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

Claim No CO/1587/2021

B E T W E E N :

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

Claimants

-and-

(1) SECRETARY OF STATE FOR BUSINESS, ENERGY AND INDUSTRIAL STRATEGY
(2) HM TREASURY
(3) THE PRIME MINISTER

Defendants

SUMMARY GROUNDS OF DEFENCE

References in these summary grounds are as follows:

- [CB/T] is Core Bundle where T is a tab number
- [TC/1/T/P] is Part 1 of Exhibit TC/1 where T is a tab number and P is a page number
- [TC/2/T/P] is Part 2 of Exhibit TC/1 where T is a tab number and P is a page number

Introduction

1. These summary grounds are filed on behalf of the Defendants. The Secretary of State for Business, Energy and Industrial Strategy ("the Secretary of State") is responsible for climate change policy and is the appropriate lead defendant in this matter. HM Treasury is the appropriate defendant, rather than the Chancellor of the Exchequer, but in relation to ground 3 only. There is no need for the Prime Minister to be named as a defendant in addition to the Secretary of State. In preparing this response, the Secretary of State has consulted with other Government departments as appropriate. The naming and numbering of the defendant parties has been re-ordered to reflect this and the Court is invited to update its records to reflect the ordering in the above headnote.

2. The claim seeks to challenge the alleged *"ongoing failure to take effective measures to implement [the UK's] climate change commitments"*.[1] The Defendants contest the claim in full. The claim is unarguable and permission should be refused for it to proceed.

3. The Claimants' Statement of Facts and Grounds ("SFG") is overly long and complex and does not comply with the requirement in the Administrative Court Judicial Review Guide 2020 at [6.3.1.1] that the document *"should be as concise as reasonably possible, while setting out the claimant's arguments"* (see R (Dolan) v SSHSC [2020] EWCA Civ 1605 at [119]).

4. The claim itself does not challenge any particular policy or decision, but is an attack on the Government's programme of legislation and policy across an array of economic, social and environmental spheres, alleging failures to meet a *"positive obligation"* to take measures to prevent breaches of the Claimants' rights under Articles 2, 8 and 14 of the European Convention on Human Rights ("ECHR") in a number of wide-ranging respects (grounds 1-4). The claim also alleges breaches of s.13 of the Climate Change Act 2008 ("CCA 2008") (ground 1) and s.58 of the CCA 2008 (ground 2).

5. Those arguments are legally and factually misguided. For the purposes of these summary grounds, the Secretary of State makes the following points in summary (expanded upon below) – each of which is a knock-out blow justifying the refusal of permission:

    (1) There is no credible basis for contending that the Secretary of State is not complying with any of the domestic obligations in the CCA 2008. The Claimants' assertions to the contrary in grounds 1 and 2 are confused, unsubstantiated and/or wrong.

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[1] The claim form statement of truth was only signed by the Fifth Claimant, Mr Crosland, as *"Director, Plan B. Earth"*. It is not clear on what basis he is able to represent the Second to Fourth Claimants in this claim. In pre-action correspondence dated 15.1.21, Mr Crosland stated that: *"I am acting as a legal representative neither for Plan B nor for the individual claimants"*, a position he has since confirmed. By CPR r 22.1(6), the statement of truth in a claim form must be endorsed by the party or litigation friend or their legal representative. The statement of truth in this case is only endorsed by the First Claimant (acting through its director) and the Fifth Claimant (acting personally) On 10.5.21, the Supreme Court found Mr Crosland in criminal contempt of court for deliberately disclosing the result of a Supreme Court appeal prior to hand down of the judgment, a matter that the Defendants understand is now being investigated in respect of the First Claimant by the Charity Commission.

(2) The Claimants have not arguably demonstrated that they are victims of the Government's alleged failures for the purposes of s.7 of the Human Rights Act 1998 ("HRA 1998") and so are not entitled rely upon ECHR rights in these proceedings.

(3) A positive obligation on the UK to act does not arise as a result of ECHR Articles 2 or 8 in this case, and for that reason also Article 14 is not arguably engaged.

(4) Even if a positive obligation does arise on which any of the Claimants could rely:

i. the Government is plainly doing enough to comply with it; and

ii. the Court should afford the Government a wide margin of discretion in this area given the complex and cross-cutting nature of tackling climate change; the choice of means is a matter for the Government.

6. It is important to emphasise that the UK Government takes tackling climate change extremely seriously. The UK was the first country in the world to establish a binding long-term legal commitment to greenhouse gas emission reductions in the CCA 2008. The Climate Change Act 2008 (2050 Target Amendment) Order 2019 ("the 2019 Order"), that amended the CCA 2008 s.1(1) to mandate an at least 100% (or "net zero") carbon account target for 2050 was one of the world's first examples of legislating for net zero greenhouse gas emissions. The nationally determined contribution ("NDC") communicated by the UK to the United Nations Framework Convention on Climate Change ("UNFCCC") Secretariat in December 2020 is in line with the UK achieving net zero by 2050. The UK is President of the 26th session of the Conference of the Parties to the UNFCCC, to be hosted in Glasgow in November 2021 (COP26). The UK is recognised as a global leader in this area.

7. In that context, the claim that the UK has failed to play its part by taking measures to implement the Paris Agreement (e.g. SFG 17-18) is surprising. It is also clearly misconceived: as it set out further below, the UK has complied with all of its obligations under the Paris Agreement and is acting to tackle climate change on numerous fronts.

8. It is noteworthy that this is not the first time that the First Claimant has sought to pursue human rights arguments on climate change before the courts. In Plan B Earth v SSBEIS [2018] EWHC 1892 (Admin), [2019] Env LR 13 the claimants argued among other things that the UK's (then) climate change mitigation target of 80% was insufficiently ambitious, inconsistent with the Paris Agreement and was a breach of the Secretary of State's positive obligation to uphold Convention rights, including Articles 2 and 8. Supperstone J refused permission for the claim to proceed, holding on the human rights ground at [49]:

> *"…this is an area where the executive has a wide discretion to assess the advantages and disadvantages* of *any particular course of action, not only domestically but as part of an evolving international discussion. The Secretary of State has decided, having had regard to the advice of the Committee, that now is not the time to revise the 2050 carbon target. That decision is not arguably unlawful, and accordingly the human rights challenge is not sustainable".*[2]

9. The First Claimant also sought unsuccessfully to pursue human rights arguments in the recent Heathrow case.[3]

Legal context

Intensity of review

10. It is well-established that the Administrative Court *"does not exist to monitor and regulate the performance of public policies"* (see R (P) v Essex CC [2004] EWHC 2027 (Admin) per Munby J at [33]). The courts are rightly reluctant to intervene over how public funds should be spent: see e.g. in the context of the margin of appreciation R (C and others) v SSWP [2019] EWCA Civ 615, [2019] 1 WLR 5687 per Leggatt LJ (as he then was) at [87]. In R (JS) v SSWP [2015] UKSC 16 [2015], 1 WLR 1449 Lord Reed explained:

[2] Supperstone J's conclusion on the margin of appreciation was upheld by Asplin LJ refusing an appeal against his decision on 22 January 2019 (case ref. C1/2018/1750).
[3] See R (Friends of the Earth Ltd and Plan B Earth) v SST [2020] UKSC 52, [2021] PTSR 190 at [113].

> *"92. Finally, it has been explained many times that the Human Rights Act entails some adjustment of the respective constitutional roles of the courts, the executive and the legislature, but does not eliminate the differences between them: differences, for example, in relation to their composition, their expertise, their accountability and their legitimacy. It therefore does not alter the fact that certain matters are by their nature more suitable for determination by Government or Parliament than by the courts. In so far as matters of that nature have to be considered by the courts when deciding whether executive action or legislation is compatible with Convention rights, that is something which the courts can and do properly take into account, by giving weight to the determination of those matters by the primary decision-maker.*
>
> *93. That consideration is relevant to these appeals, since the question of proportionality involves controversial issues of social and economic policy, with major implications for public expenditure. The determination of those issues is pre-eminently the function of democratically elected institutions. It is therefore necessary for the court to give due weight to the considered assessment made by those institutions. Unless manifestly without reasonable foundation, their assessment should be respected"* (emphasis added).

11. Similar considerations have been held to apply in the policy area of climate change. In R (Packham) v SST [2020] EWCA Civ 1004, [2021] Env LR 10, the statutory and policy arrangements for achieving net zero by 2050 were said to *"leave the Government a good deal of latitude in the action it takes to attain those objectives"* ([87]) and the Court of Appeal approved the submission of counsel for the Secretary of State that:

> *"it is the role of Government to determine how best to make that transition"* (ibid.).

Climate Change Act 2008

12. The CCA 2008 is the legislative centrepiece of the UK's domestic efforts to tackle climate change. It sets a target for the year 2050 for the reduction of targeted greenhouse gas emissions and provides for a system of carbon budgeting. It establishes a framework for the UK to achieve its long-term goals of reducing greenhouse gas emissions through setting emissions reduction targets in statute and carbon budgeting. The UK was the first country to set such long-term legally binding targets, introducing limits on the amount of greenhouse gases the UK can emit over successive five-year periods.

13. The explanatory notes to the CCA 2008 explain the position as follows:

> *"The Act establishes an economically credible emissions reduction pathway to 2050 and beyond by putting into statute medium and long-term targets. In addition, the Act introduces a system of carbon budgeting which constrains the total amount of emissions in a given time period. Carbon budget periods will last five years, beginning with the period 2008-2012, and must be set three periods ahead."*

14. The Committee on Climate Change ("CCC") was established under CCA 2008 as an independent expert body, to advise the Government and devolved administrations on how to reduce emissions over time and across the economy.

