

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

**BETWEEN:**

**THE QUEEN**  
**on the application of**

**PLAN B EARTH & OTHERS**

**Claimants**

**- and -**

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

**Defendant**

**- and -**

**THE COMMITTEE ON CLIMATE CHANGE**

**Interested Party**

---

**REPLACEMENT SKELETON ARGUMENT ON BEHALF OF THE DEFENDANT**  
**for the permission hearing on 4 July 2018**

---

Time estimate for hearing: 1 day

Suggested pre-reading: In addition to the Claimants' list, the court will be assisted by reading sections 1-10, 24(1), 27(1), 29(1), 32-34, 36-38 and Schedule 1 para 1 of the Climate Change Act 2008 [2/F/34].

**A. Introduction**

1. This skeleton argument responds on behalf of the Secretary of State to the Claimants' renewed application for permission to apply for judicial review, following the refusal of permission by Lang J on 14 February 2018. It neither repeats nor replaces the Secretary of State's Summary Grounds of Defence ("SGD"), but responds to the specific basis upon which the Claimants argue in their replacement skeleton argument of 29 June 2018 that Lang J was wrong to refuse permission.
2. The Claimants' renewed application for permission was originally listed before Nicola Davies J on 22 March 2018. She adjourned it to be heard over a full day, deciding that

its listing for 1.5 hours (after the Defendant had resisted the Claimant's contention that it should be listed for 30 minutes) was insufficient to determine the Claimants' application.

3. In light of the way in which the Claimants' argument has developed over the course of the claim, and in light of the delay occasioned by the adjourned permission hearing, the Defendant has taken the step of serving a brief witness statement to clarify two short points and to provide an update to the court as to the current position: see the first witness statement of Tim Lord [3/21/488]. Those points are that:
  - a. the Minister accepted the advice provided by the Committee on Climate Change ("**the CCC**") in October 2016 ("**the 2016 Advice**");
  - b. the Minister did not "misunderstand" the 2016 Advice, and there is no "inconsistency" between the position of the CCC and the Secretary of State, as alleged by the Claimant; and
  - c. the Government has announced its decision to seek further advice from the CCC on the issue of long-term targets after the IPCC has reported in October 2018, in response to the CCC's recommendation to that effect.
4. For the reasons which follow, the claim is unarguable, and Lang J was right to refuse permission in respect of it.

**B. The nature of the Secretary of State's decision**

5. The Secretary of State has power under section 2(1) of the Climate Change Act 2008 ("**the Act**") to amend the target for 2050 provided for by section 1(1) of the Act [2/F/35]. There are certain pre-conditions which must be fulfilled before that power may be exercised: section 2(2). In addition, the Secretary of State must first obtain, and take into account, the advice of the CCC: section 3(1).
6. The CCC is an independent body composed of experts, established by section 32 of the Act [2/F/57]. Its composition reflects the various areas of experience and knowledge in the areas listed in Schedule 1, para 1 of the Act [2/F/65].

7. If, having considered the advice of the CCC, the Secretary of State decides to exercise the power of amendment under section 2, he must lay before Parliament a draft of a statutory instrument containing such an order. That order is subject to affirmative resolution procedure: section 2(6) and 3(1). If the order makes provision different from that recommended by the CCC, the Secretary of State must publish a statement setting out the reasons for that decision: section 3(6).
8. In October 2016, the CCC published its advice to the Secretary of State on “*UK Climate Action Following the Paris Agreement*” [1/D/96]. Its advice was that the Secretary of State should not set new UK emissions targets now (including by amending the target for 2050), but that they should be kept under review: see SGD §31.
9. The Minister accepted that advice: SGD §3; Lord w/s §§3-6 [3/21/489]. Contrary to the Claimants’ skeleton §13(b), it is not necessary “*to try piecing together different and inconsistent rationales*” to identify the reasons for that decision. The Minister accepted the recommendation set out in the CCC’s advice, based on the CCC’s reasons. It was accepted on the basis that the long-term ambition should be kept under review by both the Government and the CCC: Lord w/s §5.
10. Since the advice was not to amend the target for 2050, and the Secretary of State accepted that advice, it obviously follows that the Secretary of State has neither laid a draft statutory instrument before Parliament under section 2 of the Act, nor published a statement under section 3(6) of the Act.
11. Following the publication of the Secretary of State’s Clean Growth Strategy in October 2017, the CCC responded on 17 January 2018 with its own independent assessment of that strategy [3/6/99]. It maintained its view that now is not the time to amend the UK’s long-term emissions targets: see the section of the report entitled “*Preparing for 2050*” at [3/6/120-121]. It concluded:

