Neutral Citation Number: [2023] EWCA Civ 1549

Case No: CA-2022-002370

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION (ADMINISTRATIVE COURT)
Mrs Justice Lang
[2022] EWHC 3269 (Admin)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 21 December 2023

Before :

SIR KEITH LINDBLOM,
(Senior President of Tribunals)
LORD JUSTICE SINGH
and
LADY JUSTICE ANDREWS

- -

Between :

THE KING **(on the application of** **GLOBAL FEEDBACK LIMITED)**	**Claimant/** **Appellant**
- and -	
1. SECRETARY OF STATE FOR ENVIRONMENT, FOOD AND RURAL AFFAIRS **2. SECRETARY OF STATE FOR ENERGY, SECURITY AND NET ZERO**	**Defendants/** **Respondents**

- -
- -

David Wolfe K.C., Peter Lockley and Stephanie David (instructed by **Leigh Day**) for the **Appellant**
Galina Ward K.C., Mark Westmoreland Smith and Rose Grogan (instructed by **Government Legal Department**) for the **Respondents**

Hearing date: 6 November 2023

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Approved Judgment

This judgment was handed down remotely at 2.35pm on 21 December 2023 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Sir Keith Lindblom (Senior President of Tribunals), Lord Justice Singh and Lady Justice Andrews:

Introduction

1. Did the duty of the "Secretary of State" in section 13(1) of the Climate Change Act 2008 ("the Climate Change Act") to "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" apply to the preparation by the Secretary of State for Environment, Food and Rural Affairs ("SSEFRA") of the Government's food strategy, ("the Food Strategy") which was published by his department ("DEFRA"), on 13 June 2022? That is the central question in this case, which is before us as a claim for judicial review retained in the Court of Appeal under CPR r.52.8(6).

2. The Food Strategy is linked to the Net Zero Strategy: Build Back Greener ("the Net Zero Strategy") which was published on 19 October 2021 by what was then the Department for Business, Energy and Industrial Strategy ("BEIS"), as the Government's plan for reducing the UK's carbon emissions in line with the sixth "carbon budget" ("CB6") published in accordance with the statutory obligations under section 4 of the Climate Change Act.

3. SSEFRA had the responsibility for creating the Food Strategy, whereas the Secretary of State for Energy, Security and Net Zero ("SSESNZ") (in succession to the Secretary of State for Business, Energy and Industrial Strategy ("SSBEIS")) fulfils the functions and discharges the duties under Part 1 of the Climate Change Act for setting and ensuring compliance with the UK's carbon budgets.

4. On 23 August 2022 the appellant, Global Feedback Ltd ("Global Feedback") issued proceedings for judicial review of the decision by SSEFRA to adopt the Food Strategy. It sought both a declaration that that decision was unlawful, and a mandatory order requiring him to publish in its place a lawful food strategy. There were originally three grounds of challenge. Permission to apply for judicial review was refused in the court below on all grounds, by Sir Ross Cranston on the papers on 13 October 2022, and by Lang J. at the hearing of the renewed application on 6 December 2022.

5. Global Feedback sought permission to appeal against Lang J.'s order on five grounds. On 24 April 2023 Elisabeth Laing L.J. directed that the application for permission on two grounds be listed for an oral hearing, but refused permission on the remainder.

6. The permission hearing took place before a three-judge constitution of this court (the Senior President of Tribunals, Singh L.J. and Simler L.J., as she then was) on 16 June 2023. Permission to apply for judicial review was granted under CPR r.52.8 on both grounds, one of which Global Feedback was permitted to reformulate:

    1. that the Food Strategy published by SSEFRA on 13 June 2022 was a "proposal" or "policy" for the purposes of section 13 of the Climate Change Act, and that SSEFRA failed unlawfully to comply with the duty imposed on "the Secretary of State" by that section (part of ground 2 of the claim as originally pleaded); and

2. that, in adopting the Food Strategy, SSEFRA failed unlawfully to give significant weight to the advice of the Climate Change Committee ("the CCC"), or to give cogent reasons for departing from that advice (ground 3 of the claim as now reformulated).

7. Following the grant of permission to proceed, the claim for judicial review was reserved to the Court of Appeal under CPR r.52.8(6). The court also directed that SSESNZ be joined as a party to the proceedings (as second respondent). This has now happened, but it should be noted that Global Feedback has not sought any relief against SSESNZ.

8. Although the claim has evolved since it was lodged, the parties have been able to agree that two questions arise for our determination:

    1. Was the duty under section 13 of the 2008 Act engaged in the development and adoption of the Food Strategy?

    2. If the answer to that question is yes, when adopting the Food Strategy, did SSEFRA, or SSBEIS, need to be aware of, give significant weight to, and give cogent reasons for departing from, the advice of the CCC on diet and climate change?

9. It was also common ground that the second issue only arises if Global Feedback succeeds on the first. If Global Feedback were to succeed on the first of those issues, or both, the further question would arise of what relief should follow.

10. For the reasons set out below, we would answer question 1 in the negative, and therefore, strictly speaking, question 2 does not arise. However, in deference to the arguments advanced by Mr David Wolfe K.C. on behalf of Global Feedback, we have also considered that issue, and have concluded that even if the question had arisen for determination in this case, it should also be answered in the negative.

The Climate Change Act

11. The Climate Change Act embodies, in primary legislation with effect throughout the UK, the national response to the global threat of climate change. Part 1, "Carbon target and budgeting", contains a range of statutory duties and mechanisms whose intended effect is to bring about a reduction in greenhouse gas emissions. The statutory scheme is predicated on the setting of five-year carbon budgets, with the purpose of enabling the UK to meet the target for 2050, which is widely referred to as "net zero".

12. Section 1(1) of the Climate Change Act, as amended in 2019 (to reflect the terms of the Paris Agreement on Climate Change) provides that:

> "(1) it is the duty of the Secretary of State to ensure that the net UK carbon account for the year 2050 is at least 100% lower than the 1990 baseline."

13. Sections 2 and 3 set out the mechanics by which the percentage target specified in section 1(1), or the "baseline year", can be amended. Section 3(1)(a) specifically

obliges the Secretary of State to obtain and take into account the advice of the CCC before laying before Parliament a draft of a statutory instrument containing an order under section 2 amending the 2050 target or the baseline year.

14. Sections 4 and 5 relate to the setting of carbon budgets, which are milestones along the way towards achieving the 2050 target. They are set in advance of each budget period, and restrict the amount of greenhouse gases that the UK can legally emit in a five-year period to ensure that progress is made towards the overall target. Section 4 (1) provides:

> "It is the duty of the Secretary of State –
>
> (a) to set for each succeeding period of five years beginning with the period 2008 – 2012 ("budgetary periods") an amount for the net UK carbon account (the "carbon budget"), and
>
> (b) to ensure that the net UK carbon account for a budgetary period does not exceed the carbon budget."

Section 5 makes provision for the level of the carbon budgets. It provides, in subsection (1)(b), that the carbon budget for the budgetary period including the year 2050, "must be such that the annual equivalent of the carbon budget for the period is lower than the 1990 baseline by at least the percentage specified in section 1 (the target for 2050)".

