

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

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

SUMMARY GROUNDS OF DEFENCE

A. Introduction and Summary

1. These are the Summary Grounds served on behalf of the Defendant (the “**Secretary of State**”) in response to the application for judicial review served by the twelve Claimants. For ease of reference, these Grounds refer to the Claimants collectively as “**Plan B**”. Reference to Plan B’s Statement of Facts and Grounds appears as “**SFG**”.
2. The United Kingdom is a world leader in reducing carbon emissions. The Government is fully committed to tackling climate change. It has taken a prominent role in advancing the climate change agenda both domestically and internationally. Under its

domestic law, the UK has enshrined the “**2050 Target**”, a duty placed on the Secretary of State to ensure that there is an at least 80% reduction in greenhouse gas emissions by 2050 against a 1990 baseline, in primary legislation (the “**Climate Change Act**”). At the international level, the UK played a pivotal role in securing the Paris Agreement which, for the first time, secured a commitment by all Parties to undertake ambitious efforts to combat climate change and adapt to its effects, with enhanced support to assist developing countries to do so.

3. Pursuant to Section 2 of the Climate Change Act the Secretary of State has the power to amend the 2050 Target if certain circumstances arise and he considers it appropriate to do so, having consulted the Committee on Climate Change (the “**Committee**”). In response to the Paris Agreement, the Committee advised that no change should be made to the 2050 Target at this time.¹ The Secretary of State accepted that advice, as he was entitled to do. However, the Government is committed to introducing a net zero emissions target at the appropriate time in the future.
4. In a very recent publication (on 17 January 2018) responding to the Government’s Clean Growth Strategy, the Committee indicated that, in its view, it should be invited to advise on the implications of the Paris Agreement for the UK’s long-term emission targets after the Intergovernmental Panel on Climate Change (the “IPCC”) publishes its Special Report on the implications of the Paris Agreement’s 1.5°C ambition.² The report is expected to be finalised in October 2018.³
5. Although advanced under a number of different rubrics in its grounds, Plan B’s case is ultimately that the Court should treat the discretion conferred by Section 2 to amend the 2050 target as if it imported a duty. It does not. There may be reasonable disagreement as to *when* to amend the 2050 target, and if amended, as to *what* the new target should be. Each requires a policy judgment to be made. Plan B advances no case as to the latter, but argues that the Court should nonetheless order the Secretary of State to amend the 2050 Target now (to an unspecified target), without awaiting the IPCC’s Special Report, and contrary to the Committee’s current advice. Its case is unarguable, and permission to apply for judicial review should be refused.

¹ [1/D/96-150].

² Page 22, Report provided with these Summary Grounds.

³ See the website of the IPCC, at <http://www.ipcc.ch/>.

B. Factual Background

(1) The UK is a world leader in reducing greenhouse gas emissions

6. The UK is a world leader in reducing greenhouse gas emissions. It has sought actively to advance the climate agenda at the domestic and international level.
7. On the domestic level, the UK has, in particular:
 - a. enacted the Climate Change Act which includes an existing target of an at least 80% reduction of greenhouse gas emissions by 2050 against a 1990 baseline. Both the enactment of such legislation and the adoption of a stretching 2050 target were world leading when the Climate Change Act was enacted, and paved the way for other countries who have adopted similar models;
 - b. not only met but exceeded the average 25% reduction on the 1990 baseline required in the first carbon budget period (2008 to 2012);
 - c. put polices and measures in place such that the UK is on track to outperform the second carbon budget for the period 2013 to 2017, which required an average reduction of 31%;
 - d. put polices and measures in place such that the UK is on track to outperform the third carbon budget (2018 to 2022), which is the current budgetary period. This budget requires an average 37% reduction; and
 - e. established further carbon budgets which require an average: (i) 51% reduction over 2023-2027 against the 1990 baseline (the fourth carbon budget period), and (ii) 57% reduction over 2028-2032 (the fifth carbon budget period).
8. The purpose of carbon budgets is to put the UK on a trajectory to meet the 2050 Target which is already stretching and relatively ambitious. In particular, the domestic 2050 Target is more ambitious than the EU target for 2021 to 2030, which was communicated to the UNFCCC in what is now treated as the joint EU/Member State Nationally Determined Contributions under the Paris Agreement for that period, which specifies an EU target of a 40% reduction by 2030 compared to 1990.

9. On the international level, the UK played an important role in pushing for ambitious aims to be set in the Paris Agreement. That success is testament to the progress that has been made in gaining international consensus on what needs to be achieved. Under the Paris Agreement, as well as seeking to limit warming to well below 2°C, and to pursue efforts to limit the temperature increase to 1.5°C, the UK is committed to working with other countries to achieve the aim of global net zero emissions of greenhouse gases in the second half of the century. See further paragraphs 17 to 30 below.
10. The setting of such an ambitious domestic target – and the global leadership that the UK has shown in setting new international aims – reflects the Government’s focus on the importance of tackling climate change. Importantly, although the 2050 Target is ambitious, it is also achievable.

(2) *The 2050 Target, strategies for achieving the carbon budgets and uncertainties*

11. The 2050 Target is both stretching and achievable. It requires considerable policy work by current and future Governments to achieve, taking into account the prevailing circumstances at different points in time.
12. It is obviously impossible for the present Government:
 - a. to know now the exact technological changes that will help deliver on the fourth and fifth carbon budgets and beyond: some technologies will develop faster than expected, making it easier to reduce emissions in particular sectors, others less so;
 - b. to know now all relevant scientific and other developments which may impact on the achievement of the ambitious existing targets (whether positive or negative);
or
 - c. to dictate the precise policies and proposals that must or may be adopted in future periods, which may be more than a decade away.
13. What the Government can do at this stage, and has done in the past, is to analyse plausible pathways to meeting the fourth and fifth carbon budgets (and ultimately the 2050 Target), reflecting the inherent uncertainties surrounding planning for the

achievement of future targets. Those pathways can be developed, updated and amended over time.

