



## Transport Committee

### Oral evidence: Vehicle type approval, HC 622

Monday 25 April 2016

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Written evidence from witnesses:

- [Department for Transport \(VTA0008\)](#)

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Members present: Mrs Louise Ellman (Chair); Robert Ffello; Mary Glendon; Karl McCartney; Stewart Malcolm McDonald; Mark Menzies; Huw Merriman; Iain Stewart; Graham Stringer; Martin Vickers.

Questions 344-564

Witnesses: **Richard Lloyd**, Executive Director, Which?, **Christian Twigg-Flesner**, Professor of Commercial Law, University of Hull, and **Peter Shears**, Professor of Consumer Law and Policy, Plymouth University; **Paul Higgs**, Interim Chief Executive, Vehicle Certification Agency, **Robert Goodwill MP**, Minister of State, and **Ian Yarnold**, Head of the International Vehicle Standards Division, Department for Transport gave evidence.

**Q344 Chair:** Good afternoon and welcome to the Transport Select Committee. Could you give us your name and organisation, please?

**Professor Shears:** My name is Peter Shears. I am professor of consumer law and policy at Plymouth University.

**Richard Lloyd:** I am Richard Lloyd, executive director of the Consumers Association Which?

**Professor Twigg-Flesner:** I am Christian Twigg-Flesner, professor of commercial law at the University of Hull.

**Q345 Chair:** What consumer legislation could Volkswagen be guilty of breaching in the UK?

**Richard Lloyd:** Part of the problem we have is that we do not have enough information from the Department for Transport about precisely what they found in their investigation to allow us to work out whether consumers have suffered a loss and what the impact of the cheat devices has been. Theoretically, there could be a breach of consumer protection regulations because consumers have been misled by claims in the sales process. There



could be breaches of the Consumer Rights Act for more recent sales, but, frankly, until the Department for Transport put out more evidence about what they found in their investigation, in relation to people's ability to bring a claim in the court for any loss, it is really hard for us to establish what legislation has been breached and what losses or impact there may have been for consumers, and therefore what they might do about it. The problem that we have is that the Department for Transport, if it knows the answer to those questions, is still sitting on evidence that would allow us to answer your question.

**Q346 Chair:** You are saying that the onus is on the Department for Transport and not on Volkswagen, the company.

**Richard Lloyd:** I say that, because no one believes what Volkswagen is saying. Consumers feel conned in the first place, misled and cheated. Over the weekend we surveyed 30,000 consumers, and 93% of them said they felt that the car industry is not treating them fairly. Three quarters of them feel that the Government must now take action. Seven months after this first came out, all we have are assurances from VW that the fix they are going to put into place will not impact on fuel efficiency or the performance of their car. Why should anyone believe a word that VW is saying about this? In the absence of something credible from VW or of any other independent assessment, in particular of the fix that VW is offering—albeit at a snail's pace and woefully late—we need the DFT to look at this independently and to tell consumers what the impact was in the first place and what the impact will be post the change to the software, therefore giving the likes of us some means to work out what consumer law has been broken and whether consumers might have a legal claim against VW.

**Q347 Chair:** Professor Shears, what do you make of that?

**Professor Shears:** What we can offer you is VW's position in an analogous jurisdiction. Events have moved much more quickly in America. To answer the question you asked Richard, it is argued—it is barely defensible—that they were in breach of the Clean Air Act under the Environmental Protection Agency. There is an assertion of misleading advertising, and the Federal Trade Commission is bringing actions. At the very least in this country we will have, if only theoretical, arguments based on breach of contract. Of course, in America they have class actions. Last Thursday in a federal court in San Francisco, a class action on behalf of 600,000 consumers in America was taken one step further by a federal court judge. We can see it being played out in America, and perhaps that sort of set of arguments with analogous organisations and Government agencies in this country may follow. But that is all we have to show you.

**Q348 Chair:** Do you think the situation here could be quite different from the situation in the States?

**Professor Shears:** No. I think the arguments will be similar, because the alleged damage is by the same agency, which is a motor car. It is not a device but a piece of software. It is not a toy you can hold up; it is a piece of software. The damage that is argued is pollution of the air. The damage is diminution of the value of the motor car. The damage is being a victim of allegedly misleading advertising, and not just casual advertising on hoardings but advertising at half-time in the Super Bowl, which is serious advertising, alleging how



pure and clean they are. In fact in the last one they put out they even had angels' wings sprouting from their executives.

**Q349 Graham Stringer:** It is very appropriate to have angels' wings, because the real victims are not the motor car owners but the people who have died because of the air being polluted.

**Professor Shears:** Yes, 40 times the permitted level.

**Q350 Graham Stringer:** On that point, when you list the people affected by this, it seems to me that it is the people who are poisoned rather than the people who bought the machine that is poisoning them who are the real victims. Do you think there is a case for a class action there?

**Professor Shears:** In this country?

**Graham Stringer:** Yes.

**Professor Shears:** We do not have class actions in this country.

**Q351 Graham Stringer:** Weren't Piper Alpha and the poisoning in Cornwall class actions?

**Professor Shears:** Do you mean Camelford?

**Graham Stringer:** Yes, and Piper Alpha.

**Professor Shears:** I live 20 miles from Camelford. That is probably why I am so strange.

**Richard Lloyd:** We do not have a regime that allows class actions in the US style. What you can do is have representative actions where a small number of, for example, consumers or people affected can represent a number of others who have opted in to a case, but there is quite a difficult threshold to meet. In relation to the consumer loss, at the moment we cannot quantify the loss that Peter was talking about, because we do not have the independent information, so it is very hard to tell people who bought a car three years ago—maybe quite an expensive car—what the loss in value, the future loss in value or additional cost will be if the software fix changes the fuel efficiency, for example. It is hard for individuals to quantify that, or for the likes of Which?.

**Q352 Chair:** Professor Twigg-Flesner, what is your view on what you have just heard?

**Professor Twigg-Flesner:** I have looked at this primarily from the perspective of individual consumers who have actually bought or acquired a car and the kind of remedies they might now have. There are a number of problems. First of all, for most of them the Consumer Rights Act will not apply because it only applies to contracts concluded after 1 October last year. We have to go back to the older law that was in force before October 2015, which is a very complex set of legal rules.

I suspect most consumers who have bought a car will have done so through some sort of hire purchase arrangement, which means the relevant law is an Act of Parliament from 1973,

which requires, in the same way as the Sale of Goods Act used to do and the Consumer Rights Act now does, that all goods supplied have to be of satisfactory quality. There is a reasonable case to be made that, objectively speaking, a car with those shortcomings would not pass that standard. It would depend on how the argument was presented, based perhaps on statements made about emissions compliance and so on.

The real difficulty is what kind of rights a consumer has once they have established that a car was not of satisfactory quality. Under the new law there is a right to replacement and software updates. If the software update has knock-on effects on the performance of the car, it can be dealt with under the Consumer Rights Act, but before then all the consumer would have is a claim for damages for compensation. As Richard said, it is very difficult to quantify the exact loss a consumer has suffered, other than perhaps a reduction in the value of the vehicle. Of course, the car would have depreciated in value quite rapidly anyway after purchase, so consumers are in a bit of a difficult situation as far as the value of the car and the effects on the car itself are concerned.

**Q353 Chair:** So it could be an ongoing situation.

**Professor Twigg-Flesner:** The other problem, of course, is that they are subject to limitation periods as well. Many consumers have had their car for quite a long time. A lot of cars will potentially be outside the six-year period. For more recent purchases they will have a right to claim damages, but of course they will probably have lost the right to terminate a hire purchase agreement, because it has been public knowledge for some months that there is a problem. Because that knowledge was there, they will now probably not be able to claim that they can still terminate that contract.

**Q354 Huw Merriman:** This is not a question, but it touches directly on that point. Surely the six-year statute of limitations will only kick in from the time when the individual was aware that they had damage rather than from when they purchased the car. On your point about six years, I would have thought that a court would look at it and say, “Actually, it was from whenever this was found to be an issue.”

**Professor Twigg-Flesner:** It depends on the type of contract. Obviously if it was a straightforward sale contract, the six years would start from the date of purchase. There is a delay with other types of contract, yes. That was the problem under the old law; there was no consistency about when periods started and what remedies were available. At the same time, the right to terminate has been lost in any event, because it is now six months since the whole thing broke. The only remedy would be a claim for damages, and that gets us back to the question of quantification.

**Q355 Huw Merriman:** When VW spoke to this Committee, they maintained the position that there had been no loss and therefore there is no compensation. I think they were talking more about good-will payments. In the US that might be required because it may take longer to get a fix in place. What is your view of that statement?

**Professor Twigg-Flesner:** It is difficult to say what sort of quantification will be put on the loss. There is some loss. There is certainly some kind of reduction in the overall value of a car because a car that is not in compliance with emissions standards is probably worth less to the market than a car that is fully in compliance, but the actual quantification can be



quite difficult. I would not say there is no right to compensation, but I cannot say how much there will be. The other point to make in passing is that, of course, VW has no direct liability to any of those consumers. They only have claims against the immediate retailer or the finance company.

**Richard Lloyd:** Separately from the legal claim, people are saying to us that they are completely bewildered and they cannot understand why everyone is being offered a \$1,000 good-will payment in the US.

**Chair:** That is why we are asking these questions.

**Q356 Karl McCartney:** There has been a lot of hot air from all three of you so far. In the past 10 years how often has Which? asked its consumers how many people bought a new car based on its environmental credentials?

**Richard Lloyd:** We have been saying for years that in particular the miles per gallon claims are wrong. We have been testing fuel efficiency claims and publishing the difference for years.

**Karl McCartney:** You are not really answering the question I asked.

**Richard Lloyd:** What we have not been aware of, as no one was—this is why I keep saying it is for the Department for Transport to clear this up for consumers—was that there were defeat devices and software in the cars that were affecting the performance in the labs. We have maintained for years that the lab results are, on average, 13% out of kilter with the real-world tests that we have done. We have warned people about that for years. No one, including the Department for Transport, the FDA or anyone else in the US, knew that the software existed, so I think it is a bit rich to say that Which? should have known about something that no one knew about until September last year.

**Q357 Karl McCartney:** I am asking the question whether you had gone out and asked consumers that in the last 10 years, and you have not. When the E-type was launched, it was claimed to do 150 mph. It did not but people still went and bought it. Do you see the example I am giving you? You might have whinged about it, but people go and buy cars for completely different reasons other than their environmental credentials.

**Richard Lloyd:** So we ask people, “Why do you buy cars?” and—

**Q358 Karl McCartney:** Let me move on to the next question.

**Richard Lloyd:** Can I just answer that point first?

**Q359 Karl McCartney:** The next question: you are claiming that you want some information from the Department for Transport. Yes, rightly, we all do. But say that the amount of pollution was at one level and we were told that it was going to be at a different level. If the amount of pollution difference was infinitesimal, how much do you think consumers are going to be due, because it is a tiny amount of pollution?

**Richard Lloyd:** The whole point, with due respect, is that no one knows. No one knows what the amount is.



**Q360 Karl McCartney:** Say, for instance, it is infinitesimal and is a tiny amount. How much money do you think people should be due?

**Chair:** Mr McCartney is asking you what evidence there is for the fact that people, when they purchase cars, are influenced by this specific factor. What evidence is there?

**Richard Lloyd:** Thank you. That was his previous question. My answer is that, when we have surveyed people, we found as recently as October last year that, of the features of a product that people base their decision on, fuel efficiency is just equal third with price.

**Q361 Karl McCartney:** Now there is \$1,000 for people in America.

**Richard Lloyd:** So it is an important factor.

**Q362 Karl McCartney:** The question I asked you was about the situation previous to what has been discovered with VW in the past couple of years. Previous to that, how many times have you questioned your consumers? You have not questioned your consumers, because that is not the main reason why people buy cars. A point to yourself, Professor: you came out with the supposition that people are going to lose money on selling their second-hand cars. Do you work in the second-hand trade?

**Professor Twigg-Flesner:** No, but that is not what I said either—

**Q363 Karl McCartney:** How do you know what people are going to buy or sell second-hand cars for that are VWs or any other car?

**Professor Twigg-Flesner:** I did not suggest it was a question of second-hand value. My answer was suggesting that, if there was any kind of loss, that loss would simply be the value of the car's purchase. If the car was worth, say, £20,000 on the date of purchase, assuming compliance with emissions standards and everything else, there might be a loss in the value of that car because it does not comply. It could be a small amount; it could be £500.

**Q364 Karl McCartney:** It might be, but how many people do you think are going to go out and buy a second-hand car and worry if it is VW that may or may not be causing a small amount of pollution more than it was supposedly going to after the test? I am not a defender of VW; I am just questioning your reasoning and what you three have been saying to us this afternoon.

**Richard Lloyd:** With all due respect, that was entirely my point. People need the facts. If the Department for Transport have the facts about the impact of the defeat device on emissions tests, people need to know. They need to know if they want to make a legal claim. They need to know if they want to understand what that purchase decision may cost them in the future. But nobody knows. Nobody knew prior to this and nobody knows now. What we do know is that across all the cars that the DFT and the VCA tested there is a very large difference between claims and lab tests and what on-the-road conditions have found. That has left consumers none the wiser about what may be the impact on them in the future of a decision to buy an expensive car last August.

