

PLAN

62 Sutherland Square

London SE17 3EL

Plan B is a Charitable Incorporated Organisation

Registered Charity Number 1167953

tim@planb.earth

DRAFT

12 December 2020

For the attention of

Rt Hon Boris Johnson MP, Prime Minister, First Lord of the Treasury

Rt Hon Rishi Sunak MP, Chancellor of the Exchequer

Rt Hon Alok Sharma MP, Secretary of State for Business, Energy & Industrial Strategy

Care of

[]

Government Legal Department

102 Petty France

London, SW1H 9GL

Dear [*names have been redacted*]

Government failure to take practical and effective measures to (i) meet its legally binding targets for reducing its domestic greenhouse gas emissions; (ii) adapt to the impacts of climate change; and (iii) prevent UK-based financing from driving catastrophic levels of global warming. Breach of the Human Rights Act 1998 (ECHR Articles 2, 8 and 14); breach of the Climate Change Act 2008, sections 13 and 58; failure to take into account the UK's international law obligations relating to climate change, in particular the Paris Agreement on Climate Change and the duty to prevent harm to the territory of other states.

Letter sent pursuant to the Pre-action Protocol for Judicial Review

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INTRODUCTION

1. Plan B. Earth ('Plan B') is a charitable incorporated organisation, registered and regulated by the Charity Commission, with the charitable purpose of upholding the goals of the Paris Agreement on Climate Change, which the UK Government has advanced, signed and ratified. Jerry Amokwandoh, aged 22, Adetola Onamade aged 23, and Marina Tricks, aged 19 (collectively "the co-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.
2. We are writing to you pursuant to the Pre-Action Protocol for Judicial Review regarding the Government's failure to produce a coherent plan for tackling the climate emergency across the "three pillars" of the Paris Agreement, which are: i) "mitigation", i.e. the urgent reduction of domestic greenhouse gas emissions; ii) "adaptation", i.e. preparing for the impacts of climate change; and iii) "finance flows", i.e. aligning finance flows to the objectives of the Paris Agreement. Specifically, the Government has failed to take practical and effective measures to:
 - a. meet its legally binding targets for reducing domestic greenhouse gas emissions;
 - b. adapt to the impacts of climate change and to support vulnerable communities in adapting to the impacts of climate change;
 - c. prevent UK-based financing from driving catastrophic levels of global warming.
3. This failure is a violation of the co-claimants' rights to life and to family life, contrary to the Human Rights Act 1998. It is a breach of the Climate Change Act 2008, sections 13 and 58. It is inconsistent with UK's international law obligations arising under the UN

Framework Convention on Climate Change (“**UNFCCC**”) and the Paris Agreement on Climate Change (“**the Paris Agreement**”).

4. Furthermore, as revealed by a letter from the Government Legal Department, the Rt Hon Rishi Sunak MP, Chancellor of the Exchequer (“the Chancellor”), in taking decisions under the Memorandum of Understanding on resolution planning and financial crisis management (“**the MoU**”), which governs important elements of the economic response to COVID-19, has unlawfully interpreted “international obligations” as excluding international obligations relating to climate change.
5. In these proceedings, we seek:
 - a. a Declaration that the Government’s failure to take practical and effective measures (as defined in paragraph 2 above) is unlawful;
 - b. a Mandatory order that the Government deliver a comprehensive, whole-of-government plan to address these failings as a matter of urgency;
 - c. a Declaration that “international obligations” for the purposes of the MoU, includes international obligations relating to climate change.

BACKGROUND TO THIS LETTER BEFORE ACTION

6. On 21 July 2020, Plan B sent the Government and Andrew Bailey, the Governor of the Bank of England (“**Governor, BoE**”) a Pre-Action Protocol letter (“**PAP letter**”) regarding what appeared to be the Government’s position that the economic recovery from COVID-19 and action on climate change were “competing priorities”. This position was stated most clearly by the Governor of the Bank of England on 1 July 2020:

“[T]he crisis has required hard decisions to be taken on competing priorities. The Bank’s lending to companies as part of the emergency response to Covid 19 has not incorporated a test based on climate considerations. This was deliberate, because in such a grave emergency affecting this country we have focused on the immediate priority of supporting the jobs and livelihoods of the people of this country. We believe that the Bank’s duty to the people of this country requires such a difficult choice to be made ...”.

7. Plan B’s letter included extensive evidence (from the Government’s own scientific and economic advisers) that far from being competing priorities, the objectives of recovery from COVID-19 and responding to climate change needed to be unified. Lord Deben, for example, Chair of the Committee on Climate Change (“**the CCC**”), expressed it as follows:

“The most effective and decisive action to secure our recovery from COVID-19 will also accelerate the transition to Net Zero and strengthen our

resilience to the changing climate. Unifying these aims is absolutely necessary and entirely possible”.

8. Plan B argued that the Government’s failure to act on this advice was irrational and inconsistent with its domestic and international legal obligations on climate change.
9. On 7 August 2020, the Government Legal Department (“**GLD**”) responded on behalf of Her Majesty’s Treasury. GLD disputed the existence of an overarching “COVID Recovery Programme” stating that:

“The Government’s response to COVID-19 has involved a wide and comprehensive range of actions, coordinated across departments. However, this does not constitute a single overall “COVID Recovery Programme”...”

