

Briefing

Net Zero Strategy legal challenge – High Court Judgment

At a glance:

- In a landmark victory for climate justice, the High Court has upheld the legal challenges brought by Friends of the Earth, ClientEarth, Good Law Project and environmental campaigner Joanna Wheatley that the Government’s economy-wide decarbonisation strategy (the Net Zero Strategy; “NZS”) is unlawful and breached s.13 and s.14 of the Climate Change Act 2008.
- The High Court ruled that the Minister did not have legally sufficient information to enable him to adopt the NZS. In addition, the NZS itself did not contain critical information to enable Parliament and the public to scrutinise it, and to understand the risks to the delivery of its policies.
- The judgment strengthens the role of the expert Committee on Climate Change (CCC). The judge gave considerable weight to their view that the quantified impact of individual policies for achieving emissions reductions should be included in the NZS.
- As a result of the litigation, the Government must update the NZS to correct the legal errors identified in the judgment, resubmit it to the Minister for approval, and present the fuller report to Parliament again.
- Prior to the hearing, the Government had already conceded Friends of the Earth’s ground on the Heat and Buildings Strategy, agreeing that it had breached the Equality Act 2010 when it adopted this strategy, by not assessing impacts on protected groups.ⁱ

“.. Parliamentary accountability is no less fundamental to our constitution than Parliamentary sovereignty”

[judgment Holgate J at para. 189]

This Briefing includes the following sections:

- A. Introduction and Background**
- B. The Grounds**
- C. The Judgment**
- D. Conclusions and Next Steps**

A. Introduction and Background

1. On 12 January 2022, Friends of the Earth filed a claim for judicial review against the Secretary of State for Business Energy and Industrial Strategy (Kwasi Kwarteng; “SoS for BEIS”). We alleged that the Government had breached the Climate Change Act 2008 when it adopted the NZS on 19 October 2021, and that it had breached the Equality Act 2010 when it adopted the Heat and Buildings Strategy (HBS).
2. The Net Zero Strategyⁱⁱ is the Government’s economy-wide decarbonisation plan for cutting UK climate emissions in order to meet our upcoming carbon reduction targets. It

purports to set out “*clear policies and proposals for keeping us on track for our coming carbon budgets ... and ... our vision for a decarbonised economy in 2050*”ⁱⁱⁱ. It was approved and then published under s.13 and s.14 of the CCA, following the adoption of the sixth carbon budget (CB6), which limits our total GHG emissions to 965 million tonnes of CO₂e for the period 2033-2037.

3. The HBS is the Government’s strategy for decarbonising heating and homes, and was adopted on the same day as the NZS.
4. Legal environmental charity ClientEarth and legal campaign group the Good Law Project (GLP) filed similar cases shortly after Friends of the Earth. Friends of the Earth’s was the only claim to challenge the HBS as well.
5. The three claims were granted permission to proceed on all grounds in March 2022 by order of Justice Cotter, despite submissions from the Government that they were all unarguable. The hearing was listed for 8 and 9 June 2022 before Justice Holgate. Whilst the claims were separate, the court heard all three together. There was therefore extensive coordination between the claimants in the preparations for the hearing.
6. Friends of the Earth was represented in the proceedings by leading environmental barristers: David Wolfe QC of Matrix Chambers, Catherine Dobson of 39 Essex Chambers and Nina Pindham of No5 Barristers Chambers, and by Rowan Smith at the law firm Leigh Day LLP.

Why we brought the case

7. Friends of the Earth was the organisation that originally devised the CCA over 10 years ago and led the ‘Big Ask’ campaign to make it law. We therefore have a particular investment in, and unique insight and perspective into the Climate Change Act and how it is implemented.
8. The successful implementation of the CCA’s provisions is of paramount importance in tackling the climate emergency, both for this country and across the world. It was the first piece of legislation in any country to set legally binding carbon reduction targets in domestic law. But other countries have since adopted similar pieces of domestically enforceable legislation, for example, Canada, Japan and New Zealand.
9. It is clear that a rapid and fair transition to a safer future is not yet secured, and the Government strategies, as published by the Department for Business, Energy and Industrial Strategy (BEIS), do not match what is needed.
10. We brought this court case because we believed it was necessary to strengthen the application of the CCA, due to the apparent issues with - among other things - a concerning lack of detail in the Government’s latest decarbonisation plan, the NZS.
11. We incorporated a challenge to the HBS, because we had uncovered that no ‘equality impact assessment’ had been undertaken of this strategy, meaning that impacts on vulnerable people in society had not been properly considered. In our view, this is shocking in the context of the energy and climate crises. We know that fuel poverty disproportionately impacts certain groups with protected characteristics, such as older people, people of colour and disabled people^{iv}. And we know also, that those most impacted by the climate crisis will often be those who have contributed to it the least.