**Professor Twigg-Flesner:** To be absolutely clear, the legal standard under the Consumer Rights Act and the Sale of Goods Act 1973 is not a subjective standard. The focus is on what an objective person, a reasonable person, in the light of all the circumstances, would think about a car. The question is, objectively speaking, to what extent would the average consumer, aware of the way cars are marketed and the way environmental issues are more and more at the heart of advertising campaigns, expect that a car is in compliance with emissions standards? I suspect there would be a reasonable assumption that consumers would expect that to be a part of the conversation leading up to the purchase of a car.

**Q365 Karl McCartney:** But if environmental concerns are one of a purchaser's main reasons for purchasing a new car—

**Professor Twigg-Flesner:** They do not have to be one of the main reasons.

**Q366 Karl McCartney:** Surely they will go and buy a Prius or something other than a Volkswagen.

**Professor Twigg-Flesner:** They do not even have to be one of the main reasons. There could be many reasons, as long as there is a clear indication that one of the reasons why—it could be a negligible reason—the car was purchased was an environmental consideration—

**Q367 Karl McCartney:** If it is a negligible reason why they bought the car, why are they due some compensation according to you three?

**Professor Shears:** Could you unpick the two separate issues? We seem to be arguing in two places at the same time. We are talking about whether or not a consumer can make a claim for compensation for something—let us just leave it at disappointment—on the one hand. On the other hand, we are assessing whether or not it is proper for a massively important and internationally significant car manufacturer—we are talking about 11 million vehicles—to mislead consumers, whether or not consumers are actually misled and whether or not they actually suffer as a result of having been misled, and that it should be permissible for those kinds of misleading statements to be made.

**Q368 Chair:** But would this be relevant in terms of compensation as distinct from being good practice?

**Professor Shears:** The layman's concept of compensation, without being patronising, is satisfied in various ways. You made mention of the good-will package that they have in America. This is brand protection obviously. It is in three parts. They give you a prepaid debit card for \$500 and you can spend it on anything. They give you another card for another \$500 that you can spend with your car maintenance guy; anything that he would have charged you for he can take off the card. Thirdly, they give you, for three years, free roadside assistance. They are not asserting that they have to do that as a result of some judge's decision. What they are saying is, "We are protecting our brand and our image." They have 70% of the diesel market in America.

**Q369 Chair:** Let's bring it back to the position in the UK, and not in terms of a thing called good will, because VW have already spoken to us about good will. We are asking



about potential legal rights. That is what we want to focus on in relation to this question. Mr McCartney is saying that in terms of environmental standards if an individual did not purchase a car with that standard being the main reason for purchasing it, and the standard was not as declared, does that give them a legal case for compensation? Good will is something else.

**Professor Shears:** It is a lack of correspondence with description. The statutes that Christian mentioned require compliance with description.

**Q370 Chair:** Would that be a legal issue?

**Professor Shears:** Yes, the argument is very straightforward. The argument is breach of contract. Breach of the contractual terms—

**Chair:** Yes, we just wanted to clarify that point.

**Q371 Robert Ffello:** In a way this follows on from that; it is a comment on the questioning really. Generally, in terms of the buyer of a new or used car, is it not the case that the public are always a little bit dubious whenever they walk into either a new car showroom or on to the local used car piece of land with various cars and various placards in the window?

**Professor Shears:** It is difficult to generalise between the two.

**Q372 Robert Ffello:** Indeed, but I am. Is there not something in the back of people's minds where they think, "Hang on, is this slick salesman really telling me the full thing?" Are we almost starting from the point of the customer sometimes suspecting that they might get ripped off?

**Professor Shears:** No. There is a difference between slick salesmen and advertising puff—the Arthur Daley kind of approach—and an internationally significant car manufacturer making specific promises. Specific promises become contractual terms, and if they are not met that becomes a breach of contract, because we require compliance with description.

**Richard Lloyd:** If I can just add to that, let us not forget that these claims are officially accredited claims. In the mind of the consumer, you are buying something that has at least some sense of official accreditation of the claim that is being made. To answer your question again, Mr McCartney, among the issues that people said they were looking for when buying a car, when we surveyed them, fuel economy ranked highly. It was third or fourth, just after comfort, practicability and reliability. When you have an officially endorsed claim on something that ranks that highly for the customer, I would say that it matters a great deal.

**Q373 Robert Ffello:** But surely most people know that whatever it says on the ticket in terms of the fuel efficiency of their vehicle is not real world, and that it is almost impossible to achieve the figures that the manufacturer quotes. Surely everybody knows that anyway, do they not?

**Professor Twigg-Flesner:** But there is always room for tolerance. The question is to what extent there is significant variation. For example, in Germany, I have spoken to my



German colleagues who have had very similar inquiries to those we are having here today. The German approach seems to be that if there is a variation of more than 10% there is a very serious problem. If the fuel efficiency deviates by more than 10% from the claimed standard, there is a problem. Of course, any claim that is made in public about comparisons is regarded as a public statement that ultimately influences the contractual obligations of the retailer. If VW makes grand claims that are too far removed from reality, we will have a problem.

**Q374 Chair:** Who would decide what is significant variation from the claim, in terms of legality? Who would make that decision?

**Professor Twigg-Flesner:** That would be a decision to be made by a judge if it came to court.

**Q375 Chair:** That decision would be made in court.

**Professor Twigg-Flesner:** Yes.

**Q376 Robert Ffello:** Going back to the Arthur Daley versus big company example, if I have understood rightly, the issue here—whether you call it good will to protect brand or compensation for breach of contract, or somewhere between the two or both—is that people are going to VW because they trusted that brand and they have been badly let down. That therefore is the basis on which I, as a consumer, would want to be compensated, because I could have got a car really cheaply from Arthur Daley and taken the risk, but I went to VW and trusted them and they have really messed up on that trust and now I want some compensation because I could have had something cheaper. Have I oversimplified it, or is that pretty much where we are at?

**Professor Shears:** That is fine. One instance that I dealt with personally was where a buyer of a VW car, having read some of the literature and the newspaper reports—some of them from America rather than this country—said, “I don’t want my car any more.” This is somebody who ranks environmental damage very highly: “You are telling me that I am polluting the atmosphere unnecessarily.” Any internal combustion engine is going to do something. “I don’t care that it was a joy when I bought it new on the day, and I don’t care that its second-hand value isn’t really that much lower than its new price. I just don’t want it any more. I don’t want to be behind the wheel of a car that is doing that to the atmosphere.” That is a real example.

**Q377 Chair:** Does that mean that there are legal grounds for compensation for factors other than financial loss in the UK? We are focusing on the UK.

**Professor Shears:** I am saying that anything that falls short of promises made before contract can easily amount, and usually does amount, to a breach of contract. Whether it is a matter that will get settled on an individual basis or on a global basis, settlement seems to me to be very likely, and while the fact that individuals might go along to a small claims court for £1,000 is very unlikely, there are 1.2 million of these cars in the UK alone. We are not going to see 1.2 million small claims actions. I would predict that it will be done by some kind of settlement.

**Chair:** Potentially there is an action.



**Q378 Mark Menzies:** Paul Willis from Volkswagen came before the Committee on two occasions. When he was probed on the issue of loss by myself, he began by saying, “I do apologise for what our company has done. We want to fix the cars so that they are in line with regulations. I refute your allegation that we misrepresented the vehicles in any way. To have compensation, Mr Menzies, you need a loss, and there is no evidence of a loss.” Clearly what you are telling us now is that to get compensation you do not have to produce evidence of a loss. Consumer law in the UK is enough to trigger a financial settlement; is that correct?

**Richard Lloyd:** No. I think we are saying that to bring a legal claim with confidence you would need to be able to quantify your loss, and that is the problem we have in advising you on this. It is impossible for us without more data from the DFT’s research or from the company to quantify that loss.

**Q379 Chair:** What data would be needed?

**Richard Lloyd:** We would need to see by brand and by model more of the testing data. We would need to see the assumptions that have been made, and validation of those assumptions, about the impact of the modification to the software. We would need to see more data on the actual impact of the defeat device prior to the modification. All we have had are assertions from VW. We have had none of this from any independent source.

**Q380 Chair:** Professor Twigg-Flesner, do you agree with that?

**Professor Twigg-Flesner:** Yes, on the whole. I can imagine that there might be some losses that could be quantified once the evidence is there. For example, what is the impact on fuel consumption over a certain period of time? If the vehicle ends up using a lot more fuel than it should have done, there is a clear loss that can be quantified. If it uses an extra 2 litres per 100 kilometres or whatever, there is a clear issue that can be quantified, but that information needs to be worked out first.

You asked whether there is any possibility of compensation beyond economic loss. Historically, if we look at the range of case law that we have from the English courts, it is not very common—but not unheard of either—to have some compensation for non-economic losses being awarded by the courts. It is possible to make some kind of allowance on a fairly rough and ready basis, for the loss of confidence perhaps.

**Q381 Mark Menzies:** Going back to the issue of information from VW, you have touched on some things, but is there anything else you think VW should be making available to Government and putting in the public domain in order to quantify loss and shed complete light on the nature of what they have been doing?

**Richard Lloyd:** Yes. Obviously we are not party to everything that VW may have told the Government. We would like to see in the public domain clear evidence, independently verified, of VW’s assessment of the impact on fuel efficiency. They have claimed there is no impact on resale. We would like to see their evidence for that. We would like to see, for each of the vehicles tested by the Government, more detail as to what the methodology is. We would like to see what the change to the software will do to fuel efficiency, so that we can then benchmark a likely cost to the consumer of running a car in the real world when they bought it, relative to what will be the case once the software has been changed.



**Q382 Mark Menzies:** Just for clarity, who would be liable for paying that? Would it be VW corporately or the actual individual dealership from whom the consumer bought the car?

*Professor Shears:* It would be the seller.

*Professor Twigg-Flesner:* The dealership initially. They might be able to reclaim any losses from VW but that depends on the contractual arrangements between the retailer and VW itself.

**Q383 Mark Menzies:** What about trading standards legislation? VW have been making false claims; we now know that. What recourse through trading standards legislation would consumers and the authorities have?

*Professor Twigg-Flesner:* Again, it is a question of timing. The Consumer Protection from Unfair Trading Regulations 2008 would certainly, assuming the advertisement was misleading, allow trading standards to intervene and take action. Until October last year we did not have the so-called enhanced consumer measures, which were introduced by the Consumer Rights Act, which, for example, allow for compensation orders to be made in respect of affected consumers. I do not think it would be possible to apply those retrospectively to all the cases that might have accrued before October. The only thing that could be done now is to take enforcement action generally for breach of various regulations.

**Q384 Mark Menzies:** My final question on this is: what measures would you like to see the UK Government take in order to ensure that UK consumers have not been short-changed by Volkswagen and their attempts at what is clear deception of UK customers?

*Richard Lloyd:* First of all, they need to tell consumers what they have done to verify the effectiveness of the modification to the software. At the moment we are taking that from VW as though, first, it will not have an impact on the performance and the value of the car; secondly, that it will work; and, thirdly, that it will not lead to a change in the emissions that that car will produce. We need to see much more from the Government about their assessment of what VW is trying to do to put this right. What is the efficacy of the fix?

Secondly, the DFT ought to be looking at the car market in the round and giving consumers at least some information about what they have assessed the impacts on them to be. In the US, the authorities have been much more proactive and much quicker. As you know, they have put in place prosecution. They have put enormous pressure on VW and as a result VW customers in the US appear to be at the front of the queue for getting, at the very least, a good-will payment—

**Q385 Chair:** Where should the responsibility lie? Should it be, as suggested, with the Government to produce more information, or should consumers take an action forward, which would then have to be addressed either by the Government or by VW?

*Richard Lloyd:* Given the loss of trust in VW, and given that the Government have already carried out those tests and presumably have data, it needs to be the Government who equip consumers with the information so that they can form a judgment about



whether they might have a legal claim, and indeed put pressure on VW to sort this out. At the moment we have a report, welcome though it was last week, that includes evidence that a Skoda model had a defeat device, yet we have no idea as a result of that testing whether it resulted in illegal emissions or what it means for purchasers of that car. It feels to us that the DFT has been woefully slow and has not given consumers enough independent verified information for them to make a judgment about whether they should bring a legal claim, join in a representative action or merely wait for however many months for VW to get in touch with them to change the software.

**Chair:** We are about to bring the Minister responsible forward to that seat to ask him some of these questions.

**Q386 Karl McCartney:** You have just made a very good argument for Vote Leave; thank you very much for that. Do you not think, on the argument you have been making about the Government giving you figures, that some of the delay is because the European Union is delaying things? Obviously you have been in touch with VW in Germany, but there are a lot of other countries where a lot of cars have been sold by Volkswagen and under other banners, whether it is Skoda or any of the other manufacturers.

**Richard Lloyd:** The VCA and the DFT have it in their gift to give consumers more information about this. We would like to know if, in the research that was published last week, the Government or the VCA found any evidence of unlawful activity. They could say that. They could say it today—I hope you will ask them the question. Whether it has anything to do with whether we are part of the EU or not is for you to judge, of course.

