Climate Change and the Threat of Inundation:

R (Finch on Behalf of the Weald Action Group) v Surrey County Council

A. CLIMATE CHANGE LITIGATION

Though the number of climate change reviews of public policies that have been and continue to be brought by political activists now exceeds a hundred, the grounds of challenge may be reduced to three: the international, the human rights, and the procedural.

It has been claimed that the UK has not "done enough" to comply with the Paris Agreement. As successive UK Governments unarguably have pursued emissions reduction, international challenges on this ground are a rejection of dualism in the reception of international law in order to substantively review domestic policies by direct reference to treaty provisions. Whilst what are said to be obligations under the Paris Agreement have dominated the interpretive background in which these challenges have been heard, and whilst it might be said that the rigour of UK dualism has not been left completely unscathed, those challenges have proven unavailing. The Court of Appeal did uphold one challenge seeking to prevent Heathrow expansion,[1] but this was reversed within a year.[2]

It has also been claimed that the UK's climate change policies are so inadequate as to constitute violations of human rights, particularly the rights to life and to family life under the European Convention on Human Rights. But even if one accepts that Arts 1 and 8 create positive rights in the prevention of harm, this ground of challenge also amounts to

[1] *R (on the application of Plan B Earth) v Secretary of State for Transport* [2020] EWCA Civ 214; [2020] PTSR 1446.

[2] *R (on the application of Friends of the Earth Ltd and others) v Heathrow Airport Ltd* [2020] UKSC 52; [2021] 2 All ER 967. Lord Leggatt concurred in the unanimous judgment.

substantive review, and also has been unavailing. However, on 9 April 2024 the Grand Chamber of the European Court of Human Rights found that Swiss policies akin to those of the UK did violate Art. 8.[3] It can be expected that this judgment, understood by the successful claimant to mean that "climate protection is a human right", will generate further applications on the human rights ground.

B. THE ISSUE IN *R (FINCH) V SURREY CC*

In *R (on the application of Finch on behalf of the Weald Action Group) v Surrey County Council and others*,[4] issued on 17 March 2024, Lord Leggatt, with whom Lord Kitchin and Lady Rose agreed, gave the approval of the Supreme Court to a major change of direction over challenges on the procedural ground. This decision is of constitutional significance and will have major practical consequences. Procedural ground reviews had claimed that UK policies fail to implement numerous and various legislative provisions "enshrining" a national goal of mitigation of climate change. These reviews previously had also been unavailing, largely being dismissed as unarguable challenges to the substance of policies formulated with a *Wednesbury* rational regard to the mitigation goal. Holgate J, the first instance judge in *Finch*, had been responsible for a number of important decisions, including being a member of the Divisional Court which initially rejected the Heathrow challenge.[5]

[3] *Verein KlimaSeniorinnen Schweiz and Others v Switzerland* [2024] ECHR 53600/20.

[4] [2024] UKSC 20; [2024] 4 All ER 717; [2024] PTSR 988; [2025] Env LR 3; [2024] 9 CL 161; [2024] All ER (D) 71 (Jun); (19 August 2024) The Times 43; (2025) 3 Journal of Planning and Environment Law 302.

[5] *R (Spurrier) v Secretary of State for Transport* [2019] EWHC 1070 (Admin); [2020] PTSR 240.

In *Finch* itself, review was sought of Surrey County Council's 2019 consent to the continuation and expansion of oil extraction at Horse Hill near Horley, Surrey. Regulation 3 of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017[6] made such consent conditional upon submission by the developer of a satisfactory environmental statement, transposing the very important Environmental Impact Assessment Directive 2011, amendment of which in 2014 had emphasised climate change. Regulation 4(2) requires a statement to "identify, describe and assess … the direct and indirect significant effects of the proposed development" on a number of health and environmental factors, including, under Regulation 4(2)(c), "climate".[7] The developer's statement was, however, "confined to the direct releases of greenhouse gasses from within the well site's boundary resulting from the site's construction, production, decommissioning, and subsequent restoration".[8] The Council accepted this confinement of the scope of the environmental statement,[9] and, making no inquiry into indirect downstream emissions after finding that direct emissions would not "give rise to significant impacts on the climate",[10] gave consent.

