

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

In the matter of a claim for judicial review

BETWEEN

THE QUEEN

on the application of

- (1) PLAN B. EARTH
- (2) ADETOLA STEPHANIE KEZIA ONAMADE
- (3) JERRY NOEL AMOKWANDOH
- (4) MARINA XOCHITL TRICKS
- (5) TIMOTHY JOHN EDWARD CROSLAND

Claimants

- and -

- (1) THE PRIME MINISTER
- (2) THE CHANCELLOR OF THE EXCHEQUER
- (3) THE SECRETARY FOR STATE FOR BUSINESS, ENERGY AND INDUSTRIAL STRATEGY

Defendants

STATEMENT OF FACTS AND GROUNDS

Sir David King, former Government Chief Scientist

“What we do over the next three to four years, I believe, is going to determine the future of humanity. We are in a very, very desperate situation.”

<https://www.thecitizen.org.au/articles/forget-2050-experts-say-its-2030-or-bust-for-net-zero-emissions>

Sir James Bevan, Chief Executive, Environment Agency

"The net effects will collapse ecosystems, slash crop yields, take out the infrastructure that our civilisation depends on, and destroy the basis of the modern economy and modern society."

<https://www.gov.uk/government/news/climate-emergency-impacts-hitting-worst-case-scenario-levels>

Rt Hon Alok Sharma MP

"The climate crisis represents a clear and present danger to people and our planet. Its real-world consequences are now all too visible."

<https://www.theguardian.com/commentisfree/2021/mar/18/climate-crisis-cop26-president-global-targets>

Sir David Attenborough

"If we continue on our current path we will face the collapse of everything that gives us our security ... We are no longer separate nations ... we are a single, truly global species, whose greatest threats are shared."

<https://www.bbc.com/news/av/science-environment-56175714>

Célia Xakriabá, from the Xakriabá people of Minas Gerais state

"[A]s an indigenous person, you fight to survive. You don't really have another choice. I think about the fight as the children that I haven't generated yet, the children that I and the indigenous peoples will give birth to in the future."

<https://www.theguardian.com/environment/2020/aug/10/the-amazon-is-the-vagina-of-the-world-why-women-are-key-to-saving-brazils-forests-aoe>

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INTRODUCTION

A. SUMMARY OF THE CLAIM

1. Two years on from Parliament's declaration of a climate and environmental emergency¹, the Claimants bring this claim, on behalf of themselves and countless others, to uphold their rights to life and to family life, free from discrimination in the enjoyment of such rights, in reliance upon Articles 2, 8 and 14 of the European Convention on Human Rights ("**ECHR**") as implemented into UK law by the Human Rights Act 1998 ("**HRA**").
2. In the face of this existential threat, which is already causing loss of life and displacement of people at scale, damaging the mental health of young people in particular and jeopardising the conditions which make the planet habitable, those rights depend fundamentally on the UK Government working with others to ensure effective implementation of the Paris Agreement on Climate Change ("**the Paris Agreement**"), which it advanced, signed and ratified to avoid climate catastrophe.
3. Beyond the temperature limit of 1.5°C and "well below" 2°C, set out in the Paris Agreement ("**the Paris Temperature Limit**"), the implications for the entire international community are intolerable. But many who have contributed least to the problem, including the younger generation and the majority in the Global South, face disproportionate and discriminatory impacts and risks.
4. The UK Government has a legal obligation, arising from the HRA, which must be interpreted in the context of rules of international law, to take practical and effective measures to ensure, *at a minimum*, that the UK plays its full part in upholding the commitments of the Paris Agreement by implementing those commitments domestically.
5. Rhetorically, the Government embraces that proposition. In January 2018, for example, the Government published "*A Green Future: Our 25 Year Plan to Improve the Environment*":

"Using our leading role in the UNFCCC, through which the Paris Agreement was established, we will urge the international community to meet the goals enshrined in the text ... This is vital for future environmental security."²
(emphasis added)

6. On 27 March, 2018, the Foreign and Commonwealth Office ("FCO") Minister, Mark Field MP, was asked the following written question:

"What diplomatic steps his Department has taken to support the implementation of the Paris agreement on climate change."

7. Mr Field began his response as follows:

¹Hansard Volume 659, Environment and Climate Change, statements of Michael Gove, page 75 of Exhibit TC/1

²HM Government: A Green Future: Our 25 year Plan to Improve the Environment, p 118, page 7 of Exhibit TC/1

“Climate change is an existential threat ... Our diplomats and Climate Envoy are working, with BEIS [the Department for Business, Energy and Industrial Strategy] and international partners, to ensure international implementation of Paris Agreement commitments”.³ (emphasis added)

8. Yet while the Government claims to lead on the international implementation of the Paris Agreement, and will chair the critical UN climate talks due to be held in Glasgow in November (“COP26”⁴), in its actions it disregards the terms of the Paris Agreement.
9. The Government has enacted a “net zero” target for 2050, but failed to implement the measures to translate it from aspiration to reality. Instead it has supported the opening of a new coal mine, the expansion of aviation, new oil and gas licences, a £27.4 billion investment in the road network and finance for overseas fossil fuel projects, while simultaneously cutting vital financial support from international communities already exposed to extreme climate impacts and risks⁵. Such a stance from a self-proclaimed “climate leader” and the President of COP26 condemns the UN talks to failure, and exposes the Claimants and their families to gross violations of their ECHR rights.
10. The Defendants are urged to commit formally to taking the practical and effective measures set out at §§11 and 38 below in order to:
 - a. Comply with their legal obligations; and
 - b. Salvage their credibility ahead of COP26.
11. Specifically, the Defendants are bound, but have so far failed, to take practical and effective measures to:
 - a. Align UK greenhouse gas emissions to the Paris Temperature Limit (Paris Agreement, Articles 2 and 4);
 - b. Adapt to and prepare for the current and projected impacts of climate change and to support others in so doing, including through education and awareness raising (Paris Agreement, Articles 2, 7, 9 and 12);
 - c. Align UK finance flows to the Paris Temperature Limit (Paris Agreement, Articles 2 and 9); and
 - d. Ensure access to justice and compensation for those suffering loss and damage attributable to climate change, in the UK and beyond (Paris Agreement, Articles 8,9 and 10; the polluter pays principle; and the international law duty to prevent harm).
12. As recognised by the Supreme Court in *Rabone v Pennine Care NHS Trust*,⁶ Article 2 of

³ UK Parliament: Climate Change Convention: Question for Foreign And Commonwealth Office, page 9 of Exhibit TC/1

⁴ The 26th Conference of the Parties to the UN Framework Convention on Climate Change (“UNFCCC”)

⁵ Gov.uk: “Changes to the UK’s aid budget in the Spending Review”, page 539 of Exhibit TC/1

⁶ *Rabone v Pennine Care NHS Trust* [2012] UKSC 2 at [12]-[16], page 106 of the Claimants’ Authorities Bundle

the ECHR imposes both a negative duty on governments to refrain from taking life and a positive duty to protect life. This positive duty includes a general duty on the state “to put in place a legislative and administrative framework designed to provide effective deterrence against threats to the right to life”: see *Ahunbay and Others v Turkey*⁷ and *Öneryildiz v Turkey*⁸. The same principle applies to Article 8 (see *X & Y v. The Netherlands*⁹).

13. The Preamble to the Paris Agreement emphasises the intersection between climate change and human rights:

“Acknowledging that climate change is a common concern of humankind, Parties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights ...”¹⁰

14. Michelle Bachelet, the UN High Commissioner for Human Rights, has said of the climate crisis:

“The world has never seen a threat to human rights of this scope”¹¹.

15. In December 2019, the Supreme Court of the Netherlands ruled that Articles 2 and 8 of the ECHR oblige contracting states to do “their part” to limit warming to 1.5°C, in accordance with the Paris Agreement:

“Climate science has ... arrived at the insight that a safe warming of the earth must not exceed 1.5°C.... Exceeding [that limit] would involve a serious degree of danger that the consequences referred to ... [which includes the loss of human life] will materialise on a large scale ...”¹²

“... the Supreme Court finds that Articles 2 and 8 ECHR relating to the risk of climate change should be interpreted in such a way that these provisions oblige the contracting states to do ‘their part’ to counter that danger.”¹³

16. The European Court of Human Rights is currently fast-tracking a climate change case brought by a group of young claimants from Portugal¹⁴.

⁷ *Ahunbay and Others v Turkey*, No 6080/06, 29 January 2019

⁸ *Öneryildiz v Turkey* (ECtHR 30 November 2004, no. 48939/99) at [89], page 315 of the Claimants’ Authorities Bundle

⁹ *X & Y v. The Netherlands*, App. No. 8978/80, 8 Eur. H.R. Rep. 235 (1986), page 353 of the Claimants’ Authorities Bundle

¹⁰ Paris Agreement on Climate Change, page 70 of the Claimants’ Authorities Bundle

¹¹ The Guardian: “Climate crisis is greatest ever threat to human rights, UN warns”, page 10 of Exhibit TC/1

¹² *Urgenda v The Netherlands* (Supreme Court of the Netherlands) para. 4.2-4.3, page 1022 of the Claimants’ Authorities Bundle

¹³ *Ibid.* para. 5.8, page 1029 of the Claimants’ Authorities Bundle

¹⁴ The Guardian: “European states ordered to respond to youth activists’ climate lawsuit”, page 402 of Exhibit TC/1

17. For the UK to play its part it must, at a minimum, take practical and effective measures to implement domestically the key commitments of the Paris Agreement, including those referenced at §11 above.
18. It is clear that the Defendants have failed to take such measures.
19. First, the Defendants have failed to take practical and effective measures to align UK greenhouse gas emissions to the Paris Temperature Limit. While the Government has implemented a “net zero target” for 2050, via section 1 of the Climate Change Act 2008 (“CCA 2008”), it has failed to take the measures necessary to meet that target. Since there is no obligation on Government Departments or local authorities to ensure projects are consistent with the net zero target or the Paris Agreement, decisions are taken to support new carbon intensive projects despite overwhelming evidence of inconsistency with both.
20. The Public Accounts Committee has recently emphasised that the Government does not even have a plan to meet the net zero target¹⁵. The Committee on Climate Change (“CCC”), the Government’s statutory adviser on climate change, has likewise emphasised the Government’s systematic failure to meet its net zero milestones.¹⁶
21. The failure to align action to the net zero target also breaches CCA 2008, section 13, which requires the Secretary of State to prepare policies and proposals “*with a view to meeting*” the net zero target and which, taken as a whole “*must ... contribute to sustainable development*”.
22. Second, the Defendants have failed to take practical and effective measures to adapt to and prepare for the current and projected impacts of climate change and to support others in so doing, including through education and awareness raising. The Committee on Climate Change (“CCC”), the Government’s statutory adviser on climate change, has issued the following damning verdict:
- “UK plans have failed to prepare for even the minimum climate risks faced”.**¹⁷
23. That is also a breach of section 58 of CCA 2008, which obliges the Secretary of State to lay programmes before Parliament which set out the Government’s objectives, policies and proposals for adapting to climate change which “*must ... contribute to sustainable development*”.
24. There is no obligation on local authorities, Government Departments or private sector bodies, to ensure homes and infrastructure are resilient to the current and projected impacts of climate change.

¹⁵ BBC News: “Government has no climate change plans – MPs”, page 14 of Exhibit TC/1

¹⁶ See §§154ff below

¹⁷ Committee on Climate Change Progress Report to Parliament: “Reducing UK Emissions”, pp170-174, page 20 of Exhibit TC/1

25. Further, the Government has failed to provide or support the development of general educational and public information programmes concerning the climate crisis, let alone programmes appropriately tailored to communities exposed to discriminatory impacts and risks, which is an essential component of equipping the Claimants and the wider public to meet the crisis, in accordance with ECHR, Article 2¹⁸ and Article 12 of the Paris Agreement.
26. To the contrary the Government seeks to impede the campaigners who attempt to compensate for the deficit in public information, by eroding the constitutional right to protest through its recently introduced *Police, Crime, Sentencing and Courts Bill 2021*. Section 59 of the Bill makes it an offence, punishable with 10 years imprisonment to do an act which “*obstructs the public or a section of the public in the exercise or enjoyment of a right that may be exercised or enjoyed by the public at large*” - a criterion applicable to any protest on a scale sufficient to register with the public at large.¹⁹
27. Third, the Defendants have failed to take practical and effective measures to align financial flows to the Paris Temperature Limit. It is estimated that the City of London “*supports, at minimum, somewhere in the order of 15% of potential global CO2 emissions*”²⁰. In July 2020, around £1bn of taxpayer money was committed, through UK Export Finance, to a new Liquid Natural Gas project in Mozambique²¹. It is reported that further such projects are being supported, despite the First Defendant’s commitment in December 2020 to ending practice: “*Major Brazilian oil and gas project could get UK backing despite promised end to fossil fuel funding*”²².
28. Meanwhile the Bank of England has disclosed that its Corporate Assets Portfolio is “*consistent with an average temperature increase of 3.5°C above pre-industrial levels by 2100*”;²³ and the Chair of the Environment Agency, Emma Howard Boyd, has said that “*the FTSE 100 index as a whole is heading towards 3.9 degrees*”²⁴. To invest in 3-4°C warming, is knowingly to invest in catastrophe, with devastating and unspeakable consequences for the Claimants and all of our young people.
29. Further, the Second Defendant has admitted that for the purposes of the Memorandum of Understanding on resolution planning and financial crisis management (“**the MoU**”)²⁵,

¹⁸ *Öneryıldız v Turkey (ECtHR 30 November 2004, no. 48939/99)*, page 286 of the Claimants’ Authorities Bundle

¹⁹ Daily Mail: “Extinction Rebellion protestors could be classified as an ‘organised crime group’ as Boris Johnson promises to clamp down on climate anarchists with tough new laws”, page 542 of Exhibit TC/1; *Police, Crime, Sentencing and Courts Bill 2021*, s.59, page 50 of the Claimants’ Authorities Bundle

²⁰ Carbon Tracker: “UK Net Zero 2050 – good intentions, but aren’t we missing something?”, page 31 of Exhibit TC/1

²¹ Letter of Response dated 10 August 2020, page 29 of the Claimants’ Core Bundle

²² The Telegraph: “Major Brazilian oil and gas project could get backing despite promised end to fossil fuel funding”, page 34 of Exhibit TC/1

²³ Bank of England: “The Bank of England’s climate-related financial disclosure 2020”, p 5, page 36 of Exhibit TC/1

²⁴ Speech made by Emma Howard Boyd, Chair of the Environment Agency, at the Committee on Climate Change’s “Adapting to 3°C+ of global warming” conference, page 38 of Exhibit TC/1

²⁵ HM Treasury: Memorandum of Understanding on resolution planning and financial crisis management, page 45 of Exhibit TC/1

which governs the economic response to COVID-19, he interprets “international obligations” to exclude international obligations relating to climate change. There is no justification for this approach, which is unlawful.

30. Fourth, the Defendants have failed to implement the polluter pays principle, which is a fundamental principle of both economics and law, and have failed to implement a legal and administrative framework to provide consistent and principled compensation for those suffering climate change loss and damage, whether in the UK or beyond.
31. Such failure is the more egregious for the asymmetry between the high polluters and consumers most responsible for the crisis and those disproportionately exposed to the impacts and risks, both within the UK and internationally. To the contrary, the Defendants have chosen this moment of global crisis, in the build-up to COP26, to cut financial support to communities around the world most exposed to disproportionate impact and risk. In the words of Mark Lowcock, the head of the UN’s Office for Humanitarian Affairs this decision is “*an act of medium and longer term self-harm*”²⁶.
32. In its rhetoric, the Government acknowledges that implementation of the Paris Agreement is critical to averting catastrophe. Yet in addressing previous legal challenges invoking the Paris Agreement, the Government has defended itself on the basis that the Paris Agreement, as an international instrument, is not binding domestically and consequently that the Paris Temperature Limit is “not relevant” to the assessment of carbon intensive infrastructure projects, such as the expansion of Heathrow Airport²⁷.
33. It is down to the Government that there is no legal or regulatory framework that implements the key commitments of the Paris Agreement into national law. The Government cannot expect to “*ensure international implementation of Paris Agreement commitments*” if it fails to do so domestically.
34. In summary, the Defendants have failed to take practical and effective measures to implement the central commitments of the Paris Agreement, despite acknowledging that it is necessary to do so, which is inconsistent with the Claimants’ fundamental rights.
35. The 2nd to 4th Claimants are young British Citizens who have family in Afrika and Abya Yala (the Americas, including the Caribbean and Latin America), regions of the world already experiencing extreme disruption from climate and ecological breakdown. They are additionally exposed to disproportionate and discriminatory impacts and risks on the grounds of:
 - a. Belonging to racially marginalised communities (2nd and 3rd Claimants)
 - b. Gender (3rd and 4th Claimants)
 - c. Mental health (3rd Claimant).

²⁶ The Guardian: “UK ‘balancing books on backs of Yemen’s starving people’, says UN diplomat”, page 60 of Exhibit TC/1

²⁷ *R. (on the application of Plan B Earth)* [2020] EWCA Civ 214, para. 186, page 204 of the Claimants’ Authorities Bundle

36. The Defendants' failure to take practical and effective measures to address the climate crisis creates intolerable risks to the lives and family lives of all those within the jurisdiction, but has disproportionate and discriminatory impacts for many, including the younger generation, their children and grandchildren.

37. The Claimants seek:

- a. a Declaration that the Defendants' failure to take practical and effective measures to meet their climate change commitments arising under the Paris Agreement and the Climate Change Act 2008 (as set out above) breaches the Claimants' rights under the Human Rights Act 1998 (ECHR Articles 2, 8 and 14);
- b. a Mandatory Order that the Defendants implement, with appropriate urgency, a legal and regulatory framework sufficient to meet those commitments.

38. In particular such a framework must ensure that:

- a. All Government Departments, local authorities and regulatory bodies are under a duty to align all activity under their control with the Paris Temperature Limit and the net zero target;
- b. All Government Departments, local authorities and regulatory bodies are under a duty to ensure that all activity under their control is resilient to the current and projected impacts of climate change;
- c. UK financial flows from both public and private institutions are consistent with the Paris Temperature Limit;
- d. This Government and future governments implement the polluter pays principle to provide consistent and principled compensation and financial and technical assistance to historically low polluting and consuming communities on the frontline of the climate crisis, in the UK and internationally.

39. In the absence of such a framework, there is nothing to prevent public and private institutions in the UK from actively investing and profiteering from projects that will lock-in gross violations of the rights of the Claimants, and all current and future generations.

B. THE PARTIES AND THE TIMING OF THE CLAIM

40. Plan B. Earth ('Plan B') is a charitable incorporated organisation, registered and regulated by the Charity Commission, with charitable purposes including the following:

- a. developing and advancing legal strategies and actions to prevent average global warming exceeding the temperature goal agreed by governments (further to the United Nations Framework Convention on Climate Change and related instruments);

- b. promoting and supporting the development of legal, regulatory and policy frameworks to support the realisation of internationally recognised climate change and other environmental goals;
 - c. promoting human rights (as set out in the Universal Declaration of Human Rights and subsequent United Nations Conventions and Declarations) in so far as they are threatened or adversely affected by the impacts of climate change and other environmental degradation, in particular by:
 - i. preventing infringements of such rights;
 - ii. obtaining redress for victims where such rights are infringed;
 - iii. promoting respect for such rights among individuals.
41. Plan B will act as the lead claimant in the case.
42. Adetola Onamade, aged 24, Jerry Amokwandoh, aged 22, and Marina Tricks, aged 20, the 2nd to 4th Claimants, are British Citizens with family in West Africa, the Caribbean and Latin America, regions of the world which are highly vulnerable to the impacts of climate change.
43. Tim Crosland, aged 51, is the Director of Plan B and the father of two children, aged 12 and 19.
44. The Prime Minister, the First Lord of the Treasury, is the first named Defendant. As recognised by the Government, he has assumed personal responsibility for the UK’s domestic and international strategy on climate change:
- “The Government has taken other broader enabling steps, including the announcement in October 2019 that the Prime Minister would chair a Cabinet committee on climate change. The PM-chaired Climate Action Strategy Committee (CAS) determines the UK’s overarching climate strategy, both domestically and internationally.”²⁸**
45. It is only through the leadership of the First Defendant that the “whole-of-government” response, urged by the CCC and others, can be effectively delivered.
46. The Chancellor has failed to introduce measures to ensure that projects are only funded across Government if they are consistent with the Government’s commitments under the Paris Agreement and the net zero target. The Chancellor has failed to implement measures to align finance flows to the Paris Temperature Limit, despite recently changing the Bank of England’s remit to require it to support the net zero target²⁹. It is the Chancellor who has misinterpreted “international obligations” for the purposes of the

²⁸ HM Government: The Government Response to the Committee on Climate Change’s 2020 Progress Report to Parliament, Presented to Parliament pursuant to section 37 of the Climate Change Act 2008, page 70 of Exhibit TC/1

²⁹ The Guardian: “Bank of England given green remit to aid net zero carbon goal”, page 71 of Exhibit TC/1

MoU and has consequently failed to implement the necessary measures in his handling of the economic crisis arising from COVID-19.

