

Bah Humbug to safety at Christmas?



**A survey of Christmas novelties by the
SWERCOTS Safety Group**

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Executive Summary and Recommendations

The range and number of novelties and decorations sold for the Christmas season has expanded considerably over the last 10 years. Although many resemble toys, localised surveys have suggested that their standard of safety is far lower than that legally required for toys. SWERCOTS members used their combined resources to investigate whether this was the case, and to assess the protection the law offered purchasers of these products.

As there are no specific regulations that cover this type of novelty, they fall under the General Product Safety Regulations 2005, which as their title suggests lay down generalised requirements that call on compliance with European or national standards where there are any that are relevant. In this survey, sampling officers were asked to purchase items they believed would be appealing to young children, and so the European Standard for toys, EN71, was chosen as the most appropriate yardstick.

91 types of novelties, purchased across the South West, were tested. 58 failed to comply with the constructional requirements of the standard. 54 of the failures were because the item had a component that could be removed by the force a small child could generate, and was sufficiently small to be a choking hazard. 46 of these failures carried warnings of some kind, but of those only 5 used the wording that would be needed for a toy with detachable small parts. The labelling used varied widely in wording and prominence. Novelties that resembled soft toys had a somewhat higher failure rate than the overall figure.

Research shows that children spend a considerable amount of their time putting things in their mouth and biting them. They are particularly interested in small plastic items such as those detached from these novelties. Choking accidents peak at around 12 months, and although fatalities are fortunately rare,

visits to A & E Departments by children up to 4 years old because of accidents involving foreign bodies is estimated at 34,000 each year. There is no separate category for Christmas novelties in official figures, so it is unknown how many would have been caused by a Christmas novelty. However, as they are exposed in the home for a relatively short time and as about half choking accidents are caused by food it is probably not a large number.

In many of the cases, the risk could have been removed by modifying the design, using different components or making the product to a higher standard. The extra cost would have been minimal. However, the General Product Safety Regulations do not necessarily make it illegal to sell such products. The Regulations offer a smorgasbord of considerations for a court to choose from, including the presence of warnings. Where there is no warning, it is likely that a child appealing novelty that does not comply with EN71 also does not comply with the requirements of the Regulations. It is more difficult to predict a court's decision if a novelty has a warning of some kind. In other words although safety legislation has a part to play, we have to look beyond it if the risk these products pose is to be reduced.

Purchasers are more likely to look for warnings and act for them if they are aware there is a problem, and one strategy is to work with those with a long term interest in child safety to raise awareness. The root problem is that those who design and manufacture these products do not consider child safety. We may be able to influence these manufacturers by persuading British retail chains and specialist importers that current standards are not acceptable. Trading Standards are in a good position to bring these considerations to their attention.

Introduction

Christmas novelties and decorations can be found at outlets ranging in size from market stalls to most of the large retail chains, including supermarkets and DIY chains. Research by both the British Retail Consortium and B & Q suggests that each British household spends about £25 each year on Christmas decorations. Over £140 million pounds were spent on them in 2004.¹

The range of decorations available has expanded over the last 20 years, and items are far more varied and complex than the traditional glass baubles and paper chains. Tree decorations have become more sophisticated, and the range of Christmas products includes table top decorations, Christmas stockings, singing figures and decorations that are placed on the floor.

What most of these items have in common is their bright appearance, and it has been commonly accepted that many of them can be attractive to children. It is unlikely that many of these will be mistaken for toys by purchasers, as there are cultural clues in their appearance that will alert adults to their purpose. However, an infant will not be aware of these niceties, but will see them as interestingly bright objects. Christmas is a time when many new, bright objects are introduced into the home. It is also a time when normal routine is disrupted so that children may be unsupervised or supervised by relatives or family friends who may be unfamiliar with child care. Children's seasonal excitement and the presence of alcohol are other factors that can contribute to effective supervision being decreased. In short, it is foreseeable that young children may come into contact with these novelties.

