IN THE HIGH COURT OF JUSTICE **Claim No. AC-2024-LON-002305**
KING'S BENCH DIVISION
PLANNING COURT

IN THE MATTER OF A CLAIM FOR JUDICIAL REVIEW

BETWEEN:

THE KING
-on the application of -
TRANSPORT ACTION NETWORK LIMITED)

Claimant

and

SECRETARY OF STATE FOR TRANSPORT

Defendant

DEFENDANT'S SKELETON ARGUMENT FOR FINAL HEARING ON 9 AND 10 APRIL 2025

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*References to the Core Bundle are in the form **[CB/XX]** and Supplemental Bundle are in the form **[SB/XX]** where 'XX' is the internal page number. References to Mr Todd's Second Witness Statement (not included in CB or SB) are in the form **[T2/YY]** where 'YY' is the paragraph number. References to the Claimant's Skeleton Argument are in the form **[CSA/ZZ]** where 'ZZ' is the paragraph number. An agreed chronology, list of issues and recommended essential pre-reading will be provided by the parties.*

A. Introduction

1. By this claim, the Claimant challenges the Defendant's decision to designate the National Networks National Policy Statement (**"NNNPS 2024"**), taken on 24 May 2024 (**"the Decision"**), following a review of the then extant National Policy Statement for National Networks (**"NPSNN 2015"**)[1] pursuant to s.6 of the Planning Act 2008 (**"PA 2008"**).

2. The NNNPS 2024 sets out a policy framework for determining applications for development consent for those national road, rail, and strategic rail freight interchange developments which qualify as Nationally Significant Infrastructure Projects ("**NSIPs**") under the PA 2008. NSIP road development affects the Strategic Road Network ("**SRN**") which comprises motorways and some A roads.[2] NSIP road development includes building

[1] Laid before Parliament in December 2014 and designated in January 2015.
[2] Where National Highways is the relevant highway authority.

new roads and carrying out improvements on existing roads on the SRN. The NNNPS 2024 is a planning policy document for such projects. It does not, and does not purport to, set out all of Government's policies on transport or decarbonising the transport network. These matters are dealt with in a range of other policies including (in relation to decarbonisation) but not limited to, the Defendant's Transport Decarbonisation Plan ("**TDP**") and the Secretary of State for Energy Security and Net Zero's ("**SSENZ**") policies in the Carbon Budget Delivery Plan ("**CBDP**")).

3. The Claimant's challenge seeks to rehearse various points made by it in the consultation and other arguments relating to the Claimant's desire for government policy to take a different approach to matters of climate change. Although these points are advanced as alleged legal errors, in reality they are challenges to the merits of the policies in the NNNPS 2024 and do not form legitimate grounds of judicial review. The NNNPS 2024 was adopted following a lawful consultation process, and matters considered relevant that fell within the scope of the consultation were conscientiously considered (including the points made by the Claimants relating to decarbonisation policies and the need case). The Claimant's submissions fail to engage with that basic point. Instead, its case has evolved and presented somewhat of a moving target, with the errors now alleged having developed significantly since the claim was first advanced in the Statement of Facts and Grounds. As now advanced in its skeleton argument, it appears the Claimant's main complaint is that the Defendant did not agree with the Claimant's points on need for NSIP road development and the question of delivery risk to non-planning policies and a complaint that the Defendant relied on existing government transport policy, rather than the Claimant advancing any sustainable legal error.

4. The Defendant submits that each of the three grounds should be dismissed. In summary:

    a. <u>Ground 1:</u> Under this ground the Claimant alleges that there was an unlawful failure conscientiously to consider consultation responses advocating for modal shift and demand management. This ground is misconceived both in principle and on the facts. In relation to principle, wider transport policy (in particular those matters upon which the Claimant seeks to rely) is addressed in other government policies. The Claimant acknowledges that the NNNPS 2024 does not set out general transport policy (Claimant's Reply, para 4 **[CB/96]**) but fails to engage with what

this means for its claim. The Defendant was entitled to differentiate between arguments raised by the Claimant that were considered to within the scope of NSIP development policy and those which were not. As Dr Catherine Miller has explained, points raised by the Claimant relevant to the statement of need were taken into account and, in some cases, the NNNPS 2024 was updated to account for them. In relation to need, the Claimant wrongly conflates conscientious consideration with a duty to agree with the points made. The Defendant, having considered the consultation responses, was entitled to regard the Claimant's desires about wider transport policy (including challenges to those wider policies) as outside the scope of the NNNPS 2024.

b. Ground 2: this ground is based on a basic misunderstanding and/or mischaracterisation of the judgment of Sheldon J in *R (Friends of the Earth) v Secretary of State for Energy Security and Net Zero* [2024] EWHC 995 (**"*Friends of the Earth*"**). The Court in that case did not make any findings as to the delivery risk of the TDP. The Defendant was not legally required to consider delivery risk for the TDP or CBDP policies more generally. However, in designating the NNNPS 2024, the Defendant did in fact address his mind to delivery risk of the TDP, along with the decision in *Friends of the Earth* and reached a judgment that he could designate the NNNPS 2024. That was both a judgment he was entitled to reach and one in respect of which no sound basis for challenge is identified. Further, there is also no basis for alleging some sort of unlawful failure to give reasons for not including policies on demand management and modal shift. Any duty to give reasons is a duty to give reasons for the policies in the NNNPS. That is what the Defendant has done. There is no requirement to give reasons about other wider transport policy or strategy addressed elsewhere. Proper, adequate, and intelligible reasons were given in the response to the consultation and other decision-making documents in any event.

c. Ground 3: the minor changes to the policies on the assessment of carbon emissions (to which reference is made) were not material changes on any proper reading of them and the Defendant was entitled to treat them as such. They were simply included for clarity and to reflect the current legal position with regard to statutory carbon targets. There was no obligation to re-consult under the PA 2008 and the Defendant was entitled to designate the NNNPS 2024 without carrying out further

consultation. The Claimant is wrong to allege that the changes were not brought to the Minister's attention: they were identified in the briefing material and were, in any event, there to be seen as between the draft and final versions of NNNPS 2024 (the Defendant saw both).

B. Factual Background

5. The factual background to this case is set out in two statements of Dr Catherine Miller (**"CM/WS1"** at **[CB/133]** and **"CM/WS2"** at **[CB/155]**). The review of the NPSNN 2015 was within the remit of Dr Miller's team.[3] A key summary of the background is at CM/WS1, paras 9-43 **[CB/135-143]**.

