

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT

Claim No. CO/4922/2017

Before the Hon. Mr Justice Garnham

B E T W E E N:

THE QUEEN
on the application of
CLIENTEARTH (No. 3)

Claimant

-and-

**(1) SECRETARY OF STATE FOR THE
ENVIRONMENT, FOOD AND RURAL AFFAIRS**
(2) SECRETARY OF STATE FOR TRANSPORT
(3) WELSH MINISTERS

Defendants

- and -

MAYOR OF LONDON

Interested Party



ORDER

UPON the Claimant having applied for judicial review of the Air Quality Plan for the United Kingdom published on 28 July 2017 ("the 2017 AQP");

AND UPON the Third Defendants being responsible for the 2017 AQP to the extent that it is a plan to achieve the relevant limit value in zones in Wales made under regulation 20(1) of the Air Quality Standards (Wales) Regulations 2010 (the "Welsh AQP" and "Welsh Regulations" respectively);

AND UPON the Third Defendants having accepted that the Welsh AQP does not satisfy the requirements of Directive 2008/50/EC ("the Directive") or the Welsh Regulations;

AND UPON the Third Defendants giving, and the Court accepting, an undertaking:

(1) to publish and commence consultation on a draft supplemental Welsh AQP which

satisfies the requirements of the Directive and the Welsh Regulations on or before 4pm on 30 April 2018, such publication to be accompanied by publication of relevant technical information (including relevant details of the modelling techniques and assumptions used); and

- (2) to draw up, publish and provide to the First Defendant a final supplemental Welsh AQP which satisfies the requirements of the Directive and the Welsh Regulations on or before 4pm on 31 July 2018 ("the final supplemental Welsh AQP").

AND UPON the First Defendant giving, and the Court accepting an undertaking, to notify the final supplemental Welsh AQP to the European Commission immediately upon receipt from the Third Defendants;

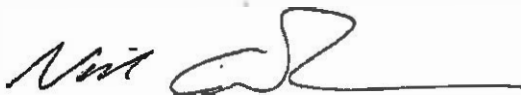
UPON HEARING Counsel for the Claimant, for the First Defendant and for the Third Defendants;

IT IS DECLARED THAT:

1. The 2017 Air Quality Plan is unlawful in that:
 - (a) in its application to the 45 local authority areas listed in Annex I to this Order, it does not contain measures sufficient to ensure substantive compliance with the Directive and the Air Quality Standards Regulations 2010 ("the English Regulations");
 - (b) in respect of the 45 local authority areas listed in Annex I to this Order, it does not contain the information required by Annex XV to the Directive and Schedule 8 to the English Regulations;
 - (c) it does not satisfy the requirements of the Directive or the Welsh Regulations in respect of Wales and therefore it contains no compliant AQP for Wales.
2. The 2017 AQP remains in force and should continue to be implemented, notwithstanding the adoption of the supplemental Welsh AQP pursuant to the Third Defendants' undertaking and to paragraph 3 below.

IT IS ORDERED THAT:

3. The First Defendant publish, and notify to the European Commission, a Supplement to the 2017 AQP containing measures sufficient to comply with the requirements of the Directive and English Regulations and containing the information required by Annex XV to the Directive and Schedule 8 to the English Regulations, on or before 4 pm on 5 October 2018.
4. In relation to the English AQP, there be liberty to apply on notice (a) for further or additional relief; (b) in relation to any issues as may arise in the course of the preparation of the Supplement and (c) as to the lawfulness of the final Supplement.
5. In relation to the supplemental Welsh AQP, there be liberty to apply on notice (a) for further or additional relief; and (b) in relation to any issues as may arise in the course of the preparation of the supplemental Welsh AQP.
5. The Third Defendants do pay the Claimant's reasonable costs of the claim against the Third Defendants, to be assessed on the standard basis if not agreed, such costs to be capped at £35,000 in any event in accordance with CPR 45.43.
6. Subject to paragraph 7 below, the First Defendant do pay the Claimant's reasonable costs of the claim against the First Defendant on the standard basis, to be assessed if not agreed, such costs to be capped at £35,000 in any event in accordance with CPR 45.43.
7. The Claimant do pay the First Defendant's reasonable costs of addressing the issue concerning the "5 cities" from 1 January 2018 to trial, on the standard basis, to be assessed if not agreed, such costs to be capped at £10,000 in any event in accordance with CPR 45.43.
8. The First Defendant's application for permission to appeal is denied.





