By recorded delivery

The Rt Hon Greg Clark MP
Secretary of State for Business, Energy and Industrial Strategy
Department for Business, Energy and Industrial Strategy
1 Victoria Street
London
SW1H 0ET

Also by email: enquiries@beis.gov.uk

Dear Secretary of State

Failure to revise the 2050 carbon target under the UK Climate Change Act 2008

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

1. We act for Plan B. Earth (“Plan B” or “our client”), a charitable incorporated organisation registered and regulated by the Charity Commission.

2. We are instructed to write to you pursuant to the Pre-Action Protocol for Judicial Review in respect of your ongoing failure (the “Ongoing Failure”) to revise the 2050 carbon target (the “2050 Target”) under the UK Climate Change Act 2008 (the “2008 Act”) both generally and specifically in response to the report of the Committee on Climate Change (the “CC Committee”), UK climate action following the Paris Agreement dated 13 October 2016 (the “2016 Committee Recommendation”).

3. Our client considers that the Ongoing Failure is unlawful for the reasons given below. We therefore invite you to agree to make a decision to revise the 2050 Target in accordance with the 2008 Act and the principles derived therefrom, as set out more fully below. If you refuse to do so, we are instructed to issue judicial review proceedings in the Administrative Court.
Background

4. We set out below the pertinent background to this matter, beginning with the background to the 2008 Act, before considering developments since the 2008 Act, including our client’s correspondence with you.

The UNFCCC

5. The UN Framework Convention on Climate Change ("UNFCCC") was ratified by the UK in December 1993. It came into force in March 1994. The objective of the UNFCCC is set out in Article 2:

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

6. The Preamble to the UNFCCC notes:

“... that the largest share of historical and current global emissions of greenhouse gases has originated in developed countries, that per capita emissions in developing countries are still relatively low and that the share of global emissions originating in developing countries will grow to meet their social and development needs ...”.

7. Article 3 sets out the fundamental principles for interpreting parties’ responsibilities, which include the following:

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

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

8. Article 4 sets out specific commitments under the UNFCCC:

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

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

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

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

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

7. The extent to which developing country Parties will effectively implement their commitments under the Convention will depend on the effective implementation by developed country Parties of their commitments under the
9. The UK had thus accepted in 1993:

(a) that climate change required an urgent and effective response, and that a lack of “full scientific evidence” regarding its impacts should not be used as a reason for postponing that response;

(b) that all countries had to make a contribution to that response based on equity and the precautionary principle, taking into account their respective positions both historically and for the future;

(c) that developed countries, including the UK, had to lead the response;

(d) that developed countries, including the UK, had to provide developing countries with adequate and predictable finance and technology transfer as part of that response; and

(e) that each country’s response was to be regularly updated.

Lead up to the 2008 Act

10. The below is not intended to be a comprehensive summary of the background to the 2008 Act (which would clearly be disproportionate in pre-action correspondence), but rather to highlight the most pertinent aspects.

11. In 2000, the Royal Commission on Environmental Pollution’s 22nd Report, Energy – the Changing Climate, emphasised three reasons why “the UK should strive, at home and abroad, to ensure that an effective international response to the threat of climate change is mounted, beginning now and extending far into the future.”

Those reasons were as follows:

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

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

¹ Page 59, paragraph 4.58.
“Third, the UK is very likely to be harmed by climate change.”

12. Consequently, the Royal Commission recommended a reduction of 60% by 2050. This was based explicitly on a “contraction and convergence” model. Such a model consists of keeping overall global emissions of greenhouse gases within a safe “budget”, measured in mass of carbon (contraction), resulting from every country bringing its emissions per capita to a level which is equal for all countries (convergence). The extent of reduction required in the future in any country can then be determined based on past and current emissions (since it is the cumulative weight of emissions that causes global warming). Countries may trade their allowances to provide flexibility and efficiency without compromise to the global carbon budget as a whole.

13. Subject to integrating financial obligations into the analysis, in line with UNFCCC commitments, it is difficult to envisage any fundamentally different basis for global burden-sharing that would be both sensible and equitable, as was acknowledged by Lord Adair Turner, the Original Chair of the CC Committee, in evidence to the Environmental Audit Committee (the “EA Committee”) in 2008:

“When we proceed from the global target to the UK target we are suggesting something which is reasonably pragmatically close to Contract and Converge ... It’s very difficult to imagine a long-term path for the world which isn’t somewhat related to a Contract and Converge approach.”

14. The Royal Commission’s recommendations were accepted in the 2003 Energy White Paper.

15. The Royal Commission’s reasons for urgent action remain as valid today as they were at the time (with the urgency only increasing in light of the substantial developments since 2000). A similar conclusion was reached by the Stern Review, The Economics of Climate Change (the “Stern Review”), commissioned by Gordon Brown, then Chancellor, in 2006:

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

The scientific evidence is now overwhelming: climate change is a serious global threat, and it demands an urgent global response.
This Review has assessed a wide range of evidence on the impacts of climate change and on the economic costs, and has used a number of different techniques to assess costs and risks. From all of these perspectives, the evidence gathered by the Review leads to a simple conclusion: the benefits of strong and early action far outweigh the economic costs of not acting ...”

16. Variations to the contraction and convergence model described above were also considered by the Stern Review, but it was concluded this was the only realistic model:

“The correlation between income or wealth and current or past emissions is not exact, but it is strong. This means that equity criteria tend to lead to fairly similar policy approaches: as Ringius et al note, ‘we are in the fortunate situation that all the …equity principles to a large extent point in the same direction’.”

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

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

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

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

18. One of the primary purposes of the Bill, as set out in the Executive Summary of that response, was to:

“[set] an international precedent, reinforcing the UK’s position as a consistent leader in the field of climate change and energy policy.”

2 Summary of Conclusions, page vi.
19. The response was also explicit that the 2050 Carbon Target was the centre-piece of the legislation:

“The central focus of the Climate Change Bill is the long-term target to reduce the UK’s carbon dioxide (CO2) emissions by at least 60% by 2050. This target was established in the 2003 Energy White Paper in response to a recommendation from the Royal Commission on Environmental Pollution, in their 2000 report Energy - the Changing Climate.”

20. The proposed 60% target was based on a commitment to limiting warming to 2°C, reflecting international agreement and scientific evidence as it stood at the time of the 2000 Royal Commission and the 2003 White Paper.

21. The commitment to keeping warming below 2°C was confirmed by the then Secretary of State when appearing before the House of Commons EA Committee, as noted in its July 2007 report, Beyond Stern: From the Climate Change Programme Review to the Draft Climate Change Bill:

“The Secretary of State for Environment, Food and Rural Affairs confirmed to us that the Government was still completely committed to limiting global warming to a rise of 2°C. By stressing the dangers even of this level of warming, he emphasised the reasons why the UK and EU were committed to holding a rise in temperature at no more than 2°C:

‘Just to put that in perspective, I was told ... that with a two-degree average change it will not be uncommon to have 50°C in Berlin by mid century, so associated with a two-degree change is something that is pretty unprecedented in northern Europe, and I think that is quite a sobering demonstration because 50°C is beyond our experience.’”

