

On behalf of the Claimant
The Rt. Hon. the Lord Deben
First Witness Statement
Date: 20 November 2023

Claim No: CO/2224/2023

IN THE HIGH COURT OF JUSTICE

KING'S BENCH DIVISION

ADMINISTRATIVE COURT

IN AN APPLICATION FOR JUDICIAL REVIEW

BETWEEN:

THE KING

on the application of

FRIENDS OF THE EARTH LIMITED

Claimant

-and-

SECRETARY OF STATE FOR ENERGY SECURITY AND NET ZERO

Defendant

WITNESS STATEMENT OF THE RT. HON. THE LORD DEBEN

I, The Rt. Hon. the Lord Deben, of the House of Lords, Houses of Parliament, Parliament Square, London SW1A 0PW, will say as follows.

1. I make this statement to assist the Court on matters in issue in these proceedings. Save where I say otherwise, matters in this witness statement are within my own knowledge and are true. Matters not within my own knowledge are derived from the sources stated and are true to the best of my knowledge and belief.

My background

2. I was MP for Lewisham West from 1970 to 1974. In 1979 I was elected MP for Eye in Suffolk, later partly redistributed into Suffolk Coastal which I represented until 2010. I was later elevated to the House of Lords. I was a Minister for 16 years which included serving as Minister for Agriculture Fisheries and Food and Secretary of State for the Environment.
3. Professionally, I was a publisher, becoming Editorial Controller of the British Printing Corporation and later Chief Executive of Siemssen Hunter PLC - a conglomerate which published education materials, distributed foreign newspapers, ran boutique shops in major hotels, and imported Havana cigars. In 1998 I founded the sustainability consultancy, Sancroft, of which I remain Chairman. I am also Chairman of Valpak (which provides compliance services to meet businesses' obligations under producer responsibility legislation) and of PIMFA - the trade association representing Financial Advisers and Wealth Managers.
4. From 2012 to 2023 I was independent Chairman of the Climate Change Committee ("**CCC**") - appointment by the UK Minister responsible for Climate Change; the First Minister of Scotland; the First Minister of Wales; and the First Minister of Northern Ireland.

The role of the Climate Change Committee under the Climate Change Act 2008

5. The Climate Change Act 2008 ("**CCA 2008**") is a carefully constructed statutory scheme, within which the Government, Parliament, the CCC, and the public are given distinct roles to ensure achievement of the statutory emission reduction target.
6. The CCC is independent of Government and is charged with advising Parliament. It consists of a chair and 8 expert members who are distinguished scientists and economists. They are served by an expert staff. The CCC is required to prepare budgets which cover five-year periods and set the necessary targets for emission reduction. These budgets are presented to Parliament by the Government and, so far, Parliament has agreed six, the last of which takes us to 2037. The CCC will now be embarking on the construction of the 7th Carbon Budget which will take some two years to prepare.
7. These budgets are designed to ensure that the UK reduces its emissions in an orderly fashion. Parliament decides on the overall target reductions and then passes each of these budgets into law, requiring Government to meet them. Originally it expected to

provide for a 60% cut on a 1990 base: then, in the CCA 2008, this was raised to 80%, and in 2019, to net zero. This net zero target, together with meeting each of the budgets, are legal requirements. The CCC provides advice on how best to achieve these budgets, but the Government is responsible for producing the delivery programme for meeting the carbon budget targets and reaching the 2050 net zero target. Parliament is responsible for approving the carbon budget targets proposed by Government, on the advice of the CCC. Before the end of June each year the CCA 2008 requires the CCC to publish a report assessing the Government's performance and recommending any necessary changes. The Government then has to respond before the end of October. The Government is also required to lay before Parliament a report setting out its delivery programme (under section 14 of the CCA 2008) as well as an annual statement of UK emissions (under section 16 of the CCA 2008).

