreement and disagreement.

At trial, a witness or expert for a party will first affirm their statement or report and note changes that are required to it, if any. They will then be cross-examined by the opposing party or parties. Finally, the party who instructed them can ask questions in re-examination. Judges may, and frequently do, ask questions at any time.

**Law stated - 1 July 2025**

## Expert evidence

- 13** | May the court appoint experts? May the parties influence the appointment and may they present the evidence of experts they selected?

CPR 35 and the supporting Practice Direction sets out the control and use of experts in proceedings. The court can appoint experts but rarely does so. Parties generally seek permission to call their own experts. The court may limit the number and disciplines of experts permitted or order that the parties jointly instruct a single expert in one or more disciplines, usually in more straightforward cases.

Experts must be impartial in their analysis and acknowledge their overriding duty to the court and not to the party instructing them. This includes acting independently when preparing their reports and verifying them with a statement of truth.

**Law stated - 1 July 2025**

## Compensatory damages

- 14** | What types of compensatory damages are available to product liability claimants and what limitations apply?

The law aims to restore the claimant to the position they would have been had the loss or injury not occurred. Damages are available to compensate a claimant for losses that were a direct and reasonably foreseeable consequence of the injury or damage suffered. These may be:

- general damages for non-pecuniary losses, for example, pain, suffering and loss of amenity;
- special damages for financial losses, for example, loss of earnings, damage to property; and
- general damages for estimated future financial losses.

Under the Consumer Protection Act (CPA), claimants can seek compensatory damages for death, personal injury or property damage. Damage to the product itself is excluded from the scope of recoverable damages. The property damage suffered by the claimant must exceed £275 for the claimant to be entitled to pursue a claim under the CPA.

There must also be a causal link between the product defect and the damage sustained in order for damages to be awarded. Pure economic loss is not recoverable.

Provisional damages may be awarded where a claimant has not fully recovered from injury or is at risk of further injury in the future as a result of the defendant's negligence.

**Law stated - 1 July 2025**

## Non-compensatory damages

- 15** | Are punitive, exemplary, moral or other non-compensatory damages available to product liability claimants?

Punitive damages are awarded in excess of the claimant's loss. They are rarely awarded but are available, typically only in cases of deliberate torts, such as deceit or defamation, where a defendant has calculated that the financial gain from the wrongdoing is likely to exceed any damages payable to the claimant who suffered from his or her negligence. They are therefore intended to punish the defendant rather than compensate the claimant. They are not available for breach of contract.

**Law stated - 1 July 2025**

## Other forms of relief

- 16** | May a court issue interim and permanent injunctions in product liability cases? What other forms of non-monetary relief are available?

Pursuant to CPR 25, the court can grant several interim remedies, including:

- an interim injunction;
- an interim declaration; and
- an order.

The standard of proof and evidence varies for each type of interim remedy. The power of regulators to require corrective action and take enforcement action, with recourse to criminal law, is of greater practical application in this sphere.

Law stated - 1 July 2025

## LITIGATION FUNDING, FEES AND COSTS

### Legal aid

- 17** | Is public funding such as legal aid available? If so, may potential defendants make submissions or otherwise contest the grant of such aid?

Community Legal Services Public Funding (previously known as Legal Aid) is no longer available for product liability claims.

Law stated - 1 July 2025

### Third-party litigation funding

- 18** | Is third-party litigation funding permissible?

Third-party litigation funding (TPLF) is permissible in product liability claims. This is becoming an increasingly popular method of funding cases in England and Wales.

Third-party litigation funding is self-regulated by the Association of Litigation Funders, which is a private company limited by guarantee, owned and directed by its member firms.

In recent years, third party litigation funding has come under scrutiny following the UK Supreme Court's landmark ruling in 26 July 2023 in [R \(on the application of PACCAR Inc & others\) v Competition Appeal Tribunal & others \(PACCAR\)](#). The court found that Litigation Funding Agreements (LFAs), which allow the funder to receive a percentage of any damages received, constitute a Damages Based Agreement (DBA) within the meaning of section 58AA of the Courts and Legal Services Act 1990. This rendered the majority of litigation funding agreements unenforceable because most LFAs are not drafted in a way that is compliant with DBA regulations.

