

Subject matter of the application

All the information concerning the facts, complaints and compliance with the requirements of exhaustion of domestic remedies and the four-month time-limit laid down in Article 35 § 1 of the Convention must be set out in this part of the application form (sections E, F and G). It is not acceptable to leave these sections blank or simply to refer to attached sheets. See Rule 47 § 2 and the Practice Direction on the Institution of proceedings as well as the "Notes for filling in the application form".

E. Statement of the facts

58. INTRODUCTION

1. The Applicants challenge the violation of their human rights caused by the UK's failure to put in place adaptation measures necessary to protect them (and, for Friends of the Earth, the people it represents) from the existing risks and impacts of climate change. Their Article 2, Article 8 and Article 1 of Protocol 1 (read with Article 14) ECHR rights are engaged by the effects of climate-change, including heatwaves and coastal erosion. The Respondent's failure adequately to address those impacts and/or even to adopt a proper process for doing so breaches those rights.

2. Mr Jordan is impacted by climate change-induced coastal erosion, Mr Paulley by climate change-induced temperature rises. As detailed further in 'Additional Submissions':

a. Coastal erosion has been accelerated by climate change. Constructing coastal defences is increasingly unsustainable. Slowing erosion through coastal defences have increasingly been replaced by (re)moving coastal defences to allow the shoreline to adjust naturally, displacing coastal communities in the process. Mr Jordan lived in Hemsby, a town on the Norfolk coast subject to a Managed Realignment plan. For a long time, he suffered due to the threat of losing his home. He has now lost his home to coastal erosion, and was offered little support, whether pastoral, financial or otherwise. That, along with the lack of meaningful, long-term and effective planning to support coastal communities, leaves him particularly affected by coastal erosion and associated risks. See §2-31 [383-390]; [400-405].

b. The UK is experiencing rising temperatures as a result of climate change. Rising temperatures pose health risks, especially for the most vulnerable, as shown e.g. by statistical analyses of record heatwaves in 2022. Care home residents are at particular risk of ill-health and death. Mr Paulley lives in a care home and has multiple conditions and disabilities which make him particularly vulnerable to heat. Rising temperatures and lack of meaningful and long-term planning to adapt care homes to excess heat mean Mr Paulley is particularly exposed to climate-induced temperature rises and associated risks, including heightened risk of death during heatwaves. Lack of adaptation measures in his care home mean that common areas of his care home experience very high temperatures during heatwaves, so he has to stay isolated in his room (where he has invested in air conditioning units) for long periods of time. This isolation has a severe effects on his physical and mental health. See §32-56 [391-397]; [406-430].

3. FOE is not for profit company established in 1971, pursuing, amongst others, the purpose of promoting a vision for a peaceful and sustainable world based on societies living in harmony with nature, as well as a greater understanding and appreciation of the need for humanity to live fairly within environmental limits.

UK's FAILURES TO ADAPT TO CLIMATE CHANGE

4. The Applicants challenge the UK's adaptation framework, including the Third National Adaptation Programme ('NAP3') because it does not provide effective protection to their rights in the context of such increasing and intensifying climate change-related impacts and near-term risks.

5. NAP3 was published by the Secretary of State on 17 July 2023, under Part 4 of the UK's Climate Change Act 2008 ('CCA'). Part 4 CCA addresses adaptation to climate change [2692-2709]. National Adaptation Programmes are the main "pathways" via which the UK acts on adaptation (the counterpart "pathways" concerning mitigation are the UK's "carbon budgets"). [861]

6. Under the CCA, adaptation reporting occurs in cycles: every five years. By section 58 CCA the Secretary of State must lay programmes before Parliament setting out "(a) the objectives of Her Majesty's Government in the United Kingdom in relation to adaptation to climate change; (b) the Government's proposals and policies for meeting those objectives, and (c) the time-scales for introducing those proposals and policies." All of these must be geared towards "addressing" the "risks for the United Kingdom of the current and predicted impact of climate change," which the Secretary of State has an obligation to assess under section 56 CCA and in the light of the Climate Change Committee's ('CCC') advice (the CCC is an independent, statutory body established under the CCA, whose purpose is publicly to advise the UK and devolved governments and assess their progress with respect to climate change mitigation and adaptation).

7. There was no procedure in place to allow the Applicants and other affected members of the public to participate in the process that led to the adoption of NAP3 let alone open consultation on the objectives, policies and proposals which it then adopted in NAP3; no procedures to seek information about NAP3 before it was published; nor any procedures which would have allowed the Applicants an adequate opportunity to provide their views and input on matters that were specifically relevant to them. FOE was thus also deprived of the opportunity to represent the views of those most vulnerable to climate change, in line with its organisational purposes. The lack of such a participatory process in the

Statement of the facts (continued)

59. lead-up to NAP3 meant that the public, including the Applicants, was not given any adequate opportunity to engage on matters relating to adaptation to climate change, despite those matters are posing direct and immediate threats to their human rights.
8. On 17 October 2023, the Applicants brought a claim for judicial review before the domestic High Court challenging the legality of NAP3. The Applicants argued that NAP3 failed to protect their (and others') rights. Amongst others, NAP3 did not set out objectives that were sufficiently precise, thus compromising the effectiveness of the adaptation framework under Part 4 CCA. It also failed to implement the large majority of the CCC's recommendations.
9. Specifically, with respect to care homes (affecting Mr Paulley), NAP3 did not suitably or at all address (amongst others):
- The need for long-term policy and funding to enable care-homes to adapt to excess heat. The CCC stated that long-term funding to adapt hospitals, care homes and other healthcare buildings to the impacts of climate change is not currently available [1807]. So healthcare institutions cannot make long-term decisions and take action on adaptation. The CCC recommended that NAP3 should contain clear new funding commitments for investment in adaptation over the coming five-year period and should make available long-term, protected funding to adapt care homes and other healthcare buildings to the impacts of climate change [1897].
 - The need for policy to manage overheating risks in existing health and social care buildings. One of the CCC's primary criticisms of the previous NAP was its failure to expand building regulations to cover refurbishments of existing buildings [1809].
10. With respect to coastal erosion (affecting Mr Jordan) NAP3 did not suitably or at all address (amongst others):
- The CCC's recommendation to put Shoreline Management Plans on a statutory footing, absent which "it is difficult to monitor their progress or guarantee their funding." [1855]
 - The absence of support to affected communities, with the CCC noting that "there is no strong commitment to provide sufficient resources and support communities at risk of being lost to erosion and flooding." [1855]
 - Inadequate protections for property rights: the CCC noted that "where coastal protection cannot be provided, resources and support for coastal communities to carry out relocation, demolition, and adaptation are inconsistent. There is no insurance scheme for homeowners and businesses at erosion-risk. There are limited clear incentives for managed realignment." [1855] NAP3 did not set out provisions for compensating property losses, nor did it set out measures to ensure that individuals like Mr Jordan have access to (re-)insurance schemes.
 - Large gaps in data on coastal erosion; the CCC noted that it lacked "key data for tracking the number of properties and land lost to coastal erosion," [1843] and "while there are examples of local monitoring initiatives, there remains no consistent national picture. This data would provide useful context for tracking national-scale risk assessment and targeting funding." [1843] In coastal change management areas, "the main tool for managing development in erosion-risk locations... are currently not mapped centrally, nor aligned with Environment Agency maps or updated regularly." There were "no clear frameworks with standards for managed realignment schemes and working with natural processes." [1855]
11. The Applicants challenged the UK's failure to comply with its human rights obligations in two ways in the domestic court:
- The Secretary of State acted unlawfully in considering that section 58 CCA did not require setting "objectives" which were sufficiently "specific, measurable, achievable, realistic and timebound" (or 'SMART'). The obligation in section 3 of the Human Rights Act ('the HRA', which implements the ECHR domestically) meant that section 58 must be interpreted as requiring the UK to set objectives that are SMART. Failing to do so would have led to an interpretation of section 58 which was not compatible with ECHR rights, read in light of the European Court of Human Rights judgment in Verein KlimaSeniorinnen Schweiz v Switzerland (2024) 79 EHRR 1 ('VKS'), and specifically, with the Court's dictum that the "State's primary duty is to adopt, and to effectively apply in practice, regulations and measures capable of mitigating the existing and potentially irreversible, future effects of climate change." (§545 VKS). VKS applied with equal – if not greater – force in the adaptation context, which involves risks of climate change that have materialised or are to materialise in the near-term.
 - The Secretary of State acted unlawfully because NAP3 breached the First and Second Applicants' substantive and procedural human rights, in light of their specific vulnerabilities. The insufficient precision of the objectives set out in NAP3 meant that Mr Paulley's and Mr Jordan's substantive rights under Articles 2, 8 and Article 1 Protocol 1 (read with Article 14) were not given effective protection. The failure to put in place sufficient procedural safeguards in the preparation of NAP3 also meant that NAP3 breached all three Applicants' procedural rights.
12. The High Court held that the degree of specificity or precision with which objectives must be set was a matter for the Respondent's discretion. It found that VKS did not apply equally in the adaptation context because "the narrow margin of appreciation in relation to the mitigation aims was justified by reference to the internationally agreed objective of

Statement of the facts (continued)

60. carbon neutrality by 2050 and the impact of one State's default on other States; neither of these features applies in the field of adaptation; and accordingly, in the field of adaptation, States are to be accorded a wide margin of appreciation in setting the relevant objectives and a wider margin still in setting out the proposals and policies for meeting them." (§105 [230])

13. On that basis, the High Court dismissed the Applicants' human rights arguments. It concluded that (i) the Respondent acted within its lawful discretion in setting objectives that were not "SMART;" and (ii) the Applicants' human rights arguments failed "for essentially the same reasons that the arguments under section 3 HRA fail." (§157 [240]) With respect to the Applicants' procedural arguments, the Court found that the role played by the CCC, combined with the possibility for the public to request information via the Environmental Information Regulations 2004 (i.e. in effect, after the NAP3 was published), was sufficient to discharge the UK's procedural human rights obligations. The Court of Appeal refused permission to appeal, exhausting the Applicants' domestic remedies.

