Written evidence submitted by ClientEarth (IAQ0162)

ClientEarth welcomes the opportunity to respond to the Environment, Food and Rural Affairs, Environmental Audit, Health, and Transport Committees’ inquiry on improving air quality.

Illegal and harmful levels of air pollution are harming the health of people across the UK. Legal limits of nitrogen dioxide (NO₂) should have been met in 2010 but successive governments have failed to get a grip on the problem.

ClientEarth is calling for:

1. A comprehensive network of Clean Air Zones (CAZs) across the UK - these must keep the dirtiest vehicles out of the most polluted parts of our towns and cities and champion public transport, walking and cycling.

2. A series of measures to help people switch from the dirtiest vehicles to cleaner forms of transport including tackling the perverse fiscal incentives for diesel cars.

3. A new UK Clean Air Act to ensure and preserve our rights in law to breathe clean air.

The following is ClientEarth’s submission in response to the questions set out by the joint inquiry:

1) How effectively do Government policies take into account the health and environmental impacts of poor air quality?

Successive governments have failed to tackle illegal and harmful levels of air pollution. The UK government failed to meet its own air quality objectives in 2005 under the Environment Act 1995 and legal limits for NO₂ under the EU Ambient Air Quality Directive (the “Directive”) from 2010.

Historically, there has been a lack of joined up thinking across departments with the Department for Environment, Food and Rural Affairs (Defra) having responsibility for tackling air pollution while other departments, such as the Department for Transport (DfT), holding responsibility for crucial policy areas, while other departments, such as the Department for Health (DH), bear the burden of treating illness caused by air pollution.

Opportunities to address key policy failures and set the UK on a more ambitious path towards reducing the health burden from air pollution have been missed. In some cases, for instance with the negotiation of the new Real Driving Emissions testing requirements and the National Emission Ceilings Directive, reports suggested the government attempted to lower the ambition of the policies.

While ClientEarth’s legal action has forced the government to produce plans to address illegal levels of NO₂ there has not been a wider UK air quality strategy since 2007. As a consequence, there has been inadequate action to address other harmful pollutants, such as particulate matter (PM), which while not breaching legal limits are still of concern with regards to public health. This
can largely be explained by the fact that the legal limits for PM set by the Directive are inadequate. For example, legal limits for PM$_{10}$ are double the guideline levels recommended by the World Health Organization (WHO).

In addition to addressing illegal levels of NO$_2$ the UK government should also be taking action to meet WHO guideline levels for particulate matter by 2030. This will require a comprehensive strategy that addresses all pollutants and sources

2) Do these plans set out effective and proportionate measures to achieve necessary emissions reductions as quickly as possible?

ClientEarth has won two cases against the UK Government over illegal levels of NO$_2$ in the UK. In ClientEarth (No.1), four years of litigation, which included a reference to the Court of Justice of the European Union, culminated with a Supreme Court judgment in May 2015 ordering the government to produce a new air quality plan that demonstrated how it would achieve NO$_2$ limits in the shortest time possible. That plan was published at the end of 2015. ClientEarth brought further judicial review proceedings in order to challenge the 2015 plan in March 2016, a case that became known as ClientEarth (No.2).

The judgement in ClientEarth (No.2) gave a clear and definitive ruling on the meaning of Article 23 of the Directive, which requires that where air quality limits are breached, air quality plans must be prepared containing appropriate measures to achieve limits as soon as possible. Garnham J laid down three criteria that plans must satisfy in order to meet this obligation:

1. Show exactly how legal limits would be met in the shortest time possible;
2. Take the route which reduces human exposure as quickly as possible; and
3. Ensure that meeting legal limits in the shortest time possible was not only possible but likely.

In doing so, he gave primacy to the protection of human health over other factors, such as political expedience and cost.

Garnham J judged that the 2015 plan did not meet these three tests and therefore declared it unlawful. He also made a mandatory ordering requiring the Secretary of State to prepare a modified plan to achieve limits as soon as possible. The final plan was published in July this year.

