

Briefing

Second challenge to government's climate plan – High Court judgment

Key points

- In a critical victory for climate justice, the government has been defeated in court for the second time on its decarbonisation plan, following challenges brought by Friends of the Earth, ClientEarth and Good Law Project.
- The High Court has ruled the government breached its duty under section 13 of the Climate Change Act 2008. This requires the Secretary of State for Energy Security and Net Zero to adopt policies and proposals which they consider will enable our legally binding carbon reduction targets to be met. They sought to do this by adopting the Carbon Budget Delivery Plan.
- During the hearing, it was revealed that the government's own assessments revealed huge doubt that its climate policies could actually be delivered and generate their intended carbon savings. A November briefing 2022 to the Secretary of State identified that, on the basis of proposed policies, officials had "very low confidence" or "low confidence" in the achievement of around half the reductions needed to meet the sixth carbon budget and the UK's 2030 international pledge.
- The court has ruled that when adopting the plan, **"the Secretary of State made an irrational decision...[as] there was an unexplained evidential gap...The Secretary of State's decision under section 13 was based on reasoning which was simply not justified by the evidence."** [Judgment, para. 126]
- This is a particularly embarrassing defeat for the government. It marks the second time in under 2 years that the government has been found in breach of the Climate Change Act 2008. This Act is of huge significance and was a result of the successful Big Ask campaign, led by Friends of the Earth.
- This latest win builds on the 3 claimants' previous landmark victory in July 2022 over the government's Net Zero Strategy, the government's first attempt at a lawful plan. This latest victory, against the government's second attempt, further demonstrates the court's willingness to hold ministers accountable for their legal duties under the Climate Change Act.
- Friends of the Earth's case was supported by Lord Deben, Conservative Peer and former Chair of the Climate Change Committee. In an unprecedented intervention, Lord Deben provided a [witness statement](#) setting out his own [stinging criticisms](#) of the government's approach
- The **Annex** to this briefing includes links to critical documents disclosed by the Secretary of State in these proceedings, as well as other key case papers.

Background

In March 2023 the government published the Carbon Budget Delivery Plan (CBDP). The relevant minister who signed off on the plan was the Secretary of State for Energy Security and Net Zero. At the time this was Grant Shapps MP. It's now Claire Coutinho MP.

In summer 2023, Friends of the Earth, ClientEarth and Good Law Project filed their legal challenges. The 3 NGOs coordinated closely throughout the proceedings, and the cases were heard together before Mr Justice Sheldon in February 2024 at the High Court.

The previous court case

The CBDP was adopted because of the 3 claimants' 2022 court victory concerning the previous version of the plan, the Net Zero Strategy.

This earlier strategy, published in October 2021, was the government's economy-wide plan for cutting UK greenhouse gas emissions to meet the country's upcoming carbon budgets. It was issued after the adoption of the Sixth Carbon Budget, which covers the period 2033 to 2037 and requires the country's greenhouse gas emissions to be limited to a maximum of 965 million tonnes of CO₂e in that period.

In July 2022, the High Court ruled that the government had breached its duties under sections 13 and 14 of the Climate Change Act when it adopted this earlier plan. These duties require the Secretary of State to adopt policies that they consider will enable the carbon budgets to be met (the section 13 duty) and to publish these policies in a plan (the section 14 duty) so that parliament and the public can engage with and scrutinise the policies.

The High Court ruled the Secretary of State had insufficient information to adopt the Net Zero Strategy (a breach of section 13); he did not know what emissions savings the individual policies were expected to generate.

In addition, the plan lacked critical information (a breach of section 14), including that there was a shortfall in the emissions cuts that the quantified policies were collectively expected to generate. Parliament and the public had therefore been left in the dark.

For details on this earlier victory, see [Friends of the Earth's legal briefing](#) on the Net Zero Strategy judgment. The court ordered the government to go back to the drawing board, to produce a lawful plan. That resulted in the CBDP, published in March 2023.

The Climate Change Act

Both legal challenges have been made possible by the Climate Change Act. Friends of the Earth originally devised this Act nearly 2 decades ago and led the ["Big Ask" campaign to make it law](#). We believe that the successful implementation of the Act's provisions is of paramount importance in tackling the climate emergency, both for this country and across the world.