15. As enacted, the CCA 2008 placed the Secretary of State under a duty to reduce the net UK carbon account for the year 2050 to at least 80% below the level of net UK emissions of targeted greenhouse gases in 1990. This was amended to at least 100% below, with effect from 27 June 2019, by the 2019 Order. This is the 2050 'net zero' target.

16. As is clear from the Explanatory Memorandum to the 2019 Order, the Government took the Paris Agreement into account when proposing a net zero target, ensuring that this national legislation was consistent with the Paris Agreement's goals.

17. Section 4(1) of the CCA 2008 places a duty on the Secretary of State to set carbon budgets for successive periods of five years and also a duty to ensure that the net UK carbon account for a budgetary period does not exceed the carbon budget. Under s.8(2), the carbon budget for a period must be set with a view to meeting the target for 2050, the carbon budget requirements in s.5, and the European and international obligations of the UK.

18. Section 10 sets out matters which must be taken into account by the Secretary of State in coming to any decision relating to carbon budgets. The list of mandatory considerations includes economic, fiscal and social circumstances, including the likely impact on the economy and the competitiveness of particular sectors of the economy.

19. Section 13 places a duty on the Secretary of State to prepare proposals and policies to enable the carbon budgets that have been set under the CCA 2008 to be met and with a view to meeting the 2050 net zero target and any target set under the s.5(1)(c) power to set targets for later years. Section 13(3) also provides that the proposals and policies, taken as a whole, must be such as to contribute to sustainable development.

20. Part 4 of the CCA 2008 relates to the impact of and adaptation to climate change. Section 56 requires the Secretary of State, having received advice from the CCC, to lay reports before Parliament containing an assessment of the risks to the UK from climate change.

21. Section 58 places a duty on the Secretary of State to prepare programmes setting out the Government's objectives in relation to climate change adaptation and proposals and policies (including time-scales) for meeting those objectives. Section 58(2) provides that the objectives, proposals and policies, taken as a whole, must be such as to contribute to sustainable development.

22. By ss.36 and 59 of the CCA 2008, the CCC is required to lay progress reports before Parliament on both mitigation and adaptation and, by s.37, the Secretary of State, having consulted the devolved administrations, is required to respond each year by 15 October.

23. The CCA 2008 therefore provides an overarching framework for the mitigation of, and adaptation to, the impacts from climate change. It also contains certain ancillary provisions on emissions trading (Part 3), waste reduction (ss.76-77), renewable transport fuel obligations (s.78 and Sch7) and carbon emissions reduction targets in the energy sector (s.79 and Sch8).

24. There is much other legislation (let alone Government policy) that directly addresses the mitigation of or adaptation to the effects of climate change. Many examples could be given. The Claimants refer in the SFG in particular to the planning system. Section 19(1A) of the Planning and Compulsory Purchase Act 2004 requires that development plans must *"include policies designed to secure that the development and use of land in the local planning authority's area contribute to the mitigation of, and adaptation to, climate change"*. Section 5(8) of the Planning Act 2008 provides that national policy statements for infrastructure development must *"include an explanation of how the policy set out in the statement takes account of Government policy relating to the*

mitigation of, and adaptation to, climate change". Other legislation refers specifically to the net zero target and budgets in the CCA 2008.[4]

The Paris Agreement

25. The Paris Agreement was signed by the UK on 22 April 2016 and was ratified on 18 November 2016.

26. The Paris Agreement aims to strengthen the global response to the threat of climate change, including by the long-term temperature goals of *"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"* (Article 2.1). The Paris Agreement is to be implemented in light of differing national circumstances (Article 2.2).

27. Article 4.1 records that *"in order to achieve the long-term temperature goal set out in Article 2"*, the 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".*

28. In this way, in order to achieve the long-term temperature goal, parties aim collectively to reach net zero greenhouse gas emissions in the second half of this century.

29. The Paris Agreement sets out global aims to which all parties subscribe. Each party then draws-up their *"nationally determined contributions"* ("NDCs") which are part of the *"ambitious efforts"* each party is to take *"with the view to achieving the purpose of this Agreement as set out in Article 2"* (Article 3). Under Article 4.3, each party's successive

[4] See e.g. Energy Act 2013 s.2(2) and s.5(2), and Infrastructure Act 2015 s.49(1). See also para 86 below.

NDCs will represent a progression and reflect its highest possible ambition, in the light of different national circumstances.

30. The Paris Agreement imposes no obligation on individual states to implement the Paris Agreement's goals in any particular way. The action to be taken pursuant to the Paris Agreement is nationally-determined. As the Supreme Court held in R (Friends of the Earth Ltd) v SST [2020] UKSC 52, [2021] PTSR 190 at [71]:

> *"the Paris Agreement did not impose an obligation on any state to adopt a binding domestic target to ensure that those objectives were met."*

31. The provisions of the Paris Agreement on adaptation to climate change in Article 7 are even less prescriptive. Article 7.1 establishes a *"global goal on adaptation of enhancing adaptive capacity, strengthening resilience and reducing vulnerability to climate change"*. The key obligations are at Article 7.7 (that parties *"should strengthen their cooperation on enhancing action on adaptation"*), Articles 7.9-7.11 (on adaptation planning processes, implementation of actions and communications) and Article 7.12 (on international support to developing countries for adaptation). Article 7.9 however is in deliberately permissive terms:

> *"Each Party shall, as appropriate, engage in adaptation planning processes and the implementation of actions, including the development or enhancement of relevant plans, polices and/or contributions, which may include ..."* (emphasis added).

32. Similarly, Article 7.10 provides that parties *"as appropriate"* should submit and periodically update adaptation communications.

33. Article 9.1 provides that developed country parties shall provide financial assistance to developing country parties with respect to both mitigation and adaptation. Article 9.3 provides:

> *"As part of a global effort, developed country Parties should continue to take the lead in mobilizing climate finance from a wide variety of sources, instruments and channels, noting the significant role of public funds, through a variety of actions, including supporting country-driven*

> *strategies, and taking into account the needs and priorities of developing country Parties. Such mobilization of climate finance should represent a progression beyond previous efforts."*

34. Developed country parties are required biennially to communicate indicative quantitative and qualitative information related to Articles 9.1 and 9.3 (Article 9.5).

35. The Paris Agreement contains other provisions relating to technology transfer (Article 10), capacity building (Article 11) and education, training and public awareness (Article 12). Contrary to the suggestion at SFG 121f, there is nothing in Articles 8-10 of the Paris Agreement that requires *"compensation"* to be paid to historically low-polluting countries.

Human rights

Jurisdiction

36. Save in certain exceptional circumstances and with special justification (which does not apply in this case), the ECHR confers a responsibility on states to safeguard ECHR rights only within their own territories – see Article 1:

> *"The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention"* (emphasis added).

Need for *"victim"* status

37. By HRA 1998 s.6(1), it is unlawful for a public authority to act in a way which is incompatible with a Convention right.[5] Section 7(1) provides that a person may only rely on Convention rights in legal proceedings *"if he is (or would be) a victim of the unlawful act"*. Victim is a term of art interpreted in accordance with Strasbourg case law on ECHR Article 34 (HRA 1998 s.7(7)).

[5] As defined in HRA 1998 s.1(1) and Sch 1.

38. There are a number of points to make in this regard.

39. First, to be a victim within ECHR Article 34 a person must be able to show that they are an individual *"directly affected"* by the act or acts complained of. That is because the ECHR does not allow for the institution of an *actio popularis* (see e.g. Roman Zakharov v Russia (2016) 63 EHRR 17 at [164]). As the European Court of Human Rights (ECtHR) has held:

> *"[Article 34] requires that an individual applicant should claim to have been actually affected by the violation he or she alleges. It does not institute for individuals a kind of* actio popularis *for the interpretation of the Convention; it does not permit individuals to complain against a law* in abstracto *simply because they feel it contravenes the Convention. In principle, it does not suffice for an individual applicant to claim that the mere existence of a law violates his rights under the Convention; it is necessary that the law should have been applied to his detriment"* (Klass and Others v Germany (1979-80) 2 EHRR 214 at [33]).

40. Second, in order to show that they are *"directly affected"*, an individual must generally be able to establish a *"causal link"* between the act and the alleged effect on them personally (see e.g. Asselbourg and Others Asselbourg and Greenpeace Association-Luxembourg v Luxembourg Application no. 29121/95, 29 June 1999, p7).

41. Third, the general rule is that a person cannot be a *"victim"* under Article 34 based on mere risk of future violations (see e.g. Berger-Krall and Others v Slovenia Application no. 14717/04 at [258]-[260]).

42. Fourth, only in very exceptional cases may it be sufficient for an applicant to show that they are a *"potential victim"*, and only then where they can produce *"reasonable and convincing evidence of the probability of the occurrence of a violation concerning him or her personally: mere suspicions or conjectures are not enough …"* (Asselbourg pp6-7). Mere assertion of risks is insufficient. As was held in Tauira and Others v France (Application no. 28204/95; 4 December 1995, pp131-132):

> *"Merely invoking risks inherent in the use of nuclear power, whether for civil or military purposes, is insufficient to enable the applicants to claim to be victims of a violation of the Convention, as many human activities*

generate risks. They must have an arguable and detailed claim that, owing to the authorities' failure to take adequate precautions, the degree of probability that damage will occur is such that it may be deemed to be a violation, on condition that the consequences of the act complained of are not too remote".

43. The Claimants are therefore wrong to assert that Strasbourg jurisprudence demonstrates that it is not necessary to identify any particular victims of environmental disaster to engage Articles 2 or 8 (SFG 279). While it may be possible for a positive obligation under Article 2 to be owed to a number of people in a wider area – e.g. a municipality specifically designated by the Italian government as of high environmental risk (see Cordella and Others v Italy Application nos. 54414/13 and 54264/15; 24 January 2019) – it is essential to the proper operation of the ECHR that those who seek to rely upon it are victims who are personally affected. The applicants in the cases relied upon by the Claimants at SFG 279 were all quite clearly direct or indirect victims of the measures complained of, which the Claimants are not.[6] The Claimants wrongly conflate the two matters.