Our Win on the Heat and Building Strategy

12. Following the order of Justice Cotter granting the claims permission to proceed, the Government u-turned and conceded on our HBS ground in full. It stated that it was now carrying out an equality impact assessment of the HBS in response to our claim. This

was a fantastic result, and particularly bearing in mind their original submission was that this ground was unarguable. The win is recorded in the judgment (see section C below). For further information, see this [Guardian](#) article and our previous [press](#) release.

13. Our campaign team is now working with sector allies, such as the End Fuel Poverty Coalition, to seek to ensure that the equality impact assessment is done in a meaningful and comprehensive way, and to call for improvements in the HBS as a result. This is an opportunity to contribute to the achievement of a just and fair transition to a decarbonised economy, which takes account of vulnerable people.

B. The Grounds

14. Friends of the Earth, ClientEarth and GLP all pursued two grounds of challenge in relation to the CCA:
 - **Ground 1:** that the Minister (on behalf of the SoS) had not discharged his obligations under s.13 of the CCA, to prepare policies and proposals that he considers will enable the carbon budgets to be met.
 - **Ground 2:** that the NZS did not include sufficient information on how it would enable the carbon budgets to be met. This was a breach of s.14 of the CCA, which requires that the SoS must, as soon as practicable after a new carbon budget is adopted, prepare a report to Parliament setting out policies and proposals that will enable the carbon budgets to be met. Owing to the lack of detail in the NZS, we argued that it was not possible for Parliament, or the public, to properly hold the Government to account for any deficiencies.
15. Friends of the Earth's barrister David Wolfe QC led on the presentation of these arguments in the court hearing, and also on the claimants' reply submissions (other than on ground 3; see below).
16. Separately, GLP pursued a third ground of challenge in relation to s.3 of the Human Rights Act 1998. They argued that s.13 and s.14 of the CCA were not interpreted in a way which is compatible with the Government's human rights obligations, including the obligation to protect the right to a private and family life under Article 8 of the European Convention of Human Rights.

C. The Judgment

17. The judgment of Mr Justice Holgate was handed down on 18 July 2022. Holgate J allowed the claim for judicial review on grounds 1 and 2, and rejected ground 3 (brought by GLP and Ms Wheatley).

Ground 1 – the s.13 Duty

18. In relation to ground 1, Holgate J held that the Minister lacked the legally required information to adopt the NZS, and that this compromised his ability to take account of the risk to the delivery of the polices to achieving the statutory carbon budgets.
19. The Minister had been advised that the quantified polices in the NZS only added up to c.95% of the emissions reductions needed to meet CB6, but had not been told what the contributions of the individual polices were to this, nor how any other measures (whether quantified or not) were credibly going to make up the shortfall.
20. Holgate J found that this information was *“crucial so that he [the Minister] could question whether, for example, the Strategy he was being advised to adopt was overly dependent on particular policies, or whether further work needed to be carried out to address*

uncertainty, or whether the overall figure of 95% was robust or too high.” [para. 214] Furthermore, it was “legally essential” to enable the Minister to consider “the all-important issue of risk to delivery” [para. 214] and therefore an “obviously material consideration” for the Minister when discharging the s.13 duty [para. 211].

21. In relation to the shortfall of c.5%, there were “*obviously material*” factors which the Minister was simply not told about [para. 217]. For example, he was not told which of the unquantified policies were being relied upon to fill this gap, or which quantified policies were considered capable of further development [para. 216]. Without this information, Holgate J concluded that the Minister was not able to decide for himself what weight, if any, to attach to the adjustment to overcome the 5% shortfall.

