

**In the Administrative Court
High Courts of Justice**

Between:

**Platform
World Development Movement
People & Planet**

Claimants

and

Commissioners of HM Treasury

Defendant

First Witness Statement of Ian Leggett

Background

1. I, IAN LEGGETT of People and Planet, 51 Union street, Oxford OX4 1JP make this statement in support of the claimants' application for permission to judicially review the Commissioners of HM Treasury.
2. This statement provides the Court with evidence on how the Treasury's failure to consider environmental factors when managing its investments in RBS directly contradicts its statements, policies and obligations to tackle climate change.
3. I am the Director of People & Planet, a not-for-profit company which is one of the UK's leading student organisations. People & Planet's objective is to inspire and support active global citizenship on issues of global poverty, human rights and the environment in schools, colleges and universities.
4. People & Planet is a network of student-organised and voluntarily-run groups based at universities, colleges and schools. There are approximately sixty People and Planet groups in universities across the whole of the UK and approximately the same number of groups in schools and colleges almost all of which are located in England.
5. People & Planet operate on the basis of devolved responsibility with each group choosing for itself which campaigns it wants to support, and how it wishes to advance that campaign. This is in accordance with our overall mandate of inspiring and supporting students to have the skills, knowledge and confidence that they can make a difference – whether that difference is at a local level, nationally or internationally.
6. The fact we are a network of young people means that it is central to our mandate

to address concerns that will have a direct impact on the lives and well-being of young people. Climate change is the most pressing of these concerns.

7. People & Planet has been campaigning on the threat of climate change for nearly ten years. Many organisations and public bodies have recognised the change in attitude and policy that our work has achieved. For example, the Higher Education Funding Council and the Environmental Association of Universities and Colleges have both stated that People and Planet played a crucial role in transforming attitudes towards environmental management in the Higher Education sector, by encouraging universities and colleges to change their policies, priorities and practices towards promoting sustainable development and reducing their own carbon emissions. In 2007, we won 'Best Campaign' in the nationwide British Environmental Media Awards.
8. One component of our work regarding climate change has focused on finance. We have spent some time trying to persuade public and private financiers to implement a managed transition out of fossil fuels and into renewable and low carbon technologies, companies and infrastructure.
9. Platform's research into the role played by banks in the finance of the fossil fuel sector industries showed that RBS was (and is) the bank most involved in this areaⁱ [page 793-820].
10. Kevin Smith's first statement deals with this issue in detail. Our organisation has then used the research to which Mr Smith refers to increase knowledge and understanding amongst our groups and amongst students in general, build the momentum for a popular campaign and to encourage students to exercise their rights as citizens by building parliamentary support for the objectives of the campaign.

The Science of Climate Change and its Threat

11. There is now an overwhelming consensus that climate change is happening and that it is linked to the growing concentration of greenhouse gases in the atmosphere and, in particular, of carbon dioxide. There is consensus, too, that these increased emissions of carbon dioxide are the consequence of the growing use of fossil fuels.
12. Some fossil fuels are dirtier, and thus more dangerous, than others. By far the biggest threat is posed by coal. Coal is the fossil fuel most responsible for 'excess' CO₂ (i.e. the increase in CO₂ above pre-industrial levels) in the air today.
13. Professor James Hansen, director of Nasa's Goddard Institute for Space Studies, Adjunct Professor of the Columbia University Earth Institute, a member of the US National Academy of Sciences and one of the world's leading climate scientists has described it as "the single greatest threat to civilisation and all life on our planet"ⁱⁱ [page 879-881].
14. Oil and gas also increase CO₂ levels but the damage they cause varies depending on type and from where they are exploited. The report "Unconventional

Oil” by WWF and the Co-operative Bank sets out in detail the threat posed by the different types of fossil fuels [page 768(1)-(52)].