The review was brought on the *prima facie* procedural ground that, because it did not address the indirect effect on climate change of the downstream consumption of extracted oil, the statement did not satisfy Reg. 4(2), and consent based upon it was unlawful. Though the applicant, Ms Sarah Finch, previously lived close to the site, it must be made clear that her involvement was politically motivated. Under her name,[11] the arguments of the Weald

6 SI 2017/541.
7 *R (Finch) v Surrey CC* (SC), [53].
8 Ibid, [34].
9 Ibid, [37].
10 Ibid, [38].
11 See n 45 below.

Action Group, which opposes oil and gas extraction across south east England, were put forward, and behind this the arguments of environmental activist groups opposing "fossil fuels" globally, such as Friends of the Earth and Greenpeace, which were allowed to intervene. The challenge fundamentally asked whether the Council had to take into consideration the global effects of downstream consumption.[12]

C. GLOBAL EMISSIONS AND LOCAL POWERS

The EIA Directive 2011 is, of course, of very wide application. The UK's transposition of the Directive with regard specifically to onshore oil fields vested the power to consent in county councils, which had long had relevant planning roles.[13] Regulation 4, including the terms "indirect" and "effects", therefore should be interpreted in the context of the local nature of the duties and powers of county councils over land use planning in their areas.[14] The Regulation contemplated that the sort of indirect effects that had to be considered would be the construction of ancillary processing and transport facilities remote from the site. But in a "scoping opinion" issued at the start of the consent process, the Council itself interpreted indirect effects widely to include "the global warming potential of the oil and gas that would be produced".[15] The Council, however, granted consent after concluding at the end of a substantial process of negotiation and deliberation[16] that the interpretation of indirect effects should confine its range in accord with the local nature of the issues that a

[12] Ibid, [52].
[13] Ibid, [27].
[14] Ibid, [107].
[15] Ibid, [33].
[16] Ibid, [32]-[37], [188]-[200].

county council could productively consider.[17] Downstream issues were reserved to national decision-makers charged with examining wider environmental impacts.[18]

In the Administrative Court, Holgate J dismissed the application because, interpreting direct and indirect effects in a way tied to the specific project, downstream consumption was not an indirect effect within the meaning of Regulation 4, and could not be discussed.[19] He found *obiter* that, had downstream consumption fallen under Regulation 4, the Council's decision not to consider global climate effects was *Wednesbury* rational.[20] A majority of the Court of Appeal affirmed the second part of his reasoning, and upheld his decision.[21] Moylan LJ, dissenting, also accepted the principle of the second part of Holgate J's reasoning, but on the facts reached a different conclusion about the rationality of the Council's approach.[22] In the Supreme Court, the first part of Holgate J's reasoning was emphatically affirmed by Lord Sales, dissenting, with whom Lord Richards agreed.[23] The second part of Holgate J's reasoning was not regarded as relevant by their Lordships.

Lord Leggatt in the majority stressed that environmental impact assessment is "essentially procedural in nature",[24] so that, though consent may well be given to "projects which will cause significant harm to the environment", an assessment "aims to ensure that, if such consent is given, it is given with *full knowledge* of the environmental cost".[25] His judgment was dominated by a concern to secure such full knowledge, and on this basis Lord

17 Ibid, [5]. [37].
18 Ibid, [106].
19 *R (Finch) v Surrey County Council* [2020] EWHC 3566 (Admin); [2021] PTSR 1160 [126].
20 Ibid, [127]-[133].
21 *R (Finch) v Surrey County Council* [2022] EWCA Civ 187; [2022] PTSR 958 [61] (Sir Keith Lindblom SPT), [149] (Lewison LJ).
22 Ibid, [129]-[139]
23 *R (Finch) v Surrey CC* (SC), [327].
24 Ibid, [62].
25 Ibid, [3] (emphasis added).