*“In our advice on UK Climate Action Following the Paris Agreement, the Committee recommended that the Government wait to set more ambitious long-term targets until it had strong policies in place for meeting existing budgets and the evidence base is firmer on the appropriate level of such targets. The Government has now published its strategy to meet the legislated carbon budgets. The Intergovernmental Panel on Climate Change (IPCC) will produce a Special*

*Report on the implications of the Paris Agreement's 1.5 °C ambition in 2018. At that point, the Government should request further advice from the Committee on the implications of the Paris Agreement for the UK's long-term emissions targets."*

12. Since then, the Government has committed to follow the CCC's recommendation and to request further advice from the Committee on the implications of the Paris Agreement for the UK's long-term emissions targets after the IPCC publishes its report: see Lord w/s §§15-16. An appropriate timetable for the provision of that advice will be agreed with the CCC.
13. The obvious relevance of the IPCC's forthcoming Special Report to the CCC's conclusion in this respect is that, in the CCC's assessment, it will provide a firmer evidence base on the appropriate levels of such targets than presently exists. Notably, the Claimants (correctly) accept that there is not now a single 'correct' 2050 Target to which the UK should commit itself: skeleton §20(b).
14. The Secretary of State has not sought at any stage to fetter his discretion as to the exercise of the section 2 power. Instead, he simply accepted the CCC's advice in October 2016 not to amend the targets at that time, and continues to accept its advice that it remains premature to do so at present, while remaining open to its future advice following its review of the IPCC report.
15. The Claimants' skeleton argument characterises this position as a "*refusal*" to amend the 2050 target. There has been no such "*refusal*" in any prospective sense. All that the Secretary of State has done to date, in accordance with the CCC's advice, is not to have amended the 2050 target at this time.
16. That does not mean that the Secretary of State has refused to do so at any point in the future. To the contrary, as set out at SGD §29-30, the Government has already committed to enshrining a goal of net zero emissions (i.e. a 100% reduction of the net UK carbon account) in domestic law in due course: as repeatedly made clear by Ministers, "*the question is not whether, but how we do it*" – an approach reflected in the Clean Growth Strategy itself [1/B/59], in accordance with the Paris Agreement's aim of achieving net zero global greenhouse gas emissions in the second half of the century.

17. Viewed against this background, the Claimants' characterisation of the Secretary of State's decision at skeleton §§10-13 is wholly misplaced. There is no mystery as to when the Secretary of State took any relevant decision, what process was followed, or what his reasons were for deciding not to amend the target for 2050. The statutory consultee, whose advice must be taken before any exercise of the section 2 power, has addressed the topic in its published reports of October 2016 and January 2018, and on each occasion the Secretary of State has duly taken those reports into account and has agreed with its conclusion that no amendment should be made to the 2050 target at this time.
18. There was no basis for Plan B's apparent assumption at the stage of pre-action correspondence that "*no decision had been taken*" (skeleton §10): it should come as no surprise to anyone that consideration is given to any report that the CCC produces. If a different view had been taken of the CCC's advice on whether or not to amend the 2050 target, the Secretary of State would have said so (not least because section 3(6) of the Act would have required him to publish a statement to that effect). But there is no obligation in law to publish a reasoned decision every time the Secretary of State decides *not* to exercise a power; nor was there any obligation to publish a separate parallel set of reasons to those which the CCC had produced, in circumstances where the CCC was not recommending change. The apparent suggestion to the contrary at skeleton §12 is contrary to the scheme of the Act.
19. Nor is there any proper basis for Plan B's assertion at skeleton §13(d) that the Secretary of State has not complied with his duty of candour, simply because the Secretary of State has not taken the (unusual) step at the pre-permission stage of disclosing departmental records. The duty of candour does not require such disclosure: it is sufficient to provide a witness statement setting out an accurate account of the position. That is what the Secretary of State has done. (The incorrect suggestion of an "inconsistency" in the Secretary of State's position referred to at §13(c) is dealt with at section D below.)

