Neutral Citation Number: [2021] EWHC 3469 (Admin)

Case No: CO/1587/2021

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 21/12/21

Before :

THE HON. MR JUSTICE BOURNE

- -

Between :

THE QUEEN
On the application of

(1) PLAN B. EARTH
(2) ADETOLA STEPHANIE KEZIA ONAMADE
(3) JERRY NOEL AMOKWANDOH
(4) MARINA XOCHITL TRICKS
(5) TIMOTHY JOHN EDWARD CROSLAND **Claimants**

- and -

(1) THE PRIME MINISTER
(2) THE CHANCELLOR OF THE EXCHEQUER
(3) THE SECRETARY OF STATE FOR BUSINESS, ENERGY AND INDUSTRIAL STRATEGY **Defendants**

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The 2nd, 3rd and 5th Claimants (acting in person) for the **Claimants**
Richard Honey QC and Ned Westaway (instructed by Government Legal Department) for the **Defendants**

Hearing date: Thursday 25 November 2021

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Approved Judgment

The Hon. Mr Justice Bourne:

Introduction

1. This is a renewed application for permission to apply for judicial review, permission having been refused on the papers by Cavanagh J on 29 September 2021.

The claim

2. The Claimants seek to challenge the lawfulness of the policies of the UK Government relating to climate change.

3. The proposed claim advances the following grounds, each of which is said to identify a breach of section 13 and/or section 58 of the Climate Change Act 2008 (the 2008 Act) and/or a breach of section 6 of the Human Rights Act 1998 by way of ECHR Article 2 and/or Article 8, read by themselves and/or in conjunction with Article 14:

   (1) The Defendants have failed to take practical and effective measures to align UK greenhouse gas emissions to the Paris Temperature Limit (see [24] below).

   (2) The Defendants have failed to take practical and effective measures to adapt and prepare for the current and projected impacts of climate change and to support others to do so, including through education and awareness raising.

   (3) The Defendants have failed to take practical and effective measures to align UK financial flows to the Paris Temperature Limit.

   (4) The Defendants have failed to implement the "polluter pays" principle, which is a fundamental principle of both economics and law, and have failed to implement a legal and administrative framework to provide consistent and principled compensation for those suffering climate change loss and damage whether in the UK or beyond.

4. The Claimants seek, by way of remedy:

   (1) a declaration that the Defendants' failure to take practical and effective measures to meet their climate change commitments arising under the Paris Agreement and the Climate Change Act 2008 breaches the Claimants' rights under the Human Rights Act 1998 (ECHR Articles 2, 8 and 14); and

   (2) a mandatory order that the Defendants implement, with appropriate urgency, a legal and regulatory framework sufficient to meet those commitments.

The decision of Cavanagh J

5. Cavanagh J refused permission as I have said. He ordered the Defendants' application for the costs of preparing the acknowledgment of service to be adjourned to an oral hearing at which the Claimants' contention that they were entitled to "Aarhus protection" could be dealt with.

6. In refusing permission, Cavanagh J ruled:

   (1) The Claimants did not appear to be represented by solicitors or counsel authorised to conduct litigation, the Prime Minister was not an appropriate Defendant and HM Treasury should be a Defendant only to ground 3, the Statement of Facts and Grounds ("SFG") was unduly long and some material in the pleadings resembled lobbying rather than legal argument.

   (2) Given the terms of sections 13 and 58 of the 2008 Act and the discretion conferred by them, there was no realistic prospect of success for the contention that the Defendants had not complied with them.

   (3) The claims based on breaches of the Paris Agreement were hopeless because the Courts have no jurisdiction to determine whether the Government has acted in breach of its obligations under an unincorporated international treaty.

   (4) Even if any of the Claimants were "victims" for the purpose of the 1998 Act, it was not arguable that the Defendants' policies breached Article 2 or 8 or 14 in view of the wide margin of discretion given to Government in areas such as fiscal and tax policy. The First Claimant could not be a victim because it is not a natural person. The evidence did not show that any of the Claimants were in immediate risk to their lives or to their family life in the UK.