15. Section 8, entitled "Setting of carbon budgets for budgetary periods", provides:

> "(1) The Secretary of State must set the carbon budget for a budgetary period by order.
>
> (2) The carbon budget for a period must be set with a view to meeting –
>
> (a) the target in section 1 (the target for 2050), and
>
> (b) the requirements of section 5 (requirements as to level of carbon budgets),
>
> and complying with the European and international obligations of the United Kingdom.
>
> (3) An order setting a carbon budget is subject to affirmative resolution procedure."

16. Section 9, "Consultation on carbon budgets'', provides in subsection (1)(a) that ''[before] laying before Parliament a draft of a statutory instrument containing an order under section 8 … , the Secretary of State must … take into account the advice of the [CCC] under section 34 …", and in subsection (4) that "[if] the order sets the carbon budget at a different level from that recommended by the Committee, the Secretary of State must also publish a statement setting out the reasons for that decision".

17. Section 10 specifies a number of technical, economic, fiscal and other matters which must be taken into account by the Secretary of State in coming to any decision under Part 1 of the 2008 Act relating to carbon budgets, and by the CCC in considering its advice in relation to any such decision. Subsection (2) provides:

> "(2) The matters to be taken into account are –
>
> (a) scientific knowledge about climate change;
>
> (b) technology relevant to climate change;
>
> (c) economic circumstances, and in particular the likely impact of the decision on the economy and the competitiveness of particular sectors of the economy;
>
> (d) fiscal circumstances, and in particular the likely impact of the decision on taxation, public spending and public borrowing;
>
> (e) social circumstances, and in particular the likely impact of the decision on fuel poverty;
>
> (f) energy policy, and in particular the likely impact of the decision on energy supplies and the carbon and energy intensity of the economy;
>
> (g) differences in circumstances between England, Wales, Scotland and Northern Ireland;
>
> (h) circumstances at European and international level;
>
> (i) the estimated amount of reportable emissions from international aviation and international shipping for the budgetary period or periods in question."

18. Under section 12, entitled "Duty to provide indicative annual ranges for net UK carbon account", the Secretary of State, as soon as is reasonably practicable after making an order setting the carbon budget for a budgetary period, is required to "lay before Parliament a report setting out an indicative annual range for the net UK carbon account for each year within the period" (subsection (1)). Section 12(3) requires the Secretary of State to "consult the other national authorities on the indicative annual ranges set out in the report" before laying the report before Parliament.

19. Section 13 is entitled "Duty to prepare proposals and policies for meeting carbon budgets." It provides:

> "(1)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.
>
> (2) The proposals and policies must be prepared with a view to meeting –
>
> (a) the target in section 1 (the target for 2050), and

(b) any targets set under section 5(1)(c) (power to set targets for later years).

(3) The proposals and policies, taken as a whole, must be such as to contribute to sustainable development.

(4) In preparing the proposals and policies, the Secretary of State may take into account the proposals and policies the Secretary of State considers may be prepared by other national authorities."

20. Section 14, entitled "Duty to report on proposals and policies for meeting carbon budgets", provides:

"(1) As soon as is reasonably practicable after making an order setting the carbon budget for a budgetary period, the Secretary of State must lay before Parliament a report setting out proposals and policies for meeting the carbon budgets for the current and future budgetary periods up to and including that period.

(2) The report must, in particular, set out –

(a) the Secretary of State's current proposals and policies under section 13, and

(b) the time-scales over which those proposals and policies are expected to take effect.

(3) The report must explain how the proposals and policies set out in the report affect different sectors of the economy.

(4) The report must outline the implications of the proposals and policies as regards the crediting of carbon units to the net UK carbon account for each budgetary period covered by the report.

(5) So far as the report relates to proposals and policies of the Scottish Ministers, the Welsh Ministers or a Northern Ireland department, it must be prepared in consultation with that authority.

(6) The Secretary of State must send a copy of the report to those authorities."

21. Section 18 imposes a duty on the Secretary of State to lay before Parliament in respect of each budgetary period, a statement containing certain information which includes in respect of each targeted greenhouse gas, the final amount for the period of UK emissions, UK removals and net UK emissions of that gas. Methane is specifically included in the expressions "targeted greenhouse gas" and "greenhouse gas" as defined in sections 24 and 92 respectively.

22. Section 27 (1) defines the "net UK carbon account" for the purposes of Part 1:

"(1) In this Part the "net UK carbon account" for a period means the amount of UK emissions of targeted greenhouse gases for the period –

> (a) reduced by the amount of carbon units credited to the net UK carbon account for the period in accordance with regulations under this section, and
>
> (b) increased by the amount of carbon units that in accordance with such regulations are to be debited from the net UK carbon account for the period."

23. Part 2 of the Climate Change Act contains provisions relating to the CCC. Section 32(1) provides that "[there] shall be a body corporate to be known as the Committee on Climate Change …".

24. Section 34, "Advice in connection with carbon budgets", provides:

> "(1) It is the duty of the Committee to advise the Secretary of State, in relation to each budgetary period, on –
>
> (a) the level of the carbon budget for the period;
>
> (b) the extent to which the carbon budget for the period should be met –
>
> (i) by reducing the amount of net UK emissions of targeted greenhouse gases, or
>
> (ii) by the use of carbon units that in accordance with regulations under sections 26 and 27 may be credited to the net UK carbon account for the period;
>
> (c) the respective contributions towards meeting the carbon budget that should be made –
>
> (i) by the sectors of the economy covered by trading schemes (taken as a whole);
>
> (ii) by the sectors of the economy not so covered (taken as a whole), and
>
> (d) the sectors of the economy in which there are particular opportunities for contributions to be made towards meeting the carbon budget for the period through reductions in emissions of targeted greenhouse gases.
>
> …".

25. Section 36, "Reports on progress", requires the CCC to provide, each year, a report setting out its views on the progress made towards the meeting of carbon budgets and the target in section 1 of the Climate Change Act, on the further progress needed to meet those carbon budgets and that target, and whether those budgets are likely to be met. Section 37, "Response to Committee's reports on progress", requires the Secretary of State, by no later than 15 October in the year in which the CCC's report was made, to lay before Parliament a response to that report.

26. In Part 6, "General supplementary provisions", section 93(1) provides that "for the purposes of this Act greenhouse gas emissions, reductions for such emissions, and removals of greenhouse gas from the atmosphere shall be measured or calculated in tonnes of carbon dioxide equivalent."

27. Section 95(1) defines the "national authority" as meaning "(a) the Secretary of State", … "(b) the Scottish Ministers", … "(c) the Welsh Ministers", and "(d) the relevant Northern Ireland department".

Factual background

28. In June 2020 the CCC published its annual "Progress Report to Parliament" on reducing UK emissions. It included, in table 5, a number of recommendations to DEFRA, including that it should "introduce an ambitious new policy framework to drive transformational change in agriculture and land use", with "policies to encourage consumers to shift to healthier diets and reduce food waste". In its statutory response to that report, published on 15 October 2020, the Government committed, among other things, to "publish a comprehensive Net Zero Strategy in the lead up to COP26".

29. On 9 December 2020 the CCC published its sixth carbon budget report, containing its advice to government on setting the level of CB6. It stated that meeting CB6 – the first carbon budget to be set following the net zero amendment to the Climate Change Act – required action across four key areas, namely, reducing demand for carbon-intensive activities, take-up of low-carbon solutions, expansion of low-carbon energy supplies, and land (and removals), the last of which required a "transformation in the UK's land while supporting UK farmers".