15. The vast range of scientific evidence suggests that there is a 'safe limit' of carbon dioxide in the atmosphere of 450 parts per million (ppm) – though there are growing anxieties that this may be too high. Currently, carbon concentrations have reached 387 ppm. On the basis that the level is rising at slightly more than 2 ppm p.a. it is clear we will cross that safety threshold in the next 25 years or so. As Professor Hansen confirmed, “the climate system is dangerously close to tipping points that could have disastrous consequences for young people, life and property, and general well-being on the planet.”ⁱⁱⁱ [page 881(1)-881(20)]
16. Scientific consensus is unequivocal that drastic action needs to be taken to tackle climate change and such action is needed immediately. Martin Parry, co-chair of the Intergovernmental Panel on Climate Change’s (IPCC) Impacts Assessment working group, says: “The longer we delay mitigation, the more likely it is that global change will exceed our capacity to adapt”.^{iv} [page 784-786]
17. Almost all scientific evidence points to the conclusion that developing countries need radical and urgent action to halt the growth in, and reduce, global CO₂ emissions. Rich countries currently emit on average 13.2 tonnes of CO₂ per person, compared to 2.5 tonnes per person in developing countries^v [page 408(23)-408(24)] and advanced economies such as the UK need to begin radical cuts in emissions now.
18. The UK bears particular responsibility for taking immediate and drastic action to mitigate climate change. In 1830, the UK began emitting more CO₂ a year than the current level which has been deemed by scientists to be sustainable. For the past 175 years, the UK has been contributing to the climate change we are now seeing. Today, over 84 per cent of the world’s population live in countries which emit less CO₂ per person than the UK.^{vi} As an indication of the imbalance in relative contributions to climate change, in just eight days, the average UK citizen produces as much CO₂ as the average person in one of the poorest countries will produce in an entire year. It takes only 40 days for the UK to produce as much CO₂ per person as India will in a year.

The Government’s Response

19. The need to act and to act urgently appears to have been accepted by the UK government. In one of the first and most important interventions by the UK government the then Prime Minister Tony Blair said in 2004 “The Royal Commission on Environmental Pollution’s seminal report on energy concluded that to make its contribution towards tackling climate change, the UK needed to reduce our carbon dioxide emissions by 60% by 2050. This implies a massive change in the way this country produces and uses energy. We are committed to this change. There are immense business opportunities in sustainable growth and moving to a low carbon economy”^{vii} (14 September 2004) [Page 202-211].
20. When Prime Minister Tony Blair described the threat of climate change as “the

greatest long-term threat facing the world today”^{viii} [page 377-379], and the present Prime Minister Gordon Brown has described it as “the most momentous and far reaching challenge we have ever faced as a world”^{ix} [page 1023-1027] and Foreign Secretary David Miliband as the “greatest long-term threat to global stability and prosperity”.^x [page 484] The Chancellor himself has admitted that the failure to act to combat climate change risks “catastrophic economic and social consequences”^{xi}. [page 746-766]

21. No doubt with these “catastrophic...consequences” in mind the then Minister for Environment and Rural Affairs, David Miliband announced that the UK must “move [its] whole economy to one that is low carbon.” The Secretary of State for Business Enterprise and Regulatory Reform, Lord Mandelson has since stated that “This transition to low carbon is an economic and environmental imperative. It is also inevitable. There is no high carbon future... Low carbon is not a sector of an economy – it is an economy”^{xii}. [page 1021-1022]
22. Ed Miliband, head of the Department of Energy and Climate Change, which is “responsible for all aspects of UK energy policy and for tackling global climate change” [page 737], has stated “We have to decarbonise all sectors of the economy”, adding that “we need to make the transition to low carbon as quickly as we can”^{xiii} [page 1151].
23. In order to achieve this in November 2008, the government passed a Climate Change Act committing Britain to a reduction by 80% of CO₂ emissions by 2050 and the government appeared to accept that in order to change the economy to one based on “low carbon”, a fundamental break from existing policies and practices was required. The Climate Change Act is said by the government to be “a landmark piece of legislation. For the first time anywhere in the world, it establishes national medium and long-term emissions reduction targets and requires Government to set and meet five year carbon budgets that put the UK on the right trajectory to meet these targets. By enshrining in law the UK’s commitment to tackling climate change, the Act both drives progress towards a low-carbon economy in the UK and supports our efforts to secure a satisfactory global deal on climate change”^{xiv} [page 1051].
24. The government has taken steps to comply with the Climate Change Act. For example, in April 2009, the Climate and Energy Minister Ed Miliband made an announcement in Parliament that no new unabated coal power stations would be granted permission in the UK^{xv} [page 1068-1069].
25. In his 2009 budget speech to Parliament, the Chancellor announced that Treasury is dedicating over £1 billion to help tackle the threat of climate change, and also presented “the world’s first ever carbon budget”, committing Britain to cutting carbon emission by 34% by 2020. This he said was a “landmark step, which point the way to the vital decisions which must be made at the Copenhagen Climate Change Summit later this year”.^{xvi} [page 1056-1067]
26. More generally, the Treasury has acknowledged the centrality of sustainable development to the overall direction of UK government spending. These commitments include a “transparent public expenditure delivery framework” and “making use of the fiscal system, where appropriate, to tackle environmental

externalities”.^{xvii} [page 376]

