Neutral Citation Number: [2018] EWHC 1892 (Admin)

Case No: CO/16/2018

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 20 July 2018

Before :

THE HONOURABLE MR JUSTICE SUPPERSTONE

- -

Between :

(1) PLAN B EARTH	**Claimants**
(2) CARMEN THERESE CALLIL	
(3) JEFFREY BERNARD NEWMAN	
(4) JO-ANNE PATRICIA VELTMAN	
(5) LILY MEYNELL JOHNSON	
(6) MAYA YASMIN CAMPBELL	
(7) MAYA DOOLUB	
(8) PARIS ORA PALMANO	
(9) ROSE NAKANDI	
(10) SEBASTIEN JAMES KAYE	
(11) WILLIAM RICHARD HARE	
(12) MB (A Child) BY HIS MOTHER & LITIGATION FRIEND, DB	
- and -	
SECRETARY OF STATE FOR BUSINESS, ENERGY AND INDUSTRIAL STRATEGY	**Defendant**
- and -	
THE COMMITTEE ON CLIMATE CHANGE	**Interested Party**

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- -

Jonathan Crow QC and Emily MacKenzie (instructed by **Bindmans LLP**) for the **Claimants**
Robert Palmer (instructed by **Government Legal Dept.**) for the **Defendant**
Richard Gordon QC (instructed by **Climate Change Committee**) for the **Interested Party**

Hearing date: 4 July 2018

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Approved Judgment

Mr Justice Supperstone :

Introduction

1. This is a renewed application for permission to apply for judicial review, brought by Plan B Earth and eleven other claimants, of the refusal by the Defendant ("the

Secretary of State") to revise the 2050 carbon target under the Climate Change Act 2008 ("the 2008 Act") at the present time.

2. The essence of the Claimants' case is that by this decision the UK Government is acting in breach of its international obligations under the Paris Agreement on Climate Change ("Paris Agreement"), made in late 2015 by the 195 State Parties to the UN Framework Convention on Climate Change ("the Convention") ratified by the UK in December 1993.

3. The Claimants do not suggest that the Paris Agreement is, of itself, legally enforceable in domestic law. Rather they seek to argue that the lawfulness of the Secretary of State's refusal to amend the 2050 Target needs to be assessed in the light of the current international scientific consensus, and the UK's commitments under the Paris Agreement, and its other international obligations.

4. Permission was refused on the papers by Lang J.

5. Section 1(1) of the 2008 Act imposes a duty on the Secretary of State to ensure that the net UK carbon account for the year 2050 ("the 2050 target") is at least 80% lower than the 1990 baseline. Section 2(1)(a) confers a power on the Secretary of State by order to amend the 2050 target by amending the 80% figure.

6. Section 2(2) provides:

> "The power in sub-section (1)(a) may only be exercised—
>
> (a) if it appears to the Secretary of State that there have been significant developments in—
>
> (i) scientific knowledge about climate change, or
>
> (ii) European or international law or policy,
>
> that make it appropriate to do so."

7. Section 2(6) provides that "An order under this section is subject to affirmative resolution procedure".

8. Before exercising his power under s.2(1) of the 2008 Act to amend the 2050 Target, the Secretary of State is required by s.3(1)(a) to obtain, and take into account, the advice of the Committee on Climate Change ("the Committee"), an independent body composed of experts, established by s.32 of the Act. Schedule 1 to the 2008 Act prescribes the membership of the Committee.

9. The Committee is under a statutory duty to provide advice to the Government, Parliament and the devolved administrations on the 2050 emission target (s.33); the 5-yearly carbon budgets (limits on UK emissions) (s.34); and annually on progress towards meeting the carbon targets (s.36).

10. The Paris Agreement, so far as is relevant, states:

> "*The Parties to this Agreement,*

In pursuit of the objective of the Convention, and being guided by its principles, including the principle of equity and common but differentiated responsibilities and respective capabilities, in the light of different national circumstances,

Have agreed as follows

Article 2

1. This Agreement, in enhancing the implementation of the Convention, including its objective, aims to strengthen the global response to the threat of climate change in the context of sustainable development and efforts to eradicate poverty, including by

(a) 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 limits, recognising that this would significantly reduce the risks and impacts of climate change.

