



Environmental Audit Committee

Oral evidence: [Assessment of EU/UK environmental policy](#),
HC 537

Wednesday 20 January 2016

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Written evidence from witnesses:

- [Rory Stewart MP](#)

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Members present: Huw Irranca-Davies (Chair), Peter Aldous, Caroline Ansell, Mary Creagh, Geraint Davies, Margaret Greenwood, Luke Hall, Peter Heaton-Jones, Mr Peter Lilley, Caroline Lucas, John Mc Nally.

Questions 324 - 380

Witnesses: **Rory Stewart MP**, Parliamentary Under-Secretary of State, Department for Environment, Food and Rural Affairs, **Lord Bourne of Aberystwyth**, Parliamentary Under-Secretary of State, Department of Energy and Climate Change, **Tom Bastin**, Head of the European Union and International Energy Efficiency Team, Department of Energy and Climate Change, and **Robert Hitchen**, Head of the Environment Team, European Union Strategy, Department for Environment, Food and Rural Affairs, gave evidence.

Q324 Chair: Welcome to this afternoon's session of the Environmental Audit Committee's inquiry into EU and UK environmental policy. Ministers, you are very welcome as are your colleagues on either side of you. Good to see you back here again in front of us; you are always very welcome here. I understand, Lord Bourne, you would like to make a statement but, first, Ministers, would you like to introduce your colleagues alongside who may be contributing to this session of the inquiry?

Rory Stewart: I have brought along Rob Hitchen, who leads on our European issues and is in and out of Brussels a great deal. I probably, to be honest, Mr Chairman, will be doing most of the talking but if you wanted any sense of the granular day to day maybe Rob can help you a little bit on that.

Chair: That is very welcome. Thank you very much.

Lord Bourne of Aberystwyth: Thank you, Chair. This is Tom Bastin of our EU team. Similarly, I hope to be taking the bulk of the questions, but if there is anything in great detail, Tom will probably be able to help.

Q325 Chair: Thank you both very much. Lord Bourne, if you want to kick us off, I understand you would like to make some opening remarks.

Lord Bourne of Aberystwyth: Thanks, Chair, just very briefly because I think it probably is appropriate to look at it, from the Department of Energy and Climate Change perspective, through the prism of what happened in Paris, as it is very recent. I know you and the Committee were there, Chair; I met many of you over there. I think it demonstrates that, in this area of energy and climate change, the UK's interests are very much within a strong EU. I think it demonstrated, and the Prime Minister reiterated this on 12 January in the Liaison Committee, that this area is not part of the renegotiation. We are very comfortable with the EU stance. The lead negotiator was British and very good, Pete Betts. Amber Rudd, the Secretary of State, had a lead role alongside the French and other EU Ministers, so we are very happy with the outcome at Paris, very happy with our role as part of the EU there. That is really all I wanted to say, Chair, in terms of scene setting.

Chair: Thank you very much, Lord Bourne. Can I thank you personally as well for taking the time while you were not involved in those negotiations to meet a few of the members of the Environmental Audit Committee? That was very helpful for us, so thank you.

Lord Bourne of Aberystwyth: Pleasure.

Q326 Chair: Let me kick straight into one of the fundamental questions, which sort of flows from that. What is your view on the extent to which the Government's environmental and climate change priorities depend on us remaining a member of the European Union?

Lord Bourne of Aberystwyth: Certainly, in relation to climate change, we have a very clear domestic agenda, which chimes very much with the EU agenda. We had some very specific UK lines on wanting a long-term goal, wanting a rules-based system, and we came away with very much what we wanted. That was very much also part of what the EU wanted. I think it is more than happy coincidence. Obviously, climate change is an issue that does not stop at national boundaries, so it is very natural that we want to be part of a unit like Europe in terms of climate change negotiations to push the agenda forward. We saw it as a very positive exercise going into Paris and certainly very much coming out of it. I know, through those negotiations, that we were very much part of the EU grouping, as we were of other groupings: the Commonwealth, Small Island Developing States. We kept very close to the Cartagena dialogue and so on, but I think that it certainly helped being part of that very strong, united EU team. Obviously, the French were taking a lead with their diplomacy and we were very much alongside them.

Q327 Chair: Let us specifically focus on those climate change negotiations. The UK was very successful in its leadership as part of the high-level ambition coalition as well. The leadership within that was UK leadership and a very strong hand was played by the European Union as well. To come back to the fundamental premise of my question, on that specific area is it important that we were part and parcel of the EU in those negotiations or could we have done just as well outside?

Lord Bourne of Aberystwyth: Yes to the first part and no to the second part, in my view. I think it was important that we were part of the EU on this area specifically, which is the

area I am answering on for the Department. To my way of thinking, and I think the Government's and the Secretary of State's—the whole Department—we were better being within the EU arguing for what was needed. That is not to say that it could not have been done separately; no doubt that was possible. Looking at the record and looking at what happened there—and I was there for much of it—it demonstrated to me that in this area, because of the nature of climate change, because of the way the EU operates, we were better being within the EU. I think that is the line of the Government, the Prime Minister and the Secretary of State, and borne out by the facts.

Q328 Chair: Thank you, Lord Bourne. Mr Stewart, on wider environmental policy, the same question to you: to what extent does our ambition, our achievements with wider environmental policy, depend on remaining in the EU?

Rory Stewart: Philosophically, most of our positions on air, water, biodiversity, forestry are basically in the middle of European opinion. There is not a sense that Britain is an outlier. I would imagine that these are things that we would want to do on a sovereign national basis, but there are certainly also issues where getting a European-wide agreement has been very helpful. Air pollution does not, obviously, stop at borders. It gets blown by wind. Fisheries policy is a very good example of something on which it is good to have a European agreement. Invasive species would be another very good example. If we are trying to deal with everything from ash dieback through to oriental gall wasp, we need some kind of international and initially European-wide environmental framework.

Q329 Chair: Thank you. That is helpful. On that wider environmental policy, over the last few years, it seems from our analysis—and you might be able to confirm this—that the UK has been subject to being outvoted at the European Council on environmental matters the greatest number of times. Why is that? Is it because we are out of step or is it because we are trying to lead too far too fast? What is your analysis? You sit there on the European Council.

Rory Stewart: Probably the most dramatic, clearest example of this was in relation to the floods directive, where we opposed it and it went through. I think that was 2007-08. The reason the British Government chose to oppose I think is quite straightforward: we are an island nation, and the real logic of the floods directive relates to the Danube and the Rhine and places where different countries share the same water system. It is extremely rare that riverine or surface water flooding in continental Europe would have any impact on the United Kingdom. I think the Government were right to say that that is something where we did not want that directive and we would prefer to have subsidiarity.