**Chair:** That is another question for another meeting.

**Richard Lloyd:** Although it does feel like we are at the back of the queue for compensation.

**Q387 Stewart Malcolm McDonald:** There is that phrase again, Chair. I apologise to you and our witnesses for coming in slightly late from the Chamber. If you have gone over what I am about to ask, feel free to repeat yourselves. Mr Lloyd, what is your assessment of the VCA model as both tester and regulator of the industry? What impression do you assess that gives to consumers?

**Richard Lloyd:** It has been wholly inadequate. The question that Mr Ffello asked earlier was: would people be surprised to know that the previous testing regime, which is still in place now, allows manufacturers to pump up the tyres to way beyond the pressures that people would use in real conditions? They can strip the mirror off. They can install software that detects whether that car is in a testing environment or not. The regime has been completely unrealistic. We have published, with all due respect again to Karl, for years and years evidence of our real-world testing in terms of fuel efficiency compared with what manufacturers have claimed based on officially authorised lab tests. The difference has been shocking at times. We have done our best to inform consumers of that.

I think the VCA and the DFT have let consumers down for years. We have also asked for the real-world tests to be brought in much quicker than next year. People are still buying cars this week that are being tested under the old regime. That is not good enough. All of this does

not inspire confidence on the part of consumers in VW or the rest of the industry. We need much more proactivity from the VCA.

**Q388 Stewart Malcolm McDonald:** Why do you think they have not been so proactive?

*Richard Lloyd:* There has been a very long debate in Brussels about changing the testing regime. We have been campaigning there. I have to say that the car manufacturers have been extremely effective in slowing down changes to the testing regime. It has been quite outrageous. These problems have been known for years.

**Q389 Stewart Malcolm McDonald:** Can the other two witnesses comment on the Government's response to the Volkswagen scandal? I remember that, when this broke, it seemed that every day another national authority was taking Volkswagen to court or opening up an investigation and all the rest of it, while our Government seemed to be sitting around staring at their feet for quite some time, although we finally had the report last week. How would you assess the Government's response by comparison with other national Governments?

*Professor Twigg-Flesner:* From a consumer's point of view, the different response might be understandable, because the legal framework is quite different. To take steps to help individual consumers, there is not really the same legal context as in the United States, as Professor Shears explained earlier. Their hesitation might be explicable for that reason. I am only guessing at this point, but I suspect that the legal context might mean that there is a slower response than you might see elsewhere.

*Professor Shears:* I know that you want me to focus on the individual's position, but I return to the distinction between arming individual dissatisfied and aggrieved consumers with the data on which to decide whether or not to bring a claim either together or with a group of others—as I say, there is an action in the States with 600,000 people; you will not see that in this country—and the open-handed attitude of VW in America. That is a direct result of two enormously powerful agencies of Government putting pressure on them. It is a reaction that is not about litigation. It is not about nice arguments about breach of contract. It is about the Environmental Protection Agency saying no. They will come to a settlement. Back in the early 1990s, they came to a settlement against another major motor manufacturer that I will name only if you really want me to. The settlement came to a very small number. The EPA could have \$30 million off them, but this was another manufacturer and another time, 1998, when part of the settlement involved paying for a load of school buses—trying to make good in that way. That is a global thing and a Government thing; it is different from giving details in reports and, as it were, arming consumers with data on which they can make reasonable decisions as to whether they are going to do anything or whether they are just going to get disappointed with their car, never buy another one and try to get rid of this one at minimal loss. It is a different set of arguments for a different purpose.

**Q390 Stewart Malcolm McDonald:** I hear what you say about the clout of the EPA. Obviously we know that their environmental regulations are in some cases stronger, but what



is your assessment of consumer legislation in the United States in relation to this whole affair? Is it better than what is on offer here?

**Professor Shears:** You have to start with the fact that there is no real consumer law that covers 50 individual nations loosely tied together.

**Q391 Stewart Malcolm McDonald:** Indeed; so what can we learn from best practice elsewhere?

**Professor Shears:** That you are going to do better if you live in California than if you live in Iowa. Everywhere except Louisiana has the uniform commercial code—nobody really knows what is going on in Louisiana. There is a great deal of similarity and the theories are very similar, but the degree of consumer awareness and consumer focus on rights, duties and compensation varies tremendously across that huge nation.

**Q392 Chair:** Are you saying that it is not about the USA as a whole compared with the UK and Europe as a whole—it is individual states and the force of the agencies?

**Professor Shears:** In terms of individual consumers bringing individual actions, which is where your focus has been, it is state-based. In terms of the big and powerful putting political and quasi-political pressure on these massive organisations, that is federal. The thing that came out last Thursday was a federal court. It happened to be in San Francisco, but it was a federal judge in a federal matter, which is obviously an inter-state thing. Again, you have this distinction between individual consumers and their individual rights and whether or not they bother to enforce those individual rights, which are state-based, and you can have the enormous and far more effective pressure that is put on a federal level across all 50 states.

**Q393 Stewart Malcolm McDonald:** Setting the US to one side for a moment, I want to try to get under this question a bit. There were investigations and lawsuits being opened up in Brazil, India, South Korea, New Zealand and all over the world. What consumer protection laws do they have in those countries, or in other countries that reacted quickly and in the interest of the consumer, that we do not have here? That is essentially what I am asking.

**Richard Lloyd:** A good example is in Italy. Our equivalent in Italy has been able to bring what is effectively a class action against VW, because of the legal regime in Italy. This is not popular by any means, but one of the big distinctions between the regime here and in countries like Italy, and obviously the US, is the ability of very large groups of consumers to bring credible legal action and to get funding for technical advice and, obviously, legal support for groups of them to take action. In addition to the federal pressure that Peter described, the fact that 800,000 consumers in the US are able to join together in an action has made a tremendous difference, as it has in Italy.

There is huge debate about the pros and cons of so-called class actions. We do not have that here. It is very difficult for groups of consumers to bring a collective action of that nature.

**Q394 Chair:** Professor, in your view is it to do with different legal regimes or is it more about political will?



**Professor Twigg-Flesner:** It is both, I suspect. It is about the extent to which we allow different types of enforcement procedure. I would say that, substantively, UK consumer law is probably at the top of the list in terms of quality and rigour, especially after the reforms last year. The problem, as Richard says, is the ability to enforce—for consumers to come together and take collective action. Individual consumers do not really have the economic means or the economic interest to take these things to court individually, but if they came together through a proper class action—a proper group action—they would be able to enforce the very good consumer rights we have these days. That is one of the big problems about UK consumer laws. In terms of substantive rights they are very strong, especially after 2015 but even before then, but the ability to enforce those rights is significantly hampered by the nature of the enforcement process.

**Q395 Huw Merriman:** We talked about individual rights, but we did not talk about the Road Vehicles (Approval) Regulations 2009, which give the Secretary of State the power to impose unlimited fines. There is potentially another road in that particular direction, but maybe that is more of a comment. I do not want to hold things up.

**Richard Lloyd:** At the risk of repeating myself, this is precisely why I think the Secretary of State—the DFT—now needs to stand up for British consumers in this regard. He is the one who has the power really to make a difference on this.

**Chair:** We will now move on to the next session with the Minister. Thank you all very much for coming and answering our questions.

## Examination of Witnesses

**Witnesses:** **Paul Higgs**, Interim Chief Executive, Vehicle Certification Agency, **Mr Robert Goodwill MP**, Minister for State, Department for Transport, and **Ian Yarnold**, Head of the International Vehicle Standards Division, Department for Transport, gave evidence.

**Q396 Chair:** Good afternoon, Minister, and good afternoon to your colleagues. Could you please tell us who you are and your positions for our records?

**Mr Goodwill:** I am Robert Goodwill, the Minister of State at the Department for Transport. I lead on matters European, which I think is why I am here today.

**Paul Higgs:** I am Paul Higgs, chief executive of the VCA.

**Ian Yarnold:** I am Ian Yarnold. I head the Department's international vehicle standards division.

**Q397 Chair:** The European Commission has openly called for VW Group to compensate vehicle owners. We have not heard that from our Minister here, Mr Goodwill. Why is that?

**Mr Goodwill:** My primary objective in this matter has been to ensure that those vehicles are fixed. I know in your previous evidence session you talked at length about individual owners and how they may be compensated for the depreciation in the value of their car

possibly, or the fact that they bought that car for environmental reasons. My objective is to make sure that those cars are made cleaner. Yes, the guy driving the Volkswagen in front of me on my bicycle is the person who bought the car, but I am the person breathing in the air; this is about cleaning up the atmosphere and ensuring that happens.

The first point I would make is that we are the first member state to publish the detailed information on 37 vehicles. We have been working very closely with our opposite numbers in Germany. In fact, I spoke on three occasions last week to the German Secretary of State for Transport, Alexander Dobrindt. They published their results on Friday. Until that point we were really in the dark as to what was going on. What we have demonstrated is that Volkswagen were using a defeat device. The test cycle was repeated by us in the normal way and it showed the results that you would expect. We then did the motorway section—the extra-urban section first and then the urban section—and the vehicle did not recognise it on the test cycle and we got much higher levels of NOx emissions. The important thing is that we demonstrated that those Volkswagen Group cars were not in compliance and they were actually using what would be described as a defeat device. The other news is that the other vehicles we tested from the other manufacturers were not using a defeat device.

There are other issues that we need to address in terms of the way that their engines are set up, but what we need to ensure now is that the owners of Volkswagen cars get that problem put right. In most cases, it is a software fix that will take about 15 minutes at the garage. In the case of the 1600 cc cars, it is a hardware change as well; they need to put an insert into the air inlet system, a fairly straightforward fix that will put it right. My objective is to ensure that those cars are put right and that they are operating at all times in the same way, not recognising that they are on the test site and therefore keeping their emission control systems on for the test but turning them off at other times.

**Q398 Chair:** Does that mean that you are not interested in the compensation issue?

**Mr Goodwill:** The issue of compensation is one that I know the Serious Fraud Office is looking at, as are the Competition and Markets Authority. What is brought forward will be a matter for them. As I said, my objective at the moment is to make sure the cars are fixed and then to move forward to ensure that all cars are producing the levels of emissions in practice, in real-world conditions, that they do in the lab. There are a number of other issues that we need to look at. In fact, I wrote today to the Commissioner, Mrs. Bieńkowska, to see how we can move forward in the way that some of the engine management systems are moderated at certain temperatures and therefore do not produce the sort of levels of emissions we would expect. Indeed, we would be very happy to take the Committee through the full results of our test, perhaps in a private session, so that you can fully understand all the information.

**Chair:** That could well be helpful. There are some other aspects that members want to ask you about, although we still do not have a clear answer to the question put to you.

**Q399 Huw Merriman:** As well as the individual private compensation, and indeed any sort of fix, my understanding is that the Road Vehicles (Approval) Regulations 2009 give the Secretary of State the power to issue an unlimited fine if there has been a breach of the VCA process. Given that you have just mentioned that VW was using a defeat device, does that mean that is an avenue that can now be opened up?



**Mr Goodwill:** Certainly we are looking at that. It is not something we have come to a view on. As I say, my priority at the moment is to ensure that the vehicles that are non-compliant are made compliant and therefore are performing in a better way. If you look at the results of our trials, you will see that, certainly with the Euro 6 vehicles, the Volkswagen vehicles are actually performing better than some of the other vehicles that are not fitted with a defeat device, under a clause that can be used to turn off some of the exhaust gas recirculation at low temperatures. That is something that we were not aware of before conducting those tests. Mr Yarnold has been central in doing that testing and ensuring that we are in a much better position now. Today, we are in a much better position than we were before last Thursday to understand exactly where we are and what the industry needs to do to improve its standards. Indeed, the Secretary of State has written to the managing directors of Volkswagen, Opel and Mercedes-Benz to ask if the fixes that they are looking at doing for the owners of those cars in Germany can be extended to owners of the same cars in the UK. We need to talk to our UK manufacturers as well to see what they can do to improve performance in real-world conditions.

**Q400 Huw Merriman:** The reason I mention that is that last year, when VW were before us, they seemed to talk about the fact that they had everything in hand and it was all just round the corner. We had them in again recently as part of this inquiry, and it turned out that they had not done anything wrong, there just seemed to be delay and they could not work out what was going on at all. If there are more teeth that can be inserted, perhaps it is the door to kick down, as it were.

**Mr Goodwill:** I absolutely agree with you that we need to make further progress. This is not a new issue for me. I was in the European Parliament for five years doing just this. In fact, on 27 July 1999 I was appointed shadow rapporteur on a report on CO<sub>2</sub> emissions for vehicles and the information made available at point of sale, so this is not something new.

We always knew that performance in real conditions in terms of CO<sub>2</sub>, and therefore fuel consumption, was not as good on the road as it was in the lab. I expected that there would be similar discrepancies between the NO<sub>x</sub> levels of emissions and the lab. What we found out was that those levels are far greater than anything we even imagined might be the case, with maybe eight, nine or even 12 times as much NO<sub>x</sub> being produced in real-world conditions as in the lab. That has been a big revelation and a big shock, which is why I have written to the Commissioner to see what we can do to further tighten up the system.

We have an agreement on real-world testing. In your last evidence session you asked why we had not done anything sooner. The fact of the matter is that we did not have the equipment that could be fitted into a car boot sooner. If you look at the heavy goods vehicle sector, they are pretty much in compliance, because they have been able to carry the equipment on the back of the truck for a long time. They are up to 90% compliant with NO<sub>x</sub> emissions using the systems on those vehicles. We need to do the same with passenger cars, car derived vans and other smaller vehicles as we have done with the heavy trucks to ensure that they are in compliance. The technology is there; it is just a case of applying it.

