

## General Product Safety Regulations 2005 (GPSR)

We are aware that Government are considering using the GPSR as part of a process to ensure that products are supplied and importantly compliantly installed. This is to ensure that all safety critical products are compliant and installed by competent operatives and organisations.

*Extracted from THE FORGOTTEN DUTY-HOLDER printed in SpecFinish*

The forgotten duty holders are, those that have responsibilities during a construction project but tend not to be prosecuted often for criminal offences under health and safety legislation and in a post Grenfell world, many other duty holders (including installers of products) will be caught out for failing to meet their obligations under safety legislation

Lincoln County Council, argued in court that professionals responsible for installing products could also be liable for a defective product by virtue of their installation under the **General Product Safety Regulations 2005**.

This particular piece of legislation was usually reserved for manufacturers or suppliers in a consumer law context. Here, a fireplace installer was being prosecuted for safety failings because he is deemed to be a 'producer' of products. This has serious implications for all tradespeople and installers, who can now be prosecuted under the GPSR, even if the product itself was perfectly sound.

### The facts

The fireplace installer who was being prosecuted as a 'producer' under the General Product Safety Regulations 2005 (GPSR) for supplying an unsafe product by virtue of its installation.

Under section 2 of the GPSR, a 'producer' includes:



- The manufacturer of a product who is established in the EU
- A person established in the EU, holding himself out as the manufacturer, for example by selling private label products under his own brand ("own-branders")
- A person established in the EU who reconditions the product
- A person established in the EU who represents a manufacturer from outside the EU
- Where there is no EU representative of the manufacturer, the importer into the EU
- Other professionals in the supply chain who affect the safety of the product.

"Other professionals in the supply chain" is not legally defined. It was on this point (ie whether the installer was an "other professional" for the purposes of the GPSR) that the case made the ground-breaking ruling.

In this case, the defendant supplied and fitted fireplaces for a living. His work included the removal of old stoves, plates and chimney liners and replacing them with new equipment including flue liners and canopies.

The old equipment was removed by the defendant and the chimney was then swept before the new basket and back were installed.

An independent engineer who inspected the installation found that the fittings had been installed incorrectly and incompetently. The hood and flue liner were too small and did not comply with UK building regulations.

The local authority argued that whilst the fireplace was being renovated, the defendant installed a flue liner and a canopy in such a way to render them unsafe products.

The court's decision The court ruled that a "professional (other) person" as defined in section 2 of the GPSR could (and did, in this case) include an installer because the act of installing a product can affect its viability and safety. Crucially, this is the case even if the product itself is free from defects.

Ultimately the defendant was found not guilty in this case. He won his case based on the facts (the installation was deemed incomplete – he was performing regular test and diagnostic checks during his works to rectify the problems with the chimney) and he therefore escaped conviction.

However, the approach by the prosecution and court raises serious questions about who exactly falls within the ambit of GPSR and who could be liable for providing defective products. Anyone who installs a product must be aware that this decision means they could be prosecuted under the GPSR for 'providing an unsafe product' by virtue of its installation. This should be taken seriously, as failure to comply with the GPSR can lead to fines and/or imprisonment. There is also the risk of potential prosecution for installers under the Health and Safety at Work etc Act 1974 for failing to conduct their undertaking in such a way so as to ensure the health and safety of non-employees (eg domestic clients, sub contractors or members of the public), which can also lead to significant fines and/or imprisonment in accordance with the 2016 Health and Safety Sentencing Guidelines.

### How does competency help?

This case highlighted the need to carry out work competently to avoid the suggestion that their work was potentially unsafe and incompetent due to the way their work was carried out.

Since the revised CDM Regulations in 2015, we have seen the requirement for 'competence' replaced with a requirement for 'skills, knowledge, experience and training' and 'organisational capability'.

- Skills: Practical application of knowledge needed to successfully undertake work activities.
- Knowledge: Technical training and 'know how' that the individual needs to understand how to carry out their duties.
- Experience: Enhanced knowledge or skill acquired by a period of practical experience.

Coupled with the recommendations made in the Hackitt review after the Grenfell fire that suggested that duty holders should only make and accept appointments where the necessary skills, knowledge, experience and organisational capability are in evidence, it seems that competence will continue to play a big part in assessing whether someone is in breach of safety legislation in the event of an incident, or even just the presence of a risk of injury to relevant persons.

One likely outcome of the Hackitt review is the increase in prosecutions, and a lack of competence or training will provide ammunition for enforcing authorities to criticise the dutyholder and prosecute under a raft of available legislation, which could result in large fines or even imprisonment being imposed.

Contractors should limit the risk of liability for duty holders in respect of safety breaches, by focusing on changes in culture or 'attitude'.

The fact that enforcing authorities can now use consumer-based legislation for providing defective products (as well as HSWA and CDM for acting in an 'unsafe' manner) to prosecute installers or manufacturers is worrying – and only a proactive, competent duty holder will be able to successfully defend such allegations

Original article from Kizzy Augustin published in FIS SpecFinish October 2019 [HERE](#)

THE General Products Safety Regulation can be found [HERE](#)