6. The draft NNNPS 2024, including the statement of need and its overall policy objectives, were prepared with input from Ministers. It was subject to an Appraisal of Sustainability (**"AoS"**) incorporating the Strategic Environmental Assessment (**"SEA"**) requirements under the SEA Regulations,[4] a Habitats Regulation Assessment,[5] public consultation, Parliamentary scrutiny (including an inquiry by the Transport Select Committee (**"TSC"**)), and a debate and vote in the House of Commons.

7. By way of summary chronology only:

    a. On 22 July 2021 the Defendant published a written ministerial statement announcing the review of the NPSNN 2015 on the basis of, among other things, developments in climate change law and policy **[SB/12]**.

    b. Between January 2022 and April 2022 initial work took place, including discussions with Ministers, as to the overall objectives of the NNNPS 2024 and the statement of need. This included a round of stakeholder engagement workshops held in January 2022, one of which the Claimant attended.[6]

    c. Between 28 March 2022 and 2 May 2022, a scoping report for the purposes of SEA was subject to consultation with statutory consultees (e.g. Environment Agency, Natural England, and Historic England), and shared with environmental groups and

[3] CM/WS1, para 1 **[CB/133]**.
[4] Environmental Assessment of Plans and Programmes Regulations 2004 (SI 2004/1633).
[5] Pursuant to the Conservation of Habitats and Species Regulations 2017 (SI 2017/1012).
[6] CM/WS1, para 11 **[CB/136]**.

organisations such as the Claimant. The Claimant responded to this consultation **[SB/22]**.

d. A consultation draft of the revised NNNPS (**"dNNNPS"**) **[SB/216]**, draft AoS (**"dAoS"**) **[SB/154]**, and draft HRA were published and consulted on between 14 March 2023 and 6 June 2023.[7] The Claimant responded to this consultation **[SB/304]**.

e. The dNNNPS was then updated in light of the consultation responses and the report from Parliament's TSC dated 20 October 2023. That revised draft was published on 6 March 2024 (**"rNNNPS"**) **[SB/460]** and a debate in the House of Commons was held on 26 March 2024, with the House of Commons approving it. The dAoS was also updated and the AoS was published on 6 March 2024 **[SB/708]**.

f. The rNNNPS was further considered by the expert consultants appointed by the government to carry out the AoS. They concluded that none of the amendments made following consultation would make a material difference to the results of the AoS overall, and that the AoS scores for environmental impacts were also unlikely to change.[8]

g. Ministers were briefed on the rNNNPS, including the conclusions of the AoS, before a decision to designate was made. A briefing on 6 February 2024 **[SB/456]** attached an Environmental Principles Policy Statement assessment (**"EPPS"**) **[SB/598]**. Among other things, the EPPS identified with regard to carbon emissions:[9]

    i. That Ministers could rely on the TDP to deliver reductions in carbon emissions in the transport sector and that carbon budgets were still the main mechanism for delivery of the UK's commitments on net zero and climate change objectives (EPPS, para 13 **[SB/606]**).

[7] CM/WS1, para 38-40 **[CB/142]**.
[8] CM/WS1, para 41-43 **[CB/142-143]**.
[9] This section of the EPPS began by noting at para 9 **[SB/605]**: *"*The public consultation elicited a number of responses on this point, including Greenpeace and Transport Action Network, who disputed the Statement of Need set out in the draft NNNPS and challenged the government's approach to achieving net zero. Both organisations stated that the government should put in place policies to reduce demand for car transport and that this should have been considered as one of the alternatives under the AoS. Given the high profile of this subject, additional information is provided below in addition to the AoS which covers all the environmental impacts."

ii. Specific reference to the carbon assessment carried out for the purposes of preparing the draft Third Road Investment Strategy (**"RIS3"**), which sets the funding for improvements to the strategic road network, including NSIP development.[10] The assessment of the possible schemes then under consideration for the draft RIS3, carried out in October 2023 concluded that the carbon emissions resulting from scheme development, and the additional traffic from the capacity that this creates, forms only a small proportion of the overall SRN tailpipe carbon emissions, and the existing (and future) predicted baseline traffic forms the vast majority of emissions now and in future years (EPPS, para 12 **[SB/606]**).

h. Ministers were briefed again on 23 April 2024 and officials recommended that Ministers decide to designate the rNNNPS.[11]

i. Following the judgment in *Friends of the Earth*, Ministers were briefed again on 13 May 2024 **[SB/692]** (updating the earlier 23 April 2024 submission) and advised that (amongst other things): there remained high confidence in delivery of the TDP; that the Zero Emission Vehicle Mandate (**"ZEVM"**) (which delivers significant reductions in carbon emissions) had come into force on 3 January 2024; that carbon emissions from the construction and operation of the SRN represented a small proportion of overall UK domestic emissions; and that the rNNNPS contained policies ensuring carbon emissions are reduced as far as possible and consent should be refused where an individual scheme has an impact on compliance with carbon budgets. Officials advised that *Friends of the Earth* was not a reason to pause designation of the rNNNPS **[SB/693, 694]**.[12]

j. The NNNPS 2024 was designated under the PA 2008 on 24 May 2024 **[SB/696]**.[13]

8. Further detail is set out below in response to the three grounds of challenge advanced by the Claimant.

C. Legal Framework

Planning Act 2008

[10] CM/WS1, para 60-63 **[CB/147-148]**.
[11] CM/WS1, para 64 **[CB/149]**.
[12] CM/WS1, para 64 **[CB/149]**.
[13] CM/WS1, para 65 **[CB/149]**.

9. The PA 2008 sets out the framework for granting development consent for NSIPs. Part 2 governs the preparation and publication of National Policy Statements (**"NPSs"**). Section 5(1) of the PA 2008 gives the Defendant the power to designate a statement as a NPS for the purposes of the PA 2008. The background to the PA 2008 and the process of designating NPSs was set out by the Supreme Court in *R (Friends of the Earth Ltd) v Heathrow Airport Ltd* [2020] UKSC 52 at [19]-[38].

10. Section 5(3) of the PA 2008 provides that an NPS may only be designated if an appraisal of the sustainability of the policy in the statement has been carried out. Section 5(4) of the PA 2008 provides that an NPS can only be designated under s.5(1) if the consultation and publicity requirements in s.7, and the Parliamentary requirements in s.9, have been complied with.