VICTIM STATUS

14. As a consequence of the domestic courts' findings and the lack of effectiveness of NAP3, Mr Jordan, Mr Paulley and FOE (on behalf of its activists, supporters and other affected individuals) are left insufficiently protected from the existing impacts and short-term risks of climate change. They are thus victims of violations of their human rights which results from the UK's failure to comply with its positive obligations to adopt, and to effectively apply in practice, regulations and measures capable of mitigating the existing effects of climate change (as clarified at §§545-550 of VKS).

15. Specifically:

a. [REDACTED]

Mr Jordan has thus been subject to a high intensity of exposure to the adverse effects of climate change; the level and severity of the adverse consequences of governmental inaction affecting him are significant. There is a pressing need to ensure Mr Jordan's individual protection, owing to the absence and inadequacy of NAP3's objectives, policies and proposals with respect to communities displaced by coastal erosion. [400-405]

b. Mr Paulley has suffered significant adverse impacts on his health and wellbeing (including aggravating existing serious medical conditions) as well as immediate risks to his life and wellbeing caused by exposure to excess heat in his care home, in circumstances where heatwaves have become more common. This was caused by the UK's failure to act effectively on climate change-induced excess heat in care homes. Mr Paulley has thus been subject to a high intensity of exposure to the adverse effects of climate change; the level and severity of the adverse consequences of governmental inaction affecting him are significant. There is a pressing need to ensure Mr Paulley's individual protection, owing to the absence and inadequacy of NAP3's objectives, policies and proposals with respect to protecting vulnerable care home residents from increasing heat. [406-430]

c. FOE's purpose and work is detailed in [300-314]. It is concerned that more delay in adopting Convention compliant measures and a failure to consult widely on this and future NAPs puts large numbers of its members, and UK residents more generally, at risk. All recent scientific projections indicate a worsening of relevant impacts including extreme heat and coastal erosion [382-399].

16. Without prejudice to the Applicants' position on the applicable test for victim status in the circumstances of the case, for the reasons set out above at paragraph 15, in the Applicants' witness statements and in the 'Additional Submissions' annexed to this form, all three Applicants are "victims" for the purposes of ECHR Article 34 and consequently have standing:

a. Mr Jordan and Mr Paulley are both individuals (a) subject to a high intensity of exposure to the adverse effects of climate change, i.e., the level and severity of (the risk of) adverse consequences of governmental action or inaction affecting them is significant; and (b) there is a pressing need to ensure their individual protection, owing to the absence or inadequacy of any reasonable measures to reduce harm. (VKS, §§478-8)

b. FOE is (i) lawfully established in the UK; (ii) pursues a dedicated purpose in accordance with its statutory objectives in the defence of the human rights of affected individuals within the UK, including collective action for the protection of those rights against the threats arising from climate change; and (iii) is genuinely qualified and representative to act on behalf of individuals in the UK affected by climate change. It is therefore a victim, pursuant to VKS, §502.

URGENCY

17. The Applicants face a real threat from the UK failing to adapt to climate change. They and their supporters are experiencing concrete and imminent risks to their lives and health. The issue of a state's responsibilities in respect of climate change adaptation has not been expressly dealt with by the Court before, making this an impact case. Any judgment will have major legal implications and may lead to important practical changes in how states respond to the climate crisis, which is recognised as one of the most pressing social and human rights issue confronting humanity today.

F. Statement of alleged violation(s) of the Convention and/or Protocols and relevant arguments

61. Article invoked
Article 2

Explanation

20. States owe a positive obligation to "take appropriate steps to safeguard the lives of those within their jurisdiction." (LCB v UK (1998) no. 23413/94, §36), in the "context of any activity, whether public or not, in which the right to life may be at stake." (Ercan Bozkurt v Turkey (2013), no. 20620/10, §54). The obligation has two limbs: it involves "a primary duty on the state to put in place a legislative and administrative framework designed to provide effective deterrence against threats to the right to life," and requires that "practical measures" be taken to protect life (Oneryildiz v Turkey (2004), no. 48939/99, §89-90). The obligation must be applied "so as to make its safeguards practical and effective" (McCann and Others v UK (1995); 21 EHRR 97, §146), and the courts must be "especially vigilant" in right-to-life cases (Giuliani and Gaggio v Italy (2011) no. 23458/02, §182).

21. There will be a breach of the Article 2 obligation when the authorities (i) knew or ought to have known of the existence of a real and immediate risk to identified individuals and (ii) failed to take measures within the scope of their powers, which, judged reasonably, might have been expected to avoid that risk, i.e., unless the "state did all that could have been required of it to prevent the applicants' life from being avoidably put at risk." (LCB, §36)

22. The Respondent infringed Mr Paulley's right to life, because (including for the reasons set out above at paragraph 10) NAP3, judged reasonably, fails to put in place sufficient policy measures to avoid the risk to his life as a result of excess heat. Consequently, Mr Paulley remains at heightened risk of death due to excess heat every Spring/Summer and during periods of heatwaves (which will repeat and intensify in future). This risk is known to the authorities, as demonstrated, amongst others, by the Respondent's own ONS statistics. The failure to address the pressing need to address this high exposure means that Mr Paulley remains at risk of morbidities and death during heatwaves. He thus remains in pressing need of protection.

23. The Respondent infringed the right to life of Mr Jordan by failing to ensure safe access to and from his house, which was at serious risk of collapse due to coastal erosion. Given Mr Jordan's limited mobility and health conditions this situation created a real and imminent risk to his life at the latest from March 2023 until he was directed to leave his home on 30 November 2023. The pressing need to secure his safety was thus not addressed for some 10 months. The Respondent is in breach of the positive obligation it owes Mr Jordan because NAP3, judged reasonably, failed to put in place sufficient policy measures to avoid the risk to Mr Jordan's life as a result of coastal erosion, including for the reasons set out above at paragraph 11.

24. FOE brings this claim to protect the right to life of Mr Paulley, Mr Jordan and other affected individuals in the UK who are similarly at imminent risk to life from extreme heat and coastal erosion.

Article 8

25. In the context of climate change, "the State's primary duty is to adopt, and to effectively apply in practice, regulations and measures capable of mitigating the existing ... effects of climate change." (VK5, §§545-550) Importantly, "effective protection of the rights of individuals ... requires ... adaptation measures aimed at alleviating the most severe or imminent consequences of climate change, taking into account any relevant particular needs for protection. Such adaptation measures must be put in place and effectively applied in accordance with the best available evidence ... and consistent with the general structure of the State's positive obligations in this context." (VK5, §552)

26. As noted above, and further set out in the Additional Submissions, in Mr Paulley's witness statement and in his medical records [406-430] excess heat poses a serious and foreseeable risk to Mr Paulley's life, quality of life and wellbeing, as of this and every future Spring/Summer. Excess heat can and often does lead to an aggravation of Mr Paulley's existing illnesses. Importantly, Mr Paulley continues to have no choice but to live periods of excess heat room-bound, given the high temperatures that affect common areas of his care home. This has a severe impact on his physical and mental health. NAP3 is out of step with the best available scientific evidence on adaptation to

Statement of alleged violation(s) of the Convention and/or Protocols and relevant arguments (continued)

62. Article invoked

Explanation

extreme heat and fails to offer sufficient and effective protection to those most vulnerable to heatwaves. In light of the fact that care home residents represent a highly vulnerable group to the impacts of extreme heat, NAP3 ought to – but failed – to suitably address the CCC's concerns and either (i) plan to ensure the resilience of all care homes to excess heat within a reasonable period of time and/or (ii) duly balance the interests of vulnerable care home residents against competing rights and interests in order to offer a proportionate response to excess heating in accordance with Article 8(2) ECHR.

27. Mr Jordan was subject to [REDACTED] because of coastal erosion, including due to the risk to his home and the difficulty in accessing his property and necessary goods and services. In August 2023 Mr Jordan was without water or heating in his home [400-405]. The direct risk posed to his home which resulted in his displacement put him at high exposure to the impacts of climate change and in pressing need of protection. Following his displacement, he suffered [REDACTED] due to the inadequacy of the housing he was provided with, which is far away from his home community. [REDACTED]

[1891] NAP3 fails to at all or appropriately address the severe impacts on quality of life and wellbeing suffered by those who, like Mr Jordan, are subject to evacuation and displacement due to climate change induced coastal erosion.