### **C. The underlying basis of the Secretary of State's decision**

20. There are five core points which underpin the position of the Secretary of State and / or the CCC.<sup>1</sup>
21. **First**, the Paris Agreement does not impose a binding legal target on each specific contracting party to achieve any specified temperature level by 2050. It enshrines a global effort to addressing a global problem (see SGD §§18-28). The Paris Agreement outlines two targets / levels of ambition in Article 2(1)(a):
- a. an aim of keeping the increase in global average temperature well below 2°C; and
  - b. the commitment / goal of pursuing efforts to limit the global average temperature to 1.5°C above pre-industrial limits. The achievement of the latter goal requires a move to net zero emissions targets in the second half of this century (Article 4(1)).<sup>2</sup>
22. **Second**, the implications for the 2050 Target of the two levels of ambition set out in the Paris Agreement are different:
- a. The 2050 Target is to reduce net emissions by at least 80% by 2050 against a 1990 baseline. As the CCC outlined in its 2016 advice, as well as §§13-15 of its SGD, the existing 2050 Target is within the range required to be consistent with keeping global temperature rise below 2°C.<sup>3</sup> The development of policies and technologies aimed at achieving at least 80% reductions, will also help support the aim of pursuing efforts of limiting global temperature rises to 1.5°C.<sup>4</sup>
  - b. Greater ambition is likely to be required at some point before 2050 if the net zero emissions ambition is to be achieved in the latter half of this century.<sup>5</sup>

---

<sup>1</sup> As an Interested Party, the Committee does not address all of the points made by Plan B in its own SGD. However, it is clear that the Secretary of State and Committee reach the same conclusions on the appropriate way forward in response to the Paris Agreement.

<sup>2</sup> As explained at §§18-28 of the Secretary of State's SGD, as well as §12 of the CCC's SGD.

<sup>3</sup> See also SGD §31

<sup>4</sup> See also SGD §31

<sup>5</sup> See §21 of the CCC's SGD; and §31 of the Secretary of State's SGD.

23. **Third**, a net zero emissions target (and potentially other enhanced, if evidenced targets) should be introduced at the appropriate time in order to work towards the greater level of ambition adopted by the Paris Agreement, i.e. 1.5°C /net zero emissions.<sup>6</sup> The Claimants seek to minimise the significance of this point at skeleton §20(c), stating that their case “*does not relate*” to the setting of such a target, and that the point is only a “*distraction*”. That is incorrect: it is the view of both the Secretary of State and the CCC that a net zero target will need to be adopted in due course. The Secretary of State is fully entitled to approach the question of whether to amend the 2050 target in the light of further evidence as to the appropriate time frame in which a net zero target should be reached.
24. **Fourth**, a net zero emissions target should not be introduced now because there is no feasible way of achieving it at this time, based on current knowledge and the UK’s circumstances. As both the CCC’s 2016 advice, and §24 of its SGD make clear, there are no plausible scenarios for the UK to reach that target as it is not technically feasible. Such a target should not therefore be set now. Both the Secretary of State and CCC agree that the UK should remain flexible as how best to reflect that aim in its domestically legislated targets.<sup>7</sup>
25. **Fifth**, the appropriate course is to reconsider the correct and appropriate level of the UK’s ambition – both as to the net zero target and as to any amended target for 2050 under the Act – at appropriate points of time in the future.<sup>8</sup> As the CCC explains in §21 of its SGD, the CCC’s advice was to the effect that there “... *would be future opportunities to consider strengthening of UK targets.*” Such later consideration would have the benefit of an improved evidence base, information about new developments in low carbon technologies and options for greenhouse gas removals, and greater insight into the ambition of other countries.<sup>9</sup>

---

<sup>6</sup> See §§3 and 29-30 of the Secretary of State’s SGD; and §§6, 21, 24-27 of the CCC’s SGD.

<sup>7</sup> See §§31-39 of the Secretary of State’s SGD; and §6 of the CCC’s SGD.

<sup>8</sup> See §§38-39 of the Secretary of State’s SGD; and §§6, 21 and 24-26 of the CCC’s SGD.

<sup>9</sup> See also §§26 and 28 of the CCC’s SGD.