11. Section 5(7) of the PA 2008 requires an NPS to "*give reasons for the policy set out in the statement*". The reasons "*must (in particular) include an explanation of how the policy… takes account of Government policy relating to the mitigation of, and adaptation to, climate change*": s.5(8). The reasons required are the rationale for making the policy; there is neither a requirement to provide reasons for making a specific decision (including for rejecting points made in the consultation), nor a requirement to refer to every relevant consideration taken into account: *R (Spurrier) v Secretary of State for Transport* [2019] EWHC 1070 (**"*Spurrier*"**) at [113]-[123]. The test when considering the adequacy of reasons under s.5(7) of the PA 2008 is not the same as that provided for in *South Bucks DC v Porter (No.2)* [2004] UKHL 33 (see *Spurrier* at [114]-[115] and [118]-[119]).[14]

12. Review of existing designated NPSs is provided for in s.6 of the PA 2008. After such a review the Secretary of State must either amend the relevant statement, withdraw the statement's designation, or leave the statement as it is: s.6(5). Section 6(7) provides that an NPS may only be amended if the consultation and publicity requirements in s.7, and the Parliamentary requirements in s.9, have been complied with in relation to the proposed amendment.

13. Consultation is provided for in s.7 of the PA 2008. The Secretary of State is required to carry out such consultation and publicity as they think appropriate and must also consult

[14] See also *R (Siraj) v Kirklees Metropolitan Council* [2010] EWCA Civ 1286. In that case Sullivan LJ accepted at [14] (and applied at [24]) that the then obligation to give 'summary reasons' when granting planning permission should not be equated with the duty in *Porter*.

such persons and such descriptions of persons as may be prescribed. Section 7(6) requires the Secretary of State to have regard to the responses to the consultation and publicity in deciding whether to proceed with the proposal.

14. Section 6A of the PA 2008 provides that the consultation and publicity requirements set out in s.7 are to be treated as having been complied with in relation to a statement or proposed amendment if:

> "(a) they have been complied with in relation to a different statement or proposed amendment ("the earlier proposal"),
>
> (b) the final proposal is a modified version of the earlier proposal, and
>
> (c) the Secretary of State thinks that the modifications do not materially affect the proposals as set out in the earlier proposal."

15. The functions of ss.5 and 6 PA 2008 must be exercised "with the objective of contributing to the achievement of sustainable development": s.10(2) of the PA 2008. In doing so, the Secretary of State "must (in particular) have regard to the desirability of – (a) mitigating, and adapting to, climate change; (b) achieving good design": s.10(3).

Challenges to policy

16. The courts will not trespass into the merits of a particular policy, save on irrationality grounds. A challenge to planning judgment on the grounds of irrationality is a "particularly daunting task": *Newsmith Stainless Steel Ltd v Sec. of State for the Environment, Transport and Regions* [2001] EWHC Admin 74 at [8].[15] Similarly, the greater the policy content of a decision: *"*…the more hesitant the court must necessarily be in holding a decision to be irrational…": see *R v MOD ex parte Smith* [1996] QB 517 at p.556 *per* Sir Thomas Bingham MR.

17. The standard of review the courts will adopt depends on the particular strand of policy that is being challenged, the nature of any right or interest it seeks to protect, the process by which the decision under challenge was reached, and the nature of the ground of challenge: *Spurrier* at [151]. As was later held in *Spurrier* at [168]:[16]

> "However, we stress that the degree of scrutiny will be necessarily dependent upon the circumstances of the particular challenge. Some of the issues raised in respect of some

[15] The principles in that case were held to apply to challenges to NPSs in *Spurrier* at [172].
[16] See also *R (Fighting Dirty) v Environment Agency* [2024] EWHC 2029 (Admin) at [34(1)]: "*Whether the function is legislative can point towards a lower intensity [of review]. The political, policy-laden, complex or predictive qualities of the decision will also do so*".

of the grounds of challenge (e.g. noise impact issues) have been specifically addressed in the Parliamentary process, notably in the report of the Transport Committee ("Airports National Policy Statement" HC 548 – 23 March 2018) and the Secretary of State's published response to that (CM 9624 – June 2018). Moreover, they have formed part of an overall judgment which has involved balancing those considerations against the national economic interest. We see the force in the proposition that the courts should apply "considerable caution" when reviewing such matters (see paragraph 161 above)."

18. An enhanced margin of appreciation applies to matters of scientific and technical judgment: *R (Mott) v Environment Agency* [2016] EWCA Civ 564. This is true of political judgment: see *Spurrier* at [149] and [176]-[179].

Material considerations

19. It is very well-established that it is insufficient for a claimant to simply say that a decision-maker failed to take into account a material consideration. There is a distinction between material considerations which a decision-maker may take into account and must take into account.

20. To demonstrate an error of law, a claimant must show that the decision-maker was expressly or impliedly required by the legislation to take a particular consideration into account when they did not, or that, in the circumstances of the case, the matter was so obviously material that it was irrational for the decision-maker not to have taken it into account: *R (Friends of the Earth Ltd) v Sec. of State for Business, Energy and Industrial Strategy* [2022] EWHC 1841 (Admin) at [200].

21. Where a decision-maker turns their mind to a material consideration, they may decide to give that consideration no weight. Weight is a matter for the decision-maker which may only be challenged on rationality grounds: see e.g. *Tesco Stores Ltd v Secretary of State for the Environment* [1995] 1 WLR 759 at 780.

Consultation

22. As set out above, s.6A of the PA 2008 does not require re-consultation on amendments to a draft NPS where the Secretary of State considers "the modifications do not materially affect the proposals as set out in the earlier proposal". It is clear from the statute that the question of what is and is not material is a matter of judgment for the decision-maker.

23. The test in s.6A of the PA 2008 reflects and codifies well-established principles in common law, namely that there is no general duty to re-consult on policies that have previously been

consulted on absent material changes in circumstances, particularly where changes are made in response to consultation responses: see *R (Smith) v East Kent Hospital NHS Trust* [2002] EWHC 2640 (Admin)).

24. The principles applicable to a lawful consultation are well-established: see *R (Moseley) v Haringey LBC* [2014] UKSC 56 at [25]-[26]. Those principles apply to consultation responses that are within the scope of the consultation carried out, applying the standard of what a reasonable reader considering the consultation document would have understood: *Stephenson v Secretary of State for Housing, Communities and Local Government* [2019] EWHC 519 (Admin) at [44] and [52].