7. On this oral renewal application, all issues were fully argued. Some parts of the debate had moved on, and I received a certain amount of evidence and was taken to some authorities which were not before Cavanagh J. As is required on a renewal hearing, I have dealt with all of the issues anew, unrestricted by the previous ruling.

The parties

8. The Third Defendant is the minister with direct departmental responsibility for the main policies at stake. The Claimants also direct the claim at the First Defendant because of his overall responsibilities and because he chairs the Climate Action Strategy Committee, and at the Second Defendant because they say that a Government-wide response is needed, in particular to effect necessary economic changes, and because he has particular responsibility in respect of the third ground of claim (see below). The Fifth Claimant ("Mr

Crosland") explained to me that it is important for any judgment to bind the Second and Third Defendants directly.

9. If this claim were to proceed any further, then I would accept the submission made by Mr Honey QC for the Defendants that the Second Defendant (or, more appropriately, HM Treasury) is properly joined only in respect of ground 3, and that the First Defendant should not remain party to the claim. That is because the Third Defendant, as the responsible minister, stands in the shoes of the Government as a whole, and the Government as a whole would be bound by any judgment or order.

10. In response to the concerns expressed by Cavanagh J, Mr Crosland explained that each of the five Claimants is acting as a litigant in person, though he also speaks for the First Claimant which is an organisation. Mr Crosland made written and oral submissions on all of the grounds. These were expressly adopted by the Second and Third Claimants who also made concise oral submissions. The Fourth Claimant was unavailable to attend this hearing but I have been told that she is content to adopt the submissions made by the other Claimants.

The legal framework

11. Part 1 of the Climate Change Act 2008 is entitled Carbon Target and Budgeting.

12. Section 1, as amended, requires steps to be taken to ensure that the net UK carbon account for 2050 is at least 100% lower than the 1990 baseline. That means that the UK's net emission of greenhouse gases (the balance between greenhouse gas emissions produced and the amount removed from the atmosphere) would be reduced to zero. This is sometimes referred to as "net zero".

13. Under section 4 it is the duty of the Secretary of State to set for each 5-year period (beginning with 2008-12) an amount for the net UK carbon account, known as a "carbon budget", and to ensure that the budget is not exceeded.

14. Section 13 provides:

> "(1) The Secretary of State must prepare such proposals and policies as the Secretary of State considers will enable the carbon budgets that have been set under this Act to be met.
>
> (2) The proposals and policies must be prepared with a view to meeting—
>
> (a) the target in section 1 (the target for 2050), and

(b) any target set under section 5(1)(c) (power to set targets for later years).

(3) The proposals and policies, taken as a whole, must be such as to contribute to sustainable development.

(4) In preparing the proposals and policies, the Secretary of State may take into account the proposals and policies the Secretary of State considers may be prepared by other national authorities."

15. Part 2 of the 2008 Act, with Schedule 1, provided for the setting up of an independent expert body corporate to be known as the Committee on Climate Change ("the CCC"). It has statutory duties (inter alia) under section 34 to advise the Secretary of State on the level of carbon budgets and on how to achieve them, under section 36 to provide an annual report on the progress made towards meeting the carbon budgets and the 2050 target and on "whether those budgets and that target are likely to be met" and under section 38 to provide national authorities with advice on request in connection with their functions, the progress made towards meeting the statutory objectives, adaptation to climate change or any other matter relating to climate change.

16. Part 4 of the 2008 Act is entitled Impact of and Adaptation to Climate Change. Section 56 provides (so far as material):

"(1) It is the duty of the Secretary of State to lay reports before Parliament containing an assessment of the risks for the United Kingdom of the current and predicted impact of climate change.

(2) The first report under this section must be laid before Parliament no later than three years after this section comes into force.

(3) Subsequent reports must be laid before Parliament no later than five years after the previous report was so laid.