28. Consequently, NAP3 fails to provide effective protection of Mr Paulley and Mr Jordan's Article 8 rights from serious adverse effects on their life, health, well-being and quality of life. It does not set out sufficient adaptation measures aimed at alleviating the most severe or imminent consequences of climate change, taking into account the particular needs for protection of Mr Paulley, Mr Jordan, and others (whose interests FOE represents and who are similarly highly exposed to the risks and impacts of climate change). The Respondent is thus failing to put in place and effectively apply in practice adaptation measures that are in accordance with the best available evidence (including the CCC's advice) and consistent with the general structure of the State's positive obligations in this context.

Article 1, Protocol One

29. The Respondent breached Mr Jordan's A1P1 rights by failing to put in place effective measures to protect Mr Jordan's property rights, including for the reasons above at paragraph 11(c). Mr Jordan was deprived of his possessions in circumstances that, given the lack of proper planning in NAP3, were not in the public interest and/or subject to conditions provided for by law. Indeed, NAP3 failed to set out measures to either ensure that Mr Jordan's property was not lost to the sea or that, once his home was demolished as a result of managed realignment, he was provided with proportionate compensation, access to reinsurance, or the like, and it fails to demonstrate that the Respondent even considered those things, let alone reached a lawful conclusion as to why those matters were not to be addressed.

Article 14

30. Both individual applicants are extremely vulnerable due to their intersecting and compounding vulnerabilities: e.g., their specific conditions (residing in a care home, or a town subject to managed realignment), various health conditions, limited mobility and mental health (e.g., Mr Jordan's [REDACTED] when access to his house was severely restricted). The failure to take action to protect them thus constitutes unlawful indirect discrimination contrary to Article 14, read with articles 2 and 8.

31. FOE relies on Articles 2, 8, 14 and Article 1 of Protocol 1 in pursuit of its organisational purposes and in accordance with its objectives of defending the human rights (including by way of collective action) of individuals – especially the most vulnerable – whose rights are directly and seriously affected by climate change within the UK. [300-381]

ADDITIONAL SUBMISSIONS

I. Introduction

1. This document sets out the detail of the Applicants' factual and legal case, and supplements the summary provided in Sections E and F of the Application form.

II. Statement of Facts (see section E of Application Form)

The Applicants

2. The Applicants are an association, Friends of the Earth Limited ('FOE'), and two individuals, Mr Kevin Jordan and Mr Doug Paulley. FOE is a not-for-profit organisation and company limited by guarantee. Incorporated in the UK in 1971, FOE undertakes campaigning and other work in furtherance of environmental objectives. It is the largest grassroots campaigning community in the UK, including a network of over 200 local groups and approximately 250,000 supporters. It is concerned, among other things, with the pressing need for action to be taken on climate change, to ensure that there is a safe and socially just outcome to the "climate emergency" for current and future generations. FOE brings this legal action for the purpose of seeking protection of the human rights of those affected (including its network of supporters and activists), as well as those at risk of being affected, by the adverse effects of climate change in the UK, in line with its stated mission and organisational purposes, as set out further below and in [300-381].
3. Mr Jordan lived in Hemsby, directly on the coast (within the area of Great Yarmouth Borough Council), a location particularly vulnerable to sea level rises arising from climate change and thus coastal erosion. On 30 November 2023, he was told to leave his home by the local authority due to the risks posed by that coastal erosion. His home was demolished seven days later. [REDACTED]
[REDACTED] Through the loss of his home and the conditions that he lived in prior to leaving his home in November 2023, as well as the failure of the Respondent to ensure adequate re-housing or compensation Mr Jordan has been directly and severely affected by coastal erosion and by the Respondent's failure to take necessary adaptation measures in a manner consistent with its Convention obligations, as explained further below and in [400-405; 431-437; 498].
4. Mr Paulley, a care home resident, has a number of long-term health conditions [REDACTED] which mean he is a wheelchair user and lives in a care home. As a result of his conditions, Mr Paulley is at increased risk of suffering adverse effects from high temperatures and heat exposure in his accommodation [406-430]. Mr Paulley is therefore directly and severely affected by climate-change induced heatwaves and temperature rises, and the Respondent's failure to take necessary adaptation measures in a manner consistent with its Convention obligations to take effective measure to protect his life from real and imminent risk as well as his health and well-being in his home, as set out further below and in [406-430; 443-446].

Climate Impacts in the UK

5. The UK's independent advisory body on climate change, the Climate Change Committee ('the CCC'), has publicly stated that the UK is already experiencing a range of significant adverse impacts from climate change, including heatwaves and coastal erosion.
6. Record heat waves occurred in 2022 which caused excess mortality in the UK; national statistics on excess deaths during the summer of 2022 record that **[1708-1732]**:
 - a. During the five heat-periods between June and August 2022, 56,303 deaths occurred in England and Wales and were registered by 7 September; this is 3,271 deaths (6.2%) above the five-year average **[1711]**.
 - b. The 2022 heat-period with the largest number of excess deaths was the second heat-period (10 to 25 July), with 2,227 excess deaths (10.4% above average) **[1711]**.
 - c. From June to August 2022, deaths occurring in care homes were also above average on heat-period days (9.2% above average) and below average on non-heat-period days (0.2% below average) **[1721]**.
7. Many residents of care homes, including Mr Paulley, are particularly vulnerable to excess heat and heatwaves, which pose a risk to their life. For instance:
 - a. A study of heatwave mortality in the summer of 2020 found that excess deaths increased as a result of the 2020 heatwaves. The increase in excess deaths was not evenly distributed across the three places of death studied (home, care home, hospital). Rather, "the proportional increase in deaths occurring in each place of death category in 2020 was comparable to previous years, with a 15% to 24% increase in mortality occurring at home; 19% to 30% increase in deaths occurring in care homes; 6% to 26% increase in mortality occurring in hospitals across all years." (section 4.1 **[1405-1406]**)
 - b. An earlier study assessing mortality in southern England during the 2003 heat wave by place of death **[499-501]** found that "deaths at home increased by 33 per cent and deaths in nursing homes increased by 42 per cent. Around one quarter of the deaths attributable to the heat wave occurred in care homes, but this is likely to be an underestimate as some residents may have been admitted to hospital before death."
 - c. A 2021 study assessing summertime overheating in two London care homes notes that "summertime overheating in care settings has been identified as a key risk and research priority for the health and social care system." Furthermore, it found that "in both care settings, indoor temperatures were observed to exceed 30 °C during daytime hours, significantly higher than the recommended 26 °C threshold of Public Health England. Although severity of overheating was lower in the older building, overheating was found to be prevalent and prolonged across both care settings with bedroom temperatures higher than lounges especially at night." It recommends a series of solutions (e.g., night ventilation, external shading and high-albedo external walls) which it concludes would be most effective in reducing overheating in care homes. **[1186-1204]**

8. Similarly, in respect of coastal erosion, studies suggest that 'Hold-the-Line' policies (i.e., policies that focus on maintaining the current shoreline position by either building or upgrading coastal defences) are increasingly problematic to sustain. Building and maintaining coastal defences is not cost-beneficial (final bullet point, [633-634]) and may be unsustainable.¹ Consequently, studies suggest that greater adaptive management of coastlines is, and will be, required. This involves transitioning from Hold-the-Line policies to Managed Realignment policies, i.e., policies which deliberately move or remove coastal defences to allow the shoreline to re-adjust, creating new habitats like salt marshes and reducing flood risk. Hemsby, where Mr Jordan lived, is an example of this.
9. Communities which are subject to transitions from Hold the Line to Managed Realignment are particularly vulnerable. Studies confirm that:
 - a. Coastal communities are facing an "unprecedented challenge in responding to sea level rise and associated changes." [1415-1419] In England specifically, the most affected communities face particular disadvantage including as a result of the "little guidance" which "is offered on the role of transformational change (including the relocation of coastal communities) or how this would be supported where required" and the "lack of clarity as to how this transition will be made, particularly when it would impact communities." (section 4 [1416-1417])
 - b. "It is apparent from the experiences to date that adaptation is complex and requires a long-term approach." [541] Ensuring communities are able to cope with such transitions could involve, for instance, implementing Hold the Line policies "for a short time to buy time for communities to adapt. This might for instance be accomplished by continuing to [maintain] and repair defences for 5 to 10 years whilst preparing communities for policies of MR [managed realignment]." [540] Whatever method is chosen, it is "necessary to start planning for these changes as early as possible, to enable communities to prepare for change." [541]
 - c. Coastal communities subject to transformational change have particular needs. For instance, where decisions are made in favour of managed retreat and sacrifice areas, it is important to ensure affected communities are afforded the opportunity to input properly in decision-making [610-626; 1418-1419] Furthermore, such communities will have specific economic needs, given the likely impact on their property rights: studies suggest it will be necessary to support "property owners (and local authorities) in accessing assistance packages (for demolition and relocation) including buy-back or lease back-schemes and preferential access to development land." [1418]

The Paris Agreement and the link between Adaptation and Human Rights

10. As confirmed by the European Court of Human Rights ('ECtHR') on many occasions, the European Convention on Human Rights ('ECHR') is a living instrument which falls to be determined in the light of, among other things, developments in international

¹ One such study explains, for instance, that "in many places continuing to defend the coast with hard structures may lead to unacceptable environmental impacts on coastal processes and environments over the long term" [538]. See also: [610-626]

law. The ECtHR most recently confirmed this, in the context of climate change, in its ruling in *Verein KlimaSeniorinnen Schweiz v Switzerland* (2024) 79 EHRR 1 ('*VKS*'), at §§434 (and references therein) and 451.

