

Business, Energy and Industrial Strategy Committee

Oral evidence: The safety of electrical goods in the UK follow-up, HC 2468

Tuesday 23 July 2019

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Members present: Rachel Reeves (Chair); Vernon Coaker; Stephen Kerr; Peter Kyle; Antoinette Sandbach.

Questions 153 - 235

Witnesses

I: Lynn Faulds Wood, author of *UK consumer product recall: An independent review*.

II: Kelly Tolhurst MP, Minister for Small Business, Consumers and Corporate Responsibility, Department for Business, Energy and Industrial Strategy; Graham Russell MBE, CEO, Office for Product Safety and Standards.

Examination of witness

Witness: Lynn Faulds Wood.

Q153 **Chair:** Thank you very much, Lynn Faulds Wood, for coming to see us this morning on this important issue of product safety, particularly around Whirlpool tumble dryers. You published your report in February 2016.

Lynn Faulds Wood: It was published.

Q154 **Chair:** Yes, it was published in February 2016. In June 2017, you criticised the lack of progress made in improving product safety. Why do you think that progress has been so slow, Lynn?

Lynn Faulds Wood: Can I give you one line on who I am? I have worked with consumer Ministers many times over the years. The first was Michael Howard, 30-plus years ago, who created two laws out of the work that I did. I have helped create laws and standards over the years, so this is what I do. "Potential death traps" is what they used to say about me on television. Why has it been so slow? I wish I knew. There has been so little notice taken of what has been said and done, in my opinion. In my report there were special creative funding ideas, none of which was taken up. There were all sorts of ideas, because they said to me there would be no new laws or new money, so I took that into account.

Q155 **Chair:** Your report suggested there was an independent official national product agency. You suggested something along the lines of the Food Standards Agency. Does the OPSS do what you recommended in your report?

Lynn Faulds Wood: I do not think so. I was given about 40 stakeholders. We had regular meetings. By the way, all of this was voluntary for the stakeholders as well, so there has been a huge voluntary effort here that has not been funded much. Just ask me your question again.

Q156 **Chair:** You suggested something along the lines of the Food Standards Agency. Does the OPSS do that?

Lynn Faulds Wood: I suggested something more independent than that, like they have in Australia, Canada and the United States. However, the FSA was set up nearly 20 years ago, and it is very cleverly set up to be transparent. All of its business is online, so that people can watch it. I do not think the OPSS is transparent. I have found it difficult to find a lot of their investigations or inquiries and their results. I am not sure it can be justified to be constantly told, "It is low-risk". I would like to see those reports openly.

Q157 **Chair:** Is the problem for you that it is still within the Department. Would you like to see it at arm's length?



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Lynn Faulds Wood: That is what we all wanted to see. That is why it was called an “agency”. The FSA is at arm’s length. Yes, it should definitely be at arm’s length. I was concerned, because they rang me on the day that the OPSS was to be announced. I had to take an urgent call and they told me it was being launched to the press on the Sunday. This was the Friday morning. There was something called the Better Regulation Delivery Office, and I thought that it was a huge surprise that the name of this business-facing part of Government was to be changed, over the weekend, to the Office for Product Safety and Standards. I felt that was not the way Government should be doing open and transparent business.

Q158 **Vernon Coaker:** Good morning, Lynn. You have talked a lot in the past about the establishment of a national injury database, which is not there. Can you say a bit to us about why it is so important to have that?

Lynn Faulds Wood: Every pen in the world has a little hole in the top, because children used to get them stuck in their throat and die. For a lot of the things I did, I looked at the database and found injuries and deaths, particularly to children. I had a baby myself at the time. That resulted in a lot of improvements in safety, laws and standards. That was based on hospitals. I do not think that is a 21st-century solution. As part of the review, I went to see the insurance industry and said to them, “I have cases such as two little babies, who have been catastrophically injured for life from the same accident. They are costing £30 million. What about putting a penny into product safety and sharing?” I spoke at the first world safety conference in Stockholm and found out there about an insurance agency, called Folksam, which worked with the Government and pooled data.

Vernon Coaker: This is in Sweden.

Lynn Faulds Wood: Yes, in Sweden. They have changed a lot of the injuries that were happening. Motorcyclists was a big one; all the padded clothing comes from them. I felt the insurance industry could have an enormous benefit from being involved in this. It was very interested but, unfortunately, when I proposed this, I was told not to take it any further. I was willing to do it in my own time.

Q159 **Vernon Coaker:** Why do you think there was that reluctance there? Did you have any sense of why that was?

Lynn Faulds Wood: I am trying to be non-political here, because I have worked with Ministers of all complexions, but I was appointed under the coalition Government and I fully expected my work to be stopped, but it continued. I spent nine months working on it. When I put in my report in October 2015, I was invited to meet the Minister—not the present one—to be thanked for my work. She had no idea why I was sitting in her office and was very dismissive. When I told her what my review was about, what the recommendations were and why it was so important, I



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was told, "We need a longer meeting about this". I never got that longer meeting.

- Q160 **Vernon Coaker:** When the London Fire Brigade gave evidence a couple of weeks ago, it insisted on the importance of a database to track trends. It is almost a no-brainer to have that. It also talked about indelible marking to track. Is that something you have seen evidence of or would support as well?

Lynn Faulds Wood: It is really important. It is how you find out why cars catch fire. One reason I was appointed was that cars were catching fire, and you can find out quickly what is wrong because you have the tracking number. I went to see universities such as Brunel, because they can get together with others. If you give them a problem and say, "Solve it", they will have a doctoral group who works on it. Possibly because I am Scottish, all the time I was trying to find free or cheap solutions to what was going wrong. That was something else that I am afraid was not taken up.

- Q161 **Vernon Coaker:** Your evidence to the Committee is that the establishment of a database would be really important and that there should be an indelible marking on products, so you can track trends.

Lynn Faulds Wood: Yes, and a database would also help. I have just spent a weekend in Wales with some friends. I said, "Have you got a tumble dryer?" "Yes". "What is it?" "It's a Hotpoint". "Have you ever checked if it is on the recall list?", and they did not really know about this. These were people who work at a high level in culture and news. I said, "If you knew there was a recall going on, would you expect to be the person who delves around and finds out what is wrong?" They said, "We would expect the shop that sold it to us to warn us if there is a safety issue", and they had never been warned.

