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21 July 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 Michael Gove MP, Secretary of State for the Cabinet Office
Andrew Bailey, Governor of the Bank of England
Noël Harwerth, Chair of UK Export Finance

Care of

[]
Government Legal Department
102 Petty France
London, SW1H 9GL

Dear [*names have been redacted*]

Unlawful allocation of UK Government and Bank of England funds: Failure to take into account the Climate Change Act, the Paris Agreement, the Human Rights Act and other legal commitments when designing and implementing the COVID Recovery Programme

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

INTRODUCTION

1. Plan B. Earth ('Plan B' or 'we') is a charitable incorporated organisation registered and regulated by the Charity Commission.

2. We are writing to you pursuant to the Pre-Action Protocol for Judicial Review in respect of what appears to be the failure of the Cabinet Committee on Climate Change, the Treasury, the Cabinet Office, the Bank of England and UK Export Finance (together the 'Government') to give proper consideration to the UK's domestic and international climate obligations when devising and implementing the Government's COVID Recovery Programme ("the Recovery Programme", as defined at paragraph 6 below). We consider this failure to be unlawful for the reasons given below.
3. This letter follows our initial letter of 07 July 2020, which alerted you to our position. There we stated that if we did not hear from you by 17 July 2020, with a clear explanation of how the Recovery Programme supports the Government's relevant obligations under the Climate Change Act 2008, the Human Rights Act 1998 and the Paris Agreement on Climate Change, we would proceed to the formal legal process.
4. On 17 July you wrote to us to say you would await a formal Pre-Action Protocol letter before providing a substantive response. For ease of reference, we will repeat here relevant parts of the letter of 7 July.
5. If we do not receive an adequate response by 04 August 2020, we intend to issue judicial review proceedings in the Administrative Court. This is 14 days from the date of this letter which, under the Pre-Action Protocol for Judicial Review, is the time normally allowed for Defendants to respond.
6. For the purposes of this letter, the Recovery Programme, refers to all aspects of the Government's package of financial measures designed to support the economy following the interruption caused by Covid-19, including but not limited to:
 - a. The Bank of England's Covid Corporate Financing Facility ('CCFF') which has, as of 15 July 2020, provided £18.49 billion in settled Commercial Papers ('CPs') to 67 businesses. In this instance, these CPs act as very low interest loans at a far better rate than would be available on the open market.
 - b. The UK Treasury's support for the economy or any section of it that were announced after 01 March 2020.
 - c. New projects supported by UK Export Finance.
 - d. Any future such announcements up to and including the anticipated Autumn Budget of the UK Government.
7. In these proceedings, we seek:
 - a. a Declaration that the Recovery Programme must be consistent with the Government's obligations under Climate Change Act 2008, the Paris Agreement and the Human Rights Act 1998; and

- b. The quashing of all parts of the Recovery Programme which are inconsistent with such obligations.

THE CLIMATE AND ECOLOGICAL EMERGENCY

8. 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."¹

9. Already with just over 1°C of warming, recurring flooding is leaving property uninsurable in the UK², wreaking havoc for residents and for farmers. Air pollution is causing the loss of tens of thousands of lives every year³, and there is evidence that it increases vulnerability to COVID-19⁴. In Australia and the US, insurers have been unable to meet the costs of wildfires⁵. Even now people are dying and being displaced at scale⁶, with marginalised communities and the Global South on the frontline. We have entered the sixth mass extinction with species disappearing at more than 100 times the natural rate⁷. And because of the inertia in the climate system (which means it takes decades for the

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<https://hansard.parliament.uk/commons/2019-05-01/debates/3C133E25-D670-4F2B-B245-33968D0228D2/EnvironmentAndClimateChange>

² [Flooding risk makes some homes uninsurable, says Flood Re](#), Financial Times, July 10, 2018

³ <https://www.gov.uk/government/news/public-health-england-publishes-air-pollution-evidence-review>

⁴ <https://www.bbc.com/future/article/20200427-how-air-pollution-exacerbates-covid-19> and <https://www.nytimes.com/2020/04/07/climate/air-pollution-coronavirus-covid.html?action=click&module=Top%20Stories&pgtype=Homepage>

⁵ See <https://edition.cnn.com/2018/12/04/us/camp-fire-insurance-company-liquidation/index.html> and <https://www.theguardian.com/business/2020/jan/14/suncorp-and-iag-temporarily-stop-selling-insurance-in-fire-affected-areas-of-victoria-and-nsw>

⁶ <https://daraint.org/wp-content/uploads/2012/09/CVM2ndEd-FrontMatter.pdf>

⁷ "Extinction crisis 'poses existential threat to civilisation'", BBC 2 June 2020, <https://www.bbc.co.uk/news/science-environment-52881831>

impacts of increased concentrations of atmospheric carbon to be felt) we know that worse is on its way⁸.