30. Following the publication of that report, in the early part of 2021 SSBEIS was engaged in decision-making to set CB6 in law. This process involved discussions across Government to develop the Net Zero Strategy. DEFRA produced policy intended to reduce emissions from agriculture, which would include the production of food, land use (including peat), and waste and waste products, whilst simultaneously increasing England's carbon sequestration potential through forestry policies. In the course of the process, therefore, DEFRA put forward policies and proposals for agriculture and land use that would contribute towards CB6.

31. In March 2021, ministers agreed that CB6 should be set at the CCC's recommended emissions limit. SSBEIS made the final decision to set CB6 at that level in April 2021. However the Government retained flexibility in the approach to meeting that target.

32. The Carbon Budget Order 2021 (S.I. 2021 No. 750) setting CB6 came into force on 24 June 2021. It covers the period 2033-2037 and sets a carbon budget of 965 Mt Co_2 e (million tonnes of carbon dioxide equivalent) for that period. That target is substantially more challenging than those set in the previous carbon budgets. The Carbon Budget Order was accompanied by an "Impact Assessment", which analysed different potential CB6 levels based on a range of relevant factors including technical feasibility, delivery implications, and quantified and unquantified costs and benefits. The Impact Assessment considered the type of measures the Government might put in place to meet each CB6 option. However the different CB6 levels, and the measures that might be

used to achieve them, were entirely based on modelling, and there were no specific proposals or policies considered at that stage.

33. The Impact Assessment also pointed to the forthcoming publication of the Net Zero Strategy, which it said would set out "the Government's vision for the net zero transition".

34. The relevant part of DEFRA's contribution to the Net Zero Strategy was known as the "agriculture and land use pathway". The policies and proposals it contains for agriculture to support the delivery of CB6 concentrate on technological interventions, innovation, productivity measures and low-carbon farming practices, together with land-based interventions including regenerative agriculture, agroforestry, afforestation and peatland restoration.

35. The agriculture and land use pathway was formally approved by SSEFRA on 20 July 2021 before being incorporated into the overarching Net Zero Strategy by SSBEIS. SSEFRA was briefed on the role of dietary change in the context of the Net Zero Strategy and agreement on setting CB6, in the months prior to his approval of the agriculture and land use pathway. Officials advised that the CCC's recommended reductions for CB6 were achievable without dietary change, and that further research should be undertaken on the wider environmental and socio-economic impacts of measures to encourage dietary change, particularly in the context of food security and affordability, as well as the required depth of behavioural change. That advice was accepted.

36. On 15 July 2021 the second part of the National Food Strategy Independent Review by Henry Dimbleby was published. It identified the greenhouse gas impacts of methane emissions arising from meat production, and the carbon benefits of less meat being consumed. It made 14 formal recommendations. These did not specifically include dietary change. Instead, they focus on reducing emissions from livestock, investing in alternative protein sources, and using data to promote change in the food system, all of which are covered by the Food Strategy.

The Net Zero Strategy

37. The Net Zero Strategy was laid before Parliament, and published, by SSBEIS on 19 October 2021. Before this was done, on 17 October 2021, SSBEIS made his decision to approve the proposals and policies prepared under section 13 of the Climate Change Act and duly set out in the Net Zero Strategy, and, under section 14, to lay the Net Zero Strategy before Parliament as a report.

38. Under section 12, an addendum was laid before Parliament on 14 December 2021. This provided a final version of the indicative range of the UK's carbon account for each of the five years of CB6 in the Technical Annex after consultation with "other national authorities" – as section 12(3) requires.

39. Acknowledging the potential benefit of the Food Strategy then in preparation, the Net Zero Strategy states (in paragraph 33 of Chapter 3vi):

> "33. The Government's upcoming Food Strategy will support the delivery of net zero, nature recovery, and biodiversity commitments and will help to create a food system that incentivises farmers to produce high quality, high welfare food in the most sustainable way."

40. Annex C to the final advice to the minister to approve the Net Zero Strategy for publication, given on 15 October 2021, contained a list of proposals and policies to deliver direct emissions savings towards the carbon budgets and other emissions targets. That list was a very advanced working draft. After publication of the Net Zero Strategy, officials in BEIS produced a final list of all the quantified and unquantified proposals and policies in the Net Zero Strategy, which included the status of their quantification, or not, at the time of publication of the Net Zero Strategy. A copy of that list was provided to the court in *R. (on the application of Friends of the Earth) v Secretary of State for Business, Energy and Industrial Strategy* [2022] EWHC 1841 (Admin) as an exhibit to the witness statement of Sarah James, Co-Director of the Net Zero Strategy Directorate at BEIS, dated 6 April 2022. The list replicates the text of paragraph 33 of the Net Zero Strategy and describes the Food Strategy as "unquantified".

The legal challenge to the Net Zero Strategy

41. In *Friends of the Earth*, three claims for judicial review challenging the Net Zero Strategy were issued by Friends of the Earth Ltd., ClientEarth, and Good Law Project in January 2022. The subject-matter of those proceedings included two decisions of SSBEIS: his decision to approve the proposals and policies prepared under section 13 of the Climate Change Act, which are set out in the Net Zero Strategy, and his decision to lay before Parliament a report under section 14.

42. In a judgment handed down on 18 July 2022, Holgate J. held that SSBEIS had failed to comply with section 13 by omitting to consider the quantitative contribution that particular proposals and policies, individually or in combination, were expected to make to the meeting of carbon budgets; how the shortfall of 5% in quantified proposals and policies for meeting CB6 would be made good; and the consequent risk to the Net Zero Strategy being realised and CB6 met.

43. By an order dated 19 July 2022 Holgate J. granted a declaration that the Net Zero Strategy was unlawful, and issued mandatory relief requiring SSBEIS, by no later than 31 March 2023, to lay before Parliament a report complying with section 14. On 30 March 2023 SSESNZ laid before Parliament and published the Carbon Budget Delivery Plan.

44. Recording the parties' shared understanding of section 13 and its operation, Holgate J. said (in paragraphs 164 to 167 of his judgment):

> "164 Firstly, the obligation on the Secretary of State under s.13 is a continuing one.

> 165 Secondly, his duty is to *prepare* measures that will enable the carbon budgets to be met. The statutory scheme recognises that proposals will evolve over time and will be introduced and developed at different stages. Policies may need to be reconsidered as circumstances change, I would add that this is reinforced by s.10(2) of the CCA 2008, which requires the Secretary of State to take into account a wide range of considerations … which will be subject to considerable change over time.
>
> 166 Thirdly, it is agreed that the phrase "proposals and policies" is deliberately broad. … [Counsel for the first and third claimants] also accepted that the phrase "proposals and policies" includes an emerging policy or a proposal to be further developed. That must be correct. The context in which s.13 sits includes carbon budgets which may cover a period ending up to 16 years into the future, the 2050 target and the innovative nature of important aspects of climate change technology.
>
> 167 Fourthly, it is agreed that it is a matter of judgment for the Secretary of State to decide (a) on the proposals and policies which should be prepared and (b) whether they will enable the carbon budgets to be met. …
>
> 168 Fifthly, [counsel for the Secretary of State] submitted, rightly, that s.13(1) does not require the Secretary of State to be certain that his proposals and policies will enable the carbon budgets to be met. … ." (emphasis in the original)

45. Holgate J. concluded (in paragraph 194) that "[under] the first component of s.13(1) it is a matter of judgment for the Secretary of State to decide which proposals and policies should be prepared and when", and (in paragraph 195) that "[the] second component of s.13(1) is the Secretary of State's obligation to be satisfied that his proposals and policies will enable the carbon budgets to be met", and "this depends upon the making of a predictive assessment by the Minister".

