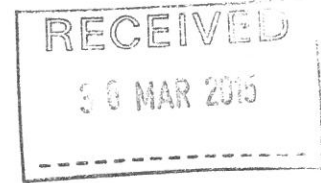




Doncaster
Metropolitan Borough Council



Ms N J Mundy
Senior Coroner
South Yorkshire (East) District
Doncaster Crown Court
College Road
Doncaster
DN1 3HS

Contact: [REDACTED]
Tel: [REDACTED]
Fax: [REDACTED]
E-mail: [REDACTED]
Web: www.doncaster.gov.uk
Our Ref: [REDACTED]
Your Ref: [REDACTED]

Date: 24th March 2015

Dear Ms Mundy,

Re: Margaret Elsie CLARKE (Deceased)
Consumer Protection Act 1987
General Product Safety Regulations 2005

Further to my recent letter acknowledging receipt of a copy of your report following the unfortunate death of Mrs Margaret Clarke from [REDACTED] of the Health and Safety Executive I have now had an opportunity to consider the matter.

This Authority has a duty to enforce the provisions of the Consumer Protection Act 1987 (CPA87) and the General Product Safety Regulations 2005 (GPSR). These two pieces of legislation work together to establish a regime to ensure that consumers may purchase products in the knowledge that they should be reasonably safe when used in the manner intended.

The CPA87 Part II firstly gives the Secretary of State the power to make regulations regarding specific goods, or classes of goods, in order to ensure that when supplied those goods are safe. An example of this is The Toys (Safety) Regulations 2011 which regulate certain aspects regarding playthings for children. Where there are specific regulations such as these, the supply of a product which does not conform to the requirements of the regulations is an offence by virtue of section 12 of the Act.

I attach a list of the regulations currently in force under this legislation as Appendix 1 to this letter. You will notice that there are no regulations that apply to showerheads or indeed plumbing products more generally.

The only solution to the problem under this legislation would be for the Secretary of State to make regulations relating to these products under Section 11 of the Act.

The GPSR fill in where specific regulations do not exist. It places a general requirement on manufacturers, or in the case of imported goods their representative within the European Union, to only place on the market products which are safe. Contravention of the requirement is an offence.

A safe product is defined as:

Doncaster Council
Civic Office, Waterdale, Doncaster DN1 3BU

A product which, under normal or reasonably foreseeable conditions of use including duration and, where applicable, putting into service, installation and maintenance requirements, does not present any risk or only the minimum risks compatible with the product's use, considered to be acceptable and consistent with a high level of protection for the safety and health of persons. In determining the foregoing, the following shall be taken into account in particular—

- (a) the characteristics of the product, including its composition, packaging, instructions for assembly and, where applicable, instructions for installation and maintenance,*
- (b) the effect of the product on other products, where it is reasonably foreseeable that it will be used with other products,*
- (c) the presentation of the product, the labelling, any warnings and instructions for its use and disposal and any other indication or information regarding the product, and*
- (d) the categories of consumers at risk when using the product, in particular children and the elderly.*

The feasibility of obtaining higher levels of safety or the availability of other products presenting a lesser degree of risk shall not constitute grounds for considering a product to be a dangerous product;

However “product” is defined as:

A product which is intended for consumers or likely, under reasonably foreseeable conditions, to be used by consumers even if not intended for them and which is supplied or made available, whether for consideration or not, in the course of a commercial activity and whether it is new, used or reconditioned and includes a product that is supplied or made available to consumers for their own use in the context of providing a service.

This leaves a couple of difficulties.

Firstly, there is the question of whether a shower head which requires permanent installation, rather than a detachable hose and head, is intended for consumers. It is much more likely that it is intended to be supplied to the plumbing trade and therefore outside the remit of the regulations.

Secondly, I have doubts about whether it is the shower head itself that is unsafe.

Although my understanding of problems with Legionnaires disease is very limited, I believe it is more to do with the installation as a whole, together with the management, use and cleaning of the water system rather than the individual component. Legionella levels take time to build up, needing the appropriate environment to multiply in order to cause a problem. Then a situation is required where the contaminated water is atomised and introduced to the person. It is not necessarily the showerhead where the infection has built up – the showerhead is merely the vector, and therefore cleaning the showerhead alone would not be a reliable remedy.

Given an infected supply the same could happen in a variety of situations and cause otherwise perfectly safe products to become potential sources of infection. If this is the case it is not the design of the showerhead that needs consideration, but the maintenance of the water system as a whole.

The issue of maintaining water systems is already addressed in the HSE ACOP L8 as you have pointed out. And I note that paragraph 2(a) already identifies showers as a potential risk and the information relating to low risk situations referring to "no showers".

It would seem to me, particularly if I am correct that cleaning the showerhead alone could be ineffective, that the appropriate response to this situation would be for the HSE to review the guidance that they publish regarding Legionnaires disease to consider if greater emphasis needs to be put on showers being a suitable vector, and the required installation and maintenance of shower systems. I have copied [REDACTED] in on this letter to allow him to comment further.

I hope that you find this response helpful and it is formulated given the facts available to us, if you feel you have any other pertinent information to inform our conclusions please feel free to contact me should you feel I can assist any further.

Yours sincerely,

[REDACTED]

[REDACTED]

Senior Trading Standards Officer

cc. f.a.o. [REDACTED]
HM Inspector of Health & Safety
Health & Safety Executive
Group 10
Foundry House
3 Millsands
Riverside Exchange
Sheffield
S3 8NH