10. The Intergovernmental Panel on Climate Change (“the IPCC”) has warned of the dire consequences of exceeding 1.5°C, for our health, security and economy and of the urgent and fundamental decarbonisation required to stay within that limit⁹.
11. The scientific advice is that we are on course to pass not just that threshold, but for catastrophic warming of 3-4°C. The Government’s statutory adviser, the Committee on Climate Change (“the CCC”) warned in 2008 that 4°C would mean “extreme danger”¹⁰. A 4°C world implies the loss of not just millions but billions of human lives, with the younger generation, racially marginalised communities, and those in the Global South most at risk. Such a world would be beyond adaptation and incompatible with an organised global community. In June this year, the CCC, chaired by Lord Deben, published a progress report, which highlighted the Government’s failure to honour its own commitments and urged it to consider preparing for a 4°C world. The CCC report repeats its clear advice from the past concerning the fundamental requirements to achieve net zero. It notes that these are largely unchanged by COVID 19 and that many such requirements - from infrastructure investments to the upskilling of workers - can dramatically assist the COVID recovery. The CCC report underlines the irrationality of government inaction on climate, particularly in the wake of COVID 19¹¹.
12. Yet the trajectory that the Bank of England, the Treasury and UK Export Finance are actively financing, as revealed, for instance, in the Bank of England’s own “climate related disclosure”, is fundamentally at odds with the urgent advice repeatedly given by the Government’s own scientific advisors in the CCC.
13. The overriding climate and ecological emergency cannot be put on hold and it cannot be overridden. The laws of physics cannot be suspended through Government dictat. The rise in zoonotic diseases, such as COVID-19, is simply one symptom of this wider planetary crisis¹², which only highlights the false economy of postponing necessary action.

⁸ https://en.wikipedia.org/wiki/Climate_inertia

⁹ https://www.ipcc.ch/site/assets/uploads/sites/2/2019/05/SR15_SPM_version_report_LR.pdf

¹⁰

<https://www.theccc.org.uk/wp-content/uploads/2008/12/Building-a-low-carbon-economy-Committee-on-Climate-Change-2008.pdf>

¹¹

<https://www.theccc.org.uk/wp-content/uploads/2020/06/Reducing-UK-emissions-Progress-Report-to-Parliament-Committee-on-Cli...-002-1.pdf>

¹² <https://www.unenvironment.org/news-and-stories/story/coronaviruses-are-they-here-stay>

THE ECONOMIC ADVICE AND COVID-19

14. In 2006, the Stern Review on the Economics of Climate Change concluded:

“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.”¹³

15. Reflecting on the response to the financial crash of 2008, Lord Stern, the former Chief Economist to the World Bank, wrote in 2014:

“The conclusion of the Stern Review that the costs of inaction greatly exceed the costs of action has strengthened still further ...

Looking back, I think historians may see missed opportunities for further action because of distractions from the economic crisis, slow-down and recession. We should be investing when interest rates are low and many resources remain unemployed.”¹⁴

16. The shadow of economic recession and mass unemployment looms large over the country as a result of COVID-19. Creating jobs must be the priority, and the transformation to a low carbon economy is a unique opportunity to do that at scale, right across the country.

17. The CCC has advised that **“the COVID-19 pandemic has occurred at a critical time for global efforts to achieve the goals of the Paris Agreement”¹⁵.**

18. Sir James Bevan, Chief Executive of the Environment Agency, has warned that **“[r]eturning to business as usual after the Coronavirus pandemic won’t be enough to address the challenges of the future...Instead of working to return to a world we once knew”** we must rebuild in a way that leads to **“a greener, healthier future”**.

