

Claimant
T Crosland
Third
TJEC/3
6 June 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

THIRD WITNESS STATEMENT OF TIMOTHY CROSLAND

I, TIMOTHY CROSLAND, DIRECTOR at PLAN B. EARTH of 62 SUTHERLAND SQUARE SHALL SAY AS FOLLOWS:-

1. I make this statement further to my first and second statements, and in advance of the permission hearing listed for 4 July 2018, in order to address:
 - a. the announcement on behalf of the Defendant, on 17 April 2018, that he plans to commission a review by the CCC of the UK's long-term climate targets later this year;
 - b. the statement on behalf of the Defendant in Parliament, on 1 May 2018, that he has already asked, or intends to ask, *how* the UK "*will get to a zero-carbon economy in 2050*";
 - c. significant new evidence arising since the filing of my second statement.
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/3]". For ease of reference I shall continue to refer to the Claimants collectively as "Plan B".

The Defendant's announcement of a possible announcement

3. On 17 April 2018, the Rt Hon Claire Perry MP, the BEIS Minister for Energy and Clean Growth (the "**Energy Minister**"), made the following statement at the Commonwealth Heads of Government Meeting ("**CHOGM**") in London (the "**CHOGM Announcement**") [TJEC/3/1], on behalf of the Secretary of State:

“After the IPCC report later this year, we will be seeking the advice of the UK’s independent advisors, the Committee on Climate Change, on the implications of the Paris Agreement for the UK’s long-term emissions reduction targets ...”

4. This announcement was not, however, as far as I am aware, ever confirmed formally. The only public source I have been able to locate is a tweet, which is what I have exhibited.

5. On 18 April 2018, Lord Deben, Chair of the CCC, commenting on this announcement, indicated that no formal request had in fact been received by the CCC [TJEC/3/3]:

“The request to the Committee is likely to be made following the publication of a special report by the UN’s Intergovernmental Panel on Climate Change, due out in October” (emphasis added).

6. On 1 May 2018, the Energy Minister answered two written Parliamentary questions, effectively repeating the CHOGM Announcement [TJEC/3/5 and 6]:

“The Government will be seeking the advice of the Committee on Climate Change (CCC) on this issue after the Intergovernmental Panel on Climate Change (IPCC) publishes its Special Report on the impacts of global warming of 1.5°C later this year. We will work with the CCC to agree an appropriate timetable for the provision of their advice.”

“The Clean Growth Strategy made clear that the Government believes the UK will need to legislate for a net zero emissions target at an appropriate point in the future, to provide legal certainty on where the UK is heading.

We will seek the Committee on Climate Change’s (CCC) advice on the implications of the Paris Agreement for the UK’s long-term targets, after the release of the IPCC Special Report later this year.”

7. On the same day, in an exchange with Barry Gardiner, the Shadow Secretary of State for International Trade, in the House of Commons, the Energy Minister further implied that the terms of reference for a request were now defined and that the request to the CCC had been made [TJEC3/8]:

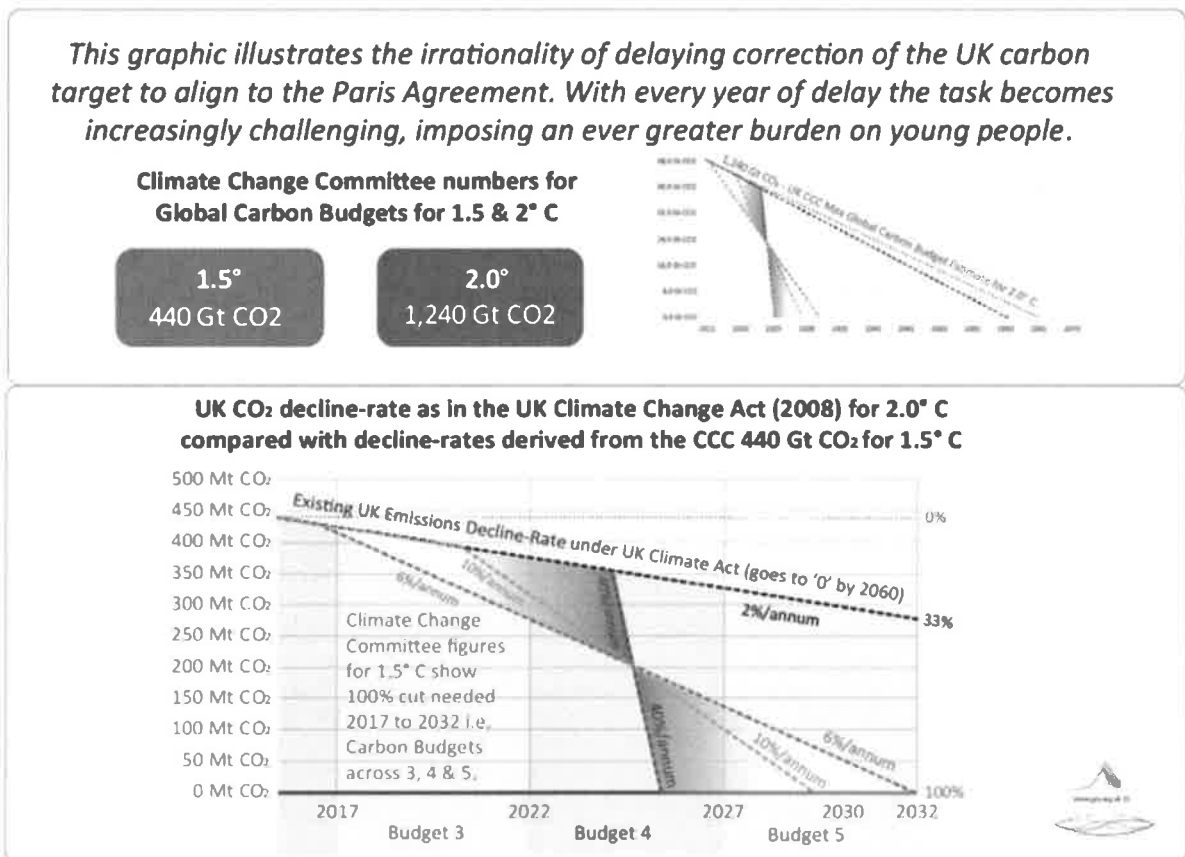
“He will also know that we are the first developed nation to have said that we want to understand how we will get to a zero-carbon economy in 2050, and my request to the committee – [Interruption.] ... We were the first country in the world to ask how we will get to decarbonised economy in 2050, and I hope that we would enjoy cross-party support for something so vital” (emphasis added).

8. However, as yet, at least as far as I am aware, the Secretary of State has neither defined the terms of reference to the CCC nor formally made the request for its advice. Nor has any time-table been announced (whether for the making of the request, for the completion of the CCC’s review, or for the Secretary of State’s decision based on that review).
9. Plan B accordingly wrote to the Secretary of State by letter dated 1 June 2018 seeking to clarify when a formal request for advice from the CCC will be made, the scope of that request and the timetable for the giving of advice and a subsequent decision by the Defendant, such that Plan B could properly consider the implications for this litigation: [TJEC/3/10]. At the time of signing this statement, no response has been received to that letter.
10. Since writing that letter, it has also been announced that the IPCC has sent the final draft of the summary of its Special Report on Global Warming of 1.5°C to Governments for comment: [TJEC/3/194]. It appears that the underlying report, and most importantly the scientific analysis, has already been finalised. Accordingly, the UK Government is now aware of the IPCC’s own conclusions, which have already been subject to two rounds of

expert review and one round of Governmental review. Moreover, one of the members of the CCC, Jim Skea, is also one of the authors of the IPCC report, so the CCC will also be very familiar with the Report and the process that has been followed.

The Irrationality of Delay

11. I have described the consequences of delayed action in previous statements: see, for example, Part III of my first witness statement and paragraphs 23 to 31 of my second witness statement.
12. To give an up-to-date illustration of the impact of delay on the UK's fair contribution to the global goal, the Global Commons Institute has prepared the graphic below, using data adopted by the CCC [TJEC/3/15]:



13. As can be seen, every year of delay substantially reduces the time available for decarbonisation consistent with the global climate obligation, increasing the burden in future years.