14. On 12 October 2017, the Government published the Clean Growth Strategy which sets out in detail a possible pathway for meeting the fifth carbon budget, which covers the period from 2028 to 2032, through domestic action [1/B/1-165]. BEIS estimates that the combination of existing policies and a subset of the new measures in the Clean Growth Strategy that can be quantified could deliver 93% of the required level of emissions savings for the fifth carbon budget to 2032, against our 1990 baseline.⁴ The Strategy also identifies further areas where the Government will need to drive further progress through future consultations, innovation spending and policy design (see the decision pathways in Annex A to the Clean Growth Strategy).
15. There is even greater uncertainty about which technologies will help reduce emissions by at least 80% by 2050. Again, it is not possible for the current Government to know now which technological breakthroughs will be most important in helping the UK meet the 2050 Target – or every possible future policy proposal that may result from such breakthroughs. The Government has, however, explored the plausible potential pathways to 2050 to identify low regrets steps which can be taken in the next few years common to many versions of the future, as well as the key technologies and uncertainties. To that end, the Clean Growth Strategy presents three illustrative long-term pathways (the Electricity pathway, the Hydrogen pathway, and the Emissions removal pathway – see page 56 of the Strategy). The Government is continuing to build its understanding of the best approach. The ultimate way forward might in fact be some combination of the three, or another approach that builds on further innovation.
16. As the UK approaches 2050, its remaining emissions will likely be in the sectors where it is most difficult to cut them – in industry, agriculture, aviation and shipping. As highlighted by the Committee on Climate Change, greenhouse gas removal (“GGR”) technologies are likely to have an important role to play in offsetting difficult-to-cut

⁴ Since the Strategy was published, the Government has updated its Energy and Emissions Projections for 2017 (January 2018).⁴ As a result, BEIS now projects that the gap between: (a) what the existing and quantifiable new policies/proposals are predicted to achieve (94/93%); and (b) the targets for the fourth and fifth carbon budgets, is even smaller than set out in the Strategy on current projections. Using the updated projections, the percentage figures change to 97% and 95% for the fourth and fifth carbon budgets respectively. As demonstrated by the impact of this single set of updates, there is inherent uncertainty around projecting what existing and future policies can achieve, which needs to be the subject of continuous review.

emissions, by removing greenhouse gases from the air. There is a diverse set of GGR technologies with varying potential scale and at varying stages of development. These include afforestation, bio-energy with carbon capture and storage, direct air capture (capturing carbon dioxide from the air and storing it), enhanced weathering (crushing suitable rocks that react with carbon dioxide and spreading over land), and methods for storing carbon in the oceans, such as ocean liming. Thus, the Government and, in particular, BEIS, is taking active steps to strengthen its understanding of these technologies and, where appropriate, move forward with deployment. The Government will develop its strategic approach for GGR technologies in light of the research and development work it is doing to improve its understanding of GGR technologies, and to consider the scope for removing barriers and strengthening incentives to support the deployment of GGR, to position the UK at the leading edge of GGR development (see further the Clean Growth Strategy at page 57).

(3) *The Paris Agreement*

17. As Plan B acknowledges, the UK adopted a leading role in securing the Paris Agreement in 2015 (paragraphs 88 and 90 of the SFG). The Paris Agreement is at [2/F/86-112]. It entered into force in November 2016. In the light of the centrality of the Paris Agreement to Plan B's application for judicial review, it is vital to understand the nature, context and legal significance of that Agreement.
18. Plan B's application for judicial review is premised to a significant extent upon an assertion that the current 2050 Target is inconsistent with international law, in particular the Paris Agreement. However, this argument is based on a misstatement and misunderstanding of the legal effect of the Paris Agreement. In particular, it misrepresents the aims and objectives of the Agreement as amounting or giving rise to legally binding targets in their own right.
19. Article 2(1) of the Paris Agreement sets out the overarching aim of the Agreement as follows:

“This Agreement, in enhancing the implementation of the Convention, including its objective, aims to strengthen the global response to the threat of climate change, including by

(a) Holding the increase in the global average temperature to well below 2°C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5°C above pre-industrial limits, recognising that this would significantly reduce the risks and impacts of climate change.”⁵

20. Article 3 explains that: “As nationally determined contributions to the global response to climate change, all Parties are to undertake and communicate ambitious efforts as defined in Articles 4, [and others] ... with the view to achieving the purpose of this Agreement as set out in Article 2. The efforts of all Parties will represent a progression over time ...”.⁶ Article 4 provides:

“1. In order to achieve the long-term temperature goal set out in Article 2, Parties aim to reach global peaking of greenhouse gas emissions as soon as possible, recognising that peaking will take longer for developing country Parties, and to undertake rapid reductions thereafter in accordance with best available science, so as to achieve a balance between anthropogenic emissions by sources and removals by sinks of greenhouse gases in the second half of this century,

2. Each party shall prepare, communicate and maintain successive nationally determined contributions that it intends to achieve. Parties shall pursue domestic mitigation measures, with the aim of achieving the objectives of such contributions.

3. Each Party’s successive nationally determined contribution will represent a progression beyond the Party’s then current nationally determined contribution and reflect its highest possible ambition, reflecting its common but differentiated responsibilities and respective capabilities, in the light of different national circumstances.

4. Developed country Parties should continue taking the lead by undertaking economy-wide absolute emission reduction targets. ...

...

9. Each Party shall communicate a nationally determined contribution every five years in accordance with decision 1/CP.21 and any relevant decisions of the Conference of the Parties serving as the meeting of the Parties to this Agreement and be informed by the outcomes of the global stocktake referred to in Article 14.

...

11. A Party may at any time adjust its existing nationally determined contribution with a view to enhancing its level of ambition ...”⁷

⁵ Emphasis added.