25. In *The Electronic Collar Manufacturers Association v Secretary of State for Environment, Food and Rural Affairs* [2019] EWHC 2813 (Admin) (**"*ECMA*"**) Morris J provided guidance on the proper approach to "conscientious consideration". He noted at [151] that there "is no obligation to consider each and every specific item of detail". At [152] he then held:

> "152. As to the information placed before the decision-maker, the decision-maker must know enough to ensure that nothing that is necessary, because legally relevant, for him to know is left out of account. But there is no requirement that he must know everything that is relevant. The claimant must establish that a matter was such that no reasonable decision-maker would have failed in the circumstances to take it into account as a relevant consideration… To this extent, the *Coughlan* (4) requirement is based on a *Wednesbury* approach."

26. As to whether a consultation is unlawful, "[t]he test is whether the process was so unfair as to be unlawful… [which] is likely to be based on a factual finding that something has gone clearly and radically wrong": *R (Baird) v Environment Agency* [2011] EWHC 939 (Admin) at [51]. That question is to be resolved having regard to the nature of the consultation exercise, which in this case was a proposal to adopt a policy document (see *Spurrier* at [127], [134] and [136]-[137] and *Moseley* at [38]-[39]).[17]

Senior Courts Act 1981

27. Section 31(2A) of the Senior Courts Act 1981 (**"SCA 1981"**) provides:

> *"The High Court –*

[17] The Claimant seeks to rely on *R (Montpelliers & Trevors Association) v City of Westminster* [2005] EWHC 16 (Admin) and *R (Draper) v Lincolnshire CC* [2014] EWHC 2388 (Admin) but these cases are not cases involving the formulation of national policy.

(a) must refuse to grant relief on an application for judicial review…

if it appears to the court to be highly likely that the outcome for the applicant would not have been substantially different if the conduct complained of had not occurred."

28. The proper approach to the test in s.31(2A) has recently been summarised in *R (Cava Bien Ltd) v Milton Keynes Council* [2021] EWHC 3003 (Admin) at [52]-[53].

29. Two recent cases have considered s.31(2A) in the context of consultation challenges: *R (The Police Superintendents' Association) v HM Treasury* [2021] EWHC 3389 (Admin) (**"*PSA*"**) and *R (HPSPC) v Secretary of State for Education* [2022] EWHC 3159 (Admin) (**"*HPSPC*"**).[18] In both those cases, the existence of a preferred policy position, the fact that the content of views expressed in a consultation had been considered as part of the decision-making process and the ultimate reasons for the decision were all considered to be relevant factors justifying refusal of relief.

D. Ground 1: Alleged unlawful consultation on the draft NNNPS 2024

Introduction

30. As a matter of principle, the Claimant is wrong to assert that, interpreted objectively, the scope of the consultation on the dNNNPS extended to transport policy matters of demand management and modal shift. However, the Claimant is also wrong to allege, in any event, that consultation responses advocating for these matters were not conscientiously considered and that the Government Response to Consultation (**"the Government Response"**) incorrectly rejected calls for such policies on the basis that they were outside the scope of the consultation. The Claimant's allegations are based on an unfair reading of the documents and a basic misapplication of the law.

31. Further, the Claimant has not, until very recently, sought to identify with any precision the matters it alleges were not conscientiously considered. Even so, and in any event, a fair reading of the Claimants' consultation response reveals that many of the points now advanced were not stated clearly in the response, nor would it have been obvious to the reasonable reader that those points were relevant to the need case, or some other point. The Claimant's arguments should be considered with that important context in mind.

Scope of the consultation

[18] While no unlawfulness was ultimately found in *HPSPC* (see [157]-[160]), Hill J went on to consider s.31(2A) and considered it would have applied to the case in any event.

32. First, the Claimant fails to address properly the nature of the NNNPS 2024: it is a planning policy document setting the framework for decision-making on NSIP development, rather than a document setting out other transport policies or strategies of a more general scope. This basic point would necessarily be at the forefront in the mind of the putative reasonable reader interpreting the scope of the consultation on the dNNNPS in light of the relevant statutory scheme (applying the principles in *Stephenson*). Tellingly, at no point in the "*Ground 1*" section of its skeleton argument does the Claimant recognise this simple fact.

33. The scope of the consultation was made clear from the outset in the consultation description **[SB/296]**:

> "The principal purpose of this consultation is to identify whether the draft revised national policy statement is fit for purpose. This means whether it provides a suitable framework to support decision making for nationally significant road, rail and strategic rail freight interchange projects."

34. It is plain on the face of these words,[19] but also by reference to the purpose of any NPS made under the PA 2008, that the purpose of the consultation was to seek views of the fitness of dNNNPS as a planning policy framework document for NSIPs. That is whether the policy supports "decision making for nationally significant infrastructure"; it did not invite responses on general transport policy, nor was it required to do so. Nor, indeed, did it invite criticisms and after the event commentary on those policies.

35. The Claimant seeks to argue that the consultation was wider (although the precise scope of what is alleged remains unclear):

    a. At **[CSA/37]** the Claimant makes extensive reference to the statement of need in the dNNNPS. However, the fact that the NNNPS acknowledged modal shift as relevant to the need case does not assist the Claimants. The Defendant considered modal shift in the context of the need case (see further below). Nonetheless, he was entitled to conclude that broader points about transport policy generally were outside of the scope of the consultation. Given the terms of the consultation, the Defendant was clearly not seeking views on the merits of the wider transport policies referred to in the draft statement of need. Identification of where modal

[19] At **[CSA/36]** the Claimant omits the second sentence of this quotation. That second sentence is important as it makes clear that the relevant question was whether the dNNNPS provided a suitable framework for NSIP decision-making: "This means whether it provides a suitable framework to support decision making for nationally significant infrastructure road, rail and strategic rail freight interchange projects." **[SB/296]**

shift matters are dealt with in other policy does not have the effect of bringing wider transport strategy within the scope of the consultation.

b. The Claimant also seeks to rely on the consultation questions at **[CSA/38]**. None of these questions invites comment on the underlying general transport policy set out and explained in the dNNNPS. Each question sought responses on whether the dNNNPS was sufficiently detailed: (a) so as to be workable at each stage of a development consent application (Q4); (b) to explain the need for developing national networks (Q5); (c) as to carbon and wider environmental targets in the context of NSIP decision making (Q12); and, (d) on the adequacy of the AoS (Q16)[20].