11. The UK is a party to the 2015 Paris Agreement on Climate Change [2712-2718]. The Preamble to the Paris Agreement acknowledges that "parties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights, the right to health, the rights of indigenous peoples, local communities, migrants, children, persons with disabilities and people in vulnerable situations and the right to development, as well as gender equality, empowerment of women and intergenerational equity." (See §136 *VKS*)
12. Article 2 Paris Agreement sets out the ways in which the Agreement strengthens the response to climate change including by "(b) Increasing the ability to adapt to the adverse impacts of climate change and foster climate resilience and low greenhouse gas emissions development, in a manner that does not threaten food production." (See §136 *VKS*)
13. Article 7(1) Paris Agreement establishes a global goal on adaptation of enhancing adaptive capacity, strengthening resilience and reducing vulnerability to climate change, with a view to contributing to sustainable development and ensuring an adequate adaptation response in the context of the temperature goal referred to in Article 2. Article 7(5) provides:

"Parties acknowledge that adaptation action should follow a country-driven, gender-responsive, participatory and fully transparent approach, taking into consideration vulnerable groups, communities and ecosystems, and should be based on and guided by the best available science and, as appropriate, traditional knowledge, knowledge of indigenous peoples and local knowledge systems, with a view to integrating adaptation into relevant socioeconomic and environmental policies and actions, where appropriate."
14. Article 7(9) provides that each Party shall, as appropriate, engage in adaptation planning processes and the implementation of actions, including the development or enhancement of relevant plans, policies and/or contributions, which may include... (c) The assessment of climate change impacts and vulnerability, with a view to formulating nationally determined prioritized actions, taking into account vulnerable people, places and ecosystems.
15. Numerous human rights bodies have confirmed the relevance of human rights obligations to adaptation to climate change (see references in *VKS* §§157, 164, 168, 176, 180, 183 and 186). The Human Rights Committee, for instance, did so in *Billy et al. v. Australia*, finding that Australia had violated the International Covenant on Civil and Political Rights ('*ICCPR*') due to its lack of timely adequate adaptation measures.
16. Consequently, as a party to the Paris Agreement, the Respondent should respect, protect and consider existing obligations on human rights when taking action to address climate change. Accordingly, the Respondent is also required, pursuant to Article 7(1) of the Paris Agreement, to address adaptation by reducing vulnerability to climate change consistently with the above-mentioned Convention rights. For the reasons set out below,

the Respondent did not respect, protect or consider the Article 2, Article 8, Article 1 of Protocol One or Article 14 rights of the Applicants or those similarly placed.

Domestic Law: Part 4 CCA

17. Part 4 CCA [2692-2709] provides the general statutory framework in the UK for adaptation to climate change. It provides for a five-yearly cycle of climate change risk assessment followed by a national adaptation programme (the '**statutory adaptation cycle**').
18. Under section 56 CCA, the Respondent Secretary of State must lay before Parliament a report containing an assessment (on behalf of the Government) of the risks for the United Kingdom of the current and predicted impacts of climate change (the Climate Change Risk Assessment ('**CCRA**') reports). By section 56(5), the Respondent must "take into account the advice of the Committee on Climate Change under section 57" before laying a report before Parliament.
19. The CCC, which includes an Adaptation Sub Committee,² was established pursuant to section 32 CCA. Section 57 requires the CCC to advise the Respondent on the preparation of each of the Respondent's reports under section 56.
20. The Respondent must then lay before parliament programmes per section 58 (see Application form, section E, paragraph 6). Pursuant to section 59, the CCC must report, every two years, on the "progress made towards implementing the objectives, proposals and policies set out in the programmes laid before Parliament under section 58."

NAP3

21. The CCC published its Independent Assessment of UK Climate Risk pursuant to section 57 in June 2021 ('**the section 57 Report**') [1161-1178]. It drew on evidence gathered by the CCC and set out in the accompanying Climate Change Risk Assessment Technical Report ('**the Technical Report**'), which identified 61 "risks and opportunities" to the UK from climate change (set out in Table 2). [882-883] As outlined further below, the CCC has repeatedly advised that the UK's approach to adaptation under the CCA is inadequate and in relation to NAP3 concluded that the Programme "falls far short of what is needed." (first bullet point [2451])
22. The Technical Report's analysis included formulating criteria to assess whether "risks or opportunities are being managed" and asking whether the "policy, strategy or plan in place" had a "clear objective (SMART)" (section 2.7.3 and table 2.6 [925-927]). This analysis of existing progress in managing risks was said to be "challenging because Government targets on adaptation are often quite generic (i.e. they may not be quantitative, or defined in SMART terms [Specific, Measurable, Achievable, Realistic and Timebound])." [919] It was "often challenging in practice to assess the actual benefits of these policies because many of them are not specific in terms of objectives ... Many of the targets in the 25 YEP [Year Environment Plan] and NAP2 are quite general, e.g. they set a general goal for reducing risks or enhancing resilience, but do not include a specific stated objective and outcome, which makes it difficult to

² See Schedule 1, para 16 [2710].

understand what level of adaptation benefit the policy is meant to achieve” (box 2.9 [921]).

23. The CCC’s section 57 Report noted that “adaptation remains the Cinderella of climate change, still sitting in rags by the stove: under-resourced, underfunded and often ignored. ... progress with adaptation policy and implementation is not keeping up with the rate of increase in climate risk and that the risks to all aspects of life in the UK have increased over the last 5 years” [1164]. The CCC’s criteria for good adaptation included “specific, outcome-focused, and measurable objectives that describe outcomes rather than processes and activities” [1172].
24. The Respondent published its Third Climate Change Risk Assessment, pursuant to section 56, on 17 January 2022 (‘**CCRA3**’) [1278-1292]. It identified 34 risks as requiring more action, including risks to health and wellbeing from high temperatures (H1) and several risks relating to coastal flooding, sea level rise and coastal erosion (H3b, H4, B2) [1287-1289].
25. On 29 March 2023, the CCC published its report pursuant to section 59(1) CCA, “Progress in adapting to climate change” (‘**the 2023 Progress Report**’) [1799-1897]. The 2023 Progress Report focused on the Respondent’s progress towards meeting the objectives, proposals and policies within the Second National Adaptation Programme (‘**NAP2**’). Within it, and with a view to improvements being made for NAP3, the CCC criticised the adequacy and sufficiency of NAP2. It noted that “no clear objectives, targets or performance indicators were identified to allow Respondent or others to track progress in implementing the programme or its effects on exposure and vulnerability to climate change.” It distinguished between “lack of ambition” and “no overarching framework.” The absence of clear, measurable objectives was considered to fall under the latter (box 3 [1813]).
26. The CCC noted that “the gap between future levels of risk and planned adaptation has widened in the last 5 years” (box 1.4 [1817]), it commented that “the next National Adaptation Programme must make a step change... If the next National Adaptation Programme falls short, it risks another lost five years of ineffectual adaptation action – which the UK’s people, ecosystems and infrastructure cannot afford.” [1815]
27. NAP3 was published on 17 July 2023 [1975-2119]. For each sector/area of public activity, NAP3 Annex 1 identified (a) “risk reduction goals” and (b) proposed “actions.” The “risk reduction goals” are the Respondent’s “objectives” and the “proposed actions” are the “policies and proposals” required under section 58. However, of the 78 total “risk reduction goals” set out in Annex 1, nine were merely a stated intention to increase the knowledge about something and at least 28 simply expressed a generic intention to reduce one or more of the 61 risks identified in CCRA3 or to vaguely “improve” or “increase” resilience in respect of the risk (e.g., the objective for Risk 12, which is merely to “reduce the risks to the energy system from climate change-driven increases in river, surface water and groundwater flooding” [2118]).
28. In relation to public participation, the Respondent in the end only carried out very limited public engagement on NAP3 prior to its publication. While it had first considered doing so, it did not ultimately carry out an exercise which was open and available to the public at large, so that those concerned could meaningfully engage on the development of NAP3. Rather, it carried out a dialogue process in February 2022

involving just 107 people selected for workshops, and a stakeholder event which was not open to the public [2124-2127]. The public – and particularly at-risk members of the public – were not consulted on a package of proposed measures. Their views were not taken or fed back to the Respondent, to be taken into account in finalising NAP3. As a result, none of the Applicants were able to feed into this process. As an association representing (among other things) the interests of those affected by climate change, and with a large grassroots network, FOE would have been particularly well-suited to engage with the Respondent but was deprived of any adequate opportunity to do so. Consequently, the procedures put in place through which the views of the public, and in particular the interests of those affected or at risk of being affected by NAP3, could be taken into account in the decision-making process were fundamentally flawed and insufficient.

