

Claimant
T Crosland
Second
TJEC/2
12 February 2018

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

Claim No: CO/16/2018

B E T W E E N :

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 -

SECRETARY OF STATE FOR BUSINESS,
ENERGY AND INDUSTRIAL STRATEGY

Defendant

- and -

THE COMMITTEE ON CLIMATE CHANGE

Interested Party

SECOND WITNESS STATEMENT OF TIMOTHY JOHN EDWARD CROSLAND

I, TIMOTHY JOHN EDWARD CROSLAND, director at Plan B. Earth of 62 Sutherland Square, London SE17 3EL, SHALL SAY AS FOLLOWS:-

1. I make this statement further to my first statement in these proceedings in order to address:
 - a. new matters raised in the Summary Grounds now submitted by both the Secretary of State and the CC Committee; and
 - b. a number of relevant developments arising since the filing of the claim on 8 December 2017.
2. Except where otherwise stated, the facts and matters set out in this witness statement are within my own personal knowledge. Where they are not, I identify the source of my understanding and belief. In the course of making this statement, I shall refer to certain documents, a bundle of which is now shown to me marked "[TJEC/2]". I also refer to the exhibit to my first statement, "[TJEC/1]" and to documents in the permission bundle, "[PB/x/y]". I adopt the definitions used in my first statement.

New matters to which the Defendant and Interested Party's summary grounds give rise

3. As set out in the Claimants' reply to the Summary Grounds (the "SoS SG" and the "CCC SG" respectively), the positions of the Secretary of State and the CC Committee now directly conflict.
4. The Secretary of State continues to accept the obvious inconsistency between the UK's 2050 Target and the Paris Agreement (which Agreement the UK Government advanced, signed and ratified). However, the Secretary of State claims his decision to maintain the current target was based on advice from the CC Committee that greater ambition for the 2050 Target was not feasible (see, for example, paragraph 36 of the SoS SG). By contrast, the CC Committee denies that its advice to the Secretary of State was based on considerations of feasibility. It now claims that the "primary basis" for its advice to the Secretary of State was that the current 2050 Target remains consistent with the increased ambition of the Paris Agreement (CCC SG, paragraph 24).
5. Not only is there an inconsistency between the positions taken by the Secretary of State and the CC Committee, but the position now adopted by the CC Committee would also appear to contradict its own previous statements. For example, the minutes of the

meeting of the CC Committee at which its advice was discussed (see [TJEC/1/92-95] / [PB/D/92-95]) state as follows:

"It was clear that the aims of the Paris Agreement, to limit warming to well below 2°C and to pursue efforts to limit it to 1.5°C, went further than the basis of the UK's current long-term target to reduce emissions in 2050 by at least 80% on 1990 levels (which was based on a UK contribution to global emissions reductions keeping global average temperature rise to around 2°C) ...

The Committee therefore agreed that whilst a new long-term target would be needed to be consistent with Paris, and setting such a target now would provide a useful signal of support, the evidence was not sufficient to specify that target now." [emphasis added]

6. Similar statements have been made by the CC Committee in its 2016 Report ([TJEC/1/96-201] / [PB/D/96-201]), its August 2017 letter to Plan B ([TJEC/1/214] / [PB/D/214]) and its most recent report on the Government's Clean Growth Strategy (see further below) [TJEC/2/27-110].
7. Accordingly, the CCC SG would appear to be the first time the CC Committee have suggested a consistency between the 2050 Target and the Paris Agreement.
8. Subsequently, on 7 February 2018, a House of Commons Business, Energy and Industrial Strategy Select Committee questioned Lord Deben, the Chair of the CC Committee, and Adrian Gault, its Chief Executive, on what the Paris Agreement meant for UK policy. The first relevant part of this questioning occurs at 10:22hrs (and may be seen on the video record of proceedings)¹:

Vernon Coaker asks (for the Committee):

"Taking a broader strategic look at where we are ... on best assumptions, even if we are generous to the government, there is a gap (the government is not going to reach its targets and now we've signed the Paris Agreement, which means that targets will be even more stretching. In your view as advisers, and frankly challengers to the government, how are we

¹ <http://www.parliamentlive.tv/Event/Index/5e3635bc-2665-4b50-9416-7d2d2856bc9d> (accessed on 12 February 2018). At the time of preparing this statement, I have been unable to locate a written transcript of the session. The transcript included here is my own, taken from the video.

going to a) fill the existing gap and then be credible with the public about what we are actually going to do to meet the Paris Agreement targets?"

