

# The Ladder Association

## Product Safety Review

### Consultation response

Nov 2023

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## About The Ladder Association

The Ladder Association Limited (The Ladder Association) is a UK-based not-for-profit organisation representing the portable ladder industry. Membership is drawn from international companies, SMEs and sole traders and encompasses manufacturers, rental companies, training providers and distributors.

## How The Ladder Association supports the safe use of ladders

The Ladder Association supports the safe use of ladders by:

- Providing free of charge guidance including a Code of Practice
- Work with the Office for Product Safety and Standards, Trading Standards departments and the Health and Safety Executive
- Partnered with another access lead industry body with a substantial investment to create the Test & Research Centre, the UK's first dedicated access-product testing, research, and certification facility.
- Ladder Association personnel serve on and in many cases act as Chair or Convenor of British Standards/European product standards committees

Membership of the Ladder Association shows clear commitment to adhere to the Ladder Association Code of Practice which puts safety at the heart of everything members do:

- Ladder Association Manufacturers only make ladders that comply with BS EN 131 (or international equivalents) and those products must be certified by a third-party Conformity Assessment Body and be subject to ongoing surveillance.
- Ladder Association Suppliers only supply ladders that are certified to BS EN 131 (or international equivalents);
- Ladder Association Training Providers conduct training in approved centres, using Ladder Association trained instructors, and only use equipment that complies to BS EN 131.

## The Association's View on the Product Safety Review

The Association has previously campaigned for more consumer product safety awareness with ladder use. It supports the Product Safety Review and the vision of a product safety regime based on five objectives<sup>1</sup>.

- Ensuring business obligations are proportionate to the hazard presented by their products, exploring how to reduce compliance costs for lower-risk products and make the conformity assessment process easier where possible.
- Enabling a more agile and responsive regulatory framework, allowing business greater scope to innovate when producing safe products.
- Using digital solutions, such as voluntary e-labelling, to reduce business costs and explore how digital options can be utilised to reduce business burdens.
- Addressing concerns regarding the ease with which unsafe products can be sold online, creating a fairer playing field so that shopping online is as safe as on the high street.
- Enhancing the leadership and coordination role of the Office for Product Safety and Standards alongside addressing identified enforcement gaps.

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<sup>1</sup> Extracted from <https://www.gov.uk/government/consultations/smarter-regulation-uk-product-safety-review>

## Hospital admissions

The Ladder Association is concerned that unsafe ladders could be a contributing factor to accidents. Hospital data from NHS England<sup>2</sup>, NHS Wales<sup>3</sup> and Public Health Scotland<sup>4</sup> includes various categories for hospital admissions. One category is “Falls on or from a ladder” and analysis of this data gives an annual snapshot of ladder fall admissions over time.

This data shows:

- Between 2014/15 and 2021/22 on average 7,723 people find themselves in hospital after falling on or from a ladder each year, with numbers remaining fairly stable year to year;
- Typically each year, 91% of admissions were due to an emergency as the result of a fall on or from a ladder;
- The average time spent in hospital, if admitted, is between 2 and 4 days;
- The average age of patients admitted is between 58 and 60 years old, with little variation over time. The highest number of patients admitted are aged 50-79 and around 80% of them are male;
- The total number of bed days due to ladder-related incidents in 2021/2022 was at least 22,300.

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<sup>2</sup> 1 NHS England – Hospital Episode Statistics (HES): <https://digital.nhs.uk/data-and-information/data-tools-and-services/data-services/hospital-episode-statistics>

<sup>3</sup> 2 NHS Wales Informatics Service, PEDW Statistics - 2014-2022

<sup>4</sup> Public Health Scotland - IR2023-00534: Number of emergency admissions in Scotland due to falls on/from a ladder (January 2011 - December 2022)

Q2 – Regulatory requirements linked to product risks?