46. Pointing to the salient provisions in Part 1 of the Climate Change Act, Holgate J. said (in paragraph 202):

> "202 The statutory context is of paramount importance:
>
> …
>
> (iv) The CCA 2008 imposes the obligation to ensure that the net UK carbon account meets those targets solely on the Secretary of State;
>
> (v) Under the CCA 2008 the preparation of proposals and policies under s.13 … is critical to achieving those targets;
>
> (vi) The Act imposes solely on the Secretary of State the obligations to prepare such measures and to be satisfied that they will enable the carbon budgets to be met. There is no requirement for Parliament or the public to be consulted on those proposals and policies or for Parliament to approve them;
>
> …

> (x) The carbon budgets and the 2050 target relate to the whole of the UK economy and society and not to sectors. Achievement of those targets requires a multiplicity of policy measures addressing the UK as a whole, individual sectors, and factors falling within s.10(2). Those measures will be operative at different points in time. Some will apply in isolation and others in combination. Whether an overall strategy will enable the statutory targets to be met depends upon the contribution which each policy (or interrelated groups of policies) is predicted to make to the cumulative achievement of those targets;
>
> (xi) The merits of individual measures, their contributions and their deliverability, together with the deliverability of the reductions in GHG emissions required by s.1(1) and s.4(1), are all essential considerations for the Secretary of State, or the Minister in his place."

47. Holgate J. went on to say (in paragraphs 212 and 213):

> "212 … Ultimately the Minister's decision depended upon unquantified measures and other quantified measures to be developed further … and upon comparison with a delivery pathway which was said to meet the CB6 target, but only just, and was in any event subject to a wide uncertainty range.
>
> 213 In my judgment, without information on the contributions by individual policies to the 95% assessment, the Minister could not rationally decide *for himself* how much weight to give to those matters and to the quantitative assessment in order to discharge his obligation under s.13(1)." (emphasis in the original)

48. In conclusion on this part of the claim before him, Holgate J. said (in paragraph 222):

> "222 As I have said, the obligation under s.13 is a continuing one (para 164 above). … The parties' submissions did not address any implications of the issues I have had to resolve for compliance with s.13 on a continuing basis, nor was there any evidence on that aspect. Accordingly, my reasoning and conclusions on, for example, the legal adequacy of information before the Minister on quantification, should not be treated as necessarily applying to compliance with s.13 at *any* point in time. No doubt the development of policy measures is kept under review by officials and by the Secretary of State, but my judgment does not address how often and when quantitative analysis might be required to be carried out. Such issues are essentially matters of judgment for the defendant and his officials." (emphasis in the original)

49. The claim succeeded on this and one other ground. No appeal was pursued by SSBEIS.

The Climate Change Committee's assessment of the Net Zero Strategy in October 2021

50. The CCC published an independent assessment of the Net Zero Strategy on 26 October 2021. It expressed the CCC's view that "the Net Zero Strategy fulfils the requirement in the Climate Change Act for the Government to set out its policies and proposals to meet carbon budgets". It also noted that there were certain "differences in ambition from the CCC pathway", including the fact that the strategy "has nothing to say on diet changes away from meat and dairy, or on limiting growth in flying". Under the heading "What important areas remain to be resolved?" it noted that "[a] comprehensive Agriculture and Land use strategy is needed", that "[a] Government Food Strategy is being planned, which needs to set out clear targets for the food system's impact on health, nature and climate" and that "[this] should include the role of consumers and the wider food supply chain."

The Food Strategy

51. The Food Strategy was published by DEFRA on 13 June 2022. It sets out an overarching approach to delivering the Government's ambitions for the food system, rather than a detailed description of all of the policy initiatives that will deliver those ambitions.

52. Objective 2 of the Food Strategy is to create "a sustainable, nature positive, affordable food system that provides choice and access to high quality products that support healthier and home-grown diets for all". To attain this objective, the Government will seek to "reduce greenhouse gas (GHG) emissions and the environmental impacts of the food system, in line with our net zero commitments and biodiversity targets and preparing for the risks from a changing climate" (paragraph 10 of the Executive Summary). In one of the bullet points under Objective 2 it is stated that the Government "will publish a land use framework in 2023 to ensure we meet our net zero and biodiversity targets, and help our farmers adapt to a changing climate, whilst continuing to produce high quality, affordable produce that supports a healthier diet".

53. Paragraph 1.3.5 stated that the Government "will launch a Call for Evidence to better understand the challenges associated with the use of feed additives and materials that can reduce methane emissions from livestock", that "[this] will explore how we can work with farmers and agri-businesses to increase adoption of this technology to support more sustainable protein production", and that "[there] are also proteins from non-traditional livestock sectors".

The Carbon Budget Delivery Plan published in March 2023

54. In compliance with the order made by Holgate J in the *Friends of the Earth* case, a "Carbon Budget Delivery Plan" was laid before Parliament and published on 30 March 2023. It supersedes and updates the Net Zero Strategy, but confirms that the Government still considers the approach set out in the Net Zero Strategy to be correct. It provides the detail of a package of proposals and policies prepared by SSESNZ to enable the delivery of Carbon Budgets 4, 5 and 6.

55. The Carbon Budget Delivery Plan states that "our quantified proposals and policies give us over 100% of savings required to meet Carbon Budget 4 and 5 and 97% of the savings required to meet Carbon Budget 6" (paragraph 30). However "there is a judgement to be made whether the policies identified at this stage are sufficient to enable Carbon Budget 6 to be met", and "[the Government is] confident that Carbon Budget 6 can be met through a combination of the quantified and unquantified policies identified" (paragraph 31). The text goes on to indicate that the Government believes it will be possible to deliver additional carbon savings beyond those currently quantified through a number of proposals, including some in the areas of agriculture and land use, land-use change and forestry (paragraphs 31-32).

56. We were told that the Carbon Budget Delivery Plan is now itself the subject of three claims for judicial review issued in the Administrative Court, which are not before us and will take their own course.

"The Secretary of State"

57. Several of the provisions in Part 1 of the Climate Change Act refer to the powers and duties of "the Secretary of State".

58. To discern whether that expression means a particular Secretary of State, or any Secretary of State, one must begin with the interpretation of the relevant legislative provisions. This is a conventional exercise of statutory construction, guided by principles that are well established and familiar (see the speech of Lord Reid in *Black-Clawson International Ltd. v Papierwerke Waldhof-Aschaffenburg AG* [1975] A.C. 591 (at p.613), the speech of Lord Nicholls in *R. v Secretary of State for the Environment, Transport and the Regions, ex parte Spath Holme Ltd.* [2001] 2 A.C. 349 (at p.396), and the judgment of Lord Hodge JSC in *R. (on the application of Project for the Registration of Children as British Citizens) v Secretary of State for the Home Department* [2022] UKSC 3; [2023] A.C. 255 (at paragraph 29)).