One of the problems at the moment, if I could be allowed to divert into that, is that we talk about Whirlpool all the time, but people say to me, "I do not have a Whirlpool machine". I have just been to America, where Whirlpool makes a very different, probably better-made, much heavier machine than we have here. That is one of the problems for the Committee.

- Q162 **Antoinette Sandbach:** Your report called for a well-trusted and well-publicised Government website, where consumers could register their product without fear of being marketed to.

Lynn Faulds Wood: If you do not mind me saying, I was not calling for a Government one; I was calling for a Government-backed one. I do not know that Government should be making databases for consumers. That, again, should be at arm's length. It is a surprise to me that, three and half years later, we do not have a database like that. I have been trying to find it myself without having the link and it is very difficult for people to find out what is going on. I have dyslexia in my family and a lot of people cannot wade through the information to find the bit they want.



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Q163 **Antoinette Sandbach:** AMDEA offers a Register My Appliance website. Is it adequate?

Lynn Faulds Wood: Can I ask the question: has anyone registered their appliances on it?

Chair: I did, but only after this.

Lynn Faulds Wood: You are the first I have met.

Chair: It was only after doing this inquiry that I thought it might be a good idea.

Lynn Faulds Wood: The problem for me is that, when they first told me about it, they had set up their marketing departments. All credit to them for trying, but there was nothing about safety on there. People were in the hands of the marketing department then. They changed that but, at the same time, it needs to be independent and it should not be paid for by marketing money. We should not have to opt out to avoid getting marketing materials.

Q164 **Antoinette Sandbach:** Should that happen at point of sale?

Lynn Faulds Wood: I cannot understand why, for everything we buy of a certain price on a card, we cannot share that information, if there is a safety issue.

Q165 **Antoinette Sandbach:** What is your view of the way in which the OPSS has handled the Whirlpool dryer issue?

Lynn Faulds Wood: First, I did not think it was the right way for it to start in life, and I still have criticisms about it. I do not think it has been handled well. I have made television programmes—"Watchdog", "World in Action", breakfast television and so on—and the first thing I would have wanted was a list of the machines. Then people watching could see a roller and whether their machine is on it. I do not know whether the fire brigade has that list yet. Which? says it never got it. I do not understand why that list was not available, for starters, and then there ought to be a button checker, so you can find out right away if your machine is one of the affected ones. In the early days, people would wait a year to have their machines modified. Several things could have been done better by OPSS. One was to get Whirlpool to be more open about the information it has on the machines. Also, it is being called "Whirlpool"; it should list the names of the companies.

Q166 **Antoinette Sandbach:** I am pleased that you brought up openness, because we know that Whirlpool has used non-disclosure agreements. It has accepted that it has used NDAs with customers on at least 23 occasions. What is your view on the use of NDAs and the impact it has on product safety in the UK?

Lynn Faulds Wood: You had a witness in two weeks ago, Jemma Spurr. Her non-disclosure agreement did not appear to have the name of



Whirlpool or her product on it. It did not appear to her to have the name of who was issuing it to her, so it was very anonymous and that worries me. In my whole career, apart from trying to gag me, I have never noticed people being gagged with NDAs. That is effectively what an NDA does. What really annoys about the way people have been treated is that, even if they have insurance, they rarely get everything back, because of consequential losses.

Q167 Antoinette Sandbach: I am trying to get your view on whether it would have an adverse effect on product safety if people are not allowed to talk about their experiences or what has happened to them. Your programmes have relied on consumers coming forward and explaining the difficulties they have had with their products. Do you think that NDAs for consumer safety issues should be banned?

Lynn Faulds Wood: I have not thought about banning. Before I banned them, I would certainly like to have some kind of inquiry into why they are needed. Why do you need an NDA? They should voluntarily give it up.

Chair: The point Antoinette is trying to make is that, if people feel that they cannot speak about what happened to them, fewer people are likely to hear about it and check for themselves. Jemma's testimony was really powerful, both for this Committee and on television, and encouraged others to make those checks that could have saved them from the terrible situation she experienced.

Thank you very much, Lynn. That was helpful for the session we are just about to have with the Minister and the OPSS. We very much welcome the report you have done and, like you, would like to see it fully implemented. Thank you very much for your time this morning.

Examination of witnesses

Witnesses: Kelly Tolhurst and Graham Russell.

Q168 Chair: Good morning, Minister. Good morning, Graham Russell. We are keen, like you, to finish this session for 11.00 today, so we will try to keep our questions brief. If you can do the same with the answers, we will all win. Minister, what was the tipping point that made you order a full recall of the remaining unmodified tumble dryers that our Select Committee has been looking at for some time?

Kelly Tolhurst: Thank you, Chair, and thanks for the work you have done in the last few weeks leading up to this. As you know, the OPSS conducted a review of the Whirlpool programme. On the back of that, as you will have seen, it published a letter to Whirlpool in April, outlining the things we were asking them to do and making some recommendations. It had 28 days to respond. It responded and our officials in OPSS looked at



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it. We decided that Whirlpool's response was not sufficient for us, so we issued a letter of intent to ask for a recall. That is really what it was: we were not satisfied with the information that had been in the response from Whirlpool to our letter of April.

Q169 **Chair:** When Whirlpool gave evidence to our Committee a couple of weeks ago, it admitted that there might be 800,000 of these tumble dryers still in people's homes. Was that number a surprise to you?

Kelly Tolhurst: It was not necessarily a surprise. That was something we had estimated. We were estimating between 300,000 and 800,000, so we knew it was somewhere between those points. That is why I, as the Minister, am taking the matter seriously, as you would with that number of potentially unsafe pieces of equipment in people's homes.

Q170 **Chair:** You have said that Whirlpool will provide you with a weekly update on how the recall is going. Will you share that with our Committee?

Kelly Tolhurst: We are more than happy to update the Committee on what is happening with the recall. As you will know, the information that we are requesting from Whirlpool on a weekly basis in relation to the recall is being done under regulation 28. We will update you depending on what data we can share, because this is part of an ongoing legal process and breaches of that could result in criminal sanctions.