The main measure in the 2017 plan is to require 23 local authorities with the most persistent breaches, by a direction made under the Environment Act 1995, to prepare local air quality plans to achieve limits as soon as possible. These plans must be prepared in draft by March 2018 and finalised and sent to Defra for approval by the end of 2018. In this sense the 2017 plan can properly be viewed as “a plan for more plans.”

In ClientEarth’s view the 2017 plan fails the three tests laid down in ClientEarth (No.2). The quickest and most certain way to achieve compliance as soon as possible would have been for
the Secretary of State to mandate all local authorities with significant breaches to introducing charging CAZs. Local authorities could then have determined the precise details of those CAZs, such as their boundaries, based on local monitoring and assessment.

However, the 2017 plan expressly discourages local authorities from including charging CAZs in their plans, despite Defra’s own modelling showing that the introduction of charging CAZs were the most effective measure. Instead, this modelling is used as a benchmark: local plans must achieve compliance at least as early as the dates by which charging CAZs are projected to achieve compliance. There is little or no evidence that alternatives to charging CAZs will be effective. There seems to be some reliance on speed limits and redirecting of traffic, however there is little evidence that such measures will be effective and a real and acknowledged risk that they could simply displace pollution to nearby roads.

Significant sums of money have been allocated to assist local authorities in preparing local plans, although these sums are to be raised by reforms to the taxation of diesel vehicles, which are to be announced in the November budget.

In October this year, ClientEarth filed a further challenge to the 2017 plan because it falls far short of what is needed to bring air pollution to within legal limits as soon as possible.

ClientEarth’s grounds for judicial review are:

1. The latest plan backtracks on previous commitments to order 5 cities to introduce CAZs by 2020.
2. The plan does not require any action in 45 local authorities in England, despite them having illegal levels of air pollution which are projected to continue until 2021.
3. The plan does not require any specific action by Wales to achieve NO\textsubscript{2} limits as quickly as possible.

The claim does not specifically relate to the 23 local authorities that have been directed to prepare local plans. This is primarily to avoid any further delay to ongoing work by Defra, DfT and local authorities. To this end ClientEarth is not calling for the current plan to be overturned, but instead to be supplemented with additional documents correcting the deficiencies identified.

The claim also identifies a number of general flaws in the plan that are relevant to all areas in breach of NO\textsubscript{2} limits. First, the plan suffers from a lack of detail. Key national measures, such as reforms to fiscal policy, a consultation on scrappage and other mitigation measures are promised at some unspecified date in the future. This is unacceptable. The court ordered a final plan to be prepared by July 2017 and this is clearly not a final plan. Second, the plan relies on overoptimistic modelling which underestimates the scale of the current problem and the time it will take to achieve compliance. This is because the national modelling technique used is a crude tool that is unsuitable for projecting future compliance with air quality limits and ignores data assessed by local authorities.

ClientEarth understands that Leicester City Council, as well as Oxford City Council have written to the government raising doubts about the plans. These include claims that the government has seriously underestimated pollution levels in their cities and excluded them from access to essential support to fight the problem.
3) Are other nations or cities taking more effective action that the UK can learn from?

Reducing emissions from road transport

Cities, rather than national governments, are showing leadership with more ambitious action to tackle air pollution. For example, Paris is aiming to phase out diesel cars by 2024 and petrol cars by 2030. Madrid is also aiming to phase out diesel cars across the city and have a zero emission zone by 2025, and is aiming to halve the number of cars allowed into the city centre. Oslo has aimed to ban private vehicles from the city centre by 2019.

In the UK, London has been showing leadership on this issue. The Mayor of London is committed to bringing forward and expanding the Ultra-Low Emission Zone (ULEZ), which is essential if we are to protect people’s health. Phasing out pure diesel buses from 2018 and ensuring all newly licensed taxis are zero emissions capable will also go some way to tackling London’s air pollution. The Mayor’s transport and environment strategies have set out a number of ambitious solutions to tackling London’s illegal levels of air pollution. Changing the way people travel so that, by 2041, 80% of all Londoners’ trips will be made on foot, by cycle or by public transport will help reduce air pollution levels.