47. The Secretary of State for Business, Energy and Industrial Strategy (“**the Secretary of State**”) bears the legal responsibility for meeting the net zero target in the CCA 2008 and is also legally responsible for the breaches of CCA 2008, sections 13 and 58.
48. The Claimants sent the Defendants a Pre-Action Protocol letter on 12 December 2020 and received a reply on behalf of the Second and Third Defendants on 14 January 2021, but not on behalf of the First Defendant, despite the Government’s position that “*The PM-chaired Climate Action Strategy Committee (CAS) determines the UK’s overarching climate strategy*”.
49. This Claim relates not to a specific decision made by the Defendants, but to ongoing breaches by the Defendants of their legal obligations, including breaches of the Claimant’s rights to life and to family life. For as long as such breaches continue, legal claims for redress cannot be out of time.
50. There have been a number of substantial developments since December 2020, including the report of the Public Accounts Committee from March 2021, to the effect that the Government has failed to make a plan to meet its own legally binding climate commitments.³⁰ The Claimants have proceeded with all due expedition, in light of the significance and substance of the matters in issue, and the volume of work involved in preparing this case. All are volunteer litigants-in-person, with numerous responsibilities and commitments.

C. FACTUAL BACKGROUND

C.1 The existential threat from climate change

51. The Defendants are well aware of the extraordinary threat the climate crisis presents to the lives and family lives of all those within the jurisdiction, including the Claimants. A snapshot of recent statements made by the Defendants and other public figures is sufficient to bring the point home.
52. On 1 May 2019, Parliament approved a motion to declare a climate and environmental emergency. On behalf of the Government, the Rt Hon Michael Gove MP acknowledged the UK’s historic responsibility for the crisis and the consequent obligation to “show leadership”:

“I make it clear that the Government recognise the situation we face is an emergency. It is a crisis, and it is a threat that we must all unite to meet ... We in the United Kingdom must bear that moral and ethical challenge particularly heavily. We were the first country to industrialise, and the industrial revolution that was forged here and generated prosperity here was responsible for the carbon emissions that have driven global warming. The

³⁰ BBC News: “Government has no climate change plans – MPs”, page 14 of Exhibit TC/1

burden of that is borne, even now, by those in the global south, so we have a responsibility to show leadership.”³¹ (emphasis added)

53. In December 2020, the Second Defendant published a report which begins:

“Climate change is an existential threat to humanity. Without global action to limit greenhouse gas emissions, the climate will change catastrophically with almost unimaginable consequences for societies across the world.”³² (emphasis added)

54. On 5 February 2021, Mark Carney, the former Governor of the Bank of England said:

"When you look at climate change from a human mortality perspective, it will be the equivalent of a coronavirus crisis every year from the middle of this century, and every year, not just a one-off event. So it is an issue that needs to be addressed now.”³³

55. On 18 February 2021, Antonio Guterres, the UN Secretary General, warned:

“Humanity is waging war on nature. This is senseless and suicidal. The consequences of our recklessness are already apparent in human suffering, towering economic losses, and the accelerating erosion of life on Earth.”³⁴

56. On 23 February 2021, Sir James Bevan, Chief Executive of the Environment Agency, said that the UK is seeing the impacts of the climate emergency hitting “worst case scenario” levels with more extreme weather and flooding:

“The reasonable worst case scenario for climate sounds like this:

Much higher sea levels will take out most of the world’s cities, displace millions, and make much of the rest of our land surface uninhabitable or unusable.

Much more extreme weather will kill more people through drought, flooding, wildfires and heatwaves than most wars have.

The net effects will collapse ecosystems, slash crop yields, take out the infrastructure that our civilisation depends on, and destroy the basis of the modern economy and modern society.

If that sounds like science fiction let me tell you something you need to know. This is that over the last few years the Reasonable Worst Case for several of

³¹ Hansard Volume 659, Environment and Climate Change, statements of Michael Gove, page 75 of Exhibit TC/1

³² HM Treasury: Net Zero Review: Interim Report, p. 2, page 78 of Exhibit TC/1

³³ BBC News: “Mark Carney: Climate crisis deaths will be worse than Covid”, page 81 of Exhibit TC/1

³⁴ The Guardian: “Human Destruction of nature is ‘senseless and suicidal’, warns UN chief”, page 85 of Exhibit TC/1

the flood incidents the EA has responded to has actually happened, and it's getting larger.

That is why our thinking needs to change faster than the climate. And why our response needs to match the scale of the challenge.³⁵ (emphasis added)

57. Also on 23 February, the First Defendant addressed the UN Security Council as follows:

“If we don’t act now, when will we act? That’s my question. When are we going to do something if we don’t act now? ...

Whether you like it or not, it is a matter of when, not if, your country and your people will have to deal with the security impacts of climate change.”³⁶

58. Sir David Attenborough gave a presentation to the same meeting, during which he said:

“If we continue on our current path, we will face the collapse of everything that gives us our security. Food production. Access to fresh water. Habitable ambient temperature. And ocean food-chains.

And if the natural world can no longer support the most basic of our needs, then most of the rest of civilisation will quickly break down.

Please make no mistake: climate change is the biggest threat to security that modern humans have ever faced

Some of these threats will assuredly become reality within a few short years. Others could, in the lifetime of today’s young people, destroy entire cities and societies, even altering the stability of the entire world.³⁷ (emphasis added).

59. On 18 March 2021, the Rt Hon Alok Sharma MP said:

“The climate crisis represents a clear and present danger to people and our planet. Its real-world consequences are now all too visible.

In Nepal last month, I met communities displaced by melting glaciers. In Ethiopia, I saw how floods, droughts and locusts have decimated crops. Around the world, oceans are warming, and storms, floods and wildfires are intensifying, while here at home, our coastal towns face serious long-term threats from rising seas. Unless we act now, we will be out of time to hold back the worst impacts.

³⁵ GOV.UK: “Climate emergency impacts hitting ‘worst case scenario’ levels, page 89 of Exhibit TC/1

³⁶ BBC News: “Climate change is a threat to our security – Boris Johnson”, page 92 of Exhibit TC/1

³⁷ BBC News: “Attenborough gives stark warning on climate change to UN”, page 96 of Exhibit TC/1

Our planet is heating up, fast. On course, scientists tell us, for temperature rises of some 3.5C by 2100 compared to pre-industrial levels. The impact of such a rise will be nothing less than catastrophic.³⁸ (emphasis added)

60. Consequently it is surprising that the Defendants, in their Pre-Action Protocol letter response, should say:

“It is not accepted that the circumstances of climate change affecting the UK are sufficient to engage positive obligations under Article 2 or Article 8 of the European Convention on Human Rights.”³⁹

61. If an “*existential threat*”, that will “*kill more people ... than most wars have*”, and “*destroy the basis of the modern economy and modern society*”, which “*represents a clear and present danger to people and our planet*” is not sufficient to engage positive obligations under the ECHR then nothing is, and HRA and ECHR protections are exposed as empty and illusory.

62. Climate change is not a *force majeure* that the Government is helpless to defend against. It is the consequence of human activity, and in particular the burning of fossil fuels.

63. As recognised by the Rt Hon Michael Gove MP (see §52 above) the UK, as the first country to industrialise, bears a particular responsibility for historic carbon emissions. The UK continues actively to increase the danger through:

- a. Its own greenhouse gas emissions; and
- b. Public and private UK financing of fossil fuel projects overseas (it is estimated, for example, that the City of London supports an extraordinary 15% of global carbon emissions)⁴⁰.

C.2 The disproportionate and discriminatory impacts on the 2nd to 4th Claimants

64. As described at §56 above, on the current trajectory, the “*net effects will collapse ecosystems, slash crop yields, take out the infrastructure that our civilisation depends on, and destroy the basis of the modern economy and modern society*”. The climate crisis threatens not only the human rights of all, but also the underpinnings of the system that maintains the rule of the law and the concept of human rights.

65. Nevertheless, at least in the short term, and as with COVID-19⁴¹, the impacts of the climate crisis are unequally distributed. The 2nd to 4th Claimants face disproportionate and discriminatory impacts for the following reasons:

³⁸ The Guardian: “Time is running short – but we can get a grip on the climate crisis”, page 97 of Exhibit TC/1

³⁹ Letter of Response dated 14 January 2021, page 67 of the Claimants’ Core Bundle

⁴⁰ Carbon Tracker: “UK Net Zero 2050 – good intentions, but aren’t we missing something?”, page 31 of Exhibit TC/1

⁴¹ House of Commons Women and Equalities Committee: “Unequal impact? Coronavirus and BAME people”, Third Report of Session 2019–21, page 464 of Exhibit TC/1; Public Health England: “Beyond the data: Understanding the impact of COVID-19 on BAME groups”, page 468 of Exhibit TC/1

- a. They are young people, aged 20-24, who face “*unimaginable consequences*” in their own life-times and the life-times of any children or grandchildren they may have;
 - b. Their family life is inextricably linked with regions of the world which are on the frontline of the crisis;
 - c. The 2nd and 3rd Claimants are from racially marginalised communities, which are disproportionately exposed to the impacts and risks of social and economic breakdown, including from the rising xenophobia that is historically associated with such conditions;
 - d. The 3rd and 4th Claimants are female, and will be exposed to disproportionate and discriminatory impacts and risks from social and economic breakdown, including from gender-based violence;
 - e. The 3rd Claimant is exposed to disproportionate risk associated with her mental health.
66. The Claimants do not envisage that the matters set out at §65 above will be in dispute between the parties, since they are uncontroversial and are widely acknowledged. Indeed the latest Government UK Climate Change Risks Assessment acknowledges the discriminatory impacts of climate change:

“The UK Climate Change Risk Assessment 2017 Evidence Report highlights that climate risks will affect people differently, depending on their social, economic and cultural environment. Low-income households are particularly susceptible to climate change impacts, as these impacts disproportionately affect their resources. These groups also have lower capacity and resources to adapt. Evaluation of climate risks and actions must consider these distributional effects.”⁴²

67. The evidence in support of these propositions is extensive. The Claimants advance a small sample by way of illustration.
68. The Preamble to the Paris Agreement refers specifically to “people in vulnerable situations”:

“Acknowledging that climate change is a common concern of humankind, Parties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights, the right to health, the rights of indigenous peoples, local communities, migrants, children, persons with disabilities and people in vulnerable situations and the right to development, as well as gender equality, empowerment of women and intergenerational equity ...”⁴³.

⁴²HM Government: UK Climate Change Risk Assessment 2017, p 10, page 102 of Exhibit TC/1

⁴³ Paris Agreement on Climate Change, page 70 of the Claimants’ Authorities Bundle

69. In June 2017, the Scottish Government published its “*Climate Change Bill: Consultation Paper*” . A section titled “Assessing Impacts on People” highlights the centrality of human rights obligations to the Scottish Government’s approach:

“The Scottish Government is a champion of climate justice as an approach to tackling climate change internationally. This approach focuses on equality and human rights, as the adverse effects of a changing climate are expected to disproportionately impact vulnerable groups across the world. By showing leadership on climate ambition, the Scottish Government intends to encourage other countries to make similar commitments.”⁴⁴ (emphasis added)

70. On 18 April 2019, Dr James E. Hansen, one of the world’s leading climate scientists, wrote a letter addressed “*To the General Public of the United Kingdom Including, Especially, British Young People*”. Dr Hansen states:

“I write too in recognition that citizens throughout the U.K., led increasingly by the young – those who stand to lose most – now are rising to demand that national leaders develop and adhere to a viable path away from calamitous global warming, including all the disruption to civilization and nature that is, of necessity, at issue...”⁴⁵ (emphasis added)

71. In the face of the social and economic collapse, which the current trajectory implies, those from racially marginalised communities will be exposed to disproportionate and discriminatory impact and risk. Following the financial crisis of 2008, UNESCO produced a “*Fact-Sheet on the Impact of the Economic Crisis on Discrimination and Xenophobia*”, which states:

“History shows that times of economic depression have a negative impact on social cohesion. All previous crises of the 1900s, including the Great Depression, the Oil Crisis, the Asian financial crisis, the Russian financial crisis and the Latin American financial crisis, affected migration in distinct ways and spurred resentment of foreigners and xenophobic actions.”⁴⁶

72. The Article 8 rights of the Claimants are intimately bound up with their families outside the jurisdiction, in West Africa, the Caribbean and Latin America, regions of the world which, as the Government acknowledges, are disproportionately exposed to the impacts and risks of the climate crisis (see §52 above).

73. In 2012, Dara International, produced a report *Climate Vulnerability Monitor: A Guide to the Cold Calculus of a Hot Planet* which concluded:

“This report estimates that climate change causes 400,000 deaths on average each year today, mainly due to hunger and communicable diseases that affect

⁴⁴ Climate Change Bill: Consultation, page 103 of Exhibit TC/1

⁴⁵ Letter to the General Public of the United Kingdom, especially British young people by Dr. James E. Hansen, page 137 of Exhibit TC/1

⁴⁶ Global Migration Group: Fact-Sheet on the Impact of the Economic Crisis on Discrimination and Xenophobia, page 147 of Exhibit TC/1

above all children in developing countries. Our present carbon-intensive energy system and related activities cause an estimated 4.5 million deaths each year linked to air pollution, hazardous occupations and cancer ...

Continuing today's patterns of carbon-intensive energy use is estimated, together with climate change, to cause 6 million deaths per year by 2030, close to 700,000 of which would be due to climate change.”⁴⁷

74. By 2021 that appeared to be a substantial underestimate, with new research indicating that fossil fuels caused 8.7million deaths in 2018⁴⁸.

75. The Intergovernmental Panel on Climate Change (“**the IPCC**”) said in its 2018 report on the impacts of 1.5°C warming:

“Exposure to multiple and compound climate-related risks increases between 1.5°C and 2°C of global warming, with greater proportions of people both so exposed ... in Africa and Asia (high confidence)”.⁴⁹

76. Far from limiting warming to 1.5°C, current levels of greenhouse gas emissions leave the world on course for devastating temperature rises of 3-4°C warming. In the words of Sir David King, the Government’s former Chief Scientific Adviser:

“A temperature rise of 4.0 degrees C would give rise to unmanageable risks, and yet this is the most likely outcome by 2100 unless appropriate global action is taken.”⁵⁰

77. Professor Johan Rockstrom, one of the world’s leading climate scientists, was interviewed about the risks of 4°C by the Guardian in May 2019:

"Indeed, the consequences of a 4C warmer world are so terrifying that most scientists would rather not contemplate them, let alone work out a survival strategy. Rockström doesn't like our chances. “It's difficult to see how we could accommodate eight billion people or even half of that,” he says. “There will be a rich minority of people who survive with modern lifestyles, no doubt, but it will be a turbulent, conflict-ridden world.”⁵¹ (emphasis added).

78. It is clear that the Government’s failure to take practical and effective measures to tackle the climate crisis breaches the 2nd to 4th Defendants’ Convention rights in ways which are disproportionate and discriminatory.

⁴⁷Climate Vulnerability Monitor: A Guide to the Cold Calculus of a Hot Planet, DARA International, p 24, page 149 of Exhibit TC/1

⁴⁸ The Guardian: “Invisible killer’: fossil fuels caused 8.7m deaths globally in 2018, research finds”, page 151 of Exhibit TC/1

⁴⁹ IPCC: Summary for Policymakers, page 157 of Exhibit TC/1

⁵⁰ Witness statement of Sir David King, page 181 of Exhibit TC/1

⁵¹ The Guardian: “The heat is on over the climate crisis. Only radical measures will work”, page 184 of Exhibit TC/1

C.3 The UK Government's national and international climate change commitments

79. The threat from climate change has been understood for decades by both industry and governments. Investigative journalists have obtained the Minutes of a meeting of the American Petroleum Institute from March 1980, which states:

“LIKELY IMPACTS:

1°C RISE (2005) : BARELY NOTICEABLE

**2.5°C RISE (2038): MAJOR ECONOMIC CONSEQUENCES,
STRONG REGIONAL DEPENDENCE**

5°C (2067): GLOBALLY CATASTROPHIC EFFECTS”⁵².

80. In 1988, Dr. James E. Hansen, who was at the time a scientist working with the US National Aeronautics and Space Administration (NASA), gave evidence to a Senate Committee that the process of global warming was already underway.⁵³ Dr Hansen's testimony is widely regarded as the catalyst for the international effort to confront the threat from climate change, leading to the adoption of the *UN Framework Convention on Climate Change* (“UNFCCC”) in 1992.

The UNFCCC

81. The UNFCCC⁵⁴ was ratified by the UK in December 1993. It came into force in March 1994. The objective of the UNFCCC is set out in Article 2:

“The ultimate objective of this Convention and any related legal instruments that the Conference of the Parties may adopt is to achieve, in accordance with the relevant provisions of the Convention, stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system. Such a level should be achieved within a time frame sufficient to allow ecosystems to adapt naturally to climate change, to ensure that food production is not threatened and to enable economic development to proceed in a sustainable manner.”
(emphasis added)

82. The Preamble to the UNFCCC notes:

“... that the largest share of historical and current global emissions of greenhouse gases has originated in developed countries, that per capita emissions in developing countries are still relatively low and that the share of

⁵² Minutes of the American Petroleum Institute AQ-9 Task Force meeting, pp 1, 13, page 193 of Exhibit TC/1

⁵³ The New York Times: “Global Warming Has Begun, Expert Tells Senate”, page 195 of Exhibit TC/1

⁵⁴ United Nations Framework Convention on Climate Change, page 63 of the Claimants' Authorities Bundle

global emissions originating in developing countries will grow to meet their social and development needs ...”.

83. Article 3 sets out the principles that shall guide the actions of the State parties to achieve this objective. These include the following:

“(1) The Parties should protect the climate system for the benefit of present and future generations of humankind, on the basis of equity and in accordance with their common but differentiated responsibilities and respective capabilities. Accordingly, the developed country Parties should take the lead in combating climate change and the adverse effects thereof ...

(3) The Parties should take precautionary measures to anticipate, prevent or minimize the causes of climate change and mitigate its adverse effects. Where there are threats of serious or irreversible damage, lack of full scientific certainty should not be used as a reason for postponing such measures, taking into account that policies and measures to deal with climate change should be cost-effective so as to ensure global benefits at the lowest possible cost.”

84. Article 4 then sets out the specific commitments of the State parties.

“1. All Parties, taking into account their common but differentiated responsibilities and their specific national and regional development priorities, objectives and circumstances, shall ...

(b) Formulate, implement, publish and regularly update national and, where appropriate, regional programmes containing measures to mitigate climate change by addressing anthropogenic emissions by sources and removals by sinks of all greenhouse gases ...

2. The developed country Parties [which includes the UK] and other Parties included in Annex I commit themselves specifically as provided for in the following:

(a) Each of these Parties shall adopt national policies and take corresponding measures on the mitigation of climate change, by limiting its anthropogenic emissions of greenhouse gases and protecting and enhancing its greenhouse gas sinks and reservoirs. These policies and measures will demonstrate that developed countries are taking the lead in modifying longer-term trends in anthropogenic emissions consistent with the objective of the Convention.” ...

3. The developed country Parties ... shall also provide such financial resources, including for the transfer of technology, needed by the developing country Parties to meet the agreed full incremental costs of implementing measures ... The implementation of these commitments shall take into account the need for adequacy and predictability in the flow of funds and the

importance of appropriate burden sharing among the developed country Parties ...

7. The extent to which developing country Parties will effectively implement their commitments under the Convention will depend on the effective implementation by developed country Parties of their commitments under the Convention related to financial resources and transfer of technology ...”

85. Thus, by 1993, the UK Government had accepted:

- (a) that climate change required an urgent and effective response;
- (b) that all countries had to make a contribution to that response based on equity and the precautionary principle, taking into account their respective positions both historically and for the future;
- (c) that “developed countries”, including the UK, had to lead the response;
- (d) that developed countries, including the UK, had to provide “developing countries” with adequate and predictable finance and technology transfer as part of that response; and
- (e) that each country’s response was to be regularly updated.