The UK government initially sought to address concerns relating to the PACCAR ruling through the tabling of an amendment to the Digital Markets, Competition and Consumer Bill in November 2023, although this amendment only applied to opt-out collective proceedings brought in the Competition Appeals Tribunal. The government subsequently introduced

The Litigation Funding Agreements (Enforceability) Bill, which aimed to restore the pre-PACCAR position and ensure that third party litigation funding remained a viable funding method for claimants, thereby improving access to justice. However, the Bill fell away as a result of the dissolution of Parliament in May 2024, which followed the call for a general election.

On 2 June 2025, the Civil Justice Council's Working Group published its [Final Report](#) on litigation funding. The report makes wide-ranging recommendations that aim to promote 'effective access to justice', the fair and proportionate regulation of TPLF, and improvements to the provision and accessibility of other forms of litigation funding. However, the long-term impact of the report remains to be seen, as the UK government's plans, especially in relation to TPLF regulation, have not been published and timings are not clear.

**Law stated - 1 July 2025**

## Contingency fees

### 19 | Are contingency or conditional fee arrangements permissible?

Yes, as follows:

- conditional fee arrangements, whereby the legal fees of legal representatives are contingent upon a certain event taking place, usually the client 'winning' the case or obtaining a certain outcome; and
- damages-based agreements, whereby the legal representative's fees are contingent on success in the case, determined as a percentage of the compensation received by the successful party.

For the above agreements entered into after 1 April 2013, successful claimants can no longer recover additional liabilities such as success fees, after the event insurance premiums or other arrangement costs from the defendant.

**Law stated - 1 July 2025**

## 'Loser pays' rule

### 20 | Can the successful party recover its legal fees and expenses from the unsuccessful party?

In general, the UK has a 'loser pays' principle in product liability matters, meaning that the losing party has to pay the winning party's costs. If the claimant's claim is successful, they may recover their costs from the defendant, subject to a 'set-off' of any costs orders made in the defendant's favour.

In product liability claims involving damages for personal injury or death, qualified one-way costs shifting (QOCS) applies. This means that the claimant will not be responsible for the defendant's costs in most claims where the claimant is unsuccessful. Recent changes to

the QOCS regime provides that for claims issued on or after 6 April 2023, costs orders made against a claimant will be enforceable against any orders for damages, costs and interest made in favour of the claimant. QOCS provisions may not apply if the claim is struck out or if the court determines that the claimant was fundamentally dishonest.

Law stated - 1 July 2025

## SOURCES OF LAW

### Product liability statutes

#### 21 | Is there a statute that governs product liability litigation?

The relevant statute in the UK is the Consumer Protection Act (CPA), which imposes strict liability (sometimes referred to as 'no fault liability') for defective products that have caused damage to private property or injury. This 'strict liability' regime means that persons can bring an action without having to prove negligence. It is merely necessary to prove that the product itself was defective and that any injury or damage was most likely caused by the product. Product liability claims brought pursuant to the CPA can also be brought in negligence and under contract.

Law stated - 1 July 2025

### Traditional theories of liability

#### 22 | What other theories of liability are available to product liability claimants?

##### Negligence

Negligence is a tort-based avenue by which claimants can bring product liability claims. Manufacturers or other actors in the supply chain can be liable in common law negligence in respect of a defective product. Liability will attach to a defendant who owes a duty of care and subsequently breaches that duty of care, which results in reasonably foreseeable physical loss or damage to the claimant or claimant's property. A claimant must prove fault on the part of the defendant.

##### Contract

Consumers that are party to a contract with a product supplier can bring a breach of contract claim, if the product supplied is defective or fails to conform to the contract of sale. The claimant would need to show that the supplier, under a contract for the sale of a product, breached an express or implied term of the contract and that the breach led to loss or damage.