In practice, looking back at it over time, having just been through a big flood in the last five and a half weeks, nobody has ever raised the directive with me. It has not caused, to my knowledge, any problems of any sort. I think the Government were right to vote against it in principle but in practice it is largely irrelevant. Many of the times when we are standing out against Europe, there is a logic in doing it and I think it is worthwhile having a member state that is prepared to challenge and stand up for things. The floods directive is a good example of that.

Q330 Chair: It does not impact at all on our negotiation leverage that we are outvoted more than anyone else? It does not impact negatively?

Rory Stewart: It is a difficult judgment call. I can absolutely agree, Mr Chairman, in theory it might. I think in practice it depends how you do it. If our diplomats are doing it politely with serious evidence and serious arguments, I think we are respected for doing so. I have seen that most recently in discussions around the national emission ceilings directive, for example. If we go in there with clear evidence and arguments about ammonia or methane, we are listened to. We may not always agree with Europe but judging by the tone around the table—it is a difficult thing to judge—I do not think we are seen as a troublemaker. I think we are seen as reasonably serious but maybe occasionally they would make jokes about us being Anglo-Saxon.

Q331 Caroline Lucas: To carry on if I could for one second on the Chairman's line of questioning, the issue of where the UK has been outvoted, I was going to talk about the role that the UK played in watering down the fuel quality directive, trying to water down the EU energy efficiency directive, successfully blocking adoption of binding national renewables targets for 2030. That is from some written evidence we have had from others who are giving evidence to the inquiry. Would you accept the thesis that they are putting forward that one of the reasons we are being outvoted is because we are trying to water things down too much?

Rory Stewart: Clearly, from the point of view of our European partners, if they vote against us and we fail to convince them, it is because they disagree with us.

Caroline Lucas: Yes, but is it because we are being too ambitious or not ambitious enough? That is the bit I wanted you to focus on.

Rory Stewart: Usually it is because we have conducted a cost-benefit analysis trying to look at the environmental costs and benefits. We are trying to do a form of natural capital accounting. Normally, certainly in my experience—I can only talk for the last seven months of my going into the European Environment Council—I am going in there with a very sophisticated set of numbers and we are challenging the way that the Commission is doing its analysis. We tend to think they underestimate the costs and overestimate the benefits and that many of these things could be done in a smarter way or they could be done over a longer timeframe. Recently, I think we have been winning those arguments, but you are right, in the past we have not always won and that has been because they have disagreed with our evidence and our data.

Q332 Caroline Lucas: Are other member states recognising that we have more sophisticated figures thanks to our wonderful cost-benefit analysis that they do not have access to?

Rory Stewart: I am sure other member states would not be putting it in that way, but I think we are quite lucky in the United Kingdom. We are one of the bigger countries. We have more resources to dedicate to doing that kind of analysis. It is probably true that it is a bit easier for bigger member states like the United Kingdom or Germany or France to have the teams necessary to do that kind of analysis. Without pointing fingers, I think some of the east European states have traditionally struggled to get quite as much detail and data together in order to make their cases. There was a case recently where one of the

member states walked out of a European Council at which I was present and that appears to be partly because some of that data did not come in quite as quickly as it could have done for them to make their argument. For that you should not be asking me; I would obviously have a biased view on this. You should be asking the Commission whether they think we are producing decent data.

Lord Bourne of Aberystwyth: Could I chip in, Chair, just on a specific of where we persuaded the EU to our point of view? That was on the climate and energy framework in 2014 for the targets for 2030. It is not all one way traffic and obviously there is discussion. It is not necessarily black and white. As we all know, there are discussions and compromises, but that was one example where it very much moved in our direction.

Q333 Caroline Lucas: Thank you very much. I will not hold up the Committee longer on that particular point, but I would just note that, again from some of the evidence we received, it looked as if Germany was the country that we are most often opposite, another very large country, so at some point it might be quite interesting to look at how different countries do their cost-benefit analysis. But I will just park that and ask you the question I am supposing to be asking you, which is: do you think the current balance of competencies between the UK and EU on environment and climate policy is right and, if not, are there any competencies that you would like to see returned to the UK?

Lord Bourne of Aberystwyth: Broadly, we think it is right. As we have perhaps just demonstrated in this recent exchange, there are always going to be issues where we take, as every country will, a slightly different view. Obviously, we will see it as it affects our own national interests within that broad framework. In general terms, on the balance of competences, as was examined by the Government in 2014, overwhelmingly all the evidence that we were seeing chimed very much with the Government's view that the balance was, broadly speaking, where we need to be on energy and climate change.

Rory Stewart: I think that is true in our Department as well. We tend to focus on implementation and better regulation, but we have not concluded that we need to return competencies from the European Union in relation to the environment, and the Prime Minister's current negotiations are not intending to do that.

Q334 Caroline Lucas: When you make that assessment, when you are looking at the different criteria in determining where you think the competence should lie, is it cross-border impacts, is it impacts on the single market or is it something else that leads you to that conclusion, or is it simply a combination of them?

Lord Bourne of Aberystwyth: I think, without taking the easy route out, it probably is a combination. The cross-border nature of climate change means that the Government's view and overwhelmingly the view of respondents in the balance of competence review was that this is the appropriate mechanism to use. As I say, there will be individual issues where we may take a slightly different line from some other member states, and occasionally it will not be the case—it will be other member states taking a different line from the majority. The evidence on something like climate change I think is overwhelming. If you accept it is an issue, which I do and the Government do, the best way of tackling it is with other countries. The most appropriate way of doing that in our geographic context is certainly through Europe.

Q335 Caroline Lucas: To sum that up, would I be right, therefore, in concluding from what you have said, that the UK Government do not have subsidiarity concerns about the way in which the EU exercises its competence over the environment?

Lord Bourne of Aberystwyth: In Energy and Climate Change—I will leave Rory to deal with the DEFRA part—although a leading question, it is one I can respond to positively and say, yes, I think that is the case.

Rory Stewart: Specifically in relation to our portfolio and the directives that concern DEFRA, ranging from the national emission ceilings directive through to the habitats and birds directives, we are comfortable with them. We are not intending to renegotiate those directives. Where our focus is on working with the Commission and other member states is to make sure that we implement them in a way that is flexible, realistic, brings the public with us and makes sure that we do not discredit good environmental projects by doing things that do not make sense. The basic structure of the competences, the basic structure of European environmental law in relation to our Department I think is very close to what we think is sensible. It is what we would intend to do in the United Kingdom.

Q336 Mr Peter Lilley: I wonder whether you could comment on one possibly unforeseen consequence of the outcome of the Paris negotiations. Most countries put in individual national commitments. Europe put in a commitment for the whole of Europe and is now to allocate that global amount among member states. We are committed under the Climate Change Act and our other policies to decarbonise at roughly twice the rate of the rest of Europe at 2030 or whenever it is. The net effect, therefore, of us doing more than everybody else is that they can do less within the same global total and we will not have achieved a reduction of a single molecule of CO₂ emitted into the atmosphere. What thought is being given to that issue?