Ground 2 – the S.14 Report

22. In relation to ground 2, Holgate J accepted our submission that the NZS included insufficient information to enable Parliament and the public to properly scrutinise it, or to understand the risks to the delivery of its policies. The accountability of the Government to Parliament and UK citizens as a whole was compromised.
23. Holgate J agreed. He emphasised the importance of Parliamentary accountability, and accountability to the public in a functioning democracy, and held that the report to Parliament must do more than tell Parliament what the NZS proposals and policies are: “*Given the nature of the problems posed by climate change, the need for substantial changes across the country and the challenges involved, telling Parliament how the Secretary of State proposes to meet the carbon budgets does indeed require him to explain the thinking behind his proposals and how they will enable the carbon budgets to be met.*” [para 233; emphasis added].
24. He rejected the Government’s submission that the threshold for the legal adequacy of a report to Parliament under s.14 of the CCA was lower than for a report issued for a public consultation [para. 245]. He held that the NZS ought to have [paras 252 and 253]:
- Included information on the contributions to emissions reductions resulting from the individual policies;
 - Explained that the quantitative analysis related only to quantifiable policies which would have a direct effect on emissions;
 - Explained that the analysis predicted that those policies would, if delivered in full, achieve c.95% of the reductions needed to meet CB6, and not 100%;
 - Explained how it was predicted that the 5% shortfall would be met; and
 - Explained how the quantitative analysis of the policies differed from the modelling underpinning the emissions delivery pathway (the latter was included in the NZS).
25. These were all “*obviously material*” to the “*the critical issue of risk to the delivery of the statutory targets*” and this information should have been presented to Parliament and to the public [para. 254].
26. His interpretation of the requirements of s.13 and s.14 was informed by the “*considerable weight*” he placed on the advice of the CCC that the Net Zero Strategy should include a quantified set of policies and proposals [para 215], the statutory framework of the CCA itself, and the nature of the problems posed by climate change [para 233].
27. Holgate J rejected ground 3 brought by GLP and Ms Wheatley, on the basis that it was too ambitious and did not accord with established principles.

D. Conclusions and Next Steps

28. This is a landmark ruling, which shows that the CCA can be enforced through the courts if the Government does not comply with its legal duties. Climate governance in the UK has been strengthened as a result, and this will set a positive example for similar laws being legally enforceable in other countries too.
29. The considerable weight placed by the Court on the CCC's independent, expert opinion should act as a reminder to the Government of the importance of following the CCC's advice. It is notable that in the CCC's latest progress report, published in June 2022, they concluded that in relation to meeting CB6, "*Credible plans exist for 39% of the required emissions reduction*".^v
30. The Court has ordered the Government to produce a report which is compliant with s.14 of the CCA by no later than 31 March 2023. Therefore, the SoS will need to update the NZS, and include the details of the emissions reductions that its policies will actually achieve, and how any measured shortfall (currently c.5% of the reductions needed to meet the 6CB, which equates to c. 10 – 15 Mt CO₂e per annum)^{vi} will credibly be made up so the legislated targets are reached. The revised NZS will need to be submitted again to the Minister for approval, and then it will need to be presented to Parliament for scrutiny.
31. The judgment sets down criteria which must be included in future s.14 reports. It's clear that they will need to explain *how* their policies will enable the upcoming carbon budgets to be met, what the quantified impact of their policies are in terms of reducing emissions, including a breakdown for the individual policies themselves, and an explanation for any shortfall and how this will be overcome. As the size of any shortfall increases, it will likely become increasingly challenging for the SoS to be satisfied that the policies will meet the requisite emissions reductions [para. 185], and this can now be transparently challenged in Parliament and if necessary ambition raised.
32. In partnership with sector allies, Friends of the Earth will continue in our efforts to ensure that the Government undertakes a comprehensive and meaningful equality impact assessment of the HBS, and ultimately call for an improved HBS which takes full account of impacts on vulnerable people in society.

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ⁱ The Equality Act 2010 prohibits discrimination against anyone on the basis of a protected characteristic. Protected characteristics are defined in the Act, and include age, disability and race, amongst others.

ⁱⁱ Department for Business, Energy and Industrial Strategy, 19 October 2021, 'Net Zero Strategy: Build Back Better', <https://www.gov.uk/government/publications/net-zero-strategy>

ⁱⁱⁱ Net Zero Strategy p17

^{iv} <https://policy.friendsoftheearth.uk/reports/failing-insulate-double-threat-fuel-poverty-and-climate-harm>

^v <https://www.theccc.org.uk/publication/2022-progress-report-to-parliament/> p22

^{vi} These figures are derived from the Government's evidence included in the court case