⁶ Emphasis added.

⁷ Emphasis added.

21. Article 14 provides for the “*global stocktake*” referred to in Article 4(9), being a meeting of the Conference of the Parties “*to assess the collective progress towards achieving the purpose of this Agreement and its long-term goals*” in 2023 and every five years thereafter. Article 14(1) makes clear that the Conference shall make that assessment “*in a comprehensive and facilitative manner, considering mitigation, adaptation and the means of implementation and support, and in the light of equity and the best available science.*”
22. There are three main points arising out of the provisions of the Paris Agreement outlined above.
23. First, while the Government is fully committed to the objectives of the Paris Agreement, the legal obligation upon the Parties is to prepare, communicate and maintain nationally determined contributions to reduce net emissions, with a view to achieving the purpose of holding global average temperature increases to “*well below 2°C*” above pre-industrial levels, and pursuing efforts to limit them to 1.5 °C. This is not the same as a legal duty or obligation for the Parties, individually or collectively, to achieve this aim. There is also a collective long-term goal for near net zero emissions “*in the second half of this century*” (not by 2050) which all countries will work together to achieve. The approach is, therefore, a “bottom up” one by which each Party will determine their own contribution, and – notwithstanding the common objective to which Parties are committed as a matter of shared aim – there is no legal obligation on any one Party (or all Parties collectively) to achieve a “top down” target. In particular, the Paris Agreement certainly does not require the adoption of a binding domestic target to ensure that a target of 1.5°C (or even one “*well below 2°C*”) is met by 2050.
24. This focus on national contributions to a global effort reflects the approach adopted by the earlier UN Framework Convention on Climate Change (“UNFCCC” [2/F/1-33]), upon which the Paris Agreement builds. The Recitals to the UNFCCC acknowledge that “... *the global nature of climate change calls for the widest possible cooperation by all countries and their participation in an effective and appropriate international response, in accordance with their common but differentiated responsibilities and respective capabilities and their social and economic conditions*”. There is no dispute that developed countries, including the UK, are to take the lead in this regard. The UK has done so (see paragraphs 6 to 10 above). But the fact that a group of countries have

agreed that they must take the lead in pursuing an international response to a global problem does not translate into a specific legal obligation to achieve individually a “top down target”. On the contrary, the provisions of the UNFCCC quoted by Plan B at paragraphs 21 to 24 of the SFG [1/A/16-18] reflect the need for cooperation to achieve the objective of the UNFCCC and associated legal instruments. In particular, Plan B quotes selectively from Article 4 of the UNFCCC at paragraph 24 of the SFG. The omitted provisions, Articles 4(1)(c), 4(1)(d) – (i) [2/F/10-11] make this point clear, referring repeatedly to the need for the parties to “*cooperate*”.

25. Second, the ambition of measures incorporated into Parties’ respective nationally determined contributions is to be set by each Party, having regard to what is “*possible*” and to best “*available*” science and each Party’s respective “*capabilities*”. This also reflects the approach adopted under the UNFCCC. The UNFCCC recognised that the specific commitments to be made by developed country Parties and other Parties included in Annex I (which included the United Kingdom) – both in terms of their national policies and of the corresponding measures on the mitigation of climate change by limiting emissions of greenhouse gases – needed to take into account “*the need to maintain strong and sustainable economic growth, available technologies and other individual circumstances, as well as the need for equitable and appropriate contributions by each of these Parties to the global effort regarding [the] objective [of] the Convention*” (Article 4(2)(a)).⁸ At paragraph 24 of its SFG, Plan B purports to quote the text of Article 4(2)(a) of the UNFCCC [1/A/18]. However, it omits the text quoted in this paragraph, which makes clear that matters such as the availability of technologies and the individual circumstances in each state are important and relevant to the development of national policies.
26. Thus, the Paris Agreement does not oblige a party, including the UK, to fix a target (still less, a 2050 target) and, in particular, it does not oblige the UK to amend an existing domestic target to something which is not currently recognised as achievable having regard to available technologies and the UK’s circumstances (see further below).

⁸ In line with this approach, as outlined below, the Climate Change Act requires the Secretary of State in coming to any decision relating to carbon budgets to take into account not only scientific knowledge about climate change, but also “technology relevant to climate change” (amongst other matters): section 10(2) of the Climate Change Act. The Climate Change Committee is also required to take such matters into account in considering its advice in relation to any such decision.

27. Despite arguing that the Paris Agreement requires the Secretary of State to amend the 2050 Target, Plan B (somewhat contradictorily):
- a. criticises the Paris Agreement for the absence of internationally determined targets for each party and/or the absence of an international mechanism for compelling sovereign states to change their targets (paragraph 98 of the SFG [1/A/38-39]); and
 - b. acknowledges that neither the UNFCCC nor the Paris Agreement impose a legal requirement upon any State to set any particular target (paragraph 179 of its SFG [1/A/65]).
28. As to (a), Plan B’s criticisms of the Paris Agreement are misplaced – the Paris Agreement is a critical convention ratified by 174 parties. However, for present purposes the important point in response to (a) and (b) above is that the absence of such international obligations cuts across Plan B’s entire case. Surprisingly, in footnote 97, Plan B asserts that contrary to the Secretary of State’s pre-action response, “*the Claimants are clearly not arguing that the Paris Agreement created a legally binding obligation on the Secretary of State to fix a target at a certain level.*” However, that is in fact the premise of Plan B’s case. Plan B points to the Paris Agreement, as well as the UNFCCC and other international obligations, and argues that the only option open to the Secretary of State is to amend the 2050 Target now, in the light of the Paris Agreement (see, for example, paragraph 179 of the SFG [1/A/65]). Plan B fails to grapple with the key flaw in its case: there is no obligation in international law on the UK, whether under the Paris Agreement or otherwise, to amend the 2050 Target. See further Section D below.