Lord Bourne of Aberystwyth: I saw you had raised that issue so I did have a look at it. It is perfectly true to say that we have our own very ambitious domestic targets, which are obviously quite independent of the EU, which we have legislated for and which the Government are committed to. We have not begun that discussion in Europe yet—we obviously will need to—about how that 40% reduction is going to be apportioned among the member states. Therefore, I do not think we can come to any conclusions about what the final pie will look like in terms of who does what because that negotiation has not started yet. The point you are making, I think, is that we have ambitious targets of our own but we did that independently of the EU, so I do not think that is relevant to this particular discussion. But you are quite right that that discussion has to happen and will be happening.

Q337 Mr Peter Lilley: It is relevant in that they are certainly not going to ask us to do more than we are already committed to since we are committed to more than any other country in Europe. We cannot do less because we are legally committed to doing what we are committed to doing. Our commitment will just be subtracted from the total and it will be a total minus Britain that will be allocated to everybody else. Therefore, the effect of our higher commitment is that we will have reduced the amount by which other countries in Europe

have to bear this burden, our industry will have a higher cost base, theirs a slightly lower cost base, and not a single molecule fewer will be emitted of CO₂ into the atmosphere.

Lord Bourne of Aberystwyth: One needs to remember that it is at least 40%, so it is an assumption in the discussions that that will not go up because of the discussions and there will, therefore, be a greater commitment on other states. Of course, it is going to be a regular review mechanism, as you know, as well, which was integral to Paris. Every five years we are going to be looking at that again. I repeat: that will be a hard negotiation that we will want to enter into and obviously we will want to protect the interests of British business. That is one of the Prime Minister's concerns about competitiveness so it will be part of that discussion. Of course, we need to remind ourselves it is at least 40%.

Q338 Luke Hall: We have talked a little bit already about the Prime Minister's reforms and negotiations at the moment. Has each of your Departments been involved in those discussions and, if so, what priorities have your Departments fed into the discussions?

Lord Bourne of Aberystwyth: In relation to energy and climate change they do not, I think, directly impinge on what we are doing. At least, there is one on welfare benefits, which does not really impinge. The ones on competitiveness have some impact, it is quite true to say, and the broader issue that we do not, as a Government, want a deeper union. That does have some general import to what we are doing, but as regards the day-to-day business, which is obviously what we are caught up in for most of the time, I come back to the basic but very true point that we are very content with Europe in relation to energy and climate change. Personally, I very much support the Prime Minister's stance, but in terms of the day-to-day business of DECC, it is not a red line. Indeed, the Prime Minister has said that the best way of dealing with these issues is through Europe and that is very much the Department's view and my own view.

Luke Hall: That sounds like the Department has not really been involved.

Lord Bourne of Aberystwyth: I think that is broadly true. I cannot think of a single issue where we have said, "Right, that red line would affect the nature of what we are doing in DECC". I am not directly involved with some of the business aspects of it. That would probably be more the Minister of State, though I am occasionally and it has not come up in any specific way, it is true to say. I am careful to say that it possibly could but it certainly has not happened in the six or seven months I have been a Minister.

Rory Stewart: I think it is important to distinguish two things within our Department. One is the Prime Minister's big renegotiation, which has focused on his four main objectives and they do not include my Department's work. The second thing is the day-to-day work we do negotiating and renegotiating with Europe all the time on trying to make sure that as new directives come forward, they fit the British environment, they fit British society and the British economy, and that we make sure that we get smarter regulation. In that sense, we are negotiating all the time. Every time I am in Brussels, we are pushing it, but that is completely separate from the Prime Minister's plan, which came out of the balance of competences review. At the end of that, he concluded that he had four things he wanted to focus on and we have subsets of that. One of those things he is interested in is competitiveness, and if competitiveness relates to environmental policy, we will look at it under that banner. But the Prime Minister's negotiation is separate from our normal day-to-day environmental policy in Europe.

Q339 Chair: Can I conclude from that that there must have been a point at which No. 10 and the advisers spoke with your advisers and said, “Look, we are into this renegotiation. Is there something key that we ought to get in there on the environment?” and the response clearly from both your Departments was, “We have looked at the balance of competences, we have done the review. Broadly, where we are is that we may have differences on implementation or on interpretation or whatever, but, actually, no, lead us up to this”.

Rory Stewart: There was a very formal process. There was the balance of competences review and then, in relation to DEFRA, the individual Department, individual directives. For example, we did a long process on the habitats and birds directives from 2012 onwards and concluded where we are now, which is that there was something we could do with implementation but we did not want to reform the directive. All that is then fed back into the No. 10 Government machine.

Q340 Mary Creagh: I remember that review of habitats and birds very well and the great consternation it caused. We have had witnesses in front of us who have told us about the UK’s influence in the development of EU environmental policies. Perhaps this is one for the civil servants, who are obviously in the back channel negotiations before the big ministerial meetings. How has the renegotiation and the referendum process impacted on the UK’s influence in those discussions? Has it diminished in any way?

Rory Stewart: I am going to let Rob correct me if I am wrong rather than dump it on his shoulder. My sense is that Commissioner Vella, for example, has been very open with us and I think part of the framework is that many European states would like the UK to remain part of the European Union. I think Commissioner Vella is particularly proud of European environmental policy and sees it as a plus and I have felt, dealing with him and with the Director-General, quite a lot of flexibility and openness in dealing with us. Whether that is that they are particularly keen to show flexibility and openness at this particular time or not I do not know, but there is certainly a sense that I feel at the moment that the commissioner seems to be falling over backwards to be reasonable, pragmatic and open-minded in discussions and that is a really good thing.

Lord Bourne of Aberystwyth: Once again in terms of Paris—sorry to keep harking back to that but obviously it is a recent example where all the member states were there—I never heard the issue of renegotiation coming up at all. I think it is widely recognised that probably along with Germany—and it is true we do not always agree with Germany—we lead on the area of energy and climate change. Other states look to us. There was no hint of us not being regarded or not being listened to because of the renegotiation issue. I think it was seen, if it was seen at all, as quite separate. I did not ever hear it mentioned by anybody there. I do not think it affects that. An example of where we have been leading on EU policy is probably in framing the ETS legislation based on our own model. It was certainly not an issue at Paris and I do not think it has been an issue generally in discussions with European partners.

Q341 Mary Creagh: Would you say that that is the same for all other EU countries? They see us in exactly the same way at your ministerial meetings?

Lord Bourne of Aberystwyth: There is no evidence that they do not. There is obviously the psychological issue of whether they are holding back and not saying something that they feel, but certainly in any discussions I have had privately or more formally, it has not been an issue that has been raised. It really has not.