29. On 13 March 2024, the CCC published its ‘Independent Assessment of the Third National Adaptation Programme (NAP3)’ [2446-2464]. It commented: “NAP3 falls far short of what is needed... The lack of a measurable vision will prevent effective delivery of adaptation by public agencies, local authorities, and the private sector, as well as inhibiting a clear assessment of progress” (first bullet point [2451]). It stated that “clear and specific outcomes are needed to make adaptation tangible both inside and outside of government... making the vision operational requires clear outcomes supported by a delivery programme with measurable goals, and a demonstration of how the outcomes link to the activities in the programme” (see ‘vision’ bullet point [2452]). Instead, NAP3 “only contains a very high-level vision statement that is not operational, with no measurable goals or specific outcomes for any sector” (table 1 [2454]).
30. On 30 April 2025, the CCC published its report, ‘Progress in adapting to climate change: 2025 report to Parliament.’ Key findings included that [2646]:
 - a. “The UK’s preparations for climate change are inadequate. Delivery of effective adaptation remains limited and, despite some progress, planning for adaptation continues to be piecemeal and disjointed. The vast majority of our assessment outcomes have the same low scores as in 2023.”
 - b. “The Government has yet to change the UK’s inadequate approach to tackling climate risks. The current government [...] inherited a NAP that fell short of the task of preparing the UK for the climate change we are experiencing today, let alone that coming in the future. Our assessment finds little evidence of a change of course.”
 - c. “The Government must act without further delay to improve the national approach to climate resilience.” The CCC recommends four key areas for improvement. The first is “Improve objectives and targets. This is the vital first step to provide an actionable and measurable framework for the rest of government and beyond.”
31. With respect to high temperatures in care homes, the 2025 Progress Report found that:
 - a. Data collection is sub-standard: “Beyond the NHS, there are no routinely collected data on extreme weather disruption or adaptation implementation in other health care settings such as care homes.” (see ‘Health and wellbeing’ section [2650, 2655])

- b. Failure to implement proper implementation targets means that “funding allocations to adapt hospitals, care homes and other healthcare buildings are not set out.” (final paragraph [2654])
- c. Recommendations consequently included, first, developing “a long-term cross-sector approach to address risks in the social care sector, including using appropriate levers to accelerate adaptation action and ensuring that monitoring of overheating occurrences and air quality in care homes is undertaken frequently,” (see ‘Health and wellbeing’ section [2650, 2656]) and, second, making “available long-term, protected funding to adapt hospitals, care homes and other healthcare buildings to the impacts of climate change.” [2657]

32. With respect to coastal erosion, the 2025 Progress Report found that:

- a. Vulnerability to coastal erosion is increasing: “Between 5,000 to 45,000 properties could be in areas at risk of coastal erosion by 2050, depending on how coastlines are managed. Towns and cities will become increasingly hot, with a large fraction of current buildings at risk of reaching uncomfortable and potentially dangerous temperatures in summer heatwaves.” (third bullet point [2647])
- b. Progress towards the outcome of ensuring that “places are resilient to river and coastal flooding” is noted as having “worsened” since the CCC’s 2023 progress report as a result of “reduced overall projected targets for the Flood and Coastal Erosion Risk Management investment programme, despite recent funding announcements.” (top row of table on [2649])
- c. “Only a few areas have good adaptation planning. [...] Nearly all areas need further development, with higher scores mainly limited to regulated infrastructure sectors or publicly funded areas like flood and coastal erosion management. 27 outcomes (60%) show limited or insufficient progress, highlighting major gaps in adaptation efforts across policies and plans.” (last bullet point [2648])
- d. The CCC thus recommended that the Respondent “Include long-term targets on net change in flood risk in the next flood and coastal erosion risk management investment programme. These need to be supported with sufficient levels of funding and a clear delivery plan to ensure these targets are met.” [2650]

The Impact of Failed Adaptation on the Applicants

- 33. NAP3 constitutes the Respondent’s current response (for the five-year period between 2023 and 2028) to adaptation needs in the UK. As detailed further below, it is the Applicants’ case that NAP3 is an insufficient and ineffective response to those adaptation needs, and that, by failing to ensure a sufficient and effective response via NAP3, the Respondent has thus breached the positive obligations it owes the Applicants. This section briefly details the impacts that NAP3’s failings have on the Applicants and should be read together with the content in the Application form and with the Applicants’ witness statements.
- 34. The direct impacts of NAP3’s failings are evident from Mr Jordan’s and Mr Paulley’s circumstances. Mr Paulley continues to be at heightened risk of serious harm to his physical and mental health from exposure to excess heat, due to the combination of (i) his multiple long-term conditions and (ii) his status as a care home resident. The CCC’s

s.57 report recognised that those with existing health conditions [REDACTED] increase an individual's risk of overheating (first paragraph [1177]). NAP3 failed to acknowledge this increased vulnerability but recognised the risks of overheating to vulnerable care home residents like Mr Paulley [2119]. Despite this, and as detailed below, it did not provide for any effective framework to identify, prevent and mitigate those risks, including in relation to existing care homes such as the one Mr Paulley lives in.

35. Consequently, Mr Paulley remains highly exposed to excess heat, as set out in the Application Form. Mr Paulley continues to live in a care home for which no provision is made to ensure consistent, long-term and effective adaptation to overheating. Mr Paulley is amongst the most vulnerable in society in view of his residency in a care home, his complex health needs and disabilities and remains at much heightened risk of harm due to excess heat. The vague nature of NAP3, and the lack of concrete measurable objectives means that no, or no effective action, is being taken by the Respondent to ensure that relevant authorities mitigate the risks which Mr Paulley and others in his circumstances are exposed to as a result of climate change-induced temperature rises.
36. Mr Jordan is similarly affected by the inadequacy of NAP3. At the time of first filing his claim in the national courts, Mr Jordan was at heightened risk of losing his home due to coastal erosion. He has since lost his home (in November 2023), which was demolished due to the increased risks and impacts of coastal erosion. He remains in accommodation, which is inadequate in light of his needs [400-405].
37. Prior to having to leave his home in November 2023, Mr Jordan lived for years in fear of losing his home to coastal erosion, with no clarity or understanding of what the Respondent was doing to protect him, or what would happen to him should he lose his home. There was no, or no adequate, advance planning enabling Mr Jordan and those in his position to prepare for coastal transformation, and there was inadequate engagement with him and his community or others in a similar position. There was a failure to provide him with information or warnings about the specific risks he faced and/or the steps that would be put in place to assist him. His situation worsened significantly in March 2023, when he faced difficulties accessing refuse collection and other services due to the collapse of an access road. [REDACTED]
[REDACTED]. No effective support was provided to him before he lost his home and while access was severely compromised, although he was already impacted by the effects of coastal erosion in Hemsby and despite his vulnerability (§7-11 [401-402]). After he lost his home at very short notice, limited and inadequate resources and support were available to him. (§11-14 [402-403]).
38. Mr Jordan is thus directly impacted by the action (or lack of) which the Respondent set out in NAP3 with respect to coastal erosion, and with respect to coastal communities displaced by coastal erosion and subject to transitional arrangements (from Hold the Line to Managed Realignment, as was the case for Hemsby).
39. Furthermore, neither Mr Jordan nor Mr Paulley were afforded the opportunity to participate in consultation on the process which led to NAP3, and neither can therefore understand what – if anything – the Respondent, through the NAP3 framework, is doing

to address the direct and significant risks to their health, life and wellbeing. Nor can they understand how – if at all – the Respondent, through the NAP3, considered their Convention rights, including whether or not the Respondent sought to strike a balance between protecting their rights (and those of others in analogous circumstances) and other countervailing considerations. Had the Applicants (or others similarly placed) been given the opportunity to participate in the making of NAP3, then the Respondent would have had the benefit of understanding their concerns, including those relating to risks posed to their lives, health and well-being, taking them into account in any proportionality assessment, and improving NAP3 with regards to them, thus ensuring that NAP3 was effective at upholding and protecting the rights of people in their position.

40. FOE similarly has been unable to effectively bring forward its own expert views, or the views and concerns of its grassroots network (which includes individuals and ‘FoE local groups’). FoE was similarly unable to input on the draft NAP3 on behalf of other individuals and communities it works with or acts on behalf of (including those facing direct and serious risks to their lives, health, homes and wellbeing from the impacts of climate change) [300-313]. Like Mr Jordan and Mr Paulley, FOE was given no adequate opportunity to participate in the process which led to NAP3. Had there been such an opportunity to participate, FOE would have been able to inform its local group network and associated FOE activists and supporters of this opportunity to influence an important area of climate policy that could have a direct impact on them.
41. Finally, once published, the NAP3’s vague and aspirational nature has meant that FOE’s ability to effectively campaign and engage politically on NAP3’s content and its impact on human rights in the UK has been severely curtailed. Like the CCC, FOE struggles to understand the extent and scope of the measures proposed by the Respondent in relation to adaptation, given NAP3’s fundamental lack of clarity and its failure to set express objectives. Accordingly, FOE is severely hindered in holding the Respondent to account with respect to NAP3’s compliance with the UK’s obligations under the Convention as regards the protection of the rights of those affected by the impacts of climate change. [300-313] This in a context where real and imminent threats to life, as well as serious harm to health and well-being are already a reality for individuals like Mr Jordan and Mr Paulley, and large numbers of other people vulnerable to the grave impacts of climate change.