Article 2

44. Article 2 provides for everyone's right to life to be protected by law. Typically, cases on Article 2 relate to situations where life has been lost. The following general principles may be drawn from the case of Öneryıldız v Turkey (2005) 41 EHRR 20 – a case that concerned the deaths of close relatives of the applicants from a methane explosion at a municipal rubbish tip in Istanbul:

    (1) Article 2 extends beyond the situation of deaths resulting from use of force by agents of the state and in certain circumstances imposes a positive obligation on states to take appropriate steps to safeguard the lives of those within their jurisdiction (Öneryıldız [71]).

[6] In Tagayeva v Russia (Application no. 26562/07; 13 April 2017) the applicants were either hostages, or family members of individuals killed, during the Beslan school siege. In Gorovenky and Bugara v Ukraine (Application no. 36146/05; 12 January 2012) the applicants' relative had been shot by an off-duty police officer. In Stoisecu v Romania (Application no. 9718/03; 26 July 2011) the applicant had been bitten by a stray dog. In Cordella v Italy some of the applicants were residents in towns classified as being at high environmental risk from toxic emissions from a steelworks (and 19 of the applicants in question were found not to have victim status as they did not live in those towns and had not shown that they were personally affected).

(2) The risk in question must be to *"life"* not quality of life (see Öneryıldız e.g. at [71] referring to an obligation to take appropriate steps *"to safeguard ... lives"*; at [73] referring to exposure to *"life-endangering circumstances"*; and at [89] referring to an obligation to take all appropriate steps *"to safeguard life"*).

(3) The positive obligation to take appropriate steps to safeguard life for the purposes of Article 2 *"entails above all a primary duty on the State to put in place an appropriate legislative and administrative framework designed to provide effective deterrence against threats to the right to life"* (Öneryıldız [89]).

(4) The positive obligation only arises where the state knows or ought to have known that there is a *"real and immediate risk"* to life (Öneryıldız [101]).[7]

(5) The state enjoys a wide margin of appreciation in relation to the scope of any positive obligation under Article 2, in particular where (as in this case) matters of social and economic policy are concerned (Öneryıldız [107]). As the ECtHR stated (ibid.):

> *"... it is not [the Court's] task to substitute for the views of the local authorities its own view of the best policy to adopt in dealing with the social, economic and urban problems in this part of Istanbul. It therefore accepts the Government's argument that in this respect an impossible or disproportionate burden must not be imposed on the authorities without consideration being given, in particular, to the operational choices which they must make in terms of priorities and resources ..."*.

Article 8

45. Article 8(1) provides that *"[e]veryone has the right to respect for his private and family life, his home and his correspondence"*. The Claimants in this case allege a positive

[7] The domestic courts have held that the test is applied for establishing a violation of the positive obligation arising under Article 2 to protect someone from a *"real and immediate risk to his life" "is clearly a stringent one which will not easily be satisfied"* (Van Colle v Chief Constable of the Hertfordshire [2008] UKHL 50, [2009] 1 AC 225 per Lord Brown of Eaton-under-Heywood at [115]).

obligation arising from the right to respect for their family lives (see SFG 322, 327, 332 and 336). Article 8(2) permits interference with a person's family life where it:

> *"is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."*

46. In Dubetska and Others v Ukraine (2015) 61 EHRR 11 the ECtHR found a breach of Article 8 arising from a failure to protect individuals' home, private and family life from excessive pollution by two state-owned industrial facilities. At [105], the ECtHR summarised the established position that neither Article 8 nor any other provision of the Convention guarantees the right to preservation of the natural environment as such and added:

> *"Likewise, no issue will arise if the detriment complained of is negligible in comparison to the environmental hazards inherent in life in every modern city. However, an arguable claim under Article 8 may arise where an environmental hazard attains a level of severity resulting in significant impairment of the applicant's ability to enjoy his home, private or family life. The assessment of that minimum level is relative and depends on all the circumstances of the case, such as the intensity and duration of the nuisance and its physical or mental effects on the individual's health or quality of life"* (emphasis added).

47. In respect of Article 8, *"there may be positive obligations inherent in an effective respect for private or family life. These obligations may involve the adoption of measures designed to secure respect for private life even in the sphere of the relations of individuals between themselves"* (X and Y v Netherlands (1986) 8 EHRR 235 at [23]).

48. Only where an individual is *"directly and seriously affected"* by pollution may an issue conceivably arise under Article 8 (Hatton v United Kingdom (2003) 37 EHRR 28 at [96]).

49. In considering whether any interference is justified under Article 8(2), the state *"must be allowed a wide margin of appreciation and be left a choice between different ways of meeting its obligations. The ultimate question before the Court is ... whether a State has*

succeeded in striking a fair balance between the competing interests of the individuals affected and the community as a whole … In making such an assessment all the factors, including domestic legality, must be analysed in the context of a particular case" (Dubetska [141]).

50. The wide margin of appreciation for both Article 2 and Article 8 means that *"the choice of means as to how to deal with environmental issues is a matter falling within the Contracting State's margin of appreciation in environmental matters"* (Greenpeace v Germany, No 18215/06, 19 May 2009; see also Fadeyeva v Russia (2007) 45 EHRR 10 at [96], Kolyadenko v Russia (2013) 56 EHRR 2 at [160], and Budayeva v Russia (2014) EHRR 2 at [134]).

51. The Secretary of State relies on the following additional principles with regard to family life:

    (1) For an applicant to rely upon *"family life"* presupposes the existence of a family (see e.g. Marckx v Belgium (1979-80) 2 EHRR 330 at [31]).

    (2) The existence or non-existence of family life is a question of fact, depending upon the "*real existence in practice of close personal ties*" (see e.g. Znamenskaya v Russia (2007) 44 EHRR 15 at [27]).

    (3) Sufficient family ties have been found in the context of near relatives other than parents and children, such as grandparents/grandchildren, but only where those relatives play a considerable part in family life (Marckx [45]).

    (4) The requirement to respect family life imposes an obligation on states to allow persons with protected family ties to lead a normal family life and develop those ties (Marckx [31]).

Article 14

52. Article 14 is as follows:

> *"The enjoyment of the rights and freedoms set forth in this 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."*

53. The following general principles apply:

(1) Article 14 has no independent existence. It applies only if the facts of the case fall within the ambit of one or more of the other substantive ECHR Articles (see e.g. Burden v United Kingdom (2008) 47 EHRR 38 at [58]).

(2) Not every difference in treatment will amount to a violation of Article 14. It must be established that other persons in an analogous or relatively similar situation enjoy preferential treatment and that this distinction is discriminatory (Schwizgebel v Switzerland Application no. 25762/07; 10 June 2008 at [76]).

(3) A difference in treatment is discriminatory within the meaning of Article 14 if it has no objective or reasonable justification. A difference in treatment should pursue a legitimate aim. There should be a reasonable relationship of proportionality between the means employed and the aim sought to be realised (Schwizgebel [77]).

(4) Article 14 does not prohibit distinctions in treatment which are founded on an objective assessment of essentially different factual circumstances and which, being based on the public interest, strike a fair balance between the protections of the interests of the community and respect for the rights and freedoms safeguarded by the Convention (Schwizgebel [77]).

(5) States enjoy a margin of appreciation in assessing whether and to what extent differences in otherwise similar situations justify a difference in treatment (Schwizgebel [79]).

Factual context

Introduction

54. The basic factual contention underlying the claim – that the Government is not doing enough to meet its own net zero target under the CCA 2008 and/or to meet its international obligations under the Paris Agreement – is misconceived and wrong.

55. The contention is misconceived as it rests on a merits-based disagreement as to the adequacy of actions taken by the Government in a complicated policy area.

56. The contention is wrong as it derives from a false and partial picture. The documentation relied upon in support of the claim is selective and incomplete. Important matters, such as the Government's published commitment to producing a Net Zero Strategy (see para 62 below) are omitted. Instead, the Claimants rely upon an array of news articles, third party reports and statements, picking bits that suit their cause. Much of the material relied upon is of no real relevance (such as the material relating to the Whitehaven coal mine at [TC/2/60-66/313-341]) or authority (such as the letter to Lord Reed of 30 March 2021 [TC/2/84/405-412] – see also SFG 351). Some relevant documents that are included, such as the Government's October 2020 response to the CCC, are only included in extremely limited extracts [TC/1/12/65-70]. The Secretary of State seeks to present a fuller narrative below, but does not at this stage consider it necessary or proportionate to provide documents to the Court to fill the numerous gaps in the materials provided by the Claimants. In the event that permission is granted, he will do so.

57. The Secretary of State also notes that the Claimants place reliance upon Ministerial statements in Parliament (SFG 133) and the report of a Parliamentary committee (the Public Accounts Committee) (SFG 20, 50 and 178-179). The Secretary of State reiterates[8] that reliance upon such material is a breach of Parliamentary privilege as given effect to by Article 9 of the Bill of Rights 1689. The Court may not analyse the

[8] See the Secretary of State's pre-action response of 14 January 2021 [CB/5] at para 4.23.

correctness of any statements or criticisms made as part of proceedings in Parliament in support of the claim.[9] That material is therefore inadmissible.

Measures being taken by Government on climate change

Mitigation (and net zero)

58. The UK's greenhouse gas emissions have been reducing since the early 1990s. The Government over-achieved against the first two carbon budgets set under the CCA 2008 (2008-17) and is on track to over-achieve on the third as well (2018-22). Further action is being taken and more is planned to ensure that the UK can meet the fourth and fifth carbon budgets (2023-32). The fifth carbon budget requires the equivalent of a 57% cut in emissions over 2028-32 from a 1990 baseline.