Q171 **Chair:** Do you mean breaches by Whirlpool?

Kelly Tolhurst: Yes, breaches by Whirlpool, because it is conforming to regulation 28. We will give you as much information as we can, as I am sure you will appreciate.

Q172 **Chair:** What are you looking for on a weekly basis—the number of tumble dryers that have been replaced or modified?

Kelly Tolhurst: We are monitoring how many are being modified, and the extended Q&A process we have agreed on the unmodified machines in people's homes, if that is part of the recall. Ongoing information and data will be sent to us. There is a list of things we have been asking for.

Q173 **Chair:** When Whirlpool gave evidence to us, it said that people can now get a replacement tumble dryer, rather than the modification, which is good news. Will you ensure that Whirlpool gives you weekly data both on the number of modified machines, as well as how many people have just had their machines replaced?

Kelly Tolhurst: Yes, absolutely. Part of our ongoing work is to ask for information around the whole marketplace, which includes how many are unmodified and modified. We need that information, because that is my way, as a Minister, to understand how this is working on the ground, whether further action needs to be taken by us and to monitor what is coming from Whirlpool.



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Q174 **Chair:** As you know, Lynn Faulds Wood gave evidence to us earlier. She gave her report to the Department and it was published in February 2016. Our Select Committee did an inquiry in 2017 looking into these issues. The OPSS was set up at the beginning of 2018. How long did it take the OPSS to do its review of Whirlpool's modification programme?

Kelly Tolhurst: The OPSS was set up in January last year and the review into Whirlpool was agreed in May.

Q175 **Chair:** Were you happy with the thoroughness and robustness of the OPSS review?

Kelly Tolhurst: Yes. From the evidence of the review I had seen, I was satisfied that the two objectives we had made for that had been looked at. That culminated in why we went back to Whirlpool with a letter asking for further information and things that we recommended or asked it to do.

Q176 **Chair:** Can I ask you about the difference between a review and an investigation? There was a review into the modified tumble dryers, but there was an investigation of the fridge-freezer that was identified as the initial cause of the Grenfell fire. Why did one justify a review and the other an investigation, given that a tumble dryer had caused a previous fire in Shepherd's Bush?

Kelly Tolhurst: There was a review because we knew Whirlpool had had an issue. It was a self-identified issue that Whirlpool had admitted to having with their tumble dryers and models. There was a recall process taking place, which they had instigated. The review that we carried out was on the back of complaints.

Q177 **Chair:** Why was it a review and not an investigation?

Kelly Tolhurst: It was a review into how the recall process was going. The difference is the investigation was into one particular incident around the tumble dryer that caught alight. We were looking at two different things: an incident investigation, and then a review into the recall. Obviously this had been raised by your Committee and my predecessor. Once the OPSS had been set up, it instigated or agreed to the review.

Q178 **Stephen Kerr:** These are questions to Graham, not the Minister. Apart from Whirlpool's data and the 20 modified tumble dryers you looked at, what evidence did you use to review the Whirlpool tumble dryer modification?

Graham Russell: We looked at a wide range of evidence, including the two areas you mentioned, as well as the Home Office fire statistics, the fire service's data, information from various people around consumer inquiries that they were kind enough to pass on to us—so a wide range of data that we could look at.

Q179 **Stephen Kerr:** Why did you not reply to the 6,928 people who emailed you about the inquiry?



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Graham Russell: They emailed us about the inquiry, as you say. If they had information and details about a concern about a tumble dryer, we responded to them. When they were talking about the inquiry more generally, we referred them to the results of the review.

Q180 **Stephen Kerr:** The 6,928 people were making general inquiries about the inquiry, rather than giving you specific information about their concerns about the safety of tumble dryers?

Graham Russell: That is my understanding.

Q181 **Stephen Kerr:** How did you challenge the data that Whirlpool gave you?

Graham Russell: We challenged the data in a variety of ways—analytical, engineering and we also employed independent experts. Since the review, we have had further advice from chief scientific advisers and others. We sought to challenge Whirlpool's data but, as will perhaps be clear, a lot of the data does come from Whirlpool.

Q182 **Stephen Kerr:** Did you use the London Fire Brigade data? Its report suggested that 16 modified tumble dryers had caught fire in London alone.

Graham Russell: We have used all the data that London Fire Brigade gave to us, yes.

Q183 **Stephen Kerr:** Two of the modified machines were missing the rivet to stop lint build-up. Did you follow up on this with Whirlpool?

Graham Russell: These are the machines that we purchased. We did not purchase them as a sample, because we were not doing that piece of work at that time. We purchased them to understand the engineering behind the modification, to ensure that what Whirlpool had told us about the engineering was actually being carried through in practice. Our engineers purchased these machines, stripped them down and looked at them. In doing that, we sought to understand how the modification was working in practice.

It is important to be clear that we were not able to trace the history of those machines, because they were bought online or through auction sites, so we were not able to establish when those machines were modified. We looked at whether the various elements of the modification had been carried forward and were still in place when we looked at those machines. As you say, of those machines, two did not have the rivet that was part of the modification programme. We have taken that forward with Whirlpool and it is why we require it to carry out further quality assurance work to ensure that the modification is carried out satisfactorily.

Q184 **Stephen Kerr:** What did Whirlpool tell you about the new machines with the modification? How many machines have now been manufactured with the modifications required to make them safer?



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Graham Russell: All the relevant machines that have been manufactured since 2015 have the modification built in at the factory, alongside other changes that Whirlpool makes as part of its design criteria, which were explained to you by Whirlpool when it was at the Committee.

Q185 **Stephen Kerr:** Why is the OPSS report so secretive?

Graham Russell: Which report, sorry?

Q186 **Stephen Kerr:** The risk assessment you did on the tumble dryers. For example, there was an FoI request made for the full risk assessment you did. Can you confirm that this request was refused and why?

Graham Russell: We have published all the data that we can, both at the end of the review and in response to freedom of information requests. We have had a number of requests on various things, and we publish all the data that we can, in the interests of transparency. At the conclusion of the review, we published a report on it and a risk statement, which we understand is in accordance with best practice and other regulators, such as the Food Standards Agency.

Q187 **Stephen Kerr:** Are you saying that you have published all of the information that would comprise a full risk assessment on these Whirlpool machines, because that is not what we have been told?