Dated: 21 February 2018

By the Court


Annex I

Relevant local authority areas in England:

1. Portsmouth City Council;
2. Wakefield Metropolitan District Council;
3. Bournemouth Borough Council;
4. Bradford City Council;
5. Plymouth City Council;
6. Solihull Metropolitan Borough Council;
7. Wolverhampton City Council;
8. Bolsover District Council;
9. Leicester City Council;
10. Liverpool City Council;
11. Newcastle-under-Lyme Borough Council;
12. Oldham Metropolitan Borough Council;
13. Sandwell Metropolitan Borough Council;
14. Stoke-on-Trent City Council;
15. Walsall Metropolitan Borough Council;
16. Poole Borough Council;
17. Burnley Borough Council;
18. Peterborough Council;
19. Reading Borough Council;
20. Sefton Metropolitan Borough Council;
21. South Gloucestershire District Council;
22. Basingstoke and Deane Borough Council;
23. Blaby District Council;
24. Calderdale Metropolitan Borough Council;
25. Cheltenham Borough Council;
26. Dudley Metropolitan Borough Council;
27. Kirklees Metropolitan Council;
28. South Tyneside Metropolitan Borough Council;
29. Southend Borough Council;
30. Ashfield District Council;
31. Broxbourne Borough Council;
32. Chelmsford Borough Council;
33. Doncaster Metropolitan Borough Council;
34. Havant Borough Council;
35. North East Lincolnshire Council;
36. Sunderland City Council;
37. Warrington Borough Council;
38. Broxtowe Borough Council;

39. Luton Borough Council;
40. Oxford City Council;
41. South Ribble Borough Council;
42. Knowsley Metropolitan Borough Council;
43. Northampton Borough Council;
44. Rochdale Metropolitan Borough Council;
45. Dartford Borough Council.

IN THE HIGH COURT
APPLICATION FOR LEAVE TO APPEAL
TO THE COURT OF APPEAL (CIVIL DIVISION)

Title of case/action: THE QUEEN on the application of CLIENTEARTH (No. 3) v SECRETARY OF STATE FOR THE ENVIRONMENT, FOOD AND RURAL AFFAIRS and others	Action/case no. <u>CO/4922/2017</u>
Heard/tried before (insert name of Judge): Garnham J	Court no
Nature of hearing Final JR	
Date of hearing/judgement: 21 February 2018	
Results of hearing (attach copy of order): Attached	
Defendant's application for leave	Refused
Reasons for decision (to be completed by the Judge): 1. As to the ground challenging the substantive judgment, no properly arguable ground was advanced. In fact no discernible ground was advanced at all. In any event, the substantive judgment speaks for itself. 2. As to the challenge to the wide terms of the liberty to apply, it was not suggested (despite the point being raised by the court during the argument) that there was no power in the court to make the order. Accordingly, the issue turned on the exercise of discretion. For the reasons set out in the judgment on remedies, these were exceptional circumstances which justified a wide order. In particular EU law requires domestic courts to fashion an effective remedy, HMG had been in breach of the Directive for 8 years and this was the third unsuccessful attempt by the government to produce a compliant plan.	
Judge's signature:  23/02/2018	Note to the Applicant: When completed this form should be lodged in the Civil Appeals Office on a renewed application for leave to appeal or when setting down an appeal