…

(5) Before laying a report under this section before Parliament, the Secretary of State must take into account the advice of the Committee on Climate Change under section 57."

17. Section 58 requires the Secretary of State to lay programmes before Parliament as soon as reasonably practicable after each report under section 56, setting out objectives for adaptation to climate change and proposals and policies for meeting them, with timescales.

18. Section 57 requires the CCC to advise the Secretary of State on the preparation of each report under section 56, and section 59 requires each of the CCC's reports under section 36 to contain an assessment of the progress made towards implementing the objectives, proposals and policies set out by the Secretary of State under section 58.

19. Section 6 of the 1998 Act makes it unlawful for a public authority to act in a way which is incompatible with a Convention right, and a "Convention right" includes the rights declared in ECHR Articles 2, 8 and 14 of which the material parts provide:

> "Article 2: right to life
>
> 1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.
>
> …
>
> Article 8: right to respect for private and family life
>
> 1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.
>
> Article 14: prohibition of discrimination
>
> The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

20. The material parts of section 7 of the 1998 Act provide:

> "(1) A person who claims that a public authority has acted (or proposes to act) in a way which is made unlawful by section 6(1) may—
>
> (a) bring proceedings against the authority under this Act in the appropriate court or tribunal, or

> (b) rely on the Convention right or rights concerned in any legal proceedings,
>
> but only if he is (or would be) a victim of the unlawful act.
>
> …
>
> (3) If the proceedings are brought on an application for judicial review, the applicant is to be taken to have a sufficient interest in relation to the unlawful act only if he is, or would be, a victim of that act.
>
> …
>
> (7) For the purposes of this section, a person is a victim of an unlawful act only if he would be a victim for the purposes of Article 34 of the Convention if proceedings were brought in the European Court of Human Rights in respect of that act."

21. Article 34 of the Convention provides:

> "The Court may receive applications from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the protocols thereto. …"

22. However, a non-governmental organisation will not be a victim unless it can show that it has been directly affected by the matter complained of. See, for example, *R (Children's Rights Alliance) v Secretary of State for Justice* [2012] EWHC 8 (Admin) at [212-225] per Foskett J.

23. What is needed for any person to be a victim is "reasonable and convincing evidence that a violation affecting him personally will occur; mere suspicion or conjecture is insufficient". See *R (Pitt and Tyas) v General Pharmaceutical Council* [2017] EWHC 809 (Admin) DC per Singh J at [61].

24. The international effort to confront climate change led to the adoption of the UN Framework Convention on Climate Change ("UNFCC") in 1992. In 2015, the Conference of the Parties ("COP") to the UNFCC took place in Paris. This led to an international treaty, the Paris Agreement, which entered into force on 4 November 2016. The UK is one of (I have been told) 191 states which have ratified the treaty. Article 2 of the Paris Agreement identifies the objective of "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 levels, recognizing that this would significantly reduce the risks and impacts of climate change" (the "Paris Temperature Limit"). The Treaty obliges countries to determine emission reduction targets with a view to achieving that objective.

25. Unincorporated treaties such as the Paris Agreement do not form part of domestic law, and domestic courts cannot determine whether the UK has violated its obligations under an international treaty: *R (SC) v SSWP* [2021] UKSC 26, [2021] 3 WLR 428 per Lord Reed at [77], [84] and [91].

The claims under the Climate Change Act

26. It is common ground that the Secretary of State has prepared proposals and policies under section 13 of the 2008 Act and has laid programmes before Parliament as required by section 58.

27. The Claimants' case is that all of the Government's proposals, policies and programmes are insufficient to meet their statutory targets and that the Government has failed to take the necessary practical and effective measures, in particular to achieve the objective agreed in Article 2 of the Paris Agreement. Nor, they claim, has the Government sufficiently planned for adaptation to climate change, or to align finance flows to the requirements of the Paris Agreement.