Kelly Tolhurst: We published a summary of the risk assessment. Some of the data provided from our research might be commercially confidential. However, we will always publish the information that we can under a freedom of information request. When it is part of an ongoing legal process, that may not be the case. We take it very seriously. I am very clear that we are not secretive. The way that I have been working with the OPSS has not been to hide information. In fact, it has been quite the opposite; we have challenged information, quite rightly, to make sure we are making the right decisions for consumers.

Q188 **Stephen Kerr:** The London Fire Brigade was clear with us that risk assessments of electrical products, especially those that might be involved in fires, should be shared with all fire safety organisations. Do you agree?

Kelly Tolhurst: I do not particularly know the documents that London Fire Brigade would have been asking for, but it is absolutely right. We work with all partners on sharing information. We have published a summary of the risk assessment. I need to stress that there is no desire to be secretive in this process, but we have to recognise we are in a legal process.

Q189 **Stephen Kerr:** We are in the business of keeping people safe though, are we not?

Kelly Tolhurst: Absolutely.



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Q190 **Stephen Kerr:** In their evidence session, we asked London Fire Brigade if it would automatically see a full risk assessment of white goods. It said, "We always share our data, lab reports, findings, research and everything we get. Unfortunately, I could sum it up to a zero, without looking to be flippant. Let me be clear: we want to be working with industry". Many members of the public, including me, will be astonished to discover that these full risk assessments are not automatically shared with fire safety organisations such as the London Fire Brigade. Surely that is not right.

Kelly Tolhurst: For risk assessments, we use EU RAPEX, which is a standard used by everybody across the European Union. There is a way in which we develop it, so it is a recognised procedure. As I have outlined, we need to work with all of our partners. Graham can give more detail about what has not been shared with London Fire Brigade.

Q191 **Stephen Kerr:** I will follow up on the very good point you made about RAPEX and will ask Graham a supplementary question in relation to it. Using the RAPEX methodology to evaluate the risks posed by Whirlpool tumble dryers, the risk came out as low. What does that mean in terms of the 1.7 million modified tumble dryers? How many of them would you expect to catch fire?

Graham Russell: Would it be convenient if I added something on London fire data and then answered your question? In terms of the question that you have asked about the London Fire Brigade, we share data as openly as we can, in particular with trusted partners such as London Fire. If we are talking about specific fires, what we and they know about them, that data is shared. When we have data from a company—and it is no different whether it is from Whirlpool or anyone else—if it is supplied commercially and confidentially, we will share what we can under law, but we are not necessarily able.

Q192 **Stephen Kerr:** You do not share the OPSS's full risk assessment of these tumble dryers with the fire brigade.

Graham Russell: We have shared everything that we can with London Fire Brigade with regards to that risk assessment.

Q193 **Chair:** Are you saying that Whirlpool is stopping you from giving all this evidence to the London Fire Brigade? Is that the blockage here? You want to share stuff, but you are worried there will be legal ramifications and that Whirlpool will take you to court if you share this information.

Graham Russell: We speak regularly to the London Fire Brigade and I am not aware of a request from it that we have not been able to satisfy. I saw the evidence they gave to your Committee and we have followed up since with them, and I am still not aware of any information that they need that we have that we have not been able to satisfy.

Q194 **Chair:** You are saying that you provide everything that you are allowed to provide, so you are not providing everything.



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Graham Russell: If there was a situation where the London Fire Brigade, in this case, was asking for information and we were not able to satisfy it, we would look into that. To the best of my knowledge, because we followed this up following the evidence I saw given to your Committee, there is no information that we have that London Fire Brigade needs.

Q195 **Chair:** You are saying that, when you are deciding what to share, you cannot share everything because of commercial confidentiality. Are you saying that?

Kelly Tolhurst: The difference is that any information or data that is related directly to particular incidents, or where there is consumer or product safety, will be shared. A lot of information that we get has other commercial parts to it. It is all a mix of data, so there will be, in some parts of the scope of the data, things that will not necessarily be material and may be confidential, which will not need to be shared. I have to make it clear that there is no situation in which we will not share data, because we may get into trouble. It is not that, whereas the OPSS would use data, as the regulator, to assess the other data it has been given. I need to make that clear. That is what I understand as the Minister.

Q196 **Antoinette Sandbach:** Who decides whether the information is commercial and/or confidential? Is it an assertion by the company, which is taken at face value by the Department, or an independent decision by the OPSS?

Graham Russell: We have to make a decision on whether information is commercially confidential. The company may have a view on that, but we have to make that decision.

Q197 **Antoinette Sandbach:** Do you have set criteria by which you assess whether it is commercial and confidential?

Graham Russell: We work in accordance with what the law sets out in terms of what we can obtain and publish. Our commitment is to publish as much as we can.

Q198 **Antoinette Sandbach:** Mr Russell, what I am trying to get at is that there must be a set of criteria by which you judge whether something is commercially sensitive or confidential. It would be helpful if you could write to the Committee and tell us what those criteria are.

Graham Russell: I certainly will do that, but, just to reiterate, they are what the law requires in terms of the information we receive, the gateway to refuse to receive it and the ability we have to pass that on.

Q199 **Chair:** Have you ever challenged Whirlpool and said, "We would like to publish this", and it has come back and said, "You can't".

Graham Russell: Where we have information that needs to be put into public domain, if Whirlpool—using that example—objected, we would challenge it.



Q200 **Stephen Kerr:** I have to say the evidence that we received from the London Fire Brigade was pretty black and white: "If they do not share anything with us, how can we nationally be alert to the issues to then feed back and help the risk assessment?" That is stark evidence from the London Fire Brigade.

Graham Russell: I will follow up with them again. I followed up after the evidence to your Committee and will follow up again, if there is information they think we are not sharing with them.

Stephen Kerr: There is a clear gap, from what I understand.

Q201 **Antoinette Sandbach:** What we are trying to drive at, Mr Russell, is whether you have disclosed enough information to allow an independent expert to look at the tests that you have run and come to their own conclusions as to whether those tests, or your assessments, should be challenged. In other words, if there was litigation around this, people representing consumers would have access to information to decide whether or not your assessment of risk is adequate and properly reached.