36. It is clear to any reasonable reader that the scope of the consultation was rightly on the fitness for purpose of the dNNNPS as a planning policy document setting the framework for decision-making on NSIP development (per *Stephenson*), rather than other policies or strategies of more general scope. This is a point that appears to be acknowledged by the Claimant (see Reply, para 4 **[CB/96]**), but nonetheless it has failed clearly to distinguish between wider transport strategy matters and matters which properly fell within the scope of the consultation.

The Claimant's consultation response

37. Before turning to the detail of what the Claimant now alleges was wrongly dismissed as outside the scope of the consultation (as now set out in Mr Todd's Second Witness Statement), it is pertinent to begin by looking at the consultation response in its entirety **[SB/304]**.

38. It is a wide-ranging consultation response dealing with a host of transport policy-related issues (which the Court is invited to read in full). It makes no attempt to confine itself to the scope of the consultation on the dNNNPS. Given the Claimant now acknowledges the consultation did not invite replies on transport policies and strategies generally, the Claimant must necessarily accept that a lawful analysis of its consultation response permitted a sifting exercise to identify those aspects of the response which were considered

[20] For the avoidance of doubt, consultation responses on reasonable alternatives in the AoS were considered, see summary of responses at 2.86, 2.87 and the Government's Response at 2.89. An alternative reducing demand for the car was rejected because it was not reflective of current government policy **[SB/676-677]**.

to fall within the scope of the consultation.[21] Further, and in any event, as set out in *ECMA*, it is not a requirement for "conscientious consideration" that there be a consideration of "each and every specific item of detail" or that the Defendant must approach the task as if he was writing a decision letter following a public inquiry (*Spurrier* at [135]-[137]). It also does not necessarily follow that the decision-maker must *"know every everything that is relevant"*. The judgments as to what were and were not within scope were judgments reached by experienced officials, the Defendant was briefed on matters that were material and the standard of review is *Wednesbury* (see *ECMA* at [152]).

Consideration of modal shift and demand management

39. As is explained in Dr Miller's second witness statement (CM/WS2, para 28-35 **[CB/162-164]**, consultation responses advocating for different approaches to the statement of need were conscientiously considered, with updates made to the final NNNPS 2024 in certain respects. Officials within the Department for Transport were entitled to reach a judgment as to matters which were considered within scope of the NNNPS 2024 as a planning policy document and matters which related to wider transport strategy (see *ECMA* above).

40. The Claimant now seeks to place particular emphasis on aspects of its consultation response which criticised the statement of need. In those aspects of the response, the Claimant advocated modelling a wider range of scenarios to reflect what it considered to be current environmental commitments and sought to propose modal shift as a solution to congestion problems on the network. The Claimant also advocated against further road building. As explained by Dr Miller, the statement of need seeks to address a range of problems on the SRN, not limited to congestion and does not seek to cater for any particular level of traffic growth (this answers the contention at **[CSA/40]** that the impact of TDP policies is relevant to traffic forecasts). The points raised by the Claimant relevant to the statement of need were taken into account, conscientiously considered and responded to in the Government Response at para 2.22 **[SB/659]**:

> "Following consultation, the government remains confident that the revised NNNPS sets out an appropriate needs case for developing strategic road and rail infrastructure and that development may be needed to respond to a wide variety of challenges which national networks may face. While other interventions will support effective use of the SRN (and local roads), these may not be sufficient in addressing specific issues at

[21] This distinguishes the facts of this case from *Stephenson* where responses were not considered at all and excluded from the material presented to the Minister.

particular locations. In light of consultation remarks relating to predict and provide, the revised NNNPS has been updated to refer to the Common Analytical Scenarios used in the National Road Traffic Projections other than the core scenario, focusing on scenarios which have forecast lower levels of traffic growth than the core scenario. This is not intended to provide a "prediction" of traffic growth; instead the inclusion of these scenarios suggests that traffic will continue to grow to some extent even under lower growth scenarios. The government is clear that the draft NNNPS is not based on a predict and provide model - it has not identified a specific level of traffic growth nor has it identified a volume of development necessary to meet that growth. The revised NNNPS has been updated to make that position more explicit…"

41. At **[CSA/41]** the Claimant refers to para 2.9 and 2.21 of the Government Response (see below) and asserts that these make clear the responses were not conscientiously considered.[22] This is incorrect, as is clear from Dr Miller's second statement and para 2.22 of the Government Response above, which is a clear example of the legitimate sifting process carried out by the Defendant's officials. The fact that the Defendant decided not to model a wider range of traffic scenarios does not mean consultation responses were not considered (cf **[CSA/44]**); it is simply that the Defendant did not agree that consideration of additional scenarios was necessary for the reasons given.

42. As to points made about wider transport policy: the Government's position that modal shift and wider transport policies cannot address all issues on the SRN (and therefore do not undermine the need case) is also set out in terms in the NNNPS 2024 itself at para 3.42-3.45 **[CB/202-203]**. In particular, it is made clear that policies to improve the local road network (such as active travel and public transport use) may impact on demand for the SRN but these interventions: "may not be sufficient to address all the challenges of the SRN and may require specific interventions brought forward under the NSIP regime in specific locations in order to address those challenges."[23] The Claimant dismisses this as a comment relating to the local road network, but, read fairly and as a whole, it is a wider point explaining that congestion is not the only focus of the NNNPS 2024.

[22] By reference to those paragraphs the Claimant says they "*make clear that responses were <u>not</u> conscientiously considered by the Minister insofar as they advocated an NNNPS reflecting in its SoN the imperatives of modal shift and demand management*".

[23] Which, ultimately, is how those matters identified at **[T2/4.1]** were taken into account. It is incorrect to say that these matters were not considered.