#### **D. The Secretary of State's supposed misunderstanding**

26. The Claimants now allege that the Secretary of State took his decision on the basis of “*a fundamental misunderstanding*” of the CCC’s advice. That is incorrect.
27. The Paris Agreement records global goals to keep temperature rises to well below 2°C and to pursuing efforts towards 1.5°C. Plan B incorrectly elides (and mischaracterises) the nature of the different targets and goals outlined by the Paris Agreement with the effect that it misrepresents the positions adopted by both the Secretary of State and the CCC.
28. Plan B alleges that: (a) the Secretary of State’s case in his SGD was that he had decided not to act due to feasibility concerns, but had implicitly accepted nonetheless that the 2050 Target was “*incompatible with “the targets required by the Paris Agreement”*” (skeleton §22); and (b) the CCC’s position was that it had not based its decision on any feasibility concerns but had considered that the 2050 Target was compatible with “*the targets*” set by the Paris Agreement (skeleton §23). The Secretary of State is then said to have altered his position in his first skeleton argument (for the March permission hearing) to align with the CCC’s view (skeleton §29).
29. This allegation of a misunderstanding and change of position is unsustainable.
30. **First**, the Secretary of State has not taken the view that any increase on the 80% target is not feasible at this time. To the contrary, he expressly cited at §31 of the SGD the passage of the Executive Summary of the CCC’s 2016 Advice at [1/D/102] which recognised that the adoption of some key measures “*could allow deeper reductions by 2050 (on the order of 90% below 1990 levels) if action were ramped up quickly*”. The report itself was explicit that “*In theory, realising all the options would result in domestic UK emissions 66% below 1990 levels by 2030, and just over 90% by 2050*” and that “*Achieving all of the options in the Max scenarios would result in net economy-wide emissions of around 64 MtCO<sub>2</sub>e/yr in 2050 (i.e. 92% below 1990 levels) including the UK share of international aviation and shipping*” [1/D/127]. Those findings were unambiguously stated, and there is no basis to suggest that they were somehow “misunderstood”.



31. Equally, the Secretary of State has taken the view that a target for net zero emissions – to which the Government is committed in principle – should not yet be set, because (as the CCC advise) there is not yet a feasible path to achieving it: SGD §32.
32. It was on the basis of a clear understanding of that position that both the CCC and the Secretary of State (in accepting the CCC’s advice) took the view in October 2016 that it was not the appropriate time to amend the long-term target: instead, the immediate priority was to publish a robust plan of measures to meet the legislated UK carbon budgets, and deliver policies in line with the plan: that was the purpose of the Clean Growth Strategy (published in October 2017). The aim (as envisaged by the CCC in its 2016 Advice) was both to close the gap to existing targets and to open up options to reach net zero emissions. There would then be several opportunities to revisit the UK’s long-term targets as low-carbon technologies and options for greenhouse gas removal technologies were developed, and as more was learnt about ambition in other countries and potential global paths to well below 2°C and 1.5°C. The first of those opportunities would be after publication of the IPCC Report in 2018, when there would also be an international dialogue to take stock of national actions: see the CCC’s 2016 Advice at [1/D/102].
33. The course of seeking further advice from the CCC at that stage allows any recommendations as to any revised target to be set for 2050 to be made in light of further knowledge as to the feasibility and timing of a net zero target. That was at all times the understanding of the CCC [1/D/102] and of the Secretary of State (SGD §32).
34. In pre-action correspondence and in the SGD, the Secretary of State defended the lawfulness of that approach. In particular:
  - a. The Claimants’ claim was understood by the Secretary of State to be based upon the assertion that he was required to adopt a path to the 1.5°C goal immediately (not simply to ensure that the current 2050 target was consistent with the aim of limiting global temperature rises to well below 2°C, while developing further understanding as to how the 1.5°C goal might be met). The Claimants’ claim that an amended 2050 target had to be set immediately (albeit to an unspecified level) was understood in that light.

- b. The Secretary of State's understanding of how the Claimants put their case was understandable, given the terms of SFG §§12, 99, 106-113, 137-138, 172-173, 187, and 195-196 – all of which appeared to be intended to suggest that the Secretary of State was bound to adopt a new 2050 target immediately, to be set by reference to (what was said to be) an “*equitable share of the global carbon budget*”, consistent with a 50% probability of limiting warming to 1.5°C.
  - c. However, as the CCC had made clear in its advice, “*If global emissions are reduced starting now on a linear path to zero, the budgets imply zero would need to be reached in the 2030s for a 50% likelihood of 1.5°C...*” [1/D/115]. If an “*equitable share*” is based upon dividing the global cumulative emissions budget remaining from 2011 by the UK share of global population, that “*implies the **UK reaching net zero CO<sub>2</sub>** by around 2030-2055 for a 66% likelihood of 2°C and **by around 2025-30 for a 50% likelihood of 1.5°C***” (emphasis added) [1/D/121].
  - d. Thus setting a target on that basis would in itself entail a setting of a net zero emissions target. That was judged (in October 2016) not yet to be feasible, since there was no clear pathway to achieving it.
  - e. Since the Claimants have consistently argued – and still argue – that feasibility is *irrelevant* as a matter of law to the setting of the 2050 target (see skeleton §9 and fn9), the Secretary of State responded to that case (as it was understood) by arguing that that was incorrect, and that a decision not to set an unfeasible target for 2050 discloses no error of law or irrationality. It was to that case that the pre-action protocol response and the SGD were directed (in particular at §§65-67, which are to be read in that context).
35. If such a case is not now being advanced by the Claimants, the Secretary of State welcomes that clarification. However, the confusion was introduced by the Claimants' elision of the various aims of the Paris Agreement (differing as to their level of ambition), and their failure to distinguish between the CCC's and Secretary of State's responses to those different aims.