Article 3

As nationally determined contributions to the global response to climate change, all Parties are to undertake and communicate ambitious efforts as defined in Articles 4, [and others] with the view to achieving the purposes of this Agreement as set out in Article 2. The efforts of all Parties will represent a progression over time, while recognising the need to support developing country Parties for the effective implementation of this Agreement.

Article 4

1. In order to achieve the long-term temperature goal set out in Article 2, Parties aim to reach global peaking of greenhouse gas emissions as soon as possible, recognising that peaking will take longer for developing country Parties…

2. Each Party shall prepare, communicate and maintain successive nationally determined contributions that it intends to achieve. Parties shall pursue domestic mitigation measures, with the aim of achieving the objectives of such contributions.

3. Each Party's successive nationally determined contribution will represent a progression beyond the Party's then current nationally determined contribution and reflect its highest possible ambition, reflecting its common but differentiated responsibilities and respective capabilities, in the light of different national circumstances."

11. In response to the Paris Agreement, the Committee advised in October 2016 that no change should be made to the 2050 target at this time.

12. Mr Tim Lord, the Senior Responsible Officer for policy under the 2008 Act in the Department for Business Energy and Industrial Strategy, in his witness statement at para 5 states:

> "The Rt. Hon. Nick Hurd MP, who was at the time the Minister of State for Climate Change and Industry, accepted the recommendation in the 2016 Report that the Government should not amend its targets in response to the Paris Agreement **at that time**, and that the Government's efforts should be focussed on delivering action on the policies and proposals for meeting existing targets. However, he was clear that both the Government and the Committee should keep the long-term ambition under review in the light of the evidence."

13. Mr Lord continues at para 10:

> "The essential point is that both the Committee and the Secretary of State agree that as at October 2016, the position was that the 2050 Target did not need to be amended at that time because it was not incompatible with the Paris Agreement – but that the level of the UK's ambition should be revisited when appropriate opportunities arise."

14. The 2016 Report in chapter 1 ("Current UK ambition and the Paris Agreement") makes reference to the inter-governmental panel on climate change (IPCC) which will provide information on pathways consistent with 1.5°C in a Special Report due in 2018, and that there will be an international dialogue to take stock of national actions (see paras 22 and 24 below).

15. On 4 June 2018 the IPCC announced that it had sent the final draft of its special report on global warming of 1.5°C to Government for comment. On 20 June the Government Legal Department wrote to the Claimants' solicitors stating that the Secretary of State will seek the Committee's advice "as soon as is reasonably practicable following publication of the final IPCC report". The Government is committed to review its long-term targets (see Mr Lord's witness statement at paras 14-18).

16. At the forefront of the oral submissions made by Mr Jonathan Crow QC, on behalf of the Claimants, is the contention that the Secretary of State's decision was taken on the basis of (1) a misunderstanding of the advice given to him by the Committee; and (2) a misunderstanding as to the effect of the 2008 Act.

17. As for the first, Mr Crow submits that by reference to the Defendant's pre-action protocol response and summary grounds of defence that the Secretary of State took his decision not to amend the 2050 Target on the basis that a revised 2050 Target would not be feasible, and that the Secretary of State understood that to have been the Committee's advice. He suggests that it is clear from Mr Lord's witness statement and the Defendant's skeleton argument that the Secretary of State has now shifted his

position, following the service of the Committee's summary grounds of defence, to avoid the conclusion that he misunderstood the Committee's advice.

18. Mr Crow submits that even if it was a valid justification (which it is not) for not amending the 2050 Target that meeting a more ambitious target was not feasible, in forming that view the Secretary of State failed to have regard to ss.26-28 of the 2008 Act which provide a mechanism by which the UK can offset against its own carbon emissions "carbon units" with which it has been credited. Accordingly, in terms of achieving the 2050 Target, it is the "net UK carbon account" that is relevant, not just the UK's emissions.

19. Further Mr Crow suggests that the Committee changed its position because its 2016 advice was plainly not premised on the contention that the current 2050 Target was compatible with the targets set by the Paris Agreement. In support of this submission Mr Crow relies on the minutes of the Committee's meeting in September 2016 which state:

> "It was clear that the aims of the Paris Agreement, to limit warming to well-below 2°C and to pursue efforts to limit it to 1.5°C, went further than the basis of the UK's current long-term target to reduce emissions in 2050 by at least 80% on 1990 levels (which was based on a UK contribution to global emissions reductions keeping global average temperature rise to around 2°C).
>
> …
>
> The Committee therefore agreed that whilst a new long-term target would be needed to be consistent with Paris, and setting such a target now would provide a useful signal of support, the evidence was not sufficient to specify that target now."