**Q401 Karl McCartney:** You have just given some figures to my colleague in your answer about NO<sub>x</sub>. I asked a question of your colleagues very early on as witnesses and they could not give me an answer. You said that NO<sub>x</sub> was about eight, nine or perhaps 12 times as

high. Can you give us values on the tests you have done for the differences between those vehicles when they are and are not using the defeat software?

**Mr Goodwill:** I should probably ask Mr Yarnold, who has been conducting our tests, to give you an answer.

**Karl McCartney:** I know these are going to be a revelation to us, but to know what the differences are would be very useful.

**Mr Goodwill:** We can let you have a copy of this document. It is in an easily understandable format, unlike the German results, which take a bit of trawling through. Even I could understand this.

**Karl McCartney:** Implying that even I could therefore understand it; thank you very much indeed, Minister.

**Ian Yarnold:** The simple answer to your question is no, I cannot give you the answer as between the vehicle with a defeat device in the laboratory and in the real world, because the focus of our investigation identified the operation of the cycle recognition strategy in the Skoda vehicle that was part of the VCA fleet. It was only part of our laboratory programme. The purpose of using it was to baseline our test to see whether we could identify the recognition strategy in that particular vehicle. Once we had determined that the suite of tests that we invented and used could identify it, we stopped testing that vehicle and moved on to the vehicles that were part of the main programme. We do not have the piece of information you requested.

**Q402 Karl McCartney:** So you do not even have an inkling about what the differences are going to be.

**Ian Yarnold:** No, I cannot tell you what it is. It is possible that we could run the vehicle again and find out, but I cannot tell you at the moment. The vehicle we tested was described in the report—

**Q403 Karl McCartney:** You can find out, but you just do not have the information.

**Ian Yarnold:** We might have to run the vehicle through that suite of tests. It is not something we have done yet. It is something we could do, subject to the Minister agreeing.

**Q404 Karl McCartney:** I think you can tell that I have got disappointment on my face. I was looking forward to getting that information.

**Ian Yarnold:** There is a lot of other information in the report.

**Mr Goodwill:** What we do have are 37 vehicles that we tested in real-world conditions showing the level of NO<sub>x</sub> emissions that they produce. The first point to make is that Euro 6 vehicles are much cleaner than Euro 5 vehicles, but we have also discovered that it is very much temperature dependent, and that, for reasons of protecting the engine, some of these systems, which operate at the higher temperatures, can be turned off at low temperatures. The lab test is always carried out at about 25<sup>0</sup> C, which means that it would not have been picked up in the lab, but having tested the vehicles on the road we picked it up. We have not tested enough vehicles at different temperatures to know exactly what is



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going on, but we know that if these systems have been turned off at low temperatures for reasonable reasons—to protect the engine, the manufacturers say—the level of NOx production can be as much as 12 or 13 times higher than it would have to be to pass a lab test.

**Q405 Karl McCartney:** But only for a small period and not for the whole duration of the test.

*Mr Goodwill:* No. For a long drive on the road we are getting those sorts of levels of emission being produced.

**Q406 Karl McCartney:** But say in the first 20 minutes, when the car or vehicle engine is warming up—

*Mr Goodwill:* No, they work better; at cold temperatures you produce less NOx, because NOx is produced by high combustion temperatures. The test in the lab is done on a car that has been allowed to equalise temperature, whereas the test we do on the road is on vehicles that are already warmed up. There is that difference, but it would not explain the high levels of NOx that we have seen them producing.

*Ian Yarnold:* The EGR system—exhaust gas recirculation system—has a temperature dependency. The temperature it senses is the ambient inlet temperature of the engine. It is not the combustion temperature; it is not the heat of the engine. The engine could be at normal temperature, but if the vehicle is drawing in, let us say, atmospheric air at 1<sup>0</sup>, the EGR system will respond to that 1<sup>0</sup> rather than the temperature of the engine itself.

**Q407 Chair:** Could Skoda have passed the type approval test without the defeat device?

*Ian Yarnold:* I cannot answer that, because I have not seen the actual total emission.

**Q408 Chair:** Who would know? Mr Higgs, do you know?

*Ian Yarnold:* If we have that information we will be able to provide it to you, but I do not think we have it.

**Q409 Chair:** Can you provide that information to us?

*Ian Yarnold:* I will provide what we have, Chair, certainly.

**Q410 Chair:** But shouldn't you know the answer to this?

*Ian Yarnold:* The purpose of the vehicle test was to see how the cycle was responding. We can show very clearly the difference between when the system was operating and not operating. As the Minister said—

**Q411 Chair:** I want the answer to the question; I do not want you to tell me about the process by which you come to the answer.

**Ian Yarnold:** Your question was should I have known, and I do not know because I do not have that information in front of me.

**Q412 Chair:** Mr Higgs, can you help us?

**Paul Higgs:** We would have to have removed the defeat device or calibration. We tend to talk about a device but it is actually a calibration. We would have to have removed that and then redone the test as normal to see if it still passed.

**Q413 Chair:** Would you be able to give us the answer to the question?

**Paul Higgs:** We would have to ask them to remove the defeat device without putting it right, and then retest it to see if it still passed.

**Q414 Chair:** At the moment, with the information you have now, you do not know the answer. Is that what you are saying? You are shaking your head. That does not go down on the record.

**Paul Higgs:** Sorry. The purpose would be that they have, as part of the fix, to meet the test without the defeat device. We would have to ask Skoda to supply a vehicle without the defeat device but not fix it, so that we can retest it to see how bad it would have been, or if it would have passed.

**Q415 Chair:** Are you going to do that? Is that in the plan?

**Paul Higgs:** It seems an odd thing to ask them, because the idea is that they are going to fix the actual device they had fitted by removing it and then recalibrating the engine.

**Q416 Chair:** Skoda vehicles were tested in the UK, weren't they?

**Paul Higgs:** They were tested in Europe.

**Q417 Chair:** Were they tested in the UK? Who did the testing?

**Paul Higgs:** They were not tested in the UK. The test was carried out by our designated technical service.

**Q418 Chair:** Who tested them?

**Paul Higgs:** It would have been TÜV SÜD.

**Q419 Chair:** Where are they based?

**Paul Higgs:** They are based in Germany.

**Q420 Chair:** Was any testing carried out here?

**Paul Higgs:** No, not on the original approvals.

**Q421 Chair:** On any approvals?

*Paul Higgs:* Not on Skoda vehicles.

**Q422 Stewart Malcolm McDonald:** Minister, has Volkswagen done anything illegal?

*Mr Goodwill:* Their vehicles are certainly not compliant with the type approval and the lab test. It would be for a court to determine whether the word “illegal” should be used. Certainly a defeat device is not within the legislation. Other manufacturers have used systems in their vehicles to shut down some of the NOx mitigation equipment, which is within the rules. We are in the tax evasion and tax avoidance situation. Certainly Volkswagen has used an evasion system.

**Q423 Stewart Malcolm McDonald:** A scandal broke several months ago and the Minister responsible has not made an assessment as to whether or not the law has been broken.

*Mr Goodwill:* They are not in compliance with the regulation. As I say, it would be for a court to determine whether an offence had been committed, but certainly what Volkswagen has done is not within the framework of the legislation. What the other manufacturers are doing is within the framework of the legislation, because they are using the clause that says that, if you turn off the exhaust gas recirculation system to protect the engine, it is within the legislation. Higher temperatures in a combustion chamber produce NOx. Unlike sulphur, NOx is not in the fuel; it is in the atmosphere. High temperatures in a combustion chamber are efficient temperatures but also produce high levels of NOx. In order to reduce the amount of NOx produced, you can deplete the oxygen in the combustion chamber by injecting some exhaust gas. That exhaust gas means you then get a cooler burn and less NOx produced. The problem is that, at low temperatures, that gas will contain ice particles that could damage the engine; they could certainly damage the valves that control that system, and therefore manufacturers are legally using an engine management system that turns it off at lower temperatures. What we are not sure about is to what extent those temperatures may be higher than they need to be. It would certainly prolong engine life. Ice crystals going into the engine itself would be very damaging.

I have written to the Commissioner asking her to look at this. I said: “It is crucial therefore that current regulatory measures are updated quickly to ensure there is complete transparency in how these systems operate and their effect on emissions in different conditions such as temperature. The real driving emissions testing is a valuable and significant contribution to reducing emissions, but we are sure that changes to the core regulations are needed to ensure the type approval system is completely robust.” That is what we picked up in our testing. We tested the same vehicle at a low temperature and at a more ambient temperature, and the emissions were much higher at the low temperature. In the majority of cases, those emissions were higher than the 0.8 or 1.8 levels for Euro 6 and Euro 5, so we have a lot of non-compliant vehicles out there using this loophole.

**Q424 Stewart Malcolm McDonald:** It is well known, Minister, that the German Government and the German Chancellor are feisty advocates of Volkswagen and of the German car industry more widely. You said in answer to a question you were asked earlier



that you had spoken to the German Secretary of State for Transport three times. What did you discuss?

**Mr Goodwill:** It was more than three times, I think. We discussed how we would, first of all, co-ordinate the testing that is being carried on, on a sort of “If you show us yours, we’ll show you ours” basis. We were able, with a very limited number of people in the Department and in the German federal transport department, to look at the results we got. We were encouraged by the level of agreement.

**Q425 Stewart Malcolm McDonald:** Were you leaned on at any point?

**Mr Goodwill:** No, definitely not. They are as keen to find out what is going on as we are. Yes, the German motor manufacturing industry is very important to Germany, but the British manufacturing industry is important to this country, as are air quality and public health. We need to ensure that we can fix this problem and work with the industry to ensure that they can help. Obviously Volkswagen is a German company. They do not produce diesel cars in the UK; they produce petrol cars, of course. Indeed, if you buy a Ford Focus diesel, yes, it will be produced in their plant in Cologne, but it will have a British engine. There are a lot of British engines going into cars in Germany and vice versa, as we discovered when there were problems across the channel last summer when plants in both countries were at risk of closing because of that—

**Q426 Stewart Malcolm McDonald:** You said in answer to a question you were asked earlier that your primary objective was to get the vehicles fixed. While I do not think anyone in this room would not want you to pursue that objective, are you not just kicking the consumer issue into the long grass and passing the ball to the Serious Fraud Office and the Competition and Markets Authority? Having been in correspondence with both of them, I have to say that they both seem totally uninterested in getting to the bottom of this. At what point do you step in and say, “Bang heads together; get this sorted. I want to know if we can take these people to court and I want a judge to make a decision on this”? When are you going to do that?

**Mr Goodwill:** You should think carefully about who the injured parties in this matter are. To some extent, you could argue that people who bought a Volkswagen car in good faith are an injured party. It may be that their car has depreciated. It may be that they are very keen on having as green a car as possible. Of course, my concern primarily is for the injured parties who are the rest of us, breathing the air from those vehicles. That is why we need to get those cars fixed as much as possible.

**Q427 Stewart Malcolm McDonald:** It is also why you have to take Volkswagen to task though, isn’t it, so that this sort of thing does not happen again? At the minute, it seems that we are taking a very soft line in comparison with other countries around the world. When are you going to knock heads together?

**Mr Goodwill:** In terms of the United States, the problem that Volkswagen have is with their regulation.

**Q428 Stewart Malcolm McDonald:** We have just discussed all of that.

*Mr Goodwill:* For diesels and petrols, they are saying that their cars cannot comply in the United States; there is not a fix there to put them right.

**Q429 Stewart Malcolm McDonald:** How many conversations have you had with the Serious Fraud Office and the Competition and Markets Authority?

*Mr Goodwill:* I have not spoken to them—

**Q430 Stewart Malcolm McDonald:** You have spoken to the German Government but not to our own agencies here in the United Kingdom.

*Mr Goodwill:* I have spoken to the Dutch Government as well. I have tried to speak—

**Q431 Stewart Malcolm McDonald:** But not our own agencies here in the United Kingdom.

*Mr Goodwill:* I have tried to speak to the French Government but they are less forthcoming. There is a lot of testing going on around Europe, but, as I say, my primary aim is to get those cars fixed and then to move forward.

**Q432 Stewart Malcolm McDonald:** You have not spoken to the two agencies here in the United Kingdom that you claim have responsibility for investigating this to determine whether or not it should go to court.

*Mr Goodwill:* No, I have not, and I do not think it is my role to speak to them at this stage in the situation.

**Q433 Stewart Malcolm McDonald:** Has any Transport, DFT official or Minister had any discussions?

*Mr Goodwill:* Not that I am aware of. I have of course spoken to the Commission at length. Indeed, in April last year, before this situation became apparent, we were already working very hard to get these real-world testing systems in place. We have an agreement on that. The way to prevent this happening again is to ensure that we have a robust testing system in real-world conditions, which will not then allow the manufacturers to revise for the exam, in effect.

**Stewart Malcolm McDonald:** I agree.

**Q434 Chair:** Do you agree with the Commissioner that Volkswagen purchasers should be compensated here? You have spoken to the Commissioner about other things, but do you agree on that?