Leggatt concluded, as must anyone, that it was unlawful for the Council to "restrict the scope" of the assessment,[26] for, as the project *must* have some indirect effects,[27] this unarguably meant that the consent was not informed by full knowledge.[28] Lord Leggatt examined the issues using the Greenhouse Gas Protocol, a classification of emissions devised by a private environmental accounting standards body which is not found in the Directive or the Regulations,[29] but turning to this classification to describe downstream emissions as "Scope 3" emissions was, with respect, not only unfounded[30] but unnecessary. It cannot be disputed that there *would* be downstream emissions, and if one does not take them into account, one's knowledge will not be full. But this is an entirely different matter from whether the proper procedure had been followed.

Holgate J, the Court of Appeal majority, and the Supreme Court minority concluded that county councils could determine that it is not within their capacity to assess the global results of downstream consumption, and that indirect effects should interpreted accordingly. As Lord Sales put it: "These are all "big picture" issues which a local planning authority such as the [defendant] is simply not in a position to address in any sensible way",[31] and such matters "are all matters of national policy to be determined by the central Government".[32] But the result of Lord Leggatt approaching the issues on the basis of

[26] Ibid, [6].
[27] Ibid, [128].
[28] Ibid, [101].
[29] Ibid, [39]-[43].
[30] After it was raised by Counsel, "Scope 3" was repeatedly used, without comment, as a synonym for "downstream" in the Court of Appeal, where it was thought to be an issue whether Holgate J had been "wrong to hold that the EIA Directive and the EIA regulations did not require the assessment of "scope 3" or "downstream" greenhouse gas emissions": *R (Finch) v Surrey CC* (CA), [4]. Not only do the Regulations not mention Scope 3, neither does the judgment of Holgate J.
[31] *R (Finch) v Surrey CC* (SC), [255].
[32] Ibid, [253].

securing full knowledge was quite different. It creates the likelihood of challenge on the procedural ground to all major projects.

Lord Leggatt thought that interpreting Regulation 4 in consciousness of the local limits on the range of issues county councils had the capacity to consider was to look at the matter "the wrong way round":

> If (which I do not accept) a county council cannot carry out EIAs for projects for onshore petroleum production that are adequate to comply with the aims of the EIA Directive, then a different procedure should be established – if necessary, at a national level – that will achieve such compliance.[33]

The EIA Directive did not, of course, mandate the UK to give the role it did to county councils regarding projects such as Horse Hill. And Lord Leggatt may be right in his substantive criticism of the UK's transposition of the Directive. But what of the legal interpretation of the 2017 Regulations? Surely it is Lord Leggatt who has got the matter the wrong way round. He thought that reserving downstream considerations to a national level was a mistake. He therefore attributed to county councils a responsibility which they were never given, and then found the defendant Council's consent unlawful because it did not discharge that responsibility.

D. GLOBAL EMISSIONS AND TREATY LAW

Lord Leggatt's misinterpretation of Regulation 4 was possible, and can only make a basic sense, if he was right to think that county councils *could* discharge the responsibility he attributed to them. Lord Sales exhaustively examined the transposition of the Directive in light of the limits of county councils' capacity,[34] but Lord Leggatt placed much less weight on such capacity because

[33] Ibid, [28].
[34] Ibid, [211]-[238].

he found the fundamental issue of what he called "causation"[35] to be simple. It was axiomatic that not extracting oil at Horse Hill would be a positive contribution to mitigation of climate change because, Lord Leggatt told us, as the "whole purpose of extracting fossil fuels is … combustion [it is a] virtual certainty that once oil has been extracted from the ground the carbon contained within it will be released into the atmosphere as carbon dioxide and so will contribute to global warming".[36] It was "known with certainty" that if Horse Hill went ahead "the resulting [adverse] effects on climate are …inevitable".[37] Certainty about the inevitable surely is full knowledge; indeed it is *sub specie aeternitatis*.