Law stated - 1 July 2025



## Consumer legislation

**23** | Is there a consumer protection statute that provides remedies, imposes duties or otherwise affects product liability litigants?

The CPA implemented the [EU Product Liability Directive 85/374/EEC](#) into UK law. Part I deals with product liability and imposes a strict liability on manufacturers, importers and retailers for any damage or injury caused by a defective product. Part 2 focuses on consumer safety and Part 3 focuses on misleading price indications.

Consumers can also bring a claim arising from a breach of contract pursuant to the [Consumer Rights Act 2015](#) (CRA). The CRA applies to business to consumer contracts. It states that goods supplied to a consumer must be:

- of satisfactory quality: goods should not be faulty or damaged upon receipt;
- fit for that particular purpose: goods must be fit for the purpose for which they are supplied and any specific purpose made known to the seller (expressly or by implication) at the point of purchase; and
- as described: goods supplied must correspond with any description given, or models or samples shown at the point of purchase.

Similar requirements are set out in the [Sales of Goods Act 1979](#) (SGA), which applies to B2B (business to business) contracts.

**Law stated - 1 July 2025**

## Criminal law

**24** | Can criminal sanctions be imposed for the sale or distribution of defective products?

Criminal sanctions may be imposed for breach of the [General Product Safety Regulations 2005](#) (GPSR).

Producers cannot place a product on the market unless it is a safe product. Any breach of this may amount to a criminal offence under section 20(1) of the GPSR 2005. Any person guilty of such breach may face a jail term (not exceeding 12 months) or a fine that will not exceed £20,000 on conviction on indictment.

Distributors must help to ensure compliance with the relevant safety requirements and cannot offer to supply or supply a product which they know – or should have presumed – is dangerous. Any breach of this may amount to a criminal offence under section 20(2) of the GPSR 2005. Any person guilty of such breach may face a jail term not exceeding three months or a fine not exceeding £5,000 for offences committed before 13 March 2015 and without any limit of amount for any offence after.

Other sanctions apply for other breaches of the GPSR 2005.

**Law stated - 1 July 2025**

## Novel theories

### 25 | Are any novel theories available or emerging for product liability claimants?

In *Hastings* concerning an allegedly defective metal on metal hip replacement, the Supreme Court held that the appeal was 'no more than an attempt to appeal against the ... findings of fact'. The Supreme Court declined the appellant's invitation to overturn the factual findings made by the judge at first instance, as they were findings the lower court had been entitled to make on the evidence.

The appellant had suggested that the Supreme Court examine such findings through a different prism that introduced principles such as a benevolent approach to the application of the CPA. He also argued that the evidence presented to the lower court raised a presumption of defect that the manufacturers had been incapable of rebutting and that the lower court should not have found against him. The Supreme Court rejected his argument, holding that:

- expressions of concern in the surgical community regarding metal on metal hip prostheses generally did not assist to establish that the product in question was defective given that revision rates for the metal on metal class of hip prostheses varied from product to product;
- the fact that the product in question was withdrawn from the market for commercial considerations did not assist a case on defect; and
- product safety alerts and notices issued by a regulator or a manufacturer cannot of themselves be determinative of defect, where, as was the case in *Hastings*, it was found that the statistics on which the alert or notices were based were unreliable.

The Supreme Court cited with apparent approval the basic principles of a product liability claim, as laid down in the previous landmark decisions of [Wilkes v DePuy International Limited](#) [2016] EWHC 3096 and *Colin Gee & Others v DePuy International Limited* [2018] EWHC 1208 (QB), which clarified the approach to assessing defect.

**Law stated - 1 July 2025**

## Product defect

### 26 | What breaches of duties or other theories can be used to establish product defect?

Based on section 3 of the CPA, there is a defect 'if the safety of the product is not such as persons generally are entitled to expect'. The court must take into account 'all the circumstances'. Typically, the following circumstances will be taken into account by the court when assessing the safety of the product, including:

- product marketing;
- date of supply;
- any safety mark;

- warnings;
- what might reasonably be expected to be done with the product; and
- the time when the product was supplied by its producer to another.