28. The evidential foundation for that case comes from a number of sources. Some of these are press reports containing criticism by public figures, which could provide only a flimsy if any support for a claim. Of more substance may be extracts from reports of an official or expert nature. For example, the Claimants have referred to:

    (1) The CCC's 2020 progress report to Parliament which stated that progress was "generally off-track in most sectors", representing "no change from the previous year".

    (2) A report published by the Institute for Government in September 2020, alleging that the Government had not confronted the scale of the task and complaining of a lack of sufficient strategies.

    (3) A report published by the Institute for Public Policy Research in November 2020, alleging a lack of sufficient spending commitments to achieve net zero emissions by 2050.

    (4) A report published by the National Audit Office on 4 December 2020, alleging that Government had not yet put in place the essential components for cross-government working to achieve the net xero target.

    (5) A report published by the Public Accounts Committee on 5 March 2021, stating that Government had not set out how it planned to achieve net zero despite having set the target in 2019.

(6) The CCC's 2019 report to Parliament on "Progress in preparing for climate change" which found "a substantial gap between current plans and future requirements and an even greater shortfall in action" and the lack, at that time, of "a coherent and coordinated plan, nor the resources to enable the required actions to be carried out".

(7) The CCC's Progress Report to Parliament published in June 2020 which stated that "UK plans have failed to prepare for even the minimum climate risks faced …".

(8) The CCC's report, "The Road to Net-zero Finance", which stated that "a more systematic approach to financing is now needed", read in conjunction with comments by the Bank of England and others suggesting that without changes to global finance, the world may be on track for a temperature increase in the region of 3.5°C above pre-industrial levels by 2100.

29. The Claimants also point to specific decisions and policies, though they do not directly challenge these, which they say show disregard for the net zero target and the Paris temperature limit:

(1) Support for opening a new coal mine in Cumbria.

(2) Support for aviation expansion.

(3) Emergency loans to carbon-intensive corporations without climate conditions.

(4) A commitment to invest £27.5 billion in the road network.

30. The Claimants also complain that no framework has been implemented to ensure compensation for victims of climate change.

31. To decide the position under the 2008 Act, it is not necessary to decide whether the Claimants' contentions have factual merit. Taking them at face value, the first question is whether they arguably evidence a breach of the statutory duties contained in section 13 or section 58.

32. Those are statutory duties to prepare proposals and policies and to lay programmes before Parliament. On their face, they are not duties to achieve specific outcomes, save perhaps to meet the carbon budgets which are set under the Act.

33. Mr Crosland recognises that the wording of the Act therefore makes this a difficult challenge. In oral argument he expressly placed greater reliance on the claims under the Human Rights Act 1998, describing his reliance on the Climate Change Act 2008 as "half-hearted" because of its wording and

accepting that he could understand the reasons given by Cavanagh J for refusing permission for this part of the claim. As Mr Honey said, Mr Crosland came close to accepting that the claims cannot succeed under domestic law.

34. In my judgment, the contention that the 2008 Act has been breached does not get off the ground. Under section 13, the Third Defendant has prepared proposals and policies that he considers will enable the carbon budgets that have been set under the Act to be met. Under section 58, he has laid programmes before Parliament setting out objectives, proposals, policies and timescales regarding adaptation to climate change. Disagreement with the merits of those proposals and policies (etc.) does not give rise to an arguable case that there has been a breach of the statutory duties.

35. It also seems to me that the claim overlooks an important part of the structure created by the 2008 Act. The Act created the CCC precisely for the purpose of providing independent advice and oversight to Government. The requirement of section 36 for the CCC to consider whether budgets and targets are likely to be met presupposes that the CCC may on occasion find that they are not. The advice to be given by the CCC is expressly not binding on the Government but the Government is expressly required to have regard to it.

36. Evidentially, the Claimants rely to a very substantial extent on criticism of Government contained in CCC reports. But that criticism, far from demonstrating that the 2008 Act is not being complied with, demonstrates that the 2008 Act is working as Parliament intended. Parliament plainly contemplated that the periodic provision of reports and responses would feed into an evolution of policy over many years while successive Governments grapple with the vast and unprecedented challenge of climate change.