36. **Secondly**, it is incorrect to suggest that the Secretary of State had originally agreed that the 2050 Target was incompatible with achieving “*the targets required by the Paris Agreement*”. The Secretary of State has never accepted that maintaining the 2050 Target is inconsistent with “*targets*” set by the Paris Agreement (see further below). He accepted the advice of the CCC, as outlined above. In his SGD, he expressly stated that “*the approach taken by the Secretary of State is entirely consistent with the Paris Agreement and the UK’s other international obligations*” (SGD §64 [3/2/38]).
37. The Claimants are accordingly wrong to suggest that the Secretary of State did not “*take issue*” with its claim that the current 2050 Target was incompatible with the targets required by the Paris Agreement. The fact that the 2050 target alone is not sufficient to meet the full ambition of the Paris Agreement (i.e. insofar as it relates to net zero emissions and a limit of 1.5° in global increases of temperature) is uncontroversial – but does not establish an error of law in the decision not to amend the 2050 target at this stage, but to consider a new long-term target.<sup>10</sup>
38. The supposed “misunderstanding” of the CCC’s 2016 Advice alleged at skeleton §22 is accordingly without foundation. If there was any misunderstanding, it was of the ambition of the Claimants’ grounds in the Defendant’s SGD. This application for judicial review is not a challenge to the Defendant’s SGD, however, but to the Secretary of State’s decision. The basis of that decision is clear and unambiguous.
39. **Thirdly**, a new point has been raised alleging that the Secretary of State has misunderstood the effect of the 2008 Act: skeleton §§39-43. It appears to be suggested that the Secretary of State is unaware that the targets set under the 2008 Act are capable of being met in part by the purchase of international carbon credits. That is plainly incorrect: see for example the Clean Growth Strategy at [1/B/43, 147]. However, the Act provides for a limit to be placed on the use of carbon units in respect of each carbon budget period on the route to achieving the 2050 target: see section 11. Each limit is set after taking into account the advice of the CCC during each relevant budgetary period and the views of the national authorities, and subject to Parliament’s affirmative resolution: section 11(7) of the Act [2/F/42]. Further, in exercising functions under the Act involving consideration of how to meet the 2050 Target and the

---

<sup>10</sup> As per the CCC’s minutes of its meeting of 16 September 2016 at [1/D/92-93], relied upon by the Claimants at skeleton §§31 and 47(b).

carbon budget for any period, the Secretary of State is required by section 15 of the Act to have regard to the need for “UK domestic action on climate change”, meaning reductions in UK emissions of targeted greenhouse gases or increases in UK removals of such gases (or both) [2/F/44]. It is accordingly difficult to understand how the Secretary of State could be said to have erred in failing to plan to meet a new 2050 Target from international carbon credits from the outset. The fact that a “shortfall” may be met in such a way under the Act does not affect the primacy of the UK’s own efforts to reduce its emissions in accordance with the aims of the Paris Agreement and the underlying policy of the Act.

#### **E. The CCC’s alleged change of position**

40. The Claimants claim at skeleton §§30-38 that the CCC has changed its position. There is nothing in this claim, which the CCC has answered in its Response at §§29-31 [3/13/256].
41. Underlying this aspect of the Claimants’ case is the apparent suggestion that the CCC and/or the Secretary of State has decided not to amend the 2050 Target at all in order to meet the goals set by the Paris Agreement. The short answer to that contention is that it is simply incorrect, and misunderstands the basis of the CCC’s 2016 Advice and the Secretary of State’s decision to accept that advice. As has repeatedly been made clear, the only decision taken as to the 2050 Target was not to amend it yet, pending further analysis as to when and how the UK’s long-term targets should be amended, including the net zero emissions target to which the Government is committed. It follows that neither the CCC nor the Secretary of State has definitively concluded, once and for all, that the existing 2050 Target will not need to be amended; only that it is potentially consistent with the Paris Agreement, and will need to be reviewed again once further work has been completed (not least following the IPCC advice).
42. The Claimants’ criticisms under this head amount to no more than over-legalistic linguistic analysis of what amounts, at root, to a straightforward and consistent position. There is no value in pursuing the point further, given in particular the Secretary of State’s announced intention to seek further advice from the CCC on long-term targets following the provision of the IPCC’s advice.