There are no specific legal requirements to ensure Christmas novelties and decorations are safe, although they will be governed by the General Products Safety Regulations 2005. A number of Authorities have tested novelties and decorations

against the Toy Safety Standard EN71, and found a low level of compliance. In other words, objects as attractive to young children as toys represent a far greater risk.



This decoration has a design almost identical to a common form of toy. Its colour and the figures offer a clue to parents that it is a decoration, but children are too young to pick up these clues.

The extent to which this risk is translated into accidents is difficult to judge. The Home and Leisure Accident Surveillance System reports do not have a separate category for Christmas novelties. Any accidents they caused will be in another category, most probably one within the “Toy, game or novelty” section. Which category is chosen will depend on the interviewer. “Practical joke or novelty” shows an estimate of only 165 admissions, suggesting the number of accidents may

be low. However, other categories, such as “Unspecified toy” are also possible destinations for any such accident.²

Previous surveys carried out by individual authorities show that manufacturers and importers of these products do not usually design their products to comply with EN71. Instead they rely on warnings and information. This may reflect the fact that retailers and importers of these products do not usually sell toys as well. This is particularly true of the larger importers. The manufacturers themselves are from outside the EU (85% of “articles for Christmas festivities” were imported from outside the EU in 2004¹), and often originate from Chinese workshops that do not produce toys. It is perhaps not surprising therefore that the novelties are not usually designed so as to present a minimum risk to children.

The SWERCOTS survey was planned to gain a better idea of the nature of these products by testing a far wider range of products than any individual authority could hope to do. The aims of the survey were as follows:

- To confirm whether most Christmas novelties did not comply with EN71, as suspected;
- To see how many carried warning information;
- To see if there was any correlation between the use of the warning information and non-compliance with EN71;
- To evaluate the effectiveness of the warnings;
- To evaluate the extent to which these products represent a hazard to young children, particularly those under 36 months;
- To assess the effectiveness of the General Product Safety Regulations 2005 in protecting children where these novelties did represent a hazard;
- To explore other options to safeguard children from any risk posed by them.

A further aim was to publicise any initial adverse findings before Christmas to increase consumer awareness of possible hazards.

The brief for sampling officers was to purchase Christmas novelties which in their appearance might be attractive to young children. They would then assess any possible hazard presented that was covered by EN71. The test house, Bristol Scientific Services, would then test against the specified clause of EN71.

Results

11 Authorities across the South West took part in the Survey. 91 types of novelties were tested by Bristol Scientific Services. Clearly there is room for discussion on how child appealing any one novelty was, as Sampling Officers are not experts in child development. However, a representative sample of the tested novelties was assessed by a Consultant Paediatrician, who advised that this selection was child appealing.

In the text below “complying” and “non-complying” mean passing or failing the constructional requirements of EN 71 respectively

Total samples: 91

Total non-complying samples: 58 (63%)

The predominant criticism was that parts small enough to represent a choking hazard could be removed by the force a child of under 36 months was capable of generating (“small parts”).

Small parts: 54

Sharp point: 4

Sharp edge: 2

Flammability: 1

Some samples were criticised for more than one non-compliance.

The results for samples that resemble soft toys are of particular interest. Because EN 71 -1 2005 states “soft toys with simple features intended for holding and cuddling are considered as toys intended for children under 36 months”, manufacturers of such toys have developed components and design skills that enable them to comply with the Standard’s requirements, in particular that components sufficiently small to be a choking hazard cannot be removed by the force a child under 36 months could generate. Such expertise can be transferred easily to soft novelties, and it might be expected that a good proportion of these would comply with EN71. Another reason for looking at this group of samples is that their texture might make them more attractive to children in the most vulnerable age range.

However, a slightly higher percentage of such novelties failed to comply with the constructional requirements of EN 71 than for novelties as a whole.

Total number of novelties resembling soft toys: 55

**Total number of non-complying soft toy novelties: 37
(67%)**



Some novelties were indistinguishable from soft toys

Rather than use safe design, the manufacturers of the Christmas novelties tested used warning labels of various kinds. The two products that carried a warning in German were counted as having no warning.