Kelly Tolhurst: There was a direction from the Secretary of State to form an expert panel, which includes independent counsel but also the chief scientific officer from BEIS, the Home Office and the Health and Safety Executive. That group has been looking at all the analysis from the OPSS and challenging that. That is a second level of assessment, analysis and challenge. From our point of view, that added another level, so we could be sure and had that independence or another view of what we were looking at and its outcomes. In my view, it has worked very well.

It is an ongoing process, so that expert panel will continue. All the time, we are continuing to analyse, look at and request data from Whirlpool. I am highlighting that we are at this point at the moment but this is ongoing. I know I have used the phrase before, but it is not job done; this is going to continue. There may be more action in the future. I cannot rule that out. What I will be driven by, and I am sure any Minister in this spot will be driven by, is trying to protect consumers. I will be quite clear: if there is any doubt that consumers will be at more risk and we can take action to resolve that, in this role I will do that. I have no fear of that.

Q202 **Stephen Kerr:** You just made a strong point, Minister. I would like to ask a question to Graham Russell. Leigh Day and the London Fire Brigade told us that, aside from the lint issue, there are a number of other safety concerns connected with Whirlpool tumble dryers, including faulty door switches and capacitors. Did you look at those issues?

Graham Russell: We are conducting inquiries with all white goods manufacturers, including Whirlpool, about all their sources of incidents in white goods. We have a broad white goods piece of work, which goes to all the suppliers. It includes Whirlpool and all the sources of incidents.

Stephen Kerr: You are currently looking at these issues.



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Graham Russell: We are.

Kelly Tolhurst: One of the recommendations in the letter that was sent out in April, on the back of the review, was that Whirlpool needed to do more around a piece of research investigating and understanding other causes of fire within their machines. That was part of that letter. The OPSS is carrying out its own work. It was a recommendation, but that is something that we will be continuing to monitor and review.

Q203 **Chair:** Minister, Whirlpool has told us that it will not release the forensic report to Jemma Spurr concerning the house fire caused by her modified tumble dryer. Do you think that UK citizens who have been victims of a fire have a right to know what caused damage to their homes and put them and their families at risk? Is it right that she has not seen that report?

Kelly Tolhurst: No, it is not right that she has not seen it.

Q204 **Chair:** The reasons we have been given are commercial interests and confidentiality, but this is a fire in her home. You have said, Minister, quite rightly, that safety must override all other things. Will you take this up with Whirlpool and ask it to release to Jemma Spurr and her family the report into what happened in her home?

Kelly Tolhurst: Yes, I will and you are right. I will take it up with Whirlpool. To be clear, anything that relates to the safety of individuals in their homes should not be kept from view of anyone, whoever they are—whether Whirlpool or any other kind of manufacturer. I am happy to do that.

Chair: Thank you very much. It will be interesting to see what reply you get.

Graham Russell: Can I add something to that? Obviously that is important for that individual and we will take exactly that action but, in terms of broader concerns about incidents and their causes, we have started a piece of work, with the London Fire Brigade, insurance assessors and other fire services across the country, to ensure that any fire that happens in any white good, in any consumer's home in this country, is properly investigated and we have access to the results. The local fire service will do that, we will fund an independent third party to do it or we will have access to insurance companies' results, but we are not happy with the level of data that exists at the moment, so we have now started that programme of work with the London Fire Brigade and other fire services.

Q205 **Chair:** As you know, Minister and Graham Russell, Jemma Spurr had a modified machine. Since our session with Jemma, Whirlpool and others a couple of weeks ago, we have reached out to the public and asked them to give us information about problems they are having with modified machines. Which? has done that. ITV's "This Morning" has done it, as has BBC's "Watchdog" and the *Daily Mail*. Just in the last week, we have had



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a number of examples from customers who have had a modified machine in their home that has either caught fire or has produced burning smells. Why, in the 11 months that you spent reviewing the modification, did you not reach out to the public to hear their experiences, Graham Russell?

Graham Russell: We took information from all those sources and others, as I said earlier, but our review was of the data, which is how risk assessments are driven. We looked at all the data. I do not think we have not had access to any of the data that you just mentioned, but we continue to follow this up, including the people who have been referred to your Committee via “This Morning” and other sources.

I was asked a question earlier about how RAPEX works. It works at the level of data, but we must be careful when doing those kinds of assessments not to ignore the individuals. We are now following up with all those individuals and have spoken to those who are willing to speak to us, where they have given us contact details.

Q206 **Chair:** Just in the last couple of weeks, both “This Morning” and our Committee have received new evidence from the public. We are keen and happy to share that with you, but what assurances can you give that it will be used in a transparent way to inform your ongoing work, not just on the unmodified machines, but also on the Whirlpool-modified machines, about which we have serious concerns?

Graham Russell: I will give you an example, which I hope will give you the assurance you are looking for. Which? had information from 34 consumers. We contacted all who we could, which was 28. Of those, as of yesterday, five have been willing to share that information with us. We have spoken to them individually and that information is being used in our ongoing work.

Q207 **Chair:** We will pass this on to you. Do you have concerns about the safety of modified machines, Minister?

Kelly Tolhurst: On the current assessment, the risk still remains low. However, on the back of concerns and a lot of anecdotal information out there, we are continuing to review. The information we are requesting from Whirlpool is under regulation 28 on modified dryers, so it is ongoing work and analysis. The data we are getting from Whirlpool will be assessed by the OPSS and the expert panel, so that is continuing for the modified tumble dryers. I am really grateful to the Committee for the coverage it has been able to get from its inquiry and for being able to get parties such as “This Morning” to carry out these exercises with consumers. We are grateful for you agreeing to share that information. It will be part of our ongoing analysis of what is coming in from Whirlpool, partners and others.

Q208 **Antoinette Sandbach:** Mr Russell, you have spoken about approaching Which? consumers, but the evidence to the Committee in July was that you had not approached them. Did you only approach them after the Committee’s evidence session?



Graham Russell: No, we used the data when we first received it, in an earlier part of the review, and then we contacted them. To the best of my knowledge that was before July. We received the information from Which? and then contacted them.