10. It implied that Governor, BoE’s remarks were confined to the operation of the Covid Corporate Financing Facility (“**CCFF**”), which it described as an exceptional, emergency measure:

“The creation of the CCFF resulted from the fact that businesses of all kinds faced acute liquidity shortages. The CCFF was established as a short-term, emergency policy measure operated by the Bank of England and indemnified by the Treasury ...”.

11. More specifically, GLD denied that the financial support provided under the CCFF to various fossil-fuel based companies would prevent the UK from meeting its legally binding climate commitments, in particular its “net-zero” target, established under the Climate Change Act 2008 (“**CCA 2008**”), section 1:

“The creation of the CCFF has no necessary implications for meeting the 2050 target and will not preclude the UK from meeting that target.”

12. Critically, GLD revealed that the Government does not have a road-map for reaching targets established under the CCA 2008:

“The UK’s climate change framework, while setting the overall level of ambition, leaves the Government to determine how best to balance emissions across the economy. The Clean Growth Strategy, published in October 2017, is the most recent report, under section 14 of the CCA, setting out policies and proposals for meeting carbon budgets. The Clean Growth Strategy does not, however, set out definitive routes for meeting the CCA targets.”

13. In October 2017, when the Clean Growth Strategy was published, the Government had not yet introduced its net-zero target. At the time, the CCA 2008 section 1 imposed only a minimum target of at least 80% emissions reduction by 2050 (compared to a 1990

baseline). In June 2019 that target was increased to at least 100% emissions reductions by 2050.

14. In essence, what the GLD's PAP letter response communicated, was that as of August 2020, more than a year after enacting the net-zero target, the Government had no plan or strategy for delivering that target. To the extent it was operating to a strategy at all, it was operating to a strategy designed to implement a substantially less stringent target.
15. Consequently, it would be practically impossible for any public body or Government Department to consider how any one particular project would impact on the net-zero target. Billions in Government loans for fossil-fuel companies? A £27 billion investment in the road network? A new coal-mine in Cumbria? In the absence of a Government plan for meeting its targets, the same thing could always be said:

“The [creation of the CCFF / expansion of the road network / new coal mine in Cumbria] has no necessary implications for meeting the 2050 target and will not preclude the UK from meeting that target.”

16. Inevitably, the net effect would be that targets would not be met (with catastrophic consequences) - but the result could not be attributed to any single project or decision.
17. In summary, the GLD's PAP Letter response revealed that the failing on the part of the Government was not confined to its response to economic recovery from COVID-19. COVID or no COVID, the Government has no plan for the fundamental transformation of the economy, which its legally-binding commitments demand - a failing which, unless urgently corrected, locks in disaster.
18. That being the case, it became apparent that a further PAP letter would be necessary prior to filing a claim for judicial review.
19. The GLD's PAP letter response highlighted one other critical feature of the Government's response to climate change: the Chancellor's failure to consider the Government's international obligations relating to climate change when operating under the Memorandum of Understanding on resolution planning and financial crisis management.
20. Under paragraph 7 of the MoU, the Chancellor is specifically responsible for:

“ensuring that actions considered or taken are assessed for compliance with the UK's international obligations”.

21. According to the GLD, however:

“The MoU covers the discharge of functions relating to the stability of the UK financial system. It does not go wider to encompass climate change or

any other non-financial matters. Paragraph 48 refers to international obligations in the areas addressed by the MoU, i.e. financial matters.”

22. Such an interpretation is both wrong and irrational. Since climate change is driven by the carbon-based economy, it is not possible to separate climate change from financial matters (as the Government recognises elsewhere). Prior to the GLD’s PAP letter response, Plan B was unaware that the Chancellor was interpreting “international obligations” so as to exclude international obligations relating to climate change. Consequently, neither was this issue raised in Plan B’s PAP letter of 21 July 2020.

23. In October, the Department of Business, Energy and Industrial Strategy published “The Government Response to the Committee on Climate Change’s 2020 Progress Report to Parliament”¹. The Ministerial Foreword (by the Rt Hon Alok Sharma MP and the Rt Hon Kwasi Kwarteng MP) stated:

“[W]e owe it to future generations to build back better and base our recovery on solid foundations including a fairer, greener, and more resilient global economy. The recovery is a chance for us to build back better, build back greener and to do that at the pace that this moment requires. This means placing clean growth and our target to achieve net zero greenhouse gas emissions by 2050 at the heart of our economic recovery.”

24. It was clear that, contrary to the indication given by Governor, BoE in July, the Government was no longer asserting that climate change and economic recovery from COVID-19 were “competing priorities”.

THE EXISTENTIAL THREAT FROM THE CLIMATE EMERGENCY

25. 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.”

26. Mr Field began his response as follows:

“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.”² (emphasis added)

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/928005/government-response-to-ccc-progress-report-2020.pdf

² <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2018-03-27/904604/>

27. 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 burden of that is borne, even now, by those in the global south, so we have a responsibility to show leadership."