Total number of samples: 91
Total number with warnings: 65

However, closer examination suggests warnings were used indiscriminately.

Total number of complying samples: 33
Total number of complying samples carrying warnings: 19
(58%)

Total number of non-complying samples: 58
Total number of non-complying samples carrying warnings:
46 (80%).

As 20% of those that failed to comply carried no warning, and more than half those that did comply carried an unnecessary

warning, it is hard to detect a coherent safety strategy used by manufacturers as a whole.

The equivalent statistics for samples resembling soft toys tell a similar story.

Total number of complying “soft toy” samples: 18

Total number of complying “soft toy” samples carrying warnings: 9 (50%)

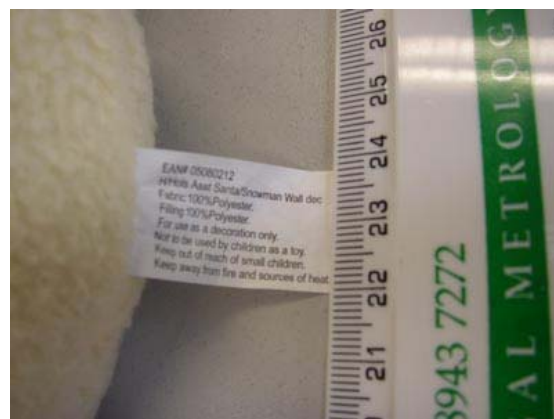
Total number of non-complying “soft toy” samples: 37

Total number of non-complying “soft toy” samples carrying warnings: 31 (84%)

The wordings of the warnings varied considerably, and the importance of the choice of wording will be considered in detail in a later section. The height of the print also varied, the smallest being ½ mm high, the largest 6mm. The most common height was 1mm or less.

Total number of samples with warnings: 65

Number of warnings in print 1mm high or less: 31 (48%).



The following is relevant in assessing the overall safety of this type of product:

Number of non-complying samples with no warnings: 12 (13%).

How hazardous are these products?

This survey assumes that the products tested may pose a hazard to children, and in particular children younger than 36 months. This can only be the case if the products are attractive to children of that age. As described earlier, a paediatrician assessed a selection of them as “child-appealing.” Some of the products tested may well be of more interest to this age group than others. However, this may be of less significance than might be thought at first. The main hazard is ingestion or inhalation of small parts. A study of mouthing behaviour amongst children between 0 – 18 months³ reports them putting a wide range of items in their mouths, including some, such as dog food, an egg carton and a vacuum hose attachment, that do not appear to be obviously attractive to a young child.

A later study⁴ by Norris & Smith, commissioned by the DTI, looked at mouthing in greater detail. Again the researchers reported a surprisingly wide range of objects being mouthed, but went further than previous research by trying to measure how long a variety of substances were mouthed, and differentiating between different types of mouthing. This helps draw up a profile of which age range of children are most at risk from a variety of components. Dummies and soothers are the most popular product for mouthing, but with a series of peaks and troughs. They dip in popularity from a peak at less than 1 month to the first trough at around 7 months. It is at this age that mouthing on toys and other products peak (toys are more popular for mouthing than dummies from the ages of approximately 4 ½ to 7 ½ months, other objects are more popular than dummies for a shorter period around 7 to 9 months). This may reflect the increased mobility of children

once they can crawl, but the dip in popularity of dummies suggests children may be choosing other objects in preference to them. The mouthing of toys declines quite steeply to about 14 months, but then the decline levels off, with substantial amounts of mouthing of toys continuing up to about 2 ½ years. It then fell away again, but was observed in children up to 4 ½ years old.

The pattern of mouthing “other objects” was different. Again it fell away from a peak at around 7 months, but rose again from just over 12 months. “Other objects” overtook toys in popularity at about 15 months, and by 18 months was as common as it was at 7 months. Mouthing of “other products” was more popular than that of toys for almost the entire period from 15 months onwards.