20. The starting point for considering whether the Secretary of State misunderstood the Committee's 2016 advice must be the 2016 report itself.

21. The key conclusions reached by the Committee, as set out in the Executive Summary of its report, include the following:

> "**Do not set new UK emissions targets now.** The UK already has stretching targets to reduce greenhouse gas emissions. Achieving them will be a positive contribution to global climate action. In line with the Paris Agreement, the Government has indicated it intends at some point to set a UK target for reducing domestic net emissions to net zero. We have concluded it is too early to do so now, but setting such a target should be kept under review. The five-yearly cycle of pledges and reviews created by the Paris Agreement provides regular opportunities to consider increasing UK ambition.
>
> **Vigorously pursue the measures required to deliver on existing UK commitments and maintain flexibility to go**

further. The most important contribution the Government can make now to the Paris Agreement is publishing a robust plan to meet the UK carbon budgets and delivering policies in line with the plan. Meeting the carbon budgets will require economy-wide improvements to efficiency, decarbonisation of electricity and scaling up on markets for zero-emission vehicles and heating. Current policies, at best, will deliver about half the required reduction in emissions. Acting with urgency to close this policy gap would reduce long-term costs and keep open options for the future. If all measures deliver fully and emissions are reduced further, this would help support the aim in the Paris Agreement of pursuing efforts to limit global temperature rise to 1.5°C.

…

We agree with the Government's intention to set a new target in future that reflects the global need to reach net zero emissions. However, to be credible it needs to be evidence-based, accompanied by strong policies to deliver existing targets and a strategy to develop greenhouse gas removals.

1. UK and international ambition

…

The Agreement describes a higher level of global ambition that the one that formed the basis of the UK's existing emissions reduction targets:

- The UK's current long-term target is a reduction in greenhouse gas emissions of at least 80% by the year 2050, relative to 1990 levels. This 2050 target was derived as a contribution to a global emission path aimed at keeping global average temperature to around 2°C above pre-industrial levels.

- The Paris Agreement aims to limit warming to well below 2°C and to pursue efforts to limit it to 1.5°C. To achieve this aim, the Agreement additionally sets a target for net zero global emissions in the second half of this century.

…

We welcome the Government's commitment to ratifying the Paris Agreement by the end of the year. The clear intention of the Agreement is that effort should increase over time. While relatively ambitious, the UK's current emissions targets are not aimed at limiting global temperature to as low a level as in the Agreement, nor do they stretch as far into the future.

2. Net zero emissions

Global temperature rise is a function largely of cumulative carbon dioxide emissions over time, meaning carbon dioxide emissions will need to fall to net zero in order to stabilise temperature. Some other greenhouse gas emissions may not need to fall to zero but will require very deep reductions in order to reach the temperature aims in the Paris Agreement…

- Emissions pathways indicate that CO_2 emissions will need to reach net zero by the 2050s-70s, along with deep reductions of all other greenhouse gases, in order to stay below 2°C. To stay close to 1.5°C CO_2 emissions would need to reach net zero by the 2040s.

…

We currently have no scenarios for how the UK can achieve net zero domestic emissions. …

- The UK's 2050 target to reduce emissions at least 80% from 1990 (i.e. to around 160 $MtCO_2e$ per year) is challenging but can be met in various ways using currently known technologies. …

4. Implications for UK policy priorities in the nearer term

Current policy in the UK is not enough to deliver the existing carbon budgets that Parliament has set. The Committee's assessment in our 2016 progress report was that current policies would at best deliver around half of the emissions reductions required to 2030, with no current policies to address the other half. This carbon policy gap must be closed to meet the existing carbon budgets, and to prepare for the 2050 target and net zero emissions in the longer term.

The existing carbon budgets are designed to prepare for the UK's 2050 target in the lowest cost way as a contribution to a global path aimed at keeping global average temperature to around 2°C. Global paths to keep close to 1.5°C at the upper end of the ambition in the Paris Agreement, imply UK reductions of at least 90% below 1990 levels by 2050 and potentially more ambitious efforts over the timescale of existing carbon budgets.