(4) *The Government’s commitment to a future net zero emissions target*

29. As set out further below, the obligations imposed by the Climate Change Act cover the period up to 2050. The Government is fully committed to enshrining the goal of net zero emissions in domestic law in due course. Thus:

- a. On 14 March 2016, the Rt. Hon. Andrea Leadsom MP, the then Minister of State for Energy, said in a debate in the House of Commons during the Report stage of the Energy Bill:

“The Government believe[s] we will need to take the step of enshrining the Paris goal of net zero emissions in UK law—the question is not whether, but how we do it, and there is an important set of questions to be answered before we do. The Committee on Climate Change is looking at the implications of the commitments made in Paris and has said it will report in the autumn. We will want to consider carefully its recommendations, and I am happy to give the right hon. Gentleman the undertaking that we will also discuss with him and others across the House how best to approach this matter, once we have undertaken that consideration.”⁹

- b. That position was further confirmed on 24 March 2016 by the Rt. Hon. Amber Rudd MP, the then Secretary of State for Energy and Climate Change, in answer to an Oral Question as to “*What steps her Department is taking to enshrine the commitment to net zero emissions made at the Paris climate change conference of December 2015 in UK law*”. She replied:

“As confirmed last Monday during the Report stage of the Energy Bill, the Government will take the step of enshrining into UK law the long-term goal of net zero emissions, which I agreed in Paris last December. The question is not whether we do it but how we do it.”¹⁰

- c. In the Clean Growth Strategy, the Government expressly stated that it believes that the UK will need to legislate for a net zero emissions target (“**the net zero emissions target**”) at an appropriate point in the future, to provide legal certainty on where the UK is heading, and reflecting the UK’s commitment to working with other countries to achieve the aim of global net zero emissions in the second half of the century.¹¹

30. At paragraphs 25 to 75, 99 to 101 and 122 of the SFG in particular,¹² Plan B sets out lengthy reasons why, *inter alia*, it is necessary for the UK to take action to tackle climate change (as part of the international response to it). This is not (and has never been) disputed.¹³ On the contrary, the change from the original proposal of a 60%

⁹ Emphasis added.

¹⁰ Emphasis added.

¹¹ [1/B/59].

¹² [1/A/19-32, 39, 44-45].

¹³ Although it is not accepted that all of the points made in these passages are correct.

target, to the 80% 2050 Target demonstrates the UK's commitment to taking a leading role on climate change (see paragraphs 67 *et seq* of the SFG¹⁴). The issue is whether the Government is obliged at this time to change the 2050 Target legislated for by Parliament in 2008, which, as explained in the next section, the Committee on Climate Change has recommended maintaining (for the time being).

(5) *The advice of the Committee on Climate Change*

31. As Parliament was informed on 14 March 2016, see paragraph 29.a above, the Committee on Climate Change looked at the implications of the commitments made in the Paris Agreement, reporting in October 2016 [1/D/96-150]. The key conclusions reached by the Committee set out in the Executive Summary of its report were as follows:

“...Do not set new UK emissions targets now. The UK already has stretching targets to reduce greenhouse gas emissions. Achieving them will be a positive contribution to global climate action. In line with the Paris Agreement, the Government has indicated it intends at some point to set a UK target for reducing domestic net emissions to net zero. We have concluded it is too early to do so now, but setting such a target should be kept under review. The five-yearly cycle of pledges and reviews created by the Paris Agreement provides regular opportunities to consider increasing UK ambition...” [1/D/97]

“...We agree with the Government's intention to set a new target in future that reflects the global need to reach net zero emissions. However, to be credible it needs to be evidence-based, accompanied by strong policies to deliver existing targets and a strategy to develop greenhouse gas removals. Early action will allow the UK to fulfil its commitment under the Paris Agreement and position it to take competitive advantage in the global shift to a zero-carbon world...” [1/D/97].

“...We currently have no scenarios for how the UK can achieve net zero domestic emissions. Alongside widespread efficiency improvements and deployment of zero-carbon energy sources, net zero would require greenhouse gas removals of over 100 MtCO_{2e} per year (UK emissions were around 500 MtCO_{2e} per year in 2015):

- The UK's 2050 target to reduce emissions at least 80% from 1990 (i.e. to around 160 MtCO_{2e} per year) is challenging but can be met in various ways using currently known technologies. Scenarios generally involve deep reductions in emissions from power, heating and transport, where zero-carbon options already exist. More challenging sectors (especially

¹⁴ [1/A/3-32].

agriculture, aviation and industry) are currently not expected to reach zero emissions on this timescale.

- A full and successful roll-out of all options identified in our published scenarios to 2050 would lead to greenhouse gas emissions just over 90% lower than 1990, and CO₂ emissions close to zero.
- These options include greenhouse gas removals from afforestation, bioenergy with carbon capture and storage (BECCS) and wood in construction. Together they remove up to 70 MtCO₂ per year within the limits to sustainable bioenergy supply we have identified.
- Achieving net zero emissions of all greenhouse gases on these timescales would require a combination of further greenhouse gas removals and further breakthroughs in hard-to-treat sectors, going beyond those already in our scenarios. Without further breakthroughs in emissions sources, UK removals would need to be over 100 MtCO₂e per year...” [1/D/100].

“... Reaching net zero emissions will be a global necessity in order to limit climate change. Achieving it on the timescales necessary to meet the aims of the Paris Agreement will be very challenging for all nations. Given current uncertainties around domestic feasibility, inclusion of non-CO₂ emissions and ambition of other countries to reach zero, it makes sense at this point to remain flexible on how best to reflect the aim of global net zero emissions in a UK target. Addressing these uncertainties will help in setting a robust target which provides the right incentives...” [1/D/100].