43. However, other aspects of the Claimant's consultation response related to wider transport policy matters which the Defendant was entitled to treat as such when dealing with NNNPS 2024 and NSIP planning policy document. For example:

    a. Throughout the Claimant's consultation response there are calls for policy measures to improve public transport and promote active travel (e.g. **[SB/310]** – albeit without specifics as to what these might be) and submissions related to a perceived failure to reflect policies in the TDP in the dNNNPS (see e.g. [**SB/309, 319, 321**]). As Dr Miller explains, commitments to active travel in the TDP relate to short urban journeys and not travel on the SRN (see CM/WS2, para 26 **[CB/161]**)[24]. These policies in respect of active travel and bus use are dealt with through other government policy (see CM/WS1, para 75 **[CB/152]**; CM/WS2, para 40 **[CB/166]**; and, NNNPS 2024, para 3.42 **[CB/202]**). In any event, the NNNPS 2024 clearly explains that implementing these types of policy on the local road network are insufficient to address specific issues on the SRN (para 3.42-3.45 **[CB/202-203]**).

    b. The Claimant's consultation response included calls for demand management, which relates to measures seeking to discourage car use which are principally fiscal in nature such as road user charging (see **[SB/308, 309 and 310]**). Fiscal matters are ultimately for HM Treasury as made clear in the Department for Transport's evidence to the Transport Select Committee (CM/WS2, para 26, **[CB/161-162]**; **[SB/395]**). At the relevant time, demand management did not form part of government policy (CM/WS, para 26, 41, **[CB/161-162, 166]**).

    c. At **[SCA/41-43]** the Claimant persists in asserting that there was no conscientious consideration without engaging with what the Defendant actually did. As has already been addressed above, the Defendant was entitled to sift the Claimant's consultation response. The response was conscientiously considered (in contrast to *Stephenson* where responses were not considered at all) and reasons for rejecting points were set out in the Government Response at para 2.9-2.12 **[SB/655-656]**, 2.21 **[SB/659]**and 2.50 **[SB/669]** and reasons why NSIP development is still needed,

[24] Mr Todd refers to the Foreword to the TDP, but the specific policy commitment is that active travel should make up at least half of all journeys "*in towns and cities*" (which is referred to in terms in NNNPS 2024 paragraph 2.6).

notwithstanding existing wider transport decarbonisation measures, are given in the NNNPS 2024 itself at para 3.42-3.45 **[CB/202-203]**.

d. Finally, to the extent that the Claimants seeks to argue that these matters were relevant because the NNNPS 2024 somehow constrains the ability of the Defendant to encourage demand management and modal shift in the future, that is incorrect (**[CSA/6**]). Nothing in the NNNPS 2024 seeks to limit decisions on wider transport policy and in fact, the policy recognises the value of such measures to ensure effective use of road capacity (see 3.42-3. 45 **[CB/202-203]**).

44. The Defendant therefore was entitled to distinguish between those matters which he considered to be for the NNNPS 2024 and those matters which were not, properly being matters of judgment for the Defendant (in line with *ECMA* and the nature of the consultation exercise).[25] This is clear from a fair reading of the Government Response, bearing in mind the diffuse nature of the response made by the Claimant and its own failure to distinguish between planning policy and other general transport policy.

45. It is clear from the Government Response that this legitimate exercise was carried out and reasons were given for treating such issues of modal shift and demand management as matters of general transport strategy as outside of the scope of the NNNPS 2024. In particular:

- Para 2.9 of the Government Response **[SB/655]**:

  "We welcome the valuable comments received through the consultation process, which raised a number of important comments and concerns. A number of these concerns related to the role of NNNPS and its ability to address wider transport concerns such as modal shift and public transport. The NNNPS's purpose and function is to provide guidance and clarity about existing government policy to support and inform decisions about applications for the development of NSIPs on the road and rail networks and SRFIs. The NNNPS is not a vehicle for setting out a new transport strategy. Wider questions concerning the overarching transport strategy are therefore beyond the scope of this consultation."[26]

- Para 2.11 **[SB/655]**:

[25] At CSA/46 the Claimant advances a new (unpleaded) argument that the Defendant misunderstood the Claimant's point. It is not clear which specific point on **CB/316** is being referred to. In any event, the Defendant was not required to take each and every point, however vaguely expressed, into account.
[26] Further, as explained at CM/WS1, para 31 **[CB/140]**, road charging is a taxation matter for HM Treasury.

"A number of respondents argued that the government needs to reduce car kilometres travelled in order to achieve net zero. It is not the policy of government to reduce demand for travel. People should enjoy fair access to jobs, education, health, shopping, recreation, friends and family and government wants to facilitate that, not restrict it. The government is addressing carbon emissions from road transport through the measures announced in the Transport Decarbonisation Plan 2021, primarily the transition to EVs, which has now been taken forward by the enactment of the Zero Emission Vehicle mandate…"

- And para 2.21 **[SB/659]**:

"As with question 4, many respondents commented on matters outside the scope of the NNNPS, such as the need for an overarching transport strategy, encouraging modal shift, and investment priorities. These are not matters for the NNNPS. Some respondents called for the draft NNNPS to adopt a spatial strategy, identifying locations for development. The Government believes that it would be inappropriate for the NNNPS to identify specific locations for investment. This is because decisions around specific locations are determined by separate investment processes, such as the national rail and road investment decision-making."

Conclusion

46. It is therefore incorrect to assert that the Defendant did not give proper and conscientious consideration to responses received. For all the above reasons, ground 1 should be dismissed.

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47. Further, and in any event, even if (notwithstanding the above) the Court considers there has been any failure to consider the Claimant's consultation response or parts thereof (which is emphatically denied), it is submitted that this is a clear case where it is highly likely that the decision would not have been substantially different (applying the approach in *PSA* and *HPSPC*). The Defendant relies upon the following (amongst other things):

    a. The content of the consultation response from the Claimant is known. This is not a case where the court is asked to speculate on what may have been in a consultation response and then address whether this would have changed matters (see, contra, the argument advanced in *HPSPC* at [169]-[170]).

    b. The themes raised by the Claimant's consultation response were set out for Minister in a variety of documents and formed part of the briefing material provided in advance of the decision to designate the NNNPS 2024:

i. First, the TSC's Recommendation 5[27] sought modelling of a wider range of scenarios and this was specifically addressed in the Government Response to the TSC **[SB/640]** (a draft of which was provided to the Minister in advance of the decision being taken: CM/WS2, para 30 **[CB/163]**; and Ministerial Submission dated 6 February 2024 **[SB/456, 458]**).

ii. Second, the Claimant's call for policies to reduce demand for car transport was specifically drawn to the Minister's attention in the EPPS assessment (para 9 onwards **[SB/605]**) and further advice and information was provided to the effect that officials considered the policies in the NNNPS 2024 were consistent with the government's net zero obligations.

c. The Claimant's views have been expressed on other occasions, including its response to the consultation on the AoS scoping report **[SB/22]**, and it was involved in stakeholder views sessions at an early stage of the review (CM/WS1, para 11 **[CB/135]**).

d. There was already a policy position in Government as to demand management (CM/WS2, para 26 and 41 **[CB/161, 166]**).

e. The NNNPS 2024 is consistent with and expressly refers to measures to encourage modal shift on the local network and reasons were given as to why, notwithstanding these policies, there remained a need for development on the SRN (para 3.42-3.45 **[CB/202-203]**).

f. The Claimant itself did not advocate for any specific policy wording to be adopted in the NNNPS 2024 anyway **[SB/304]**.

