

DEFECTIVE PRODUCTS: THE CONSUMER PROTECTION ACT 1987

A Practical Guide from the 2TG Product Liability Group

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Introduction

It is now 30 years since the Consumer Protection Act 1987 ("CPA") was enacted. It implemented the European Directive of 25 July 1985 ("the Directive"),¹ and introduced a measure of strict liability into the product liability arena. This Practical Guide provides an overview of the key provisions of the CPA, and a consideration of some of the key cases.

Since the last edition of this Practical Guide, there have been a number of important decisions of the CJEU and of the English courts. These are considered below. In addition, Brexit will (subject to its final terms) remove the underpinning of the current legal regime, as well as the role of the CJEU in developing this area of the law. The implications of this are considered below.

Strict liability where defective product causes damage

S2(1) of the CPA states that: "*... where any damage is caused wholly or partly by a defect in a product, every person to whom subsection (2) below applies [i.e. the producer and various others] shall be liable for the damage.*"

What is a product?

S1(2) says that a product "*means any goods² or electricity and ... includes a product which is comprised in another product, whether by virtue of being a component part or raw material or otherwise*". The definition is a wide one, and includes for example

¹ Council Directive on the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products, Dir. 85/374; O.J. 1985 L210/29.

² Goods are further defined in s.45(1) CPA. It should be noted that the definition is wider than the Sale of Goods Act 1979 because it includes goods attached to land, whereas under the Sale of Goods Act 1979 they must be severed before or under the contract of sale (Sale of Goods Act 1979, s.61(1)).



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transfused blood, *A v National Blood Authority* [2001] 3 All ER 289 (“*A v NBA*”). Since 2000, liability for damage caused by primary agricultural and fishery produce is also included.³ There is a debate as to whether intellectual products (such as books or software) are “products” within the CPA.⁴

When is a product defective?

A product is “defective” “[i]f the safety of the product is not such as persons generally are entitled to expect ... in the context of risks of damage to property, as well as in the context of risks of death and personal injury” (s3(1) of the CPA).

S.3(2) lays down guidelines, and provides that “all the circumstances” are to be taken into account, including: the manner and purposes of marketing, get-up, the use of any mark in relation to the product, instructions and warnings; and what might reasonably be expected to be done with or in relation to the product.

There has been a great deal of consideration (in cases and in academic texts) of what circumstances might be relevant. In *Wilkes v DePuy International Limited* [2016] EWHC 3096 (QB), [2017] 3 All ER 589 (a case involving a hip implant), Hickinbottom J concluded that assessment of whether a product is defective requires a “holistic approach ... involving the application of judgment to the exercise of balancing all relevant considerations” [78]. He noted that the question of which circumstances are relevant and the weight to be given to each are “quintessentially dependent upon the particular facts of any case”. He conceded that

whilst it was conceptually simple, the assessment may be difficult in practice [79].

Entitled to expect

The question of what “persons generally are entitled to expect” is an objective test.

In *A v NBA*, where Burton J held that the relevant question was what the public’s “legitimate expectation” was (rather than what the public in fact expected).

However, in *Wilkes*, Hickinbottom J stated that he found that Burton J’s use of the phrase “legitimate expectation” was “an unnecessary and unhelpful gloss” on the CPA [71]. He said that the level of safety is “not to be assessed by reference to actual expectations of an actual or even a notional individual or group of individuals” [69], and made it clear that the test was an objective one [70]. He concluded that “in considering whether a product suffered from a defect, the court must assess the appropriate level of safety, exercising its judgment, and taking into account the information and the circumstances before it, whether or not an actual or notional patient or patients, would in fact have considered each of those factors and all of that information” [72].

Risk-benefit and avoidability

It is worth noting that certain products are inherently unsafe but that does not mean that they are necessarily defective – for example, a chainsaw, or hot coffee, see *B (A Child) v McDonald’s Restaurants Ltd* [2002] EWHC 490 (QB), where piping hot coffee in substantial polystyrene cups was not considered to be defective. In order to be defective, there must be something more. These considerations form

³ SI 2000/2771, reflecting a change in the Directive itself, Dir. 99/34; OJ 1999 L 141/20.