The court gave guidance on the application of this test in the case of *Colin Gee & Others v DePuy International Limited* [2018] EWHC 1208 (QB):

- what persons generally are entitled to expect is an objective test, that is, it is not about what the claimant actually expected;
- hindsight plays no part in the 'entitled expectation' of safety; entitled expectation is assessed as at the time of supply of the product in question. However, when assessing whether a product met the 'entitled expectation', all relevant information to date can be considered; and
- the court can take into account all of the circumstances it considers factually and legally relevant to the assessment of safety, on a case-by-case basis.

**Law stated - 1 July 2025**

### Defect standard and burden of proof

- 27** | By what standards may a product be deemed defective and who bears the burden of proof? May that burden be shifted to the opposing party? What is the standard of proof?

The burden of proof rests with the claimant.

The standard of proof required is to prove the case against the defendant on the balance of probabilities. This is a civil standard. Under the CPA, the claimant must prove the existence of a defect and that the defect caused damage.

**Law stated - 1 July 2025**

### Possible respondents

- 28** | Who may be found liable for injuries and damages caused by defective products? Is it possible for respondents to limit or exclude their liability?

The claimant can pursue the manufacturer of the product, the importer, the distributor, the supplier or seller and anyone else who is an 'actor' in the supply chain.

#### CPA

The following entities can be jointly and severally liable under section 2 of the CPA:

- the producer (ie, the manufacturer) of the product;
-

an own-brander (ie, someone who holds themselves out as the producer of the product by placing his or her name or trade mark on it); and

- an importer to the UK. Prior to Brexit, the relevant entity was an importer into the EU.

A supplier can also be liable where they fail to identify an entity in one of the above categories to a claimant on request within a reasonable period of time.

### **Negligence**

The tort of negligence not only imposes liability on producers and manufacturers but, in certain circumstances, can stretch liability to cover wholesalers, retailers, assemblers or repairers and designers of products and those who hire the products.

### **Contract**

The liable party would typically be the party who supplied the products or goods to the end user under the contract.

### **Limiting or excluding liability**

Parties in B2B contracts can agree to exclude or limit their liability subject to certain criteria being met and certain restrictions:

- Liability for death or personal injury caused by negligence cannot be excluded or restricted under a contract (section 2(1) [Unfair Contract Terms Act 1977](#) (UCTA)).
- Liability for losses other than death or injury caused by negligence may be excluded or restricted if it satisfies the requirement of reasonableness (section 2(2) UCTA).
- Liability for breaches of statutory implied terms under SGA cannot be excluded or restricted contractually unless it satisfies requirement of reasonableness (section 6(1A) UCTA).

Parties in B2C contracts are subject to the CRA. Certain statutory implied terms cannot be excluded or restricted including the requirements for goods to be of satisfactory quality and fit for a particular purpose. However, liability under Part I of the CPA cannot be excluded in any contract.

Respondents can attempt to seek to divert liability to third-party suppliers or use indemnities to transfer product liability risks.

**Law stated - 1 July 2025**

## **Causation**

- 29** | What is the standard by which causation between defect and injury or damages must be established? Who bears the burden and may it be shifted to the opposing party?

A causal link must be demonstrated between the product defect and the damage or injury sustained. The common English law tests for causation apply to product liability cases. The claimant bears the burden of proof and the standard of proof is the balance of probabilities.

Law stated - 1 July 2025

## Post-sale duties

**30** | What post-sale duties may be imposed on potentially responsible parties and how might liability be imposed upon their breach?

Regulators across all industries encourage early notification of a potential safety issue. This is the case even where not all information has been obtained. Depending on the industry concerned, the time frame within which a company must notify regulators is very short: this can be a matter of days if the risk is serious and failure to notify within the requisite timescales is an offence.