Let us leave aside that the "common ground" accepted by Lord Leggatt "that *all* of the oil would be combusted"[38] leads him, with respect, to a mistaken position over oil's enormous part in the global manufacture of such products as plastics and fertilisers, though this undermines his reasoning about the nature of oil as opposed to other commodities.[39] It was his very foray into "elasticities of supply and demand" which allowed him to claim "that each barrel of oil left undeveloped in one region will lead will lead to [a reduction in] barrels … consumed globally"[40] that went, with respect, badly wrong. Though it is even less well-founded than his belief that all oil is combusted,[41] let us for the purposes of argument also leave this claim aside. For the issue is

35 Ibid, [66]-[82].
36 Ibid, [2].
37 Ibid, [79].
38 Ibid, [135].
39 Ibid, [121]-[123].
40 Ibid, [2].
41 No knowledge of the institutional economics of empirically plausible accounts of pricing and substitution is, however, needed for an alarm to sound at this point. Lord Leggatt quoted the claim about reduction in global consumption almost *verbatim* from a *circa* 200 word insert headed "Box 6.1.1: Leakage and supply-side policy" in UN Environment Programme, *The Production Gap 2019 Report* (2019) 50, available at https://www.unep.org/resources/report/production-gap-report-2019, where P Erickson, M Lazarus and G Piggott, "Limiting Fossil Fuel Production as the Next Big Step in Climate Change Policy" (2018) 8 Nature Climate Change 1087 is cited as the support for the claim. This is a seven page article about an entirely hypothetical reduction in oil production by California, one paragraph of which inconclusively hypothesises about the crucial issue of substitution. It was not of course possible for Lord Leggatt to properly weigh the UNEP claim, nor

not the supply of oil; it is mitigation of climate change by reduction of global greenhouse gas emissions. This is a goal of such immense scale, range, and complexity that *its advocates* say it requires a new Industrial Revolution initially focused on the entire global energy economy. A reduction in oil consumption itself carries no implication of a reduction in the emissions caused by consumption of all fossil fuels in global energy production.

Having started upon this line of argument, Lord Leggatt was obliged to place his views about the consequences of a specific national reduction in oil production in the context of a more full knowledge than he demonstrates[42] of the general global position that, since the agreement of the UN Framework Convention on Climate Change in 1992, global emissions have grown enormously, and will continue to do so. This is very largely because China and India, as developing countries under the UN climate treaties, enjoy an express permission to give complete priority to economic growth, and are, under the Paris Agreement, expressly absolved from any duty to make "absolute" emissions reductions. Their binding obligation under that Agreement is only to make public what they "independently" "nationally" choose to do,[43] and it is in perfect accord with climate treaty law that they have utilised the coal, gas and oil resources of the entire world to conduct by far the largest programmes of hydrocarbon exploitation in history, which continue.[44]

desirable for him to try to do so, and that the highest UK law could ever rest on so very slight a basis is a matter of grave concern.

42 Ibid, [242].

43 The treaty provisions, including those just quoted, are set out in D Campbell, "'What Does the Paris Agreement Actually Do?' (2016) 27 Energy and Environment 883.

44 The summary statement of the position set out in International Energy Agency, *Coal 2024* (2024) 3, 7, available at https://iea.blob.core.windows.net/assets/a1ee7b75-d555-49b6-b580-17d64ccc8365/Coal2024.pdf is that over the thirty years after the Framework Convention entered into force, global coal consumption has doubled, and in 2024 reached "an all-time high". China's 2024 consumption (56% of global consumption) itself set "another record", and India's consumption (15%) reached "a level that only China has reached previously".

Once this is taken into account, it is only in a trivial sense that one can say that oil produced at Horse Hill "will contribute to global warming". If the UK completely stopped oil production tomorrow, this would have but an inconsequential effect on the rate at which global emissions will continue to grow. It will be lost in the expansion of fossil fuel generation by China and India. If a county council conducted a cost-benefit analysis of the climate change consequences of a fossil fuel project on the basis of full knowledge of global emissions, it would be obliged to consent to the project because it would be aware that the climate change benefits of refusal would be zero. In so doing it would be acting correctly; but not lawfully.