Lord Deben responds:

"Well Mr Coaker that's a very important question. First of all, the targets are not under discussion because we fixed those and parliament voted from them and they can't be changed. So, we know where the targets are. The thing is how do we reach those targets." [emphasis added]

9. Lord Deben's answer is not correct. The 2050 Target *can* be changed under section 2 of the 2008 Act. The issue is that the CC Committee has advised against that course.
10. A short while later (10:30hrs on the video recoding), Vernon Coaker frames the question a little differently:

Vernon Coaker asks:

"In terms of the Paris Agreement is there a need for the government now to be setting out a strategy for how it's going to achieve that?"

Lord Deben responds:

"Well, there are two bits to it,

- We have looked at whether we should alter the 4th and 5th budget in respect of what Paris has required. Our judgement was that the trajectory doesn't change for that period of time sufficiently, it's within the parameters. So again, it seemed to us that it would therefore be beyond that you would want to change the trajectory and therefore it was better not to change the budgets because it would not make a material difference and also changing budgets will confuse people.

- Also IPCC is producing a document to explore what this really means. We can't make changes or recommendations until we get that so we're waiting to hear from them, it's very soon to come" [emphasis added].

11. The fifth carbon budget runs from 2028-2032. Lord Deben's answer is again different from that presented in the CCC SG. He implicitly accepts that the Paris Agreement demands a change of trajectory to 2050, but here suggests that the change can be

postponed to some time after 2032. His reason for adopting this approach, apparently, is to avoid “*confus[ing] people*”.

12. The CC Committee risks further confusion by misquoting the Claimants’ grounds. Paragraph 186 of the SFG [PB/A/66] states: “*It is not reasonable to interpret a goal of limiting warming to ‘well below’ 2°C as implying a desire only to strengthen efforts ‘towards’ 2°C*” (emphasis added). However, the CCC SG misquotes this statement in the following terms: “*It is not reasonable to interpret a goal of limiting warming to ‘well below’ 2°C as implying a desire only to strengthen efforts ‘towards’ 1.5°C*” (emphasis added). The misquotation substantially changes the meaning, misrepresenting the Claimants’ position.
13. In any event, the CC Committee’s position is untenable.
14. The CC Committee’s new argument hinges on the suggestion that the current 2050 Target “*could be*” consistent with a 66% probability of limiting warming to 2°C (see page 16 of the 2016 Committee Recommendation: [TJEC/1/106] / [PB/D/106]). First, as a matter of common sense, a 66% probability of limiting warming to 2°C is not consistent with the Paris Agreement goal of limiting warming to “*well below*” 2°C and pursuing efforts to a 1.5°C limit. The CC Committee’s position implies a 34% probability of exceeding 2°C. Indeed, the 2016 Committee Recommendation says on page 9 that “*‘below 2°C’ pathways have at least a 66% likelihood of avoiding 2°C altogether*” ([TJEC/1/99] / [PB/D/99]). The CC Committees’s argument therefore depends on the claim that there is no difference between a “*below 2°C goal*” and a “*well below 2°C*” goal. Clearly that is wrong.
15. Nor does the Paris Agreement present Parties with a choice of temperature goal, allowing them to choose whether they work with the “*well below*” 2°C limit or the 1.5°C limit. It is a case of ‘*both ... and*’, not ‘*either ... or*’: committing to one *and* pursuing efforts towards the other: [PB/E/90]. A 50% probability of 1.5°C is the minimum ambition that could be said to be consistent with the Paris Agreement and the precautionary principle.
16. In any event, we know that the original 2050 Target was set in 2008 on the basis of a 37-44% probability of limiting warming to 2°C and a low probability of exceeding 4°C: (see page 21 of the CC Committee’s 2008 report: [TJEC/2/1-2]). It is difficult to see how, many years later, with global emissions higher than envisaged, and the climate system reacting

ahead of the modelling ([TJEC/1/51-58B] / [PB/D/51-58B]) that same pathway has now become consistent with a significantly more ambitious goal. In fact, on close inspection, the 2016 Committee Recommendation does not claim that the current target *is* consistent with a 66% probability of limiting warming to 2°C. It says only that it “*could be consistent with around a 66% likelihood*” (emphasis added): [TJEC/1/106] / [PB/D/106]. Such an optimistic estimate, according to the CC Committee, assumes “*large-scale greenhouse gas removal*” which the CC Committee itself describes as “*highly uncertain*”: [TJEC/1/99] / [PB/D/99].