⁴ See for example Butterworth’s Common Law Series: The Law of Product Liability (2nd ed.) at 4.58-4.65.

part of what is known as the “*risk-benefit*” analysis.

In *Wilkes*, Hickinbottom J put the question of risk-benefit at the heart of his judgment. Having noted that no medicinal product, if effective, can be entirely safe, he concluded that safety was “*inherently and necessarily a relative concept*” and that “*the potential benefits (including potential utility) of such a product has to be balanced against the risks*” [65]. By doing this, Hickinbottom J again moved away from Burton J, who had appeared to suggest that a “*risk-benefit*” (or risk-utility) analysis was not relevant to the CPA. Hickinbottom J suggested that the “*practicability of producing a product of risk-benefit equivalence must therefore potentially be a relevant circumstance in the assessment of a product’s safety*” [82], and cost might be a factor in an appropriate case [83].

Hickinbottom J also considered the question of avoidability. He referred to *B v McDonald’s* and concluded that, whilst not determinative, in an appropriate case the ease and extent to which a risk can be eliminated or mitigated may be a circumstance that bears upon the issue of the level of safety that the public generally is entitled to expect.

Standard and non-standard products

In *A v NBA* Burton J divided defective products into “*standard*” products (one which performs as the producer intends) and “*non-standard*” products (i.e. one which is different to other products of the same model because of, for example, a manufacturing error). In Burton J’s view, in relation to non-standard products (of which he found the contaminated blood to be one), the question that should be asked is whether the harmful characteristic was one which was socially acceptable. In *A v National*

Blood, he held that it was not - the public were entitled to expect that transfused blood would be free from infection.

Hickinbottom J considered this approach to be “*unnecessary and undesirable*”, “*positively unhelpful and potentially dangerous*” and pointed out this classification did not derive from the Directive or the CPA. It is therefore doubtful whether Burton J’s distinction will survive. Nevertheless, in practice, it still seems likely that it will be easier to bring a successful claim where a particular product does not meet its own specifications.

Standards and regulatory regime

Non-compliance with any appropriate mandatory standards and regulations which apply to a product will provide evidence of defect. However, *Pollard v Tesco Stores Ltd* [2006] All ER (D) 186 (Apr), CA, shows that this may not be enough. The case concerned a child who had ingested some dishwasher powder, having been able to open a child-resistant closure which did not comply with British safety standards. It nevertheless was not found to be defective. Laws LJ appears to have focused on the “*actual*” expectations of consumers rather than on a legal test that requires the court to look at such safety that persons generally are “*entitled*” to expect.

Hickinbottom J suggested in *Wilkes* that compliance with standards will provide evidence that, in respect of the matters to which those standards go, the level of safety required by the CPA has been satisfied, and the product (in those respects) is therefore not defective [97]. He noted that “*in an appropriate case, compliance with such standards will have considerable weight; because they have been set at a level which the appropriate regulatory authority has determined is appropriate for safety purposes*”.

Similarly, whilst he noted that the simple fact of regulatory approval is not an automatic defence under the CPA, he concluded that such approval may be evidence, (and in an appropriate case, powerful evidence) that the level of safety of the product was that which persons generally were entitled to expect [101].

Misuse of a product

There may be cases where products are only unsafe when misused. If misuse was foreseeable and likely to have harmful consequences, it might be that a warning should be provided with a product and/or it should have been produced in such a way so as to prevent or reduce the risk of misuse. For example, if it were foreseeable that a laptop left on a duvet would overheat and/or catch fire, it might be necessary to warn of this risk and its consequences. Equally, if it were foreseeable that a gas canister might be used incorrectly, and this carried with it a risk that the gas canister might explode, it might be necessary to design the gas canister in such a way so as to prevent this.