“... Current policy in the UK is not enough to deliver the existing carbon budgets that Parliament has set. The Committee’s assessment in our 2016 Progress Report was that current policies would at best deliver around half of the emissions reductions required to 2030, with no current policies to address the other half. This carbon policy gap must be closed to meet the existing carbon budgets, and to prepare for the 2050 target and net zero emissions in the longer term.

The existing carbon budgets are designed to prepare for the UK's 2050 target in the lowest cost way as a contribution to a global path aimed at keeping global average temperature to around 2°C. Global paths to keep close to 1.5°C, at the upper end of the ambition in the Paris Agreement, imply UK reductions of at least 90% below 1990 levels by 2050 and potentially more ambitious efforts over the timescale of existing carbon budgets.

However, we recommend the Government does not alter the level of existing carbon budgets or the 2050 target now. They are already stretching and relatively ambitious compared to pledges from other countries. Meeting them cost-effectively will require deployment to begin at scale by 2030 for some key measures that enable net zero emissions (e.g. carbon capture and storage, electric vehicles, low-carbon heat). In theory these measures could allow deeper reductions by 2050 (on the order of 90% below 1990 levels) if action were ramped up quickly.

The priority for now should be robust near-term action to close the gap to existing targets and open up options to reach net zero emissions:

- The Government should publish a robust plan of measures to meet the legislated UK carbon budgets, and deliver policies in line with the plan.
- If all measures deliver fully and emissions are reduced further, this would help support the aim in the Paris Agreement of pursuing efforts to limit global temperature rise to 1.5°C.
- The Government should additionally develop strategies for greenhouse gas removal technologies and reducing emissions from the hardest-to-treat sectors (aviation, agriculture and parts of industry).

There will be several opportunities to revisit the UK's targets in future as low-carbon technologies and options for greenhouse gas removals are developed, and as more is learnt about ambition in other countries and potential global paths to well below 2°C and 1.5°C:

- 2018: the Intergovernmental Panel on Climate Change (IPCC) will publish a Special Report on 1.5°C, and there will be an international dialogue to take stock of national actions.
- 2020: the Committee will provide its advice on the UK's sixth carbon budget, including a review of progress to date, and nations will publish mid-century greenhouse gas development plans.
- 2023: the first formal global stocktake of submitted pledges will take place.

We will advise on whether to set a new long-term target, or to tighten UK carbon budgets, as and when these events or any others give rise to significant developments..." [1/D/102].¹⁵

32. Thus, the advice of the Committee on Climate Change was that "*We currently have no scenarios for how the UK can achieve net zero domestic emissions.*" Achieving net zero emissions of all greenhouse gases by 2050 – when the Paris Agreement sets an aim of achieving this in the second half of the century – would require a combination of further greenhouse gas removals and further breakthroughs in hard-to-treat sectors going beyond those already in both the Government's and the Committee on Climate Change's scenarios. The Government shares the view of the Committee that given current uncertainties around domestic feasibility, inclusion of non-CO2 emissions and ambition of other countries to reach net zero, it makes sense at present to remain

¹⁵ Underlined emphasis added. See also Chapter 4 of the advice which sets out the Committee's reasoning on this issue in full [PB1/D/].

flexible on how best to reflect the aim of global net zero emissions in a UK target. Consistent with the 2016 Committee Recommendation, the Secretary of State decided not to pursue the potential options to introducing a new target for the time being.

33. However, as made clear above, the Government is committed to introducing a net zero emissions target at an appropriate time in the future. The question is not whether but how this will be done. There are two main options:
 - a. The Secretary of State could exercise his discretion under section 2(1) of the Climate Change Act to amend the 2050 Target. Before exercising that power, the Secretary of State must obtain and take into account the advice of the Committee (section 3(1)(a) of the 2008 Act).
 - b. For Parliament to set a further target for net zero emissions for some point later in the second half of this century.
34. As noted at paragraph 3 above, the Committee on Climate Change has indicated that, in its view, it should be asked to provide further advice on the implications of the Paris Agreement for the UK's long-term emissions targets after the IPCC reports in 2018.

(6) *The consequences of amending targets prematurely & the best way forward*

35. It would not be good policy to set a new target (or any consequential revised carbon budget) which was not capable of being met (by reference to known and expected technology). In particular, so far as the 2050 Target under the 2008 Act is concerned, it would be wrong to place a statutory duty on the Secretary of State to “ensure” that an amended 2050 target was met, in circumstances where there were no credible means by which he could comply with that duty. As explained above, the 2050 Target is already a stretching, if achievable target. The achievement of the 2050 Target still requires detailed further investigation of emerging and unpredictable technological developments, as well as other unpredictable developments, over the course of more than three decades.
36. The consequences of setting steeper targets that are not recognised as being achievable based on current knowledge and the UK’s circumstances would be troubling. There would inevitably be a loss of credibility in the UK’s climate change programme both

nationally and internationally – sacrificing the UK’s hard-won reputation as a leader in the ongoing and important effort to tackle climate change effectively at a global level. Given that the Paris Agreement reflects collective commitments to achieving a global goal, through ambition outlined in nationally determined contributions, unachievable targets with no plausible proposals for meeting them would serve only to undermine the sincerity of the UK’s commitment to it. It may also be severely counter-productive, encouraging other countries to propose unrealistic targets.

37. The Government judges that it will achieve most progress in encouraging other countries to set similarly challenging carbon budgets (i.e. the existing budgets and any future budgets introduced by the Government) if it can demonstrate that there are plausible and affordable means of achieving it. This means that future international talks including, most immediately, the Talanoa Dialogue to take place in late 2018, are of great importance in plotting a course for global emission reductions.
38. As to the timing of legislating for a new UK target, as outlined above, the Committee on Climate Change referred in its 2016 advice to several future opportunities to revisit this issue. In particular, it referred to the Special Report of the IPCC, the Talanoa dialogue in 2018 (as provided for in paragraph 20 of the Decision 1/CP.21 by the Conference of the Parties), other Parties’ mid-century greenhouse gas development plans (made by each Party in 2020, pursuant to Article 4(9) of the Paris Agreement) and the global stocktake (pursuant to Article 14 of the Paris Agreement). The Committee has recently invited the Government to seek further advice after the IPCC has reported this year.¹⁶
39. The revisiting of the 2050 Target may become appropriate in light of developments in the global process on climate change, for example, following the IPCC special report, the Talanoa dialogue and global stocktakes. However, the success of the aim to hold temperature rises to well below 2°C or even to 1.5°C will depend on ambition not only in the United Kingdom, but also that of other countries.

