

Briefing

National Adaptation Programme 3

Legal Challenge

At a glance

- A disability rights activist, a campaigner trying to save his home and Friends of the Earth, have together brought a legal challenge to the UK's 'National Adaptation Programme 3' (or 'NAP3').
- Mitigation and adaptation are the two complementary ways in which society can respond to climate change. Mitigation refers to action taken to reduce greenhouse gas emissions, adaptation refers to action taken to reduce exposure to, or enhance resilience against, the remaining climate impacts. NAP3 is our national plan to adapt to existing and predicted climate impacts.
- The claim focuses on legal compliance with s58 of the Climate Change Act 2008, as well as breaches of human rights under the Human Rights Act 1998.
- One co-claimant is a care home resident particularly vulnerable to overheating during seasonal heatwaves, the other is at imminent risk of losing his home and possessions to rising sea levels and coastal erosion.
- Between them they allege that NAP3 is so deficient that it breaches their human rights to: life (Article 2), home (Article 8), possessions (A1P1), and that they are discriminated against on account of their vulnerable situations (Article 14).
- The case was filed on 17 October 2023, and is believed to be the first of its kind in the UK.

Background and context

1. Human-induced climate change is an existential threat to people and nature. In August 2021, UN Secretary-General Antonio Guterres noted that the then latest report by the Intergovernmental Panel on Climate Change ('IPCC', of which the UK is a member) was a "*code red for humanity*."
2. Every 5 years the UK government makes a National Adaptation Programme (NAP) under the Climate Change Act 2008 (CCA) to set out how it will adapt to the impacts of climate change. They made the 3rd such programme on 17 July 2023 – so called 'NAP3'.
3. In its scientific report published shortly before NAP3 (February 2022), the IPCC confirmed with '*high confidence*', that:

“human induced climate change, including more frequent and intense extreme events, has caused widespread adverse impacts and related losses and damages to nature and people, beyond natural climate variability”.

It also noted that:

“across sectors and regions the most vulnerable people and systems are observed to be disproportionately affected”.

4. Despite this already well-established context each NAP has been strongly criticised, including by the government’s own statutory adviser, the Climate Change Committee (CCC).
5. In its latest progress report (March 2023) the CCC said of NAP2 (2018 – 2023) that it had only included credible plans for just 5 of the 45 adaptation areas (or outcomes) that it had examined. And in its 2021 independent risk assessment the CCC had said of the UK’s efforts, that “...the evidence shows that the gap between the level of risk we face and the level of adaptation underway has widened. Adaptation action has failed to keep pace with the worsening reality of climate risk.” (our underlining).

The Legal Challenge

6. Consistent with this picture NAP3 does not appear to the claimants to make the necessary step change in approach. The claimants have applied for judicial review of the decision by the Secretary of State for DEFRA to publish and lay before Parliament NAP3, on the following basis:
 - 6.1 **Ground 1** – misdirection in law as to the correct approach to setting ‘objectives’ under s58(1)(a). Rather than setting lawful specific objectives the SoS has included vague ‘risk reduction goals’. We consider this is inconsistent with the statutory language in s58, the overall statutory scheme, and its fundamental purpose.
 - 6.2 **Ground 2** – unlawful failure to consider and/or publish information on the risk(s) to delivery of the plans and proposals in NAP3. There is no evidence this assessment was done, yet it was considered legally necessary by Holgate J. in ‘*Friends of the Earth (& Others) v SoS for BEIS [2022] EWHC 1841*’ for the analogous situation when producing the ‘Net Zero Strategy’ (for mitigating emissions) under the CCA.
 - 6.3 **Ground 3** – unlawful failure to discharge the ‘public sector equality duty’ (s149, Equality Act 2010), in not lawfully considering the unequal impacts of NAP3 on protected groups in society (such as age, race or disability).
 - 6.4 **Ground 4** – breach of section 6 of the Human Rights Act 1998 due to unlawful interferences with the individual co-claimants’ rights under articles 2, 8, 14 and article 1 of protocol 1 of the European Convention on Human Rights. This is partly due to the failures in ground 1, but also separately due to the content and deficiencies in NAP3 itself.
7. In relation to Ground 4 the following issues are relevant to the co-claimants’ circumstances:

- a. The well-established but urgent need for long-term policy and protected funding to enable care-homes (and similar healthcare settings) to adapt to excessive heat. This remains absent in NAP3 despite the increasing frequency and severity of annual heatwaves.
- b. There being no new policy to manage overheating risks in *existing* health and social care buildings, such that they are properly refurbished as soon as reasonably practicable.
- c. A lack of a commitment to provide adequate resources to support communities at imminent risk of being lost to erosion and flooding, including as to the established mental health and emotional wellbeing impacts for those affected.
- d. Gaps, inconsistency and uncertainty in the potential allocation of funding provided for a range of areas, in particular for those communities that must (or are likely to have to) relocate and have their homes demolished.
- e. There being no insurance or compensation schemes available for the worst affected by coastal erosion and who lose their homes.
- f. No evidence of their being an express consideration, or reasoned analysis, of what a fair balance to strike would be between doing more to safeguard the human rights of vulnerable people and the interests of wider society.

Why bring this case?

8. We are bringing this case because climate impacts are increasing and set to get much worse on current trajectories, yet we have a national approach to adaptation that is nowhere near what it needs to be to adequately protect society, and we consider this situation to be unlawful.
9. In addition, climate adaptation does not get the public or political attention it deserves given the increasing severe risks. There is a lack of awareness of not just the acute problems individuals *already* face here in the UK, such as shown by our co-claimants, but just how bad it could foreseeably be for much wider sections of society.
10. Long-term, consistent, and integrated government planning based on specific (lawful) objectives, with timely delivery of related adaptation measures, these are currently absent. This is even though the risks are scientifically established with high confidence, and the solutions are known to us.
11. Current and previous national adaptation programmes have in our view unlawfully failed to understand the legal requirements in formulating a credible and lawful plan (as set out in the Climate Change Act 2008). And despite acknowledging it as an issue, they do not properly account for - and address - the unequal impact of climate change on the more vulnerable in society. We believe that in some instances those failures breach the human rights of individuals concerned.
12. By taking this case we hope to uphold human rights standards in this area of policymaking and more generally achieve improvements in the way government plans for and delivers climate adaptation in the UK; for everyone, and especially the most at risk.

Next Steps

13. The SoS for DEFRA has denied any wrongdoing. We now await a more considered response to the claim, following which the court must provide permission for the case to proceed to full trial.
14. If permission is granted for judicial review a trial would be expected in mid-late 2024.

Will Rundle, Head of Legal

Friends of the Earth

1 November 2023

Further Information

The Friends of the Earth legal team managing this case includes Will Rundle and Vivian Aiyedogbon. The Claimants are represented by leading environmental barristers: David Wolfe KC of Matrix Chambers, and Margherita Cornaglia of Garden Court Chambers; and by Rowan Smith and Julia Eriksen at the law firm Leigh Day LLP.

Our press release announcing the news of our cases is found [via this link](#).

For further information, please contact Friends of the Earth's media team: media@Friends of the Earth.co.uk and 020 7566 1649.