**Do you agree that we should examine options for a framework where regulatory requirements are more closely linked to the risks of the product in question?**

- Support linking regulatory requirements to product risks
- Risk evaluation must be standardised for transparency and to support free trade
- Trade Associations and Industry Bodies are subject matter experts and should be included in framework consultation
- Any risk-based framework must be applied equally to overseas sellers and should be hosted on OPSS/GOV.UK website

The Ladder Association supports linking regulatory requirements to product risk, *providing* there is a transparent method for assessing what constitutes a high-risk product.

The existing system of conformity to product standards, written by independent technical experts, is well known and understood. Moving to a system based on risk must be supported with high quality and detailed guidance. A risk assessment is only as good as the person who authored it. We must also avoid scenarios where two risk assessments of the same object can come to two different conclusions and ratings.

Whilst the intention to reduce regulatory requirements for low-risk products is positive, implementing and maintaining the categorisation system itself could create an additional regulatory burden for businesses, particularly smaller ones.

The Association encourages OPSS to engage with trade associations and industry bodies, the specific subject matter experts on their respective product categories, in the shaping and delivery of product risk categorisation.

The role of enforcement agencies, like Trading Standards, must also be considered. A business can demonstrate to regulators that a product meets essential health and safety requirements, by conforming to a product standard, which can be independently verified, and Trading Standards can inspect test reports or certification as proof. Moving to a risk-based model would require the risk assessment to be interrogated, to ensure it is adequate for the product, its use, the users of the product and any harm it may cause in use or misuse. This places a higher burden on investigating officers than the situation today.

Businesses based in the UK already have legal obligations to only manufacture, import and distribute safe products. Under GPSR, they should already be assessing products to ensure they are safe. For the portable ladder industry, the Association established that imported products, sold directly to consumers are the biggest risk. It is therefore vital that any risk-based framework can be applied equally to overseas sellers.

**What role should standards and testing requirements play in supporting businesses to comply with the new approach?**

- Product standards establish product safety testing requirements
- Standards updates take account of safety bulletins/learning
- Avoid confusion between conformity with, in accordance with or compliance to, third-party (independent) conformity assessment is best option
- Product standards would support companies/importers to fulfil their obligations with high-risk products

Alongside guidance, standards and testing are essential elements in supporting businesses to comply with the new approach.

**Product standards** provide everyone with confidence and certainty that an achievable product performance and safety level can be met. Standards set dimensional, performance and testing requirements. BSI consider<sup>5</sup> standards provide a reliable basis for people to share the same expectations about a product or service. This helps to:

- facilitate trade
- provide a framework for achieving economies, efficiencies, and interoperability
- enhance consumer protection and confidence.

**Testing & Surveillance** are essential to confirm that products produced to a standard continue to meet the requirements.

The only acceptable testing is third-party (independent) conformity assessment which must be mandatory for high-risk products.

The May 2022 Ladder Association *Telescopic Ladder Surveillance Survey*<sup>6</sup> market surveillance report– (produced in partnership with East of England Trading Standards Association, Suffolk County Council, and the Test & Research Centre), investigated the safety of telescopic ladders being sold on the UK market. The report found that 82% of ladders tested failed the required safety tests, were non-compliant with product standards and, in most cases, were unsafe to use.

In April 2023 the Ladder Association’s *Phase Two Telescopic Ladder Surveillance Survey*<sup>7</sup> found that 100% of the ladders retested failed the required safety tests, and yet 83% of the retested ladders (purchased online) continued to claim compliance with the relevant product standard (EN 131).

Trade Associations/Industry bodies usually require their members to only supply goods that conform to recognised product standards and will usually require third-party conformity assessment certification.