The duty to prevent harm

86. Under international law, States have the sovereign right to exploit their own resources. They have a corresponding responsibility to ensure activities within their control do not cause substantial damage to other states or areas beyond the limits of national jurisdiction (such as the high seas or outer space). This is described as the ‘principle of prevention’ or the ‘no-harm rule’. The International Court of Justice has held that:

“A State is thus obliged to use all the means at its disposal in order to avoid activities which take place in its territory, or in any area under its jurisdiction, causing significant damage to the environment of another State.”⁵⁵

87. The UNFCCC directly invokes the principle in its Preamble, removing all doubt regarding its application to climate change:

“Recalling also that States have, in accordance with the Charter of the United Nations and the principles of international law ... the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction.”

88. States including the UK, therefore, have an obligation, under general principles of international law, to take all appropriate measures to anticipate, prevent or minimize the

⁵⁵ *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, I.C.J. Reports 1996(I), p. 242, para. 29

causes of climate change, in particular through effective measures to reduce greenhouse gas emissions to a level consistent with the temperature goal, and to provide compensation and restitution where harm has been caused.

The 2000 Royal Commission Report

89. In 2000, the Royal Commission issued a report on climate change which emphasised three reasons why “*the UK should strive, at home and abroad, to ensure that an effective international response to the threat of climate change is mounted, beginning now and extending far into the future.*”:

(a) **“First, there is the moral imperative ... which requires developed nations to take the lead in addressing the threat (as does UNFCCC, which the UK has ratified).”**

(b) **“Second, the more nations there are which hesitate, the less chance there is of concerted global action. Even if only a minority of nations adopt a ‘wait and see’ stance, this could jeopardise progress in future negotiations.”**

(c) **“Third, the UK is very likely to be harmed by climate change.”⁵⁶**

The 2006 Stern Review

90. A similar conclusion to that reached by the Royal Commission was reached in the Stern Review, *The Economics of Climate Change* (the “Stern Review”), commissioned by Gordon Brown, then Chancellor, in 2006. The Stern Review concluded:

“There is still time to avoid the worst impacts of climate change, if we take strong action now.

The scientific evidence is now overwhelming: climate change is a serious global threat, and it demands an urgent global response.

This Review has assessed a wide range of evidence on the impacts of climate change and on the economic costs, and has used a number of different techniques to assess costs and risks. From all of these perspectives, the evidence gathered by the Review leads to a simple conclusion: the benefits of strong and early action far outweigh the economic costs of not acting ...”⁵⁷

The Climate Change Act 2008

91. The Stern Review led to the proposal for the introduction of what would become the 2008 Act. In its response to pre-legislative scrutiny and consultation on the Climate Change Bill in 2007, the sponsoring Minister acknowledged in the Foreword:

⁵⁶Royal Commission on Environmental Pollution: Twenty-second Report, “Energy – The Changing Climate”, p 59, page 199 of Exhibit TC/1

⁵⁷ Stern Review: *The Economics of Climate Change*, page 201 of TC/1

“Climate change is the greatest challenge facing our generation. It is the ultimate expression of our interdependence and its effects will be felt by all of us, in every corner of this small and fragile planet.

This Climate Change Bill demonstrates the UK’s strong leadership on climate change, both at home and abroad.

... Other countries have been following the progress of the draft Bill with interest, and I hope it will encourage all of us as we tackle the greatest challenge we face as a world.”⁵⁸

92. The 2008 Act was originally conceived as committing the UK to an appropriate contribution to limiting warming to 2°C, reflecting the political consensus of the time. Section 1 establishes the emissions reduction “target” for 2050, which it is the duty of the Secretary of State to secure:

“The target for 2050

(1) It is the duty of the Secretary of State to ensure that the net UK carbon account for the year 2050 is [at least 80%] lower than the 1990 baseline.

(2) “The 1990 baseline” means the aggregate amount of—

(a) net UK emissions of carbon dioxide for that year, and

(b) net UK emissions of each of the other targeted greenhouse gases for the year that is the base year for that gas.”

93. In 2019, following advice from the CCC that the “at least 80%” target was insufficient to meet the Paris Temperature Limit, it was amended by the *The Climate Change Act 2008 (2050 Target Amendment) Order 2019 (S.I. 2019/1056)* to read **“at least 100%”** (the ‘net zero target’).

94. Section 4 obliges the Secretary of State to establish and meet incremental “carbon budgets” for successive 5 yearly periods:

“4 Carbon budgets

(1) It is the duty of the Secretary of State—

(a) to set for each succeeding period of five years beginning with the period 2008-2012 (“budgetary periods”) an amount for the net UK carbon account (the “carbon budget”), and

(b) to ensure that the net UK carbon account for a budgetary period does not exceed the carbon budget.”

⁵⁸Taking Forward the UK Climate Change Bill: The Government Response to Pre-Legislative Scrutiny and Public Consultation, P 4, page 206 of TC/1

95. Section 13 imposes on the Secretary of State the duty to prepare “policies and proposals” to ensure the carbon budgets are met:

“13 Duty to prepare proposals and policies for meeting carbon budgets

(1)The Secretary of State must prepare such proposals and policies as the Secretary of State considers will enable the carbon budgets that have been set under this Act to be met.

(2)The proposals and policies must be prepared with a view to meeting—

(a)the target in section 1 (the target for 2050), and

(b)any target set under section 5(1)(c) (power to set targets for later years).

(3)The proposals and policies, taken as a whole, must be such as to contribute to sustainable development.

(4)In preparing the proposals and policies, the Secretary of State may take into account the proposals and policies the Secretary of State considers may be prepared by other national authorities.” (emphasis added)

96. The 1987 Brundtland Report defines “sustainable development” as '*development that meets the needs of the present without compromising the ability of future generations to meet their own needs*'. The term is not defined in the Act itself.

97. Section 56 requires the Secretary of State to “*lay reports before Parliament containing an assessment of the risks for the United Kingdom of the current and predicted impact of climate change*”. Section 57 imposes a duty on the CCC to advise the Secretary of State regarding his Section 56 reports.

98. Section 58 imposes on the Secretary of State a duty to establish a programme for adapting to the impacts of climate change, as follows:

“58 Programme for adaptation to climate change

(1)It is the duty of the Secretary of State to lay programmes before Parliament setting out —

(a)the objectives of Her Majesty's Government in the United Kingdom in relation to adaptation to climate change,

(b)the Government's proposals and policies for meeting those objectives, and

(c)the time-scales for introducing those proposals and policies, addressing the risks identified in the most recent report under section 56.

(2)The objectives, proposals and policies must be such as to contribute to sustainable development.” (emphasis added)

99. A notable feature of the 2008 Act is that it imposes duties on the Third Defendant, which in practice depend for their fulfillment on the actions of all Government Departments, local authorities and others, but in particular the support of the First and Second Defendants.

100. The need for “*strong leadership from government*”, integrating the net zero target into “*all areas of government responsibility*” was emphasised by Sir Patrick Vallance, the Chief Scientific Adviser to the Government, and Professor Dame Nancy Rothwell, co-chair of the Council for Science and Technology, in a letter to the Prime Minister written in January 2020:

“Achieving net zero through a whole systems approach”

Achieving net zero will require fundamental changes in our society and economy. Given the long timescales required to get innovation into individual homes and businesses and the scale of behaviour change needed by individuals, communities and institutions, we must start now ...

This will require very strong leadership from government, an open dialogue with citizens and innovative approaches to policy making and delivery across the UK, working with devolved administrations, local authorities and industries ...

The newly established Cabinet Committee on Climate Change should ensure the net-zero target is translated into all areas of government responsibility. This is essential to guide the development of specific actions needed in the coming years to achieve net zero by 2050. Strong leadership from the Committee is essential to maintain a sense of urgency and accountability.”⁵⁹ (emphasis added).

Build-up to the Paris Agreement

101. In 2012, the parties to the UNFCCC (including the UK Government), commissioned a “Structured Expert Dialogue”, to review the adequacy of the 2°C goal.

102. In 2013, Lord Stern, author of the Stern Review, concluded that he had “underestimated the risks” from climate change:

“Looking back, I underestimated the risks. The planet and the atmosphere seem to be absorbing less carbon than we expected, and emissions are rising pretty strongly. Some of the effects are coming through more quickly than we thought then ...

This is potentially so dangerous that we have to act strongly. Do we want to play Russian roulette with two bullets or one? These risks for many people are existential.”⁶⁰ (emphasis added)

⁵⁹ Letter to the Prime Minister, from Patrick Vallance, Chief Scientific Adviser to the Government and Professor Dame Nancy Rothwell, page 207 of Exhibit TC/1

⁶⁰ The Guardian: “Nicholas Stern: ‘I got it wrong on climate change – it’s far, far worse’”, page 211 of Exhibit TC/1

103. The UNFCCC Structured Expert Dialogue reported in 2015, ahead of the Conference of the Parties (“COP”) to the UNFCCC in Paris, concluding that the concept of a 2°C “guardrail” was “inadequate”:

“The ‘guardrail’ concept, in which up to 2°C of warming is considered safe, is inadequate and would therefore be better seen as an upper limit, a defence line that needs to be stringently defended, while less warming would be preferable ...”⁶¹

“Experts emphasized the high likelihood of meaningful differences between 1.5°C and 2°C of warming regarding the level of risk from ocean acidification and of extreme events or tipping points, because impacts are already occurring at the current levels of warming; risks will increase with further temperature rise ... They added that in the light of the difficulties in predicting the risks of climate change, there is value in taking a precautionary approach and adopting a more stringent target.”⁶²

The 2015 Paris Agreement

104. Following the Structured Expert Dialogue report, the UK Government was active in securing the Paris Agreement through its permanent Special Representative on Climate Change, Sir David King. The Paris Agreement has been ratified by 191 governments, under the auspices of the UNFCCC. It entered into force on 4 November 2016.

105. The Preamble states:

“Acknowledging that climate change is a common concern of humankind, Parties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights, the right to health, the rights of indigenous peoples, local communities, migrants, children, persons with disabilities and people in vulnerable situations and the right to development, as well as gender equality, empowerment of women and intergenerational equity” (emphasis added)

106. The objectives of the Paris Agreement are set out in Article 2:

“This Agreement, in enhancing the implementation of the Convention, including its objective, aims to strengthen the global response to the threat of climate change, in the context of sustainable development and efforts to eradicate poverty, including by:

(a) Holding the increase in the global average temperature to well below 2°C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5°C above pre-industrial levels, recognizing that this would significantly reduce the risks and impacts of climate

⁶¹ Report of the Structured Expert Dialogue, Final Report, p 18, page 215 of Exhibit TC/1

⁶² *Ibid.* p.31, page 216 of Exhibit TC/1

change;

(b) Increasing the ability to adapt to the adverse impacts of climate change and foster climate resilience and low greenhouse gas emissions development, in a manner that does not threaten food production; and

(c) Making finance flows consistent with a pathway towards low greenhouse gas emissions and climate-resilient development.”

107. The Paris Agreement does not specify particular targets for different countries, as it is based on the concept of ‘nationally determined contributions’. However, it does specify the principles on which national targets should be based (and must be read also in conjunction with the principles set out in the UNFCCC). In particular:

(a) The Preamble acknowledges that Parties should “promote and consider their respective obligations on human rights” in taking action to address climate change.

(b) Article 2(2) states that the Agreement must be implemented to reflect “*equity and the principle of common but differentiated responsibilities*”.

(c) Article 4 provides that:

“1. In order to achieve the long-term temperature goal set out in Article 2, Parties aim to reach global peaking of greenhouse gas emissions as soon as possible, recognizing that peaking will take longer for developing country Parties, and to undertake rapid reductions thereafter in accordance with best available science, so as to achieve a balance between anthropogenic emissions by sources and removals by sinks of greenhouse gases in the second half of this century, on the basis of equity, and in the context of sustainable development and efforts to eradicate poverty.

2. Each Party shall prepare, communicate and maintain successive nationally determined contributions that it intends to achieve. Parties shall pursue domestic mitigation measures, with the aim of achieving the objectives of such contributions.

3. Each Party’s successive nationally determined contribution will represent a progression beyond the Party’s then current nationally determined contribution and reflect its highest possible ambition, reflecting its common but differentiated responsibilities and respective capabilities, in the light of different national circumstances.

4. Developed country Parties should continue taking the lead by undertaking economy-wide absolute emission reduction targets. Developing country Parties should continue enhancing their mitigation efforts, and are encouraged to move over time towards

economy-wide emission reduction or limitation targets in the light of different national circumstances.” (underlining added)

108. The Paris Agreement, in other words, allows Parties to determine their own emission reduction targets, as long as they accord with the principles set out above.

109. Article 7 sets out the commitments on adapting to the impacts of climate change:

“Parties hereby establish the global goal on adaptation of enhancing adaptive capacity, strengthening resilience and reducing vulnerability to climate change, with a view to contributing to sustainable development and ensuring an adequate adaptation response in the context of the temperature goal referred to in Article 2.”

110. Critical is the link between adaptation and the Paris Temperature Limit. If that limit is exceeded, then adaptation measures implemented on the basis of that limit (such as flood defences) will be fatally inadequate. A failure by the richer countries, for example, to align their emissions to the Paris Temperature Limit, will cause breaches to the defences of those communities and regions which are exposed to disproportionate impacts and risks and whose capacity to adapt is dependent on that limit being maintained.

111. Article 7(2) recognises the global cooperation required to support adaptation efforts, taking into account *“the urgent and immediate needs of those developing country Parties that are particularly vulnerable to the adverse effects of climate change”*:

“Parties recognize that adaptation is a global challenge faced by all with local, subnational, national, regional and international dimensions, and that it is a key component of and makes a contribution to the long-term global response to climate change to protect people, livelihoods and ecosystems, taking into account the urgent and immediate needs of those developing country Parties that are particularly vulnerable to the adverse effects of climate change.” (emphasis added)

112. Article 7(5) sets out further principles to be applied to adaptation efforts:

“Parties acknowledge that adaptation action should follow a country-driven, gender-responsive, participatory and fully transparent approach, taking into consideration vulnerable groups, communities and ecosystems, and should be based on and guided by the best available science and, as appropriate, traditional knowledge, knowledge of indigenous peoples and local knowledge systems, with a view to integrating adaptation into relevant socioeconomic and environmental policies and actions, where appropriate.” (emphasis added)

113. Article 7(6) states:

“Parties recognize the importance of support for and international cooperation on adaptation efforts and the importance of taking into account

the needs of developing country Parties, especially those that are particularly vulnerable to the adverse effects of climate change.”

114. Article 8 addresses loss and damage arising from the impacts of climate change:

“Parties recognize the importance of averting, minimizing and addressing loss and damage associated with the adverse effects of climate change, including extreme weather events and slow onset events, and the role of sustainable development in reducing the risk of loss and damage.”

115. Article 9(1) obliges “Developed country Parties”, such as the UK, to provide “financial resources” to others to assist with both mitigation and adaptation:

“Developed country Parties shall provide financial resources to assist developing country Parties with respect to both mitigation and adaptation in continuation of their existing obligations under the Convention.”

116. Notably, in the context of the UK Government’s recent decision to cut financial support for vulnerable communities overseas, Article 9(3) requires such support to *“represent a progression beyond previous efforts”*.

117. Article 10(1) addresses technology transfer:

“Parties share a long-term vision on the importance of fully realizing technology development and transfer in order to improve resilience to climate change and to reduce greenhouse gas emissions.”

118. Article 12 imposes on Government an obligation to cooperate over education, public awareness and access to information concerning the climate crisis:

“Parties shall cooperate in taking measures, as appropriate, to enhance climate change education, training, public awareness, public participation and public access to information, recognizing the importance of these steps with respect to enhancing actions under this Agreement.”

119. The Paris Agreement is supported by an accompanying Decision, which explains the relevant and agreed context in the preamble:

“Recognizing that climate change represents an urgent and potentially irreversible threat to human societies and the planet and thus requires the widest possible cooperation by all countries, and their participation in an effective and appropriate international response, with a view to accelerating the reduction of global greenhouse gas emissions ...

Acknowledging that climate change is a common concern of humankind, Parties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights ...

Emphasizing with serious concern the urgent need to address the significant gap between the aggregate effect of Parties’ mitigation pledges in terms of

global annual emissions of greenhouse gases by 2020 and aggregate emission pathways consistent with holding the increase in the global average temperature to well below 2°C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5°C above pre- industrial levels ...

Emphasizing the enduring benefits of ambitious and early action, including major reductions in the cost of future mitigation and adaptation efforts ...”⁶³
(emphasis added)

120. The Parties also agreed that:

“...developed countries intend to continue their existing collective mobilization [of finance] goal through 2025 ... ; prior to 2025 the Conference of the Parties ... shall set a new collective quantified goal from a floor of USD 100 billion per year, taking into account the needs and priorities of developing countries ...”⁶⁴

121. Thus by 2015 the UK Government had accepted:

- a. That climate change represents an urgent and potentially irreversible threat to human societies and the planet (Preamble to Paris Decision);
- b. That the UK Government should respect, promote and consider its human rights obligations in taking action on climate change, with specific reference to the rights of migrants, gender equality and intergenerational equity (Preamble to Paris Decision and Paris Agreement);
- c. That UK greenhouse gas emissions should be aligned to the Paris Temperature Limit (Paris Agreement, Articles 2 and 4);
- d. That the UK should adapt to and prepare for the current and projected impacts of climate change and support vulnerable communities around the world in adapting to and preparing for the current and projected impacts of climate change (Paris Agreement, Articles 2, 7 and 9);
- e. That UK finance flows should be aligned to the Paris Temperature Limit (Paris Agreement, Articles 2 and 9); and
- f. That the UK should provide consistent and principled compensation and financial and technical assistance to historically low polluting and consuming communities on the frontline of the climate crisis, in the UK and internationally (Paris Agreement, Articles 8,9 and 10).

C.4 Projected impacts beyond the Paris Temperature Limit

⁶³ Report of the Conference of the Parties on its twenty-first session, held in Paris from 30 November to 13 December 2015, page 86 of the Claimants’ Authorities Bundle

⁶⁴ *Ibid.* p.8, page 89 of the Claimants’ Authorities Bundle

122. In October 2018, further to a formal request from the Parties to the Paris Agreement, the Intergovernmental Panel on Climate Change (“the IPCC”) published a report on the impacts of 1.5°C warming (“the IPCC Report”), concluding:

“limiting global warming to 1.5°C, compared with 2°C, could reduce the number of people both exposed to climate-related risks and susceptible to poverty by up to several hundred million by 2050 ...⁶⁵

Lower risks are projected at 1.5°C than at 2°C for heat-related morbidity and mortality (very high confidence) ...

Risks from some vector-borne diseases, such as malaria and dengue fever, are projected to increase with warming from 1.5°C to 2°C, including potential shifts in their geographic range (high confidence) ...⁶⁶

Limiting warming to 1.5°C compared with 2°C is projected to result in smaller net reductions in yields of maize, rice, wheat, and potentially other cereal crops, particularly in sub-Saharan Africa, Southeast Asia, and Central and South America, and in the CO₂-dependent nutritional quality of rice and wheat (high confidence). Reductions in projected food availability are larger at 2°C than at 1.5°C of global warming in the Sahel, southern Africa, the Mediterranean, central Europe, and the Amazon (medium confidence) ...⁶⁷

Depending on future socio-economic conditions, limiting global warming to 1.5°C compared to 2°C may reduce the proportion of the world population exposed to a climate change-induced increase in water stress by up to 50%, although there is considerable variability between regions (medium confidence) ...

Exposure to multiple and compound climate-related risks increases between 1.5°C and 2°C of global warming, with greater proportions of people both so exposed and susceptible to poverty in Africa and Asia (high confidence).⁶⁸

123. Following the publication of the IPCC Report, Jim Skea, Co-Chair of IPCC Working Group III, said:

“We have presented governments with pretty hard choices. We have pointed out the enormous benefits of keeping to 1.5C, and also the unprecedented shift in energy systems and transport that would be needed to achieve that. We show it can be done within laws of physics and chemistry. Then the final tick box is political will.”⁶⁹

⁶⁵ IPCC: Summary for Policymakers, B.5.1, page 165 of Exhibit TC/1

⁶⁶ Ibid. B.5.2, page 165 of Exhibit TC/1

⁶⁷ Ibid. B.5.3, page 165 of Exhibit TC/1

⁶⁸ Ibid. B.5.6, page 166 of Exhibit TC/1

⁶⁹ The Guardian: “We have 12 years to limit climate change catastrophe, warns UN”, page 217 of Exhibit TC/1

124. Additional research has drawn even starker conclusions. Also in 2018, a group of leading academics published *Trajectories of the Earth System in the Anthropocene* which assessed the risk of crossing a “tipping point” in the climate system, beyond which rapidly interacting feedback effects might lead to a “Hothouse Earth”. This concluded:

“Our analysis suggests that the Earth System may be approaching a planetary threshold that could lock in a continuing rapid pathway toward much hotter conditions—Hothouse Earth. This pathway would be propelled by strong, intrinsic, biogeophysical feedbacks difficult to influence by human actions, a pathway that could not be reversed, steered, or substantially slowed.