19. The International Energy Agency (“IEA”), an intergovernmental organization established under the framework of the Organisation for Economic Co-operation and Development (“OECD”), and a policy adviser to member states, including the UK, concludes that targeting green jobs – such as retrofitting buildings to make them more energy efficient, putting up solar panels and constructing wind farms – is a far more

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https://webarchive.nationalarchives.gov.uk/20100407163608/http://www.hm-treasury.gov.uk/d/Summary_of_Conclusions.pdf

¹⁴ http://eprints.lse.ac.uk/64538/1/Growth_Climate_and_Collaboration_Stern_2014.pdf

¹⁵

<https://www.theccc.org.uk/wp-content/uploads/2020/06/Reducing-UK-emissions-Progress-Report-to-Parliament-Committee-on-Cli...-002-1.pdf>

effective mechanism for job creation than pouring money into the high-carbon economy¹⁶

20. Speaking to MPs on the commons Treasury committee, Gita Gopinath, the IMF's Chief Economist, emphasised that the UK had an opportunity to **“do public investment that also addresses the need for a greener planet, and at the same time as a jobs-rich recovery”**¹⁷.

21. In May, Oxford University's Smith School of Enterprise and the Environment published a report which concluded:

“Studies evaluating green packages in the wake of the GFC found that green projects, such as renewable energy infrastructure lead to higher numbers of jobs created compared with traditional stimulus and long-run cost savings.”¹⁸

22. The World Economic Forum has published a paper which states:

“As the global focus turns from the health crisis to economic rebuilding and recovery, concerns for the health of the planet risk being side-lined.

This would be a mistake. COVID-19 is a stark reminder of how ignoring biophysical risks can have catastrophic health and economic impacts at the global scale. If recovery efforts do not address the looming planetary crises – climate change and nature loss – a critical window of opportunity to avoid their worst impact will be irreversibly lost.

Decisions on how to deploy the post-COVID crisis stimulus packages will likely shape societies and economies for decades, making it imperative to “build back better” and not return to an unsustainable and dangerous business-as-usual approach. There is ample evidence that adopting green stimulus measures can generate even more effective economic and employment growth and build more resilient societies by aligning the global economy with planetary boundaries.”¹⁹

23. And on 5 June, the Governor of the Bank of England, Andrew Bailey, co-wrote the following with his predecessor, Mark Carney, and counterparts from France and the Netherlands:

¹⁶ <https://webstore.iea.org/download/direct/3008>

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<https://www.theguardian.com/business/2020/jul/02/uk-should-prioritise-green-projects-to-kickstart-economy-says-imf>

¹⁸ <https://www.smithschool.ox.ac.uk/publications/wpapers/workingpaper20-01.pdf>

¹⁹ http://www3.weforum.org/docs/WEF_The_Future_Of_Nature_And_Business_2020.pdf

“The world must seize this opportunity to meet the climate challenge

... This crisis offers us a once-in-a-lifetime opportunity to rebuild our economy in order to withstand the next shock coming our way: climate breakdown. Unless we act now, the climate crisis will be tomorrow’s central scenario and, unlike Covid-19, no one will be able to self-isolate from it.

Collectively, countries around the globe are still far from meeting climate crisis goals, most notably the Paris agreement to limit the increase in global temperature to well below 2C, and to pursue efforts to limit the increase to 1.5C. Over the last year, we have seen record temperatures across Europe, extreme rainfall in the US and wildfires in the Arctic. The effects of the climate crisis are irreversible, so the severity and frequency of these extreme weather events will only increase – by how much depends on our success in transitioning to a net-zero emission world.

Acting early will help to smooth the transition and avoid a sharp and disorderly adjustment. To meet the goals of the Paris agreement requires a whole economy transition: every business, bank and financial institution will need to adapt. The pandemic has shown that we can change our ways of working, living and travelling, but it has also shown that making these adjustments at the height of a crisis brings enormous costs. To address climate breakdown, we can instead take decisions now that reduce emissions in a less disruptive manner. That requires us to be strategic. To build back better.

This will only happen if financial decisions, including those made by businesses, investors, banks and governments, take the climate crisis into account. The economic recovery plans being developed today offer the chance to build a sustainable, competitive new economy ...