59. As Lord Campbell C.J. explained in *Harrison v Bush* (1855) 5 E & B 344, at p. 352, the office of Secretary of State is one of very ancient date. We would note that it is much older than the office of Prime Minister, Sir Robert Walpole being the first to hold that office in the 1720s, and which, unlike the office of Secretary of State, is rarely mentioned in legislation.

60. In *Harrison v Bush* Lord Campbell C.J. noted that originally the Secretary of State was the king's private secretary with the custody of the king's signet, and was the ordinary channel of communication between the Sovereign and the subject. Until the reign of Henry VIII the duties of the office were performed by a single person. There were then generally two officers appointed to the post until the reign of George III. By the middle of the 19th century this number had increased to five. But as Lord Campbell C.J. explained, they were all appointed by mere delivery to them of the seals of office, "each being capable in point of law of performing the duties of all the departments, and the office still being so much considered one and the same …".

61. In the current edition of "Halsbury's Laws" (2014), vol. 20, at paragraph 153, it is said that "the office of Secretary of State is one, and in law each Secretary of State is capable

of performing the duties of all or any of the departments." In footnote 10, it is again repeated that "the principle that the office of Secretary of State is one and indivisible remains strictly correct." The main authority cited for this proposition is *Harrison v Bush*.

62. Section 5 of the Interpretation Act 1978 provides that, in any Act, unless the contrary intention appears, words and expressions listed in Schedule 1 to the Act are to be construed according to that Schedule. In Schedule 1 the phrase "Secretary of State" means "one of His Majesty's Principal Secretaries of State".

63. In *Re Quinn's Application* [1996] NIJB 115, at p. 118, Kerr J. (who later became Lord Kerr of Tonaghmore) noted that, from about 1960, every senior minister of the Crown has been designated a Secretary of State. Having noted what is said in the Interpretation Act, *Harrison v Bush* and "Halsbury's Laws" (in an earlier edition which contained materially the same passages), Kerr J. said:

> "Since the historical position is that the office of the Secretary of State is one it appears to me that, in light of the clear terms of section 5 of the Interpretation Act 1978, any powers exercisable by 'the Secretary of State' will, save in exceptional and unambiguously stated circumstances, be exercisable by any of Her Majesty's Secretaries of State."

64. The position is confirmed in the Cabinet Manual (October 2011), at paragraph 3.26:

> "Most statutory powers and duties are conferred on the Secretary of State; these may be exercised or complied with by any one of the secretaries of state. This reflects the doctrine that there is only one office of Secretary of State, even though it is the well-established practice to appoint more than one person to carry out the functions of the office."

At paragraph 3.28, the Cabinet Manual continues:

> "Most secretaries of state are incorporated as 'corporations sole'. This gives the Minister a separate legal personality. This is administratively convenient … because it facilitates continuity when the office-holder changes."

65. As the Ministerial Code (December 2022) makes clear, at paragraph 4.1, the Prime Minister is responsible for the overall organisation of the executive and the allocation of functions between Ministers in charge of departments.

66. As is well known, from time to time the Prime Minister changes the structure of Government, often transferring functions between different departments or even extinguishing one department and creating a new one. These are all administrative changes, important though they are, and do not require any change in legislation. By way of example, in the present context, in March 2023, the former department, BEIS, was abolished and a new department, for Energy Security and Net Zero, was created.

67. For Global Feedback, Mr Wolfe argued that the duty of "the Secretary of State" under section 13 of the Climate Change Act applies to both SSBEIS and SSEFRA, each of whom is a Secretary of State who can carry out and "exercise any of the powers conferred by statute on the Secretary of State" (see the speech of Lord Rodger in *R. (on the application of BAPIO Action Ltd.) v Secretary of State for the Home Department* [2008] UKHL 27; [2008] 1 A.C. 1003, at paragraph 33).

68. Mr Wolfe submitted that the duty in section 13 of the Climate Change Act fell on SSESNZ (or SSBEIS) when the Net Zero Strategy was produced, and also on SSEFRA when the Food Strategy was produced. He contended that, since the office of Secretary of State is one and indivisible, and given the definition in the Interpretation Act, the duty in section 13 cannot be confined to one particular Secretary of State.

69. In this context Mr Wolfe placed particular reliance on what was said by Lord Rodger in *BAPIO*, at paragraphs 33 and 34:

> "33. In England the executive power of the Crown is, in practice, exercised by a single body of ministers, making up Her Majesty's Government. With the increased range of responsibilities of central government today, there are, of course, more ministries dealing with domestic affairs than once there were, but they all exist to carry out the policies of the Government. As this case illustrates, policies adopted in one field often have repercussions in other fields. Indeed, responsibility for government policy in particular fields is frequently transferred from one ministry to another in the hope of achieving the elusive goal of greater overall coherence. In these circumstances Schedule 1 to the Interpretation Act 1978, which declares that the term 'Secretary of State' in a statute 'means one of Her Majesty's Principal Secretaries of State', expresses a principle of constitutional law of considerable practical importance: all Secretaries of State carry on Her Majesty's Government and can, when required, exercise any of the powers conferred by statute on the Secretary of State. The same applies, in broad terms, to the exercise of the prerogative powers of the Crown.
>
> 34. I am accordingly satisfied that it would be wrong, not only as a matter of constitutional theory, but as a matter of substance, to put the powers, duties and responsibilities of the Secretary of State for the Home Department into a separate box from those of the Secretary of State for Health. Both are formulating and implementing the policies of a single entity, Her Majesty's Government."

70. While we would not dissent from anything in that passage, it needs to be understood in the context of that particular case. The successful challenge in that case was to guidance issued by the Secretary of State for Health, which had the effect of curtailing the status which foreign doctors would have under an immigration scheme issued by the Secretary of State for the Home Department. In effect, the guidance cut across what the Immigration Rules said. A majority of the Appellate Committee of the House of Lords (Lord Scott dissenting) held that, while it was open to the government to change the rules, this should have been done by an amendment to the Immigration Rules, which would have entailed the scrutiny of Parliament, and not by guidance: see paragraphs 35 and 36 in the opinion of Lord Rodger. While the reasoning of the different members

of the Appellate Committee was not identical, that was essentially the basis for the decision. In our view, it does not assist in arriving at the true interpretation of section 13 of the Climate Change Act, which is the issue that arises in the present case.

71. It is common ground in the present case that the report which must be placed before Parliament under section 14 of the Climate Change Act is one which must be prepared, now, by SSESNZ. This is important because it provides the context in which section 13 must be read. Section 13 cannot be read in isolation. This is not least because section 14(2)(a) expressly cross-refers to the Secretary of State's current proposals and policies "under section 13". In our view, this is a strong indicator that the Secretary of State whom Parliament contemplates will perform the duty in section 13 is the same as the Secretary of State who must lay a report before Parliament under section 14.

72. This does not necessarily provide a complete answer to Mr Wolfe's argument, since he submitted that, even if it is SSESNZ who must comply with section 13, he failed to do so at the point in time when the Food Strategy was prepared. That is an argument we must deal with separately, and which we address later in this judgment.

73. For present purposes, it is also important to note that section 13(3) states:

> "The proposals and policies, *taken as a whole*, must be such as to contribute to sustainable development." (emphasis added)

This again is a powerful statutory indicator that what Parliament contemplated in enacting section 13 is that it is the Secretary of State who has overall responsibility for performing the duties in sections 13 and 14 (and not each of the individual Secretaries of State responsible for different Government departments whose policies may have relevance) who has to comply with the duty in section 13.