27. In April the government published its response to the first report of the independent Committee on Climate Change that has been set up pursuant to the Climate Change Act. In announcing its acceptance of the budgets recommended to it by the Committee on Climate Change, the government stated, “The carbon budgets announced today represent a step change in the Government’s level of ambition on climate change^{xviii}.” [page 1051]
28. In the words of the Treasury, “The key ingredients will be a cap on emissions in the power and industrial sectors through the EU Emissions Trading System; dramatic improvements in energy efficiency across all sectors; shifting to renewable sources of electricity, like biomass and wind power, and supporting carbon capture and storage (CCS); and switching energy demand in the heat and transport sectors to renewable and cleaner fuels. Driving investment in the energy networks to support this change will be crucial.”^{xix} [page 1051]
29. The government welcomed the Stern Report (see further below) when it was published in 2006 and has made frequent and positive references to it over recent years. For example, in 2007, the then Chancellor of the Exchequer, Gordon Brown said, “When nearly two years ago, I commissioned the Stern report on the economics of climate change, I wanted to build a consensus that we had to ally environmental care to economic growth and social justice as our trinity of objectives^{xx}.” [page 445]

The role of ethical investment in tackling climate change

30. As the government appear to acknowledge, part of the transition to a low carbon economy necessarily involves a change in investment priorities. Support for renewable and low carbon energies have to be increased and investment in fossil fuels – beginning with those that are most carbon intensive - decreased.
31. This does not mean that all investments in all fossil fuels have to stop immediately. However, it does mean that before investing in a particular company or project, the likely carbon consequences of it have to be identified and assessed and then a determination needs to be made about whether the investment is consistent with current legal and policy requirements to become a low carbon economy. Those not consistent with the policy should not be supported.
32. The necessity of such a change in attitude appeared to be recognised by the government both in its national policies and its international role.
33. In 2006 the government accepted the principal recommendations made by Sir Nicholas Stern in his comprehensive and definitive study on the economics of climate change.
34. His Review confirms that “climate change presents a unique challenge for economics: it is the greatest and widest-ranging market failure ever seen. The economic analysis must therefore be global, deal with long time horizons, have the economics of risk and uncertainty at centre stage, and examine the possibility of

major, non-marginal change.”^{xxi} [page 392]

35. It makes clear that the first task that has to be undertaken by government is to place “an appropriate price on carbon – explicitly through tax or trading, or implicitly through regulation”^{xxii}. In so doing it “will lead ... businesses to switch away from high-carbon goods and services, and to invest in low-carbon alternatives.”^{xxiii} It goes on to state that “In order to influence behaviour and investment decisions, investors and consumers must believe that the carbon price will be maintained into the future. This is particularly important for investments in long-lived capital stock... such as power stations... If there is a lack of confidence that climate change policies will persist, then businesses may not factor a carbon price into their decision-making. The result may be over-investment in long-lived, high-carbon infrastructure – which will make emissions cuts later on much more expensive and difficult.”^{xxiv} [page 400]
36. Commenting on investment flows in relation to a global agreement in the light of the Copenhagen Conference in 2012, the Chancellor stated that:
- “We do not have to wait for a post-2012 agreement to set in motion the flows of economic investment. We can, and indeed must, do this now. A new agreement, after all, is not an end in itself. It is a means to direct global resources into low carbon investment. Over the next 25 years the International Energy Agency estimates that global energy demand will increase by 46%, and over 70% of this will be in developing countries. This will require global energy investment of some 20 trillion dollars. So the core question facing the international community is whether that investment contributes to the problem of climate change, or helps to solve it. Do our energy technologies lock in high emissions for the next forty years, or do we take the low carbon path? Are our policies efficiently designed to keep costs down, so we can afford the dramatic reductions in emissions needed? The Stern report shows that we must make these choices urgently.”^{xxv} [page 446]
37. In May 2009, Lord Myners, the Financial Services Secretary again in recognition of the Stern recommendations informed those at the Investment Management industry that “Short termism, as practised by pension funds, is self-defeating for those charged with delivering pensions over many decades in to the future, and yet it remains a predominant form of behaviour. A focus on 'shareholder value', as measured by relative share price performance over quite short time periods lies at the heart of a number of behaviours which have delivered less than ideal outcomes, such as the ascendancy of momentum investing which discourages contrarian thinking by all but a small minority" and "and a failure to take account of the longer-term consequences of investment activity, including impact on the broader economy and society.”^{xxvi} [page 1138]
38. At the international level, the World Bank’s report Extractive Industries Review 'Final Report: Striking a Better Balance' also reflects this view. Even in 2004, a time when the science of climate change was less certain and the likely impacts more contested – that financial support for extractive industries was controversial and inconsistent with the World Bank's over-arching aims of poverty