However, we recommend the Government does not alter the level of existing carbon budgets or the 2050 target now. They are already stretching and relatively ambitious compared to pledges from other countries. Meeting them cost-effectively will require deployment to begin at scale by 2030 for some key measures that enable net zero emissions (e.g. carbon capture

and storage, electric vehicles, low-carbon heat). In theory these measures could allow deeper reductions by 2050 (on the order of 90% below 1990 levels) if action were ramped up quickly.

The priority for now should be robust near-term action to close the gap to existing targets and open up options to reach net zero emissions:

- The Government should publish a robust plan of measures to meet the legislated UK carbon budgets, and deliver policies in line with the plan.

- If all measures deliver fully and emissions are reduced further, this would help support the aim in the Paris Agreement of pursuing efforts to limit global temperature rise to 1.5°C.

- The Government should additionally develop strategies for greenhouse gas removal technologies and reducing emissions from the hardest-to-treat sectors (aviation, agriculture and parts of industry).

There will be several opportunities to revisit the UK's targets in future as low-carbon technologies and options for greenhouse gas removals are developed, and as more is learnt about ambition in other countries and potential global paths to well below 2°C and 1.5°C: …"

22. Chapter 1 of the 2016 Report includes the following:

"**1. The UK 2050 emissions target and associated warming**

The UK 2050 target is potentially consistent with a wide range of global temperature outcomes:

- Temperature depends principally on cumulative emissions of long-lived greenhouse gases (especially carbon dioxide) over time. Hence nearer-term reductions below the assumed global emissions path will lower warming, as would deeper reductions after 2050.

- Warming depends on global greenhouse gas emissions, and the UK currently contributes around 1% of the global total per year. Other nations may not reach the same level of emissions per person in 2050. To the extent their emissions are different, total global emissions, and hence warming, will be different.

The IPCC suggests a lower temperature could be achieved for the level of global emissions we assumed in 2050. This relies on the option of reaching net negative global CO_2 emissions

after 2050, which was not included in our scenarios. We do not yet know if such cuts will be feasible.

- The most recent IPCC assessment, drawing on a wider range of more detailed evidence than our 2008 report, concluded that paths consistent with at least a 66% chance of staying below 2°C would have global emissions in 2050 of 15-29 $CtCO_2e$. Hence the global level of 20-24 billion tonnes underpinning the UK 2050 target could be consistent with a lower central estimate of temperature than we assumed (i.e. below 2°C).

…

In summary, the UK 2050 target was set to align to around a 50% likelihood of limiting temperature increase to 2°C, but could be consistent with around a 66% likelihood. This higher probability depends on other countries following a similar level of ambition to 2050 (e.g. to reach 2.1-2.6 tCO_2e per person) and large emissions removals beyond 2050.

…

3. The Paris Agreement

- The overarching aim of the Paris Agreement is to hold the increase in global temperature to well below 2°C above pre-industrial levels and to pursue efforts to limit it to 1.5°C. There has been relatively little work to date to quantify climate impacts at 1.5°C. Overall, they are expected to be lower than at 2°C, but still substantial in places…

...

In order to assess global emissions paths, we interpret the temperature aims in the Paris Agreement to range from (at minimum) a 66% likelihood of staying below 2°C, to (at maximum) a 50% likelihood of staying below 1.5°C:

- Previous international statements referred to the aim of staying below 2°C, without stating explicitly what likelihood of exceeding 2°C is acceptable.

- In practice, many studies have taken this to mean at least a 66% likelihood of staying below 2°C, given the spread in uncertainty in how the climate system responds to emissions. Others have also considered at least a 50% likelihood, closer to the original logic underpinning the UK 2050 target.

- A similar judgment will be required about the likelihood consistent with the Parties Agreement of staying 'well below 2°C'. Given the interpretation of 'below 2°C', it is hard to see this meaning less than a 66% likelihood of 2°C.

- Pathways with a 66% likelihood of staying below 2°C have a 50% likelihood of staying below 1.8°C and a roughly 20% likelihood of staying below 1.5°C, based on current estimates of the range of climate-system uncertainty. Conversely, pathways with a 50% likelihood of staying below 1.5°C have about an 80% likelihood of staying below 2°C.

…

Current pledges of action to 2030 do not together add up to a credible pathway to achieve either 2°C or more ambitious temperature aims. Recognising this, the Paris Agreement creates a 'ratchet' mechanism designed to encourage greater action over time:

…

- The parties did not specify an emissions level consistent with 1.5°C. Instead they asked the Intergovernmental Panel on Climate Change (IPCC) to provide information on pathways consistent with 1.5°C in a Special Report due in 2018.