37. The 2008 Act, as I have said, did not make the views of the CCC binding on Government. There is nothing in the 2008 Act to suggest that critical reports by the CCC should be a foundation for the Courts to declare that the Government's policies are unlawful.

38. I therefore do not consider it arguable that the Claimants have identified a breach of the Climate Change Act 2008.

The claims under the Human Rights Act 1998

The Claimants' submissions

39. These grounds of challenge are founded on the State's positive obligations under ECHR Articles 2 and 8.

40. Mr Crosland has referred me to the summary by the ECtHR of the positive obligations arising under Article 2 in *Tanase v Romania* (Case no. 41720/13, 2019), namely:

    (1) A duty to put in place an administrative framework designed to provide effective deterrence against threats to the right to life. In the context of road traffic in *Tanase*, that meant an obligation "to have in place an appropriate set of preventive measures geared to ensuring public safety and minimising the number of road accidents".

    (2) An obligation to take preventive operational measures to protect an identified individual from a "real and immediate risk" to life posed by another individual.

    (3) An obligation to have in place an effective judicial system to investigate deaths and provide appropriate redress for victims.

41. In this case Mr Crosland relies on the "framework" duty at (1) above. He points out that this is not subject to proving a "real and immediate risk" to an individual which is a precondition for the "operational" duty at (2) above arising. Instead, he submits that the question for the Court is whether there is a situation which presents a risk to life such that it is necessary to have a practical and effective framework to deter that threat. His case is that the existing framework is not effective and that Government is systematically failing to heed the expert advice of the CCC. And if the present situation does not infringe the 2008 Act then that itself, Mr Crosland submits, shows that the Act is not an effective part of the framework, leaving a gap in protection.

42. Mr Crosland submits that the lack of an effective framework consists of, or is demonstrated by, each of the complaints listed at paragraph 3 above.

43. So, as to the first two complaints, it is said that a direct threat to life is posed by a failure to align emissions to the Paris temperature limit and by a lack of measures to adapt and prepare for the current and projected impacts of climate change.

44. As to the third complaint, Mr Crosland points to CCC reports and recommendations which advise strongly that finance must be made consistent with the delivery of a net-zero economy. Its recommendations in the December 2020 report, *The Road To Net-zero Finance*, included:

    "7. Fully integrate climate risk and net-zero into financial regulation and monetary policy (including assessing legacy rules for alignment).

    8. Make net-zero targets and plans mandatory for financial institutions.

    …

10. Set clear metrics for the net-zero transition at the institutional and product levels."

45. Nevertheless, the Claimants say that no such measures are in place. They point out that it has been estimated (by Carbon Tracker, an independent financial thinktank) that the City of London supports around 15% of global carbon emissions. Meanwhile Government has proposed to introduce mandatory reporting of climate-related financial information across the economy by 2025, with many requirements in place by 2023, according to its *Ten Point Plan for a Green Industrial Revolution* published in November 2020.

46. As to the fourth complaint, Mr Crosland contends that the lack of a legal and administrative framework to provide compensation for those suffering climate change loss and damage in the UK or beyond also engages the framework obligation under ECHR Article 2.

47. However, the fourth complaint seems more likely to be germane to Article 8, on which Mr Crosland relies in the alternative in respect of all four complaints.

Discussion

48. The insuperable problem with the Article 2 claim (and with any Article 8 claim based on the physical or psychological effects of climate change on the Claimants) is that there is an administrative framework to combat the threats posed by climate change, in the form of the 2008 Act and all the policies and measures adopted under it.

49. That framework includes and contemplates the role of the CCC in advising on, and assessing, policies and measures. That framework is constantly evolving. As Mr Honey put it, it is a moving target. Between the issue of the claims and the oral hearing there have been relevant developments. The UK, having met the first and second carbon budgets, is now said to be on track to meet the third and on 19 October 2021 published the Net Zero Strategy: Build Back Greener. Mr Honey told me that that strategy put the UK on track to meet the fourth, fifth and sixth carbon budgets, the latter of which is confirmed by the CCC as being consistent with the targets specified in the Paris Agreement. Later in October the CCC published an assessment of the Net Zero Strategy which describes it as a "credible package" and a "material step forward". Meanwhile, the reports and responses mandated by the 2008 Act continue to be issued.