Where such a threshold might be is uncertain, but it could be only decades ahead at a temperature rise of ~2.0 °C above preindustrial, and thus, it could be within the range of the Paris Accord temperature targets.”⁷⁰

125. A peer-reviewed paper published in October 2019, *Increasing risks of multiple breadbasket failure under 1.5 and 2 °C global warming*, concluded:

“Risks of simultaneous crop failure ... increase disproportionately between 1.5 and 2 °C, so surpassing the 1.5 °C threshold will represent a threat to global food security.”⁷¹

126. The Government has itself explained the significance of the Paris Temperature Limit in its Clean Growth Strategy:

“Scientific evidence shows that increasing magnitudes of warming increase the likelihood of severe, pervasive and irreversible impacts on people and ecosystems. These climate change risks increase rapidly above 2°C but some risks are considerable below 2°C. This is why, as part of the Paris Agreement in 2015, 195 countries committed to hold “the increase in the global average temperature to well below 2°C above pre-industrial levels and to pursue efforts to limit the temperature increase to 1.5°C above pre-industrial levels, recognising that this would significantly reduce the risks and impacts of climate change”⁷² (emphasis added).

127. A paper published in March 2021 implies that beyond 1.5°C tropical regions of the world will be pushed beyond the limits of adaptation:

⁷⁰ PNAS: Trajectories of the Earth System in the Anthropocene, page 224 of Exhibit TC/1

⁷¹ ScienceDirect: “Increasing risks of multiple breadbasket failure under 1.5 and 2 °C global warming”, page 232 of Exhibit TC/1

⁷² HM Government: The Clean Growth Strategy: Leading the way to a low carbon future, p 140, page 240 of Exhibit TC/1

“These results suggest that limiting global warming to 1.5 °C will prevent most of the tropics from reaching ... [an extreme wet-bulb temperature] of 35 °C, the limit of human adaptation.”⁷³

128. In summary, there is compelling evidence, which is recognised by the Government, that limiting warming to the Paris Temperature Limit is necessary to avoid intolerable risks for us all, recognising that many communities, in the UK and beyond, will be exposed to disproportionate and discriminatory impacts and risks.

C.5 Government statements on the Paris Agreement

129. In the Prime Minister’s Foreword to the *Clean Growth Strategy*, published in October 2017, Theresa May states:

“On the world stage, we were instrumental in driving through the landmark Paris Agreement.”⁷⁴

130. In the Minister’s Foreword, Greg Clark MP states

“Following the success of the Paris Agreement, where Britain played such an important role in securing the landmark deal, the transition to a global low carbon economy is gathering momentum.”⁷⁵

131. The Strategy itself states:

“The actions and investments that will be needed to meet the Paris commitments will ensure the shift to clean growth will be at the forefront of policy and economic decisions made by governments and businesses in the coming decades.”⁷⁶

132. In January 2018, the Government published “A Green Future: Our 25 Year Plan to Improve the Environment”. In this the Government promised:

“Using our leading role in the UNFCCC, through which the Paris Agreement was established, we will urge the international community to meet the goals enshrined in the text ... This is vital for future environmental security: current global commitments under the Agreement are insufficient to limit average temperature rise to well below 2°C.”⁷⁷ (emphasis added)

133. On 27 March, 2018, the Foreign and Commonwealth Office (“FCO”) Minister, Mark Field MP, said in response to a written question:

⁷³ The Guardian: “Global heating pushes tropical regions towards limits of human livability”, page 241 of Exhibit TC/1

⁷⁴ HM Government: *The Clean Growth Strategy: Leading the way to a low carbon future*, p 2, page 236 of Exhibit TC/1

⁷⁵ *Ibid.*, p 3, page 237 of Exhibit TC/1

⁷⁶ *Ibid.* p.8, page 238 of Exhibit TC/1

⁷⁷ HM Government: *A Green Future: Our 25 year Plan to Improve the Environment*, p 118, page 7 of Exhibit TC/1

“Climate change is an existential threat ... Our diplomats and Climate Envoy are working, with BEIS [the Department for Business, Energy and Industrial Strategy] and international partners, to ensure international implementation of Paris Agreement commitments.”⁷⁸ (emphasis added)

134. In December 2020, the Rt Hon Alok Sharma MP, the President Designate of COP26, said at a virtual climate summit:

"Have we made any real progress at this summit? And the answer to that is: yes. But they will also ask, have we done enough to put the world on track to limit warming to 1.5C, and protect people and nature from the effects of climate change? To make the Paris Agreement a reality. Friends, we must be honest with ourselves, the answer to that, is currently: no. As encouraging as all this ambition is. It is not enough."⁷⁹

135. On 18 March 2021, the Rt Hon Alok Sharma MP said:

“Globally, we must halve emissions over the next decade alone if we are to meet the goals of the Paris agreement – which aims to keep global temperature rises well below 2C and closer to 1.5C. That means taking action today.

Of all the competing issues, fighting climate change and preserving biodiversity is now the UK’s number one international priority. That is the clear message from the prime minister’s comprehensive strategy for international policy – the integrated review – published this week, which also affirms our commitment to aligning all future UK aid with the Paris agreement ...

This must be the moment the world gets a grip on the climate crisis and, as Cop26 president, I have four clear aims.

The first: global net zero. I want to put the world on a path to reach net zero by the middle of the century, which is essential to keeping 1.5C within reach.

Today’s global targets for 2030 are nowhere near enough to meet the Paris agreement temperature goal, as a recent UN report made clear ...

We also need policies in place to make such targets a reality ... We need a green thread running through all Covid-19 recovery packages ...

The second goal: adaptation; protecting our communities and natural habitats from the destructive impact of climate change, the effects of which will grow in force and ferocity, even on a path to net zero ...

⁷⁸ UK Parliament: Climate Change Convention: Question for Foreign And Commonwealth Office, page 9 of Exhibit TC/1

⁷⁹ COP26 President's closing remarks at Climate Ambition Summit 2020, page 244 of Exhibit TC/1

That is part of our third goal: finance. Sufficient funds are vital to tackling the climate crisis. Developed countries have promised to raise \$100bn a year for climate action. In the UK we have committed £11.6bn over the next five years in climate finance and are pushing others to follow our lead.⁸⁰
(emphasis added)

136. In summary it is clear that the UK Government accepts that:
- a. It is vital to uphold the commitment set out in the Paris Agreement, which implies
 - b. Not just targets, but policies which implement targets for emissions reduction, adaptation and finance, in accordance with the Paris Agreement.

C.6 Evidence of the Government’s failure to take practical and effective measures

C.6.1 The global context

137. As recognised by the Rt Hon Alok Sharma MP, the international community is failing to meet the Paris Agreement commitments.
138. Far from limiting warming to 1.5°C in accordance with the Paris Agreement, the world is on course for catastrophic warming of 3-4°C, as acknowledged in the comments below.
139. On 4 February, 2020 the Prime Minister said:
“CO2 levels today are at a level not seen since 3 million years ago when there were trees on Antarctica ... the temperature of the planet has gone up by one degree, and it is now predicted, unless we take urgent action, to get three degrees hotter”.⁸¹
140. In the words of Andrew Bailey, Governor of the Bank of England:
“We have a choice: rebuild the old economy, locking in temperature increases of 4C with extreme climate disruption; or build back better, preserving our planet for generations to come”.⁸² (emphasis added)
141. Those assessments are consistent with the scientific advice. The IPCC has said:
"In most scenarios without additional mitigation efforts ... warming is more likely than not to exceed 4 degrees C above pre-industrial levels by 2100."⁸³
142. Sir David King, the Government’s former Chief Scientist has said:

⁸⁰ The Guardian: “Time is running short – but we can get a grip on the climate crisis”, page 97 of Exhibit TC/1

⁸¹ Prime Minister Boris Johnson’s speech at COP 26 Launch, page 252 of Exhibit TC/1

⁸² The Guardian: “The world must seize this opportunity to meet the climate challenge”, page 423 of Exhibit TC/1

⁸³ IPCC: Climate Change 2014 Synthesis Report Summary for Policymakers, pp 18-19, page 257 of Exhibit TC/1

“A temperature rise of 4.0 degrees C would give rise to unmanageable risks, and yet this is the most likely outcome by 2100 unless appropriate global action is taken.”⁸⁴ (emphasis added)

143. Indeed the Government itself has said that a temperature rise of 5°C is possible by the end of the century:

“Without significant reductions in emissions, the world is likely to be on course for average temperature rise in excess of 2°C above pre-industrial levels, and possibly as much as 5°C for the highest emissions scenarios, by the end of this century”.⁸⁵

144. According to the scientific literature, warming on this scale would be “catastrophic” or “beyond catastrophic”.

145. According to Yangyang Xu of Texas A&M University and Veerabhadran Ramanathan of the Scripps Institution of Oceanography the risk threat from climate change may be summarised as follows:

“>1.5 °C as dangerous; >3 °C as catastrophic; and >5 °C as unknown, implying beyond catastrophic, including existential threats”.⁸⁶

146. According to the CCC, October 2008

“The Committee’s judgement, on the basis of the IPCC AR4 report, is that ... if a 4°C rise were reached, extreme consequences potentially beyond our ability to adapt would arise”.⁸⁷

147. According to Professor Kevin Anderson, Tyndall Centre:

“there is a widespread view that 4°C is:

- **incompatible with an organised global community**
- **beyond ‘adaptation’**
- **devastating to eco-systems**
- **highly unlikely to be stable (tipping points, etc.)**

and consequently, 4°C should be avoided at ‘all’ costs.”⁸⁸

148. Professor Johan Rockstrom, one of the world’s leading climate scientists, was interviewed about the risks of 4°C by the Guardian in May 2019:

⁸⁴Witness statement of Sir David King, page 181 of Exhibit TC/1

⁸⁵ HM Government: The Clean Growth Strategy: Leading the way to a low carbon future, p.139, page 239 of Exhibit TC/1

⁸⁶ PNAS: “Well below 2 °C: Mitigation strategies for avoiding dangerous to catastrophic climate changes”, page 260 of Exhibit TC/1

⁸⁷ Letter from Lord Turner, Chair CCC, to Ed Miliband, page 261 of Exhibit TC/1

⁸⁸ Presentation of Professor Kevin Anderson: “From rhetoric to reality: facing the challenges of climate change”, slide 29, page 267 of Exhibit TC/1

"Indeed, the consequences of a 4C warmer world are so terrifying that most scientists would rather not contemplate them, let alone work out a survival strategy. Rockström doesn't like our chances. "It's difficult to see how we could accommodate eight billion people or even half of that," he says. "There will be a rich minority of people who survive with modern lifestyles, no doubt, but it will be a turbulent, conflict-ridden world."⁸⁹

149. In February 2021, the UNFCCC Secretariat issued a report on the aggregate effect of the most recent "nationally determined commitments" under the Paris Agreement. According to the Secretariat, to limit warming to 1.5°C, in accordance with the Paris Agreement, global carbon emissions need to be reduced by 45% by 2030 compared to their 2010 levels. The aggregate effect of the emission reductions from those countries submitting commitments within the deadline would be a reduction of just 1% (one per cent) by 2030.⁹⁰

150. In summary, the world is heading for climate catastrophe, with devastating impacts for the human rights of all, and with the 2nd to 4th Claimants and the children of the 5th Claimant, on the frontline.

151. It does not follow from the fact that the international community as a whole is failing to meet the commitments set out in the Paris Agreement, that the UK Government is failing to make its appropriate contribution nor that it is breaching ECHR rights.

152. If the Government's rhetoric were to be believed, the UK is leading the way. On 5 March 2021, for example, a Government spokesperson told the BBC:

"It is nonsense to say the government does not have a plan when we have been leading the world in tackling climate change."⁹¹ (emphasis added)

153. The Government's self-aggrandisement, however, is contradicted by its actions, inaction and independent expert opinion.

C.6.2 The Government is failing to meet its own net zero target

154. The CCC's June 2020 Progress Report to Parliament highlights the extent to which the Government is falling short of its own targets:

"Progress is generally off-track in most sectors, with only four out of 21 of the indicators on track in 2019 ... This represents no change from the previous year where the same four of the 21 indicators were met ..."⁹²

⁸⁹ The Guardian: "The heat is on over the climate crisis. Only radical measures will work", page 184 of Exhibit TC/1

⁹⁰ United Nations: "Climate Commitments Not on Track to meet Paris Agreement goals as NDC Synthesis report is published, page 269 of Exhibit TC/1

⁹¹ BBC News: "Government has no climate change plans – MPs", page 14 of Exhibit TC/1

⁹² Committee on Climate Change Progress Report to Parliament: "Reducing UK Emissions", p 105, page 21 of Exhibit TC/1

“Overall the Government has only fully achieved two milestones out of the 31 set out in the 2019 Progress Report.”⁹³

155. The report stated that the following 12 months to June 2021 would be “crucial” (11 of which, at the time of writing, have already passed).

“The coming year is therefore crucial. The delay of COP26 to November 2021 provides a window to address this policy deficit and establish a credible internationally-leading position. The key remaining elements of the net-zero policy package must be put in place in the coming months ...”⁹⁴

“The months ahead have huge significance. The steps that the world and the UK take to rebuild from the COVID-19 pandemic and its economic damage can accelerate the transition to low-carbon activities and improve our climate resilience. Short-term choices that lock-in emissions or climate risks must be avoided.”⁹⁵ (emphasis added)

156. The CCC emphasised the importance of a “whole-of-government” response, which embeds net zero into all major economic decisions:

“In recommending a Net Zero target for 2050, the Committee noted the need for the Net Zero challenge to be embedded and integrated across all departments, at all levels of Government and in all major decisions that impact on emissions.”⁹⁶ (emphasis added)

157. In September 2020, the Institute for Government published a report, *Net zero - How government can meet its climate change target*. This stated:

“In June 2019, the UK government committed itself to cutting greenhouse gas emissions to “net zero” by 2050, meaning the UK would emit no more than it takes out of the atmosphere ...

Yet there is still little evidence that the government, and the politicians who waved the new target through with little debate, have confronted the enormous scale of the task ahead”⁹⁷

158. The report addresses the critical role of the Prime Minister, the First Defendant:

“In several speeches, Boris Johnson has reiterated his personal commitment to net zero. But in his actions, he has not prioritised it. In October 2019, he announced that he would personally chair a new cabinet committee on climate change: it did not meet until 5 March 2020, three months after the

⁹³ Ibid. p. 112, page 23 of Exhibit TC/1

⁹⁴ Ibid. p.105, page 21 of Exhibit TC/1

⁹⁵ Ibid. p.127, page 24 of Exhibit TC/1

⁹⁶ Ibid. p.164, page 25 of Exhibit TC/1

⁹⁷Institute for Government: “Net zero: How government can meet its climate change target”, p 5, page 273 of Exhibit TC/1

election and five months after its creation. Even before the coronavirus crisis hit, no one we spoke to felt that net zero was a top three or four priority for the prime minister ...

...it will be impossible to get on track for an economic transformation as enormous as net zero if it remains only middle ranking on the prime minister's priority list. Net zero will need to be embedded in the UK's recovery from coronavirus.”⁹⁸

159. It highlights the absence of a Government plan to meet its own targets:

“Delivering net zero will happen only if the government makes tackling climate change central to its purpose...the government needs to show it can not only set ambitious targets, but also meet them”⁹⁹

“The government must outline a clear and convincing path to meeting the target”¹⁰⁰

“The UK's current plan, the 2017 Clean Growth Strategy, reads more like a list of (probably desirable) measures to promote a low-carbon economy rather than a comprehensive strategy with a clear plan to achieve net zero sector by sector”¹⁰¹

160. It highlights the absence of criteria for assessing specific projects against the net zero target:

“The government does not currently have any systematic way to compare the value for money and equity of different types of options for reducing emissions over the next 30 years. This will be important in working out how to allocate costs and where in the economy to target the heavy lifting. It also does not have a rigorous method for assessing whether its overall plans add up to its carbon budgets or longer-term trajectory to net zero.”¹⁰²

161. And it highlights the lack of Treasury support for net zero:

“The Treasury's plan does not mention emissions or decarbonisation.”¹⁰³

“Not only has the UK committed less funds [than other countries] to green measures, its plans are also less ambitious in terms of setting a path towards net zero.”¹⁰⁴

⁹⁸ Ibid. p.29, page 276 of Exhibit TC/1

⁹⁹ Ibid. p. 6, page 274 of Exhibit TC/1

¹⁰⁰ Ibid. p. 8, page 275 of Exhibit TC/1

¹⁰¹ Ibid, p. 68, page 279 of Exhibit TC/1

¹⁰² Ibid. p.72, page 280 of Exhibit TC/1

¹⁰³ Ibid. p.39, page 277 of Exhibit TC/1

¹⁰⁴ Ibid. p.65, page 278 of Exhibit TC/1

162. Finally the report identifies a number of essential requirements for meeting the net zero target, including:

- a. **“a coherent plan based on a thorough appraisal of practical options, which sets out how, sector by sector, the UK will achieve emissions reductions, and which gives businesses the certainty they need to invest**
- b. **consistent policy and regulatory frameworks in each sector**
- c. **the capacity to co-ordinate action across the whole of government and beyond ...”¹⁰⁵**

163. In November 2020, the Institute for Public Policy Research published another damning report, *The road to COP 26 A clean and fair recovery at home, and a leader on climate and nature abroad*. This found that:

“The average additional investment needed per year over this parliament is £33 billion ...

The government's spending commitments for public investment over this parliament represents only 12 per cent of what is needed to achieve net zero emissions by 2050 ...”¹⁰⁶ (emphasis added)

164. The report makes a number of specific recommendations. Noting that the Government’s net zero target excludes the carbon emissions imported into the UK and consumed within the UK, it says:

“Consumption emissions: The UK’s response to the climate and nature crises should go further and take into account its consumption emissions. This would ensure that the UK does not shift the burden of its greenhouse gas emissions to other countries. Targets on consumption emissions will need to be handled with care in order to avoid any perverse incentives. The UK government should commit to a target on consumption emissions as part of its wider net zero strategy ...

A Net Zero and Just Transition Delivery Body: To drive through the policy change required across the whole of the economy, the UK government should establish a Net Zero and Just Transition Delivery Body (NZJT) led by the Department for Business, Energy, and Industrial Strategy and include representatives from other government departments such as the Treasury and the Department for Work and Pensions, local authorities and metro mayors, trade unions, the industrial sector, financial institutions, civil society and the National Infrastructure Commission.

¹⁰⁵ Ibid. p.6, page 274 of Exhibit TC/1

¹⁰⁶Institute for Public Policy Research: “The road to COP 26: A clean and fair recovery at home, and a leader on climate and nature abroad”, p. 4, page 283 of Exhibit TC/1

Net Zero and Just Transition Delivery Plans: The NZJT should be responsible for developing and delivering a national Net Zero Delivery Plan which must be centred around a just transition. This plan will integrate various departmental plans across government to ensure there is a coherent and fair approach to achieving decarbonisation.¹⁰⁷

165. On 18 November, the First Defendant published *The Ten Point Plan for a Green Industrial Revolution*. The Prime Minister's Foreword claims it:

“mobilise[s] £12 billion of government investment”¹⁰⁸.

166. It was widely reported that this amounted to just £4 billion¹⁰⁹ in new funding, compared to:

- a) more than £4 billion in loans for fossil-fuel based companies
- b) a £27 billion road programme confirmed by the Government in August
- c) the more than £100 billion cost of HS2
- d) £16.5 billion in military spending announced the next day.

167. The plan lists ten aims and objectives, such as “*Point 1: Advancing Offshore Wind*”; “*Point 2: Driving the Growth of Low Carbon Hydrogen*”; “*Point 6: Jet Zero and Green Ships*”¹¹⁰. It does nothing, however, to address the repeated criticism concerning the absence of consistent regulatory and policy frameworks to support the net zero target.

168. On 4 December 2020, the National Audit Office (“**the NAO**”), the UK’s independent public spending watchdog, which supports Parliament in holding government to account, published a report *Achieving Net Zero*¹¹¹.