Relevant Developments since 20 March 2018

14. There have been a number of other significant developments since the Court hearing of 20 March 2018, which I detail below.

First Draft of the IPCC report into 1.5°C

15. I have now seen the first draft of the summary of the IPCC Report into 1.5°C [TJEC/3/16-45]. The Secretary of State has indicated that no formal request to the CCC will be made until the final version of this report is published in October 2018, despite the fact, as noted at paragraph 10 above, that the substantive parts of the Report, including the scientific analysis, have been finalised.

16. The draft report itself highlights the false economy of delay at [TJEC/3/18] (line 2):

“Delayed action or weak near-term policies increase mitigation challenges in the long-term and increase the risks associated with exceeding 1.5°C global warming temporarily.”

17. Further it states that, on present rates of global greenhouse gas emissions, the critical threshold of 1.5°C is likely to be crossed “in the 2040s”: see [TJEC/3/18] (line 16).

27 March 2018 – FCO acknowledge “existential threat”

18. On 27 March 2018, the FCO Minister, Mark Field, was asked the following written question [TJEC/3/46]: “What diplomatic steps his Department has taken to support the implementation of the Paris agreement on climate change?” Mr Field began his response as follows: “Climate change is an existential threat ... Our diplomats and Climate Envoy are working, with BEIS and international partners, to ensure international implementation of Paris Agreement commitments”.

29 March 2018 – Lord Krebs calls for a “more ambitious” Climate Change Act

19. On 29 March 2018, Lord Krebs, who was himself a member of the CCC in 2016, co-authored an article, published in *The Conversation*, calling for greater ambition from the Climate Change Act to align to the Paris Agreement: [TJEC/3/47-49]. The article is at odds with the CCC’s claim, set out in its Reply, that the primary basis for its 2016 recommendation was the “potential consistency” of the current 2050 target with the obligations set out in the Paris Agreement [TJEC/3/48]:

“In the Paris Agreement, governments pledged not only to hold global warming to ‘well below 2°C above pre-industrial levels’, but also to attempt to ‘limit the temperature increase to 1.5°C’ ... recognising that this would significantly reduce the risks and impacts of climate change ...

... The government’s statutory advisor, the Committee on Climate Change (the CCC, on which one of us used to sit), advises that in order to stand an evens chance of meeting the 1.5°C aspiration, global emissions of CO₂ need to fall to net zero by the 2040s. The IPCC is producing a special report this year on the case for limiting warming to 1.5°C and pathways for doing so, and is likely to say the same thing.

One of the principles of the UN climate convention is that prosperous nations lead the way. Britain agreed to this back in 1992 and has reaffirmed it many times since. If the science is clear that the global target should be ‘net zero by 2050’, there is no case for the UK setting a later date – and there is a case for making it earlier” (emphasis added).

30 March, 2018 – Report from the LSE, Ten Years of the UK Climate Change Act

20. On 30 March 2018, the LSE published a detailed report, *10 Years of the UK Climate Change Act* (the “LSE Report”): [TJEC/3/50-92]. The lead author of the report, Professor Sam Fankhauser, was also a member of the CCC at the time of its 2016 report and intimately

acquainted with its reasoning. The basis of the LSE Report is described as follows at page 1 [TJEC/3/54]:

"The assessment is based on 33 semi-structured interviews with active or former civil servants, special advisers, government ministers, shadow ministers, backbench Members of Parliament, policy commentators and private sector representatives from different industries. Their responses are complemented with insights from the relevant literature, the authors' own experience in engaging with UK climate policy and several informal conversations with experts in UK policy and in climate change governance."

21. The LSE Report says this at page 30 [TJEC/3/83]:

"Alignment with the Paris Agreement

... The basis of the UK's 2050 target when it was set related to a global objective of maintaining around a 50:50 chance of keeping global mean temperatures below 2°C (CCC, 2008). This is less ambitious than the Paris objective of a temperature rise 'well below' 2°C ..."

22. Elsewhere at page 4 [TJEC/3/57] the LSE Report states:

"The 2050 emissions target in the Act is technically consistent with the Paris Agreement but it could be tightened ..."