50. Moreover, the framework consists of high level economic and social measures involving complex and difficult judgments. As Lord Reed recently explained in *R (SC) v Work and Pensions Secretary* [2021] UKSC 26, [2021] 3 WLR 428 at [158], the State enjoys a wide margin of appreciation in matters of that kind. Whilst all the circumstances must be taken into account, it remains the position that

the judgment of the executive or legislature in such areas "*will generally be respected unless it is manifestly without reasonable foundation*".

51. That approach respects the constitutional separation between the Courts, Parliament and the executive. It also reflects the fact that the Court is not well equipped to form its own views on the matters in question. I am being invited to adopt the views expressed in selective quotations from the work of the CCC and others. When I refer to selective quotation I am not questioning the good faith of any of the parties. Rather I am pointing out that the Court does not have and cannot acquire expertise in this complex area, and will always be dependent on competing extracts from a global debate. Even if I could overcome the problem of selective quotation, I would not be equipped to assess the correctness of what is being quoted.

52. In that regard a further problem arises from the Claimants' reliance on the Paris Agreement. Mr Crosland has explained that he is not trying to enforce an unincorporated international treaty in this Court. To do so would fall foul of the Supreme Court's ruling in *SC* to which I refer at [25] above. Rather he relies on the Paris Agreement as evidence of fact, to show that a failure to limit the temperature increase to 1.5°C above pre-industrial levels poses the threat to life on which the claims are based, and that there is an international consensus to that effect.

53. The problem is that the Claimants are using compliance with the Paris Temperature Limit as a test for compliance with Article 2 (and Article 8). The effect is that the Court is being asked to enforce the Paris Agreement, contrary to the guidance in *SC*.

54. Whether or not that is so, these claims invite the Court to venture beyond its sphere of competence. In my judgment the framework established by the 2008 Act should be allowed to operate. It contains provision for debate, and that debate occurs in a political context with democratic, rather than litigious, consequences.

55. Mr Crosland suggested that the Courts in some other countries have been willing to decide issues of this kind. He drew my attention to the decision of the Dutch Supreme Court in *Urgenda v The Netherlands*, ruling that the Dutch State was obliged to reduce greenhouse gases in the Netherlands by at least 25% by the end of 2020 compared to 1990. I have not been given any comparison of the constitutional laws in play and between the powers of the Dutch and English courts in such matters. However, I note that the challenge in *Urgenda* was not to a framework of laws, but rather to a change in the State's reduction target. Previously the State pursued a 30% reduction by 2020 but this was lowered to 20% in 2011. According to the Supreme Court:

> "The State has not explained, however, that – and why – a reduction of just 20% in 2020 is conserved responsible in an EU context, in contrast to the

> 25-40% reduction in 2020, which is internationally broadly supported and is considered necessary."

I need not and do not decide whether a similar challenge could have been viable in this jurisdiction.

56. My attention was also drawn to *Friends of the Irish Environment v The Government of Ireland* [2020] IESC 49, in which the Supreme Court of Ireland entertained a challenge to a plan which was required to be adopted under the Climate Action and Low Carbon Development Act 2015 for the purpose of enabling the State to pursue and achieve the objective of transitioning to a low carbon climate resilient and environmentally sustainable economy by the end of 2050. The Court declared that the plan was ultra vires the 2015 Act because it did not contain a sufficient level of specificity in the measures contained in it so that a reasonable person could judge whether it was realistic and whether they agreed with the specified policy options.

57. That case, it seems to me, turned on the terms of the Irish legislation. It was open to the Courts there, as it would be here, to decide whether measures adopted by the Government were within or without those terms. I have already ruled that the Claimant's claims based on the 2008 Act are not arguable.