reduction and sustainable development.^{xxvii1} [page 212-218]

39. In recognition of this, the World Bank confirmed that its “future investments in extractive industries [would] be selective, with greater focus on the needs of poor people, and a stronger emphasis on good governance and on promoting environmentally and socially sustainable development...We support the principle that due to the high value of some biodiversity resources, there are, effectively, “no-go” zones in the world for new extractive industry investments.”^{xxviii} [page 214]
40. The UK is a member of the World Bank board and the Department for International Development has been at pains to point out to NGOs that the UK government would in fact like the Bank to go further.
41. In its review of the UK government’s engagement with the Bank over the period 2006-2007, it is said that :

“The government worked closely with the Bank to develop the Clean Energy Investment Framework and to strengthen cooperation with the Regional Development Banks. This will help increase developing countries’ access to clean energy and to assist them in dealing with the effects of climate change...

The UK has strongly encouraged collaboration between the World Bank and Regional Development Banks (RDBs) on a global investment framework, which has huge potential to increase the financing of clean energy. Throughout 2006/07 the Bank worked with the RDBs and the private sector to develop proposals, and in March 2007 they co-hosted the London Clean Energy Forum which brought together experts from the international financial institutions and the private sector banks and businesses. They agreed to present reports on private sector financing of clean energy to the Gleneagles Dialogue meeting in Berlin in September 2007.

In parallel, the Bank worked on a paper to be discussed at the October 2007 Annual Meetings. The Government pressed for this paper to set a number of ambitious new targets on clean energy, including on the financing of renewable energy.

While work continues on the Clean Energy Investment Framework, the World Bank is significantly increasing its support for clean energy. A recent Bank report showed that in 2006 financing of renewable energy and energy efficiency projects rose by 45%, to a total of £359 million, far exceeding the 20% annual increase target set in 2004. The Bank has also stepped up its dialogue with key countries, such as China, India, Brazil and Mexico, on clean energy issues and has begun detailed country assessments to assess opportunities for investments.

While the UK and others have been strong supporters of this work by the

¹<http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/EXTOGMC/0,,contentMDK:20605112~menuPK:592071~pagePK:148956~piPK:216618~theSitePK:336930,00.html>

World Bank, other shareholders are less convinced of its importance and that the Bank should play a leading role. This makes it difficult for the Bank to progress work as fast as it might wish, and we continue to work with Bank management to generate support from other shareholders.”^{xxix} [page 461]

42. The UN, of which the UK is also obviously a leading figure, has similarly adopted criteria in relation to its investments. In 2006 it published its Principles of Responsible Investment and the UN Global Compact which stated that the UN would [page 849]:

- a. Incorporate ESG (Environmental, Social and Governance) issues into investment analysis and decision-making processes.
- b. Be active owners and incorporate ESG issues into our ownership policies and practices.
- c. Seek appropriate disclosure on ESG issues by the entities in which we invest.
- d. Promote acceptance and implementation of the Principles within the investment industry.
- e. Work together to enhance our effectiveness in implementing the Principles.
- f. Report on our activities and progress towards implementing the Principles^{xxx}.