Rory Stewart: I wonder how much the view has fundamentally changed. I think there has always been a certain creative friction in Europe's relationship to Britain from the time that Britain joined and a sense that there have been differences, philosophical differences of approach. Whether this referendum has just brought out into the open things that maybe implicitly people in Europe felt anyway, that this is a country with a slightly different view of things, I do not know. Maybe this is something that people like Caroline and others around the table who have been MEPs will have a better sense of.

Q342 Chair: You have never had a moment, either of you as Ministers, where on a particular day in question, where things have been heated in the wider political context of a referendum, your heart has sunk and you have thought, "Crikey, this is going to take some extra diplomatic lift now to get through"? You have never had that moment?

Lord Bourne of Aberystwyth: Not at all. Absolutely honestly, not so far anyway. Not to say it could not happen, but it has not so far.

Rory Stewart: One of the bizarre things about the Environment Council, and it is probably one of its weaknesses as well as its strengths, is that it does feel a little bit like a bubble. You sit there with other Environment Ministers around a table talking in very technical terms through a particular brief, many of them reading out three-minute speeches one after another. It is very difficult to feel the bigger European debate so that you return back to London and everyone says, "It must have been very exciting for you being in Brussels in the middle of the referendum debate" and you have not really noticed it at all.

Chair: We have the Westminster bubble and now we have the EU Environment Council bubble.

Q343 Geraint Davies: We had the EU Director-General for the Environment in to give evidence and he said that there had been no preparatory work done in the EU for the eventuality of a UK exit, which is very surprising. Indeed, David Cameron has made such a statement. I was wondering what preparation you had made. There is some reasonable probability that we will exit the EU, so what preparation have you made?

Lord Bourne of Aberystwyth: Probability?

Geraint Davies: Well, we do not know. Obviously, it is a possibility so I was wondering what preparation you have made. Maybe you can describe the scenario we will be moving to, the problems and the transition to that.

Lord Bourne of Aberystwyth: Perhaps if I could say a couple of things to put that in context. First, a lot of what we do we would probably need to do if we were not part of the EU, the agreement we have just signed up to in Paris and so on, so I think that has to be borne in mind. Secondly, the position of the Government and the position of the Department is that we are backing the renegotiation that the Prime Minister is heading and believe that he will come back with terms that can be put before the British people. Not to

say no thought has been given to what happens the other side of a referendum, but obviously the prime business is getting on with what we are doing in the knowledge that the issues will still be there whatever happens in the vote.

Q344 Geraint Davies: Isn't the weakest part of the yes campaign that they have not described what the world will look like if we exited it? Everyone seems to be complacently assuming that we will not exit so we do not have to worry about that, and that might be a reason why we end up exiting.

Lord Bourne of Aberystwyth: That presumably will be a focus in the campaign but, first, we have to have the renegotiation. We have to have the Prime Minister setting out a stall and saying, "This is the renegotiation" and then people will vote on it. I am very comfortable with that position. That is the Government's position and we have to look at matters in that light. The position is that we believe, with renegotiated terms, we should stay in the EU. That is the Government position, but clearly the Prime Minister will come back with that renegotiation.

Q345 Geraint Davies: My question is—and perhaps I can ask Mr Stewart as well—what would happen if we just exited in terms of environmental policy and change?

Rory Stewart: Mr Davies, this is a very similar kind of discussion to that we got into on the Scottish referendum where, as you will remember, people pushed the Government very hard, "What is your plan B? What are you going to do if Scotland leaves? Are you actively planning for Scotland's departure? What is going to happen?" I am afraid the answer, again, is a bit bland. It is the same answer that you would have got during the Scottish referendum, which is, of course, as the Department we already know in a great deal of detail—Rob and others—which bits of our environmental policy are related to Europe and we are very aware of where our European policies are. In that hypothetical case, and this is I guess the answer we gave over Scotland, it would be a long, tortuous negotiation and the terms of that negotiation would determine the details. We feel that we are well resourced and have a smart, serious department that understands what our connections are to Europe so that we are in a position to make the right kinds of choices.

Chair: At this point there is no better person to bring in than Mr John Mc Nally.

Q346 John Mc Nally: Thank you very much, Chairman. Following on from Geraint, last week the director-general was very clear—in fact, I was quite flabbergasted—to say that he did not have any sort of plan B at all on a possible Brexit. The Commission has told us ultimately that the responsibility for compliance with EU law rests with member states, not the devolved countries, Scotland as we have just mentioned, or regions. How can the UK-wide compliance with directives be assured in the context of greater devolution, which is following on nicely from what you were just speaking about?

Rory Stewart: I think the first thing is what I hope we are doing more and more of: keeping in very direct touch with the devolved Administrations. We now have regular write-rounds. I suppose almost every week I am writing around to the devolved Administrations and following up with phone calls. If we take the last Environment Council, I spoke to the Ministers in the devolved Administrations personally on the phone and in one case spoke to the director-general and their department to get the details of their

position. So far, so long as I have been in the job, we have had a position where we talk honestly and openly and we get an agreed common position.

In certain cases, it may be something that a devolved Administration want to be more ambitious about than the UK Government and I think that is fine. Generally, what we are signing up to in these directives is a target. If they wish to exceed that target magnificently and have their own internal target—as indeed is the case to some extent, as Peter has already suggested, in relation to climate change—member states and indeed devolved nations within a member state are at liberty to do that. What we have to make sure is that we are not imposing targets on devolved Administrations that they cannot meet.

Lord Bourne of Aberystwyth: In the context of Energy and Climate Change, again, we have regular write-rounds to Ministers, phone calls from Ministers within the Department to discuss policy decisions. Consultation takes place. All the devolved Administrations were out in Paris. I met with Aileen McLeod, Mark H. Durkan and Carl Sargeant, which was very useful. There was pretty much a unity of purpose there so there were no issues arising. As a result of something that was raised with me yesterday on the Energy and Climate Change Committee by one of the Members there, I am looking at the possibility of formalising this so that we can discuss issues of common concern on a more regular basis because it seemed to me that is a very constructive way of making devolution work. We will be looking at that.

Rory Stewart: Lord Bourne's point is a very serious one. I think the other thing to bear in mind is that in the devolved Administrations, all those people are the equivalent to DEFRA Ministers so we need to work a way of doing it to make sure that Aileen, Carl and Mark are also people that we are talking to together.

Q347 John Mc Nally: The impression that we got from the director-general was that the devolved Administrations probably would not have too much say in it; they would look to the sovereign Government, in this case the UK Parliament. To follow on from that, in the event of the UK being fined by the EU for persistent non-compliance, have you considered how that fine would be allocated between the national and the devolved Governments? Is this what you are working up just now to speak about?

Lord Bourne of Aberystwyth: I am not sure whether you have a particular issue in mind. I am sure it would depend on the issue concerned, but in relation to the European position, obviously the European legal position is that the member state is the UK and then it is an internal matter as to how we make the best use of our resources in terms of exchange of best practice and so on. That is what we are working towards. There are growing pains with devolution. I do not think that this is a factor of political expediency, I think it is just a growing up with devolution as to how we make best use of that. Without a specific example in mind on the second part of your question of the infraction, it is difficult to comprehend where the liability will lie. Essentially, it lies with the member state. That is the legal position.