22. The EA Committee also identified that the scientific evidence had developed significantly since the 2000 Royal Commission and the 2003 Energy White Paper. As a result, the EA Committee concluded:

“that the UK’s targets in the draft Bill need to be significantly strengthened, in order to remain consistent with the Government’s objective of stabilising atmospheric
carbon at a level that provides a reasonable chance of holding global warming to 2°C.”

23. As a result, the Prime Minister announced in September 2007 that the CC Committee would be asked to report on whether the 2050 Target needed to be strengthened from the proposed 60% figure. The CC Committee concluded that it did based on developments in the science regarding climate change and measurements of actual emissions to that point:

“There is a very strong case for the UK to adopt a significantly more ambitious target than the 60% objective set in the 2003 Energy White Paper. There have been two key changes since this objective was set:

• Recent developments in climate science and in the analysis of potential impacts mean that the whole world should now be aiming for deeper reductions in GHG emissions than previously seemed appropriate.

• Latest evidence on emissions and atmospheric concentrations suggests that these are higher than was projected at the time that the 60% target was set. More radical and earlier action is therefore needed to achieve climate objectives.”

24. Consequently, the CC Committee advised that the 2050 Target should be increased to an 80% reduction on 1990 emissions. This was, in part, premised on a rule of reducing the probability of “extreme danger” at all times to less that 1% (which the Committee considered, in 2008, to be 4°C warming):

“The aim should be at any time to keep the probability of exceeding a defined ‘extreme danger’ threshold in the future below a very low level (e.g. less than 1%).”

25. In respect of future revision of the 2050 Target, the CC Committee observed the following in 2008:

“... Our recommendation that the UK’s 2050 objective should be to reduce emissions by at least 80%, therefore, reflects the best judgement based on imperfect information and analysis available today. Over time, more information and analysis will become available which may suggest the need to adjust the target. In particular:

---
3 At paragraph 65.
• Estimates of the probability that the world will exceed a point of ‘extreme danger’ (e.g. 4°C) could increase or decrease, or judgements on where a point of ‘extreme danger’ lies could change …

• Estimates of the likely adverse global and local human welfare impacts of different levels of temperature increase may also change as more information becomes available …

• Actual achieved emissions could diverge from our modelled trajectories. If, for instance, emissions do not peak in 2016 but continue to rise, or if emissions increase at a faster rate than anticipated before the peak, then the probability of keeping below a given temperature will be reduced. To maintain these probabilities cumulative emissions from now to 2050 will need to be in line with those implied by the recommended targets, and overshoots in the early years will need to be matched by more rapid reduction later …”

26. The Bill was revised in accordance with the Committee’s recommendation. However, even with the revision to 80%, the CC Committee found that the 2050 Target, if applied on the same basis globally, was only consistent with a 37% to 44% probability of limiting warming to 2°C. That is, it was still more likely than not that warming would exceed 2°C (leading to the “unprecedented” consequences identified by the then Secretary of State at paragraph 21 above).

27. The importance of urgent action was also emphasised by Lord Deben, now chair of the CC Committee, in a Shadow Cabinet report on the Climate Change Bill, addressing those advocating delay:

“But why act now? Why not wait until the scientists can give us more conclusive information on the risks and the economists can give us a more reliable cost benefit analysis? The reality is simple. We know that every molecule of CO2 that we add to the atmosphere will stay there for at least 100 years. Therefore with every year that passes we may be locking ourselves into a potentially bigger and more expensive problem even if it were not to become utterly disastrous …

We cannot afford to wait.

The science is clear. The problem is only going to get bigger and more expensive …
There are some who argue that we should wait before taking action to cut emissions vigorously, because the cost of the technology that will make a difference will fall. But for costs to fall, technology needs to be developed and deployed. Given the long timescales involved, our innovators and financiers need the policy framework and incentives to get to work now ..."

The 2008 Act

28. The 2008 Act was passed into law with overwhelming cross-party support (only five Members of the House of Commons voted against the Bill at Second Reading). It received Royal Assent on 26 November 2008. We set out further information regarding the 2008 Act in paragraphs 75 to 80 below.

Developments since the 2008 Act

29. Since 2008 there have been very significant developments both in terms of the science and international law and policy. Again, the below is only intended as a summary of pertinent developments.

30. From 2009 onwards, parties to the UNFCCC began to question the adequacy of the 2°C global temperature goal.

31. In parallel, in 2011, experts argued before the EA Committee that the 2050 Target was not even compatible with the 2°C goal:

   "Some have expressed concerns that the approach to setting the carbon budgets and targets is 'exceptionally risky'. The carbon budgets and targets set are premised on a 'greater than 50% chance of exceeding 2°C, when Governments have agreed the goal is to not exceed 2°C ... If the goal is to not exceed something, then a greater than 50:50 chance is not compatible with this goal'."

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

33. In 2013 Lord Stern, author of the Stern Review, reflected on his original work and reached a similar conclusion:

   "Looking back, I underestimated the risks. The planet and the atmosphere seem to be absorbing less carbon than we expected, and emissions are rising pretty strongly. Some of

---

the effects are coming through more quickly than we thought then ...

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

34. The UNFCCC Structured Expert Dialogue reported in 2015 as follows:

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

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

The Paris Agreement

35. Following the Structured Expert Dialogue report, the UK Government was particularly active in securing agreement to the Paris Agreement on Climate Change (the “Paris Agreement”) through its permanent Special Representative on Climate Change, Sir David King. The Paris Agreement has been signed by 195 Governments and ratified by 159 under the auspices of the UNFCCC, entering into force on 4 November 2016. Parties have specifically recognised the inadequacy of the 2°C temperature goal in light of relevant scientific developments, and have committed to:

“Holding the increase in the global average temperature to well below 2°C above pre-industrial levels and to pursue efforts to limit the temperature increase to 1.5°C above pre-industrial levels, recognizing that this would

---

7 Ibid, page 31.
significantly reduce the risks and impacts of climate change” (Article 2(1)(a)).

36. As to implementation, the Paris Agreement confirms that:

“This Agreement will be implemented to reflect equity and the principle of common but differentiated responsibilities and respective capabilities, in the light of different national circumstances” (Article 2(2)).

37. More specifically on implementation, the following is provided in Article 4 of the Paris Agreement:

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

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

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

4. Developed country Parties should continue taking the lead by undertaking economy-wide absolute emission reduction targets. Developing country Parties should continue enhancing their mitigation efforts, and are encouraged to move over time towards economy-wide emission reduction or limitation targets in the light of different national circumstances.”

38. The Paris Agreement is supported by an accompanying Decision, which explains the relevant, and agreed, context in the preamble:
“Recognizing that climate change represents an urgent and potentially irreversible threat to human societies and the planet and thus requires the widest possible cooperation by all countries, and their participation in an effective and appropriate international response, with a view to accelerating the reduction of global greenhouse gas emissions ...”

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

Emphasizing with serious concern the urgent need to address the significant gap between the aggregate effect of Parties’ mitigation pledges in terms of global annual emissions of greenhouse gases by 2020 and aggregate emission pathways consistent with holding the increase in the global average temperature to well below 2°C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5°C above pre-industrial levels ...