74. We also think it important to note section 13(4), which states:

> "In preparing the proposals and policies, the Secretary of State may take into account the proposals and policies the Secretary of State considers may be prepared by other national authorities."

75. We have already referred to the definition of "national authority" in section 95(1) of the Climate Change Act. Although at first sight the reference there to "the Secretary of State" may seem curious or even redundant, in our view, it makes sense once one appreciates that, in accordance with the Interpretation Act, that could be a reference to any of the other Secretaries of State. The effect of section 13(4) is therefore that, while the overall assessment must be made by the SSESNZ, he may take into account the proposals and policies that other Secretaries of State may prepare. This does not mean, however, that the duty in section 13 itself falls upon those other Secretaries of State.

76. We have stressed the need to construe section 13 in its statutory context. It belongs to a coherent set of provisions in Part 1 of the Climate Change Act, aptly described by Ms Galina Ward K.C. (who appeared on behalf of both Secretaries of State) as a "total

package". Taken together, those provisions demonstrate the comprehensive nature of the various functions given to "the Secretary of State" under Part 1.

77. Of particular significance, in our view, are sections 8, 10 and 14. Alongside section 13 they create a series of inter-related duties. They must be read with each other. The provision for the setting of carbon budgets in section 8 requires action at the national level and for the economy as a whole. The duty is to set a carbon budget for a budgetary period with a view to meeting the target for 2050 in section 1, and the requirements relating to the level of carbon budgets in section 5. Section 10 prescribes the matters that must be taken into account by the Secretary of State "in coming to any decision under [Part 1] relating to carbon budgets", which includes his duty to "prepare proposals and policies for meeting carbon budgets" in section 13. Section 14 reinforces that obligation in section 13 with the duty of the Secretary of State to report to Parliament on the "proposals and policies" he has prepared to enable carbon budgets to be met. It stipulates the required content of the report, and the arrangements for consultation with other authorities. As is made plain by section 14(2)(a), this duty relates to the Secretary of State's "current" proposals and policies, not to those that may come into being in the future, or that are inchoate or hypothetical.

78. These provisions are all premised on carbon budgets for a particular budgetary period being set for the whole of the UK, and on the assumption that one and the same Secretary of State will carry out the functions they contain. The statutory scheme envisages the duties laid down in Part 1 of the Climate Change Act being discharged by one Secretary of State, with whom responsibility lies for making the necessary judgments and undertaking the necessary steps. That Secretary of State is the Secretary of State who is charged with the conduct of the national response to climate change and the setting of carbon budgets. By contrast with the position in Northern Ireland under section 13 of the Climate Change Act (Northern Ireland) 2022, this statutory scheme does not contemplate the splitting of that work between different ministers and different departments of government.

79. Section 13 itself is directed to the performance by the Secretary of State of the obligation imposed upon him to prepare such proposals and policies as he considers, in the exercise of his own judgment, will enable the carbon budgets to be met. We agree with, and gratefully adopt, Holgate J.'s lucid exposition of the section 13 duty to that effect in his judgment in *Friends of the Earth*.

Issue 1: Was section 13 of the Climate Change Act engaged in the preparation and adoption of the Food Strategy?

80. In the light of Holgate J.'s reasoning, and our own conclusions so far, three characteristics of the section 13 duty seem clear. First, as we have said, responsibility for its performance lies with the Secretary of State who bears the primary responsibility for ensuring that carbon budgets are established and met. Second, it effectively requires a strategic and – as Ms Ward put it – a "whole-economy", or "economy-wide", judgment to be applied by the Secretary of State. And third, as Holgate J. also held, it is a "continuing" duty.

81. As for the first characteristic, the carbon budgets are established, under the statutory scheme, by SSESNZ – previously SSBEIS. It was this Secretary of State who was ultimately accountable for operating the legislative machinery designed to bring about a reduction in greenhouse gas emissions and to secure the meeting of carbon budgets through the Net Zero Strategy, and he was properly the defendant in the proceedings before Holgate J.. It was his duty under section 13 to prepare the "proposals and policies" that he considered would enable carbon budgets to be met.

82. Turning to the second characteristic, one sees that the carbon budgets themselves are to apply at the national level, and are directed at the national economy. They are not broken down into targets for individual sectors of the economy. We have referred already to the requirement in section 13(3) that the proposals and policies are to be "taken as a whole" in assessing their contribution to sustainable development. In the same vein, section 14(3) requires that the Secretary of State's report must explain how they "affect different sectors of the economy". These provisions show the composite nature of the duties imposed on the Secretary of State.

83. In our view, the Secretary of State with responsibility for the functions contained in Part 1 is uniquely well placed to discharge the duty in section 13. He has an overview of the whole economy, is conscious of the likely levels of greenhouse gas emissions in all sectors of it for the budgetary period or periods in question, and is able to judge the potential for appropriate action to ensure the meeting of carbon budgets. The section 13(1) duty therefore corresponds to the "whole economy" or "economy-wide" approach envisaged in Part 1, with a single Secretary of State holding responsibility for the setting and implementation of the carbon budgets.

84. We reject the piecemeal or multipartite approach to the performance of the section 13 duty advocated by Mr. Wolfe, in which that particular task is divided between different ministers and departments of government, each responsible under section 13 for some notional proportion or "share" of the carbon budget for an individual sector of the economy. That is not what section 13 **states**, and we do not consider it is what Parliament intended.

85. This is not to say, however, that other ministers and departments are unable to prepare measures of their own that may have the effect of reducing greenhouse gas emissions and assisting the achievement of "net zero". Such measures may relate to the sector of the economy in which a particular department has responsibilities of its own, and for which its ministers and officials are well equipped to make sensible decisions. Their preparation is not impeded by the provisions in Part 1 of the Climate Change Act. It can aid the meeting of carbon budgets, and may well be of help to SSESNZ in performing his own duty to prepare proposals and policies of his own under section 13. But it does not in itself amount to the performance of that duty. Nor does it engage the other obligations placed on the Secretary of State in Part 1. Assistance of this kind to SSESNZ is made easier by his practice of commissioning returns from other departments. This, however, is a discretionary process and is not itself subject to any statutory procedure. It does not oblige any other minister or department to "prepare such proposals and policies as [they consider] will enable carbon budgets … to be met".

86. Mr Wolfe submitted that the section 13 duty applied to the preparation and adoption of the Food Strategy, which was expressly relied on in the Net Zero Strategy as an inchoate, unquantified proposal or policy. The Food Strategy was referred to in

paragraph 33 of Chapter 3vi of the Net Zero Strategy. It was also included as an "unquantified" policy in the "[list] of proposals and policies in the Net Zero Strategy" exhibited to the witness statement of Sarah James (referred to in paragraph 40 above). A further indication that the Food Strategy was a proposal or policy for the purposes of section 13 was that there had been "significant input" from SSBEIS and his officials in assessing the emissions impacts of the Food Strategy and its constituent policies through the system of "commissions" and "returns". Even though the Food Strategy was adopted and published after the publication of the Net Zero Strategy, Mr Wolfe submitted, SSBEIS had a continuing duty under section 13, which he had to carry on performing until the publication of the Food Strategy, and beyond. This required him to assess the policies and proposals in the Food Strategy as they evolved, and to assure himself that in their final form they complied with carbon budgets. For his part, SSEFRA had a duty under section 13 to prepare, for his sphere of responsibility, proposals and policies such as the Food Strategy that would enable his "share" of the carbon budgets to be met. He had to perform a sector-specific exercise, while SSBEIS had to perform an exercise that was "economy-wide". Such an approach was necessary if the target for 2050 was to be achieved.