Kelly Tolhurst: My understanding is that, in the information provided by Which?, not all resulted in a fire, but there were concerns. An important focus of that review is the mechanical side. I cannot guarantee when they were contacted, but we have been clear with anyone who has contacted the OPSS or is contacting the OPSS with evidence. Those are the sorts of things that we can use as part of our analysis and assessment. This is a call for anyone to get in touch with the OPSS directly. I think we have already provided the Committee with those details but, if we have not, I will make sure that happens directly afterwards, so you can put that out there in anything that you do. That is ongoing. We need the public to take part in this as well and will use any data, wherever it comes from.

Q209 **Antoinette Sandbach:** Whirlpool gave us evidence that it had provided the OPSS with information about the use, by Whirlpool's insurers and loss adjusters, of confidentiality agreements in terms of settlements that had been made to affected consumers. Mr Russell, what is your assessment of the impact that confidentiality clauses like that have in terms of getting people to come out, speak to you and give evidence to you?

Graham Russell: I share the Committee's concern about the use of these agreements. I have had the opportunity to review one of them, which Jemma Spurr was kind enough to pass on to us, and I have also had information from Whirlpool. My understanding is that what Whirlpool does is not necessarily out of line with what the industry does, but that does not mean it is acceptable. At the moment, we are talking to the industry as a whole, including Whirlpool, about the importance of making sure that consumers know that, if there is a reasonable reason for signing an agreement about compensation, for example, it in no way limits their ability, right or openness to share with regulators what happened. Whirlpool has assured us that it has not used the agreements in that way, but my concern is that consumers might feel inhibited. I am looking for a change in the terms of those agreements, going forward, which I will do across the industry.

Q210 **Antoinette Sandbach:** It is interesting that you talked about disclosure to regulators. Should consumers not be free to speak in public about unsafe products that have put their homes or belongings at risk? If there is a financial settlement, it is because there has been a large amount of damage. They are not paid money for nothing. A financial settlement is there to compensate people for loss.

Graham Russell: I am conscious of the agreements that are being used. My understanding at this moment in time is that Whirlpool is not outside what the rest of the industry is doing.

Q211 **Antoinette Sandbach:** I understand that, but this is about safety. As



the regulator, should you be considering guidance to the industry to say that, where there is a consumer safety issue, NDAs should not be used?

Graham Russell: I will certainly take a view on what you have said and I will take further advice on that. I am committed to ensuring that consumers know that they are not in any way inhibited from sharing information with regulators, whether that is us, the fire brigade or anyone else who is relevant. I would like to take some advice on your point because, in front of you now, I would not like to give my assessment of where the line is drawn between what is properly confidential, around financial compensation, and what might not be, around the cause of the fire. I will commit to take advice on that. We will work with the industry and publish industry guidance, which will be public, around what that should be and then police that.

Q212 **Antoinette Sandbach:** Minister, the trade body AMDEA told us that it cannot confirm whether their members routinely use NDAs and similar legal devices. Given that, and also that AMDEA has not taken a position on their use—in other words, it has not issued guidance to its own members about whether or not they should be used—what is your position as the responsible Minister, given this is about safety?

Kelly Tolhurst: I am clear and I agree with you that no kind of NDA should be used to cover up products safety or consumer risk. I have seen a copy of the NDA that was signed by Jemma. It is a concern. I know, just from my experience outside of being here, that when financial settlements are made, often companies, not just in this industry, will use a clause not to disclose a financial settlement involved, for example. We have to strike a balance between fairness and making sure companies can protect their commercial abilities, but without it impinging on the ability to get issues out in the public domain for consumers to be aware of. Being a little bit flippant here, woe betide Whirlpool taking Jemma to court for signing an NDA, having to highlight the issue that she experienced. Would a company really want to drag an individual through that?

Q213 **Chair:** The risk to someone like Jemma going up against someone like Whirlpool is rather a David-versus-Goliath situation, with the legal resources that Whirlpool would have compared to what Jemma would presumably be able to access.

Kelly Tolhurst: Absolutely, which is why we have raised it with Whirlpool, as Graham has outlined.

Q214 **Antoinette Sandbach:** Can I ask whether you, as Minister, would consider instructing the OPSS to do a piece of work around whether NDAs of this kind should be banned, in dealing with product safety? In other words, as you have already indicated, the financial aspect of a settlement may be covered, but consumers should be free to go out and talk about bad experiences that lead to risk, damage or harm.



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Kelly Tolhurst: As I say, it is one of those things. I agree with Graham that there is an opportunity for further work. Again, this is a plea for more individuals who have had these NDA agreements foisted on them, not only by Whirlpool but by any other manufacturer. Please let the OPSS know. Please contact us directly, so we can look into the extent of their use. As Graham said, it is worth talking to the industry about the representative body not being able to say how many of their organisations use it. It clearly shows that there is a need for further work in this area. I am not making an excuse. The OPSS has been in existence since January 2018. It is taking unprecedented action and there are loads of learnings from this as well; it would be foolish to say there are not. This is part of our ongoing market surveillance and how we try to protect consumers. When something new comes about that could be an issue, we take it forwards. I am happy to do further work.

Chair: We are not going to be out of here by 11.00.

Kelly Tolhurst: I am sorry, Chair.

Chair: I am just reminding you.

Peter Kyle: You might want to miss it. I do not know. Give me a wink and I will do a long question.

Kelly Tolhurst: I love sitting here in front of Peter.

Q215 **Peter Kyle:** I hope it will continue for a long time. Mr Russell, it has been announced that there will be changes to the way testing of fridges happens in terms of the vulnerability of the backs catching fire. Can you tell us whether you will be compelling manufacturers to protect flammable materials from the backs of fridges? Will there be compulsion?

Graham Russell: The desire to improve the standard for fridge-freezers is supported by the London Fire Brigade, the Government, Which?, Electrical Safety First and other organisations in the UK. We have been driving the change in global standards for years and we think the standard that has just been improved is far better than that which it replaced.

Q216 **Peter Kyle:** Will they be compelled to make changes?

Graham Russell: Compulsion comes from the law, which is that products must be safe. The standard is a way of giving you guidance as to whether the products are safe, but the law has not changed. Fridge-freezers must be safe. Even before this standard came in, we contacted all suppliers of fridge-freezers last year.