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

39. Similar matters are identified in the preamble to the Paris Agreement itself.

40. In light of this context, and alongside the relevant temperature targets, the parties of the Paris Agreement agreed to:

“convene a facilitative dialogue among Parties in 2018 to take stock of the collective efforts of Parties in relation to progress towards the long-term goal referred to in Article 4, paragraph 1, of the Agreement...” (paragraph 20 of the Decision).

41. They also agreed that:

“...developed countries intend to continue their existing collective mobilization [of finance] goal through 2025 ...; prior to 2025 the Conference of the Parties ... shall set a new collective quantified goal from a floor of USD 100 billion per year, taking into account the needs and priorities of developing countries ...”. 
The 2016 Committee Recommendation

42. It would appear that the CC Committee discussed the “UK long-term ambition after the Paris Agreement” in a 75-minute session during its meeting on 16 September 2016. The minutes of that meeting expressly acknowledge the inconsistency between the Paris Agreement and the 2050 Target:

“It was clear that the aims of the Paris Agreement, to limit warming to well below 2°C and to pursue efforts to limit it to 1.5°C, went further than the basis of the UK’s current long-term target to reduce emissions in 2050 by at least 80% on 1990 levels (which was based on a UK contribution to global emissions reductions keeping global average temperature rise to around 2°C) …”.

43. However, the CC Committee concluded that no action should be taken because there was inadequate scientific evidence to establish precisely what the 2050 Target should be and that it was not currently possible to envisage net zero emissions:

“However, we currently have no scenarios for how the UK can achieve net zero domestic emissions. Theoretically, putting all practical difficulties aside, achieving all the options in the “Max” scenario in the Committee’s 5th carbon budget advice would result in around a 93% reduction in 2050 emissions as against 1990. Emissions in “hard to reduce” sectors - aviation, agriculture, parts of industry - would remain.

... The Committee therefore agreed that whilst a new long-term target would be needed to be consistent with Paris, and setting such a target now would provide a useful signal of support, the evidence was not sufficient to specify that target now. Further actions to strengthen the achievement of existing targets should be prioritised (which would leave open options to push further in future).”

44. On 13 October 2016, the CC Committee published a paper entitled UK climate action following the Paris Agreement (ie the 2016 Committee Recommendation). So far as the 2050 Target was concerned, the CC Committee said this:

“While relatively ambitious, the UK’s current emissions targets are not aimed at limiting global temperature to as
low a level as in the [Paris] Agreement, nor do they stretch as far into the future.”

45. It also noted that delayed action would only substantially increase the overall challenge:

“Table 2.1 shows the global CO2 budgets provided by the IPCC, consistent with a 50% likelihood of staying below 1.5°C and 66% likelihood of staying below 2°C (the range of temperature ambition in the Paris Agreement) ... These budgets can be used to infer simple, indicative timescales for reaching net zero global CO2 emissions. If global emissions are reduced starting now on a linear path to zero, the budgets imply zero would need to be reached in the 2030s for a 50% likelihood of 1.5°C and the 2040s to 2070s for a 66% likelihood of 2°C ...

Delays to emissions reductions will hasten the deadline for zero emissions, making the credibility of meeting the global CO2 budgets very questionable. For example, if global emissions remain flat the entire CO2 budget for 2°C would be used up in 15 to 30 years, after which time emissions would need to be eliminated immediately.”

46. However, the CC Committee still reached the following conclusion:

“Do not set new UK emissions targets now. The UK already has stretching targets to reduce greenhouse gas emissions. Achieving them will be a positive contribution to global climate action. In line with the Paris Agreement, the Government has indicated it intends at some point to set a UK target for reducing domestic emissions to net zero. We have concluded it is too early to do so now, but setting such a target should be kept under review. The five-yearly cycle of pledges and reviews created by the Paris Agreement provides regular opportunities to consider increasing UK ambition.”

47. In neither the September 2016 minutes nor the Committee 2016 Recommendation did the CC Committee make reference to the matters set out in the 2008 CC Committee Report that it considered would justify a revision to the target.
Plan B’s correspondence with the you and the CC Committee

48. On 13 April 2017, Plan B wrote urging you to:

(a) exercise your power to revise the carbon target for 2050, aligning it to the global climate obligation and the Paris Agreement; and

(b) take reasonable and proportionate measures to safeguard the right to life.

49. Also on 13 April 2017, Plan B wrote to the CC Committee urging it to revise the 2016 Committee Recommendation.

50. The CC Committee responded on 2 May 2017 asking Plan B to provide some further analysis in support of its case. Plan B responded to that request on 19 May 2017.

51. Plan B chased a response from you and received a brief acknowledgement on 29 June 2017 indicating a substantive response would be received “shortly”. Plan B responded the same day to highlight the urgency of the matter. No further response has been received.

52. In its most recent response to Plan B dated 7 August 2017, the CC Committee again acknowledged that:

“... the Paris Agreement describes a higher level of ambition than the one that formed the basis of the UK’s existing legislated emission reduction targets.”

The current scientific perspective

53. A recent “Comment” piece, published in the leading scientific journal, *Nature*, and signed by numerous eminent scientists, diplomats and policy-makers, sets out the scale of the global challenge:

“The magnitude of the challenge can be grasped by computing a budget for CO2 emissions – the maximum amount of the gas that can be released before the temperature limit is breached. After subtracting past emissions, humanity is left with a ‘carbon credit’ of between 150 and 1,050 gigatonnes of CO2 to meet the Paris target of 1.5 °C or well below 2 °C.”

---

8 Published on 28 June 2017 - see [https://www.nature.com/news/three-years-to-safeguard-our-climate-1.22201](https://www.nature.com/news/three-years-to-safeguard-our-climate-1.22201).
54. The authors conclude that for reasonable prospects of conforming to the global climate obligation, global emissions of carbon dioxide must peak no later than 2020 and collapse to zero by 2040. The position is visualised in the graphic below:

55. The Comment is consistent with the global carbon budgets set out in the *Fifth Assessment Report* of the Intergovernmental Panel on Climate Change ("IPCC") from 2014, which itself is one of the bases for the Paris Agreement.

56. The graphic below, prepared by the Global Commons Institute (the "GCI") in 2017, whose Contraction and Convergence model provided the basis for the 2050 Target, exposes the scale of the variance between the current 2050 Target and the UK’s equitable share of the global carbon budget (see the Annexure to this letter for a larger version of the graphic):
57. As demonstrated in the graphic, the 2050 Target would entail the UK consuming more than three times its share of the budget for a 50% probability of limiting warming to 1.5°C if its CO₂ equivalent emissions are taken into account; and more than two and a half times its share on the basis of CO₂ emissions alone.

58. It should also be emphasised that the global climate obligation to limit warming to 1.5°C and “well below” 2°C is not an aspirational goal. It is the threshold beyond which the scientific evidence establishes that the risks of crossing critical tipping points in the climatic system become intolerably high, potentially leading to runaway climate change.