The study divided “mouthing” into different categories: licking, sucking/trying to bite, and biting/chewing. The first category is the least likely to expose a child to choking, and the third is the most likely. Activities involving biting are most likely to remove a small component. The figures suggest that biting commences between 3 and 6 months, and it is at this stage that it peaks for toys. For both toys and other objects biting continues as a regular activity across the age groups to 3 years old, with a number of peaks and troughs. These figures suggest that biting of objects is a regular habit from 3 months upwards, lasts to about 36 months for toys, and continues beyond that age group at least to 5 years old for other objects.

The survey also looked at the popularity of objects mouthed. The results printed discuss statistics on what the part that was mouthed was made from. Plastic components are by far the most popular objects for mouthing from about 4-5 months upwards. For the youngest age group, fabric is more popular.

An earlier report commissioned by the DTI⁵ evaluated choking risks to children under four. One of its conclusions was that the legal requirements for toys had been so successful that toys were an unusual cause of choking, and that there was no need for these legal requirements to be tightened. Where toys had caused serious choking accidents it was due to parts small enough to fit within the EN71 small parts cylinder. This was based on a study of 1289 non-fatal incidents (1987-96) and 182 fatalities (1986-95). The findings help to evaluate risks: food was responsible for 51% of the cases and for 69% of the fatalities. The most common non-food cause was coins (26% for children under 3, a higher percentage for four year olds).

The accidents peaked at around one year, which correlates to some extent with the later research on mouthing. Putting the results of the two DTI commissioned reports together, it appears that at around one year children are particularly likely to mouth small plastic parts, and not merely to suck them but to bite them. This is reflected in the injuries at this age.

Choking accidents need professional intervention more often than the average for all accidents. Looking at figures for A & E visits by children under 4 in 2002², 90% of those for choking required treatment as compared with an average for all visits of 80%. The figures are not for all accidents, but only for those where treatment has been sought at a hospital. The parent or minder of the child will have considered the problem sufficiently serious to go to casualty, so that in their eyes the accident is not trivial. The nature of choking means that the child can be in distress, but the problem becomes resolved suddenly when the foreign body recommences its journey down the body – so that some quite unpleasant incidents may not need a visit to the hospital. Once in Casualty, the foreign object may be dislodged without difficulty, but that does not mean both the parent and child felt the matter was minor before professional intervention resolved it. An estimated 34,000 children up to

four years of age were taken to casualty because of an accident involving a foreign body in 2002².

Warnings

As described above, the most common hazard was a detachable small part. In total 54 samples had detachable small parts. Of these, 46 samples had a warning notice of some kind. If they were toys they would have had to carry the warning “not suitable for children under 36 months” plus an indication of the hazard⁶ i.e. “small parts” or “choking hazard.” The warnings used on these 46 samples were as follows:

Warning complied with EN71:	5
Warning mentioned small parts, and that should be kept away from children without stating age	3
“Keep away from children” with no mention of hazard	24
Description of product only e.g. “not a toy”, “for decoration only”	14

There is no obvious correlation between the content of a warning and the size of its print.

Interestingly, the requirements of the American National Standards Institute advises the appropriate safety signal word (either danger, warning or caution) in italics, with a clear specific statement of the risk underneath, both being in boxes⁷. This goes beyond the requirements of EN71. None of the samples had warnings that complied with the American standard.

A broader issue is how effective any warning notice is likely to be. The DTI has commissioned a report into this⁸. It collated

over forty studies into the effect of labelling on consumer behaviour. Some of its conclusions appear relevant in judging how efficient a warning may be. The report points out that for a scheme to be effective the customer must notice and read the label, understand the implications and take action. It was suggested that this is most likely to occur when consumers have been primed through advertising or other publicity campaigns that there may be a problem with a product, and that they can find information on the product that will give appropriate advice. The message must be simple, and the consumer must recognise it, understand it, and be sympathetic to it.

