

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

Claim Nos CO/126/2022
CO/163/2022
CO/199/2022

BEFORE THE HONOURABLE MR JUSTICE HOLGATE

B E T W E E N:

R (on the application of)
(1) FRIENDS OF THE EARTH LIMITED
(2) CLIENTEARTH
(3) GOOD LAW PROJECT and (4) JOANNA WHEATLEY

Claimants

- and -

SECRETARY OF STATE FOR BUSINESS, ENERGY
AND INDUSTRIAL STRATEGY

Defendant



ORDER

UPON the Claimants' applications for judicial review

AND UPON hearing David Wolfe QC, Catherine Dobson and Nina Pindham for the First Claimant, Jessica Simor QC and Emma Foubister for the Second Claimant, Jason Coppel QC and Peter Lockley for the Third and Fourth Claimants and Richard Honey QC, Ned Westaway and Flora Curtis for the Defendant

IT IS ORDERED THAT

1. The Claimants' applications for judicial review are allowed on Grounds 1 and 2 to the extent set out in the Court's Judgment. The First Claimant's application for judicial review is additionally allowed on Ground 4 to the extent set out in the Court's Judgment and reflected in the declaration made at paragraph 5 of this Order.

2. The Claimants' applications for judicial review are otherwise refused.

IT IS DECLARED THAT

3. In determining that the proposals and policies set out in the Net Zero Strategy will enable carbon budgets set under the Climate Change Act 2008 ("the Act") to be met, the Defendant failed to comply with section 13(1) of the Act by failing to consider (i) the quantitative contributions that individual proposals and policies (or interrelated group of proposals and policies) were expected to make to meeting those carbon budgets; (ii) how the identified c.5% shortfall for meeting the sixth carbon budget would be made up, including the matters set out at [216] of the judgment and (iii)

the implications of these matters for risk to delivery of policies in the NSZ and the sixth carbon budget.

4. The Net Zero Strategy of 19 October 2021 failed to comply with the obligation in section 14(1) of the Act to set out proposals and policies for meeting the carbon budgets for the current and future budgetary periods (i) by failing to include information on the quantitative contributions that individual proposals and policies (or interrelated group of proposals and policies) were expected to make to meeting those carbon budgets and (ii) by failing to address the matters identified in [253] of the judgment.

5. The Defendant did not comply with, and therefore breached, section 149 of the Equality Act 2010 in relation to the Heat and Buildings Strategy (“HBS”), because it failed to carry out an Equality Impact Assessment in respect of the HBS.

IT IS FURTHER ORDERED THAT

6. The Defendant is to lay before Parliament a report which is compliant with section 14 of the Climate Change Act 2008 by no later than 31 March 2023. Liberty to apply to extend time upon the defendant giving at least 28 days’ written notice of the application, served on the other parties with detailed grounds and any evidence relied upon. Any claimant wishing to oppose any such application must file and serve written grounds of opposition and, if necessary, any evidence relied upon within 10 days of service of the application. Any reply must be filed and served within 7 days thereafter.

7. The Defendant shall pay the First Claimant’s costs of bringing its application to be assessed if not agreed subject to a cap of £35,000.

8. The Defendant shall pay the Second Claimant’s costs of bringing its application to be assessed if not agreed subject to a cap of £35,000.

9. The Defendant shall pay the Third Claimant’s costs of bringing its application to be assessed if not agreed subject to a cap of £35,000.

10. There be no order as to costs in respect of the Fourth Claimant.

11. The above costs must be paid within 21 days of the date of agreement or assessment.

12. The Defendant’s application for permission to appeal is refused.

BY THE COURT

Dated 18 July 2022

Reasons

Mandatory order

1. The claimants are entitled to a mandatory order. The defendant is incorrect in submitting that the order sought by the claimants would simply duplicate the duty in s. 14. The duty has been breached and the order is justified to ensure compliance with the duty.
2. Often a matter such as this is dealt with by an undertaking to the court, which itself is enforceable. I appreciate that the defendant has offered an undertaking to discharge his

duties under both sections 13 and 14 “as soon as reasonably practicable”. But a clear time limit must be imposed, albeit with liberty to apply.