59. Lord Deben, now chair of the CC Committee, explained the concept of “the tipping point” in his report to the Shadow Cabinet in 2007:

“This refers to the point at which these changes in the climate system lead to runaway global warming. At this stage, what little influence we had on the climate system will no longer have any effect on the outcome. Runaway global warming could lead to mass extinction.”

60. In other words, global compliance with the Paris Agreement is necessary to ensure the stability and viability of human civilisation on this planet. Consequently, the rational approach is to determine what is necessary to ensure compliance, and to plan accordingly. The plan must drive the necessary technological innovation and not vice versa.
Climate change is already causing loss of life in the UK. Research has been conducted into the 2003 heat-wave, associated with the loss of 70,000 lives across Europe, and concluded that loss of lives in London can be attributed to climate change.\(^9\) The last three years (2014, 2015, 2016) have been the three hottest years on record.\(^10\)

According to the Environment Agency more than a million homes in the UK risk becoming uninsurable due to flood risk.\(^11\) In addition, melt rates and temperature rises in the Arctic are running significantly ahead of the modelling, implying that critical tipping points are already being crossed.\(^12\)

The scale of such impacts will rise exponentially if the Paris Agreement obligation is not met and the crossing of critical tipping points cannot be averted. The graphic below reveals the speed at which global warming is approaching the 1.5 °C limit:

\[\text{GISTEMP LOTI (incl. 2017 prediction)}\]

\[\text{Anomaly w.r.t. baseline (1885-1994) (°C)}\]

2017 annual estimate based on Jan-Jul. \(@\text{ClimateGavin}\)

---

\(^9\) Mitchell et al. *Attributing human mortality during extreme heat waves to anthropogenic climate change* (July 2016).


\(^12\) Alaska’s Sea Ice Is Melting Unusually Early, ‘Another Sign Arctic Is Unraveling’: Inside Climate News (26 May 2017).
Although some have questioned the feasibility of limiting warming to 1.5°C, recent research suggests it remains in reach. The well-publicised recent article in Nature Geoscience, “Emission budgets and pathways consistent with limiting warming to 1.5°C”, concludes:

“Our analysis suggests that ‘pursuing efforts to limit the temperature increase to 1.5 °C’ is not chasing a geophysical impossibility, but is likely to require a significant strengthening of the NDCs at the first opportunity in 2020”.13

Given the need for a reduction in global emissions to begin by 2020, the UNFCCC review process (known as the “Facilitative Dialogue”), which will take place in late 2018, assumes critical significance. The UK should enter those talks as part of the solution, rather than part of the problem. If the UK Government fails to make an appropriate contribution to implementing the Paris Agreement (and so preventing climate change crossing critical tipping points), it will be in no position to influence others to increase their ambition.

The Scottish Government’s response to the Paris Agreement

The Scottish Government’s approach to implementation of the Paris Agreement is also of relevance.

The Climate Change (Scotland) Act, passed by the Scottish Parliament in 2009, established for Scotland a 2050 target of reducing emissions by 80% from a 1990 baseline, linked to meeting the global obligation of limiting warming to 2°C.

In October 2016, following the Paris Agreement, the Scottish Government requested advice from the CC Committee on the appropriate level of targets under their Act.

For reasons that are unclear, the CC Committee appears to have adopted a more considered and consultative approach to that taken in preparing the 2016 Committee Recommendation on action following the Paris Agreement for the UK as a whole. In particular, it put out a call-for-evidence in December 2016 to gather views from stakeholders, experts, and individuals. It also held an evidence session for stakeholders in Edinburgh in January 2017.

13 Richard Millar et al, published online (18 September 2017, DOI: 10.1038/NGEO3031).
In March 2017, the CC Committee published its advice to the Scottish Government. The Executive Summary states:

“Following the commitment under the Paris Agreement to limit warming to well below 2°C and to pursue efforts to limit it to 1.5°C, there is a case - whether now or at a future date - for ambition that goes beyond Scotland’s existing 2050 target for a reduction of at least 80% on baseline levels (effectively 1990 emissions). Scotland could either enact more ambitious long-term emissions targets now or wait until the evidence base has been strengthened over the coming years. We set out two options for the level of long-term ambition but urge that these are considered in light of the wider explanation and considerations set out in this advice … :

Option 1: Keep the target for a reduction in greenhouse gas emissions of at least 80% by 2050 with subsequent reviews to increase ambition.

- This maintains the same level of ambition as the existing Act in Scotland and the UK Climate Change Act, consistent with limiting global temperature rise to around 2°C …

Option 2: Set a ‘stretch’ target for a reduction in greenhouse gas emissions of 90% by 2050, potentially accompanied by a net-zero CO2 target for 2050.

- A 90% reduction in greenhouse gas (GHG) emissions would be more consistent with the temperature limits set out in the Paris Agreement. Our scenario that achieves such a low level of GHG emissions does so by reducing CO2 emissions to around zero (non-CO2 emissions would remain greater than zero). Setting a target now to reach net-zero CO2 emissions by 2050 would be consistent with a GHG target for a 90% reduction by the same date and would reflect the acknowledgement in the Paris agreement of the necessity for zero global GHG emissions in the second half of the century …”

---

71. In June 2017, the Scottish Government published its “Climate Change Bill: Consultation Paper”. The Ministerial Foreword states:

“The Paris Agreement has strengthened global climate change ambition and aims to keep global temperature rise this century well below 2°C, with efforts to limit this to 1.5°C. Meeting this aim will significantly reduce the risks and the global impacts of climate change, but it also represents a significant economic opportunity …

The focus of our proposals is therefore on updating Scotland’s framework of emission reduction targets ... to increase ambition in line with an appropriate contribution to limiting temperature rise to 1.5°C …”.

72. Further, the Consultation Paper emphasises the importance of regular revision to targets in line with changing science:

“Experience of the 2009 Act, particularly regarding revisions to the greenhouse gas inventory, shows the importance of having flexibility to respond to changing science ... In light of this, it is proposed that a duty should be put on Scottish Ministers to seek advice from the CCC on a regular basis regarding the levels of the interim and 2050 targets.”

73. A section titled “Assessing Impacts on People” highlights the centrality of human rights obligations to the Scottish Government’s approach:

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

74. The Scottish approach highlights:

(a) the anomaly of your Ongoing Failure to review and revise the 2050 target; and

(b) the apparent inconsistency and politicisation of the CC Committee’s advice.
The provisions of the 2008 Act

75. The preamble to the 2008 Act provides the following:

“An Act to set a target for the year 2050 for the reduction of targeted greenhouse gas emissions; to provide for a system of carbon budgeting; to establish a Committee on Climate Change; to confer powers to establish trading schemes for the purpose of limiting greenhouse gas emissions or encouraging activities that reduce such emissions or remove greenhouse gas from the atmosphere; to make provision about adaptation to climate change; to confer powers to make schemes for providing financial incentives to produce less domestic waste and to recycle more of what is produced; to make provision about the collection of household waste; to confer powers to make provision about charging for single use carrier bags; to amend the provisions of the Energy Act 2004 about renewable transport fuel obligations; to make provision about carbon emissions reduction targets; to make other provision about climate change; and for connected purposes.”