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.²⁰ (emphasis added)

THE APPLICABLE LEGAL FRAMEWORK

The Climate Change Act 2008

24. The Climate Change Act, 2008 (“CCA”), section 1, imposes on the Government an obligation to **“to ensure that the net UK carbon account for the year 2050 is at least 100% lower than the 1990 baseline”** (emphasis added). CCA, section 4 also requires

²⁰ <https://www.theguardian.com/commentisfree/2020/jun/05/world-climate-breakdown-pandemic>

the Government to set and operate within successive 5-yearly “carbon budgets” consistent with the 2050 carbon target. The Secretary of State is under an obligation, via section 13 of the CCA, to prepare proposals and policies that he considers will enable the carbon budgets to be met. Under section 36 of the CCA, the CCC is under an obligation to lay before Parliament a report on the progress made towards meeting the carbon budgets. The Secretary of State is under a complementary obligation, per s. 37, to lay before Parliament a response to the points raised by each of the CCC reports. Although the CCA does not formally impose sanctions should the government fail to deliver, the CCA’s architecture clearly envisages legal action as the mechanism to hold the government to account over failures to act in line with its climate obligations.²¹

The Paris Agreement on Climate Change

25. Further it is the Government’s own stated policy to uphold the objectives of the Paris Agreement which are:

- 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.²²

26. The Government has published a Clean Growth Strategy under sections. 12 and 14 of the CCA. This 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.”

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

“We will: Provide international leadership and lead by example in tackling climate change...”

²¹ Frankhauser, Averchenkova, Finnegan, 10 Years of the Climate Change Act, LSE Grantham Institute, April 2018.

²² Article 2, Paris Agreement. Accessible at:

<https://unfccc.int/process-and-meetings/the-paris-agreement/the-paris-agreement>

We will use our diplomacy on the international stage to encourage more ambitious global action ...

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.” (emphasis added)

28. 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.”

29. Mr Field responded 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.”

30. In February 2020, the Court of Appeal ruled:

“It is clear, therefore, that it was the Government’s expressly stated policy that it was committed to adhering to 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.”²³

31. On 4 March 2020, the Prime Minister stated in Parliament **“we will ensure that we abide by the judgment and take account of the Paris convention on climate change”**.²⁴

32. The 2017 Memorandum of Understanding (“MOU”) on resolution planning and financial crisis management (which was created under The Financial Services and Markets Act 2012) states:

“Action to manage a potential financial crisis may give rise to considerations of compliance with the UK’s international obligations ... The

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https://www.judiciary.uk/wp-content/uploads/2020/02/Heathrow-judgment-on-planning-issues-27-February-2020.pdf?fbclid=IwAR3OQKZqQ_Wd41jVtcxrBimnVuqWMogMaPXgi1JYWrAA6XCF3lqhZL1uowQ

²⁴

<https://hansard.parliament.uk/Commons/2020-03-%2004/debates/034D0B7F-9941-489F-ADDD-69F0E6FC7CA9/Engagements>

Government is legally responsible for ensuring that this compliance is achieved. The Bank [of England] and the Treasury will therefore coordinate activity to ensure that actions considered or taken are assessed for compliance with those international obligations.²⁵ (emphasis added)

The European Convention on Human Rights (“ECHR”) and the Human Rights Act 1998

33. ECHR Article 2 enshrines the right to life. ECHR Article 8 protects the right to respect for private and family life. ECHR Article 14 prohibits discrimination in the “enjoyment” of Convention rights. The Human Rights Act directly incorporates these rights into UK law.
34. It is well established that the Human Rights Act not only limits Government interference with Convention rights, but also imposes positive obligations on public authorities to take reasonable and proportionate measures to safeguard those rights.
35. The European Court of Human Rights has not yet considered the relationship between Convention rights and action on climate change, but in December 2019, the Supreme Court of The Netherlands, one of the Convention parties ruled as follows:

“Climate science long ago reached a high degree of consensus that the warming of the earth must be limited to no more than 2°C and that this means that the concentration of greenhouse gases in the atmosphere must remain limited to a maximum of 450 ppm. Climate science has since 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 ... 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.”

36. In September 2019, the UN High Commissioner for Human Rights warned:

“Climate change is a reality that now affects every region of the world. The human implications of currently projected levels of global heating are catastrophic ...