8. The scheme is subtly designed to accommodate two objectives which might otherwise be in tension. First, in order effectively to tackle an issue of the scale and scope of climate change it is necessary to have a long-term programme to achieve long-term goals. The target could not be achieved with programmes which started and stopped. The second, which might sometimes undermine such long-term policy continuity, is the ordinary political parliamentary and political cycle with the democratic imperative that the mandate is reviewed and refreshed on a regular basis. What the CCA 2008 did was to reconcile these two objectives through a long-term regime informed by the best available science and independent expert advice, which was given democratic legitimacy by each five-year budget being agreed by Parliament.
9. This careful balance is achieved by entrusting the CCC, a body which is independent of Government, to advise on key matters including the level of the 2050 target, the level of carbon budgets, the Government's annual progress towards meeting those things and the proposals and policies to be deployed on the way. This is in part provided for by sections 10, 33, 34, 38 and 39 of the CCA 2008. It is for Parliament to approve carbon budget targets contained in a statutory instrument laid by the Secretary of State. The ability to alter carbon budgets is subject to certain constraints including the requirement that the Secretary of State obtain and consider the advice of the CCC on whether such a change is justified and the need for Parliament to vote, through the affirmative resolution procedure, to approve an order to vary a carbon budget. This scheme creates the necessary degree of permanence in policy terms to enable the long-term net zero target to be achieved. Through the democratic process, the public is able to hold their representatives and the Government to account for delivery of the statutory targets.

10. In order to perform these statutory functions and give that advice, it is necessary for the CCC, Parliament and the public to have sufficient information in order properly to advise, scrutinise, and hold the Government to account for its programme for delivering the statutory targets as well as its implementation of that programme.
11. The CCC needs sufficient information so that it can provide independent expert scrutiny and advice on the adequacy of the Government's programme and delivery of the same, which requires an understanding of any difficulties it may face in delivering that programme. Parliament needs sufficient information so that it can understand and question Ministers about the adequacy of the programme and its delivery. The public also needs this information so that it can hold Parliament and Government to account. Solving the problem of climate change requires common endeavour. The responsibility rests not only with Government but with the public. The Government should be candid about the challenges in achieving the targets so that we all understand what is needed, why, and how we may contribute. Unless the public understand the challenges, they cannot understand how to contribute to closing those gaps, nor why they should. This is why the provision of full, accurate information throughout the process is paramount.

The information provided to the Climate Change Committee

12. Although I am not aware of any formal duty on the Government to offer the CCC advance sight of proposals, in my experience, the Government has previously given the CCC advance information about reports published under the CCA 2008. This was so that we could consider such reports and make proper informed reference to them upon publication.
13. Reports published under the CCA 2008 are normally prepared in parallel with the CCC as the statutory expert body. The CCC's engagement with Government in relation to the section 14 report is in addition to the annual planning and accountability process that takes place between the CCC and the Government. The CCC advises on the carbon budget, then every year reports on the delivery of that budget in June. The Government then, under the provisions of the CCA, has until October to respond to that report. It is intended that the Government ensures the concerns of the CCC in their June report are addressed in its October report. The CCC has previously been given sufficient advance information of the Government's October report for it to be able to comment in an informed manner upon publication.

14. However, in relation to the Carbon Budget Delivery Plan (“**CBDP**”) produced in 2023 and in issue here, the Government did not provide information to the CCC in advance of publication. When the Government announced that it was going to publish the report, we had not even been provided with any advance notice of the date. I therefore had a telephone conversation with the Minister of State responsible for Climate Change and explained that the CCC had not been provided with an advance copy of the CBDP or other information about the report. I expressed my concern at our inability to assess its content and therefore to give the public the independent comment they might reasonably expect and would normally have got from the CCC. The Minister averred that he had not realised the CCC had not been provided with an advanced copy and informed me that this would be corrected. However, the CCC was not provided with a copy of the CBDP until about 7pm on the evening before its publication next morning. Even then we were not provided with the accompanying documents which contained a great deal which was directly germane to the report itself and without which no proper assessment of the report was possible. In the event we were never provided with those documents although they were released to journalists. The CCC had to procure them for itself.
15. It was difficult to avoid the view that the Government did not want us to examine the CBDP carefully before they published it. That is regrettable. From the first, the CCC has based all its statements on the best available science. It is careful to avoid saying anything which is not firmly based on fact. Those very clear standards have meant that our advice has been recognised throughout the world as independent and trustworthy. Not having sight of the CBDP or any detailed discussion of its contents or the process of its compilation or, indeed, of its accompanying documents meant that the CCC had to refuse to comment upon its publication as we were not able to check the facts, assess the assumptions, or evaluate the judgements it contained.
16. I should add that to the best of my knowledge, the CCC was not provided with any information regarding the delivery risk of policies and proposals included in the CBDP beyond that in the report provided to Parliament. We were not provided with any risk tables nor were we told of any process of risk assessment. There was no discussion of how the report might meet the concerns of the CCC about the ability to attain the carbon budget and net zero targets. Indeed, there was no formal or informal communication on its content before publication.