- The Agreement sets a five-yearly 'ratchet' system to review pledges, starting in 2023, with the intention that their ambition will rise over time in a nationally-determined manner. Ahead of this, nations agreed to a 'facilitative dialogue' in 2018 to take stock of the current pledges."

23. Chapter 2 ("Implications of Paris ambition for emissions in 2050 and beyond") of the 2016 Report includes the following:

"**2. The difference in global action between 1.5°C and 2°C**

…

- Scenarios to reach either 2°C or 1.5°C require increased efforts to 2030. This was recognised by the parties to the Paris Agreement, who identified the need to reduce emissions to 40 $GtCO_2e/yr$ in 2030, rather than the expected level from existing pledges of 56 $GtCO_2e/yr$. Emissions would need to continue falling after 2030, with a 1.5°C goal implying much faster rates of reduction….

- Some experts already state that 2°C is no longer feasible in reality because model scenarios are too optimistic about global co-operation and technology availability.

We therefore consider the goal of pursuing efforts to 1.5°C as implying a desire to strengthen and potentially to overachieve on efforts toward 2°C. …

…

In summary, currently available information indicates a range of timescales by which the UK should aim for zero net emissions, depending on the range of global paths implied by Paris ambition and the method of judging a fair UK contribution. On the logic underpinning the existing 2050 target, net UK CO_2 emissions should be zero by 2045-65 and net greenhouse gas emissions should be zero by 2060-90."

24. Chapter 4 ("Considerations in setting UK policy to reflect Paris ambition") of the 2016 Report includes the following:

"**3. Considering raising the ambition of the UK's existing targets**

…

We have considered whether the UK should commit now to increased efforts by revising the targets in the Climate Change Act (i.e. the 2050 target to reduce emissions at least 80% below 1990 levels and the carbon budgets, which require a 57% reduction by 2030). Our conclusion is that these targets are already stretching and should not be tightened now, but should be kept under review…

…

However, we note that there is scope to outperform the UK's existing targets:

- The UK's 2050 target is for a reduction of at least 80% relative to 1990. Similarly carbon budgets prescribe the maximum level of emissions, but do not preclude deeper reductions.

  …

- Emissions accounting for purchase of international credits to count towards UK carbon budgets.

The UK played an important role in reaching the Paris Agreement, and should continue its support and co-ordination of action with other nations. Enhancing this support and co-

> ordination could contribute to meeting the aims of the Paris Agreement alongside a full delivery of the UK's domestic commitments to reduce emissions.
>
> **4. Future decision points for reviewing UK targets**
>
> …
>
> Notably in this Parliament, an international 'facilitative dialogue' will occur in 2018 in order to take stock of the collective effort and inform the next round of emissions pledges. Each party to the UN negotiations will also need to communicate a revised pledge, as well as a mid-century low greenhouse-gas development plan by 2020. This will be an important indicator of collective long-term ambition for domestic emissions.
>
> …
>
> We will revisit our conclusions on a net zero target for the UK, and the possibility of tightening existing targets, as and when these events or any others give rise to significant developments."

25. Mr Richard Gordon QC, for the Committee, submits that it is clear that the Committee's position was that it was neither necessary nor appropriate to amend the 2050 target at the time it provided its advice in October 2016. As for the Claimants' suggestion that the Government's decision not to amend the 2050 target is based on a misunderstanding of the Committee's advice, it seems to me to be quite clear from the Executive Summary and the main body of the Report that the Committee's view was that emissions reductions of greater than 80% by 2050 are feasible. Indeed the Committee said it was feasible to amend to the order of 90%, but plainly they had their eye on the zero target (see para 21 above at "Implications for UK policy priorities in the nearer term"). I agree with Mr Gordon that the Committee's position was that the existing 2050 target is compatible with the Paris Agreement; and that overall the Committee's assessment is that the existing 2050 target is potentially consistent with a wide-range of global temperature outcomes. As Mr Gordon observes one end of the Paris ambition, 1.5°C probably implies a greater than 80% reduction by 2050 in the UK; the other part, well below 2°C, does not. I reject the suggestion that the Committee has changed its position.