Q217 **Peter Kyle:** Hang on a second. If they were required to make them safe and they have been selling stuff that is not safe, these companies should have been put out of business by now, but they have not been; they are carrying on. The regulatory regime is changing. It is evolving, based on products being manufactured and getting into the marketplace that are



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catching fire. Whether per se and wholesale they are unsafe or not is probably a moot point. Will they be compelled to have the right materials that are deemed appropriate to protect parts of the machinery that are flammable on the backs?

Graham Russell: Suppliers have to produce machines that are safe, as you say. Part of that is ensuring the issues you have raised about flammability. There are ways of addressing that. You can do it by boxing in the capacitor and other parts of the machinery.

Q218 **Peter Kyle:** Let me rephrase it: how they keep their products safe is voluntary.

Graham Russell: The route is voluntary. The requirement is safe machines. If people are not putting safe machines on the market, we will take action. We have already been in touch with all the suppliers of fridge-freezer products to ensure they are aware of that, and we have taken information from them about how they are doing it.

Q219 **Peter Kyle:** What about if there are adaptations to machines that are starting their route down the supply chain now? What about products that are already making their way to the marketplace? How do you make consumers aware that products that will hit the market in a few months will be of a different standard?

Graham Russell: I do not accept the premise they are going to be a different standard. They are safe and will be safe.

Q220 **Peter Kyle:** They are not; they are catching fire, and they are using NDAs to cover it up.

Graham Russell: We are working with the manufacturers to ensure they are safe. The standard that you describe has not created a new requirement. The requirement that products are safe was there when we took action last year with all the suppliers.

Q221 **Peter Kyle:** What steps are you taking to make sure that consumers are being protected from second-hand products that have had recall notices put out for them, but have had a low take-up of recall, in the second-hand market, either online or on the high street?

Graham Russell: You are right to say both online or on the high street, although people increasingly purchase items online. We have been in touch with all the suppliers online. I will use the example of the recall of the tumble dryers, because it is very high profile. We have been in touch with all of the suppliers online and also all of the trade associations of people selling second-hand goods on the high street, to ensure that they know that a product subject to a recall of that nature should not be sold.

The suppliers have come back to us with a commitment. They already had that commitment, but they have all committed to doing that and have actions in place to ensure those items are not on sale. There has been some confusion, because items could be on sale with a product



number that were not subject to the recall, depending on when they were manufactured. What the person selling the item has to do is to look at the product number and the serial number. We have obtained that commitment from them.

Q222 Peter Kyle: Minister, Electrical Safety First used an FoI request to ascertain that some local authorities are reselling, often through third parties, recycled electrical goods without checking first whether such items have been subject to a recall notice. Are you aware of this? Is it something that you or the OPSS have been taking action on?

Kelly Tolhurst: As Graham has outlined, in terms of what we are asking of the online platforms with regards to the sale of second-hand goods, we will be working with and communicating to all people who are involved in that marketplace. A big sector there is not just local authorities; it may be the charitable sector, for example. The OPSS is working with the association representative of the around 9,000 charity organisations that have shops, which may sell or even pass on second-hand goods, to make sure they are plugged into what we are doing with the OPSS and that those checks are carried out. Ultimately, we need to make sure that we are monitoring the marketplace and working with those individuals, so that the many second-hand products that exist are passed on in a safe and sure way.

One of the things we have done on that, particularly to help local authorities, is the establishment of the OPSS leading on product safety. For example, if local trading standards has a particular issue and wants to carry out testing, it can now get funding for that from the OPSS. One of the key things we are doing now is to work with local authorities on training. Some 92% of local authorities have now had training via the OPSS, and we are hoping to continue and build on that sort of relationship. My understanding so far is that it is absolutely right that we are challenged where those things happen. We make sure we always try to cover any particular gap that may have occurred. It is part of our priority to make sure that happens.

Q223 Peter Kyle: You have said you are going to write to eBay, Amazon and other online suppliers. Is it not disappointing that, 18 months after the OPSS was set up, you are not in a position to be more proactive and tell online retailers what to do, rather than just write and ask them?

Kelly Tolhurst: I take your point. I know where you are coming from. Would it not be nice just to make a ruling? One of the things that has been useful, despite this, is the relationship there has been between the OPSS and those online platforms. There has already been a dialogue. Would I like to be in the position where we could direct? You always want that, but sometimes it is good to understand how processes and procedures work.

Peter Kyle: You sound disappointed, so we will leave it at that.



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Graham Russell: Can I add some points? The letter we have written to them is to make sure they are aware of this particular recall and are taking action on it. This is not the first time we have communicated about their requirements. With the British Standards Institution, last year we published for the first time ever a code of practice about recalls. That includes requirements for online sale, second-hand sale and so on. We have been in touch with online suppliers right through. This is not the first time we have been in touch with them. The requirement is clear: they must not supply unsafe material. If something is subject to a recall, it is unsafe and they must not supply it. There is no lack of clarity about their requirements.

Peter Kyle: I am sure Amazon is trembling in its boots, as we speak.

Q224 **Vernon Coaker:** One of the recurring themes of the Committee, on which Peter Kyle just picked up in his last remark, is enforcement. We have regulator after regulator, and we worry about enforcement and the use of powers. There is a consultation about it and then a review. Then they have a look at it, take evidence and give a report. We get a bit frustrated. The strategy document from the OPSS talks, Minister, about consulting on new powers, and this occurs alongside the consumer Green Paper. Where has that got to?

Kelly Tolhurst: First, I want to say that you are absolutely right. If we have rules and regulations that we cannot enforce, we have a problem. As a Minister, I am as concerned, interested and focused on how we are able to enforce, as much as anything else.

Q225 **Vernon Coaker:** Where has the review got to?

Kelly Tolhurst: We had the Green Paper. We have been working internally on what we can do moving forward. I am sure it will form part of the next spending review.

Q226 **Vernon Coaker:** Where has it got to?

Kelly Tolhurst: It is being worked on. There we go; that was the easiest question. It is being worked on. It is right that we challenge what we are doing already and try to come up with ways to make it better. That is what we ultimately want, but we have already done that in some regard, with the establishment of the OPSS. While it sits under BEIS at the moment, because of the OPSS, we have been able to have a focus on product safety. It has attracted other funding. The extra funding it has employs roughly 300 people now. We communicate and work with partners, such as local and national trading standards. We need to look at the whole landscape of enforcement. I would say we are on that journey and the OPSS has been part of that enforcement, in having the capacity to carry out the recall and deal with it at national level, rather than relying on the local trading standards authority to do it.