Current impacts

28. As set out in the Government's *Clean Growth Strategy*:

"We are already seeing the impacts of climate change. The global average temperature of the Earth's surface has risen around 1°C since pre-industrial times. All but one of the top sixteen warmest years on record have occurred since 2000, and each of the last three decades has been successively warmer at the Earth's surface than any preceding decades since 1850. 2015 and 2016 were the warmest years on record by quite some margin ... and the impacts of climate change are already widespread and are affecting many sectors of society ..."³

This growing level of global climate instability poses great risks to natural ecosystems, global food production, supply chains and economic development. It is likely to lead to the displacement of vulnerable people and migration, impact water availability globally, and result in greater human, animal and plant disease. Climate change can indirectly increase the risks of violent conflicts by amplifying drivers of conflicts such as poverty and economic shocks. For this reason the UN, Pentagon and UK's National Security and Strategic Defence Reviews cite climate change as a **stress multiplier."⁴ (emphasis added)**

29. A zoonotic disease, such as COVID-19, is an infectious disease caused by a pathogen that has jumped from a non-human animal (usually a vertebrate) to a human.⁵

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/700496/clean-growth-strategy-correction-april-2018.pdf, p.138

⁴ Ibid. p.139

⁵ Coronavirus: Fear over rise in animal-to-human diseases, <https://www.bbc.co.uk/news/health-53314432>

30. In 2016, prior to the outbreak of COVID-19, the UN Environment Programme's *Frontiers Report* identified zoonotic diseases as a key emerging global threat, with climate change a "major factor":

"The 20th century was a period of unprecedented ecological change, with dramatic reductions in natural ecosystems and biodiversity and equally dramatic increases in people and domestic animals. Never before have so many animals been kept by so many people—and never before have so many opportunities existed for pathogens to pass from wild and domestic animals through the biophysical environment to affect people causing zoonotic diseases or zoonoses. The result has been a worldwide increase in emerging zoonotic diseases, outbreaks of epidemic zoonoses as well as a rise in foodborne zoonoses globally, and a troubling persistence of neglected zoonotic diseases in poor countries ..."⁶

Zoonoses threaten economic development, animal and human well-being, and ecosystem integrity. Over the last few years, several emerging zoonotic diseases made world headlines as they caused, or threatened to cause, major pandemics ... In the last two decades, emerging diseases have had direct costs of more than US\$100 billion; if these outbreaks had become human pandemics, the losses would have amounted to several trillion dollars ..."⁷

Climate change is a major factor for disease emergence. It influences the environmental conditions that can enable or disable the survival, reproduction, abundance, and distribution of pathogens, vectors, and hosts, as well as the means of disease transmission and the outbreak frequency. Growing evidence suggests that outbreaks or epidemic diseases may become more frequent as climate continues to change.⁸
(emphasis added)

31. Sir David Attenborough has recently stated:

"We are facing a crisis and one that has consequences for us all. It threatens our ability to feed ourselves, to control our climate, it even puts us at greater risk of pandemic diseases such as COVID-19.

It's never been more important for us to understand the effects of biodiversity loss, of how it is that we ourselves are responsible for it. Only

⁶ UNEP Frontiers Report 2016, Emerging Issues of Environmental Concern (https://wedocs.unep.org/bitstream/handle/20.500.11822/7664/Frontiers_2016.pdf?sequence=1&isAllowed=y, p.18)

⁷ Ibid. p.19

⁸ Ibid. p.22

if we do that, will we have any hope of averting disaster.”⁹

32. Far from being a “competing priority”, COVID-19 is an urgent call to climate action.

33. In the UK, the rise in flood risk, attributable to climate change, threatens to make more and more homes uninsurable, with knock-on consequences for property prices.¹⁰ Wildfires in Surrey this summer led to an evacuation order.¹¹ According to research, the heatwave of 2003, attributable to climate change, resulted in the loss of 70,000 lives in Europe (with specific reference to lives lost in London).¹²

34. The impacts are more severe in parts of the world which are (a) already more vulnerable to climate extremes, such as drought and flood, and/or (b) less well resourced to defend against them. The UN Refugee Agency (“**UNHCR**”), states:

“In 2018, extreme weather events such as severe drought in Afghanistan, Tropical Cyclone Gita in Samoa, and flooding in the Philippines, resulted in acute humanitarian needs. According to the Internal Displacement Monitoring Centre, there were 18.8 million new disaster-related internal displacements recorded in 2017. Most disaster displacement linked to natural hazards and the impacts of climate change is internal, with those affected remaining within their national borders. However, displacement across borders also occurs, and may be interrelated with situations of conflict or violence.”¹³

35. The independent, not-for-profit organisation, Dara International, published a report in 2011, *A Guide to the Cold Calculus of a Hot Planet*, which states:

“This report estimates that 5 million lives are lost each year today as a result of climate change and a carbon-based economy ... In particular, effects are most severe for the world’s poorest groups whose struggle against poverty is worsened.”¹⁴ (emphasis added)

Impacts projected beyond the Paris Agreement threshold of 1.5°C

36. The Government explains 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

⁹ <https://www.bbc.co.uk/mediacentre/latestnews/2020/extinction-the-facts>

¹⁰ <https://www.ft.com/content/757d4cf8-4e51-11ea-95a0-43d18ec715f5>

¹¹ <https://www.bbc.co.uk/news/uk-england-surrey-53700404>

¹² <https://www.nature.com/articles/nature03089>

¹³ <https://www.unhcr.org/uk/climate-change-and-disasters.html>

¹⁴ CLIMATE VULNERABILITY MONITOR: A guide to the cold calculus of a hot planet <https://daraint.org/wp-content/uploads/2012/09/CVM2ndEd-FrontMatter.pdf>

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”¹⁵ (emphasis added).

