

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT

In the matter of a claim for judicial review

BETWEEN

THE QUEEN

on the application of

- (1) PLAN B EARTH
- (2) CARMEN THERESE CALLIL
- (3) JEFFREY BERNARD NEWMAN
- (4) JO-ANNE PATRICIA VELTMAN
- (5) LILY MEYNELL JOHNSON
- (6) MAYA YASMIN CAMPBELL
- (7) MAYA DOOLUB
- (8) PARIS ORA PALMANO
- (9) ROSE NAKANDI
- (10) SEBASTIEN JAMES KAYE
- (11) WILLIAM RICHARD HARE
- (12) MB (A CHILD) BY HIS LITIGATION FRIEND DB

Claimants

- and -

THE SECRETARY OF STATE FOR
BUSINESS, ENERGY AND INDUSTRIAL STRATEGY

Defendant

- and -

THE COMMITTEE ON CLIMATE CHANGE

Interested Party

CLAIMANTS' REPLY TO SUMMARY GROUNDS

Defined terms as used in the Statement of Facts and Grounds ("SFG") are adopted herein

INTRODUCTION

1. On 29 January 2018, the Secretary of State served its summary grounds of defence (“**SoS SG**”). On 31 January 2018, the Committee on Climate Change (“**CC Committee**”) also served summary grounds resisting the claim (“**CCC SG**”).
2. It is notable that neither of the two sets of SG contains, nor even suggests that there is, any “knock-out” argument as to why permission should not be granted. Rather, both SGs seek to argue the case fully on the merits. As a result, the points taken in the SGs and, in particular, the divergences between the positions of the Secretary of State and the CC Committee, serve only to highlight the fact that the Claimants have arguable grounds for judicial review.
3. In serving this brief reply, the Claimants have sought to focus upon points that may assist the Court’s decision on permission. The fact that certain arguments have not been addressed should not be taken to indicate that the Claimants accept them.
4. Accordingly, this reply limits itself to addressing the following two issues:
 - (a) the inconsistency between the positions taken by the Secretary of State and the CC Committee as to whether the current 2050 Target is compatible with the Paris Agreement, which in the Claimants’ submission puts the arguability of Grounds 1 to 3 beyond doubt; and
 - (b) the irrelevance to this judicial review of the Secretary of State’s assertion that he may review the 2050 Target in the future.
5. Alongside this reply, the Claimants file and serve a further short witness statement from Timothy Crosland (“**Crosland 2**”), director of the First Claimant. As Mr Crosland explains in that statement, the purpose of Crosland 2 is to address the matters referred to at paragraph 4(a) above, and to explain, for the benefit of the Court, a number of significant relevant factual developments since the claim was lodged on 8 December 2017.

INCONSISTENCY BETWEEN SECRETARY OF STATE AND CC COMMITTEE AS TO COMPATIBILITY OF 2050 TARGET WITH PARIS AGREEMENT

6. The Claimants' Grounds 1 to 3 are premised on what the Claimants believed to be the uncontroversial proposition that the 2050 Target is incompatible with the targets required by the Paris Agreement.¹
7. The Secretary of State does not take issue with this proposition. Nowhere does the Secretary of State assert that he decided not to amend the 2050 Target because that Target is in fact compatible with the Paris Agreement. Rather, in both his PAP Response and his SG, the Secretary of State defends his decision not to amend the 2050 Target on essentially three bases:
 - (a) the Paris Agreement does not create a binding duty on the Secretary of State to amend the 2050 Target;²
 - (b) the Government followed the 2016 CC Committee Recommendation in finding that the 2050 Target ought not to be amended now because it would not currently be feasible to meet a stricter target;³ and
 - (c) amending the 2050 Target prematurely beyond what is feasible would harm the fight against climate change (which was raised for the first time in the SoS SG).⁴
8. The second point is key for present purposes. It is clear that:
 - (a) Feasibility was central to the Secretary of State's decision not to amend the 2050 Target (and to his defence to this claim). Thus, he states in his SG that "*[n]othing in ... the Climate Change Act requires the Secretary of State to set a new 2050 target despite any concerns as to the feasibility of meeting that target*";⁵ that it is "*wholly rational to decide not to amend the 2050 Target yet, at a time when no clear and new ambitious goal can be set with a real*

¹ See, for example, SFG §171.

² SoS SG, §18, 23, 26, 28, 49. This argument ignores that the Claimants explicitly acknowledged this in their SFG: see at §179.

³ SoS SG, §§25, 29—33, 62, 63, 65—67.

⁴ SoS SG, §35—38.

⁵ SoS SG, §63 (emphasis added). See also §49.