Potential defect

The question of a potential defect was considered in *Boston Scientific Medizintechnik GmbH v AOK Sachsen-Anhalt* (C-503/13 and C-504/13). The case concerned two products with potential defects: a pacemaker and an implantable defibrillator. The Court held that with regard to the specific products in issue, in light of their function and the particularly vulnerable situation of patients using such devices, the safety requirements which patients were entitled to expect were particularly high. The Court noted that if the products did go wrong, there was an “*abnormal potential for damage*”.

The Court therefore concluded that where it is found that products belonging to the same group or forming part of the same production series have a potential defect, it is possible to classify as defective all the products in that group or series, without there being any need to show that the product in question is defective.

In *Boston Scientific*, the potential defect was life threatening – there was on any view an abnormal potential for damage and need for absolute confidence in the product. Moreover, the defect could only be identified by removing the implanted product. It remains to be seen to what extent the Courts will be willing to extend this relaxed approach to proof of defect in less serious cases, and where any line will be drawn.

Proving a product is defective

A claimant must establish that the product was defective. However, the Court of Appeal in *Ide v ATB Sales Ltd* [2008] EWCA Civ 424 at [7] held that under the CPA it is unnecessary for the judge to ascertain the precise cause of the defect. As set out below, however, in order to prove causation, the question of the precise cause of the defect might have to be examined in some detail.

Causation

A claimant must show there is a defect *and* that the defect caused the loss, *Ide v ATB*.

Whilst this sounds simple, in practice it can often prove difficult, because a claimant might have to identify a precise defect in order to show a causal link, and/or the court might have to eliminate other possibilities. See for example *Love v Halfords Limited* [2014] EWHC 1057 (QB), where the fracture in the bicycle part in question was found to be a result of having been bent and then repaired (by some unknown person), rather

than a defect in the product itself, and *Richardson v LRC Products* [2000] PIQR P164 where the claimant failed to show that a condom that failed was defective (in part because of “inexplicable failures”).

Where a claimant’s case is based upon a defect causing an increased risk of harm, there is a debate as to what precisely the claimant has to prove. The case of *XYZ v Schering Health Care Limited* [2002] EWHC 1420 (QB) (concerning oral contraceptives) suggested that in such cases a claimant is required to prove that the risk of the adverse event had more than doubled. However, in *Sienkiewicz v Greif* [2011] UKSC 10, in *obiter* comments, the members of the Supreme Court took very different views as to the appropriateness of the doubling of the risk test, and whether further evidence, beyond the risk identified by the epidemiological evidence, is necessary. A different approach is to say that the court, having been satisfied that the level of safety was less than it ought to be, should find causation proved on the basis of material contribution (relying for example on cases such as *Fairchild v Glenhaven Funeral Services Limited* [2002] UKHL 22). This was specifically left open in *Wilkes* [137].

In the recent case of *W v Sanofi Pasteur* (C-621/15), the CJEU confirmed that it was for national courts to decide on what evidential rules to apply, as the long as the rules do not displace the burden of proof under the Directive or undermine the effectiveness of the system of liability established by the Directive.

⁵ Ss.5(1) and 5(3) CPA.

⁶ There could be more than one manufacturer, because a product is defined in s.1(2) CPA as including “a product which is comprised in another product, whether by virtue of being a component part or raw material or otherwise”. Therefore, where the defect is in a component part of the product which is

Who can sue under the CPA?

In order to have a right of action, the claimant needs to have suffered damage of a kind covered by the CPA.

- S.5 of the CPA restricts damage to death or personal injury, or any loss or damage to property which is for private use, occupation or consumption.⁵ Non-consumers therefore can bring a claim for death or personal injury, but claims for damage to property can only be brought by consumers.
- The CPA does not cover pure economic loss.
- No damages are claimable under the CPA in respect of damage to property if the claimant’s total damage (excluding interest) does not exceed £275 (s.5(4)).
- There is no liability for any loss or damage to the defective product itself, (s.5(2)).