## **F. The Claimants' grounds are unarguable**

### **Ground 1: improper purpose**

43. The primary basis upon which this claim is advanced is premised upon the assertion that the Secretary of State's discretion under section 2 of the Act must be exercised, and further that it must be exercised now, as it would be inconsistent with Parliament's legislative purpose not to exercise the section 2 power to do so.
44. Whichever way that submission is analysed, and notwithstanding the Claimants' express disavowal of any such suggestion at skeleton §48, it amounts to the assertion that Parliament intended to place the Secretary of State under a duty to amend the 2050 target in the event of developments in scientific knowledge and/or European international law or policy, and not to confer a discretion upon him as the Act in fact does.
45. Lang J was correct to regard that proposition as unarguable. There is not a single case that the Claimants can point to where the courts have held that a decision *not* to exercise a discretionary statutory power amounted to the "*exercise*" of that power for an "*improper purpose*". The very suggestion is logically incoherent.
46. The Secretary of State readily accepts that, in principle, a public authority may be obliged to exercise a statutory discretion as a matter of law if there is no rational alternative but to so exercise it. The Claimants' submission that the present case is one such is addressed under Ground 3 below (which explicitly alleges that the Secretary of State acted irrationally in accepting the expert advice of the CCC not to amend the 2050 target yet). Short of irrationality, however, there is no basis upon which the Claimants can read into the express terms of section 2 a duty to act, arising from the alleged "legislative purpose" in conferring a discretion. Parliament plainly intended that the Secretary of State should be permitted to make a (rational) decision as to whether or not to amend the 2050 target in the light of scientific and legal/policy developments. A decision not to do so at the present time but to keep the matter under active review – including by inviting the CCC to give further advice on the matter – plainly does not frustrate the legislative purpose of the Act.
47. Lang J was accordingly correct to refuse permission on this ground.

## **Ground 2: error of law**

48. Under Ground 2, the Claimants assert that the expert CCC misunderstood and misinterpreted the Paris Agreement. In response to the permission decision, Plan B also asserts that the learned judge was misled into rejecting this ground of challenge as unarguable by a single error in transposition of its case in the CCC's Summary Grounds.
49. In fact, the learned judge rightly accepted the Secretary of State's case at §§54-59 SGD, that the Claimants had misread the Committee's advice of October 2016. The selective quoting relied upon by the Claimants does not come close to showing that the Committee misinterpreted the Paris Agreement, for the reasons set out therein. The transpositional error in §18 of the CCC's SGD does not advance the substance of the Claimants' case.<sup>11</sup>
50. That conclusion is further strengthened §§12-21 of the CCC's SGD. In particular, the Claimants ignore §20 of the CCC's SGD, which clearly sets out the approach taken in the 2016 advice. The CCC's approach was to consider the implications for the 2050 Target of the range between the two goals set by the Paris Agreement. As the CCC's SGD outline, the 2016 advice refers clearly to the goal of "*staying below*" 2°C.
51. Further, the suggestion at skeleton §52 that the case for permission to be granted is somehow strengthened by the Secretary of State's observation that the Claimants should not take the CCC's words out of context – in circumstances where it is plain that that is what the Claimants have done – is wholly misplaced.
52. Ground 2 is accordingly unarguable. Lang J was right to so find.

## **Ground 3: irrationality**

53. Plan B claims that the Secretary of State acted irrationally in accepting the expert advice of the CCC, whose advice he is required to take into account (and departure

---

<sup>11</sup> That error has been clarified by the CCC in its letter received on 15 March 2018 [3/11/240].

from whose advice he would be required to explain), that it is not yet the appropriate time to amend the 2050 target.