76. Section 1 of the 2008 Act imposes on you a duty to ensure that the UK’s “net carbon account” for the year 2050 is at least 80% lower than the aggregate amount of UK emissions of carbon dioxide and other gases, as they stood in 1990. We have referred to this as the 2050 Target.

77. Importantly, section 2 empowers you to revise the 2050 Target where there have been significant developments in the science or in international law or policy:

“Amendment of 2050 target or baseline year

(1) The Secretary of State may by order—

(a) amend the percentage specified in section 1(1);

(b) amend section 1 to provide for a different year to be the baseline year.

(2) The power in subsection (1)(a) may only be exercised—

(a) if it appears to the Secretary of State that there have been significant developments in—

(i) scientific knowledge about climate change, or

15 Some of the less significant greenhouse gases are in fact tied to a different baseline year.
(ii) European or international law or policy, that make it appropriate to do so ...

(3) The developments in scientific knowledge referred to in subsection (2) are—

(a) in relation to the first exercise of the power in subsection (1)(a), developments since the passing of this Act;

(b) in relation to a subsequent exercise of that power, developments since the evidential basis for the previous exercise was established.

(4) The power in subsection (1)(b) may only be exercised if it appears to the Secretary of State that there have been significant developments in European or international law or policy that make it appropriate to do so.

(5) An order under subsection (1)(b) may make consequential amendments of other references in this Act to the baseline year.

(6) An order under this section is subject to affirmative resolution procedure."

78. Section 3 of the 2008 Act specifies the consultation process to be followed prior to amendment to the target, which requires you to take into account the advice of the CC Committee and the other national authorities within the United Kingdom.

79. The CC Committee is established by section 32 of the 2008 Act. By section 33, the CC Committee was obliged to advise on whether the 2050 Target should be amended by 1 December 2008. The CC Committee is otherwise empowered to advise in respect of carbon budgets, emissions and progress by sections 34 to 37 of the 2008 Act.

80. It would not, however, appear that the CC Committee is specifically empowered to advise on amendment of the 2050 Target (after the initial report under section 32) unless requested to do so in accordance with section 38.

The legal issues

81. Our client considers that your Ongoing Failure to amend, or even consider amending, the 2050 Target despite the significant developments in both international law and the scientific
evidence, as set out above, is unlawful for at least the following reasons:

(a) the Ongoing Failure is ultra vires, including by frustrating the legislative purpose of the 2008 Act;

(b) the Ongoing Failure is irrational, including by reason of the failure to take account of considerations which are relevant in the exercise of the statutory powers in question; and

(c) the Ongoing Failure interferes with the right to life, the right to property, the right to a private and family life, and discriminates against protected groups in a manner which is not justified or proportionate, so that the Ongoing Failure is unlawful by virtue of the Human Rights Act 1998.

82. We consider each of those grounds in turn below.

Ground (a): Ultra vires, including frustration of the legislative purpose

83. The 2008 Act confers a statutory discretion on the Secretary of State as to the amendment of the 2050 Target. It is implicit in that statutory discretion that you keep the exercise under regular review and a failure to do so is ultra vires.\(^\text{16}\)

84. Moreover, when exercising a statutory discretion (or indeed not exercising such a discretion), it is, of course, well-established that the decision-maker must act:

"...in accordance with the statutory purposes for which the discretion was given which it is to be presumed must be as a mechanism to promote the overall policy and objects of the statutory scheme."\(^\text{17}\)

85. Accordingly, the discretion conferred by the 2008 Act must be exercised consistently with the purposes of that Act. The purpose of the 2008 Act, as conveyed in the Preamble and the provisions themselves, is clearly to ensure the United Kingdom is making a full and proper contribution to the fight against climate change, taking into account its international obligations and the relevant scientific evidence at any particular time.

86. This purpose is entirely consistent with the relevant circumstances leading up to the passing of the 2008 Act, including the

\(^{16}\) That delay can be ultra vires is well established: see, for example, \(R\) (Rycroft) \(v\) Royal Pharmaceutical Society of Great Britain [2010] EWHC 2832 (Admin) at [38].

\(^{17}\) Per King J in \(R\) (Haworth) \(v\) Northumbria Police Authority [2012] EWHC 1225 (Admin) at [4].
Government’s recognition that climate change is the “the greatest challenge facing our generation”.

87. In this context, your Ongoing Failure to even consider amending the 2050 Target frustrates the legislative purpose of the 2008 Act, which is clearly intended to ensure that the 2050 Target receives regular review, particularly in light of developments in international law and policy, and scientific evidence. Such a failure cannot be justified in the context of the Paris Agreement, the scientific evidence that underpins it, and the advice of the CC Committee that the 2050 Target is inconsistent with both international law and scientific evidence.

88. In these circumstances, the Ongoing Failure is ultra vires, including because it frustrates the legislative purpose of the 2008 Act in a manner that renders that Failure unlawful.

Ground (b): irrationality / irrelevant considerations

89. It is trite law that a public decision-maker must not act irrationally, including by ensuring that she or he takes into account relevant considerations, and properly informs herself or himself regarding all decisions. The Ongoing Failure is clearly irrational and demonstrates a failure on your part to take into account relevant considerations and/or to make proper inquiries regarding relevant matters.

90. The 2008 Act establishes, at the highest legislative level, the two matters that you must take into account in exercising your discretion regarding amendment of the 2050 Target: (i) international law or policy; and (ii) scientific evidence. The Ongoing Failure demonstrates a complete failure on your part to take into account and/or make relevant inquiries about:

(a) the fact that the Paris Agreement requires parties to take steps to limit global temperature to 1.5°C or “well below” 2°C, which is a significant development in international law and policy (under section 2(2)(ii) of the 2008 Act) and which is inconsistent with the current 2050 Target; and

(b) the fact that the Paris Agreement is based on, and there have in any event been, significant developments in scientific knowledge about climate change necessitating a

---

18 That delay can itself frustrate legislative purposes has been clearly established: see, for example, R v Tower Hamlets London Borough Council, ex parte Khalique (1994) 26 HLR 517 at 522; and R (Webster) v Swindon Local Safeguarding Children Board [2009] EWHC 2755 at [34]-[35].
strengthening of the 2050 Target (under section 2(2)(i) of the 2008 Act).

91. Given the significant deterioration of the situation since 2008, the current 2050 Target is no longer consistent either with reasonable prospects of:

(a) limiting warming to 2°C; or

(b) keeping the probability of crossing the “extreme danger” threshold to a very low level.

92. It follows that the 2050 Target is even less consistent with the Paris Agreement obligation to aim to limit warming to 1.5°C and to keep it to “well below” 2°C.

93. This is particularly unjustifiable in circumstances where the CC Committee has expressly identified that the current 2050 Target is inconsistent with both international law and the scientific evidence on which it is based: paragraphs 42, 44 and 52 above.

94. The Ongoing Failure is, accordingly, unlawful on these bases alone.

95. There are, however, a number of additional and more specific matters, derived from the above, that any decision regarding the 2050 Target would have to take into account (and accordingly be subject to appropriate inquiry). These include the following:

(a) **The Paris Agreement reflects the scientific and political consensus on the absolute limit of tolerable climate change.** The UK Government signed this Agreement in December 2015 and ratified it in November 2016.