Q227 **Vernon Coaker:** That is all fine, but the question was about progress. When will you publish proposals for new powers?



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Kelly Tolhurst: I cannot sit here and give you a date.

Q228 **Vernon Coaker:** Will it be six months, three months or two months?

Kelly Tolhurst: I would like it to be as soon as possible.

Vernon Coaker: We are not sure.

Kelly Tolhurst: I cannot commit to a date, other than to say that this is something I have been focused on in my role as small business Minister. I would like something to come forward as soon as possible, and that is my genuine answer.

Vernon Coaker: I believe you. I was just trying to get a sense of what that means.

Kelly Tolhurst: I wish I could give you further guarantees. I am sorry.

Q229 **Vernon Coaker:** Can you give us any examples of how the existing powers are being used by the OPSS? Are there any actual examples of the power the OPSS has being used?

Kelly Tolhurst: There is what we are doing with the recall. This has enabled us to carry out a review and follow through a legal process to get to the stage when Whirlpool had agreed to carry out further work on the recall. We have issued legal notices in regards to information. This shows me that, with the new formulation, we have been able to take action.

Q230 **Vernon Coaker:** Why did you not fine Whirlpool?

Kelly Tolhurst: Fining Whirlpool does not protect consumers.

Vernon Coaker: No, but what happened was quite a big deal.

Kelly Tolhurst: I agree, but fining does not protect consumers.

Chair: It might deter.

Kelly Tolhurst: I take your point. The reality is that this is where we go. We are in a legal situation with regulation 28 now. If it does not comply with that regulation, there will be criminal sanctions levied by the courts in regards to fines, compensation and those kinds of things.

Q231 **Vernon Coaker:** As the Chair just outlined, the recall and all of that is essential, but people would say that, for a business that has operated in the way this has, causing the problems it has, it might be appropriate as a deterrent to anyone else acting in that way and almost a punishment to do this. That is part of the quid pro quo of a private business operating in a marketplace. All of us found it difficult to understand why there was no fine.

Kelly Tolhurst: I can understand why you think that and it is legitimate to raise it. My priority is around consumer safety and how we get



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Whirlpool to provide me with assurances that the modified products and unmodified products are safe.

Q232 **Vernon Coaker:** Did you consider fining Whirlpool?

Kelly Tolhurst: No, because my priority is how to get unmodified machines modified.

Q233 **Vernon Coaker:** Did you not even consider fining Whirlpool?

Kelly Tolhurst: No, I did not consider fining it, because it would be through the courts. Fining Whirlpool would not have made any more unmodified machines get modified any more quickly. Instituting a recall and making Whirlpool comply with what we are asking for enables more unmodified machines to be modified, thus protecting consumers, which ultimately is my focus and priority.

Q234 **Vernon Coaker:** What about how the OPSS operates? Will you consider making it an arm's length body? What about the way the Food Standards Agency operates, whereby meetings are recorded live and so on? What about doing some of that and opening up the operation of the OPSS, so that the public can see what is happening, with it operating in the way that the Food Standards Agency has? Are you considering doing that?

Kelly Tolhurst: If I were in post, it would probably be my ambition to get to that place. Speaking personally, there is some great work that the OPSS is doing. I highlight our laboratories in Teddington, for example, and what is going on there. I do not know if the Committee has visited. That would be worth doing in the future, just to see the work that is being carried out. We have to recognise that the OPSS was established in January 2018. I know we are in July 2019 but, with any kind of new body, there is a period of review and looking at how it could work better, compared to the models we have that are successful in other areas. I am not ruling out anything like that.

Q235 **Vernon Coaker:** This is the last question from me. All of us know the importance of the work that local trading standards do. As all local authority budgets are, they are massively under pressure. It is difficult for them to fulfil much of what we would expect and like them to do. What could you say about the work of local trading standards? Without saying the usual—that it is up to local authorities to make sure they have the budget—how are we going to reinvigorate and reinforce the work of local trading standards departments, which is so important?

Kelly Tolhurst: You are right. Our trading standards officers do an amazing job, as I know from what goes on in my constituency, which is a small unitary authority, and some of the joint working they do. This has definitely been a focus for me in the wider enforcement landscape, particularly in looking at what we can potentially bring forward in our response to a consumer Green Paper. Unfortunately, it is down to local priorities, but we have national trading standards. National and local trading standards work closely together and with the OPSS. National



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trading standards are not funded by BEIS; they are funded by MHCLG. I know it is Government funding, but this is just so that we are clear about how that works.

National trading standards is able to work with local trading standards to give them capacity and commission, but we are also allowing local trading standards to come to the OPSS to apply for the money for testing and to get access to the free BSI. The focus of 17% of the OPSS budget is spent on scientific research. That will aid our local authority trading standards. While I know you would love me to say I am going to give all this extra money to local trading standards, what we have been doing is offering some financial assistance, but also giving them part of the resources they need for that next-level scientific research, support and assistance, when required.

Chair: Thank you very much, Minister, for coming to give evidence today. This inquiry has been important to shed a light on these hugely important issues. It is the feeling of this Select Committee that it has taken too long to recall these tumble dryers and, in the meantime, people have been living with unsafe tumble dryers in their homes. In some cases, they have caught fire. We would like to see a greater show of strength from the OPSS in holding some of these big businesses to account and ensuring that all of the products in our home are safe and can be relied on.

As you have heard today, Minister, we also have concerns around modified machines and would like the OPSS to make it a priority to look at some of the evidence that we and others have compiled, on the safety of those machines. Like you, Minister, we want to ensure that there is justice for people who have had a fire in their home and that they get the answers that they rightly deserve, which so far, because of the secrecy of businesses such as Whirlpool, they have not had. Beyond getting that justice, we also need a regulatory framework that can give more assurance to people, so that, when they buy products, put them in their homes and use them, they are not putting themselves and their families at risk. That is the priority of all of us, so I hope we can work together to ensure that.