Who is liable under the CPA?

S2(2) of the CPA makes three categories of person liable automatically:

- 1) Producers: defined by s.1(2) of the CPA as the manufacturer,⁶ or (if the product is not manufactured) the person who won or abstracted the product, or the one who carried out an industrial or other process which gave the product essential characteristics;
- 2) Those who hold themselves out as producers; and
- 3) Importers into a member state.⁷

S.2(3) of the CPA makes a fourth category potentially liable: suppliers.

supplied to the final producer, both the manufacturer of the component part and the manufacturer of the final product will be potentially liable.

⁷ Note – it is not the importer into the UK but the importer into the Community who is liable.

The definition of suppliers includes any supplier along the chain of supply. However, suppliers can avoid liability by identifying a person set out in s.2(2) of the CPA within a reasonable time.⁸ Suppliers must do something *positive*: it is not sufficient merely to identify that they are not a producer under the CPA.⁹ It is suggested that suppliers should identify the correct legal person in a form that enables the claimant to sue them.

The CPA therefore makes it easier for claimants to identify a party to sue because (a) there a number of different types of persons who can be sued and (b) the supplier must provide appropriate information to the claimant to enable them to sue s.2(2) categories of person. However, there is also a risk that the claimant might follow numerous links of the supply chain only to find it broken in that, for example, the company has moved, or ceased to trade.

What defences are available?

S.4 of the CPA contains six specific defences. The burden is on the defendant to establish the defence.

A defence is available if:

- The defect is attributable to compliance with any requirement imposed by or under any enactment or with any EU obligation (s.4(1)(a)).
- The person proceeded against did not at any time supply the product to another (s.4(1)(b)), which protects producers where products are stolen or whether accidents occur before distribution. The question of when the product was supplied is a factual one.

- The person proceeded against is a non-business party (s.4(1)(c)), e.g. someone who produced home-made cakes neither in the course of their business nor with a view to profit (both limbs of this test must be satisfied).
- The defect did not exist in the product at the relevant time (s.4(1)(d)). The question of what was the “*relevant time*” for each part of the supply chain is set out under s.4(2) of the CPA, and will be a question of fact in each case.
- Suppliers of component parts have a special defence if the defect constituted a defect in the subsequent product and was 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 (s.4(1)(f)).

Finally, there is the development risks defence provided for in s.4(1)(e) of the CPA, which provides a defence where:

“the state of scientific and technical knowledge at the relevant time 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 his products while they were under his control”.

There must have been knowledge of the risks which caused the product to be defective. The state of knowledge is to be considered on an objective basis.¹⁰ However, there is a great deal of debate as to what test the Court should employ when examining this defence. In

⁸ There is some debate as to whether a request is needed (as set out in s.2(3) CPA) because this does not appear in the Directive Art 3(3) which simply provides that each supplier must inform the injured person or the producer within a reasonable period of time or be treated as its producer.

⁹ *O’Byrne v Aventis Pasteur* [2010] 1 WLR 1375 (CJEU) (C-358/08), [57-58].

¹⁰ *European Commission v United Kingdom* [1997] All ER (EC) 481, (C-300/95) [29], and *A v National Blood Authority* at 327.

European Commission v United Kingdom [1997] All ER (EC) 481, (C-300/95), the CJEU noted that:

- The knowledge referred to must be scientific and technical knowledge (i.e. not the practices and safety standards in the industrial sector in which the producer was operating) [26].

The Advocate-General noted that:

- If there is one isolated opinion at the relevant time to the effect that the product is defective (whilst most academics do not take that view) the producer cannot rely on this defence. The state of scientific knowledge must be identified by the most advanced level of research, not the majority of learned opinion [21-22].¹¹
- However, the accessibility of the scientific and technical knowledge (for example the place of origin, the language in which it is given and the circulation of the journals in which it was published) is also to be taken into account.¹² There is a difference between a study of an American university published in an international English-language journal and similar research carried out by an academic in Manchuria published in a local scientific journal in Chinese which does not go outside the boundaries of the region [23].