23. I have clarified the meaning of this claim in an email exchange with the report's three authors, Professor Sam Fankhauser, Alina Averchenkova and Jared Finnegan:

"I have one question regarding your excellent report, "10 Years of the UK Climate Change Act".

You say on page 4: "The 2050 emissions target is technically consistent with the Paris Agreement ...".

Does this mean:

1) a target of 80% reductions by 2050 (compared to 1990) is consistent with the 1.5°C / 'well below' 2°C Paris Goal, or

2) Because the CCA requires emissions to be 'at least' 80% lower than 1990 levels by 2050, that doesn't stop the Secretary of State requiring a greater reduction by 2050.

I can't find the answer in the text of the report itself, so would be very grateful for your clarification ..."

The answers were as follows:

"Thanks for getting in touch. I believe we mean the second one – that the target could legally go beyond 80% and is therefore technically consistent with Paris, but I'll let Sam and Alina also chime if they have additional views ...

Jared"

"Good to e-meet and a few extra thoughts from me on this. The key thing, as Jared said, is the "at least" formulation which allows for emission reductions above 80% by 2050. I'd have to check the Act to see how "at least" is implemented, but could assume it would be done in the context of a carbon budget ...

Sam"

"It is the latter, as this language would encompass a tighter target and the legislation itself does not need to be amended, it could be done by an executive decision of the Secretary of State. In fact, in recommendations/forward look we do say that there is a need to bring CCA in better consistency with the Paris agreement, including by revising the target ...

Alina."

24. Further, the LSE Report confirms at page 9 [TJEC/3/62] the purpose of the CCA and the 2050 Target:

"The 2050 target was recommended by the Committee on Climate Change ... and calculated as the UK's fair contribution to the international mitigation effort" (emphasis added).

25. It highlights at page 15 [TJEC/3/68] the CCA's relation to the international context:

"Despite these omissions, the Act is an outward-looking law. The international effort against climate change is an important, if implicit, motivation for the Act. The 2050 emissions target is interpreted, not least by the CCC, as the UK's contribution to the international effort (CCC, 2008). The international context is one of the factors that must inform the carbon budgets and the UK's level of ambition. Alongside changes in climate science, changes in international or European policy are the only reasons that could justify a revision of the 2050 target" (emphasis added).

26. It also confirms at page 16 [TJEC/3/69] that the UK target should be derived from

"scientific logic" and "global carbon budgets":

"The rationale for emissions targets is derived from scientific logic. The carbon space in the atmosphere is finite for a given global temperature and this constrains the build-up of emissions. Among scientists, the notion of global carbon budgets that are consistent with particular temperature targets, such as 2°C, is now mainstream (e.g. Rogelj et al., 2016; Millar et al., 2017)" (emphasis added).

27. It suggests at page 26 [TJEC/3/79] that government policy is failing to reflect the sense of urgency felt by the scientific community:

"The slow pace with which the government produced its implementation strategy for the 5th carbon budget is another sign that it may not share the sense of urgency that is increasingly felt by NGOs and the science community."

28. Finally, it highlights at page 33 [TJEC/3/86] the vital role of judicial review in maintaining the integrity of the Act:

“The main lever to ensure the government’s adherence to the Act – other than political embarrassment – is the threat of a judicial review ... The prospect of a judicial review ... is real and taken seriously.”

17 May, 2018, The Secretary of State refers to the UK’s international obligations on climate change

29. On 17 May 2018, the Secretary of State indicated in a written statement that the UK must comply with its *“international obligations”* on climate change [TJEC/3/93-94]:

“The UK must have safe, secure and affordable supplies of energy with carbon emissions levels that are consistent with the carbon budgets defined in our Climate Change Act and our international obligations” (emphasis added).

25 May 2018 – Bright Blue report, Hotting Up, Strengthening the Climate Change Act 10 Years

On

30. The think tank Bright Blue published its report, *Hotting Up, Strengthening the Climate Change Act 10 Years On*, on 25 May 2018: [TJEC/3/95-193]. The Report makes a powerful case for increasing the UK’s climate ambition [TJEC/3/102]:

“The case for deeper decarbonisation

There have been three main developments since the Act which demonstrate deeper decarbonisation of the UK’s economy over the next few decades is now both necessary and possible: scientific (changing climate science); technological (developments in clean technology); and legal (progress in the international legal framework).