The Act was the first piece of legislation in any country to set a legally binding framework in domestic law towards a long-term carbon reduction target in 2050.

We are in a climate crisis, and the government is failing to act accordingly. For the first time, temperature rises across the world [exceeded 1.5°C for an entire year](#) from February 2023 to January 2024. In the summer of ~~2022~~, the UK experienced record-breaking temperatures of 40°C, and an [unprecedented number of wildfires](#). Extreme weather events like this will only increase in severity and frequency if urgent action is not taken to radically reduce emissions.

Why we brought this case

We reviewed the CBDP carefully when it was published and saw there was some improvement in the level of detail included, as a result of our previous court case. This was recognised by the Climate Change Committee. Unlike its predecessor, the Net Zero Strategy, the CBDP contains information on both the total emissions savings that its policies are predicted to achieve, and the expected emissions cuts per policy.

However, we concluded the plan was still dangerously inadequate. It also appeared to us that the Secretary of State had again failed to comply with the Act. We therefore brought our second challenge, as we were not prepared to let the government off the hook. Our previous case showed that if the government breached its legal obligations, the Climate Change Act could be enforced through the courts, so we sought to do this once more.

Additionally, we did not believe that the new version of the plan would deliver the emissions savings needed to meet our upcoming carbon budgets, or the UK's 2030 target under the Paris Agreement (the "Nationally Determined Contribution", requiring a 68% cut in UK emissions by 2030).

We concluded the CBDP Plan was incredibly high risk, with reliance on technologies which are unproven at scale, such as carbon capture and storage. For more detail on our concerns, see the [article](#) by Mike Childs, our Head of Science and Policy, and Friends of the [Earth's 2030 report](#). ClientEarth and GLP, our fellow claimants in the first legal challenge, also filed cases.

The Climate Change Committee's view

The Climate Change Committee is the independent expert body appointed under the Act to advise the UK on tackling climate change. In June 2022, the Committee's [Progress Report](#) concluded that of the emissions cuts needed to meet the Sixth Carbon Budget, (for the years 2033 to 2037) there were credible policies in place for 39% of them (pg. 100).

One year later, the Committee's 2023 [Progress Report](#) welcomed the greater detail in the CBDP (page 13). It concluded that there was "some improvement" in prospects of meeting the fourth carbon budget (2023 to 2027). However, prospects for meeting the 2030 target and the Sixth Carbon Budget **had "worsened"**, and there were credible policies in place for just 19% of the emissions savings required to meet the latter (pages 22 and 97). The greater transparency resulting from our first legal challenge gave a clearer picture of just how poorly the government's climate policymaking has been.

The Grounds

Friends of the Earth challenged the adoption of the plan on the basis of 5 grounds (see below). These all built on the submissions we ran in the previous case. Lord Deben's witness

statement, filed in reference to Friends of the Earth's case, supported our arguments in several ways. ClientEarth's case addressed grounds 1 to 3, and Good Law Project's addressed an aspect of ground 5. Collectively, the claimants' arguments were different but complementary to each other, and mutually reinforcing.

Ground 1: A Breach of section 13(1)

Under s.13(1) of the Climate Change Act, the "...Secretary of State must prepare such proposals and policies as the Secretary of State considers will enable the carbon budgets that have been set under this Act to be met" (emphasis added). We argued that the Secretary of State had breached this duty by failing to consider mandatory material considerations.

Grounds 2 and 3: lack of contingency planning.

The Secretary of State's conclusion that the proposals and policies in the CBDP "will enable" the carbon budgets set under the Climate Change Act to be met for the purpose of section 13(1) proceeded on the basis of **delivery in full**: that all of the policies would be rolled out and would achieve 100% of their intended emissions cuts. We argued that the assumption everything would go to plan was not supported by the factual position, making the Secretary of State's decision unlawful (ground 2) and irrational (ground 3).

