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IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
ADMINISTRATIVE COURT
[2022] EWHC 3269 (Admin)



No. CO/3078/2022

Royal Courts of Justice

Tuesday, 6 December 2022

Before:

MRS JUSTICE LANG

B E T W E E N :

THE KING
on the application of
GLOBAL FEEDBACK LIMITED

Claimant

- and -

SECRETARY OF STATE
FOR ENVIRONMENT, FOOD AND RURAL AFFAIRS

Defendant

MR D WOLFE KC (instructed by Leigh Day) appeared on behalf of the Claimant.

MR M WESTMORELAND SMITH (instructed by the Government Legal Department) appeared on behalf of the Defendant.

J U D G M E N T

MRS JUSTICE LANG:

1 This is a renewed application for permission to apply for judicial review of the defendant's adoption of the Food Strategy on 13 June 2022. Permission was refused on the papers by Sir Ross Cranston, sitting as a High Court judge, on 13 October 2022.

Ground 1

2 The claimant submits that when adopting the Food Strategy the defendant failed to take account of Part 2 of the National Food Strategy Independent Review ("the Review"), published by Henry Dimbleby on 15 July 2021. In particular, the Review's identification of the greenhouse gas impacts of methane emissions arising from meat production, and the carbon benefits of eating less meat. In chapter 16, the Review proposed changes to the national diet to include a 30 per cent reduction in meat consumption.

3 The claimant submits that the advice and recommendations in the Review were obviously a material consideration. The Review was commissioned by the defendant, who stated that the Food Strategy would be informed by it. Also, the Review was advice from an expert and so the defendant had to give cogent reasons for not following it.

4 The claimant further submitted that it had a legitimate expectation that the Review's advice and recommendations would be taken into account, arising from the defendant's public statements and specific representations made to the claimant in a letter dated 14 July 2021, which recognised the contribution to greenhouse gas emissions made by the livestock and dairy sections and stated:

"This Government is wholeheartedly committed to listening to Henry Dimbleby's recommendations... and we will use these to inform our own Food Strategy White Paper."

5 In my judgment, Ground 1 is unarguable and has no realistic prospect of success for the reasons given by the defendant in his summary grounds of defence. The Review was clearly taken into account by the defendant; it is frequently referred to in the Strategy. There was a proposal to reduce meat eating by 30 per cent in the Review, as part of diet change to reduce emissions but it is notable that it was not included in the 14 formal recommendations.

6 As to the status of the Review, it was not undertaken by an independent expert body such as the Environment Agency or Natural England, which has a statutory duty to advise the decision-maker. The Review was commissioned by the defendant to inform the department's future strategy. So the legal principle that cogent reasons have to be given for not following expert advice (see *Wyatt v Fareham BV* [2022] EWCA 983 at [9]) does not apply in the circumstances of this case. There was no common law or statutory duty to give reasons for not adopting the advice and recommendations in the Review.

7 It is apparent from the evidence that the defendant did listen to the advice and recommendations in the Review and used them to inform the Food Strategy, as he had indicated that he would, but ultimately it was up to him to decide how to treat the contents of the Review.

8 In my judgment, the defendant did not make any representation which was capable of founding a legitimate expectation that he would adopt the advice and recommendations in the Review or give reasons for not doing so.

9 In deciding not to include diet change in the Food Strategy, the defendant properly took into account the policies and strategies which had already been agreed for reducing emissions from agriculture and land use. Proposals were submitted by DEFRA to the Secretary of State for Business, Energy and Industrial Strategy (“SSBEIS”) when the SSBEIS was setting the sixth Carbon Budget (“CB6”) in 2021. Dietary change was considered at that stage, but ultimately not pursued. Instead, the proposal was to reduce emissions through improved and innovative farming practices. Although the Climate Change Committee gave advice on the benefits of dietary change, DEFRA’s considered view was that a reduction in meat and dairy consumption was more likely to reduce UK imports from overseas and would not have the effect of reducing UK herd sizes. It concluded that other measures to reduce emissions and to deliver CB6 would be more effective. However, funding was secured for future research into dietary change for future consideration. I refer to the more detailed account of the proposers and the consideration given in the defendant’s summary grounds and skeleton argument.

10 The defendant was clearly entitled to rely on these conclusions when formulating his strategy, in the exercise of his judgment. Mr Wolfe complains that there is insufficient evidence, as opposed to submissions, in regard to this aspect of the case. I accept that the submissions made by Mr Westmoreland Smith, orally and in writing, accurately reflect counsel’s instructions, which had regard to the duty of candour, and I have no reason to doubt them. If permission were granted on this ground, the defendant has said it would adduce the evidence lying behind his submissions at a substantive hearing. I consider that the material I have is sufficient for permission stage.

Ground 2

11 Under Ground 2 (as amended), the claimant submits that the defendant or, alternatively, the SSBEIS, failed to comply with s.13 and s.14 of the Climate Change Act 2008 (“the 2008 Act”).

12 Section 13 requires the Secretary of State to prepare such proposals and policies as the Secretary of State considers will enable carbon budgets set under the 2008 Act to be met. Section 14 requires the Secretary of State to lay before Parliament a report setting out proposals and policies for meeting the carbon budgets for the current and future budgetary periods as soon as reasonably practicable after making an order setting the carbon budget for a budgetary period.