59. Pursuant to ss.13 and 14 of the CCA 2008, the Government published *The Clean Growth Strategy: Leading the way to a low carbon future* ("the CGS") in April 2018. The CGS comprises a comprehensive economy-wide mitigation strategy. A more recent statement of the overarching position is set out in the Government's response to the CCC's 2020 progress report laid before Parliament in October 2020[10] ("the October 2020 Response"). The Executive Summary to the October 2020 Response noted that *"[d]elivering net zero will have a profound effect on our economy"* and that:

> *"Reaching net zero will involve fundamental changes across the UK economy. Under any feasible scenario, meeting net zero will require reductions in emissions across the economy on a scale not previously seen; ambitious and early deployment of existing technologies and approaches; and innovation in new technologies, including greenhouse gas removal technologies which will enable us to sequester or offset emissions from sectors which cannot fully decarbonise and could offset the highest cost measures in other sectors."*

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[9] See e.g. Office of Government Commerce v Information Commissioner [2008] EWHC 774 (Admin), [2010] QB 98 per Stanley Burnton J (as he then was) at [16].
[10] *The Government Response to the Committee on Climate Change's 2020 Progress Report to Parliament – Reducing UK emissions* (HM Government, October 2020).

60. The October 2020 Response recognised that the transition to net zero requires *"careful management"* both on account of its potential economic impacts on people and the need for behavioural change.[11]

61. There have been a number of developments since the October 2020 Response in different sectors, building upon the CGS, these include:

   (1) Consultation on the Environmental Land Management ("ELM") scheme (14 October 2020) and the progression of policies for post-Brexit agricultural management including on climate change, tree planting and peatland restoration.

   (2) Publication of the Prime Minister's *Ten Point Plan for a Green Industrial Revolution* ("the Ten Point Plan") (November 2020).

   (3) Laying before Parliament of the Energy White Paper: *Powering our Net Zero Future* (14 December 2020).

   (4) Publication of the *Net Zero Review: Interim Report* by HM Treasury (17 December 2020).

   (5) Publication of the Government's *Industrial Decarbonisation Strategy* (17 March 2021).

   (6) Commitment to a progressive legislative and policy agenda on climate change in the Queen's Speech to Parliament (11 May 2021).

   (7) Publication of the England Peat Action Plan and the England Trees Action Plan (18 May 2021).

62. As is set out in the October 2020 Response and the Ten Point Plan, the Government will publish a comprehensive Net Zero Strategy in the lead up to COP26 in November 2021.

[11] See e.g. the Ministerial foreword: *"We also agree with the CCC that as we do this it is important that we involve the public and bring them with us, so that the decisions we make align with society's concerns and values. As the [Climate Change] Committee has pointed out, 62% of emissions reductions involve some form of behaviour change."*

This will supersede the CGS and will set out the Government's proposals for transitioning to a net zero economy, making the most of new growth and employment opportunities across the UK. Work is also underway, for example, on a Transport Decarbonisation Plan and a Heat and Buildings Strategy. A useful summary of what is being done across the UK economy to achieve net zero is set out at pp30-31 of the Ten Point Plan.

63. On 12 December 2020, in accordance with the Paris Agreement, the UK communicated to the UNFCCC Secretariat a new nationally-determined contribution ("NDC") committing to a greenhouse gas emissions reduction of at least 68% by 2030 on 1990 levels. This represents a significant increase in ambition compared to the UK's previous NDC, set with the EU, which sought an at least 40% reduction by 2030. The UK's new NDC commits to the highest level of emissions reduction by 2030 of any major economy to date. The CCC's December 2020 advice on the sixth carbon budget described the position which has subsequently been adopted by the UK in its NDC and sixth carbon budget as *"world leading"*.[12]

64. The NDC submission includes the institutional arrangements, policies and measures being taken in each jurisdiction of the UK on climate change and sets out a summary of progress in other relevant areas, including food policy, biodiversity, education and health.

65. Importantly, the CCC advised in December 2020 that the UK's new NDC and the sixth carbon budget would be consistent with, and reflect the goals and requirements of, the Paris Agreement. It advised that the sixth carbon budget placed the UK on a trajectory that was consistent with the Paris Agreement and that the NDC aligned with the pathways published by the IPCC to meet the 1.5 °C goal.

66. On 16 April 2021, the Secretary of State laid before Parliament the legislative instrument for the sixth carbon budget,[13] together with an explanatory memorandum and impact assessment. The sixth carbon budget covers the period 2033-2037 and the proposed

[12] *The Sixth Carbon Budget: The UK's path to Net Zero* (Committee on Climate Change, 9 December 2020) p.13.
[13] The Carbon Budget Order 2021.

budget accepts the recommendation of the CCC in its December 2020 report[14] for a 78% reduction in emissions by 2035. As the CCC advises, the reduction *"would put the UK ahead of existing targets from other similar large European countries and ambitious US states, both in terms of progress reducing emissions since the base year (1990) and in percentage reductions from 2018 levels"* (p330). The sixth carbon budget is in line with what is required to meet the UK's contribution under the Paris Agreement. It will also for the first time directly include international aviation and shipping[15] through regulations to be made under CCA 2008 s.30 in due course.

67. The Claimants' assertion of a *"systematic failure ... to implement practical and effective measures to deliver on its net zero commitment"* (SFG 180) is therefore wholly misconceived. The Government is making substantial efforts to bring forward measures across the economy to meet its greenhouse gas reduction goals. In doing so, it is engaging with, and responding to, the advice of the CCC and Parliamentary scrutiny. It should in particular be stressed that the independent CCC made clear in December 2020 that the NDC and the sixth carbon budget would *"reflect the goals and requirements of the Paris Agreement, recognising the UK's responsibility as a richer developed nation and its respective capabilities"*.

68. The reliance upon (selective) quotations from reports produced by think tanks (the Institute for Government and the Institute for Public Policy Research), the National Audit Office and the Public Accounts Committee[16] in the SFG (SFG 157-179) does not assist the Claimants. Those reports demonstrate what is already recognised by Government: that meeting net zero will be a major challenge requiring radical changes across the economy. They also demonstrate that there is, and will continue to be, political debate over how best to achieve it. They do not arguably demonstrate a *"systematic failure"*.

69. The Claimants separately place reliance upon certain decisions taken across Government to illustrate the point. It is not clear what these examples are intended to add. SFG 181 acknowledges that *"[t]he Claimants do not seek to challenge these individual*

[14] See footnote 12.
[15] Rather than making provision indirectly through a separate allowance.
[16] To the extent that the report is admissible – see para 57 above.

decisions". For the avoidance of doubt, however, the Defendants do not accept that they are illustrative of an unlawful approach (as alleged). First, they are selective and need to be viewed in the context of a wider programme of Government (see e.g. the Ten Point Plan). Second, even on their own terms they do not demonstrate the *"systematic failure"*, *"disarray"* or lack of coherence that the Claimants allege.

70. The Secretary of State makes the following observations on SFG 180-205:

(1) As is set out at SFG 194, on 11 March 2021, the Secretary of State for Housing, Communities and Local Government called in for his own consideration the decision of Cumbria County Council to grant permission for a new underground metallurgical coal mine at Whitehaven in Cumbria. That was in light, among other things, of the CCC's (subsequent) recommendations on the sixth carbon budget. The implications of the project for climate change, including whether the local authority was correct to consider it to be *"broadly carbon neutral"*, will now be examined at an independent public inquiry. The Secretary of State has stipulated that the inquiry should particularly examine *"the extent to which the proposed development is consistent with Government policies for meeting the challenge of climate change"*. The decision shows that the planning system works to ensure that (i) climate change impacts are assessed when planning applications are considered and (ii) the exceptional safeguard of calling-in applications for determination by the Government may be used for applications of particularly sensitivity or controversy for climate change.[17]

(2) The lawfulness of the 2018 Airports National Policy Statement ("ANPS") in relation to Heathrow (referred to at SFG 198-199) was upheld by the Supreme Court in December 2020 and the First Claimant's challenge was rejected. This was on the basis, among other things, that the Secretary of State for Transport did have regard to the Paris Agreement[18] and that the ANPS would require any

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[17] For the avoidance of doubt, it is false to claim that the Government has given *"[s]upport for the opening of a new coal mine in Cumbria"* (SFG 180a). The application was by a private developer and the local planning authority originally resolved to grant planning permission. At no point has there been any positive support from the Government. The BEIS Secretary of State has said that he considers that there were *"very compelling reasons"* not to permit the mining.

[18] See R (Friends of the Earth Ltd and Plan B Earth) v SST [2020] UKSC 52, [2021] PTSR 190 per Lords Hodge and Sales at [132]. The reference to the factual basis for the Court of Appeal's decision at SFG 199 is

scheme for a north west runway at Heathrow to be assessed against the carbon reduction targets in place when a development consent application is determined.[19] Again, therefore, the point is of no assistance to the Claimants' argument.

(3) SFG 201 refers to the resolution of Leeds City Council to approve the expansion of Leeds-Bradford Airport. That is simply an individual position taken by a democratically elected local planning authority. Moreover, the SFG omits to mention that, on 6 April 2021, the Secretary of State for Housing, Communities and Local Government issued a direction[20] preventing the local planning authority from granting the permission until he has had more time to consider the proposal.

(4) The attack on the Covid Corporate Financing Facility ("CCFF") at SFG 202 is wholly inapposite. As was explained in pre-action correspondence,[21] the CCFF addressed urgent financial crisis management. It opened in March 2020 and notice of its closure was given in October 2020. Government's wider policy on post-pandemic recovery is that it be pursued together with climate change goals.[22]

(5) The references to plans for investment in the road network (SFG 203) and the award of offshore oil and gas exploration licences (SFG 204) are also inapposite. First, they are only one part of a much wider and more ambitious Government programme. Second, they are only one part of a wider regulatory process within which climate change will be a consideration.[23] Third, as with all of the examples relied upon by the Claimants, they are not challenged by the claim.