III. Statement of Grounds (see section F of Application Form)

Introduction: Climate Adaptation and Human Rights

42. The Applicants rely on the ECtHR’s well-established environmental jurisprudence, combined with recent judgments by the ECtHR, and specifically VKS and *Cannavacciuolo v Italy* (2025) Applications nos. 51567/14 and 3 others, which confirm and explain the applicability of ECHR rights in the context of State responses to climate change and severe environmental impacts.
43. Under the established jurisprudence of the ECtHR, read with VKS, and as set out in summary in the application form, the UK is under a positive obligation to protect the Applicants from interference with their rights under Articles 2, 8 and 14 of the Convention, as well as Article 1 of Protocol 1. This includes a requirement to act on the basis of expert and scientific advice as to the scale of the risks posed and the measures

required to address them under both Articles 2 and 8 (*VKS* §552) and to respect procedural rights under those provisions (*VKS* §554). In particular, the UK is under an obligation to warn and inform those potentially affected by specific climate impacts, especially the most vulnerable or at risk from those impacts. The standard for complying with these requirements is one of due diligence (*Pavlov*, §90). In consistently failing to address concerns raised by the independent advisor, the CCC, including in not setting understandable and measurable objectives, the UK has failed to comply with its obligation of due diligence in this regard and to ensure protection against real and imminent risks to life under Article 2 and/or to conduct any adequate balancing exercise as is required under Article 8, in circumstances where there is an interference with Article 8 rights and where such balancing exercise is an integral part of its due diligence obligation.

44. In relation to Article 2, the ECtHR recently found, in *Cannavacciuolo*, that the Respondent State had failed to do all that it could to protect the lives of the Applicants, in breach of its duty of due diligence. Similarly, akin to the large number of people affected by state failings and the urgent need to grant them speedy and appropriate redress at domestic level (*Cannavacciuolo*, §501), this case relates to the implications of the Respondent's failure to protect Mr Paulley from the risk to his life posed by extreme heat and the risk to Mr Jordan from the risk posed by the impact of coastal erosion his home,. As a representative body/NGO, FoE is seeking to resolve all those deficiencies in NAP that interfere with rights under the ECHR including those related to heat and coastal erosion. The inherent flaws in NAP3, including the failure to adopt specific SMART objectives, mean that the Respondent is not acting consistently with its positive obligations under the Convention in relation to an even larger potential group of impacted people. FoE's case relates to the specific and grave impacts related to heat and coastal erosion as per co-claimants situations and also to these inherent flaws in NAPs (as set out in our Application) which mean that the Respondent is not ensuring that adaptation plans and policies are consistent with its Convention obligations.

Ground 1: No effective framework for ECHR-compliant climate adaptation

45. The Respondent's (including via the national courts') interpretation of the requirement for "objectives" under section 58 means that the UK is in breach of the ECHR, because Part 4 CCA does not - for that reason - provide for an effective adaptation framework to respond to existing climate-change related risks and to thus ensure the requisite protection of the Applicants' Convention rights.
46. Before the domestic courts, the Applicants had argued that, properly construed, the word "*objectives*" in section 58 required the Respondent to set out objectives in the form of substantive, specific and measurable outcomes, taking into account the requirements of the ECHR as enshrined in the HRA. The Respondent could not lawfully set objectives which were merely unspecified and unmeasurable aspirations to reduce the 61 identified statutory risks in question (which included risks related to health from excess heat and risks posed by coastal erosion) – doing so did not constitute an effective response to climate change related risks and impacts and meant that nobody (including the Respondent itself, and Parliament) could assess the ambition of the proposals, nor their consistency with Convention rights, or, later, whether those proposals were being delivered effectively.

47. In relation to the ECHR, the Applicants argued that pursuant to section 3 HRA, Part 4 should be interpreted as requiring an *effective* framework to protect the Applicants' rights, in light of the ECtHR's judgment in *VKS* and earlier caselaw. The Respondent contended that it enjoyed a wide margin of discretion to set adaptation related objectives as it saw fit, and that those objectives did not by law have to be substantive, specific and measurable; the Respondent also argued that as *VKS* was concerned only with the mitigation of climate change, the Court's judgment was thus of no assistance in the context of adaptation to climate change. The Applicants had maintained that *VKS* applied equally (if not with greater force) to climate adaptation as an area directly bearing on the enjoyment of Convention rights, and that the interpretation of section 58 advanced by the Respondent was incompatible with the ECHR, because its consequence was that Part 4 would not (and did not) operate in a way that gave practical and effective (as opposed to theoretical or illusory) protection to the Applicant's Convention rights when those were threatened by the existing risks posed by climate change. Furthermore, due to a failure to adhere to procedural safeguards required under the ECHR for the Applicants, the Respondent was outside its margin of appreciation in any event (pursuant to *VKS* §553).
48. The domestic courts rejected the Applicants' claim. The High Court held that section 58 does not prescribe how ambitious or specific the adaptation related objectives must be, save to say that they must be objectives "addressing" the risks identified in the report under section 56. It then considered whether compatibility with the ECHR required a different result. In relation to *VKS*, the Judge stated it was likely that:
- "... if the Strasbourg Court had in a future case to apply the reasoning in *VKS* to the adaptation context, it would say that: (a) the narrow margin of appreciation in relation to the mitigation aims was justified by reference to the internationally agreed objective of carbon neutrality by 2050 and the impact of one state's default on other States; (b) neither of these features applies in the field of adaptation; and (c) accordingly, in the field of adaptation, States are to be accorded a wide margin of appreciation in setting the relevant objectives and a wider margin still in setting out the proposals and policies for meeting them. ..." (§105 [230])
49. On that basis, the Judge concluded that the "the interpretation of s. 58 which I have arrived at applying domestic modes of construction seems to me to fall comfortably within the UK's margin of appreciation under Articles 2 and 8 ECHR." (§106 [230]). The Court of Appeal refused permission on this ground, so the High Court's judgment stands.
50. The national courts' acceptance of the Government's arguments on the requirements for a lawful adaptation programme under Part 4 of the CCA, combined with the inadequacies of NAP3, mean that the Respondent is currently in breach of its positive obligations to appropriately and effectively safeguard the Applicants' rights in circumstances where those are threatened by the current and short-term future risks posed by climate change.
51. Specifically, the Respondent's approach towards adaptation does not offer adequate protection to the Applicants' human rights, because it means that Part 4 of the CCA is not being effectively applied in practice. This is so including for the following reasons:

- a. First, it follows from the Court's jurisprudence that specificity of adaptation objectives and plans is required in order to ensure and deliver the effective protection from the most severe and imminent consequences of climate change that Court expressly referred to in *VKS* at §552.
- b. Second, despite that, the Respondent currently does not consider itself bound by the positive obligation set out in *VKS* when it comes to implementing adaptation measures. Indeed, the High Court agreed with the Government when finding that "with the exception of the comments in [552] ... the focus of the *VKS* decision was on the State's positive obligation to adopt mitigation measures" (§98 [229]). That approach was wrong: *VKS* refers repeatedly to "existing" as well as "future" risks of climate change, and §552 is clear that the State's positive obligations in the adaptation context are "consistent with the general structure of the State's positive obligations (see paragraph 538(a) above)" in the mitigation context. Existing risks are risks that are addressed via adaptation (because they relate to immediate potential impacts or those that are actively realising), as opposed to mitigation measures (which seek to limit future risk by reducing cumulative emissions). The ECtHR in *VKS* thus set out an approach for assessing the obligations of states under human rights law in the context of climate change, which encapsulated both mitigation and adaptation. Indeed, the *VKS* Applicants' complaint related to both the existing *and* future adverse impacts of climate change (§556), and existing risks are specifically referred to in the ECtHR's ratio on Article 8 at §545. By failing to recognise that the same positive obligation applies to it in the context of adaptation, in circumstances where it clearly does, the Respondent is – inevitably – in breach of its ECHR obligations under Article 8.
- c. Third, and as a result of the Respondent's misunderstanding of the applicability of *VKS* to the adaptation context, the Respondent erroneously considers that it enjoys a materially wider margin of appreciation when setting adaptation objectives than mitigation targets. That approach means that the Respondent's adaptation targets are vague, unspecific and ineffective (as is evidenced by NAP3 itself, and NAP2 before it – confirmed by the expert CCC assessments) in circumstances where the failure to adapt entails a more direct and immediate impact on human rights than a failure to mitigate. Contrary to the Respondent's position, States enjoy a narrow margin of appreciation when setting adaptation targets or objectives. Those objectives must be set in sufficiently precise terms so as to be capable of effectively protecting Convention rights, prioritising the most immediate and severe risks. One mechanism by which that effectiveness may be achieved is by setting objectives in 'SMART' terms (as advised by the CCC and as originally accepted by the Respondent's Secretary of State when first commencing the process that led to the adoption of NAP3). Consequently, the Respondent is in breach of its positive obligation under Article 8, as specified in *VKS*, because it considers it permissible (within its margin of appreciation) to set adaptation targets that are vague, unspecific and ineffective.
- d. Fourth, and as set out in the Application form, the Respondent is in any event in breach of its positive obligations under Articles 2 and 8, as set out in the Court's long-established environmental jurisprudence, which makes clear that Articles 2 and 8 ECHR require the State to (i) have in place an effective framework for addressing existing risks to the protection afforded under those provisions which (ii) is applied effectively in practice. Having a framework alone is insufficient, if that framework is not applied effectively. While Part 4 CCA is an

effective framework if interpreted consistently with the UK's obligations under the Convention/*in principle*, the Respondent's flawed and limited interpretation to the requirements under Part 4 (including via its courts), and its consequent application of those requirements in practice, means that the Part 4 framework is not operating effectively in practice, and that it thus cannot provide due protection to the Applicants' rights. As in *Oneryildiz*, so here the "regulatory framework proved defective" in practice, such that the risks in question have become "so serious as to endanger human lives" (§109).