Product standards are an essential tool for producers, importers, and distributors to demonstrate that an object meets published essential health and safety requirements. Consumers also generally understand what conformity with a standard means. If standards were replaced with a risk-based approach, it would be difficult to differentiate in the market what essential health and safety requirements and object does / does not conform to. This may ultimately lead to a “race to the

<sup>5</sup> <https://www.bsigroup.com/en-GB/standards/Information-about-standards/what-is-a-standard/> [accessed 28-10-23]

<sup>6</sup> <https://ladderassociation.org.uk/wp-content/uploads/2022/05/Telescopic-Ladder-Surveillance-Survey-Report-Version-1-Revision-0-May-2022.pdf>

<sup>7</sup> <https://ladderassociation.org.uk/wp-content/uploads/2023/04/Phase-2-Step-In-Telescopic-Ladder-Surveillance-Survey-Report-Version-1-Revision-0-April-2023.pdf>

bottom” as objects cannot be independently compared. It is therefore vital that product standards continue to be referenced in any future framework, alongside risk assessment and categorisation, as a way of demonstrating that a product is safe.

After consultation with our members, the Association supports the proposal that products categorised as high risk must be independently tested and certified by a UKAS accredited conformity assessment body (or other conformity assessment bodies accepted through any mutual recognition agreements). From our product market surveillance, we believe this would help consumers to differentiate between safe, good quality products, and dangerous, sometimes fraudulent imports.

#### Q4 – types and areas of guidance to help you understand requirements

##### **What type and areas of guidance would most likely help you understand your requirements under any new framework?**

- A standard approach to risk assessments
- Method for designating a high-risk product

Clear and concise guidance on the risk assessment process, perhaps in the style of PAS 7050 and PAS 7100 will be essential in any future framework. A poorly written risk assessment could lead to poor judgement of risk and injury to consumers. The quality of the risk assessment is based on the competency of the author, and so a standardised method (with examples) should be created.

The Ladder Association would welcome a standardised web tool on the OPSS website. This would give businesses a single method to follow, that can be centrally updated based on risk from time to time. It would also give OPSS access to significant data on businesses and their products, meaning it can act faster to risk from emerging products.

There must also be transparent and unambiguous guidance on the categories of risk. For example, what sort of injury to a user or property, and what sort of risk probability, would trigger a “high risk” rating. This cannot be left to the assessor to judge, as this may lead to a bias to down rate certain probabilities to avoid a high-risk rating.

Q5 - Anticipated costs in understanding a new framework

**Whilst anticipated costs and benefits would depend on the design of a new framework, what type of costs, quantified, if possible, would you anticipate in understanding a new framework?**

- Additional costs should be minimal.
- It's likely most good businesses are already undertaking risk assessments as part of bringing safe products to market.

If a risk-based model was implemented, businesses would need to:

- Review and understand how the new framework is applied to their business and products, which may require staff training or hiring of new staff.
- Implement a programme of risk assessments for existing products.
- Arising from this, undertake further testing of product against standards, if required.

For smaller and simpler businesses, this could be undertaken by competent staff in a few hours, if the regulations and guidance are all freely available.

For larger and more complicated businesses, this could take teams of people many months to complete, especially in extended supply chains.

A new, transparent framework would simplify requirements and reduce the barriers to business – therefore business costs.

Q6 – Guidance to help business in carrying out pre-market risk assessments

**Do you support the development of guidance to assist businesses in carrying out pre-market risk assessment?**

- Help identify potential risks
- Ensure consumers are given information on how to mitigate risks.

Yes, the Association supports the development of an online tool (hosted on the OPSS website) to assist businesses in carrying out pre-market risk assessments but it should not just be at the pre-market stage.

It is equally important for product risk assessments to be reviewed and updated regularly.

Changes from the environment, users, ergonomics, etc, may all have an impact on the original pre-market risk assessment.



Q12 –Clarifying cooperations for online marketplaces

**Do you agree with the proposal to clarify cooperation duties for new business models, particularly ‘online marketplaces’?**

- detail is required about the level of cooperation
- marketplaces should be liable for third-party sellers

The Association broadly agrees with the proposal, however more detail is required about the level of cooperation from online marketplaces anticipated.

The Association is concerned that these proposals stop short of stating online marketplaces are jointly responsible for the products on their platforms.