169. The NAO stresses the scale of the challenge and the need for action across the economy:

“Achieving net zero is a colossal challenge and significantly more challenging than government’s previous target to reduce emissions by 80% by 2050. Achieving net zero means all parts of the economy, including those that are harder to decarbonise, need to reduce emissions substantially.”¹¹²

170. It highlights the Third Defendant’s own analysis, which is that the Government is failing to meet even the less stringent, historic 80% carbon target, let alone the more ambitious net zero target:

¹⁰⁷ Ibid. pp 3-4, pages 282-283 of Exhibit TC/1

¹⁰⁸ HM Government: *The Ten Point Plan for a Green Industrial Revolution*, p 3, page 285 of Exhibit TC/1

¹⁰⁹ BBC News: “Ban on new petrol and diesel cars in UK from 2030 under PM’s green plan”, page 291 of Exhibit TC/1

¹¹⁰ HM Government: *The Ten Point Plan for a Green Industrial Revolution*, pp 8,10,18, page 286 of Exhibit TC/1

¹¹¹ National Audit Office Report: “Achieving net zero”, page 298 of Exhibit TC/1

¹¹² Ibid. p.6, page 299 of Exhibit TC/1

“BEIS projects that the UK’s emissions will exceed government’s shorter-term targets without further action to close the gap. These targets are set at a level that is less ambitious than will be required to achieve net zero. BEIS’s latest projections show that the UK’s emissions will be higher than the level set by the fourth and fifth carbon budgets, which are legally binding targets for UK emissions over a five-year period from 2023 to 2027 and 2028 to 2032, respectively. BEIS has been predicting emissions that exceed the fourth carbon budget since 2011. These carbon budgets were set on a trajectory to reduce emissions by 80% by 2050, not to achieve net zero.”¹¹³ (emphasis added)

171. It emphasises the risks for implementation in the absence of a central body “with the responsibility and levers to achieve change.”¹¹⁴

172. It recommends that Treasury guidance:

“..requires departments to evaluate the impact of policies on the achievement of the net zero target, and is consistently adhered to.”¹¹⁵

173. It highlights the Government’s failure to set roles for public bodies beyond central government:

“Government has not set out clearly the roles of public bodies outside central departments in achieving net zero. Arm’s-length bodies, regulators and local authorities all have critical roles in the achievement of net zero. Our past work has shown that roles and responsibilities need to be clear and that the perspectives of different delivery bodies need to be incorporated into plans to achieve cross-cutting policy objectives. Local authorities will be key in the achievement of emissions reductions in the transport and housing sectors locally where the decarbonisation challenge will vary by location. But local government representatives we have spoken to have said there is a lack of clarity from central government on the role local authorities should play in achieving net zero.”¹¹⁶

174. The NAO concludes:

“BEIS, alongside the other departments involved, is yet to put in place all the essential components for effective cross-government working, such as integrated planning and progress monitoring, and processes to manage interdependencies, to ensure all of government steps up to this challenge. Beyond these internal structures government also needs to spearhead a concerted national effort to achieve the ambitious outcome of net zero greenhouse gas emissions by 2050. To do so, it needs to engage actively and constructively with all those who will need to play a part – across the public

¹¹³ Ibid, p.7, page 300 of Exhibit TC/1

¹¹⁴ Ibid. p.8, page 301 of Exhibit TC/1

¹¹⁵ Ibid. p.9, page 302 of Exhibit TC/1

¹¹⁶ Ibid.

sector, with industry and with citizens – to inject the necessary momentum.”¹¹⁷ (emphasis added).

175. In December 2020, the Treasury published its *Net Zero Review: Interim report*, which begins:

“Climate change is an existential threat to humanity. Without global action to limit greenhouse gas emissions, the climate will change catastrophically with almost unimaginable consequences for societies across the world.”¹¹⁸

176. The report, however, makes only a number of high level “findings” such as:

“The costs of the transition to net zero are uncertain and depend on policy choices.”

“Government needs to use a mix of policy levers to address multiple market failures and support decarbonisation”

“Well-designed policy can reduce costs and risk for investors, support innovation and the deployment of new technologies.”¹¹⁹

177. It does not propose or adopt practical measures to ensure alignment between Government spending and the net zero target, but states that a final report, to be published in Spring 2021, will consider:

“Embedding the findings: How HM Treasury could incorporate climate considerations into spending reviews and fiscal events and how to embed the principles of the Net Zero Review into policy making across government.”¹²⁰

178. On 5 March 2021, the Public Accounts Committee (“PAC”) published another damning report:

“Government has not set out how it plans to achieve net zero despite having set the target in 2019”

“The Department is not yet reporting on the programmes across government that are crucial to the delivery of net zero in a way that enables Parliament or the public to scrutinise progress.”

“HM Treasury has not yet clarified how it will ensure net zero is given adequate weight in the assessment of government policies and projects.”

“Government does not have a clear way of determining whether its actions to reduce emissions in the UK are transferring emissions to other countries.”

¹¹⁷ Ibid. p. 15, page 303 of Exhibit TC/1

¹¹⁸ HM Treasury: Net Zero Review: Interim Report, p.2, page 78 of Exhibit TC/1

¹¹⁹ Ibid. p.4, page 79 of Exhibit TC/1

¹²⁰ Ibid. p.6, page 80 of Exhibit TC/1

“The Department has not sufficiently engaged with local authorities on their role in the achievement of net zero across the UK.”¹²¹ (emphasis added)

179. Crucially PAC received evidence directly from the Government that Government Departments were not considering climate impacts on a consistent basis. Steve Field, Director, Climate, Environment, Energy, HMT, gave evidence to PAC on 21 January 2021:

“Within the Green Book, clearly, even if climate change and emissions reduction are not the primary objective of a particular proposal, Departments should be considering whether there is an important impact there, or whether it is a constraint on the objectives of their particular policy of programme.

As I said earlier, it is fair to say that that is not always happening on a consistent basis. We need to do more to set expectations of Departments.”¹²²

180. The systematic failure of the Defendants to implement practical and effective measures to deliver on its net zero commitment manifests itself in the decisions taken across Government, with complete disregard for the implications for the Government’s legally binding net zero target and the Paris Temperature limit, such as:

- a. Support for opening of a new coal mine in Cumbria, contrary to the advice of the CCC
- b. Support for aviation expansion, contrary to the advice of the CCC
- c. Climate condition-free emergency loans to carbon intensive corporations, contrary to the advice of the CCC.
- d. A commitment to invest £27.5billion in the road network, contrary to the advice of the CCC.

181. The Claimants do not seek to challenge these individual decisions in these proceedings. They reference them, however, as illustrations of the systemic failings that result from the absence of an appropriate legal and regulatory framework to implement Paris Agreement and CCA 2008 commitments.

[C.6.2.1 The Cumbria coal mine](#)

182. In 2019, Cumbria County Council approved an application submitted by West Cumbria Mining for a new coal mine, expected to extract 2.78 million tonnes of coal a year up to 2049, with 85 per cent exported to Europe. The Council’s reasoning, concerning the impact of the mine on climate change, was as follows:

¹²¹ Public Accounts Committee: Conclusions and Recommendations, page 304 of Exhibit TC/1

¹²² Public Accounts Committee, Oral evidence: Achieving Net Zero, HC 935, Q & A No. 54, Question 54, page 306 of Exhibit TC/1

“The greenhouse gas emissions of the mining operations were not estimated, because the officer assessment in the original Committee Report proceeded on the basis that coal production at Whitehaven would substitute for coal production elsewhere. Therefore, it was considered that the greenhouse gas emissions of the mining operations would be broadly carbon neutral.”¹²³

183. Properly understood, a ‘carbon neutral’ project is one in which any carbon emissions produced from the project are ‘balanced’ by those removed from the atmosphere, for example through carbon capture and storage (CCS) or carbon storage through land management. Speculation that the damage a project would cause would otherwise be caused by someone else, does not make a project carbon neutral.

184. The position of the CCC, the Government’s statutory advisers on climate change, was made explicit in December 2020, in its 6th Carbon Budget report:

“Government should target near-zero emissions from ore-based steelmaking in the UK by 2035.”¹²⁴

185. The CCC explained:

“In most existing primary steel production, coke (made from coal) is used as a reductant in blast furnaces. Hydrogen-based direct reduction of iron (DRI), can replace coke as the reductant with hydrogen (so, in part, the reductant is switched rather than the fuel). This process change leads to water vapour being produced, instead of CO2.”¹²⁵

186. The CCC’s report directly exposed the inconsistency between opening a new coal mine to support steel production and the Government’s own legally binding emission reduction commitments.

187. Nevertheless, on 6 January 2021, Tim Farron MP revealed that his request to the Communities Secretary, the Rt Hon Robert Jenrick MP to exercise his power to “call in” the project, pursuant to his power under the Town and Country Planning Act 1990, Section 77, had been rejected. A council spokesman said: "We have been informed that the [government] has decided not to call in the decision on the planning application for West Cumbria Mine. Tim Farron described the decision as a "complete disaster for our children's future"¹²⁶.

188. The decision drew national and international criticism. On 29 January 2021, Lord Deben, Chair of the CCC, wrote to Mr Jenrick as follows:

“My Committee notes that you have chosen not to call in the recent decision of Cumbria County Council to grant planning permission to a new Cumbrian coal mine to 2049. As you said in the House of Commons on the

¹²³ Minutes of Meeting of Development Control and Regulation Committee, page 308 of Exhibit TC/1

¹²⁴ Climate Change Committee: The Sixth Carbon Budget: Manufacturing and construction, p 53, page 312 of Exhibit TC/1

¹²⁵ Ibid. p.10, page 311 of Exhibit TC/1

¹²⁶ BBC News: “Whitehaven coal mine: Government refuses to call in plans”, page 313 of Exhibit TC/1

11th January, “it is a decision on whether it meets the bar to bring in a case and have it heard on a national scale, or whether, in the opinion of the Secretary of State, it is better left to local democratically-elected councillors”

...

The opening of a new deep coking coal mine in Cumbria will increase global emissions and have an appreciable impact on the UK’s legally binding carbon budgets. The mine is projected to increase UK emissions by 0.4Mt CO₂e per year. This is greater than the level of annual emissions we have projected from all open UK coal mines to 2050.

The decision to award planning permission to 2049 will commit the UK to emissions from coking coal, for which there may be no domestic use after 2035 ...

This decision also highlights the critical importance of local councillors and planning authorities considering fully the implications of their decisions on climate targets. In this regard, I would ask that we discuss the provision of guidance to local authorities. The CCC stands ready to provide whatever advice you feel is needed ...

... it is also important to note that this decision gives a negative impression of the UK’s climate priorities in the year of COP26.”¹²⁷

189. According to the BBC, “[i]n response to the letter, a government spokesperson said the decision to allow the coal mine would not be reversed”¹²⁸ (emphasis added).

190. Then on 4 February 2021, Dr James E. Hansen, the former NASA scientist, wrote a public letter to Boris Johnson, the First Defendant, which said:

“In leading the UK, as host to the COP, you have a chance to change the course of our climate trajectory, earning the UK and yourself historic accolades – or you can stick with business-almost-as-usual and be vilified in the streets of Glasgow, London, and around the world.

It would be easy to achieve this latter ignominy and humiliation. Just continue with the plan to open a new coal mine in Cumbria and continue to invest funds of the British public in fossil fuel projects overseas, in contemptuous disregard of the future of young people and nature.”¹²⁹

191. The letter was copied to John Kerry, the US representative to COP26.

¹²⁷ Letter from Lord Deben, Chairman of the CCC to Rt Hon Robert Jenrick MP, Secretary of State for Housing, Communities and Local Government, page 317 of Exhibit TC/1

¹²⁸ BBC News: “Whitehaven coal mine: Government refuses to call in plans”, page 313 of Exhibit TC/1

¹²⁹ Letter from Dr. James E. Hansen to the Prime Minister Boris Johnson, page 319 of Exhibit TC/1

192. On 9 February, Cumbria County Council announced it would reconsider the coal mine application in light of “new information” contained in the CCC’s December report.¹³⁰
193. On 8 March 2021, John Kerry told Newsnight, “*The marketplace has made a decision that coal is not the future.*”¹³¹
194. On 11 March 2021, the Government wrote to Cumbria County Council, calling in the decision under section 77 of the 1990 Act:
- “The Secretary of State has decided to call this application in because of the further developments since his original decision. The Climate Change Committee’s recommendations for the 6th Carbon Budget have been published since he was advised on this decision. The Secretary of State recognises that proponents and opponents take different positions on that matter, and considers that this should be explored during a public inquiry.**
- Furthermore controversy about the application has increased. Overall the Secretary of State considers that this application raises planning issues of more than local importance, and further considers that the limbs of the call-in policy relating to potential conflict with national policies in Chapters 14 and 17 of the Framework and substantial cross-boundary or national controversy are satisfied.”¹³²**
195. On 17 March 2021, the Rt Hon Kwasi Kwarteng MP, the Third Defendant, said:
- “Initially, [Jenrick] said we wouldn’t go against the local planning decision, but he’s now looking at that again and I think there were very compelling reasons to do as the CCC suggested, and not open the mine”¹³³ (emphasis added).**
196. In summary, the ongoing history of the application to open a new coal-mine in the UK, highlights the disarray of the Government’s approach to the climate crisis; and its failure to take practical and effective measures, including the implementation of a coherent regulatory framework, applicable to all public bodies to ensure its vital climate targets are met.

[C.6.2.2 Other examples in brief](#)

¹³⁰ Independent: “Controversial new coal mine plan to be reconsidered by Cumbria council” page 324 of Exhibit TC/1

¹³¹ Independent: “US Climate envoy John Kerry warns UK government coal has ‘no future’ amid growing concern over Cumbria mine”, page 331 of Exhibit TC/1

¹³² Letter on behalf of Secretary of State, BEIS to Cumbria County Council, page 335 of Exhibit TC/1

¹³³ The Guardian: “‘Compelling reasons’ not to open Cumbrian coal mine, says Kwasi Kwarteng”, page 339 of Exhibit TC/1

197. Similar examples of incoherence regarding the Government’s climate policies abound, but as individual decisions are not the target of this claim, and are referenced only to exemplify the systemic failure, they will be described in shorter form.
198. In June 2018, the Government approved plans to expand Heathrow Airport, despite the Government’s own evidence that:
- a. the expansion of Heathrow Airport would lead to around 40,000,000 tonnes of carbon dioxide emissions from UK aviation by 2050 (with no expansion to any other airport)¹³⁴; and that
 - b. in order to meet the Paris Temperature Limit (ie 1.5°C and “well below” 2°C), carbon dioxide emissions would need to be “net zero” before 2050¹³⁵.
199. The Government did not explain how the expansion of Heathrow Airport could be reconciled with the goals agreed in Paris by every country in the world. To the contrary, it argued that the Paris Agreement was “not relevant”¹³⁶. Chris Grayling MP, the Transport Minister at the time, relied instead on the historic 2°C temperature limit, rejected by governments (including the UK Government) in December 2015¹³⁷.
200. On 14 June 2018, Lord Deben and Baroness Brown, Chair and Deputy Chair of the CCC, had written to the Secretary of State for Transport as follows:
- “The UK has a legally binding commitment to reduce greenhouse gas emissions under the Climate Change Act. The Government has also committed, through the Paris Agreement, to limit the rise in global temperature to well below 2°C and to pursue efforts to limit it to 1.5°C.**
- We were surprised that your statement to the House of Commons on the National Policy Statement on 5 June 2018¹ made no mention of either of these commitments. It is essential that aviation’s place in the overall strategy for UK emissions reduction is considered and planned fully by your Department ...**
- Aviation emissions at 2005 levels in 2050 means other sectors must reduce emissions by more than 80%, and in many cases will likely need to reach zero. Higher levels of aviation emissions in 2050 must not be planned for, since this would place an unreasonably large burden on other sectors.”¹³⁸**
(emphasis added)
201. The CCC gave that statement prior to the introduction of the more stringent net

¹³⁴Department for Transport: “UK Aviation Forecasts: Moving Britain Ahead”, p 107, table 36, page 342 of Exhibit TC/1

¹³⁵*R. (on the application of Plan B Earth)* [2020] EWCA Civ 214, para 207, page 210 of the Claimants’ Authorities Bundle

¹³⁶ *Ibid.* para.186, page 204 of the Claimants’ Authorities Bundle

¹³⁷ *R (on the application of Friends of the Earth Ltd and others) (Respondents) v Heathrow Airport Ltd (Appellant)* [2020] UKSC 52, para. 112, page 266 of the Claimants’ Authorities Bundle

¹³⁸ Letter from Committee on Climate Change to Secretary of State, page 344 of Exhibit TC/1

zero target, yet the Government continues to support airport expansion, despite its own evidence and the evidence from its expert advisers that such expansion is inconsistent with its climate commitments. As noted by the BBC in the context of the proposed expansion of Leeds-Bradford Airport:

“It's not clear how the Leeds airport expansion plans will play out, and how they will fit with national policy.

The government's advisory Climate Change Committee says emissions from aviation must not be allowed to grow, so every expansion in capacity must be compensated by a contraction in passenger numbers elsewhere.

Ministers are considering the advice and preparing a new clean aviation strategy later in the year. But their thinking is far from clear.

On the one hand they say: "Airport growth has a key role to play in boosting our global connectivity and levelling up in the UK." That sounds pro-aviation.

But on the other hand they say: "The government takes seriously its commitments on the environment - and the expansion of any airport must always meet its climate change obligations."

Who knows how will this apparent contradiction be resolved?”¹³⁹

202. Since March 2020, the Second Defendant, via the Bank of England, and the Covid Corporate Financing Facility scheme (“CCFF”) (concerning which David Cameron controversially approached the Second Defendant over Greensill¹⁴⁰), has provided cheap finance in excess of £4billion to fossil fuel companies without imposing any climate conditions, contrary to the advice of the CCC, that “*support for carbon-intensive sectors should be contingent on them taking real and lasting action on climate change*”¹⁴¹. The loans include the following:

- £600million to Baker Hughes, an American international industrial service company and one of the world's largest oil field services companies
- £415million to Schlumberger, an oilfield services company
- £600million to RyanAir
- £600million to EasyJet
- £300million to British Airways

¹³⁹ BBC News: “Leeds Bradford Airport expansion plans approved”, page 346 of Exhibit TC/1

¹⁴⁰ BBC News: “Greensill: Former PMs ‘must never lobby government’ says Gordon Brown, page 426 of Exhibit TC/1

¹⁴¹ Letter from Lord Deben, Chairman of the Committee on Climate Change, and Baroness Brown, Chair of the CCC’s Adaptation Committee, to the Prime Minister, the Rt Hon Boris Johnson MP, page 349 of Exhibit TC/1

- £300million to WizzAir
- £300million to RCL Cruises Ltd, an American global cruise holding company incorporated in Liberia and based in Miami
- £600million to Nissan Motor Co Ltd
- £110million to Honda Finance Europe PLC.¹⁴²

203. In August 2020, Highways England confirmed plans for £27.4 billion investment in the road network¹⁴³, contrary to the advice of the CCC in May 2020 that “*higher investment in resilient digital technology including 5G and fibre broadband should ... be prioritised over strengthening the roads network*”.¹⁴⁴

204. In September 2020, the UK Oil & Gas Authority announced the award of 113 new licences for offshore oil and gas exploration.¹⁴⁵

205. In summary, in the absence of a clear and consistent framework, to be applied across Government Departments, local authorities and others, there is no practical and effective mechanism for aligning the UK’s emissions to its climate commitments. The Government is failing to play its part in averting the existential threat from the climate crisis, in breach of its legal obligations to the Claimants.

C.6.3 The Government is breaching its adaptation commitments

206. Section 56(3) of the 2008 Act obliges the Secretary of State to publish a climate change risk assessment for the UK every 5 years. The last such report was the *UK Climate Change Risk Assessment 2017*, based on evidence from the CCC.

207. The Report states:

“The Government endorses the six priority areas identified by the Adaptation Sub-Committee in the UK Climate Change Risk Assessment 2017 Evidence Report.”¹⁴⁶

208. Those priority areas, with associated current and future risks, are visualised in the graphic below. Presciently, “*New and emerging pests and diseases*” was identified as the research priority.

