Claim No. CO/16/2018

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' GROUNDS FOR SEEKING RECONSIDERATION UNDER CPR 54.12

---

1. The Claimants seek reconsideration of their application for permission to apply for judicial review of the Defendant's failure to revise the 2050 carbon target ("**the 2050 Target"**) under the Climate Change Act 2008 ("**the 2008 Act**"), following the refusal of permission by Lang J on 14 February 2018.

2. The Judge refused permission in respect of each of the Claimants' five grounds. She was wrong to do so, for the reasons outlined below.

3. The Judge held that ground 1 is unarguable, in essence because section 2 of the 2008 Act confers upon the Defendant a discretionary power, rather than a duty. But the Claimants do not contend, and never have contended, that section 2 imposes a duty on the Defendant. Nevertheless, the exercise of a discretionary power must still be exercised lawfully and consistently with the purpose of the governing legislation. The Defendant has asserted that he exercised his discretionary power in October 2016 (although no contemporaneous record of that decision has ever been provided and no delay argument is made by the Defendant). The Claimants' case is that the Defendant, in making that decision (and on an on-going basis) acted inconsistently with the underlying purpose of the 2008 Act in circumstances where there have been significant developments in international law, policy and in science. It is notable that the Defendant concedes that the original purpose of the 2050 Target was to keep the UK on a path consistent with the global temperature goal of the time,[1] a purpose that has been frustrated by the Defendant's decision.

4. The Judge appears to have misunderstood ground 2 (and it is unclear whether she had the opportunity to read the First Claimant's second witness statement addressing this point) in that she held, without explanation, that the Claimants have misread the Interested Party's October 2016 advice to the Defendant. This may have arisen, as the First Claimant explains in its second statement, because the Interested Party has misquoted the Claimants' submissions on ground 2. It appears that the Judge may have been misled by this misquotation into believing it is the Claimants who are in error.

5. The Judge wrongly dismissed ground 3 on the basis that it is an impermissible challenge to the Defendant's discretionary judgment. That discretionary judgment must still be exercised lawfully, and therefore rationally. The Defendant asserts that

[1] PAP Response, paragraph 42.

his refusal to amend the 2050 Target was based on advice from the Interested Party that greater ambition was not feasible or realistic. It is clear from the Interested Party's Summary Grounds that that is a misunderstanding of its advice, and that greater ambition for the 2050 Target is in fact perfectly feasible. It is equally clear, therefore, that the Defendant's decision was based on a significant error of fact and consequently irrational. Further, the Defendant's decision entirely ignores a number of relevant considerations, including the obligation to maintain climate change mitigation measures in accordance with equity and the precautionary principle, and so as to reflect the UK's 'highest possible ambition'. Moreover the Defendant now alleges that increasing the UK's ambition would damage global efforts towards reducing climate change and would set the wrong example to other countries: this is irrational, as explained in the Claimants' Reply and the First Claimant's second witness statement. These matters fundamentally undermine the rationality of the Defendant's position and give rise to at least an *arguable* case that the Defendant has acted unlawfully.

6. As to ground 4, the Judge was wrong to find that the second to twelfth Claimants have no prospect of establishing a violation of their human rights. In light of the exceptionally grave consequences to which the decision under challenge arguably gives rise, it would be startling if the Claimants' human rights were *not* engaged. Moreover, the Judge appears to ignore the Claimants' contention that the Defendant should be accorded a narrower margin of appreciation than might otherwise be the case with decisions of this type.

7. Finally, the Judge was also wrong to refuse permission on ground 5, by which the Claimants argue that the Defendant failed to comply with the public sector equality duty ("**PSED**"). The Defendant has offered no evidence that the specific impact on persons with protected characteristics was considered *in the context of the decision under challenge*. Investigation into the impact of climate change generally cannot act as a proxy for fulfilment of the Government's PSED in respect of this decision.

8. Each of the Claimants' grounds is plainly arguable and the test for permission is surpassed in this case. The Claimants accordingly invite the Court to grant permission for judicial review.

Jonathan Crow QC

Bindmans LLP

22 February 2018