*Mr Goodwill:* I have not spoken to the Commissioner about compensation. I have spoken to the Commissioner about how we get real-world testing.

**Q435 Chair:** But do you agree with the Commissioner's views on compensation?

*Mr Goodwill:* I think Mr Yarnold wants to comment.

**Q436 Chair:** I am asking you as Minister. Do you agree with the Commissioner's views on the need for compensation?

**Mr Goodwill:** I think compensation is a matter for the courts. In my view, as I have said already, there are a number of injured parties. Arguably—it would be for the courts to decide—my concern is for the injured parties who are the people breathing in the atmosphere.

**Q437 Chair:** But is it exclusively for that? Do you not see your role as being in any way whatsoever involved with questions of compensation?

**Mr Goodwill:** As the Transport Minister involved with these regulations and rules and the work with the motor manufacturers, I do not see it as my role to take forward litigation against a number of manufacturers.

**Q438 Chair:** Or expressing a view on the subject.

**Mr Goodwill:** We have had a number of cases in this country where vehicles have been defective, sometimes in a way that was dangerous, and the manufacturers have had compulsory recalls to put those right. We now have a voluntary recall on Volkswagen Group cars and I believe it is important that we get those fixed as quickly as possible. Then we need to think how we can actually get to—

**Q439 Chair:** We accept that. I am just asking you this: are you saying that you do not see it as your role to make comments about compensation?

**Mr Goodwill:** Compensation would be a matter for the courts to decide.

**Q440 Chair:** But you do not think you should express any view about the desirability of compensation.

**Mr Goodwill:** I am not a lawyer so I am not able to comment in any detail, but you would have to demonstrate material loss before compensation could be claimed. That may be for a number of issues, including depreciation in the value of the car. It could be for the time that you do not have the car when it is going into the garage to be done. A lot of the debate is about brand management, and certainly Volkswagen Group are very keen to ensure that their brand continues to be one that people can trust. They are going to have a lot of work to do to get that trust back. Some of that may involve interaction with their customers.

**Chair:** That is the case, but there are other things. I'll come back to that later.

**Q441 Robert Ffello:** The DFT is being phenomenally complacent about this. It is a bit like saying we will have the Met Police stopping any HGV that comes into London and checking it over, but we will not enforce any penalties against them if they have done anything wrong. If you have enforcement and you have the rules, making sure that VW and others are complying with those rules, you then have to have the penalties. If the DFT is sitting there saying, "Well, we are more interested in getting it sorted out and fixed than in taking any sort of action," that is frighteningly complacent, surely.

**Mr Goodwill:** I would not accept the criticism that we have been complacent. We are the first member state to publish detailed results of our testing programme. We have ensured





that the problem that Volkswagen has been found guilty of is not widespread across the industry. It is only the Volkswagen Group that has been using defeat devices in that way. I believe that we acted quickly. Other member states who also have motor manufacturing have not embarked on this level of detailed testing overseen by a—

**Q442 Robert Ffello:** The DFT has done some testing. We have heard about that ad nauseam almost. In terms of the powers that the Secretary of State for the Department has, in relation to the 2009 regulations, or in terms of talking to the Serious Fraud Office, why has the DFT singularly failed to take any of those options?

*Mr Goodwill:* The Serious Fraud Office is itself able to take action, as is the Competition and Markets Authority.

**Q443 Robert Ffello:** But the DFT has not approached them to say, “Put down whatever you are looking at, at the moment; pick this up and have a look at it.” The DFT has just washed its hands of it; it is not interested.

*Ian Yarnold:* Mr McDonald asked this earlier. When you asked your question you used the word “officials” among who was contacted. The Department’s lawyers and my experts, the engineers, have provided information to the CMA, so we have had conversations with them, but obviously it is for them to decide how they take the issue forward.

**Q444 Stewart Malcolm McDonald:** Was that a ministerial instruction? It does not sound to me as though it was.

*Ian Yarnold:* Everything we do is under the guidance of Ministers.

**Q445 Chair:** We heard from the previous panel that the Department needed to make more information available to assist a possible action against Volkswagen. Would the Department be willing to put whatever information was required in the public realm to enable that to take place?

*Mr Goodwill:* We published our information on Thursday. The detailed tabular information will be made available in due course, but we have made it available in such a way that members of the public and politicians in Committees like this can easily understand what has been happening. We are in a much better position now to know what has been going on than we were a week ago.

**Q446 Chair:** When is due course? You said you would be making things available in due course.

*Mr Goodwill:* As I say, we are providing information to the CMA.

*Ian Yarnold:* In terms of making the information available, this would be the underpinning information for the test report. We expect to do that probably during May. I cannot give you a precise date because of all the various publication processes. There is no intention to hold any of the information back.

**Q447 Chair:** We just want an idea of the timescales.

**Mr Goodwill:** Until last Thursday we were not aware whether this defeat device type of strategy was being used across the industry. We have now isolated it to Volkswagen Group, but we have identified that there are other mechanisms being used that are temperature dependent, which means that a number of vehicles on the roads are not performing anything like as well as we expected they would or should perform. We expected some discrepancy between the lab, which is very artificial, and the road, but it is far worse than that. I am very disappointed indeed that these vehicles are not performing as they should, and I am determined to make sure that they carry out the fixes as quickly as possible. The Secretary of State has written to some of the major manufacturers about this to see if they can look at how those vehicles can be modified. They are not breaking any rules, but they need to bring them up to scratch. We will move forward with our real-world testing, coming in next year for new models and in 2019 for all vehicles, which will ensure that we are testing cars in the sorts of situations, environments and driving conditions where consumers would use those cars. There will be no further opportunities for use of the artificial test to skew the figures.

**Q448 Robert Flello:** Minister, consumers listening to this will be incredibly confused as to what the situation is. On the one hand VW are saying that, yes, they have used defeat software but they would still have passed the tests. The DFT is saying that it has not actually checked to see if that is true or not, but has just taken their word that they would have passed anyway because real-world testing shows something else. A consumer is thinking, “Hang on, is this car compliant or not? Would it meet the emissions test or not?” They think that perhaps these VW cars have passed the emissions test, yet now some of them are having to have something inserted in the airflow as a fix. That suggests that they cannot have been fine to start with, because if you were a manufacturer you would simply say, “They passed the test anyway and that’s the end of it.” What is going on? How can consumers have any sort of confidence?

**Mr Goodwill:** You talk about passing the emissions test. It is passing the test cycle in the lab, which is an entirely synthesised situation.

**Q449 Robert Flello:** Indeed, but to pass that some of the cars have to have something in the airflow.

**Mr Goodwill:** Obviously all the vehicles on the road have had to pass that test. The problem is how they are performing in real-world driving conditions and why that is not as good as we expect.

**Q450 Robert Flello:** The problem is whether, if they had got rid of the defeat software, those cars would pass the test. It sounds like they would not.

**Mr Goodwill:** You would assume, yes, that they would pass the test.

**Q451 Robert Flello:** Then why are you requiring VW not only to remove the software but to put some sort of sensor or device in the airflow?

**Mr Goodwill:** The vehicles passed the test because they recognised they were being tested. If the test cycle is the same, it would make no difference at all whether it was a vehicle that had been modified. There may be a slightly different fuel consumption on them.

**Robert Flello:** You can see why the consumer would be very confused.

**Q452 Chair:** Could you give us an answer as briefly as possible, please, because we want to move on to other questions?

**Ian Yarnold:** I will try, Chair. My understanding is that VW in its evidence to this Committee questioned the legality of it. I think it said that it believes its system is legal.

**Q453 Robert Flello:** Is legal?

**Ian Yarnold:** The device; it is compliant. That is the issue about whether it complies or not. Your point is that, if it complies in terms of the emissions values when the device operates, why are we bothering to recall all those vehicles? On the basis that VW has voluntarily said it is going to do all this, my assumption is—

**Q454 Robert Flello:** But the Minister has told the Committee he is putting all his energies into making sure—

**Ian Yarnold:** I am just trying to answer your question, which is that the vehicle does not comply when it does not have the device operating. You asked me earlier, Chair, whether I had that information, and I do not.

**Chair:** You are saying that is the answer. I am going to move on now.

**Robert Flello:** VW has obviously misled us.

**Q455 Iain Stewart:** Minister, you have said on a number of occasions that your priority is to get the Volkswagen vehicles fixed. What assessment have you made of Volkswagen's programme, which commenced a couple of months ago, for calling the cars in to be fixed? Are they on schedule?

**Mr Goodwill:** They have not fixed any cars yet, I am disappointed to announce. They will need to have their fix approved by us before they do it, to ensure that it fixes the problem. They have already contacted the owners of the cars to let them know that they will be called in. As I say, it will be a fairly straightforward job to re-programme the software.

The challenge for us is to ensure that people take their cars in. The cars are still perfectly operable. People will not notice when they drive them around that they are not performing as they should in terms of NOx emissions. We are looking at ways of encouraging people to bring them in. One of them may be using the opportunity of the MOT test, which of course does not happen until a vehicle is three years old, to give them a reminder at that point. We do not have legislation in place to fail a test if the fix has not been done, but we can use that opportunity to put an advisory on their MOT certificate saying, "This vehicle has not yet had its fix." Of course, a lot of the vehicles will be done in due course as they go to the dealer for service. They will have the fix done while they are there.

Generally with other recalls we have had a high level of uptake, but we need to make sure that the people who do not see it as a priority can be encouraged to do that. If other ways become apparent that we can also help that to happen, we would be happy to look at those.

**Q456 Iain Stewart:** There is no compulsion to have this fix done.

**Mr Goodwill:** There is no compulsion. It is not a safety-related recall. There is no compulsion and there is no legislation in place for us to compel people to do this, but, as I said, the evidence from previous recalls has been that there were high levels of uptake. We are looking at ways of getting the reluctant few, who may not comply, to do that, possibly through using the opportunity of the first MOT to remind them. If they are taking their cars into their main dealer's garage, they will do it as part of the service anyway.

**Q457 Iain Stewart:** You say there is a very high take-up. Roughly what percentage will have this done, do you think?

**Mr Goodwill:** We normally get 80% take-up on other types of recall, but we want to ensure that as many as possible of these vehicles are done.

**Q458 Iain Stewart:** Potentially up to a fifth of the vehicles affected will never be fixed.

**Mr Goodwill:** Yes. If we have records of which vehicles have been fixed and which have not, we could use change of ownership as an opportunity to write to the new owners and say, "By the way, your car has not been done yet, so please get it done." We are looking at that. It may be that somebody is planning to sell their car anyway, so they do not see it as a priority, but I suspect that the new owner would want to get the car fixed. I am confident that people will. I have spoken to a number of Volkswagen and Skoda owners, who have been very keen to get those cars sorted out as quickly as possible.

**Q459 Mark Menzies:** Throughout this, Minister, has Volkswagen furnished you, the Department and your officials with all the information you have requested?

**Mr Goodwill:** Yes.

**Q460 Mark Menzies:** Now that we have established that NOx emissions are 12 times higher—

**Mr Goodwill:** In some cases.

**Q461 Mark Menzies:** In some cases 12 times higher than Volkswagen themselves were putting out there in terms of official data—

**Mr Goodwill:** That 12 times higher refers to a number of things. It has to be said, if you look at our data, that Volkswagen Group are not the worst offenders in terms of NOx emissions. Although what they are doing is not within the rules, in some of the legal engine management systems, including the exhaust gas recirculation being turned down at low temperatures, Volkswagen are not the worst offenders in relation to a number of the vehicles that have been tested, when you look at the raw data. We only had a small number; we tested 47 vehicles at different temperatures. We were not aware at the



beginning that temperature would have such a dramatic effect. Now we are in a position to carry forward additional testing to try to refine things a bit further.

**Q462 Mark Menzies:** That is interesting. We may return to some of those other people in a second, Minister. We have now established that we are looking at NOx emissions 12 times higher than in the official data in some cases.

*Mr Goodwill:* Than the standard. They have had to meet the standard in the lab.

**Q463 Mark Menzies:** What impact do you believe this has had on public health?

*Mr Goodwill:* I think it has had a bad effect on public health. We need to reduce the levels of a number of pollutants, including NOx. Over the last 20 or 30 years, we have seen dramatic reductions in NOx emissions, probably 70% reductions. We were slightly perturbed as to why this was not coming down quicker. You may be aware that there are a number of areas of particular interest in air quality not far from one of our major airports. We were wondering why the air quality had not improved more. We put it down to the fact that people were not buying new cars because of the recession. We put it down to driving behaviour and a number of other issues. We are now in a good position to know that it is because a number of diesel vehicles are not complying with the sort of levels we had expected. Therefore, it is very important that we use the new testing regime on the road, and any new regulation that we can bring forward, to ensure better levels of compliance to bear down on air quality.

Overall, there is a very good story to tell. Sulphur emissions have come down by 95%. Particulates are down dramatically. There is no lead in petrol any more. I do not think people out there should think that the air is dirtier than it ever was, because in most cases it is dramatically cleaner, but in the case of NOx the improvement has not been as good as we forecast. We now know the reason why: vehicles in the real world are not performing anything like as well as they do in the lab. We expected them to be slightly less effective in the real world, but the factors of non-compliance that we have seen are very high. They are complying with the regulations, but the levels of emissions in the field are much greater.