52. The conclusion that the Respondent is in breach of its Convention obligations is reinforced when the ECHR is read consistently with applicable state obligations under international law, and, specifically, with those contained in the UNFCCC and Paris Agreement. The Paris Agreement confirms the intrinsic connection between human rights requirements and all aspects of climate action, including in relation to adaptation and the acknowledgement of Parties that human rights should be respected, promoted and considered when taking climate action (preamble). The language of the treaty in relation to the global goal on adaptation and the legally relevant factors underpinning adaptation action (Article 7) do not in any way lessen the obligations of state parties to the Convention in the context of adaptation as compared to mitigation.
53. The Convention is a living instrument which must be interpreted in the light of present-day conditions, and in accordance with developments in international law, so as to reflect the increasingly high standard being required in the area of the protection of human rights (see for instance *VKS* at §434). Insofar as the Respondent's (including its court's) flawed interpretation of the Paris Agreement led it to lower the standard of protection under the Convention in this respect, that represents a failure to respect the relevant Convention rights. The correct interpretation of the Paris Agreement should have informed the Respondent's approach to the protection of the Applicants' Convention rights in the way that it drew up NAP3 and ensured a human rights-based approach, centred on Convention rights. The failure to adopt measurable specific and clear objectives (as well as the failure to hold open public engagement including the most at risk) reflects the UK's failure to act consistently with the Paris Agreement, including the need to act on the basis of the best available scientific evidence and transparency. The UK's current approach to adaptation is also inconsistent with the mutually informed approach to the protection of the right to life recommended by the HRC in paragraph 62 of General Comment No 36.
54. The Respondent's approach to adaptation programmes is thus fundamentally inconsistent with its obligations under the Paris Agreement to "respect, promote and consider" its obligations on human rights when taking action to address climate change (Preamble). The limited requirements for specificity and effectiveness of adaptation programmes, as confirmed by the domestic courts, are contrary to the requirements of the Convention and indeed mean that Part 4 of the CCA is not being interpreted and applied in a way which duly respects and promotes the UK's obligations on human rights when adapting to climate change. Nothing in the language of Part 4 requires it to be interpreted inconsistently with Convention rights.
55. The ECtHR's jurisprudence, including but not limited to *VKS*, makes clear that what is required to ensure compliance with the ECHR are adaptation measures that are capable of "alleviating the most severe or imminent consequences of climate change" (§552).

In order for the framework in which such measures are decided and implemented to be effective, it must be possible for the public to assess whether, and the degree to which, consequences are severe or immediate and are / will be alleviated (or not). This can only logically be done by reference to SMART objectives (or the like) or, at least, not on an approach which simply offers unspecific risk reduction.

56. The Applicants submit that the requirement for an effective framework in *VKS* applies equally in the adaptation context as it does in the mitigation context. Indeed, the Committee of Ministers recently recalled that *VKS* required Switzerland to address the identified “adaptation measures aimed at alleviating the most severe of imminent consequences of climate change” as part of its positive obligation to ensure effective protection from the serious adverse effects of climate change, including in respect of “any particular needs for protection, especially for persons in vulnerable situation” (§4-6 [2724-2725]). NAP3 is not an effective framework, because it lacks substantive, specific and measurable objectives. Consequently, the Respondent is in breach of the positive obligations it owes the Applicants to put in place and operate effectively in practice a framework to protect their rights in the face of existing risks posed by climate change.

Ground 2: NAP3 itself does not effectively protect Convention rights

57. Ground 2 is that the Respondent breached the Applicants’ substantive rights under Articles 2, 8, 14 and, in relation to Mr Jordan, A1P1, in light of Mr Paulley and Mr Jordan’s *specific* vulnerabilities and in light of FOE’s role as a means through which the Convention rights of those affected by climate change, including those at a distinct representational disadvantage, can be defended. The Respondent is in breach of its obligations because, (i) NAP3 does not effectively protect the Applicants’ substantive rights: it fails to set out adequate measures to respond to climate change related impacts and risks in the five-year period it covers, and (ii) NAP3 was developed without adequate procedural safeguards, such that the Applicants’ procedural rights have also been breached.
58. First, as to substantive breaches, and as noted in the Application Form, the Respondent was obliged to address the particular additional requirements arising from the health and disability of Mr Paulley, Mr Jordan (and others in a similar position), and/or to prioritise the needs of those most vulnerable who share those needs by taking practical and effective measures to protect them (and others similarly vulnerable) from the impact of extreme heat and coastal erosion. The positive obligation under Articles 8 and Article 1 of Protocol 1 required the Respondent to take the same practical measures as those expected in the context of their positive obligation under Article 2 of the Convention in circumstances where environmental dangers are known and foreseeable (*Kolyadenko and others v Russia*, Application Nos. 17423/05, 20534/05, 20678/05, 23263/05, 24283/05 and 35673/05, §216). In not prioritising those most susceptible to the impacts of extreme heat in care homes, or of those most susceptible to displacement due to coastal erosion, the Respondent has unlawfully discriminated against Mr Paulley and Mr Jordan by reference to Article 14 read in conjunction with Articles 2 and 8 (engaged here including because NAP3 is a modality of the state’s discharge of those obligations). Indeed, when NAP3 was published, there was not even any evidence that the Respondent considered the matter.

59. The Respondent considers that it is complying with its positive obligations simply because there is a legislative framework in place (which, as above, allowed for objectives set in the vaguest way). That approach fails to address limb two of the positive obligation (adequate implementation). As a result of that misconception, NAP3 itself fails to afford effective and practical protection to the Applicants' rights, including for the following general reasons:

- a. Instead of setting out SMART objectives (or specific and timebound objectives to like effect), combined with practically feasible plans and policies to effectively implement those objectives, NAP3 largely limited itself to promising vague improvements with respect to risks that specifically affect the Applicants: for instance, H3 and H4 merely commit to "improve the nation's resilience to future flood and coastal erosion risks, thereby reducing the risks of harm to people, the environment and the economy" [2119B-2119E].
- b. As set out in the Application Form, NAP3's vague and aspirational risk reduction goals (framed in a way which, among other things, makes it impossible to know what will be done by when, or why not; and then to measure progress) are in stark contrast with the detailed and precise measures which the CCC had recommended the Respondent consider in its latest progress report. The ineffectiveness of NAP3's objectives, policies and proposals to fulfil obligations under the Convention, including with respect to extreme heat in care settings and with respect to coastal erosion are relied upon as evidence that NAP3 breaches Mr Paulley and Mr Jordan's substantive human rights, in light of the State's positive obligations in relation to climate change-related impacts (as articulated in *VKS*, §552). As indicated above the flaws in NAP3 also render it ineffective to secure Convention compliance more widely.
- c. NAP3 provided for none of things recommended by the CCC, nor did it explain why it did not. There was not even any evidence of consideration of those issues by the Respondent, let alone any assessment of the costs of doing so (weighed against the impact on persons such as (but not limited to) Mr Jordan and Mr Paulley). There is no indication that the Respondent addressed the need to strike a balance between protecting the Convention rights of the Applicants, and those similarly placed whose Convention rights were subject to interference, with other legitimate aims and public interests.
- d. A range of inadequacies in NAP3 at a general level, such as the absence of timelines for introducing policies and proposals in respect of multiple of NAP3's risk reduction goals, in breach of section 58 CCA.
- e. The fact that – in practice, and as a result of all of the above – NAP3 (like NAP2 before it) led to a further widening of the adaptation gap, for example in relation to the protection of residents of existing care homes from the impacts of excess heat or the safeguarding of those whose homes are at imminent risk from coastal erosion including through securing safe access to emergency services. FOE is particularly concerned that the widening adaptation gap breaches the human rights of many of the individuals whom it represents via this work, including but not limited to those at risk of excess heat and coastal erosion.

60. Further, NAP3 specifically breaches Mr Paulley's substantive rights because:

- a. The reasons set out in the Application Form are repeated.

- b. With respect to Article 2, in summary, Article 2 is engaged on Mr Paulley's case because his right to life is at stake whenever there are periods of excess heat. Article 2 is therefore applicable. The increase in frequency and intensity of duration of heatwaves, as well as their consequences, is well-known to the authorities (as evidenced by the Respondent's own ONS statistics on excess mortality in periods of extreme heats and the reports discussed above at paragraphs 6-7). NAP3 however fails to set out measures to ensure Mr Paulley's Article 2 rights as a care home resident are duly safeguarded. Excess heat poses a foreseeable risk to Mr Paulley's life as of this Summer and next Spring/Summer. Article 2 has therefore been breached.
- c. With respect to Article 8, Excess heat also poses an existing and foreseeable risk to Mr Paulley's quality of life and wellbeing as of this and every future Spring/Summer. As noted, his illnesses may and often do become more severe in excess heat and he largely lives room-bound during heatwaves. The increase in frequency and intensity of duration of heatwaves, as well as their consequences, is well-known to the authorities. Mr Paulley's vulnerability to heatwaves is thus akin to the vulnerability of the applicants in *Budayeva v Russia* (2008), Apps No. 15339/02 to mudslides (both pose foreseeable risks to life, which are known to the authorities), and to the vulnerability of the applicants in *Pavlov v Russia* (2022), App no. 31612/09 to excess pollution and consequent impacts on his quality of life, wellbeing and right to live in a safe environment. Article 8 is therefore also applicable.
- d. NAP3 fails to set out and implement measures to ensure that Mr Paulley's Article 8 rights as a care home resident are duly safeguarded. There is no lawful objective, or specific plan or policy, for ensuring all care homes can withstand higher temperatures by a certain date (or anything even close to that). Consequently, NAP3 does not include measures, e.g., the provision of permanent air conditioning units for care homes, or any systematic measures, plans or funding to adapt Mr Paulley's residential care home (and the home of others in the same situation) to extreme heat, or even a lawful conclusion as to why those matters were not to be addressed. NAP3 ought to – but failed – to suitably address the CCC's concerns and either (i) plan to ensure the resilience of all care homes to excess heat within a reasonable period of time and/or (ii) duly balance the interests of vulnerable care home residents against competing rights and interests in order to offer a proportionate response to excess heating in accordance with Article 8(2) ECHR.
- e. Instead, NAP3 detailed a process of evidence gathering "to increase our evidence of the health-related impacts of issues such as overheating in homes" [2119F-2119G]. However, this process is meant to last for the entirety of the period which NAP3 covers (2023-2028) and is merely evidence gathering of a kind which featured in the predecessor plans, NAP1 and NAP2, without any identified outcome (let alone actual action). No further significant policy action, including on overheating in care homes was provided within NAP3. Of particular relevance to Mr Paulley, was that regulatory requirements were confined to new buildings and thus did not apply to existing care homes which form the majority of the care provision [1227-1232].
- f. Implementing existing policy, reviewing or supporting other organisations, and including unspecified and vague adaptation measures, which is the totality of NAP3's response to this issue, do not amount to lawful objectives, or a level of effective protection sufficient to meet the requirements of Article 2 and 8 of the