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potentially misleading given that the Supreme Court overturned the Court of Appeal's judgment, differing from the lower court's factual and legal analysis.

[19] Ibid. [98]. See also [166] with regard to non-CO_2 emissions.

[20] Under Article 31 of the Town and Country Planning (Development Management Procedure) (England) Order 2015.

[21] See paras 4.16-4.17 of the Secretary of State's letter of 14 January 2021 [CB/5]. See also the Secretary of State's letter of 7 August 2020 [CB/2].

[22] See e.g. the October 2020 Response on *Building Back Greener*.

[23] Separate consents for the construction of any roads and extraction of any offshore fossil fuels will be required.

Adaptation

71. The Government has taken a rigorous approach to adapting the UK to meet the challenges associated with climate change, pursuant to its obligations under CCA 2008 ss.56 and 58 and in line with Article 7 of the Paris Agreement.

72. Since 2013, the Government has prepared two Climate Change Risk Assessments ("CCRAs") and two National Adaptation Programmes ("NAPs"). The most recent CCRA was published in 2017, and was based on an independent evidence report commissioned from the Adaptation Sub-Committee of the CCC. The evidence report identified six priority areas for action, which were largely endorsed by the Government in the CCRA (see SFG p51).

73. The second NAP drew on the particular risks identified in the 2017 CCRA, and the ambitions set out in the 25 Year Environment Plan,[24] in order to set out a strategy for adapting to existing and future climate change in the period from 2018 to 2023. The second NAP set out a comprehensive and cross-departmental plan for building resilience and responding to climate change risks in five key areas: the natural environment, infrastructure, people and the built environment, business and industry, and local government. Published alongside the second NAP was the Third Strategy for Climate Adaptation Reporting, which set out the Government's plans for collecting information on climate change from persons and bodies with functions of a public nature, such as infrastructure providers.

74. During the second NAP period, the Government has implemented numerous plans and programmes designed to improve the UK's resilience in relation to climate change in the priority areas identified. These have included:

    (1) Publication of an annual *Heatwave Plan* by Public Health England (most recently in April 2021) and provision of a suite of associated resources to support awareness and action during periods of hot temperatures, so as to protect individuals vulnerable to increasing temperatures.

[24] *A Green Future: Our 25 Year Plan to Improve the Environment* (HM Government, 11 January 2018).

(2) Changes to environmental permitting schemes to require organisations to consider potential climate risks (December 2019).

(3) Establishing a £640 million Nature for Climate Fund, designed to protect, restore and expand habitats like woodlands and peat bogs, support climate mitigation and adaptation, such as through natural carbon capture and natural flood alleviation (March 2020).

(4) Publication by the Environment Agency of the *National Framework for Water Resources*, setting out England's future water resource needs and potential deficits at a national and regional level (16 March 2020).

(5) Publication of a new edition of the Climate Change Adaptation Manual by Natural England and the Royal Society for the Protection of Birds (May 2020).

(6) Publication of new sensitivity assessments on the impacts of climate change on Marine Protected Areas (May 2020).

(7) Publication of a policy statement setting out Government's ambition to improve resilience to flood and coastal erosion risks and publication of an updated *National Flood and Coastal Erosion Risk Management Strategy* by the Environment Agency (14 July 2020).

(8) Reaching the target to better protect 300,000 homes from flooding and coastal erosion in March 2021, following a £2.6 billion investment programme in new flood and coastal defences since 2015, and the announcement of plans to invest another £5.2 billion over six years from April 2021.

(9) Updating the *Green Book Supplementary Guidance on Accounting for the Effects of Climate Change* to provide for climate change risks to be embedded in policy and programme decisions (November 2020).

(10) Launching the second Covid-19 Green Recovery Challenge Fund, providing a total of £80 million to help environmental organisations restore nature and provide nature-based solutions to tackling climate change (March 2021).

(11) Continued review of the Thames Estuary 2100 Plan, setting out the strategy for managing the flood risk to the end of the century.

(12) Carrying out the third adaptation reporting round, for which over 90 organisations, including bodies responsible for water, energy, transport, environment, heritage, health and finance have committed to reporting by the end of 2021.

75. Notably, the UK Government became one of the first parties to the Paris Agreement to fulfil the commitment in Article 7.10, by preparing and submitting to the UNFCCC Secretariat its first Adaptation Communication at the December 2020 Climate Ambition Summit. The Adaptation Communication sets out the UK's plans to prepare for the effects of climate change domestically and to support those facing climate impacts overseas.

76. The Government's adaptation strategy is of course not static. During each NAP round, adaptation plans develop in response to new evidence and information. Following the CCC's 2019 progress report, for example, the Government broadly accepted the CCC's recommendations and has sought to address them. This has included working with the CCC to consider the expansion of the indicators used to monitor adaptation.

77. Moreover, each cycle of adaptation planning is itself a step in the Government's long-term commitment to adapting to climate change. Each cycle learns from the lessons of the previous strategy. This is set out succinctly in the second NAP itself:

> *"Achieving long term goals in the face of uncertainty requires many steps along a pathway that cannot be fully laid out from the start. The nature of the Act's framework allows for iteration and evaluation as we progress. This means we can build on the achievements of, and learn lessons from, the previous cycle of assessment and reporting and set out a flexible pathway that will enable us to adapt as risks evolve in the future. This*

> *report focuses on the key actions we will be taking over the next five years to strengthen our resilience to climate change."*

78. The CCC Adaptation Sub-Committee is currently in the process of preparing the third independent risk assessment report, which is due to be published in Summer 2021 and will form the basis of the third CCRA, to be published in early 2022. This will, in turn, inform the third NAP to be published thereafter.

79. The Claimants' assertions at SFG 206-222 that the Government is not doing enough to adapt to the challenges associated with climate change are therefore misleading and misguided. The Claimants rely heavily on the CCC's 2019 criticisms (SFG 211-214), but those are criticisms that the Government has taken or is taking steps to address.[25]

80. The Claimants make some separate allegations. SFG 220 alleges that *"the Government has failed to provide or support the development of general educational and public information programmes concerning the climate crisis …"*. That is obviously wrong given the provisions for publication of reports in the CCA 2008 alone. Moreover, climate change awareness is something that is being pursued by many different departments across Government, including BEIS, and also the Department for Education and the Department for Environment, Food and Rural Affairs. The Claimants do not substantiate their claim.

81. SFG 221 bizarrely seeks to impugn the Police, Crime, Sentencing and Courts Bill 2021. This Bill is entirely unrelated to the Government's efforts to adapt to climate change, and, in any event, it is not reviewable by the Court.

82. As set out above, the Government clearly is taking significant steps to adapt to the risks associated with climate change in line with the priorities identified in the CCRAs, contrary to the selective picture that the Claimants have sought to paint.

[25] See p67 of the October 2020 Response: *"We broadly accepted the recommendations made last year by the CCC, and we continue to address them"* [TC/1/12/67].

Finance

83. In July 2019 the Government published the Green Finance Strategy ("GFS").[26] This commits, in relation to green finance, to at least match the ambition of the three key objectives of the EU's 2018 EU Sustainable Finance Action Plan. It also went further, setting out a comprehensive approach to greening financial systems, mobilising finance for clean and resilient growth, and capturing the resulting opportunities for UK firms in light of the Paris Agreement. Among other things, the GFS contained a commitment to *"aligning the UK's Official Development Assistance spending with the Paris Agreement"*.

84. Building on the GFS, other action that the Government has taken on climate finance includes:

    (1) Launch of the Green Finance Institute to foster greater co-operation between the public and private sectors, create new investment opportunities and strengthen the UK's reputation as a hub for green finance (July 2019).

    (2) Announcement by the Prime Minister that the UK would double its International Climate Finance ("ICF") contribution from £5.8 billion in 2016/2017 to £11.6 billion in 2021/2022 to 2025/2026 (September 2019). This made the UK the first major donor to set out a significant increase in climate finance beyond 2020. This spending is designed to help developing countries adapt to climate change and promote low-carbon growth.

    (3) Completion of the Green Home Finance Innovation Fund competition, to pilot innovative products such as green mortgages (29 June 2020).

    (4) Launch of the Green Finance Education Charter (July 2020).

    (5) Committing to introduce a 'green taxonomy', a common framework for determining what activities are environmentally sustainable (9 November 2020).

[26] *Green Finance Strategy: Transforming Finance for a Greener Future* (HM Government, July 2019).

(6) Rules made by the Financial Conduct Authority (FCA) to promote better climate-related financial disclosure (21 December 2020).[27]

85. In November 2020, the Chancellor announced the Government's intention to go further and make climate-related disclosure mandatory across the economy by 2025. The UK was the first G20 country to make such a commitment. Consultations on introducing such disclosure obligations for occupational pension schemes, publicly-quoted companies, large private companies and LLPs have been carried out this year.

86. There have been many other related developments in this complex area. The new Financial Services Act 2021 will strengthen green governance by making the target in s.1(1) of the CCA 2008 a mandatory material consideration for the FCA and the Prudential Regulation Authority when making certain key prudential rules applying to investment firms and credit institutions such as banks.[28] The 2021 budget included further commitments, including to issue a new sovereign bond or 'green gilt' to support green finance and to establish a UK Infrastructure Bank with a mandate to address climate change. In December 2020, the Government announced that it will no longer provide any new direct financial or promotional support for the fossil fuel energy sector overseas, save for very limited exceptions.

