

URGENT – BY EMAIL ONLY

The Rt Hon Rishi Sunak MP
Chancellor of the Exchequer

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Your Ref:

Our Ref: TGY/LJH/00237918/1

Date: 4 May 2020

Dear Chancellor

Re: State bailout of airlines

1. We write on behalf of our client, Possible, a UK climate action charity campaigning for a zero-carbon society. Possible was founded in 2009 under the name 10:10 Climate Action with a campaign to get everyone to cut carbon emissions by 10% in 2010.
2. Our client supports the protection of airline workers' jobs throughout the crisis period but is concerned to learn that there are proposals for HM Treasury to provide sector-specific financial assistance to the airline industry and/or to companies within that sector that would not be conditional on the industry reducing its harm to the environment and that will not assist with providing a just transition for airline workers to low-carbon industries. The purpose of this letter is (1) to seek assurances from you that any such assistance will be accompanied by rigorous environmental conditions that will ensure that aviation emissions are reduced in line with climate change objectives, and (2) to set out our view that providing financial assistance to the aviation sector without such assurances would be unlawful.
3. A copy of this letter has also been sent to the Department for Transport.

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Background

4. As you will be aware, Section 1 of the Climate Change Act 2008 (“**the CCA**”), as amended by The Climate Change Act 2008 (2050 Target Amendment) Order 2019 (“**the 2019 Order**”), requires the UK Government to reduce net emissions of ‘targeted greenhouse gases’ to zero by 2050 (“**the Net Zero Target**”).
5. Emissions from international aviation were, prior to the Covid-19 crisis, one of the fastest-growing sources of greenhouse gases (“**GHGs**”) in the UK, but these emissions are not, at present, a ‘targeted greenhouse gas’ for the purposes of the CCA. As part of its advice recommending the adoption of the Net Zero Target (“**the Net Zero Advice**”)¹, the Committee on Climate Change (“**CCC**”) advised that CCA should be amended to include international aviation emissions within carbon budgets and the Net Zero Target. Although the Government has not yet implemented that advice, it nonetheless rightly assumes that international aviation emissions will be included within the scheme of the CCA before 2050 and plans to meet the target set for 2050 on that basis.
6. In its consultation *Aviation 2050: the Future of Aviation* (DfT, December 2018), the Government proposed to accept the CCC’s then-current recommendation that emissions from all UK-departing flights should be at or below 2005 levels in 2050 (para.3.87); that is, that they should be no more than 37.5 MtCO₂e. It also committed to review the CCC’s advice on the implications of the Paris Agreement for the UK’s long-term emissions reduction targets ‘and to adjust its mix of policy measures and overall approach accordingly’ (para 3.97).
7. That advice of the CCC – the Net Zero Advice – has now been published. It identifies aviation as a ‘hard to treat’ sector, in which there are no currently viable options for deep carbon reductions. It describes a ‘Further Ambition’ scenario, in which, by

¹ *Net Zero – The UK’s contribution to stopping global warming*, CCC, May 2019

limiting the growth in passenger numbers to 60% above 2005 levels, and implementing an aggressive programme of technological and operational efficiency improvements, UK aviation emissions could be held to 31 MtCO₂e in 2050 (pp 148, 156).

8. The CCC, however, make clear that even this is the minimum level of ambition for the aviation sector that is potentially compatible with the Net Zero Target. This is because even if all measures in the Further Ambition scenario were realised, across all sectors, this would still result in only a 96% reduction in GHGs, not a 100% reduction. Therefore, still further emissions reductions would be needed, and it is reasonable to assume that some of the burden of achieving these would fall on the aviation sector, which, together with agriculture, would by 2050 form the bulk of remaining GHG emissions. On page 156 of the Net Zero Advice, the CCC discuss one such scenario, in which limiting passenger demand to 20-40% above 2005 levels would imply a further saving in emissions of 4-8 MtCO₂e.
9. The UK Government has not yet responded to the Net Zero Advice, and there is no current policy prescription, for aviation or any other sector, for achieving the Net Zero Target. The latest forecasts of UK aviation emissions were published by the Department for Transport in 2017.² They show that emissions are forecast to increase to 37 MtCO₂e in the 'baseline' scenario; and to 39.9 MtCO₂e if the Northwest Runway at Heathrow were built.
10. Clearly, prior to the Covid-19 crisis, the UK aviation sector was on a course that was not compatible with the Net Zero Target.
11. Moreover, the analysis above addresses only the CO₂ emissions from aviation. Aviation has a range of other, non-CO₂ impacts on the climate. The current best