As noted above, the limits of the defence and the precise test used are still very much a matter of debate. However, in England to date the defence has been narrowly construed, see e.g. *A v National Blood Authority* at 361-365, *Richardson v LRC Products Ltd* [2000] Lloyd's

Law Reports (Medical) 280, and *Abouzaid v Mothercare Ltd* [2000] All ER (D) 2436 (Dec) per Pill LJ at [28]-[29], and per Chadwick J at [46].

Questions of ambiguity

S.1(1) of the CPA provides "*This Part shall have effect for the purpose of making such provision as is necessary in order to comply with the product liability Directive and shall be construed accordingly*". Further, it is a principle of European law that courts should try to interpret the national implementing law so as to comply with the Directive.¹³ Therefore, where there is any ambiguity in the national law, the Courts will look to the Directive. This is indeed what Burton J did in *A v National Blood Authority* at 308-309.

International scope of CPA

Importers into a member state can be held liable under the CPA. These importers could be companies which are *not* domiciled within a member state.

There is some debate as to whether producers who are not domiciled within a member state could be held liable under the CPA, but it is likely that they could be so liable.¹⁴

Where a defendant is domiciled in England, the English Court has jurisdiction as of right and is not entitled to decline jurisdiction, *Owusu v Jackson* (C281/02) [2005] QB 801, CJEU. It does not matter if the manufacture, marketing and damage all occurred outside England.

If a victim suffers injury in England, the English court is likely to have jurisdiction over any defendant in a claim brought by the victim pursuant to the CPA under the Judgments Regulation (recast) and at common law on the

¹¹ See also [26] and [29] of the CJEU's judgment.

¹² See also [29] of the CJEU's judgment

¹³ Case C-106/89 *Marleasing SA v La Comercial Internacional de Alimentación SA* [1990] ECR I-4135.

¹⁴ See e.g. Clerk & Lindsell "On Torts" (21st ed) at 11-75.

basis that the harmful event occurred in England – Art 7(2) Judgments Regulation (EU 1215/2012); (CPR PD6B, para3.1(9)).

Territorial scope of CPA

The territorial scope of the CPA was considered as one of the preliminary issues decided in the case of *Allen & Others v DePuy International Limited* [2014] EWHC 753 (QB), [2015] 2 WLR 442. The claimants alleged that they had suffered injury as result of defective metal-on-metal hip prostheses manufactured by the defendant in England. None of the claimants was domiciled in England; and none had their operation or suffered their alleged injury in England. Most of the claimants were domiciled in New Zealand or South Africa, where they had also had their operations and suffered their alleged symptoms. The claimants sought to argue that English law applied to their claims and relied on the CPA. The defendants argued that English law did not apply, and even if it did, the CPA and/or Directive did not extend to damage suffered outside the EEA.

Stewart J held that English law was not the applicable law.¹⁵ He also held that even if English law had applied, the claimants would not have had the benefit of the CPA. Here the claimants were all non-EEA consumers who suffered damage outside the EEA, in relation to products which had been marketed and supplied outside the EEA. The claims fell outside the territorial scope of the CPA.

However, the judge did not need to decide, and did not decide, the difficult question of whether the CPA is limited only to damage in the UK or

also extends to damage within the EEA. He also did not need to decide whether it was necessary in order to fall beyond the scope of the CPA that the goods were marketed outside the EEA, or simply that damage was sustained outside the EEA.

Limitation

There are specific limitation periods in relation to the CPA.

Personal injury claims

Personal injury claims must be brought within three years of the date on which the cause of action accrued, or (if later) the date of the knowledge of the injured person, s.11A(4) Limitation Act 1980.¹⁶ The Court also has a discretion to allow an action to proceed if it would be equitable to do so, even if the 3 year period has passed (s.33 Limitation Act 1980).