Low Emission Zones (LEZs), also known as CAZs, are much more widespread on mainland Europe. Germany, for instance, has a network of 78 LEZs that affect all vehicle types except for motorcycles and are based on a national framework. Emission standards, however, are based on particulate matter and as such do not directly address the problem of NO₂.

Legal challenges in Germany by ClientEarth, in conjunction with our partner DUH, have resulted in courts in Stuttgart ruling that the city’s proposed Air Quality Plan was inadequate. The judge ordered that a diesel ban be implemented in the city from January 2018. Similar orders have also been given in Düsseldorf and Munich.

Mitigation

France offers a “super bonus” that builds on existing incentives against green vehicles. This is offered to drivers living in the country’s most polluted areas – around 48% of the population – and who are trading in a diesel vehicle over 13 years old. It provides an additional €3,700 (€2,765) discount against an electric vehicle (on top of the existing €6,300/£4707 eco bonus) and €2,500 (£1,868) off a plug-in hybrid (on top of an existing €4,000/£2,989 eco bonus).

A recently introduced pilot program in California has incentives aimed at getting old polluting vehicles off the roads while allowing low-income drivers to purchase clean cars. The program from CARB (California Air Resources Board) works by “providing increasingly larger cash payments for the lowest-income families to move up to the very cleanest cars.”

Both the German and French governments have already required that manufacturers including Volkswagen, Opel, Audi, Mercedes and Renault fix over a million diesel vehicles that were emitting far higher levels of toxic pollution on the road than in official tests. In Germany car companies agreed to overhaul 5.3 million diesel cars to cut emissions.
German Chancellor Angela Merkel has announced plans to double to €1 billion a clean air fund aimed at cleaning up urban transport. The car industry has pledged €250 million of the €1 billion fund and could be asked to contribute more. This is in stark comparison to the UK where the industry has not contributed a single penny.

**Emergency measures**

In addition to the health impacts from the everyday long-term exposure to illegal and harmful levels of air pollution, there are occasions throughout the year where people are exposed to “high” and “very high” levels of air pollution as determined by the government’s Daily Air Quality Index. This acute exposure can have immediate impacts on people’s healthy, for example, during the so-called “Saharan dust” smog event in April 2014 the London Ambulance Service received 227 emergency calls on one day from people with breathing and heart problems, 14% higher than the number of calls received on an average day.

Currently no action is taken in the UK to try to reduce air pollution levels during these smog episodes. The UK government has a limited public information system to alert the population and the Mayor of London has introduced a more proactive alert system using existing signage in the city’s transport network. There are examples, however, of other cities in Europe which take emergency action during high pollution episodes. For example, Paris and Madrid make use of an alternating traffic rule on days of high pollution. Paris also increases emissions standards for its Low Emission Zone, reduces the price of public transport and changes parking regulations to encourage residents to leave their cars at home. Madrid reduces speed limits, bans non-residents from parking in the city and taxis are not allowed to travel while empty.

4) **Is there enough cross-government collaboration to set in place the right fiscal and policy incentives?**

The Joint Air Quality Unit between Defra and DfT is a positive step but the Treasury, DH, the Department for Business, Energy and Industrial Strategy (BEIS) and the Department for Communities and Local Government (DCLG) need closer involvement in air quality policy.

The Treasury need to be fully involved, as we need fiscal policies that incentivise the up-take of ultra-low emission vehicles and disincentivise diesel vehicles. We also need to deal with the legacy issue, i.e. the large number of highly polluting diesel vehicles currently on Britain’s roads, through policies such as scrappage and retrofit schemes targeted at low income families and small businesses, and a system that forces the car industry to recall the most polluting diesel vehicles to retrofit, retune or replace them.

BEIS should be fully involved in order to co-ordinate air quality policy with climate change and industrial policy, similarly DCLG on planning issues.