Q348 Chair: It might be one that Mr Stewart is able to help us with. The obvious example is air pollution and the infraction proceedings against the UK Government. The UK Government have made clear that there may be a contribution here from London, from local

authorities, but there must be other areas as well. Is that a response to John Mc Nally's question?

Rory Stewart: Yes. I think you are right and it is a good response to John. You are right it is an issue for devolved Administrations. Not just for devolved Administrations, it would be an issue for an individual city, a town or actually an individual business. A big industrial factory could be in this situation, too. The UK Government have set aside a fair, equitable, open way of distributing a fine and trying to get a real balance between the source of the non-compliance—so that could be in an extreme case a particular city or a business that was causing the problem—and the responsibility of us as the UK Government to regulate and police. Generally speaking, when we have dealt with these things in the past, we find a balance. We get a combination of those things. The devolved Administrations would be in the same situation.

Q349 Chair: Air pollution is a good example because you find a balance; you decide where the balance is, as opposed to cities and local authorities or devolved nations?

Rory Stewart: Mr Chair, I think as we are all aware that sounds easier said than done. The reality is that nobody is going to take this lying down. It is going to be a very voluble, public, political fight in which a lot of people are going to scream and shout.

John Mc Nally: Well, we are up for a fight.

Rory Stewart: It is not quite that an official is going to sit in an ivory tower and find a balance. We are going to have to have a very tough negotiation with people in that extreme situation. If we found ourselves in that situation, it would be a very tough negotiation.

Q350 Geraint Davies: In the event that we exit the EU, would it be your judgment that in practice we would simply have to implement new EU policy? At the moment, as has been pointed out, obviously you have an impact on EU policy, whether it is watering it down or whether it is being more ambitious, whatever the influence is, or whether it is chilling. Clearly, we do have an influence one way or another, so would the scenario with an EU exit be that we would simply have to take on board these new policies over which we had no influence?

Lord Bourne of Aberystwyth: There would be a lot of pressure to do that, it is fair to say. Say on the ETS, Norway, Iceland and Liechtenstein are all members of the EU ETS. I think they do probably have some say in the development of policy. I think they are also represented on the Energy Council very often. A point that perhaps I should have made earlier is that it is not just about the European member states, albeit being the relevant body, agreeing some of this stuff. It very often is broader than that, particularly with Norway, as you might expect with its energy importance. My judgment is that, for a lot of it, there probably would be a lot of pressure to do that, which may well be in our own best interest to do. On this area, the Government's view is that certainly it is better to be within the EU rather than make strategic alliances with Liechtenstein and Norway.

Q351 Geraint Davies: Insofar as we are watering things down, and maybe we are not but insofar as we are or we are more ambitious, one way or another, if we are not on the inside, clearly the outcome in the EU will be less than we wanted and we will have to

implement it anyway. It is not just that we will have to implement what they would have decided, they will have decided something different that we will have to implement.

Lord Bourne of Aberystwyth: I think your point is well made that we have more influence on the inside than on the outside, in this area certainly.

Q352 Caroline Ansell: Following watering down, my question is related to flooding in part. To what extent do EU directives enhance or hinder the UK's ability to pursue its environmental policies? Some have argued that the increased flooding that we have witnessed is partly attributed to EU directives. If there is merit in that argument, is this then an example of where EU environmental policy has limited the scope of the UK's environmental protection?

Rory Stewart: You are perhaps talking about dredging and the water framework directive and the way in which protection of individual species or habitats gets in the way of dredging. Honestly speaking, my gut instinct is that that discussion, that disagreement, would not go away if Europe was not there. Those directives have huge supporters in the United Kingdom. There are a lot of people in the Rivers Trust, the Angling Network who are deeply committed to the principles embodied in those directives. If you did not have those directives, you would be having the same conflicts on dredging those specific bits of river with those people who care deeply about the species in that river, whether it is fish or white-clawed crayfish or particular plant life.

Generally, again, if you can make a reasonable case that something is significantly increasing the chance of flooding households and endangering lives, in my experience the directives do not stand in the way of being able to take that action. The fight on flooding is about analysing a whole catchment from the top to the bottom, working out what you want to do all the way down, and discussing relentlessly with the local farmer, the NGO, the local parish council, the Environment Agency where you want to dredge, how you want to dredge and how you get that balance right. I do not particularly feel that it is Europe that is pinning our hands.

Q353 Caroline Ansell: Is that in that instance as relates to flooding? I think that was a very full answer on that example, but what about in a wider sense and a broader sweep, EU directives across the board, not just those that relates to flooding?

Rory Stewart: I think we are getting into a much better space now. I have been very impressed by the way in which NGOs are increasingly prepared to engage in discussions with us about achieving the objectives of the directives rather than chasing the perverse details. For example, in relation to bats and newts, which is a famous 15 year-old problem, we are now in a much better space where we have some of the leading NGOs in the country sitting down around tables with the key stakeholders, with house builders, with churches and coming up with practical solutions and agreeing how we provide good protection for these species without doing things that are basically a waste of time and a waste of environmental energy.

Again, that would be an example of where I think we want to be with these European directives, which is not to fall back on blaming them but to understand that often when we are blaming them, what we are really talking about is highly committed, energetic

environmental campaigners in Britain using those directives to make points they would want to make domestically anyway.

Q354 Peter Heaton-Jones: To pick up, Minister, on what you have just said, I want to be clear. When a farmer in north Devon tells me that for generations his family dredged a certain river or brook or drainage channel and now he is being told not to and the reason he is being told not to is Europe, because of the EU, that is not true—is that what you are saying?

Rory Stewart: In my experience, it is not. In my experience, there will be three reasons why there will be a challenge for him dredging. It will be because in certain cases dredging can increase flood risk. Obviously, if you dredge an entire river, the water simply gets to the town eight hours more quickly. If you block the entire river, it simply gets to the town eight hours more slowly but it still gets there in the same quantity.

Mr Peter Lilley: You can increase the volume of the river.

Rory Stewart: Correct, you can increase the volume. In the Ribble, for example, where we looked at doing this, we could make a significant difference if we dredged 85 metres down over eight and a half miles of the Ribble. We could increase the volume and it would cost us £7.5 million a year to do. Those interventions are possible but that must bring me on to my second reason why the farmer may—

Q355 Mary Creagh: Did you say 85 metres?

Rory Stewart: 85 metres down, yes, was the modelling.

Mary Creagh: The depth?

Rory Stewart: Yes, was the modelling to make a significant difference. Often the volume is provided by a flood plain, so if you have a narrow channel and you have a flood plain that is—

Chair: No, carry on and answer the question.