Where there has been a death

If the product causes somebody's death, their dependants might be able to bring a claim under the Fatal Accidents Act 1976.¹⁷ If the deceased's claim was not already time-barred, then a dependant can bring a claim within 3 years of the date of death or the date of knowledge of a person for whose benefit the action is brought, whichever is the later (s.12(2) Limitation Act 1980).

Damage to property

If a product causes damage to property – s.5(5) CPA provides that *"In determining ... who has suffered any loss of or damage to property and when any such loss or damage occurred, the loss or damage shall be regarded as having occurred*

¹⁵ He held that the mere fact that the product was manufactured in England was not sufficient to displace the general rule under the Private International Law (Miscellaneous Provisions) Act 1995 that the applicable law was the law of the country where the individual was when he sustained the injury.

¹⁶ If an injured person dies before the expiration of the limitation period, the cause of action survives for the benefit of his or her estate. A claim must be

brought within three years of either the date of death or the date of the personal representative's knowledge (s.11A(5) Limitation Act 1980).

¹⁷ In order to bring such a claim within the Fatal Accidents Act (and despite the fact that the CPA provides for strict liability), the damage is deemed to have been caused by the defendant's wrongful act, neglect or default (s.6(1)(a) CPA).

at the earliest time at which a person with an interest in the property had knowledge of the material facts¹⁸ about the loss or damage.”

Such a claim must be bought within three years from the date on which the cause of action accrued or the date of knowledge of the claimant or (if earlier) of any person in whom the cause of action was previously vested (s.11A(4) Limitation Act 1980).

10-year long stop provision

s.11A(3) Limitation Act 1980 sets out a 10-year long stop:

- It does not simply impose a procedural bar to an action to which the section applies, but extinguishes the right of action.
- The period of 10 years runs from “the relevant time” as defined by s.4 CPA, i.e. in effect when the product was last supplied by someone who was a producer, purported producer, or importer. There are often considerable difficulties in determining when a product is said to be supplied.
- The period starts to run whether or not the claimant’s right of action has accrued (i.e. it runs even before the claimant has suffered damage).
- The court in theory has a discretion under CPR r.19.5(1)(a) to allow for substitution of a defendant after the expiry of the 10-year period, *Horne Roberts v SmithKline Beecham Plc* [2001] 1 WLR 1662, CA.
- However, the CJEU has ruled that art.11 of the Directive must be interpreted as

precluding national legislation allowing the substitution of one defendant for another during proceedings in a way which permits a “producer” (within the meaning of art. 3 of the Directive) to be sued, after the expiry of the 10-year long stop, as defendant in proceedings brought within that period against another person, *O’Byrne v Aventis Pasteur SA* (C-358/08).¹⁹

As a result of this long-stop, generally there will therefore be no need under the CPA to keep records for more than 10 years (though if there is a concern about liability in negligence, records may well need to be retained for a longer period).

General provision under the Limitation Act 1980

Certain general provisions of the Limitation Act 1980 are applied to claims under Part 1 of the CPA. For example, s.28 Limitation Act 1980 provides that where someone is under a disability (i.e. while he is an infant or lacks capacity within the Meaning of the Mental Capacity Act 2005)²⁰ the limitation period only starts to run when either that person dies or ceases to be under a disability. There are also provisions for extending the limitation period in cases of fraud, deliberate concealment or mistake (s.32 Limitation Act 1980). However, these periods will not affect the 10-year long stop limitation period set out above. Those representing claimants under a disability will therefore need to bear in mind the 10-year long stop period.

¹⁸ As defined in s.5(6) CPA.

¹⁹ There is a potential exception identified by the ECJ - in circumstances where to all outward appearances a supplier (which had been sued by the claimant) had decided to put a product into circulation, but where *in fact* it was the manufacturing parent company (which had not been sued by the

claimant) which had determined that the product should be put into circulation, see *O’Byrne v Aventis Pasteur MSD Ltd* [2010] 1 WLR 1412 SC [33]. The House of Lords held on the facts that this did not apply in the *O’Byrne* case.