The CCC's response to the CBDP

17. As a result of the delay in providing the CCC with the CBDP, the CCC did not make any comment on the CBDP until 28 June 2023, when it published its Progress Report to Parliament.
18. We then concluded that we were even less convinced that the Government had a programme that would enable net zero to be achieved by 2050. The principal reason for this conclusion was the approach which the CCC takes to delivery risk.
19. As we have explained in numerous Progress Reports, delivery of the Government's programme for achieving net zero depends on assumptions, none of which can ever be 100% safe. Given the importance of the task, a reasonable approach to risk is required. Despite this, the first assumption in the Government's CBDP is that everything will go exactly as planned. That is not a satisfactory way to design a delivery programme. No one sensible would run a business or even their private life on the basis that everything will go according to plan. Serious people build in some contingency. The second concern is that the plan depends upon significant improvements in technology being realised. Whilst it might be right to consider the role of improvements in technology as providing additional contingency, it is not right to assume that such improvements will always be achieved within the necessary timeframe for achieving net zero targets or indeed achieved at all. The third problem with the Government's programme is that it says very little about the timing for the delivery of policies. When delivery times are provided, little or nothing is said about how they will be achieved. This is important because there has been a history, so far as important policies are concerned, of significant delays in delivery.
20. Ultimately the CCC reached the conclusion that the additional detail included in the CBDP meant that, where previously it had been possible to give certain plans and proposals in the Net Zero Strategy the benefit of the doubt, we could no longer do that for the CBDP. Its greater detail had removed possibilities that more general language had included.
21. That is how the CCC reached the position we were even more unconvinced that the Government's programme would achieve net zero by 2050.

The information about delivery risk given to the Secretary of State

22. I am familiar with the obligation on the Secretary of State under section 13 of the CCA 2008 to be satisfied that he has proposals and policies in place which will enable the statutory targets to be met.
23. In the context of this litigation (but not as part of the CCC) I have now received and reviewed the following documents:
- December Guidance on the December Commission [Exhibit CT1/6]
 - 27 February 2023 List of quantified and unquantified policies and proposals from Defra to DESNZ [Exhibit CT1/26]
 - 27 March 2023 Ministerial Submission on proposals and policies to enable Carbon Budgets to be met (“s. 13 advice”) Exhibit [CT1/40]
 - 27 March 2023 Annex B – Explanatory text to the tables of proposals and policies [Exhibit CT1/42]
 - 27 March 2023 March 2023 Annex B, Appendix B – Tables of proposals and policies and delivery risk [Exhibit CT1/44]
24. I have considered the information which the Secretary of State was provided in March 2023 when being advised to approve the CBDP for publication, including the section 13 advice on proposals and policies to enable the carbon budget to be met. I have noted the Secretary of State was advised by officials that the quantified proposals and policies would deliver 97% of the carbon budget because the estimated emission reductions would all be delivered in full. He was advised that it was reasonable to expect this level of ambition having regard to delivery risk and the wider context. I have also looked at the information on delivery risk provided to the Secretary of State in Annex B and Appendix B.
25. If I had received that advice during my time as Secretary of State, I would have considered carefully the information on delivery risk provided by advisers. The first thing I would have done upon receiving this information would have been to ask “what do you mean by ‘uncertain delivery risk’”. That statement could mean a range of different things. It does not provide a basis upon which to form a view on actual delivery risk. Nor is that ambiguity improved in the vast majority of cases by the “narrative explanation” provided in respect of individual policies and proposals. I would have made sure I understood

delivery risk. This would have been a crucial concern because I would be being advised that the reason this plan would deliver net zero was that I could rely on all the policies being delivered. 16 years in Government would have made that sound entirely unreasonable.

26. As above, in the context of this litigation (but not as part of the CCC) I have also now seen the information about delivery risk initially provided to the Department for Energy Security and Net Zero by the Department of Environment Food and Rural Affairs (DEFRA).
27. That included a risk rating – red, amber or green – for each policy and proposal. Many of the policies and proposals were rated red or amber in terms of delivery risk. I am told that this information was not provided to the Secretary of State. This is surprising to me. Had the Secretary of State been provided with this information it is quite clear to me that he could not have formed a view that the policies and proposals will enable the statutory targets to be met when that depended on all policies and proposals being delivered in full - it being clear that the DEFRA itself had no confidence in that conclusion.

Statement of Truth

28. This statement has been produced following email, telephone and video calls with the Claimant's in-house legal and policy team, and its external legal team.
29. I believe that the facts stated in this witness statement are true. I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

A handwritten signature in black ink, appearing to be 'J. Baker', written over a horizontal dotted line.

Signed

Dated: 20 November 2023