17. The Secretary of State also introduces a new argument for the first time in his SG, namely that to increase the 2050 Target would positively damage the global effort to combat climate change (paragraph 36):

“The consequence of setting steeper targets that are not recognised as being achievable based on current knowledge would be troubling. There would inevitably be a loss of credibility in the UK’s climate change programme both nationally and internationally ... unachievable targets ... may also be severely counterproductive, encouraging other countries to propose unrealistic targets.”

18. No evidence is provided for this rather extraordinary assertion, which is inconsistent with both the Paris Agreement and the scientific evidence of what needs to be done, as the Secretary of State would also appear to accept.
19. Moreover, it is inconsistent with the position the UK Government has adopted publicly. Also in January 2018, the Government published “*A Green Future: Our 25 Year Plan to Improve the Environment*” [TC/2/3-26]. In this the Government promises leadership by example on climate change:

“We will: Provide international leadership and lead by example in tackling climate change.”
[TJEC/2/4]

...

We will use our diplomacy on the international stage to encourage more ambitious global action.

...

Using our leading role in the UNFCCC, through which the Paris Agreement was established, we will urge the international community to meet the goals enshrined in the text ... This is vital for future environmental security: current global commitments under

the Agreement are insufficient to limit average temperature rise to well below 2°C.”
[TJEC/2/12]

20. No explanation has been given for how maintaining a 2050 Target inconsistent with the Paris Agreement could possibly be consistent with urging other countries to meet the goals in the Paris Agreement.
21. Accordingly, there is no coherent, rational explanation for either:
- a. the CC Committee’s recommendation not to revise the 2050 Target, which is now said to have been made on a basis that is unsustainable; or for
 - b. the Secretary of State’s decision not to do so, which has been based on (i) an apparent misreading of the 2016 Committee Recommendation and (ii) a new argument, which is similarly unsustainable.
22. In the circumstances, the obvious confusion and misunderstanding affecting the Secretary of State’s decision-making process is a matter of significant public concern.

Recent developments since the filing of the Claimants’ claim

23. There have been a number of significant evidential developments since the claim was filed on 8 December 2017.
24. As noted by both the Secretary of State and the CC Committee, the CC Committee published in January 2018 a report entitled “*An independent assessment of the UK’s Clean Growth Strategy*”: [TJEC/2/27-110]. In the course of this report the CC Committee invited the Secretary of State to commission a review of the 2050 Target in October 2018, following the publication of the IPCC’s report into global pathways for 1.5°C. The Secretary of State has not accepted this recommendation.
25. On page 21 [TJEC/2/1], the CC Committee clearly states that the Paris Agreement is likely to require greater ambition than the 2050 Target:

“This [carbon target] currently set in legislation as a reduction of at least 80% on 1990 emissions. However, the Paris Agreement is likely to require greater ambition by 2050 and for emissions to reach net-zero at some point in the second half of the century. It is therefore essential that actions are taken now to enable these deeper reductions to be achieved.”

26. The first draft of the IPCC's report, referred to above, has been widely leaked and reported on: see for example, the South China Morning Post, 13 January 2018 [TJEC/2/23-26]. The draft advises that for a 50% probability of limiting warming to 1.5°C, global emissions will need to reach "net zero" by 2050, implying that emissions for developed country parties will need to reach net zero in advance of 2050.
27. Also in January 2018, the European Parliament voted to legislate in favour of the following propositions²:
- a. *"The Paris Agreement substantially increased the level of global ambition on climate change mitigation, with signatories to it committing to "holding the increase in the global average temperature to well below 2°C above pre-industrial levels and to pursue efforts to limit the temperature increase to 1.5°C above pre-industrial levels". The Union needs to prepare for much deeper and faster cuts in emissions than previously foreseen. At the same time such reductions are feasible at a lower cost than previously assessed, given the pace of development and deployment of renewable energy technologies."*³
 - b. *"In line with the aim of the Paris Agreement to achieve a balance between anthropogenic emissions by sources and removals of GHG by sinks in the second half of the 21st century, the Union should aim, on an equitable basis, to reach net-zero emissions domestically by 2050, followed by a period of negative emissions."*⁴
 - c. *"For the climate system it is the cumulative total anthropogenic emissions over time that are relevant for the total concentration of greenhouse gases in the atmosphere. In order to be consistent with the commitments of Paris Agreement, it is necessary to analyse the global carbon budget which is consistent with pursuing efforts to limit the temperature increase to 1.5°C above pre-industrial levels, and establish a Union fair share of the remaining global carbon budget for the Union. Long-term climate and energy strategies should be consistent with that carbon budget."*⁵