87. At the hearing before us Mr Wolfe did not base his argument on the absence from both the Food Strategy and the Net Zero Strategy of measures to encourage dietary change. The Climate Change Committee considered that such measures would help in the meeting of carbon budgets. But as the evidence of Mr Daniel Roff, a Deputy Director for Food Security and Co-ordination at DEFRA, indicates (in paragraphs 38 and 43 to 47 of his witness statement), SSEFRA did not rely on dietary change to achieve savings of carbon, either in DEFRA's contribution to the Net Zero Strategy or in the Food Strategy itself.

88. Ms Ward submitted that the argument for Global Feedback misunderstands the status and purpose of the Food Strategy. The Food Strategy was not itself a proposal or policy within section 13(1), intended to discharge the obligation imposed on "the Secretary of State" in that provision. Its preparation and adoption did not engage the duties in sections 13 and 14. The kind of assessment held to have been required in *Friends of the Earth* did not arise in this case.

89. Ms Ward accepted that the section 13 duty is a continuing one, and not confined to the process of producing a report under section 14. Her basic point was straightforward; section 13 did not apply to the Food Strategy and its preparation.

90. In our view that is right. We cannot accept Mr Wolfe's argument on this issue. We think Ms Ward's submissions in response are sound. On the central question in the case, identified at the beginning of this judgment, we consider that section 13 of the Climate Change Act did not apply to the preparation of the Food Strategy. As a matter of legal analysis, and on the facts, this seems clear.

91. It is important to keep in mind that the subject-matter of this claim is the Food Strategy itself, not the Net Zero Strategy. The grounds of claim, both as originally pleaded and as now reframed, do not make any direct criticism of the Net Zero Strategy. It should also be remembered that when the Net Zero Strategy was challenged the court did not find it was unlawful to omit "proposals" or "policies" that might later emerge in the Food Strategy promulgated by SSEFRA, including measures to encourage dietary change, or any other strategy proposed by ministers in different departments of

government. No argument of that kind was put forward then. And such grounds could not have been deployed now as a collateral attack either on the Net Zero Strategy itself or on the Carbon Budget Delivery Plan, which superseded it in March 2023.

92. In this case, for the reasons we have already indicated, the preparation of the Food Strategy by SSEFRA was not, in our view, activity within the duty of "the Secretary of State" under section 13. And it did not involve any other statutory functions of "the Secretary of State" in Part 1 of the Climate Change Act, such as the duty to report in section 14.

93. The submission that SSEFRA was performing the section 13 duty as it bore on his own department's responsibilities, and preparing under that section a proposal or policy that would enable his department's "share" of the carbon budgets, is, we think, wrong. It is true that SSBEIS, when preparing his own proposals and policies under section 13, had looked to other ministers and departments, including DEFRA, to acquaint him with relevant strategies of their own. But in doing so he was not transferring to them the duty imposed only upon him. Rather, he was seeking their help in preparing the proposals and policies that he considered would enable the carbon budgets to be met. This was a judgment that he alone had to make under section 13, on the basis of an assessment spanning the whole economy, not merely an individual sector of it such as agriculture or the production of food.

94. On this understanding of section 13, there was no failure by SSEFRA to comply with section 13 in the preparation by DEFRA of the Food Strategy. Mr Wolfe's submissions to the contrary are mistaken. Section 13 did not apply to DEFRA's preparation of the Food Strategy.

95. This takes us to the third characteristic of the section 13 duty, which is its continuing nature as an obligation resting upon SSESNZ – previously SSBEIS. As Holgate J. concluded (in *Friends of the Earth*, at paragraphs 164 and 222 of his judgment) the duty is not confined, in time, to the production of reports under section 14. Preparation of proposals and policies under section 13 is intended, we think, to carry on without pause. As Mr Chris Thompson, the Director of the Net Zero Strategy Directorate in the Department for Energy Security and Net Zero, explains in his witness statement (at paragraphs 32 to 46), SSBEIS continued with that exercise while DEFRA was preparing the Food Strategy. But the continuing duty of SSBEIS under section 13 was not engaged by the preparation of the Food Strategy by DEFRA. The Food Strategy was not in itself a proposal or policy of SSBEIS prepared under section 13.

96. That there was some interaction between departments while these two streams of work went ahead, and that SSBEIS and his department were kept aware of the progress and content of the Food Strategy as it emerged, is unsurprising. It shows two government departments co-operating on strategic matters touching the remit of both. It did not, however, confer on the Food Strategy the status of a proposal or policy of SSBEIS himself, falling within the scope of the duty he had to discharge under section 13.

97. To suppose that the collaboration between departments on these separate but simultaneous activities had the effect of merging the two streams of work into a single process under section 13 is incorrect. There is no evidence that at any stage either Secretary of State, or officials in either department, saw the preparation and adoption of the Food Strategy as an adjunct to the preparation and adoption of the Net Zero

Strategy, or as a means of performing the section 13 duty. And in our view that was not the reality here.

98. When the Food Strategy was published in June 2022 it fulfilled the broad expectations to which the Net Zero Strategy had referred when published in October 2021. But it did not seek to quantify any of the unquantified proposals or policies in the Net Zero Strategy. Nor did the Net Zero Strategy itself embrace any unformed proposal or policy, whether for dietary change or for some other objective, that was to be realised in the Food Strategy. Later – in January 2023 – as Mr Thompson describes (in paragraph 38 of his witness statement), the Food Strategy featured in a commission return made by DEFRA as a strategy that would "support the delivery of net zero …". Parts of it, still unquantified, were also incorporated in the Carbon Budget Delivery Plan. However, as Mr Thompson points out, it did not appear in subsequent commission returns, or in DEFRA's advice to SSESNZ. Nor was it mentioned by name in the Carbon Budget Delivery Plan itself.

99. We do not accept Mr Wolfe's description of the Food Strategy as a "working out" of various matters that had been "left over" as unquantified proposals or policies by the Net Zero Strategy, or the submission that the duty in section 13 of the Climate Change Act therefore applied to the Food Strategy as well as to the Net Zero Strategy itself. The fallacy here, as we see it, is that the concept of matters being "left over" in this way is incorrect. It does not reflect a true understanding of what the Net Zero Strategy said, or the role of the Food Strategy itself.

100. The steps taken by DEFRA to make its own contribution, as a department, to the proposals and policies that eventually came together in the Net Zero Strategy are explained by Mr Thompson in his witness statement (at paragraph 19). The possibility that the Food Strategy might in due course assist in the achievement of net zero was explicitly recognised in the Net Zero Strategy. But it is wrong to suppose that work was being "left over" to the process of producing, and possibly modifying, the Food Strategy as a means of discharging the section 13 duty. As Mr Thompson explains (in paragraphs 20 and 21 of his witness statement) this is not what was intended. Nor is it what actually happened.

