

IN THE COURT OF APPEAL  
ON APPEAL FROM  
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) MHB (A CHILD) BY HIS LITIGATION FRIEND DHB**

Appellants

- and -

**THE SECRETARY OF STATE**  
**FOR BUSINESS, ENERGY AND INDUSTRIAL STRATEGY**

Respondent

- and -

**THE COMMITTEE ON CLIMATE CHANGE**

Interested Party

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**GROUNDS OF APPEAL**

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The Appellants seek permission to appeal against the judgment below on the following grounds. The target of their challenge is the Secretary of State's decisions, which were

apparently taken in October 2016 and again in January 2018 (“**the impugned decisions**”), not to alter the 2050 target set out in the Climate Change Act 2008 (“**the 2008 Act**”).

1. **Frustrating the statutory purpose**: The impugned decisions involved the exercise of a statutory discretion in a manner inconsistent with the statutory purpose. The judge was wrong in law to reject this argument.
2. **Misunderstanding the Paris Agreement**: The judge misunderstood the Paris Agreement, wrongly accepting the Secretary of State’s argument that it embodies two, alternative levels of ambition, when in truth there is only one target.
3. **Misunderstanding the statutory consultee**: In exercising his discretion, the Secretary of State fundamentally misunderstood the advice of the statutory consultee, the Committee on Climate Change (“**the CCC**”). The judge wrong rejected this argument on the basis of an erroneous assessment of the documentary evidence.
4. **Violation of the Human Rights Act 1998 (“the HRA 1998”)**: The impugned decisions violate s. 6 of the HRA 1998 because the Secretary of State failed to take adequate protective measures with respect to the UK’s positive obligations under Articles 2 & 8 of the European Convention on Human Rights & Fundamental Freedoms, and Article 1 of the First Protocol, both individually and in conjunction with Article 14. The judge was wrong in law to reject this argument.
5. **Violation of the Public Sector Equality Duty (“PSED”)**: The impugned decisions failed to take account of the PSED. The judge was wrong in law to reject this argument.
6. **Irrationality**: The judge wrongly rejected the Appellants’ argument that the impugned decisions are irrational on the grounds that (i) the Secretary of State misunderstood the purpose of the statutory discretion under s. 2 of the 2008 Act (Ground 1 above); (ii) he misunderstood the Paris Agreement (Ground 2 above), (iii) he misunderstood the CCC’s advice (Ground 3 above); (iv) he failed to take into account his obligations under the HRA 1998 (Ground 4 above); (v) he failed to take

into account his PSED duties (Ground 5 above); (vi) he failed to take properly into account the UK's international leadership obligations; (vii) he failed to take into account the adverse impacts of delay; and (viii) he failed to take into account the fact that the 2050 Target is inconsistent with the Paris Agreement.

7. **The shifting defence & the duty of candour**: The judge ought not to have refused permission to bring proceedings for judicial review in circumstances where **(i)** the issues at stake are of the widest public importance, **(ii)** neither of the impugned decisions was announced at the time it was taken, **(iii)** there is no contemporaneous documentary record of the basis on which either decision was taken, **(iv)** before the proceedings were issued the Appellants asked for a definitive account of the reasons for the decisions, but that was refused, **(v)** the responses given by the Secretary of State and the CCC have shifted over time to the point where there are now serious inconsistencies, **(vi)** since the proceedings were issued, the Secretary of State has put forward an extremely slight witness statement from a departmental official who does not purport to give a full and frank account of the decision-making process or the grounds for the decisions, **(vii)** the CCC has put in no evidence at all, and **(viii)** a credible case has been advanced based on irrationality. The judge did not address these concerns.
  
8. **Abdication**: Without full evidence explaining properly the basis on which the Secretary of State took the impugned decisions, the Appellants do not know whether they have grounds to allege that he failed to exercise his discretion at all, but instead abdicated the decision to the CCC. The paucity of the evidence served on behalf of the Secretary of State suggests that he did not in reality apply his mind to the exercise of the statutory discretion at all, but simply adopted the advice of the CCC. The Appellants reserve the right to apply to amend the Claim Form if, having seen the Secretary of State's evidence, it is apparent that he did not exercise his discretion.