58. In the present case, the fact that the CCC and others have criticised the generality of the measures or lack of measures adopted by the Defendants does not make this a suitable case, or an arguable case, for judicial review. It is not arguable that a legal and administrative framework has not been put in place in response to the threats posed by climate change.

59. As Mr Honey said, that framework includes measures relating to finance such as those contained in the new Financial Services Act 2021. This too is a moving target. The third of the complaints specified at [3] above does not add anything to the first two. And I agree with Mr Honey that the fourth complaint, based on a lack of provision to compensate people outside the UK for climate change loss, does not reveal any arguable breach of a positive obligation under Article 2 or Article 8.

60. For those reasons I refuse permission in respect of the direct effects of climate change which are alleged to engage Article 2 and/or Article 8 (and Article 14 by association).

61. I turn to the case based on family life. Article 8 requires respect for private or family life. That may entail a positive obligation to adopt measures designed to secure that respect: see *X and Y v The Netherlands* (1986) 8 EHRR 235. Article 8 can be engaged by environmental matters including pollution, where individuals are "directly and seriously affected" by it: *Hatton v UK* (2003) 37 EHRR 28 at paragraph 96.

62. The Claimants claim that the potential consequences of climate change on family life mean that Article 8 is clearly engaged, whatever the position under Article 2.

63. However, the Second, Third and Fourth Claimants claim that Article 8 is of particular relevance to them because they are young and have family members who live outside the UK in regions of the world that may be affected more profoundly, and/or sooner, by climate change. As it is put in the SFG, "the younger generation, racially marginalised communities and the Global South are on the frontline". Thus, they say, it will have a particular impact on their family life. It was suggested that a disregard for the welfare of those affected evidences an attitude of "colonial contempt".

64. For the same reasons the Second, Third and Fourth Claimants also rely on Article 14, read alongside Article 8. Their case is that the four complaints amount to discrimination in relation to their enjoyment of their rights to life and to family life.

65. It is important to explain the difficulty of establishing a case under Article 8 in a claim such as this.

66. First, it is only in exceptional circumstances that the Courts of the UK will hold a UK public authority liable for a breach of ECHR rights outside the UK. This has occurred in cases of state agents outside the UK exercising authority and control, of action by diplomatic and consular staff overseas and of legislation passed expressly to affect an overseas territory. See *Smith v MOD* [2013] UKSC 41, [2014] AC 52.

67. Second, as Mr Honey points out, a claim under Article 8 depends on establishing a "significant impairment" of a Claimant's ability to enjoy "family life": see *Dubetska v Ukraine* (2015) 61 EHRR 11. "Family life" for the purposes of the ECHR is a term of art. The relevant "family life" usually involves the ties between immediate relations such as spouses, parents and minor children. It will involve relations with more distant relatives only in an unusual case where they play a considerable part in family life. So relations between adult siblings or adult children and their parents or other adult relatives do not ordinarily amount to family life unless there are additional elements of dependency going beyond "normal emotional ties". See *Kugathas v Immigration Appeal Tribunal* [2003] EWCA Civ 31, [2003] INLR 170 where Sedley LJ said at [19]:

> "… neither blood ties nor the concern and affection that ordinarily go with them are, by themselves or together, in my judgment enough to constitute family life. Most of us have close relations of whom we are extremely fond and whom we visit, or who visit us, from time to time; but none of us would say on those grounds alone that we share a family life with them in any sense capable of coming within the meaning and purpose of Article 8."

68. In the same case, Arden LJ at [25] said that although there might be cases where "family life" was carried on between individuals in different countries, it would "probably be exceptional".

69. These claims combine those two difficulties. The case under Article 8 and/or Article 14 largely depends on establishing that ties with non-immediate adult relations who live overseas are capable of constituting the relevant family life.