37. In October 2018, 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 ...¹⁶

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) ...¹⁷

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) ...¹⁸

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) ...¹⁹

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

¹⁵ *Clean Growth Strategy*, p. 140

¹⁶ [IPCC SR1.5 Summary for Policy Makers](#), B.5.1

¹⁷ *Ibid.* B.5.2

¹⁸ *Ibid.* B.5.3

¹⁹ *Ibid.* B.5.4

confidence)”²⁰

38. 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.”

The impacts of 4°C global warming

39. Far from limiting warming to 1.5°C in accordance with the Paris Agreement, the world is on course for warming to pass 4°C.

40. 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”.

41. In the words of Andrew Bailey:

“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”. (emphasis added)

42. 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.”²¹

43. Sir David King, the Government’s former Chief Scientist has said:

“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.” (emphasis added)

44. 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

²⁰ Ibid. B.5.6

²¹ IPCC AR5, Summary for Policy Makers, s.3.2, p.18

levels, and possibly as much as 5°C for the highest emissions scenarios, by the end of this century”.²² (emphasis added)

45. It is clear that failing to take the action necessary to avoid warming on this scale would be a fundamental breach of the social contract and a treasonous betrayal of the younger generation.

46. 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”

47. 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"

48. 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."

49. 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.”"

50. When Andrew Bailey and the Prime Minister say that urgent action must be taken to avoid 4°C warming, they mean that urgent action must be taken to avoid suffering and mass loss of human life on an unimaginable scale.

²² Clean Growth Strategy, pps 138-139

THE GOVERNMENT'S INTERNATIONAL OBLIGATIONS RELATING TO CLIMATE CHANGE

The “no harm principle”

51. Under international law, nation 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.”²³

52. In the preamble to the United Nations Framework Convention on Climate Change (see below), governments (including the UK Government) have acknowledged that this principle applies to climate change.

53. As noted by the Rt Hon Michael Gove MP (see para [x] above), the UK bears a particular responsibility for the carbon emissions which are already causing substantial damage to the environments of other states.

54. The IPCC report confirms that the impacts of exceeding 1.5°C warming would be devastating, in particular for the vulnerable regions of the world in the Global South. Failure of the Government to honour its international commitments, as set out in the UNFCCC and the Paris Agreement, would breach the ‘no harm principle,’ a fundamental principle of international law.

The United Nations Framework Convention on Climate Change (“UNFCCC”)

55. The UNFCCC was ratified by the UK in December 1993. It came into force in March 1994. The preamble directly references the “no harm principle” as set out above:

“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.”

56. The objective of the UNFCCC is set out in Article 2:

²³ Pulp Mills on the River Uruguay (2010) ICJ, para 101

“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.”

57. Article 3 sets out the principles to guide the actions of the State parties in achieving 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.”

The Paris Agreement

58. The CCA 2008 was originally based on the political consensus that global warming must be limited to 2°C.

59. From around 2010, concerns were expressed in the UK and internationally regarding the adequacy of the 2°C limit.

60. In 2011, Christiana Figueres, then Executive Secretary of the UNFCCC, warned:

“Two degrees is not enough – we should be thinking of 1.5°C. If we are not headed for 1.5°C we are in big, big trouble.”

61. In 2012, the UNFCCC Conference of the Parties (“COP”), which includes the UK Government, commissioned an expert review (“Structured Expert Dialogue”) concerning the adequacy of the 2°C global temperature limit.

62. In May 2015, the Structured Expert Dialogue issued its final report, which concluded:

“The ‘guardrail’ concept, in which up to 2°C of warming is considered safe is inadequate ...Experts emphasised the high likelihood of meaningful

differences between 1.5°C and 2°C of warming regarding the level of risk from ... extreme events or tipping points ...”.

63. In December 2015, the 197 Governments which are parties to the UNFCCC, including the UK, united in adopting the Paris Agreement, which amongst other things, introduced a more stringent global temperature limit. The UK ratified the Paris Agreement in November 2016.

64. The Preamble to the Decision supporting the adoption of the Paris Agreement states as follows:

“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,

Also recognizing that deep reductions in global emissions will be required in order to achieve the ultimate objective of the Convention and emphasizing the need for urgency in addressing climate change,

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 ...

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”. (emphasis added).

65. The Preamble to the Paris Agreement repeats verbatim the language from the Decision, emphasising the relationship between action on climate change and human rights.

66. The Agreement is structured around three principal objectives, as set out in Article 2:

“(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;

(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.”

67. These objectives constitute the “three pillars” of the international response to climate change, i.e.:

- a. Mitigation (i.e. emissions reduction)
- b. Adaptation (i.e. preparing for impacts)
- c. Finance flows.

68. The Paris Agreement does not set specific targets for countries. Rather it establishes the framework for countries to set their own “nationally determined contributions” (“**NDCs**”) to meeting the objective of the Paris Agreement.

69. Article 3 states:

“As nationally determined contributions to the global response to climate change, all Parties are to undertake and communicate ambitious efforts as defined in Articles 4, 7, 9, 10, 11 and 13 with the view to achieving the purpose of this Agreement as set out in Article 2.” (emphasis added).

70. Article 4 states:

“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 ...”