Convention, as required. As a result, the Respondent has not taken all reasonable measures to prevent Mr Paulley's life being avoidably put at risk, nor to safeguard Mr Paulley's health, wellbeing, quality of life and right to live in a safe environment during periods of extreme heat. As a consequence, Mr Paulley is effectively room bound during periods of excess heat with severe implications for his mental health and well-being (§14 [408]).

61. In relation to Mr Jordan, NAP3 breaches Articles 2, 8 and Article 1 Protocol 1, for the following reasons:

- a. The reasons set out in the Application Form are repeated.
- b. With respect to Article 2, in summary, Article 2 is engaged on Mr Jordan's case because his right to life was threatened/engaged when his home was at risk of being lost to climate-accelerated coastal erosion. This posed a foreseeable risks to his life, which were known to the authorities (including e.g., the risks caused by the difficulties he faced accessing emergency services prior to the demolition of his home). Article 2 is therefore applicable. NAP3 failed to set out/ensure all necessary measures to prevent Mr Jordan's life, as a vulnerable individual living in a coastal area subject to a managed realignment plan, from being avoidably put at risk, because it failed to set objectives which were capable of effectively protecting Mr Jordan's rights. Coastal erosion posed a foreseeable risk to Mr Jordan's life, and NAP3 failed to adequately protect Mr Jordan against that risk. NAP3 also failed even to address the CCC's concerns on data, monitoring and information. Consequently, it failed even to ensure that Mr Jordan was provided with sufficient information to understand and respond to risks to his life. Article 2 was therefore breached.
- c. With respect to Articles 8 and A1P1, NAP3 does not set effective objectives, policies or proposals in relation to coastal erosion. NAP3's vague and aspirational risk reduction goals with respect to coastal erosion are in stark contrast with the detailed and precise measures which the CCC had recommended the Government consider in its latest progress report. These included, for example, (i) putting Shoreline Management Plans ('SMPs') on a statutory footing, to ensure better monitoring of their progress and to guarantee their funding, (ii) addressing gaps in the allocation of long-term funding and in the resources and support for displaced coastal communities, (iii) addressing gaps in data, in circumstances where it noted that it lacked "key data for tracking the number of properties and land lost to coastal erosion" at a national level, which it considered would provide useful context for tracking national-scale risk assessment and targeting funding. [1843] Mr Jordan's life, well-being and property were thus at risk due to the vulnerability of his home to coastal erosion, compounded by his own vulnerability due to his medical conditions.
- d. NAP3 breached Mr Jordan's rights under Article 8 ECHR, in that it failed to set out sufficient (and sufficiently clear) objectives and measures to ensure that Mr Jordan was properly supported, [REDACTED], and that Mr Jordan's right to live in a safe environment (as per *Pavlov*) was safeguarded. It failed entirely even to carry out (or show evidencing of consideration by the Respondent of) the balancing exercise in respect of objectives as advised by the CCC and as set out above, such that the Respondent failed to carry out the exercise required under Article 8(2).

- e. Genuine, effective exercise of the right protected by A1P1 may require positive measures of protection, particularly where there is a direct link between the measures an applicant may legitimately expect from the authorities and his effective enjoyment of his possessions (*Budayeva*, paragraph 172). NAP3 breached Mr Jordan's property rights in that it failed to set out objectives and measures to either ensure that Mr Jordan's property was not lost to the sea or that, should his home be demolished as a result of Hemsby's managed realignment SMP (as it then was), to ensure that Mr Jordan was provided with proportionate compensation, reimbursement for the costs of removal and for storage of his belongings, or alternative effective remedies (such as access to insurance or reinsurance schemes) for his property losses. Nor does NAP3 even show the Respondent considering those things, let alone reaching a lawful conclusion as to why those matters were not to be addressed. The compensation afforded to Mr Jordan is not compliant with the Respondent's obligations under A1P1, including because the terms of compensation must be assessed in the light of all the other measures implemented by the authorities, account being taken of the complexity of the situation, the number of affected owners, and the economic, social and humanitarian issues inherent in the provision of disaster relief (*Budayeva* §182).

62. In respect of all of the above, NAP3 breached Article 14 – the various failings of NAP3 detailed above created a de facto situation which disproportionately affected Mr Jordan and Mr Paulley [REDACTED]

[REDACTED] None of this meets the due diligence standard for compliance with Article 8 laid down the ECtHR in *Pavlov*.

63. Consequently, the Respondent failed to act with due diligence in protecting the rights impacted by climate change including extreme heat and coastal erosion. There also exist gaps on the facts akin to those found in *VKS*: those gaps lie in the Respondent's failure to properly implement Part 4 CCA having regard to specific positive obligations under relevant Convention rights. The Applicants' substantive rights are not duly protected by reason only of the existence of the CCA framework, in circumstances where that framework is not interpreted as protecting Convention rights.

64. Second, as to procedural breaches, NAP3 was not accompanied by sufficient safeguards such that the Applicants' procedural rights were breached. *VKS*, §553, emphasised in relation to Article 8 that "procedural safeguards available to those concerned will be especially material in determining whether the respondent State has remained within its margin of appreciation." As set out above, those safeguards required (i) public access to relevant information held by public authorities, in order to allow assessment of the risks to which they are exposed; and (ii) procedures through which the views of the public, and particularly those affected, can be taken into account in the decision-making process.

65. The Respondent's position is that there was due protection of the Applicants' procedural rights under the Convention, because the provisions of the CCA and the availability of Environmental Information Requests discharged the obligations set out in *VKS*. However, compliance with the Respondent's procedural obligations here required that the Applicants have an opportunity to express views on proposals for NAP3 and have them taken into account in the process which led to NAP3's publication. That was not the case. Environmental Information Requests are not an answer to the obligation on

the State to proactively provide proper and specific information to the public, and particularly to vulnerable groups, in the manner set out by the ECtHR. Such information requests do not guarantee access to, and crucially use of, information during the decision-making process. They can only also be relied on when a member of the public is aware of recorded information to be requested. In this case NAP3 was developed behind closed doors without requisite details of the process, and specific draft objectives, policies or measures. Key information used was not known to the Applicants, or the public at large.

66. The Respondent therefore exceeded its margin of appreciation given the inadequate procedural safeguards in respect of the process which led to the adoption of NAP3.

IV. Conclusion

67. The UK courts' failure to uphold the Applicants' claims was in part due to a failure to address and/or misunderstanding of the ECtHR's general caselaw in this area and in particular the implications of the *VKS* judgment in relation to adaptation. Furthermore, the domestic courts misinterpreted the international framework for adaptation as laid down in the Paris Agreement, which clearly engages and integrates human rights protections such as those under the Convention and requires a specific assessment of the extent to which adaptation policy is consistent with specific human rights obligations. The NAP3 falls well short of ensuring compliance with ECHR standards, and UK courts have failed to remedy this through their limited interpretation and application of the ECHR, leaving those at real and imminent risk, like the individual Applicants, unprotected.
68. In failing to adopt specific and measurable objectives on adaptation (including extreme heat and coastal erosion), the Respondent undermined the protection against the existing and potential impacts of climate change of the most vulnerable including the individual Applicants. It further failed to ensure transparency or provide sufficient information of the risks and responses to those most at risk. The vague framing of NAP3 is not capable of ensuring a Convention-compliant system of protection under Articles 2 and 8 of the Convention as read with Article 14 nor with Article 1 of Protocol One.
69. In all these respects (or any of them), the repeated failure to address the criticisms made by the CCC / follow the advice of the CCC has meant that the UK has failed to address its inadequate protection of relevant Convention rights by adhering to the best available science as to the specific risks posed to the enjoyment of Convention rights by the impacts of climate change (specifically extreme heat and coastal erosion in the case of the two individual applicants) and/or act with due diligence in seeking to protect those rights by ensuring that effective and practical measures are taking consistent with the standards set by the Convention as above.

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