13 The claimant contends that the defendant and/or the SSBEIS was subject to the continuing duty under s.13 of the 2008 Act when he adopted the strategy, as the strategy was an unquantified policy within the meaning of the Net Zero Strategy published in October 2021 by the SSBEIS pursuant to s.14 of the 2008 Act. Such policies have to be scrutinised in accordance with the 2008 Act by the relevant minister (here the defendant) or the SSBEIS himself.

14 In my judgment, Ground 2 is unarguable and has no realistic prospect of success.

15 The Secretary of State, who fulfils the functions and discharges the duties in relation to carbon budgeting under the 2008 Act, is the SSBEIS (see para.69 to para.73 of the defendant’s skeleton argument). The carbon budgets that are set by the SSBEIS relate to the whole economy. They are comprised of a single overall budget for a period and are not divided up by sector or department. Only the SSBEIS is in a position to perform the s.13 duty by considering the effect of all proposals across all sectors of the economy and/or departments. Other Secretaries of State issuing their own departmental strategies at any particular time are not in a position to perform the s.13 duty and are not required by law to

do so. The strategy adopted by the defendant, which is the subject matter of this case, did not contain the policies and proposals of the Government for meeting carbon budgets under the 2008 Act.

- 16 In my view, it is not arguable that s.13 imposes a duty on the SSBEIS to assess all departmental proposals or strategies for their potential contribution to meeting carbon budgets prior to their adoption by other ministers, whenever that might be. That is not a tenable interpretation of the scope of s.13. I agree with Sir Ross Cranston that if Parliament had intended to impose such a wide-ranging obligation on the SSBEIS it would have used express language to this effect. Therefore, it is not arguable that the adoption of the strategy engaged s.13 of the 2008 Act.
- 17 The judgment of Holgate J in *R (Friends of the Earth Limited) v SSBEIS* [2022] EWHC 1841 (Admin) does not directly support the claimant's case. Holgate J expressly said at para.222 that his "reasoning and conclusions on, for example, the legal adequacy of information before the Secretary of State [on quantification] should not be treated as necessarily applying to compliance with s.13 at any point in time". The decision was focused on the discharge of the s.13 duty at the time when the SSBEIS was publishing a s.14 report.
- 18 The duty under s.14 is a duty on the SSBEIS to prepare and publish a single report at a specific point in time, namely, as soon as practicable after the SSBEIS has set a carbon budget. Section 14 does not impose a statutory requirement to provide supplementary reports on proposals and policies as they develop or as they are adopted. The defendant's strategy, in my view, was not a report made under s.14, and s.14 was not engaged.
- 19 The claimant made a late application to join the SSBEIS as a party to the claim, which Sir Ross Cranston rightly refused on the grounds that it was unnecessary as the defendant had addressed the relevant issues, and adding the SSBEIS as a party would simply require further work and incur further costs. I agree with Sir Ross Cranston's conclusion on this point for the reasons he gave.

Ground 3

- 20 Under Ground 3 the claimant submits that the Climate Change Committee's recommendation for quantified targets to reduce meat and dairy consumption was a material consideration which the defendant failed to take into account. Targets were set out in the Climate Change Committee's 2021 progress report and the point was raised again in its response to the Net Zero Strategy Report but the Committee's advice was not addressed by the Government or the defendant.
- 21 The claimant submits that as the Strategy was a policy or proposal that was subject to the duty under s.13 of the 2008 Act, the advice of the Climate Change Committee was obviously material. But even if s.13 was not engaged, it was an obviously material consideration on public law principles, including the fact that the Committee is the Government's statutory advisor.
- 22 In my judgment, Ground 3 is unarguable and has no realistic prospect of success. For the reasons I have already given under Ground 2, the Strategy was not a policy or proposal that was subject to the duty in s.13 of the 2008 Act.
- 23 Section 36 of the 2008 Act requires the Climate Change Committee to report annually on progress towards meeting carbon budgets and, by s.37 the SSBEIS must respond to those reports. These provisions did not impose any obligations on the defendant, either to give

particular weight to advice from the Climate Change Committee or to give reasons for disagreeing with it, when adopting the Strategy.

- 24 As to the public law obligation to have regard to obviously material considerations, I accept that the defendant did take into account the Climate Change Committee's advice, and did consider whether or not to introduce a target for the reduction of meat and dairy consumption (see para.7 to para.21 and para.26 to para.30 of the defendant's skeleton argument). In my view, it would be surprising if the defendant and his civil servants overlooked the Climate Change Committee's advice.
- 25 As I have already said, it was DEFRA's considered view that other measures to reduce emissions and to deliver CB6 would be more effective. I repeat the observations I made under Ground 1 as to the sufficiency of the defendant's evidence at this stage in the proceedings. In his role as Secretary of State, the defendant was entitled to exercise his judgment on these complex issues, and to reach a different view to that of the Climate Change Committee.

Conclusion

- 26 For the reasons I have given, permission to apply for judicial review is refused on all grounds.

CERTIFICATE

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This transcript has been approved by the Judge