

Application for judicial review on the UK's 2050 target

The Committee on Climate Change is an 'Interested Party' in a potential judicial review of the Government's decision not to amend the UK's 2050 emission reduction target following the 2015 Paris Agreement.

The application for judicial review, which is being considered by the courts, is being brought by "Plan B" and a number of other claimants.

The Committee considered the implications of the Paris Agreement for the UK's targets in its October 2016 report, *UK climate action following the Paris Agreement*. The Committee stands by its advice and, in so far as the claimants rely on or take issue with this advice, the Committee contests the application.

It is important that the basis of the Committee's advice should be clearly understood, and consequently, the Committee has submitted papers to the Court which set out the areas where its advice has been misread. The Committee expects its involvement as an Interested Party to be limited to the advice it has previously given.

The full summary of grounds submitted to the Court by the Committee are below.

31 January 2018

Acknowledgment of Service (N462) - Section C

1. The Committee on Climate Change (“the Committee”) is an independent body established by the Climate Change Act 2008. It has two main functions:
 - i. to advise the Government on the level of the UK’s greenhouse gas emission reduction targets;
 - ii. to advise Parliament, annually, on the UK’s progress towards meeting those targets.
2. In so far as it relies on the Committee’s previous advice, the Committee contests this application for permission to apply for judicial review. At different stages of its submissions, the Claimant (“Plan B”) has sought to rely on advice given by the Committee to the Defendant in support of its arguments. It is respectfully submitted that such reliance is misplaced. The summary grounds that follow focus on the relationship between the Committee’s advice and the present challenge.
3. The UK’s current targets for emissions reduction – both the 2050 target and the level of carbon budgets on track to that target – have been set in line with the Committee’s advice.
4. The Committee considered the implications of the Paris Agreement for the UK’s targets, and advised the Government, in its October 2016 report *UK climate action following the Paris Agreement*.¹ The Committee stands by that advice.
5. It is important that the basis of the Committee’s advice should be clearly understood and should not be misrepresented. There are elements of the grounds document provided by Plan B that demonstrate that it has misread that advice.
6. In summary, the Committee’s conclusion in its 2016 advice was:

“The Paris Agreement marks a significant positive step in global action to tackle climate change. This report considers the domestic actions the UK Government should take as part of a fair contribution to the aims of the Agreement. Our conclusions are as follows:

- 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 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

¹ CCC (2016), *UK climate action following the Paris Agreement*.

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 of 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.

- Set out a strategy for developing options to remove greenhouse gases from the air..... A strategy for deployment at scale by 2050 should start now given the timescales inherent in bringing new technologies to market.

We agree with the Government's intention to set a new target 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. Early action will allow the UK to fulfil its commitment under the Paris agreement and position it to take competitive advantage in the global shift to a zero-carbon world".²

7. Plan B advances five grounds in support of its application. The Committee responds as follows to those grounds which include (and insofar as they include) points relating to its advice.

Ground 1: Improper Purpose

8. Plan B states that:

"Maintaining a target inconsistent with that limit [as specified by the Paris Agreement] is patently inconsistent with the purpose of the 2008 Act."³

9. The target in question is that set in the Climate Change Act 2008, to reduce UK emissions in 2050 by at least 80% on 1990 levels.
10. There is no specific objective relating to global temperature in the Climate Change Act. At the time that the Act was passed there was also no agreed UN temperature objective.
11. The UK 2050 target was set in line with previous advice of the Committee (when established in shadow form prior to passing of the Act)^{4,5}. It was set on the basis that it was a UK contribution (i.e. with UK emissions per capita in 2050 at the same level as the global average) to halving global greenhouse gas emissions by 2050, broadly consistent (around 50:50 probability) with keeping global average temperature rise

² CCC (2016), Executive Summary, page 7.

³ Plan B grounds, para 171.

⁴ CCC letter (2008), <https://www.theccc.org.uk/publication/letter-interim-advice-from-the-committee-on-climate-change/>

⁵ CCC (2008), *Building a low-carbon economy – the UK's contribution to tackling climate change*

close to 2°C above pre-industrial levels and keeping the chance of an extreme 4°C warming to very low levels.

12. The Committee accepts that the Paris Agreement describes a higher level of global ambition than the one that formed the basis of the UK's existing 2050 target. The Paris Agreement aims to limit warming to "well below" 2°C and to "pursue efforts" to limit it to 1.5°C. It also establishes a target to reach net zero global emissions in the second half of the century.
13. However, this does not mean that the 2050 target as it stands is inconsistent with the Paris Agreement. This is because:
 - The existing target is for *at least* an 80% reduction in emissions by 2050 compared to 1990 levels.
 - The Paris Agreement specifies a range of ambition, from well below 2°C to pursuing efforts to 1.5°C.
 - Updated analysis at the time of the Committee's 2016 advice found that there are global emissions paths consistent with the UK's existing 2050 target (based on 2 tonnes per capita in 2050) and which have a 66% probability of staying below 2°C.
14. Specifically, the Committee found that for global emissions pathways consistent with keeping global temperature rise below 2°C, the UK contribution would need to be a reduction in the range 71-83% below 1990 levels in 2050.⁶
15. The UK's existing 2050 target is within that range.
16. The Committee also found that pathways with a 66% likelihood of staying below 2°C had a 50% likelihood of staying below 1.8°C and a roughly 20% likelihood of staying below 1.5°C.
17. For the existing UK 2050 target to be considered inconsistent with the Paris Agreement would require that:
 - greater weight were given to the lower end of the Paris Agreement range (to pursue efforts to 1.5°C) than to consistency with the range as a whole; and/or
 - the equitable basis for the 2050 target were to be interpreted as equal per-capita cumulative emissions, rather than equal per-capita emissions in 2050. This would be a change from the basis of the existing 2050 target.