71. While not setting specific targets for individual countries, the Paris Agreement establishes the criteria for NDCs, which include:

- aiming at the Paris Temperature Limit (Arts. 3 and 4(1))
- equity (Art. 4(1))
- progressive ambition (Art. 4(3)), and
- leadership by “Developed country Parties” (Art. 4(4)).

72. In summary, the Government’s international obligations relating to climate change cannot be reduced to its net-zero commitment under the CCA 2008, section 1. The Government’s finance flows, for example, including export finance, are outside the scope of the CCA 2008, but within the scope of the Paris Agreement.

73. As confirmed by the Court of Appeal in *R (Plan B. Earth) v Secretary of State for Transport [2020] EWCA Civ 214*, the Paris Agreement is Government policy (and therefore a potentially relevant consideration for the purposes of administrative law):

“In our view, the Government’s commitment to the Paris Agreement was clearly part of “Government policy” by the time of the designation of the ANPS.”

THE CHANCELLOR’S MISINTERPRETATION OF “INTERNATIONAL OBLIGATIONS”

74. The Memorandum of Understanding on resolution planning and financial crisis management, which establishes the framework for coordination of financial crisis management between the Treasury and the Bank of England, states at paragraph 7:

“The Chancellor and the Treasury are also responsible for ...

- **ensuring that actions considered or taken are assessed for compliance with the UK’s international obligations ...”**

75. The issue is expressed more firmly at paragraph 48:

“Compliance with international obligations

48. Action to manage a potential financial crisis may give rise to considerations of compliance with the UK’s international obligations, particularly those arising from European law. The Government is legally

responsible for ensuring that this compliance is achieved. The Bank and the Treasury will therefore coordinate activity to ensure that actions considered or taken are assessed for compliance with those international obligations.” (emphasis added)

76. The Chancellor’s opinion, as communicated by the GLD, is that “international obligations”, for the purposes of the MoU, exclude international obligations relating to climate change (see paragraph [x] above).

77. The requirement to consider international obligations also appears in primary legislation, including the Bank of England Act 1998, which states at s.9(F)(3):

“(3)In the exercise of its functions, the [Financial Policy] Committee must also have regard to - ...

(c)the international obligations of the United Kingdom, particularly where relevant to the exercise of the powers of the Committee in relation to the FCA or the PRA.”

78. The Financial Services and Markets Act 2000, section 410 states:

“International obligations

(1)If it appears to the Treasury that any action proposed to be taken by a relevant person would be incompatible with [EU] obligations or any other international obligations of the United Kingdom, they may direct that person not to take that action.

(2)If it appears to the Treasury that any action which a relevant person has power to take is required for the purpose of implementing any such obligations, they may direct that person to take that action.”

79. Presumably, the Chancellor’s interpretation of section 410 (above) is likewise that it excludes international obligations relating to climate change.

80. More generally, as confirmed in *R (Gulf Centre for Human Rights) v the Prime Minister* [2018] EWCA Civ 1855, Ministers are bound to follow the law, including international law. As noted by the Court, in October 2015 Lord Faulks, then Minister of State at the Ministry of Justice, was asked the following question in Parliament:

"Will the Minister please give the House a categorical assurance that the amendment to the Ministerial Code will make absolutely no difference to Ministers' existing duty to comply with international law and treaty obligations?"

81. His answer was:

"Neither Parliament nor courts are bound by international law, but a member of the Executive, including a Minister such as myself, is obliged to follow international law, whether it is reflected in the Ministerial Code or not. All Ministers will be aware of their obligations under the rule of law" (emphasis added).

82. The Government's policy, as set out in the *Clean Growth Strategy*, is that the Paris Agreement should inform the Government's financial decisions:

"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."

83. More recently, the Government's October response to the CCC states:

"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."

84. The Chancellor's interpretation of "international obligations", in the context of financial decisions, as excluding international obligations relating to climate change is not only wrong, it is inconsistent with the Government's own policy.

85. Government policy is that **"The actions and investments that will be needed to meet the Paris commitments ... will be at the forefront of policy and economic decisions made by governments"** and that **"in all sectors, we must align our public and private finance with the Paris Agreement"**, whereas the Chancellor's position is that the requirement on the Treasury to consider the Government's international obligations (imposed by the MoU, certain primary legislation, and general considerations of public law) specifically excludes its international obligations relating to climate change, including the Paris Agreement.

86. The economy and the response to the climate emergency are inextricably linked. By systematically ignoring the Government's international obligations relating to climate change, the Treasury not only undermines the UK's standing in the international community and the framework of international law, it drives the UK and others headlong towards disaster.

THE GOVERNMENT'S HUMAN RIGHTS OBLIGATIONS RELATING TO CLIMATE CHANGE

87. 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”²⁴.

88. The Paris Agreement, which is Government policy, confirms the obligation on Governments to assess their actions on climate change against 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”.

89. The Human Rights Act 1998, section 6(1) states:

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

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

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

91. Art. 8 ECHR provides:

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

92. 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.”