¹⁴² Energy Policy Tracker, page 355 of Exhibit TC/1

¹⁴³ Gov.uk Press Release: “£27 billion roads investment to support 64,000 jobs”, page 359 of Exhibit TC/1

¹⁴⁴ Letter from Lord Deben, Chairman of the Committee on Climate Change, and Baroness Brown, Chair of the CCC’s Adaptation Committee, to the Prime Minister, the Rt Hon Boris Johnson MP, page 349 of Exhibit TC/1

¹⁴⁵ Oil and Gas Authority Press Release: Offer of Awards for the UK’s 32nd Offshore Licensing Round, page 537 of Exhibit TC/1

¹⁴⁶ HM Government: UK Climate Change Risk Assessment 2017, p 10, page 364 of Exhibit TC/1

Figure 2: The Adaptation Sub-Committee’s assessment of the top six areas of inter-related climate change risks for the UK

Flooding and coastal change risks to communities, businesses and infrastructure (Ch3, Ch4, Ch5, Ch6)	MORE ACTION NEEDED
Risks to health, well-being and productivity from high temperatures (Ch5, Ch6)	
Risk of shortages in the public water supply, and for agriculture, energy generation and industry (Ch3, Ch4, Ch5, Ch6)	
Risks to natural capital, including terrestrial, coastal, marine and freshwater ecosystems, soils and biodiversity (Ch3)	
Risks to domestic and international food production and trade (Ch3, Ch6, Ch7)	
New and emerging pests and diseases, and invasive non-native species, affecting people, plants and animals (Ch3, Ch5, Ch7)	RESEARCH PRIORITY
NOW -----> RISK MAGNITUDE -----> FUTURE 	

209. The report sets out 56 discrete areas for action, as identified in the UK Climate Change Risk Assessment 2017 Evidence Report.

210. In July 2018, the Government published *The National Adaptation Programme and the Third Strategy for Climate Adaptation Reporting* (“NAP”)¹⁴⁷.

211. In 2019 the CCC submitted a report to Parliament on “*Progress in preparing for climate change*”. The Foreword emphasises the Government’s failure to take practical and effective measures to prepare for the impacts from climate change:

“The Adaptation and Mitigation Committees have reviewed the UK Government’s approach to climate change adaptation and emissions reduction. Our reports are published in parallel, as required under the Climate Change Act. We find a substantial gap between current plans and future requirements and an even greater shortfall in action ...

Planning for climate change adaptation is a statutory obligation but the National Adaptation Programme (NAP) is incomplete. Of the 56 risks and opportunities identified in the UK’s Climate Change Risk Assessment, 21 have no formal actions in the NAP. Furthermore, we have been unable to

¹⁴⁷ Department for Environment Food & Rural Affairs: “The National Adaptation Programme and the Third Strategy for Climate Adaptation Reporting: Making the country resilient to a changing climate”, pp i, ii, page 365 of Exhibit TC/1

give high scores for managing risk to any of the sectors we have assessed in this report.

... it is prudent to plan adaptation strategies for a scenario of 4°C, but there is little evidence of adaptation planning for even 2°C. Government cannot hide from these risks ...

The central premise of the Climate Change Act is that the Government of the day holds the responsibility to act to protect future generations. This principle is at risk if the priority given to climate policy is not substantially increased over the next year and the next Government spending review.

The need for action has rarely been clearer. Our message to government is simple: Now, do it.”¹⁴⁸ (emphasis added)

212. Instead of increasing the priority given to climate change adaptation, as impacts such as wildfire, flood and disease become more evident and extreme, the Government has been decreasing its priority:

“The number of policy officials working directly on adaptation in Defra has fallen from several dozen in 2013 when the first NAP was published, to a handful for the second publication in 2018. Government funding for adaptation support services; the UK Climate Impacts Programme, the Environment Agency's Climate Ready programme and the Regional Climate Change Partnerships, has ceased. Reporting on adaptation was mandatory for the first round of the Adaptation Reporting Power (ARP) in 2011, but has since been made voluntary ...”¹⁴⁹

213. The consequence is that the Government has failed to prepare even for the minimum level of impact:

“On the basis of the evidence available, England is not prepared for even a 2°C rise in global temperature, let alone more extreme levels of warming. Many national plans and policies still lack a basic acknowledgement of climate change, while others make a passing mention but have no associated actions to reduce risk ...

Planning for a minimum of 2°C, with consideration of more extreme scenarios should be a Government requirement for all departmental and public sector plans and policies that are likely to be affected by climate change.”¹⁵⁰ (emphasis added)

214. The CCC’s report emphasises the absence of a “coherent and coordinated plan”, led by central Government:

¹⁴⁸ Committee on Climate Change: “Progress in preparing for climate change” Report to Parliament, p 7, page 369 of Exhibit TC/1

¹⁴⁹ Ibid. p. 12, page 371 of Exhibit TC/1

¹⁵⁰ Ibid.

“Climate change is also not a discrete policy issue that falls neatly under a single department's remit. It will affect the Government's ability to meet a very wide range of goals and objectives. This includes the majority of the goals set out in the Government's 25 Year Environment Plan and some in the Industrial Strategy. Ignoring the climate change implications of decisions being taken now will lead to increased risks or irreversible damage in the future, and make the delivery of related goals more costly; known as ‘lock in’. In contrast, adaptation actions taken today to manage these risks will have benefits long into the future.

These factors mean that adaptation action will not be successful without a strong, integrated, strategic national plan. Given the piecemeal nature of the NAP, the gaps within it, the decline in resources and local support, and the lack of progress in managing risks, the Committee's view is that the Government's approach of mainstreaming adaptation has, so far, not succeeded in putting in place a coherent and coordinated plan, nor the resources to enable the required actions to be carried out.”¹⁵¹

215. In June 2020, the CCC published its Progress Report to Parliament, which restated the conclusions of its 2019 report:

“Key risks to the UK include both direct risks from the physical effects of climate change and systemic risks for our environment and the economy ...

Both climate change in the UK and overseas will impact on the UK's ability to maintain a secure food supply ...

UK plans have failed to prepare for even the minimum climate risks faced ...

Effective policy should reduce risks and support those that are worst affected ...”¹⁵²

216. In October 2020, the Government published its response to the CCC's 2020 report, which repeats the “piecemeal” approach the CCC complains of. It begins by setting out “key achievements in the past year” such as *“a £3.9 million first-of-its-kind project in the Solent to trial an online ‘nitrate trading’ auction platform, under which housing developers buy credits to create new habitats such as meadows, woodlands and wetlands”¹⁵³.*

217. The Government claims to agree with the CCC's recommendations:

“The CCC's progress report on reducing emissions contains important recommendations on strengthening the country's resilience to climate change

¹⁵¹ Ibid. pp 15-16, page 372 of Exhibit TC/1

¹⁵² Committee on Climate Change Progress Report to Parliament: “Reducing UK Emissions”, pp 170-174, page 26 of Exhibit TC/1

¹⁵³ HM Government: The Government Response to the Committee on Climate Change's 2020 Progress Report to Parliament, Presented to Parliament pursuant to section 37 of the Climate Change Act 2008, p 40, page 66 of Exhibit TC/1

risks. The CCC has also highlighted that Covid-19 has made starkly clear how crucial resilience is to the management of risks and hazards.

The Government agrees with the CCC that integrating our climate mitigation and adaptation actions and other environmental policies is crucial to maximise their co-benefits and minimise trade-offs; promoting a holistic approach ...

We broadly accepted the recommendations made last year by the CCC, and we continue to address them. This includes working with the CCC to consider the expansion of the indicators used to monitor adaptation.”¹⁵⁴

218. Yet the Defendants have failed to put in place the “coherent and coordinated plan” or the basic “requirement for all departmental and public sector plans and policies” to prepare for the impacts of climate change, as recommended by the CCC.

219. That does not, however, stop the Government asserting UK “leadership” in adapting to climate change:

“Looking forward, 2021 marks a hugely significant year for global climate action, culminating in COP26. Increasing international action on adaptation and resilience is one of the core priorities for the UK's Presidency of COP26, reflecting the ambition of the Paris Agreement. It is one of our five international COP26 campaigns (alongside finance, clean transport, energy transitions and nature). Building on the foundations laid through our leadership on adaptation and resilience, we will put our own approach in the spotlight as we have a unique opportunity to showcase, and share best practice, whilst driving further progress at home to ensure our international ambitions are underpinned by strong domestic action.”¹⁵⁵ (emphasis added)

220. A key component of adaptation and resilience is public awareness concerning climate risks. But the Government has failed to provide or support the development of general educational and public information programmes concerning the climate crisis, let alone programmes appropriately tailored to communities exposed to discriminatory impacts and risks, which is an essential component of equipping the Claimants and the wider public to meet the crisis, in accordance with ECHR, Article 2 and Article 12 of the Paris Agreement.

221. To the contrary the Government seeks to impede those who compensate for this deficit by raising awareness through public protest, by eroding the constitutional right to protest through its *Police, Crime, Sentencing and Courts Bill 2021*. Section 59 of the Bill makes it an offence, punishable with 10 years imprisonment to do an act which “*obstructs the public or a section of the public in the exercise or enjoyment of a right that*

¹⁵⁴ Ibid. p.41, page 67 of Exhibit TC/1

¹⁵⁵ Ibid. p.41-42, page 67 of Exhibit TC/1

may be exercised or enjoyed by the public at large” - something which is true of any protest on a scale sufficient to attract widespread public attention.¹⁵⁶

222. In summary, the Defendants are failing to prepare even for the minimum impacts of the climate crisis, despite knowledge of the extreme threat to life and to family life for all within the jurisdiction and despite knowledge of the many communities exposed to disproportionate and discriminatory risks. Worse still, they are promoting their approach internationally as an example of “best practice”, while simultaneously cutting overseas finance for the communities most immediately exposed to climate impacts and risks¹⁵⁷ and actively repressing civil society attempts to raise public awareness through protest.¹⁵⁸

C.6.4 The Government is failing to align finance flows to the Paris Agreement

223. The Government likewise claims to be an international “[lead] the way” in terms of finance to tackle the climate crisis (see for example its *Green Finance Strategy* of 2019):

“As the financial risks and opportunities from the low carbon transition become apparent, a second, equally important, transformation is also underway: that of the financial system. This transformation moves beyond just funding green projects to ensuring climate and environmental factors are fully integrated into mainstream financial decision making across all sectors and asset classes.

And here too, the UK has led the way ...”¹⁵⁹

224. The Government also acknowledges the imperative to align financial flows to the Paris Agreement in its report of October 2020:

“In all sectors, we must align our public and private finance with the Paris Agreement, accelerating the flow of finance from high to low-carbon and resilient investments, improving access to finance especially for developing countries, accelerating the development and transfer of technologies, enhancing long-term capacity building and ensuring the \$100 billion climate finance goal is met.”¹⁶⁰

225. In December 2020, the Second Defendant published its *Net Zero Review: Interim report* which begins:

¹⁵⁶ Police, Crime, Sentencing and Courts Bill 2021, s.59, page 50 of the Claimants’ Authorities Bundle

¹⁵⁷ BBC News: “Spending review: Backlash over Rishi Sunak’s overseas aid cut”, page 431 of Exhibit TC/1

¹⁵⁸ Daily Mail: “Extinction Rebellion protestors could be classified as an ‘organised crime group’ as Boris Johnson promises to clamp down on climate anarchists with tough new laws”, page 542 of Exhibit TC/1

¹⁵⁹ HM Government: “Green Finance Strategy: Transforming Finance for a Greener Future”, p 6, page 374 of Exhibit TC/1

¹⁶⁰ HM Government: The Government Response to the Committee on Climate Change’s 2020 Progress Report to Parliament, Presented to Parliament pursuant to section 37 of the Climate Change Act 2008, p 52, page 69 of Exhibit TC/1

“Climate change is an existential threat to humanity. Without global action to limit greenhouse gas emissions, the climate will change catastrophically with almost unimaginable consequences for societies across the world.”¹⁶¹

226. Yet by implication, the report acknowledges that the Second Defendant is currently not even incorporating “climate considerations” into spending reviews and fiscal events. It says a final report will be published in spring 2021 which will look at:

“How HM Treasury could incorporate climate considerations into spending reviews and fiscal events and how to embed the principles of the Net Zero Review into policy making across government.”¹⁶²

227. In February 2021, the Second Defendant published a major report it had commissioned from Professor Sir Partha Dasgupta, a leading economist, which states:

“Humanity faces an urgent choice. Continuing down our current path – where our demands on Nature far exceed its capacity to supply – presents extreme risks and uncertainty for our economies. Sustainable economic growth and development requires us to take a different path, where our engagements with Nature are not only sustainable, but also enhance our collective wealth and well-being and that of our descendants.

Choosing a sustainable path will require transformative change, underpinned by levels of ambition, coordination and political will akin to, or even greater than, those of the Marshall Plan. The change required should be geared towards three broad transitions.¹⁶³ (emphasis added)

228. It recommends abandoning exponential growth in GDP as the overarching economic objective:

“As a measure of economic activity, Gross Domestic Product (GDP) is needed for short-run macroeconomic analysis and management. However, GDP does not account for the depreciation of assets, including the natural environment. As our primary measure of economic success, it therefore encourages us to pursue unsustainable economic growth and development.”¹⁶⁴ (emphasis added)

229. In December 2020, the CCC published its report *The Road To Net-zero Finance*, which highlights the gap between the Government’s words and its actions:

“Making finance consistent with the delivery of a net-zero and resilient economy is the crucial third goal of the Paris Agreement. As the UK seeks to

¹⁶¹ HM Treasury: Net Zero Review: Interim Report, page 77 of Exhibit TC/1

¹⁶² Ibid. p. 6, page 80 of Exhibit TC/1

¹⁶³ The Economic of Biodiversity: The Dasgupta Review: Headline Messages, p 3, page 381 of Exhibit TC/1

¹⁶⁴ Ibid. p. 4, page 382 of Exhibit TC/1

deliver its target of reaching net-zero emissions by 2050, a more systematic approach to financing is now needed.¹⁶⁵ (emphasis added)

230. It continues:

“The UK’s public finance architecture has not yet been updated in light of the net-zero goal, both in terms of existing institutions and filling institutional gaps. In terms of practical delivery, financing net-zero will need to be connected to wider issues of resilience and fairness, enabling local and regional financing solutions.

Internationally, the UK’s efforts to deliver net-zero finance will have to be closely connected with global regulatory and market initiatives. Finally, the UK lacks a dashboard of metrics that measures how well it is aligning finance with its climate goals.”¹⁶⁶

231. The CCC’s recommendations include the following:

“7. Fully integrate climate risk and net-zero into financial regulation and monetary policy (including assessing legacy rules for alignment)”

“8. Make net-zero targets and plans mandatory for financial institutions”

“10. Set clear metrics for the net-zero transition at the institutional and product levels”¹⁶⁷

232. Yet, despite the extreme urgency of the situation and the gravity of the threat, not only to the Claimants but to the nation and the wider international community, the Defendants have failed to act on these recommendations and there are no effective measures in place to align financial flows to the Paris Temperature Limit.

233. To the contrary, the UK continues to play a leading role in financing the carbon economy around the world.

234. In July 2020, UK Export Finance agreed to provide up to US\$1.15bn of export finance support for UK exporters, as part of the design, construction and operation of a liquefied natural gas (LNG) project in Mozambique, despite acknowledging the risk that the investment would displace low carbon solutions:

“UKEF considered climate change as part of its review of the Project including considering the potential lock-in risks from the Project. It is not known for certain whether the Project will displace renewable energy potential or lower carbon solutions.”¹⁶⁸ (emphasis added)

¹⁶⁵ Climate Change Committee: “The Road to Net- Zero Finance”, p 3, page 387 of Exhibit TC/1

¹⁶⁶ Ibid. p.4, page 388 of Exhibit TC/1

¹⁶⁷ Ibid. p. 10, page 389 of Exhibit TC/1

¹⁶⁸ Letter of Response dated 10 August 2020, page 29 of the Claimants’ Core Bundle

235. It is reported that UK Export Finance continues to be used to back overseas fossil fuel projects, despite the First Defendant’s commitment in December 2020 to end the practice: “Major Brazilian oil and gas project could get UK backing despite promised end to fossil fuel funding”¹⁶⁹

236. Carbon Tracker, an independent financial think, estimates that the City of London supports a minimum of 15% of global carbon emissions:

“The UK is a service-based economy with a world scale financial market in the City of London. The City remains one of the largest global centres for financing fossil fuel – it plays host to, amongst others, BP, Shell, Glencore, Anglo American, Russian oil and gas companies such as Gazprom and Rosneft. The world’s largest energy company, Saudi Aramco, has just raised \$US12bn via UK debt markets. Indeed, the City has entwined its prospects with that of fossil fuels – BP & Shell distribute large dividends, mainly derived from non-UK activities, to UK investors and separately, the UK has been competing with Wall Street, Hong Kong and Singapore, in bidding for Aramco’s full IPO. Depending on how it’s measured, the City’s hosting of these companies means that it currently supports, at minimum, somewhere in the order of 15% of potential global CO2 emissions.”¹⁷⁰ (emphasis added)

237. On 13 October 2020, Emma Howard Boyd, Chair of the Environment Agency stated:

“But, distressingly, [Aviva’s] analysis said the FTSE 100 index as a whole is heading towards 3.9 degrees.”¹⁷¹

238. The implications of this statement is that FTSE 100 companies are actively investing in death and destruction on an unimaginable scale (see §§146ff above).

239. It is intolerable and unlawful that the Government should permit companies to profit from investment decisions which are known to be leading to the loss of the conditions which make the planet habitable and consequently to the mass loss of human life.

240. The Government’s proposed solution, as outlined in its *Ten Point Plan for a Green Industrial Revolution* is to “introduce mandatory reporting of climate-related financial information across the economy by 2025”:

“We will harness the international reputation of the UK’s world leading financial sector to encourage private investment into supporting innovation and manage climate financial risk. In line with the recommendations of the Taskforce on Climate-related Financial Disclosures (TCFD), we intend to

¹⁶⁹The Telegraph: “Major Brazilian oil and gas project could get UK backing despite promised end to fossil fuel funding”, page 34 of Exhibit TC/1

¹⁷⁰ Carbon Tracker: “UK Net Zero 2050 – good intentions, but aren’t we missing something?”, page 31 of Exhibit TC/1

¹⁷¹ Speech made by Emma Howard Boyd, Chair of the Environment Agency, at the Committee on Climate Change’s “Adapting to 3°C+ of global warming” conference, page 38 of Exhibit TC/1

introduce mandatory reporting of climate-related financial information across the economy by 2025, with a significant portion of mandatory requirements in place by 2023.”¹⁷²

241. An example of such reporting is the “*Bank of England’s climate-related financial disclosure 2020*” which states:

“This suggests the portfolio is consistent with an average temperature increase of 3.5°C above pre-industrial levels by 2100, in line with estimates of the overall market, and within a range from data providers of 1.75°C to 4°C. This illustrative estimate is materially above Paris agreement goals, reflecting that a whole economy transition will be needed if internationally agreed climate goals are to be met, and with companies being required to reduce their annual carbon emissions materially.”¹⁷³

242. A plan to make such reporting mandatory by 2025 is not a plan to align finance flows to the Paris Agreement, nor a plan to require companies to reduce their emissions in line with the Paris Agreement. It is simply a plan to require companies to report on their emissions by 2025.

243. On 24 March 2021, a coalition of NGOs published a report showing that the world’s biggest 60 banks have provided \$3.8 trillion of financing for fossil fuel companies since the Paris climate deal in 2015. UK bank Barclays has provided more than \$144bn - the most fossil fuel financing among all European banks.¹⁷⁴

244. The Defendants are knowingly permitting financial flows through the jurisdiction which are funding catastrophe. They are undeniably and systematically failing to take effective measures to align finance flows to the Paris Agreement, in breach of the Claimants’ Convention rights, and with catastrophic implications for all those within the jurisdiction and for the wider international community.

C.6.5 The Government has failed to implement a framework to ensure compensation for the victims of climate change

245. The Second Defendant’s *Net Zero Report - Interim Review* states that:

“The most important market failure to address is the negative externality associated with the emission of greenhouse gases ...”¹⁷⁵

246. That is not a new insight. The “polluter-pays-principle” (“PPP”) is not only a principle of law and justice, it is a principle of economics to ensure the market accounts for the costs of environmental damage.

¹⁷² HM Government: The Ten Point Plan for a Green Industrial Revolution, p 27, page 290 of Exhibit TC/1

¹⁷³ Bank of England: “The Bank of England’s climate-related financial disclosure 2020”, p 5, page 37 of Exhibit TC/1

¹⁷⁴ Organisation for Economic Co-Operation and Development: The Polluter-Pays Principle, page 392 of Exhibit TC/1

¹⁷⁵ HM Treasury: Net Zero Review: Interim Report, p 4, page 79 of Exhibit TC/1

247. The UK is one of the 37 members of the Organisation for Economic Co-operation and Development (OECD). An OECD paper on the PPP from 1992 states:

“The Polluter-Pays Principle (PPP) was adopted by OECD in 1972 as an economic principle for allocating the costs of pollution control ...

Under the 1972 and 1974 OECD Recommendations(1)(2), the Polluter-Pays Principle means that the polluter should bear the "costs of pollution prevention and control measures", the latter being "measures decided by public authorities to ensure that the environment is in an acceptable state" ...