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/609875/PU2079_MoJ_2017_print.pdf

The world has never seen a threat to human rights of this scope.”²⁶

37. The Government knows (or ought to know) that its proposed course of action, which involves applying public funds on an unprecedented scale to reinforce the carbon economy, contrary to scientific and economic advice and contrary to its own policy commitments and legal obligations on climate change, creates intolerable risks, including of:
- a. Mass loss of life;
 - b. Damage to private and family life;
 - c. Breakdown of the social order, on which the rule of law and the enjoyment of human rights depends.
38. It also knows (or ought to know) that the younger generation and vulnerable and marginalised communities, including ethnic minorities, will be disproportionately affected and with discriminatory consequences.
39. It is clear, therefore, that the Government’s proposed course of action interferes with Articles 2, 8 and 14 of the ECHR. There is no suggestion that the course taken by the Government is necessary and proportionate to the achievement of a legitimate aim. As such, there are strong grounds to contend that the current COVID recovery plans are in breach of the ECHR and the Human Rights Act.

THE GOVERNMENT’S STATED APPROACH TO THE RECOVERY PROGRAMME

40. The Government has stated that it would assess its Recovery Programme against its climate obligations. Kemi Badenoch, Exchequer Secretary, provided the following written answer to a question from Alex Norris, Shadow Minister for Social Health and Care, on 16 June:

“The Coronavirus is the biggest threat this country has faced in decades. We will assess the impacts of potential interventions against their contribution to our environmental goals, including our climate change and air quality targets. The Government remains committed to tackling climate change, and meeting our Net Zero target.”

EVIDENCE OF THE GOVERNMENT’S ACTUAL APPROACH

²⁶ <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24956&LangID=E>

41. There is, however, no evidence that the Government is listening to the scientific and economic advice, or taking proper account of its legal obligations, which demand an urgent and radical decarbonisation of the economy. To the contrary there is abundant evidence that, at this critical juncture, the Government is disregarding both the expert advice and the law.
42. On 30 June, in introducing his “new deal”, the Prime Minister trivialised environmental protections as “newt-counting”, referring to them as “a massive drag on the productivity and prosperity of this country”.
43. 1 July, Andrew Bailey, the Governor of the Bank of England, just a few weeks after writing, “**The world must seize this opportunity to meet the climate challenge**”, said that:

“[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 ...”

44. On 2 July, the Government announced it had attached climate conditions to a loan to Celsa steel, as part of *Project Birch* initiative, the Treasury's rescue programme geared at bailing out "strategically important" companies that have exhausted all other options. However the Rt Hon Alok Sharma MP claimed he could not disclose details either of the loan or the conditions attached on the grounds of “commercial confidentiality”²⁷. A company requiring emergency support from public funds is in no position to insist on “commercial confidentiality”. To the contrary there is every reason why the use of public funds in these circumstances should be transparent and accountable, particularly in light of the work of the Financial Stability Board to normalise the disclosure by corporations of climate risk²⁸.
45. On 8 July, the Chancellor, the Rt Hon Rishi Sunak MP, announced a “£3billion green investment package”²⁹. For comparison, the Bank of England, through its Covid Corporate Financing Facility (“CCFF”) scheme, has purchased commercial papers in fossil fuel and related companies with a value of over £4billion (including £415million for Schlumberger Plc and £600million for TechnipFMC plc (both oil and gas companies),

²⁷

<https://hansard.parliament.uk/commons/2020-07-02/debates/7dd48ebc-e7ba-4819-974d-786bb646f646/WrittenStatements>

²⁸ <https://www.fsb.org/work-of-the-fsb/policy-development/additional-policy-areas/climate-related-financial-disclosures/>

²⁹ <https://www.gov.uk/government/news/rishis-plan-for-jobs-will-help-britain-bounce-back>

£600million each for RyanAir and Easyjet, £500million for Airbus, £600million for Nissan, and £300million for Rolls Royce). These are at a rate more favourable to the relevant companies than would be available in the current market, yet no climate related conditions have been attached.