93. As recognised by this Court in *Rabone v Pennine Care NHS Trust* [2012] UKSC 2 at [12]-[16], Art. 2 imposes both a negative duty on the state to refrain from taking life and a positive duty to protect life in certain circumstances. 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 *Öneryıldız v Turkey* (ECtHR 30 November 2004, no. 48939/99) at [89]. As stated by the Court:

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<https://www.theguardian.com/law/2019/sep/09/climate-crisis-human-rights-un-michelle-bachelet-united-nations>

“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.”²⁵

94. In accordance with this principle, Article 2 imposes on the Government the obligation to introduce practical and effective measures to ensure that its climate obligations, which are necessary to reduce the risk of catastrophic climate change and to safeguard the lives of those within the jurisdiction, are met.
95. Additionally Articles 2 and 8 may 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.”²⁶

96. 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: *Tătar v Romania* (ECtHR 27 January 2009, no 67021/01) at [88]. Art. 8 may apply in environmental cases where the pollution is directly caused by the State, or where State responsibility arises from the failure to take measures to protect citizens, such as proper regulation of private sector activities: *Jugheli v Georgia* (ECtHR 13 July 2017, no 38342/05) [73-75].
97. 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*; App no 4143/02, ECtHR 16 November 2004, [56]).
98. ECtHR jurisprudence demonstrates that it is not necessary to identify particular victims

²⁵ *Oneryildiz*, §71-72

²⁶ *Ibid.* §90

of environmental disaster to engage Art. 2 and Art. 8. Rather, the state can owe protective obligations to residents of an entire region, or even to the general population or society at large. For Art. 2, see, inter alia, *Gorovenky and Bugara v Ukraine* (ECtHR 12 January 2012, no. 36146/05) at [32]; and *Tagayeva v Russia* (ECtHR 13 April 2017, no. 26562/07) at [482]. For Art. 8, see, inter alia, *Stoicescu v Romania* (ECtHR 26 July 2011, no. 9718/0), at [59]; and the environmental hazard case of *Cordella v Italy* (ECtHR 24 January 2019, nos 54414/13 and 54264/15) at [172].

99. 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. On November 30th 2020, however, it announced it would be fast-tracking a climate case brought by 6 Portuguese children against 33 Governments, including the UK Government²⁷.

100. In 2015 a Dutch 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."

101. That conclusion was upheld by the Dutch Court of Appeal and in December 2019 by the Dutch Supreme Court, which stated:

"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 ... 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. In light both of the facts set out in 4.2-4.7 and of the individual responsibility of the contracting states, this constitutes an interpretation of the positive obligations laid down in those provisions that corresponds to its substance and purport ... This interpretation is in accordance with the standards ... that the ECtHR applies when interpreting the ECHR and that the Supreme Court must also apply when interpreting the ECHR."

102. Strasbourg jurisprudence is clear that the interpretation of the ECHR should take

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<https://www.theguardian.com/environment/2020/nov/30/european-states-ordered-respond-youth-activists-climate-lawsuit>

relevant international law into consideration. In *Nada v Switzerland* (ECtHR 12 September 2012, no. 10593/08), 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” [169]. In *Demir and Baykara v Turkey* (ECtHR 12 November 2008, no. 34503/97) [85]-[86], 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.

103. In *Tătar*, 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 endorsed through the Rio Declaration [120].
104. The disproportionate and discriminatory impacts of climate change on vulnerable groups engages Art. 14, which reinforces the State’s positive obligations under Art. 2 and Art. 8.
105. In summary, to safeguard those within the jurisdiction from the existential threat of climate change, and in order to comply with its legal obligations arising under the Human Rights Act 1998, the Government must implement practical and effective mechanisms to:
 - a. **meet its legally binding targets for reducing its domestic greenhouse gas emissions;**
 - b. **adapt to the impacts of climate change and to support vulnerable communities in adapting to the impacts of climate change;**
 - c. **prevent UK-based financing from driving catastrophic levels of global warming; and**
 - d. **ensure that the public have accurate information on the risks from climate change and the measures they can take to safeguard themselves, their families and their communities.**

THE GOVERNMENT’S OBLIGATIONS UNDER THE CLIMATE CHANGE ACT 2008

106. CCA 2008 section 1, establishes a minimum, legally binding “carbon target” for domestic UK emissions reduction:

“It is the duty of the Secretary of State to ensure that the net UK carbon account for the year 2050 is at least 100% lower than the 1990 baseline.”

107. CCA 2008 section 4 obliges the Secretary of State to set 5 yearly carbon budgets as staging posts to meeting the carbon target:

“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.”

108. CCA 2008 section 13 obliges the Secretary of State to prepare “policies and proposals” for meeting the carbon budgets, which, taken as a whole must “contribute to sustainable development”.

“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.”

109. CCA 2008 section 56 obliges the Secretary of State to lay regular reports before Parliament concerning “the current and predicted impact of climate change”:

“56 Report on impact of climate change

(1)It is the duty of 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.”

110. CCA 2008 section 58 requires the Secretary of State to “lay programmes before Parliament” for preparing to meet those impacts which must “contribute to sustainable development”:

“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.”

111. It is clear that the CCA 2008 obliges the Government not only to set targets for reducing domestic emissions and for adapting to the impacts of climate change, but also to make actionable and effective plans for meeting those targets and for preparing for the impacts.

112. The CCA 2008 does not directly address UK financial support for carbon intensive projects overseas. It is, however, the Government’s stated policy to align public and private financial flows to the Paris Agreement (see paragraphs [82-83] above).