In 1991, OECD adopted a Recommendation on the use of economic instruments (5) which states that sustainable and economically efficient management of environmental resources requires the internalisation of pollution prevention, control and damage costs (15). After 20 years’ discussion, the need to internalise damage costs was clearly acknowledged in a formal act of the Organisation. A year previously, at the Forum on International Environmental Law in Siena, government legal experts had already supported application of the Polluter-Pays Principle to environmental damage.

This trend is gradually coming about with greater use of economic instruments that charge polluters pro rata to the pollution released. Levying a pollution charge or tax at an appropriate level internalises the cost of the damage ...

The trend outlined above indicates that the Polluter-Pays Principle has gradually -- but not yet completely -- become identified with the principle of full internalisation of the external costs of pollution. Ultimately, it seems likely that a polluter will have to bear if not all at least most of the costs that pollution may cause, and increasing use will be made of economic instruments, compensatory mechanisms and fines with a view to fully implement the PPP. The revenue will help to strengthen the environmental and other policies of governments.”¹⁷⁶

248. Principle 22 of the Stockholm Declaration commits states to further developing international law ‘regarding liability and compensation for the victims of pollution and other environmental damage’.¹⁷⁷

249. The Rio Declaration 1992, Principle 16, states that:

“National authorities should endeavour to promote the internalization of environmental costs and the use of economic instruments, taking into

¹⁷⁶ Organisation for Economic Co-Operation and Development: The Polluter-Pays Principle, page 392 of Exhibit TC/1

¹⁷⁷ Stockholm Declaration, 1972, page 53 of the Claimants’ Authorities Bundle

account the approach that the polluter should, in principle, bear the cost of pollution.”¹⁷⁸

250. A number of international treaties (such as the International Convention on Oil Pollution Preparedness, Response and Cooperation, 1990; the Protocol on civil liability and compensation for damage caused by the transboundary effects of industrial accidents; and the Protocol on Preparedness, Response and Co-operation to Pollution Incidents by Hazardous and Noxious Substances, 2000) expressly refer to the ‘polluter pays’ principle as ‘a general principle of international environmental law’. Art. 191(2) of the EU’s 2007 Lisbon Treaty states that EU environmental policy shall be based on the principle (inter alia) that ‘the polluter should pay’.

251. Yet, as the Second Defendant’s report recognises, the Government has failed to implement practical and effective measures to internalise the costs of climate change, leaving those most exposed to the impacts and risks, in the UK and around the world, to pay the price.

252. To the contrary, the Second Defendant, in his most recent budget, has ignored his own analysis regarding externalities, by freezing the duty on fuel for the 11th consecutive year¹⁷⁹.

253. The Rt Hon Alok Sharma MP, who will serve as the President of COP26, has warned that the climate crisis is already devastating communities around the world, with those who have contributed least to the crisis, suffering the most:

“The climate crisis represents a clear and present danger to people and our planet. Its real-world consequences are now all too visible.

In Nepal last month, I met communities displaced by melting glaciers. In Ethiopia, I saw how floods, droughts and locusts have decimated crops.”¹⁸⁰

254. Yet the Second Defendant has chosen this moment to cut support to these communities, contrary to the PPP¹⁸¹.

255. The Second Defendant’s failure to implement the PPP principle and to ensure consistent and principled compensation for those suffering loss and damage from the climate crisis is not only morally wrong and a breach of international law, it is a failure which locks in disaster, in breach of the Claimants’ Convention rights.

D. THE ACTS AND OMISSIONS UNDER CHALLENGE

256. First, the Defendants have failed to take practical and effective measures to align UK greenhouse gas emissions to the Paris Temperature Limit, in breach of the HRA and the 2008 Act.

¹⁷⁸ Rio Declaration, 1992, page 58 of the Claimants’ Authorities Bundle

¹⁷⁹ Gov.uk: “Budget 2021: What you need to know”, page 395 of Exhibit TC/1

¹⁸⁰The Guardian: “Time is running short – but we can get a grip on the climate crisis”, page 97 of Exhibit TC/1

¹⁸¹ Gov.uk: “Changes to the UK’s aid budget in the Spending Review”, page 539 of Exhibit TC/1

257. Specifically, the Defendants have failed to:
- a. Implement a legal and regulatory framework that embeds its own net zero target across all levels of Government, including the Treasury and other central government departments, local government and regulators, such as would ensure that projects only proceed if, individually and in aggregate, they are consistent with the legally binding net zero target;
 - b. Implement a legal and regulatory framework to align the UK's *consumption* emissions to the Paris Temperature Limit, ensuring the UK does not export its emissions to other countries;
 - c. Develop and implement a legal and regulatory framework to ensure its emissions from aviation and shipping are consistent with the Paris Temperature Limit.
258. Second, the Defendants have failed to take practical and effective measures to adapt to and prepare for the current and projected impacts of climate change and to support others in so doing, including through education and awareness raising campaigns, in breach of the HRA and the 2008 Act.
259. Specifically, the Defendants have failed to:
- a. Develop plans to address the risks identified under section 56 of the 2008 Act concerning the current and projected impacts of climate change;
 - b. Implement a legal regulatory and policy framework to ensure those plans are embedded across industry and all levels of government;
 - c. Ensure that the projected impacts of 2-4°C+ warming are understood at all levels of government as well as by business and the public, in accordance with Article 12 of the Paris Agreement; and
 - d. Provide consistent and principled financial and technical assistance to communities around the world exposed to disproportionate and discriminatory impacts and risks, to support their adaptation efforts, in accordance with the Paris Agreement.
260. Third, the Defendants have failed to take practical and effective measures to align public and private finance flows to the Paris Temperature Limit.
261. Specifically, the Defendants have failed to implement a legislative and regulatory framework to ensure public and private finance flows are aligned to the Paris Temperature Limit.
262. Fourth, the Defendants have failed to implement the principle of the polluter pays, leading to market distortion, in particular by failing to establish legal and regulatory frameworks to ensure that those suffering loss and damage attributable to climate change, in the UK and beyond, recover appropriate compensation.

E. APPLICABLE LEGAL PRINCIPLES

263. The Government’s public statements recognise that the climate crisis presents a real and immediate threat to life, not only to those within the jurisdiction, but to humanity as a whole (see §§52ff above). It also recognises that many communities are exposed to disproportionate and discriminatory risk (see §§66ff above).

264. The threat is not an external threat or *force majeure*. To the contrary, the threat is the direct result of greenhouse gas emissions arising from human activity, with the UK bearing substantial responsibility not only through its own emissions, past and present, but through its ongoing financing of the carbon economy internationally. It is beyond dispute that the Government has a moral and legal responsibility, under both national and international law, to take reasonable and proportionate measures to tackle such a threat to the lives of its people.

E.1 The positive obligation on Governments to take practical and effective measures to counter known threats to life and family life

265. The UN High Commissioner for Human Rights, Michelle Bachelet, has said of the climate crisis:

“The world has never seen a threat to human rights of this scope”¹⁸².

266. The Paris Agreement, which the UK Government, advanced, signed and ratified, makes explicit the link between government actions on climate change and their human rights obligations:

“Acknowledging that climate change is a common concern of humankind, Parties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights”¹⁸³.

267. More specifically, the Government has an obligation under the HRA to take practical and effective measures to safeguard the lives and family lives of those within the jurisdiction, so that such rights are enjoyed without discrimination on any ground.

268. The HRA, section 6(1) states:

“It is unlawful for a public authority to act in a way which is incompatible with a Convention right”.

269. Art. 2 of the European Convention on Human Rights (“ECHR”) provides:

“Everyone’s right to life shall be protected by law [...].”

¹⁸² The Guardian: “Climate crisis is greatest ever threat to human rights, UN warns”, page 10 of Exhibit TC/1

¹⁸³ Paris Agreement on Climate Change, page 70 of the Claimants’ Authorities Bundle

270. Art. 8 ECHR provides:

“Everyone has the right to respect for his private and family life, his home and his correspondence [...].”

271. Art. 14 ECHR provides:

“The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”

272. As recognised by the Supreme Court in *Rabone v Pennine Care NHS Trust*¹⁸⁴, Art. 2 imposes both a negative duty on the state to refrain from taking life and a positive duty to protect life.

273. The ECtHR emphasised this principle in *Öneryildiz v Turkey ECtHR*¹⁸⁵:

“In this connection, the Court reiterates that Article 2 ... lays down a positive obligation on States to take appropriate steps to safeguard the lives of those within their jurisdiction ...

The Court considers that this obligation must be construed as applying in the context of any activity, whether public or not, in which the right to life may be at stake, and *a fortiori* in the case of industrial activities, which by their very nature are dangerous ...

Where the Convention institutions have had to examine allegations of an infringement of the right to the protection of life in such areas, they have never ruled that Article 2 was not applicable.”¹⁸⁶ (emphasis added)

274. The Grand Chamber of the European Court of Human Rights, helpfully summarised its case law on the positive obligations arising under Article 2 in its recent judgment, *Nicolae Virgiliu Tănase v Romania*¹⁸⁷. Positive obligations include the primary substantive procedural obligation to put in place an appropriate legislative and administrative framework, including the making of regulations to compel institutions, whether private or public, to adopt appropriate measures for the protection of people’s lives:

“This substantive positive obligation entails a primary duty on the State to put in place a legislative and administrative framework designed to provide effective deterrence against threats to the right to life (see *Öneryildiz v.*

¹⁸⁴ *Rabone v Pennine Care NHS Trust* [2012] UKSC 2 at §§12-16, page 107 of the Claimants’ Authorities Bundle

¹⁸⁵ *Öneryildiz v Turkey ECtHR* 30 November 2004, no. 48939/99 at §89, page 315 of the Claimants’ Authorities Bundle

¹⁸⁶ *Ibid.*, §71-72, page 310 of the Claimants’ Authorities Bundle

¹⁸⁷ *Nicolae Virgiliu Tănase v Romania* [GC], No 41720/13, 25 June 2019, page 822 of the Claimants’ Authorities Bundle

*Turkey [GC], no. 48939/99, § 89, ECHR 2004-XII; Budayeva and Others v. Russia, nos. 15339/02 and 4 others, § 129, ECHR 2008 (extracts); Kolyadenko and Others v. Russia, nos. 17423/05 and 5 others, § 157, 28 February 2012, and Fernandes de Oliveira, cited above, §§ 103 and 105-07). It applies in the context of any activity, whether public or not, in which the right to life may be at stake (Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania [GC], no. 47848/08, § 130, ECHR 2014, and Lopes de Sousa Fernandes v. Portugal [GC], no. 56080/13, § 165, 19 December 2017). **It also requires the State to make regulations compelling institutions, whether private or public, to adopt appropriate measures for the protection of people’s lives ...**¹⁸⁸ (emphasis added)*

275. In accordance with this principle, Article 2 imposes on the Government the obligation to introduce practical and effective measures to ensure the fulfillment of its climate obligations, which are necessary according to its own analysis to reduce the risk of catastrophic climate change and to safeguard the lives of those within the jurisdiction.

276. Significantly, Articles 2 and 8 oblige the Government to provide the public with information concerning matters which threaten those rights:

“Among these preventive measures, particular emphasis should be placed on the public’s right to information, as established in the case-law of the Convention institutions ...The Grand Chamber agrees with the Chamber ... that this right, which has already been recognised under Article 8 (see Guerra and Others, cited above, p. 228, § 60), may also, in principle, be relied on for the protection of the right to life.”¹⁸⁹

277. Likewise, the positive obligations of the State under Art.8 extend to requiring the State to adopt all the reasonable and appropriate measures needed to protect individuals from serious damage to their environment (see *Tătar v Romania*¹⁹⁰). Art. 8 is engaged both in environmental cases where the pollution is directly caused by the State and where State responsibility arises from the failure to take measures to protect citizens, such as proper regulation of private sector activities: (see *Jugheli v Georgia*¹⁹¹).

278. The systemic duty required of States under Articles 2 and 8 requires not only the mere existence of appropriate systems, but also that they are put into practice, and are effective (see *Moreno Gomez v Spain*¹⁹²).

279. It is clear from the Strasbourg jurisprudence that it is not necessary to identify particular victims of environmental disaster to engage Art. 2 and Art. 8. Rather, the state

¹⁸⁸ *Ibid.* §135, page 852 of the Claimants’ Authorities Bundle

¹⁸⁹ *Ibid.* §90, page 840 of the Claimants’ Authorities Bundle

¹⁹⁰ *Tătar v Romania* (ECtHR 27 January 2009, no 67021/01), §88

¹⁹¹ *Jugheli v Georgia* (ECtHR 13 July 2017, no 38342/05), §73-75, page 383 of the Claimants’ Authorities Bundle

¹⁹² *Moreno Gomez v Spain*; App no 4143/02, ECtHR 16 November 2004, §56, page 402 of the Claimants’ Authorities Bundle

may owe protective obligations to residents of an entire region, or even to the general population or society at large (for the application of this principle in relation to Art. 2, see, inter alia, *Gorovenky and Bugara v Ukraine*¹⁹³; and *Tagayeva v Russia*¹⁹⁴; for its application to Art. 8, see, inter alia, *Stoicescu v Romania*¹⁹⁵; and the environmental hazard case of *Cordella v Italy*¹⁹⁶).

280. While states have been found to violate these requirements on many occasions, the ECtHR has not yet decided a case relating specifically to the threat from climate change. It is notable however that the President of the Committee of Ministers, the President of the Parliamentary Assembly, and the President of the European Court of Human Rights said, referring to the “living instrument” doctrine, in their joint statement of 29 January 2020 at the launch of the 70th anniversary of the ECHR, that:

“The Convention ... has repeatedly proved itself capable of adapting to new human rights challenges ...

This adaptability will be crucial in helping the continent to face emerging challenges to individuals’ rights linked to ... threats to the natural environment.”¹⁹⁷

281. On November 30th 2020, the Court announced it would be fast-tracking a climate case brought by 6 Portuguese children against 33 Governments, including the UK Government¹⁹⁸.

282. The jurisprudence of other parties to the ECHR is also relevant to the interpretation of Convention obligations. In 2015 a Dutch Court of first instance, in a judgment subsequently upheld by the Dutch Court of Appeal and Supreme Court, ruled:

"If, and this is the case here, there is a high risk of dangerous climate change with severe and life-threatening consequences for man and the environment, the State has the obligation to protect its citizens from it by taking appropriate and effective measures.”¹⁹⁹

283. In July 2020 the Supreme Court of Ireland stated, in ruling against the Irish government’s climate change policies:²⁰⁰

¹⁹³ *Gorovenky and Bugara v Ukraine* (ECtHR 12 January 2012, no. 36146/05) at §32, page 416 of the Claimants’ Authorities Bundle

¹⁹⁴ *Tagayeva v Russia* (ECtHR 13 April 2017, no. 26562/07) at §482, page 529 of the Claimants’ Authorities Bundle

¹⁹⁵ *Stoicescu v Romania* (ECtHR 26 July 2011, no. 9718/0), at §59, page 676 of the Claimants’ Authorities Bundle

¹⁹⁶ *Cordella v Italy* (ECtHR 24 January 2019, nos 54414/13 and 54264/15)

¹⁹⁷ Council of Europe: “70th anniversary of European Convention on Human Rights: a convention for the people”, page 400 of Exhibit TC/1

¹⁹⁸ The Guardian: “European states ordered to respond to youth activists’ climate lawsuit”, page 402 of Exhibit TC/1

¹⁹⁹ *Urgenda v The Netherlands* (first instance judgment), page 950 of the Claimants’ Authorities Bundle

²⁰⁰ *Friends of the Irish Environment -v- The Government of Ireland & Ors* [2020] IESC 49, page 1045 of the Claimants’ Authorities Bundle

“Climate change is undoubtedly one of the greatest challenges facing all states ...”²⁰¹

Climate change is already having a profound environmental and societal impact in Ireland and is predicted to pose further risks to the environment, both in Ireland and globally, in the future. While the challenges of climate change will affect all sectors of society, it is acknowledged that the impact will be felt most severely in developing countries ...”²⁰²

It can, however, safely be said that the consequences of failing to address climate change are accepted by both sides as being very severe with potential significant risk both to life and health throughout the world but also including Ireland ...”²⁰³ (emphasis added)

284. Although the court ruled that Friends of the Irish Environment could not, in isolation, advance a rights-based claim, it emphasised that had the claim been brought by individuals “*it would have been necessary*” for the Court to consider whether Government climate measures (or the lack of them) amounted to a breach of the right to life:

“[I]t is important, in saying that, to fully acknowledge that there may well be cases, which are environmental in nature, where constitutional rights and obligations may be engaged. Indeed, this case provides a good example. Had standing been established or had similar proceedings been brought by persons who undoubtedly had standing, then it would have been necessary for this Court to consider the circumstances in which climate change measures (or the lack of them) might be said to interfere with the right to life or the right to bodily integrity.”²⁰⁴ (emphasis added)

285. It is beyond dispute that anthropogenic climate change represents an extraordinary threat to life and to family life; and it is therefore beyond dispute that the manifest inadequacy of the Defendants’ response engages the Claimants’ Convention rights.

E.2 Defining the scope of these positive obligations in the context of climate change

286. The Claimants do not contend that either they or the Courts should prescribe the Government response to the climate crisis. To the contrary, they advance only the modest proposition that, to discharge their ECHR obligations, the Defendants must, at a minimum, honour their commitments under both national and international law, including specifically, their commitments under the Paris Agreement (including those which are partially implemented through the CCA 2008), the implementation of which they

²⁰¹ *Ibid.* §1.1, page 1045 of the Claimants’ Authorities Bundle

²⁰² *Ibid.* 3.3, page 1047 of the Claimants’ Authorities Bundle

²⁰³ *Ibid.* 3.6, page 1048 of the Claimants’ Authorities Bundle

²⁰⁴ *Ibid.* 8.14, page 1084 of the Claimants’ Authorities Bundle

acknowledge to be necessary to avert catastrophe, and in relation to which they claim “international leadership”.

287. In particular it will not be possible for the UK Government to press for implementation of the Paris Agreement internationally, unless it has itself implemented the core commitments domestically.

288. Such an approach to the interpretation of Convention rights is supported by both the Strasbourg jurisprudence and the “*General Rule of Interpretation*” of the *Vienna Convention on the Law of Treaties*, section 31(3)(c):

“There shall be taken into account, together with the context: ...

... any relevant rules of international law applicable in the relations between the parties”

289. In *Ahunbay and Others v Turkey*²⁰⁵, ECtHR emphasised the applicability of this rule to the interpretation of ECHR rights:

“... the provisions of the Convention cannot be interpreted and applied in a vacuum. Despite its specific character as a human rights instrument, the Convention is an international treaty to be interpreted in accordance with the relevant norms and principles of public international law, and, in particular, in the light of the Vienna Convention on the Law of Treaties of 23 May 1969 ... Thus the Court has never considered the provisions of the Convention to be the sole framework of reference for the interpretation of the rights and freedoms enshrined therein. On the contrary, account should be taken, as indicated in Article 31§3(c) of the Vienna Convention, of “any relevant rules of international law applicable in the relations between the parties”...”²⁰⁶

290. Likewise, in *Nada v Switzerland*²⁰⁷, the Court held that “the Convention cannot be interpreted in a vacuum but must be interpreted in harmony with the general principles of international law”. In *Demir and Baykara v Turkey*²⁰⁸, the Grand Chamber emphasised the role of the “common ground” as an interpretative tool that the Court must take into account when defining terms and notions within the Convention. This “common ground” includes other international human rights treaties, other “elements of international law,” states’ interpretation of such elements, and state practice reflecting common values.

291. Consequently, it is clear that the provisions of the Paris Agreement, together with general principles of law, must be used to define the scope of Convention rights in the context of the response to the climate crisis.

²⁰⁵ *Ahunbay and Others v Turkey*, No 6080/06, 29 January 2019

²⁰⁶ *Ibid.* §23

²⁰⁷ *Nada v Switzerland* (ECtHR 12 September 2012, no. 10593/08), §169, page 734 of the Claimants’ Authorities Bundle

²⁰⁸ *Demir and Baykara v Turkey* (ECtHR 12 November 2008, no. 34503/97), §85-86, page 793 of the Claimants’ Authorities Bundle

292. According to the Government itself, implementation of the Paris Agreement, which has been agreed by nearly all nations, is necessary to avoid intolerable risks, both for individuals and for humanity as a whole (see section C.5 above, §§132 ff).

293. In the context of climate change, national courts have specifically emphasised the Paris Agreement as the benchmark for determining a Government's obligations.