What is interesting is how little research has been done in this country on whether the statutory warnings required by a number of safety regulations do any good whatsoever. Most of the research quoted in this report deals with food labelling issues, which provides information rather than warnings. Only four studies of the efficacy of safety warnings were quoted in detail. One was on tobacco warnings. This is a special case, as it is well known that tobacco is injurious, and the purpose of the warning is to encourage smokers to give up, and to discourage others from starting. Studies on warnings on alcoholic drinks (mandatory in the USA) again are not typical of safety warnings in that users are aware that alcohol can damage health and lead to accidents. A study on CHIPS labelling is again unhelpful, as many purchasers of such products are professionals with a reasonable knowledge of these products. Given the importance of statutory warnings in the sphere of safety it is sobering that the only British research into their effectiveness for a consumer product is a study on nightwear warning¹⁰. One of the conclusions in that report was that it is crucial for customers to be informed that there is a potential problem for labelling to have an impact. Most consumers were unaware that there was a choice between “safe” and “unsafe” garments despite there being a statutory labelling regime that had been in existence for more than 12 years at the time of the report. Of course, this may be due to particular deficiencies in that particular labelling

regime, but it does suggest we should think carefully before advising traders that putting on a warning will “make a product safe.” An American overview of 15 experiments into the effectiveness of warnings¹¹ concluded that warnings increased safe behaviour “in general.” Studies that used students as participants rather than typical consumers were more likely to show warnings as successful. The results suggested that the effectiveness of a warning was dependent on the interaction of a number of variables, such as the warning itself, the product, the user and where and when the product was used. This enforces the contention that simply putting a warning on a Christmas novelty does not in itself necessarily lead to many purchasers reading it and taking appropriate decisions.

The legal implications

There are no specific safety regulations governing Christmas novelties, so they have to satisfy the requirements of the General Product Safety Regulations 2005. These include an obligation for a producer to supply a “safe product.” “Safe product” is defined at some length, with the central concept being that it is something that presents either no risk at all or the minimum risks compatible with its use under normal or reasonably foreseeable conditions. The definition lists a number of points that should assist in determining the level of risk, including labelling, warning and instructions, and whether children may be at risk. There is a rebuttable presumption that a product is a “safe product” if it conforms to one of a hierarchy of standards, with conformity to a published European standard being near the top and the state of art and technology near the bottom. The fact that a higher level of safety is possible, or is present in other products, does not in itself make a product unsafe.

This definition allows a court to consider the wide range of non-regulated goods, but makes it more of a challenge to assess

whether a particular product will be held to comply with the law. With these novelties, conformity with EN71 is a reasonable requirement if they are child appealing. Therefore it can be said with some confidence that those samples that did not comply with EN71 and have no warning labels at all do not meet the Regulations' definition of a "safe product" – with the proviso that a court would need to accept they were child-appealing.



Some components of this nativity set were potential choking hazards. There was no warning about this to purchasers

When there is a warning, the matter becomes less clear. Some "warnings" were no more than a statement that the product was a decoration and not a toy. Many warnings were only 1 mm high, and some of those did not stand out from the rest of the ticket they were printed on. Given the similarity of some of these products to a toy, particularly to a child, it does not seem inconceivable that a court would decide these warnings were insufficient to make the novelty a "safe product."

Because the Regulations clearly point to warnings as a consideration in deciding whether a product is safe, it is easy to take the position that the prominence and wording of that warning are not relevant. It sometimes appears that British courts are more impressed by the mere presence of legally required information than whether the average consumer is likely to read it before going to the check out (see *Lewin v*

Purity Soft drinks Ltd). However, that would be an oversimplification. A producer has chosen to put on the market a product that is attractive to young children but at the same time is hazardous to them. The consequences of a purchaser not reading or understanding there is a hazard amount to more than the disappointment of finding it is an orange drink and not orange juice that has been bought: they could result in a child having to be taken to visit hospital, or worse. Furthermore, the Regulations invite the court to consider a range of relevant facts, including the state of art and technology. Soft toys are designed and manufactured to comply with EN71, and the technology that allows them to do so is easily and cheaply available: for example eyes with plates behind them. If teddy bears costing less than £1 retail can comply with these Regulations, is it really the intention of those who wrote them that a similar Christmas novelty costing more should rely on a warning rather than being inherently safe?