*anticipation that it could be met”;*⁶ and that “[a] *credible pathway to the achievement of any revised target is necessary*”.⁷

and

- (b) The Secretary of State purports to base this reasoning upon the CC Committee’s advice to that effect. Consistently, he states that he acted upon the advice of the CC Committee.⁸

9. However, in stark contrast to the Secretary of State’s case, the CC Committee in its SG argues that:

- (a) the 2050 Target is compatible with the targets required to meet the Paris Agreement⁹; and, crucially
- (b) that this alleged compatibility, rather than concerns about the feasibility of meeting a stricter target, was the “primary basis” of its advice not to amend the Target – indeed the CC Committee accept that achieving a lower target would be feasible.

10. This is stated in terms at §24 of the CCC SG:

*“The Plan B argument that the Committee’s advice, in recommending no need to amend the 2050 target now, gave priority to technical feasibility is incorrect. Though they might, in practice, be difficult to achieve, the Committee had developed scenarios that achieved a greater than 80% emission reduction in 2050. But the primary basis for its advice was on the question, covered above, of consistency of the existing 2050 target with the Paris range of ambition. The issue of technical feasibility in the Committee’s advice was more related to the question of setting a target, in the 2nd half of the century, for reducing emissions to net zero. The Committee had no scenarios for the UK that can achieve net zero emissions”*¹⁰ (emphasis added).

⁶ SoS SG, §66 (emphasis added).

⁷ SoS SG, §67 (emphasis added).

⁸ See *inter alia* SoS SG, §3, 31—32, 48, 60, 66 and 67.

⁹ CCC SG, §§ 13—17, 21, 22.

¹⁰ CCC SG, §24. This would appear to be a *volte face* from the note of the meeting of the CC Committee in September 2016 ([TJEC/1/92-3], cited in the SFG §§103-4) and the CC Committee Recommendation (p 8 [TJEC/1/98], cited in the SFG §107).

11. Thus, on the CC Committee’s case, the Secretary of State fundamentally misunderstood the basis of the CC Committee’s own advice.
12. The Secretary of State appears to have confused the CC Committee’s advice as to whether to amend the 2050 Target, which the CC Committee says it did consider feasible, with its advice as to whether to set a “net zero” emissions target, which the CC Committee says was where non-feasibility was relevant.¹¹ This alone is, in the Claimant’s submission, enough for the Claimants’ claim to succeed.
13. Moreover, for the reasons set out in *Crosland 2*, the CC Committee’s claim that the 2015 Target is consistent with the Paris Agreement is untenable.
14. In any event, and irrespective of what the Court ultimately concludes about the true nature of the CC Committee’s advice, it is clear that the consequence of:
 - (a) the CC Committee now claiming that its advice was premised on one proposition (despite, on the face of that advice, it being premised on precisely the opposite proposition); and
 - (b) the Secretary of State claiming to have followed the CC Committee’s advice (and continuing to defend this claim) assuming that advice was premised on a different proposition,

is that the arguability of Grounds 1 to 3 has been put beyond doubt.

IRRELEVANCE OF POSSIBLE FUTURE REVIEW OF 2050 TARGET

15. The CC Committee states in its SG that it has recommended that it should be invited to provide further advice to the Secretary of State after the publication of the report of the Intergovernmental Panel on Climate Change (“**IPCC**”).¹²
16. The Secretary of State refers to this recommendation¹³ but notably makes no promise whatsoever to take up that recommendation. The furthest he goes is to say that “[t]he revisiting of the 2050 Target may become appropriate in light of developments ... for

¹¹ This is despite the fact that §§23 and 30 of the SoS SG appears to recognise that the issue of the 2050 Target and a “net zero” target are, in principle, separate. The question of whether and when to set a “net zero” target is not the target of this claim, as stated explicitly in the SFG, §§113 and 242.

¹² CCC SG, §29.

¹³ SoS SG, §§38 and 66.

*example, following the IPCC special report, the Talanoa Dialogue and global stocktakes”.*¹⁴

17. It is notable that neither the Secretary of State nor the CC Committee states in terms that the above is a freestanding reason why permission should be refused. The Claimants submit that that is for good reason.

18. The Secretary of State has acknowledged that:

*“[c]limate change is a matter of the utmost public concern, which if not addressed will have significant global consequences for everyone, as well as particular impacts on different groups of individuals across the world.”*¹⁵

Given that the Claimants’ case raises legal questions of major public importance relevant to the exercise of the Secretary of State’s power under section 2 of the Act, it is not in the public interest to postpone their resolution to some later point.

CONCLUSION

19. For all of the reasons set out above, as well as those set out in the Statement of Facts and Grounds, the Claimants respectfully request that permission to seek judicial review be granted.

JONATHAN CROW Q.C.

EMILY MACKENZIE

12 February 2018

¹⁴ SoS SG, §39 (emphasis added).

¹⁵ SoS SG, §50.