Ground 4: Breach of section 13(3)

The s. 13(3) duty requires the Secretary of State to prepare proposals and policies for meeting carbon budgets, which "...taken as a whole **must** be such as to contribute to sustainable development" (emphasis added). We argued that the Secretary of State had had not applied this test when assessing the plan and had instead applied a lower and less rigorous test.

In addition, Friends of the Earth argued that the Secretary of State lacked legally sufficient information to enable him to know whether the UK's Nationally Determined Contribution (adopted under the Paris Agreement) would actually be met by the plan. We argued that this issue engages the s.13(3) duty, because a failure to meet the international target compromises the ability of future generations to meet their own needs, and therefore undermines the core aspect of sustainable development.

Ground 5: Breach of section 14

We argued that the Secretary of State failed to include critical information in the published plan itself on the level of risk associated with the individual policies and how likely they were to achieve their intended emissions cuts. Even the limited (in our view) information on risks to individual policies seen by the Secretary of State (known as 'risk tables') were absent from the plan.

More crucially, the underlying assessments by departmental government officials that actually classified the policies according to how likely they were to achieve their intended cuts were absent from the plan. Additionally, the plan lacked information on the risks associated with policies developed by the devolved governments in Scotland, Wales and Northern Ireland.

The Judgment

Mr Justice Sheldon gave judgment on 3 May 2024. Of the 5 grounds of challenge, the judge allowed the first 3, brought by Friends of the Earth and ClientEarth, and the fourth, brought by Friends of the Earth. While the remaining ground brought by Friends of the Earth and Good Law Project was found to be arguable, it was ultimately dismissed.

Grounds 1 to 3 (delivered in full)

Grounds 1-3 concerned the duty under section 13(1) of the Act, and the judgment deals with them all together. The judge ruled the Secretary of State was not provided with, and so failed to consider, key materials on the risk to the delivery of individual policies and proposals in the plan. That meant “the Secretary of State made an irrational decision...[as] there was an unexplained evidential gap...The Secretary of State’s decision under section 13 was based on reasoning which was simply not justified by the evidence” (Judgment, paragraph 126).

This was a significant finding, as it’s notoriously difficult for claimants to overcome the high bar of showing a defendant has acted irrationally.

A key piece of evidence was the advice given to the Secretary of State by his officials and the assumption of delivery in full (see above) when signing off on the plan. There was a dispute between the parties about what that advice actually meant. The judge sided with Friends of the Earth’s and ClientEarth’s interpretation, holding that a reasonable Secretary of State would have understood the advice as meaning that the carbon budgets (and the 2030 target) would be met only **if all planned policies were delivered in full** (Judgment, paragraph 118). Yet this was not borne out by the facts: it was not expected that all of the policies would in reality be rolled out and achieve all of their estimated emissions cuts.

The judge emphasised the important implications of this finding: “It is not possible to ascertain from the materials presented to the Secretary of State which of the proposals and policies would not be delivered at all, or in full” (Judgment, paragraph 128). Further, the Secretary of State “could not work out... whether and which of the quantified policies were likely to miss the target by a small or a large amount, and he could not evaluate for himself whether, and if so the extent to which, any shortfall from the policies that under-delivered would be compensated for by those policies that over-delivered.”

The judge maintained that even if he was wrong about the Secretary of State’s understanding of the ‘delivery in full’ assumption, the decision (to adopt the policies for the purpose of section 13) was still not lawful. This was because the Secretary of State was not provided with sufficient information as to the “obviously material consideration of risk to the individual policies and proposals”; “the information provided was incomplete” (Judgment, paragraphs 131 and 133).

Crucially, the judge also stressed that “this evaluation had to be made by the Secretary of State personally: he could not simply rely on the opinions of his officials” (Judgment, paragraph 128).

Ground 4 (sustainable development)

The judge agreed with Friends of the Earth that the Secretary of State had breached the sustainable development duty under section 13(3). He held that “sustainable development”

is not a term defined under the Climate Change Act. The judgment references the Divisional Court in Friends of the Earth's case challenging the Airport National [Policy Statement](#), that it's an "uncontroversial concept", which has been defined to mean "meeting the needs of the present without compromising the ability of future generations to meet their needs."