The August 2023 Ladder Association *Multi Hinge-Joint Ladder Surveillance Survey*<sup>8</sup> investigated the safety of multi hinge-joint ladders being sold. The survey reports clear evidence from product labelling, the packaging, or the product description online, that manufacturers, importers and sellers are knowingly and, in some cases, fraudulently claiming compliance to the product standard in a deliberate attempt to mislead consumers.

“All 6 samples purchased from the well-known online giants, Amazon and eBay, failed the safety tests. Given we selected the products due to their ranking in Google search results, we know these products are appearing online at the top of the search listings. Consumers are therefore more likely to see, browse and buy these substandard products based on this availability and ‘top ranking’ position.

The Ladder Association’s limited scope testing clearly confirms there is a real and serious issue with the availability and use of substandard multi hinge-joint ladders on the UK market.

Worse still, a significant proportion of these ladders are being knowingly and apparently fraudulently marked and sold as ‘EN 131 compliant’ in a deliberate attempt to mislead consumers.”

**Clearly the existing situation is untenable, and there must be a mandatory requirement on ‘online platforms’ to make them jointly and severally responsible for the products sold on their platforms**

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<sup>8</sup> <https://ladderassociation.org.uk/wp-content/uploads/2023/09/Ladder-Association-Multi-Hinge-Joint-Ladder-Surveillance-Survey-Version-1-Revision-0-September-2023.pdf>

Q13 – Practical considerations for new online supply chains

**What practical considerations would Government need to take into account if such cooperation duties applied to new business models in the online supply chain?**

- **Online platforms have a joint responsibility to verify these claims before accepting a product listing.**

Until the sales platform/facilitator/distributor is also jointly responsible for the products sold on their platforms, there is limited scope for enforcing a duty of care for unsafe product listings and associated penalties for contravention.

If an online marketplace considered itself as a middleman and the store/seller is responsible for product safety, then there is no business risk to them, and therefore their systems and processes could be non-existent, depending on how these regulations are written and enforced.

**Recommendation: Where a seller listing claims third-party product conformity, online platforms have a joint responsibility to verify these claims before accepting a product listing.**

For any new cooperation duties to work, there needs to be an enforcement agency with enough resource to enforce them.

For our sector, there is an increasing impact from overseas sellers providing dangerous products directly to consumers. The market is not a level playing field. UK based businesses are fully liable in the event of loss from product failure. Overseas sellers are not. Therefore, there needs to be a mechanism to either enforce legal penalties on the “new business models” or enforce the penalties via the “new business models” onto the seller, in much the same way VAT can be managed on the overseas sellers’ behalf by the “new business model”.

Q14 –Due care requirements for unsafe product listings

**Do you agree with the proposal to introduce due care requirements in relation to unsafe product listings?**

- Due care requirements must include online platform verifying third-party product conformity *if* claimed in a seller listing.

Until the sales platform/facilitator/distributor is also jointly responsible for the products sold on their platforms, there is limited scope for enforcing a duty of care for unsafe product listings and associated penalties for contravention.

This joint responsibility must include verifying third-party product conformity *if* claimed in a seller listing.

The Association supports the introduction of due care requirements for online marketplaces. This is at least a step towards making them jointly liable for the products they are facilitating. But, as with the other points, there needs to be enforcement agencies with enough resource to actively police these new regulations.

Q15 – Increase consumer-facing online information for higher risk products

**Do you agree with the proposal to increase consumer-facing information on online product listings for higher risk products?**

- Improve consumer confidence - objectively verifiable (e.g. by hyperlinking to the product certificate)

The Association agrees in principle with increasing consumer facing information. Some of the newer online market places (Wish, Temu) hide the sellers information.

The Association remains concerned that showing the sellers details, if it is an overseas address without legal redress or enforcement action is futile.

Other details should be listed such as checks on the product or seller, and that any claims of conformity to a standard must be objectively verifiable (e.g. by hyperlinking to the product certificate).

Q16 – What extra information would be useful for consumers?