48. It is said at **[CSA/49]** that it is "untenable to suggest" s.31(2A) applies because this would be a material omission of relevant consultation response material which "may well have resulted in a different NNNPS" where, it is asserted the Claimant called for a different statement of need (without expanding upon what that statement of need may have said). This fails to engage with the Defendant's points: this is a case where the arguments were already well-known to the Defendant, there was a strong policy position (including in extant government policy), these issues were addressed in the NNNPS 2024, and no

[27] In its TCS "*Draft revised National Policy Statement for National Networks, Ninth Report of Session 2022-23*", p.18 **[SB/423]**.

specific alternative was advanced by the Claimant. There are therefore strong parallels with *PSA* and *HPSPC.* This is not a case where the exercise would descend into an assessment of the merits (contrary to the suggestion at **[CSA/49]**).

49. It is therefore submitted that relief should be refused in any event even if any error of law could be established.

E. Ground 2: Alleged failure to provide lawful reasons for adopting a policy approach in the NNNPS 2024 that relies on effective delivery of non-planning transport decarbonisation policies set out in the TDP notwithstanding *Friends of the Earth*

50. This ground has seemingly evolved into an allegation of a failure by the Defendant to take into account *Friends of the Earth* and alleged changes in policy which are said to have diluted commitments in the TDP. While framed as a reasons challenge, it is difficult to pinpoint the species of error of law that is alleged to have occurred. The reality is the Claimant raises a rationality challenge to matters of judgment related to whether the Defendant could rely on the delivery of non-planning transport decarbonisation policies. These contentions have no merit.

51. At **[CSA/57]** the Claimant asserts that "the Defendant could no longer assume… that the TDP policies… would be delivered in full, such that the NNNPS 2024 could dispense with consideration of modal shift and/or demand management". It is incorrect to criticise the Defendant's lawful exercise of judgment as merely an "assumption" and, in any event, there is nothing legally wrong with the Defendant placing reliance on wider policies for achieving decarbonisation.

52. As to the assertion that the Defendant could not rationally rely on the delivery of wider transport policies:

    a. There is no legal basis for the Claimant's argument that the Defendant was required to carry out his own assessment of delivery risk of non-planning policies. The requirement to consider delivery risk in the context of s.13 CCA 2008 is confined to decisions made pursuant to that provision (see on *R (Friends of the Earth) v Secretary of State for Environment, Food and Rural Affairs* [2024] EWHC 2707 at [116]-[120] and *R (Save Stonehenge World Heritage Site Ltd) v Secretary of State for Transport* [2024] EWHC 339 at [241]).

b. *Friends of the Earth* was not a challenge to the TDP, nor any of the policies in the TDP. Sheldon J expressed no view on delivery risks of TDP policies. The judgment is instead concerned with whether the Secretary of State for Energy Security and Net Zero had sufficient information to ascertain the delivery risk of the whole package of policies and proposals set out in the CBDP for the purposes of s.13 of the Climate Change Act 2008 (which cover all sectors, not just transport).

c. In any event, in direct contradiction of the Claimant's assertions anyway, the CBDP itself identifies TDP as one of the policies where there is in fact a "reasonable to high level of confidence that the proposed policy package will deliver in line with what is needed to enable carbon budgets to be met" (CBDP Appendix D para 37 **[SB/261]**). Nothing in *Friends of the Earth* affects that conclusion; nor does that case exclude, or purport to exclude, from the Defendant's consideration the underlying facts which led to that conclusion.

d. The Claimant suggests that it is now not merely the TDP, but the entire CBDP which calls into question the conclusions in the NNNPS 2024 **[CSA/56, 58]**. This is tantamount to a suggestion that the Defendant and the Department of Transport should carry out some form of shadow exercise to that performed by the Secretary of State for Energy Security and Net Zero when arriving at a policy package for meeting carbon budgets. It is not the place of a planning policy to re-evaluate and re-write the TDP nor the CBDP either as a result of *Friends of the Earth*, or as a result of after the event criticisms advanced by the Claimant. In any event, *Friends of the Earth*, did not call into question the efficacy of the policies in the CBDP - the judgment related to the level of information the Secretary of State should have been provided with.

e. The allegation is also misconceived on the facts because delivery risk in respect of the TDP and the effect of *Friends of the Earth* was a matter to which the Defendant had specific regard when designating the NNNPS 2024. The Defendant was provided with a summary of the outcome in *Friends of the Earth*, and was provided with information specifically addressing delivery risk for the TDP. The ministerial

submission set out an entirely lawful evaluative judgment **[SB/693]** (see also Consultation Response at para 2.11**[SB/655]**).[28]

53. The reality is that even if there were any obligation to assess delivery risk in the way asserted (which is not accepted for the reasons set out above) the assessment of delivery of the TDP and the relevance and status of the wider policy landscape is an evaluative judgment, and ultimately a matter for the Defendant. The Defendant assessed and considered it when designating the NNNPS 2024.

54. At **[CSA/59-60]** the Claimant maintains an assertion that there is a reasons error made by the Defendant, albeit now this seems not in respect of reasons related to the treatment of demand management and modal shift as part of NNNPS 2024, but rather an allegation that it relates to reasons for "the policy approach of the carbon emission policy in the proposed NNNPS". The reasons for the policy are set out in the NNNPS 2024. There is no obligation to explain why other policies were not adopted and no obligation to analyse other government policy.

55. As to the Claimant's reliance on *Porter*; this is misguided for the reasons in *Spurrier* set out above. The relevant duty to give reasons arises under the PA 2008 and is not supplemented or extended by the common law. Indeed, the concept of a "principal important controversial issue" is not apt in cases concerned with the formulation of strategic national policy: this was not a planning decision on an individual development where the Defendant was required to resolve rival contentions of affected parties (see *Spurrier* at [114]-[115]).

56. Ultimately, under this ground the Claimant simply disagrees with the policy approach in NNNPS 2024, and the legitimate evaluative judgment made on delivery risk of those policies. Such disagreements do not form the basis for sustainable or legitimate grounds of judicial review.