26. The minutes of the 16 September 2016 meeting of the Committee need to be read in full and considered in the round. I consider that the statement that a new target would be needed relates to the need for a post-2050 net-zero target not to an increase in ambition for the 2050 target. I accept the Secretary of State's submission that he did not take the view that any increase on the 80% target is not feasible at this time. As Mr Robert Palmer, for the Defendant, points out, the Secretary of State in the summary grounds of defence (at para 31) relies upon the passage in the Executive Summary 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". Equally, as Mr Palmer observes, the Secretary of State has taken

the view that a target for net zero emissions, to which the Government has committed in principle, should not yet be set because, as the Committee has advised, there is not yet a feasible path to achieving it.

27. The fallacy in Mr Crow's submission, as Mr Gordon (supported by Mr Palmer) highlights, is in the Claimants' contention that their case does not relate to the setting of a "net zero" target, which is described as an irrelevant distraction. I consider it clear from the 2016 Report that the 2050 target and the "net zero" target are inter-related. The net zero target is central, as Mr Gordon observes, to what the Paris Agreement is aiming to achieve. Articles 2 and 4 of the Paris Agreement (see para 10 above) are integral to each other.

28. I do not accept the suggestion that the Secretary of State misunderstood the Committee's advice. I do not think that this contention is even arguable. The advice of the Committee as set out in the Executive Summary and the body of the Report is clear.

29. I reject the contention that the Secretary of State had originally agreed that the 2050 target was incompatible with achieving the targets required by the Paris Agreement.

30. The Secretary of State correctly understands that the Paris Agreement does not impose a binding legal target on each specific contracting party to achieve any specified temperature level by 2050. Article 2(1)(a) of the Paris Agreement refers to two levels of ambition. First, an aim of keeping the increase in global average temperature well below 2°C; and second, the goal of pursuing efforts to limit the global average temperature to 1.5°C above pre-industrial limits. The position of the Secretary of State (and indeed of the Committee), summarised by Mr Palmer, as to the implications for the 2050 target of the two levels of ambition are different. The 2050 target is to reduce net emissions by at least 80% by 2050 against a 1990 baseline. 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.

31. As for Mr Crow's alternative submission (see para 18 above), which now does not arise for consideration in the light of my conclusion that there was no misunderstanding by the Secretary of State, I note that the Committee clearly stated that there is scope for the UK to out-perform existing targets through emissions accounting for purchase of international credits to count towards UK carbon budgets (see para 24 above).

32. Mr Crow told me that these alleged misunderstandings by the Secretary of State and the Committee only became clear during the course of the proceedings as documents were made available, and therefore no ground of challenge has as yet been formulated in respect of them. He said that if permission is granted on the pleaded grounds, then an additional ground encompassing these various misunderstandings will be drafted.

33. I do not consider any of these new grounds of complaint against the Secretary of State or the Committee to be arguable.

34. Turning then to the existing grounds of challenge: it became clear during the course of Mr Crow's submissions that the theme of the alleged misunderstandings by the Secretary of State and the Committee runs through all of them. Having considered

the alleged misunderstandings in some detail, I can now deal with the original grounds more shortly.

35. Mr Crow advances five grounds of challenge to the Secretary of State's decision.

36. The first is that the Secretary of State's statutory discretion to amend the 2050 target has been exercised unlawfully, because the Secretary of State's refusal to amend the target frustrates the legislative purpose of the 2008 Act (**Ground 1**).

37. The true purpose of the legislation, the Claimants contend, is to commit the UK to make an equitable contribution to the global climate obligation (that is the global temperature limit) consistent with the prevailing scientific evidence and international agreements. The Secretary of State's decision frustrates that purpose because the 2050 target is not sufficient to meet the ambition of the Paris agreement; and so the Secretary of State's refusal to amend the target is an unlawful exercise of his discretion.

38. I agree with Mr Palmer that, notwithstanding the Claimants' express disavowal of any such suggestion, the Claimants' case on Ground 1 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 or international law or policy, not to confer a discretion upon him as the Act in fact does.

39. It appears to me that the Claimants' arguments rest on an incorrect interpretation of the terms and implications of the Paris Agreement.

40. I accept Mr Palmer's submission that all that the Secretary of State has done to date, in accordance with the Committee's advice, is not to have amended the 2050 target at this time.

41. It is to be noted that the Claimants accept that there is not now a single "correct" 2050 target to which the UK should commit itself.