(b) **The consequences of exceeding this limit will inevitably be catastrophic** for current and future inhabitants of the UK and beyond (whether in terms of life expectancy, the economy, international security or any other relevant metric).

(c) **The 2050 Target should be calculated on the basis of equity and the precautionary principle.** This is the basis on which the 2008 Act was introduced and also the basis of the international agreements ratified by the UK both before and since. Accordingly:

(i) you should apply principles, which, if applied consistently by other countries around the world, would ensure compliance with the global climate obligation (which is also linked to the leadership role voluntarily
adopted by the United Kingdom as explained at (d) below);

(ii) the UK should consume no more than its fair share of the remaining global carbon budget (using the standard of equal per capita emissions) consistent with at least a 50% probability of limiting warming to 1.5°C; and

(iii) you should take into account the extent of the UK’s historic consumption of the global carbon budget - the importance of which is highlighted by the graphic below, prepared by the GCI (see Annexure for a larger version):

To do otherwise would be to suggest that other countries have a greater obligation to address climate change than the UK, which would be irrational and inconsistent with the UK’s international law obligation.

(d) The UK has accepted and, indeed, positively promoted, a global leadership role in the fight against climate change. The 2008 Act was passed to demonstrate “the UK’s strong leadership on climate change, both at home and abroad”: see paragraph 17 above. That leadership role is also consistent with the UK’s rational self-interest. The UK cannot influence other countries around the world and seek to ensure compliance with the Paris Agreement if it is not complying with its own obligations. The point was well made by the House of Commons EA Committee in 2007:
“The UK cannot, of course, tackle global warming on its own. Ultimately—and sooner rather than later—other countries must adopt similar policy frameworks and levels of effort. However, the UK can do much by leading by example, and the measures proposed in the draft Bill represent a large step forward. As we heard from Climate Change Capital, the rest of the world is watching the UK’s ‘experiment’...”.

(e) The UK has a duty at international law to prevent harm to other countries. States have the sovereign right to exploit their own resources. They have a corresponding responsibility to ensure activities within their control do not cause substantial damage to other states or areas beyond the limits of national jurisdiction. This is described as the “principle of prevention” or the “no-harm rule”. The UNFCCC, ratified by the UK Government, directly invokes the principle in its Preamble, removing all doubt regarding its application to climate change. Inaction on your part puts the UK in breach of its commitments under international law, exposing the UK to potentially vast damages claims from other countries. It is notable in this context that a number of climate-vulnerable Parties have lodged declarations to the UNFCCC revealing that such litigation is within their contemplation.

(f) The carbon target must safeguard the human rights of both current and future generations, in particular the rights to life; private and family life; and the peaceful enjoyment of property. This is consistent with the commitment made by the UK, alongside all other signatories of the Paris Agreement: paragraph 38 above. See further the section on human rights below.

(g) The UK must take into account, and implement a framework for quantification of such obligations with reference to past emissions when considering its own fair share of the Global Budget. Establishing the UK’s equitable contribution to emission reductions is inextricably linked to fulfilment of its finance obligations to developing countries (see UNFCCC 4(7) at paragraph 7 above). The UK’s fair share of the global carbon budget must correlate to the fair shares of others, and the shares of developing countries are dependent on the provision of adequate and predictable flows of finance. Again, this is consistent with commitments expressly set out in 2008 Act and the Paris Agreement - paragraph 41 above - having been carried through from the UNFCCC and subsequent related agreements.
96. You do not appear to have taken into account any of the above matters.

97. Nor have such matters been taken into account properly or at all by the CC Committee in respect of the CC Committee 2016 Recommendation.

98. In this respect, we note that it does not appear that you commissioned the CC Committee 2016 Recommendation and it is unclear under what powers the CC Committee issued that Recommendation.

99. That said, it is still clearly relevant, and consistent with its role, that the CC Committee confirmed that the 2050 Target was no longer harmonious with international law or the scientific evidence. However, its Recommendation that no action be taken is clearly unsustainable and inconsistent with its role and powers for the following reasons.

100. That Recommendation would appear to have been based primarily on:

(a) a supposed lack of evidence on what an appropriate limit should be in order to limit warming to $1.5^\circ C$; and

(b) lack of technical ability to show how zero emissions within the UK could be achieved.

101. Such reasons are, however, generally inconsistent with the matters set out at paragraph 95 above, which are themselves derived from the purposes of the 2008 Act.

102. Moreover, the CC Committee fails to refer back to the matters that it had itself identified as necessitating an amendment to the 2050 Target back in 2008 (as set out in full at paragraph 25 above), namely:

(a) an increase in the estimate of the probability that the world will exceed a point of “extreme danger” and/or changes in the identification of extreme danger;

(b) an increase in the estimates of the likely adverse global and local human welfare impacts of particular levels of temperature increase (eg the impact of a $2^\circ C$ warming being more harmful than previously thought); and

(c) divergence of actual achieved emissions from our modelled trajectories.

103. Each of the three factors above has now occurred.
104. More specifically, a lack of sophisticated scientific evidence to determine precisely what the 2050 Target should be cannot properly be a relevant consideration in determining whether the Target should be amended, when it is clear that the current Target is inadequate. To treat it as such is inconsistent with the precautionary principle. In any event, the IPCC’s *Fifth Assessment Report* specifies the global carbon budgets consistent with the 1.5°C limit (from which an appropriate UK contribution may be easily derived).

105. Similarly, a current lack of technical ability to reach zero emissions cannot properly justify a failure to change the 2050 Target. Even on the basis of the CC Committee’s existing modelling, UK pathways could achieve a 93% reduction by 2050. In reality, no modelling can accurately determine in 2017 what technical innovation may be available by 2050 (or earlier). Indeed, it is, in part, the function of the 2050 Target to incentivise the necessary Research and Development of future technology (a point accepted by Lord Deben, now Chairman of the CC Committee, in 2007: paragraph 27 above). As has been repeatedly acknowledged, the serious economic consequences of failing to ensure compliance with the global obligation far outweighs any short-term economic costs: see, for example, paragraphs 11, 15 and 27 above.

106. Accordingly, for you simply to proceed in accordance with the CC Committee 2016 Recommendation would similarly be unlawful.

**Ground (c): Human Rights Act 1998**

107. We rely primarily upon Article 2, Article 8 and Article 1 of Protocol 1 (“A1P1”), both individually and read together with Article 14 of the European Convention on Human Rights 1950 (“ECHR”).

108. The relevant rights are not only those of Plan B and those it represents, but also those of all residents of the United Kingdom and, in particular, those most likely to be affected by climate change, namely the young (who are likely to experience its effects to a greater degree in the future) and the elderly or others with particular conditions, who are less able to withstand the extreme weather events caused or exacerbated by climate change now.

109. It is generally accepted that unconstrained climate change will have an unprecedented effect on human life, leading to a significant loss of life, serious impacts on health for those who survive and substantial property damage. It is already having a significant effect on the health of those impacted by the rising temperatures, flooding, droughts and other extreme weather events caused or exacerbated by climate change, and/or in
respect of decisions people are making about their futures, including decisions on whether to commit to having children in light of the potential risks of climate change.