E. CONCLUSION

That Lord Leggatt has been drawn into a most serious error is indicative of it being the case that no court is able to productively enter into economic and political discussion of this nature, and should not attempt to do so. That Lord Leggatt's judgment, though particularly important, is but one example of a now common form of politicised judicial review obliges us to ask where responsibility for a very troubling state of affairs should be allocated. In most of the national media *Finch* has been criticised as the latest product of anti-democratic judicial supremacy, and in two respects it is.

First, that the named applicant in *Finch* was the natural person Ms Sarah Finch seems but a charming period feature. Thoughts of a requirement of standing would be misplaced, for no issue arose from Ms Finch being but a figurehead who, on her own account (which this writer does not fully understand) was needed "only" for the purposes of obtaining Aarhus costs protection for the group of which she was a member.[45] *Finch* was possible

[45] A Vaughan, "Woman Whose Green Legacy Could Be Greater than Greta's" (9 September 2024) The Times 20.

only because standing has been no bar whatsoever to an issue the very significance of which is its claimed universality - a "global" "crisis" or "emergency" posing "an existential threat to all humankind" – being made the subject of over a hundred reviews devised as a legal resistance tactic against political decisions. The reduction of standing to such a nullity has been the work of the senior courts.

Secondly, the divergence of judicial opinion over *Finch* is further evidence that two attitudes towards administrative review now obtain in the UK's senior courts. A Diceyan focus on procedural lawfulness must be contrasted to a focus on the merits of the substance of policies. The latter draws the criticism of anti-democratic judicial supremacy; but whilst "judicial supremacy" is entirely apposite, "anti-democratic" is much less so.

For, of course, Lord Leggatt did not, to adopt Parke B's memorable words, go off on "a frolic of his own".[46] The opportunity to engage in merits review was unarguably created by Parliament. *Finch* posed a stumbling block to those wishing to use the Administrative Court for the political purpose of preventing emissions because the transposition of the EIA Directive made the consent to Horse Hill a matter for a body of local scope. But the 2017 Regulations generally seek to make consent a matter of expert decision at a national level, and one can imagine the transfer of responsibility recommended by Lord Leggatt receiving a warm reception by Government departments.[47] One "independent non-departmental public body",[48] the Office for Environmental Protection, intervened, and though it itself claimed, and Lord Leggatt agreed, that it did "not take sides",[49] Lord Sales, it is submitted correctly,

[46] *Joel v Morison* (1834) 6 Car and P 502, 503; 172 ER 1338, 1339.
[47] When in October 2024 the Department of Energy Security and Net Zero opened a consultation on draft guidance for offshore oil projects after *Finch*, the Department accepted that *Finch* applied to offshore projects, and put 'Scope 3' emissions, defined with reference to the Greenhouse Gas Protocol, at the heart of the draft guidance.
[48] *R (Finch) v Surrey CC* (SC), [179].
[49] Ibid, [51].

found that its evidence, a characteristic expert call for full knowledge, "supports the [applicant's] case".[50]

To criticise such arrangements as anti-democratic is not straightforward. They are the climate change dimension of "constitutionalisation" by the "regulatory state", and though it is the case that, as Professor Majone told us at the outset with the honesty of a true intellectual, such arrangements "by design, are not directly accountable either to voters or to elected politicians",[51] it was successive UK Governments that created them. It is they that made "public participation in environmental decision-making" in significant part a matter of consciously politicised legal action by, for example, minimising the liability of unsuccessful applicants through Aarhus costs protection. Most importantly, successive UK Governments have "enshrined" the emissions target, now "net-zero by 2050", set by the expert Climate Change Committee established under the Climate Change Act 2008. After the extensive "constitutional dialogue" conducted in the Administrative Court, activists have learned to frame arguments based on the 2008 Act in a way likely to meet with success, and in 2023 Holgate J, it is submitted correctly, in substantial part found for one such applicant.[52] This decision and cases building on it[53] have not been appealed to the Supreme Court, and have now been eclipsed by *Finch*.