Rory Stewart: I am sorry. Three reasons: number one, in certain cases dredging can increase flood risk. In certain other cases, dredging can decrease flood risk. Obviously, what you need in a river is some bits that are dredged and speed it up, other bits that are not dredged and slow it down. You need to even outflow.

The second reason he or she may have been prevented from doing that may be that genuine environmental damage could be done, which would need to be weighed up against the advantages of doing it. The third and most common reason is financial, which is that in most cases the farmers are not volunteering to get out there and dredge all those things themselves. They would like somebody else to do it. There has been a huge change in the way that rivers are organised from the 1970s where you would have 65 linksmen in a 400 square mile patch towards the situation now where you would be lucky to have one.

Peter Heaton-Jones: Yes. I am very aware this is not an inquiry on dredging but I just want to be clear.

Chair: No, go on, it is the balance between the EU and the UK.

Q356 Peter Heaton-Jones: I want to be absolutely clear: it is not because we are having to follow EU directives that farmers in north Devon are being prevented from dredging rivers when they think it would do some good to prevent flooding?

Rory Stewart: Were you to find such an example, come to me and I would be pretty confident that I could go to the Commission and sort that out if that was happening. I do not feel that Europe is forcing us to do bonkers things in relation to dredging.

Peter Heaton-Jones: That is an invitation that I shall take up, Minister. Thank you.

Q357 Mr Peter Lilley: I just wondered whether it operated via the environmental whatever it is—

Rory Stewart: Environment Agency, yes.

Mr Peter Lilley: —Environment Agency, that their interpretation of the EU directives has been such as to discourage or, if it is their responsibility, cause them to do less dredging than might previously have been the case.

Rory Stewart: Usually, in my experience, because the officer agrees with Europe. They may say, “I have to do this because of Europe”, but usually they agree.

Mr Peter Lilley: No, I am saying they may be over interpreting. They may be doing it even though the European directive does not really require it.

Rory Stewart: That could certainly be the case. We often have cases where people want to be more ambitious than Europe and will try to imply that Europe is responsible, so we have to be really attentive to that. That is where all this gold-plating stuff comes in. But I do not think there is very much of that going on and we try to come down on it like a proverbial ton of bricks if it is happening. You are right, it certainly is something that has happened in the past and we need to be very vigilant. If we are gold-plating, we need to defend it. If we believe we want to achieve a higher standard than Europe—for example, Scotland is trying to achieve higher standards than Europe in relation to waste recycling—that is fine but they need to take responsibility for that and say, “This is us, not Europe, doing it”.

Q358 Peter Aldous: I want to come on and look, Ministers, at the impact of EU environmental regulations in relation to businesses, particularly as to whether they are proportionate to the size of the business or project involved. Do you think that is an area of concern, particularly with regard to SMEs?

Q359 Lord Bourne of Aberystwyth: It can be. We are very supportive of the review that is happening in Europe, the Tindemans review that is looking at the scope of legislation and seeing if we cannot strip out some legislation at the EU level, which may have an impact on small or medium-sized businesses. We think there should be an EU target for reducing surplus regulation, surplus legislation. A lot of the legislation is quite appropriate, but I think just as domestically we have our own red tape challenge, in Europe there is a task to be done as well, because we cannot, in the red tape challenge, remove things at the European level, because they are European level and they are the law.

Q360 Peter Aldous: Do you think there is too much focus on the quantity of the regulations rather than the quality of the regulation? In an earlier session, Dr Merry from the Renewable Energy Association had particular regard to renewable projects, and she cited one that was a marine current turbines projects in Strangford Lough that had a total cost of £10 million, and addressing the environmental monitoring costs came to £2 million. That is 20% of that project being eaten up in satisfying the environmental requirements.

Lord Bourne of Aberystwyth: I am not familiar with the particular case that you refer to, but obviously there are such examples. Where there are, we need to look at it very closely. We need to argue our case, or the case of small and medium-sized enterprises within Europe, knowing that there are SMEs within other European countries as well so we may have support from elsewhere for amending some of the directives and regulations. It is a fair point.

Q361 Peter Aldous: How do you think we can determine whether there are disproportionate impacts as the result of the design of the directives or their implementation on those small businesses? Mr Stewart previously gave us quite interesting criteria to work towards, which was being flexible, being realistic, bringing the public with us, which I think was important, and then not discrediting good environmental practice. A lot of these SMEs in the marine environment have some very innovative and exciting projects.

Lord Bourne of Aberystwyth: Yes, that is undoubtedly the case. Each case has to be looked at on its merits, each case has to be argued on its merits, but it is fair to say that larger enterprises will have more resources with which to comply. I think that is a fair point, and that should be, and sometimes is, reflected in the legislation. I come back to the point about the review that is happening in Europe that we, as a Government, are strongly supportive of.

Q362 Chair: Mr Stewart, you are sitting there very quietly at the moment, but if I am correct, Lord Bourne and his Department come forward, they have been doing great negotiations with some small marine tidal company and they want to locate something that may lead to great things and lots of jobs, and so on. They come along to your Department and they look at the environmental impact that is necessary, and your people say, “Well, yes, here is the scale of what you are going to have to do”.

Rory Stewart: I was told this was a friendly Committee. You are now trying to cause fights within the Government.

Q363 Chair: This is friendly. This is my diplomatic way. Is there truth to this issue, that, whether it is marine tidal, a small company, or whether it is in a difficult, fragile ecosystem, there are disproportionate obstacles and financial costs put in the way, particularly of smaller operators, by your Department?

Rory Stewart: I think the solution to that problem is generally not about the regulation. It is about making sure that we have really well trained, well informed staff, that we get on with doing the assessment really quickly, and that we make sure that we run good pre-application procedures so that people six months down the line, having got all the right permissions from the local council, don't find suddenly that they have a whole set of new permits that they failed to get from the EA or NE. It is those three things that I am trying to make sure that we get right. In most cases you can get through this stuff. The way you

get through this stuff is by having really good people who are well trained, who know what they are doing and start very early.

Q364 Chair: Have you changed it, that early engagement between officials of both Departments? Does that now happen a lot earlier?

Rory Stewart: We have, and I am very happy to be challenged more on this. The marine example is not my field; that is George Eustice's field. But the MMO has set up a new framework to bring all the different planners together to try to make sure there is a one-stop shop in the future so that this does not happen. I go through it in relation to waste, habitats and birds directives. Generally what we would do if we are doing a big development, for example, is to try to get the developer talking to us early, so that no new problems hit them. A classic example would be this: if you are building an incinerator plant, the local council may well say to you they want to keep the chimney low for planning reasons. They do not want to ruin the skyline. Then you will come along to us six months later and the Environment Agency say, "No, you need a big chimney to get the pollution out of the town". Those are both perfectly valid reasons, but the key thing is that we have that conversation right at the start.