The judge did not address Friends of the Earth's sub-ground relating to the international 2030 target. However, in relation to the s.13(3) duty, the judge held that "it connotes a degree of certainty that a particular outcome will eventuate" and rejected the government's arguments to the contrary.

He also rejected the government's argument that s.13(3) was "merely ancillary" to s.13(1), holding instead that the two duties were driving at different outcomes. Section 13(1) is concerned with adopting policies in order to meet our carbon budgets, whereas section 13(3) is concerned with ensuring that the policies which are adopted also contribute to sustainable development. The judge agreed with Friends of the Earth that the Secretary of State had applied an incorrect and lower test in their assessment of the plan. They had breached s.13(3) by making an assessment that the policies were "likely" to contribute to sustainable development. This was not enough. The judge held: "On no reasonable view could it be said that "likely" means "must"" (Judgment, paragraphs 145 and 149-151.)

Ground 5 (duty to report on proposal and policies)

This was the only ground that did not succeed (although the judge still considered it to be arguable). The judge held that the plan itself did not need to include risk information on the individual policies.

Wider significance

This judgment is extremely significant. It's an embarrassing defeat for the government and is the second time that we've successfully challenged it in under 2 years over its economy-wide plan to reduce carbon emissions. It means that the Secretary of State is once again required to rewrite their plan to reduce carbon emissions.

Importantly, the judgment will apply to *future* plans also, which the government will need to adopt when further emissions targets are set in years to come (including the next carbon budget which will cover the period 2038-2042). It means that for future plans to be signed off, the Secretary of State must be satisfied that the required emissions savings will be achieved, even if not all of the individual, quantified proposals and policies will generate their intended emissions cuts.

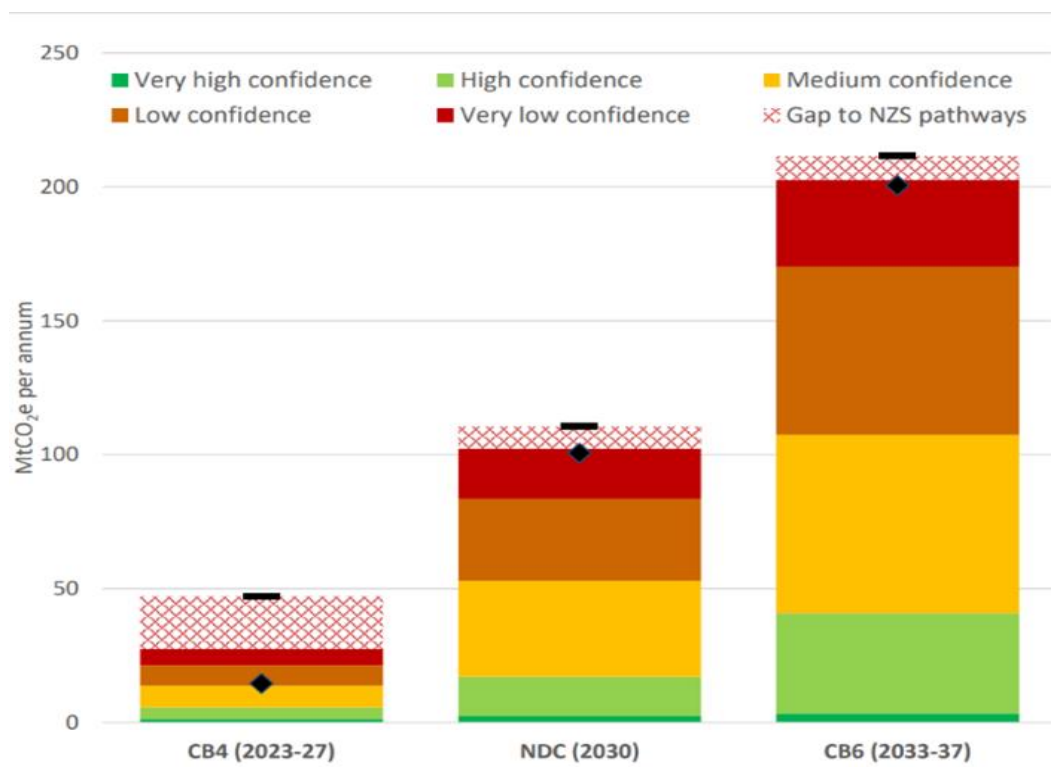
It also means the Secretary of State needs to know which of the proposals and policies carry a risk of not being delivered at all, or not delivering on their intended emissions cuts. And from this information, the Secretary of State must evaluate for themselves if the package of proposals is, taken as a whole, going to achieve the emissions targets.