54. Given the high threshold of irrationality, a submission that a decision to accept expert advice is irrational would be regarded as ambitious in any context. In the present context, it is wholly unarguable.
55. It is plain that the Claimants disagree with: (a) the CCC's judgment in 2016 that there were no developments in scientific knowledge about climate change that necessitated an immediate change in the 2050 target; and (b) the CCC's current judgment that it is appropriate to await the outcome of the IPCC's Special Report to provide a firmer evidence base before considering amendment to the 2050 target or the setting of a different long-term target. Disagreement with the CCC does not establish irrationality on the part of the Secretary of State. Further, disagreement as to the sufficiency of the evidence base upon which to make a judgment on this matter – a highly technical matter upon which reasonable climate change scientists may disagree – is wholly unsuitable to be adjudicated upon on an application for judicial review.
56. In any event, as the CCC observes in §26 of its SGD there is nothing irrational in a decision to wait for an improved evidence base to reach a decision on how to amend the 2050 Target. Nor is it yet the appropriate time to set a net zero emissions target, given the absence of any technically feasible pathway to it. The Secretary of State judges (in agreement with the CCC) that the appropriate way forward at present is to continue to work towards the stretching 2050 Target of at least 80%, and to continue to review the position at appropriate points in time. The very first point in time identified by the CCC was the outcome of the IPCC's report in October 2018 – and that opportunity is to be taken.
57. Skeleton §54 does not disclose any viable basis for impugning the advice of the CCC or the decision of the Secretary of State on grounds of irrationality. The fact that the Paris Agreement raises the levels of ambition to reduce emissions and tackle climate change is uncontroversial, and well understood by all. But it does not follow that it is irrational not to take an immediate decision on the 2050 target to amend it *now*, especially in advance of the advice from the IPCC on the implications of the 1.5°C ambition.

58. Nor is the Secretary of State incorrect to regard the feasibility of any new target as relevant.<sup>12</sup> The Secretary of State is not obliged to place himself under a binding duty to ensure an unfeasible target is met. All are agreed that the achievement of the existing target is feasible, even though considerable further technological progress will need to be made to achieve it. All are also agreed that a more ambitious target should be set in future (recalling the Secretary of State’s commitment to introduce a net zero target – the question is not “whether” to do so but “how”). But the setting of targets which cannot feasibly be achieved will neither advance progress towards tackling climate change, nor carry credibility with international partners.
59. Least of all can the Secretary of State’s decision be impugned on the grounds of a supposed failure to “*show leadership*”. The United Kingdom has always been at the forefront of international efforts to tackle climate change, as the Claimants accept. But it is not a challenge that the United Kingdom can address alone. It is a global challenge, in which the United Kingdom’s efforts must be coordinated with those of its global partners. How best to persuade other countries to meet the United Kingdom’s own levels of ambition is a matter of diplomatic judgment, and is to be conducted in international fora. Both the CCC and the Secretary of State are well aware of the importance of a strongly evidence based approach – hence the importance of developments such as the IPCC’s report. But in none of this will the court impugn the Government’s judgement as to what strategies may be most effective, least of all on the basis of the Claimants’ simple disagreement with the judgments which have been reached.
60. Lang J was accordingly right to refuse permission on Ground 3 on the basis that the: “... *Secretary of State’s position cannot properly be characterised as irrational. Grounds 1 and 3 are an impermissible challenge to the Secretary of State’s discretionary judgment.*”

---

<sup>12</sup> The Claimants assert at skeleton §7 and footnote 9 that feasibility is “*immaterial*” to the setting of any new long-term target, but at the same time accept that it is material to the setting of the 5 yearly carbon budgets (as they must, given the terms of sections 10(1) and 10(2)(b) of the Act). The two propositions are mutually inconsistent: carbon budgets are intended to pave the way to the achievement of the long-term target.



#### **Ground 4: human rights**

61. Under Ground 4, the individual Claimants propose to challenge the decision to wait to strengthen targets at the appropriate time relying on alleged breaches of the Human Rights Act. According to the Claimants, it would be “*startling*” if their rights were not engaged.<sup>13</sup>
62. The answer to this ground is set out at §§69-72 of the Secretary of State’s SGD.
63. The fight against climate change is a global one. The effects of climate change are global. UK emissions account for around 1% of total global emissions. Relying on the effects of *climate change generally* (now and in the future), does not support the contention that the *decision under challenge* gives rise to any interference with the rights of any individuals. The Government would in any event have a wide margin of appreciation in deciding how to contribute to international efforts to combat climate change.
64. The arguments at skeleton §64 are all premised upon the proposition that the decision not to amend the United Kingdom’s 2050 targets at this time (but to continue to review such targets) in itself adversely impacts on the individual claimants’ rights. That is an impossible contention. It ascribes total responsibility for the effects climate change not only to the United Kingdom, but also to the precise timing of any change to an explicitly long-term target. That is a hopeless contention.
65. The learned judge was therefore right to refuse permission for the reasons she gave. There is no prospect of the Claimants establishing that a breach of their human rights ensues from the Secretary of State’s decision not to amend the 2050 target at this time.