42. In my view the Secretary of State was plainly entitled, having had regard to the advice of the Committee, to refuse to change the 2050 target at the present time.

43. I do not consider it arguable that the Secretary of State's refusal to amend the 2050 target is an unlawful exercise of his discretion.

44. The second ground of challenge is that in reaching his decision, the Secretary of State relied on the advice of the Committee; that advice was flawed, because the Committee misunderstood the Paris Agreement. As a result the Secretary of State's decision was also flawed (**Ground 2**).

45. I am entirely satisfied that when the Committee's advice of October 2016 is read as a whole it is clear that the Committee did not misunderstand the Paris Agreement (see paras 25-26 above).

46. Mr Crow acknowledges that the main argument under the third ground, irrationality, is on the basis of the alleged misunderstandings by the Secretary of State of the 2008 Act and the Committee's advice, which I have already dealt with (**Ground 3**).

47. In addition, the Claimants submit that the Secretary of State's decision fails to take into consideration various factors, including the UK's legal obligations to show leadership in tackling climate change, the Government's obligations under the Human Rights Act 1998 ("HRA 1998"), the public sector equality duty, and the impact of delay. It is clear from the 2016 Report and Government documents that the Secretary of State is well aware of the UK's legal obligations under the UNFCC and the Paris Agreement. The Government's obligations under HRA 1998 and the public sector equality duty form discrete grounds of challenge (Grounds 4 and 5 respectively), which I shall consider below. The impact of delay is said to compound "the feasibility challenge", which, for the reasons I have given, is not arguable.

48. The fourth ground is that the Secretary of State's refusal to amend the 2050 target constitutes a violation of the Claimants' human rights. The Claimants rely on the rights conferred by Articles 2 and 8 of the ECHR, and by Article 1 of the First Protocol, both individually and in conjunction with Article 14. Mr Crow submits that in so far as the Secretary of State is acting inconsistently with his Treaty obligations and with general principles of international law, he is in breach of his positive obligations to uphold the Claimants' Convention rights. This ground, Mr Crow acknowledges, raises a novel issue under the HRA 1998. However he observes that it is difficult to conceive of any issue that would be of greater significance to each member of the British public than the threat of climate change, which the Government has acknowledged as constituting an "existential threat". In this context, he submits that the Government's delay is inexcusable (**Ground 4**).

49. Mr Palmer submits that the decision not to amend the 2050 target at this time does not amount to an interference with any identifiable victim's rights under any of the Articles relied upon. Mr Crow accepts there is no interference with any identifiable victim's rights, but submits that there has been a violation of those rights, which have an environmental dimension. The Claimants do not identify any interference to which that decision gives rise, but only to the effects of climate change generally. The violation arises, it is said, because of the failure of the Secretary of State to take proper preventive measures. I reject this submission. The Government is committed to set a net zero emission target at the appropriate time. I agree with Mr Palmer that this is an area where the executive has a wide discretion to assess the advantages and disadvantages of any particular course of action, not only domestically but as part of an evolving international discussion. The Secretary of State has decided, having had regard to the advice of the Committee, that now is not the time to revise the 2050 carbon target. That decision is not arguably unlawful, and accordingly the human rights challenge is not sustainable.

50. The fifth and final ground of challenge is that the Secretary of State failed to have due regard to the specified issues under s.149 of the Equality Act 2010 when deciding not to amend the 2050 target. The basis of this ground appears to be the contention that the Secretary of State has offered no evidence to show that the specific impact on persons with protected characteristics was considered at all in the context of the decision under challenge (**Ground 5**).

51. It is clear that the impact of climate change has been the subject of investigation and assessment, most recently in the UK climate change risk assessment of 2017. Climate risks will affect people differently. However, I agree with Mr Palmer that does not mean that the public sector equality duty requires a decision concerning the UK's

efforts to limit global temperature rises (and hence the effects of climate change) by reducing emissions, to give differential consideration to the interests of those who may be affected. The Secretary of State aims to set targets that have a good prospect of assisting all groups.

52. I am not persuaded that it is arguable that any public sector equality duty arose in circumstances where the Secretary of State was considering the question as to whether now is the time to amend the 2050 target. He decided it was not. This ground of challenge does not take the Claimants' case any further.

53. For the reasons I have given, in my judgment this claim is not arguable. Accordingly the application is refused.