87. The UK Government became one of the first parties to the Paris Agreement to fulfil the key provision in Article 9.5, by preparing and submitting to the UNFCCC Secretariat its first biennial Finance Communication at the December 2020 Climate Ambition Summit. The Finance Communication sets out the UK's commitment to international climate finance.

88. It is therefore simply incorrect to contend that the Government has ignored or failed to act on the recommendations of the CCC and others (SFG 232). Nor has it systematically failed to take effective measures to align financial flows to the Paris Agreement (SFG 244). The Government has taken and is in the process of taking a number of

[27] Proposals to enhance climate-related disclosures by listed issuers and clarification of existing disclosure obligations; Policy Statement PS20/17 (FCA, 2020).
[28] Financial Services Act 2021 Sch 2, para 1, inserting a new s.143G(1) into the Financial Services and Markets Act 2000.

important steps to integrate climate risk and net zero into investment decisions and financial regulation. Action is also being taken separately by the Bank of England, as is noted in its June 2020 climate-related financial disclosure report.[29]

<u>Ground 1: failure to take practical and effective measures to align UK greenhouse gas emissions to the 'Paris Temperature Limit'</u>

CCA 2008 s.13

89. SFG 326 makes a distinct allegation that the Secretary of State has breached s.13 of the CCA 2008. That is a hopeless contention given that: (i) the Secretary of State published the CGS under CCA 2008 ss.13 and 14 in 2017; (ii) the Government has built upon that since the net zero amendment with a range of further proposals and policies (see paras 61-62 above); and, (iii) the Secretary of State is in the process of preparing, and will publish ahead of COP26, a Net Zero Strategy that will contain plans to meet future budgets.

90. Those actions clearly satisfy the duty in s.13(1) for the Secretary of State to prepare proposals and policies that he *"considers will enable the carbon budgets that have been set under this Act to be met"*. As is set out at paragraph 58 above, the UK is on track to meet its carbon budgets up to 2022. The Secretary of State's judgement that, with further work, future budgets – including the sixth carbon budget – can be met is plainly lawful. The Claimants' contention that the Secretary of State has not met the duty in s.13 of the CCA 2008 is totally without merit and permission should be refused in respect of this element of ground 1 (see SFG 326).

Human rights

91. The main and remaining argument under ground 1 is that the Defendants have breached their *"positive obligation"* under ECHR Articles 2, 8 and/or 14 to take *"practical and*

[29] Extract at [TC/1/8/37]: *"[o]ver the next year, the Bank will continue to engage domestically and internationally to develop its TCFD disclosure further. The Bank's approach will also evolve further, reflecting the dynamic nature of the risks …"*.

effective measures to safeguard the Claimants' lives and family lives from the threat of climate change" by not aligning UK greenhouse gas emissions to *"the Paris Temperature Limit"*. As is summarised in paragraph 5 above, there are a number of insuperable problems to that argument. Each of them by themselves mean that permission ought to be refused for all four grounds of challenge. They are set out below.

Lack of victim status

92. The SFG does not suggest that the First Claimant, an incorporated body, could be a *"victim"* for the purposes of HRA 1998 s.7(1). It plainly cannot. Permission should therefore be refused for it to pursue all four grounds of challenge.

93. Moreover, there is no credible basis for suggesting that the Second to Fifth Claimants are *"victims"* of the alleged failure of the UK Government to mitigate climate change. None of them are directly affected by the matters complained of. They are all residents of the UK living in South London: Bromley, Croydon (or Oxford for university), Clapham and Walworth respectively. They have not been directly and personally affected by climate change in general or the policies of the Government on climate change in particular. The claim in reality is an improper *actio popularis* (see para 39 above). This is clear from the Claimants' witness statements, which the Court is invited to read. For example:

    (1) The Second Claimant complains that *"the Government's failure to take practical and effective measures breaches the rights to life <u>for all</u>"* ([CB/14] [8] emphasis added).

    (2) The Third Claimant's statement refers to Government's failure to safeguard *"us as citizens"* generally ([CB/12] [10]).

    (3) The Fourth Claimant refers to Government's actions as *"an attack on our lives and dignity"* ([CB/15] [9]).

(4) The Fifth Claimant states that the Government's failure to take action *"is a breach of my right to life (<u>among countless others</u>)"* ([CB/13] [13] emphasis added).

94. Moreover, there is no causal link between the omissions complained about and any impact upon the Second to Fifth Claimants' rights. The Claimants do not – and could not arguably – establish that the failure of the Government to bring forward an even more ambitious and wide-ranging series of measures to address climate change is having or will have an impact upon them personally. The UK has not caused the harm or risks which the Claimants allege. It is important in this regard also to appreciate the global nature of climate change, to which the UK contributes to only a minor degree. The UK is estimated to have contributed only 2% of human-induced global warming to date. As is correctly noted at SFG 151:

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

95. Finally, even if the Claimants were able to establish a potential future impact personally affecting their human rights, it would only be a generalised and hypothetical risk. The Claimants' arguments on Articles 2, 8 and 14 are predicated on climate change causing *"social and economic breakdown"* and *"collapse"* (SFG 65, 71). The Claimants do not provide any *"reasonable and convincing evidence of the probability of the occurrence of a violation concerning him or her personally"* (see para 42 above, citing <u>Asselbourg</u> and <u>Tauira</u>).

96. This point on victim status is a knock-out blow for all Claimants on all grounds of challenge. Permission should be refused on this basis alone.

Articles 2 and/or 8 are not engaged

97. For similar reasons, no evidence has been provided which could establish that ECHR Articles 2 and/or 8 are engaged in this case. They are not.

98. On Article 2, the Claimants provide no evidence whatsoever that climate change represents a *"real and immediate risk"* to their lives (as is required – see para 44(4) above citing Öneryıldız). It does not. The Claimants' right to life is not at stake due to climate change. A risk to future quality of life, which is at most what the Claimants allege, is not sufficient to engage Article 2. It is also entirely speculative. As there is no real and immediate risk to the life of the Claimants, the UK Government cannot be under any positive obligation under Article 2.

99. On Article 8, the Claimants do not arguably substantiate a "*significant impairment"* of their ability to enjoy family life (as required – see para 46 above citing Dubetska). Their close family ties are all in the UK. The evidence is far from sufficient to establish that any of the Claimants enjoy family life with relatives overseas. The Second and Third Claimants refer to wider family in West Africa and the Caribbean, but do not suggest that any relatives there play a considerable part in their family life. The Fourth Claimant refers to grandparents in Mexico City (and Somerset) ([CB/15] [18] and [24]) about whom she is worried, but again does not claim close personal ties. The evidence does not establish that any of the Claimants enjoy family life with any relatives outside the UK. In any event, it is entirely fanciful to suggest that the failure of the UK Government to take further action on climate change could or would directly affect the Fourth Claimant's ability to lead a normal life and develop ties with her grandparents.

100. The impact of climate change on the Claimants falls a very long way short of the level of severity resulting in significant impairment of the Claimants' ability to enjoy their home or family life which is required to engage Article 8 (Dubetska at [105]). They are not sufficiently directly and seriously affected by the impact of climate change arguably to satisfy the stringent conditions required for there to be a breach of Article 8. The UK Government cannot therefore be under any positive obligation under Article 8.

101. The positive duty to take measures under either Article 2 or Article 8 is not therefore triggered in this case. The position of the Claimants in relation to climate change in the UK is very far removed from the circumstances where the ECtHR has previously found the positive duty to arise, which is essentially where people live close to a dangerous or hazardous installation which causes a real and immediate risk of an acute disaster or serious pollution which directly causes a severe impairment of the ability to enjoy home or family life.

102. Moreover, the Government's obligations under the ECHR do not extend to preventing disruptions to the circumstances of any wider extra-territorial family (see para 36 above).

Article 14 is not engaged

103. Nor is there any basis for suggesting that Article 14 is engaged. As is set out at paragraph 53 above, Article 14 has no independent existence and only applies if the facts of the case fall within the ambit of other ECHR Articles. They do not (see above). Moreover, as is acknowledged by the claim, climate change is a general crisis of universal concern. The Government, in taking action to mitigate the impacts of climate change, is not acting in a discriminatory fashion and is seeking to balance (and bring together) the public interest in economic progress and the public interest in limiting the worst consequences of climate change. Any inadvertent and indirect discriminatory impacts would fall well within the UK's margin of appreciation, and be objectively and reasonably justified, if they could be established by the Claimants.

The Government is not breaching any positive obligation arising under Articles 2 and/or 8

104. Even if a positive obligation arises under the Articles 2 and/or 8 of the ECHR (which is denied), it is wholly unarguable that the Government is not meeting it.

105. The Government is easily meeting the minimum content of a positive obligation (if it applies) that – as far as ground 1 is concerned – would be *"to put in place a legislative and administrative framework designed to provide effective deterrence against threats to the right to life"* from climate change (Öneryıldız at [89]) and/or to adopt measures

designed to secure respect for family life in the context of climate change (X and Y v Netherlands at [23]).[30] Such a framework and measures are provided for in the CCA 2008 in particular, as well as in the current and emerging policies and proposals identified above.

106. The Claimants argue that *"there is no legal or regulatory framework that implements the key commitments of the Paris Agreement into national law"* (SFG 33). However, that ignores the reality that there is a legal and policy framework in the UK for tackling climate change which is delivering on the Paris Agreement provisions domestically. Moreover, as is set out at paragraph 58 and following above, the Government has taken (and is continuing to take) progressive steps across different areas of public administration to tackle climate change.

107. The Paris Agreement does not impose any separate legal obligation on the UK with regard to mitigation. However, it is noteworthy that in December 2020 the UK communicated a NDC under the Paris Agreement committing to the highest level of emissions reductions by 2030 of any major economy to date (see para 63 above). The UK cannot be said to be failing to implement the Paris Agreement – it is leading the way on its implementation.