¹⁶ See paragraph 3 above.

C. Legal Framework

40. Section 1 of the Climate Change Act imposes a duty on the Secretary of State to meet the 2050 Target, i.e. that the net UK carbon account for the year 2050 is at least 80% lower than the 1990 baseline. Section 2 makes provision for the amendment of the 2015 Target or the baseline year, as follows:

“(1) The Secretary of State may by order—

- (a) amend the percentage specified in section 1(1);
- (b) amend section 1 to provide for a different year to be the baseline year.

(2) The power in subsection (1)(a) may only be exercised—

(a) if it appears to the Secretary of State that there have been significant developments in—

- (i) scientific knowledge about climate change, or
- (ii) European or international law or policy,

that make it appropriate to do so, or

(b) in connection with the making of—

- (i) an order under section 24 (designation of further greenhouse gases as targeted greenhouse gases), or
- (ii) regulations under section 30 (emissions from international aviation or international shipping).

(3) The developments in scientific knowledge referred to in subsection (2) are—

(a) in relation to the first exercise of the power in subsection (1)(a), developments since the passing of this Act;

(b) in relation to a subsequent exercise of that power, developments since the evidential basis for the previous exercise was established...¹⁷

41. Thus, the Secretary of State has discretion over whether to amend the 2050 Target, or the baseline year.

¹⁷ Emphasis added.

42. A decision to exercise the discretion granted by section 2 is also subject to consultation.

Section 3 of the Climate Change Act provides, *inter alia*, that:

(1) Before laying before Parliament a draft of a statutory instrument containing an order under section 2 (order amending the 2050 target or the baseline year), the Secretary of State must—

(a) obtain, and take into account, the advice of the Committee on Climate Change, and

(b) take into account any representations made by the other national authorities.

(2) The Committee must, at the time it gives its advice to the Secretary of State, send a copy to the other national authorities.

(3) As soon as is reasonably practicable after giving its advice to the Secretary of State, the Committee must publish that advice in such manner as it considers appropriate.

(4) ...

(5) At the same time as laying such a draft statutory instrument before Parliament, the Secretary of State must publish a statement setting out whether and how the order takes account of any representations made by the other national authorities.

(6) If the order makes provision different from that recommended by the Committee, the Secretary of State must also publish a statement setting out the reasons for that decision...¹⁸

43. Section 10(1) obliges the Secretary of State to take certain matters into account when making decisions in relation to carbon budgets (which must themselves be set by reference to the 2050 target – see section 8(2)), and the Committee on Climate Change to take those same matters into account when advising on any such decisions. Section 10(2) sets out the relevant matters, as follows:

“(2) The matters to be taken into account are—

(a) scientific knowledge about climate change;

(b) technology relevant to climate change;

(c) economic circumstances, and in particular the likely impact of the decision on the economy and the competitiveness of particular sectors of the economy;

¹⁸ Emphasis added.

(d) fiscal circumstances, and in particular the likely impact of the decision on taxation, public spending and public borrowing;

(e) social circumstances, and in particular the likely impact of the decision on fuel poverty;

(f) energy policy, and in particular the likely impact of the decision on energy supplies and the carbon and energy intensity of the economy;

(g) ...

(h) circumstances at European and international level...¹⁹

44. The Secretary of State is not limited to considering only these identified matters (section 10(7) of the Climate Change Act). However, the factors identified by Parliament reflect the need for the Secretary of State to have regard to changes in technology, as well as scientific evidence, and, critically, to consider likely impact of any decision in the future.

D. Response to the Grounds of Challenge

Ground 1: Ultra vires as contrary to the purpose of the Climate Change Act

45. Under Ground 1 (and under a number of its other Grounds), Plan B attempts to convert the Section 2 discretionary power into a duty. The first way it seeks to do so is to argue, incorrectly, that the UK's international obligations mandate such an interpretation of Section 2 of the Climate Change Act.

46. At paragraph 4 of the SFG, Plan B states that the "heart" of its case is that:

"... the 2008 Act obliges the Secretary of State to maintain a 2050 Target that gives effect to the UK's obligations under international law, and which has reasonable prospects of keeping people safe. It is apparent that the current target does neither. By maintaining such a target the Secretary of State is acting contrary to the purposes of the 2008 Act, which is unlawful."²⁰

47. At paragraph 9 it is asserted that: "*Crucially, section 2 must be interpreted in light of the international law obligations to maintain climate targets on the basis of equity and*

¹⁹ Emphasis added.

²⁰ [1/A/12].

the precautionary principle".²¹ While in some passages Plan B appears to recognise that Section 2 grants a discretionary power to the Secretary of State, it then relies on, in particular, the Paris Agreement to assert that the only option open to the Secretary of State is to amend the 2050 target now to some other unspecified level.²² This assertion is incorrect.