**Q464 Mark Menzies:** That is right, and they do not comply because there has been a deliberate attempt by Volkswagen to deceive you, the Department for Transport, this Committee and the people of this country. There has been a deliberate attempt to deceive.

*Mr Goodwill:* Yes.

**Q465 Mark Menzies:** They have fitted defeat devices.

*Mr Goodwill:* Yes.

**Q466 Mark Menzies:** When the representative from Volkswagen UK came before this Committee the first time, he was led very much by PR people, so we had all the mea culpa and how sorry he was. The second time it was led by lawyers and it was, "We have done nothing wrong." Yet we know that they have done something wrong. We know they set out to deceive. We also are at a point where the Serious Fraud Office is looking at them and the Competition and Markets Authority is looking at them. We see compensation being

offered across the globe, but we somehow think it is acceptable to sit back and allow a company that deceives this Committee and the people of this country to continue to get away with their deception.

We know that under the 2009 Act the Government have the ability to prosecute. Can I follow up from where Mr Merriman left off and ask: do you not think that Her Majesty's Government have a duty to stand up for the people of this country and actually bring a prosecution? Let's test it in the courts; let Volkswagen stand before a court in this land and justify what they have done to the people of this country.

*Mr Goodwill:* There are a number of legal avenues open to the Government through the Competition and Markets Authority, the Serious Fraud Office and the legislation that you mentioned. Certainly all these are under consideration.

**Q467 Mark Menzies:** Minister, it has to be more than under consideration. The people of this country will not accept a situation where they look across the globe and see Volkswagen being held to account, when they know that there are powers open to Her Majesty's Government to bring Volkswagen in this country to account and we let them get away scot-free. It looks as though we do not take it seriously, and we do not value the people of Britain, or it is all too much trouble. I know you are an absolutely outstanding Minister. You work incredibly hard. Can I put one more thing on your "to do" list, and that is to make sure that Volkswagen are held to account? It cannot be acceptable that a representative from Volkswagen can come before this Committee and on both occasions completely change their whole view as to what Volkswagen has done. We are not interested in a puff piece. We are interested in action. Minister, I call on you to ensure that action is exactly what happens.

**Chair:** You have given us the impression, Minister, when other members asked a similar question, that you do not see it as your role to become involved in this. Do we have a wrong impression?

*Mr Goodwill:* The detailed data that we now have only became available on Thursday. We only saw the detailed German data on Friday. It is now Monday. In terms of legal processes, we need a little bit more time to see what is happening on the data. There would need to be proof of an intent to defraud in order to bring action forward. Certainly my officials who are doing this work, both in the VCA and within the Department, are very keen to provide whatever information might be needed to bring action.

**Q468 Chair:** Does this mean that the work is ongoing and you are not ruling out becoming involved in encouraging an action to compensate consumers who have been, at least, misled?

*Mr Goodwill:* As I say, in my view the injured parties in this are the people in this country who breathe air. I am on my bicycle—

**Q469 Chair:** Mr Menzies's question was how you see your role as Minister in relation to this.

*Mr Goodwill:* To make sure that the information we have gathered is available to those who would look at the legal context and see what action can be taken.



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**Q470 Chair:** You would make all necessary information available.

**Mr Goodwill:** It may also be that the Commission themselves, who are the guardians of the treaties and who are charged with making sure that EU legislation is complied with, will wish to take action, because these cars are being sold not just in the UK or Germany but across the European Union.

**Q471 Chair:** The Commissioner has already called for compensation. Do you agree with that statement?

**Mr Goodwill:** If the Commission has called for that, it is important that it looks at what sort of compensation might be payable.

**Q472 Chair:** But you have more powers as Minister than the Commissioner does in this regard.

**Mr Goodwill:** I am not legally qualified. However, in order to get compensation in a court of law you need to demonstrate material loss. It may be that, because the value of these vehicles has depreciated more than otherwise, there is a material loss. It may be that the inconvenience of having to take your car to the garage and losing the use of it for a day is a loss, although if you are provided with a courtesy vehicle it may not be such a loss. In order to get compensation, one has to demonstrate loss. That might be something that the individual user of a car takes legal advice on.

**Q473 Chair:** That is correct, Minister, but the question is how you see your role as Minister in relation to assisting people who may wish to pursue such a claim. Have you said that you will make all relevant information available?

**Mr Goodwill:** Yes. We are publishing all the information we have, which people may use.

**Q474 Chair:** That is a start.

**Mr Goodwill:** It may also be in some cases that the vehicles operating without the NOx mitigation systems operating are getting better fuel consumption than they would with the systems operating. In that case, people may actually be better off in pure monetary terms because they get more miles to the gallon than they would otherwise. That is something else that would be very interesting to investigate. By and large, certainly when you talk to the heavy goods vehicle manufacturers about the systems they have—particularly the selective catalytic reduction systems—there is a hit on fuel consumption. Indeed, when those systems first came in, a number of truck operators were getting their vehicles re-chipped to turn off the system so that they could get better fuel consumption. In terms of the loss, it may well be that a number of those vehicles have been operating without their exhaust systems and catalytic systems working and are getting better fuel consumption and therefore they have not had a loss. In fact, they might be slightly in pocket in terms of fuel consumption.

**Q475 Chair:** But the question is how you see your role as Minister in assisting a potential compensation claim.

**Mr Goodwill:** My role is to provide all the information we have. We are going to continue with further testing. I have asked my officials to look at the German data to see if we can

format it in a more easily understandable way. I am very pleased that the report we have produced is very easy to understand and makes clear what has been going on. Some of the other data I have seen—

**Q476 Chair:** What further testing?

**Mr Goodwill:** We have further budgets to test further cars. We have spent about £1 million so far, which is more than we expected. We have had to retest some vehicles, and we intend to carry on with that, with a similar additional amount of money.

**Q477 Chair:** You are going to continue testing.

**Mr Goodwill:** We are going to continue testing. We were completely in the dark, as I say, until this came out, mainly because the equipment was not available to stick in the boot of a car driving on the road as it was with trucks.

**Q478 Chair:** But you are doing more testing and you will make the information available.

**Mr Goodwill:** We are doing more testing.

**Ian Yarnold:** The programme will be a market surveillance programme. We will be looking not just at vehicles from the market but new vehicles before they come in. We will also be looking at components. We will be implementing a broader programme.

**Q479 Chair:** You are expanding the testing that the Department already does.

**Ian Yarnold:** We are taking a slightly broader approach. We are not necessarily going to carry on doing exactly what we have done in this programme. We will be looking at a broader range of issues, but continuing a market surveillance programme.

**Mr Goodwill:** There is a whole area of durability testing. When vehicles come off the production line they are brand-new and everything works. How will those vehicles continue to perform on the roads of our country when they have done 30,000 miles, 60,000 miles or 100,000 miles? The current regulations ensure that the vehicles will continue for about 100,000 miles.

**Chair:** There will be some further questions on that specific point.

**Q480 Graham Stringer:** What estimates have you made of the number of people who have died because these defeat devices were put in?

**Mr Goodwill:** I have seen figures with regard to the total number of people whose lives have been shortened by poor air quality. It would be difficult to come to any figure that you could scientifically be sure about as to the number of additional deaths, but there is no doubt—

**Q481 Graham Stringer:** Have you taken statistical advice on that?

**Mr Goodwill:** I have not taken statistical advice, no.





**Q482 Graham Stringer:** So you do not know, Minister.

**Mr Goodwill:** What I can say is that because air quality—

**Q483 Graham Stringer:** No; answer that question. I am asking if you have taken statistical advice. You are a farmer and not a statistician, so you actually do not know the answer to that question.

**Mr Goodwill:** We got information last Thursday that indicated that a number of vehicles are not performing as well in practice.

**Q484 Graham Stringer:** That is not the question. I said the number of people who have died because these defeat devices were there. I would think that, if you were serious about representing the people who have had to breathe this filthy air, you would want to find out that figure, to take some kind of legal action. You are telling us that you have not even taken statistical advice to try to find out if you could ascertain that figure. Is that correct?

**Mr Goodwill:** What we can say with a degree of certainty—

**Q485 Graham Stringer:** Is that correct?

**Mr Goodwill:** It is correct that we have made no calculation of the—

**Q486 Graham Stringer:** But you have not even tried to make the calculation. You have not asked for those figures.

**Mr Goodwill:** We were only in a position last Thursday to understand exactly what the level of emissions was from those cars. We know the ambient levels of NO<sub>x</sub> in the atmosphere. We know there are a number of areas in the country where we have hotspots for high levels of pollution, particularly in the—

**Q487 Graham Stringer:** That is not relevant to the question.

**Mr Goodwill:** The calculations have been done with a degree of certainty as to what the effects on human health are in areas where we have high levels of NO<sub>x</sub>—

**Q488 Graham Stringer:** That was not the question I was asking, and I suspect you know it, Minister.

**Mr Goodwill:** The figures that I have seen published are in connection with the levels of NO<sub>x</sub> pollution we have here at the moment. We can say with a degree of certainty that, if the cars had been cleaner, that figure would have been lower. There is no doubt about that.

**Q489 Graham Stringer:** That is not an answer to the question I was asking. The Secretary of State, when he came to this Committee previously, said, “Let me just say that I think they have behaved in an appalling way. These devices were made illegal in 1998. It is fairly unbelievable to think that a company of the size and reputation of VW have been doing something like this and finding ways around regulations. I think they are going to suffer very

substantial damage as a result, and they deserve to, quite honestly.” What has changed since the Secretary of State made that statement?

*Mr Goodwill:* Nothing has changed in terms of what the Secretary of State said. What we—

**Q490 Graham Stringer:** You are following a ministerial line. You have said that you are not prepared to say that what Volkswagen has done is illegal or not. You have said it a number of times to both Mr Menzies and Mr McDonald. The Secretary of State was unambiguous that what they have done is illegal. What has changed in the departmental policy?

*Mr Goodwill:* Nothing has changed at all.

**Q491 Graham Stringer:** You accept that these devices are illegal.

*Mr Goodwill:* They are outside the regulations and therefore by definition—

**Q492 Graham Stringer:** That is not what the Secretary of State said.

*Mr Goodwill:* He said they are illegal.

**Q493 Graham Stringer:** They were made illegal in 1998.

*Mr Goodwill:* Yes. They are not in compliance with that particular regulation, so by inference you could use the word “illegal”, but it would be for the courts, I think, to determine whether or not that was an illegal use of a defeat device. We have demonstrated through our testing that these defeat devices have been used by Volkswagen. It was very simple to demonstrate. We just did the test the other way round and the vehicles behaved in a completely different way.

**Q494 Chair:** But going back to Mr Stringer’s question, are you saying that being outside the regulation does not make something illegal?

*Mr Goodwill:* As I say, it would be for a court to determine whether they viewed that as being illegal or not.

**Q495 Chair:** What is the standing of a regulation in terms of—

*Mr Goodwill:* Our view is that they are breaking the regulations, but those of us who have experience of protracted court cases will know that lots of arguments are deployed by lawyers, so to tell you whether that is illegal it would need to come before the courts, and it may well be the European Commission that takes that action. It is their regulation they have been breaking.

**Q496 Graham Stringer:** It seems to me—I would like you to comment on this point—that you are more concerned with protecting the reputation of Volkswagen into the future than you are about punishing Volkswagen that has poisoned the people of this country.

*Mr Goodwill:* My primary consideration is to make sure that these cars, many of which are out there on the roads of our country and may well continue to be there for a number of

years, are fixed. Volkswagen has made it clear that there is a fix available. Indeed, we have demonstrated through our testing that the cars can perform very well when the system is turned on. When the defeat device turns the system off, they do not perform as well. Our priority is to ensure that these vehicles get fixed as quickly as possible so that the emissions they are producing are no longer produced, and indeed, moving forward, that new vehicles, when they are type approved, go through a test that is more relevant to normal driving conditions. Therefore, these arguments about defeat devices could not be deployed, because the vehicles will not be able to recognise that they are on test.

We need to move forward further to ensure that some of the other systems that are being turned off for reasons of engine protection can be fully operable. It may well be in many cases that some of the manufacturers will need to use new technology, such as the systems used on heavy trucks; they use AdBlue, where ammonia is used as a reagent to reduce the gases, the oxalate and nitrogen, to enable them to be cleaner. This will be a good initiative for the industry to take, to deploy new technology in their vehicles to make them cleaner still. Instead of trying to pass the test, which is an artificial test, they will need to perform on real roads.

**Q497 Graham Stringer:** Can you tell me why you did not answer the question as to whether or not you were protecting the reputation of Volkswagen as opposed to punishing Volkswagen for poisoning the people of this country?

**Mr Goodwill:** I have no remit for any of the motor manufacturers in Germany or in the UK. My remit is to ensure that we get clean cars on our roads, which means we get better health for our people. Indeed, it may well be, as we have seen in other situations, that bringing forward the tightest regulation means that the manufacturers who have the highest levels of research and development and can produce to those regulations are the successful manufacturers. It is a great opportunity for British business to get ahead of the curve and make sure that their cars are in the absolute forefront of clean vehicle technology.

**Q498 Chair:** Doesn't the Department have the power to bring a case if it wanted to?

**Ian Yarnold:** As Mr Merriman said earlier, the Road Vehicles (Approval) Regulations 2009 set out the requirements and penalties in certain circumstances, as you described.