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/878705/uk-aviation-forecasts-2017.pdf, p.108

scientific estimate is that the overall warming impact of aviation is around twice that of the warming caused by its CO₂ emissions alone (*Meeting the UK Aviation Target - Options for reducing emissions to 2050*³, CCC 2009). These warming impacts are not currently accounted for in policy frameworks such as the CCA, so that approximately half of the overall impact of the sector is effectively invisible in policy terms. This situation is not compatible with the Paris Agreement on climate change, because that agreement sets global temperature-based goals, and progress towards achieving these must take account of all sources of warming.³

Your legal duty to impose environmental conditions

12. Any sector-specific financial support for the aviation industry would have the purpose and/or the effect of enabling airlines to resume operations once the current travel restrictions are lifted. However, any support that simply allowed the aviation industry to resume its business-as-usual emissions trajectory would be unlawful, because it would be incompatible with the obligations imposed by the CCA, and would fail to take account of the Paris Agreement.
13. In Friends of the Earth Ltd v Secretary of State for Transport [2020] EWCA Civ 214 it was held that, in setting planning policy of national significance, climate change considerations, including the Paris Agreement, were so obviously material that they had to be taken into account (at para 237). In relation to aviation's non-CO₂ impacts, the Court of Appeal also held that 'in line with the precautionary principle, and as common sense might suggest', these were also a factor that had to be considered, notwithstanding that some scientific uncertainty remains over their precise quantification (para 258).

³ *International aviation and the Paris Agreement temperature goals*, Lee, December 2018 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/813343/international-aviation-paris-agreement.pdf. This paper, commissioned by the Department for Transport, also demonstrates that at a global level, measures to reduce aviation emissions are insufficient to meet the goals of the Paris Agreement.

14. We consider that you would be under equivalent duties when considering offering financial support to the aviation sector. Such duties would be implied, even where not set out expressly in the statute conferring the power to offer financial assistance. (In this regard, we assume that the Government proposes to exercise its powers under Part III of the Industrial Development Act 1982, but would be grateful for your confirmation.) Such is the significance of the climate change impacts of the aviation industry prior to the Covid-19 crisis, we consider that any relevant statutory powers would require the Government to impose environmental conditions of access to financial aid for the aviation industry. Otherwise, the Government would be taking positive action to facilitate and enable the domestic aviation industry to return to its previous very harmful levels of emissions and other impacts, contrary to the Government's climate change objectives.
15. The use of environmental conditions and safeguards would be in line with the approach taken in other comparable states such as France, where the government has made financial support to Air France conditional against a number of environmental specifications, cutting carbon emissions by half per passenger and per kilometre by 2030, from 2005 levels⁴. Should the Chancellor decide to provide financial assistance to the aviation sector, our client, Possible, considers that a policy or terms that result in overall demand for flights being limited to levels that permit the UK's Net Zero target to be achieved should form part of such environmental conditions. Due to the unavailability of GHG emissions-free forms of commercial mass aviation, and the inability of industry measures such as carbon offsetting to yield within-sector emissions reductions, only through deliberate policies to manage overall demand will a meaningful reduction in emissions from air travel be achieved. Our client believes that demand management could be achieved in a fair and

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<https://www.nytimes.com/reuters/2020/04/29/world/europe/29reuters-health-coronavirus-france-economy.html>

equitable manner through the use of a Frequent Flyer Levy. That echoes the call of UN Secretary General António Guterres at the Petersberg Climate Dialogue last week for governments to take into account environmental factors when considering state aid at this time of climate crisis:

“Where taxpayers’ money is used to rescue businesses, it must be creating green jobs and sustainable and inclusive growth. [...] It must not be bailing out outdated, polluting, carbon-intensive industries.”⁵

Requests for Information

16. Taking all of the above into account, we consider that the matter is urgent and ask that you therefore provide a reply to the following by no later than 4pm on Thursday 7 May 2020 :

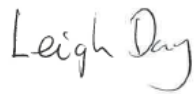
- a. Please confirm what legal power you propose to exercise in providing any financial support to the aviation sector;
- b. Please confirm what, if any, environmental conditions (including, for example, climate conditions, carbon emissions reduction conditions and/or non-CO2 emissions reductions conditions) that you intend to impose when offering such support;
- c. Please explain how any conditions imposed will put UK aviation emissions on a path that is compatible with the Net Zero Target;

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- d. Please explain what account you have taken of aviation's non-CO2 climate change impacts, in line with the temperature-based goals of the Paris Agreement.

We look forward to your prompt response.

Yours faithfully

A handwritten signature in cursive script that reads "Leigh Day".

Leigh Day

cc: Department for Transport - POCorrespondence@dft.gov.uk / Transport.Secretary@dft.gov.uk