THE GOVERNMENT’S FAILURE TO TAKE PRACTICAL AND EFFECTIVE MEASURES AGAINST THE THREAT FROM THE CLIMATE EMERGENCY

113. The Government has produced numerous reports and documents relating to climate change and no doubt will produce many more. What it has failed to do is take practical and effective measures to:

- a. meet its legally binding targets for reducing domestic greenhouse gas emissions;
- b. adapt to the impacts of climate change and to support vulnerable communities in adapting to the impacts of climate change;
- c. prevent UK-based financing from driving catastrophic levels of global warming.

The Government's failure to take practical and effective measures to meet its net-zero obligation

114. As the Chancellor acknowledged in his PAP letter response in August:

“The Clean Growth Strategy, published in October 2017, is the most recent report, under section 14 of the CCA, setting out policies and proposals for meeting carbon budgets. The Clean Growth Strategy does not, however, set out definitive routes for meeting the CCA targets.”

115. The Clean Growth Strategy predates the net-zero target, which was legislated for in June 2019. Since June 2019, the Government has been operating to a Strategy aiming at fundamentally the wrong target.

116. The CCC's June Progress Report to Parliament highlights the Government's systemic failure to produce and implement a plan to meet its 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 ...

Overall the Government has only fully achieved two milestones out of the 31 set out in the 2019 Progress Report.” (emphasis added)

117. The report emphasises that the next 12 months are “crucial” (six of which have now 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 ...”²⁸

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.”²⁹ (emphasis added)

118. The CCC cited 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

²⁸ Ibid. p. 105

²⁹ Ibid. p. 127

impact on emissions.”³⁰ (emphasis added)

119. It stressed the critical role of the Cabinet Office Committee, which the Prime Minister chairs:

“the Cabinet Committee on Climate Change should oversee a review of the Government’s core strategy, funding and planning, working across departmental silos to ensure sustained progress in climate change mitigation and adaptation”³¹.

120. The Government responded to this report in October stating:

“we owe it to future generations to build back better and base our recovery on solid foundations including a fairer, greener, and more resilient global economy. The recovery is a chance for us to build back better, build back greener and to do that at the pace that this moment requires. This means placing clean growth and our target to achieve net zero greenhouse gas emissions by 2050 at the heart of our economic recovery.”

121. It emphasised the Prime Minister’s personal responsibility for the UK’s climate change strategy:

“The PM-chaired Climate Action Strategy Committee (CAS) determines the UK’s overarching climate strategy, both domestically and internationally.”

122. In November 2019 the Government had committed to publishing in Autumn 2020 an HMT review “setting out principles to guide decision-making during the transition to net zero”³². However, despite the CCC’s pleas for urgency in June, the Government’s October 2020 report indicated that the report would be delayed to Spring 2021. The Government further stated:

“We are pleased to announce today that ... we will publish a comprehensive Net Zero Strategy in the lead up to COP26. The strategy will set out the Government’s vision for transitioning to a net zero economy, making the most of new growth and employment opportunities across the UK.”

123. In November 2020, Chris Stark, the CEO of the CCC, said wittingly:

³⁰ Ibid. p.164

³¹ Ibid. p.164

³²

<https://www.gov.uk/government/publications/net-zero-review-terms-of-reference/hm-treasurys-review-into-funding-the-transition-to-a-net-zero-greenhouse-gas-economy-terms-of-reference>

“I don’t particularly see problems [in decarbonising the economy] – what I see is an absence of a plan ...”³³

124. It is not only the CCC who have highlighted the need for an urgent change of approach.

125. In January 2020, Sir Patrick Vallance, the Chief Scientific Adviser to the Government, and Professor Dame Nancy Rothwell, co-chair of the Council for Science and Technology, wrote to the Prime Minister to say “we must start now”:

“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.” (emphasis added).

126. It was six months before the Prime Minister replied:

“I welcome your recommendations and agree with much of what you have said. Taking a whole systems approach to deliver net zero will be particularly vital ... I also agree about the fundamental importance of this agenda being driven from the centre of Government and the critical role the Cabinet Committee on Climate Change will have in driving forward our work.”

127. On 18 November 2020, the Government published its “*10 Point Plan for a Green Industrial Revolution*”. The Prime Minister’s Foreword claimed this would:

“mobilise £12 billion of government investment”.

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<https://www.theguardian.com/environment/2020/nov/12/reaching-uk-net-zero-target-cheaper-than-we-thought-says-climate-adviser>

128. It was widely reported that this amounted to £4 billion 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.

129. On 4 December 2020, the National Audit Office published another damning report, *Achieving net zero*, emphasising that the Government remains off-track even to meet its old 80% target let alone net zero:

**“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. In some sectors, there are well-understood pathways to net zero but there is uncertainty in other sectors over how to reduce emissions
....**

BEIS’s latest projections show that the UK’s emissions will be higher than the level set by the fourth and fifth carbon budgets ...These carbon budgets were set on a trajectory to reduce emissions by 80% by 2050, not to achieve net zero ...

The costs of achieving net zero are highly uncertain but the costs of inaction would be far greater ...

Government still needs to identify how it will manage the links between different aspects of achieving net zero and how it relates to other government priorities ...

Neither BEIS nor HM Treasury collates information on the total costs and benefits of government policies that contribute to achieving net zero.”³⁴

130. It is clear that the Government is not just failing to meet even its own outdated and inadequate targets, it is systematically failing to do so. Instead of the “whole-system” integrated plan that is required, it offers only piecemeal announcements and high level strategy statements.