A post-sale duty to warn may arise when a danger inherent in the foreseeable uses of the product that was unknown and unknowable at the time of sale becomes known at a later time; a danger resulting from an unforeseeable use of the product becomes known because the use is discovered after the product is sold; or a risk reduction measure is developed because of a post-sale improvement in the state of the art.

Law stated - 1 July 2025

## LIMITATIONS AND DEFENCES

### Limitation periods

**31** | What are the applicable limitation periods?

Under the [Limitation Act](#) 1980, product liability claims involving property damage or personal injury under the Consumer Protection Act (CPA) have a limitation period of three years from the later of:

- the date the injury or loss is suffered; or
- the date of the claimant's knowledge of the damage, the defect that caused the damage and the identity of the producer.

A claim under the CPA must also be brought within 10 years from the date on which the product was supplied to another party by the producer, own-brander or importer. This is known as the 10-year 'longstop' period. Any right of action under the CPA is extinguished after the expiry of this period.

The limitation periods for claims in negligence are:

- for personal injury claims, three years from the date of accrual of the action or the date of the claimant's knowledge of damage, whichever expires later; and

- for any other claims, six years from the date on which the cause of action accrued.

The limitation period to seek damages for breaches of contract is 6 years from date of the breach of contract.

**Law stated - 1 July 2025**

### State-of-the-art and development risk defence

- 32** | Is it a defence to a product liability action that the product defect was not discoverable within the limitations of science and technology at the time of distribution? If so, who bears the burden and what is the standard of proof?

This defence is also commonly referred to as the 'state of the art' or 'development risks' defence and is available under the CPA. Section 4(1)(e) of the CPA provides that a defence is available if '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 as the product in question might be expected to have discovered the defect if it had existed in their products while they were under their control'. The burden of proof is on the defendant relying on it and the standard is the balance of probabilities.

**Law stated - 1 July 2025**

### Compliance with standards or requirements

- 33** | Is it a defence that the product complied with mandatory (or voluntary) standards or requirements with respect to the alleged defect?

A defendant will have a defence under section 4(1)(a) of the CPA if the defect is attributable to compliance with any requirement of UK law (or retained EU law post-Brexit). Therefore, even if there is a defect in the product, as long as that defect exists as a result of compliance with requirements of UK or retained EU law, there will be a potential defence available to the defendant. However, simply demonstrating compliance with regulatory requirements is not a defence, although it may be a circumstance that the court takes into account.

**Law stated - 1 July 2025**

### Other defences

- 34** | What other defences may be available to a product liability defendant?

#### CPA

Further defences available under the CPA are as follows:

- the defendant did not at any time supply the product (section 4(1)(b));

- the product was not supplied in the course of the defendant's business or with a view to profit (section 4(1)(c));
- the defect did not exist in the product at the time of supply (section 4(1)(d)); and
- the defect relates to a defect in a subsequent product in which the product in question is contained and is wholly attributable to the design of the subsequent product or to compliance by the producer of the product in question with instructions given by the producer of the subsequent product.

### Negligence

In practice, actions brought in negligence are usually defended on the basis that the requisite elements of duty, damage, breach and causation have not been established. Other common defences to claims in negligence are as follows:

- contributory negligence, namely that the claimant contributed, at least to some extent, to their damage or injury;
- voluntary assumption of risk, namely that the claimant consented to the risk that resulted in injury or loss; and
- establishing that the injury was caused by the claimant's participation in a criminal enterprise.

### Contract

Contractual claims are usually defended on the basis that not all elements of the claim have been established. For example, if there was no contract in place or the contractual terms did not include the term allegedly breached. Otherwise, the following defences may be available in a product liability claim under contract:

- the breach of contract is waived and the claimant did not act on the breach within a reasonable time (or at all);
- the contract terms exclude or limit liability (use of such terms is restricted in personal injury claims);
- the contract terms were varied; and
- promissory estoppel.

