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Dear Mr Walker,

REGULATION 28 REPORT- SANTOSH BENJAMIN MUTHIAH

Thank you for the copy of your Regulation 28 Report to Prevent Future Deaths, which you have addressed to [REDACTED], Head of Product Regulation and the Department for Business, Innovation and Skills. I am replying as this matter falls within my portfolio. The death of Santosh Benjamin Muthiah in November 2010 was a tragic incident and I share your interest in preventing a reoccurrence.

The first two concerns you have addressed to me relate to differences in approach to undertaking risk assessments of products (paragraphs 26-29), and inconsistencies in the related guidance (paragraphs 31-34). My view on this is that the legislation itself is clear, and that this is underpinned by equally clear guidance (produced by Prosafe, a non-profit making organisation which draws together European Market Surveillance Authorities to spread and develop best practice, with support from the UK). The Government plays a leading role in discussions on risk assessment and corrective action in the EU, and we will continue to promote best practice and draw attention to the Prosafe guidance on this basis.

However, we are aware that there may be additional guidance in the public domain that is not fully consistent with Prosafe advice. Whilst it is important to note that risk assessment is an inherently subjective activity, I share your concern that any apparent divergence in approach could cause confusion for manufacturers in relation to their obligations. As a result, consistency of guidance and sharing of best practice is something that will be considered as part of the independent review of consumer product recalls recently announced by Baroness Neville-Rolfe during a House of Lords debate on the Consumer Rights Bill. The review will incorporate views from a range of Market Surveillance Authorities and other business and non-government stakeholders. The output will be a report to BIS Ministers highlighting the strengths and weaknesses of the current system and making recommendations on how it might be improved.

You also raise a series of concerns in paragraphs 52-57. The first of these relates to the creation of a website where all product recalls can be registered and accessed by consumers. There are already a number of initiatives in this area including AMDEA's 'Register my Appliance' site launched on 15 January, as well as the online list of product recalls maintained

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by the Trading Standards Institute. Nevertheless, the usefulness and feasibility of such a website will be considered as part of the aforementioned independent review.

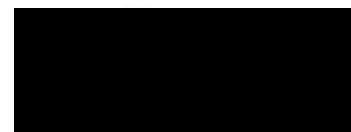
Your second concern in this section relates to white goods carrying key information on a fire-resistant plate or similar. I understand that this idea has a number of practical challenges associated with it, but I believe that industry are looking into it in some detail and are seeking to make a proposal with the aim of securing global agreement. BIS will continue to support their efforts in this area.

Your third concern covers the "failure to notify" offences under the General Product Safety Regulations 2005 and, in particular, whether the range of penalties is sufficient and whether the time limits for instituting criminal proceedings are too short. In my view, the general scheme of offences in the 2005 Regulations operates in a proportionate and effective manner. In relation to penalties, it is important to appreciate that a producer or distributor who commits an offence under regulations 7 or 9 (the "failure to notify" offences), will very frequently also have committed an offence under regulations 5 (general safety requirement) or 8 (obligations of distributors), to which higher penalties can be applied. In addition, you may be aware that the Ministry of Justice is currently working on commencing section 85(1) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012, which would have the effect of permitting a fine of any amount to be given in respect of the "failure to notify" offences. In relation to time limits, I agree that the system must allow sufficient time for effective prosecutions to be brought. However, the system must also be proportionate and certain. Therefore, I do not propose to address the range of penalties or the time limits applying to the "failure to notify" offences under the 2005 Regulations any further at this time.

Your fourth concern centres on collection and storage of consumers' contact details by retailers. As you will appreciate, there are some challenging issues here in relation to data protection, as well as customers' general willingness to give their contact details. This is why BIS's approach focusses on encouraging consumers to register their appliances and helping them understand why this is beneficial, rather than forcing them to do so. This is exactly what AMDEA's Register my Appliance site is designed to do, and we will continue to support that initiative.

Finally, you raise concerns about the absence of a Code of Practice on product recalls. I believe that much of the content that one would expect to see in a Code of Practice is covered by the Prosafe guidance mentioned above. In addition, it is difficult to set out firm criteria for product recalls, since each one must be tailored according to a huge number of factors including the nature and age of the product, the nature of the risk, the number of products on the market and the consumers affected. Once again, however, the potential for a Code of Practice will be considered as part of the independent review.

In addition to the points above, I would like to highlight that the independent review of product recalls will also consider a number of the other concerns you have raised elsewhere in your report. I understand that views will be sought from coroners as part of the evidence gathering that underpins the review. I would of course be happy to send you details of the review's findings when it concludes later in the year.



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