³⁴ <https://www.nao.org.uk/wp-content/uploads/2020/12/Achieving-net-zero.pdf>

131. The Government knows we face a climate emergency. It understands the exceptional threat to life, with the younger generation, racially marginalised communities and the Global South on the frontline. Its ongoing failure to implement the systems and the whole-of-government plan required to meet that threat, constitutes a failure to provide the practical and effective mechanisms necessary to safeguard the right to life and the right to family life and a breach on the prohibition against discrimination in the enjoyment of those rights.

The Government’s failure to take practical and effective measures to adapt to the impacts of climate change and to support vulnerable communities in adapting to the impacts of climate change

132. The Government has a legal obligation under both the CCA 2008 and the Human Rights Act to implement practical and effective mechanisms to safeguard those within its jurisdiction from current and projected impacts of climate change (offering support in particular to vulnerable communities).

133. According to the CCC, the Government’s expert advisers:

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

The Government’s failure to take practical and effective measures to prevent the UK financing catastrophic levels of climate change

134. The Government’s *10 Point Plan* acknowledges the “devastating” impacts of 3°C warming:

“Whilst progress has been made through the Paris Agreement, current commitments will not achieve the temperature goals that were set, instead implying a devastating rise of around 3°C of warming by 2100.”

135. It is clear, however, that both public and private UK Finance is driving temperatures even higher than that already devastating level. In June 2020, the Bank of England made a “Climate Related Financial Disclosure”, which stated that its corporate assets portfolio was “*consistent with an average temperature increase of 3.5°C above pre-industrial levels*”³⁵.

136. 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.”

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<https://www.bankofengland.co.uk/-/media/boe/files/annual-report/2020/climate-related-financial-disclosure-report-2019-20.pdf?la=en&hash=5DA959C54540287A2E90C823807E089055E6721B>

137. *“Distressingly”* makes it sound like an accident. In reality, these are informed investment decisions.

138. Carbon Tracker, an independent financial think, estimates that the UK is financing 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.”³⁶

139. The Government’s October response to the CCC’s June Report states:

“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.”

140. But that is no more than an aspirational statement.

141. Point 10 of the Government’s *10 Point Plan* is “Green Finance and Innovation”. This states:

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

142. It fails even to mention the City of London’s role in financing catastrophic levels of warming. Certainly it does not advance practical and effective measures to prevent investment in levels of warming which would be so devastating for everyone, but with

³⁶ <https://carbontracker.org/uk-net-zero-2050-good-intentions-but-arent-we-missing-something/>

discriminatory and disproportionate consequences for the young generation, racially marginalised communities and the Global South.

CONCLUSION

143. The Government knows we are in a climate emergency and it recognises the responsibility to show leadership (a legal obligation falling on historically high polluting countries under the Paris Agreement). To repeat the words of the Rt Hon Michael Gove MP from 1 May 2019:

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

144. The Government claims to be showing leadership on the basis of an inadequate net zero target it is failing to meet. It has failed to prepare even for the minimum level of climate impact and plans to cut financial support for the most vulnerable communities around the world. It knows the City of London is financing levels of warming that would devastate our society, which is a form of terrorist funding and already terrorising young people and the Global South.

145. As its own expert advisers have made clear, the Government is failing to take practical and effective measures to safeguard its people from the most serious threat that we face. That is a treasonous betrayal of this country’s young people.

146. In this year of the UK Presidency of the UN climate talks and the G7, it is also a gross betrayal of this country’s responsibilities to the international community.

ALTERNATIVE DISPUTE RESOLUTION

147. We are willing to seek to resolve this matter through discussion and negotiation (and/or mediation) with you. Please contact us as a matter of urgency if you wish to explore this option.

DETAILS OF DEFENDANTS AND INTERESTED PARTIES

148. The Prime Minister has assumed personal responsibility for the UK's domestic and international strategy on climate change and is the first named defendant and it is only through his office that the "whole-of-government" response, urged by the Government's own expert advisers, can be delivered.
149. It is the Chancellor who has misinterpreted "international obligations" for the purposes of the MoU.
150. The Secretary of State for Business, Energy and Industrial Strategy is an Interested Party.

DETAILS OF THE CLAIMANTS

151. The proposed claimants are Plan B, Jerry Amokwandoh, Adetola Onamade and Marina Tricks. Correspondence should be directed to Plan B's registered address at 62 Sutherland Square, London, SE17 3EL.

SERVICE OF DOCUMENTS

152. We are willing to accept correspondence and service of documents by email at tim@planb.earth.
153. Please confirm if you are similarly willing to receive correspondence and accept service by email.

COSTS

154. Should it be necessary to file proceedings, we consider that any claim would fall within the scope of the Aarhus Convention and accordingly considers that the costs limits under CPR 45.3 should apply. Please confirm in your reply if you disagree that such a claim would be an Aarhus Convention claim and/or whether you would intend to object to the application of the costs limits.

PROPOSED REPLY DATE

155. The usual period for responding to a Pre-Action Protocol letter is 14 days. Such a response should therefore be provided by close of business on 30 December 2020.

ACKNOWLEDGEMENT

156. We should be grateful if you will acknowledge receipt of this letter by return and confirm that you will respond within the proposed time-frame.

Yours sincerely,

Tim Crosland

Director, Plan B