Ground 2: Error of Law

18. Plan B states that the Committee's 2016 advice is based on a "clear error of law regarding the interpretation of the Paris Agreement".⁷ It states that it is "not reasonable to interpret a goal of limiting warming to "well below 2°C" as implying a desire only to strengthen efforts "towards 2°C."
19. But this is based on a misreading of the Committee's advice and a selective quotation from that advice.
20. The Committee's interpretation of the Paris Agreement is more precisely set out as:

⁶ This estimation reflects calculations based on UNEP (2015), *The emissions gap report 2015*, and peer-reviewed literature.

⁷ Plan B grounds, para 183.

“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.”⁸

21. The Committee considered the implications for the UK's 2050 target of this range of temperature aims. It considered (as set out in Table 2.3 of the 2016 report), that the existing 2050 target was in that range (i.e. the existing target of at least an 80% reduction below 1990 levels in 2050, as against an estimated required reduction for “below 2°C” in the range 71-83%). The Committee accepted that global emissions paths to keep close to 1.5°C, at the upper end of the ambition in the Paris Agreement, implied greater UK reductions, of at least 90% below 1990 levels by 2050, but recommended that there would be future opportunities to consider strengthening of UK targets.

Ground 3: Irrational Policy

22. The Committee accepts that the Paris Agreement is a significant development in international law which requires that consideration should be given to the implications for the UK 2050 target. This was the purpose of the Committee's 2016 report. It does not accept that this currently requires a change to the UK's 2050 target, for the reasons summarised above.
23. The Committee did not (and does not) consider that at the time of its 2016 advice, developments in scientific knowledge about climate change necessitated a change in the 2050 target. The Committee's 2016 report was concerned with the implications of the Paris Agreement, but it built on previous advice from the Committee on the appropriate level of the 5th carbon budget (the limit on UK emissions in the period 2028-2032, consistent with being on track to the UK 2050 target). That advice⁹, in October 2015, reviewed the scientific evidence on climate change. It concluded that the latest understanding reflected a “broadly similar assessment of climate risk”¹⁰ as when the Committee had previously provided advice (based on an objective to keep central estimates of warming by 2100 close to 2°C above pre-industrial levels).
24. The Plan B argument that the Committee's advice, in recommending no need to amend the 2050 target now, gave priority to technical feasibility is incorrect. Though they might, in practice, be difficult to achieve, the Committee had developed scenarios that achieved a greater than 80% emission reduction in 2050. But the primary basis for its advice was on the question, covered above, of consistency of the existing 2050 target with the Paris range of ambition. The issue of technical feasibility in the Committee's advice was more related to the question of setting a target, in the 2nd half of the century, for reducing emissions to net zero. The Committee had no scenarios for the UK that can achieve net zero emissions.
25. Further, the Committee accepted in its October 2016 advice that there may be a need to strengthen the UK 2050 target in future. This can be considered on the basis

⁸ CCC (2016), page 20.

⁹ CCC (2015), *The scientific and international context for the fifth carbon budget*.

¹⁰ CCC (2015), page 26.

of an improved evidence base (e.g. the report by the Intergovernmental Panel on Climate Change on 1.5°C later in 2018, which was a known commitment at the time the Committee provided its advice).

26. Delaying a decision on a more ambitious target for 2050 is not the same as delaying more ambitious action to reduce emissions. It is not irrational to delay such a decision when there is potential for such an improved evidence base, and so long as actions taken now leave open the potential to achieve strengthened targets in future.
27. Hence, the Committee's advice in its 2016 report should be considered in full – this was that there was no requirement to strengthen the 2050 target now, or set a date for reaching net zero emissions, but that the Government should:

“Vigorously pursue the measure required to deliver on existing UK commitments and maintain flexibility to go further. ... Acting with urgency to close this policy gap [to meet the legislated UK carbon budgets] 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.”¹¹

28. The Committee identified that there would be future opportunities to revisit the UK's targets 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.
29. More recently, in its 2018 assessment of the Government's Clean Growth Strategy¹², the Committee has recommended that:

“The Intergovernmental Panel on Climate Change (IPCC) will produce a Special Report on the implications of the Paris Agreement's 1.5°C ambition in 2018. At that point, the Government should request further advice from the Committee on the implications of the Paris Agreement for the UK's long-term emissions targets.”

¹¹ CCC (2016), page 7.

¹² CCC (2018), *An independent assessment of the UK's Clean Growth Strategy: From ambition to action*.