²⁰ Per s.38(2) of the Limitation Act 1980

Reviews of the Directive

The Commission reports every five years on the Directive. It has issued a Green Paper on *Liability for Defective Products* and four reports on product liability (a fifth will be submitted in 2017). These broadly concluded that there is a balance between producer and consumer interests, and indicated a reluctance to propose further reform.

However, the Commission has now decided to conduct an evaluation of the Directive, and as part of it has launched a public consultation which concluded in April 2017.

Brexit

The CPA is an Act of Parliament. As such, even though it is based on the Directive, it will remain in force after Brexit, unless repealed. Nevertheless, certain provisions will (subject to the terms of departure from the EU) need to be revised: for example section 2(2)(c) which refers to imports into a "member state", and section 4(1)(a) which provides for a defence when complying with an EU obligation. The Great Repeal Bill proposes giving the Government power to make such amendments by regulation.

Another consequence of Brexit is the removal of the CJEU as final arbiter of legal issues under the CPA/ Directive. The Great Repeal Bill proposes, however, to retain the precedent status of pre-Brexit CJEU decisions. Moreover, it would seem likely that English courts will continue to take into account later CJEU jurisprudence on the Directive in interpreting the CPA, even if they will not strictly be bound by it.

Other causes of action

A claimant might of course also have a contractual claim (for damages or other

remedies such as rescission), or a claim in negligence. Frequently such claims are found in combination with a claim under the CPA.

The advantage of such claims is that the claimants do not have to be consumers in order to be able to have a cause of action for damage to property. Further, they might (in claims which do not involve personal injury) have longer to bring a claim. Additionally, claims in contract can be brought for pure economic loss.

Claims in contract are usually more attractive than claims in negligence in that in contract the claimant must only prove that the product was not of satisfactory quality (which will normally be similar to defectiveness) under the Sale of Goods Act 1979 or under the Consumer Rights Act 2015 as opposed to showing negligence on the part of the defendant. However, a claim in negligence is open to a broader category of person, in that it is not limited to the contracting party.

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Charles has a strong product liability practice, focused in particular on complex cases, often with an international element. Recent cases have involved prosthetic hip implants, pumps, cars, electrical plugs, child car seats, pacemakers, contaminated food, pharmaceuticals, breast implants and fridges. He acted as lead counsel in the recent Corin Hips Litigation GLO, and appeared for the successful manufacturer in the seminal case of *Allen v Depuy* [2015] 2 WLR 442 (QB). He is recommended as a leading silk for product liability cases in both Chambers & Partners and Legal 500.

As well as product liability, Charles is recommended in the legal directories as a leading silk for commercial litigation, commercial fraud, professional negligence, travel and insurance.

"An exceptionally intelligent man, who just gets things and runs with them"; "Instantly inspires confidence; he is razor sharp in his analysis but down to earth with clients"; "phenomenal brain and commercial sense" (Chambers UK)



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Isabel has a busy common law and commercial practice, with a particular focus on product liability, professional negligence, and property damage.

Isabel acts for claimants and defendants in a wide range of product liability claims. Recent cases have included claims involving extensive property damage and personal injury arising out of defective products.

Isabel was led by Charles Dougherty QC in the important cases of *Allen v Depuy*. Other notable cases include claims concerning a wide range of products including: domestic electrical products and boilers; medical implants; toys and gymnastic equipment; products installed in commercial premises; and components of a nuclear fusion reactor.

"Super-bright, ferociously hardworking and a delight to work with"; "very user-friendly and approachable" (Legal 500); "driven and intelligent, she is excellent"; "she has an exceptional style with clients and produces a quality of advice well beyond her years" (Chambers UK).

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"Outstanding service" (Legal 500)

"On the ball, courteous and efficient" (Chambers UK)

"Approachable, modern and commercial in their outlook" (Chambers UK)



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