Lord Deben's witness statement was categorical that on a plan like this, contingencies must be built in to mitigate for things going wrong or being delayed. His powerful evidence provided in support of Friends of the Earth's case was referred to several times in the judgment (for example, paragraphs 65 and 66). The judge specifically noted his criticism that a plan as significant as the CBDP was being made on the basis of everything going smoothly. Lord Deben described this as an "unsatisfactory" assumption.

The finding that the legislation places duties specifically on the Secretary of State, and that this duty is non-delegable, is also of critical importance. It means that politicians can be held to account in meeting their legal obligations under the Climate Change Act.

While the judge did not ultimately find that the government had breached the section 14 duty (concerning the level of detail in the published plan), critical pieces of information are now in the public domain owing to the court case, which neither the claimants, parliament, the public at large or even the Climate Change Committee were aware of.

For example, the information presented before the court was that there were serious concerns amongst government officials over the achievability of the emissions cuts needed to meet both the sixth carbon budget and the UK's 2030 international pledge. Government officials' view in a November 2022 briefing to the Secretary of State was that of the cuts required to meet these targets, around half were backed by policies which they had "very low confidence" or "low confidence" in. See below this bar chart from the November briefing below (Judgment, paragraph 15):



In addition, a later assessment by officials within the department for environment, food and rural affairs (Defra) from 27 February 2023, a month before the plan was adopted, concluded that they had "very low confidence" or "low confidence" in around half of the department's emissions saving policies.

Our view therefore remains that this case has played an additional, important role in helping to reveal the truly high-risk nature of the plan, through the disclosure that resulted from it (see the **Annex** to this briefing).

Lord Deben's view is that both the information provided to the Secretary of State and the information included in the plan were inadequate, as per his magazine.

In any event, the judge was clear that it may be possible for parliament to call for more information, including risk information, beyond that provided in the CBDP (Judgment, paragraph 169). The implication that parliament is not restricted to the information a Secretary of State chooses to include in a published plan is an interesting point and one which may prove useful in the future.

Taken overall, this victory resoundingly proves the strength and importance of the Climate Change Act.

The judgment comes at an auspicious time. Friends of the Earth will return to court in June on another case related to the Climate Change Act. That case concerns the government's national adaptation plan, brought alongside our fellow claimants Kevin Jordan and Doug Paulley. We believe the adaptation plan, which is supposed to put in place measures to protect us all from the accelerating impacts of climate change, is completely inadequate and puts peoples' lives at risk. We also think it breaches both the Act and our co-claimants' human rights.

Conclusions and next steps

Through this critical second victory, we've once more shown the power of the Climate Change Act. By taking this case, and winning again, we've held the government's feet to the fire. We've demonstrated to them, and whatever government is in place after the general election, that compliance with this Act is not optional.

2023 saw unprecedented climate extremes. We need to see urgent action by our government to address the climate crisis and to reduce the UK's carbon emissions. But unfortunately, that is not what is happening. Of the emissions reductions needed to meet the 6CB, the assessment of the Climate Change Committee is that there are currently credible policies in place for just 19%.

Friends of the Earth campaigners have been working to raise awareness among the public and politicians of the government's failure to enact policies that will achieve our carbon budgets and its own pledge to reduce emissions by over two thirds by 2030.

Following our court victory, (and the order for the government to produce a revised and legally compliant plan within 12 months), Friends of the Earth will now be driving home the message with politicians from all the major parties that the UK desperately needs a new lawful and credible climate plan that will meet its climate targets while sharing the costs and benefits of climate action fairly. As a result of such a plan, ordinary people's lives will be improved with lower energy bills, better transport, warm homes, clean air, and well-paid green jobs.