110. At a general level the European Court of Human Rights has accepted that the effective enjoyment of Convention rights depends on a sound, quiet and healthy environment conducive to well-being and that human rights law and environmental law are mutually reinforcing.

111. On 27 June 2003, the Parliamentary Assembly of the Council of Europe adopted Recommendation 1614 (2003) on environment and human rights. The relevant part of this recommendation states:

“9. The Assembly recommends that the Governments of member States:

(i) ensure appropriate protection of the life, health, family and private life, physical integrity and private property of persons in accordance with Articles 2, 3 and 8 of the European Convention on Human Rights and by Article 1 of its Additional Protocol, by also taking particular account of the need for environmental protection;

(ii) recognise a human right to a healthy, viable and decent environment which includes the objective obligation for states to protect the environment, in national laws, preferably at constitutional level;

(iii) safeguard the individual procedural rights to access to information, public participation in decision making and access to justice in environmental matters set out in the Aarhus Convention ...”.

112. In Taşkin v. Turkey the Court referred to Recommendation 1614 and stated:

“The Court points out that Article 8 applies to severe environmental pollution which may affect individuals’ well-being and prevent them from enjoying their homes in such a way as to affect their private and family life adversely, without, however, seriously endangering their health ...

The Court points out that in a case involving State decisions affecting environmental issues there are two aspects to the inquiry which it may carry out. Firstly, the Court may assess

the substantive merits of the national authorities’ decision to ensure that it is compatible with Article 8. Secondly, it may scrutinise the decision-making process to ensure that due weight has been accorded to the interests of the individual.”

113. More specifically the Court has held that a State’s international environmental law obligations help determine the scope of Convention rights. In *Tatar v. Roumanie*, the Court held that the Romanian Government should have applied norms of international law, as well as national law, but had failed to do so, and that accordingly there had been a breach of Article 8.

114. While human rights case law to date has primarily focussed upon localised individual concerns, the ECHR is a living instrument and is constantly evolving. Accordingly, it would seem clear that a serious matter of national (and international) concern, such as climate change, with the potential to affect the lives of all citizens (some more than others) also properly falls within its remit, subject, of course, to an appropriate margin of appreciation.

115. This perspective accords with the views of the Office of the High Commissioner for Human Rights (the “OHCHR”), which stated as follows in a submission to the 21st Conference of the Parties to the UNFCCC in 2015:

“It is now beyond dispute that climate change caused by human activity has negative impacts on the full enjoyment of human rights. Climate change has profound impacts on a wide variety of human rights, including the rights to life...

The human rights framework also requires that global efforts to mitigate and adapt to climate change should be guided by relevant human rights norms and principles including the rights to participation and information, transparency, accountability, equity, and non-discrimination. Simply put, climate change is a human rights problem and the human rights framework must be part of the solution.

...

In the context of climate change, extreme weather events may be the most visible and most dramatic threat to the enjoyment of the right to life but they are by no means the
only one. Climate change kills through drought, increased heat, expanding disease vectors and a myriad of other ways ... In order to uphold the right to life, States must take effective measures to mitigate and adapt to climate change and prevent foreseeable loss of life.”

116. Similarly, in 2015 a Dutch Court ruled that the Dutch Government must increase the ambition of its emission reduction plans, stating:

“If, and this is the case here, there is a high risk of dangerous climate change with severe and life-threatening consequences for man and the environment, the State has the obligation to protect its citizens from it by taking appropriate and effective measures. For this approach, it can also rely on the aforementioned jurisprudence of the [European Court of Human Rights].”

117. The above particularly highlights the engagement of Article 2 ECHR, which includes a positive obligation on States to safeguard the lives of those within their jurisdiction, including where such a risk is created by natural disasters and other environmental matters. Such an obligation includes a requirement to take active measures, such as establishing an appropriate legislative and administrative framework to address the particular features of a relevant situation and to ensure the public are properly informed.

118. As noted above, there is no longer any doubt that climate change has and will continue to cause loss of life. This is as relevant to the United Kingdom as anywhere else on earth.

119. You are, or should be, fully aware of such matters. And while there is an appropriate legislative and administrative framework, you are failing (or refusing) to take all reasonable and necessary measures to safeguard current and future generations of UK residents from the grave risks from climate change, in particular by failing to keep the contents of that framework, and in particular the 2050 Target, up-to-date so as to ensure its proper operation, contrary to your obligations under Article 2. We also consider that you are unlawfully failing to provide adequate information to the general public regarding the risks of climate change.

120. A similar analysis can be applied in respect of Article 8 and A1P1 given the impact of climate change on individuals’ personal life and property respectively. It is also to be noted that the impact of

---

climate change in effect discriminates between individuals according to \( \textit{inter alia} \) age (the elderly and the young being worst affected) and thereby engages Article 14 when read together with each of the above rights.

121. We consider that the margin of appreciation that should be afforded to you in respect of making decisions regarding the appropriate response to climate change should be narrow given the serious implications, the precautionary principle and the international commitments properly to address it. However, irrespective of the appropriate margin of appreciation, the interference with the freedoms posed by climate change, as set out above, cannot be justified for essentially the same reasons as given in respect of irrationality above.

122. In such circumstances, the interference in fundamental rights occasioned by the Ongoing Failure is unjustified and disproportionate, and therefore unlawful.

The details of the actions required by you

123. In light of the above, we require you to review the 2050 Target to determine an appropriate amended 2050 Target taking into account the relevant principles set out above and setting clear reasons for any decision reached as a result of that review.

Alternative dispute resolution

124. Our client is willing to seek to resolve this matter through discussion and negotiation (and/or mediation) with you. However, given the urgency of the matter and the already significant delay in obtaining a satisfactory response, such alternative dispute resolution would need to take place soon, and by no later than the end of October 2017.

Details of any interested parties

125. We consider the CC Committee meet the requirements of being an “interested party” for the purposes of CPR rule 54.1(2)(f) and accordingly will provide it with a copy of this letter.

126. Should you be aware of any other interested parties, we should be grateful if you could notify us as a matter of urgency such that they can also be provided with a copy of this letter.

Further information and documents to be provided

127. In accordance with the obligations under the Pre-action Protocol for Judicial Review, please provide us with:
(a) all correspondence, notes of meetings and other documents relating to any review conducted by you in respect of the 2050 Target since the passing of the 2008 Act; and

(b) all documents concerning your assessment of the threat from climate change within the last five years.

128. Please also confirm to us whether you had any role in commissioning or seeking the CC Committee 2016 Recommendation.

129. Such documents and information are clearly necessary for our client to be able to properly plead any judicial review proceedings. If such documents or information are not provided now, but are subsequently relied upon and require any re-pleading of the case, we will bring this to the attention of the Court and seek costs accordingly.

Details of the claimant and its legal representatives

130. The proposed claimant is Plan B. Earth. Its registered address is 62 Sutherland Square, London, SE17 3EL.

131. The claimant is represented by Bindmans LLP. Jamie Potter, a partner in Bindmans’ Public Law and Human Rights team has overall responsibility for this case and will be assisted by Ben Gaston, a solicitor in the team. Their respective email addresses are set out at the top of this letter.