These novelties were not designed to reduce possible choking hazards, nor was their construction sufficiently robust to withstand the small parts test. Each of these components is a potential choking hazard

In practice, local authorities may be cautious about taking prosecutions where there is some sort of warning. A prosecution might need a paediatrician and an expert in the efficacy of labelling to stand a chance of succeeding. The definition of “safe product” is so generalised it may depend on the interpretation of a particular court on the day. An authority will be cautious to take formal action in these circumstances, even if it believes a novelty represents a hazard.

The General Product safety Regulations 2005 is deficient in that a distributor only commits an offence where he knows, or should have presumed, that it is a dangerous product. This does not reflect the realities of the British retail market, which is dominated by a small number of chain retailers. These chains are bigger, and have greater resources, than the companies who supply them with these imported novelties. There is no legal incentive for them to insist on safe design or testing of novelties.

Conclusions

The SWERCOTS officers purchased a wide range of novelties that to a greater or lesser extent were child appealing. Despite this, more than 60% failed to comply with the Toy Safety Standard’s constructional requirements, in particular that for detachable small parts. The failure rate for those that resembled soft toys was higher than the overall rate. Children under 3 years derive pleasure from mouthing and biting plastic objects such as the eyes on toys and similar objects. Choking fatalities peak at around 12 months. Given these facts, it is a pleasant surprise that the number of accidents involving Christmas novelties appears to be low. Accidents and fatalities are foreseeable, but have not occurred in sufficient numbers for statistics for them to have been separately collated.

Those criticised samples with no warnings at all merit consideration for formal action. A braver authority might

consider some of those with vague or small warnings. The current financial and political climate does not encourage this. In any case, formal action cannot be the whole answer. As pointed out by a Home Authority officer for a novelty importer, some products could only be made to comply with EN71 at a cost that would make them unsellable. Whilst we feel strongly that goods should be safe, others will stress the customers' right to purchase what they wish in a market economy and to make their own assessment of risk.

Warnings are only effective when the purchaser is aware there is a problem to look out for. Part of a strategy to prevent accidents must be to educate purchasers that Christmas novelties are unlikely to be as safe as toys. Trading Standards authorities have a role to play in that, but to be effective in the long term there are more suitable agencies, such as charities and health professionals. After last years' press release, perhaps we should now ensure that those with a long-term interest in child safety are aware of what we found.

Education is not merely reminding the consumer about yet another Christmas hazard. There is a role for Trading standards Departments, particularly those who are Home Authority for importers and large scale retailers of these novelties, to make them aware that there is a problem with these products. Relying on a warning can be a risky strategy, particularly where it is poorly worded or hard to find. Should there be a death, the name of the national retailer where the product was bought will receive considerable adverse publicity, and if the product relied on a warning rather than using inexpensive safety components this will in turn be brought to the public's attention. Many retailers like to stress they have a commitment to their customers as well as a desire to maximise profits. Part of this could be insisting on higher standards of design and construction when selecting which novelties to market at Christmas. Pressure from the buyers in the West is what will persuade the manufacturers in the Far East to design and

manufacture novelties with the same regard to safety as is used for toys.

References:

¹ Office for National Statistics

² 24th (Final) Report of the Home and Leisure Accident Surveillance System 2002 data.

³ Groot M E, Lekkerkek M C, & Steenbekkers L P A: “Mouthing Behaviour of young children – An observational study.” Wageningen Agricultural University 1998

⁴ Norris B & Smith S: “Research into the mouthing behaviour of children up to 5 years old.” Nottingham University/DTI

⁵ “Choking risks to children under four from toys and other objects.” Metra Martech Ltd/DTI

⁶ 24th (Final) report of the Home and Leisure Accident Surveillance System

⁶ S EN 71-1:2005

⁷ ANSI 2535.4

⁸ “The Impact of Labelling Schemes” Metra Martech Ltd/DTI

⁹ “The Consumer Perspective on Nightwear Warning Labelling and the Availability of Low Flammability Garments” DTI

¹⁰ “Do product warnings increase safe behaviour?” Cox, Wogalter, Stokes, Tipton Murff