Q365 Peter Aldous: I think Mr Stewart answered a bit of my question, but I would just like to go in on that point. I appreciate what I am asking did not happen on his watch and it is not his area, but I did have a constituency issue where a company came up with an obstacle in the MMO some three or four years ago. From what you are saying, that particular log jam has been addressed and the MMO does have the capacity and the expertise to handle these type of projects now.

Rory Stewart: We have certainly improved a lot, so I would hope it would not come up again. I am also very aware, as a Minister, that frequently we can get complacent; we can feel that we have sorted all these problems out, and then suddenly a constituency MP will come to you with some horrendous case where we have not managed to succeed. But I think the way that we learn is through these individual cases we are given and really drilling down into what went wrong.

Q366 Geraint Davies: Just spinning it on its head, obviously we have talked about the environmental costs on business. There is some concern about the new US/EU free trade agreement that we might end up in a situation where companies are empowered to sue Governments. Where we raise the bar on environmental costs and law, they might call foul and sue the Government, and that will have a chilling effect on new environmental provisions, in particular around things like fracking. It may be that we will find that the environmental impacts and methane emissions, or whatever, are more than we thought, and we will have to pare back the approval of fracking, and then in consequence the fracking industry sues the Government. Do you have any thoughts on that?

Lord Bourne of Aberystwyth: First, on fracking, before I look at the EU North Atlantic trade agreement, or the possibility of that, we obviously have a very strict, and rightly strict, regime in relation to fracking that is compliant with EU directives over time. I think we have a very good regime there, and it is widely recognised as such. I am not an expert on the potential EU North Atlantic trade agreement. I think that would be a BIS lead, but the devil is in the detail, or maybe not the detail, some of the principles. I think at the

moment it is not something that has been scrutinised in any detail by our Department. We would want to look at it in terms of any impact that it would have on our agenda and, indeed the Government agenda, and comment. But we are some way away from that at the moment, I have to say.

Q367 Geraint Davies: But as you have mentioned the fracking, we did have the EU Director-General on this. He seemed to be saying on the regime of fracking it was basically devolved down to nation state level. I am not quite clear on this, because my understanding is that fracking consists of millions of gallons of water going into the ground, impregnated by 100 chemicals, some of which would be carcinogenic, and then half of it would come back up, some of which would be radioactive. We do not have processes in place to clean up that water so that it is safe, have we, or have we?

Lord Bourne of Aberystwyth: I disagree with that. There are certainly European directives that impinge on fracking, and rightly so. I think it is recognised that we have a very good record in relation to drilling and in relation to this area in general. It is no doubt something that will be subject to continual review, but it is very different from the position in the US with which we are often compared. I do not accept that we do not have a pretty good story to tell on fracking.

Q368 Peter Heaton-Jones: I want to explore the extent to which the EU is clever enough, smart enough, if I can put it like that, when it comes to updating and reforming its directives as things change. It is going through the REFIT process at the moment, reviewing a lot of it legislation and directives, and that is having a particular impact on environmental directives. Do you think the REFIT process is going to have the desired conclusion, and to what extent is the UK able to influence that?

Lord Bourne of Aberystwyth: That is a very fair question. The answer to that is that I certainly hope it will. We are seeking to influence it. I think it is the right policy to review directives over time, just as it is more generally with domestic law. We are hopeful that that will happen. As time moves on, you have to look at directives and regulations in the light of change. We are hopeful it will achieve the results as you set out, Peter.

Rory Stewart: Peter, there is an issue here, and it applies to dealing with any complicated set of international treaties, which is that, once signed, they tend to be quite static. There is often a reluctance among member states to open them up again, because they think they are opening up Pandora's box and it is going to be like a Christmas tree and everyone is going to stick stuff in. It would be like reopening primary legislation in this place. Generally what we have to do is work around the implementation space. Sometimes that is quite a burdensome and onerous way of doing it, but it is usually the only way that we can really do it. I suppose that is the necessary evil of having this number of member states signing up to something. Once they have agreed to something in 1994, once they have put a list of species into an annex, that is pretty much fixed, and there is not going to be much appetite to open that up again. So it is really in the implementation space.

Q369 Peter Heaton-Jones: Is there any scope for the UK to seek to influence amendments, for instance, to certain directives, either now or in the future? Is that something that the UK Government would be seeking to exercise?

Rory Stewart: Yes, we can do that. We have to conduct a very serious discussion with ourselves about whether that is the best way to do it, because trying to change a directive is an incredibly burdensome, painful business. You have to bring all the other member states on side and you have to make sure that, when you open it up again, they do not make it worse than it was in the first place. Generally speaking, we would not do that, we would tend to focus on implementation, but of course it remains a possibility in the case of a directive that was causing extreme damage.

Lord Bourne of Aberystwyth: It is fair to say, Chair, that some of the more recent directives do have a built-in review clause, which is more often the case these days. I think formerly it was not, but there are provisions sometimes in them for a review to be held at a later time.

Rory Stewart: The water framework directive, for example, is due to be revisited in 2019, and using those dates as times to have these conversations is sensible

Q370 Peter Heaton-Jones: What Lord Bourne said was interesting. If I could just explore that for one moment: that inbuilt review is over and above the REFIT process, is it?

Lord Bourne of Aberystwyth: As I understand it, yes, that would be complementary to that. I think probably there is a greater tendency now to have such a review clause in a directive or regulation and it obviously makes sense. I think one could disagree about how frequently the review should be held, but it does seem a sensible principle very often.

Q371 Chair: Lord Bourne, I understand that you have a meeting at 5 pm.

Lord Bourne of Aberystwyth: 4 pm.

Chair: Sorry, 4 pm.

Lord Bourne of Aberystwyth: I do have another one at 5 pm though.

Chair: We are probably within the last 15 minutes of questions. Do you want to stay with us, or do you need to rush off?

Lord Bourne of Aberystwyth: It is with Welsh peers, with the Welsh Secretary, so I am sure he will be sympathetic. I can stay for another five minutes.

Chair: Thank you very much.

Q372 Mary Creagh: In an earlier session, the EU Commission praised the UK's compliance record, but obviously that record is slightly tarnished by our record on emissions, air quality and NOx. What do you think that says about the effectiveness of directives in general?

Rory Stewart: If you are asking what is the effectiveness of the ambient air quality directive, what has happened there is that the UK, largely because we did not get the kind of improvements in engine standards that we anticipated—in other words, the Euro 6 engines and the Euro 5 engines were pumping out more NOx than we were anticipating, so our models did not work—found itself being infracted, brought into the Supreme Court and being instructed by the Supreme Court to comply. We have now published a plan to

comply. So I guess, although that is a bit cumbersome, that is basically how the directive is supposed to work, and that is an example of it working.

Q373 Mary Creagh: Do you know, Minister, because I do not, how our compliance on NOx compares with other European Union countries? Have they pursued different environmental policies? It seems to me particularly it is partly industrial emissions but also partly transport emissions and our approach to diesel.