Further information

Friends of the Earth was represented in these proceedings by the same legal team that secured our victory in the Net Zero Strategy case: leading environmental barristers David

3 May 2024



Wolfe KC of Matrix Chambers, Catherine Dobson of 39 Essex Chambers and Nina Pindham of Cornerstone Barristers; Rowan Smith and Julia Eriksen at the law firm Leigh Day LLP; and Friends of the Earth's own in-house legal specialists.

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Friends of the Earth

ANNEX - KEY DOCUMENTS

Documents the government disclosed to Friends of the Earth as part of the court case.

- [Briefing to incoming minister on net zero](#) (November 2022). This introductory briefing was prepared by government officials for the incoming net zero secretary, Grant Shapps MP, explaining his role in delivering the carbon budgets. It warned of “increasing delivery risks” for government climate policies ([paragraph 9](#)). For the sixth carbon budget, covering the years 2033 to 2037, it confirmed officials had either low or very low confidence in delivering approximately half of the emissions savings needed (Annex C).
- [First internal request to government departments on their climate policies](#) (December 2022). This request was made by the department with overall responsibility for climate change. It asked other departments to report back on their individual climate policies, to feed into the overarching climate plan under preparation. Departments were asked to classify the delivery confidence for each of their policies, using a traffic light system. Green was to represent very high confidence, with the ratings going through to red for very low confidence (Table 3, pages 45 and 46).
- [The environment department's internal cover note when updating its policies](#) (January 2023). This internal document from the environment department (Defra) provides concerning information as to the level of risk associated with its own policies.
- [The environment department's policy-level update](#) (February 2023). In this document, Defra lists all its climate policies and, for each policy, rates delivery confidence using the traffic light system. Approximately half are either "red- amber" or "red", meaning delivery confidence is either low, or very low.
- [Second internal request to government departments on their climate policies](#) (February 2023). This request was also made by the department with overall responsibility for climate change. It scrapped the traffic light system, and instead asked departments to draft "narrative" descriptions of delivery risk. It suggested stock wording that could used, including replacing red and red-amber ratings with the words "uncertain delivery risk".
- [Advice to minister when signing off plan](#) (March 2023). This key document sets out all the information before the net zero secretary, Grant Shapps MP, when signing off on the CBDP. His officials explain why, in their view, the plan will enable the carbon budgets to be met. They list all government policies, along with the narrative descriptions of delivery risk. They do not include, and so the minister never sees, the traffic light ratings provided by government departments.

Documents Friends of the Earth or its witnesses produced as part of the case.

- [Witness statement from Mike Childs](#) (June 2023). This statement from Friends of the Earth's Head of Science and Policy analyses the narrative descriptions of risk that were disclosed by the government early on in the case.
- [Witness statement from Niall Toru](#) (November 2023). This statement from Friends of the Earth's Senior Lawyer at Friends of the Earth compares the

information on delivery confidence in Defra's traffic light assessment with the narrative descriptions on risk ultimately provided to the net zero secretary in the March 2023 advice.

- [Witness statement from Lord Deben](#) (November 2023). This statement from Lord Deben, former chair of the Climate Change Committee, sets out his concerns with the way the plan was prepared. He filed this statement in support of Friends of the Earth's case.
- [Friends of the Earth's written arguments](#). This was our "skeleton argument" for the February 2024 hearing. It outlines the arguments we ultimately put to the court at that hearing.

¹ *R (oao Friends of the Earth Ltd & Others) v SoS BEIS* [2022] EWHC 1841 (Admin) at paras. 204 and 254

² Carbon dioxide equivalent is a metric to compare emissions for different greenhouse gases, such as carbon dioxide, methane and nitrous oxide, on the basis of their global-warming potential. [Glossary:Carbon dioxide equivalent - Statistics Explained \(europa.eu\)](#)

³ Carbon Budget Delivery Plan at paras 29 and 30.

⁴ An international law treaty on climate change

⁵ *R (oao Friends of the Earth Ltd & Others) v SoS BEIS* [2022] EWHC 1841 (Admin) at para. 215

⁶ Ibid at para. 204

⁷ Carbon Budget Delivery Plan at p183

⁸ Ibid at para. 254