² Amendments adopted by the European Parliament on 17 January 2018 on the proposal for a regulation of the European Parliament and of the Council on the Governance of the Energy Union, amending Directive 94/22/EC, Directive 98/70/EC, Directive 2009/31/EC, Regulation (EC) No 663/2009, Regulation (EC) No 715/2009, Directive 2009/73/EC, Council Directive 2009/119/EC, Directive 2010/31/EU, Directive 2012/27/EU, Directive 2013/30/EU and Council Directive (EU) 2015/652 and repealing Regulation (EU) No 525/2013 (COM(2016)0759 - C8-0497/2016 - 2016/0375(COD)) (1) (Ordinary legislative procedure: first reading).

³ Amendment 8, Proposal for a regulation, Recital 6 a (new) [TJEC/2/112].

⁴ Amendment 9, Proposal for a regulation, Recital 6 b (new) [TJEC/2/112-114].

⁵ Amendment 10, Proposal for a regulation, Recital 6 c (new) [TJEC/2/113].

d. *“The Union and the Member States should keep the climate and energy targets under regular review and should revise the targets upwards as necessary, to reflect successive reviews carried out within the UNFCCC process and to reflect the latest scientific evidence on the pace and impacts of climate change.”⁶*

28. The vote was overwhelming (a margin of 466 to 139). Yet of 21 Conservative Party MEPs, the only one to vote in favour of it was Julie Girling, who has previously had the whip withdrawn. Given the Government’s commitment to “international climate leadership” the reasons that it should be voting against greater ambition on the part of the EU as a whole are unclear, particularly when the UK is leaving the EU.

29. Consequently Plan B wrote to Julie Girling MEP on 25 January 2018 and posed the following question [TJEC/2/116]:

“Please could you clarify ...why UK conservative MEPs voted against the proposal (when Michael Gove recently promised 'international leadership on climate change')”.

30. Ms Girling responded as follows [TJEC/2/115]:

“I cannot understand this either but they are following advice from HMG”.

31. On 9 February 2018, the former leader of the Conservative Party, Lord Howard of Lympne, published an article in The Times calling for a reconsideration of the 2050 Target in light of the Paris Agreement [TJEC/2/117-122]:

“There is one thing further that we should do this year: ask whether the targets contained in the Climate Change Act are strong enough. In 2008, scientists predicted that climate change would increase the odds of damaging storms, droughts and heatwaves. Now they are able to show that this is a reality. In 2008, there were forecasts that wind and solar power would one day become cheaper than coal and gas; that is also now a reality. In 2008, it was not clear that developing nations would ever agree to limit their carbon emissions; now, via the Paris Agreement, they have.

And in the Paris Agreement, all governments, including our own, promised to attempt to keep global warming below 1.5C, rather than the more generous 2C target that was the global standard in 2008.

⁶ Amendment 11, Proposal for a regulation, Recital 6 d (new) [TJEC/2/113].

In the Conservative Party we also now know that younger voters in particular will hold us to account if we do not address climate change with the seriousness it demands. With impacts more visible than ever and with a new international target in place, it is incumbent on the UK, as a fair and responsible member of the international community, to consider whether we need to do more. A Trumpian denial of the facts will not work.” (underlining added)

Conclusion

32. In light of the above, the Claimants continue to consider that the Secretary of State’s position regarding the 2050 Target is unlawful and respectfully invites the Court to award the relief sought.

STATEMENT OF TRUTH

I believe that the facts in this witness statement are true.

Signed

Timothy John Edward Crosland

Dated: 12 February 2018