46. Further, despite the Bank of England's warnings about a "carbon bubble"³⁰, it appears the Government has now committed £1billion to financing a new natural gas project in Mozambique³¹, while telling Parliament that "we cannot comment on potential transactions for reasons of commercial confidentiality".³²
47. For broader context, the Government is committing more than £100billion to the HS2 project³³, which involves the destruction of large areas of ancient woodland, which function as a "carbon sink", extracting carbon from the atmosphere; and £27.4 billion to a 5 year road building programme³⁴.
48. Rather than complying with their commitments, including under Article 2 and 9 of the Paris Agreement, to make financial flows consistent with a pathway towards low greenhouse gas emissions and climate-resilient development, the Government is actively applying its funds in a way that will drive us to global temperature rises far beyond the targets specified in the Paris Agreement.
49. Far from grasping the **"once-in-a-lifetime opportunity to rebuild our economy in order to withstand the next shock coming our way: climate breakdown"** (as urged by the Governor of the Bank of England), in accordance with the scientific and economic advice and the law, the Government is instead using the Recovery Programme to double-down on the carbon economy, unlawfully locking us into a trajectory towards disaster.

WIDER POLITICAL AND CONSTITUTIONAL IMPLICATIONS

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<https://www.independent.co.uk/news/business/news/carbon-bubble-global-wealth-mass-unemployment-fossil-fuels-climate-change-research-a8382631.html>

³¹

<https://www.telegraph.co.uk/news/2020/06/26/uk-agrees-1bn-backing-mozambique-gas-pipeline-despite-environmental/>

³²

<https://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2020-06-23/63443/>

³³ <https://www.bbc.co.uk/news/uk-16473296>

³⁴

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/872252/road-investment-strategy-2-2020-2025.pdf

50. It is the primary responsibility of the Government to safeguard its people. According to Thomas Hobbes, the basis of the social contract is the willingness of individuals to relinquish personal freedoms in exchange for the protection of the State.
51. John Locke, in his *Two Treatises on Government*, declared that under natural law, all people have the right to life, liberty, and estate; under the social contract, the people could instigate a revolution against the government when it acted against the interests of citizens, to replace the government with one that served the interests of citizens. In some cases, Locke deemed revolution an obligation.
52. The Universal Declaration of Human Rights states:
- “Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law ...”³⁵.**
53. Not only does the Government appear to be ignoring the scientific and economic advice and its legal obligations; it is also ignoring the evidence of the popular will, in favour of short-term corporate interests. Following an extended process of consideration, 79% of a UK Citizens’ Assembly, convened by Parliament, agreed that Covid recovery measures should be designed to support the net zero climate target³⁶. According to polling, 63% of the British public expect the lessons from 2008 to be heeded and say that large corporations should only get financial support if they agree to environmental and social conditions³⁷. An IPSOS poll, conducted across 14 different countries, showed that 65% of people agree that Government actions should prioritise climate change in the economic recovery³⁸.
54. Before his resignation as the UK’s senior civil servant, it appears that Sir Mark Sedwill had “angered” the Prime Minister by advising that climate change was the single greatest threat to the country’s national security³⁹.
55. The Government has no democratic mandate to **“rebuild the old economy, locking in temperature increases of 4C with extreme climate disruption”**. It has no democratic mandate to commit to a course of action that tends to the loss of the conditions which make the planet habitable, with devastating impacts for the rights and lives of the people

³⁵ https://www.ohchr.org/EN/UDHR/Documents/UDHR_Translations/eng.pdf

³⁶

<https://www.newscientist.com/article/2246693-uk-citizens-assembly-shows-big-support-for-green-covid-19-recovery/>

³⁷ <https://positivemoney.org/2020/07/two-thirds>

³⁸

<https://www.ipsos.com/en-au/two-thirds-citizens-around-world-agree-climate-change-serious-crisis-covid-19-ipsos-survey>

³⁹

<https://www.dailymail.co.uk/news/article-7929991/Civil-service-boss-nobbled-Boris-Johnson-MI5-caving-Huawei-claim-Ministers.html>

of this country in mainland Britain, in overseas territories, expatriates around the world, the families of Britons internationally and the wider global community.

56. Such reckless disregard for public safety and for national and international security is a fundamental breach of the social contract, undermining the legitimacy of the government, and imposing an obligation, individually and collectively, on all people of conscience to organise to safeguard the right to life.