#### **Ground 5: public sector equality duty**

66. Under Ground 5, the Claimants contend that the Secretary of State erred by failing to comply with the Public Sector Equality Duty in deciding to accept the Committee’s advice to await further evidence to strengthen the UK’s climate change targets. As the learned judge set out in the permission decision (see also paragraphs 73-74 of the Secretary of State’s Summary Grounds), the impact of climate change, including the

---

<sup>13</sup> See §6 of the Claimants’ Grounds for Reconsideration.

heightened impact on certain groups in society, has been the subject of considerable investigation and assessment by the Committee and the Secretary of State. That assessment underpins the exercise of on-going statutory functions under the Climate Change Act. Nothing more is required.

67. In particular, there is no requirement to “*mention*” the duty, nor to carry out an equality impact assessment, *R (Brown) v Secretary of State for Work and Pensions* [2008] EWHC 3158 (Admin), DC at §89.

68. The Secretary of State has already acknowledged that climate risks will affect people differently, depending on their social, economic and cultural environment [1/D/169]. But that does not mean that the public sector equality duty requires a decision concerning the United Kingdom’s efforts to limit global temperature rises (and hence the effects of climate change) by reducing emissions, must give differential consideration to the interests of those who may be affected. The different impact that climate risks may have does not affect the necessity of setting appropriate long-term targets for the reduction of net emissions: compare *R (on the application of Lewisham LBC) v Assessment and Qualifications Alliance (AQA)* [2013] EWHC 211 (Admin), § 148 per Elias LJ.

69. The Claimants have not established any arguable case that the duty has been breached.

## **G. Conclusion**

70. For the reasons set out above and in the SGD of both the Secretary of State and the CCC, and reflected by the decision of Lang J, permission should be refused because it is clear that the claim is not arguable.

71. To reach that conclusion does not involve a “trial”, or require a detailed review of all the materials (unrealistically) listed at §76 of the Claimants’ skeleton.

72. The Secretary of State’s decision to accept the CCC’s advice, and not to amend the 2050 target at this time but to keep the matter under review and seek further advice from the CCC, is plainly lawful.

73. Further, the fact that the Secretary of State has committed to seeking the CCC’s further advice on the implications for the UK’s long-term emissions targets (which, self-

evidently, include the 2050 Target) following the IPCC's report in October 2018 means that there is no practical purpose to be served by allowing this application for judicial review to proceed, challenging the decision made in October 2016 not to amend the long-term targets at that time.

74. The Claimants' skeleton §70 sets out an unrealistic and artificial basis for contending that some purpose would be served by granting permission for the present claim to proceed – apparently premised on the suggestion that the CCC should now *delay* reporting on the IPCC report until after the conclusion of these proceedings, so that its advice can be informed by the judgment of the court. That suggestion is inconsistent with the Claimants' recurrent theme that any delay in revising targets is adverse to the achievement of the Paris Agreement's goals. Moreover, such proceedings would only serve as a substantial distraction of resources and effort – for both the CCC and the Secretary of State – in the proper assessment of the appropriate long-term targets in the light of the improved evidence base expected to be provided, and renewed international dialogue with global partners.
75. The Claimants' rationale appears to be aimed at a premature apprehension of illegality in the outcome of that process. The proper course is to allow the CCC to give its advice and the Secretary of State to consider that advice in the ordinary way, and for the Claimants to seek to challenge the outcome if they so wish. There is no basis for the suggestion that the court must supervise that process as it unfolds, or to imagine that the CCC will unduly delay in providing the advice to be sought.
76. Finally, as to §71, the Claimants are incorrect to suggest that the draft IPCC report (confidential to Governments) provides a basis for seeking advice from the CCC at this stage. It cannot already be considered to be final: see the Government Legal Department's letter of 28 June 2018 [3/24/500].
77. Permission to apply for judicial review should be refused accordingly, and costs be awarded in favour of the Defendant (subject to the PCO limits in paragraph 2(a)-(b) of the Order of Lang J [3/7/195]).

**ROBERT PALMER**  
**Monckton Chambers**  
**3 July 2018**