Dear Ms Greenwood

I am writing further to the spring 2018 update on the DVSA actions contained in the Government’s response to your Committee’s Vauxhall Fires Report. I thought it would be helpful to provide some additional detailed information ahead of my appearance before your Committee on 26 June.

The Government’s response to your Committee’s report contained a commitment to “review existing powers of enforcement to ensure they are being used effectively”. DVSA has now sought and received further Counsel advice to clarify the extent of DVSA’s investigatory and prosecution powers stemming from the General Product Safety Regulations (GPSR).

This advice has confirmed that some investigatory powers originally contained in the GPSR (eg the general power to enter and search premises in order to ascertain whether there has been a contravention of the GPSR) were removed by the Consumer Rights Act 2015 (CRA) which came into force in October 2015. However, we retain other powers of investigation derived from the GPSR, including the specific power under Regulation 28 to obtain information for the purposes of deciding whether to serve a ‘safety notice’ (which includes a recall notice). This allows the Secretary of State, and therefore us as an enforcement authority, to serve a notice requiring a person to furnish information, produce records and/or produce samples of a product. It is an offence for a person to fail, without reasonable cause, to comply with a notice served under Regulation 28(1), or in purporting to comply with such a notice to knowingly or recklessly furnish information or records which are false in a material particular (Regulations 28(2) and (3)). In all but very exceptional circumstances, this gives us the necessary investigatory powers in relation to considering whether or not to issue a recall notice.

In the specific case of the Vauxhall fires, Vauxhall had previously carried out a voluntary recall, starting in December 2015, and so the issue that arose in early 2016 was whether Vauxhall had initially failed to notify us of safety issues in breach of its obligations under the GPSR. The Secretary of State’s powers under Regulation 28, as set out above, were not therefore available in this case, because DVSA was not considering whether a recall notice should be served.

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Given that we lacked powers under the GPSR (as amended by the CRA 2015) to enter and search premises, it was necessary to consider alternative routes for obtaining evidence. As you know, we managed this by starting work with Luton Borough Council's Trading Standards Department, as Luton Borough Council and Luton Trading Standards has the authority to investigate for breaches of the GPSR relevant to this case. I should like to assure the Committee that the requirement to work with Luton Borough Council's Trading Standards department has been and continues to be effective and has not had a negative bearing on the investigation.

In conclusion, we do not have the complete suite of investigatory powers that we once had under the GPSR, due to the interplay with the CRA. This has meant, and continues to mean, that in some circumstances we will not have powers to investigate, such as in the Vauxhall situation, but there are options available to us to overcome this. However, The Secretary of State, remains an enforcement authority under the GPSR and if sufficient evidence can be obtained through other means, the Secretary of State and we can still commence criminal proceedings and prosecute offences contrary to the GPSR.

We will continue to work with the Department for Transport to assess the long-term options for our important work in ensuring that manufacturers fulfil their obligations and help us to protect drivers and the public from unsafe vehicles.

Yours sincerely

[Signature]

Gareth Llewellyn
Chief Executive