132. Plan B is also in discussions with a number of potential individual co-claimants who may join the challenge, representing particular interests and adopting the position as set out above. Those individuals include the following:

(a) a number of young people (including minors), who will bear a disproportionate burden of the impacts of climate change, and whose rights to life and to family life are in particular jeopardy;

(b) a person closely connected to a Small Island Developing State;

(c) a medical doctor;

(d) a property owner, whose property has been damaged or is at risk from climate change;

(e) a person of an age that renders them particularly vulnerable to temperature extremes; and
(f) a person from a socio-economic background that puts them at a significant disadvantage in adapting to the impacts of climate change.

133. Should you wish to contact us by telephone, please call 020 7833 4433 and ask to speak to either Mr Potter or Mr Gaston.

Service of documents

134. We are willing to accept correspondence and service of documents by email, provided that they are sent to both Jamie Potter and Ben Gaston using the email addresses identified above.

135. Please confirm if you are similarly willing to receive correspondence and accept service by email.

Costs

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

137. In addition, in order to narrow the issues in dispute and minimise costs accordingly in advance of the preparation of grounds we invite you to indicate whether you are able to agree to any or all of the following propositions:

(a) the UK Government was active in advancing the Paris Agreement and the 1.5°C temperature goal, and continues to support and to be bound by the objectives of that Agreement;

(b) Beyond the threshold set out in the Paris Agreement, the risk of crossing critical tipping points in the climatic system increases significantly, presenting intolerable risks for the people of the UK, including risks of loss of life, disruption to private and family life, and disruption to peaceful enjoyment of property;

(c) The IPCC and others confirm that with urgent and radical action the Paris temperature limit is technically and economically feasible;

(d) The global climate obligation implies pursuing a pathway with at least a 50% chance of limiting warming to 1.5°C;
(e) According to the most recent IPCC report (AR5) the global ‘carbon budget’ consistent with such a probability was 550 Gt CO2 (as from 2011);

(f) The current UK carbon target for 2050 is inconsistent with any equitable or sensible assessment of the UK’s fair share of such a budget;

(g) Delaying correction of the 2050 target will only increase the practical challenges of bringing it into line with the Paris Agreement, giving industry and others less time to make the necessary adjustments;

(h) The UK, along with other developed countries, has a moral and legal obligation to provide leadership in meeting the global climate obligation;

(i) The 2050 Target was intended by Parliament to demonstrate such leadership, and to provide a model for other countries to follow;

(j) Consequently the 2050 Target must be set at a level that makes a fair contribution towards the global challenge (using the standard of equal per capita emissions);

(k) There have been significant developments since 2008 in relation to scientific knowledge about climate change and international law and policy;

(l) The situation has grown significantly more urgent since 2008: global emissions are higher than envisaged, and the impacts worse. Temperature rises and melt-rates in the Arctic are significantly higher than predicted by the models.

(m) To comply with the global climate obligation, global emissions of carbon dioxide will need to peak by 2020 and reach net zero by 2040;

(n) The Secretary of State should have regard to the UK obligations under international law in considering revisions to the 2050 target;

(o) The carbon target for 2050 should be calculated on the basis of equity and the precautionary principle;

(p) The carbon target must safeguard the human rights of both current and future generations, in particular the rights to life; private and family life; and the peaceful enjoyment of property;
(q) The Secretary of State should apply principles, which, if applied consistently by other countries around the world, would ensure global emissions remained within the collective global carbon budget;

(r) The UK should consume no more than its fair share of the remaining global carbon budget (using the standard of equal per capita emissions);

(s) The UK should provide substantial climate finance to developing countries, quantified with reference to past emissions, both as a matter of enlightened self-interest and as an inextricable component of assessing the UK’s equitable contribution to the global obligation.

Proposed reply date

138. The usual period for responding to a Pre-Action Protocol letter is 14 days. Such a response should therefore be provided by close of business on Tuesday 10 October 2017.

139. However, we would urge you to give this matter more urgent consideration and treat it extremely seriously, including in light of:

(a) the general urgency of the crisis (which demands that global emissions of carbon dioxide peak by 2020 and collapse to zero by 2040); and

(b) the political imperative that the UK enters critical UN talks in 2018 in a position to lead by example.

Conclusion

140. We should be grateful if you will acknowledge receipt of this letter by return and confirm that you will respond within the proposed timeframe.

Yours faithfully

[Signature]

Bindmans LLP
Annexure

The Global Commons Institute has prepared the graphics below (paragraphs 56 and 95(c)(iii)) following the same methodology used to underpin the 2050 Target, see The Royal Commission on Environmental Pollution’s 22nd Report, ‘Energy - the Changing Climate’ (2000).

Table 4.1

<table>
<thead>
<tr>
<th>maximum atmospheric concentration ppmv</th>
<th>permissible UK emissions in 2050 % of 1997 level</th>
<th>permissible UK emissions in 2100 % of 1997 level</th>
</tr>
</thead>
<tbody>
<tr>
<td>450</td>
<td>21</td>
<td>11</td>
</tr>
<tr>
<td>550</td>
<td>42</td>
<td>23</td>
</tr>
<tr>
<td>750</td>
<td>56</td>
<td>47</td>
</tr>
<tr>
<td>1,000</td>
<td>58</td>
<td>61</td>
</tr>
</tbody>
</table>

4.52 The UK-based Global Commons Institute has taken the lead in promoting contraction and convergence, and has developed a computer model which specifies emission allocations under a range of scenarios. The concept has been supported by several national governments.

Note that the 42% “permissible UK emissions” in the second column implied a reduction of 58% by 2050; and the 21% figure, a reduction of 79% by 2050 (as against a 1997 baseline). These figures correspond to the 60% target in the Bill, which became an 80% target in the Act. See further paragraphs 12 and 13 above.
As shown, the UK Climate Change Act & BEIS carbon target at ‘Equal Per Capita emissions shares globally by 2050’, is roughly three times the UK’s share of the IPCC carbon budget for an even chance of 1.5°C that is consistent with the ‘Paris Agreement’.

The ‘80% cut’ by 2050 off a Base Year of 1990, reaching equal per capita emissions globally by 2050 (following the UK Climate Act) is clearly neither equitable nor adequate. The Green, Amber & Red curves (gross & per capita) show the UK shares of the remaining global carbon weights for temperature shown & come from IPCC AR5 Synthesis Report.

2014, the Blueprint Population Base Year for UK Shares of IPCC Budgets based on the Global Per Capita Emissions Averages arising from the global Green, Amber & Red budgets.
UNITED KINGDOM & GLOBAL CO₂ EMISSIONS

Per Capita & Gross Emissions over time compared to global average. Carbon Credit/Debit accumulated 1750-2013 in Gigatonnes of Carbon (Gt C). Shares of budgets for 1.5°C & 2.0°C 2014-2050 & INDC.

UK’s carbon target: - an 80% reduction on 1990 emissions by 2050.

Methodology: http://www.gci.org.uk/Easy_Visualization.html