70. In my judgment that proposition is not arguable on the evidence.

71. The witness statement of the Second Claimant refers generally to her family being scattered across the world, to "large numbers of young cousins in the Caribbean" and to the fact that "a large part of my family lives in 'Small Island Developing States' of the Caribbean". She provides no details about her relations with those individuals. She adds that anxiety about climate change has caused her to suffer mental health problems and makes her unwilling to have children.

72. The witness statement of the Third Claimant does not identify the relevant family members or indeed allege that he is enjoying family life, in the Article 8 sense, with them. He states that he has relatives in Ghana who are already experiencing water scarcity.

73. The Fourth Claimant was born in Mexico to a Mexican mother and a British father. Her witness statement also refers to an uncle, an aunt, cousins and a grandmother living in California, and to a grandmother in Mexico. She identifies a place in Mexico which she calls home but also identifies herself as a "member of the diaspora" and refers to worrying about the health and safety of her "family back home". It is not entirely clear where she enjoys family life in the Article 8 sense, or who with. She also refers to the effects of anxiety and the potential differential effects on women of societal collapse.

74. From that evidence, I could not begin to make findings of fact that could sustain a claim under Article 8, with or without Article 14.

75. I should add that when Mr Honey pointed out that the evidence comes nowhere near establishing the necessary family life, this caused some offence to the Claimants in Court. That, I think, was a misunderstanding. Mr Honey was not questioning the importance of these family members to each other. He was pointing out the lack of evidence of the type of family life, consisting of or being comparable to the immediate nuclear family, which Article 8 protects. Still less is there evidence of that family life being carried on in the UK, or of circumstances so exceptional that UK Courts would extend their jurisdiction to such family life when carried on overseas.

76. So these Article 8 and/or Article 14 claims fail at the evidential threshold.

77. Even if that were not so, they would face the same insuperable difficulty as I have referred to in respect of Article 2.

78. In the alternative, I am not convinced that any of the Claimants could arguably establish the necessary status as a "victim" of a breach of ECHR rights so as to qualify to bring a claim under section 7(1) of the HRA 1998. There was no real attempt to persuade me that the First Claimant could do so, and clearly it cannot. I have already explained why the Second, Third and Fourth Claimants cannot mount claims based on family life under Article 8, and it was not even argued that the Fifth Claimant could do so. Meanwhile, it also does not seem to me that a generalised future risk of harm to the global community is arguably sufficient to establish victim status for the Second to Fifth Claimants in relation to Article 2.

Conclusion

79. Permission is refused on all grounds.

80. My decision is not based on purely procedural defects. Nothing now turns on the length of the SFG on which Cavanagh J remarked, but I agree that it was unduly long. That is not to understate the importance of the issues which the Claimants sought to raise but it should be rare indeed for an SFG in judicial review to run to 88 pages and 352 paragraphs.

81. The Defendants seek their costs of preparing an AOS, in the sum of £21,549.67.

82. I also heard argument on another point relating to costs. As I have said, the order of Cavanagh J provided for argument on whether the Claimants should have the costs protection given to claims under the Aarhus Convention by way of CPR 45.43. The Defendants did not at any time concede that they qualified for that protection. However, after the Claimants had prepared a skeleton argument on the point, the Defendants pragmatically offered to undertake not to seek costs beyond the limit which that protection would impose. The figure they now seek, per Claimant, does not exceed that limit. The Claimants say that they should in any event be awarded the costs which they expended on the skeleton. The parties agreed before me that, if awarded, such costs could be summarily assessed in the sum of £304 representing two days' work at the rate allowed to litigants in person.

83. Admittedly some legal work could have been avoided if the Defendants had made that proposal earlier than they did. However, it was just a proposal, not a concession. Given the clear lack of an arguable claim under national law relating to the environment, i.e. the 2008 Act, I do not consider that the Defendants were at fault in any way. And greeting late proposals with costs orders could discourage parties from making sensible proposals. I therefore do not make any order in the Claimants' favour.

84. However, not having heard argument on the amount sought by the Defendants, I will award them their costs summarily assessed in the sum of £20,000 unless the parties inform me that they wish to make written submissions on the amount claimed.