Rory Stewart: What we have discovered since the UK was brought to court is that a very large number of other member states have the same problem. Germany, for example, at the moment is having a real issue around places like Cologne, trying to deal with whether low-emission zones are in place across the country. Almost every other major member state I have discussed this with has the same problem. They are now all in breach of the ambient air quality directive, and that is because largely in every case they assumed that the numbers produced by Europe on these engines were real numbers, and they turned out not to be.

Q374 Mary Creagh: Is there any work going on collectively at the EU level—we are doing a parallel inquiry into the Volkswagen scandal—to ensure that a similar type of scandal that could have impacted on air quality across the entire European Union does not happen again?

Rory Stewart: Yes. The Environment Council had a lot on this. Member states, including Britain, take this very seriously, and the European Parliament has taken this very seriously and is pushing this very hard at the moment, and the Commission is pushing this very hard. We have significantly tightened up now the conformity factors on the engines. We are pushing industry very hard to be much more ambitious. The Parliament is now pushing to try to get a date for a conformity factor of 1, which is obviously what we want: in other words that what it says on the tin is how it performs on the road. We need to get there as soon as we possibly can. I think the only discussion there between the Parliament and the member states—and the lead member states on this are countries like Germany, which have manufacturers in diesel—is making sure that we push those companies as hard as we possibly can to comply so that we do not end up having to punish individual vehicle owners into the future.

Q375 Mary Creagh: When you say Germany is one of the key countries on this scandal, are they pushing very hard for compliance as part of an industrial strategy?

Rory Stewart: Germany has been in a very interesting position on this, and maybe I am being overly frank but, as Caroline Lucas said, Germany has in many ways been a leading environmental campaigner in Europe over many years. They now find themselves in a very difficult situation in relation to this Volkswagen scandal, because suddenly Germany has gone from being one of the great green exemplars of Europe to having a car industry that is now being blamed by other member states for contributing to the problems. I think they are very serious about sorting it out. I was very impressed by the way the German Minister spoke, that he essentially began by saying, “This is a very difficult moment for our country, we are really going to come down hard on these companies and we are going to sort this out”. So I think Germany is moving in the right direction. In the end, a very difficult negotiation around the table, which I think Britain played an important part at,

ended up with the compliance factors going down from 3 to 2, which imposes a huge amount of strain on the car industry to try to comply with that. They fought hard against that and we got what we wanted, and that is partly because Germany really changed its position when it saw what Volkswagen was doing.

Q376 Margaret Greenwood: Previous witnesses have told us how EU membership boosts the UK's international influence in areas like climate change. Do you think our influence would be reduced or enhanced by leaving the EU?

Lord Bourne of Aberystwyth: In relation to energy and climate change I think it would be reduced. Our influence was very perceptible and was highly regarded at Paris. As I say, the Secretary of State was a key part of the negotiations. Alongside the French hosts of the talks, the lead negotiator was British. Without being complacent about it, we came out of Paris with considerable plaudits for British efforts and also for the financial assistance on help on adaptation and mitigation. In my mind there is absolutely no doubt about it: in this area, leaving the EU would reduce our impact, which would reduce our prestige and reputation.

Q377 Margaret Greenwood: Thank you very much. A question for Mr Stewart. Some believe that giving the power to negotiate on behalf of a member state to the EU reduces the ability of that member state to achieve their objectives in the area of environment. Has that been your experience?

Rory Stewart: No, not in the key parts of our environmental brief. The point is that in the field in which we work, which tends to be things such as industrial emissions, air pollution and water quality, there is not a single European standard. It is relative to your existing performance. The rates that we will be set for ammonia, methane, sulphur dioxide and nitrogen oxide will be quite different from the rates set for Denmark, Germany, France, Spain, and so on, and are negotiated individually on the basis of the evidence we produce on the cost and benefits of doing it.

Q378 Geraint Davies: Since we last saw you, the Ministry of Justice in the United States, on behalf of the Environmental Protection Agency, has taken Volkswagen to court in the United States, and are saying they could be fined tens of thousands of dollars per car because of the defeat devices. I was wondering what was going to be done to Volkswagen by the UK Government. When we asked the EU Director-General he said, "We are not doing anything. It is for nation states", and that is what I thought you said last time he should be doing. I wondered if I can pass the ball back to you.

Rory Stewart: It is a really interesting question. Basically, this is a public policy question. The question is whether this is something that the United Kingdom wants to get involved in. The United States does this: they impose swingeing and astonishing fines on companies—generally, I notice, never American companies; they tend to be other people's companies—and they do it in a way whereby it is quite difficult to follow the due process. It is difficult to fully understand the basis of their legal cases, often, but they do it, and they do it with great bravura and they pull it off. They have done it most dramatically with BP; they are doing it again with Volkswagen. They are talking about imposing fines, as you say, of tens of billions of dollars on individual companies. That will almost wipe out these companies in the United States. There certainly are options available. It is a

Department for Transport or an Exchequer or a Home Office lead. The key way legally within British law that we would do it is on the basis of fraud and misrepresentation. If the Department for Transport concluded, on the basis of their studies, that Volkswagen was deliberately misleading customers, that would be a question for the Director of Public Prosecutions, and he could then take a case against Volkswagen.

Q379 Geraint Davies: That is the basis on which the EPA is moving forward on imports, isn't it? I hear what you say, but it is the case, as I understand it, that something like 23,000 people die a year from NO_x. If there is an enormous increase in the output because we have been deceived by VW, surely there is a case for the Government to take similar action.

Rory Stewart: I absolutely hear what you say. It is a much bigger Government policy issue, and it goes to the heart of a very different culture between the way the United States does this and the way that European countries do this. But I understand your case, and I can completely understand why you would prefer an American system.

Geraint Davies: No, we could beat them rather than shoot them, as opposed to doing nothing.

Q380 Mr Peter Lilley: You mentioned fraud. Presumably they would also need to demonstrate a loss. It is not the purchaser of the car who has necessarily suffered a loss, it is the general environment that has been affected, and any deaths will be the result of particulates shortening people's lives. I do not know quite whether fraud applies to that. It is the customer who has been defrauded who has not suffered a loss; the people who have suffered loss have not been defrauded.

Rory Stewart: Some lawyers have suggested that there could be potential—again they are investigating in the United States—to bring a class action suit on the basis of public health. People whose lungs are affected, asthmatics and so on, could try to bring a class action suit.

Chair: Thank you very much. Thank you for giving your evidence today, and Lord Bourne in his absence, as well, but also Mr Bastin and Mr Hitchen, who were not called upon by the Ministers. The Ministers flew solo or dual seat. Thank you very much for the time you have given us, and also thank you to Committee members for their in-depth questions. As usual, if there is anything pertinent to this that you subsequently think you want to contact us with that we have not covered, please do. Otherwise, thank you very much indeed from us.