**Law stated - 1 July 2025**

### Appeals

#### 35 | What appeals are available to the unsuccessful party in the trial court?

An unsuccessful party must be granted permission to appeal a judgment made by a County Court or High Court. An application for permission can be considered solely on the basis

of written submissions although the judge may request that oral submissions are made to ensure a fair hearing.

The appealing party must be able to show that the court's decision is wrong or unjust as a result of a serious procedural (or other) irregularity. For a judgment to be considered 'wrong' for the purposes of an appeal, it needs to be shown that there is an error of law or fact or an error in the way that the court exercised its discretion. Appeals based on an error of fact are less common and permission to appeal on this ground is rarely given. This is because the appellate courts generally do not wish to interfere with a finding of fact that was open to the first instance court to determine, as that court heard the evidence first-hand.

**Law stated - 1 July 2025**

### **36 | How long do appeals typically take for resolution?**

The time for an appeal to progress to resolution will vary and depends on a number of factors including the capacity of the courts and the complexity of the appeal. However, because appeals generally do not involve the presentation of new factual or expert evidence, the appeal process is usually significantly shorter than the underlying litigation.

**Law stated - 1 July 2025**

## **SETTLEMENT AND ALTERNATIVE DISPUTE RESOLUTION**

### **Settlement**

#### **37 | What rules and procedures govern the settlement of product liability cases?**

CPR 1 details that the overriding objective is a procedural code to enable the court to deal with cases justly and at a proportionate cost. The parties are required to further the overriding objective, which includes considering settlement of the whole or part of a case in order to minimise time, costs and the use of the court's resources. The court is under a duty to encourage the parties to use alternative dispute resolution (ADR) procedures, where appropriate.

**Law stated - 1 July 2025**

### **Alternative dispute resolution**

#### **38 | Is alternative dispute resolution required or advisable before or instead of proceeding with litigation? How commonly is ADR and arbitration used to resolve claims?**

The Practice Direction on Pre-Action Conduct and Protocols states that litigation should be a last resort. Parties should consider ADR to save time and costs, as per the Practice Direction and the overriding objective. Under the Practice Direction, the parties should consider whether negotiation or some other form of ADR might enable them to settle their dispute before commencing proceedings.



Forms of available ADR include:

- negotiation;
- mediation (with a third party facilitating a resolution);
- arbitration (with a third party deciding the dispute);
- early neutral evaluation (with a third party giving an informed opinion on the dispute); and
- Ombudsmen schemes.

If a claim cannot be resolved pre-action and proceedings are commenced, the court may ask the parties to provide evidence that they have engaged in, or at a minimum, considered ADR. A party's silence in response to an invitation to participate in ADR, or an outright refusal, may be considered by the court to be unreasonable and could lead to an order for that party to pay additional costs.

Law stated - 1 July 2025

## JURISDICTION ANALYSIS

### Status of product liability law and development

- 39** | Can you characterise the maturity of product liability law in terms of its legal development and utilisation to redress perceived wrongs?

The product liability regime is fairly mature as the Consumer Protection Act PA) has been in force for over three decades now and case law is generally stable. The UK courts have seen many product liability cases over the years and are familiar with this area of the law.

Law stated - 1 July 2025

### Product liability litigation milestones and trends

- 40** | Have there been any recent noteworthy events or cases that have particularly shaped product liability law? Has there been any change in the frequency or nature of product liability cases launched in the past 12 months?

The recent UK Supreme Court ruling in *Hastings*, in which the Supreme Court justices unanimously dismissed the appeal brought by the appellant Mr Hastings, maintains the finding of the lower court that the appellant failed to prove that the metal on metal hip replacement in question is defective under the CPA.

The Supreme Court's decision affirms the approach to the assessment of 'defect' under the CPA in continuity with the previous landmark decisions of *Wilkes v DePuy International Limited* [2016] EWHC 3096 and *Colin Gee & Others v DePuy International Limited* [2018] EWHC 1208 (QB), which shaped the approach to defect.