101. In short, therefore, the preparation of the Food Strategy was not an activity within the reach of section 13 of the Climate Change Act. The duty in that section did not apply to it. This conclusion, in our view, is consistent with that of Holgate J. in his judgment in *Friends of the Earth*.

102. Although in oral submissions Mr Wolfe did not rely on the absence of a policy for dietary change in the Food Strategy, we have in mind that this was, in part at least, the basis for the claim as originally pleaded. We shall therefore address it here, but briefly. The "classic public law errors" alleged in Mr Wolfe's skeleton argument in this court relate to the decision to exclude measures for dietary change from DEFRA's return to SSBEIS, in July 2021, describing DEFRA's "Proposed Pathway to Meet [its] Net Zero Sector Share". This is, in truth, a criticism of DEFRA's conduct in the process leading to the preparation of the Net Zero Strategy, and not a criticism of what it did in the course of preparing the Food Strategy, which is the subject-matter of the claim before us. It does not amount to a cogent attack upon the Food Strategy itself. Nor does it lend any additional strength to the more general case advanced on the duty in section 13,

and its asserted application to the Food Strategy, which is the real substance of the argument Mr Wolfe presented to us at the hearing.

103. For these reasons we reject Global Feedback's argument on the first issue.

Issue 2: Did either Secretary of State need to give significant weight to, and give cogent reasons for departing from, the CCC's advice?

104. As is plain from the formulation of the second issue, and as was common ground before us, it is "parasitic" on the first issue. Therefore, for the reasons we have given above, it does not arise in the circumstances of this case. Nevertheless, since it is an important issue in its own right and we heard full argument about it, we shall address it here.

105. On the evidence before the court it is clear, as Ms Ward submitted, that SSEFRA was aware of the advice from the CCC. In paragraphs 74 to 77 of his witness statement, Mr Roff addresses the consideration that was given by that Secretary of State to the advice of the CCC in relation to diet change. In particular, he says, in paragraph 75, that "SSEFRA considered the CCC's advice during the subsequent development of the [Food Strategy] in relation to the delivery of the [Net Zero Strategy]."

106. The crucial question, as it seems to us, is whether the Secretary of State was under a duty to give that advice from the CCC "significant weight" and to give "cogent reasons" for departing from it, as is submitted on behalf of Global Feedback. Mr Wolfe observed that no reasons have been given in published documents for departing from that advice at all, let alone cogent ones. Ms Ward's fundamental argument on this issue is that the duty asserted simply did not arise in the first place.

107. As we have said, the CCC was established by section 32(1) of the Climate Change Act. Schedule 1 to that Act contains further provisions about the CCC. As paragraph 1 of Schedule 1 makes clear, the membership of the CCC must include people who have experience in or knowledge of a wide range of matters, such as business competitiveness and climate science. Mr Wolfe therefore submitted that it is clearly a body with expertise in this field, whose advice should be given significant weight by the Secretary of State.

108. In support of his submissions Mr Wolfe relied on what was said by the Court of Appeal in *R. (on the application of Wyatt) v Fareham Borough Council* [2022] EWCA Civ 983; [2023] Env LR 14. The main judgment was given by Sir Keith Lindblom, the Senior President of Tribunals, with whom Singh L.J. agreed. Males L.J. gave a concurring judgment. Mr Wolfe relies in particular on what was said by the Senior President of Tribunals at paragraph 9(4):

> "A competent authority is entitled, and can be expected, to give *significant weight* to the advice of an 'expert national agency' with relevant expertise in the sphere of nature conservation, such as Natural England (see the judgment of Sales L.J. in *Smyth*, at paragraph 84, and the first instance judgment in *R. (on the*

> *application of Preston) v Cumbria CC* [2019] EWHC 1362 (Admin) at paragraph 69). The authority may lawfully disagree with, and depart from, such advice. But if it does, it must have *cogent reasons* for doing so (see the judgment of Baroness Hale in *R. (on the application of Morge) v Hampshire CC* [2011] 1 W.L.R. 268 at paragraph 45, the judgment of Sales L.J. in *Smyth*, at paragraph 85, and the first instance judgment in *R. (on the application of Prideaux) v Buckinghamshire CC* [2013] Env. L.R. 32 at paragraph 116). And the court for its part will give appropriate deference to the views of expert regulatory bodies (see, for example, the judgment of Lord Justice Beatson in *R. (on the application of Mott) v Environment Agency* [2016] 1 W.L.R. 4338 at paragraphs 69 to 77)." (emphasis added)

109. It is important to place that passage in its proper context. *Wyatt* was concerned with regulation 63 of the Conservation of Habitats and Species Regulations 2017 **(**S.I. 2017 No. 1012) ("the Habitats Regulations"). Regulation 63(3) provided:

> "The competent authority must for the purposes of the assessment consult the appropriate nature conservation body and have regard to any representations made by that body within such reasonable time as the authority specifies."

Regulation 5 of the Habitats Regulations provided that, in this context, the "appropriate nature conservation body" is Natural England.

110. There was therefore an express duty in the Habitats Regulations to consult Natural England. It was for that reason that the Senior President of Tribunals said what he did at paragraph 9(4) in *Wyatt*. That is not the legal position in the present context. Section 13 of the Climate Change Act does not require the Secretary of State to consult the CCC when performing the duty set out in it.

111. Mr Wolfe sought to meet this difficulty in his submissions by pointing to the fact that the CCC has the power to give such advice, including in the context of section 13. He relied upon the provisions of section 10(1)(b) of the Climate Change Act. He also relied on what was said by Holgate J. in *Friends of the Earth* at paragraph 55, where he accepted the submission made on behalf of SSBEIS in that case, that sections 38 and 39 of the Climate Change Act "enabled the CCC to engage in ongoing dialogue with the Secretary of State and to respond publicly to documents he publishes, such as the [Net Zero Strategy]".

112. We do not doubt that the CCC does have the power to give such advice as it thinks fit in this context. It does not follow, however, that the Secretary of State is under a duty to take it into account, let alone that he is under a duty to give it significant weight or to follow it unless there are cogent reasons for departing from it. There is no express duty to that effect in the relevant legislation. And in our view it would be wrong for this court to impose such a duty in the absence of specific legislation to that effect.

113. As Ms Ward pointed out, there are a number of express provisions in the Climate Change Act in which the Secretary of State is required to obtain, or to take into account, the advice of the CCC before taking certain actions: for example, section 7(1)(a), which applies before the Secretary of State lays a draft of a statutory instrument before

Parliament containing an order under section 5(1)(c) (an order setting a target percentage) or under section 6 (an order amending a target percentage); and section 9(1)(a), which applies before the Secretary of State lays before Parliament a draft of statutory instrument containing an order under section 8 (an order setting a carbon budget).

114. It is therefore clear that where Parliament wished to impose a duty to obtain or take into account the advice of the CCC, it expressly did so in a number of provisions in the Climate Change Act. The fact that Parliament chose not to do so in section 13 is telling. We have come to the clear conclusion that the law does not impose on SSESNZ (or SSEFRA) the duties contended for by Mr Wolfe on behalf of Global Feedback.

115. Accordingly, we conclude that, even if the second issue had arisen in this case, it should be decided in favour of the Secretaries of State.

116. It also follows that there is no need for us to consider the third issue, relief.

Conclusion

117. For the reasons we have given, we dismiss this claim for judicial review.