57. Finally, the suggestion at **[CSA/60]** that Defendant failed to explain how Government policy on climate change mitigation was taken into account is not borne out on the facts: the NNNPS 2024 contains an explanation as to how it has taken into account Government

[28] This remains a lawful judgment notwithstanding the assertions at **[T2/4.2]** which, in any event, is an oversimplification of the range of considerations taken into account. It also provides a post-hoc analysis of TDP and it is not demonstrated how this is pertinent to a planning policy which was not reviewing or seeking to set out new non-planning transport policy.

policy relating to the mitigation of, and adaptation to, climate change as is required by s.5(8) PA 2008 in sections 2 and 3 (see, in particular, para 2.19-2.30 **[CB/191-193]** and 3.17 **[CB/197]** (government policy on climate change); 2.31 **[CB/193]**, 3.9-3.16 **[CB/196-197]** (policy on adaptation); 3.34-3.37 **[CB/201]** (road); and, 3.66-3.68 **[CB/207-208]** (rail)).

58. For these reasons, Ground 2 should be dismissed.

F. Ground 3: Alleged failure to re-consult on revised draft NNNPS following material changes as a matter of fairness and alleged failure by Defendant to decide for himself whether re-consultation was required

59. Under this ground the Claimant alleges that there is a material difference between the carbon emissions policies in the dNNNPS and the adopted NNNPS 2024, such that those differences ought to have been consulted on again pursuant to s.6A of the PA 2008. Those changes relate to: (1) the policy on the assessment of a scheme's carbon emissions and the question of when consent should be refused; and (2) references to regional and sectoral targets.

60. The changes in question were plainly not material and the Defendant was entitled to treat them as not material, as is clear from the facts and the proper application of the relevant legal principles. As to each aspect of the policy:

    a. The Materiality Test: The reasons for the change are explained in CM/WS1 at [53] – [57]. As explained there, the dNNNPS wording was not intended to be a significant change from the NPSNN 2015 **[CB/145-147]**. The Defendant explained in the Government Response to the Transport Select Committee Report that the 'materiality test' in paragraph 5.18 of the NPSNN 2014 **[SB/10]** was reinstated into the adopted version of the NNNPS 2024 'for added clarity' and that this approach had been approved in case law (see p.9 **[SB/636]**). A draft of the Government Response to the Transport Select Committee was considered by the Defendant before the NNNPS 2024 was adopted and therefore formed part of his consideration as to the materiality of the changes **[SB/456, 458]**. The changes were also identified at 2.52 of the Government Response **[SB/670]**. The reintroduction of the 'materiality test' test was also outlined in a summary of the changes to the NNNPS presented to the Minister in Annex G of the 6 February 2024 submission **[SB/571]**. Even if there were any requirement for the decision-maker to consider changes for

the purposes of s.6A of the PA 2008 for themselves (which is not accepted in principle), they were personally considered by the Secretary of State in this case anyway. The inclusion of text referring to a material impact on compliance with carbon budgets was, in any event, not a significant change to the relevant carbon emissions policies. This was also the finding of the Holgate J (as he then was) in *R (Save Stonehenge World Heritage Site Ltd) v Secretary of State for Transport* [2024] EWHC 339 at [255], in circumstances where the interpretation of policy is a matter for the Court.[29] The Post-Adoption Statement at section 5 also makes clear that the changes to the NNNPS 2024 following the consultation did not materially alter the results of the original AoS **[SB/691]**.[30] Given all of the above, there was no need to re-consult and the Secretary of State, advised by officials, was lawfully entitled to conclude that the changes were not material (see also paragraph 16 of the EPPS **[SB/607]**).

b. Regional and Sectoral Targets: the original text of para 5.31 of dNNNPS **[SB/254]**:

> *"Having regard to current knowledge, a carbon management plan should be produced as part of the Development Consent Order submission and include:*
>
> *…*
>
> *where there are residual emissions, the level of emissions and the impact of those on national and international efforts to limit climate change, both alone and where relevant in combination with other developments at a regional or national level, or sector level, if statutory sectoral targets are developed and come into force."*

This was then amended to in para 5.35 of NNNPS 2024 **[SB/239]**:

"*Having regard to current knowledge, a carbon management plan should be produced as part of the Development Consent Order submission and include…*

…

where there are residual emissions, the level of emissions and the impact of those on any relevant statutory carbon budgets"

[29] The suggestion at **[CSA/73]** that the judgment of Holgate J is not relevant is incorrect. Interpretation is a matter for the Court and, in the process of undertaking the assessment of rationality he considered the textual differences between the NPSNN 2014 and the dNNNPS. The conclusion he reached cannot sit alongside the suggestion by the Claimant that there is a material difference between the two tests.

[30] Contrary to **[CSA/68]**, officials did not conflate the conclusions of the AoS with the question of whether changes were or were not material. They reached a separate conclusion on materiality, which is supported by the findings of the AoS that the changes make no difference to the AoS assessments.

The amendment was made simply better to reflect the correct legal position, which is that the only statutory targets currently in existence are national carbon budgets (see *Bristol Action Network Co-Ordinating Committee v Secretary of State for Levelling Up, Housing and Communities* [2023] EWHC 171 (Admin) and *R (Boswell) v Secretary of State for Transport* [2024] EWCA Civ 145). It was not judged to be material, nor was it material. Should there be relevant and applicable statutory regional targets in the future, the NNNPS 2024 caters for that scenario and nothing in the NNNPS 2024 precludes them from being taken into account (contrary to the suggestion in **[CSA/65]**.

61. Second, and in any event, these were changes made in light of responses to the consultation and process of Parliamentary scrutiny (see *Smith* at [65] above), and were merely clarificatory of the position that always existed in the draft policy or at law. Contrary to the Claimant's submissions, the differences between the draft and final versions were seen by the Defendant; and the briefing material drew the relevant changes to the Defendant's attention (CM/WS2, para 50 **[CB/169]**). There was no need (let alone any legal requirement) to provide the Defendant with a detailed, or specific briefing on these matters, nor for the Defendant to address his mind personally to these matters (cf **[CSA/67-71]**). Any duty to re-consult relates to fairness and no possible unfairness can have been suffered by the Claimant in circumstances where the changes were objectively not material for the reasons set out above.

62. For the above reasons, the Defendant submits that Ground 3 should be dismissed.

G. Conclusion

63. For the reasons set out above, the Court is invited to dismiss the claim for judicial review on all grounds.

JAMES STRACHAN KC
ROSE GROGAN
DANIEL KOZELKO
26 March 2025