**Q499 Graham Stringer:** I have to say, just before I ask my final question, that the very expensive lawyers who were sat behind the witnesses from Volkswagen will be popping very expensive bottles of champagne tonight after this performance, Minister.

A final question I would like to ask is this. Isn't part of the problem, beyond defeat devices, of why there is now so much NO<sub>x</sub> in our atmosphere the priority that was given, under a Labour Government as it happens, to focus on carbon dioxide and not NO<sub>x</sub>? Would it not have been better to focus on NO<sub>x</sub> emissions, which are much more poisonous gases, whereas carbon dioxide is plant food?

**Mr Goodwill:** I think the champagne order at Volkswagen Group was probably cancelled some time ago; they are in a very bad place in a number of countries around the world.



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**Q500 Graham Stringer:** But not in this country, Minister—they're laughing.

*Mr Goodwill:* The fact that our research, which we published on Thursday, demonstrated that only Volkswagen Group was using a defeat device of this kind is no cause for any celebration by Volkswagen. They are not in compliance with the regulation. They were the only company that we found to be using this type of defeat system, and therefore in my view they are in a very bad place.

**Mark Menzies:** So prosecute them.

**Robert Flello:** But they are not being held accountable, are they?

**Chair:** One at a time.

*Mr Goodwill:* As I say, we have had four days since we have seen the results.

**Q501 Graham Stringer:** Can you answer the last question, please?

*Mr Goodwill:* Mr Stringer, you are absolutely right: we set very tough CO<sub>2</sub> targets in terms of reducing greenhouse gases and combating global warming. Indeed, as you say, one of the strategies to combat this was the switch to diesel. It was as a result of the 2001 pre-election budget when low-sulphur diesel was reduced by 3p a litre and there was a tremendous incentive to get more people to use diesel cars. Indeed your own colleague, the Member for Brent North, Barry Gardiner, said there was “no question that the decision we took was the wrong decision.”

Let us not forget that, in parallel with the increasing use of diesel vehicles, at European level we introduced tougher and tougher standards on NO<sub>x</sub> emissions; Euro 5 was 1.8 mg per kilometre and Euro 6 was 0.8 mg per kilometre. If those tough levels had been complied with, we would have seen reductions in NO<sub>x</sub> at the same time as we saw reductions in CO<sub>2</sub>. The surprise was, looking at ambient levels of NO<sub>x</sub> in our cities, why it has not come down quicker. We now know the reason. While the cars were performing on the test in the lab, they were not performing on the roads for a number of reasons, including the reason that Volkswagen is now charged with. We need to ensure that with real-world testing, which we have agreed and which will be coming in next year, we will not be in that situation any more. When the vehicles are tested, they will be tested in the same sort of situation as in normal use. The industry must respond to that. It is a challenge to them. They must respond to it, otherwise they will not be able to sell diesel vehicles.

**Q502 Chair:** How much is the Department spending on emissions testing?

*Mr Goodwill:* We spent £1 million on this particular programme. As I say, we have another £1 million in the pipeline for further such testing. A lot of the testing that is carried out in terms of type approval is financed by the industry through VCA.

**Q503 Chair:** What percentage is financed by the industry?

*Mr Goodwill:* The industry finances the type approval testing. We deliberately took the decision not to involve the industry in this. We did not ask them to provide vehicles. We selected them from some Government fleets. We ensured that they were not part of the

testing process, because we wanted to make absolutely sure that they could not bring influence to bear on the choice of the vehicles.

**Q504 Chair:** Don't you think that there is too close a connection between the vehicle industry and testing?

**Mr Goodwill:** I have been hearing some criticisms of the VCA in terms of its being too close to the industry because the industry is paying for the testing. Indeed Mr Higgs might want to say a word after this. I have to say that I think you are barking up the wrong tree. I think that would be to underestimate the professionalism of VCA and its opposite numbers in other countries that also carry out testing. When you take your own car for the MOT, you pay the garage to do the test. Nobody is suggesting that the garage will pass your car when it should have failed because you paid them. Nobody is suggesting that, when you pay to take your A-levels, the examination board will pass you because you have paid for the test. It is absolutely right that we expect the industry to pay for the testing of its vehicles. It is also absolutely right that we have the independence of the VCA to make sure that those tests are done properly.

**Q505 Chair:** But isn't it the case that the VCA is in fact conducting testing as well as assessing the results of it? It is looking at certification but it is also testing. We are told that there is some kind of wall between the two, but surely it is much too close: two things in one agency.

**Paul Higgs:** I would suggest that as a type approval authority we are obliged to issue a valid type approval certificate when presented with evidence that a vehicle, system or component has met the regulatory standard. In the VCA's case, as with one other authority in Europe, we actually conduct and manage the testing as well. I do not see that that is necessarily a conflict of interest, or too close to industry.

**Q506 Chair:** Not necessarily, but it could be seen as a conflict, couldn't it?

**Paul Higgs:** In a scenario where a third party presents us with evidence to suggest that a vehicle has passed a test but we have not had any kind of direct viewing of that vehicle, I do not know how that is going to prove the case.

**Q507 Huw Merriman:** Following on from that, the perception could be that doing the test and also marking it is every student's dream. You have to have very strict firewalls in place, particularly because the amount of money that the VCA gets from the industry has increased. What firewalls do you have to make sure that no conflicts can occur?

**Paul Higgs:** In VCA, the testing is undertaken by qualified type approval engineers. They undertake the managing and the witnessing of the tests. They use test reports that are designed and developed with the TSG team within the VCA, who are separate. The team that actually checks and monitors the test reports that come in is separate from the test engineers. They ultimately issue the approvals based on the information presented—evidence presented that a vehicle has passed and met the regulatory requirements. The other consideration is that VCA are not “No pass, no fee.” You get charged whether the test is passed or otherwise. We are a not-for-profit organisation; we are part of the Department for Transport. We are subject to third-party reviews from external sources.

**Q508 Huw Merriman:** But given the heightened sense of anxiety that this issue has caused for the market, do you not believe, notwithstanding the firewalls are in place, that perception is more important than reality and you should be focusing on one part and not the other?

**Paul Higgs:** I do not see that, no.

**Q509 Chair:** It is true, isn't it, that you are competing against other vehicle certification approval authorities. You are in a competitive situation trying to attract more business from manufacturers. Surely that gives you at least an incentive to be favourable to manufacturers.

**Paul Higgs:** We do not necessarily compete like that. As the approval authority—

**Q510 Chair:** But you are, aren't you? You say "not necessarily" but you are; you are in that situation.

**Paul Higgs:** Manufacturers are free to go to any type approval authority in Europe.

**Q511 Chair:** That is exactly the point I am putting to you. You want to attract their business, so aren't they likely to seek out the most favourable authorities for them?

**Paul Higgs:** I do not see that that would be the case; otherwise we would have all the business.

**Q512 Chair:** It might not work out quite like that, but you are in a competitive situation.

**Paul Higgs:** We are regarded within the industry as being quite robust, generally speaking.

**Q513 Chair:** But you can see why these question marks are over the current situation, can't you?

**Paul Higgs:** In which case, would you look at the German model or the Dutch VCA model?

**Q514 Chair:** That is for another question: what else might substitute for what there is now, or what changes might be made. I am saying to you, and I think really you are confirming it, that there is a potential conflict of interest, isn't there?

**Paul Higgs:** No, I do not see that.

**Q515 Chair:** You are testing and you want to attract manufacturers to give you their business. You are then certifying what is right.

**Paul Higgs:** We are not after their business. They come to the VCA because normally within Europe it usually comes down to a question of logistics. Manufacturers in the UK will tend to use the type approval authority and/or technical services in the UK. The type approval activity and the witnessing that we do tend to be fairly short pieces of activity within the overall vehicle homologation cycle. If, for example, we operated out of Japan,



we could fly engineers out to do the small pieces of test management and witnessing of tests, but we would spend more time in the air than actually checking the vehicles. Hence if we are local, we can manage it that much easier. We can support UK manufacturers in the UK readily, because we are based in the UK.

**Q516 Chair:** The European Commission thinks there is a problem, doesn't it? That is why it is proposing changes.

**Paul Higgs:** We have seen some of the proposals that have been put in place, but they have not actually put in place much detail around what those proposals are going to look like.

**Q517 Chair:** Do you think they are right to be looking at this area?

**Paul Higgs:** I think we would be very open to looking at a more robust process, more challenge and more audit critique, yes.

**Mr Goodwill:** It is important to recognise that it is only the UK and the Netherlands that have a Government agency that oversees these tests. In other parts of Europe it is more commercial. Looking at our results in terms of the temperature dependency of some of these cars, we need to be very careful that people don't just take their cars to Spain to get tested in the summer. We need to look at how we can ensure that the temperature variations we have seen do not result in people playing the system and going to a country where it is hot to test their cars. We are just becoming aware that this is something where we need to work with the Commission, to ensure that vehicles are tested in a place that is robust. I am confident in the professionalism and integrity of the VCA in carrying out this testing. I think we have one of the best regimes in the European Union.

**Q518 Mark Menzies:** Clearly, from listening to the Minister, and from previous discussions, I know he has ensured that the Department has done a lot of work to investigate the level of Volkswagen's deception. How much money has that cost the UK taxpayer in terms of all these reports, investigations, testing and so on? Ballpark, how much?

**Mr Goodwill:** We have spent about £1 million on the most recent level of testing. We are looking at just a bit more than £1 million to go.

**Ian Yarnold:** The work that comprised this report is just on £1 million for all the testing and the independent validation. The work you just described is the market surveillance programme for the coming year.

**Q519 Mark Menzies:** The total cost of this to the taxpayers of the UK will be roughly £2 million.

**Ian Yarnold:** I could not say.

**Mr Goodwill:** Ballpark, yes.

**Q520 Mark Menzies:** Ballpark, £2 million. Well, I have good news for you, Minister. When Mr Willis first came before us I asked about this: if there was any loss to UK

taxpayers as a result of the actions of Volkswagen, would Volkswagen UK compensate UK taxpayers? It is on the record. It was an unequivocal yes. Can I suggest that the UK Government approach Volkswagen UK and ask them to write a cheque for £2 million? Anything other than a yes, people out there will not understand. An offer has been made by Volkswagen. A commitment has been made to ensure that UK taxpayers are not out of pocket. We have to get that money back off them, because that is £2 million we cannot spend on nurses, doctors and schools.

*Mr Goodwill:* Four of the 37 cars we tested were Volkswagen Group cars. The remainder were cars from other manufacturers, so I can exactly understand the point you make. I have heard what you said and I will look forward to a cheque arriving from Volkswagen for at least the proportion of the testing that was their cars, but maybe they would like to contribute a bit more.

**Q521 Mark Menzies:** I am sure the media organisations out there, Minister, will be ensuring that Volkswagen is held to account on this and pays the UK taxpayer. This is one that is not going to go away. If Volkswagen are nice people, they could start tonight by compensating UK taxpayers and getting that cheque in the post.

*Mr Goodwill:* I have been very disappointed by the way that Volkswagen has communicated with people. I remember at your first Committee hearing they sent somebody who didn't know much. I understand more about vehicle management technology and exhaust systems than the guy they sent. They have not been prepared to be up front. We have now, through the testing we have done, shown what is going on. Now is the time for them to be much more proactive, ensure that we understand exactly what has been going on and fix the problem.

I know members of the Committee are very keen that the Government, car owners or people in general are compensated, but my primary objective, as I have said more than once, is to get this problem fixed. It is not only Volkswagen cars but, looking into the future, the other cars that are using other engine management systems to not perform as well on the roads of our country as they do in the lab.

**Q522 Mark Menzies:** To be really clear, and so that we are in absolutely no doubt, you as a Minister and the Department for Transport will take up Mr Willis's very generous offer when he first came before us, and ensure that the UK taxpayer is not out a tuppenny-ha'penny and that this is going to be pursued.

*Mr Goodwill:* I will send him a transcript of this conversation and see what his reaction is.

**Q523 Mark Menzies:** I am sure that media organisations in the UK will make what they will of Mr Willis's first offer.

*Mr Goodwill:* In terms of the financing of this testing programme, at the onset, for the reasons we have just described with the VCA, I made it absolutely clear that the testing should be taxpayer funded because we did not want any suggestion that the industry was involved in this. We took the vehicles at random without them knowing which they were. They had no chance to prepare them. It would have been very easy to say to the manufacturer, "Provide us with a car please, and we'll test it." That could have resulted in criticism that they had doctored the car.





**Q524 Chair:** Minister, if you consider that to be so important, and it is very important, why did the Department end the in-service surveillance programme in 2011? That was stopped, wasn't it? That was when the Department itself did a check on manufacturers to make sure that there was a consistent standard. Why did you suddenly stop funding it?

**Mr Goodwill:** We have discussed that, and the reasons are that basically we were not finding out anything that surprised us.

**Ian Yarnold:** When we did that, we redirected the funding to new areas. The experience we had of the testing we had done from around 2006 showed that it yielded very few problems with the vehicles we were testing, because they were being tested in laboratory conditions.

**Q525 Chair:** Instead of doing different testing, you stopped testing.

**Ian Yarnold:** No. We redirected the resources to different areas of the surveillance programme. We moved to look at catalytic converters, motorcycles, and so on.