Though one therefore can now conceive of cases which could succeed, the two climate change reviews that have reached the Supreme Court *should* have been unsuccessful. That the second was nevertheless successful represents the culmination of the enormous pressure to use

[50] Ibid, [179].
[51] G Majone, "Introduction", in G Majone *et al*, *Regulating Europe* (1996) 4.
[52] *R (Friends of the Earth Ltd) v Secretary of State for Business, Energy and Industrial Strategy* [2022] EWHC 1841 (Admin); [2023] 1 WLR 225.
[53] *Friends of the Earth and others v Secretary of State for Energy Security and Net Zero* [2024] EWHC 995 (Admin); [2024] PTSR 1293.

judicial review for political climate change objectives, and is of great concern. Professor Dawson famously noted that "a … principle prohibiting unjust enrichment … has the … faculty of inducing quite sober citizens to jump right off the dock".[54] It would seem that certain atmospheric emissions by industrial processes have this faculty in superabundance. The wave now caused by Lord Leggatt, Lord Kitchin, and Lady Rose will inundate the Administrative Court and the planning system as it crashes against the proper separations of the UK constitution. Just as with the Court of Appeal decision in the Heathrow case, *Finch* creates the likelihood of raising possibly insuperable and certainly all but interminable legal objections to projects of all kinds.

Downstream emissions are of a global nature and the empirical and political process of obtaining full knowledge of their consequences, not to speak of determining their relationship to the UK's domestic net-zero target, will offer infinite possibilities of legal challenge in an Administrative Court which has lost control of the proportionate handling of such challenges. In the Heathrow litigation, our Senior Courts required approaching 1,200 paragraphs to deal with arguments which it was found were "not reasonably arguable". What will happen now that related arguments are found successful? Like the Court of Appeal Heathrow decision, the Supreme Court decision in *Finch* will have to be nullified, but to say that this will be difficult is an acme of understatement. In this writer's opinion, such will be its practical consequences that *Finch* will quickly prove to be a crisis point in the anti-democratic constitutionalisation of political decision-making. But he is very conscious that he does not have full knowledge of how this crisis will be resolved.

[54] JP Dawson, *Unjust Enrichment: A Comparative Analysis* (1951) 8.

POSTSCRIPT

The above note was drafted immediately after *Finch* was issued in June 2024. By permission of the Editors, I am able to describe *Finch's* impact as of 31 January 2025, which already has been enormous.

The most important development is that the UK Government has given *Finch* as the reason for its refusal to defend a number of challenges. This is by no means a drastic change in the attitude of UK Governments which had, most significantly, refused to challenge the Court of Appeal's Heathrow decision, but *Finch* offers an extremely wide-ranging opportunity to display that attitude. In what has been regarded as a significant early indicator of the way the wind was blowing, in 2024 the Government withdrew its opposition to challenges to an oil project similar to Horse Hill at Biscathorpe in the Lincolnshire Wolds after proceedings in the Administrative Court took *Finch* into consideration.[55] This writer cannot at the moment say how many such withdrawals of opposition to challenges to, or refusals initially to proceed with, relatively minor projects of this sort have taken place. The issue has been overshadowed in public debate by the UK Government's refusal to defend challenges to a major new coalmine and to two major North Sea oil projects.[56]

Finch has been cited eleven times, and though some of these are insubstantial or irrelevant to the issues discussed here, *R (Boswell) v Secretary of State for Energy and Net Zero*[57] and *Rae*

[55] *SOS Biscathrorpe v Secretary of State for Levelling Up, Housing and Communities and others*, Consent Order, Administrative Court, 4 July 2024.

[56] In a speech on 29 January 2025, the Chancellor announced that the Government will support Heathrow expansion: Rt Hon Rachel Reeves MP, "Chancellor Vows to Go Further and Faster to Kickstart Economic Growth" (29 January 2025) available at https://www.gov.uk/government/speeches/chancellor-vows-to-go-further-and-faster-to-kickstart-economic-growth. She saw no necessity to address *Finch* or the Government's subsequent legal stance, arguing, with reference to increased use of sustainable aviation fuel, that the expansion will be "delivered in line with our legal, environmental, and climate obligations".

[57] [2024] EWHC 2128 (Admin), [65]-[66].

v Glasgow City Council[58] should be taken into account. However, discussion will be confined to two cases of great significance concerning the three major projects.