ALTERNATIVE DISPUTE RESOLUTION

57. 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

58. It is presumed that the intention of the Government's Recovery Programme is to be coherent and aligned, despite the multiple enacting bodies of it. It is the responsibility of the Cabinet Office to support such coordination. We are unclear on the scope and mandate of the Cabinet Committee on Climate Change, which the Prime Minister Chairs.
59. The Bank of England has announced and administered the Government's CCFF programme.
60. However, the 2017 Memorandum of Understanding (the "2017 MOU") between the Bank of England and the Treasury on resolution planning and financial crisis management (which was presented to Parliament pursuant to section 65(7) of the Financial Services Act 2012, states:

"The Chancellor and the Treasury have sole responsibility for any decision on whether and how to use public funds, including: authorising any proposal by the Bank to provide [Emergency Liquidity Assistance]" ('ELA' - defined as support operations outside the Bank's published frameworks to firms that are at risk but are judged to be solvent).

61. The CCFF appears to fall within the scope of this definition and therefore to be the sole responsibility of the Chancellor and the Treasury. In letters shared between Andrew Bailey, Governor of Bank of England and Rt Hon Rishi Sunak MP, both dated 17 March 2020, it was made clear that the Bank of England is operating the CCFF "on behalf of HM Treasury" and the Treasury will make all "final decisions". It is also noted in both

letters that the Treasury “will fully indemnify the Bank from any losses and expenses arising from [CCFF]”⁴⁰.

62. The Treasury is also responsible for the use of public funds by UK Export Finance (‘UKEF’). As per the Governance of UKEF Concordat, the Treasury is responsible for, among other things:
- a. Setting the business domain of the UKEF;
 - b. Monitoring the financial performance of UKEF against “Ministerially agreed Financial and other objectives”; and
 - c. Monitoring the impact of UKEF operations on the public finances.
63. As the First Lord of the Treasury and Chair of the Cabinet Committee on Climate Change, it may be that the Prime Minister and the Chancellor are the appropriate Defendants, and that the others named should be interested parties. Please advise on where legal accountability for the Recovery Programme properly lies.
64. Should you be aware of any other interested parties, we should be grateful if you could notify us as a matter of urgency such that they can also be provided with a copy of this letter.

FURTHER INFORMATION AND DOCUMENTS TO BE PROVIDED

65. In accordance with the obligations under the Pre-action Protocol for Judicial Review, please provide us with all relevant correspondence, notes of meetings and other documents relating to the Government’s consideration of the design and implementation of the COVID Recovery Programme, in particular any such information relating to potential compliance with the Climate Change Act, the Paris Agreement, and the Human Rights Act.
66. More specifically, please provide answers to the following questions:
- a. Who has overall responsibility for ensuring that the Recovery Programme supports the Government’s policy commitments and legal obligations relating to climate change?
 - b. What steps has the Government taken to ensure that the Recovery Programme supports the Government’s policy commitments and legal obligations relating to climate change?

⁴⁰ <https://www.gov.uk/government/publications/launch-of-covid-19-corporate-financing-facility-ccff>

- c. What consideration has been given to the impact of the Recovery Programme in terms of the Government's obligations under the Human Rights Act and the Public Sector Equality Duty under the Equality Act 2010?
 - d. Does the Government accept the analysis of the Governor of the Bank of England that **"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."**?
 - e. Did the Prime Minister or the Chancellor influence the Governor of the Bank of England to say subsequently, **"The Bank's lending to companies as part of the emergency response to Covid 19 has not incorporated a test based on climate considerations"**? To what extent does this position accord with the Government's wider approach to the Recovery Programme?
 - f. Why does "commercial confidentiality" prevent the Government being transparent around its financial support for Celsa Steel and the UK Export Finance' funding for a gas project in Mozambique?
67. Such documents and information are clearly necessary for us to be able to properly plead any judicial review proceedings. If such documents or information are not provided now, but are subsequently relied upon and require any re-pleading of the case, we will bring this to the attention of the Court and seek costs accordingly.

DETAILS OF THE CLAIMANT

68. The proposed claimant is Plan B. Earth. Its registered address is 62 Sutherland Square, London, SE17 3EL. We have not as yet instructed solicitors but may do so in due course.
69. Additional claimants may be added to this claim, and we will notify you if this is the case.

SERVICE OF DOCUMENTS

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

COSTS

72. 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

73. 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 04 August 2020.

ACKNOWLEDGEMENT

74. 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,

A handwritten signature in black ink, appearing to read 'Tim Crosland', written in a cursive style.

Tim Crosland

Director, Plan B