**Q526 Chair:** But at that stage, if you found that the testing was not producing the desired results, why didn't you look for the possibility of deception?

**Ian Yarnold:** We did not have the instrumentation that is available now for us to be able to do it.

**Q527 Chair:** But at that stage why didn't you think a little deeper about what might be wrong? If you were testing and it was not producing the right results, why didn't you wonder whether there was something untoward going on?

**Ian Yarnold:** You are concluding that the testing we did didn't produce the right results.

**Q528 Chair:** Well, that is what you have just told us.

**Ian Yarnold:** No. What I said was—

**Q529 Chair:** You told us that was why you stopped it.

**Ian Yarnold:** What I said was that the results did not show that there were any problems in the marketplace, or very few. I think there were one or two vehicles over quite a considerable number of tests that we completed. Therefore, the decision was taken to redirect the resources, the same amount of money, to different areas of the vehicle technology area.

**Q530 Chair:** But you did not discover any deception, or any problems or disparities between the lab testing and performance on the road.

**Mr Goodwill:** At that time, the market surveillance testing was done in the lab because the equipment was not available in a compact enough form to go into a car boot. All the testing was carried out in the lab, unlike, as I said, in heavy trucks where you could stick it on the back of a truck and they were tested. That is why we have seen very high levels of compliance. It is only since the advent of equipment that will fit in a car boot that we have



been able to test vehicles on the road, which is why this problem with Volkswagen came to light. At the time that programme was discontinued we had no option to test vehicles in any other way. The level of compliance in terms of vehicles being selected at random and tested was very good. We were confident that the vehicles were performing in the lab as well as they had been when they were initially type approved.

**Q531 Stewart Malcolm McDonald:** Mr Higgs, the VCA's time as tester and regulator has to be up, surely. It would be madness to continue in the way that it does at the minute, don't you think?

**Paul Higgs:** No, I disagree.

**Q532 Stewart Malcolm McDonald:** If you disagree, and you think that the current model is fit for purpose, which presumably you do—the Minister seems to be nodding in your defence—

**Mr Goodwill:** Very much so.

**Q533 Stewart Malcolm McDonald:** Talk me through what policies you have in place to ensure that you do not have this revolving door between industry and the VCA. That would stop the idea that you are too close to each other. What policies do you have to stop people leaving the VCA and then going off to advise Volkswagen or whoever?

**Paul Higgs:** In that scenario what would ex-VCA employees be advising VW or others?

**Q534 Stewart Malcolm McDonald:** I have no idea; I do not work for Volkswagen. You get the crux of my question. What policies do you have in place?

**Paul Higgs:** I get the crux of the question, but, as I said before, the idea is that manufacturers present their vehicles for testing; we then test and witness the vehicle and it either passes or it does not pass the legislative requirements.

**Q535 Stewart Malcolm McDonald:** You do not have any policies in place at all.

**Paul Higgs:** Policies? I don't—

**Q536 Stewart Malcolm McDonald:** I am referring to a question that the Chair of the Committee put down to ask the Secretary of State for Transport and his Department about the VCA's policy with regard to staff who leave the VCA and then go and work for vehicle manufacturers. Do you keep a register as to what people go off and do, or anything like that, in the way that, for example, Ministers are supposed to declare that? If you have been the Health Secretary or the Transport Secretary, for example, it would be a bit gauche to leave and go off to work for some private health firm or for Volkswagen or whatever. There is nothing to stop that churning between industry and the VCA, is there?

**Paul Higgs:** No.

**Q537 Stewart Malcolm McDonald:** Do you think it would help if there was something?

**Paul Higgs:** Do you think it would help if we had public—

**Q538 Stewart Malcolm McDonald:** A yes or no will do.

**Paul Higgs:** No.

**Q539 Stewart Malcolm McDonald:** You do not think there is a problem with independence in terms of the relationship that you have. You do not think that the millions of pounds you have received over the years from the industry is a problem. Am I right in thinking that?

**Paul Higgs:** For confirming that their vehicles as presented meet legislative requirements?

**Q540 Stewart Malcolm McDonald:** Yes. Obviously you do not think that is a problem, but if it is not a problem, why did it take independent researchers to uncover this scandal and not the VCA or another similar organisation?

**Paul Higgs:** Were the independent people you mention testing against the regulatory norms?

**Q541 Stewart Malcolm McDonald:** Why did the regulators not notice it? Why did the VCA not pick up on this?

**Paul Higgs:** Pick up on what?

**Stewart Malcolm McDonald:** The use of defeat devices.

**Paul Higgs:** A vehicle manufacturer presents a vehicle and then says, “Does this meet the requirement?” We check it and it does, and then we say arbitrarily, “Tell you what, let’s go off and do a lot more testing”—not at the customer’s expense; it must be at the taxpayers’ expense in that case—“to see if it may or may not do things when you are not on the test.” Is that what you would like us to do?

**Q542 Stewart Malcolm McDonald:** But it passed your tests because it had a defeat device and you did not notice.

**Paul Higgs:** We were not checking for a defeat device.

**Q543 Stewart Malcolm McDonald:** Would you have noticed it anyway?

**Paul Higgs:** In the particular case that we are talking about, as I have said in previous comments, we would not have found it. No one else in Europe found it. Technical services that are nothing to do with the VCA whatsoever did not find it. EPA in the States did not find it.

**Q544 Stewart Malcolm McDonald:** You are almost making my point for me.

**Paul Higgs:** What? That somehow, if we did not have technical services ourselves, and only with a token of authority, when presented with a document looking very similar to a

document I can show you in a few minutes that has on the top a test report that met all the requirements, we would somehow not approve the vehicle?

**Ian Yarnold:** May I just make an observation? I think there is a difference between the role of the VCA, which is a test and certification body, and the way you described it, which is as a research and investigation body. With respect, you are linking the two together. You are saying: should VCA have investigated alternative ways of assessing a vehicle, when their role is actually to follow the legal text and report on that?

**Q545 Stewart Malcolm McDonald:** What has to change then?

**Ian Yarnold:** I do not know that anything has to change.

**Q546 Stewart Malcolm McDonald:** So we just keep going the way we are going now.

**Ian Yarnold:** You have to recognise that there are different functions. The VCA is a test and certification body. What we talked about a moment ago, and what the Minister mentioned, is a market surveillance programme. That market surveillance programme, which we are just moving forward with now, will start to uncover if there are any similar practices across a range of vehicle functions. That is a research and investigation programme specifically looking at non-compliance.

**Q547 Stewart Malcolm McDonald:** Finally, to go back to the question I was asking a moment ago, in terms of the churn of people between industry, regulators and testers, how common is it for VCA engineers, for example, to go and work for vehicle manufacturers, and vice versa?

**Paul Higgs:** I could not really comment. We do not have a huge churn of engineers at VCA for sure, compared with industry, for example.

**Q548 Stewart Malcolm McDonald:** Is it common or not that common?

**Paul Higgs:** If you look at the number of engineers we have and the number of engineers that leave, they tend to leave to go to the automotive industry, because that is where their professionalism lies.

**Q549 Chair:** I want to go back to real driving emissions tests, Minister, because you have stressed that you want to make things better and that that is the focus of your concern. There have been criticisms of the new proposals. It has been alleged that they are too generous to manufacturers. I am referring specifically to what is known as the conformity factor—the degree of latitude allowed by the manufacturers in not meeting the standards that are required. The Commission wanted one level of latitude and the UK Government wanted to extend that and give the manufacturers more latitude in not meeting the new standards that are now being proposed. Why did you pursue that? Why did you want more laxity when you are so concerned about making the new testing better?

**Mr Goodwill:** We already understand that the real-world testing tests cars in a much more realistic situation than in the lab—



**Q550 Chair:** But what about the conformity issue?

*Mr Goodwill:* And, therefore, one would expect that to have the same level of performance in the lab as on the road would not be a realistic read-across. You would expect that on the real road the performance would be less good. Therefore, we had to agree what level of conformity you would need. We agreed that it would be 2.1, starting next year for new type approved vehicles; 2.1 for all vehicles by 2019; and 1.5 in 2020. That takes into account the margins for error, because we have seen with the lab tests that it is very accurately replicable. It can be repeated again and again and you get the same results, whereas—

**Q551 Chair:** But why did you want more laxity than the Commission wanted? That is the question.

*Mr Goodwill:* Because we wanted to make something that was achievable and that would actually reflect the difference, which everybody accepts, between performance on the real road and in the lab, and we believed—

**Q552 Chair:** What scientific evidence is there that the laxity that you proposed, and in fact achieved, was better than the proposals from the Commission? What was the scientific base for that?

*Mr Goodwill:* As you will see from our testing, Madam Chairman, we tested vehicles that passed the test in the lab, and their levels of compliance on the road were in some cases much greater. As I say, it was as high as 12 times.

**Q553 Chair:** But that is not what I am asking you. What is the scientific basis of the change you made to the Commission's proposals?

*Mr Goodwill:* It is based on a level that we think is realistically achievable and broadly comparable with the performance in the lab.

**Q554 Chair:** Where is the evidence that your proposals, which were in fact carried, were scientifically sounder than the Commission's proposals?

*Mr Goodwill:* This was agreed by a number of member states who had their own data on which to base that. We feel that it was a sensible step that would be achievable. The main thing is that we have a level that is both ambitious, to enable the new technology to be deployed, and achievable.

**Q555 Chair:** What did the DFT data show? Did the DFT have any data?

*Mr Goodwill:* In the end it was a compromise, and we agreed that it was a reasonable compromise. Indeed, a number of—

**Q556 Chair:** But does the DFT have data on this issue?

*Mr Goodwill:* Looking at the results—



**Q557 Chair:** Does the DFT have data on this issue?

**Mr Goodwill:** We have data that we published on Thursday that show the level of current compliance.

**Q558 Chair:** No, that is not the question. Minister, can we focus on the very specific question that I am putting to you? Does the DFT have data to support the proposal that extended the amount of latitude to be allowed by manufacturers in not meeting the new standards? Does the DFT have its own data to show that it was right?

**Mr Goodwill:** At the time this was agreed there was not a large amount of data available to demonstrate clearly what level of performance in real driving conditions would need to be set to be comparable with the lab test. We are now in a much better position to know what is happening. In fact, if you look at the results of the tests we have carried out, it is a very ambitious target indeed. Very many vehicles are way beyond compliance, and they will have to look at new technology on those vehicles to get them to comply. While we were at the time—

**Q559 Chair:** That could well be, but what I am trying to establish is whether the DFT had its own scientific data that justified the proposals that were eventually carried, and it appears to be the case that the answer is no. Am I right?

**Mr Goodwill:** We did not have the data on which to base this. This was a negotiation, so there were a number of—

**Q560 Chair:** I know there is negotiation, but I am asking what the scientific data behind that was, or was there any?

**Ian Yarnold:** Just taking a step back, we had a clear ambition to get to 1.0. You mentioned earlier a conformity factor of 1.0 and that is what our position was. I think the date the Minister said was January 2020, and January 2021 for the different situations with the vehicles. It was a judgment call based on discussions with DEFRA and with other Government Departments about the trajectory to get from where we are now to where we want to be, and what the appropriate steps along that journey—

**Q561 Chair:** It was a judgment call. Is that what you are saying? I just want to establish that.

**Ian Yarnold:** It would be the evidence from DEFRA's modelling about where we are, where they need to be for the ambient air quality issues and how quickly we felt we could get there.

**Q562 Chair:** What difference will the new regulations in RDE make to emissions, and to NOx emissions specifically? Have you done any modelling on that?

**Mr Goodwill:** They will reduce them. In terms of what is actually happening out on the roads, they will reduce them dramatically. We had assumed that the relation of NOx emissions in real driving conditions compared with the lab was pretty much on the same scale as CO<sub>2</sub> emissions on the road as compared with the lab. We all know that our cars generally do not perform as well in terms of fuel consumption as the test. What we have discovered is that NOx emissions in some cases are way above. We thought this would be

an ambitious target for the industry to meet. Now we believe it is a very ambitious target for them to meet.

**Q563 Chair:** What will the reduction be? You used the word “dramatically”.

**Mr Goodwill:** For them to comply—as I say, some of these vehicles are 12 times over the current limit—they will be limited to 2.1 times the limit, which takes account of the read-across from the lab test and the real-road test, which we know about, and of the difficulty in repeating exactly a real-world driving test and a test in the lab. That is why, after 2020, we have this 0.5% margin of error.

**Q564 Chair:** You said that some vehicles were 12 times over the limit. Is that using the same methodology as will be used in the new testing regime?

**Ian Yarnold:** As far as we can judge at the moment, the Commission’s approach has been to introduce real driving emissions with four separate measures, or packages, as they call them. We now have the test procedure, the conformity factors and the dates. There is another package that we expect to be agreed over the summer, and then a final package, hopefully, this year. The third package is the final package in terms of being absolutely clear on what the legal obligation for new vehicles will be. As soon as we get that completed, we will have absolute clarity. The testing that we have done for this report has been on our best approximation of what that will look like, but it is firmly based in the European proposals and we used the post-processing applications from the European Commission to ensure that our data was correctly handled.

**Mr Goodwill:** Given what we have learned, we also need to talk about temperature because it is much more critical than we thought. We need to make sure that we do not have a situation where the temperature that the test is carried out at can affect the result.

**Chair:** Thank you very much.