294. The Supreme Court of Ireland, for example, has said:

“There is, therefore, a general consensus in climate science that, if the effects of global warming are to be mitigated or reduced, the rise in global temperatures should not exceed 2°C above pre-industrial levels. However, MacGrath J. in the High Court in this case noted that, since the Paris Agreement 2015, which forms part of the United Nations Framework Convention on Climate Change (1992), scientific thinking has moved in the direction of a lower figure which is in the region of 1.5°C above pre-industrial levels.”²⁰⁹ (emphasis added)

295. The Court explained that such a limit was informed in part by the imperative to avoid “tipping points” in the climate system, leading to abrupt and irreversible climate change:

“However, it is also accepted that, in addition, climate change may lead to more abrupt changes. There is as yet no consensus as to the precise level of climate change which is likely to trigger many of the tipping points in question. However, there are strong suggestions that even a level of global warming limited to below 2°C may give rise to some important tipping elements ... It would certainly seem to me on the evidence that the practical irreversibility and significant consequences of reaching some of the tipping points in question adds a further imperative to the early tackling of global warming.”²¹⁰

296. Likewise the Supreme Court of the Netherlands has ruled:

“Climate science has ... arrived at the insight that a safe warming of the earth must not exceed 1.5°C and that this means that the concentration of greenhouse gases in the atmosphere must remain limited to a maximum of 430 ppm. Exceeding these concentrations would involve a serious degree of danger that the consequences referred to in 4.2 [which includes the loss of human life] will materialise on a large scale ...”²¹¹

the Supreme Court finds that Articles 2 and 8 ECHR relating to the risk of climate change should be interpreted in such a way that these provisions

²⁰⁹ *Friends of the Irish Environment v Government of Ireland*, Appeal No: 205/19, 3.4, page 1045 of the Claimants' Authorities Bundle

²¹⁰ *Ibid.* 3.7, page 1048 of the Claimants' Authorities Bundle

²¹¹ *Urgenda v The Netherlands* (Supreme Court of the Netherlands), para. 4.2-4.3, page 1022 of the Claimants' Authorities Bundle

oblige the contracting states to do ‘their part’ to counter that danger.²¹²
(emphasis added)

297. On 30 March 2021, more than 130 lawyers, academics and policy experts, including Sir David King, formerly the Government’s Chief Scientific Advisor, and the Government’s Special Representative for Climate Change through the negotiation of the Paris Agreement, wrote to Lord Reed, President of the Supreme Court to say:

“We remind the Court of its own obligations under the Human Rights Act 1998 to safeguard the right to life. That entails taking all reasonable measures to ensure respect for the entirety of the Paris Agreement.”²¹³

298. Fulfilling the Government’s commitments under the Paris Agreement requires that the Defendants should, at a minimum, take practical and effective measures to:

- a. Align UK greenhouse gas emissions to the Paris Temperature Limit (Paris Agreement, Articles 2 and 4);
- b. Adapt to and prepare for the current and projected impacts of climate change and support others in so doing (in particular those exposed to disproportionate and discriminatory impacts and risks), including through the provision of accurate information concerning impacts and risks (Paris Agreement, Articles 2, 7, 9 and 12);
- c. Align UK finance flows, both public and private, to the Paris Temperature Limit (Paris Agreement, Articles 2 and 9); and
- d. Ensure access to justice and compensation for those suffering loss and damage attributable to climate change, in the UK and beyond (Paris Agreement, Articles 8,9 and 10; the polluter pays principle; and the international law duty to prevent harm).

E.3 The polluter pays principle, the precautionary principle and the duty to prevent harm

299. In 1978, in the case of *Tyrer v UK*²¹⁴, the ECtHR “recalled” that “*the Convention is a living instrument which ... must be interpreted in the light of present-day conditions. ... the Court cannot but be influenced by the developments and commonly accepted standards in ... the member States of the Council of Europe*”. This “living instrument” doctrine is a fundamental component of the Court’s approach to the interpretation of the Convention as “*first and foremost a system for the protection of human rights*”. Consequently, the Court will “have regard to the changing conditions within the respondent State and within Contracting States generally and respond, for example, to any evolving convergence as to the standards to be achieved”. (emphasis added)

300. In accordance with the *Vienna Convention* and *Ahunbay and Others*, Convention

²¹² *Ibid.* para. 5.8, page 1029 of the Claimants’ Authorities Bundle

²¹³ Letter from Sir David King and others to Lord Reed, President of the Supreme Court, page 405 of Exhibit TC/1

²¹⁴ *Tyrer v United Kingdom*, 25 April 1978, § 31, Series A No 26, page 933 of the Claimants’ Authorities Bundle

rights in the context of climate change must be interpreted in light of general rules of international law, including in particular:

- a. The polluter pays principle (“PPP”)
- b. The precautionary principle
- c. The duty to prevent harm.

The Polluter Pays Principle

301. As set out at §§246ff above, the PPP is a fundamental rule of international law, which aims both to avoid market distortion and to ensure the costs of environmental harm are fairly allocated.
302. The Second Defendant acknowledges that, **“The most important market failure to address is the negative externality associated with the emission of greenhouse gases ...”**²¹⁵, which is an admission that the Government has failed to implement a legislative and regulatory framework to put the PPP into practice.
303. The PPP requires, in particular, that a legislative and regulatory framework is established, which ensures that the victims of the climate crisis, in the UK and beyond, are properly compensated for loss and damage, and that those profiting from greenhouse gas emissions should bear the costs.
304. It is not for the Claimants to prescribe how this principle should be used to interpret the Defendants’ obligations under ECHR Articles 2, 8 and 14. But by way of example, a carbon tax might be used to support a climate change loss and damage fund. As losses increase, so would the tax to provide the necessary compensation, simultaneously correcting the market failure to which the Second Defendant refers.

The precautionary principle

305. Principle 15 of the UN General Assembly’s *Rio Declaration on Environment and Development*²¹⁶ states:

“In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.”
306. The principle is restated in the UN Framework Convention on Climate Change, Article 3(3):

²¹⁵ HM Treasury: Net Zero Review: Interim Report, page 77 of Exhibit TC/1

²¹⁶ Rio Declaration, page 58 of the Claimants’ Authorities Bundle

“In their actions to achieve the objective of the Convention and to implement its provisions, the Parties shall be guided, inter alia, by the following:

(3) The Parties should take precautionary measures to anticipate, prevent or minimize the causes of climate change and mitigate its adverse effects. Where there are threats of serious or irreversible damage, lack of full scientific certainty should not be used as a reason for postponing such measures ...”²¹⁷

307. In *Tătar*²¹⁸, a case concerning a state’s environmental law obligations under Art. 8, the ECtHR found that the Romanian Government should have applied norms of international law, as well as national law. The Court emphasised the importance of the international law precautionary principle, which countries had endorsed through the Rio Declaration.

308. In light of the evidence of the risks of irreversible damage beyond the Paris Temperature Limit, including crossing tipping points leading to a “hothouse earth”²¹⁹, simultaneous bread-basket failure²²⁰, and substantial regions of the world being rendered uninhabitable²²¹, the precautionary principle demands that the minimum standard for discharging human rights obligations in the context of the climate crisis, is the taking of practical and effective measures to implement Paris Agreement commitments domestically; and consequently that legally binding measures must be introduced to align emissions and finance flows to the Paris Temperature Limit.

The no harm principle

309. The “no harm principle” is the foundation not just of international environmental law, but of international law generally. Recognising the interdependence of states’ rights and obligations, it consists of both a right and corresponding duty:

- a. the right of jurisdiction over a territory, its population and natural resources; and
- b. the duty of non-intervention in the area of exclusive jurisdiction of other states.

310. Its application to cross-border pollution was first considered by the *Trail Smelter Arbitral Tribunal* in 1941. Sulphur Dioxide emissions from a smelting plant in Canada (owned by a Canadian company) were causing substantial damage to land in the US. The Tribunal held the Government of Canada responsible for the damage on the basis that no state may permit activity on its territory which causes serious injury to another.

²¹⁷ European Convention on Human Rights, page 4 of the Claimants’ Authorities Bundle

²¹⁸ *Tătar v Romania* (ECtHR 27 January 2009, no 67021/01), §120

²¹⁹ PNAS: Trajectories of the Earth System in the Anthropocene, page 224 of Exhibit TC/1

²²⁰ ScienceDirect: “Increasing risks of multiple breadbasket failure under 1.5 and 2 °C global warming”, page 232 of Exhibit TC/1

²²¹ The Guardian: “Global heating pushes tropical regions towards limits of human livability”, page 241 of Exhibit TC/1

311. The UNFCCC directly invokes the principle in its Preamble, removing all doubt regarding its application to climate change²²².

312. It is evident that this principle is already being honoured in the breach. The Rt Hon Alok Sharma MP recently described some of the impacts on territories which have contributed least to the crisis:

“In Nepal last month, I met communities displaced by melting glaciers. In Ethiopia, I saw how floods, droughts and locusts have decimated crops. Around the world, oceans are warming, and storms, floods and wildfires are intensifying, while here at home, our coastal towns face serious long-term threats from rising seas. Unless we act now, we will be out of time to hold back the worst impacts.”²²³

313. But it is also evident that beyond the Paris Agreement threshold of 1.5°C, there are substantial risks that whole regions of the world, including regions where the Claimants have friends and family, are rendered uninhabitable (see §§122ff above).

314. Consequently, interpreting the Defendant’s positive obligations under Article 8 in light of the no harm principle, further emphasises the requirement to take practical and effective measures to align emissions and finance flows to the Paris Temperature Limit.

E.4 Establishing breach of positive obligations in the context of climate change

315. It follows from interpreting the Defendants’ positive obligations in light of existing rules of law, that they are under a legal obligation to take practical and effective measures to:

- a. Align UK greenhouse gas emissions to the Paris Temperature Limit (Paris Agreement, Articles 2 and 4);
- b. Adapt to and prepare for the current and projected impacts of climate change and to support communities exposed to disproportionate and discriminatory risk in so doing, including through the provision of accurate information concerning impacts and risks (Paris Agreement, Articles 2, 7, 9 and 12);
- c. Align UK finance flows to the Paris Temperature Limit (Paris Agreement, Articles 2 and 9); and
- d. Ensure access to justice and compensation for those suffering loss and damage attributable to climate change, in the UK and beyond (Paris Agreement, Articles 8,9 and 10; the polluter pays principle; and the international law duty to prevent harm).

316. Breach of those obligations is established conclusively by the overwhelming evidence that they have failed to take such measures (see [Section C.6](#) above).

²²² European Convention on Human Rights, page 4 of the Claimants’ Authorities Bundle

²²³The Guardian: “Time is running short – but we can get a grip on the climate crisis”, page 97 of Exhibit TC/1

E.5 Climate Change Act 2008 obligations

317. To the extent that section 13 of the 2008 Act (see §95 above) already imposes a legally binding obligation on the Third Defendant to take practical and effective measures to implement the Government's net zero target, the Third Defendant is in breach of that provision.
318. The Third Defendant, however, may contend that he is not in a position to take such measures in isolation, since they could never be effectively implemented without support from the First and Second Defendants in particular.
319. The position is similar with respect to section 58 of the 2008 Act (see §98 above), which obliges the Third Defendant to lay before Parliament proposals and policies for the adaptation to climate change, which contribute to sustainable development.
320. To the extent that this provision imposes a legally binding obligation on the Third Defendant to take practical and effective measures to adapt to and prepare for the impacts of climate change, it is evident that he is in breach of that provision.
321. The Third Defendant may contend that he is not in a position to take such measures, since they cannot be effectively implemented without backing from the First and Second Defendants.

F. GROUND 1: FAILURE TO TAKE PRACTICAL AND EFFECTIVE MEASURES TO ALIGN UK GREENHOUSE GAS EMISSIONS TO THE PARIS TEMPERATURE LIMIT

322. Further to the HRA and ECHR Articles 2, 8 and 14, the First, Second and Third Defendants have, individually and collectively, a positive obligation to take practical and effective measures to safeguard the Claimants' lives and family lives against the threat from climate change.
323. That includes taking practical and effective measures to align UK greenhouse gas emissions to the Paris Temperature Limit.
324. The obligation demands at a minimum that the Defendants:
- a. Implement a legal and regulatory framework that embeds its own net zero target across all levels of Government, including the Treasury and other central government departments, local government and regulators, such as to ensure that projects only proceed if, individually and in aggregate, they are consistent with the net zero target;
 - b. Implement a legal and regulatory framework to align the UK's *consumption* emissions to the Paris Temperature Limit, such as to ensure that the UK does not export its emissions to other countries;

- c. Develop and implement a legal and regulatory framework to ensure its emissions from aviation and shipping are consistent with the Paris Temperature Limit.
325. As set out at [Section C.6.2](#) above, it is evident that the Defendants have failed to take such measures, thereby breaching their legal obligations under the HRA.
326. Additionally, in so far as section 13 of the 2008 Act imposes on the Third Defendant an obligation to take practical and effective measures to align UK emissions to the Government's own net zero target, the Third Defendant has breached that provision.

G. GROUND 2: FAILURE TO TAKE PRACTICAL AND EFFECTIVE MEASURES TO PREPARE FOR THE IMPACTS OF CLIMATE CHANGE

327. Further to the HRA and ECHR Articles 2, 8 and 14, the First, Second and Third Defendants have, individually and collectively, a positive obligation to take practical and effective measures to safeguard the Claimants' lives and family lives against the threat from climate change.
328. That includes taking practical and effective measures to adapt to and prepare for the current and projected impacts of climate change, and to support others in so doing, including through education and awareness raising campaigns.
329. The obligations demand at a minimum that the Defendants:
- a. Develop plans to address the risks identified under section 56 of the 2008 Act concerning the current and projected impacts of climate change;
 - b. Implement a legal, regulatory and policy framework to ensure those plans are embedded across industry and all levels of government;
 - c. Ensure that the projected impacts of 2-4°C+ warming are understood at all levels of government as well as by business and the public, recognising the specific educational and informational needs of communities exposed to discriminatory impacts and risks; and
 - d. Provide consistent and principled financial and technical assistance to communities around the world exposed to disproportionate risks, to support their adaptation efforts, in accordance with the Paris Agreement.
330. As set out at [Section C.6.3](#) above, it is evident that the Defendants have failed to take such measures, thereby breaching their legal obligations under the HRA.
331. Additionally, in so far as section 58 of the 2008 Act imposes on the Third Defendant an obligation to ensure that practical and effective measures are taken at all levels of Government to prepare for the impacts of climate change, the Third Defendant has breached that provision.

H. GROUND 3: FAILURE TO TAKE PRACTICAL AND EFFECTIVE MEASURES TO ALIGN UK FINANCE FLOWS TO THE PARIS TEMPERATURE LIMIT

332. Further to the HRA and ECHR Articles 2, 8 and 14, the First, Second and Third Defendants have, individually and collectively, a positive obligation to take practical and effective measures to safeguard the Claimants' lives and family lives against the threat from climate change.
333. That includes taking practical and effective measures to align public and private UK finance flows to the Paris Temperature Limit.
334. The obligation demands at a minimum that the Defendants implement a legislative and regulatory framework to ensure public and private finance flows are aligned to the Paris Temperature Limit.
335. As set out at [Section C.6.4](#) above, it is evident that the Defendants have failed to take such measures, thereby breaching their legal obligations under the HRA.

I. GROUND 4: FAILURE TO TAKE PRACTICAL AND EFFECTIVE MEASURES TO ENSURE COMPENSATION FOR THOSE SUFFERING CLIMATE CHANGE LOSS AND DAMAGE

336. Further to the HRA and ECHR Articles 2, 8 and 14, the First, Second and Third Defendants have, individually and collectively, a positive obligation to take practical and effective measures to safeguard the Claimants' lives and family lives against the threat from climate change.
337. That includes taking practical and effective measures to ensure access to justice and compensation for those suffering loss and damage attributable to climate change, in the UK and beyond.
338. The obligation demands at a minimum that the Defendants establish legal and regulatory frameworks to ensure that those suffering loss and damage attributable to climate change, in the UK and beyond, recover appropriate compensation, both financial and reparatory.
339. As set out at [Section C.6.5](#) above, it is evident that the Defendants have failed to take such measures, thereby breaching their legal obligations under the HRA.

J. CONCLUSION

340. The scale of the impacts and the threat from the climate and ecological emergency is almost beyond comprehension. In the words of 17 eminent climate scientists:

“The scale of the threats to the biosphere and all its lifeforms—including humanity—is in fact so great that it is difficult to grasp for even well-informed experts.”²²⁴

341. Since that scale, however, is a critical element in this legal claim, one quotation, previously cited, is repeated below.

342. On 23 February 2021, Sir James Bevan, Chief Executive of the Environment Agency, said that the UK is seeing the impacts of the climate emergency hitting “worst case scenario” levels with more extreme weather and flooding:

“The reasonable worst case scenario for climate sounds like this:

Much higher sea levels will take out most of the world’s cities, displace millions, and make much of the rest of our land surface uninhabitable or unusable.

Much more extreme weather will kill more people through drought, flooding, wildfires and heatwaves than most wars have.

The net effects will collapse ecosystems, slash crop yields, take out the infrastructure that our civilisation depends on, and destroy the basis of the modern economy and modern society.

If that sounds like science fiction let me tell you something you need to know. This is that over the last few years the Reasonable Worst Case for several of the flood incidents the EA has responded to has actually happened, and it’s getting larger.

That is why our thinking needs to change faster than the climate. And why our response needs to match the scale of the challenge.”²²⁵ (emphasis added)

343. The impacts are not confined to the future - for many they are already present. As a result of increased flooding, wildfire, storms, malnutrition and disease, people are already dying and being displaced at scale²²⁶. The mental health toll is mounting, in particular on the younger generation, as evidenced by the Third Claimant.

344. The threat is not an external threat or *force majeure*. It is the direct consequence of human activity, in particular the burning of fossil fuels, financed and legitimised by governments, including the UK Government. The UK bears a heavy responsibility in consequence of its cumulative carbon emissions and its ongoing financial support for the carbon economy in the UK and internationally.

345. In the circumstances, since the threat is so clearly established, and already interfering with the Claimants’ protected rights, it follows from both domestic and Strasbourg jurisprudence that the Defendants are subject to a positive obligation to take

²²⁴ Article: Underestimating the Challenges of Avoiding a Ghastly Future, page 413 of Exhibit TC/1

²²⁵ GOV.UK: “Climate emergency impacts hitting ‘worst case scenario’ levels, page 89 of Exhibit TC/1

²²⁶ See §§73ff above

practical and effective measures to safeguard the lives and family lives of those within the jurisdiction, in the face of the extreme danger presented by the climate and ecological crisis.

346. While the impacts of the climate crisis affect everyone, the impacts are not evenly distributed. As is widely acknowledged, there is an asymmetrical relationship between responsibility and exposure to risk, whereby those who have contributed least to the crisis are often exposed to greatest risk. In particular, the younger generation, racially marginalised communities and the Global South are on the frontline.

347. The Second to Fourth Claimants are at the intersection of these increased risks, and consequently the Defendants have an additional obligation to uphold their rights to life and to family life without discrimination in accordance with ECHR Article 14.

348. The Defendants do not dispute that implementation of the Paris Agreement is vital to avoiding the worst impacts of climate change. Indeed they have repeatedly laid claim to “leadership” in relation to the Paris Agreement. In accordance with Strasbourg jurisprudence and the *Vienna Convention*, the Defendants obligations to the Claimants must be interpreted, at a minimum to mean, taking practical and effective measures to support the implementation of Paris Agreement commitments into domestic law.

349. It is clear, however, that the Defendants have failed to take such measures, and that their self-aggrandising claims to “climate leadership” serve principally to confuse and distract.

350. The issues raised by this claim are critical not only to the Claimants, but in this year of COP26, to the future of humanity, and in particular to the future of all young people in this country and around the world. It is only by implementing the central commitments of the Paris Agreement into domestic law, in accordance with this claim and its legal obligations, that the UK Government will have the credibility to influence others to do the same.

351. Sir David King, the Government’s former Chief Scientific Adviser, and the Government’s Special Representative on Climate Change through the Paris Agreement negotiations, signed a letter to the Supreme Court, dated 30 March 2021, along with a great many scientists, lawyers and policy experts, in the following terms:

“We remind the Court of its own obligations under the Human Rights Act 1998 to safeguard the right to life. That entails taking all reasonable measures to ensure respect for the entirety of the Paris Agreement.”²²⁷

352. There can be few cases which come before this Court where so much is at stake. It is a case which demands to be heard. The Claimants seek the Court’s leave to bring this claim for judicial review.

²²⁷ Letter from Sir David King and others to Lord Reed, President of the Supreme Court, page 405 of Exhibit TC/1

TIM CROSLAND
On behalf of the Claimants
30 April 2021