108. The Claimants do not suggest that it would be reasonable to require any more of the Government than compliance with the CCA 2008 and the Paris Agreement (see SFG 286). On no interpretation of the ECHR could the UK Government be required to do more than is required by the Paris Agreement. The independent and expert CCC advised in December 2020 that the UK's new NDC and the sixth carbon budget would be consistent with, and reflect the goals and requirements of, the Paris Agreement.

[30] The Claimants' case is entirely predicated upon the contention that the positive obligation under Articles 2 and 8, if engaged, obliges the UK Government to *"take practical and effective measures"* actually to achieve particular outcomes or results (see SFG 323-324, 328-329, 333-334, 337-338). However, no authority is cited by the Claimants for this proposition. It is quite untenable and goes well beyond what is established in the case law on which the Claimants rely, which – as above – is that there is a positive duty *"to put in place a legislative and administrative framework designed to provide effective deterrence against threats to the right to life"* (Öneryıldız [89]) and for the *"adoption of measures designed to secure respect"* for family life (X and Y v Netherlands at [23]). The positive obligation (insofar as it arises) is to provide a framework and put measures in place *designed* to achieve an objective.

109. Ground 1 is predicated on achieving the "Paris Temperature Limit" but: the temperatures in Article 2.1(a) of the Paris Agreement are goals, not limits; the 1.5 °C temperature level is not a commitment but a level which the parties are to pursue efforts to meet; and, the only obligation in the Paris Agreement in relation to Article 2.1(a) is to prepare nationally-determined contributions with a view to achieving the purposes set out in Article 2. The Paris Agreement does not impose a legal obligation on states to limit warming to 1.5 °C. Nor does the Paris Agreement impose any legal obligation as to the content of nationally-determined contributions in relation to temperature levels.

110. Moreover, the additional actions that the Claimants assert the *"obligation demands"* at SFG 324 are (i) superfluous, (ii) unrealistic, (iii) go beyond the CCA 2008, (iv) go beyond the Paris Agreement, and/or (v) would amount to "*an impossible or disproportionate burden"* which ECtHR case law establishes are beyond the scope of any positive obligation. Taking them in turn:

(1) The Claimants first argue for a new *"legal and regulatory framework embedding [the] net zero target across all areas of Government ... such as to ensure that projects only proceed if, individually and in aggregate, they are consistent with the net zero target"* (SFG 324(a)). Given that the CCA 2008 already provides for the publication of policies and proposals to meet carbon budgets and net zero, and applies across the UK economy, it is not clear what is meant, but any such framework would require the bringing of new primary legislation through Parliament. If *"projects"* refers to development projects, then s.19(1A) of the Planning and Compulsory Purchase Act 2004 and s.5(8) of the Planning Act 2008 already provide that the policy frameworks pursuant to which consenting decisions are made achieve climate change mitigation and adaptation. To the extent that the Claimants seek action beyond the existing statutory framework, this would appear to present a serious restriction on Governmental freedom to act in cases of national importance.

(2) The Claimants next argue for a new *"legal and regulatory framework to align the UK's* consumption *emissions to the Paris Temperature Limit"*. However *"consumption emissions"* is an entirely different perspective on emissions (calculated not according to where the emissions are produced but according to

where goods and services giving rise to emissions are consumed). It is not the approach followed by the UNFCCC or the Paris Agreement. As a means of regulating greenhouse gas emissions, it is complex and untested. If applied unilaterally, it would risk emissions being missed and/or double-counted.

(3) The Claimants finally argue for a new *"legal and regulatory framework to ensure its emissions from aviation and shipping are consistent with the Paris Temperature Limit"*. There are two responses to this. First, responsibility for international aviation and shipping rests with the International Civil Aviation Organisation ("ICAO") and the International Maritime Organisation ("IMO") respectively. Second, and in any event, the Government has committed to including international aviation and shipping within the sixth carbon budget (see para 66 above).

111. The case law on both Article 2 and Article 8 is clear that a state should be afforded a wide margin of appreciation in areas such as this involving matters of social and economic policy. It is Government that is the democratically elected body responsible for making judgements and decisions on how to implement the Paris Agreement and the CCA 2008 and what steps must be taken to do that. The choice of means is a matter for the Government as falling within the margin of appreciation. It is not open to the Claimants to challenge the measures the UK Government is taking on their merits.

112. In any event, the Courts are in no position to impose demands or prescriptions on Government as to how to achieve its goals, as the Claimants seek. That is particularly important in an area such as climate change policy that involves the allocation of substantial financial resources, will lead to fundamental changes across the UK economy, requires difficult political choices, and balances complex economic priorities (see paras 10-11 above citing *inter alia* R (JS) v SSWP and Packham). This is categorically not an area where the Government has acted *"manifestly without reasonable foundation"* (R (JS) v SSWP per Lord Reed at [93]).

Conclusion

113. For the above reasons, ground 1 is wholly unarguable and permission should be refused for it to proceed. The contention that there has been a breach of s.13 of the CCA 2008 is totally without merit.

Ground 2: failure to take practical and effective measures to prepare for the impacts of climate change

CCA 2008 s.58

114. SFG 331 makes a distinct allegation that the Secretary of State has breached s.58 of the CCA 2008. That is a hopeless contention given that the Government has published two NAPs under s.58 – most recently in 2018 – in each case responding to CCRAs produced under s.56. The 2018 NAP plainly meets the requirements of s.58(1) in setting out objectives, proposals and policies and timescales for adaptation to climate change and addressing the risks identified in the most recent climate change risk assessment. Moreover, as is explained at paragraphs 74-78 above, there has been more work since the last NAP and updates to it, including to respond to criticisms, and there is currently in hand the process for updating the CCRA, through the publication of the third CCRA in 2022 and the third NAP thereafter.

115. The Claimants' contention that the Secretary of State has not met the duty in s.58 of the CCA 2008 is totally without merit and permission should be refused in respect of this element of ground 2 (see SFG 331).

Human rights

General

116. As with ground 1, the main and remaining argument under ground 2 is that the Defendants have breached their *"positive obligation"* under ECHR Articles 2, 8 and/or 14 to take *"practical and effective measures to safeguard the Claimants' lives and family*

lives from the threat of climate change" by not preparing for the impacts of climate change.

117. That argument is subject to the same insuperable problems as identified for ground 1.

118. For ground 2, the Secretary of State repeats and relies upon the lack of status of the Claimants as *"victims"* under HRA 1998 s.7(1) (paras 92-95 above) and the explanation why Articles 2, 8 or 14 are not engaged (paras 97-103 above).

The Government is not breaching any positive obligation arising under Articles 2 and/or 8

119. Even if a positive obligation arises under the ECHR (which is not accepted), it is wholly unarguable that the Government is not meeting it.

120. The Government is easily meeting the minimum content of a positive obligation (if it arises) that – as far as ground 2 is concerned – would be to put in place a legislative and administrative framework for climate change adaptation and/or to adopt measures designed to secure respect for family life in the context of climate. As with mitigation, such a framework and such measures are provided for in the CCA 2008. Moreover, as is set out at paragraph 74 and following above, the Government has acted (and is continuing to act) outside the CCA 2008 process to promote adaptation and resilience to climate change. The Government has also acted progressively under the limited obligations of the Paris Agreement on adaptation by submitting its first Adaptation Communication under Article 7.10 on 12 December 2020.

121. SFG 328 refers to *"education and awareness raising campaigns"*. In that regard it should be noted that Article 12 of the Paris Agreement provides that:

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

122. There is no obligation on the Government to carry out any particular educational campaigns.

123. The Claimants do not, and could not, suggest that it would be reasonable to require any more of the Government than compliance with the CCA 2008 and the Paris Agreement (see SFG 286).

124. However, the additional actions that the Claimants assert the *"obligations demand"* at SFG 329 are (i) superfluous, (ii) unrealistic, (iii) go beyond the CCA 2008, (iv) go beyond the Paris Agreement, and/or (v) would amount to "*an impossible or disproportionate burden"* which ECtHR case law establishes are beyond the scope of any positive obligation. Taking them in turn:

    (1) The Claimants first argue for *"plans to address the risks identified under section 56 of the 2008 Act concerning the current and projected impacts of climate change"*. However, such plans already exist in the NAPs. Moreover, as is set out at paragraph 78 above, the third CCRA under s.56 of the CCA 1998 is in hand and will be published in early 2022, followed by the third NAP, responding to it. The Defendants are doing what the Claimants seek.

    (2) The Claimants next argue for the implementation of *"a legal, regulatory and policy framework to ensure those plans are embedded across industry and all levels of government."* This already exists in the form of the CCA 2008 and what flows from it. The Defendants are doing what the Claimants seek. To the extent that this goes further than the CCA 2008, it would require (at least) legislative amendment. It may also be highly impracticable given the need for flexibility in how the UK adapts to climate change, determined in part by climatic events. The Government's preference is for a number of specific strategies focussed on specific areas (such as the 2019 *Heatwave Plan* and the Thames Estuary 2100 Plan).

    (3) The Claimants next ask that it be ensured that the projected impacts of 2-4 ^{o}C warming are understood at all levels of Government, businesses and the public. That is an odd stipulation given that the SFG is replete with examples of public

statements on behalf of Government and/or public bodies about the risk of climate change, including greater warming. There is no legal obligation on Government to carry out a specific educational campaign, but it is clear – not least from the work of the CCC and the publication of regular reports, including the CCRAs – that information about the facts and risks of climate change is widely disseminated by the Government. The Defendants are doing what the Claimants seek.