**What additional information would be useful to support consumers to purchase safe products?**

- Alert consumers when a product is high-risk
- Alerts when supplier is not a UK registered entity/no service UK address
- Seller claims about product compliance should be verified by online marketplaces **before** listing

Previous OPSS research<sup>9</sup> acknowledged consumers place safety a long way down the list of priorities. To help consumers make informed purchasing choices, alerts at the point of purchase and a warning when the supplier is not a UK registered entity (or no UK service address) should be made.

Many products sold online today make claims about compliance or “certification”. For the online marketplaces to enforce this, there needs to be detailed requirements on what evidence must be provided when listings are made. Auditing statements by the seller must be a key part of the online marketplaces “due care requirements”.

**Recommendation: Where a seller claims product standards compliance, the listing must be accompanied by a clickable link to the relevant third-party conformity assessment certificate**

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<sup>9</sup> Consumer attitudes to product safety Research report BEIS Research Paper Number 2020/032  
The Ladder Association submission – Product Safety Review 10/23

Q17 – Enhancing the role of OPSS

Do you agree with the proposal to enhance the leadership and coordination role of OPSS?

- The duty to cooperate requirement is ill-defined
- Funding opportunities

The Ladder Association supports the OPSS being empowered to produce statutory, and therefore mandatory, guidance for local authorities to ensure a consistent approach to enforcement for product safety.

The duty to cooperate requirement for local authorities is a vague and ill-defined duty, that needs to be more clearly defined.

With this new coordination and leadership role, greater central spending should be allocated to help support local authorities, which are already struggling to provide adequate services.

Q18 – A new data gateway?

**Do you agree with the proposal to create a new legal data gateway?**

- Digital product passport

The Association believes the goal must be a ‘digital product passport’ (DPP), (building on the EU’s Ecodesign for Sustainable Products Regulation DPP) but **until** this is available then the pre-market assessment should be publicly available to any prospective consumer and clearly demonstrate the mitigating actions users must take where a risk of harm may exist.

A digital risk assessment tool should be hosted on the OPSS web site, enabling all the product data to be stored in one place, including any test reports or product certification. Operators could then be given a unique code or identifier to facilitate trade through ports and borders, as the operator / product would already be registered in the OPSS system.

Recommendation: A new legal data gateway together with a focused **import classification system** that would enable better-targeted intervention at ports and borders.

These requirements must be written in such away that they are enforceable on overseas operators.

Q19 – A single point of contact for product safety recalls?

**Do you agree with the proposal to have a single point of contact for product safety recalls?**

- RAPPEX / PRISM essential
- RIDDOR unreliable method
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The proposal to mandate the reporting of all product-related incidents to OPSS as a national central point of contact in a manner similar to RIDDOR is very wide-ranging if it applies to ALL product-related incidents. The suggestion that reporting be mandated in a manner like RIDDOR implies that RIDDOR is an effective means of collecting incident data.

However, it is well documented that there is considerable under-reporting of RIDDOR incidents making the data incomplete and unreliable. Davies, Kemp & Frostick in their report commissioned by the HSE in 2007 conclude that overall, only 30% of reportable incidents identified in the study were reported to HSE. The researchers also found that self-employed workers were poor at reporting incidents, with a reporting rate of only 12%, compared with 32% for employed workers.<sup>10</sup>

The Association welcomes and supports the proposal to consolidate and align enforcement legislation to allow compliance, withdrawal, and recall notices to be issuable for all products covered by the framework. This could be effective if the economic operator is UK-based, but what if they have no UK base, will the online marketplace be deemed to take on the role of importer, distributor or fulfilment agent?

Similarly, the creation of a single agile information notice through which authorities can request information about a product seems sensible and welcome, but what if the economic operator has no UK base? Will the products be rejected or, if already on the market, compelled to be withdrawn, and who will be compelled to withdraw?