3. The reference in s.14 to laying a report before Parliament as soon as practicable is not in point. That refers to as soon as reasonably practicable after the making of an order under s. 8. Here the order was made in June 2021. The NZS was laid before Parliament in October 2021 and the information which was missing should have been provided to the Minister and to Parliament at that stage. The work had already been carried out and the information was available then. The breach occurred in October 2021 and the question is how long should reasonably be allowed for that breach to be remedied.
4. I note that there is an analogy here with the sequence of decisions in the *ClientEarth* air quality litigation.
5. I take into account all the factors referred to by the defendant. I bear in mind also that changes in Government are taking place and that the holiday season is upon us.
6. But the climate change problem is urgent and demands high priority. The CCC have reported in June and the Secretary of State I understand is due to lay a report before Parliament responding to their points and criticisms by October this year. The duty to prepare policies under s. 13 is ongoing and no doubt monitoring and policy preparation has continued to take place. On the information before the court I do not accept that a period for compliance as long as 12 months is justified, albeit supported by Friends of the Earth. On the other hand the period suggested by ClientEarth and Good Law Project, 4 months, is too short. I consider a period of just over 8 months to be appropriate.

Costs

7. I agree with the claimants in CO/199/2022 that viewed overall they are the successful party as against the defendant. An issues-based approach would be inappropriate.
8. The defendant has not argued for an issues-based approach to the costs of the claimants in CO/126/2022 and CO/163/2022, although both they and the claimants in CO/199/2022 failed on ground 1(i). Ground 3 was simply an alternative argument to support ground 1(i) relying upon s.3 of the HRA 1998 and certain Convention rights. It did not take up much additional time.

Permission to appeal

9. I refuse permission to appeal under both limbs of CPR 52.6.
10. I begin with paras. 15, 19 and 20 of the application for permission to appeal. On receipt, I contacted the parties to point out that parts of what was said did not appear to accord with the evidence before the court and indicated that the hearing might have to be reconvened to clarify matters. As the claimants rightly point out, this related to a subject which I sought to clarify on several occasions during the first two days of the hearing with leading counsel for the defendant but to little or no avail. This had been important at that stage because on one view of what the defendant *appeared* to be saying, ground 1(i) did not arise on the facts and was academic. However, the defendant accepted that that was not so.

11. On the following day (14 July 2022 at 7.21) counsel for the defendant sent an email “going into reverse gear”. Whereas it had been suggested in the application for permission to appeal on 13 July that my conclusions on ground 1(ii) (not ground 1(i)) were underpinned by a failure to understand the table in the ministerial submissions ([128] of the judgment) and related evidence, that point was now withdrawn. Counsel added “the Defendant does not consider the point materially to affect the judge’s conclusion on ground 1”.
12. Indeed, the criticisms made by the defendant in that part of his application for permission to appeal did not influence my analysis of the legislation and the circumstances of the NZS under ground 1(ii) or the substance of my reasoning. The defendant was wrong to suggest that they had. As to ground 1(i), the defendant has been successful on that issue of statutory interpretation. So this part of the defendant’s application cannot justify the grant of permission to appeal against any part of the judgment.
13. In view of the lamentable lack of clarity in the defendant’s case in this area, and the confusion he introduced in this part of the application for permission to appeal (and additionally the understandable misapprehensions in the claimant’s reply), I decided that the hearing should be reconvened on 15 July 2022. On that occasion the court and the defendant’s leading counsel went through key passages in the pleadings and evidence before the court. Beforehand I had approved an application by the defendant for the release of the draft judgment to an expert within the Department on the modelling which it had carried out, so that leading counsel could take instructions as appropriate.
14. Leading counsel clarified a number of points which I have included in the approved judgment (e.g. [118]-[119] and [131]-[136] and [158]). I have also made a number of consequential changes and reordered the sequence of some paragraphs, with the overall aim of improving my clarity and precision. Paragraph [142] of the draft judgment has been amended to reflect the points accepted by leading counsel on 15 July 2022. In these circumstances, it is surprising that the skeleton for the defendant (an indeed the application for permission to appeal) made assertions about the delivery pathway and its use which did to accord with his evidence.
15. These changes have not affected the substance of my analysis and application of the law in grounds 1 or 2. It does not affect the merit of the application for permission to appeal or the relief granted by the court. Accordingly I see no need to circulate a further draft to the parties.
16. Turning then to what the proposed grounds of appeal are really about, the thrust of the criticism is that my conclusions involve a misinterpretation of the legislation. Unfortunately, however, the defendant does not grapple with that analysis or say why it is arguably wrong, let alone with a real prospect of success. In those circumstances it would be inappropriate to grant permission to appeal. It has not been shown that there is a real prospect of success or a compelling reason.