48. First, the circumstances in Section 2(2) which must be satisfied before the power arises are not simply that there have been significant developments in scientific knowledge about climate change or in European or international law or policy. It must also "*appear to the Secretary of State*" that such developments make it "*appropriate*" to amend the 2050 Target. For the reasons set out above, and as recommended by the Committee on Climate Change, the Secretary of State does not yet consider it appropriate to amend the 2050 Target. As outlined further below in response to Ground 2, the judgment reached by the Secretary of State on the merits of exercising his section 2 discretion is not irrational.
49. Second, as outlined in Section B(3) above, Plan B's arguments rest on an incorrect interpretation of the terms and/or implications of the Paris Agreement. There is no obligation in international law to amend the 2050 target, and least of all to do so now.
50. Third, there is no dispute that climate 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.²³ That does not mean, however, that it would be appropriate for the Secretary of State to set a goal that is not recognised as being achievable based on current knowledge and the UK's circumstances. Setting such targets does not assist any individual impacted by climate change. On the contrary, as outlined above it would be counter-productive in the global arena.
51. Fourth, Plan B asserts, in footnote 91 to its SFG that it is "*well established*" that "*delay can be ultra vires*".²⁴ It cites one authority in support of this statement. However, that case concerned delay in the performance of a statutory duty. Indeed, as noted above,

²¹ [1/A/13].

²² Paragraphs 171-176, [1/A/62-64].

²³ See paragraph 177 of Plan B's SFG [1/A/62-64].

²⁴ [1/A/62].

Ground 1 as a whole seeks to convert a clear statutory discretion into a binding duty – which would in itself be contrary to Parliament’s intention.

52. Fifth, by this ground Plan B seeks to shape the UK’s diplomatic strategy in complex, future multilateral talks by asserting that the purposes of the 2008 Act would “*only*” be fulfilled if the UK adopts a new target “*to show leadership in tackling climate change*” and demonstrates “*leadership by example*”. The 2008 Act does not provide any such mandatory approach to the UK’s future negotiations. Nor could it even arguably be said to do so. Effective action on climate change requires international cooperation and coordination; the most effective means of persuading other countries to adopt ambitious nationally determined contributions is a matter of judgment for the Government to decide upon in the light of up to date evidence. Plan B’s application for judicial review is an impermissible attempt to constrain that discretion.
53. Ground 1 is accordingly unarguable.

Ground 2: Error of law

54. Ground 2 of Plan B’s application asserts that the Committee erred in its October 2016 report by misinterpreting the Paris Agreement – and that this in turn infects the Secretary of State’s decision not to amend the 2050 target yet. This ground is based on selective quotation from the Committee on Climate Change’s detailed advice, and has no proper basis.
55. At [1/D/108-111], the Committee outlined the nature of the obligations agreed to by the parties of the Paris Agreement, including the agreement to pursue efforts to limit the rise in global temperature to 1.5°C in the second half of the century. It is clear that the Committee not only understood the nature of the agreement reached, but also engaged in detailed analysis of its implications.
56. At paragraph 185 of its SFG,²⁵ Plan B quotes a short extract from Chapter 2 of advice which discusses in detail the implications of Paris ambition for emissions in 2050 and beyond. In Section 2 of that Chapter, the Committee discusses in detail the fact that achieving 1.5°C in the second half of the century is an “*extremely challenging goal*”, as

²⁵ [1/A/66].

even staying below 2°C remains very challenging [1/D/117]. It is clear that to achieve the former goal, significantly faster rates of reduction than are currently envisaged would be required. The Committee explained that the parties to the Paris Agreement were aware of this [1/D/118]. It also noted that some experts are already of the view that 2 °C is no longer feasible in reality because model scenarios are too optimistic about global co-operation and technology availability. In that context, the Committee stated that it considered:

“... the goal of pursuing efforts to 1.5 °C [i.e. the commitment made in the Paris Agreement] as implying a desire to strengthen and potentially to overachieve on efforts towards 2 °C...”

57. The Parties to the Paris Agreement have pledged to work together in order to try to achieve an extremely challenging goal. Recognising the reality of the difficulties in achieving that goal is not, contrary to Plan B’s case, an error of law. Thus, the criticisms made at paragraphs 186-189 of the SFG, attaching a single sentence within a detailed advice, are incorrect on their face.²⁶ They provide no sustainable basis upon which to assert, as Plan B does, that the alleged errors show that the expert Committee proceeded on a fundamentally flawed premise which also infects the Secretary of State’s judgment, as made in 2016 and maintained at the present time.²⁷ The Secretary of State well understands the goal of pursuing efforts to 1.5 °C, as does the Committee.
58. Further, Plan B’s baseless attempt to question the independence of the Committee on Climate Change and/or undermine the cogency of the detailed consideration given to the issues raised by the Paris Agreement in the advice, is as misconceived as it is inappropriate.²⁸
59. Plan B continues to fail to grapple with the detail of the Committee’s advice. Any attempt to dismiss the importance and relevance of that advice based on misplaced criticism of a single sentence contained within it should be rejected. Ground 2 provides no basis upon which to impugn the Secretary of State’s judgment that the 2050 target should not yet be amended.

²⁶ [1/A/66-67].

²⁷ Paragraph 189 of the SFG [1/A/67].

²⁸ See, for example, paragraphs 13, 20 and 102 to 114 of the SFG [1/A/14, 16 & 40-43].

Ground 3: Irrational policy

60. The Secretary of State's decision, based on the advice of the Committee on Climate Change, not to amend the 2050 Target at this time (to achieve net zero emissions or some other unspecified goal) is not irrational, as contended or at all.
61. Despite Plan B's lengthy submissions on this issue (see paragraphs 190 to 204 of the SFG),²⁹ the essential points appear to be that:
- a. action needs to be taken to address climate change because of its serious impact;
 - b. the 2050 Target is inconsistent with the Paris Agreement/the UK's international obligations; and
 - c. the Climate Change Act is premised on the notion that the only rational way to combat climate change is to aim to achieve what is necessary to avoid disaster, and by aiming for it, and investing in it, to make it feasible. It is the setting of the Target which drives industry to develop and fund technologies that help meet the Target and, accordingly: "*... by not aiming for what is necessary, what is necessary is rendered unfeasible*".
62. As to the **first** of these points, again the serious consequences of climate change are not and never have been disputed. This does not alter the fact, however, that the Secretary of State has to exercise his judgment to decide whether and when it is appropriate to amend the 2050 Target set by Parliament. This is why, contrary to the third of those points, the Climate Change Act does not indicate that feasibility is irrelevant.
63. The current target is to ensure that the net UK carbon account for the year 2050 to be at least 80% lower than the 1990 baseline. The UK has come a long way since the passage of the Climate Change Act in 2008. The Clean Growth Strategy published in 2017 sets out ambitious strategies for staying on course to meet that obligation – and the Government is committed to achieving net zero emissions in accordance with the Paris Agreement's aim to do so by the end of the century. It is wrong to suggest that Parliament was not alive to the issue of technological barriers to achieving the Act's goals, or to other matters of feasibility (see, for example, section 10 of the Act).