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<sup>10</sup> [Health & Safety Executive Research Report RR528 An investigation of reporting of workplace accidents under RIDDOR using the Merseyside Accident Information Model, 2007](#)



Q20 – Consolidation of existing enforcement legislation?

**Do you agree with the proposal to consolidate and align existing enforcement legislation?**

The Ladder Association welcomes and supports the proposal to consolidate and align enforcement legislation to allow compliance, withdrawal, and recall notices to be issuable for all products covered by the framework. This could be effective if the economic operator is UK-based, but what if they have no UK base, will the online marketplace be deemed to take on the role of importer, distributor or fulfilment agent?

Similarly, the creation of a single agile information notice through which authorities can request information about a product seems sensible and welcome, but what if the economic operator has no UK base? Will the products be rejected or, if already on the market, compelled to be withdrawn, and who will be compelled to withdraw?

Q21 – Introducing civil penalties, improvement notices and enforcement undertakings

**Do you agree with the proposal to introduce improvement notices, civil monetary penalties, and enforcement undertakings?**

The Ladder Association welcomes the proposed new enforcement regime giving powers to OPSS to issue improvement notices and civil monetary penalties, but would like to see more details on how economic operators with no UK base would receive notices and civil monetary penalties.

Additional powers should be considered where any enforcement actions placed on an overseas operator, is facilitated via the online marketplace, in a similar way to the handling of VAT for some overseas sellers. Whilst some of the actions could not be enforced on overseas sellers, financial monetary penalties could be facilitated by the online marketplace. This would, at least in a small way, help to level the playing field between UK based and overseas operators.

**Recommendation: OPSS be granted powers to issue improvement notices and civil monetary penalties to any entity operating in the UK. If an entity does not have a UK base, the enforcement must be against the agent or platform facilitating the sale in the UK/**

Q22 – Inspection powers, options for change

**Do you agree with the proposal to explore changing inspection powers?**

The Ladder Association welcomes the proposal empowering officers to conduct inspections of business operating from home, with some restrictions, to combat the issue of fulfilment agents, but might this require such officers to be warranted, in a similar manner to police officers, immigration officers and HSE Inspectors?

**Recommendation: Investigation officers should be warranted**

Q23 – Is the civil product liability fit for purpose?

**To inform consideration of whether the civil product liability regime remains fit for purpose, can you provide any examples where the current product liability regime:**

The Ladder Association welcomes the adjustment of the civil product liability regime to allow consumers to seek compensation where harm has been caused by a defective product and the concept that this could be a driver to compel businesses to carry out greater due diligence, particularly when products are sold online, but once again, question the efficacy of such a measure if the economic operator does not have a base in the UK.

**a) is unclear because of technological developments (e.g., lack of clarity about who is responsible for safety of an AI/smart product or when software is updated); or**

**b) doesn't enable consumers to seek fair redress; or**

based on our market surveillance projects, we know that dangerous, sub-standard ladders are being sold through online marketplaces by overseas operators. In the event of an injury caused by these sub-standard ladders, the consumer has no access to seek fair redress, as the operator is based overseas and so is free from any UK legal proceedings.

**c) doesn't provide businesses with clarity and confidence to develop new products?**

because of the price point of the ladders sold through online marketplaces, many of which fraudulently claim to meet product standards<sup>11 12</sup>, there is no commercial incentive for UK businesses to try and compete.

It makes the market a very uneven playing field, with the consumer exposed to dangerous products and a race to the bottom.

<sup>11</sup> <https://ladderassociation.org.uk/wp-content/uploads/2023/04/Phase-2-Step-In-Telescopic-Ladder-Surveillance-Survey-Report-Version-1-Revision-0-April-2023.pdf> refer to Appendix One for non-compliant test results

<sup>12</sup> <https://ladderassociation.org.uk/wp-content/uploads/2023/09/Ladder-Association-Multi-Hinge-Joint-Ladder-Surveillance-Survey-Version-1-Revision-0-September-2023.pdf> refer to Section 11 pages 14/15 for test results