43. The UK is a signatory to these Principles. The Executive Secretary of the UN Framework Convention on Climate Change (UNFCCC) explained that in order to implement such Principles, a “conscious effort to shift from traditional investment to more climate-friendly alternatives will require governments to adopt new policies and change the way they use their funds. The required shift in future investment and financial flows needs a combination of actions by the intergovernmental process under the UNFCCC and national governments”^{xxxi}. [page 482]

The Inconsistency of the Treasury’s Position

44. It was therefore with great surprise, confusion and disappointment that we read in the UKFI’s Framework Document^{xxxii} [page 997-1020] and subsequent correspondence with Platform that the Treasury does not consider the impact investments by a bank it owns and controls might have on climate change to be relevant when making decision on how to spend public money.

45. Instead, it apparently considers that the appropriate approach by UKFI is one of 'business-as-usual', which is clearly inconsistent with the policies, goals and statements the government has made about the importance of tackling climate change and the role played by ethical investment in achieving that aim.

46. The Treasury’s failure to take perhaps the most obvious step in tackling climate change, to stop using public money to bankroll damaging projects financed by RBS, will make climate change worse and counteract all the public expenditure the government it is making on green initiatives.

47. The HMT is contradicting stated government policy objectives, expenditure commitments, and best practice considerations.

48. The UKFI Framework Document [page 1007] makes it clear that UKFI recognises the fundamental legal duty of boards to manage their companies in the interests of all their shareholders. UKFI has just one shareholder, the Treasury on behalf of the public.
49. If UKFI is to be managed in the interests of all of its shareholders it must be managed in a way that advances the public interest. Given climate change is recognised to be one of the gravest threats facing our society, it is hard to imagine under what conditions it would be in the public interest for RBS to invest in projects or activities that are likely to contribute to increasing the likelihood of climate change, let alone how it can be in the public interest for the Treasury not even to consider these matters when deciding how to exercise power over RBS.
50. The Treasury has stated in its letter of 21 April that “the environmental and human rights records of the individual banks were of no relevance to the decision” (to re-capitalise). Whilst this may be understandable in the context in which the decisions were taken in 2008 such a position cannot be correct moving forward when the Treasury decides now to run RBS in the public interest. [page 1052-1055] The Treasury has adopted an exceedingly narrow interpretation of its overarching objective “to protect and create value for the taxpayer as shareholder”^{xxxiii}. The only two factors which it apparently regards as relevant are the maintenance of financial stability and the promotion of competition.
51. Indeed, it is clear from the correspondence that Treasury assumes that incorporating environmental and social criteria into the Investment Mandate would in some way “undermine the commercial viability of the banks....thereby threatening the success of the re-capitalisation scheme”. No evidence is offered to justify this assumption and the Treasury do not appear even to have assessed the commercial impact on a bank such as RBS of requiring it not to invest in the most damaging kinds of projects.
52. Such a decision completely contradicts all the previous statements and obligations of the government regarding the need to urgently tackle climate change and to ensure the economy (including public as well as private finance) is used to encourage a transition to a “low carbon economy”.
53. It is for this reason we feel we have no option but to ask the Court to review this decision. For the government to decide that it is appropriate to invest public money in projects that will have devastating effects on the climate makes a mockery of, and undermines all its promise to reduce CO2 emissions.

Signed:

Dated:

- ⁱKevin Smith, Mel Evans and Sara Pena, *Cashing in on Coal: RBS, UK Banks and the Global Coal Industry* (2008)
- Mika Minio-Paluello, *The Oil and Gas Bank: RBS & the financing of climate change* (2007)
- ⁱⁱ James Hansen, 'Coal-fired power stations are death factories. Close them', *Observer*, February 2009
- <http://www.guardian.co.uk/commentisfree/2009/feb/15/james-hansen-power-plants-coal>
- ⁱⁱⁱ<http://www.greenpeace.org.uk/files/pdfs/climate/hansen.pdf>
- ^{iv} Parry, M. et al. (2008) "Squaring up to reality" *Nature Reports Climate Change*. 29 May 2008
- ^v Calculated using data from US EIA (2008) in Appendix to WDM report, 'Climate Calendar' (2007)
- <http://www.wdm.org.uk/resources/reports/climate/climatecalendarreport08012007.pdf>
- ^{vi} WDM report, 'Climate Calendar' (2007)
- <http://www.wdm.org.uk/resources/reports/climate/climatecalendarreport08012007.pdf>
- ^{vii} Prime Minister's Speech on Climate Change, September 2004, <http://www.number10.gov.uk/Page6333>
- ^{viii} Letter from PM to David Miliband, 11 May 2006 <http://www.number10.gov.uk/Page9442>
- ^{ix} Speech to Low Carbon Industrial Summit, March 2009, <http://www.number10.gov.uk/Page18530>
- ^x Climate change 'greatest' threat to global stability, British minister says at UN United Nations News Centre 27 September 2007 <http://www.wan.cn/apps/news/story.asp?NewsID=24046&Cr=general&Cr1=debate>
- ^{xi} Chancellor of the Exchequer's Budget Statement, March 2008 http://www.hm-treasury.gov.uk/bud_bud08_speech.htm
- ^{xii} Peter Mandelson, 'Building a Successful Low Carbon Economy', March 2009 <http://www.berr.gov.uk/aboutus/ministerialteam/Speeches/page50378.html>
- ^{xiii} Ed Miliband responding to questions on the Guardian website, <http://www.guardian.co.uk/environment/blog/2009/jun/26/climate-change-carbon-emissions>
- ^{xiv} 'Building a low-carbon economy: implementing the Climate Change Act 2008', Treasury, April 2009, http://www.hm-treasury.gov.uk/d/Budget2009/bud09_carbon_budgets_736.pdf
- ^{xv} Miliband, "The era of new unabated coal has come to an end", Quoted in Quoted in Damian Carrington, 'No new coal without carbon capture, UK government rules', <http://www.guardian.co.uk/environment/2009/apr/23/carbon-capture-plans>
- ^{xvi} *The Daily Telegraph* "Budget 2009: Alistair Darling's speech" 22 April 2009
- ^{xvii} HM Treasury – key contributions to sustainable development. <http://www.defra.gov.uk/sustainable/government/gov/department/hmt.htm>
- ^{xviii} Building a low-carbon economy: implementing the Climate Change Act 2008, Treasury, April 2009
- ^{xix} Ibid.
- ^{xx} Speech by Chancellor of the Exchequer, the Rt Hon Gordon Brown MP to the World Bank Conference on the Clean Energy Investment Framework, London, 2007(<http://www.hm->

treasury.gov.uk/speech_chex_130307.htm)

^{xxi} Nicholas Stern, Stern Review: *The Economics of Climate Change*, Executive Summary p.1

^{xxii} Ibid. p.18

^{xxiii} Ibid.

^{xxiv} Ibid. p.19

^{xxv} Speech by Chancellor of the Exchequer, the Rt Hon Gordon Brown MP to the World Bank Conference on the Clean Energy Investment Framework, London, 2007, http://www.hm-treasury.gov.uk/press_39_07.htm

^{xxvi} Financial Services Secretary, IMA Annual Dinner, May 2009 http://www.hm-treasury.gov.uk/speech_fsst_190509.htm

^{xxvii} World Bank Group Management Response, 'Striking a Better Balance',

[http://www.ifc.org/ifcext/eir.nsf/AttachmentsByTitle/FinalMgtResponseExecSum/\\$FILE/finaleirmanagementresponseexecsum.pdf](http://www.ifc.org/ifcext/eir.nsf/AttachmentsByTitle/FinalMgtResponseExecSum/$FILE/finaleirmanagementresponseexecsum.pdf)

^{xxviii} Ibid.

^{xxix} "The UK and the World Bank: 2006-2007" Department for International Development 2007

<http://www.dfid.gov.uk/Documents/publications/involvement-wbank.pdf>

^{xxx} <http://www.unglobalcompact.org/AbouttheGC/TheTenPrinciples/index.html>

^{xxxi} Press Release, 'UNFCCC secretariat presents investment and financial flows necessary to respond to climate change', http://unfccc.int/files/press/news_room/press_releases_and_advisories/application/pdf/20070823_investment_and_financial_flows_english.pdf

^{xxxii} <http://www.ukfi.gov.uk/releases/UKFI%20Introduction.pdf>

^{xxxiii} http://www.hm-treasury.gov.uk/press_114_08.htm