Scientific change

The climate science literature from the past ten years has reaffirmed the imperative of urgent action to tackle climate change and suggests deeper decarbonisation is required to halt and prevent some of its most damaging impacts. Scientific studies from the last decade examining

the trends in the main indicators of climate change show that climate change has continued to worsen ...

Many severe impacts of climate change are now being experienced globally and will have an impact on the UK, for instance through higher food prices or greater migratory flows. However, even in the UK, recent climate science is demonstrating that different major impacts of climate change are already materialising and are expected to worsen in the years ahead. These include coastal flooding and damage, inland flooding, heat-related health effects, drought conditions, invasive species and diseases, and the decline in native species. Many of these impacts have been experienced in the UK since the Act was passed ten years ago ...

Technological developments

Since the Act, there have been advances in clean technology which has made deep decarbonisation of Britain's economy cheaper and more practical. Decarbonising some sectors of the economy is now much cheaper than expected when the Act was passed because of substantial cost reductions in clean technology ...

Progress in the international legal framework

Over the past decade, there has been important progress in the international legal framework to tackle climate change. Most significantly, the UK has now ratified the Paris Agreement, which was signed in 2015. The Agreement commits parties to 'pursuing efforts to limit the temperature increase to 1.5°C above pre-industrial levels'. It also includes the commitment to reach 'net zero' greenhouse gas emissions 'in the second half of the century', which is defined as achieving 'a balance between anthropogenic emissions by sources and removals by sinks of greenhouse gases'.

For the UK to be compatible with the 1.5°C goal, the CCC has estimated that it would need to reduce greenhouse gas emissions by 86%-96% by 2050 below 1990 levels. Later this year, the Intergovernmental Panel on Climate Change (IPCC) will release a special report on the 1.5.C

goal which is expected to recommend that the global economy needs to reach net zero emissions by 2050 in order to have a greater-than-50% chance of meeting the global warming goal.

Ultimately, the report finds that the scientific, technological, and legal case for adopting a new, legal net zero emissions target in the UK is strong" (emphasis added).

31. It also emphasises at page 46 [TJEC/3/143] the new evidence since 2008 of the risks from "feedback cycles" (as explained in paragraphs 37 to 39 of my first witness statement, this is where one impact (such as melting sea ice) causes another impact (increased dark water absorbing more heat) that exacerbates the first impact (faster melting sea ice), reinforcing the overall warming effect and leading, potentially, to runaway climate change):

"Clearly, over the past ten years since the Act, a stronger body of evidence from climate science has emerged in support of deeper decarbonisation in the decades ahead, in order to disrupt positive feedback cycles, and to lessen the most damaging impacts of climate change."

32. As with LSE Report, it confirms at page 18 [TJEC/3/115] the basis on which the 2050 Target in the CCA was fixed:

"The 80% target was adopted so that the UK would contribute an equitable share to global efforts to keeping the increase in global mean temperatures to within 2°C above pre-industrial levels (with a 50% chance of success)" (emphasis added).

33. Consistently with the objectives of the CCA, it recommends at page 12 [TJEC/3/109] that the terms of reference for the CCC should ensure that *"the UK makes an equitable contribution to meeting the Paris Agreement goal of limiting global average temperature rise to 1.5°C above pre-industrial levels"* (emphasis added).

Conclusion

34. As recognised by the Government, the threat from climate change is “existential”. Because it is the product of cumulative emissions, and subject to “feedback cycles” and “tipping points”: by the time the worst impacts are felt, it will be too late to escape them.
35. The purpose of the CCA was to ensure an evidence-based approach to tackling the threat, committing the UK to a fair contribution to the global climate obligation and preventing climate change policy from being dominated by political considerations.
36. That vital purpose is now being frustrated by the Secretary of State’s ongoing procrastination. There is widespread recognition of the “mismatch” between the current goal and the global climate obligation, which represents the minimum standard for all parties, and for developed country parties in particular. Indeed the Secretary of State’s announcement of a possible future announcement, now implicitly recognises the gap, but still does nothing about it.

STATEMENT OF TRUTH

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

Signed

Timothy Crosland

Dated 6/6/18.....