There has not been any noteworthy change in the frequency or nature of product liability cases launched in the past 12 months.

Law stated - 1 July 2025

## Climate for litigation

- 41** | Describe the level of 'consumerism' in your country and consumers' knowledge of, and propensity to use, product liability litigation to redress perceived wrongs.

Over the past few years, consumer awareness has increased due to factors including the influence of social media, the increased advertising by claimant law firms and high-profile cases reported in the news. As the general public becomes increasingly aware of product liability and product safety aspects, they are more likely to make claims.

This is combined with the ever growing trend for group litigation led by consumer groups, again with several high-profile cases reported in the news, and increased availability of third party litigation funding. Manufacturers, producers and other actors in the supply chain are likely to face more claims in the future.

Law stated - 1 July 2025

## Efforts to expand product liability or ease claimants' burdens

- 42** | Describe any developments regarding 'access to justice' that would make product liability more claimant-friendly.

The claimant lobby has initiated discussion about shifting the burden of proof, noting that the complexity of modern products makes investigation of possible defects expensive.

In 2021, the UK Law Commission identified 'product liability and emerging technology' as an area for potential law reform in its 14th Programme of Law Reform, noting that the CPA was 'not designed to accommodate software and related technological developments such as 3D printing or machines that "learn"'.

This view reflects the rationale behind the EU's new [EU Product Liability Directive](#) (PLD), which came into force on 8 December 2024. Member states have until 9 December 2026 to transpose the directive into their national laws. The new rules will apply to products placed on the market on or after 9 December 2026.

The new PLD aims to address the risks and challenges posed by the digital age, modern supply chains and the circular economy. It contains significant changes to the existing regime, which are likely to make it easier for EU claimants to successfully pursue product liability claims, particularly in respect of cases involving new technologies.

Although the Law Commission's proposed 14th Programme of Law Reform is currently on hold, it is possible that reform of the CPA may be revisited sooner rather than later, as indicated in recent government consultations.

Law stated - 1 July 2025

## UPDATE AND TRENDS

### Emerging trends

#### 43 | Are there any emerging trends or hot topics in product liability litigation in your jurisdiction?

There has been an increased focus on the potential liability of online marketplaces in respect of defective products that third party vendors have sold via their platform, given that 'online marketplaces' do not necessarily sit squarely within the definitions of the entities who may be typically liable for defective products under the Consumer Protection Act 1987.

It is expected that the UK government's future reform of the product safety framework will strengthen the current regime in place including in relation to online and marketplace sales. Interested stakeholders may wish to pay particular attention to this area given the growth of online sales during the pandemic and thereafter.

Although product liability claims in England & Wales have traditionally concerned physical, tangible products such as medical devices and white goods, as artificial intelligence and other digital technologies continue to develop at pace, it is expected that the courts will soon be tested in relation to claims concerning intangible products such as software.

There is also increasing focus on 'forever chemicals' and, in particular, 'Perfluoroalkyl and Polyfluoroalkyl substances' (PFAS), which are highly persistent chemicals used in a wide range of products. The UK's Health & Safety Executive (as the Agency for UK REACH (the regulation that applies to most chemical substances manufactured in or imported into Great Britain), with support from the Environment Agency published a Risk Management Option Analysis report that makes recommendations regarding limitations on the use of PFAS in a variety of products, including firefighting foam, cleaning products and textiles. Against a backdrop of growing consumer activism in the environmental space, coupled with increasing media attention over the use of PFAS in consumer goods, there is potential for product liability litigation in this area, including that brought by way of group actions.

**Law stated - 1 July 2025**

# Kennedys

---

**Emilie Civatte**  
**Ed Gibson**

[emilie.civatte@kennedyslaw.com](mailto:emilie.civatte@kennedyslaw.com)  
[Ed.Gibson@kennedyslaw.com](mailto:Ed.Gibson@kennedyslaw.com)

---

Kennedys

[Read more from this firm on Lexology](#)