(4) The Claimants finally argue for *"consistent and principled financial and technical assistance to communities around the world exposed to disproportionate risks, to support their adaptation efforts, in accordance with the Paris Agreement"*. It is not clear what possible connection this has to the human rights arguments pursued under ground 2. In any event, as is set out at paragraph 84(2) above, the UK announced that it would double its ICF contribution from £5.8 billion in 2016/2017 to £11.6 billion in 2021/2022 and beyond. It is a major donor for adaption efforts by developing countries around the world. The Defendants are doing what the Claimants seek.

125. The Secretary of State repeats paragraph 111 above on the margin of appreciation. Policy on adaptation is just as complex as policy on mitigation.

Conclusion

126. For the above reasons ground 2 is wholly unarguable and permission should be refused for it to proceed. The contention that there has been a breach of s.58 of the CCA 2008 is totally without merit.

Ground 3: failure to take practical and effective measures to align UK finance flows to the 'Paris Temperature Limit'

127. Ground 3 is that the Defendants have breached their *"positive obligation"* under ECHR Articles 2, 8 and/or 14, in the same way as for grounds 1 and 2, this time by failing to

take *“practical and effective measures to align public and private UK finance flows … to the Paris Temperature Limit”* (SFG 332).

128. For ground 3, the Secretary of State repeats and relies upon the Claimants’ lack of status as *“victims”* (paras 92-95 above) and the explanation why Articles 2, 8 or 14 are not engaged (paras 97-103 above).

129. Moreover, there is no obligation in the CCA 2008 or the Paris Agreement (see paras 33-34 above) for Government to introduce and/or implement a *“legislative and regulatory framework”* controlling public and private finance flows in the manner sought by the Claimants. It is wholly unarguable that human rights (even if engaged) require such a framework to be introduced.

130. In any event, as is set out at paragraph 83 and following above, the Government has taken and is taking a number of important steps to integrate climate risk and net zero into investment decisions and financial regulation. The Government is taking action to align financial flows to the Paris Agreement’s objectives, as set out in the GFS. It is doing what the Claimants seek (SFG 333-334).

131. The Government has a wide margin of appreciation in judging what, when, and how it takes measures in this area – not least because of the impact on private economic actors (that gives rise to countervailing human rights considerations). Those decisions cannot sensibly be challenged. To the extent that the Claimants argue that more should be done, this would be (i) unrealistic, (ii) go beyond the CCA 2008, (iii) go beyond the Paris Agreement, and/or (iv) would amount to “*an impossible or disproportionate burden”* which ECtHR case law establishes are beyond the scope of any positive obligation.

132. Permission should be refused for ground 3 to proceed. As this is the only ground which conceivably directly concerns HM Treasury, permission to bring the judicial review against HM Treasury should be refused as well.

<u>Ground 4: failure to take practical and effective measures to ensure compensation for those suffering climate change loss and damage</u>

133. Ground 4 is cast in the same terms, this time arguing that the Defendants must *"establish legal and regulatory frameworks to ensure that those suffering loss and damage attributable to climate change, in the UK and beyond, recover appropriate compensation, both financial and reparatory"* (SFG 338).

134. The human rights basis of the claim is flawed for the same reasons as grounds 1-3. For ground 4, the Secretary of State repeats and relies the Claimants' lack of status as *"victims"* (paras 92-95 above) and the explanation why Articles 2, 8 or 14 are not engaged (paras 97-103 above).

135. Moreover, the Claimants' demand is entirely unsupported by any legal foundation. It would effectively entail the UK unilaterally setting up a vastly complicated and expensive global compensation fund, something that parties to the UNFCCC and Paris Agreement have always resisted. It demonstrates the obvious overreach of the Claimants' arguments. It would a disproportionate burden.

136. The only suggestion that the Claimants make in favour of a legal basis for such a compensation scheme is the *"polluter pays principle"* (SFG 246-250). However, the polluter pays principle is not a freestanding *"principle of law and justice"* as the Claimants allege (SFG 246). The polluter pays principle is not recognised as a general principle of international law (see the <u>Rhine Chlorides</u> case (2004)[31] at [103]). Nor is it mentioned in the Paris Agreement. It is at most general guidance on economic policy aimed at law and policy makers. It is quite incapable of supporting the positive obligation to design and establish a compensation scheme that the Claimants advance.

137. Moreover, there is no connection whatsoever between the alleged threat to *"the Claimants' lives and family lives"* and the need to compensate people living outside the

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[31] Case Concerning the Auditing of Accounts between The Kingdom of the Netherlands and The French Republic pursuant to the Additional Protocol of 25 September 1991 to The Convention on the Protection of The Rhine Against Pollution by Chlorides of 3 December 1976, arbitral award of 12.03.04.

UK. The Claimants' evidence provides no basis at all for them having suffered any *"loss and damage attributable to climate change"* which could conceivably be compensated.

138. There is no legal basis whatsoever for the contention that there is an obligation on the UK under the ECHR to provide for compensation for climate change losses. Ground 4 is totally without merit.

Costs protection

139. Section 6 of the Claim Form is checked to indicate that the Claimants consider this to be an Aarhus Convention claim, as defined CPR 45.41(1). Neither the SFG nor the witness statements filed with the claim seek to explain why.

140. To be an Aarhus Convention claim, the claim would have to fall within the scope of Article 9(3) of the Aarhus Convention. That provides that members of the public should have access to judicial procedures to challenge decisions that *"contravene provisions of... national law relating to the environment"*.

141. The parts of grounds 1 and 2 that relate to provisions of the CCA 2008 may be claims alleging contraventions of national law relating to the environment. For the reasons given above, however, those allegations are totally without merit and permission ought to be refused in relation to them. The Claimants ought not to be able to secure costs protection by making unsubstantiated wholly unmeritorious allegations of breaches of national environment legislation when in truth, and in substance, the claim is founded upon human rights arguments.

142. ECHR Articles are not *"provisions of ... national law relating to the environment"*. They are provisions of international law and (to the extent that they are incorporated into domestic law via the HRA 1998) they do not relate to the environment, but to individual rights. No provision of the ECHR guarantees the right to preservation of the natural environment as such (see Dubetska cited at para 46 above). There is no direct (or binding) authority on the point, but it may be noted that the Courts have considered that challenges to decisions on the registration of village greens – relating to the rights of

local inhabitants to use land (under s.15 of the Commons Act 2015) – do not fall within the scope of the Aarhus Convention.[32]

143. Accordingly, the claim is not an Aarhus Convention claim and does not attract costs protection.

144. Even if, contrary to the above, it is concluded that this is an Aarhus Convention claim, the Claimants do not benefit from costs protection pursuant to CPR r 45.42(1) due to their failure to comply with the obligation in CPR 45.42(1)(b) to file a schedule of financial resources providing details, in relation to any financial support which any person has provided or is likely to provide to the Claimants, of the aggregate amount of that financial support. CPR 45.42(1) makes clear that this is a pre-requisite to the application of the costs cap in CPR 45.43. The failure to comply with this financial disclosure requirement means that Aarhus Convention costs protection does not apply to this claim.

145. In particular, the Claimants have not produced schedules of financial resources which provide *"details of… in relation to any financial support which any person has provided or is likely to provide to the claimant, the aggregate amount which has been provided and which is likely to be provided"*. Three witness statements refer to the *"expectation that Plan B and the Stop the Maanagamizi campaign will raise such funds via crowdfunding or other means"* (see e.g. Third Claimant's witness statement at [29] [CB/12]). The Second to Fourth Claimants are raising funds for this case via crowdjustice.com. The First Claimant is seeking donations to support its litigation. However, there is no schedule providing details of the aggregate amount of financial support which has been provided and which is likely to be provided to any of the Claimants.

146. As matters stand therefore, pursuant to CPR 45.42(1), the Claimants do not and cannot benefit from Aarhus Convention costs protection at all, due to the failure to comply with the requirement in CPR 45.42(1)(b).

[32] See e.g. Forbes v Wokingham BC [2018] EWHC 2530 (Admin) at [31]-[32].

147. In the event that the Court concludes that any claim for which permission is granted is an Aarhus Convention claim, the Defendants reserve the right to apply to the Court to vary the caps under CPR 45.44.

Conclusion

148. For all the above reasons, permission should be refused for this claim to proceed. In short, and regardless of whether it is required to do so by ECHR jurisprudence, the UK Government has taken and is continuing to take measures to deliver on the Paris Agreement provisions domestically, including by putting in place a legislative and administrative framework to do so. The choice of means to be taken within this framework – which is the focus of the Claimants' claim – is a matter for the UK Government.

149. Even if, contrary to these submissions, the Court considers some element of the claim is arguable, nonetheless:

(1) permission should be refused to argue the alleged breaches of s.13 and s.58 of the CCA 2008;

(2) permission should be refused for the First Claimant to bring this claim, as an incorporated body cannot be a victim for the purposes of the HRA 1998;

(3) permission should be refused to bring the claim against HM Treasury in relation to grounds 1, 2 and 4, as there is no arguable basis that HM Treasury has erred in law given that those grounds do not concern HM Treasury responsibilities;

(4) permission should be refused to bring the claim against the Prime Minister, as there is no arguable basis that he has erred in law given that it is the Secretary of State who has primary responsibility for UK Government action in relation to climate change;

(5) permission should be refused on ground 4 as being totally without merit.

150. The Defendants seek their costs for filing the acknowledgement of service, including these summary grounds. A successful defendant who has filed an acknowledgment of service should generally recover the costs of so doing.[33]

RICHARD HONEY QC

NED WESTAWAY

25 May 2021

[33] R (Mount Cook) v Westminster CC [2003] EWCA Civ 1346, [2004] 2 P & CR 22 at [76(1)]. See also R (Ewing) v Office of the Deputy Prime Minister [2006] 1 WLR 1260 at 1267A-B and CPRE Kent v SSHCLG [2020] 1 WLR 352 at paras 22 and 37.