Permission to develop a new metallurgical coal mine at Whitehaven in Cumbria was sought in 2017 and granted in 2022. Friends of the Earth and another environmental campaigning group, South Lakeland Action on Climate Change, challenged this permission, and after considering *Finch* the Secretary of State withdrew from the hearing which took place in July 2024, though the private party involved, West Cumbria Mining Ltd,[59] continued the proceedings. In *Friends of the Earth Ltd v Secretary of State for Levelling Up, Housing and Communities*,[60] handed down on 13 September 2024, Holgate J adopted the core aspects of *Finch*,[61] and quashed the permission. West Cumbria Mining has declined to appeal. It is, of course, open for it to make an entirely new application. In this writer's opinion, in the current state of the law this would be fruitless.

In August 2024, the UK Government gave *Finch* as the reason that it would not defend challenges which had been brought by two environmental groups to its grants of licenses to develop two North Sea oilfields of national and international importance.[62] The private parties continued proceedings, though they publicly conceded prior to the hearing in the Outer House in November 2024 that in light of *Finch* they would not argue that the grants had been lawful.[63] This was readily understandable as the Environmental Statements on which those grants were

58 [2024] CSOH 74, [66]-[83]; affd on this point [2025] 1 CSIH 1, [38]-[41].
59 Ibid, [48]-[56].
60 [2024] EWHC 2349 (Admin).
61 Ibid, [60]-[80].
62 Department for Energy Security and Net Zero, *Certainty for Oil and Gas Industry in Light of Landmark Ruling* (29 August 2024), available at https://www.gov.uk/government/news/certainty-for-oil-and-gas-industry-in-light-of-landmark-ruling
63 R Wright, "UK Made Legal Error in Granting Oil and Gas Licenses, Companies Will Admit" (11 November 2024) Financial Times online.

based were clearly open to the downstream emissions reasoning of *Finch*.[64] In *Greenpeace Ltd v Advocate General for Scotland*,[65] issued on 29 January 2025, the Outer House briefly reviewed "the *Finch* ground"[66] of the unlawfulness of the grants which had been accepted by all parties,[67] and Lord Ericht then spent some 150 paragraphs considering the form of relief to be granted. That the main issue of climate change litigation was shifting from establishing unlawfulness to devising appropriate relief had been indicated in *R (Friends of the Earth) v Secretary of State for Business, Energy and Industrial Strategy*. *Greenpeace v Advocate General* gives very strong reason to believe that, under the law of *Finch*, this shift of focus will be consolidated. The private parties have stated their intention to reapply for the licenses, taking *Finch* into account.[68] In this writer's opinion, in the current state of the law this will prove fruitless.

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[64] Equinor *et al*, *Rosebank Environmental Statement* (3 August 2022) ch 9, available at https://assets.publishing.service.gov.uk/media/62f62fec8fa8f50b4de7f743/Rosebank_Environmental_Statement_-_Final_for_Submission_To_OPRED_Equinor_3rd_August_2022.pdf and Shell UK, *Jackdaw Field Development Environmental Statement* (6 June 2021) ch 7, available at https://assets.publishing.service.gov.uk/media/6093f19fe90e0726efe4824a/Jackdaw_Project_Environmental_Statement_D.4260.2021.pdf

[65] [2025] CSOH 10. Though brief, the mention by Lord Leggatt in *R (Finch) v Surrey CC* (SC), [116] of earlier proceedings concerning another oil field (*Greenpeace Ltd v Advocate General (representing the Secretary of State for Business, Energy, and Industrial Strategy*) (2021) CSIH 53; 2021 SLT 1303) was, it is submitted, clearly sufficient to indicate the prospects of a defence of the lawfulness of the grants: *Greenpeace v Advocate General* [2025] CSOH 10, [20], [33]-[34].

[66] Ibid, [27].

[67] Ibid, [3].

[68] J Leake, "Judge Blocks Two Major North Sea Oil and Gas Drills" (31 January 2025) Daily Telegraph 19.