5) **How can those charged with delivering national plans at local level be best supported and challenged?**

The government’s own analysis recognises that the most effective measure to reach compliance in the shortest time possible would be charging CAZs. This will not only ensure that action is taken where breaches exist and CAZs are the most appropriate measure, but will help local
authorities overcome local barriers that may delay or affect their delivery. The UK government should also mandate the class of CAZ based on the analysis of the local emission sources to ensure that all the relevant vehicle types are included.

In addition, it is vital that the UK government takes action on national policies to ensure success in delivering the plan at a local level otherwise local authorities are being set up to fail. It is clear that the dieselisation of the national fleet has been a key factor in the UK’s failure to comply with legal limits of NO₂ and this has been driven by national fiscal policies. The UK government should commit to changes in the tax regime, e.g. Vehicle Excise Duty and Company Car Tax that currently encourage the take up of diesel vehicles and provide incentives to help people move over to cleaner forms of transport. For instance, a diesel scrappage scheme that complements CAZs and is targeted at people on low-incomes and small businesses, as well as investment in public transport, walking and cycling infrastructure.

A national awareness raising campaign would also help to not just raise awareness of the issue among the public but also build support for national and local measures. A national approach would give consistent and clear messaging and be a more cost effective way to deliver a campaign than having local authorities devise and deliver their own.

As part of showing national leadership the UK government should also ensure that the motor industry takes responsibility for its role in contributing to the problem. The European Commission is taking legal action against the UK government for failing to respond to the dieselgate scandal. The Commission takes the view that the United Kingdom and Germany have broken the law by refusing to disclose, when requested by the Commission, all the technical information gathered in their national investigations regarding potential nitrogen oxide (NOx) emissions irregularities in cars by Volkswagen and other car manufacturers.

The German government has already secured money from the German car industry to help fund local measures and the UK government should seek to obtain the same support. It should also address the problem created by the introduction of the new Real Driving Emissions testing procedure, which allows car manufacturers to benefit from generous “conformity factors”. This means that the new Euro 6 cars will not have to meet the actual Euro 6 emission limits in the real world.

A number of approaches are needed to address this. For example, the UK government should work with the UK car manufacturing industry to establish a vehicle labelling scheme to ensure that consumers can be informed about the real world emissions of their vehicles and that only the cleanest vehicles are able to enter CAZs. Tax should be reformed so that is based on real-world emissions of CO₂ and NOx, to incentivise manufacturers to produce clean vehicles. The CAZ framework, which currently would allow Euro 6 cars to enter a CAZ without paying a charge, should be revised to introduce a differentiated charge for Euro 6 cars.

While the government has already committed to a £255m Implementation Fund for the 23 local authorities mandated to undertake feasibility studies and has said it will establish a Clean Air Fund, there is concern over whether funds will be allocated according to need or through a complex and competitive bidding system. It is important that the development and delivery of local measures is appropriately resourced and supported.

The UK government should also ensure that those local authorities mandated to undertake feasibility studies receive clear guidance on the implications of the ClientEarth (No.2) judgement
in developing and delivering their local plans. In particular, the overriding priority of protecting 
health over cost means that the usual cost-benefit analysis undertaken by local authorities 
cannot be used.

There also needs to be clear and ambitious timetables for production, review and approval of 
plans. In the case of the five formerly mandated cities, there needs to be a formal political 
commitment to the introduction of CAZs as soon as possible and no later than 2020. Plans 
should be based on the assumption of the introduction of CAZs, with local authorities required to 
start putting up signage and making public communication as soon as possible to give 
businesses and drivers time to adapt.

The national framework for CAZs, published in May 2017, is still incomplete despite being 
required by the local authorities developing their local plans. Currently there is no guidance on 
the level of charging to be applied, the signage and branding, and the technology systems to be 
used for enforcement. There should be clear guidance on the design of effective CAZs, based 
on a precautionary approach, which ensures CAZs are sufficiently large that they drive vehicle 
upgrade rather than simply displacing pollution to the perimeter of the CAZs. We would also 
recommend the revision of the Framework to allow a varied charge for Euro 6 diesel cars that 
recognises vast differences in real-world emissions.

We are also concerned about the lack of direction and financial and technical support for the 45 
local authorities who are currently excluded from the process.

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