²⁹ [1/A/67-74].

Nothing in Section 2 or any other provision of 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.

64. Contrary to the **second** point, and as outlined above, the approach taken by the Secretary of State is entirely consistent with the Paris Agreement and the UK's other international obligations.
65. As made clear by the **third** point, Plan B's case seems to be that the Secretary of State is under a duty to change the target now, as by doing so the means to achieve it will simply materialise. This is incorrect. As the Clean Growth Strategy demonstrates, the existing 2050 Target continues to drive innovation. There is no duty on the Secretary of State to commit to a new legally binding target now, without a recognised route to meeting it and against the advice of the Committee, in the hope that new technology will materialise in the interim beyond that which may reasonably be expected to occur under the existing target.
66. It is accordingly 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 anticipation that it could be met or that it would accordingly make a real contribution to limiting global climate change. Whether or not a revised target would have that effect can be most effectively judged by taking into account technological developments and the ambition of other countries to tackling the global problem. That is precisely why the Committee on Climate Change has suggested that it be asked to report again after the 2018 IPCC Special Report.
67. In short, the Secretary of State's decision not to amend the 2050 Target now is not even arguably irrational – nor is the advice from the Committee on Climate Change to that effect. A credible pathway to the achievement of any revised target is necessary, particularly where the effect of an amendment to the 2050 Target would be to place a legal duty on the Secretary of State to achieve it. Further, the Secretary of State is already committed to setting a target of net zero emissions at the appropriate time.
68. Ground 3 is accordingly unarguable.

Ground 4: Human Rights

69. Since the pre-action protocol stage, Plan B has sought out a number of further individual claimants to join it in its claim, apparently in order to advance its grounds based upon the Human Rights Act 1998. The addition of these claimants does nothing to improve its argument. The position remains that the HRA 1998 provides no sustainable basis to treat the ambit of the Secretary of State's discretion under section 2 as so constrained that it amounts to a duty to amend the 2050 target immediately.
70. The decision not to amend the 2050 Target for the UK at the present time does not even arguably give rise to a breach of any specific individual's human rights:
- a. On the facts, the Secretary of State has not failed to take any required step to safeguard present or future generations. The fight against climate change is a global one. The Secretary of State's approach to the specific issue of the 2050 Target is informed by the need to ensure that targets remain credible and are capable of being achieved. The most effective means of persuading other countries to set similar targets is a matter for the Secretary of State to judge, not for Plan B to dictate.
 - b. The decision not to amend the 2050 Target at this time does not amount to an interference with any identifiable victim's rights, whether under Article 2, Article 8 or Article 1 Protocol 1, whether taken alone or in combination with Article 14 ECHR. The SFG do not identify any interference to which *that decision* gives rise, but only to the effects of *climate change generally* (now and in the future), see, for example, paragraph 223.³⁰ These two matters cannot be conflated.
 - c. Plan B ignores the commitment made by the Government to set a net zero emissions target at the appropriate time. Such a target, when credible, is more likely to address the long-term concerns raised by the application than a lesser change to the existing target, in circumstances where stretching action is already required to be taken under the fourth and fifth carbon budgets up to 2032. Plan B posits a "choice" between amending the 2050 Target now and inevitable disaster. There is simply no basis for it.

³⁰ [1/A/80-81].

- d. Despite lengthy quotes from various sources, Plan B fails to identify any jurisprudence of the Strasbourg Court which supports the conclusion that a failure to amend a target for emissions in 2050 – least of all where justified on the grounds set out above – can give rise to an interference with a person’s rights under the ECHR. There is none.
 - e. Even if such a decision was capable of giving rise to any interference with protected rights (which it is not), the suggestion that UK would not have a wide margin of appreciation is wholly unrealistic (see paragraph 227 of Plan B’s SFG³¹). This is quintessentially an area where the executive, and not the court, must assess the advantages and disadvantages of any particular course of action, not only domestically but as part of an evolving international discussion.
71. Further, Plan B’s suggestion that the Court could rely on Section 3 of the Human Rights Act in order to convert a discretionary power into a duty is similarly misconceived. Such an approach would override the clear will of Parliament. The Climate Change Act expressly created a decision-making process involving advice from the expert Committee, and judgments to be reached by the Secretary of State, in the exercise of a discretionary power.
72. Ground 4 is unarguable.

Ground 5: Public Sector Equality Duty

73. Ground 5 was not included in Plan B’s Pre-action Letter. Its inclusion now does not take Plan B’s case any further.
74. Plan B again conflates the impact of climate change and the impact of the decision under challenge. The impact of climate change has been the subject of considerable investigation and assessment – and continues to be investigated; see, for example, the UK Climate Change Risk Assessment 2017. The question the Secretary of State considered was whether now is the time to amend the 2050 Target. For the reasons given above, it was not. Ground 5 is misconceived and unarguable.

³¹ [1/A/82].

E. Conclusion

75. For all of the reasons given above, the Court is requested to refuse the Claimants permission to apply for judicial review. The claim is unarguable.

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